

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

<p>MEGAN and RYAN MECH as INDIVIDUALS and MEGAN MECH as PERSONAL REPRESENTATIVE of the ESTATE OF MILES MECH, Deceased, Plaintiffs,</p> <p>v.</p> <p>CHILDREN'S HOSPITAL &amp; MEDICAL CENTER and NEBRASKA PEDIATRIC PRACTICE, INC., Defendants.</p>	<p>CASE NO: CI _____</p> <p>COMPLAINT</p>
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NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

1. This is a medical malpractice claim brought pursuant to the Nebraska Hospital-Medical Liability Act (NHMLA); Nebraska Revised Statutes (2010); Chapter 44, Insurance; Article 28, Sections 01-55.

EXCLUSIVE REMEDY

2. NHMLA is the exclusive remedy for patients alleging professional negligence against qualified healthcare providers. §44-2821(2):
  - a. Each defendant was NHMLA qualified during the dates of the occurrences. §44-2824;
  - b. Occurrences are events that proximately cause damages for which patients or representatives may claim reimbursement. §44-2813;
  - c. The Plaintiffs are bound by NHMLA because Plaintiffs did not:

- i. Elect to opt out of NHMLA. §44-2821(2) (a);
- ii. File notice with the Director of Insurance, in advance of any treatment with a qualified healthcare provider, of the election to opt out of NHMLA. §44-2807, 2821(2) (b);
- iii. Notify the healthcare provider of the election to opt out of NHMLA. §44-2821(2) (c).

#### WAIVER OF MEDICAL REVIEW PANEL

3. No claim against a qualified healthcare provider may be filed in court without it first being submitted to a medical review panel. §44-2840 (2).
4. A claimant may affirmatively waive that right, and then may proceed to file an action directly in court. §44-2840 (4).
5. Plaintiffs waive the right to a panel review.

#### COMMENCING AN ACTION

6. Filing a complaint in a court of law having requisite jurisdiction is the proper way to commence an action under NHMLA. §44-2822.
7. This action is filed within two years of the occurrences. §44-2828.
8. A copy of this complaint must be personally served on the Director. §44-2840 (4).

#### JURISDICTION

9. This is a civil action in which the Plaintiffs seek to recover damages for the wrongful death of their child, Miles Mech, on October 4, 2015.

10. Being a court of general jurisdiction, the District Court for Douglas County has requisite jurisdiction to hear NHMLA cases. §44-2822.
11. This action was timely commenced within two years of the occurrences alleged below.
12. The occurrences took place in Douglas County, Nebraska;

#### PARTIES

13. Plaintiffs Megan and Ryan Mech (hereinafter "Megan" and "Ryan") are:
  - a. Qualified as representatives as defined by §44-2808;
  - b. Residents of Omaha, Douglas County, Nebraska; and
  - c. The parents of the decedent, Miles Mech.
  - d. The County Court for Douglas County, Nebraska, appointed Megan Mech as personal representatives on August 21, 2017, at Appearance Docket PR 17-1241.
14. Defendant Children's Hospital & Medical Center (hereinafter "CHMC"):
  - a. Is a nonprofit hospital licensed to operate health care facilities in Nebraska;  
and
  - b. Operates health care facilities in Douglas County, Nebraska.
15. Defendant Nebraska Pediatric Practice, Inc. (hereinafter "NPP"):
  - a. Is a nonprofit domestic corporation licensed to provide pediatric services in the Omaha, Nebraska region; and

- b. Employs physicians practicing at CHMC.

