

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

KIP E. FISHER and)	CASE NO. _____
ALISSA A. FISHER,)	
)	
Plaintiffs,)	
)	
)	
)	
v.)	COMPLAINT
)	(Medical Negligence)
)	
BRIAN F. GUENTHER, D.C., P.C.,)	
d/b/a Guenther Chiropractic and)	
Acupuncture; BRIAN F. GUENTHER,)	
D.C.; NEBRASKA METHODIST)	
HEALTH SYSTEM, INC., d/b/a)	
Methodist Health System; JOSEPH T.)	
MCCASLIN, M.D.; THE NEBRASKA)	
METHODIST HOSPITAL; MIDWEST)	
NEUROSURGERY, P.C.;)	
GUY A. MUSIC, M.D.;)	
JOHN DOES 1-10, JANE DOES 1-10,)	
individual names unknown,)	
)	
)	
Defendants.)	

ALLEGATIONS COMMON TO ALL COUNTS

Plaintiff Kip E. Fisher (“Mr. Fisher”) and Plaintiff Alissa A. Fisher (“Mrs. Fisher” and together with Mr. Fisher, are each individually referred to herein as, a “Plaintiff” and collectively as, “Plaintiffs”), for their common allegations of fact against the above-named Defendants, state as follows:

PRELIMINARY STATEMENT

1. This is a civil action in which Mr. Fisher seeks to recover damages for injuries sustained beginning on or about December 3, 2014, as a result of the medical negligence of: (a) Brian F. Guenther, D.C., P.C., a Nebraska professional corporation, d/b/a Guenther Chiropractic and Acupuncture (“Guenther Chiropractic”); (b) Brian F. Guenther, D.C. (“Dr. Guenther”); (c) Nebraska Methodist Health System, Inc., a Nebraska non-profit corporation, d/b/a Methodist

Health System (“MHS”); (d) Joseph T. McCaslin, M.D. (“Dr. McCaslin”); (e) The Nebraska Methodist Hospital, a Nebraska non-profit corporation (“TNMH”); (f) Midwest Neurosurgery, P.C., a Nebraska professional corporation (“Midwest Neurosurgery”); (g) Guy A. Music, M.D. (“Dr. Music”); and (h) John Does 1- 10 and Jane Does 1- 10, whose real names are presently unknown to Plaintiffs (collectively, the “Unknown Defendants” and together with Guenther Chiropractic, Dr. Guenther, MHS, Dr. McCaslin, TNMH, Midwest Neurosurgery and Dr. Music, are each individually referred to herein as, a “Defendant” and collectively as, “Defendants”).

2. Mrs. Fisher seeks damages for loss of consortium arising out of the injuries suffered by her husband, Mr. Fisher.

PARTIES

3. At all times relevant herein, Mr. Fisher resided in Elkhorn, Nebraska.

4. At all times relevant herein, Mrs. Fisher resided in Elkhorn, Nebraska.

5. At all times relevant herein, Guenther Chiropractic was a Nebraska professional corporation, operating its business under the trade name of “Guenther Chiropractic and Acupuncture.” Guenther Chiropractic, in whole or in part, engaged in the business of owning and operating a health care facility that provided health care goods and chiropractic care and services on an outpatient basis to members of the general public including, but not limited to, Mr. Fisher.

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

7. At all times relevant herein, Dr. Guenther was a chiropractor practicing chiropractic in the State of Nebraska, and held himself out to be a skilled and competent chiropractor.

8. At all times relevant herein, Dr. Guenther was an employee, agent, servant, director and/or ostensible or apparent agent of Guenther Chiropractic, acting in the course and scope of his employment or other business relationship with Guenther Chiropractic. As a matter of law, the negligent acts and/or omissions of Dr. Guenther are imputed to Guenther Chiropractic, and, therefore, Guenther Chiropractic is vicariously liable for all such negligent acts and/or omissions.

