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Superior Court of New Jersey

NOV 16 2012

CIVIL CASE MANAGEMENT
UNION COUNTY

NAGEL RICE, LLP
103 Eisenhower Parkway
Roseland, New Jersey 07068
(973) 618-0400
Attorneys for Plaintiff

JUSTIN D. CONKLIN,

Plaintiff,

v.

TAMARA MOISE, D.O.; MATTHEW
LETIZIA, D.O.; SAAD USMANI,
M.D.; C. ZHANG, M.D.; SHIH HO
LUE, M.D.; REKHA SHARMA, M.D.;
MEREDITH XIMINES, R.N.; ANTONIO
ALTAMIRANO, R.N.; AMANDA CIANI,
R.N.; TRINITAS REGIONAL MEDICAL
CENTER; CITY OF ELIZABETH; CITY
OF ELIZABETH FIRE DEPARTMENT;
K. SEALY; A RODRIQUEZ; JOHN
DOES (being fictitious names);
JANE DOES (being fictitious
names); ABC MEDICAL PRACTICE
(being a fictitious name),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION- UNION COUNTY
DOCKET NO.:

Civil Action

FIRST AMENDED COMPLAINT AND
JURY DEMAND

(Medical Malpractice)

Plaintiff, Justin D. Conklin, residing at 153 Dehart Place, Elizabeth, Union County, New Jersey, by way of Complaint against the defendants says:

FACTS COMMON TO ALL COUNTS

1. At all times relevant hereto, defendant, Tamara Moise, D.O. (hereinafter "Moise"), was an osteopathic physician licensed to practice medicine in the State of New Jersey.

2. On information and belief, at all times relevant hereto, defendant, Moise, was a specialist in emergency medicine

and is held to the standards of care applicable to such a specialist.

3. At all times relevant hereto, defendant, Matthew Letizia, D.O. (hereinafter "Letizia"), was an osteopathic physician licensed to practice medicine in the State of New Jersey.

4. On information and belief, at all times relevant hereto, defendant, Letizia, was a specialist in emergency medicine and is held to the standards of care applicable to such a specialist.

5. At all times relevant hereto, defendant, Saad Usmani, M.D. (hereinafter "Usmani"), was a physician licensed to practice medicine in the State of New Jersey.

6. On information and belief, at all times relevant hereto, defendant, Usmani, was a specialist in emergency medicine and is held to the standards of care applicable to such a specialist.

7. At all times relevant hereto, defendant, C. Zhang, M.D. (hereinafter "Zhang"), was a physician licensed to practice medicine in the State of New Jersey.

8. On information and belief, at all times relevant hereto, defendant, Zhang, was a specialist in emergency medicine and is held to the standards of care applicable to such a specialist.

9. At all times relevant hereto, defendant, Shih Ho Lue, M.D. (hereinafter "Lue"), was a physician licensed to practice medicine in the State of New Jersey.

10. On information and belief, at all times relevant hereto, defendant, Lue, was a specialist in emergency medicine and is held to the standards of care applicable to such a specialist.

11. At all times relevant hereto, defendant, Rekha Sharma, M.D. (hereinafter "Sharma"), was a physician licensed to practice medicine in the State of New Jersey.

12. On information and belief, at all times relevant hereto, defendant, Sharma, was a specialist in internal medicine and is held to the standards of care applicable to such a specialist.

13. At all times relevant hereto, defendant, Meredith Ximenes, R.N. (hereinafter "Ximenes"), was a registered nurse licensed to practice nursing in the State of New Jersey.

14. At all times relevant hereto, defendant, Ximenes, was a specialist in emergency nursing and is held to the standards of care applicable to such a specialist.

15. At all times relevant hereto, defendant, Antonio Altamirano, R.N. (hereinafter "Altamirano"), was a registered nurse licensed to practice nursing in the State of New Jersey.

16. At all times relevant hereto, defendant, Altamirano, was a specialist in emergency nursing and is held to the standards of care applicable to such a specialist.

17. At all times relevant hereto, defendant, Amanda Ciani, R.N. (hereinafter "Ciani"), was a registered nurse licensed to practice nursing in the State of New Jersey.

18. At all times relevant hereto, defendant, Ciani, was a specialist in emergency nursing and is held to the standards of care applicable to such a specialist.

19. At all times relevant hereto, defendant, Trinitas Regional Medical Center (hereinafter "Trinitas"), was a hospital in the State of New Jersey.

20. At all times relevant hereto, defendants, Moise, Letizia, Usmani, Zhang, Lue, Sharma, Ximenes, Altamirano, Ciani, John Does (being fictitious names for unknown individuals described below) and/or Jane Does (being fictitious names for unknown individuals described below) were principals, agents, ostensible agents, servants and/or employees of defendant, Trinitas.

