

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

JENNIFER D. SMITH,)	
)	CASE NO. CI 16-3706
Plaintiff,)	
)	
v.)	
)	
THE VISITING NURSE)	
ASSOCIATION OF THE MIDLANDS)	AMENDED COMPLAINT &
d/b/a VISITING NURSE)	JURY DEMAND
ASSOCIATION,)	
PHYSICIANS CLINIC, INC. d/b/a)	
METHODIST PHYSICIANS CLINIC,)	
NEBRASKA METHODIST)	
HOSPITAL, NEBRASKA)	
METHODIST HEALTH SYSTEM,)	
INC., GARY ANTHONE, MD, and)	
JOHN DOES 1-10, and JANE DOES)	
1-10,)	
)	
Defendants.)	

COMES NOW, the Plaintiff, Jennifer D. Smith, and for her causes of action against Defendants, alleges and state as follows:

PARTIES

1. The Plaintiff is JENNIFER D. SMITH, an individual. At all relevant times, Ms. Smith was a patient as defined by the Nebraska Hospital-Medical Liability Act (NHMLA). *Neb. Rev. Stat. § 44-2805*. She is sometimes referred to in this Complaint as “Ms. Smith” or as “Plaintiff.”

2. At all relevant times, Defendant The Visiting Nurse Association of the Midlands d/b/a Visiting Nurse Association:

2.1. was a Nebraska corporation providing professional medical services to members of the public in Douglas County, Nebraska;

- 2.2. did business as Visiting Nurse Association;
- 2.3. maintained its principal place of business in Omaha, Douglas County, Nebraska;
- 2.4. had a nurse-patient relationship with Jennifer D. Smith from April 26, 2014, through June 25, 2014;
- 2.5. provided continuous and ongoing treatment to Jennifer D. Smith related to Ms. Smith's wound care from April 26, 2014, through May 5, 2014, and thereafter, in Omaha, Douglas County, Nebraska;
- 2.6. provided continuous and ongoing negligent care to Jennifer D. Smith related to Ms. Smith's wound care from April 26, 2014, through May 5, 2014, and thereafter, in Omaha, Douglas County, Nebraska;
- 2.7. employed Shari Page, RN;
- 2.8. employed Kristin Chronic, RN;
- 2.9. employed Scott Wentworth, RN;
- 2.10. employed Jean North, RN;
- 2.11. employed John Hessel, RN;
- 2.12. employed Cassandra Norton, RN;
- 2.13. employed Norma Danner, LPN;
- 2.14. employed Clint Cave;
- 2.15. employed Alexis McCormick;
- 2.16. employed Tammy Winkler-Bitzes, PT;
- 2.17. employed Melanie Welch;

2.18. employed other individuals whose negligence causally contributed to, or proximately resulted in, the incidents and damages alleged below.

3. At all relevant times, Defendant PHYSICIANS CLINIC, INC.:

3.1. was a Nebraska corporation providing professional medical services to members of the public in Douglas County, Nebraska;

3.2. was a health care provider as defined by the NHMLA;

3.3. did business as Methodist Physicians Clinic;

3.4. had a health care provider-patient relationship with Jennifer D. Smith from November 18, 2013, and before, through December 22, 2014, and thereafter;

3.5. provided continuous and ongoing treatment to Jennifer D. Smith related to Ms. Smith's severe panniculitis and intertrigonal rash from November 18, 2013, and likely before, through December 22, 2014, and thereafter;

3.6. provided continuous and ongoing negligent care to Jennifer D. Smith related to Ms. Smith's severe panniculitis and intertrigonal rash from November 18, 2013, through December 22, 2014, and thereafter;

3.7. employed Gary Anthone, M.D.;

3.8. employed Joseph Dumba, M.D.;

3.9. employed Quinn Schulte, P.A.;

3.10. employed Cassie Pratt, APRN;

3.11. employed Kathy Langbehn, RN;

3.12. employed Angela McMillian, MA;

3.13. employed other individuals whose negligence causally contributed to, or proximately resulted in, the incidents and damages alleged below.

4. At all relevant times, Defendant, NEBRASKA METHODIST HOSPITAL:

4.1. was a Nebraska corporation providing professional medical services to members of the public in Douglas County, Nebraska;

4.2. was a healthcare provider and hospital as defined by the NHMLA;

4.3. had a health care provider-patient relationship with Jennifer D. Smith from March 21, 2014, and before, through June 27, 2014, and thereafter;

4.4. provided negligent care and treatment to Jennifer D. Smith; and

4.5. employed individuals whose negligence causally contributed to, or proximately resulted in, the incidents and injuries described herein.