9. At all times relevant herein, MHS was a Nebraska non-profit corporation, operating its business under the registered trade name of “Methodist Health System.” MHS, in whole or in part, engaged in the business of owning and operating health care facilities including, but not limited to, those certain hospitals more commonly known as Methodist Women’s Hospital located at 707 North 190th Plaza, Omaha, Nebraska 68022 (“MWH”) and/or Methodist Hospital located at 8511 West Dodge Road, Omaha, Nebraska 68114 (“Methodist Hospital”). MHS provided health care goods and services on an inpatient and/or outpatient basis to members of the general public including, but not limited to, Mr. Fisher.

10. At all times relevant herein, MHS employed physicians, nurses, technicians, agents and other health care professionals at MWH (collectively, the “MWH 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, Mr. Fisher. As a matter of law, the negligent acts and/or omissions of the MWH Staff are imputed to MHS and, therefore, MHS is vicariously liable for all such negligent acts and/or omissions by the MWH Staff.

11. MHS employed physicians, who provided health care services to members of the general public including, but not limited to, Mr. Fisher at MWH.

12. At all times relevant herein, Dr. McCaslin was a physician practicing medicine in the State of Nebraska, and held himself out to be a skilled and competent physician.

13. At all times relevant herein, Dr. McCaslin was an employee, agent, servant, director and/or ostensible or apparent agent of MHS and/or TNMH, acting in the course and scope of his employment or other business relationship with MHS and/or TNMH. As a matter of law, the negligent acts and/or omissions of Dr. McCaslin are imputed to MHS and/or TNMH, and, therefore, MHS and/or TNMH are vicariously liable for all such negligent acts and/or omissions.

14. At all times relevant herein, TNMH was a Nebraska non-profit corporation, in whole or in part, engaged in the business of owning and operating health care facilities including, but not limited to, MWH and/or Methodist Hospital. TNM provided health care goods and services on an inpatient and/or outpatient basis to members of the general public including, but not limited to, Mr. Fisher.

15. At all times relevant herein, TNMH and/or MHS employed physicians, nurses, technicians, agents and other health care professionals at Methodist Hospital (collectively, the “Methodist Hospital 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, Mr. Fisher. As a matter of law, the negligent acts and/or omissions of the Methodist Hospital Staff are imputed to TNMH and/or MHS and, therefore, TNMH and/or MHS is vicariously liable for all such negligent acts and/or omissions by the Methodist Hospital Staff.

16. MHS and/or TNMH employed physicians, who provided health care services to members of the general public including, but not limited to, Mr. Fisher at MWH and/or Methodist Hospital.

17. At all times relevant herein, Midwest Neurosurgery was a Nebraska professional corporation, engaged in, in whole or in part, the business of owning and operating a health care facility that provided health care goods and services to members of the general public including, but not limited to, Mr. Fisher.

18. At all times relevant herein, Midwest Neurosurgery employed physicians, nurses, technicians, agents and other health care professionals at Midwest Neurosurgery (collectively, the "Midwest Neurosurgery 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, Mr. Fisher. As a matter of law, the negligent acts and/or omissions of the Midwest Neurosurgery Staff are imputed to Midwest Neurosurgery and, therefore, Midwest Neurosurgery is vicariously liable for all such negligent acts and/or omissions by the Midwest Neurosurgery Staff.

19. At all times relevant herein, Dr. Music was a physician practicing medicine in the State of Nebraska, and held himself out to be a skilled and competent physician.

20. At all times relevant herein, Dr. Music was an employee, agent, servant, director and/or ostensible or apparent agent of Midwest Neurosurgery, acting in the course and scope of his employment or other business relationship with one or more of Defendants including, but not limited to, MHS and/or TNMH. As a matter of law, the negligent acts and/or omissions of Dr. Music are imputed to Midwest Neurosurgery, and, therefore, Midwest Neurosurgery is vicariously liable for all such negligent acts and/or omissions.

21. At all times relevant hereto, the Unknown Defendants were physicians, nurses, and other healthcare providers engaged in the practice of their profession in the State of Nebraska, and held themselves out to be skilled and competent physicians, nurses or other healthcare providers.

22. At all times relevant herein, the Unknown Defendants were employees, agents, servants, directors and/or ostensible or apparent agents of one or more Defendants, acting in the

course and scope of their employment or other business relationships with one or more Defendants. As a matter of law, the negligent acts and/or omissions of the Unknown Defendants are imputed to MHS and/or TNMH, and, therefore, MHS and/or TNMH are vicariously liable for all such negligent acts and/or omissions.