21. As such, defendant, Trinitas, is vicariously liable and vicariously responsible for any negligent acts or omissions on the part of defendants, Moise, Letizia, Usmani, Zhang, Lue, Sharma, Ximenes, Altamirano, Ciani, John Does and/or Jane Does.

22. At all times relevant hereto, defendant, City of Elizabeth (hereinafter "Elizabeth") was a municipality in Union County, New Jersey.

23. At all times relevant hereto, defendant, City of Elizabeth Fire Department, emergency medical services division, was an emergency medical services unit operating in the City of Elizabeth, New Jersey.

24. At all times relevant hereto, defendant, K. Sealy, (first name unknown) (hereinafter "Sealy"), was an emergency medical technician.

25. At all times relevant hereto, defendant, Sealy, was an agent, ostensible agent, servant and/or employee of defendants, Elizabeth and/or City of Elizabeth Fire Department, emergency medical services division.

26. At all times relevant hereto, defendant, A. Rodriquez, (first name unknown) (hereinafter "Rodriquez"), was an emergency medical technician.

27. At all times relevant hereto, defendant, Rodriquez, was an agent, ostensible agent, servant and/or employee of defendants, Elizabeth and/or City of Elizabeth Fire Department, emergency medical services division.

28. As such, defendants, Elizabeth and/or City of Elizabeth Fire Department are vicariously liable and vicariously

responsible for any negligent acts or omissions on the part of defendants, Sealy and Rodriguez.

29. At all times relevant hereto, defendants, John Does, (being fictitious names) were doctors or other similar health care providers whose identities and elements of involvement are not currently known, who rendered care to plaintiff at Trinitas on September 1, 2011 and/or September 2, 2011.

30. At all times relevant hereto, defendants, Jane Does, were nurses, medical technicians or other health care providers, whose identities and elements of involvement are not currently known, who rendered care to plaintiff at Trinitas on September 1, 2011 and/or September 2, 2011.

31. At all times relevant hereto, defendant, ABC Medical Practice (hereinafter "ABC"), was a medical practice entity whose identity is not currently known, who rendered care to plaintiff either directly or through its principals, agents, ostensible agents, servants and/or employees.

32. At all times relevant hereto, any of the defendants named herein was the principal, agent, ostensible agent, servant and/or employee of defendant, ABC.

33. As such, defendant, ABC, is vicariously liable and vicariously responsible for any negligent acts or omissions on the part of any such principal, agent, ostensible agent, servant and/or employee of defendant, ABC.

34. At all times relevant hereto, plaintiff, Justin D. Conklin, was the patient of defendants and received various medical care and treatment from the defendants.

35. By way of illustration but not by way of limitation, plaintiff received care from the defendants at Trinitas on September 1, 2011 and/or September 2, 2011 in the emergency department and/or as an admitted patient.

36. Plaintiff, Justin D. Conklin, was severely and permanently injured as a result of the negligence, carelessness, recklessness and deviations from accepted standards of medical/nursing/emergency medical technician practice on the part of defendants, as set forth below.

37. Plaintiff, Justin D. Conklin, has suffered severe and permanent injury and disability as a result of the negligence, carelessness, recklessness and deviations from accepted standards of medical/nursing/emergency medical technician practice on the part of defendants, as set forth below, including severe emotional and mental distress and anguish.

FIRST COUNT

38. Plaintiff repeats every preceding paragraph of this Complaint.

39. Defendants were negligent, careless, reckless and deviated from accepted standards of medical, nursing and/or

emergency medical technician practice in the care and treatment rendered to plaintiff, Justin D. Conklin.

40. Said negligence, carelessness and recklessness and deviations from accepted standards of medical, nursing and/or emergency medical technician practice include but are not limited to:

a. Failure to make proper and timely diagnoses of plaintiff's condition.

b. Failure to institute proper and timely treatments.

c. Failure to perform or order necessary and appropriate medical and surgical interventions and/or failure to do so in a timely manner.

d. Failure to perform or order necessary and appropriate diagnostic procedures and/or failure to do so in a timely manner.

e. Failure to institute necessary and appropriate precautions to prevent injury to plaintiff while under the care of defendants and/or failure to do so in a timely manner.

f. Failure to follow accepted procedures for the handling, management, care and treatment of patients such as plaintiff.

g. Failure to provide necessary and appropriate information to plaintiff regarding his medical condition.

