

FILED
02-01-2019
CIRCUIT COURT
DANE COUNTY, WI
2019CV000284
Honorable Frank D.
Remington
Branch 8

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH _____

KERI ANNE CONNAUGHTY

311 North 13th Street
Wausau, WI 54403

KEVIN CONNAUGHTY

311 North 13th Street
Wausau, WI 54403

Plaintiffs,

Case No.

Case Code: 30103

v.

MEDICAL MALPRACTICE

JOHN W. SIEBERT, M.D. (In his individual capacity)

UW Health Transformations
7974 UW Health Court
Middleton, WI 53562

UW HEALTH TRANSFORMATIONS

7974 UW Health Court
Middleton, WI 53562

ABC INSURANCE COMPANY

Address unknown

DEF INSURANCE COMPANY

Address unknown

Defendants,

and

SECURITY ADMINISTRATIVE SERVICES

1515 North Saint Joseph Avenue
Marshfield, WI 54449

Subrogated Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 215 S. Hamilton Street, Madison, WI 53703, and to Gingras, Cates & Wachs, Plaintiff's attorneys, whose address is 8150 Excelsior Drive, Madison, Wisconsin 53717. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

[signature on following page]

Dated this 1st day of February, 2019.

Respectfully submitted,

GINGRAS, CATES & WACHS

Electronically Signed By /s/ Robert J. Gingras

Robert J. Gingras

State Bar No. 1002909

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COMPLAINT

NOW COME THE PLAINTIFFS, Keri Anne Connaughty and Kevin Connaughty, individually and by her attorneys Gingras, Cates & Wachs, by Robert J. Gingras, as and for a cause of action against the above-named defendants, allege and show the following to the court:

PARTIES

1. Plaintiff Keri Anne Connaughty (hereafter “K.A. Connaughty”) is an adult resident of the State of Wisconsin residing at 311 North 13th Street, Wausau, Wisconsin 54403.

2. Plaintiff Kevin Connaughty (hereafter “K. Connaughty”) is an adult resident of the State of Wisconsin residing at 311 North 13th Street, Wausau, Wisconsin 54403.

3. Defendant John W. Siebert, M.D. (hereafter “Siebert”) upon information and belief, is an adult resident of the State of Wisconsin. He is a physician licensed to practice in Wisconsin. Upon information and belief, Dr. Siebert’s current business address UW Health Transformations, 7974 UW Health Court, Middleton, Wisconsin 53562.

4. Defendant UW Health Transformations is a healthcare facility in the State of Wisconsin, with a principal office address of 7974 UW Health Court, Middleton, Wisconsin 53562. At all material times, UW Health Transformations employed various individuals who were involved in the care and treatment of Plaintiff Keri Anne Connaughty. Such employees were, at all material times, acting as agents of UW Health Transformations.

5. Defendant ABC Insurance Company (“ABC”) is the name for the liability insurance company that had in full force and effect, at all material times, a policy of insurance covering Dr. Siebert for the alleged negligence which is the subject of this complaint, and is therefore directly liable to the Plaintiffs for the below enumerated damages.

6. Defendant DEF Insurance Company (“DEF”) is the name for the liability insurance company that had in full force and effect, at all material times, a policy of insurance

covering UW Health Transformations for the alleged negligence which is the subject of this complaint, and is therefore directly liable to the Plaintiffs for the below enumerated damages.

7. Subrogated Defendant Security Administrative Services, LLC is an insurance company which is named due to its potential subrogation interest having paid medical bills Plaintiff Connaughty incurred due to the injuries which are the subject of this complaint. The address for the registered agent for service of process is 1515 North Saint Joseph Avenue, Marshfield, Wisconsin 54449.

ALLEGATIONS OF FACT

8. From 2006 to 2008, Siebert—then a practicing surgeon in New York—engaged in an inappropriate sexual relationship with a married patient.

9. In 2008, the New York State Office of Professional Medical Conduct launched an investigation into Siebert’s inappropriate sexual relationship with his married patient.

