

KAH/SAC/sfk

FILED

2013 APR 26 PM 3:16

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

DOROTHY J. ...
CLERK OF CIRCUIT COURT
LAW DIVISION

JOSEPH F. DIMARIA and DONNA DIMARIA,)

Plaintiffs,)

v.)

PRESENCE HEALTH NETWORK a corporation;)

PRESENCE RESURRECTION MEDICAL)

CENTER, a corporation;)

DANIEL L. DAHLINGHAUS, M.D.;)

NORTHWEST GENERAL SURGEONS, LTD.,)

a corporation;)

BRANKA PAVLOVIC, M.D.;)

JENNIFER O'TOOLE, CRNA;)

UNIDENTIFIED NURSE A;)

UNIDENTIFIED NURSE B; and)

UNIDENTIFIED NURSE C.)

Defendants.)

2013L004532
CALENDAR ROOM A
TIME 00:00
Medical Malpractice

**PLAINTIFFS DEMAND
A TRIAL BY JURY**

COMPLAINT AT LAW

COUNT I - MEDICAL NEGLIGENCE

Plaintiff, JOSEPH F. DIMARIA, by his attorneys, CLIFFORD LAW OFFICES, P.C.,
complaining of Defendants, PRESENCE HEALTH NETWORK, a corporation, PRESENCE
RESURRECTION MEDICAL CENTER, a corporation (hereinafter "MEDICAL CENTER")
DAN DAHLINGHAUS, M.D. (hereinafter "DAHLINGHAUS"), NORTHWEST GENERAL
SURGEONS, LTD, a corporation, BRANKA PAVLOVIC, M.D. (hereinafter "PAVOLVIC"),
JENNIFER O'TOOLE, CRNA (hereinafter "O'TOOLE"), UNIDENTIFIED NURSE A,
UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C, and each of them, states as
follows:

1. On and before September 22, 2012, and at all times mentioned herein, Defendant, PRESENCE HEALTH NETWORK, was an Illinois based health care system.

2. On and before September 22, 2012, and at all times mentioned herein, the business of Defendant, PRESENCE HEALTH NETWORK, was to provide patient care through its primary care and specialty physicians working at various hospitals and outpatient facilities in Illinois.

3. On and before September 22, 2012, and at all times mentioned herein, Defendant, MEDICAL CENTER, was a duly licensed health care institution.

4. On and before September 22, 2012, and at all times mentioned herein, Defendant, MEDICAL CENTER, was an agent of PRESENCE HEALTH NETWORK.

5. On and before September 22, 2012, and at all times mentioned herein, the business of Defendant, MEDICAL CENTER, was to provide treatment to patients admitted therein.

6. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, presented to Defendant, MEDICAL CENTER, for the insertion of a Groshong port-catheter by Defendant, DAHLINGHAUS, with the active aid and assistance of various MEDICAL CENTER employees, nurses, and medical staff.

7. On September 22, 2012, and at all times mentioned herein, Defendant, DAHLINGHAUS, was a physician duly licensed to practice medicine in the State of Illinois and was engaged in the practice of medicine, specializing in general surgery.

8. On September 22, 2012, and at all times mentioned herein, Defendant, DAHLINGHAUS, was a duly authorized employee and/or agent of PRESENCE HEALTH NETWORK, and was acting within the scope of his agency and employment.

9. On September 22, 2012, and at all times mentioned herein, Defendant, DAHLINGHAUS, was a duly authorized apparent agent of PRESENCE HEALTH NETWORK, and was acting within the scope of his apparent agency.

10. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, was never informed that Defendant, DAHLINGHAUS, was not an agent or employee of the PRESENCE HEALTH NETWORK.

11. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, neither knew nor should have known that Defendant, DAHLINGHAUS, was not an agent or employee of the PRESENCE HEALTH NETWORK.

12. On September 22, 2012, the Plaintiff, JOSEPH F. DIMARIA, reasonably relied upon Defendant, PRESENCE HEALTH NETWORK, to provide him with complete surgical care.

13. On September 22, 2012, and at all times mentioned herein, Defendant, DAHLINGHAUS, was a duly authorized employee and/or agent of Defendant, MEDICAL CENTER, and was acting within the scope of his agency and employment.

14. On September 22, 2012, and at all times mentioned herein, Defendant, DAHLINGHAUS, was a duly authorized apparent agent of Defendant, MEDICAL CENTER, and was acting within the scope of his apparent agency.

15. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, was never informed that Defendant, DAHLINGHAUS was not an agent or employee of the MEDICAL CENTER.

16. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, neither knew nor should have known that Defendant, DAHLINGHAUS, was not an agent or employee of the MEDICAL CENTER.

17. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, reasonably relied upon Defendant, MEDICAL CENTER, to provide him with complete surgical care.

18. On September 22, 2012, and at all times mentioned herein, Defendant, NORTHWEST GENERAL SURGEONS, LTD., was an Illinois corporation providing medical care to patients.

19. On September 22, 2012, and at all times mentioned herein, Defendant, DAHLINGHAUS , was a duly authorized employee, and/or agent of Defendant, NORTHWEST GENERAL SURGEONS, LTD, and was acting within the scope of his agency and employment.

20. On September 22, 2012, and at all times mentioned herein, the unidentified staff nurse whose signature is circled on page 2 of the outpatient surgery nursing flowsheet attached hereto as Exhibit A (hereinafter "NURSE A"), was a duly authorized employee and/or agent of Defendant, MEDICAL CENTER, and was acting within the scope of her agency and employment.

21. On September 22, 2012, and at all times mentioned herein, NURSE A was an apparent agent of Defendant, MEDICAL CENTER, and was acting within the scope of her apparent agency.

22. On September 22, 2012, NURSE A performed a preoperative evaluation of Plaintiff, JOSEPH F. DIMARIA.

23. On September 22, 2012, and at all times mentioned herein, Defendant, PAVLOVIC, was a physician duly licensed to practice medicine, in the State of Illinois and was engaged in the practice of medicine, specializing in anesthesiology.

24. On September 22, 2012, and at all times mentioned herein, Defendant, PAVLOVIC, was a duly authorized employee and/or agent of PRESENCE HEALTH NETWORK, and was acting within the scope of her agency and employment.

25. On September 22, 2012, and at all times mentioned herein, Defendant, PAVLOVIC, was a duly authorized apparent agent of PRESENCE HEALTH NETWORK, and was acting within the scope of her agency.

26. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, was never informed that Defendant, PAVLOVIC, was not an agent or employee of PRESENCE HEALTH NETWORK.

27. On September 22, 2012, the Plaintiff, JOSEPH F. DIMARIA, neither knew nor should have known that Defendant, PAVLOVIC, was not an agent or employee of PRESENCE HEALTH NETWORK.

28. On September 22, 2012, the Plaintiff, JOSEPH F. DIMARIA, reasonably relied upon Defendant, PRESENCE HEALTH NETWORK, to provide him with complete surgical care, including but not limited to surgical support services such as anesthesiology.

29. On September 22, 2012, and at all times mentioned herein, Defendant, PAVLOVIC, was a duly authorized employee, and/or agent of Defendant, MEDICAL CENTER, and was acting within the scope of her agency and employment.

