

FILED May 2, 2019  
 ANGIE SPARKS, Clerk of District Court  
 By [Signature] Deputy

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

CHERYL O'DONNELL, as Personal	)	CAUSE NO. CDV-2017-850
Representative of the Estate of RODNEY	)	
KNOEPFLE, Deceased,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PRETRIAL ORDER
	)	
LEE HARRISON, M.D., and ST. PETER'S	)	
HEALTH,	)	
	)	
Defendants.	)	

Pursuant to Rule 16 of the Montana Rules of Civil Procedure, a pretrial conference was held in the above-entitled cause on the 2<sup>nd</sup> day of May, 2019. Mark Kovacich, Ben Snipes, and Michael McKeon of Kovacich Snipes Johnson, P.C. and McKeon Law, PLLC, respectively, represented the Plaintiff. Dave McLean and Ryan Willmore of McLean & Associates, PLLC, represented the Defendants.

Pursuant to Rule 16, M.R.Civ.P., and the Montana Uniform District Court Rules, this Pretrial Order shall control the subsequent course of this action.

**I. AGREED FACTS**

The following facts are admitted, agreed to be true, and require no proof:

1. Rodney Knoepfle was a resident of Helena, Lewis and Clark County, Montana.
2. Defendant Dr. Lee Harrison practices medicine at St. Peter's Health in Lewis and Clark County, Montana.
3. Defendant St. Peter's Hospital is a hospital located in Helena, Lewis and Clark County, Montana.
4. Plaintiff's allegations arise in Lewis and Clark County, and jurisdiction is proper.
5. Plaintiff's allegations arise in Lewis and Clark County, and venue is proper.

## **II. PLAINTIFF'S CONTENTIONS**

Plaintiff contends as follows:

1. On **March 18, 2016**, at approximately 7:15 p.m., Rodney arrived at St. Peter's Emergency Department (ED) via wheelchair with complaints of weakness, shortness of breath, chest tightness, 8 lbs of weight gain in the previous two days, lower extremity edema, constipation and decreased urine production. For the two months prior, Rodney had been in atrial fibrillation and was waiting to be adequately anticoagulated before cardioversion. He had been previously hospitalized for this condition in February 2016. At the time of Rodney's arrival to St. Peter's ED, Margaret Ruckey, RNC performed the intake/patient assessment. In that assessment, Nurse Ruckey noted that Rodney had an Advance Health Directive, which consisted of a Living Will and Durable Power of Attorney. Additionally, Nurse Ruckey noted that Rodney had a valid POLST (Physician Orders for Life-Sustaining Treatment) on file with St. Peter's Hospital.

2. In the ED, Rodney was treated by Dr. Kuntzweiler. At 7:25 p.m., Dr. Kuntzweiler ordered labs, an x-ray and an EKG. Upon receiving the results of the ordered tests, Dr. Kuntzweiler, in consultation with Dr. Kreisberg, determined the proper course of action was to admit Rodney into St. Peter's. At that time, Dr. Kreisberg agreed to accept Rodney as a patient for hospitalist services. He was admitted less than an hour after arrival. At the time of his admission, Rodney had a DNR/DNI identifying band placed on his wrist. His medical chart was allegedly transferred with Rodney to his room on the medical floor.

3. Following his admission, Dr. Kreisberg assessed Rodney with acute renal failure, Coumadin coagulopathy, atrial fibrillation, weakness, dizziness, dyspnea on exertion, coronary artery disease with elevated troponin, congestive heart failure and complication prophylaxis. Dr. Kreisberg opined Rodney would likely require 2 days or more of inpatient care.

4. At approximately 11:12 p.m., Dr. Kreisberg prepared and Esigned an Order confirming Rodney's resuscitation status as DNR/DNI. This DNR/DNI Order was electronically transmitted within the St. Peter's system at approximately 11:12 p.m. Dr. Kreisberg's DNR/DNI Order was acknowledged via PCS at approximately 11:42 p.m. At all times after the entry of Dr. Kreisberg's DNR/DNI Order, Rodney donned a blue wristband. The purpose of this blue wristband was to ensure that all members of St. Peter's hospital staff knew of Rodney's DNR/DNI status.

5. **March 19, 2016** - At 11:46 a.m., Dr. Lee Harrison assumed care for Rodney. She spent 45 minutes examining him and reviewing his records. Her exam revealed continuing irregular heart rhythm. Cheryl, Rodney's wife, was present for Dr. Harrison's

initial visit. At 1:44 p.m., Dr. Sarah Fenton engaged Rodney in a cardiology consultation and examination. Her notes indicate that she discussed findings with Dr. Harrison and committed to informing Dr. Godlewski (Rodney's regular cardiologist) of the treatment options discussed.

6. **March 20, 2016** - At around 11:30 a.m., Rodney was seen by his treating cardiologist, Dr. Godlewski, who was on call at St. Peter's that day. Rodney's rhythm strips continued to show atrial fibrillation. Dr. Godlewski then elected to perform cardioversion. After 3 attempts at cardioversion, Rodney converted to sinus rhythm. Following the cardioversion, Dr. Godlewski planned to continue to monitor Rodney over the next 24 hours. If he was stable, Dr. Godlewski planned to discharge him on March 21, 2016.

