

**LUCAS AND CAVALIER ATTORNEYS SUCCESSFULLY OBTAIN DISMISSAL OF
MEDICAL MALPRACTICE CASE FILED IN FEDERAL COURT, THEN OBTAIN SECOND
DISMISSAL AFTER CASE WAS RE-FILED IN STATE COURT**

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By Thomas L. Mueller

On June 21, 2019, the United States District Court for the Middle District of Pennsylvania granted Defendants' Motion to Dismiss in a medical malpractice case first filed in 2018.

Plaintiff, a federal prisoner then incarcerated at the United States Penitentiary in Lewisburg, Pennsylvania (USP-Lewisburg), filed the case as an FTCA/Bivens action. He alleged staff members at USP-Lewisburg lifted his "medical hold," resulting in his transfer to another facility and the cancellation of follow-up medical appointments with the defendant neurosurgeon, who recently had performed spinal surgery on Plaintiff. Plaintiff alleged this denial of medical care resulted in the worsening of his condition, including neuropathy in his left foot. Plaintiff alleged Defendants violated his Eight Amendment Rights by demonstrating deliberate indifference to his medical needs.

Defendants, a neurosurgeon and his practice group both represented by Lucas and Cavalier, sought dismissal of Plaintiff's Second Amended Complaint on two grounds. First, Defendants argued the court lacked jurisdiction under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) because they are not federal actors. Second, Defendants argued Plaintiff's failure to file Certificates of Merit in connection with his claims against Defendants was fatal to his case.

In an eleven-page opinion authored by the Honorable Yvette Kane, the court agreed with Defendants and found Defendants were private actors, not federal actors acting under color of federal law, and Plaintiff's failure to file Certificates of Merit is grounds for dismissal of the case. The court further held another proposed amendment to Plaintiff's Complaint would be futile, so he was precluded from filing a Third Amended Complaint.

Plaintiff, unfazed by the dismissal of his federal court case, re-filed the case in the Lycoming County Court of Common Pleas. Defendants again sought the dismissal of the case due to Plaintiff's failure to support his Complaint with the requisite Certificates of Merit. Defendants also successfully opposed efforts by the incarcerated Plaintiff to obtain court-appointed counsel.

On January 7, 2020 the court entered a judgment of non pros against Plaintiff, thereby dismissing his Complaint. Before his case's dismissal, Plaintiff engaged in an attempt to settle the case with Defendants. Based on the advice of our attorneys, Defendants opposed this request, as they maintained Plaintiff could not support his case and would be unsuccessful if the case ever went to trial.

The attorneys at LUCAS AND CAVALIER, LLC work tirelessly to obtain decisive and efficient results for our clients and are available to answer any questions arising from this case.