

**IN THE DISTRICT COURT OF DODGE COUNTY, NEBRASKA**

**DEBORAH BRANDON**, Personal )  
Representative of the Estate of )  
Jennifer J. Brandon, Deceased )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
**FREMONT HEALTH**, )  
**METHODIST FREMONT HEALTH**, )  
**FREMONT HEALTH CLINIC**, )  
**FREMONT HEALTH PARTNERS**, )  
**INC.**, and )  
**CURTIS BATTEN, M.D.**, )  
 )  
Defendants. )

**COMPLAINT**  
**(Medical Negligence, Wrongful**  
**Death, Survival)**

**ALLEGATIONS COMMON TO ALL COUNTS**

The above-named Plaintiff, for her causes of action against the above-named Defendants, states as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action for wrongful death and a survival action brought against the above-named Defendants for health care services provided or not provided to Jennifer J. Brandon (“Ms. Brandon”) on April 19, 2017, which resulted in the death of Ms. Brandon on April 19, 2017. Plaintiff seeks recovery of the damages allowed by law for the separate causes of action pled in more detail below.

**JURISDICTION, VENUE AND PARTIES**

2. This Court has jurisdiction over the parties to this action pursuant to Neb. Rev. St. §24-517, because this is a civil action in which the amount in controversy exceeds \$52,000. Venue lies in this Court because the negligent acts and/or omissions alleged below occurred in Dodge County, Nebraska.

3. Prior to her death, Ms. Brandon resided in Dodge County, Nebraska.

4. Plaintiff Deborah Brandon, surviving mother of Ms. Brandon, brings suit in her capacity as the duly-appointed Personal Representative of the Estate of Jennifer J. Brandon, Deceased.

5. At all times relevant hereto, Defendant Fremont Health has been a county hospital located in Dodge County Nebraska, formerly known as Fremont Area Medical Center, and has been engaged, in whole or in part, in the business of owning and operating health care facilities including, but not limited to, the health care facility currently known as Fremont Health Medical Center, in Fremont, Dodge County, Nebraska (“Fremont Health”), and providing health care goods and services to members of the general public, on an inpatient or outpatient basis, including but not limited to Ms. Brandon.

6. At all times relevant hereto, Fremont Health employed physicians, nurses, technicians, agents and/or other health care professionals (collectively, the “Fremont Health Staff”) to provide health care goods and services on an inpatient and/or outpatient basis to members of the general public including, but not limited to, Ms. Brandon. As a matter of law, the negligent acts and/or omissions of the Fremont Health Staff are imputed to Fremont Health, and therefore, Fremont Health is vicariously liable for all such negligent acts and/or omissions by the Fremont Health Staff.

7. At all times relevant hereto, Defendant Methodist Fremont Health (“Methodist Fremont”) has been a Nebraska nonprofit corporation. At a time presently unknown to the Personal Representative, but believed to be after April 19, 2017, Methodist Fremont acquired Fremont Health, including its assets and liabilities, or otherwise entered into a business relationship with Fremont Health, thereby acquiring an interest in and/or responsibility for the assets and liabilities of Fremont Health, including but not limited to the negligent acts and/or omissions of Fremont Health more fully described below.

8. At all times relevant hereto, Defendant Fremont Health Clinic, formerly known as Health Care Professionals, Inc. (“Fremont Clinic”), has been a Nebraska nonprofit corporation, engaged in whole or in part providing health care goods and services to members of the general public at the Fremont Health facility located at 450 East 23rd Street, Fremont, Nebraska 68025 (“the Hospital”).

9. At all times relevant hereto, Fremont Clinic employed physicians, nurses, technicians, agents and/or other health care professionals (collectively, the “Fremont Clinic Staff”) to provide health care goods and services on an inpatient and/or outpatient basis to members of the general public including, but not limited to, Ms. Brandon. As a matter of law, the negligent acts and/or omissions of the Fremont Clinic Staff are imputed to Fremont Clinic, and

therefore, Fremont Clinic is vicariously liable for all such negligent acts and/or omissions by the Fremont Clinic Staff.

10. At all times relevant hereto, Defendant Fremont Health Partners, Inc. (“Fremont Partners”), has been a Nebraska nonprofit corporation, engaged in whole or in part providing health care goods and services to members of the general public at the Fremont Health facility located at 450 East 23rd Street, Fremont, Nebraska 68025.

