



ELECTRONICALLY FILED
12/8/2020 12:49 PM
02-CV-2020-902441.00
CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
JOJO SCHWARZAUER, CLERK

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

CHRISTINE METZGER, as Personal
Representative of the Estate of DENNIS
METZGER, deceased,

Plaintiff,

v.

Civil Action No. _____

INFIRMARY HEALTH SYSTEM, INC.;
INFIRMARY MEDICAL CLINICS, P.C.;
MOBILE INFIRMARY ASSOCIATION
doing business as MOBILE INFIRMARY
MEDICAL CENTER; INFIRMARY
NEUROSURGERY; JONATHAN PISHOI
NAKHLA, MD; A, B, and/or C, whether
singular or plural, is that licensed,
registered, or practical nurse who
undertook to provide medical services to
DENNIS METZGER on the occasion
made the basis of this suit, whose proper
identity will be substituted upon
identification of same; D, E, and/or F,
whether singular or plural, is that entity
which, concerning the occasion made the
basis of this suit, was the principal of the
named or above-described fictitious party
defendants, whose proper identity will be
substituted upon identification of same; G,
H, and/or I, whether singular or plural, is
that entity which is the successor-in-
interest of any of the named or above-
described fictitious party defendants,
whose proper identity will be substituted
upon identification of same; J, K, and/or L,
whether singular or plural, is that entity
other than those described above whose
negligence or other wrongful conduct
contributed to cause the injuries to
DENNIS METZGER made the basis of this
lawsuit; M, N, and/or O, whether singular
or plural, is that physician, physician
assistant, and/or other agent, employee or
servant of Defendants INFIRMARY
HEALTH, MOBILE INFIRMARY MEDICAL

CENTER and/or INFIRMARY NEUROSURGERY who undertook to provide medical services to DENNIS METZGER on the occasion made the basis of this lawsuit; P, Q, and/or R, that entity, whether association, corporation, LLC, partnership or otherwise regardless of legal status, that employed Jonathan P. Nakhla, M.D. at the times set forth herein or on whose behalf he was working at said times while he was providing treatment to Dennis Metzger, whose proper identity will be substituted upon identification of same, all of whose true names are presently unknown to Plaintiff but will be added by amendment when ascertained, separately and severally,

Defendants.

COMPLAINT

COMES NOW, CHRISTINE MEZGER, as Personal Representative of the Estate of DENNIS METZGER, deceased, the Plaintiff in the above-captioned matter, and states as follows:

PARTIES

1. Plaintiff CHRISTINE MEZGER is and was at all times relevant and material to this Complaint a resident and citizen of Baldwin County, Alabama and over nineteen (19) years of age. Plaintiff's decedent, her husband DENNIS METZGER, was at all times relevant and material to this Complaint a resident and citizen of Baldwin County, Alabama. DENNIS METZGER passed away on or about December 11, 2018. Within two (2) years of the death of decedent DENNIS METZGER, prior to the commencement of this action, and pursuant to and in compliance with Ala. Code § 6-5-410 (1975), Plaintiff petitioned the Probate Court of Baldwin County, Alabama for issuance of Letters of

Administration and was issued said Letters of Administration. At the time of the filing and commencement of this lawsuit, at present, and at all times between, CHRISTINE METZGER was the duly appointed Personal Representative of the Estate of DENNIS METZGER.

2. Defendant INFIRMARY HEALTH SYSTEM, INC. is organized under the laws of Alabama with its principal place of business in Mobile, Alabama. Infirmiry Health System, Inc. is affiliated with several other corporations operating hospitals and medical clinics serving South Alabama and the Central Gulf Coast region.

3. Defendant INFIRMARY MEDICAL CLINICS, P.C. is organized under the laws of Alabama with its principal place of business in Mobile, Alabama. Infirmiry Health System, Inc. is affiliated with several other corporations operating hospitals and medical clinics serving South Alabama and the Central Gulf Coast region.

4. Defendant MOBILE INFIRMARY ASSOCIATION doing business as MOBILE INFIRMARY MEDICAL CENTER ("MIMC") is a hospital located in Mobile County, Alabama, at 5 Mobile Infirmiry Circle, Mobile, Alabama, 36607, and was doing business in Mobile County at all times relevant and material to this Complaint.

5. Defendant INFIRMARY NEUROSURGERY is a health care provider located in Mobile County, Alabama, and at all times relevant and material to this Complaint did business in Mobile County, Alabama and was involved in the provision of medical services, care, and/or treatment to decedent DENNIS METZGER.

6. Defendant JONATHAN PISHOI NAKHLA, MD (hereinafter "Dr. Nakhla") is and at all times material to this Complaint was a person over the age of nineteen years who undertook to and did provide medical services, care, and/or treatment to Dennis

Metzger in Mobile County, Alabama at the time(s) and place(s) described herein. At all times herein, Dr. Nakhla was a member of the medical staff at Mobile Infirmary and was employed with and/or acting as an agent of Infirmary Health System, Inc., Infirmary Medical Clinics, P.C., Mobile infirmary Medical Center, and/or Infirmary Neurosurgery and fictitious defendants P, Q and R.

7. Fictitious Defendants, A, B, and/or C, whether singular or plural, is that licensed, registered or practical nurse who was working within the line and scope of their employment as agents, servants, or employees of Defendant MIMC, who undertook to provide medical services to DENNIS METZGER on the occasion made the basis of this suit, and whose proper identity will be substituted upon identification thereof.

8. Fictitious Defendants, D, E, and/or F, whether singular or plural, is that entity which, on the occasion made the basis of this suit, was the principal of the named or above described fictitious party Defendants, whose proper identity will be substituted upon identification of same.

9. Fictitious Defendants, G, H, and/or I, whether singular or plural, is that entity which is the successor in interest of any of the named or above described fictitious party Defendants, whose proper identity will be substituted upon identification of same.

10. Fictitious Defendants, J, K, and/or L, whether singular or plural, is that entity other than those described above whose negligence or other wrongful conduct contributed to cause DENNIS METZGER's injuries made the basis of this lawsuit.

11. Fictitious Defendants, M, N, and/or O, whether singular or plural, is that physician, physician assistant, and/or other agent, employee or servant of Defendants INFIRMARY HEALTH SYSTEM, INC., INFIRMARY HEALTH HOSPITALS, INC.,

INFIRMARY MEDICAL CLINICS, P.C., MOBILE INFIRMARY ASSOCIATION doing business as MOBILE INFIRMARY MEDICAL CENTER, and INFIRMARY NEUROSURGERY, who undertook to provide medical services to DENNIS METZGER on the occasion made the basis of this suit, whose proper identity will be substituted upon identification of same.

12. Fictitious Defendants, P, Q and R, whether singular or plural, is that entity whether association, corporation, LLC, partnership or otherwise regardless of legal status, that employed Jonathan P. Nakhla, M.D. at the times set forth herein or on whose behalf he was working at said times while he was providing treatment to Dennis Metzger, whose proper identity will be substituted upon identification of same.

FACTS

13. On December 2, 2018, Mr. Metzger was admitted to Mobile Infirmary Medical Center by Dr. Suzana Sogorovic with an admitting diagnosis of brain tumor. Prior to admission he underwent a CT of his brain and was found to have a 6 cm left frontal lobe brain mass crossing the midline. He was transferred to Mobile Infirmary Medical Center for further evaluation. The plan was to obtain an MRI Brain with and without contrast and to consult with Oncology (Dr. Michael W. Meshad) and Neurosurgery (Dr. Jonathan Nakhla).

14. On December 3, 2018, Dr. Nakhla consulted on Mr. Metzger. Thereafter, an MRI Brain with and without contrast was performed which showed a large enhancing left frontal mass with small acute hematomas and areas of necrosis with mild surrounding edema and significant mass effect resulting in a 2.2 cm shift of the septum pellucidum to the right of midline with subfalcine herniation. In addition, a glioblastoma was suspected.