7. **March 21, 2016** - Rodney complains of feeling distended, constipated, and not able to get up and ambulate. He was given a suppository and left in the bathroom. It is unclear from the treatment records who prescribed and administered the suppository. When the nurse returned to his room, Rodney was found unresponsive. It is at this point, the standard of care was first breached. Despite Rodney's advanced health directive instructions not to prolong his life with resuscitation or intubation, he was put down on the floor and aggressive and unauthorized CPR and epinephrine were administered. These procedures were performed until the code team arrived and reiterated Rodney's DNR/DNI status.

8. Around this time, Cheryl, who was at work, received a phone call from an unknown nurse at St. Peter's informing her that Rodney was found unresponsive and had "coded." The unknown nurse then confirmed with Cheryl that Rodney's directives

were to not prolong his life with resuscitation or intubation and that he was on DNR/DNI status. Cheryl confirmed Rodney's advance directive and DNR/DNI status with the nurse and the conversation ended.

9. Believing the advanced directives were honored and that her husband had died, Cheryl was given a ride to the hospital by a co-employee. While enroute to the hospital, approximately 8 minutes after Cheryl had received the first call to confirm Rodney's DNR/DNI status, she received a second call from St. Peter's Hospital and was informed that the treating providers had "forgotten" about Rodney's DNR/DNI status and that he had been resuscitated and was now conscious.

10. In her note corresponding to the March 21, 2016, unauthorized resuscitation of Rodney, Dr. Harrison relayed that "[i]t was felt that [Rodney] may have suffered severe bradycardia with straining of stool or an arrhythmia, which we did not see on telemetry related to his propafenone." Dr. Harrison's note was dictated at 1:42 p.m. Prior to that, at 11:37 a.m., Dr. Harrison acknowledged that Rodney's DNR/DNI order continued to persist.

11. Dr. Fenton later characterized this occurrence as "very prolonged pauses, essentially asystole." In other words, Rodney had flat-lined. After Rodney was wrongfully resuscitated and stabilized, he was moved to the Intensive Care Unit (ICU). As a result of the CPR, he suffered bleeding into his left chest.

12. While it is unknown at this time exactly who was involved with the unauthorized resuscitation or who was in the room at the time, Dr. Harrison's medical record from that incident confirms a breach of the standard of care by the administration of unauthorized resuscitation. In her March 21, 2016, Progress Note, Dr. Harrison states:

IMPRESSION AND PLAN:

1. Cardiovascular collapse, most likely due to either severe bradycardia or arrhythmia, which was not caught on telemetry. Plan: 1) Ongoing monitoring in the ICU. 2) We will check a troponin. 3) Dr. Godlewski will be following up.

2. **DO NOT RESUSCITATE/DO NOT INTUBATE status. His CODE was started before it was recalled that he had requested DO NOT RESUSCITATE/status. His wife by phone confirmed this, but by that time he was alert and responding. He will remain a DNR/DNI with no further chest compressions or intubation should this become necessary (emphasis added).**

13. As indicated by this record, and as both Rodney and Cheryl will state, Rodney was extremely upset when he was told his advance directives had been violated and that aggressive and unauthorized life prolonging measures had been administered. Both he and Cheryl explicitly confirmed his advance directives and Dr. Harrison noted it (see 3/21/16 Progress Note, above). Additionally, Dr. Harrison apologized to both Rodney and Cheryl for not following his advance directive. He remained in the ICU the night of March 21, 2016.

14. **March 22, 2016** - Dr. Harrison performed a morning evaluation of Rodney, stating "it was felt that [Rodney] experienced bradycardia and cardiac arrest after a bowel movement." Shortly after Dr. Harrison's morning evaluation, while in the ICU, Rodney "Bradyed down with heart rates in the 20s and became unresponsive."

15. Rodney's advanced directive, which had just been confirmed and reiterated in Dr. Harrison's March 21, 2016, Progress Note, was again violated on March 22, 2016. Upon becoming unresponsive in the ICU, aggressive and unauthorized means were again used to prolong his life, including ventilation and the administration of atropine and epinephrine. This treatment was unauthorized by Rodney and administered in

direct violation of his controlling directives. This represents the second breach of the applicable standard of care.

16. On two separate occasions within a 24-hour time period, Rodney's medical providers failed to honor his advance directives and administered unauthorized and unwanted treatment. Subsequent to his second CODE, it was found that Rodney's atrial fibrillation had recurred, two days following cardioversion. In her record of March 22, 2016, after the second CODE and unauthorized administration of life prolonging care, Dr. Harrison again documents Rodney's advance directives:

**In visiting with Mr. Knoepfle and his wife, they DO NOT WANT INTUBATION or CPR again, but would want treatment up until that point (emphasis added).**

Following the second unauthorized and aggressive life prolonging treatment administered in the ICU, Rodney and Cheryl, in consultation with his cardiologist, Dr. Godlewski, elected to have a pacemaker placed. This was performed shortly after Rodney's second bradycardic arrest on March 22, 2016.