11. At all times relevant hereto, Fremont Partners employed physicians, nurses, technicians, agents and/or other health care professionals (collectively, the “Fremont Partners Staff”) to provide health care goods and services on an inpatient and/or outpatient basis to members of the general public including, but not limited to, Ms. Brandon. As a matter of law, the negligent acts and/or omissions of the Fremont Partners Staff are imputed to Fremont Partners, and therefore, Fremont Partners is vicariously liable for all such negligent acts and/or omissions by the Fremont Partners Staff.

12. The principal places of business of Methodist Fremont, Fremont Clinic, and Fremont Partners are all located at 450 East 23rd Street, Fremont, Nebraska 68025, which is the address of the Hospital, *i.e.*, Fremont Health Medical Center, f/k/a Fremont Area Medical Center.

13. Methodist Fremont, Fremont Clinic and Fremont Partners have the same registered agent: Stephen L. Goeser, 8511 West Dodge Road, Omaha, Nebraska 68114.

14. At all times relevant hereto, Fremont Health, Methodist Fremont, Fremont Clinic and Fremont Partners have been engaged in a partnership, joint venture, or other business relationship pursuant to which members of the Fremont Health Staff, the Fremont Clinic Staff, and/or the Fremont Partners Staff provide health care goods and services to members of the general public, on an inpatient or outpatient basis, at the Hospital and/or at other locations in or near the city of Fremont.

15. As of the filing of this Complaint, the Personal Representative does not know, and has no way of knowing whether the individuals who provided or failed to provide appropriate health care services to Ms. Brandon on April 19, 2017, were members of the Fremont Health Staff, the Fremont Clinic Staff, or the Fremont Partners Staff. If discovery discloses those individuals were not members of the Fremont Clinic Staff, or the Fremont Partners Staff, the Personal Representative will dismiss the claims against those Defendants.

16. At all times relevant hereto, Defendant Curtis Batten, M.D. (“Dr. Batten”), was a

physician engaged in the practice of his profession in Fremont, Dodge County, Nebraska, and held himself out to be a skilled a competent physician.

17. At all times relevant hereto, Dr. Batten was an agent, servant, employee, or ostensible or apparent agent of Fremont Health, Fremont Clinic and/or Fremont Partners, acting in the course and scope of his employment or other business relationship with Fremont Health, Fremont Clinic, and/or Fremont Partners. As a matter of law, the negligent acts and/or omissions of Dr. Batten are imputed to Fremont Health, Fremont Clinic and/or Fremont Partners, and Fremont Health, Fremont Clinic and/or Fremont Partners are vicariously liable for all such negligent acts and/or omissions.

18. Alternatively, Methodist Fremont is vicariously liable for the negligent acts and/or omissions of Dr. Batten as a result of the acquisition of Fremont Health by Methodist Fremont, or as a result of the business relationship between Fremont Health and Methodist Health.

#### **STATEMENT OF FACTS**

19. On April 19, 2017, at approximately 8:59 a.m., Ms. Brandon arrived at the Hospital via ambulance, with complaints of abdominal pain.

20. On April 19, 2017, Ms. Brandon was seen by Dr. Batten, thereby establishing a doctor-patient relationship between Dr. Batten and Ms. Brandon.

21. On April 19, 2017, Ms. Brandon was seen by or received health care services from members of the Fremont Health Staff, thereby establishing a hospital-patient relationship between Fremont Health and Ms. Brandon, and a health care provider-patient relationship between the particular members of the Fremont Health Staff and Ms. Brandon.

22. Alternatively, on April 19, 2017, Ms. Brandon received health care services from members of the Fremont Clinic Staff and/or the Fremont Partners Staff, thereby respectively establishing health care provider patient relationships between Ms. Brandon and Fremont Clinic, and/or the Fremont Clinic Staff, and/or Fremont Partners, and/or the Fremont Partners Staff.

23. At the time Ms. Brandon arrived at the Hospital, and throughout the entirety of her time in the hospital, Ms. Brandon was suffering from a small bowel obstruction, sometimes called a volvulus, at or near a gastric bypass site.

24. Over the course of almost six hours, Ms. Brandon's condition steadily and continuously worsened, as shown by her worsening vital signs.

