

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

TERRY L. GOMEZ,	)	CASE NO. CI 17-6828
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT OF DEFENDANTS</b>
ALEGENT CREIGHTON HEALTH	)	<b>CREIGHTON UNIVERSITY, BRIAN</b>
CREIGHTON UNIVERSITY MEDICAL	)	<b>BIGGERSTAFF, M.D. AND</b>
CENTER, LLC; TEAM HEALTH, INC.;	)	<b>STEPHEN J. SERIO, M.D.</b>
BRIAN BIGGERSTAFF, M.D.; STEPHEN	)	<b>AND</b>
J. SERIO, M.D.; THOMAS KRANER,	)	<b>NOTICE OF HEARING</b>
M.D.; MICHAEL WAGNER, M.D.; DALE	)	
SIMMONDS, M.D. and CREIGHTON	)	
UNIVERSITY,	)	
	)	
Defendants.	)	

COME NOW Defendants Creighton University, Brian Biggerstaff, M.D., and Stephen J. Serio, M.D. (hereinafter collectively "Defendants"), and pursuant to Neb. Rev. Stat. §§ 25-1331 and 25-1332, move the Court for an Order granting summary judgment against Plaintiff and in favor of Defendants, for the reason that the pleadings and evidence disclose there is no genuine issue as to any material fact or the inferences which may be drawn therefrom and that said Defendants are entitled to judgment as a matter of law. In support of their motion, Defendants will offer at the time of hearing the Affidavit of Brian Biggerstaff, M.D., attached hereto as Exhibit "A"; and the Affidavit of Stephen J. Serio, M.D., attached hereto as Exhibit "B."

WHEREFORE, Defendants pray that the Court grant a summary judgment on all counts of Plaintiff's Complaint in their favor and dismiss this action, with prejudice, at Plaintiff's cost.

DATED this 15th day of August, 2018.

CREIGHTON UNIVERSITY, BRIAN  
BIGGERSTAFF, M.D., and STEPHEN J.  
SERIO, M.D., Defendants.

By: /s/ John A. McWilliams  
Brien M. Welch – 18192  
John A. McWilliams – 25798  
Cassem, Tierney, Adams,  
Gotch & Douglas  
9290 West Dodge Road, Suite 302  
Omaha, Nebraska 68114  
(402) 390-0300  
[bwelch@ctagd.com](mailto:bwelch@ctagd.com)  
[jmcwilliams@ctagd.com](mailto:jmcwilliams@ctagd.com)

**NOTICE**

You are hereby notified that Defendants Creighton University, Brian Biggerstaff, M.D., and Stephen J. Serio, M.D., will call up for hearing their foregoing Motion for Summary Judgment before the Honorable Gregory M. Schatz in Courtroom No. 501 of the District Court of Douglas County on the 21st day of September, 2018 at 9:00 a.m. or as soon thereafter as counsel may be heard.

CREIGHTON UNIVERSITY, BRIAN  
BIGGERSTAFF, M.D., and STEPHEN J.  
SERIO, M.D., Defendants.

By /s/ John A. McWilliams

## CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2018, I electronically filed the foregoing document with the Clerk of the Court using the e-Filing system and on said date this document was served on the following using the e-Service system:

Thomas M. Rowen  
1904 Farnam Street, Suite 726  
Omaha, NE 68102

Patrick G. Vipond  
Lamson Dugan & Murray  
10306 Regency Parkway Drive  
Omaha, NE 68114

Mark A. Christensen  
Cline Williams Wright Johnson & Oldfather  
1900 U.S. Bank Building  
233 S. 13th St.  
Lincoln, NE 68508

Lisa M. Meyer  
Pansing Hogan Ernst & Bachman  
10250 Regency Circle, Ste 300  
Omaha, NE 68114

/s/ John A. McWilliams  
John A. McWilliams

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

TERRY L. GOMEZ,

Plaintiff,

vs.

ALEGENT CREIGHTON HEALTH  
CREIGHTON UNIVERSITY MEDICAL  
CENTER, LLC; TEAM HEALTH, INC.;  
BRIAN BIGGERSTAFF, M.D.; STEPHEN  
J. SERIO, M.D.; THOMAS KRANER,  
M.D.; MICHAEL WAGNER, M.D.; DALE  
SIMMONDS, M.D. and CREIGHTON  
UNIVERSITY,

Defendants.

CASE NO. CI 17-6828

**AFFIDAVIT OF  
BRIAN BIGGERSTAFF, M.D.**

STATE OF CALIFORNIA )

) ss.

