

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

KAREN SANTORUM)
1101 LANDESET DRIVE)
HERNDON, VA 20170)

Plaintiff,)

vs.)

At Law No.: 175800

DAVID B. DOLBERG, D.C.)
8996 BURKE LAKE ROAD, SUITE 104)
BURKE, VA 22015)

and)

KING'S PARK FAMILY CHIROPRACTIC, P.C.)
8996 BURKE LAKE ROAD, SUITE 104)
BURKE, VA 22015)

AMENDED MOTION FOR JUDGMENT

Karen Santorum hereby alleges as follows:

PARTIES

1. Plaintiff, Karen Santorum (hereinafter "Plaintiff") is an individual, sui juris, residing in Herndon, Fairfax County, Virginia 20170.

2. At all time pertinent hereto, Defendant David B. Dolberg, D.C. (hereinafter "Dolberg") was a healthcare provider pursuant to Va. Code § 8.01-581.1 duly licensed to practice chiropractics in the Commonwealth of Virginia, and held himself out to the public as an expert in the treatment of individuals with Plaintiff's condition. Upon information and belief, Dolberg was employed by King's Park Family Chiropractic Center, P.C. at 8996 Burke

Lake Road, Suite 104, Burke, VA 22015.

3. At all times pertinent hereto, Defendant King's Park Family Chiropractic Centers, P.C. (hereinafter "Family Chiropractic") was a professional corporation licensed by the Commonwealth of Virginia, and holding itself out to the public as a healthcare provider and an expert in the treatment of individuals with Plaintiff's condition. Family Chiropractic is located at 8996 Burke Lake Road, Suite #104, Burke, VA 22015. The professional corporation provided chiropractic care to Plaintiff through its agents and employees.

4. At all times pertinent hereto, Defendant Family Chiropractic was acting by and through its agents, servants and/or employees who were acting within the scope of their authority and on the business of Family Chiropractic.

5. The Defendants have a duty to exercise that degree of skill, care, attention and diligence necessary under the circumstances and further to conform to the legal standard of care in light of the foreseeable risks.

6. On November 15, 1996, Plaintiff presented to Dolberg with complaints of pain in the lower back, with no radicular pain. Plaintiff also told Dolberg she had given birth "three (3) weeks earlier" to her fourth child, who died shortly after birth.

7. Dolberg performed a limited physical examination and took x-rays of the lower back. Dolberg's diagnosis of Plaintiff was lumbar intervertebral disc syndrome/displacement/protrusion, disorder of the sacrum, and lumbosacral neuritis or radiculitis.

8. On November 15, 1996, Dolberg administered a violent manipulation to Plaintiff.

9. Within an hour or two of the manipulation, Plaintiff began to develop pain

in the central portion of her low back which radiated into her left buttock and left leg.

10. On November 16, 1996, at approximately 3:00 a.m., the pain in the aforementioned areas became excruciating and Plaintiff's husband telephoned Dolberg's emergency telephone number. Dolberg was advised of Plaintiff's condition and asked whether Plaintiff should be transported to the emergency room. Dolberg advised against emergency medical care, told Plaintiff to take a hot shower, and report to his office at 8:00 a.m.

11. On November 16, 1996, at 8:00 a.m., Plaintiff reported to Dolberg's office and repeated her symptoms to Dolberg. Dolberg again administered a violent manipulation on both sides of Plaintiff's back. Plaintiff began to cry as a result of the excruciating pain. Dolberg then released Plaintiff from his care.

12. On November 23, 1996, Plaintiff presented to the emergency department of Passavant Hospital in Pittsburgh, Pennsylvania, her home state. A lumbar myelogram and CT Scan were ordered which revealed a large midline disc herniation at L5-S1, lateralizing toward the left side. Further, there was compression on the anterolateral aspect of the dural sac on the left side and on the takeoff of the left S1 root sleeve. Extruded disc material extended downward to the level of the upper sacrum on the left.

13. Plaintiff was transferred from Passavant Hospital to the University of Pittsburgh Medical Center a/k/a Presbyterian University Hospital, for emergency surgery on the evening of November 23, 1998 by neurosurgeon Donald W. Marion, M.D.

14. Dr. Marion performed a left L 5-S 1 microdisectomy and also a wide S1 foramenotomy.

COUNT I
(Medical Negligence of Defendant Dolberg)

15. Plaintiff repeats and incorporates by reference, paragraphs 1 through 14 of the Motion for Judgment as though fully set forth herein.

16. The Defendant Dolberg breached the applicable standard of care in his care and treatment of the Plaintiff in the following particulars:

- a. In failing to take into consideration, as a complicating factor, Plaintiff's recent pregnancy, labor and delivery prior to administering manipulation on Plaintiff; and/or
 - b. In failing to order additional tests or perform additional examinations, in particular, but not limited to Magnetic Resonance Imaging (MRI), prior to administering manipulation; and/or
 - c. In failing to properly perform a manipulation which resulted in a herniated disc; and/or
 - d. In performing a manipulation on this patient; and/or
 - e. In failing to diagnose that the manipulation administered by him had caused a herniated disc; and/or
 - f. In failing or refusing to see, to treat and/or refer Plaintiff when Defendant knew or reasonably should have known of the serious nature of Plaintiff's condition; and/or
 - g. In failing to exercise reasonable care to prevent further harm to Plaintiff when Defendant knew or should have known that his conduct caused bodily harm to Plaintiff;
 - h. In failing to possess the requisite degree of knowledge and skill necessary for the proper treatment of the Plaintiff;
17. As a direct and proximate result of the aforementioned negligence and

wrongful conduct of the Defendants and their agents and/or employees, acting solely and/or jointly and severally, Plaintiff has suffered severe and permanent neurologic injuries and other damage; incurred and will continue to incur great pain, suffering, humiliation and embarrassment; loss of earning capacity; and will continue to suffer great expense for medical care.

