

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

CHAD CHONIS and LISA CHONIS, individually,)
and as parents and next friends of)
VINCENT CHONIS, a minor child,)

CASE NO: CI 16 _____

Plaintiffs,)

vs.)

COMPLAINT
(LAW)

CHILDREN’S HOSPITAL & MEDICAL)
CENTER, JOHN DOE, and)
JANE DOE,)

Defendants.)

COME NOW the Plaintiffs and hereby state and allege as follows for their Complaint against the Defendants.

1. Plaintiffs Chad and Lisa Chonis are individuals residing in Omaha, Douglas County, Nebraska.
2. Plaintiff Vincent Chonis is a minor residing in Omaha, Douglas County, Nebraska.
3. Defendant Children’s Hospital & Medical Center is a non-profit corporation doing business in Douglas County, Nebraska, holding itself out as providing pediatric hospital services.
4. Children’s Hospital & Medical Center also conducts business under its affiliate and/or trademark Children’s Specialty Physicians. Children’s Hospital & Medical Center is responsible for all acts of employees and agents transacting business under the name Children’s Specialty Physicians under the doctrines of respondeat superior and alter ego. Children’s Hospital & Medical Center and its service mark (or trademark) Children’s Specialty Physicians are collectively referred to hereinafter as “Children’s Hospital”.
5. Defendant Children’s Hospital is engaged in the business of providing hospital and medical care for consideration, including payment for services rendered and supplied.

6. Defendant Children's Hospital held itself out through its nurses, nurse's aids, residents, physicians, agents, representatives, employees, and medical staff as capable of making and/or giving proper medical examination, care, treatment and attention.
7. Defendant Children's Hospital invited the public, including the Plaintiffs, to utilize its services and charged Plaintiffs remuneration for such services.
8. Defendant Children's Hospital by and through its its nurses, nurse's aids, residents, physicians, agents, representatives, employees, and medical staff undertook to render proper medical care, treatment and assistance to Plaintiff Vincent Chonis and thereby assumed the duty to exercise reasonable care to ensure that Plaintiff Vincent Chonis received property medical care, treatment, monitoring and attention while a patient at Defendant Children's Hospital.
9. Any negligence found against its nurses, nurse's aids, residents, physicians, agents, representatives, employees, and medical staff is imputed to Defendant Children's Hospital pursuant to the doctrine of respondeat superior.
10. Defendants Jane and John Doe represent employees, contractors and/or agents of Defendant Children's Hospital who provided services to Plaintiff Vincent Chonis while he was a patient at Defendant Children's Hospital.

COUNT I: NEGLIGENCE.

11. Plaintiffs incorporate and restate by reference all of the foregoing paragraphs.
12. On or about July 15, 2014, Defendant Children's Hospital provided medical treatment and services to Vincent Chonis, a minor child.

13. During the course of providing dental services to Vincent, Defendant Children's Hospital, by and through its agents, was negligent and generally departed from the standard of care employed by physicians and medical care providers practicing in Douglas County, Nebraska by failing to diagnose Vincent Chonis's infection and in failing to take necessary precautions against worsening of infection while Vincent was a patient.
14. Defendant Children's Hospital charged Chad and Lisa Chonis for the services rendered to Vincent Chonis.
15. As a consequence of the errors and omissions of the Defendants, including a failure to properly diagnosis, Vincent Chonis developed an infection and/or suffered a worsening of an infection while admitted to the hospital for treatment.
16. On July 15, 2014, Vincent Chonis was feeling ill and lethargic and was transported via ambulance to Defendant Children's Hospital.
17. While providing medical history, Defendant Children's Hospital was advised that Vincent Chonis had recently undergone dental procedures.
18. Vincent Chonis' then existing condition was consistent with symptoms of an infection resulting from a dental procedure performed upon him.
19. Vincent Chonis was admitted and diagnosed with diabetes.
20. Plaintiffs were advised that Vincent would spend what was characterized as "a couple of days" in the hospital to stabilize his condition.
21. Vincent was not administered any antibiotic to prevent the further spread of infection which he would have been then suffering.
22. On or about July 16, 2014, after being admitted for an overnight stay and monitoring, Vincent went into septic shock and suffered a stroke.