25. At approximately 3:30 p.m., was taken for imaging, and around this time she experienced a cardiac arrest.

26. Ms. Brandon died at the Hospital shortly after the cardiac arrest.

27. Ms. Brandon's small bowel obstruction was undiagnosed, untreated, and unrepaired, and ultimately led to cardiac arrest and Ms. Brandon's death.

#### **COMPLIANCE WITH POLITICAL SUBDIVISION TORT CLAIMS ACT**

28. On January 27, 2018, pursuant to the Political Subdivision Tort Claims Act, a claim was submitted to Fremont Health, a copy of which is attached hereto, marked as Exhibit A and incorporated by reference.

29. There was no settlement agreement with Fremont Health within six months of providing notice of the claim to Fremont Health. On August 23, 2018, the claim was withdrawn. A copy of that letter is attached hereto, marked as Exhibit B and incorporated by reference.

#### **NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT**

30. If any Defendant claims that, at all times relevant hereto, it or he was covered by and in compliance with the Nebraska Hospital-Medical Liability Act, § 44-2801 et. seq. R.R.S. 1943, as amended (the "Act"), and seeks the benefits of the Act, Plaintiff demands strict proof of such coverage and compliance. Plaintiff specifically alleges the Defendants, and each of them, failed to properly qualify, and thus, are not entitled to any benefits under the Act.

31. Notwithstanding any filing by any Defendant for the special benefits, privileges and protection of the Act, Defendants, and each of them, failed to meet their statutorily mandated duties pursuant to the Act, and, as a result, deprived Ms. Brandon of her right to either elect not to be bound by the Act, or seek healthcare services from a non-qualified healthcare provider (as such term is defined under the Act).

32. Notwithstanding any filing by Defendants for the special benefits, privileges and protection of the Act, Plaintiff alleges that the Act is unconstitutional in whole or in part, as it fails to promote the health, safety or general welfare of the public, and the Act limits, without any reasonable bases the damages which a plaintiff may obtain and such limitations serve no legitimate state interest. Plaintiff also alleges that the Act is unconstitutional in whole or in part because it violates the Seventh (7th) and Fourteenth (14th) Amendments to the Constitution of the United States, as well as the following provisions of the Constitution of the State of Nebraska: Article I, §§ I, 3, 6, 13, 16, 21, 25, 26; Article II, § 1; Article III, §18; Article V, § 2; Article VI, § 1 and

Article XII, § 10(c).

33. Plaintiff hereby affirmatively waives her right for a medical review panel to review their claims hereto against Defendants as provided by the Act and elect to file this action directly in the District Court of Dodge County, Nebraska.

34. A copy of this Complaint is hereby served upon the Director of the Nebraska Department of Insurance, together with a copy upon the Attorney General of the State of Nebraska.

### **COUNT I : WRONGFUL DEATH**

For her Count I claim against all Defendants, the Personal Representative alleges:

1. The Personal Representative incorporates by reference Paragraphs 1 through 34 of the Allegations Common to All Counts.

2. As a result of the health care provider-patient relationship between Ms. Brandon and Fremont Health and the Fremont Health Staff (for which Methodist Fremont is vicariously liable), and the health care provider-patient relationship between Ms. Brandon and Fremont Clinic, the Fremont Clinic Staff, Fremont Partners, and the Fremont Partners staff, each health care provider owed a duty to Ms. Brandon to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other health care providers and members of their respective professions engaged in a similar practice.

3. Fremont Health and the Fremont Health Staff (for whose negligent acts and omissions Methodist Health is vicariously liable), as well as Fremont Clinic, the Fremont Clinic Staff, Fremont Partners, and the Fremont Partners staff, breached their respective duties to Ms. Brandon to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other health care providers and members of their respective professions engaged in a similar practice, because they negligently:

- a. Failed to properly triage Ms. Brandon;
- b. Failed to properly examine Ms. Brandon;
- c. Failed to timely recognize Ms. Brandon's deteriorating condition;
- d. Failed to provide necessary and timely examinations and workup to determine what her condition was;
- e. Failed to properly and timely diagnose her condition(s);
- f. Failed to timely intervene with appropriate medical support, and,

were otherwise negligent in a manner not presently known to the Personal Representative.

4. As a result of the health care provider-patient relationship between Dr. Batten and Ms. Brandon, Dr. Batten owed a duty to Ms. Brandon to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by members of his profession engaged in a similar practice.