15. On December 4, 2018, Dr. Nakhla discussed Mr. Metzger's case with the Hospital Tumor Board at the tumor board meeting in order to develop a plan to better understand Mr. Metzger's tumor. As a result of this meeting, Dr. Nakhla planned on a cerebral angiogram to better understand the tumor and to see if there was a role for pre-operative embolization. Further, Dr. Nakhla asked the OR to hold time for Thursday or Friday to proceed for a biopsy/debulking or total resection depending on the intra-operative findings and frozen pathology. As of this day, Mr. Metzger was doing well and was without complaints, according to Dr. Nakhla's notes.

16. On December 5, 2018, Dr. Roger P. Tart performed a cerebral angiogram and found tiny meningeal branches which were seen from the left middle meningeal artery. Dr. Tart also noted that there was no significant hypervascularity from the internal or external carotid system on either side. Dr. Nakhla was present for the angiogram and noted that there were no large identifiable vessels for embolization, and as such, planned to take Mr. Metzger to the operating room on Friday morning on December 7, 2018.

17. On December 6, 2018, Dr. Nakhla saw Mr. Metzger and documented that Mr. Metzger was doing well, had no complaints, was AAOx3, was following commands, and was moving all extremities.

18. On December 7, 2018 at approximately 4:44 a.m., Mr. Metzger signed a "Disclosure and Consent" for the following procedure: "Biopsy and Debulking Brain Tumor". At 8:35 a.m., Dr. Nakhla began the procedure. However, the procedure that was performed was not the procedure Mr. Metzger had agreed to. Dr. Nakhla performed a "Bifrontal Craniotomy for Resection of Tumor". During the procedure, specimen was collected and sent for frozen section. Dr. Nakhla documents that "the tumor was

extremely soft and came out very easily; however, the mass was extremely vascular and hemorrhagic". The procedure ended at 10:53 a.m. At some point later in time, Dr. Nakhla realized he performed the wrong surgery and either he himself crossed through the original disclosure to alter it to read "Bifrontal Craniotomy for Resection of Tumor" or directed someone else to do so.

19. On December 7, 2018 at 11:21 a.m., Mr. Metzger arrived PACU.

20. On December 7, 2018 at 1:28 p.m., Dr. Nakhla authorized Nurse Beverly Bosarge to enter the following medication orders: 0.9% NaCl solution; Zofran injection 4 mg; Decadron injection 6 mg; and Keppra 500 mg.

21. On December 7, 2018 at 1:38 p.m., a cabinet override was performed by Nurse Beverly Bosarge for Decadron 4 mg/mL injection.

22. On December 7, 2018 at 4:30 p.m., Mr. Metzger was complaining of nausea and had a small amount of emesis. At 4:50 p.m., Nurse Beverly R. Bosarge placed a call to Dr. Nakhla to come see Mr. Metzger. At 5:06 p.m., Dr. Nakhla ordered codeine tablet 30 mg and morphine injection 1 mg for severe pain. At 5:08 p.m., a cabinet override was performed by "L, Arendall Randi" for morphine 2 mg/mL injection. At 5:10 p.m., Dr. Nakhla was bedside and medicated Mr. Metzger for a headache.

23. On December 7, 2018 at 5:29 p.m., Dr. Nakhla authorized Nurse Kaitlin K. Hill to enter an order for a CT Head/Brain without contrast. Dr. Nakhla subsequently electronically signed this order at 6:51 p.m.

24. On December 7, 2018 at 5:51 p.m., a cabinet override was performed by Nurse Beverly Bosarge for Decadron 4 mg/mL injection.

25. On December 7, 2018 at 6:34 p.m., a cabinet override was performed by Nurse Beverly Bosarge for Zofran 4 mg/mL injection.

26. On December 7, 2018 at 6:37 p.m., Mr. Metzger left PACU to go to the Neuro Intensive Care Unit. Thereafter, Mr. Metzger developed a post-operative cranial bleed.

27. On December 7, 2018 at 6:46 p.m., Mr. Metzger arrived Neuro ICU and was received by Nurse Kaitlin K. Hill with orders to keep SBP less than 140. When received to the NICU, Nurse Cameron Peyregne documented: abnormal mental status, abnormal level of consciousness, lethargic, not oriented to place or time, size of right pupil is 3 mm, brisk reaction of right pupil, size of left pupil is 3 mm, brisk reaction of left pupil, and a MEND Exam Score of 2. No MEND Exam Score is documented between 7:00 p.m. and 11:00 p.m. according to the medical records produced.

28. On December 7, 2018 at 9:34 p.m., Nurse Cameron Peyregne documented that Mr. Metzger was “gagging and holding emesis bag”.

29. On December 7, 2018 at 10:23 p.m., Nurse Cameron Peyregne documented: “Call placed to Nakhla, MD. Physician notified of unequal pupils. No new orders received. Patient continues to follow commands. No change in MEND. Will continue to monitor and address POC.” In addition, at 10:26 p.m., Nurse Cameron Peyregne documented: sluggish reaction of the left pupil, a left pupil that was 5 mm, sluggish reaction of the right pupil, a right pupil that was 3 mm, delayed speech responses, lethargic level of consciousness, and was still responding to commands when moving extremities .

30. On December 7, 2018 at 11:09 p.m. and 11: 12 p.m., Nurse Cameron Peyregne documented: sluggish reaction of the left pupil, a left pupil that was 5 mm, sluggish reaction of the right pupil, a right pupil that was 3 mm, no speech responses, lethargic level of consciousness, and movement of extremities to painful stimuli only. Thereafter, at 11:15 p.m., Nurse Cameron Peyregne documented in part the following: "Reassessment completed. Changes in LOC noted. Nakhla, MD notified of increased lethargy. No new orders received... Patient localizing pain."

31. On December 8, 2018 at 12:45 a.m., Nurse Cameron Peyregne documented a MEND Exam Score of 4.

32. On December 8, 2018 between 12:49 a.m. and 1:00 a.m., Dr. Nakhla authorized Nurse Cameron Peyregne to enter an order for a CT Head/Brain without contrast. The reason for exam is "Neuro change".

33. On December 8, 2018 at 12:54 a.m., Dr. Nakhla authorized Nurse Cameron Peyregne to enter a routine order for a critical care consult.

34. On December 8, 2018 at 1:07 a.m., Dr. Nakhla authorized Nurse Mackenzie Hogan to enter an order for mannitol 10% infusion.

35. Emergency Brain Surgery (i.e., Craniotomy for Hematoma Subdural Evacuation) was performed by Dr. Nakhla in the early morning hours of December 8, 2018. Mr. Metzger was in the operating room ready for surgery at 1:56 a.m. The procedure began at 2:09 a.m. and ended at 3:49 a.m. Mr. Metzger was out of the operating room by 4:00 a.m.

36. On December 8, 2018 at 4:08 a.m., Nurse Cameron Peyregne documented a MEND Exam Score of 4.

37. On December 8, 2018 between 4:25 a.m. and 4:30 a.m., Dr. Nakhla authorized Nurse Cameron Peyregne to enter an order for a CT Head/Brain without contrast.

38. Mr. Metzger remained in a coma until he died on December 11, 2018 at 6:07 p.m. The immediate cause of death listed on the death certificate is intracranial bleed.

39. Considering the circumstances giving rise to Mr. Metzger's death, on or about December 11, 2018 Defendants knew, or reasonably should have known, that litigation was probable. Therefore, Defendants had a duty to not suppress, alter, or destroy material evidence favorable to the Plaintiff. Plaintiff alleges that Defendants breached this duty and severely prejudiced the Plaintiff by creating late entries into the medical record, altering the medical record to support the Defendants' defenses, destroying telemetry monitoring information specific to Mr. Metzger, deleting blood pressure readings, destroying nurse monitoring information which would show the location of the nurses caring for and assigned to Mr. Metzger, and/or by deleting, destroying, or creating other entries and documents concerning Mr. Metzger. Plaintiff further alleges that the destroyed evidence was relevant to the facts and circumstances of this case, the allegations in this Complaint, and the care provided to Mr. Metzger.

CAUSE OF ACTION AGAINST DEFENDANT MIMC

First Cause of Action – Medical Negligence/Wrongful Death

40. Plaintiff adopts and re-alleges all prior paragraphs as if set out here in full:

41. At the time(s) and place(s) set forth above, Defendants MIMC and/or fictitious parties A-R, undertook and did provide medical, diagnostic, nursing, technical,

and/or other allied health care services and treatment to Mr. Metzger. All of said medical services were provided in Mobile County, Alabama.

