

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MARITZA MENDOZA GARCIA, a
disabled individual, by and through her
natural mother, and duly appointed
Guardian, LUCILA GARCIA-GARCIA,

Plaintiff,

v.

JAMES L. MANION, M.D., an individual;
CARON GRAY, M.D., an individual;
ALEGENT CREIGHTON HEALTH
CREIGHTON UNIVERSITY MEDICAL
CENTER, LLC, a Nebraska Limited
Liability Corporation;
ALEGENT CREIGHTON HEALTH, a
Nebraska Non-Profit Corporation,
OORMILA KOVILAM, M.D., an individual,
KIM WESTBROOK, M.D., an individual,
and TOMMY LEE, M.D., an individual,

Defendants.

Case No. CI 18- _____

COMPLAINT

COMES NOW the Plaintiff and for causes of action against Defendants
states:

1. Maritza Mendoza Garcia is:

A. An individual born April, 1997;

B. Bringing this action by and through her natural mother and next friend,
Lucila Garcia, who was duly appointed to represent Maritza as her guardian;

C. Was born in the United States and is a United States citizen;

D. Was it a negligent free patient of Defendants;

E. Was permanently and catastrophically harmed as a result of Defendants' violations of applicable standards of medical, surgical, anesthetic, obstetrical and hospital care on or about April 9 and 10, 2014;

F. Was a person with a mental disorder as of April 9, 2016, which mental disorder continues and is permanent in nature, as the term mental disorder is defined under Neb. Rev. Stat. §25--213.

2. Lucila Garcia is:

A. Maritza's natural mother having given birth to Maritza at St. Joseph Hospital in Omaha Nebraska in April 1997;

B. Maritza's duly appointed guardian; and

C. Maritza's present caretaker.

3. Defendant James L. Manion:

A. Is an individual doctor who delivered anesthesia services to Plaintiff on or about the dates alleged above;

B. Was acting at all times material within the course and scope of his employment with Defendants Alegent Creighton Health Creighton University Medical Center, LLC and/or Alegent Creighton Health;

C. Violated the applicable standards of professional anesthesia care in the treatment of Maritza; and

D. Was the anesthesiologist during surgery when Plaintiff suffered permanent and catastrophic neurological insult to her brain on April 10, 2014.

4. Defendant Caron Gray, M.D.:

A. Is an individual doctor who delivered obstetrical services to Plaintiff on or about the dates alleged above;

B. Was acting at all times material within the course and scope of his employment with Defendants Alegent Creighton Health Creighton University Medical Center, LLC and/or Alegent Creighton Health;

C. Violated the applicable standards of professional obstetrical care in the treatment of Maritza; and

D. Was a treating obstetrician during surgery when Plaintiff suffered permanent and catastrophic neurological insult to her brain on April 10, 2014.

5. Defendant Oormila Kovilam, M.D.:

A. Is an individual doctor who delivered medical services to Plaintiff on or about the dates alleged above;

B. Was acting at all times material within the course and scope of her employment with Defendants Alegent Creighton Health Creighton University Medical Center, LLC and/or Alegent Creighton Health;

C. Violated the applicable standards of professional medical care in the treatment of Maritza; and

D. Was a treating doctor during surgery when Plaintiff suffered permanent and catastrophic neurological insult to her brain on April 10, 2014.

6. Defendant Kim Westbrook, M.D.:

A. Is an individual doctor who delivered obstetrical services to Plaintiff on or about the dates alleged above;

B. Was acting at all times material within the course and scope of her employment with Defendants Alegent Creighton Health Creighton University Medical Center, LLC and/or Alegent Creighton Health;

C. Violated the applicable standards of professional obstetrical care in the treatment of Maritza;

D. Was a treating obstetrician during surgery when Plaintiff suffered permanent and catastrophic neurological insult to her brain on April 10, 2014;

E. Was a resident under Defendant Gray on April 10, 2014.

7. Defendant Tommy Lee, M.D.:

A. Is an individual doctor who delivered surgical services to Plaintiff on or about the dates alleged above;

B. Was acting at all times material within the course and scope of his employment with Defendants Alegent Creighton Health Creighton University Medical Center, LLC and/or Alegent Creighton Health;

C. Violated the applicable standards of professional surgical care in the treatment of Maritza; and

D. Was the treating surgeon during surgery when Plaintiff suffered permanent and catastrophic neurological insult to her brain on April 10, 2014.

8. Defendant Alegent Creighton Health Creighton University Medical Center, LLC (hereinafter "Creighton University Medical Center") is a limited liability corporation which employed health care providers who at all times material acted under the direction of Defendants.

9. Defendant Alegent Creighton Health corporation which employed health care providers who at all times material acted under the direction of Defendants.

10. On or about April 9, 2014 Maritza Mendoza Garcia was, transported by ambulance to from OneWorld Community Health Center to Creighton University Medical Center/Alegent Creighton Health. She was diagnosed as 38 and 3/7 weeks pregnant and intrauterine fetal demise was suspected. Upon arrival to Creighton University Medical Center/Alegent Creighton Health intrauterine fetal demise was confirmed. She was also suffering from preeclampsia complicated by oliguria.