COUNTY OF ORANGE )

Brian Biggerstaff, MD, being first duly sworn upon oath, deposes and states as follows:

1. I am over age 21 and have personal knowledge of the matters attested to in this Affidavit.

2. I am a medical doctor and have held a license in the State of California since July 1, 2017. In September of 2015, I held a temporary educational permit in the State of Nebraska (held from July 1, 2012 through June 30, 2017, renewed annually) for my residency at Creighton University. I am currently in a fellowship in the Department of Plastic Surgery, University of California, Irvine, School of Medicine.

3. In September of 2015, I was employed by Creighton University as a resident physician. The attending surgeon concerning the surgical care of Terry L. Gomez on September 24, 2015, was Thomas Kraner, M.D.

4. I am familiar with the standard of care as it existed in September of 2015 in Omaha, Nebraska, and similar communities for a general surgeon's treatment of stab wounds to the leg and a resident general surgeon's treatment of stab wounds to the leg.

5. I have reviewed Plaintiff Terry Gomez's Complaint; the Answer of Defendant Creighton University; the Answer of Stephen J. Serio, M.D.; the Answer of Brian Biggerstaff, M.D.; and Mr. Gomez's medical records from September of 2015.


6. Based upon my review of Mr. Gomez's medical records, Mr. Gomez underwent right leg anterior compartment exploration, right leg wound exploration, right leg anterior compartment fasciotomy, full release of the anterior and lateral compartments, ligation of the anterior tibial artery, and repair of the right anterior tibial vein on September 24, 2015.

7. Based upon my review of Mr. Gomez's medical records and my education, training, and experience as a medical doctor, it is my opinion to a reasonable degree of medical certainty as a medical doctor that the treatment Mr. Gomez received from me in September of 2015 met the applicable standard of care in all respects for a resident general surgeon's treatment of stab wounds to the leg.

8. Based upon my review of Mr. Gomez's medical records and my education, training, and experience as a medical doctor, it is my opinion to a reasonable degree of medical certainty as a medical doctor that the treatment Mr. Gomez received from me in September of 2015 did not cause or contribute to cause any injury or damage to Mr. Gomez.

**FURTHER AFFIANT SAYETH NOT.**

DATED this 2nd day of August, 2018.

  
Brian Biggerstaff, M.D.

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of August, 2018.

See Attached

\_\_\_\_\_  
Notary Public



# All-purpose Acknowledgment California only

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

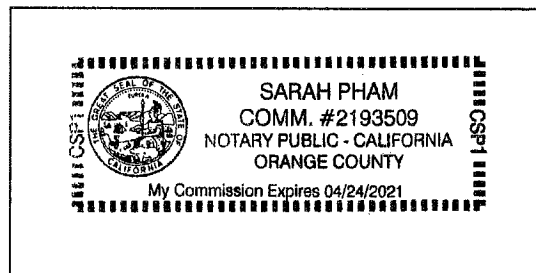
State of California

County of ORANGE

On 2ND AUGUST 2018 before me, SARAH PHAM (here insert name and title of the officer),

personally appeared BRIAN BIGGERSTAFF

who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Notary Seal

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

## For Bank Purposes Only

Description of Attached Document

Type or Title of Document AFFIDAVIT OF BRIAN BIGGERSTAFF, MD

Document Date AUGUST 2 2018 Number of Pages 3

Signer(s) Other Than Named Above \_\_\_\_\_



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

TERRY L. GOMEZ,

Plaintiff,

vs.

ALEGENT CREIGHTON HEALTH  
CREIGHTON UNIVERSITY MEDICAL  
CENTER, LLC; TEAM HEALTH, INC.;  
BRIAN BIGGERSTAFF, M.D.; STEPHEN  
J. SERIO, M.D.; THOMAS KRANER,  
M.D.; MICHAEL WAGNER, M.D.; DALE  
SIMMONDS, M.D. and CREIGHTON  
UNIVERSITY,

Defendants.

CASE NO. CI 17-6828

**AFFIDAVIT OF  
STEPHEN J. SERIO, M.D.**

STATE OF NEBRASKA )

) ss.

COUNTY OF DOUGLAS )

Stephen J. Serio, MD, being first duly sworn upon oath, deposes and states as follows:

1. I am over age 21 and have personal knowledge of the matters attested to in this Affidavit.

2. I am a medical doctor and have held a license as a medical doctor since July of 2017. In September of 2015, I held a temporary educational permit for my residency at Creighton University. I am currently in a fellowship in the Division of Vascular Surgery at the University of Nebraska Medical Center.