JURISDICTION

23. This Court has jurisdiction pursuant to Neb. Rev. St. § 24-517 because this is a civil action in which the amount in controversy exceeds \$53,000.

VENUE

24. Venue lies in Douglas County because the negligent acts and/or omissions complained of herein occurred in Douglas County, Nebraska.

NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

25. If one or more Defendants claim to qualify for coverage under the Nebraska Hospital-Medical Liability Act, § 44-2801 et. seq. R.R.S. 1943, as amended (the "Act"), Plaintiffs demand strict proof that at all times relevant herein, any of Defendants making such a claim, was covered by and in compliance with the Act.

26. Notwithstanding any filing by Defendants for the special benefits, privileges and protection of the Act, Plaintiffs allege 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 1, §§ 1, 3, 6, 13, 16, 21, 25, 26; Article II, § 1; Article III, §18; Article V, § 2; Article VI, § 1 and Article XII, § 10(c).

27. Plaintiffs hereby affirmatively waive their right for a medical review panel to review their claims herein against Defendants as provided by the Act and elect to file this action directly in the District Court of Douglas County, Nebraska.

28. 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.

STATEMENT OF FACTS

29. On or about December 3, 2014, Mr. Fisher presented himself to Guenther Chiropractic with, among other complaints, significant pain in his lower back and radiating pain from his lower back to his gluteal muscles with accompanying pain in his right testicle.

30. On or about December 3, 2014, the Guenther Chiropractic Staff provided health care goods and services to Mr. Fisher, thereby establishing a healthcare provider-patient relationship between Guenther Chiropractic and Mr. Fisher.

31. On or about December 3, 2014 and thereafter, Dr. Guenther provided health care services to Mr. Fisher at Guenther Chiropractic, thereby establishing a chiropractor-patient relationship between Dr. Guenther and Mr. Fisher.

32. On or about December 5, 2014, Mr. Fisher presented himself to the emergency department at MWH with, among other complaints, significant pain in his lower back and right hip area with accompanying numbness in his right leg.

33. Upon Mr. Fisher's admittance to the emergency room at MWH, the MWH Staff provided health care goods and services to Mr. Fisher, thereby establishing a hospital-patient relationship between MHS and Mr. Fisher.

34. On or about December 5, 2014 and thereafter, Dr. McCaslin provided health care services to Mr. Fisher at MWH, thereby establishing a physician-patient relationship between Dr. McCaslin and Mr. Fisher.

35. During the course of Mr. Fisher's stay at MWH, on or about December 5-6, 2014, Dr. McCaslin documented Mr. Fisher's medical history, performed multiple examinations on Mr. Fisher and treated Mr. Fisher for his complaints.

36. On or about December 10-11, 2014, Mr. Fisher presented himself to the emergency department at Methodist Hospital with, among other complaints, significant pain in his lower back and right hip area with accompanying numbness in his right leg and right foot.

37. Upon Mr. Fisher's admittance to the emergency room at Methodist Hospital on or about December 10-11, 2014, and thereafter, the Methodist Hospital Staff provided health care goods and services to Mr. Fisher, thereby establishing a hospital-patient relationship between TNMH and Mr. Fisher.

38. Upon Mr. Fisher's admittance to the emergency room at Methodist Hospital on or about December 10-11, 2014, and thereafter, the Midwest Neurosurgery Staff provided health care goods and services to Mr. Fisher, thereby establishing a health care provider-patient relationship between Midwest Neurosurgery and Mr. Fisher.

39. Upon Mr. Fisher's admittance to the emergency room at Methodist Hospital on or about December 10-11, 2014, and thereafter, Dr. Music provided health care goods and services

to Mr. Fisher, thereby establishing a health care provider-patient relationship between Dr. Music and Mr. Fisher.

40. Upon Mr. Fisher's admittance to the emergency room at Methodist Hospital on or about December 10-11, 2014, the Unknown Defendants provided health care services to Mr. Fisher at Methodist Hospital, thereby establishing a health care provider-patient relationship between the Unknown Defendants and Mr. Fisher.