WHEREFORE, the Plaintiff requests judgment against the Defendants jointly and severally in the sum of Five Hundred Thousand Dollars (\$500,000.00) and whatever further relief the Court deems proper and just including pre and post judgment interest. This prayer for relief is made without prejudice to Plaintiff arguing that the Virginia Medial Malpractice Cap is inapplicable in this case.

COUNT II
(Medical Negligence of Defendant Family Chiropractic)

18. Plaintiff repeats and incorporates by reference paragraphs 1 through 17 of the Motion for Judgment.

19. The Defendant Family Chiropractic and/or its agents, servants, and/or employees, acting within the scope of their authority, breached the applicable standard of care in its care and treatment of the Plaintiff in the following particulars:

- a. In failing or refusing to see and/or to treat Plaintiff when defendant knew or reasonably should have known of the serious nature of Plaintiff's condition; and/or
- b. In abandoning the care and treatment of plaintiff when defendant knew or reasonably should have known that Plaintiff was seriously injured; and/or
- c. In failing to adequately, properly and/or timely direct, require or obtain the attention, advice and/or instruction and/or consultation of qualified specialists and/or to refer Plaintiff to another physician or hospital so she could obtain

adequate, proper, complete and timely care and treatment; and/or

- d. In failing to adequately or properly provide competent, properly trained personnel to care for and to supervise the care and treatment performed upon Plaintiff; and/or
- e. In caring for and/or treating and/or attempting to care for and/or treat Plaintiff when Defendant knew or reasonably should have known that the manner of care and treatment were inadequate and/or improper and/or unwarranted and/or medically contraindicated and/or outmoded and/or unnecessary.

20. As a direct and proximate result of the aforementioned negligence and wrongful conduct of both Defendants and their agents, servants and/or employees, acting solely and/or jointly and severally, Plaintiff has suffered severe and permanent neurologic injuries and other damage; incurred and will continue to incur great pain, suffering, humiliation and embarrassment; loss of earning capacity; and will continue to suffer great expense for medical care.

WHEREFORE, the Plaintiff requests judgment against the Defendants jointly and severally in the sum of Five Hundred Thousand Dollars (\$500,000.00) and whatever further relief this Court deems proper and just including pre and post judgment interest. This prayer for relief is made without prejudice to Plaintiff arguing that the Virginia Medical Malpractice Cap is inapplicable in this case.

COUNT III
(Informed Consent)

21. Plaintiff repeats and incorporates by reference paragraphs 1 through 20 of the Motion for Judgment as though fully set forth herein.

22. On November 15, 1996, Defendants Dolberg and Family Chiropractic (by and through its agents) committed an assault and battery on Plaintiff.

23. The assault and battery committed by the Defendants upon the person of Plaintiff was in no manner whatsoever due to any act or failure to act on the part of the Plaintiff.

24. Defendant Dolberg and Family Chiropractic failed to adequately, properly, completely and/or timely obtain the informed consent of Plaintiff.

25. Defendants Dolberg and Family Chiropractic failed to comply with the applicable standard of care in obtaining the informed consent of the Plaintiff as follows:

- a. inform Plaintiff of the dangers inherent in the chiropractic treatment and procedures proposed and administered to this particular Plaintiff so as to permit the Plaintiff to provide her informed consent thereto; and/or
- b. warn Plaintiff of inherent dangers involved in the chiropractic treatments and/or procedures suggested and administered by Defendants to a patient with this Plaintiff's condition; and/or
- c. warn and/or inform Plaintiff of the various risks or unfortunate results or the foreseeable consequences arising from the chiropractic treatment and procedures performed; and/or
- d. inform Plaintiff as to reasonable medical alternatives to the chiropractic treatment and procedures performed;

24. Defendants Dolberg and Family Chiropractic allowed and permitted the course of chiropractic treatment and procedures suggested and administered to exceed the limitation of Plaintiff's consent;

WHEREFORE, the Plaintiff, Karen Santorum requests judgment against the Defendants jointly and severally in the amount of Five Hundred Thousand Dollars (\$500,000.00) and whatever further relief as the Court deems proper and just, including pre and post judgment interest. This prayer for relief is made without prejudice to Plaintiff


arguing that the Virginia Malpractice Cap is inapplicable in this case.

JURY TRIAL DEMANDED ON ALL COUNTS

Karen Santorum
Plaintiff
By Counsel

MILES & STOCKBRIDGE P.C.

By:


Amy S. Owen (VSB #27692)
Richard D. Holzheimer, Jr. (VSB#40803)
1741 Pinnacle Drive, Suite 500
McLean, Virginia 22102-3833
(703) 903-9000

Heather S. Heidelbaugh, Esquire
BURNS WHITE & HICKTON
2400 Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222-3001
(412) 394-2582

Counsel for Plaintiff