5. At all relevant times, Defendant, NEBRASKA METHODIST HEALTH SYSTEM, INC.:

5.1. was a Nebraska corporation providing professional medical services to members of the public in Douglas County, Nebraska;

5.2. was a health care provider as defined by the NHMLA;

5.3. had a health care provider-patient relationship with Jennifer D. Smith from November 18, 2013, and likely before, through December 22, 2014, and thereafter;

5.4. provided continuous and ongoing treatment to Jennifer D. Smith related to Ms. Smith's severe panniculitis and intertrigonal rash from November 18, 2013, and likely before, through December 22, 2014, and thereafter;

5.5. provided negligent care to Jennifer D. Smith related to Ms. Smith's severe panniculitis and intertrigonal rash from November 18, 2013, through December 22, 2014, and thereafter;

- 5.6. employed Gary Anthone, M.D.;
- 5.7. employed Joseph Dumba, M.D.;
- 5.8. employed Quinn Schulte, P.A.;
- 5.9. employed Cassie Pratt, APRN;
- 5.10. employed Kathy Langbehn, RN;
- 5.11. employed Angela McMillian, MA; and
- 5.12. employed other individuals whose negligence causally contributed to,

or proximately resulted in, the incidents and damages alleged below.

6. At all relevant times, Defendant, GARY ANTHONE, MD:

6.1. was a physician, duly licensed and authorized to practice medicine in the State of Nebraska;

6.2. was a physician as defined by the NHMLA;

6.3. had a physician-patient relationship with Jennifer D. Smith from November 18, 2013, and likely before, through December 22, 2014, and thereafter;

6.4. provided continuous and ongoing treatment to Jennifer D. Smith related to Ms. Smith's severe panniculitis and intertrigonal rash from November 18, 2013, and likely before, through December 22, 2014, and thereafter;

6.5. provided continuous and ongoing negligent treatment to Jennifer D. Smith related to Ms. Smith's severe panniculitis and intertrigonal rash from November 18, 2013, and likely before, through December 22, 2014, and thereafter; and

6.6. was a physician employee of Defendant Physicians Clinic, Inc. and/or Nebraska Methodist Health System, Inc.

6.7. Defendants John Does 1-10 and Jane Does 1-10, whose real names are presently unknown to the Plaintiff, were physicians, nurses, and other healthcare providers engaged in the practice of their profession in Omaha, Douglas County, Nebraska, and held themselves out to be skilled and competent physicians, nurses, or other healthcare providers.

JURISDICTION & VENUE

7. The District Court, Douglas County, Nebraska, has subject matter jurisdiction over the subject matter of this action pursuant to *Neb. Rev. Stat. § 24-302*.

8. Venue is appropriate in Douglas County, Nebraska, where Plaintiff's causes of action arose and where at least one Defendant resides. *Neb. Rev. Stat. § 25-403.01*.

HOSPITAL-MEDICAL LIABILITY ACT

9. Plaintiff believes that some or all of the Defendants may not be properly qualified under the Nebraska Hospital-Medical Liability Act, N.R.S. Section 44-2801 – Section 44-2855 and were not so qualified during the time that one or more of the Defendants provided medical treatment to Jennifer Smith.

WAIVER OF REVIEW

10. Plaintiff has affirmatively waived the right to a Panel Review of her allegations against any of the Defendants registered under the Nebraska Hospital-Medical Liability Act (N.R.S. Section 44-2801 et seq.) at any time pertinent hereto and has notified the Director of Insurance of the State of Nebraska of such waiver by serving a copy of this Complaint upon him by certified mail at the time of filing hereof.

HOSPITAL MEDICAL LIABILITY ACT IS UNCONSTITUTIONAL

11. Notwithstanding any filings herein by any of the Defendants for special benefits, privileges and protections of the Nebraska Hospital-Medical Liability Act, Plaintiff alleges that such Act is unconstitutional in whole or in part, because it does not promote the health, safety or general welfare of the public and serves no public purpose, and that these Statutes limit the amount of recovery available to claimants such as the Plaintiff, without any reasonable basis or relationship to injuries and damages sustained by the Plaintiff, and serve no legitimate State interest. Plaintiff alleges such Act is unconstitutional in whole or in part, because it violates the Constitution of the United States, and the Constitution of the State of Nebraska.

12. A copy of this Amended Complaint is served by certified mail upon the Attorney General of the State of Nebraska.

JOINT VENTURE

13. All preceding paragraphs are repeated and incorporated here as if fully set forth.

14. The aforementioned Defendants controlled the operation, planning, management and quality control of the healthcare provided to Jennifer D. Smith, and they have a mutual interest in the profits or benefits from Jennifer D. Smith's health care, and they have mutual liability for the losses or liabilities from Jennifer D. Smith's health care.

