

STATE OF NEW MEXICO
COUNTY OF GRANT
SIXTH JUDICIAL DISTRICT COURT

FILED
6th JUDICIAL DISTRICT COURT
Grant County
7/19/2023 2:39 PM
MICHAEL M. MEDINA
CLERK OF THE COURT
Erik M Chavez

THE ESTATE OF NICHELLE NICHOLS, by
and through personal representative, PETER F. WIRTH, ESQ.,

Plaintiff,

v.

Cause No. D-608-CV-2023-00181

GILA REGIONAL MEDICAL CENTER,

Stewart, Tom F.

Defendant.

**COMPLAINT FOR MEDICAL NEGLIGENCE
RESULTING IN WRONGFUL DEATH**

COMES NOW Plaintiff, by and through its attorneys of record, Curtis & Co. Law Firm, (Lisa K. Curtis, Esq. and Luke W. Holmen, Esq.) and hereby submits the following Complaint for Medical Negligence Resulting in Wrongful Death. Plaintiffs' claims against Defendant are stated as follows:

1. Nichelle Nichols suffered wrongful death because Defendant Gila Regional Medical Center fostered an environment which prevented Ms. Nichols from being diagnosed and treated properly. Gila knows, or should know, that patients like Ms. Nichols may present to its hospital with heart failure and other life-threatening pulmonary and cardiovascular conditions.

2. Gila Regional Medical Center failed to have the appropriate diagnostic tools, and equipment available to providers for diagnosing and treating heart failure and other life-threatening pulmonary and cardiovascular conditions.

3. Gila Regional Medical Center failed to have qualified providers and staff who knew how to identify patients suffering from heart failure and other life-threatening pulmonary and cardiovascular conditions and treat them accordingly.

4. Gila Regional Medical Center failed to have appropriate systems in place to identify patients with heart failure and other life-threatening pulmonary and cardiovascular conditions and a system to transfer patients to a higher level of care.

5. Gila Regional Medical Center failed to have safe discharge protocols for patients with heart failure and other life-threatening pulmonary and cardiovascular conditions.

6. Gila Regional Medical Center failed to use ordinary care in operating its hospital and failed to possess and apply the knowledge and to use the skill and care ordinarily used in reasonably well-operated hospitals when treating Ms. Nichols. It failed to follow basic protocols, and failed to maintain, keep available, and employ basic medical equipment and tests to diagnose Ms. Nichols before discharging her with multiple life-threatening conditions.

7. Gila Regional Medical Center hired, credentialed, and inappropriately supervised unqualified medical providers and allowed them to treat Ms. Nichols.

8. Gila Regional Medical Center abdicated its responsibility to ensure the safety of its patients including Ms. Nichols by hiring, partnering with, and contracting with third parties to run the hospital.

9. Ms. Nichols was admitted to Gila Regional Medical Center because her symptoms and the results of her imaging and labs were consistent with a diagnosis of acute heart failure.

10. Ms. Nichols was transferred for admission to inpatient care.

11. Upon information and belief, Defendant failed to secure a hospital bed for Ms. Nichols upon admission and then failed to transfer her to a facility that had an available bed.

12. Defendant failed to secure a cardiac consultation or make one available for Ms. Nichols.

13. Defendant failed to secure a pulmonary consultation or make one available for Ms. Nichols.

14. Upon information and belief, Defendant failed to maintain its echocardiogram equipment in proper working order so that it would be available for patients like Ms. Nichols who needed it, or otherwise caused the unavailability of this equipment through its negligent acts and omissions.

15. Upon information and belief, Defendant failed to develop an appropriate plan to provide echocardiograms to patients like Ms. Nichols in the absence or unavailability of echocardiogram equipment at Gila Regional Medical Center.

16. Ms. Nichols was placed on furosemide, a diuretic, and observed overnight.

17. Defendant discharged Ms. Nichols on July 30, 2022 around 10am.

18. Ms. Nichols was diagnosed with acute heart failure at the time of discharge, but the diagnosis was general and its etiology unexplained.