30. On September 22, 2012, and at all times mentioned herein, Defendant, PAVLOVIC, was a duly authorized apparent agent of Defendant, MEDICAL CENTER, and was acting within the scope of her apparent agency.

31. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, was never informed that Defendant, PAVLOVIC, was not an agent or employee of MEDICAL CENTER.

32. On September 22, 2012, the Plaintiff, JOSEPH F. DIMARIA, neither knew nor should have known that Defendant, PAVLOVIC, was not an agent or employee of MEDICAL CENTER.

33. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, reasonably relied upon Defendant, MEDICAL CENTER, to provide him with complete surgical care, including but not limited to surgical support services such as anesthesiology.

34. On September 22, 2012, and at all times mentioned herein, Defendant, O'TOOLE, was a duly licensed Certified Registered Nurse Anesthetist ("CRNA"), in the State of Illinois and was engaged in the practice of nurse anesthesia.

35. On September 22, 2012, and at all times mentioned herein, Defendant, O'TOOLE, was a duly authorized employee, and/or agent of PRESENCE HEALTH NETWORK, and was acting within the scope of her agency and employment.

36. On September 22, 2012, and at all times mentioned herein, Defendant, O'TOOLE, was a duly authorized apparent agent of PRESENCE HEALTH NETWORK, and was acting within the scope of her apparent agency.

37. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, was never informed that Defendant, O'TOOLE, was not an agent or employee of PRESENCE HEALTH NETWORK.

38. On September 22, 2012, the Plaintiff, JOSEPH F. DIMARIA, neither knew nor should have known that Defendant, O'TOOLE, was not an agent or employee of PRESENCE HEALTH NETWORK.

39. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, reasonably relied upon Defendant, PRESENCE HEALTH NETWORK, to provide him with complete surgical care, including but not limited to surgical support services such as anesthesiology.

40. On September 22, 2012, and at all times mentioned herein, Defendant, O'TOOLE, was a duly authorized employee, and/or agent of Defendant, MEDICAL CENTER, and was acting within the scope of her agency and employment.

41. On September 22, 2012, and at all times mentioned herein, Defendant, O'TOOLE, was a duly authorized apparent agent of Defendant, MEDICAL CENTER, and was acting within the scope of her agency.

42. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, was never informed that Defendant, O'TOOLE, was not an agent or employee of MEDICAL CENTER.

43. On September 22, 2012, the Plaintiff, JOSEPH F. DIMARIA, neither knew nor should have known that Defendant, O'TOOLE, was not an agent or employee of MEDICAL CENTER.

44. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, reasonably relied upon Defendant, MEDICAL CENTER, to provide him with complete surgical care, including but not limited to surgical support services such as nursing anesthesia.

45. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA, received surgical anesthesia services, including but not limited to a pre-anesthetic evaluation, from Defendant, PAVLOVIC, with the active aid and assistance of Defendant, O'TOOLE.

46. On September 22, 2012, and at all times mentioned herein, the unidentified scrub nurse whose signature is circled on page 2 of the perioperative record attached hereto as Exhibit

B (hereinafter "NURSE B"), was a duly authorized employee and/or agent of Defendant, MEDICAL CENTER, and was acting within the scope of her agency and employment.

47. On September 22, 2012, and at all times mentioned herein, NURSE B was an apparent agent of Defendant, MEDICAL CENTER, and was acting within the scope of her apparent agency.

48. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA was prepped for surgery by NURSE B.

49. On September 22, 2012, and at all times mentioned herein, the unidentified circulating nurse whose signature is circled on page 2 of the perioperative record attached hereto as Exhibit C (hereinafter "NURSE C"), was a duly authorized employee and/or agent of Defendant, MEDICAL CENTER, and was acting within the scope of her agency and employment.

50. On September 22, 2012, and at all times mentioned herein, NURSE C was an apparent agent of Defendant, MEDICAL CENTER, and was acting within the scope of her apparent agency.

51. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA was prepped for surgery by NURSE C.

52. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA's chest and neck were prepped for surgery using Chloraprep, an alcohol based skin preparation solution.

53. On September 22, 2012, Plaintiff, JOSEPH F. DIMARIA's surgical site was draped with surgical drapes.

54. On September 22, 2012, during surgery, Plaintiff, JOSEPH F. DIMARIA, was receiving oxygen by facemask.

55. On September 22, 2012, during surgery, an attempt was made by Defendant, DAHLINGHAUS, to design a pocket for a Groshong port-catheter using a rake retractor and a Bovie electrocautery device.

56. On September 22, 2012, during surgery, a flame ignited and burned the body of Plaintiff, JOSEPH F. DIMARIA.

57. On September 22, 2012, Defendant, MEDICAL CENTER, had the duty to act as a reasonably careful health care institution would under the same or similar circumstances.

58. On and before September 22, 2012, Defendant, MEDICAL CENTER, was negligent in the following ways:

- a) Failed to implement a surgical fire risk assessment protocol;
- b) Failed to enforce a surgical fire risk assessment protocol;
- c) Failed to incorporate a fire risk assessment into routine pre-surgical patient protocols;
- d) Failed to establish appropriate policies and procedures to reduce the associated risks of surgical fire;
- e) Failed to implement appropriate measures to reduce the risk of fires associated with the use of alcohol-based skin preparations in anesthetizing locations;
- f) Failed to enforce surgical fire risk reduction measures;
- g) Failed to implement a fire safety education program, specifically for operative fires;
- h) Failed to require that equipment for managing a fire be readily available in the presence of a fire triad - *i.e.* an oxidizer-enriched atmosphere, an ignition source and fuel.

59. On September 22, 2012, Defendant, DAHLINGHAUS, had the duty to possess and use the knowledge, skill, and care ordinarily used by a reasonably careful general surgeon in the same or similar circumstances.

60. On September 22, 2012, Defendant, DAHLINGHAUS, was professionally negligent in the following ways:

- a) Failed to perform a surgical fire risk assessment on Plaintiff, JOSEPH F. DIMARIA;
- b) Failed to recognize Plaintiff, JOSEPH F. DIMARIA's, high risk for surgical fire based on the presence of a fire triad – *i.e.* an ignition source in proximity to an oxidizer, and fuel;
- c) Failed to inspect Plaintiff, JOSEPH F. DIMARIA's, prepped surgical area to confirm drying of all skin preparations;
- d) Failed to take all necessary precautions to reduce the risk of surgical fire while utilizing the Bovie electorcautery device;
- e) Failed to ground the Bovie electorcautery device before activation; and
- f) Failed to moisten sponges and gauze used in proximity to the Bovie electrocautery device.

61. On September 22, 2012, Defendant, PAVLOVIC, had the duty to possess and use the knowledge, skill, and care ordinarily used by a reasonably careful anesthesiologist in the same or similar circumstances.