15. One or more of the Defendants have explicitly or implicitly agreed to engage in a business activity together, including but not limited to ownership, operation and management of facilities and personnel, and in so doing have formed a partnership, joint venture, common venture or other business relationship between themselves, physicians,

and others whose names are presently unknown to Plaintiff by sharing facilities, control, patients, residents, profits, losses, and personnel for the purpose of providing professional medical services to the public for a fee.

16. Defendants have equal authority to control the performance of the business activity, even if some of them give up or never exercise that authority. The authority exercised by the aforementioned Defendants over the Plaintiffs' healthcare included, but was not limited to, control of the marketing, human resources management, training, staffing, creation and implementation of Policy & Procedure manuals used by them, Federal and State Medicare and Medicaid reimbursement, quality care assessment and compliance, licensure and certification, legal services, financial tax and accounting control through fiscal policies established by the aforementioned Defendants.

17. The aforementioned Defendants operated as a common venture and/or enterprise for the purpose of streamlining and furthering their similar business interests.

18. Because the aforementioned Defendants were engaged in a common venture, joint venture and/or enterprise before and throughout the time period during which they provided treatment to Ms. Smith, the acts and omissions of each participant in the common venture/enterprise are imputable to all other participants, and each joint venturer is jointly and severally liable for the acts and omissions of each other joint venturer. They are also each individually liable for their own conduct.

19. The actions and inactions of the Defendants and each of their servants, agents and employees as set forth herein are imputed to each of the Defendants, jointly and severally.

OCCURRENCES

20. All preceding paragraphs are repeated and incorporated here as if fully set forth.

21. Between the dates of November 18, 2013, and December 22, 2014, and thereafter, each of the above-named Defendants provided care and treatment to the Plaintiff.

22. On or before November 18, 2013, Jennifer D. Smith began treatment with Dr. Gary Anthone, M.D. and other personnel employed by Physicians Clinic, Inc. for care related to Ms. Smith's severe panniculitis and intertrigonal rash.

23. There was an ongoing and continuous physician-patient relationship between Dr. Anthone and Ms. Smith from on or around November 18, 2013, or before, through December 22, 2014, and thereafter.

24. There was also an ongoing and continuous physician-patient and/or health care provider-patient relationship between Physicians Clinic, Inc. and Ms. Smith from on or around November 18, 2013, or before, through December 22, 2014, and thereafter.

25. On March 21, 2014, Dr. Anthone performed surgery on Ms. Smith at Nebraska Methodist Hospital. The 3/21/2014 surgery included formal laparotomy, lysis of adhesions, repair of a recurrent incarcerated midline incisional hernia with placement of a 15 x 20 cm Phasix mesh, and a 32 pound panniculectomy with abdominal wall reconstruction.

26. Ms. Smith's wound from the 3/21/2014 surgery did not heal. The wound progressed, it deteriorated, and it became infected. Defendants' negligence was a proximate cause of the infection, progression, deterioration, and non-healing of Ms. Smith's

surgical wound. Defendants' negligence during the 3/21/2014-5/7/2014 timeframe also proximately caused Ms. Smith to develop severe pressure ulcers on her back. These pressure ulcers also became infected.

27. During the 11/18/2013 - 12/22/2014 timeframe, Dr. Anthone, Physicians Clinic, Inc. and their staff continued an ongoing course of negligent treatment related to Ms. Smith's severe panniculitis and intertrigonal rash. This continuous and ongoing negligent treatment included but was not limited to:

27.1. improper pre-surgical and post-surgical assessment and workup;

27.2. negligently performing the 3/21/2014 surgery when the patient had active bilateral lower extremity cellulitis;

27.3. negligently providing post-operative care, 3/21/2014 - 5/7/2014 and thereafter;

27.4. negligently permitting and ordering discharge of the patient in an unsafe condition on 3/28/2014,

27.5. failing to order appropriate post-operative wound care, 3/21/2014-5/7/2014;

27.6. failing to assure that appropriate post-operative wound care was performed 3/21/2014-5/7/2014 and thereafter;

27.7. failing to appropriately create and amend care plans 3/21/2014-5/7/2014 and thereafter;

27.8. failing to change wound care orders as reasonably necessary, 3/21/2014-5/7/2014 and thereafter;

27.9. failure to appropriately monitor their patient 3/21/2014-5/7/2014

and thereafter;

27.10. failing to appropriately recognize, assess and respond to signs of infection on numerous occasions, including but not limited to 4/1/2014, 4/2/2014, 4/3/2014, 4/15/2014, and 4/30/2014;

27.11. failing throughout the 3/21/2014 - 5/7/2014 timeframe to appropriately assess and respond to risk of, and development of, further injury to Ms. Smith including but not limited to infection and severe pressure ulcers.