10. The New York State Office of Professional Medical Conduct claimed that Siebert’s actions were “professional misconduct” that evinced a “moral unfitness to practice.”

11. In 2011, while the New York State Office of Professional Medical Conduct’s investigation into Siebert was ongoing, Defendant UW Health Transformations hired Siebert.

12. Defendant UW Health Transformations dubbed Siebert’s two year long inappropriate sexual relationship with a married patient as “a minor or technical violation” that was “not seriously harmful to the public.”

13. In 2013, the New York State Office of Professional Medical Conduct concluded its investigation into Siebert’s inappropriate sexual relationship.

14. The New York medical board suspended Siebert's medical license; however, the New York medical board agreed to stay the suspension if a chaperone accompanied Siebert any time he attended to a female patient.

15. Siebert agreed to be accompanied by a chaperone any time he attended to a female patient.

16. Upon information and belief, UW Health Transformations—following the investigation's findings—implemented a chaperone policy for Siebert.

17. Plaintiff Connaughty is a married mother of three children.

18. K.A. Connaughty—an avid marathon runner, triathlete, and boxer—was dissatisfied with the appearance of her abdomen and lateral thighs.

19. On September 29, 2017, K.A. Connaughty consulted Siebert and Rebecca Farmer, M.D., Ph.D.—another UW Health Transformations employee—regarding plastic surgery.

20. Siebert insisted that K.A. Connaughty was an excellent candidate for abdominoplasty (more commonly known as a “tummy tuck”) and thigh liposuction and scheduled a plastic surgery date for February 26, 2018.

21. In the months between her September 29, 2017 consultation and the February 26, 2018 surgery date, K.A. Connaughty decided that she wanted a bilateral breast mastopexy, a bilateral breast augmentation, and a “tummy tuck” instead of a thigh liposuction and “tummy tuck.”

22. On February 1, 2018, K.A. Connaughty visited Mary K. Hill, nurse practitioner, at UW Health Transformations for her preoperative examination. During this appointment, K.A. Connaughty selected 225 to 250 cubic centimeters silicone breast implant sizes for her bilateral breast augmentation.

23. Mary K. Hill documented K.A. Connaughty's 225 to 250 cubic centimeters silicone breast implant sizes on K.A. Connaughty's patient chart. Further, upon information and belief, K.A. Connaughty was promised that she could "try on" the breast sizes on the day of her surgery.

24. On February 26, 2018, Siebert performed a bilateral breast mastopexy, a bilateral breast augmentation, and a "tummy tuck" surgery on K.A. Connaughty.

25. Prior to her surgery, a nurse refused to allow K.A. Connaughty to "try on" silicone breast implant sizes.

26. A nurse administered K.A. Connaughty with two Valium pills, which K.A. Connaughty consumed prior to her pre-surgery consultation with Siebert and prior to her signing the surgical consent form.

27. During the pre-surgery consultation K.A. Connaughty reviewed her surgical forms which detailed 225-250 cubic centimeters silicone breast implant sizes with her assigned nurse and personally informed Siebert that she selected 225 to 250 cubic centimeters silicone breast implant sizes.

28. Siebert assured K.A. Connaughty that he would make her look beautiful again.

29. During the surgery—while K.A. Connaughty was placed into a fully-induced medical sedation, Siebert inserted 350 and 375 cubic centimeters high profile silicone breast implants into K.A. Connaughty's right and left breasts, respectively, thereby disregarding and violating K.A. Connaughty's authorization to implant breast implants of 225 to 250 cubic centimeters in size.

30. After the surgery, it was not until K.A. Connaughty got home that she located Mentor breast implant ID cards detailing 350 and 375 cubic centimeters in size. K.A.

Connaughty was not sure which ID card was associated to each breast or why that size was implanted.

31. In the days following her surgery K.A. Connaughty complained of abdominal swelling and consumed oxycodone as prescribed.