42. At the time(s) and place(s) set forth above, Defendants MIMC and/or fictitious parties A-R, had a duty to provide reasonably proper and adequate medical care and treatment to Mr. Metzger, in compliance with the standard of care applicable to similarly situated health care providers providing such care and treatment.

43. At the time(s) and place(s) set forth above, MIMC's registered nurses and/or licensed practical nurses had a duty to have applied knowledge of medication administration and safety, including but not limited to the following: drug action; classifications; expected therapeutic benefit of medication; expected monitoring; indications based on existing patient illness or injury processes; contraindications based on presence of additional known patient illnesses, disease processes or pre-existing conditions; possible side effects and interventions for the same; adverse reactions and interventions for the same; interactions with other drugs, foods, or complementary therapies; and calculation of drug dosages.

44. At the time(s) and place(s) set forth above, MIMC's registered nurses and/or licensed practical nurses had a duty to exercise proper decision-making skills when administering medications, including but not limited to: whether medications should be administered; assessment of a patient's health status and complaint(s) prior to and after administering medications, including as needed (PRN) medications; the decision of when to contact the prescribing physician of said medications; and the education of patient, family, and caregiver regarding medications.

45. At all times, MOBILE INFIRMARY ASSOCIATION doing business as MOBILE INFIRMARY MEDICAL CENTER's registered nurses and/or licensed practical nurses had a duty to perform a focused assessment and appraisal of a patient's status and specific complaint through observation and collection of objective and subjective data by the registered nurse or licensed practical nurse and identify normal and abnormal findings, anticipation and recognition of changes or potential changes in patient's health status, and may contribute to a comprehensive assessment performed by the registered nurse.

46. At all times, MOBILE INFIRMARY ASSOCIATION doing business as MOBILE INFIRMARY MEDICAL CENTER's registered nurses and/or licensed practical nurses had a duty to perform and conduct and document comprehensive and focused nursing assessments of the health status of patients by: (a) collecting objective and subjective data from observations, physical examinations, interviews and written records in an accurate and timely manner as appropriate to the patient's health care needs; (b) analyzing and report the data collected; (c) developing a plan of care based upon the patient assessment; (d) modifying the plan of care based upon the evaluation of patient responses to the plan of care, including: (i) anticipating and recognizing changes or potential changes in patient status; (ii) identifying signs and symptoms of deviation from current health status; and (iii) implementing changes in interventions.

47. At the time(s) and place(s) set forth above, Defendants MIMC and/or fictitious parties A-R, negligently breached the accepted standard of care applicable to similarly situated health care providers in the national community in one or more of the following respects:

- a. By negligently failing to recognize the signs and symptoms of intracranial bleeding which caused Mr. Metzger's death;
- b. By negligently failing to timely detect the fact that Mr. Metzger was having an intracranial bleed;
- c. By negligently failing to act as a patient advocate for Mr. Metzger;
- d. By negligently failing to notify a physician of Mr. Metzger's documented change in condition on December 7, 2018;
- e. By negligently failing to ensure that a physician saw Mr. Metzger at his bedside as a result of his documented change in condition on the evening of December 7, 2018;
- f. By negligently failing to follow or comply with applicable protocols, standards, policies, and/or procedures with regard to patients presenting with symptoms of intracranial bleeding;
- g. By negligently failing to regularly record and monitor Mr. Metzger's vital signs as ordered;
- h. By negligently failing to comply with the Hospital's "Physician Notification" policy;
- i. By negligently failing to comply with the Hospital's "Pain Assessment/Reassessment" policy;
- j. By negligently failing to comply with the Hospital's "Patient assessment Plan" policy;
- k. By negligently failing to comply with applicable nursing and/or allied health care standards and/or hospital policies and procedures concerning Mr. Metzger's care;
- l. By negligently failing to follow state, federal, and/or other guidelines applicable to hospitals;
- m. By negligently failing to timely and properly treat and manage Mr. Metzger's changing condition in a timely fashion;
- n. By negligently failing to timely and properly treat and manage Mr. Metzger's post-operative bleed on the evening of December 7, 2018 and the morning of December 8, 2018;

- o. By negligently failing to screen, or by improperly screening, the nursing personnel caring for Mr. Metzger;
- p. By negligently failing to hire appropriately qualified nursing personnel to provide care for Mr. Metzger;
- q. By negligently failing to properly and adequately train, supervise, evaluate, discipline, and/or evaluate the performance of the nursing personnel caring for Mr. Metzger;
- r. By negligently assigning incompetent personnel to give care to Mr. Metzger -- said incompetent personnel being unfit or otherwise incapable of providing adequate nursing care;
- s. By operating a systematically understaffed hospital, or by otherwise failing to provide sufficient personnel to provide all necessary nursing care to Mr. Metzger;
- t. By negligently failing to provide the expected and necessary monitoring that Mr. Metzger required based on his presenting condition;
- u. Negligently failing to perform timely treatment on Mr. Metzger, when the Defendants knew or should have known that with patients like Mr. Metzger, time is of the essence, and that the opportunity for implementing a plan of treatment is a narrow window and requires the coordinated efforts of the nursing staff, the neurosurgeon, and/or all other means available;
- v. By negligently failing to safely administer medications to Mr. Metzger;
- w. By negligently failing to consistently document a pain scale or pain descriptions when administering narcotics;
- x. By negligently failing to consistently re-evaluate the effectiveness of narcotics administered for pain;
- y. By negligently failing to follow physician's orders; and/or
- z. By negligently failing to perform timely neurological assessments.

48. The Defendants separately and severally violated the applicable standards of care as stated above which, combined and concurred with the negligent conduct of the

other Defendants in this action, proximately caused the death of Mr. Metzger on or about December 11, 2018.

49. WHEREFORE, PREMISES CONSIDERED, the Plaintiff, CHRISTINE METZGER, as Personal Representative of the Estate of DENNIS METZGER, deceased, demands judgment against each of the Defendants, separately and severally. The Plaintiff demands such judgment to be an amount which will adequately reflect the enormity of the Defendants' wrong in causing the death of Dennis Metzger, the ease with which her death could have been prevented, and which will effectively prevent similarly caused wrongful deaths in the future.

CAUSE OF ACTION AGAINST DEFENDANT MIMC

Second Cause of Action – Vicarious Liability (MIMC Employees)

50. Plaintiff adopts and re-alleges all prior paragraphs as if set out here in full:

51. Defendant MIMC, by and through its agents, servants, employees, representatives, nurses, registered nurses, licenses practical nurses, technicians, and/or medical staff provided medical services, care, and/or treatment to Mr. Metzger while he was a patient at MIMC on December 2, 2018 thru December 11, 2018.

52. Fictitious Defendants J, K, and L are those nurses and/or other non-physician healthcare providers who rendered medical care and treatment to Mr. Metzger while he was a patient at MIMC in Mobile County, Alabama between December 2, 2018 and December 11, 2018.

53. At the time(s) and place(s) set forth above, said non-physician medical providers, and/or fictitious Defendants J, K, and L, were working within the line and scope

of their duties as agents, servants, and/or employees of Defendants MIMC, A, B, C, D, E, and/or F.

54. In providing medical services to Mr. Metzger, said non-physician medical providers, and/or fictitious Defendants J, K, and L, had a duty to possess and exercise the degree of care, skill, and diligence commonly possessed and exercised by similarly situated medical providers in the national community.