23. Defendants failed to use reasonable skill, diligence and care in the treatment of Vincent Chonis, including but not necessarily limited to failing to initiate, follow or conduct proper protocols; failing to properly diagnosis Vincent's condition; failing to administer proper medications, including antibiotics; failing to follow appropriate and standard medical procedures in light of the situation presented; mismanaging the care and treatment of Vincent Chonis; failing to ensure referral to appropriate medical personnel qualified to handle and manage the care and treatment of Vincent; and failure to take necessary and appropriate precautions to prevent the spread of infection.
24. Vincent Chonis' septic infection ultimately led to Vincent Chonis' stroke and near death.
25. Prompt and proper diagnosis and treatment of Vincent's condition, including but not necessarily limited to administration of proper antibiotic medication, would have prevented the infection from becoming septic and Vincent thereafter suffering a stroke.
26. As a direct and proximate result of the infection and the subsequent damage to his organs, Vincent Chonis was forced to undergo dialysis and a kidney transplant.
27. As a consequence of the kidney transplant, Vincent Chonis has been restricted in the activities that he can participate in for the remainder of his life.
28. Vincent Chonis' life expectancy has been shortened and he has been forced to undergo multiple painful procedures, including dialysis and multiple surgical procedures, including a kidney transplant, and is reasonably anticipated to be required to undergo further kidney transplants during the course of his life, or face a premature death arising from the damage and destruction of his original functioning kidneys.
29. As a consequence of his injuries, including the need for a kidney transplant, Vincent Chonis will require further medical care throughout his life.

30. As a consequence of his injuries, including the need for a kidney transplant, Vincent Chonis will be required to take medication for the rest of his life, including but not necessarily limited to anti-rejection medication.
31. As a consequence of his injuries arising from the Defendant's treatment, Vincent is also reasonably expected to suffer a decreased life expectancy.
32. Vincent's injuries and resulting medical care, has required extraordinary services from his parents Chad and Lisa Chonis, which has placed a substantial emotional and economic burden upon them. It is reasonably expected that such extraordinary services will be required to be provided in the future to Vincent.
33. Vincent's condition has caused Chad and Lisa to suffer great emotional distress and anguish, including having to observe Vincent requiring life-saving resuscitation while hospitalized.
34. Chad and Lisa have also been deprived of the normal companionship and relationship with Vincent that they would have otherwise had with him but for Vincent's injuries and damage arising from the Defendants' negligent treatment and care.
35. As a consequence of Vincent's damages and injuries arising out of the negligent treatment of Vincent, Chad and Lisa have suffered a loss of parental consortium.
36. The total economic cost of the present and continuing care of Vincent is in an amount to be determined but is reasonably expected to be over a million dollars over the course of Vincent's lifetime.
37. As a consequence of his condition Vincent is also reasonably expected to lose out upon the earning power or capacity he otherwise would have possessed had he not been subjected to the malpractice of the Defendants. Plaintiff Vincent Chonis' damages for lost earning capacity are in an amount to be determined at trial.

38. As a direct and proximate result of the errors and omissions of the Defendants, Vincent Chonis has suffered damages including, but not necessarily limited to:

- (1) Physical injury;
- (2) Loss and enjoyment of life;
- (3) Pain and suffering in the past and reasonably expected to continue into the future during his lifetime;
- (4) Diminished life expectancy;
- (5) Diminished function;
- (6) Temporary and permanent injury;
- (7) Temporary and permanent disability;
- (8) Loss of educational and extracurricular opportunities;
- (9) Loss of earning capacity, income and/or future lost wages;
- (10) Emotional distress;
- (11) past and future medical expenses and necessary supplies; and
- (12) mental anguish, among other damages.

39. As a direct and proximate result of the errors and omissions of the Defendants, Chad Chonis has suffered damages including, but not necessarily limited to:

- a. Loss of services which would have been provided by Vincent Chonis;
- b. Past and future economic losses, including but not necessarily limited to past and future expenses for healthcare and associated goods and services for Vincent, including but not necessarily limited to expenses associated with medical, hospital, physician costs, and therapy, including mileage expenses associated with transportation of Vincent for treatments;

- c. Lost wages associated with time away from work to provide care for Vincent, including during periods of his hospitalization and recuperation;
- d. A loss of society, affection, care, comfort and companionship with Vincent; and
- e. Severe emotional distress and trauma, including but not limited to that associated with personally observing Vincent's near death while hospitalized.

40. As a direct and proximate result of the errors and omissions of the Defendants, Lisa Chonis has suffered damages including, but not necessarily limited to:

- a. Loss of services which would have been provided by Vincent Chonis;
- b. Past and future economic losses, including but not necessarily limited to past and future expenses for healthcare and associated goods and services for Vincent, including but not necessarily limited to expenses associated with medical, hospital, physician costs, and therapy, including mileage expenses associated with transportation of Vincent for treatments;
- c. Lost wages associated with time away from work to provide care for Vincent, including during periods of his hospitalization and recuperation;
- d. A loss of society, affection, care, comfort and companionship with Vincent; and
- e. Severe emotional distress and trauma, including but not limited to that associated with personally observing Vincent's near death while hospitalized.