62. On September 22, 2012, Defendant, PAVLOVIC, was professionally negligent in the following ways:

- a) Failed to perform a surgical fire risk assessment on Plaintiff, JOSEPH F. DIMARIA;
- b) Failed to recognize Plaintiff, JOSEPH F. DIMARIA's, high risk for surgical fire based on the presence of a fire triad – *i.e.* an ignition source in proximity to an oxidizer, and fuel;
- c) Failed to inspect Plaintiff, JOSEPH F. DIMARIA's, prepped surgical area to confirm drying of all skin prepping solutions before draping;
- d) Failed to configure surgical drapes to prevent oxygen from accumulating under the drapes or from flowing into the surgical site;

- e) Failed to take precautions against oxygen buildup under the surgical drapes, including but not limited to insufflating with medical air or scavenging the surgical field with suction;
- f) Failed to stop or reduce the delivery of supplemental oxygen to the minimum required to avoid hypoxia before the Bovie electrocautery device was activated;
- g) Failed to wait a few minutes between decreasing the flow of supplemental oxygen before approving the activation of the Bovie electrocautery device; and
- h) Failed to use a sealed gas delivery device for Plaintiff, JOSEPH F. DIMARIA, based on his increased risk for surgical fire.

63. On September 22, 2012, Defendant, O'TOOLE, had the duty to possess and use the knowledge, skill, and care ordinarily used by a reasonably careful CRNA in the same or similar circumstances.

64. On September 22, 2012, Defendant, O'TOOLE, was professionally negligent in the following ways:

- a) Failed to perform a surgical fire risk assessment on Plaintiff, JOSEPH F. DIMARIA;
- b) Failed to recognize Plaintiff, JOSEPH F. DIMARIA's, high risk for surgical fire based on the presence of a fire triad – *i.e.* an ignition source in proximity to an oxidizer, and fuel;
- c) Failed to inspect Plaintiff, JOSEPH F. DIMARIA's, prepped surgical area to confirm drying of all skin prepping solutions before draping;
- d) Failed to configure surgical drapes to prevent oxygen from accumulating under the drapes or from flowing into the surgical site;
- e) Failed to take precautions against oxygen buildup under the surgical drapes, including but not limited to insufflating with medical air or scavenging the surgical field with suction;
- f) Failed to stop or reduce the delivery of supplemental oxygen to the minimum required to avoid hypoxia before the Bovie electrocautery device was activated;

- g) Failed to wait a few minutes between decreasing the flow of supplemental oxygen before approving the activation of the Bovie electrocautery device; and
- h) Failed to use a sealed gas delivery device for Plaintiff, JOSEPH F. DIMARIA, based on his increased risk for surgical fire.

65. On September 22, 2012, NURSE A, NURSE B, and NURSE C, and each of them, had the duty to possess and use the knowledge, skill, and care ordinarily used by reasonably careful nurses in the same or similar circumstances.

66. On September 22, 2012, NURSE A, NURSE B, and NURSE C, and each of them, were professionally negligent in the following ways:

- a) Failed to perform a surgical fire risk assessment;
- b) Failed to recognize Plaintiff, JOSEPH F. DIMARIA's, high risk for surgical fire based on the presence of a fire triad – *i.e.* an ignition source in proximity to an oxidizer, and fuel;
- c) Failed carry out effective fire risk reduction measure when using alcohol-based skin preparations in anesthetizing locations;
- d) Negligently applied alcohol-based skin preparations in anesthetizing locations;
- e) Negligently wicked alcohol-based skin preparations into Plaintiff, JOSEPH F. DIMARIA's, hair;
- f) Failed to inspect the prepped surgical area to confirm drying of all skin preparations before draping;
- g) Negligently draped Plaintiff, JOSEPH F. DIMARIA, before all flammable skin preparations were completely dry; and
- h) Failed to configure surgical drapes to prevent oxygen from accumulating under the drapes or from flowing into the surgical site.

67. As a direct and proximate result of the aforesaid negligent acts or omissions, Plaintiff, JOSEPH F. DIMARIA, sustained injuries of a personal and pecuniary nature, including burns and scarring on his face, neck and chest.

68. Attached to this Complaint at Law is the affidavit of one of Plaintiff's attorneys and the written physicians' reports required by 735 ILCS 5/2-622.

WHEREFORE, Plaintiff, JOSEPH F. DIMARIA, demands judgment against Defendants, PRESENCE HEALTH NETWORK, a corporation, PRESENCE RESURRECTION MEDICAL CENTER, a corporation, DAN DAHLINGHAUS, M.D., NORTHWEST GENERAL SURGEONS, LTD, a corporation, BRANKA PAVLOVIC, M.D., JENNIFER O'TOOLE, CRNA, UNIDENTIFIED NURSE A, UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C, and each of them, in an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

COUNT II - LOSS OF CONSORTIUM / MEDICAL NEGLIGENCE

Plaintiff, DONNA DIMARIA, by her attorneys, CLIFFORD LAW OFFICES, P.C., complaining of Defendants, PRESENCE HEALTH NETWORK, a corporation, PRESENCE RESURRECTION MEDICAL CENTER, a corporation (hereinafter "MEDICAL CENTER") DAN DAHLINGHAUS, M.D. (hereinafter "DAHLINGHAUS"), NORTHWEST GENERAL SURGEONS, LTD, a corporation, BRANKA PAVLOVIC, M.D. (hereinafter "PAVLOVIC"), JENNIFER O'TOOLE, CRNA (hereinafter "O'TOOLE"), UNIDENTIFIED NURSE A, UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C, and each of them, states as follows:

1-67. Plaintiff, DONNA DIMARIA, re-asserts and re-alleges paragraphs 1-67 of Count I as if fully set forth herein.

68. On September 22, 2012, Plaintiff, DONNA DIMARIA, was the wedded wife of Plaintiff, JOSEPH F. DIMARIA, and as a direct and proximate result of the injuries sustained by the Plaintiff, JOSEPH F. DIMARIA, Plaintiff, DONNA DIMARIA, sustained injuries of a

personal and pecuniary nature, including, but not limited to, loss of society, companionship, affection and consortium.

69. Attached to this Complaint at Law is the affidavit of one of Plaintiffs' attorneys and the written physicians' reports required by 735 ILCS 5/2-622 of the Illinois Code of Civil Procedure.

WHEREFORE, Plaintiff, DONNA DIMARIA, demands judgment against Defendants, PRESENCE HEALTH NETWORK, a corporation, PRESENCE RESURRECTION MEDICAL CENTER, a corporation, DAN DAHLINGHAUS, M.D., NORTHWEST GENERAL SURGEONS, LTD, a corporation, BRANKA PAVLOVIC, M.D., JENNIFER O'TOOLE, CRNA, UNIDENTIFIED NURSE A, UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C, and each of them, in an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

COUNT III – RES IPSA LOQUITUR

Plaintiff, JOSEPH F. DIMARIA, by his attorneys, CLIFFORD LAW OFFICES, P.C., complaining of Defendants, PRESENCE HEALTH NETWORK, a corporation, PRESENCE RESURRECTION MEDICAL CENTER, a corporation (hereinafter "MEDICAL CENTER") DAN DAHLINGHAUS, M.D. (hereinafter "DAHLINGHAUS"), NORTHWEST GENERAL SURGEONS, LTD, a corporation, BRANKA PAVLOVIC, M.D. (hereinafter "PAVLOVIC"), JENNIFER O'TOOLE, CRNA (hereinafter "O'TOOLE"), UNIDENTIFIED NURSE A, UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C, and each of them, states as follows:

1- 66. Plaintiff, JOSEPH F. DIMARIA, re-asserts and re-alleges paragraphs 1- 66 of Count I as if fully set forth herein.