41. The standard of care applicable to each of Defendants is a national one.

COUNT I – NEGLIGENCE

For his Count I claim against Guenther Chiropractic and Dr. Guenther, Mr. Fisher incorporates by reference Paragraphs 1 through 41 of the Allegations Common to All Counts and alleges:

1. As a result of the health care provider-patient relationship between Guenther Chiropractic and Mr. Fisher and between the Guenther Chiropractic Staff and Mr. Fisher, Guenther Chiropractic and the Guenther Chiropractic Staff owed Mr. Fisher a duty 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.

2. Guenther Chiropractic and the Guenther Chiropractic Staff breached their duties to Mr. Fisher to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other members of their respective professions engaged in a similar practice because, in one or more of the following ways, they:

- a. Violated established medical rules;
- b. Violated the applicable standard of care;
- c. Failed to adequately monitor the medical situation of Mr. Fisher;
- d. Failed to comply with appropriate protocols, policies, procedures and guidelines for a situation similar to the one experienced by Mr. Fisher;
- e. Failed to communicate proper in-house education to its employees relevant to the issues within this case;
- f. Failed to adhere to communicated in-house education; and/or
- g. Were otherwise negligent in a manner not presently known to Mr. Fisher.

3. As a result of the chiropractor-patient relationship between Dr. Guenther and Mr. Fisher, Dr. Guenther owed Mr. Fisher a duty to possess and use the care, skill, and knowledge

ordinarily possessed and used under like circumstances by other physicians engaged in a similar practice.

4. Dr. Guenther breached his duty to Mr. Fisher to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other chiropractors engaged in a similar practice because, in one or more of the following ways, Dr. Guenther negligently:

- a. Violated established medical rules;
- b. Violated the applicable standard of care;
- c. Failed to adequately monitor the medical care and treatment of Mr. Fisher;
- d. Failed to comply with appropriate protocols, procedures and guidelines for situations similar to the one experienced by Mr. Fisher;
- e. Failed to obtain and direct appropriate and capable medical personnel to manage and assist with a situation such as the one involving Mr. Fisher; and/or
- f. Was otherwise negligent in a manner not presently known to Mr. Fisher.

5. As a result of the joint and several negligence of Guenther Chiropractic and the Guenther Chiropractic Staff, for which Guenther Chiropractic is vicariously liable, and the negligence of Dr. Guenther, for which Guenther Chiropractic is vicariously liable, Mr. Fisher suffered the following injuries:

- a. Past and future physical pain and suffering;
- b. Past and future emotional distress and mental anguish;
- c. Past and future loss of enjoyment of life;
- d. Impaired earning capacity;
- e. Past and future expenses for health care goods and services, the nature and extent of which are not presently known by Plaintiffs; and
- f. Other damages, the nature and extent of which are not presently known by Plaintiffs.

WHEREFORE, Mr. Fisher prays for judgment against Guenther Chiropractic and Dr. Guenther, and each of them, for special and general damages plus interest, costs, attorneys' fees and expenses as may be allowed by law, and for such further relief as this Court may deem just and proper under the circumstances.

COUNT II – NEGLIGENCE

For his Count II claim against each MHS and Dr. McCaslin, Mr. Fisher incorporates by reference Paragraphs 1 through 41 of the Allegations Common to All Counts and alleges:

1. As a result of the health care provider-patient relationship between MHS and Mr. Fisher and between the MWH Staff and Mr. Fisher, MHS and the MWH Staff owed Mr. Fisher a duty 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.

2. MHS and the MWH Staff breached their duties to Mr. Fisher 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, in one or more of the following ways, they:

- a. Violated established medical rules;
- b. Violated the applicable standard of care;
- c. Failed to adequately monitor the medical care and treatment of Mr. Fisher;
- d. Failed to comply with appropriate protocols, procedures and guidelines for situations similar to the one experienced by Mr. Fisher;
- e. Failed to obtain and direct appropriate and capable medical personnel to manage and assist with a situation such as the one involving Mr. Fisher;
- f. Failed to communicate proper in-house education to its employees relevant to the issues within this case;
- g. Failed to adhere to communicated in-house education; and/or
- h. Were otherwise negligent in a manner not presently known to Mr. Fisher.