19. Defendant knew or should have known that Millie's Assisted Living Center lacked the appropriate resources to monitor and care for a patient in Ms. Nichols' condition. In the alternative, Defendant failed to verify whether Millie's Assisted Living Center was an appropriate facility to discharge Ms. Nichols to.

20. Defendant failed to discharge Ms. Nichols to a facility capable of monitoring her condition and providing her with medication given her dementia and other symptoms of confusion and past history of refusing medication.

21. Defendant failed to keep Ms. Nichols as an inpatient to further observe, diagnose, and manage her condition.

22. On July 30, 2023, the same day she was discharged from Gila Regional Medical Center, EMS was dispatched to Millie's Assisted Living Center around 7:50pm.

23. The efforts of first responders were unsuccessful, and Ms. Nichols died shortly after EMS arrived.

24. As a result of Defendant's negligence, Nichelle Nichols suffered a wrongful death.

25. Peter F. Wirth, Esq. is the duly appointed Personal Representative of the Estate of Nichelle Nichols.

26. The events giving rise to this Complaint occurred in Silver City, Grant County, New Mexico.

27. Jurisdiction and venue of the Court is proper in the 6th Judicial District Court, County of Grant.

28. Defendant GILA REGIONAL MEDICAL CENTER, is a non-profit acute-care hospital owned and operated by Grant County located in Silver City, County of Grant, New Mexico. Defendant Gila Regional Medical Center is responsible for the ownership and operation of the hospital, its emergency room, its employees, agents, apparent agents, marketing, human resources management, training, staffing, creation and implementation of policy and procedure manuals, federal and state Medicare and Medicaid reimbursement, quality care assessment and compliance, licensure and certification, legal services, and financial, tax, and accounting control and fiscal policy.

29. In treating and caring for Ms. Nichols, Defendant failed to use the skill and care ordinarily used by reasonably well qualified hospitals or medical providers during the care, evaluation, treatment, and diagnosis of Ms. Nichols.

30. Gila Regional Medical Center is a hospital responsible for injuries proximately resulting from the negligence of its employees.

31. Gila Regional Medical Center breached its duty to exercise reasonable diligence in obtaining and acting upon information concerning the competence of applicants to and members of its staff which it permitted to exercise clinical privileges and treat Ms. Nichols. Gila Regional Medical Center knew or reasonably should have known that such persons were not qualified to exercise those privileges with reasonable skill, and is therefore negligent.

32. In caring for Ms. Nichols, Gila Regional Medical Center failed to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another, and is therefore negligent.

33. In caring for Ms. Nichols, Gila Regional Medical Center failed to possess and apply the knowledge and to use the skill and care ordinarily used in reasonably well-operated hospitals under similar circumstances, giving due consideration to the locality involved, and is therefore negligent.

34. Defendant engaged in wanton, reckless, intentional or negligent acts and omissions during the care and treatment of Ms. Nichols in failing to obtain her informed consent and advise her of all treatment options and risks, in failing to timely diagnose and treat her cardio-pulmonary condition. Such failures caused Ms. Nichols to suffer wrongful death.

35. Gila Regional Medical Center abdicated its responsibility to ensure the safety of its patients including Ms. Nichols by hiring, partnering with, and contracting with third parties to run the hospital.

36. Gila Regional Medical Center knew or should have known such persons and entities were not providing adequate hospital management services.

37. Upon information and belief, Defendant was additionally negligent in the care and treatment of Ms. Nichols in the following ways:

- a. The administrative, medical, nursing and general staff of failed to render appropriate care and attention Ms. Nichols.
- b. The medical, general, and nursing staff breached their duty to properly care for and treat Ms. Nichols within the standard of care.
- c. Defendant failed in its duty to properly operate its facilities including Gila Regional Medical Center.

38. Defendant was negligent per se in violation of CFR 482, and its related NMAC references for medical record documentation responsibilities and privileging.

39. It is the duty of the hospital to credential and privilege only competent physicians to care for its patients. Defendant breached that duty in negligently credentialing and privileging healthcare providers who treated Ms. Nichols,.

