

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
NINTH DIVISION**

KATRINA ANTHONY, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF JANETTE COOK
MCDANIEL, DECEASED,

PLAINTIFFS

VS.

CASE NO. 60CV-13-3009

FIRST INITIATIVES INSURANCE, LTD.,
ST. VINCENT INFIRMARY MEDICAL CENTER,
LITTLE ROCK ANESTHESIA SERVICES
PLLC, JUAN CARLOS RAMON, MD;
and VIRGINIA S. MAXWELL, CRNA,

DEFENDANTS

PLAINTIFFS' ORIGINAL COMPLAINT

COMES NOW Katrina Anthony, Individually, and as Administratrix of the Estate of Janette Cook McDaniel, Deceased, (collectively "Plaintiffs"), and files this Original Complaint complaining of First Initiatives Insurance, Ltd.; St. Vincent Infirmary Medical Center ("St. Vincent"), Little Rock Anesthesia Services, PLLC ("LRAS") and Juan Carlos Ramon, M.D. ("Dr. Ramon") and Virginia S. Maxwell, CRNA ("CRNA Maxwell.") In support thereof, Plaintiffs respectfully show the Court as follows:

I.

JURISDICTION AND VENUE

1.1. This Court has jurisdiction and venue is proper in Pulaski County, Arkansas because at least one of the Defendants has its principal office in Pulaski County, Arkansas and because the events that form the basis for liability occurred in Pulaski County, Arkansas. This case involves an amount in controversy that is within the jurisdictional limits of this Court.

II.

PARTIES

2.1. Plaintiff Katrina Anthony is the daughter and Executrix of the Estate of Janette Cook McDaniel, Deceased. She brings this action individually, and as Administratrix of the Estate of Janette Cook McDaniel, Deceased. Eugene McDaniel, Jr. is the surviving spouse of Janette Cook McDaniel, Deceased. Robin Anthony and Detrice Payne are the daughters of Janette Cook McDaniel, Deceased.

2.2 Defendant St. Vincent Infirmiry Medical Center is a Corporation operating in the State of Arkansas as a hospital and doing business as St. Vincent Health System. Said Defendant may be served with summons by serving its registered agent for service of process, The Corporation Company, at 124 West Capitol Avenue, Suite 1900, Little Rock, Arkansas 72201.

2.3. Defendant Little Rock Anesthesia Services, PLLC is an Arkansas entity operating in Little Rock, Pulaski County, Arkansas, and may be served with a summons by serving their registered agent, Michael Stone, at their principal place of business at 500 S. University Avenue, Suite 505, Little Rock, AR 72205.

2.4. Defendant Juan Carlos Ramon, M.D. is a licensed medical doctor residing and practicing medicine in Little Rock, Pulaski County, Arkansas, and may be served with process at his place of business at 500 S. University Avenue, Suite 505, Little Rock, AR 72205.

2.5. Defendant Virginia S. Maxwell, CRNA is a licensed nurse anesthetist residing and practicing in Little Rock, Pulaski County, Arkansas, and may be served with process at her place of business at 500 S. University Avenue, Suite 505, Little Rock, AR 72205.

2.6 Defendant First Initiatives Insurance, Ltd., is a Risk Pool providing liability coverage for entities associated with Catholic Health Initiatives including St. Vincent Infirmiry

Medical Center and is located in the Cayman Islands. Defendant, First Initiatives Insurance, Ltd, is the proper defendant in the event St. Vincent Infirmary Medical Center is afforded charitable immunity.

III.

FACTS

3.1. On October 15, 2012, 47-year-old Janette Cook McDaniel was admitted to St. Vincent in Little Rock, Arkansas for elective right knee replacement surgery by Dr. Paul Edwards. She was known to be at moderate to high risk for pulmonary complications during surgery due to her history of Chronic Obstructive Pulmonary Disorder (COPD), asthma, and obstructive sleep apnea. Specifically, Ms. McDaniel was known to be at high risk for cessation of breathing if she were to be medicated and left alone lying on her back due to her physical size, her large fleshy neck, and the condition of her lungs. For this reason, it was known that when sedated this patient required close monitoring so that she would not die needlessly upon receiving sedation.