17. **March 23, 2016** - Dr. Fenton performed a cardiology progress evaluation and found Rodney was now also suffering from sick sinus syndrome as a result of the 2 bradycardic arrests. Dr. Fenton further commented that Rodney's hemoptysis was due to intrathoracic bleeding from CPR.

18. Following the above events, Rodney remained in ICU until March 28, 2016, when he was transferred to the medical floor of the hospital. At all times relevant hereto, Rodney's DNR/DNI order was in place and he wore a blue wristband indicating the same. Rodney was discharged from St. Peter's Hospital to the Big Sky Care Center on April 1, 2016.

19. St. Peter's Hospital and Rodney's treating providers were negligent and breached the applicable standards of care for doctors and/or nurses which require the following:

- a. A heightened sense of evaluation and focus on life sustaining treatment decisions when a patient presents with an advanced and serious illness that may adversely affect the patient's health and survival;
- b. Development of and adherence to a uniform system, practice or protocol to ensure the right of the patient to direct all aspects of his personal care and medical treatment, including the right to decline medical treatment and/or direct that medical treatment be withdrawn;
- c. Proper documentation of a patient's advance directive in the medical chart;
- d. Development of and adherence to a uniform system, practice or protocol to ensure that a patient's decisions regarding healthcare as expressed in an advance directive (or otherwise) are known, promptly communicated to doctors and nurses, honored and respected;
- e. Development of and adherence to a uniform approach for obtaining a patient's informed consent to treatment so the patient/advance directive agent has sufficient pertinent information prior to making a decision regarding medical treatment.
- f. The ability and willingness to recognize and acknowledge when a patient has an incurable and irreversible condition that is likely to result in the patient's death within a relatively short time and to refrain from taking steps to prolong life if so directed by the patient's advance directive.
- g. The ability to follow an expected uniform protocol of communication with an appointed proxy or surrogate decision-maker in the event that the patient lacks the ability to effectively communicate or lacks decision-making capacity.

20. St. Peter's Hospital and Rodney's treating providers were negligent and breached the standards of care by failing to ensure systematic communication and adherence of Rodney's advance directives to all hospital and medical staff. The administration of aggressive life prolonging care, twice in contradiction of Rodney's



advanced directives, further constitutes actionable violations of his right to accept or refuse medical treatment and to direct his medical care.

21. As a provider of Medicare services, St. Peter's Hospital has a statutory and contractual duty to comply with the provisions of 42 U.S.C. §1395cc(f)(sometimes referred to as the "Patient Self Determination Act).

22. St. Peter's Hospital is required to promulgate and adhere to written policies pertaining to an individual's right to accept or refuse medical or surgical treatment and the right to formulate an advanced directive. Additionally, Defendants had a duty to develop written policies respecting the implementation of such rights and to document in a prominent part of a patient's medical record whether or not an individual has executed an advance directive.

23. By accepting Rodney's DNR/DNI directive at the time it was delivered, and preparing an Order establishing Rodney's DNR/DNI status, St. Peter's Hospital agreed to honor his right to decline medical treatment and/or direct that medical treatment be withdrawn.

24. St. Peter's Hospital breached its agreement with Medicare and its agreement with Rodney by failing to promulgate, implement and abide by a policy to ensure compliance with the DNR/DNI Order.

25. St. Peter's Hospital failed to ensure appropriate communication of the DNR/DNI Order to the doctors and medical staff involved in Rodney's medical care and treatment. By breaching its agreement with Medicare and Rodney, St. Peter's Hospital permitted aggressive life sustaining treatment on Rodney without first obtaining informed consent.

26. Said breach constitutes a failure of St. Peter's Hospital to abide by its agreement to comply with and respect Rodney's DNR/DNI Order and his right to refuse medical treatment in the circumstances presented herein.

27. Said breach constitutes failure to abide by its agreement to refrain from performing aggressive life sustaining treatment on Rodney.

28. As a result of said breaches, Rodney incurred medical expenses and was forced to endure excruciating pain and suffering, both mental and physical.

29. St. Peter's Hospital is liable to Rodney for damages alleged herein in an amount shown by the evidence at trial.

30. Dr. Harrison and the medical staff at St. Peter's Hospital had a duty to exercise due care and skill in their medical treatment of Rodney. The applicable standard of care in a similar circumstance as those presented herein requires at least the following:

- a. A heightened sense of evaluation and focus on life sustaining treatment decisions when a patient presents with an advanced and serious illness that may adversely affect the patient's health and survival;
- b. Development of and adherence to a uniform system, practice or protocol to ensure the right of the patient to direct all aspects of his personal care and medical treatment, including the right to decline medical treatment and/or direct that medical treatment be withdrawn;
- c. Proper documentation of a patient's advance directive/physician order in the medical chart;
- d. Development of and adherence to a uniform system, practice or protocol to ensure that a patient's decisions regarding healthcare as expressed in an advance directive/physician order are known, promptly communicated to doctors and nurses, honored and respected;
- e. Development of and adherence to a uniform approach for obtaining a patient's informed consent to treatment so the patient/advance directive agent has sufficient pertinent information prior to making a decision regarding medical treatment;

f. The ability and willingness to recognize and acknowledge when a patient has an incurable and irreversible condition that is likely to result in the patient's death within a relatively short time and to refrain from taking steps to prolong life if so directed by the patient's advance directive/physician order;

g. The ability to follow an expected uniform protocol of communication and adherence to a do not resuscitate order, or alternatively transfer a person with a do not resuscitate order to another provider or facility in which the do not resuscitate protocol will be followed.