5. Dr Batten breached his duty to Ms. Brandon to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by members of his profession engaged in a similar practice, because he negligently:

- a. Failed to properly examine Ms. Brandon;
- b. Failed to timely recognize Ms. Brandon's deteriorating condition;
- c. Failed to provide necessary and timely examinations and workup to determine what her condition was;
- d. Failed to properly and timely diagnose her condition(s);
- e. Failed to timely intervene with appropriate medical support, and,

was otherwise negligent in a manner not presently known to the Personal Representative.

6. As a direct and proximate result of the above-described joint and several negligence of Fremont Health and the Fremont Health Staff (for whose negligent acts and omissions Methodist Health is vicariously liable), as well as Fremont Clinic, the Fremont Clinic Staff, Fremont Partners, the Fremont Partners Staff, and Dr. Batten, Ms. Brandon died on April 19, 2017.

7. The Personal Representative, on behalf of the next of kin of Ms. Brandon, seeks recovery for the loss of Ms. Brandon's society, comfort, companionship, counseling, and advice; the funeral expenses, and other pecuniary losses for which recovery is allowed by law.

**WHEREFORE**, Plaintiff Deborah Brandon, as Personal Representative of the Estate of Jennifer J. Brandon, Deceased, prays for judgment against Defendants Fremont Health, Methodist Fremont Health, Fremont Health Clinic, Fremont Health Partners, Inc., and Curtis Batten, M.D., for special damages in an amount undetermined at this time, for all general damages allowable under the laws of the State of Nebraska, for the costs she incurs in this lawsuit, and for such other and further relief as may be just and equitable in the circumstances.

#### **COUNT II: SURVIVAL ACTION**

For her Count II claim all Defendants, the Personal Representative alleges:

1. The Personal Representative incorporates by reference Paragraphs 1 through 34 of

the Allegations Common to All Counts, and Paragraphs 2 through 5 of Count I.

2. As a direct and proximate result of the above-described negligence of Defendants, Ms. Brandon suffered pre-death injuries, including but not limited to physical pain and suffering, emotional distress and mental anguish, medical expenses, funeral expenses and other pre-death injuries for which recovery is allowed by law, the nature and extent of which are not presently known.

**WHEREFORE**, Plaintiff Deborah Brandon, as Personal Representative of the Estate of Jennifer J. Brandon, Deceased, prays for judgment against Defendants Fremont Health, Methodist Fremont Health, Fremont Health Clinic, Fremont Health Partners, Inc., and Curtis Batten, M.D., for special damages in an amount undetermined at this time, for all general damages allowable under the laws of the State of Nebraska, for the costs she incurs in this lawsuit, and for such other and further relief as may be just and equitable in the circumstances.

#### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands that trial by jury of the foregoing action be held in Dodge County, Nebraska, and that the case be calendared accordingly.

DATED this 2<sup>nd</sup> day of January, 2019.

**DEBORAH BRANDON**, Personal Representative  
of the Estate of Jennifer J. Brandon, Deceased

By: /s/ Patrick J. Cullan  
Patrick J. Cullan, #23576  
Joseph P. Cullan, #22145  
Cullan & Cullan L.L.C.  
1113 Harney Street  
Omaha, Nebraska 68102  
Telephone: (402) 397-7600  
Facsimile: (402) 397-3816  
Email: pat@cullanlaw.com  
joe@cullanlaw.com  
ATTORNEYS FOR PLAINTIFF

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing

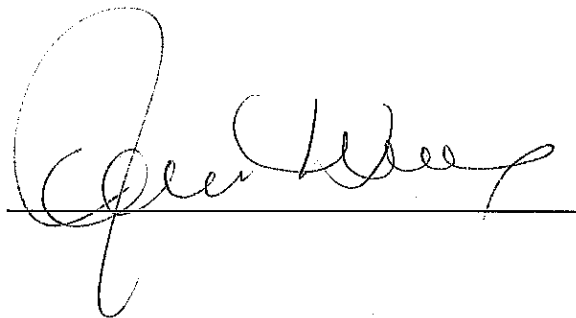


Complaint was served on the parties herein by sending said document via United States Postal Service, first-class postage prepaid, addressed to the following on this 2<sup>nd</sup> day of January, 2019.