3. As a result of the physician-patient relationship between Dr. McCaslin and Mr. Fisher, Dr. McCaslin owed Mr. Fisher a duty to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other physicians engaged in a similar practice.

4. Dr. McCaslin breached his duty to Mr. Fisher to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other physicians engaged in a similar practice because, in one or more of the following ways, Dr. McCaslin negligently:

- a. Violated established medical rules;
- b. Violated the applicable standard of care;

- c. Failed to adequately monitor the medical care and treatment of Mr. Fisher;
- d. Failed to comply with appropriate protocols, procedures and guidelines for situations similar to the one experienced by Mr. Fisher;
- e. Failed to obtain and direct appropriate and capable medical personnel to manage and assist with a situation such as the one involving Mr. Fisher; and/or
- f. Was otherwise negligent in a manner not presently known to Mr. Fisher.

5. As a result of the joint and several negligence of MHS and the MWH Staff, for which MHS is vicariously liable, and the negligence of Dr. McCaslin, for which MHS is vicariously liable, Mr. Fisher suffered the following injuries:

- a. Past and future physical pain and suffering;
- b. Past and future emotional distress and mental anguish;
- c. Past and future loss of enjoyment of life;
- d. Impaired earning capacity;
- e. Past and future expenses for health care goods and services, the nature and extent of which are not presently known by Plaintiffs; and
- f. Other damages, the nature and extent of which are not presently known by Plaintiffs.

WHEREFORE, Mr. Fisher prays for judgment against MHS and Dr. McCaslin, and each of them, for special and general damages plus interest, costs, attorneys' fees and expenses as may be allowed by law, and for such further relief as this Court may deem just and proper under the circumstances.

COUNT III – NEGLIGENCE

For his Count III claim against TNMH, Midwest Neurosurgery, Dr. Music and the Unknown Defendants, Mr. Fisher incorporates by reference Paragraphs 1 through 41 of the Allegations Common to All Counts and alleges:

1. As a result of the health care provider-patient relationship between TNMH and Mr. Fisher and between the Methodist Hospital Staff and Mr. Fisher, TNMH and the Methodist Hospital Staff owed Mr. Fisher a duty 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.

2. TNMH and the Methodist Hospital Staff breached their duties to Mr. Fisher to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other members of their respective professions engaged in a similar practice because, in one or more of the following ways, they:

- a. Violated established medical rules;
- b. Violated the applicable standard of care;
- c. Failed to adequately monitor the medical care and treatment of Mr. Fisher;
- d. Failed to comply with appropriate protocols, procedures and guidelines for situations similar to the one experienced by Mr. Fisher;
- e. Failed to obtain and direct appropriate and capable medical personnel to manage and assist with a situation such as the one involving Mr. Fisher; and
- f. Was otherwise negligent in a manner not presently known to Mr. Fisher.

3. As a result of the health care provider-patient relationship between Midwest Neurosurgery and Mr. Fisher and between the Midwest Neurosurgery Staff and Mr. Fisher, Midwest Neurosurgery and the Midwest Neurosurgery Staff owed Mr. Fisher a duty 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

4. Midwest Neurosurgery and the Midwest Neurosurgery Staff breached their duties to Mr. Fisher to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other members of their respective professions engaged in a similar practice because, in one or more of the following ways, they:

- a. Violated established medical rules;
- b. Violated the applicable standard of care;
- c. Failed to adequately monitor the medical care and treatment of Mr. Fisher;
- d. Failed to comply with appropriate protocols, procedures and guidelines for situations similar to the one experienced by Mr. Fisher;
- e. Failed to obtain and direct appropriate and capable medical personnel to manage and assist with a situation such as the one involving Mr. Fisher; and
- f. Was otherwise negligent in a manner not presently known to Mr. Fisher.