31. Defendants breached their duties and violated the standard of care and skill exercised by medical doctors generally under similar conditions and like surrounding circumstances such as those presented in the circumstances shown herein.

32. The Defendant nurses and other medical personnel employed by St. Peter's Hospital breached their duty and violated the standard of care and skill exercised by nurses generally under similar conditions and like surrounding circumstances such as those presented by Rodney, including but not limited to the failure to ensure communication of the advanced directive/physician order to all involved hospital and medical staff.

33. Defendants had a statutory duty to obtain informed consent before performing life sustaining treatment on Rodney on March 21, 2016 and March 22, 2016. In failing to do so, Defendants were negligent per se.

34. As shown herein, Defendants authorized, allowed and performed life sustaining treatment on Rodney without first obtaining informed consent from his designated agent for health care decisions. This failure violated Rodney's advanced directive/physician order documented in the medical record.

35. As a direct and proximate result of the negligence of the Defendants, and each of them, Plaintiff suffered damages.

36. Pursuant to § 50-9-101 et seq, and § 50-10-101, et seq, Montana Code Annotated, a health care provider who is furnished an advanced directive and/or a do not resuscitate order, directing the withholding of life-sustaining treatment, shall make the advanced directive a part of the patient's medical record, and shall act in accordance with its provisions and with the instructions of a designee.

37. As shown herein, Defendants authorized, allowed and performed life sustaining treatment on Rodney in contradiction to his advanced directive/physician order. This violated Rodney's advanced directive and/or the physician order reflecting his DNR/DNI status.

38. As a direct and proximate result of the negligence of the Defendants, and each of them, Plaintiff suffered damages.

39. Rodney's advanced directive/physician order constituted informed refusal of specifics measures in medical care under specified circumstances.

40. Defendants knew at all times pertinent hereto or should have known about the provisions of Rodney's advanced directive/physician order.

41. At all times pertinent herein, Defendants were under express directions not to perform life sustaining treatment on Rodney.

42. Defendants had actual knowledge of the specific circumstances invoking Rodney's advanced directive/physician order. On March 21, 2016 and March 22, 2016, Defendants authorized and performed life sustaining treatment on Rodney, a medical intervention expressly forbidden by his advanced directive/physician order.

43. The performances of the life sustaining treatment on Rodney on March 21, 2016 and March 22, 2016, were non-consensual and offensive contact with Rodney's person and constituted a battery.

44. Defendants' negligent acts or omissions caused serious or severe emotional distress to Rodney, which was a reasonably foreseeable consequence of Defendants' wrongful conduct.

45. As a direct and proximate result of Defendants wrongful conduct, Rodney suffered serious and severe emotional distress that no person should be expected to endure.

46. Under the Montana Constitution Article II, Section 3, Plaintiff has the following fundamental, inalienable, and self-executing constitutional rights: The right to individual dignity, which is inviolable; and the right to individual privacy (Article II, Section 10).

47. Defendants' acts or omissions before, during and after March 21, 2016 and March 22, 2016, violated Plaintiff's aforementioned constitutional rights.

48. Plaintiff has the right to certain unenumerated rights, including but not limited to, the right to seek recourse against those who violated his constitutional rights.

49. As a direct and proximate result of Defendants' violation of rights granted to Plaintiff under the Montana Constitution, Plaintiff suffered severe physical and emotional injury. Plaintiff is therefore entitled to compensatory damages and attorneys' fees for Defendants' violations of his state constitutional rights.

50. As a direct and proximate result of Defendants' negligent and unlawful conduct, as herein alleged, Plaintiff Rodney Knoepfle underwent unauthorized medical treatment, incurred medical expenses, and will incur future medical expenses.

51. As a direct and proximate result of Defendants' negligent and unlawful conduct, as herein alleged, Plaintiff Rodney Knoepfle has suffered great mental and physical pain.

52. As a direct and proximate result of Defendants' negligent and unlawful conduct, as herein alleged, Plaintiff Rodney Knoepfle has experienced loss and destruction of his established course of life.

53. Plaintiff requests the Court grant her the following relief:

- A. For reasonable compensation for past and future medical and related expenses of Plaintiff Rodney Knoepfle proximately caused by the Defendants' unlawful conduct.
- B. For reasonable compensation for Plaintiff Rodney Knoepfle's pain and suffering proximately caused by the Defendants' unlawful conduct.
- C. For reasonable compensation for Plaintiff Rodney Knoepfle's loss of enjoyment of established course and way of life proximately caused by Defendants' unlawful conduct.
- D. For costs and disbursements incurred herein.
- E. For such other and further relief as the Court may deem just.