**Douglas J. Peterson**  
Attorney General of the State of Nebraska  
2115 State Capitol  
Lincoln, Nebraska 68509  
Telephone: (402) 471-2683

-and-

**Bruce R. Range, CPCU, CIE**  
Director, Nebraska Department of Insurance  
1135 M. Street  
Lincoln, Nebraska 68508-3639

A handwritten signature in black ink, appearing to read "Bruce R. Range", is written over a horizontal line. The signature is cursive and somewhat stylized.



January 17, 2018

13.  
1-31-2018

**SERVED VIA PERSONAL SERVICE**

Mr. Fred Mytty, Dodge County Clerk, and  
Ms. Linda McClain, Secretary for  
the Board of Trustees of Fremont Health  
or the official whose duty it is to maintain  
the official records of the political subdivision

Clerk of Dodge County  
435 North Park  
Fremont, NE 68025

Fremont Health  
Attn: Board of Trustees  
450 East 23<sup>rd</sup> Street  
Fremont, NE 68025

RECEIVED  
2018 JAN 17 PM 1:41  
DODGE COUNTY, NEBRASKA  
FRED MYTTY, COUNTY CLERK

RE: Claims Pursuant to Neb. Rev. Stat. §13-905

Dear Mr. Mytty, Ms. McClain, and other members of the Fremont Health Board of Trustees:

This letter is being filed with you pursuant to Neb. Rev. Stat. §13-905, in your respective capacities as the statutorily designated recipients of claims against Dodge County, Nebraska. The website<sup>1</sup> for Fremont Health, a Nebraska non-profit corporation organized under Neb. Rev. Stat. § 23-3501, et. seq. ("Fremont Health"), the owner and operator of that certain county hospital more commonly known as Fremont Health Medical Center, formerly known as Fremont Area Medical Center, located in Dodge County, Nebraska (the "Hospital"), indicates that Ms. McClain is the secretary to the Fremont Health's Board of Trustees.

<sup>1</sup> <http://www.fremonthhealth.com/Leadership>

Furthermore, the Office of the Dodge County Clerk has indicated that claims are to be filed with it and addressed to Mr. Mytty. Although this letter is being filed with Fremont Health and the Office of the Dodge County Clerk, a copy is being provided to all of the members of the Board of Trustees whose members govern Fremont Health: Dr. Monty Sellon (Chairman); Ken Beebe (Vice Chairman); Steve Pribnow (Treasurer); Jody Horner; Larry Shepard; and F. Thomas Waring, M.D. The claim, as noted outlined herein, is being made pursuant to the Political Subdivisions Tort Claims Act, Neb. Rev. St. §§ 13-901 to 13-928, *et seq.* (the “Act”).

#### CLAIMANTS

The claimants in this matter are Deborah Brandon, Special Administrator of the Estate of Jennifer J. Brandon, deceased (the “Estate”), and Kyle Michael Kirkwood (“Mr. Kirkwood”), individually, and Karrissa Rose Kirkwood (“Ms. Kirkwood”), individually, in their respective capacities as the son and daughter of, and sole heirs at law of Jennifer J. Brandon (“Ms. Brandon”).

This law firm represents the Estate, as well as Mr. Kirkwood, individually, and Ms. Kirkwood, individually. Please direct all future communications regarding their claims referenced herein to our attention.

#### PERSONS/ENTITIES AGAINST WHOM CLAIM IS MADE

This claim is being made by Claimants against the following entities and persons (each, a “Defendant” and collectively, “Defendants”):

- Dodge County.
- Fremont Health.
- Fremont Health Clinic, a Nebraska non-profit corporation (“FHC”).
- Fremont Health Foundation, a Nebraska non-profit corporation (the “Foundation”).
- Fremont Health Partners, Inc., a Nebraska non-profit corporation (the “FHP”).
- Any and all agents, servants, or employees (of Dodge County, Fremont Health, FHC, the Foundation and/or FHP, that provided care and treatment to Ms. Brandon on or about April 19, 2017, including but not limited to:
  - Curtis Batten, M.D. (“Dr. Batten”); and
  - Nursing Staff (spelling as reflected in the medical records):
    - Bennet, LRZCP;
    - Robley, RN;
    - Hamilton, RN;
    - Butts, RN; and
    - Holtz, RN.