40. Defendant privileged physicians, physician assistants, nurse practitioners, nurses, and healthcare providers who did not possess or apply the knowledge as and use the skill and care ordinarily used by reasonably well-qualified health care providers of the same field of medicine practicing under similar circumstances, giving due consideration to the locality involved, thus breaching its duty to patient Ms. Nichols.

41. During the time herein stated, Defendant was negligent per se by failing to provide care, treatment, and services within acceptable standards of care for hospitals as set forth by the State of New Mexico, including the following regulations enacted by the New Mexico Department of Public Health, NMSA 1978, Section 9-7-6(E) and the New Mexico Public Health Act, NMSA

1978, Section 24-1-2(D), 24-1-3(I), and 24-1-5, including but not limited to the following specific statutes (discovery in this matter is ongoing).

- a. Defendant violated NMSA 61-6-15(D), which states that Defendant engaged in unprofessional conduct.
- b. Defendant violated NMSA 61-6-15(D), which states that Defendant engaged in unprofessional conduct by failing to maintain timely, accurate, legible, and complete medical records regarding Ms. Nichols' care.
- c. Defendant violated CFR 482 regarding medical record keeping and privileging which negatively affected Ms. Nichols' care.

42. At all times material hereto, the relationship of medical provider-patient existed between Ms. Nichols and Defendant.

43. During all the times stated herein, and during the time the Defendant was treating Ms. Nichols, Defendant expressly and impliedly warranted to Ms. Nichols that everything necessary and proper was being done for her to maintain her health; however, Defendant breached said warranties.

44. Ms. Nichols and Defendant entered into an agreement whereby Defendant agreed to provide medical services to its patient, Ms. Nichols. There was a valid contract between Ms. Nichols and Defendant. Ms. Nichols performed pursuant to said contract. Defendant breached said contract by failing to perform said services in a competent and professional manner.

45. Ms. Nichols' injuries are of the kind which do not ordinarily occur in the absence of negligence. Defendant failed to properly assess, evaluate, care, treat, and intervene with their patient to prevent Ms. Nichols' injuries and negligence against it should be preserved under the theory of *res ipsa loquitur*.

46. Defendant, its nurses and other employees were negligent in that they failed to appropriately diagnose and treat Ms. Nichols' condition.

47. Defendant, its nurses and employees were negligent in that they discharged Ms. Nichols rather than continuing to monitor her or to ensure she was transferred to another facility capable of providing Ms. Nichols with an appropriate level of care.

48. Defendant's medical negligence rises to recklessness and wanton disregard for the safety of Ms. Nichols health and life. Such conduct – either individual or cumulative in nature – requires that Defendant, either individually or jointly and severally, be subject to the assessment of punitive damages.

49. Defendant by and through its employees or agents failed to use ordinary care in furnishing health care and treatment for Ms. Nichols, which contributed to cause her wrongful death and damages.

50. As a direct and proximate result of the negligence and breaches caused by the Defendant, Ms. Nichols suffered death and damages, including but not limited to medical expenses, pain and suffering, lost wages, lost earning capacity, loss of enjoyment of life, lost chance of life, and wrongful death.

51. Defendant is responsible for the damages: actual, incidental, special, punitive and otherwise allowable by law to the Estate of Nichelle Nichols.

52. Plaintiff is entitled to recover damages recited herein and all other damages available under law.

53. Plaintiff disputes Defendant's anticipated affirmative defenses and requires strict proof therein.

54. Plaintiff contends some of Defendant's anticipated affirmative defenses are unconstitutional.

WHEREFORE, Plaintiff prays for judgment against Defendant, awarded in an amount reasonably necessary to compensate Plaintiff for injuries, harm, death, damages, punitive or consequential damages, for interest including pre- and post-judgment interest, costs, and for such other and further relief as this court may deem just and appropriate.

Respectfully submitted,

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Electronically signed
/s/ Luke W. Holmen, Esq.
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