

IOWA DISTRICT COURT IN AND FOR LINN COUNTY

BERNNADETTE CECENA, individually
and as Parent and Next Friend of M.B.,JR.,

Plaintiff,

vs.

LINDSY ALONS, M.D. and CEDAR
RAPIDS OB GYN SPECIALISTS, P.C.

Defendants.

LAW NO. LACV092925

**LINDSY ALONS, M.D., AND CEDAR
RAPIDS OB GYN SPECIALISTS, P.C.'S
AMENDED TRIAL BRIEF**

Defendants Lindsay Alons, M.D., and Cedar Rapids Ob-Gyn Specialists, P.C.

(Defendants), submit the following trial brief:

I. CASE SYNOPSIS/FACTS ADMITTED

Prior to the events at issue in this case, Bernnadette Cecena had an extensive medical history including pelvic inflammatory disease (PID), premenstrual dysphoric disorder (PMDD), abnormal uterine bleeding, abdominal/pelvic pain, dyspareunia, menorrhagia, salpingitis, rectocele (pelvic floor dysfunction), urinary retention, urinary urgency, frequent urination, dysuria, vaginal numbness, abdominoplasty, chronic diarrhea, anemia, chronic fatigue, chronic headaches, decreased libido, conversion disorder, depression, anxiety, bipolar disorder, insomnia, drug use and smoking. She has four children. The first three were delivered vaginally and the fourth via cesarean section.

Ms. Cecena presented to Ob-Gyn Specialists and Dr. Lindsay Alons on October 12, 2017, for abnormal uterine bleeding and PMDD. As mentioned above, these problems had been going on for years and Ms. Cecena had discussed the option of a hysterectomy with her previous gynecologist. Dr. Alons reviewed the options for management including

hysterectomy and oophorectomy but advised there was no guarantee her symptoms would resolve. On October 23, 2017, Ms. Cecena underwent a pelvic ultrasound which indicated likely adenomyosis. Following discussion, Ms. Cecena elected to move forward with hysterectomy and oophorectomy.

Dr. Alons saw Ms. Cecena again on November 3, 2017, for a preoperative appointment to discuss the planned robotically assisted total abdominal hysterectomy with bilateral salpingo-oophorectomy (TLH/BSO). During the appointment, Dr. Alons discussed the risks of surgery including damage to the bowel, urinary system, blood vessels, nerves and the potential that the surgery would need to be converted to an open procedure. Ms. Cecena understood she was at increased risk for bladder injury because of her earlier cesarean section. Dr. Alons also discussed the risks of anesthesia, postoperative complications as well as the postoperative expectations regarding symptoms related to the oophorectomy and early menopause. Written consents were reviewed and signed. The surgery was performed on November 6, 2017. Ms. Cecena tolerated the procedure well and was discharged the same day.

On November 7, 2017, Ms. Cecena presented to the Mercy Hospital emergency department with increased pain and inability to urinate. Ms. Cecena was admitted and a CT indicated a left ureteral injury, a known complication of hysterectomy. Ms. Cecena underwent ureteral stenting and reimplantation to repair the injury. Most recently she had an InterStim Therapy device implanted, which has helped alleviate her urinary retention issues.

II. ELEMENTS OF MEDICAL MALPRACTICE

To prove a claim for medical malpractice, expert testimony must be produced which: “(1) establishes the applicable standard of care, (2) demonstrates a violation of this standard, and (3) develops a causal relationship between the violation and the injury sustained.”

Oswald v. LeGrand, 453 N.W.2d 634, 635 (Iowa 1990).

“[E]vidence of the applicable standard of care -- and its breach -- must be furnished by an expert.” *Oswald*, 453 N.W.2d at 635; *see also Kennis v. Mercy Hosp. Medical Center*, 491 N.W.2d 161, 165 (Iowa 1992) (“[W]hen the ordinary care of a physician is an issue, only experts can testify and establish the standard of care and the skill required.”).

“Causal connection is essentially a matter which must be foundationed upon expert evidence.” *McCleary v. Wirtz*, 222 N.W.2d 409, 413 (Iowa 1974). “More specifically, common knowledge and everyday experience would not suffice to permit a layman’s expression of opinion” as to whether a medical provider’s alleged negligence “was a substantial factor in bringing about the complained of result.” *Id*; *see also Donovan v. State*, 445 N.W.2d 763, 766 (Iowa 1989) (“[H]ighly technical questions of diagnoses and causation which lie beyond the understanding of a layperson require introduction of expert testimony.”); *Barnes v. Bovenmyer*, 122 N.W.2d 312, 317 (Iowa 1963) (“The accepted method of proving proximate cause would be by expert testimony that defendant’s delay in discovering the piece of steel in the eye was the probable cause of its loss.”).