In addition, claims are being made against John and Jane Does 1-10, and John and Jane Does 11-20. John and Jane Does 1-10 are agents, servants, or employees of any Defendant who were on duty at the Hospital between approximately 9:00 a.m. and 7:00 p.m. on Wednesday, April 19, 2017. John and Jane Does 11-20 are agents, servants, or employees of any Defendant who had actual knowledge of the events giving rise to this claim, regardless of whether they were on or off

duty during the above-described time frame. The real names of John and Jane Does 1-20 are presently unknown to Claimants.

#### **BASIS OF CLAIMS: TIME AND PLACE**

As noted above, Fremont Health is a non-profit healthcare provider, chartered in 1940 by Dodge County<sup>2</sup> and is the owner and operator of the Hospital.

The claim-related events occurred at the Hospital located at 450 East 23<sup>rd</sup> Street, Fremont, Nebraska 68025, on Wednesday, April 19, 2017, while Ms. Brandon was a patient at the Hospital. The claim-related events continued until approximately 3:33 p.m. on Wednesday, April 19, 2017, when Ms. Brandon died and was discharged from the Hospital.

The precise time and location of the claim-relevant events are presently unknown to Claimants, but the undersigned believes this data to be sufficient to put Dodge County on notice of the time and place pursuant to Neb. Rev. St. § 13-905, so as to enable Dodge County to investigate the claim-related events.

#### **BASIS OF CLAIM SUMMARY**

On April 19, 2017, Ms. Brandon, the mother of Mr. Kirkwood and Ms. Kirkwood, presented to the emergency department at the Hospital. She arrived at or near 9:00 a.m. via ambulance, in moderate distress and with complaints of abdominal pain. Ms. Brandon was seen by Dr. Batten, and other employees and/or agents of the Hospital. Over the course of almost six (6) hours, Ms. Brandon's condition steadily and continuously worsened. Her vital signs demonstrated and were evidence of her deterioration. Finally, around 3:30 p.m. that day, over six (6) hours after her arrival at the Hospital, Ms. Brandon was taken for imaging. However, around this time, Ms. Brandon experienced a cardiac arrest and was declared dead. Ms. Brandon's condition, a small bowel obstruction, was undiagnosed and unrepaired, and ultimately lead to cardiac arrest and Ms. Brandon's death.

During the course of providing professional medical services to Ms. Brandon, Defendants and/or their agents, subsidiaries, and/or employees failed to use the ordinary and reasonable care, skill, and knowledge possessed and used by other health care providers providing such services.

As a result of the negligent acts and/or omissions of one or more of Defendants, Ms. Brandon's condition remained undiagnosed, her condition was allowed to deteriorate, she suffered conscious pain and suffering, incurred injuries and damages, and ultimately lost her life. The Special Administrator of the Estate, Mr. Kirkwood and Ms. Kirkwood specifically reserve the right to supplement the information in this letter concerning Defendants' negligent acts and/or omissions as new and/or additional information becomes available.

This letter shall constitute formal notice under the Act, that the Special Administrator of the Estate, Mr. Kirkwood, individually, and Ms. Kirkwood, individually, are asserting tort claims

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<sup>2</sup> <http://www.fremonthhealth.com/about-fremont-health>

against Defendants for all injuries and damages, including those suffered by Ms. Brandon, and for her wrongful death as a result of and/or arising from the aforementioned negligence of Defendants. These damages are presently unliquidated and will include all past medical expenses, lost wages, loss of future earning capacity, mental and physical pain and suffering, inconvenience, special damages, and general damages.

#### **DAMAGES**

During the course of the approximately six (6) hours at the Hospital, and continuing up to and until her death, Ms. Brandon experienced extreme physical, mental and emotional pain, suffering, distress, and anguish. Additionally, during her “care and treatment” at the Hospital Ms. Brandon’s suffering, her physical, emotional, and mental anguish as her clearly deteriorating condition was being willfully and/or wantonly and/or negligently ignored by personnel at the Hospital, can be said to have been agony. Ms. Brandon died on April 19, 2017. Ms. Brandon is survived by her two children, Mr. Kirkwood and Ms. Kirkwood.

#### **DEMAND**

Pursuant to Neb. Rev. St. §13-922 and §13-926, Claimants demand \$1,750,000.00.