28. Defendants performed a series of surgeries to address infection, progression, and deterioration of Ms. Smith's surgical wounds and to address the pressure ulcers. These surgeries, which were required as a result of Defendants' negligence, included:

28.1. 4/22/2014 - Excisional debridement and removal of large amount of necrotic skin and subcutaneous tissue, some superficial abdominal wall fascia with re-closure of abdominal wall wound;

28.2. 5/5/2014 - Debridement of the presacral area;

28.3. 5/7/2014 - Sacral area debridement of muscle tissue, fascial tissue, subcutaneous tissue and skin, and debridement of necrotic abdominal wall flap from prior hernia repair reconstruction;

28.4. 5/13/2014 - (1) Debridement of presacral area necrotic wound subcutaneous tissue, fascia and muscle; (2) Debridement of anterior abdominal wall subcutaneous tissue and skin, and reclosure of the same; (3) Placement of left subclavian triple-lumen central venous line;

28.5. 5/15/2014 - (1) Excisional debridement, first of the necrotic subcutaneous tissue, fascia and muscle of the presacral area; and (2) Excisional

debridement of necrotic skin and subcutaneous tissue off the anterior abdominal wall flap, and reclosure of abdominal wall flap with reconstruction;

28.6. 5/20/2014 – Excisional debridement of both presacral and anterior abdominal wall necrotic wounds.

29. Ms. Smith was hospitalized at Nebraska Methodist Hospital from March 20, 2014, through March 28, 2014, from April 21, 2014, through April 25, 2014, and from May 4, 2014, through June 27, 2014. Ms. Smith and Nebraska Methodist Hospital had a continuous and ongoing relationship during the entire period of Ms. Smith's 3/20/2014 – 6/27/2014 hospitalizations. Nebraska Methodist Hospital and its personnel continuously failed to assess and monitor Ms. Smith's wounds and risk for wounds, including surgical wounds and pressure wounds, and they failed to assess and monitor for infection and risk of infection. They also continuously failed to prevent deterioration and progression of Ms. Smith's wounds and infection.

30. Ms. Smith remained under Dr. Anthone's and Physicians Clinic, Inc.'s continuous and ongoing treatment during the entire period of her 3/20/2014 – 6/27/2014 hospitalizations. There was an ongoing and continuous physician-patient relationship between Ms. Smith and Dr. Anthone during the entire period of Ms. Smith's 3/20/2014 – 6/27/2014 hospitalizations. There was an ongoing and continuous health care provider-patient relationship between Ms. Smith and Physicians Clinic, Inc. during the entire period of Ms. Smith's 3/20/2014 – 6/27/2014 hospitalizations.

31. On April 23, 2014, Ms. Smith's health care providers referred Ms. Smith to Defendant The Visiting Nurse Association of the Midlands d/b/a Visiting Nurse Association ("VNA") for wound care in her home.

32. On April 25, 2014, Ms. Smith's health care provider, Quinn A. Schulte, P.A., ordered home health care (HHC) "to perform daily dressing changes of abdominal wound, with WTD kerlix." PA Schulte further ordered, "VNA HHC to follow. . . . RN to pack incision daily. BA for hygiene. PT/OT for balance, gait and strength. . . . SW to see at home." Ms. Smith's Acute Follow-Up notes from April 25, 2014, further state, Ms. Smith "will go home with VNA HHC for PT/OT/RN/BA/SW . . . She has a large abdominal wall wound and the HHC nurses will be packing this daily."

33. On April 26, 2014, VNA began providing Ms. Smith wound care in her home. VNA and its personnel provided home health care to Ms. Smith, at her home, on April 26 - 29, 2014, and on May 1 - 2, 2014. VNA failed to treat Ms. Smith on May 3, 2014, and on May 4, 2014.

34. On May 4, 2014, Ms. Smith was admitted to Methodist Hospital. The Emergency Department physician noted that Ms. Smith's "lower abdomen demonstrates a large incision running away across her pelvis, it is open with foul smelling purulent discharge and packing in place. Surrounding edges demonstrates several centimeters of induration and erythema." Ms. Smith was diagnosed with septicemia, severe sepsis and wound infection, and she was admitted to the Intensive Care Unit.

35. VNA discharged Ms. Smith from its care on or around June 25, 2014.

36. During the 4/26/2014 - 5/4/2014 timeframe, there was an ongoing and continuous nurse-patient relationship between VNA and Ms. Smith.

37. During the 4/26/2014 - 5/4/2014 timeframe, VNA continued an ongoing course of continuous negligent treatment related to Ms. Smith's wound care and other therapies.