### **III. DEFENDANTS' CONTENTIONS**

Defendants contend as follows:

1. Knoepfle presented at and was admitted to SPH on March 18, 2016.
2. Upon admission, an order was entered pursuant to Knoepfle's wishes that he be designated a do not resuscitate/do not intubate ("DNR/DNI") patient.
3. On March 21, 2016, Knoepfle needed to utilize the restroom.
4. While in the restroom, Knoepfle became unresponsive.

5. The nurse in Knoepfle's room called a code in an effort to get assistance with Knoepfle.

6. When a code was called at approximately 11:20 am on March 21, 2016, the resuscitation team arrived immediately and started chest compressions. Dr. Harrison proceeded with CPR without looking for DNR orders as she was responding to a code and was focused on the patient's life.

7. Although Dr. Harrison was previously aware of Knoepfle's code status, in response to the code being called, she proceeded with CPR without recalling Knoepfle's DNR status.

8. O'Donnell was contacted via telephone and confirmed Knoepfle's DNR status. Thus, CPR was discontinued but Knoepfle had already been resuscitated.

9. Dr. Harrison and SPH admit Knoepfle should not have been resuscitated on March 21, 2016 and that performing CPR was in contradiction to Knoepfle's DNR (Do Not Resuscitate) code status and admit this resuscitation was an error.

10. Dr. Harrison met and conversed with Knoepfle and O'Donnell on March 22, 2016. In that conversation, they indicated Knoepfle did not want intubation or CPR again, but would want treatment up until that point.

11. There was no resuscitation performed on Knoepfle on March 22, 2016 and no intubation. Knoepfle simply became bradycardic and responded to medication treatment; no chest compressions or intubation was employed.

12. Providing IV medications to Knoepfle on March 22, 2016 did not violate his DNR/DNI order.

13. Knoepfle's heart did not stop on March 22, 2016.

14. Knoepfle had a pacemaker placed on March 22, 2016.
15. Knoepfle sought additional pacemaker treatment in Utah on November 7, 2016.
16. Knoepfle did not seek counseling or mental health treatment between March 21, 2016 and March 16, 2018.
17. Knoepfle did not suffer serious or severe emotional distress between March 21, 2016 and March 16, 2018.
18. Knoepfle's medical condition between March 21, 2016 and March 16, 2018 was similar to his medical condition prior to March 21, 2016.
19. Defendants dispute the nature and cause of Knoepfle's claimed injuries and damages.
20. Knoepfle failed to mitigate his alleged damages and increased the expenses his estate is seeking.
21. After Knoepfle was resuscitated in contravention to his DNR, he took subsequent steps to prolong his life.
22. Knoepfle took life-sustaining measures between March 21, 2016 and March 16, 2018.
23. Plaintiff is seeking damages for the medical expenses incurred, and essentially being alive, from March 21, 2016 to March 16, 2018.
24. Plaintiff's own acts were wholly or partly responsible for the alleged damages he suffered – medical expenses and living for two years after CPR was performed.
25. Defendants deny Plaintiff's contentions.



26. O'Donnell is not entitled to damages she is seeking.

27. O'Donnell is not entitled to punitive damages.

#### **IV. EXHIBITS**

Plaintiff's exhibits are identified by number and Defendants' exhibits are identified by letter. A brief description of each exhibit is on the attached lists. The parties will identify their objections to proposed exhibits at least two weeks in advance of trial. Any exhibit offered at trial to which no objection was made will be admitted into evidence.

#### **V. WITNESSES**

The following witnesses, and no others, may be called to testify, except on rebuttal:

##### **Plaintiff:**

1. Cheryl O'Donnell
2. Heidi Buchanan
3. Melanie Erickson
4. Dwight Knoepfle
5. Sheila Knoepfle
6. Linda Freeman
7. Art Freeman
8. Sandy Pancake
9. Lester White
10. Linda Pfister
11. David Chamberlin, M.D. (Mercury Street Medical)
12. Lee Harrison, M.D.

13. Holly R. Ireland, RN (St. Peter's Hospital)
14. Nancy A. Westerbuhr, RN (St. Peter's Hospital)
15. Kris Godlewski, M.D. (St. Peter's Hospital)
16. Sarah Fenton, M.D. (St. Peter's Hospital)
17. Mark Kreisberg, M.D. (St. Peter's Hospital)
18. Rodolfo Choussal-Gonzalez, M.D. (St. Peter's Hospital)
19. D.L. Kuntzweiler, M.D. (St. Peter's Hospital)
20. Nicole Peebles Hodgskiss
21. Holly Ireland
22. Kari Parmer
23. Tana Redfern
24. Ryan Nash, MD
25. Rodney Knoepfle's medical providers
26. Any witness necessary to lay foundation for the admission of any exhibit.
27. Any witness identified by Defendant.
28. Rebuttal and impeachment witnesses.