## OCCURRENCES

16. On October 3, 2015, Miles Mech developed sudden onset vomiting, Miles's mother, Megan, contacted his physician, Dr. Lisa Whitcomb. Dr. Whitcomb instructed Megan to keep Miles hydrated by giving him frequent small amounts of Pedialyte. Dr. Whitcomb also instructs Mrs. Mech to call if Miles continues to be fussy, continues to vomit, or has no urine output for 8 hours. At approximately 2100 (military time will be utilized) Megan called Dr. Whitcomb to report worsening symptoms, she also requested a direct admit to CHMC. Dr. Whitcomb spoke with Dr. England, a hospitalist, who accepted Miles as a direct admit.
17. On October 3, 2015, at approximately 2330, Miles arrived at CHMC for direct admission to the hospital. Dr. Melissa Englund examined Miles at 0005 (it was now October 4, 2015), her findings were as follows: "Eight-month-old male presenting with a one-day history of vomiting, poor oral intake and fevers (T-max 102.8 ancillary). Emesis described as white, non-bilious and non-bloody associated with nearly every feed today." Abdominal exam showed no tenderness or distension. Anterior fontanelle is flat. Peripheral perfusion is normal. He is tachypnic with an otherwise unremarkable respiratory exam. He is described as appearing ill, having pallor, tachycardic, crying, and irritable. Differential diagnosis includes viral gastroenteritis, bowel obstruction, and appendicitis.

18. On October 4, 2015;

- a. At approximately 0210, Dr. Kroenke was notified that the IV bolus of normal saline was completed.
- b. At approximately 0350 Miles was crying, HR-160, BP-94/65, Spo2-97%, RR-24, T-99.5. He was fed Pedialyte, per MD orders
- c. At 0459 Miles had a large emesis.
- d. At approximately 0630 Dr. Snyder examined Miles and described his dehydration as "resolving" and her plan for the day included discharging him to home once oral intake was adequate. She also noted that Miles did not sleep overnight, had an emesis, and was febrile. Miles's HR was noted to be 160.
- e. At 0745 Nurse Roubound notes grunting, pallor, nasal flaring, lip cyanosis.
- f. At 0800 Miles's HR is 184 while he is calm.
- g. At 0830 Dr. Snyder noted "occasional grunting".
- h. At 0845 Nurse Roubound notes that Miles has nasal flaring, grunting, and purple tinted lips. Nurse Roubound notifies Dr. Snyder of this in person.
- i. At 1000 Dr. Robert Chaplin, the intensivist on duty, is asked to assess the child. Dr. Chaplin reviewed the labs and vital signs and recommended more IV fluids. Miles's HR was 194.

- j. At 1102 Miles had a large, feculent emesis. Nurse Roubound notified Dr. Snyder.
- k. At 1106 Dr. Goodrich examined Miles and noted a weak cry, delayed capillary refill, tachycardia, mottling, and grunting. He documented "At that time, I thought he certainly would benefit from more intensive care."
- l. At 1110 A RAT (Rapid Assessment Team) called due to staff concerns for acute change in respiratory rate/work of breathing; acute change in heart rate, acute change in blood pressure. HR is 194. Skin is described as cool extremities, hot to touch abdomen. Dr. Snyder notes "feet cool and mottled. Difficult to obtain pulse ox... BP was down to 70/50s, while getting NS bolus".
- m. At 1135 RT Cheryl Jarosz notes no response to pain along with lethargy. Notes "pt. needs transferred to PICU".
- n. At 1217 Miles codes. CPR is performed. Miles was emergently transferred to the PICU.
- o. Miles is put on life-support, but even on a ventilator, his heart cannot pump enough blood to sustain his body. He is placed on ECMO, which is essentially a heart bypass machine and a last-ditch effort to save him. Miles continues to deteriorate despite all the advanced medical techniques that

were employed. Miles progresses to brain death and life support is removed.

- p. Miles dies at 2203 while being held by his parents.

#### GENERALLY ACCEPTED MEDICAL STANDARD OF CARE

19. All physicians holding a license to practice medicine in Nebraska are required to meet the Generally Accepted Medical Standard of Care for physicians in Nebraska in effect at the time of the service provided to the patient.

20. As defined in §44-2810, the test for meeting the Generally Accepted Medical Standard of Care for physicians in Nebraska, in effect today, and at the time of the occurrences, is:

- a. What Physicians:

- i. Who are in the same or similar community;
- ii. Who are engaged in the same or similar lines of work.

- b. Would ordinarily do for their patients under like circumstances.