38. VNA and its staff's continuous and ongoing negligent treatment of Ms. Smith during the 4/26/2014 – 5/4/2014 timeframe included but was not limited to failing to adhere to the standard of care for treatment of a draining wound each day by, among other acts and omissions, failing to meet the standard of care for education of wound cleaning to the family and other care givers (e.g. teaching to clean the wound with soap and water in a self-described "dirty" environment), failing to meet the standard of care for documenting risk for pressure ulcer development, failing to recognize and treat the signs and symptoms of wound infection and sepsis (e.g. fever, elevated heartrate, hypotension, pain, induration, redness, odor and green drainage), failing to give proper wound care, failing to report to doctors, failing to change and/or recommend change in wound care interventions, and failing to perform a comprehensive assessment of Ms. Smith's integumentary system.

DUTIES

39. At all relevant times, Defendants individually and collectively owed a duty of care to Jennifer D. Smith:

39.1. To use the ordinary and reasonable care, skill, and knowledge ordinarily possessed and used under like circumstances by healthcare providers, clinics and/or hospitals engaged in a similar practice in their or in similar localities;

39.2. To act using using the care, skill, and diligence that reasonably careful skilled physicians, nurses, clinics and hospitals, 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;

39.3. To perform medical and/or nursing procedures lawfully and in accord with standard medical and/or nursing practices;

39.4. To ensure that all medical and/or nursing personnel were qualified to perform the medical and/or nursing procedures undertaken;

39.5. To ensure that all medical and/or nursing personnel are properly trained and supervised;

39.6. To ensure that a sufficient number of staff was available to address the Plaintiff's medical needs; and

39.7. To require strict compliance with the Regulations of the Nebraska Department of Health and Human Services, with Nebraska State Laws, and with Federal Law.

MALPRACTICE/NEGLIGENCE

40. All preceding paragraphs are repeated and incorporated here as if fully set forth.

41. Plaintiff Jennifer D. Smith claims that the Defendants were jointly and severally professionally negligent in their treatment of her.

42. Each Defendant owed Jennifer D. Smith a duty to possess and use the care, skill, and knowledge ordinarily possessed and used by members of their respective professions engaged in similar practice in similar localities.

43. Defendants Gary Anthone, MD, Physicians Clinic, Inc., Nebraska Methodist Health System, Inc., and their personnel, individually and collectively 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, and they departed from generally accepted and recognized standards of care that 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. Their acts and omissions constituting an ongoing course of continuous professional negligence and negligent treatment, from on or before 11/18/2013 through 12/22/2014 and thereafter, include:

43.1. Ordering and performing surgical procedures when it was not medically reasonable or safe for the patient to do so;

43.2. Exposing Jennifer D. Smith to unnecessary risk of harm;

43.3. Failure to order adequate and appropriate wound care;

43.4. Failure to conduct adequate and appropriate assessments;

43.5. Failure to develop and amend care plans as needed;

43.6. Failure to provide a safe environment;

43.7. Failure to prevent loss of quality of life;

43.8. Failure to prevent infections;

43.9. Failure to prevent delay of treatment;

43.10. Failure to provide care, treatment and medication in accordance with physician orders;

43.11. Failure to appropriately communicate orders to other health care providers;

43.12. Failure to consult or refer for specialty or specialist medical services;

43.13. Failure to appropriately monitor Jennifer Smith;

43.14. Failure to timely notify Ms. Smith's physicians of significant changes in her condition;

43.15. Failure to adequately instruct, train and supervise employees;

- 43.16. Failure to prevent skin breakdown;
- 43.17. Failure to prevent pressure wounds including decubitus ulcers;
- 43.18. Failure to provide proper wound care;
- 43.19. Failure to prevent wound progression and deterioration;
- 43.20. Failure to provide Jennifer Smith with the necessary care and services to attain, and maintain, the highest practicable physical, mental and psychological well-being;
- 43.21. Failure to provide and maintain a sufficient number of staff;
- 43.22. Failure to require strict compliance with their own standards, bylaws, rules and regulations for assessment and care of patients with significant care needs, like Jennifer Smith;
- 43.23. Failure to require strict compliance with the Regulations of the Nebraska Department of Health and Human Services and Nebraska State Laws;
- 43.24. Violating state and federal regulations concerning proper care and treatment of patients with health conditions such as Plaintiff's;
- 43.25. Failure to maintain Ms. Smith's medical records in accordance with accepted professional standards and practice;
- 43.26. Failure to recognize and treat injuries, illnesses and/or conditions sustained by Ms. Smith in a timely and appropriate manner;
- 43.27. Fostering an environment where care is not coordinated or harmonized for clarity or efficiency of operations, communications or billing;
- 43.28. Fostering an environment encouraging health care providers to rush treatment and care without appropriate assessment, investigation, workup,

diagnosis or care;

43.29. Failure to possess and use the care, skill and knowledge ordinarily possessed and used under like circumstances by other skilled nursing facilities, physicians, and practitioners in good standing in the profession in the same or similar localities.