**Defendants:**

1. Cheryl O'Donnell;
2. Dr. Lee Harrison;
3. Nichole Hodgskiss;
4. Holly Ireland;
5. Dr. Peter Tuberty;
6. Dr. Ryan Nash;

7. Dr. Mark Kreisberg;
8. Kari Parmer;
9. Tana Redfern;
10. Nancy Westerbuhr;
11. Dr. Kris Godlewski;
12. Rami Alharethi, MD;
13. Jonathan Peter Weiss, MD;
14. Kevin Walsh, MD;
15. Michael Cutler, MD;
16. All witnesses identified by Plaintiff;
17. All witnesses necessary for rebuttal;
18. All witnesses necessary for impeachment; and
19. All witnesses needed to establish foundation.

#### **VI. ISSUES OF FACT**

The following issues of fact remain to be litigated:

1. Did St. Peter's breach its agreement with Rodney Knoepfle by failing to ensure compliance with Dr. Kriesberg's DNR/DNI Order?
2. Were the Defendants negligent?
3. Were the Defendants negligent per se?
4. Did the Defendants commit battery?
5. Did the Defendants negligently inflict emotional distress on the Plaintiff?

6. If any of the foregoing are determined in the affirmative, did the Defendants' conduct cause damage to the Plaintiff?

7. If so, what is the reasonable value of Plaintiff's damages?

8. Did Plaintiff's cause and/or increase his own damages?

9. Additional issues of fact as raised by the parties' contentions will need to be litigated.

Defendants contend the following issue of fact also remains to be litigated:

1. Was it foreseeable Knoepfle would elect to have a pacemaker placed and seek other medical treatment to sustain or prolong his own life?

#### **VII. ISSUES OF LAW**

1. Jury Instructions to be given to the jury; and

2. The special verdict form to be utilized.

#### **VIII. DISCOVERY**

The following fruits of discovery may be offered into evidence:

##### **Plaintiff:**

1. Defendant's written discovery responses.

2. Excerpts from the depositions of Virginia Harrison, Nicole Hodgskiss Peebles, Holly Ireland, Mark Kreisberg, Kari Parmer, Tana Redfern, Nancy Westbuhr, and Peter Tuberty.

##### **Defendants:**

1. Excerpts from Depositions have not been provided to Defendants in order to allow sufficient counter-designation.

2. If necessary due to incapacity or unavailability, the parties may use depositions in conformity with the Montana Rules of Civil Procedure.

3. The parties may use discovery, including depositions, as may be necessary for impeachment, to refresh recollection and in accordance with the Montana Rules of Civil Procedure.

#### **IX. ADDITIONAL PRETRIAL DISCOVERY**

**Plaintiff:** Plaintiff previously agreed to participate in the deposition of Dr. Rami Alharethi. The parties have not agreed to any further discovery. Plaintiff has notified Defendants of her objections to further discovery after the Rule 26 discovery deadline. Plaintiff produced records in her possession, including records from Utah and also offered to sign a release allowing Defendants to obtain additional records back in August of 2018.

**Defendants:** Plaintiff failed to provide any medical records from the care Knoepfle received in Utah, made no effort to obtain or collect those records, and made no inquiry of the providers in Utah regarding the records despite the records being requested in discovery. Defendants are attempting to depose providers identified in the records they were able to obtain via subpoena.

#### **X. STIPULATIONS**

The parties stipulate that venue in this Court is proper, and the Court has jurisdiction over the parties and issues raised in this matter. The parties also stipulate that the case will be tried by jury, on all issues so triable.

1. The parties have agreed that the Court order witnesses excluded in accordance with Rule 615, Mont. R. Evid. This does not include parties or witnesses to be used for impeachment or rebuttal.

2. Authenticated copies of the medical records which are otherwise admissible may be introduced by either side, as an exhibit, instead of the original records, including all authenticated films, scans, echocardiograms and angiographic movies.

3. The parties stipulate they will provide opposing counsel one-day's notice of each witness to be called at trial the following court day, and that such notice shall be given no later than the close of the preceding Court day.

#### **XI. DETERMINATION OF LEGAL QUESTIONS IN ADVANCE OF TRIAL**

The parties do not anticipate requiring additional legal determinations.

#### **XII. JURY SELECTION PROCESS**

The jury will be selected pursuant to the Court's usual process.

#### **XIII. TRIAL**

The parties believe the case can be tried in five days as originally scheduled. The case will be tried before the Court with a 12-person jury and a number of alternates to be determined by the Court.

IT IS HEREBY ORDERED, that this Pretrial Order shall supersede the pleadings and govern the course of the trial of this case, unless modified to prevent manifest injustice.

IT IS HEREBY ORDERED that except as otherwise more specifically provided by the final pretrial order, the final pretrial order does not supersede prior rulings and

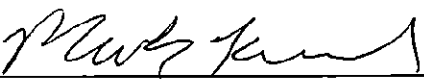
orders of the court, including but not limited to discovery rulings, summary judgment rulings, evidentiary rulings in limine, and applicable procedural requirements of any prior scheduling order.