55. The nurses, nurse practitioners, licensed practical nurses, registered nurses, technicians, and/or medical staff of Defendant MIMC, and/or Fictitious Defendants J, K, and L, negligently breached the applicable standard of care in effect at the time in one or more of the following respects:

- a. By negligently failing to recognize the signs and symptoms of intracranial bleeding which caused Mr. Metzger's death;
- b. By negligently failing to timely detect the fact that Mr. Metzger was having an intracranial bleed;
- c. By negligently failing to act as a patient advocate for Mr. Metzger;
- d. By negligently failing to notify a physician of Mr. Metzger's documented change in condition on December 7, 2018;
- e. By negligently failing to ensure that a physician saw Mr. Metzger at his bedside as a result of his documented change in condition on the evening of December 7, 2018;
- f. By negligently failing to follow or comply with applicable protocols, standards, policies, and/or procedures with regard to patients presenting with symptoms of intracranial bleeding;
- g. By negligently failing to regularly record and monitor Mr. Metzger's vital signs as ordered;
- h. By negligently failing to comply with the Hospital's "Physician Notification" policy;

- i. By negligently failing to comply with the Hospital's "Pain Assessment/Reassessment" policy;
- j. By negligently failing to comply with the Hospital's "Patient assessment Plan" policy;
- k. By negligently failing to comply with applicable nursing and/or allied health care standards and/or hospital policies and procedures concerning Mr. Metzger's care;
- l. By negligently failing to follow state, federal, and/or other guidelines applicable to hospitals;
- m. By negligently failing to timely and properly treat and manage Mr. Metzger's changing condition in a timely fashion;
- n. By negligently failing to timely and properly treat and manage Mr. Metzger's post-operative bleed on the evening of December 7, 2018 and the morning of December 8, 2018;
- o. By negligently failing to screen, or by improperly screening, the nursing personnel caring for Mr. Metzger;
- p. By negligently failing to hire appropriately qualified nursing personnel to provide care for Mr. Metzger;
- q. By negligently failing to properly and adequately train, supervise, evaluate, discipline, and/or evaluate the performance of the nursing personnel caring for Mr. Metzger;
- r. By negligently assigning incompetent personnel to give care to Mr. Metzger -- said incompetent personnel being unfit or otherwise incapable of providing adequate nursing care;
- s. By operating a systematically understaffed hospital, or by otherwise failing to provide sufficient personnel to provide all necessary nursing care to Mr. Metzger;
- t. By negligently failing to provide the expected and necessary monitoring that Mr. Metzger required based on his presenting condition;
- u. Negligently failing to perform timely treatment on Mr. Metzger, when the Defendants knew or should have known that with patients like Mr. Metzger, time is of the essence, and that the opportunity for implementing a plan of treatment is a narrow

window and requires the coordinated efforts of the nursing staff, the neurosurgeon, and/or all other means available;

- v. By negligently failing to safely administer medications to Mr. Metzger;
- w. By negligently failing to consistently document a pain scale or pain descriptions when administering narcotics;
- x. By negligently failing to consistently re-evaluate the effectiveness of narcotics administered for pain;
- y. By negligently failing to follow physician's orders; and/or
- z. By negligently failing to perform timely neurological assessments.

56. Defendant MIMC, and one or more of the parties described fictitiously as A, B, C, D, E, and F, are vicariously liable to Plaintiff for the negligence of the above-referenced non-physician healthcare providers, and/or J, K, and/or L.

57. The Defendants, separately and severally, violated the applicable standards of care as stated above which, combined and concurred with the negligent conduct of the other Defendants in this action, proximately caused the death of Dennis Metzger on or about December 11, 2018.

58. WHEREFORE, PREMISES CONSIDERED, the Plaintiff, CHRISTINE METZGER, as Personal Representative of the Estate of DENNIS METZGER, deceased, demands judgment against each of the Defendants, separately and severally. The Plaintiff demands such judgment to be an amount which will adequately reflect the enormity of the Defendants' wrong in causing the death of Dennis Metzger, the ease with which her death could have been prevented, and which will effectively prevent similarly caused wrongful deaths in the future.

CAUSE OF ACTION AGAINST DEFENDANT DR. JONATHAN NAKHLA**Third Cause of Action – Medical Negligence/Wrongful Death**

59. Plaintiff adopts and re-alleges all prior paragraphs as if set out here in full:

60. At all times material to this Complaint Defendant Dr. Nakhla, and/or one or more of Fictitious Party Defendants M-R, individually and acting as agents, servants, borrowed servants, apparent agents, employees, representatives, affiliates, and/or contractors of Defendants Infirmity Health Systems, Inc., Infirmity Health System, Inc., Infirmity Medical Clinics, P.C., Mobile Infirmity Association doing business as Mobile Infirmity Medical Center, Infirmity Neurosurgery and Fictitious Parties D-F, undertook to and did provide medical services, care, and/or treatment to Dennis Metzger at Mobile Infirmity Medical Center in Mobile, Alabama.

61. In providing said medical services, care, and/or treatment to Dennis Metzger at the times and places described herein, Defendant Dr. Nakhla, and/or one or more of Fictitious Party Defendants M-O had a legal duty to possess and exercise that degree of care, skill, knowledge, experience, and diligence commonly possessed and exercised by the same or similarly situated physicians, medical staff, and health care providers in the national medical community under the facts and circumstances of this case.

62. Defendants Dr. Nakhla, and/or one or more of Fictitious Party Defendants M-R breached the applicable standard of care which was in effect at the time in one or more of the following respects:

- a. By negligently failing to recognize the signs and symptoms of intracranial bleeding which caused Mr. Metzger's death;

- b. By negligently failing to timely detect the fact that Mr. Metzger was having an intracranial bleed;
- c. By negligently failing to act as a patient advocate for Mr. Metzger;
- d. By negligently failing to timely and properly recognize the severity of Mr. Metzger's condition and respond appropriately;
- e. By negligently failing to timely and properly recognize Mr. Metzger's deteriorating condition and respond appropriately;
- f. By negligently failing to get to Mr. Metzger's bedside in a timely manner;
- g. By negligently failing to require, recommend, and/or provide a second surgeon to assist Dr. Nakhla with Mr. Metzger's brain surgery;
- h. Negligently performing Mr. Metzger's brain surgery without a second surgeon present;
- i. Negligently failed to timely and properly monitor, assess, treat, and manage Mr. Metzger;
- j. By negligently failing to comply with the Hospital's "Physician Notification" policy;
- k. By negligently failing to timely and properly treat and manage Mr. Metzger's changing condition in a timely fashion;
- l. By negligently failing to timely and properly treat and manage Mr. Metzger's post-operative bleed on the evening of December 7, 2018 and the morning of December 8, 2018;
- m. By negligently failing to provide the expected and necessary monitoring that Mr. Metzger required based on his presenting condition;
- n. Negligently failing to perform timely treatment on Mr. Metzger, when the Defendants knew or should have known that with patients like Mr. Metzger, time is of the essence, and that the opportunity for implementing a plan of treatment is a narrow window and requires the coordinated efforts of the nursing staff, the neurosurgeon, and/or all other means available;

- o. By negligently failing to provide the Plaintiff with all of the options for treatment prior to performing operative intervention;
- p. By negligently failing to discuss the risks, benefits, and/or complications with the Plaintiff;
- q. By negligently failing to discuss any other alternatives in treatments other than biopsy and debulking brain tumor;
- r. By negligently performing a surgery on the Plaintiff that was different than discussed and authorized;
- s. By negligently performing the wrong surgery on the Plaintiff;
- t. By negligently representing to the Plaintiff that Dr. Nakhla was more experienced than he actually was in performing this kind of procedure;
- u. By negligently failing to place and insert an external ventricular drain during the procedure on December 7, 2018;
- v. By negligently failing to follow or comply with applicable protocols, standards, policies, and/or procedures with regard to post- surgical patients like Mr. Metzger who developed signs and symptoms of post-operative bleeding;
- w. By failing to order a STAT CT Head/Brain without contrast to be performed based on the signs and symptoms that had developed and were known as of 5:29 p.m., 6:46 p.m., 9:34 p.m., 10:23 p.m., and 11:15 p.m. on December 7, 2018;
- x. By negligently failing to assess, evaluate and examine Mr. Metzger's signs and symptoms of post-operative intracranial bleeding until he comatose;
- y. By negligently failing to establish appropriate procedures to ensure that the operating physician or someone affiliated with the operating physician comes bedside immediately when there is a change in patient condition like that exhibited by Mr. Metzger, with the recognition that time is of the essence when treating a post-operative intracranial bleed like the one experienced by Mr. Metzger;

- z. By negligently failing to ensure that another surgeon like Dr. Nakhla was available to respond to occurrences such as the one described in this complaint;
- aa. By negligently failing to return to the operating room in a timely fashion in order to relieve pressure building up inside of Mr. Metzger's skull as a result of the post-operative bleed; and/or
- bb. By negligently failing to control the bleeding that was known or should have been known in the initial surgery on December 7, 2018.