44. Defendants Nebraska Methodist Hospital, Nebraska Methodist Health System, Inc., and their personnel, individually and collectively 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, and they departed from generally accepted and recognized standards of care that 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. Their acts and omissions constituting an ongoing course of continuous professional negligence and negligent treatment, from on or before 3/20/2014 through 6/27/2014 and thereafter, include:

44.1. Failure to conduct adequate and appropriate assessments, including but not limited to assessment for risk of pressure ulcer development or progression;

44.2. Exposing Jennifer D. Smith to unnecessary risk of harm;

44.3. Failure to develop and amend care plans as needed;

44.4. Failure to provide a safe environment;

44.5. Failure to prevent loss of quality of life;

44.6. Failure to prevent infections;

44.7. Failure to prevent delay of treatment;

44.8. Failure to provide care, treatment and medication in accordance with physician orders;

44.9. Failure to communicate orders to other health care providers;

44.10. Failure to consult or refer for specialty or specialist medical services;

44.11. Failure to appropriately monitor Jennifer Smith;

44.12. Failing to report to Ms. Smith's physicians;

44.13. Failing to change and/or recommend change in Ms. Smith's wound care interventions;

44.14. Failure to timely notify Ms. Smith's physicians of significant changes in her condition;

44.15. Failure to adequately instruct, train and supervise employees;

44.16. Failure to prevent skin breakdown;

44.17. Failure to prevent pressure wounds including decubitus ulcers;

44.18. Failure to provide proper wound care;

44.19. Failure to prevent wound progression and deterioration;

44.20. Failure to provide proper care to prevent infections;

44.21. Failure to provide proper nutrition and hydration;

44.22. Failure to provide Jennifer Smith with the necessary care and services to attain, and maintain, the highest practicable physical, mental and psychological well-being;

44.23. Failure to provide and maintain a sufficient number of staff;

44.24. Failure to require strict compliance with their own standards, bylaws, rules and regulations for assessment and care of patients with significant care

needs, like Jennifer Smith;

44.25. Failure to require strict compliance with the Regulations of the Nebraska Department of Health and Human Services and Nebraska State Laws;

44.26. Violating state and federal regulations concerning proper care and treatment of patients with health conditions such as Plaintiff's;

44.27. Failure to maintain Ms. Smith's medical records in accordance with accepted professional standards and practice;

44.28. Failure to recognize and treat injuries, illnesses and/or conditions sustained by Ms. Smith in a timely and appropriate manner;

44.29. Failure to prevent the physical and emotional abuse of Ms. Smith by staff members;

44.30. Fostering an environment where care is not coordinated or harmonized for clarity or efficiency of operations, communications or billing;

44.31. Fostering an environment encouraging health care providers to rush treatment and care without appropriate assessment, investigation, workup, diagnosis or care;

44.32. Failure to possess and use the care, skill and knowledge ordinarily possessed and used under like circumstances by other skilled nursing facilities, hospitals, and practitioners in good standing in the profession in the same or similar localities.

45. Defendant The Visiting Nurse Association of the Midlands d/b/a Visiting Nurse Association and its personnel, individually and collectively 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, and they departed from generally accepted and recognized standards of care that health care providers and nurses, 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. Their acts and omissions constituting an ongoing course of continuous negligence and negligent treatment, from on or before 4/26/2014 through 6/25/2016 and thereafter, include:

45.1. Exposing Jennifer D. Smith to unnecessary risk of harm;

45.2. Failure to provide adequate and appropriate wound care;

45.3. Failure to conduct adequate and appropriate assessments;

45.4. Failure to develop and amend care plans as needed;

45.5. Failure to provide a safe environment;

45.6. Failure to prevent loss of quality of life;

45.7. Failure to prevent infections;

45.8. Failure to prevent delay of treatment;

45.9. Failure to provide care, treatment and medication in accordance with physician orders;

45.10. Failure to provide appropriately instruct, train and supervise family and other care givers, which failure includes but is not limited to teaching Plaintiff's family and other persons providing care to clean Plaintiff's wound in an unclean and unsterile fashion;