41. As a direct and proximate result of the negligence and errors and omissions of the Defendants, Plaintiffs suffered proximate harm and damage in an amount to be determined but substantially in excess of \$1,750,000.00 each.

42. Plaintiffs' damages arise as a direct and proximate result of the errors and omission of the Defendants.

43. Given Vincent Chonis' status as a minor, any potentially applicable statute of limitations is tolled during the period in which he is a minor.
44. Plaintiffs hereby waive the procedures, including medical review, if any are applicable under the Nebraska Medical Hospital Liability Act.
45. Contemporaneous with the filing of this action, notice has been served upon the Department of Insurance.
46. Plaintiffs hereby waive medical review and demand a jury trial on all issues so triable in Douglas County, Nebraska.

WHEREFORE, Plaintiffs pray for an award of their general and special damages in an amount to be determined but in excess of \$1,750,000.00 for each, together with the costs of this action, an award of attorney fees to the extent allowed by law, costs, prejudgment and post-judgment interest to the extent allowed by law, and for such other further relief as may be necessary, just or appropriate under the premises.

COUNT II: DECLARATORY JUDGMENT: UNCONSTITUTIONALITY OF
NEBRASKA HOSPITAL LIABILITY ACT OR PROVISIONS
THEREOF

46. The foregoing paragraphs are incorporated herein by reference.
47. Plaintiffs are informed and have reason to believe that one or more of the Defendants may claim protection under the provisions of the Nebraska Hospital Liability Act, Nebraska Revised Statute Sections 44-2801 et.seq., and, in particular, Nebraska Revised Statute Section 44-2825, which purports to provide that the total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in an injury, may not exceed the sum of one million seven hundred fifty thousand dollars (\$1,750,000.00).

48. Notwithstanding said Act and the purported special benefits, privileges and protections for Defendants thereunder, Plaintiffs allege that such Act, and in particular Nebraska Revised Statute Section 44-2825, is unconstitutional, in whole or in part, because it violates the Fourteenth Amendment to the Constitution of the United States, and Article 1, Sections 1, 3, 13, 16 and 25, and Article 3, Section 18 of the Constitution of the State of Nebraska.
49. Even if not unconstitutional on its face, the aforesaid Act, including Section 44-2825, is unconstitutional as applied to Plaintiffs because it violates Plaintiffs' due process rights guaranteed under the aforementioned Constitution provisions and amounts to unreasonable, arbitrary, discriminatory, and or confiscatory legislation, including, in particular, for the reason that it deprives the Plaintiffs of the compensation they are due as a consequence of negligence, errors and omissions of Defendants, which such damages are substantially in excess of the supposed statutory cap on damages pursuant to Section 44-2825.
50. Alternatively, to the extent that the Act is not found unconstitutional on its face, and would otherwise be applicable to Plaintiffs' claims, application to Plaintiffs' claims to limit them to a single recovery, which each has suffered independent damages would result in a violation of Plaintiffs' due process rights guaranteed under the aforementioned Constitution provisions and amounts to unreasonable, arbitrary, discriminatory, and or confiscatory legislation, including, in particular, for the reason that it deprives the Plaintiffs of the compensation they are due as a consequence of negligence, errors and omissions of Defendants, which such damages are substantially in excess of the supposed statutory cap on damages pursuant to Section 44-2825.
51. Further, application of the Act to the claims of Chad Chonis and Lisa Chonis would be improper and unconstitutional since neither Chad Chonis nor Lisa Chonis consented to having any of their individual claims subject to application of the supposed statutory damage cap arising pursuant to Section 44-2825.
52. A copy of this suit seeking a declaration of unconstitutionality has been contemporaneously issued to the Attorney General of the State of Nebraska.

WHEREFORE, Plaintiffs pray that this Court enter an order declaring the Nebraska Hospital Liability Act unconstitutional, in whole or in part, or alternatively, that it may not be applied to the Plaintiffs' collectively, but rather would have to be applied, if at all, only to each individual claim of each Plaintiff, and awarding such other further relief may be appropriate under the premises, including costs and attorney fees to the extent allowed by law.

CHAD CHONIS and LISA CHONIS, individually
and as parents and next friend of VINCENT
CHONIS,
Plaintiffs,

By:



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