67. On September 22, 2012, during the aforementioned surgical placement of a Groshong port-catheter, Plaintiff, JOSEPH F. DIMARIA, was under the exclusive management, direction and control of the Defendants, and each of them.

68. On September 22, 2012, during the aforementioned surgical placement of a Groshong port-catheter, JOSEPH DIMARIA's surgical site, the Cholraprep, the surgical drapes, the oxygen face mask, the rake retractor and the Bovie electrocautery device were under the exclusive management and control of the Defendants.

69. On September 22, 2012, during the aforesaid surgical placement of a Groshong port-catheter, while under the care and treatment of the Defendants, JOSEPH F. DIMARIA, sustained injuries due to burns.

70. In the normal or ordinary course of events, the type of burn injuries sustained by Plaintiff, JOSEPH F. DIMARIA, on September 22, 2012, would not have occurred during the surgical placement of a Groshong port-catheter if the Defendants had used a reasonable professional standard of care.

71. Attached to this Complaint at Law is the affidavit of one of Plaintiff's attorneys and the written physicians' reports required by 735 ILCS 5/2-622 (c).

WHEREFORE, Plaintiff, JOSEPH F. DIMARIA, demands judgment against Defendants, PRESENCE HEALTH NETWORK, a corporation, PRESENCE RESURRECTION MEDICAL CENTER, a corporation, DAN DAHLINGHAUS, M.D., NORTHWEST GENERAL SURGEONS, LTD, a corporation, BRANKA PAVLOVIC, M.D., JENNIFER O'TOOLE, CRNA, UNIDENTIFIED NURSE A, UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C, and each of them, in an amount in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

COUNT IV - LOSS OF CONSORTIUM/ RES IPSA LOQUITUR

Plaintiff, DONNA DIMARIA, by her attorneys, CLIFFORD LAW OFFICES, P.C., complaining of Defendants, PRESENCE HEALTH NETWORK, a corporation, PRESENCE RESURRECTION MEDICAL CENTER, a corporation (hereinafter "MEDICAL CENTER") DAN DAHLINGHAUS, M.D. (hereinafter "DAHLINGHAUS"), NORTHWEST GENERAL SURGEONS, LTD, a corporation, BRANKA PAVLOVIC, M.D. (hereinafter "PAVLOVIC"), JENNIFER O'TOOLE, CRNA (hereinafter "O'TOOLE"), UNIDENTIFIED NURSE A, UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C, and each of them, states as follows:

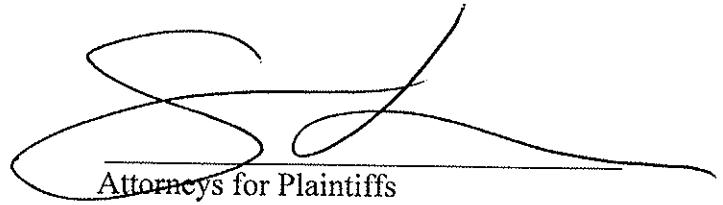
1-70. Plaintiff, DONNA DIMARIA, re-asserts and re-alleges paragraphs 1-70 of Count III as if fully set forth herein.

71. On September 22, 2012, Plaintiff, DONNA DIMARIA, was the wedded wife of Plaintiff, JOSEPH F. DIMARIA, and as a direct and proximate result of the injuries sustained by the Plaintiff, JOSEPH F. DIMARIA, Plaintiff, DONNA DIMARIA, sustained injuries of a personal and pecuniary nature, including, but not limited to, loss of society, companionship, affection and consortium.

72. Attached to this Complaint at Law is the affidavit of one of Plaintiffs' attorneys and the written physicians' reports required by 735 ILCS 5/2-622(c) of the Illinois Code of Civil Procedure.

WHEREFORE, Plaintiff, DONNA DIMARIA, demands judgment against Defendants, PRESENCE HEALTH NETWORK, a corporation, PRESENCE RESURRECTION MEDICAL CENTER, a corporation, DAN DAHLINGHAUS, M.D., NORTHWEST GENERAL SURGEONS, LTD, a corporation, BRANKA PAVLOVIC, M.D., JENNIFER O'TOOLE,

CRNA, UNIDENTIFIED NURSE A, UNIDENTIFIED NURSE B, and UNIDENTIFIED
NURSE C, and each of them, in an amount in excess of FIFTY THOUSAND DOLLARS
(\$50,000.00).



Attorneys for Plaintiffs

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Firm I.D. No. 32640

PRE-OPERATIVE

DATE/TIME OF ARRIVAL: 10/22/12 HEIGHT: 5 WEIGHT: 60 (Kgms)
 VITAL SIGNS: B/P: 142/73 P: 94 R: 20 T: 97.3 O2 SAT: 94
 PAIN ASSESSMENT: DO YOU HAVE PAIN? YES NO RATING: 0 / 10 PTS GOAL: 0 / 10

LOCATION: _____ PRECIPITATING FACTORS: _____
 DURATION: _____ ALLEVIATING FACTORS: _____

CULTURAL: _____ SPIRITUAL: _____ CONTRIBUTING FACTORS: _____

CIGARETTE USE PAST 12 MONTHS SMOKING CESSATION ADVICE / INFORMATION GIVEN

READINESS / MOTIVATED TO LEARN YES NO UNDETERMINED

Language spoken: English Language read: _____ Interpreter name: _____

Learning style: Verbal Instructions Written Instructions Demonstration Other: _____

BARRIERS	HEARING	VISION	PHYSICAL	COGNITIVE	CULTURAL	RELIGION	OTHER
PATIENT							
FAMILY							

NURSING DIAGNOSIS	GOAL	INTERVENTION	DATE RESOLVED
<input checked="" type="checkbox"/> Knowledge deficit	Decrease anxiety	Pre-op teaching	<u>9/22/12</u>

PRE-OP CHECKLIST: A checkmark reflects this was done for the patient.