11. On or about April 10, 2014, Maritza Mendoza Garcia was moved to labor and delivery where labor was induced. After several hours of labor, she was moved to the operating room for multiple attempts at forceps-assisted vaginal delivery. After a complicated delivery which involved use of forceps, the Ritgen maneuver and breaking of the fetus' humerus, it was noted that Maritza Mendoza Garcia had suffered a significant full-thickness rectal laceration consistent with a fourth degree laceration which extended approximately 6–7 cm up the vaginal vault. The tear was repaired.

12. On or about April 10, 2014 underwent a laparoscopic-assisted colostomy to protect the fresh repair of Maritza Mendoza Garcia's perineal injury. General anesthesia was administered and Maritza Mendoza Garcia became bradycardic and then asystolic and the procedure was aborted. She was in cardiopulmonary arrest for approximately six minutes.

13. On April 9 and 10, 2014, Defendants Gray, Kovilam and Westbrook, and each of them, committed acts and omissions constituting medical/surgical/obstetrical negligence in that they departed from the applicable standards care in failing to take appropriate steps to avoid neurological injury. These include, but are not limited to:

- A. Failing to timely and properly assess Plaintiff following her admission on April 9, 2014;
- B. Failing to timely and properly perform necessary delivery methods;
- C. Failing to timely and properly evaluate the patient's fetal demise;
- D. Allowing Plaintiff's perineum to sustain fourth degree laceration necessitating subsequent surgical repair;
- E. Failing to properly manage Plaintiff's diagnosis of preeclampsia and fetal demise;
- F. Failing to use the ordinary and reasonable care, skill, and knowledge ordinarily possessed and used under like circumstances by members of Defendants' profession engaged in a similar practice in similar localities; and
- G. Such other acts and omissions of medical negligence as may be discovered during the prosecution of this action. Plaintiff reserves the right to amend this complaint to include additional allegations of negligence as the prosecution proceeds.

14. As a result of the Defendants' standard of care violations, Plaintiff experienced multiple pre-delivery and intra-delivery complications, all of which

would have been avoided but for the Defendants' respective violations of the applicable standards of care.

15. On April 10, 2014, Defendants Lee and Manion, and each of them, committed acts and omissions constituting medical/surgical/anesthetic negligence in that they departed from the applicable standards care in failing to take appropriate steps to avoid neurological injury. These include, but are not limited to:

- A. Over-sedation of the patient;
- B. Failure to timely and properly monitor the patient and her response to anesthesia;
- C. Causing intra operative hypoxic/anoxic brain injury to their patient;
- D. Failing to use the ordinary and reasonable care, skill, and knowledge ordinarily possessed and used under like circumstances by members of Defendants' profession engaged in a similar practice in similar localities; and
- E. Such other acts and omissions of medical negligence as may be discovered during the prosecution of this action. Plaintiff reserves the right to amend this complaint to include additional allegations of negligence as the prosecution proceeds.

16. As a result of the negligent acts and omissions and violations of the standards care committed by Defendants and their health care provider employees alleged above, Plaintiff has in the past suffered damages and will in the future continue to suffer such damages in the form of conscious physical pain and mental

suffering, medical/hospital expenses, lost income, scarring and disfigurement, loss of bodily function, future healthcare, assistance and other needs and other damages. She suffers from a mental disorder (as that term is used in Neb. Rev. Stat. 25-213) as a result of the insult to her brain that occurred on April 10, 2014 during the surgical repair of her perineum, is profoundly disabled, and in need of constant care.

17. On behalf of Maritza Mendoza Garcia, her Guardian, Plaintiff Lucila Garcia claims as damages:

A. The reasonable value of health care services reasonably necessitated to treat Maritza during her age of majority for such conditions, diagnoses, injuries and harms proximately caused by the negligence of the Defendants;

B. Maritza's conscious physical pain and mental suffering, disfigurement and loss of bodily function;

C. Past lost wages from April 10, 2014 through the time of trial; and

D. Future lost earning capacity for her inability to be gainfully employed from the time of trial through the balance of her natural life; and

E. Such other damages as the law allows.

18. Defendants may claim application of the Nebraska Hospital-Medical Liability Act as a qualified healthcare provider. Plaintiffs has complied with the Act. Regardless of such compliance they allege that such Act is unconstitutional, in whole or in part, on its face and as applied to her, in that it violates Plaintiffs' Rights to Due Process as provided by the Constitution of the United States and the Constitution of the State of Nebraska.

19. A copy of this Complaint is being served on the Nebraska Director of Insurance and the Attorney General of Nebraska.

WHEREFORE, Plaintiff prays for trial by jury and judgment in favor of Plaintiff and against Defendants for general and special damages, court costs, a declaration that the Nebraska Hospital/Medical Liability Act on its face and as applied to the present case is unconstitutional and such other and further relief as is justified.

DATED this 6th day of April, 2018.

MARITZA MENDOZA GARCIA, a disabled individual, by and through her natural mother, and duly appointed Guardian, LUCILA GARCIA-GARCIA, Plaintiff

By: /s/ Steven H. Howard
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