DATED this 2 day of May, 2019.

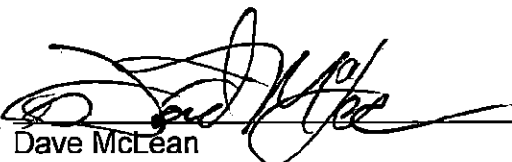
  
Kathy Seeley District Court Judge

**APPROVED AS TO FORM AND CONTENT:**

KOVACICH SNIPES JOHNSON, P.C.  
and  
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## PLAINTIFF'S EXHIBIT LIST

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

**Presiding Judge**                    HONORABLE KATHY SEELEY

**Cause No.**                            CDV-2017-850

**Plaintiff**                             Cheryl O'Donnell as Personal Representative of the Estate of Rodney Knoepfle

**Counsel of Record**                Mark M. Kovacich, Ben A. Snipes, Jacy D. Suenram, Michael J. McKeon, Jr.

**Defendants**                             Lee Harrison, M.D., St. Peter's Health

**Counsel of Record**                Dave McLean

**Pretrial Conference**                May 2, 2019

Exhibit #	Admitted	Marked	Offered	Obj. <sup>1</sup>	Description of Exhibit
1					Plaintiff's medical records of the following providers: David Chamberlin, M.D., St. Peter's Hospital, Lee Harrison, M.D., Apex of St. Peter's Hospital, Intermountain Heart Institute of Utah, St. Peter's Home Health a/k/a Home Link Healthcare, Hospice of St. Peter's, Mountain View Eyecare;
2					Plaintiff's medical bills from the following providers: David Chamberlin, M.D., St. Peter's Hospital, Lee Harrison, M.D., Apex of St. Peter's Hospital, Intermountain Heart Institute of Utah, St. Peter's Home Health a/k/a Home Link Healthcare, Hospice of St. Peter's, Mountain View Eyecare
3					St. Peter's Hospital Advanced Directives Policy
4					St. Peter's Hospital Do Not Resuscitate (DNR) Policy
5					St. Peter's Hospital Home Health and Hospice Advance Directives Policy
6					St. Peter's Hospital Provider Orders for Life Sustaining Treatment (POLST) Policies
7					St. Peter's Hospital Withholding or Withdrawal of Life-Sustaining Treatment Policy
8					St. Peter's Hospital Patient Identification Policy
9					St. Peter's Hospital DNR/DNI Full Code Status documentation

<sup>1</sup>Objection Key: "F" – Foundation; "R" – Relevance; "H" – "Hearsay"



10					St. Peter's Hospital Plan for Provision of Care: Medical Floor Policy
11					St. Peter's Hospital Medical Staff Bylaws
12					St. Peter's Hospital Informed Consent and Refusal of Treatment Policy
13					St. Peter's Hospital Code Sheet (ER/Critical Resuscitation Chart), March 21, 2016
14					St. Peter's Hospital Risk Management Worksheet (MIDAS Report), March 27, 2016
15					St. Peter's Hospital Training Materials (SPH 001691-001748)
16					Survey Report and Corrective Action Plan Submittal Form
17					Video of Rodney Knoepfle and Cheryl O'Donnell
18					March 21, 2016 resuscitation minutes
19					June 15, 2016 DNR/DNI Education email
20					St. Peter's Health Patient Bill of Rights
21					Nursing Grand Round Training
22					Survey Report and Corrective Action Plan Submittal Form
23					Rodney Knoepfle's Death Certificate
24					Photos of Rodney Knoepfle
25					Any exhibit necessary for impeachment or rebuttal
26					Any exhibit listed by Defendant
27					Any additional documents, including but not limited to photos and/or medical records and bills identified in the course of ongoing discovery
28					Demonstrative exhibits

**DR. HARRISON'S AND SPH'S TRIAL EXHIBIT LIST**

<p>CHERYL O'DONNELL, as Personal Representative of the Estate of RODNEY KNOEPFLE, Deceased,</p> <p align="center">Plaintiff,</p> <p align="center">v.</p> <p>LEE HARRISON, M.D. and ST. PETER'S HEALTH,</p> <p align="center">Defendant.</p>	<p align="center">Judge Kathy Seeley</p>
<p><b>CAUSE NO. CDV-2017-850</b></p>	<p><b>FINAL PRETRIAL CONFERENCE: MAY 2, 2019 9:00 AM</b></p>
<p><b>PLAINTIFF'S ATTORNEYS:</b> Mark M. Kovacich Ben A. Snipes Jacy D. Suenram Michael J. McKeon, Jr.</p>	<p><b>DEFENDANTS' ATTORNEYS:</b> David M. McLean Ryan C. Willmore</p>

Ex. #	Description of Document	Bates #	Admit (Y/N)	Object (Y/N)	Ref	Res	Objection Grounds
A	Patient Visit Summary / Patient Visit (2/3/14)	SPH/HARRISON_001 251-001255					
B	General Request (2/3/14)	Medical records produced with Plaintiff's Responses to St. Peter's Health's First Combined Discovery Requests, pp. 4997-4998					
C	APEX Equipment Instructions Signature Page, Equipment Terms & Conditions, and Rental/Sales Terms of Agreement (2/13/16)	Medical records produced with Plaintiff's Responses to St. Peter's Health's First Combined Discovery Requests, pp. 2647, 4228-4229					