3. In September of 2015, I was employed by Creighton University as a resident physician. The attending surgeon concerning the surgical care of Terry L. Gomez on September 24, 2015, was Thomas Kraner, M.D.



4. I am familiar with the standard of care as it existed in September of 2015 in Omaha, Nebraska, and similar communities for a general surgeon's treatment of stab wounds to the leg and a resident general surgeon's treatment of stab wounds to the leg.

5. I have reviewed Plaintiff Terry Gomez's Complaint; the Answer of Defendant Creighton University; the Answer of Stephen J. Serio, M.D.; the Answer of Brian Biggerstaff, M.D.; and Mr. Gomez's medical records from September of 2015.

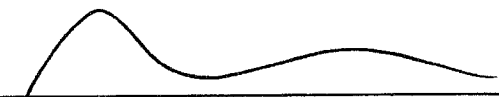
6. Based upon my review of Mr. Gomez's medical records, Mr. Gomez underwent right leg anterior compartment exploration, right leg wound exploration, right leg anterior compartment fasciotomy, full release of the anterior and lateral compartments, ligation of the anterior tibial artery, and repair of the right anterior tibial vein on September 24, 2015.

7. Based upon my review of Mr. Gomez's medical records and my education, training, and experience as a medical doctor, it is my opinion to a reasonable degree of medical certainty as a medical doctor that the treatment Mr. Gomez received from me in September of 2015 met the applicable standard of care in all respects for a resident general surgeon's treatment of stab wounds to the leg.

8. Based upon my review of Mr. Gomez's medical records and my education, training, and experience as a medical doctor, it is my opinion to a reasonable degree of medical certainty as a medical doctor that the treatment Mr. Gomez received from me in September of 2015 did not cause or contribute to cause any injury or damage to Mr. Gomez.

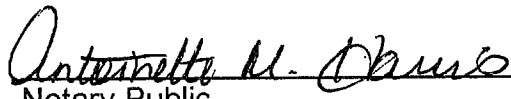
**FURTHER AFFIANT SAYETH NOT.**

DATED this 19 day of July, 2018.

  
\_\_\_\_\_  
Stephen J. Serio, M.D.

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of July, 2018.



  
\_\_\_\_\_  
Notary Public

# Certificate of Service

I hereby certify that on Wednesday, August 15, 2018 I provided a true and correct copy of the Motion-Summary Judgment to the following:

Team Health,Inc represented by Travis Tettenborn (Bar Number: 24965) service method:  
Electronic Service to ttettenborn@clinewilliams.com

Team Health,Inc represented by Christensen,Mark,A (Bar Number: 17660) service method:  
Electronic Service to mchristensen@clinewilliams.com

Simmonds,Dale,,MD represented by Travis Tettenborn (Bar Number: 24965) service  
method: Electronic Service to ttettenborn@clinewilliams.com

Gomez,Terry,L represented by Thomas M. Rowen (Bar Number: 21778) service method:  
Electronic Service to tom@rowenlawoffice.com

Gieger,Eric, service method: No Service

Serio,Stephen,J,MD represented by Welch,Brien,M (Bar Number: 18192) service method:  
Electronic Service to bwelch@ctagd.com

Kraner,Thomas,,MD represented by Meyer,Lisa,M (Bar Number: 19591) service method:  
Electronic Service to nshevmaker@pheblaw.com

Simmonds,Dale,,MD represented by Christensen,Mark,A (Bar Number: 17660) service  
method: Electronic Service to mchristensen@clinewilliams.com

Biggerstaff,Brian,,MD represented by Welch,Brien,M (Bar Number: 18192) service method:  
Electronic Service to bwelch@ctagd.com

Creighton University represented by Welch,Brien,M (Bar Number: 18192) service method:  
Electronic Service to bwelch@ctagd.com

Alegent Creighton Health Creighton represented by Shivani Sharma (Bar Number: 25959)  
service method: Electronic Service to tshughart@ldmlaw.com

Alegent Creighton Health Creighton represented by Vipond,Patrick,G (Bar Number: 16390)

service method: Electronic Service to [pvipond@ldmlaw.com](mailto:pvipond@ldmlaw.com)

Signature: /s/ John A. McWilliams (Bar Number: 25798)