45.11. Failure to appropriately communicate orders to other health care providers;

- 45.12. Failure to consult or refer for specialty or specialist medical services;
- 45.13. Failure to appropriately monitor Jennifer Smith;
- 45.14. Failing to report to Ms. Smith's physicians;
- 45.15. Failing to change and/or recommend change in Ms. Smith's wound care interventions;
- 45.16. Failure to timely notify Ms. Smith's physicians of significant changes in her condition;
- 45.17. Failure to adequately instruct, train and supervise employees;
- 45.18. Failure to prevent skin breakdown;
- 45.19. Failure to prevent pressure wounds including decubitus ulcers;
- 45.20. Failure to prevent wound progression and deterioration;
- 45.21. Failure to provide Jennifer Smith with the necessary care and services to attain, and maintain, the highest practicable physical, mental and psychological well-being;
- 45.22. Failure to provide and maintain a sufficient number of staff;
- 45.23. Failure to require strict compliance with their own standards, bylaws, rules and regulations for assessment and care of patients with significant care needs, like Jennifer Smith;
- 45.24. Failure to require strict compliance with the Regulations of the Nebraska Department of Health and Human Services and Nebraska State Laws;
- 45.25. Violating state and federal regulations concerning proper care and treatment of patients with health conditions such as Plaintiff's;
- 45.26. Failure to maintain Ms. Smith's medical records in accordance with

accepted professional standards and practice;

45.27. Failure to recognize and treat injuries, illnesses and/or conditions sustained by Ms. Smith in a timely and appropriate manner;

45.28. Fostering an environment where care is not coordinated or harmonized for clarity or efficiency of operations, communications or billing;

45.29. Fostering an environment encouraging health care providers to rush treatment and care without appropriate assessment, investigation, workup, diagnosis or care;

45.30. Failure to possess and use the care, skill and knowledge ordinarily possessed and used under like circumstances by other nursing providers and practitioners in good standing in the profession in the same or similar localities.

46. Defendants individually and collectively breached the applicable standard of care by the conduct described above.

PROXIMATE CAUSATION OF DAMAGES

47. All preceding paragraphs are repeated and incorporated here as if fully set forth.

48. Defendants' acts of professional negligence, individually and collectively, proximately caused permanent and severe damage to Jennifer D. Smith. Defendants are jointly and severally liable for these damages.

49. As a direct and proximate result of the joint and several negligence of the Defendants and/or each of them, Jennifer Smith suffered numerous personal injuries including but not limited to severe infection, sepsis, necrosis, skin tears, decubitus ulcers, malnutrition, dehydration, and wounds on her back and legs.

50. As a direct and proximate result of the Defendants' negligence, Jennifer Smith sustained personal injuries resulting in physical pain and suffering, mental suffering, emotional distress, fear, worry, anxiety, stress, inconvenience, anger and resentment that Defendants chose to violate their duties as alleged herein and expose Plaintiff and the public to unreasonable risks of harm and loss, loss of trust, scarring, disfigurement, impairment, sleeplessness, embarrassment, loss of enjoyment of life, and exposure to and necessity for additional medical treatments and invasive procedures. Plaintiff's injuries are permanent, and she may reasonably expect to suffer future physical pain and suffering, mental suffering, emotional distress, fear, worry, anxiety, stress, inconvenience, anger and resentment that Defendants chose to violate their duties as alleged herein and expose Plaintiff and the public to unreasonable risks of harm and loss, loss of trust, scarring, disfigurement, impairment, sleeplessness, embarrassment, loss of enjoyment of life, and exposure to and necessity for additional medical treatments and invasive procedures.

51. As a direct and proximate result of the Defendants' negligence, Jennifer D. Smith incurred medical expenses for medical care necessitated by the Defendants' negligence, and Plaintiff may reasonably expect to incur future medical expenses.

52. The injuries and mental trauma sustained by Jennifer Smith were all foreseeable to the Defendants and would not have occurred but for the actions and inactions of Defendants as described herein.

53. All of these situations stripped Ms. Smith of her personal dignity and proximately caused her to suffer unnecessary pain, suffering, degradation, fear of death, mental and emotional trauma, hospitalization, multiple surgeries and other medical treatment, and permanent disability.

54. Every one of these situations was proximately caused by the negligent conduct of the Defendants.

55. The Defendants have vicarious liability for the acts and omissions of all persons or entities under their control, either directly or indirectly, including employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies or pools causing or contributing to Ms. Smith's aforementioned injuries.

AGENCY & VICARIOUS LIABILITY

56. All preceding paragraphs are repeated and incorporated here as if fully set forth.

57. At all relevant times, Defendant Gary Anthone, M.D. was acting in the scope of his employment, agency, apparent authority, contract and/or credentialing with one or more of the following: Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. when providing services and/or treatment to Jennifer D. Smith from 11/18/2013 to 12/22/2014. Defendant Gary Anthone, M.D.'s conduct is imputed to Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

58. At all relevant times, Quinn Schulte, PA was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with one or more of the following: Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. when providing services and/or treatment to Jennifer Smith from 11/18/2013 to 12/22/2014. Quinn Schulte, PA's conduct is imputed to Physicians

Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

59. At all relevant times, Joseph Dumba, MD was acting in the scope of his employment, agency, apparent authority, contract and/or credentialing with one or more of the following: Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. when providing services and/or treatment to Jennifer Smith from from 11/18/2013 to 12/22/2014. Joseph Dumba, MD's conduct is imputed to Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

60. At all relevant times, Cassie Pratt, APRN was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with one or more of the following: Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. when providing services and/or treatment to Jennifer Smith from 11/18/2013 to 12/22/2014. Cassie Pratt, APRN's conduct is imputed to Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

61. At all relevant times, Kathy Langbehn, RN was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with one or more of the following: Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. when providing services and/or treatment to Jennifer Smith from 11/18/2013 to 12/22/2014. Kathy Langbehn, RN's conduct is imputed to Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

62. At all relevant times, Angela McMillian, MA was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with one or more of the following: Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. when providing services and/or treatment to Jennifer Smith from 11/18/2013 to 12/22/2014. Angela McMillian, MA's conduct is imputed to Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

63. At all relevant times, Shari Page, RN was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Shari Page, RN's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

64. At all relevant times, Kristin Chronic, RN was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Kristin Chronic, RN's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

65. At all relevant times, Scott Wentworth, RN was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Scott Wentworth, RN's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

66. At all relevant times, Jean North, RN was acting in the scope of her

employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Jean North, RN's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

67. At all relevant times, John Hessel, RN was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. John Hessel, RN's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

68. At all relevant times, Cassandra Norton, RN was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Cassandra Norton, RN's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

69. At all relevant times, Norma Danner, LPN was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Norma Danner, LPN's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

70. At all relevant times, Clint Cave was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Clint Cave's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and

vicarious liability.

71. At all relevant times, Alexis McCormick was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Alexis McCormick's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

72. At all relevant times, Tammy Winkler-Bitzes, PT was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Tammy Winkler-Bitzes, PT's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

73. At all relevant times, Melanie Welch was acting in the scope of her employment, agency, apparent authority, contract and/or credentialing with VNA when providing services and/or treatment to Jennifer Smith from 4/26/2013 to 6/25/2014. Melanie Welch's conduct is imputed to VNA under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

74. At all relevant times, all other employees and agents of Physicians Clinic, Inc., Nebraska Methodist Hospital, Nebraska Methodist Health System, Inc., and/or The Visiting Nurse Association of the Midlands d/b/a Visiting Nurse Association were acting in the scope of their employment, agency, apparent authority, contract and/or credentialing with one or more of the following: Physicians Clinic, Inc., Nebraska Methodist Hospital, and/or Nebraska Methodist Health System, Inc. when providing services and/or treatment to Jennifer Smith from 11/18/2013 to 12/22/2014. All these employees' and agents' conduct

is imputed to Physicians Clinic, Inc., Nebraska Methodist Hospital, Nebraska Methodist Health System, Inc. and/or The Visiting Nurse Association of the Midlands d/b/a Visiting Nurse Association under the doctrines of *Respondeat Superior*, agency, and vicarious liability.

75. The actions and inactions of the Defendants and each of their servants, agents and employees as set forth herein are imputed to each of the Defendants, jointly and severally.

Prayer for Relief

WHEREFORE, having stated a claim upon which relief can be granted, the Plaintiff, Jennifer D. Smith, respectfully prays for a judgment against Defendants for all damages as are reasonable in the premises, including her past and future physical pain and suffering, mental suffering, emotional distress, fear, worry, anxiety, stress, inconvenience, anger and resentment that Defendants chose to violate their duties as alleged herein and expose Plaintiff and the public to unreasonable risks of harm and loss, loss of trust, scarring, disfigurement, impairment, sleeplessness, embarrassment, loss of enjoyment of life, and exposure to and necessity for additional medical treatments and invasive procedures; for general damages resulting from the negligence of the Defendants; for her medical expenses incurred to date, as well as those to be incurred in the future; for her lost wages to date, as well as those to be incurred in the future; for her loss of earning capacity; for her disability; and for prejudgment interest, postjudgment interest, costs, and all other damages and relief allowed under Nebraska law.

JURY DEMAND

Plaintiff respectfully requests a jury trial on all issues so triable.

DATED this 14th day of July, 2016.

JENNIFER D. SMITH, Plaintiff,

By: 

Jason B. Bottlinger, #24049
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Plaintiff's Lawyer

Certificate of Service

I hereby certify that on Thursday, July 14, 2016 I provided a true and correct copy of the Amended Complaint to the following:

Does 1-10,Jane, service method: No Service

Nebraska Methodist Health Sys, Inc. service method: No Service

Does 1-10,John, service method: No Service

Physicians Clinic, Inc. service method: No Service

Nebraska Methodist Hospital service method: No Service

Anthone,Gary,,MD service method: No Service

Signature: /s/ Jason Bottlinger (Bar Number: 24049)