5. As a result of the physician-patient relationship between Dr. Music and Mr. Fisher, Dr. Music owed Mr. Fisher a duty to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other physicians engaged in a similar practice

6. Dr. Music breached his duty to Mr. Fisher to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other physicians engaged in a similar practice because Dr. Music negligently:

- a. Violated established medical rules;
- b. Violated the applicable standard of care;
- c. Failed to adequately monitor the medical care and treatment of Mr. Fisher;
- d. Failed to comply with appropriate protocols, procedures and guidelines for situations similar to the one experienced by Mr. Fisher;
- e. Failed to obtain and direct appropriate and capable medical personnel to manage and assist with a situation such as the one involving Mr. Fisher; and/or
- f. Was otherwise negligent in a manner not presently known to Mr. Fisher.

7. As a result of the health care provider-patient relationship between the Unknown Defendants and Mr. Fisher, the Unknown Defendants owed Mr. Fisher a duty to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other health care providers engaged in a similar practice.

8. The Unknown Defendants breached their duty to Mr. Fisher to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other health care providers engaged in a similar practice because, in one or more of the following ways, the Unknown Defendants negligently:

- a. Violated established medical rules;
- b. Violated the applicable standard of care;
- c. Failed to adequately monitor the medical care and treatment of Mr. Fisher;
- d. Failed to comply with appropriate protocols, procedures and guidelines for situations similar to the one experienced by Mr. Fisher;
- e. Failed to obtain and direct appropriate and capable medical personnel to manage and assist with a situation such as the one involving Mr. Fisher; and/or
- f. Were otherwise negligent in a manner not presently known to Mr. Fisher.

9. As a result of the joint and several negligence of TNMH and/or MHS, the Methodist Hospital Staff, for which TNMH and/or MHS is vicariously liable; Midwest Neurosurgery, the Midwest Neurosurgery Staff, for which Midwest Neurosurgery is vicariously liable the negligence of Dr. Music, for which Midwest Neurosurgery is vicariously liable, and the negligence of the Unknown Defendants, for which TNMH, MHS and/or an unknown entity is vicariously liable, Mr. Fisher suffered the following injuries:

- a. Past and future physical pain and suffering;
- b. Past and future emotional distress and mental anguish;
- c. Past and future loss of enjoyment of life;
- d. Impaired earning capacity;
- e. Past and future expenses for health care goods and services, the nature and extent of which are not presently known by Plaintiffs; and
- f. Other damages, the nature and extent of which are not presently known by Plaintiffs.

WHEREFORE, Mr. Fisher prays for judgment against TNMH, Midwest Neurosurgery, Dr. Music and the Unknown Defendants, and each of them, for special and general damages plus interest, costs, attorneys' fees and expenses as may be allowed by law, and for such further relief as this Court may deem just and proper under the circumstances.

COUNT IV – INFORMED CONSENT

For his Count IV claim against Dr. Guenther, Dr. McCaslin, Dr. Music and the Unknown Defendants, Mr. Fisher incorporates by reference Paragraphs 1 through 41 of the Allegations Common to All Counts and alleges:

1. The circumstances of Mr. Fisher were such that a reasonably prudent health care provider in the same or similar circumstances, would have obtained informed consent for all operations, treatments or procedures performed on or provided to Mr. Fisher.

2. As a result of the chiropractor-patient relationship between Dr. Guenther and Mr. Fisher, Dr. Guenther owed a duty to Mr. Fisher to obtain his informed consent for all operations, treatments, delay in treatments, or procedures, by providing him with information which would ordinarily be provided to a patient under like circumstances by health care providers engaged in a similar practice.

3. Dr. Guenther breached his duty to Mr. Fisher by failing to provide him with information that would ordinarily be provided to a patient under like circumstances by health care providers engaged in a similar practice, in part because Dr. Guenther negligently failed to advise Mr. Fisher of the inherent risks, benefits, indications for particular procedures, and alternative procedures in caring for and treating him, and thereby failed to obtain informed consent of Mr. Fisher.

4. As a result of the physician-patient relationship between Dr. McCaslin and Mr. Fisher, Dr. McCaslin owed a duty to Mr. Fisher to obtain his informed consent for all operations, treatments, delay in treatments, or procedures, by providing him with information which would ordinarily be provided to a patient under like circumstances by physicians engaged in a similar practice.

