
IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MARY F. ADAMS, Individually,

CASE NO. CI: 15 8610

Plaintiff,

vs.

AMENDED COMPLAINT

THE NEBRASKA METHODIST
HOSPITAL, a non-profit domestic
corporation; and ALAN T. RICHARDS,
M.D.,

Defendants.

INTRODUCTION

1. This is a medical malpractice claim brought pursuant to the Nebraska Hospital-Medical Liability Act, (hereinafter NHMLA).

JURISDICTION

2. Being a court of general jurisdiction, the District Court for Douglas County has requisite jurisdiction to hear medical malpractice cases.
3. The occurrence took place in Omaha, Douglas County, Nebraska.
4. This action was timely filed within two (2) years of the occurrence which occurred on October 1, 2013.

PARTIES

5. Plaintiff, Mary F. Adams, is:
 - a. a resident of Fremont, Saunders County, Nebraska;
 - b. is married to Virgil "Bud" Adams; and,
 - c. is a 71-year-old female.
6. Defendant, THE NEBRASKA METHODIST HOSPITAL:

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- a. is a health care provider as defined by the NHMLA;
 - b. is a corporation licensed to provide professional medical services in Nebraska;
 - c. does business under the name of Head and Neck Surgical Oncology;
 - d. its physician employee, Defendant Alan T. Richards, M.D., provided medical and surgical care to the Plaintiff on October 1, 2013, the date of the occurrence; and,
 - e. its physician employee, Defendant Alan T. Richards, M.D., was acting within the scope of his authority with The Nebraska Methodist Hospital, when he performed Plaintiff's total thyroidectomy on October 1, 2013, the date of the occurrence.
7. Defendant Alan T. Richards, M.D., (hereinafter, "Dr. Richards"):
- a. is a health care provider as defined by the NHMLA;
 - b. is a physician licensed to practice medicine in Nebraska;
 - c. was employed by The Nebraska Methodist Hospital on October 1, 2013, in Omaha, Douglas County, Nebraska; and,
 - d. was acting within the scope of his authority with The Nebraska Methodist Hospital when he performed Plaintiff's total thyroidectomy on October 1, 2013, the date of the occurrence.

OCCURRENCE

8. On October 1, 2013, Dr. Richards performed a total thyroidectomy on Plaintiff.
9. During surgery, Dr. Richards severed Plaintiff's left recurrent laryngeal nerve.

10. At the conclusion of the procedure on October 1, 2013, a nerve monitor was used with the right and left recurrent laryngeal nerves.
11. When it was discovered, at the conclusion of the procedure, that the left recurrent laryngeal nerve had been divided just about 1.5 cm before it entered the larynx, Robert H Lindau, M.D. was called in to the operating room to repair Plaintiff's left recurrent laryngeal nerve using a microscope.
12. On January 11, 2014, Plaintiff underwent tracheostomy placement which remains to the present day.

ORDINARY AND REASONABLE CARE

13. All corporations holding licenses to provide medical services by physicians in Nebraska are required to provide ordinary and reasonable care for the benefit of their patients in Nebraska.
14. Under Nebraska law, malpractice or professional negligence means that, in rendering professional services, a health care provider has failed to use the ordinary and reasonable care, skill, and knowledge ordinarily possessed and used under like circumstances by members of their profession engaged in a similar practice in their or in similar localities.
15. In determining what constitutes reasonable and ordinary care, skill, and diligence on the part of a health care provider in a particular community, the test, as defined in Nebraska law, shall be that which health care providers, in the same community or in similar communities and engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients under like circumstances.

16. Failure to use ordinary and reasonable care, skill, and diligence is professional negligence or malpractice.

17. In this case, the duty to provide ordinary and reasonable care during the occurrence was, and still is, what:

A. Physicians:

1. in Omaha or similar metropolitan areas in the United States;
2. who perform total thyroidectomies using a nerve monitor; and
3. would ordinarily exercise and devote to the benefit of their patient under like circumstances by:
 - a. identifying and preserving the right and left laryngeal nerves in order to protect the right and left laryngeal nerves;
 - b. actually identify and preserve the right and left laryngeal nerves in order to protect the right and left laryngeal nerves;
 - c. use ordinary medical knowledge to recognize that the right and left laryngeal nerves should be identified and preserved, in order to protect the right and left laryngeal nerves;
 - d. actually be diligent in the identification and preservation of the right and left laryngeal nerves in order to protect the right and left laryngeal nerves;
 - e. actually protect the right and left laryngeal nerves; and,
 - f. actually prevent injury to the right and left laryngeal nerves.