32. Siebert instructed K.A. Connaughty to wear an abdominal binder and to notify him if swelling and/or fluid collection in her abdomen continued.

33. On March 5, 2018, K.A. Connaughty visited Dr. Sommers of Astia Healthcare in Wausau, Wisconsin regarding her abdomen. Dr. Sommers noted that K.A. Connaughty's abdomen appeared "puffy" and contained a hardened "roll above the incision line."

34. Dr. Sommers' primary concern was that K.A. Connaughty was developing a rectal sheath hematoma.

35. On March 6, 2018, K.A. Connaughty was again treated by Astia Health.

36. On March 7, 2018, K.A. Connaughty called UW Health Transformations begging to visit Siebert because of her intense abdominal pain.

37. On March 8, 2018, K.A. Connaughty's belly button was bleeding. K.A. Connaughty visited Dr. Sommers, who sutured her belly button to prevent further bleeding.

38. On March 9, 2018, K.A. Connaughty returned to UW Health Transformations to visit Siebert.

39. Siebert entered the examination room, placed his hands upon K.A. Connaughty's shoulders, and said that he would do anything to make her happy.

40. K.A. Connaughty told Siebert that he had inserted larger breast implant sizes than the sizes that she selected. Siebert reassured K.A. Connaughty that her breasts merely appeared larger because of the swelling.

41. Siebert stated, “You can’t tell anything now, babe, honestly, as far as size. Because they’re just so swollen.”

42. In the examination room Siebert inserted a four to five-inch needle into K.A. Connaughty’s abdomen three times to extract the excess blood. However, K.A. Connaughty required immediate surgery to remedy her abdominal bleeding and hematoma.

43. Siebert instructed K.A. Connaughty to lie about what she had eaten that morning in an effort to admit K.A. Connaughty into the operating room. During the abdomen operation, Siebert inserted a drain tube into K.A. Connaughty’s abdomen.

44. On March 16, 2018, K.A. Connaughty visited Siebert to remove the drain tube.

45. Siebert removed the drain tube in the exam room while K.A. Connaughty was standing, covered the drain hole with a gauze, and tucked the gauze into K.A. Connaughty’s panties. Siebert never examined K.A. Connaughty’s swollen breasts.

46. K.A. Connaughty’s abdomen resumed bleeding as soon as she returned to Wausau.

47. K.A. Connaughty’s abdomen wound became infected, displayed redness around the edges, and discharged an “orange, sticky” substance.

48. On March 19, 2018, a brown fluid began to seep from K.A. Connaughty’s abdomen wound.

49. The morning of March 19, 2018, K.A. Connaughty went to Aspirus Wausau Hospital Emergency Room. She was treated with IV antibiotics and prescribed a seven-day course of antibiotics to take post-discharge for a confirmed abdomen wound infection.

50. The afternoon of March 19, 2018, K.A. Connaughty traveled to UW Transformations to be seen by Siebert regarding her infected wound. Siebert informed K.A.

Connaughty that her abdomen was not infected but directed her to take a ten-day antibiotic “just in case.” Siebert directed K.A. Connaughty to take his prescribed antibiotic and not that prescribed by Aspirus Wausau Hospital.

51. Siebert insisted on placing a new drain tube to evacuate excess fluids from the abdomen cavity.

52. After K.A. Connaughty initially refused to sign the procedure consent form because reasoning for the procedure was not explained, Siebert coaxed, “No one’s trying to pull any fast one on you, sweetie.” Eventually, K.A. Connaughty signed the consent form and Siebert proceeded to place a passive drain on the right side of K.A. Connaughty’s abdomen wound.

53. To prepare for said procedure, Siebert constructed a makeshift drain from supplies scattered about the examination room, opened K.A. Connaughty’s wound, and inserted the makeshift drain.

54. K.A. Connaughty cried while Siebert inserted his makeshift drain into her opened wound.

55. Siebert wiped the tears from K.A. Connaughty’s face and placed his hands on her bare legs and rubbed them up and down.