63. The Defendants, separately and severally, violated the applicable standards of care as stated above which, combined and concurred with the negligent conduct of the other Defendants in this action, proximately caused the death of Dennis Metzger on or about December 11, 2018.

64. WHEREFORE, PREMISES CONSIDERED, the Plaintiff, CHRISTINE METZGER, as Personal Representative of the Estate of DENNIS METZGER, deceased, demands judgment against each of the Defendants, separately and severally. The Plaintiff demands such judgment to be an amount which will adequately reflect the enormity of the Defendants' wrong in causing the death of Dennis Metzger, the ease with which her death could have been prevented, and which will effectively prevent similarly caused wrongful deaths in the future.

CAUSE OF ACTION AGAINST DEFENDANTS INFIRMARY HEALTH SYSTEMS, INC., INFIRMARY HEALTH SYSTEM, INC.; INFIRMARY MEDICAL CLINICS, P.C.; MOBILE INFIRMARY ASSOCIATION doing business as MOBILE INFIRMARY MEDICAL CENTER; INFIRMARY NEUROSURGERY

Fourth Cause of Action – Vicarious Liability (Dr. Jonathan Nakhla)

65. Plaintiff adopts and re-alleges all prior paragraphs as if set out here in full:

66. Between December 2, 2018 and December 11, 2018, the Defendants Infirmary Health Systems, Inc., Infirmary Health System, Inc., Infirmary Medical Clinics,

P.C., Mobile Infirmary Association doing business as Mobile Infirmary Medical Center, Infirmary Neurosurgery and Fictitious Parties D-F, by and through their agents, servants, employees, and/or representatives, undertook to and did provide medical, diagnostic, nursing, technical, and/or other allied health care services and treatment to Mr. Metzger. All of said medical services were provided in Mobile County, Alabama.

67. At the same time and place set forth above, the Defendants Infirmary Health Systems, Inc., Infirmary Health System, Inc., Infirmary Medical Clinics, P.C., Mobile Infirmary Association doing business as Mobile Infirmary Medical Center, Infirmary Neurosurgery and Fictitious Parties D-F, had a duty to provide reasonably proper and adequate medical care and treatment to Mr. Metzger, in compliance with the standard of care applicable to similarly situated health care providers providing such care and treatment.

68. Defendants, Jonathan Nakhla, MD and A-L are those physicians and/or other non-physician healthcare providers who rendered medical care and treatment to Mr. Metzger while he was a patient at Mobile Infirmary Medical Center in Mobile County, Alabama between December 2, 2018 and December 11, 2018.

69. At the aforesaid time and place, Defendants Jonathan Nakhla, MD and A-L were working within the line and scope of their duties as agents, servants, and/or employees of the Defendants Infirmary Health Systems, Inc., Infirmary Health System, Inc., Infirmary Medical Clinics, P.C., Mobile Infirmary Association doing business as Mobile Infirmary Medical Center, Infirmary Neurosurgery and Fictitious Parties D-F and P, Q & R.

70. Defendants Dr. Nakhla, and/or one or more of Fictitious Party Defendants M-R breached the applicable standard of care which was in effect at the time in one or more of the following respects:

- a. By negligently failing to recognize the signs and symptoms of intracranial bleeding which caused Mr. Metzger's death;
- b. By negligently failing to timely detect the fact that Mr. Metzger was having an intracranial bleed;
- c. By negligently failing to act as a patient advocate for Mr. Metzger;
- d. By negligently failing to timely and properly recognize the severity of Mr. Metzger's condition and respond appropriately;
- e. By negligently failing to timely and properly recognize Mr. Metzger's deteriorating condition and respond appropriately;
- f. By negligently failing to get to Mr. Metzger's bedside in a timely manner;
- g. By negligently failing to require, recommend, and/or provide a second surgeon to assist Dr. Nakhla with Mr. Metzger's brain surgery;
- h. Negligently performing Mr. Metzger's brain surgery without a second surgeon present;
- i. Negligently failed to timely and properly monitor, assess, treat, and manage Mr. Metzger;
- j. By negligently failing to comply with the Hospital's "Physician Notification" policy;
- k. By negligently failing to timely and properly treat and manage Mr. Metzger's changing condition in a timely fashion;
- l. By negligently failing to timely and properly treat and manage Mr. Metzger's post-operative bleed on the evening of December 7, 2018 and the morning of December 8, 2018;

- m. By negligently failing to provide the expected and necessary monitoring that Mr. Metzger required based on his presenting condition;
- n. Negligently failing to perform timely treatment on Mr. Metzger, when the Defendants knew or should have known that with patients like Mr. Metzger, time is of the essence, and that the opportunity for implementing a plan of treatment is a narrow window and requires the coordinated efforts of the nursing staff, the neurosurgeon, and/or all other means available;
- o. By negligently failing to provide the Plaintiff with all of the options for treatment prior to performing operative intervention;
- p. By negligently failing to provide Plaintiff with the required informed consent to include failing to inform Dennis Metzger of the material risks of the subject surgery, to include the risk of excess bleeding which could lead to death. Plaintiff avers that Dr. Nakhla failed to inform Mr. Metzger of any material risks associated with bleeding and in fact failed to inform Mr. Metzger that the tumor was a hemorrhagic tumor. Plaintiff avers that a reasonable person in his position would not have consented to the subject surgical procedure had that been informed of the material risks;
- q. By negligently failing to discuss any other alternatives in treatments other than biopsy and debulking brain tumor;
- r. By negligently performing a surgery on the Plaintiff that was different than discussed and authorized;
- s. By negligently performing the wrong surgery on the Plaintiff; and negligently altering and changing, without further discussion, review, disclosure, authorization and agreement, the original Disclosure and Consent form from "Biopsy and Debulking Brain Tumor" to "Bifrontal Craniotomy for Resection of Tumor";
- t. By negligently representing to the Plaintiff that Dr. Nakhla was more experienced than he actually was in performing this kind of procedure;
- u. By negligently failing to place and insert an external ventricular drain during the procedure on December 7, 2018;

- v. By negligently failing to follow or comply with applicable protocols, standards, policies, and/or procedures with regard to post-surgical patients like Mr. Metzger who developed signs and symptoms of post-operative bleeding;
- w. By failing to order a STAT CT Head/Brain without contrast to be performed based on the signs and symptoms that had developed and were known as of 5:29 p.m., 6:46 p.m., 9:34 p.m., 10:23 p.m., and 11:15 p.m. on December 7, 2018;
- x. By negligently failing to assess, evaluate and examine Mr. Metzger's signs and symptoms of post-operative intracranial bleeding until he comatose;
- y. By negligently failing to establish appropriate procedures to ensure that the operating physician or someone affiliated with the operating physician comes bedside immediately when there is a change in patient condition like that exhibited by Mr. Metzger, with the recognition that time is of the essence when treating a post-operative intracranial bleed like the one experienced by Mr. Metzger;
- z. By negligently failing to ensure that another surgeon like Dr. Nakhla was available to respond to occurrences such as the one described in this complaint;
- aa. By negligently failing to return to the operating room in a timely fashion in order to relieve pressure building up inside of Mr. Metzger's skull as a result of the post-operative bleed; and respond to nursing requests for his contact and/or return and/or;
- bb. By negligently failing to control the bleeding that was known or should have been known in the initial surgery on December 7, 2018.

71. The Defendants, separately and severally, violated the applicable standards of care as stated above, which combined and concurred with the negligent conduct of the other Defendants in this action to proximately cause the death of Dennis Metzger on or about December 11, 2018.

72. WHEREFORE, PREMISES CONSIDERED, the Plaintiff, CHRISTINE METZGER, as Personal Representative of the Estate of DENNIS METZGER, deceased, demands judgment against each of the Defendants, separately and severally. The Plaintiff demands such judgment to be an amount which will adequately reflect the enormity of the Defendants' wrong in causing the death of Dennis Metzger, the ease with which her death could have been prevented, and which will effectively prevent similarly caused wrongful deaths in the future and which will serve to deter similar future conduct and represent and preserve the sanctity of life in the hope that such substandard care as described above does not occur again.