Ex. #	Description of Document	Bates #	Admit (Y/N)	Object (Y/N)	Ref	Res	Objection Grounds
D	Proof of Delivery, Home Oxygen/PAP Physician Order (2/17/16)	Medical records produced with Plaintiff's Responses to St. Peter's Health's First Combined Discovery Requests, p. 2646					
E	Follow-up Call (2/22/16)	Medical records produced with Plaintiff's Responses to St. Peter's Health's First Combined Discovery Requests, p. 2645					
F	Emergency Room Note (3/18/16)	MMLP pp. 30-36					
G	Emergency Physician Record (3/18/16)	MMLP pp. 60-61					
H	Primary Nursing Assessment (3/18/16)	MMLP pp. 39, 44; Dep. Ex. 2					
I	History & Physical (3/18/16)	MMLP pp. 120-124					
J	Cardiology Consultation (3/19/16)	MMP pp. 185-192					
K	ER / Critical / Resuscitation Record (3/21/16)	MMLP p. 639; Dep. Ex. 7					
L	Archive Nursing Notes (3/21/16)	MMLP pp. 197-198; Dep. Ex. 11					
M	Procedural Note from Dr. Harrison (3/22/16)	MMLP pp. 135-136					
N	Procedural Note from Dr. Harrison (3/23/16)	MMLP pp. 142-143					
O	Procedural Note from Dr. Godlewski (3/25/16)	MMLP pp. 152-153					
P	Procedural Note from Dr. Harrison (3/25/16)	MMLP pp. 154-155					

Ex. #	Description of Document	Bates #	Admit (Y/N)	Object (Y/N)	Ref	Res	Objection Grounds
Q	Knoepfle's medical records from 3/18/2016-3/26/2016	MMLP pp. 121-126, 129, 131-132, 135-141, 150-151, 154-155, 158-159; Dep. Ex. 1					
R	Procedural Note from Dr. Choussal-Gonzalez (4/1/16)	MMLP pp. 11-14					
S	Procedural Note from Dr. Godlewski (4/4/16)	MMLP pp. 525-526					
T	Knoepfle's MMLP records	MMLP pp. 1-1464					
U	Rodney's Hospice Records from St. Peter's Hospice (March 2018)	Medical records produced Plaintiff's First Supplemental Responses to St. Peter's Health's First Combined Discovery Requests, (pp. 5515-5609)					
V	Knoepfle's Resuscitation Status History	SPH/HARRISON_000305					
W	Risk Management Worksheet	SPH/HARRISON_001477-001478; Dep. Ex. 8					
X	Utah Advance Health Care Directive	Dep. Ex. 13					
Y	SPH DNR Policy	SPH/HARRISON_000005-000007; Dep. Ex. 6					
Z	Plaintiff's Medical Records						
AA	Dr. Tuberty Curriculum Vitae (Expert Disclosure Attachment)						
BB	Plaintiff's Responses to St. Peter's Health's First Combined Discovery Requests (8/3/2018)						
CC	St. Peter's Health's Responses to Plaintiff's First Discovery Requests (4/2/2018)						

Ex. #	Description of Document	Bates #	Admit (Y/N)	Object (Y/N)	Ref	Res	Objection Grounds
DD	St. Peter's Health's First Supplemental Responses to Plaintiff's First Discovery Requests (8/15/2018)						
EE	St. Peter's Health's Responses to Plaintiff's Second Discovery Requests (10/26/2018)						
FF	St. Peter's Health's Second Supplemental Responses to Plaintiff's First Discovery Requests (10/29/2018)						
GG	St. Peter's Health's Third Supplemental Responses to Plaintiff's First Discovery Requests (12/5/2018)						
HH	St. Peter's Health's Fourth Supplemental Responses to Plaintiff's First Discovery Requests (3/22/2018)						
II	St. Peter's Health's First Supplemental Responses to Plaintiff's Second Discovery Requests (3/22/2018)						
JJ	St. Peter's Health's Fifth Supplemental Responses to Plaintiff's First Discovery Requests (4/1/19)						
KK	Plaintiffs' First Supplemental Responses to St. Peter's Health's First Combined Discovery Requests (4/1/19)						
LL	Any Exhibit attached to Depositions						
MM	Any Discovery Response by either party						

Ex. #	Description of Document	Bates #	Admit (Y/N)	Object (Y/N)	Ref	Res	Objection Grounds
NN	Any Document attached to Discovery Responses						
OO	Any Admissible Exhibit identified or used by Plaintiff						
PP	Any Exhibit necessary for impeachment or rebuttal						
QQ	Defendant reserves the right to make demonstrative exhibits of any of the above exhibits						
RR							
SS							
TT							
UU							
VV							
WW							
XX							
YY							
ZZ							