56. Sometime in March of 2018 K.A. Connaughty learned of Siebert’s inappropriate sexual relationship in New York.

57. Upon learning of Siebert’s past sexual misconduct, K.A. Connaughty became physically ill. This information exacerbated her feelings of being completely violated.

58. On March 30, 2018, K.A. Connaughty visited Counsellor Christine Ellis of True North regarding her depression and anxiety, which had worsened in the months following her cosmetic surgery.

59. On March 30, 2018, K.A. Connaughty called Dr. Mary K. Hill to discontinue her care with Siebert. In response, Siebert transferred K.A. Connaughty's care to Dr. Rao of UW Health Transformations.

60. On April 18, 2018, K.A. Connaughty called Siebert and complained about the appearance of her abdomen—excess skin and disfigured bulges which covered K.A. Connaughty's abdomen. However, K.A. Connaughty remained terrified to undergo additional surgery following Siebert's numerous failed surgeries and operations and upon learning of his past sexual misconduct.

**FIRST CAUSE OF ACTION - MEDICAL NEGLIGENCE AGAINST
DR. JOHN W. SEIBERT AND ABC INSURANCE COMPANY**

As and for a first cause of action against the above-named Defendants, Plaintiffs allege and show the following to the court:

61. Plaintiffs reallege and incorporate by reference paragraphs one through sixty (1-60) of the complaint with the same force and effect as if set forth fully hereinafter.

62. Siebert was negligent in that he failed to use the degree of care, skill and judgment that reasonable physicians would use in the care and treatment of a patient, by failing to advise K.A. Connaughty of his past sexual misconduct and by inserting the incorrect silicone breast implant size into Plaintiff Connaughty, and was otherwise negligent in the care and treatment provided to K.A. Connaughty.

63. As a direct and proximate result of the negligence of Siebert, K.A. Connaughty endured extreme physical, emotional, and psychological pain and suffering and continues to suffer from abdominal pain and disfigurement, and unwanted breast implant sizes. If Siebert had not been negligent in his care and treatment, K.A. Connaughty would not have continuous

abdominal pain, would possess the breast implant sizes that she selected, and would not require counselling for depression and anxiety.

64. As a direct and proximate result of the negligence of Siebert, Plaintiff Kevin Connaughty has suffered from the loss of the aid, support and comfort of his wife, Keri Anne Connaughty.

65. As a result of Siebert's aforesaid negligence, Defendants Dr. Siebert and ABC Insurance Company are directly liable to Plaintiffs in an amount to be proven at trial.

**SECOND CAUSE OF ACTION – SEXUAL EXPLOITATION AGAINST
DR. JOHN W. SEIBERT AND ABC INSURANCE COMPANY**

As and for a second cause of action against the above-named Defendants, Plaintiffs allege and show the following to the court:

66. Plaintiffs reallege and incorporate by reference paragraphs one through sixty-five (1-65) of the complaint with the same force and effect as if set forth fully hereinafter.

67. In violation of Section 895.441 of the Wisconsin Statutes, Siebert sexually exploited Plaintiff Connaughty through inserting larger silicone breast implant sizes than the sizes that K.A. Connaughty selected, by failing to advise K.A. Connaughty of his past sexual misconduct, by inappropriately touching K.A. Connaughty's shoulders, face, and legs, and by inappropriately calling K.A. Connaughty nicknames such as "babe" and "sweetie."

68. As a direct and proximate result of the sexual exploitation by Siebert, K.A. Connaughty endured physical harm and loss, psychological harm and loss, and emotional distress including pain, suffering, and humiliation.

69. As a direct and proximate result of the sexual exploitation by Siebert, Plaintiff Kevin Connaughty has suffered from the loss of the aid, support and comfort of his wife, Keri Anne Connaughty.

70. As a result of Siebert's aforesaid exploitation, Defendants Dr. Siebert and ABC Insurance Company are directly liable to Plaintiffs in an amount to be proven at trial.