3.2. On the morning of the surgery, Janette Cook McDaniel was pre-medicated with Reglan and Pepcid. She also received 10mg of Oxycodone. No contemporaneously created nursing records are available to show precisely when these drugs were administered; all related notes were added as late entries in the medical chart.

3.3. At 6:50 AM, an order was given that Janette Cook McDaniel be placed on continuous pulse oximetry via telemetry transmitter and be given supplemental oxygen. These orders required physician notification if: a) her respiratory rate is less than 10 breaths per minute, b) her blood oxygen saturation is less than 92% on room air, or c) she became difficult to arouse.

3.4. At 7:00 AM, Dr. Romans placed an epidural catheter and sedated Janette Cook McDaniel with medications and then left her alone in the pre-op room. She was left unattended and without any effective monitoring, much less the close monitoring that this patient required in order to detect immediately if she were to stop effective breathing.

3.5. Sometime between 7:00 a.m. and 7:29 a.m. the patient stopped breathing due to the medications she had been given. But, no one was monitoring the patient so no one noticed.

3.6 At 7:29 am, nursing personnel returned to take Janette Cook McDaniel to the Operating Room. On arrival to the OR, adroit personnel noticed that the patient was dead. CRNA Maxwell gave supplemental oxygen and applied monitors, but no CPR was performed. Dr. Romans was called and pronounced her dead at 7:45 AM.

IV.

PRINCIPAL/AGENCY

4.1. At all times material hereto, Dr. Ramon was acting, not only in his individual capacity, but also as an agent, representative, and/or employee of Little Rock Anesthesia Services and acting within the scope of such agency/employment. Under the doctrines of agency and *respondeat superior*, Dr. Ramon and Little Rock Anesthesia Services are jointly and severally liable for the acts and omissions of Dr. Ramon.

4.2. At all times material hereto, the nursing staff at St. Vincent were acting, not only in their individual capacities, but also as agents, representatives, and/or employees of St. Vincent and acting within the scope of such agency/employment. Under the doctrines of agency and *respondeat superior*, the nursing staff and St. Vincent are jointly and severally liable for the acts and omissions of the nursing staff.

4.3. At all times material hereto, CRNA Maxwell was acting, not only in her individual capacity, but also as an agent, representative, and/or employee of Little Rock Anesthesia Services and/or St. Vincent and acting within the scope of such agency/employment. Under the doctrines of agency and *respondeat superior*, CRNA Maxwell and Little Rock Anesthesia Services and/or St. Vincent are jointly and severally liable for the acts and omissions of CRNA Maxwell.

V.

NEGLIGENCE & GROSS NEGLIGENCE

5.1. Defendants were negligent and fell below the applicable standards of care in their treatment of Janette Cook McDaniel. As a direct and proximate cause of the negligence and gross negligence of Defendants, Janette Cook McDaniel died needlessly.

A. DR. RAMON / LITTLE ROCK ANESTHESIA SERVICES

5.2 Defendants Dr. Ramon and Little Rock Anesthesia Services were negligent and grossly negligent in the following respects:

- a) failing to be physically present, or have other qualified personnel present, to continually monitor and evaluate Janette Cook McDaniel after anesthesia services began;
- b) failing to be available to diagnose and respond to Janette Cook McDaniel's medical emergency following the administration of anesthesia;
- c) failing to assure that Janette Cook McDaniel's oxygenation, ventilation, circulation, and temperature were being continually evaluated after anesthesia services began; and/or
- d) failing to render timely and appropriate resuscitative efforts/care to Janette Cook McDaniel, to include CPR and Advanced Cardiac Life Support (ACLS) protocols.

5.3 Each of these acts/omissions was a direct and proximate cause of the Janette Cook McDaniel's death and Plaintiffs' damages herein.

B. VIRGINIA S. MAXWELL, CRNA

5.4. Defendant CRNA Maxell was negligent and grossly negligent in the following respects:

- a) failing to be physically present, or have other qualified personnel present, to monitor and evaluate Janette Cook McDaniel after anesthesia services began;
- b) failing to be available to diagnose and respond to Janette Cook McDaniel's medical emergency following the administration of anesthesia;
- c) failing to assure that Janette Cook McDaniel's oxygenation, ventilation, circulation, and temperature were being continually evaluated after anesthesia services began; and/or
- d) failing to render timely and appropriate resuscitative efforts/care to Janette Cook McDaniel, to include CPR and Advanced Cardiac Life Support (ACLS) protocols.