<input checked="" type="checkbox"/> ID BAND CORRECT	<input checked="" type="checkbox"/> VOIDED: <u>07:00</u> TIME: <u>09:16</u>	<input type="checkbox"/> URINE CATH
<input checked="" type="checkbox"/> ALLERGY BAND	<input type="checkbox"/> POINT OF CARE BLOOD SUGAR TIME: <u>09:40</u> RESULT: <u>105</u>	
<input type="checkbox"/> SURGERY / PROCEDURE PERMIT SIGNED	<input type="checkbox"/> DENTURES & PARTIALS REMOVED	
<input type="checkbox"/> HISTORY & PHYSICAL ON CHART	<input type="checkbox"/> PERM. BRIDGE CAPPED TEETH <input type="checkbox"/> LOOSE/CHIPPED TEETH	
<input type="checkbox"/> OR SITE IDENTIFIED BY PATIENT & MARKED	<input type="checkbox"/> GLASSES REMOVED, CONTACTS REMOVED <input type="checkbox"/> R <input type="checkbox"/> L	
<input checked="" type="checkbox"/> NPO SINCE: <u>Midnight</u>	<input type="checkbox"/> HEARING AID WITH PATIENT <input type="checkbox"/> R <input type="checkbox"/> L	
<input type="checkbox"/> PREVIOUS ADMISSION CHART TO OR	<input type="checkbox"/> ALL JEWELRY, HAIRPINS, PIERCINGS, RINGS REMOVED / TAPED	
<input type="checkbox"/> O2-CANNULA / MASK LITERS	<input type="checkbox"/> PROSTHESIS <input type="checkbox"/> On <input type="checkbox"/> Off	
<input checked="" type="checkbox"/> HOSPITAL GOWN ONLY	<input type="checkbox"/> TED STOCKINGS ON <input type="checkbox"/> TED STOCKINGS TO OR / HOLDING	
<input checked="" type="checkbox"/> FAMILY IN WAITING ROOM	<input type="checkbox"/> SCD BOOTS ON <input type="checkbox"/> SCD BOOTS TO OR/HOLDING	
<input checked="" type="checkbox"/> PATIENT LABELS WITH CHART	OTHER: _____	

MEDS TAKEN AFTER MIDNIGHT:

Aspirin, Simbecta, Motrin

PRE-OP MEDICATIONS GIVEN	DOSE	ROUTE	SITE	TIMES	MEDICATION INSTRUCTIONS	RN SIGNATURE
					<input type="checkbox"/> Given <input type="checkbox"/> Verbal Understanding	
					<input type="checkbox"/> Given <input type="checkbox"/> Verbal Understanding	
					<input type="checkbox"/> Given <input type="checkbox"/> Verbal Understanding	
					<input type="checkbox"/> Given <input type="checkbox"/> Verbal Understanding	

DATE / TIME	DEVICE	SITE	IV SOLUTION	RATE	RN SIGNATURE

PATIENT DISPOSITION: OR PACU GI CATH LAB RADIOLOGY TIME TO OR / PROCEDURE: _____

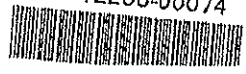
TRANSPORT MODE: CART WHEELCHAIR TRANSPORTER NAME: _____

RN Signature: [Signature] Date/Time: 9. 22. 12



OUTPATIENT SURGERY NURSING FLOWSHEET

DIMARIA, JOSEPH F 73Y
 DOB/Sex: _____ M Admit Dt: 09/22/12
 Attending: DAHLINGHAUS, DANIEL L
 Acct#: 12266-00074 Facility: RMC
 Unit#: _____



PERI-OPERATIVE RECORD

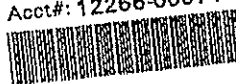
D X P R O C E D U R E	Procedure: <u>ATTEMPTED INSERTION OF GRAPHS, ENDED UP PULLING THE WIRE OUT AND CLOSE IT UP WITH STITCH</u>	
	Pre-Op Diagnosis: <u>Venous Pouch Esophageal Cancer</u> Post-Op Diagnosis: <u>same</u>	
P E R S O N N E L	Surgeon: <u>Dr Dahlinghaus</u> Assistants: <input checked="" type="checkbox"/> 1st <u>HU</u> <input type="checkbox"/> 2nd <input type="checkbox"/> 3rd	
	Scrub: <u>Cong</u> <input type="checkbox"/> Relieved By: _____ At: _____ To: _____ Circulator: <u>Melba</u> <input type="checkbox"/> Relieved By: _____ At: _____ To: _____	
I N T R A - O P E R A T I V E	Patient Monitoring: EKG Leads - <input type="checkbox"/> Back Pad - <input type="checkbox"/> Safety Strap - = Grounding Pad - + Tourniquet - Δ Pulse Ox - P BP Cuff - C Defib Pads - D	
	Equipment: <u>4017 96951</u> <input checked="" type="checkbox"/> ESU #: _____ Cut: <u>20</u> Coag: <u>20</u> Bipolar: _____ <input type="checkbox"/> ESU #: _____ Cut: _____ Coag: _____ Bipolar: _____ <input checked="" type="checkbox"/> Warming Unit Type: <u>Warm blanket</u> # Temp: _____ <input type="checkbox"/> Warming Unit Type: _____ # Temp: _____ <input type="checkbox"/> Fluid Warming Type: _____ # _____ <input type="checkbox"/> Laser Type: _____ <input type="checkbox"/> Cell Saver #: _____ <input type="checkbox"/> TEDS <input type="checkbox"/> SCDs <input type="checkbox"/> Plexipulse <input type="checkbox"/> Tourniquet #: _____ Place By: _____ <input type="checkbox"/> Site: _____ <input type="checkbox"/> Setting: _____ Time _____ Time ↓ _____ Total: _____ <input type="checkbox"/> Site: _____ <input type="checkbox"/> Setting: _____ Time _____ Time ↓ _____ Total: _____	
I N T R A - O P E R A T I V E	Positioning: <input checked="" type="checkbox"/> Supine <input type="checkbox"/> Prone <input type="checkbox"/> Wilson Frame <input type="checkbox"/> Andrew Table <input type="checkbox"/> Jackson Table <input type="checkbox"/> Other: _____ <input type="checkbox"/> Lithotomy <input type="checkbox"/> Candy Cane <input type="checkbox"/> Allen <input type="checkbox"/> GU <input type="checkbox"/> Yellow Flins <input type="checkbox"/> Lateral <input type="checkbox"/> Left Side Down <input type="checkbox"/> Right Side Down <input type="checkbox"/> Bean Bag <input type="checkbox"/> Montreal <input type="checkbox"/> Other: _____ <input type="checkbox"/> Sitting <input type="checkbox"/> Shoulder Table <input type="checkbox"/> Other: _____ <input type="checkbox"/> Jackknife <input type="checkbox"/> Traction: _____ On: _____ Off: _____ Total: _____ <input type="checkbox"/> Other: _____	
	Hair Removal: <input checked="" type="checkbox"/> NA <input type="checkbox"/> Wet/Dry Clip Skin Prep: <input type="checkbox"/> None <input type="checkbox"/> Dura Prep <input type="checkbox"/> Betadine Wash <input type="checkbox"/> Betadine Paint <input type="checkbox"/> Lashes Cut <input type="checkbox"/> Other: <u>Chlorhex</u> (10%) <input checked="" type="checkbox"/> Area Prepped: <u>Chest</u> By: <u>DAH</u> Catheter: <input type="checkbox"/> None <input type="checkbox"/> Straight <input type="checkbox"/> Foley By: _____ Urine Color: _____ Irrigation: <input type="checkbox"/> None <input checked="" type="checkbox"/> Type <u>0.9 NaCl</u> <input type="checkbox"/> With _____ <input type="checkbox"/> Type _____ <input type="checkbox"/> With _____ <input type="checkbox"/> Type _____ <input type="checkbox"/> With _____ Specimens: <input checked="" type="checkbox"/> None <input type="checkbox"/> Pathology _____ <input type="checkbox"/> Micro _____ <input type="checkbox"/> Cytology _____ <input type="checkbox"/> Misc. _____ <input type="checkbox"/> X-Ray <input checked="" type="checkbox"/> Fluoro Time <u>0.8 ses</u> <input type="checkbox"/> Pt. Shielded <input type="checkbox"/> See Implant Record	