Respectfully submitted this the 8th day of December, 2020.

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Attorneys for Plaintiff

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Attorney for the Plaintiff

Plaintiff Demands a Trial by Jury.

By: s/ J. Allan Brown
J. ALLAN BROWN (BRO206)

DEFENDANTS TO BE SERVED AS FOLLOWS VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED:

INFIRMARY HEALTH SYSTEM, INC.
c/o D. M. Nix, Registered Agent
5 Mobile Infirmery Circle
Mobile, Alabama 36607

INFIRMARY MEDICAL CLINICS, P.C.
c/o D. M. Nix, Registered Agent
5 Mobile Infirmery Circle
Mobile, Alabama 36607

MOBILE INFIRMARY ASSOCIATION,
doing business as:
MOBILE INFIRMARY MEDICAL CENTER
c/o Mark Nix
5 Mobile Infirmery Circle
Mobile, Alabama 36607

INFIRMARY NEUROSURGERY
3 Mobile Infirmery Circle
Suite POB 410
Mobile, Alabama 36607

JONATHAN PISHOI NAKHLA, MD
151 Du Rhu Drive
Apt. No. 2217
Mobile, Alabama 36608

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

CHRISTINE METZGER, as Personal
Representative of the Estate of DENNIS
METZGER, deceased,

Plaintiff,

Civil Action No. _____

v.
INFIRMARY HEALTH SYSTEM, INC.; et
al.

**PLAINTIFF’S FIRST SET OF INTERROGATORIES AND REQUEST FOR
PRODUCTION TO DEFENDANT MOBILE INFIRMARY ASSOCIATION d/b/a MOBILE
INFIRMARY MEDICAL CENTER**

COMES NOW the Plaintiff in the above styled cause, pursuant to the Alabama Rules of Civil Procedure 33 and 34 and propounds the following interrogatories and request for production of documents to the Defendant, MOBILE INFIRMARY ASSOCIATION d/b/a MOBILE INFIRMARY MEDICAL CENTER, to be answered and responded to fully and completely within the time required by law.

You are reminded that under the provision of Rule 26(a), you are under a duty to seasonably supplement your responses with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify and the substance of his testimony.

You are under a duty to seasonably amend a prior response if you obtain information upon the basis of which (a) you know that the response was incorrect when made, or (b) you know that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

Any such supplemental response is to be filed and served upon counsel of record for the Plaintiffs within fifteen (15) days after receipt of such information.

DEFINITIONS

Unless otherwise indicated, the following definitions shall be applicable to these interrogatories:

“You” and “Your” shall mean this Defendant and each of its employees, agents, and/or representatives, and all other persons acting on its behalf.

“Person” shall mean any individual, partnership, firm, association, corporation or other business, government, or legal entity.

“Document” shall mean any written, recorded, transcribed, punched, taped, filmed, and/or graphic matter of any kind or description, however produced or reproduced.

“Identify” or “Identification” *when used with reference to a person*, shall mean to state the full name and present address or last known address of said person.

“Identify” or “Identification” *when used with reference to a document*, shall mean to state its date, author or signor, addressee, type of document and all other means of identifying it, and its present or last known location or custodian. If any document was but is no longer in your possession, custody and/or control, state what disposition was made of it and the reason for its disposition.

INTERROGATORIES AND REQUEST FOR PRODUCTION

1. State the name(s), address(es), employer(s) and job title(s) of the individual(s) responding to these discovery requests.

RESPONSE:

2. Is your name correctly stated in the complaint filed in this action? If not,

please state the full and correct legal name by which you may sue or be sued in a court of law.

RESPONSE:

3. Produce color copies of all medical records, electronically stored data, photographs, videotapes, computer generated medical records, monitor data, vital signs data, computer records, and all other records, documents, and correspondence of this Defendant or retained by this Defendant, relating to Mr. Metzger while he was a patient at Mobile Infirmiry Medical Center concerning lawsuit.

RESPONSE:

4. Produce the originals or true and complete copies of all incident reports, accident reports, and/or other reports or records of any description whatsoever relating to Mr. Metzger which are not a part of the medical records relating to his care and treatment at Mobile Infirmiry Medical Center.

RESPONSE:

5. Produce the originals or true and complete copies of any and all documents, correspondence, memoranda, reports, summaries, files, and/or other documents or materials of any description which relate in any manner to any investigation conducted by you or on your behalf relating to the events made the basis of this lawsuit.

RESPONSE:

6. Please produce a copy of any and all Post-It Notes, incident reports, billing entries, or other non-medical record documents which were removed prior to copying or inspecting Mr. Metzger's chart.

RESPONSE:

7. State the name, address, employer and job title of each individual who treated or otherwise cared for Mr. Metzger at any time while he was a patient at Mobile Infirmiry Medical Center. Please include in your response the dates and shifts each such individual treated or care for Mr. Metzger.

RESPONSE:

8. Produce the originals or true and complete copies of your policy and/or procedure manuals which are now or have been in effect during the five (5) year period prior to and including the time of the events made the basis of this lawsuit.

RESPONSE:

9. Produce the originals or true and complete copies of any and all rules, regulations, and/or standards which relate to the proper care and treatment of patients like Mr. Metzger.

RESPONSE:

10. Identify by giving the name, address and telephone number each local, state, federal, or other agency which monitors your facility.

RESPONSE:

11. Produce the originals or true and complete copies of any all inspection reports and/or deficiency reports prepared by any local, state, federal, or other agency which relate to or reference any inspections of your facility conducted at any time during the five (5) year period prior to and including the time of the incident made the basis of this lawsuit.

RESPONSE:

12. Have any statements been obtained by you or anyone acting on your behalf relating to the events made the basis of this lawsuit? If so, please:

- a. state the name, address, and telephone number of each individual from whom a statement was taken;
- b. state the date each such statement was given and whether it was written, typewritten, oral or recorded;
- c. state the name(s) of the individual(s) who took the statement; and
- d. produce the originals or true and complete copies of any statements taken from Mr. Davis or members of his family.

RESPONSE:

13. State the name, address, and telephone number of each individual who, to your knowledge, has any knowledge of the events made the basis of this lawsuit and/or any information relating to the subject incident. Please include in your response the substance of each such person's information or knowledge.

RESPONSE:

14. State the name(s), address(es), and telephone number(s) of the individual(s) who was the Director of Nursing at Mobile Infirmiry Medical Center during the time that Mr. Metzger was a patient of that facility. If there was more than one Director of Nursing during, please include in your response the dates and/or shifts each such individual was the Director of Nursing.

RESPONSE:

15. Name and identify each person whom you expect to call as an expert witness at the trial of this cause and for each such expert:

- a. provide a copy of his current Curriculum Vitae;

- b. state the subject matter on which each expert is expected to testify;
- c. state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion held by each expert;
- d. provide a complete bibliography of all writings by each expert, including for each such writing the title, the name, and address of the publisher, the date of publication and, if published in or as an article, chapter or other part of a magazine, pamphlet, book, or other publication, the name of such and the name and address of its publisher;
- e. produce copies of all literature, papers, articles, reports, research, or other documents which were written or prepared wholly or partially by the expert which in any way refer or pertain to the subject matter of this case;
- f. produce copies of all records, reports, correspondence, statements, files, notes, memoranda, policies, rules, regulations, standards, and other documents or materials of any description which have been provided to each expert and/or which have been reviewed or relied upon by the expert in formulating his opinions in this case;
- g. provide a list of all matters in which each expert has been consulted by attorneys, whether on behalf of a plaintiff, defendant, or an insurance company (this request specifically includes, but is not limited to, the names of actual or potential plaintiffs and defendants, venue, date of consultation, and the names of all attorneys, whether for plaintiff or defendant);
- h. produce a copy of any and all reports prepared by each expert relating to this case.

RESPONSE:

16. Please produce all Nursing Policy and Procedures Manuals, Administrative Policy and Procedures Manuals, Personnel Policy and Procedures Manuals, and any

other policy and/or protocol that applied to nurses working at MIMC which were in effect at Mobile Infirmery Medical Center on the date of the incident made the basis of this lawsuit.