5.5. Each of these acts/omissions was a direct and proximate cause of the Janette Cook McDaniel's death and Plaintiffs' damages herein.

C. ST. VINCENT INFIRMARY MEDICAL CENTER

5.6. Defendant St. Vincent was negligent [both directly, by and through its employees or agents, and by and through the conduct of its managing member(s) and member(s) and administrator(s)] in the following respects:

- a) failing to have/enforce written policies to assure that patients undergoing anesthesia such as Janette Cook McDaniel are adequately monitored after the anesthesia has begun;
- b) failing to have/enforce written policies to assure that patients undergoing anesthesia such as Janette Cook McDaniel are continually monitored with a pulse oximeter with a working alarm when blood oxygenation drops to unsafe levels, as well as continual clinical observation/assessment of ventilation, heart rate, and blood pressure;
- c) failing to have/enforce adequate protocols, policies and procedures to assure that patients who arrest following the administration of anesthesia such as Janette Cook McDaniel receive adequate resuscitative effort to include CPR and Advanced Cardiac Life Support (ACLS) protocols;

- d) failing to assure the nurses adequately monitored Janette Cook McDaniel following the administration of anesthesia;
- e) failing to assure the nurses timely recognized the signs, symptoms, and findings of inadequate ventilation in Janette Cook McDaniel following the administration of anesthesia; and/or
- f) failing to assure OR personnel provided timely and appropriate resuscitative efforts to Janette Cook McDaniel, to include CPR and Advanced Cardiac Life Support (ACLS) protocols when she was known to have suffered cardiorespiratory arrest.

5.7. Each of these acts/omissions was a direct and proximate cause of the Janette Cook McDaniel's death and Plaintiffs' damages herein.

VI.

DAMAGES

6.1 The Plaintiff, in her capacity as Administratrix of the Estate of Janette Cook, seeks the following damages on behalf of the Estate:

- (a) Medical expenses;
- (b) Funeral and burial expenses;
- (c) The pain and anguish and suffering that Janette Cook suffered prior to her death; and
- (d) Damages for the value of the loss of Janette Cook's life.

6.2 The Plaintiff, individually and in her capacity as Administratrix of the Estate of Janette Cook seeks the following damages on behalf of the wrongful death beneficiaries:

- (a) Damages for the mental and emotional anguish suffered by each as a result of the death of Janette Cook; and
- (b) Pecuniary loss any wrongful death beneficiary has or will suffer as a result of the death of Janette Cook.

6.3 At the time of Janette Cook McDaniel's death, she was gainfully employed and

earning a livelihood for herself and contributing to her family. She was 47-years old and was in reasonably good health, with a normal life expectancy.

6.4. Plaintiff further seeks exemplary/punitive damages, in an amount to be determined by the jury, for Defendants' reckless and/or malicious conduct. The need to attend to and continually monitor high-risk patients while under anesthesia is well known in general, and specifically in reference to Janette Cook McDaniel. Here, Defendants consciously disregarded these risks, leaving Janette Cook McDaniel unattended and unmonitored after her anesthesia began. She died needlessly as a result. Given the practices of these healthcare providers, it was not a matter of if someone would die from this type of behavior, it was simply a matter of who would die. For these reasons, Plaintiffs seek punitive damages in an amount necessary to make an example of Defendants, so that in the future no other healthcare provider or institution will place a patient at such extreme and needless risk of harm.

VII.

DEMAND FOR JURY TRIAL

7.1. Plaintiffs demand trial by jury in this matter pursuant to the Arkansas State Constitution, Article 2, Section 7 and Arkansas Rule of Civil Procedure 38.

FOR THESE REASONS, Plaintiffs respectfully request each Defendant be cited to appear and answer herein; that upon a final hearing or trial of the cause, judgment be entered for the Plaintiffs against Defendants for damages in an amount within the jurisdictional limits of the Court; post-judgment interest at the highest legal rate, costs of court; and for such further relief to which Plaintiff is justly entitled.

Respectfully submitted,

THE GIRARDS LAW FIRM

_____/s/ James E. Girards

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