RESURRECTION MEDICAL CENTER
Chicago, Illinois 60631

PERI-OPERATIVE RECORD

WHITE COPY - Chart YELLOW COPY - Medical Records
 PINK COPY - Nursing GOLDENROD - Physician
 PAGE 2 OF 3 S-021 5/09

73Y
 DIMARIA, JOSEPH F M Admit Dt: 09/22/12
 DOB/Sex: _____
 Attending: DAHLINGHAUS, DANIEL L Facility: RMC
 Acct#: 12266-00074 Unit#: _____
 0000047962



PERI-OPERATIVE RECORD

D X PROCEDURE

Procedure: ATTEMPTED INSERTION OF GRAPHS, ENDED UP PULLING THE WIRE OUT AND CLOSE IT UP WITH STITCH

Pre-Op Diagnosis: Venous Pox (Esophageal Cancer)

Post-Op Diagnosis: same

PERSONNEL

Surgeon: Dr Dahlinghaus Assistants: 1st MU 2nd 3rd

Others: _____

Scrub: Care Relieved By: _____ At: _____ To: _____

Circulator: Porckner Relieved By: _____ At: _____ To: _____

INTRA-OPERATIVE

Patient Monitoring:

EKG Leads -

Back Pad -

Safety Strap - =

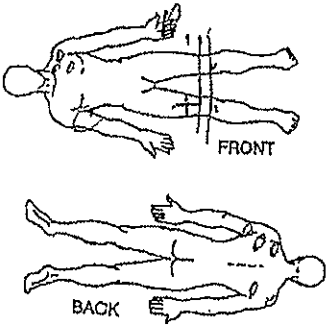
Grounding Pad - +

Tourniquet -

Pulse Ox - P

BP Cuff - C

Defib Pads - D



Equipment: 4017 36054

ESU #: _____ Cut: 20 Coag: 20 Bipolar: _____

ESU #: _____ Cut: _____ Coag: _____ Bipolar: _____

Warming Unit Type: W arm # Temp: 37

Warming Unit Type: _____ #: _____ # Temp: _____

Fluid Warming Type: _____ #: _____

Laser Type: _____ Cell Saver #: _____

TEDS SCDs Plexipulse

Tourniquet #: _____ Place By: _____

Site: _____ Setting: _____

Time _____ Time ↓ _____ Total: _____

Site: _____ Setting: _____

Time _____ Time ↓ _____ Total: _____

INTRA-OPERATIVE

Positioning:

Supine

Prone Wilson Frame Andrew Table

Jackson Table Other: _____

Lithotomy Candy Cane Allen GU

Yellow Flins

Lateral Left Side Down Right Side Down

Bean Bag Montreal Other: _____

Sitting Shoulder Table Other: _____

Jackknife

Traction: _____

On: _____ Off: _____ Total: _____

Other: _____

Limbs:	Left	Right
Arms	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/> At Side	<input type="checkbox"/>
	<input type="checkbox"/> Armboard	<input type="checkbox"/>
	<input type="checkbox"/> Sled	<input type="checkbox"/>
	<input type="checkbox"/> Across Chest	<input type="checkbox"/>
Legs	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/> Arthroscopy Holder	<input type="checkbox"/>
	<input type="checkbox"/> Well Leg Holder	<input type="checkbox"/>

Hair Removal: NA Wet/Dry Clip

Skin Prep: None Dura Prep

Betadine Wash Betadine Paint Lashes Cut

Other: Chlorhexidine (rock)

Area Prepped: to chest By: Dr Dahlinghaus

Catheter: None Straight Foley

By: _____ Urine Color: _____

Irrigation: None

Type: 0.9 NaCl With _____

Type: _____ With _____

Type: _____ With _____

Specimens: None

Pathology _____

Micro _____

Cytology _____ Misc. _____

X-Ray Fluoro Time: 0.8 ses Pt. Shielded

See Implant Record

RESURRECTION MEDICAL CENTER
Chicago, Illinois 60631

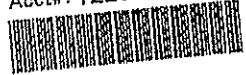
PERI-OPERATIVE RECORD

WHITE COPY - Chart
PINK COPY - Nursing
PAGE 2 OF 3

YELLOW COPY - Medical Records
GOLDENROD - Physician
S-021 5/09

73Y

DIMARIA, JOSEPH F
DOB/Sex: _____ M Admit Dt: 09/22/12
Attending: DAHLINGHAUS, DANIEL L
Acet#: 12266-00074 Facility: RMC
Unit#: _____
0000047962




KAH/SAC/sfk

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOSEPH F. DIMARIA and DONNA DIMARIA,)
)
Plaintiffs,)

v.)

No.

PRESENCE HEALTH NETWORK a corporation;)
PRESENCE RESURRECTION MEDICAL)
CENTER, a corporation;)
DANIEL L. DAHLINGHAUS, M.D.;)
NORTHWEST GENERAL SURGEONS, LTD.,)
a corporation;)
BRANKA PAVLOVIC, M.D.;)
JENNIFER O'TOOLE, CRNA;)
UNIDENTIFIED NURSE A;)
UNIDENTIFIED NURSE B; and)
UNIDENTIFIED NURSE C.)
)
Defendants.)

***PLAINTIFFS DEMAND
A TRIAL BY JURY***

PLAINTIFFS' ATTORNEY AFFIDAVIT PURSUANT TO 735 ILCS 5/2-622(a)(1) & (c)

SARAH F. KING states as follows:

1. I am one of the attorneys with responsibility for this matter on behalf of the
Plaintiffs.

2. I have consulted and reviewed the facts of this case with health professionals
whom I reasonably believe are: (i) knowledgeable in the relevant issues involved in this
particular action; (ii) practice or have practiced within the last six (6) years or teach or have
taught within the last six (6) years in the same area of health care of medicine that is at issue in
this particular action; and (iii) are qualified by experience or demonstrated competence in the
subject of this case.

3. The reviewing health professionals have determined in two written reports after review of the medical records and other relevant material involved in this particular action that there is a reasonable and meritorious cause for the filing of this action against PRESENCE RESURRECTION MEDICAL CENTER, DAN DAHLINGHAUS, M.D., BRANKA PAVLOVIC, M.D., JENNIFER O'TOOLE, CRNA, UNIDENTIFIED NURSE A, UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C.