RESPONSE:

17. Please produce the RN, LPN, and CNA nursing schedules for Mobile Infirmery Medical Center for Mr. Metzger for December 2, 2018 through December 11, 2018, for the floor where Mr. Metzger was a patient.

RESPONSE:

18. Please produce the written job descriptions for the RNs, LPNs, and CNAs who work for Mobile Infirmery Medical Center.

RESPONSE:

19. State whether or not any employee of Mobile Infirmery Medical Center, who cared for Mr. Metzger, has ever been disciplined, reprimanded, terminated, or otherwise criticized for failing to document an injury or possible injury to a patient. If your response is in the affirmative, please:

- a. identify, by giving the names, addresses, and job titles, all individuals who have been disciplined, reprimanded, terminated, or otherwise criticized; and
- b. describe in detail the circumstances which led to any such action, including in your response the date on which the incident(s) occurred and what action was taken, i.e. was the individual disciplined, reprimanded, terminated, or criticized.

RESPONSE:

20. Produce a copy of the "Tumor Board Notes" relative to Mr. Metzger's case.

RESPONSE:

21. Identify all people present in the tumor board meeting regarding Mr. Metzger on December 4, 2018.

RESPONSE:

22. Describe the purpose of the "Tumor Board" at Mobile Infirmiry Medical Center.

RESPONSE:

23. Produce full and complete copies of the "Staff Activity Report" for all locations including hallways, nurses' stations, break rooms, waiting rooms, and/or any other covered locations on Mr. Metzger's floor for December 7, 2018 through December 8, 2018.

RESPONSE:

24. Produce full and complete copies of the "Staff Activity Report" for each and every patient room located on Mr. Metzger's floor for December 7, 2018 through December 8, 2018.

RESPONSE:

25. Produce full and complete copies of the "Call Report" for each and every room located on Mr. Metzger's floor for December 7, 2018 through December 8, 2018.

RESPONSE:

26. Produce full and complete copies of the "Summary Call Report" for each and every room located on Mr. Metzger's floor for December 7, 2018 through December 8, 2018.

RESPONSE:

27. Please identify each computer system, electronic medical records system, emergency department information system, and health information system used to generate electronic and/or computer medical records that was utilized by MIMC regarding the treatment of the Plaintiff including, but not limited to, emergency room or department records, laboratory records, progress notes, consultation requests, responses, and reports, and ordering and reporting of radiology studies.

RESPONSE:

28. Please identify each person who entered any data regarding the Plaintiff into the computer system, electronic medical records system, emergency department information system, and health information system or any other system used to generate electronic and/or computer medical records that was utilized by MIMC regarding the treatment of the Plaintiff during the December 2, 2018 admission, including, but not limited to, emergency room or department records, laboratory records, progress notes, consultation requests, responses, and reports, and ordering and reporting of radiology studies, and state the date and time each entry was made and/or updated, corrected, altered, revised or otherwise changed, and state with specificity the reason any entry was changed.

RESPONSE:

29. Please produce a full and complete copy of the complete audit trail of all events entered in Mr. Metzger's computer generated and/or electronic medical records regarding his treatment during the admission at issue, including, but not limited to, data showing the time that each event or record was entered, the identification of each person making each entry, the time of each entry, the location from which each entry was made,

and all events or data that were entered, changed, amended, deleted, added, and/or modified by each such person.

RESPONSE:

30. Produce the COMLinx detailed staff activity report by locator I.D. for every nurse involved in Mr. Metzger's care on December 7, 2018 and December 8, 2018.

RESPONSE:

31. As to any requested document or tangible thing which you withheld from production on the ground that (1) it was prepared in anticipation of litigation or for trial, (2) it is work product, (3) it is privileged, or (4) for any other reason or ground, please identify each document or tangible thing and answer the following:

- a. Description of what the document is;
- b. Its date;
- c. Name, address, and employer of the author of the document, or the person taking the statement or the like;
- d. Subject of the document;
- e. Persons to whom the document is addressed;
- f. Persons indicated thereon as having received copies;
- g. Name, address, job title, and employer of any person known or believed to have received or seen the document or any copy or summary thereof;
- h. Purpose for which the document was created and transmitted;
- i. Degree of confidentiality with which it was treated both at the time of its creation and transmission, and since that time; and
- j. Any other facts relevant to the elements of the particular privilege asserted.

RESPONSE:

32. Produce a complete access log of all events entered in Mr. Metzger's computer-generated and/or electronic medical records regarding his medical treatment between December 2, 2018 and December 11, 2018, including, but not limited to, data showing the time that each event or record was entered, the location that each event or record was entered (including the User Station Location key), the identification of each person making each entry (with a User Key), the time of each entry, and all events or data that were entered, changed, amended, deleted, added, and/or modified by each such person.

RESPONSE:

33. Produce the access logs for the following individuals for December 7, 2018 at 12:01 a.m. through December 11, 2018 at 6:07 p.m. showing their respective locations as to where they were when making computer entries, as well as the time each login and logout occurred:

- a. Beverly Bosarge, RN;
- b. Randi L. Arendall, RN;
- c. Dr. Jonathan Nakhla;
- d. Kaitlin K. Hill, RN;
- e. Cameron Peyregne, RN;
- f. All people involved in the surgery on December 7, 2018.

RESPONSE:

34. Produce the MAR Audit Trail.

RESPONSE:

35. Produce the Best Practice Advisories for the hospital admission at issue in this case.

RESPONSE:

36. Produce all screenshots of the vitals graphic flowsheet regarding the hospital admission at issue in this case.

RESPONSE:

37. Produce all clinical summary graphs showing Mr. Metzger's vital signs during the events made the basis of this lawsuit.

RESPONSE:

38. Please produce a complete, unredacted color copy of any and all data, patient calls, patient surveillance, staff location data (including all documents obtainable through location technology, such as Centrak or Hill-Rom), staff-to-staff communications, patient-to-staff communications, room and bed status, asset tracking, visits to patient rooms, time in room, automatic and manual message generation, automatic alarm suppression, call cancellation reports, documents, and all other information generated as a result of the events giving rise to this lawsuit.

RESPONSE:

39. Produce all contracts, agreements, any other document showing the position, status, association, and/or relationship between this Defendant and each of the following health care entities and providers during December of 2018:

- a. Dr. Jonathan Nakhla;
- b. Dr. Amber Gordon; and
- c. Infirmary Neurosurgery.

RESPONSE:

40. Produce a copy of the clinical privileges of the following physicians that were in effect during April 2018 that allowed each of the following individuals to practice medicine at MOBILE INFIRMARY:

- a. Dr. Jonathan Nakhla; and
- b. Dr. Amber Gordon.

RESPONSE:

41. Produce all documents and records, including audit trail data and computer-generated records, regarding each read, results, and/or findings of the CT scan, MRI scan or any other diagnostic procedures performed on Mr. Metzger that were ordered during December of 2018, including but not limited to, the identification of the person making each read, results, and/or findings, the time of each read, results, and/or findings, the identification of the health care provider to whom the results and/or findings were communicated, the time of each communication, the contents of each communication, and the manner in which each communication was made.

RESPONSE:

42. Produce a digital and/or electronic copy of each radiology study ordered and performed at MOBILE INFIRMARY during December of 2018 in connection with the treatment of Mr. Metzger.

RESPONSE:

43. Produce a copy of all radiology requisitions dealing with and/or referencing Mr. Metzger in December of 2018.

RESPONSE:

44. Produce the IP Encounter Report.

RESPONSE:

45. Produce a copy of the document flowsheet templates.

RESPONSE:

46. Produce a copy of the "Documents Released as Part of the Legal Medical Record".

RESPONSE:

47. Produce a copy of the "Business Documents Not Released as Part of the Legal Medical Record".

RESPONSE:

48. Produce a copy of any and all telemetry tech monitoring notes and reports related to Mr. Metzger between December 2, 2018 and December 11, 2018.