**THIRD CAUSE OF ACTION - RESPONDEAT SUPERIOR AGAINST
UW HEALTH TRANSFORMATIONS AND DEF INSURANCE COMPANY**

As and for a third cause of action against the above-named Defendants, Plaintiffs allege and show the following to the court:

71. Plaintiffs reallege and incorporate by reference paragraphs one through seventy (1-70) of the complaint with the same force and effect as if set forth fully hereinafter.

72. Defendant UW Health Transformations is made a party to this lawsuit by virtue of the fact that at all times material to this action, Siebert was an employee, agent, and/or representative of UW Health Transformations and because said Defendant was negligent as described below.

73. At all times material to this action, Siebert and other employees and agents of UW Health Transformations were performing duties relating to and in furtherance of their employment with UW Health Transformations, for the benefit of Defendant UW Health Transformations.

74. The negligence of Siebert and other UW Health Transformations employees and agents occurred while they were performing within the scope of their employment, making Defendant UW Health Transformations liable for any damages suffered as a result of Siebert

and/or other UW Health Transformations employees' or agents' negligence under the doctrine of *respondeat superior*.

75. As a result of the aforesaid negligence of Siebert and other employees and agents of UW Health Transformations, based on the doctrine of *respondeat superior*, Defendants UW Health Transformations, and DEF Insurance Company are directly liable to Plaintiffs for the above enumerated damages.

**FOURTH CAUSE OF ACTION - NEGLIGENT HIRING AGAINST
UW HEALTH TRANSFORMATIONS AND DEF INSURANCE COMPANY**

As and for a fourth cause of action against the named defendants, Plaintiffs allege and show the following to the court:

76. Plaintiffs reallege and incorporate by reference paragraphs one through seventy-five (1-75) of the complaint with the same force and effect as if set forth fully hereinafter.

77. At all times material to this action, UW Health Transformations was negligent in its hiring of Siebert. UW Health Transformations was further negligent for failing to advise patients, including K.A. Connaughty, of Siebert's past discipline in the State of New York.

78. As a result of the aforesaid negligence of UW Health Transformations, Defendants UW Health Transformations and DEF Insurance Company caused Plaintiff damages as described above.

**FIFTH CAUSE OF ACTION -
SUBROGATION AGAINST SECURITY ADMINISTRATIVE SERVICES, LLC**

As and for a fifth cause of action against the named defendants, Plaintiffs allege and show the following to the court:

79. Plaintiffs reallege and incorporate by reference paragraphs one through seventy-eight (1-78) of the complaint with the same force and effect as if set forth fully hereinafter.

80. Subrogated Defendant Security Administrative Services, LLC is an insurance company that provided medical benefits to Plaintiffs at all times material to this action and is made a party to this lawsuit pursuant to Wis. Stat. § 802.03, as it may have paid some or all of the medical expenses incurred by the plaintiff as a result of the incident which is the subject matter of this action.

81. Subrogated Defendant Security Administrative Services, LLC's right to recover its subrogated interest, if any, is contingent upon the plaintiffs being made whole by any recovery received from the defendants in this action pursuant to decisions in *Rimes*, *Garrity*, and their progeny.

WHEREFORE, Plaintiffs pray for the following relief:

1. A DEMAND FOR TRIAL BY A SIX PERSON JURY;
2. Judgment, both jointly and severally, against Defendants John W. Siebert, M.D., UW Health Transformations, ABC Insurance Company and DEF Insurance Company in an amount to be determined at trial;
3. A determine of what rights, if any, Subrogated Defendant Security Administrative Services, LLC has in the proceeds of this action;
4. All statutory interest;
5. All costs, disbursements, and reasonable attorneys' fees; and
6. Any and all other relief the court deems appropriate in this matter.

Dated this 1st day of February, 2019.

Respectfully submitted,

GINGRAS, CATES & WACHS

Electronically Signed By /s/ Robert J. Gingras

Robert J. Gingras

State Bar No. 1002909

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