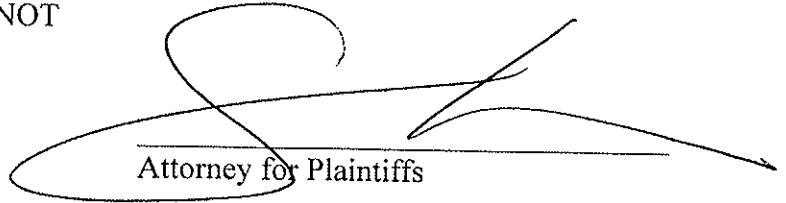
4. In addition, I certify that it is the opinion of the reviewing health professionals after review of the medical records and other relevant material involved in this particular action that negligence occurred in the course of the Defendants' treatment of Joseph DiMaria. The reviewing health professionals have determined that during the surgical catheter insertion procedure at issue, the surgical site, the Cholraprep, the surgical drapes, the oxygen face mask, the rake retractor and the Bovie electrocautery device were under the exclusive management and control of the Defendants. During the aforementioned procedure, Plaintiff, Joseph DiMaria, sustained severe burns on his face, chest and neck. The reviewing health professionals have concluded that the severe injuries sustained by Plaintiff, Joseph DiMaria, would not ordinarily have occurred in the absence of negligence. Thus, I have concluded on the basis of the reviewing health professionals' reviews and consults, that the Plaintiff will rely, in part, on the doctrine of Res Ipsa Loquitur, as defined by 735 ILCS 5/2-1113 of this code.

5. I have concluded on the basis of the reviewing health professional's review and consultation that there is a reasonable and meritorious cause for filing of this action against PRESENCE HEALTH NETWORK, PRESENCE RESURRECTION MEDICAL CENTER, DAN DAHLINGHAUS, M.D., NORTHWEST GENERAL SURGEONS, LTD, BRANKA PAVLOVIC, M.D., JENNIFER O'TOOLE, CRNA, UNIDENTIFIED NURSE A,

UNIDENTIFIED NURSE B, and UNIDENTIFIED NURSE C.

6. A copy of the written reports, clearly identifying the plaintiff and the reasons for the reviewing health professionals' determinations that a reasonable and meritorious cause exists for the filing of this case are attached.

FURTHER AFFIANT SAYETH NOT



Attorney for Plaintiffs

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that I verily believe the same to be true.

Keith A. Hebeisen
Susan A. Capra
Sarah F. King
Clifford Law Offices, P.C.
120 North LaSalle Street, 31st Floor
Chicago, Illinois 60602
(312) 899-9090
Firm ID. No. 32640

March 22, 2013

Sarah F. King
Clifford Law Offices, P.C.
120 North LaSalle Street
Suite 3200
Chicago, Illinois 60602

Re: Joseph DiMaria v. Resurrection Medical Center, et al.
File No. 24905

Dear Ms. King,

I am a physician duly licensed to practice medicine in all of its branches. I am board certified in anesthesiology. I have practiced within the last six years in the same area of medicine that is at issue in this case and I am qualified by experience and demonstrated competence in the subject matter of this case.

I have reviewed the medical records pertaining to Joseph DiMaria, including hospital records from Resurrection Medical Center. I express the opinions stated herein to a reasonable degree of medical certainty based upon my training, experience and my review of the aforesaid records.

In September 2012, Joseph DiMaria was diagnosed with esophageal cancer. Chemotherapy was recommended.

On September 22, 2012, Joseph presented at Resurrection Health Center for the surgical insertion of a Groshong port-catheter in his anterior right chest by Daniel Dahlinghaus, M.D. A Resurrection staff nurse performed Joseph's preoperative evaluation.

At 10:20 am, Joseph's pre-anesthetic evaluation was performed by attending anesthesiologist, Branka Pavlovic, M.D. with the active aid and assistance of Jennifer O'Toole, CRNA.

At 10:30 am, Joseph was taken to the operating room and placed under anesthesia by Dr. Pavlovic, with the active aid and assistance of Jennifer O'Toole, CRNA.

At 10:45 am Joseph's surgical site was prepped by a Resurrection scrub nurse and circulating nurse. Chloraprep, an alcohol based skin preparation solution, was applied to Joseph's chest and neck. The wound was draped and the procedure began.

Shortly thereafter, Dr. Dahlinghaus attempted to design a pocket for the Groshong port-catheter using a rake retractor and a Bovie electrocautery device. At that time, Joseph's oxygen saturations were 99% and he was receiving 10 lpm of oxygen via face mask. When the Bovie

electrocautery was activated, a flame ignited and a massive fire broke out. Flames quickly extended up and over Joseph's neck, chest, face and head, engulfing his drapes and hair.

Dr. Dahlinghaus attempted to physically put out the fire and called for water. Joseph's engulfed drapes were thrown to the floor with flames still present. When water arrived it was used to douse the fire. Joseph's oxygen was disconnected and he was intubated to protect his airway.

As a result of the fire, Joseph's anterior face and neck were markedly burned with soot remnants and blistering skin present. The port placement was abandoned and Joseph was admitted to the intensive care unit. Once stabilized, Joseph was transferred and admitted to the Loyola University of Chicago burn unit.

Due to the severity of his burns, Joseph was not well enough to begin chemotherapy and radiation until November 12, 2012. A Goshong port-catheter was placed in Joseph's left arm at Lutheran General Hospital. The port could not be placed in Joseph's chest due to extensive burning and scarring which increased his risk of infection.

On, September 22, 2012, during the aforementioned surgical catheter insertion procedure, the surgical site, the Chloraprep, the surgical drapes, the oxygen face mask, the rake retractor and the Bovie electrocautery device were under the exclusive management and control of Resurrection Medical Center, the staff nurse who performed the pre-operative evaluation, the scrub nurse, the circulating nurse, Daniel Dahlinghaus, M.D., Jennifer O'Toole, CRNA Branka Pavlovic, M.D. During the aforementioned procedure, Joseph DiMaria sustained severe burns on his face, chest and neck.

The severe injuries sustained by Joseph DiMaria would not ordinarily have occurred in the absence of negligence.

On September 22, 2012, Branka Pavlovic, M.D. and Jennifer O'Toole, CRNA, were negligent in the following ways:

The professional negligence of Branka Pavlovic, M.D.:

- a. Failed to perform a surgical fire risk assessment on Joseph DiMaria;
- b. Failed to recognize Joseph DiMaria's high risk for surgical fire based on the presence of a fire triad – i.e. an ignition source in proximity to an oxidizer, and fuel;
- c. Failed to inspect the prepped surgical area to confirm drying of all skin prepping solutions before draping;
- d. Failed to configure surgical drapes to prevent oxygen from accumulating under the drapes or from flowing into the surgical site;
- e. Failed to take precautions against oxygen buildup under the surgical drapes, including but not limited to insufflating with medical air or scavenging the surgical field with suction;

- f. Failed to stop or reduce the delivery of supplemental oxygen to the minimum required to avoid hypoxia before the Bovie electrocautery device was activated;
- g. Failed to wait a few minutes between decreasing the flow of supplemental oxygen before approving the activation of the Bovie electrocautery device; and
- h. Failed to use a sealed gas delivery device for John DiMaria based on his increased risk for surgical fire.