RESPONSE:

49. Produce the PACS audit trial and/or access log between December 2, 2018 and December 11, 2018.

RESPONSE:

50. Produce the Softlab audit trial and/or access log between December 2, 2018 and December 11, 2018.

RESPONSE:

51. Produce the Pharmacy audit trial and/or access log between December 2, 2018 and December 11, 2018.

RESPONSE:

52. Produce a copy of the "Vital Signs" Policy and Procedure (from the General Nursing Policies) in effect in December of 2018.

RESPONSE:

ANY DOCUMENT WHICH HAS BEEN WITHHELD ON THE BASIS OF ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT, AND/OR WHICH HAS BEEN DEEMED UNDISCOVERABLE BY THIS DEFENDANT SHOULD BE SPECIFICALLY DESIGNATED BY DATE, AUTHOR, ADDRESSEE, AND GENERAL SUBJECT MATTER SO THAT THE COURT MAY RULE ON ITS ADMISSIBILITY.

IT IS REQUESTS THAT ALL DOCUMENTS PRODUCED IN RESPONSE TO THE ABOVE REQUESTS BE BATES LABELED; AND, FOR EACH SUCH REQUEST THE RESPONSIVE DOCUMENTS BE IDENTIFIED BY THE INCLUSIVE BATES LABELLED NUMBERS.

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Attorneys for the Plaintiffs

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Attorney for the Plaintiff

TO BE SERVED WITH THE COMPLAINT

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

CHRISTINE METZGER, as Personal
Representative of the Estate of DENNIS
METZGER, deceased,

Plaintiff,

Civil Action No. _____

v.
INFIRMARY HEALTH SYSTEM, INC.; et
al.

**PLAINTIFF'S FIRST INTERROGATORIES AND REQUEST FOR PRODUCTION TO
DEFENDANT JONATHAN PISHOI NAKHLA, MD**

COMES NOW the Plaintiff in the above styled cause, pursuant to the Alabama Rules of Civil Procedure 33 and 34 and propounds the following interrogatories and request for production of documents to the Defendant, JONATHAN PISHOI NAKHLA, MC, to be answered and responded to fully and completely within the time required by law.

You are reminded that under the provision of Rule 26(a), you are under a duty to seasonably supplement your responses with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify and the substance of his testimony.

You are under a duty to seasonably amend a prior response if you obtain information upon the basis of which (a) you know that the response was incorrect when made, or (b) you know that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

Any such supplemental response is to be filed and served upon counsel of record

for the Plaintiffs within fifteen (15) days after receipt of such information.

DEFINITIONS

Unless otherwise indicated, the following definitions shall be applicable to these interrogatories:

“You” and “Your” shall mean this Defendant and each of its employees, agents, and/or representatives, and all other persons acting on its behalf.

“Person” shall mean any individual, partnership, firm, association, corporation or other business, government, or legal entity.

“Document” shall mean any written, recorded, transcribed, punched, taped, filmed, and/or graphic matter of any kind or description, however produced or reproduced.

“Identify” or “Identification” *when used with reference to a person*, shall mean to state the full name and present address or last known address of said person.

“Identify” or “Identification” *when used with reference to a document*, shall mean to state its date, author or signor, addressee, type of document and all other means of identifying it, and its present or last known location or custodian. If any document was but is no longer in your possession, custody and/or control, state what disposition was made of it and the reason for its disposition.

INTERROGATORIES

1. Please describe in detail, all pre-surgery conversations you had with Dennis Metzger and/or his family regarding the risks of surgery, if any, to include time, and date and location of each conversation and what was said by you.

RESPONSE:

2. Please identify the address where you presently reside.

RESPONSE:

3. Please set forth in detail any criminal arrest or conviction history you have.

RESPONSE:

4. Please identify the name and address of your employer in December 2018.

RESPONSE:

5. When were you first employed by Mobile Infirmiry Hospital?
 - a. What was your first day of employment with Mobile Infirmiry Hospital?
 - b. What date was your first surgery at Mobile Infirmiry Hospital?

RESPONSE:

6. Did you maintain a separate office address while employed at Mobile Infirmiry Hospital? If so, please identify.

RESPONSE:

7. Did you consult with any surgeons, outside of Mobile Infirmiry, regarding Dennis Metzger's surgery, either by phone, zoom, in person or otherwise?
 - a. If so, please identify by name and address?
 - b. Please identify the nature of the consult.
 - c. Please identify by name, any surgeon who assisted you with Dennis Metzger's surgeries.

RESPONSE:

8. Did you participate in a Hospital Tumor Board Meeting as is reflected in the medical chart?
 - a. If so, please state the purpose of the meeting, when it took place and the names of each person in attendance.

RESPONSE:

9. Please refer to Exhibit A attached hereto, a 2-page document titled, Disclosure and Consent – Medical and Surgical Procedures.

- a. Did you change the Disclosure and Consent form from “Biopsy and Debulking Brain Tumor” to “Bifrontal Craniotomy for Resection of Tumor?”
- b. If yes, when and why?
- c. If no, do you have knowledge of who did this, why and when, and if so please explain in detail?
- d. Is that your signature under “Signature of Provider” on the 2nd page of Exhibit A?
- e. If yes, when did you sign the document?

RESPONSE:

10. Was Dennis Metzger informed and/or advised that the Disclosure and Consent form for surgery was changed? If yes, when and where was he advised and what was he told and by whom?

RESPONSE:

11. Regarding complications following Mr. Metzger’s surgery, do you believe the nurses failed to timely contact you?

- a. If yes, please explain in detail.

RESPONSE:

12. Please identify all cell phone numbers with name of carrier, that you used in December 2018.

RESPONSE:

13. Did you use any other form of communication in December 2018 other than cell phone? If so, please identify in detail.

RESPONSE:

14. Please identify all board certifications you held in December 2018.

RESPONSE:

15. Did you discuss alternatives to surgery with Dennis Metzger?

- a. If yes, please describe in detail, to include when, where and what was said.

RESPONSE:

16. Do you recall any comments or questions that Dennis Metzger or his family had for you regarding surgery?

- a. If yes, please describe in detail.

RESPONSE:

17. Have you ever served as a medical expert witness in a medical malpractice case?

- a. If yes, please identify the lawyer(s) that retained you, and the locations where the case(s) was filed.

RESPONSE:

18. Please identify the last deposition that you gave by location and date, and style of the case.

RESPONSE:

19. Have you ever been diagnosed with any addiction?

- a. If yes, please describe in detail.

RESPONSE:

20. Please identify the locations where you were physically present the night of December 8, 2018, following surgery on Dennis Metzger, before you returned to the hospital.

- a. Please identify by name everyone that was with you at these locations

RESPONSE:

REQUEST FOR PRODUCTION

1. Please produce the latest version of your CV.

RESPONSE:

2. Please produce all records, notes, correspondence, photos, emails, and any other documentation relating to Dennis Metzger that are not otherwise found in his Mobile Infirmery chart.

RESPONSE:

3. Please produce a copy of your medical license.

RESPONSE:

4. Please produce a copy of your driver's license.

RESPONSE:

5. Please produce a copy of any contract of employment you have ever maintained with Mobile Infirmery.

RESPONSE:

6. Please produce a copy of all documents, to include debit card statements, credit card statements, receipts or otherwise, that reflect your physical whereabouts the night of December 8, 2018, following surgery on Dennis Metzger.

RESPONSE:

7. Please produce all notes and records and other documents created for or during or as a result of the Hospital Tumor Board meeting relating to Dennis Metzger's surgery.

RESPONSE:

ANY DOCUMENT WHICH HAS BEEN WITHHELD ON THE BASIS OF ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT, AND/OR WHICH HAS BEEN DEEMED UNDISCOVERABLE BY THIS DEFENDANT SHOULD BE SPECIFICALLY DESIGNATED BY DATE, AUTHOR, ADDRESSEE, AND GENERAL SUBJECT MATTER SO THAT THE COURT MAY RULE ON ITS ADMISSIBILITY.

IT IS REQUESTS THAT ALL DOCUMENTS PRODUCED IN RESPONSE TO THE ABOVE REQUESTS BE BATES LABELED; AND, FOR EACH SUCH REQUEST THE RESPONSIVE DOCUMENTS BE IDENTIFIED BY THE INCLUSIVE BATES LABELLED NUMBERS.

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