5. Dr. McCaslin breached his duty to Mr. Fisher by failing to provide him with information that would ordinarily be provided to a patient under like circumstances by physicians engaged in a similar practice, in part because Dr. McCaslin negligently failed to advise Mr. Fisher of the inherent risks, benefits, indications for particular procedures, and alternative procedures in caring for and treating him, and thereby failed to obtain informed consent of Mr. Fisher.

6. As a result of the physician-patient relationship between Dr. Music and Mr. Fisher, Dr. Music owed a duty to Mr. Fisher to obtain his informed consent for all operations, treatments, delay in treatments, or procedures, by providing him with information which would ordinarily be provided to a patient under like circumstances by physicians engaged in a similar practice.

7. Dr. Music breached his duty to Mr. Fisher by failing to provide him with information that would ordinarily be provided to a patient under like circumstances by physicians engaged in a similar practice, in part because Dr. Music negligently failed to advise Mr. Fisher of the inherent risks, benefits, indications for particular procedures, and alternative procedures in caring for and treating him, and thereby failed to obtain informed consent of Mr. Fisher.

8. As a result of the health care provider-patient relationship between the Unknown Defendants, the Unknown Defendants owed a duty to Mr. Fisher to obtain his informed consent for all operations, treatments, delay in treatments, or procedures, by providing him with information which would ordinarily be provided to a patient under like circumstances by health care providers engaged in a similar practice.

9. The Unknown Defendants breached their duties to Mr. Fisher by failing to provide him with information that would ordinarily be provided to a patient under like circumstances by health care providers engaged in a similar practice, in part because the Unknown Defendants negligently failed to advise Mr. Fisher of the inherent risks, benefits, indications for particular procedures, and alternative procedures in caring for and treating him, and thereby failed to obtain informed consent from Mr. Fisher.

10. As a result of the above-described failures of Dr. Guenther, Dr. McCaslin, Dr. Music and the Unknown Defendants to obtain Mr. Fisher's informed consent, Mr. Fisher sustained the injuries described in Paragraph 5 of Count I.

WHEREFORE, Mr. Fisher prays for judgment against Dr. Guenther, Dr. McCaslin, Dr. Music and the Unknown Defendants, and each of them, for special and general damages plus interest, costs, attorneys' fees and expenses as may be allowed by law, and for such further relief as the court may deem just and proper under the circumstances.

COUNT IV – LOSS OF CONSORTIUM

For her Count IV claim against Guenther Chiropractic, MHS, TNMH, Midwest Neurosurgery, Dr. Guenther, Dr. McCaslin, Dr. Music and the Unknown Defendants, Mrs. Fisher incorporates by reference Paragraphs 1 through 41 of the Allegations Common to All Counts and alleges:

1. At all times relevant herein, Plaintiffs have been husband and wife.
2. As a direct and proximate result of the above-described negligence of each Defendant, Mr. Fisher suffered the injuries described in Paragraph 5 of Count I.
3. As a direct and proximate result of the injuries sustained by Mr. Fisher, Mrs. Fisher has been deprived of the services of her husband, and has suffered a loss of consortium, including but not limited to a past, present and future impairment or diminishment in the services, society, affection, care, comfort, companionship and conjugal rights of her husband.

WHEREFORE, Mrs. Fisher prays for judgment against Defendants, and each of them, for special and general damages plus interest, costs, attorneys' fees and expenses as may be allowed by law, and for such further relief as the court may deem just and proper under the circumstances.

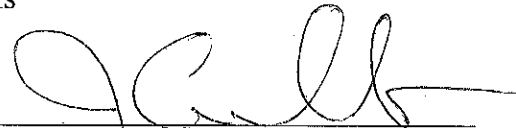
DEMAND FOR JURY TRIAL

Plaintiffs hereby request that trial by jury of the foregoing action should be held in Douglas County, Nebraska, and that the case be calendared accordingly.

DATED this 23rd day of November, 2016.

KIP E. FISHER and ALISSA A. FISHER,
Plaintiffs

By:



Joseph P. Cullan #22145

Patrick J. Cullan #23576

Cullan & Cullan L.L.C.

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