In sum, with respect to each specification of fault asserted, Plaintiff must produce expert testimony which: (1) establishes the applicable standard of care; (2) demonstrates that Defendants breached that standard of care; and (3) demonstrates the causal connection between any breach of the standard of care by Defendants and Plaintiff’s claimed damages.

III. DAMAGES SOUGHT

It is anticipated Plaintiff is seeking the following damages:

- Past and Future Pain and Suffering
- Past and Future Full Body and Mind
- Past and Future Loss of Parental Consortium

IV. WITNESSES TO BE CALLED AT TRIAL

Defendants plan to call all of their witnesses live at trial with the exception of designating portions of the depositions of treating physicians Drs. Takacs and Erikson.

A. Fact Witnesses

Defendants plan to call Defendant Lindsay Alons, M.D., as a witness at trial. Dr. Alons is an obstetrician and gynecologist at Cedar Rapids OB Gyn Specialists in Cedar Rapids. It is anticipated that Dr. Alons will testify regarding her education, training and experience as well as her care and treatment of Bernadette Cecena. Defendants note that Dr. Alons is a non-retained expert but may have opinions that are considered expert in nature. Dr. Alons will explain to the jury why her care and treatment of Bernadette Cecena met accepted standards of care.

Defendants do not know what fact witnesses Plaintiff plans to call at trial but anticipate Ms. Cecena will testify along with her son and parents. Plaintiff has also videotaped the evidentiary depositions of treating urologists Dr. Elizabeth Takacs and Dr. Brad Erickson. Defendants reserve the right to designate portions of the testimony of Dr. Takacs and/or Erikson.

B. Expert Witnesses

Defendants designated three experts: Gregory Bills, M.D., Robert Santa-Cruz, M.D., and Ann Sullivan, M.D. Dr. Bills is an ob-gyn and professor at the University of Wisconsin in Madison. Dr. Santa-Cruz is a urologist in Rapid City, South Dakota. Dr. Sullivan is an ob-gyn in Omaha, Nebraska. Generally, the defense experts will testify regarding standard of care, causation and damages issues. Their testimony will involve explanations of medical principals and procedures as well as their opinions that Dr. Alons' care and treatment met accepted standards of care. It is also anticipated they will respond to the testimony of Plaintiff's expert and treating physicians.

Plaintiff designated Gary Conner, M.D., an ob-gyn who previously practiced in Wexford, Pennsylvania, as her expert witness. Defendants anticipate Plaintiff will call Dr. Conner to testify regarding the applicable standard of care and his opinion that Dr. Alons violated this standard causing Plaintiff's damage.

V. PLAINTIFF CANNOT RECOVER ANY MEDICAL EXPENSES PAID BY COLLATERAL SOURCES¹

Iowa Code § 147.136 provides in relevant part:

In an action for damages for personal injury against a physician . . . based on the alleged negligence of the practitioner in the practice of the profession or occupation, . . . the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to, the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source except the assets of the claimant or of the members of the claimant's immediate family. (Emphasis added).

¹ For further discussion of the application of Iowa Code section 147.136, please refer to Paragraph 13 of Defendants' Motion in Limine and supporting memorandum.

Iowa Code § 147.136 was enacted in 1975. The purpose of the statute is “to reduce the size of malpractice verdicts by barring recovery for the portion of the loss paid for by collateral benefits.” *Rudolph v. Iowa Methodist Medical Center*, 293 N.W.2d 550, 558 (Iowa 1980). The reduction in the size of malpractice verdicts consequently reduces “premiums for malpractice insurance, making [malpractice insurance] affordable and available, helping to assure the public of continued health care services.” *Id*; see also *Lambert v. Sisters of Mercy Health Corp.*, 369 N.W.2d 417, 423 (Iowa 1985). *Rudolph* and *Lambert* upheld § 147.136 in the face of constitutional attacks.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2023, I filed the foregoing with the Clerk of Court using the electronic filing system which will send notification of such filing to the following:

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