41. As a direct and proximate result of the negligence, carelessness, recklessness and deviations from accepted standards of medical, nursing and emergency medical technician practice on the part of the defendants, plaintiff, Justin D. Conklin, sustained severe and permanent injuries, pain, suffering, disability, impairment, emotional distress, loss of enjoyment of life, economic damages, loss of earnings and loss of future earnings.

WHEREFORE, plaintiff, Justin D. Conklin, demands judgment against defendants, Moise, Letizia, Usmani, Zhang, Lue, Sharma, Ximenes, Altamirano, Ciani, Trinitas, Sealy, Rodriquez, Elizabeth, City of Elizabeth Fire Department, John Does, Jane Does and/or ABC, jointly, severally or in the alternative for damages, interest, and costs of suit.

NAGEL RICE, LLP
Attorneys for Plaintiff

BY: 
BARRY M. PACKIN, ESQ.

Dated: ^{NDV.} ~~October~~ 15, 2012

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Bruce H. Nagel, Esq. and Barry M. Packin, Esq. are hereby designated as trial counsel in the above captioned matter.

DEMAND FOR INSURANCE COVERAGE

In accordance with R. 4:10-2, defendants are demanded to provide a complete copy of their applicable insurance policies and declaration sheets demonstrating coverage within thirty (30) days of service of this Complaint.

DEMAND FOR DOCUMENTS

Plaintiff demands that the defendants each produce transcribed copies of their complete files and/or charts regarding care and treatment of plaintiff within 30 days of service of this Complaint.

DEMAND FOR INTERROGATORIES

Plaintiff demands that the defendants each produce certified answers to the Form C and Form C(3) Interrogatories within sixty (60) days of service of this Complaint.

DEMAND FOR SPECIALTY/BOARD CERTIFICATION INFORMATION

Pursuant to the requirements set forth in *Buck v. Henry*, 207 N.J. 377 (2011), plaintiff hereby demands that each defendant in his/her/its Answer to the Complaint set forth the specialty, if any, in which he/she/it was involved when rendering treatment to the plaintiff.

NAGEL RICE, LLP
Attorneys for Plaintiff

BY: 

BARRY M. PACKIN, ESQ.

Dated: ~~October~~ ^{NOV.} 15, 2012

RELEASE

This Release, dated

2014

BY The Releasor, Justin D. Conklin

referred to as "I",

TO: The City of Elizabeth, The City of Elizabeth Fire Department, Kenroy Sealy and Antonio Rodriguez

referred to as "You",

1. **Release.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which we are not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

Any and all claims for personal injury, economic loss, non-economic loss or otherwise which I may have arising out of care or services rendered to me by the defendants on or about September 1, 2011 which claims were the subject of a lawsuit pending in the Superior Court of New Jersey, Union County County, entitled *Conklin v moise, et al*, Docket # UNN-L-4463-11.

2. **Payment.** I have been paid a total of \$22,500.00, in full payment for making this Release. I agree that we will not seek anything further including any other payment from you.

3. **Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executors of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executors of your estates.

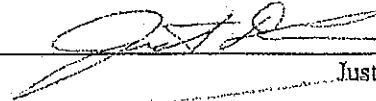
4. **Liens.** I will satisfy all claims or liens, past, current or future, arising out of this settlement or asserted against the proceeds of this settlement or alleged to have arisen out of the claims which were the subject of the above referenced lawsuit including, but not limited to, any Medicare or Medicaid claims or liens, Workers' Compensation claims or liens, physician or attorney claims or liens, healthcare insurer claims or liens or any other statutory, equitable, common law or judgment claims or liens. I hereby agree to indemnify and hold you and Western World Insurance Company harmless against any and all such claims which may be made against you.

5. **Indemnification Against Crossclaims.** It is the understanding of the parties that the only

crossclaims asserted by co-defendants in the above referenced lawsuit are pursuant to the terms of the Joint Tortfeasor Contribution and Comparative Negligence statutes of the State of New Jersey, which claims are extinguished by this release. To the extent any defendant obtains a judgment on any crossclaim against you on any other basis, arising out of the events which are the subject of the lawsuit, I will indemnify you against any such judgment.

6. Signatures. I understand and agree to the terms of this Release.

Witnessed or Attested by:


Justin D. Conklin

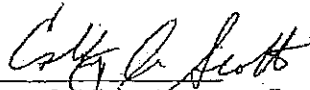
STATE OF NEW JERSEY,

SS.:

COUNTY OF

I CERTIFY that on June 30, 2014 Justin D. Conklin, personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- a) was the maker of the attached instrument; and
- b) executed this instrument as his or her own act.


Notary Public or Attorney at Law of the
State of New Jersey

CATHY A. SCOTTI
NOTARY PUBLIC OF NEW JERSEY
ID # 2417944
My Commission Expires 3/1/2017