The professional negligence of Jennifer O'Toole, CRNA:

- a. Failed to perform a surgical fire risk assessment on Joseph DiMaria;
- b. Failed to recognize Joseph DiMaria's high risk for surgical fire based on the presence of a fire triad – *i.e.* an ignition source in proximity to an oxidizer, and fuel;
- c. Failed to inspect the prepped surgical area to confirm drying of all skin prepping solutions before draping;
- d. Failed to configure surgical drapes to prevent oxygen from accumulating under the drapes or from flowing into the surgical site;
- e. Failed to take precautions against oxygen buildup under the surgical drapes, including but not limited to insufflating with medical air or scavenging the surgical field with suction;
- f. Failed to stop or reduce the delivery of supplemental oxygen to the minimum required to avoid hypoxia before the Bovie electrocautery device was activated;
- g. Failed to wait a few minutes between decreasing the flow of supplemental oxygen before approving the activation of the Bovie electrocautery device; and
- h. Failed to use a sealed gas delivery device for John DiMaria based on his increased risk for surgical fire.

My opinion is that the aforesaid negligent acts or omissions were a proximate cause of Joseph Di Maria's severe injuries. My opinions are subject to modification upon review of additional information.

Very Truly Yours,

February 11, 2013

Sarah F. King
Clifford Law Offices, P.C.
120 North LaSalle Street
Suite 3200
Chicago, Illinois 60602

Re: *Joseph DiMaria v. Resurrection Medical Center, et al.*
File No. 24905

Dear Ms. King,

I am a physician duly licensed to practice medicine in all of its branches, specializing in and board certified in general surgery. I am knowledgeable in the relevant issues involved in this particular matter. I have practiced within the last six years in the same area of medicine that is at issue in this case and I am qualified by experience and demonstrated competence in the subject matter of this case.

I have reviewed the medical records pertaining to Joseph DiMaria, including hospital records from Resurrection Medical Center. I express the opinions stated herein to a reasonable degree of medical certainty based upon my training, experience and my review of the aforesaid records.

In September 2012, Joseph DiMaria was diagnosed with esophageal cancer. Chemotherapy was recommended.

On September 22, 2012, Joseph presented at Resurrection Health Center for the surgical insertion of a Groshong port-catheter in his anterior right chest by Daniel Dahlinghaus, M.D. A Resurrection staff nurse identified on page 2 of the outpatient surgery nursing flowsheet performed Joseph's preoperative evaluation.

At 10:20 am, Joseph's pre-anesthetic evaluation was performed by attending anesthesiologist, Branka Pavlovic, M.D. with the active aide and assistance of Jennifer O'Toole, CRNA.

At 10:30 am, Joseph was taken to the operating room and placed under anesthesia.

At 10:45 am the Resurrection scrub nurse and circulating nurse identified on page 2 of the perioperative record prepped Joseph's surgical site. The circulating nurse applied Chloraprep, an alcohol based skin preparation solution, to Joseph's chest and neck. The wound was draped and the procedure began.

Shortly thereafter, Dr. Dahlinghaus attempted to design a pocket for the Groshong port-catheter using a rake retractor and a Bovie electrocautery device. At that time, Joseph's oxygen saturations were 99% and he was receiving 10 lpm of oxygen via face mask. When the Bovie electrocautery was activated a flame ignited and a massive fire broke out. Flames quickly extended up and over Joseph's neck, chest, face and head engulfing his drapes and hair.

Dr. Dahlinghaus attempted to physically pat out the fire and called for water. Joseph's engulfed drapes were thrown to the floor with flames still present. When water arrived it was used to douse the fire. Joseph's oxygen was disconnected and he was intubated to protect his airway.

As a result of the fire, Joseph's anterior face and neck were markedly burned with soot remnants and blistering skin present. The port placement was abandoned and Joseph was admitted intensive care unit. Once stabilized, Joseph was transferred and admitted to the Loyola University of Chicago burn unit.

Due to the severity of his burns, Joseph was not well enough to begin chemotherapy and radiation until November 12, 2012. A Groshong port-catheter was placed in Joseph's left arm at Lutheran General Hospital. The port could not be placed in Joseph's chest due to extensive burning and scarring which increased his risk of infection.

On, September 22, 2012, during the aforementioned surgical catheter insertion procedure the surgical site, the Cholraprep, the surgical drapes, the oxygen face mask, the rake retractor and the Bovie electrocautery device were under the exclusive management and control of Resurrection Medical Center, the staff nurse who performed the pre-operative evaluation, the scrub nurse, the circulating nurse, Daniel Dahlinghaus, M.D., Jennifer O'Toole, CRNA Branka Pavlovic, M.D. and each of them. During the aforementioned procedure, Joseph DiMaria sustained severe burns on his face, chest and neck.

The severe injuries sustained by Joseph DiMaria would not ordinarily have occurred in the absence of negligence.

On September 22, 2012, Resurrection Medical Center, Resurrection Medical Center's nurse employees, and Daniel Dahlinghaus, M.D. were negligent in the following ways:

Resurrection Medical Center's institutional negligence:

- a. Failed to implement a surgical fire risk assessment protocol;
- b. Failed to enforce a surgical fire risk assessment protocol;
- c. Failed to incorporate a fire risk assessment into routine pre-surgical patient protocols;
- d. Failed to establish appropriate policies and procedures to reduce the associated risks of surgical fire;
- e. Failed to implement appropriate measures to reduce the risk of fires associated with the use of alcohol-based skin preparations in anesthetizing locations;

- f. Failed to enforce surgical fire risk reduction measures;
- g. Failed to implement a fire safety education program, specifically for operative fires;
- h. Failed to require that equipment for managing a fire be readily available in the presence of a fire triad - *i.e.* an oxidizer-enriched atmosphere, an ignition source and fuel).

The professional negligence of the nurse who performed the pre-operative evaluation, the scrub nurse and the circulating nurse:

- a. Failed to perform a surgical fire risk assessment;
- b. Failed to recognize Joseph DiMaria's high risk for surgical fire based on the presence of a fire triad – *i.e.* an ignition source in proximity to an oxidizer, and fuel;
- c. Failed carry out effective fire risk reduction measure when using alcohol-based skin preparations in anesthetizing locations;
- d. Negligently applied alcohol-based skin preparations in anesthetizing locations;
- e. Negligently wicked alcohol-based skin preparations into Joseph DiMaria's hair;
- f. Failed to inspect the prepped surgical area to confirm drying of all skin preparations before draping;
- g. Draped Joseph DiMaria before all flammable skin preparations were completely dry; and
- h. Failed to configure surgical drapes to prevent oxygen from accumulating under the drapes or from flowing into the surgical site

The professional negligence of Daniel Dahlinghaus, M.D.:

- a. Failed to perform a surgical fire risk assessment on Joseph DiMaria;
- b. Failed to recognize Joseph DiMaria's high risk for surgical fire based on the presence of a fire triad – *i.e.* an ignition source in proximity to an oxidizer, and fuel;
- c. Failed to inspect the prepped surgical are to confirm drying of all skin preparations;
- d. Failed to take all necessary precautions to reduce the risk of surgical fire while utilizing the Bovie electorcautery device;
- e. Failed to ground the Bovie electorcautery device before activation; and
- f. Failed to moisten sponges and gauze used in proximity to the Bovie electrocautery device.

My opinion is that the aforesaid negligent acts or omissions were a proximate cause of Joseph Di Maria's severe injuries. My opinions are subject to modification upon review of additional information.

Very Truly Yours,