#### **MEDICAL BILLS AND RECEIPTS**

The Nebraska statutes that govern the content of a claim against Dodge County for personal injury and death, impose no obligation to provide medical bills and receipts at the time the claim is filed. However, if Dodge County wishes to discuss or negotiate a resolution to this claim, Claimants and their counsel are of course willing to cooperate in such a process.

#### **SUMMARY AND CAVEAT**

The aggregate conduct of the persons named and unnamed herein caused Ms. Brandon to suffer extreme pain and suffering before her death, and directly caused her death. Claimants respectfully represent that the lack of intervention by Defendants as Ms. Brandon deteriorated over numerous hours demonstrates willful and wanton conduct and gross negligence by Defendants and is so shocking to the conscience of any reasonable person, that punitive damages are warranted.

The caveat, of course, is the obvious one that the purpose of Neb. Rev. St. § 13-905 is to notify Dodge County of an event or series of events giving rise to potential tort liability so that Dodge County may investigate and determine whether to settle a claim without litigation. Nothing in the Act requires a claimant to absolutely establish Dodge County’s liability in the notice, and nothing in the Act permits the notice to in any way limit the theories of recovery possible against Dodge County as a result of the events, including but not limited to any wrongful death or survival action, if Dodge County declines to settle within the six-month time frame provided by the Act. Claimants and their counsel retain the right to file any and all claims and utilize any and all theories of recovery allowed by Nebraska law if a suit is filed arising out of the events occurring on or about April 19, 2017.

Sincerely,

Patrick Cullan M.D., J.D.

Cc: Dr. Monty Sellon (Chairman)  
Ken Beebe (Vice Chairman)  
Steve Pribnow (Treasurer)  
Jody Horner  
Larry Shepard  
F. Thomas Waring, M.D.  
Mark Novotny



August 23, 2018

**VIA CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED**

Mr. Fred Mytty, Dodge County Clerk, and  
Ms. Linda McClain, Secretary for  
the Board of Trustees of Fremont Health  
or the official whose duty it is to maintain  
the official records of the political subdivision

Clerk of Dodge County  
435 North Park  
Fremont, NE 68025

Fremont Health  
Attn: Board of Trustees  
450 East 23<sup>rd</sup> Street  
Fremont, NE 68025

RE: Claims Pursuant to Neb. Rev. Stat. §13-905

Dear Mr. Mytty, Ms. McClain, and other members of the Fremont Health Board of Trustees:

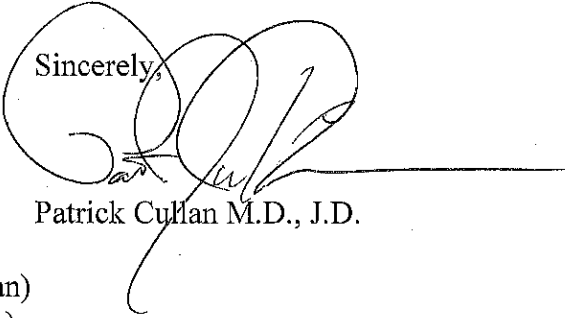
On or about January 17, 2018, we filed a claim pursuant to the Nebraska Political Subdivisions Tort Claims Act, Neb. Rev. St. §13-901, *et seq.* on behalf of Deborah Brandon, Special Administrator of the Estate of Jennifer J. Brandon, deceased (the “Estate”), and Kyle Michael Kirkwood (“Mr. Kirkwood”), individually, and Karrissa Rose Kirkwood (“Ms. Kirkwood”), individually, in their respective capacities as the son and daughter of, and sole heirs at law of Jennifer J. Brandon (“Ms. Brandon”) as a result of an undiagnosed and unrepaired small bowel obstruction that ultimately lead to cardiac arrest and Ms. Brandon’s death.

The Dodge County Clerk acknowledged receipt of the January 17, 2018, claim letter on January 31, 2018.



Inasmuch as this matter has not been resolved within the six-month time-frame set by Neb. Rev. Stat. §13-906, you are hereby notified that this claim is withdrawn.

Sincerely,



Patrick Cullan M.D., J.D.

Cc: Dr. Monty Sellon (Chairman)  
Ken Beebe (Vice Chairman)  
Steve Pribnow (Treasurer)  
Jody Horner  
Larry Shepard  
F. Thomas Waring, M.D.  
Mark Novotny