

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MICHELLE M. KROLL, Personal)	CASE NO. CI13-_____
Representative of the Estate of)	
MICHAEL F. KROLL, Deceased,)	
)	
Plaintiff)	
)	
vs.)	COMPLAINT AND WAIVER
)	OF PANEL REVIEW
NEBRASKA METHODIST HEALTH)	
SYSTEM, INC. d/b/a METHODIST)	
PHYSICIANS CLINIC, a Nebraska)	
Corporation; KATRINA LACEY,)	
JOEDY R. ISTAS; URGENT CARE OF)	
OMAHA – 173RD & CENTER, LLC,)	
A NEBRASKA LIMITED LIABILITY)	
COMPANY, d/b/a FAMILY URGENT)	
CARE, and VIRGINIA SWIERCZEK,)	
)	
Defendants.)	

Plaintiff states:

1. Michelle M. Kroll is the surviving spouse of Michael F. Kroll, deceased. She has been appointed Personal Representative of the Estate of Michael F. Kroll by the County Court of Douglas County, Nebraska.
2. Nebraska Methodist Health System, Inc. is a Nebraska Corporation organized and existed under and by virtue of the laws of the State of Nebraska, and at all time material herein did business under the name of Methodist Physicians Clinic. Throughout this Complaint, this defendant will sometimes be referred to as Methodist Physicians Clinic. Methodist Physicians Clinic operated a medical clinic at 5908 South 142nd Street, Omaha, Douglas County, Nebraska.

3. Defendants Katrina Lacey and Joedy R. Istas are residents of the City of Omaha, Douglas County, Nebraska, and at all times material herein, were physicians licensed to practice medicine in the State of Nebraska.

4. Upon information and belief, Plaintiff states that at all times material herein, the Defendants Katrina Lacey and Joedy R. Istas were employees of the Defendant Methodist Physicians Clinic and were engaged in the scope and course of their employment. The acts of negligence of the Defendants Katrina Lacey and Joedy R. Istas as further set forth in the Complaint are imputed to the Defendant Methodist Physicians Clinic under the doctrine of respondeat superior.

5. On March 19, 2011, the Defendant Urgent Care of Omaha – 173RD & CENTER, LLC was a limited liability company organized and existing under and by virtue of the laws of the State of Nebraska and was doing business under the name of FAMILY URGENT CARE.

6. The Defendant Virginia Swierczek is a resident of the City of Omaha, Douglas County, Nebraska, and at all times material herein was a physician licensed to practice medicine in the State of Nebraska.

7. Upon information and belief, Plaintiff states that on March 19, 2011, the Defendant Virginia Swierczek was an employee of the Defendant Urgent Care of Omaha, and was engaged in the scope and course of her employment. The acts of negligence of the Defendant Virginia Swierczek as further set forth in the Complaint are imputed to the Defendant Methodist Physicians Clinic under the doctrine of respondeat superior.

8. That all Defendants at all times material herein were qualified under the Nebraska Hospital – Medical Liability Act, Neb. Rev. Stat. §44-1801 - §44-2855. The

plaintiff, pursuant to Neb. Rev. Stat. §44-2840(4), (Reissue 1998), waives her right, if any is given under said statute, to a panel review and elects to proceed with her Complaint in the District Court of Douglas County, Nebraska. The plaintiff has further otherwise complied with this statute by mailing a copy of this Complaint by certified mail to the Director of Insurance for the State of Nebraska.

9. On March 18, 2011, Michael F. Kroll was 49 years of age. His date of birth was March 6, 1962. On that date, he was seen at the office of the Defendant Methodist Physicians Clinic. His primary care physician, Joedy R. Ista, was not available to see him on that date, so he was examined and evaluated by Katrina Lacey. On that date, his chief complaints were fatigue and dizziness. On that date, Michael F. Kroll provided the following medical history to the Defendant Katrina Lacey: while at home sweeping his driveway, he experienced vertigo and fell to the ground. Defendant Katrina Lacey performed a physical examination of Michael F. Kroll and upon completion of that physical examination, arrived at a diagnosis of dizziness and a possible viral infection. At the conclusion of the examination, Defendant Katrina Lacey also advised Michael F. Kroll to avoid exercise for a week and to increase his fluid intake. Defendant Katrina Lacey also advised Michael Kroll to go to the Emergency Room if he experienced recurrent chest pain.

10. On March 19, 2011, Michael F. Kroll was seen at the office of the Defendant Urgent Care of Omaha and was evaluated and treated by the Defendant Virginia Swierczek. His chief complaint at that time was nausea and dizziness. The Defendant Virginia Swierczek evaluated Michael F. Kroll at Urgent Care of Omaha and as a part of that examination obtained a history which included the following:

- a. Intermittent dizziness and vomiting since March 18, 2011;
- b. Pain in his left ear;
- c. Pain in the left side of his neck;
- d. Extreme sweating.