PROFESSIONAL NEGLIGENCE

18. Defendants THE NEBRASKA METHODIST HOSPITAL, doing business as Head and Neck Surgical Oncology and its agent, Alan T. Richards, M.D., and each of them, on October 1, 2013, the date of the occurrence, were jointly and severally negligent, when Dr. Richards, in Omaha, Nebraska, with admitting and surgery privileges at The Nebraska Methodist Hospital, severed Plaintiff's left recurrent laryngeal nerve and damaged Plaintiff's right recurrent laryngeal nerve.

CAUSATION OF DAMAGE

19. As a direct and proximate result of the joint and several negligence of Defendants, and each of them as set forth above, Plaintiff required surgical repair, tracheostomy, other medical procedures, lengthy hospitalizations, unnecessary medications, large hospital bills, and unnecessary pain and suffering. Plaintiff also incurred emergent and life-threatening consequences to include an additional surgery, a tracheostomy, painful physical discomfort, mental anguish, and permanent damage to her vocal cords and airway.

AGENCY

20. During the date of the occurrence, Alan T. Richards, M.D., was an:

- A. agent of Defendant THE NEBRASKA METHODIST HOSPITAL; and,
- B. acting in the scope of his authority with THE NEBRASKA METHODIST HOSPITAL when treating Plaintiff.

WAIVER OF PANEL REVIEW AND UNCONSTITUTIONALITY OF THE NEBRASKA
HOSPITAL MEDICAL LIABILITY ACT

21. Plaintiff alleges that the Defendants do not qualify for coverage under the Nebraska Hospital Medical Liability Act, and have failed to comply with the requirements of the Act.
22. Even though the Defendants may have filed with Nebraska Department of Insurance claims for special benefits, privileges, and other protections under the act, Plaintiff alleges the NMHLA is unconstitutional in whole or in part because it violates the Seventh and Fourteenth Amendments to the Constitution of the United States, as well as the following provisions of the Constitution of the State of Nebraska: Article 1 §§ 1, 3, 6, 13, 16, 21, 25, and 26; Article II, § 1; Article III, §18; Article V, §2; Article VI, §1, and Article XII, §10(c).
23. Plaintiff through the act of filing her Amended Complaint affirmatively waives her right for a medical review panel to review her claims against the defendants as provided by the NHMLA and elects to file this action directly in the District Court of Douglas County, Nebraska.
24. Copies of this Amended Complaint were mailed to the Director of the Department of Insurance and to the Attorney General of the State of Nebraska.

WHEREFORE, pursuant to NHMLA, Plaintiff asks for damages as are reasonable in the premises, that Neb. Rev. Stat. § 44-2825 be declared unconstitutional, and for her taxable costs.

DATED this 25th day of March, 2016.

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MARY F. ADAMS, Individually,
Plaintiff,

By: /s/ John F. Carroll
John F. Carroll, #23811
Steven M. Watson, #16075
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2809 South 160th Street, Suite 409
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john@watsoncarroll.com
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ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

On March 25, 2016, a copy of the above and foregoing was sent by United States certified mail, postage prepaid to:

Bruce Ramge, Director
Nebraska Department of Insurance
941 "O" Street, #400
Lincoln, NE 68508

Doug Peterson
Nebraska Attorney General
PO Box 98920
2115 State Capitol Building
Lincoln, NE 68509-8920

/s/ Jean M. Herman-Fehr, ACP

Certificate of Service

I hereby certify that on Friday, March 25, 2016 I provided a true and correct copy of the Amended Complaint to the following:

Physicians Clinic service method: No Service

UNMC Physicians service method: No Service

Nebraska Methodist Hospital service method: No Service

Adams, Mary, F represented by Watson, Steven, M (Bar Number: 16075) service method:
Electronic Service to steve@watsoncarroll.com

Richards, Alan, T, M.D. service method: No Service

Nebraska Methodist Health System service method: No Service

Signature: /s/ Carroll, John Fitzgerald (Bar Number: 23811)