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

TERRY L. GOMEZ,	)	Case No. CI 17-6828
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<b>MOTION FOR</b>
ALEGENT CREIGHTON HEALTH	)	<b>SUMMARY JUDGMENT</b>
CREIGHTON UNIVERSITY MEDICAL	)	<b>AND NOTICE OF HEARING</b>
CENTER, LLC; TEAM HEALTH, INC.;	)	
BRIAN BIGGERSTAFF, M.D.; STEPHEN	)	
J. SERIO, M.D.; THOMAS KRANER,	)	
M.D.; MICHAEL WAGNER, M.D.; DALE	)	
SIMMONDS, M.D. and CREIGHTON	)	
UNIVERSITY,	)	
	)	
Defendants.	)	

COMES NOW Defendant Alegent Creighton Health Creighton University Medical Center, LLC (“CUMC”) and pursuant to Neb. Rev. Stat. § 25-1331 moves the Court for an Order granting summary judgment in Defendant CUMC’s favor for the reason that the pleadings and the discovery performed to date demonstrate no genuine dispute of material fact, and, therefore, Defendant CUMC is entitled to be dismissed as a matter of law.

At the hearing on this Motion, Defendant CUMC will offer evidence showing no genuine dispute as to any material fact exists regarding breach or causation. Plaintiff has presented no evidence that Defendant CUMC breached any duty owed to Plaintiff or that Plaintiff’s outcome would have been different had CUMC treated Plaintiff differently. Because breach and causation are essential elements of a claim for negligence, Defendant CUMC requests that the case be dismissed with prejudice in the event the court grants this motion.

DATED this 28th day of September, 2018.

ALEGENT CREIGHTON HEALTH CREIGHTON  
UNIVERSITY MEDICAL CENTER, LLC,  
Defendant,

By: /s/ Patrick G. Vipond

Patrick G. Vipond, #16390

Sarah M. Dempsey, #25107

Eric Synowicki, #26403

LAMSON DUGAN & MURRAY LLP

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[esynowicki@ldmlaw.com](mailto:esynowicki@ldmlaw.com)

*ATTORNEYS FOR DEFENDANT*

### **NOTICE OF HEARING**

TO: ALL PARTIES OF RECORD.

YOU ARE HEREBY NOTIFIED that Defendant CUMC's Motion for Summary Judgment will be called up for hearing before the Honorable Gregory M. Schatz of the Douglas County District Court, 1701 Farnam Street, Courtroom 501, 5th Floor, Omaha, Nebraska 68183 on Tuesday, November 6, 2018 at 1:30 P.M., or as soon thereafter as counsel may be heard.

/s/ Patrick G. Vipond

Patrick G. Vipond

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and accurate copy of the foregoing Motion for Summary Judgment and Notice of Hearing was served upon the following via electronic mail only on this 28th day of September, 2018:

Thomas M. Rowen  
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1904 Farnam St. #726  
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[mchristensen@clnewilliams.com](mailto:mchristensen@clnewilliams.com)  
[ttettenborn@clnewilliams.com](mailto:ttettenborn@clnewilliams.com)

/s/ Patrick G. Vipond  
\_\_\_\_\_  
Patrick G. Vipond

# Certificate of Service

I hereby certify that on Friday, September 28, 2018 I provided a true and correct copy of the Motion-Summary Judgment to the following:

Team Health,Inc represented by Travis Tettenborn (Bar Number: 24965) service method: Electronic Service to ttettenborn@clinewilliams.com

Creighton University represented by John A. McWilliams (Bar Number: 25798) service method: Electronic Service to jmcwilliams@ctagd.com

Gieger,Eric, service method: No Service

Serio,Stephen,J,MD represented by John A. McWilliams (Bar Number: 25798) service method: Electronic Service to jmcwilliams@ctagd.com

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Biggerstaff,Brian,,MD represented by John A. McWilliams (Bar Number: 25798) service method: Electronic Service to jmcwilliams@ctagd.com

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Simmonds,Dale,,MD represented by Travis Tettenborn (Bar Number: 24965) service



method: Electronic Service to ttettenborn@clinewilliams.com

Alegent Creighton Health Creighton represented by Eric W. Synowicki (Bar Number: 26403)  
service method: Electronic Service to esynowicki@ldmlaw.com

Gomez,Terry,L represented by Thomas M. Rowen (Bar Number: 21778) service method:  
Electronic Service to tom@rowenlawoffice.com

Team Health,Inc represented by Christensen,Mark,A (Bar Number: 17660) service method:  
Electronic Service to mchristensen@clinewilliams.com

Signature: /s/ Vipond,Patrick,G (Bar Number: 16390)