21. Failure to meet the Generally Accepted Medical Standard of Care is professional negligence or malpractice as defined by §44-2810.

22. In this case, the Generally Accepted Medical Standard of Care in effect during the occurrences was, and still is, what:

- a. Physicians and Nurses;

- i. In Omaha, Nebraska or similar metropolitan areas in the US;

- ii. Who provide care for infants and young children in a pediatric hospital.
- b. Would ordinarily:
- i. Recognize the signs and symptoms of severe distress in an infant.
  - ii. Advocate for the health and safety of a child.
  - iii. Recognize when an infant has vital signs and physical findings that are abnormal.
  - iv. Utilize available resources to prevent the untimely death of an infant.

#### PROFESSIONAL NEGLIGENCE

23. The physicians who treated Miles Mech on October 4, 2015, were professionally negligent and deviated from the generally accepted standards of care in one or more of the following particulars:

- a. Failing to rule out gastrointestinal issues as the cause of Miles's sudden onset vomiting;
- b. Failing to recognize that Miles's symptoms were not consistent with dehydration;
- c. Failing to recognize and treat Miles's worsening gastrointestinal disease processes;
- d. Ignoring the signs and symptoms of medical crisis in an infant.



24. In addition to the deviations set forth above, CHMC and NPP, directly and through their actual, apparent, and/or ostensible agents, servants, and/or employees were negligent in deviating from the general accepted standard of care in one or more of the following particulars:

- a. Failing to adequately instruct, train, and/or supervise its agents, servants, and/or employees;
- b. Failing to adopt, follow, and/or enforce appropriate policies, procedures and/or protocols for the management of infants and children admitted for sudden onset vomiting;
- c. Failing to adopt, follow, and/or enforce appropriate policies, procedures and/or protocols for the acute deterioration of infants and/or children admitted to CHMC;
- d. Failing to adopt, follow, and/or enforce appropriate policies, procedures and/or protocols for the management of infants and/or children in distress;
- e. Failing to implement, follow, and enforce other policies, protocols and practices which may become apparent throughout the course of discovery.

#### CAUSATION OF DAMAGE

25. As a direct and proximate cause of the individual, successive, concurrent, joint and several negligence of the Defendants, Megan and Ryan Mech are entitled to recovery under §30-809 and §30-810:

- a. Suffered the loss of society, comfort, and companionship of their minor child, Miles Mech;
- b. Suffered the loss of expected services of their minor child, Miles Mech;
- c. Paid medical and funeral expenses related to the wrongful death of their minor child, Miles Mech; and
- d. Lost the future services of their child, Miles Mech.

#### SPECIAL DAMAGES

26. Those damages caused Plaintiffs Megan and Ryan Mech to incur special damages.

#### CONSORTIUM

27. The Defendants' professional negligence directly and proximately caused losses of comfort, care, and society to Megan and Ryan Mech.

#### AGENCY

28. During the occurrence, the physicians, nurses, and all other healthcare providers who cared for and treated Miles Mech were:

- a. Qualified as healthcare providers as defined by §44-2803(3);
- b. Agents of CHMC and/or NPP; and
- c. Acting within the scope of such agency when treating Miles Mech.

#### JURY DEMAND

29. Plaintiffs hereby request a trial by jury.

WHEREFORE, pursuant to Nebraska law, Plaintiffs pray for damages as are reasonable in the premises.

DATED this 27<sup>th</sup> day of September, 2017.

MEGAN and RYAN MECH as  
INDIVIDUALS and MEGAN MECH as  
PERSONAL REPRESENTATIVE of the  
ESTATE OF MILES MECH, Deceased,

By:           /s/ Sarah Centineo            
Sarah F. Centineo, #25620  
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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

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I, Sarah F. Centineo, hereby certify that on the 27th day of September, 2017, a true and correct copy the foregoing Complaint was sent via U.S. Mail (certified), postage prepaid to:

Bruce Ramage, Director  
Nebraska Department of Insurance  
941 "O" Street  
Suite 400  
Lincoln, Nebraska 68508

/s/ Sarah Centineo

Sarah F. Centineo