11. During this evaluation, the Defendant, Virginia Swierczek also noted that Michael F. Kroll had a difficult time walking. After evaluating Michael F. Kroll, Defendant Virginia Swierczek arrived at a diagnosis of labyrinthitis (vertigo). By way of a treatment plan, Defendant Virginia Swierczek advised Michael F. Kroll that if the symptoms he was experiencing returned, that he should go to the Emergency Room.

12. On March 21, 2011, Michael F. Kroll was still feeling ill. On that date, he went to the office of the Defendant Methodist Physicians Clinic and was seen by his primary care physician, the Defendant Joedy R. Ista. His chief complaint on that date was lightheadedness and migraines, which had been present since March 18, 2011. His blood pressure reading during this evaluation was 144/106. Defendant Joedy R. Ista diagnosed Michael F. Kroll as experiencing a viral syndrome and elevated blood pressure.

13. On March 23, 2011, a family member of Michael F. Kroll contacted the office of the Defendant Joedy R. Ista, and advised that Michael F. Kroll's ear condition was better but he was still very dizzy. The office of the Defendant Joedy R. Ista advised the family member of Michael F. Kroll that Michael F. Kroll should rest, take fluids, and to go to the Emergency Room if his symptoms worsened.

14. On March 24, 2011, at approximately 3:00 p.m., Michael F. Kroll was taken by a family member to the Emergency Room at Alegent Health Lakeside Hospital. His chief complaint at that time was headache pain, nausea, and vertigo. Emergency Room personnel at Alegent Health Lakeside Hospital ordered a CT scan to be performed

on Michael F. Kroll's brain. The results of this CT scan indicate an abnormality in the left cerebral area of Michael F. Kroll's brain. A neurologic consult was obtained and a diagnosis of a cerebellar stroke was made. A follow-up MRI was ordered and this MRI indicated the presence of a "large diffusion positive infarct involving the entire left lobe of the cerebellum." This MRI further showed downward cerebellar herniation. Because of Michael F. Kroll's serious medical condition, he was transferred from Alegent Health Lakeside Hospital to Bergan Mercy Medical Center for further evaluation and treatment by a neurosurgeon.

15. Michael F. Kroll was a patient at Alegent Health Bergan Mercy Medical Center from March 24, 2011 through his date of death on April 1, 2011. During the aforementioned hospitalization, Michael F. Kroll's medical condition seriously deteriorated and he died on April 1, 2011 at approximately 8:23 p.m.

16. That the death of Michael F. Kroll was a direct and proximate result of the negligence of the Defendants as set forth below. The Defendants and each of them were negligent in their care and treatment of Michael F. Kroll in the following respects:

As to Defendant Methodist Physicians Clinic and Katrina Lacey:

- a.) In failing to obtain a proper and complete medical history for Michael F. Kroll;
- b.) In failing to perform a proper medical examination and evaluation of Michael F. Kroll, to include a neurologic evaluation on March 18, 2011;
- c.) In failing to order a CT scan or MRI of Michael F. Kroll's brain given his symptoms at the time;
- d.) In misdiagnosing the cause of Michael F. Kroll's symptoms.

As to Defendants Urgent Care of Omaha and Virginia Swierczek:

- a.) In failing to obtain a proper and complete medical history;
- b.) In failing to perform a proper and complete neurologic evaluation of Michael F. Kroll on March 19, 2011;
- c.) In failing to order a CT scan or MRI of Michael F. Kroll's brain when evaluating Michael F. Kroll on March 19, 2011;
- d.) In misdiagnosing the cause of Michael F. Kroll's symptoms.

As to Defendant Methodist Physicians Clinic and Joedy R. Ista:

- a.) In failing to obtain a proper and complete medical history;
- b.) In failing to perform a proper and complete neurologic evaluation of Michael F. Kroll on March 21, 2011;
- c.) In misdiagnosing Michael F. Kroll's medical condition;
- d.) In failing to order a CT scan or MRI on Michael F. Kroll on March 21, 2011;
- e.) In failing to evaluate and examine Michael F. Kroll on March 23, 2011 or to request that he go to the nearest Emergency Department.

16. Michael F. Kroll, at the time of his death, was survived by his wife, Michelle M. Kroll, and his children, David M. Kroll, Dillon M. Kroll, and Mariah M. Kroll. By reason of his death, these named individuals have been deprived of present and future contributions of care, support, maintenance, society, companionship, and consortium, and have sustained a pecuniary loss by reason thereof.

17. That as a further direct and proximate result of the negligence of the Defendants, Plaintiff has sustained damages as follows:

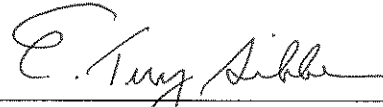
- a.) Funeral and burial expenses;
- b.) Medical expenses in the amount of approximately \$100,000.00;

- b.) Pain and suffering of Michael F. Kroll from March 18, 2011 through the time of his death on April 1, 2011.

WHEREFORE, Plaintiff prays for judgment against the Defedants and each of them for her general and special damages, including costs and such other relief as may be allowed under the laws of the State of Nebraska.

MICHELLE M. KROLL, Personal
Representative of the Estate of MICHAEL
F. KROLL, deceased, Plaintiff

By:



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