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MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

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

Plaintiff Cheryl O'Donnell, as Personal Representative of the Estate of Rodney Knoepfle, hereby submits her Trial Brief in accordance with the Court's Scheduling Order.

STATEMENT OF THE FACTS

St. Peter's Health violated Rodney Knoepfle's DO NOT RESUSCITATE/DO NOT INTUBATE physician order on March 21, 2016. This caused substantial harm to Rodney, including but not limited to nearly two years of expensive medical treatments,

substantial mental and physical suffering, reliance on in-home nursing care and his wife for assistance, and a slow decline to death. This was not the care agreement Rodney made when he communicated his DNR/DNI instructions to St. Peter's staff and his DNR/DNI order was entered by Dr. Mark Kreisberg on March 18, 2016. St. Peter's and Dr. Harrison committed malpractice and Rodney was harmed.

In the years leading up to his March 2016 hospitalization at St. Peter's, Rodney suffered from numerous medical setbacks resulting in substantial suffering and debilitation, including:

- Congestive heart failure, chronic atrial fibrillation (irregular heart beat)
- Coronary artery bypass, aortic valve replacement
- Stroke resulting in blindness of the left eye
- Osteomyelitis (infection of the bone) resulting in 3 right hip replacements
- Cervical spine fusion
- Lumbar fusion x 2
- Chronic pain

Rodney's conditions rendered him disabled and reliant on narcotic medications for pain management. O'Donnell depo, pp. 11-13 (deposition excerpts collectively attached as Exhibit A.). After substantial thought about his quality of life, Rodney determined that if he were to die, he did not want to be brought back. O'Donnell depo, pp. 15-16, 24, 46-47.

On March 18, 2016, Rodney notified St. Peter's of advance directives and a provider order of life sustaining therapy (POLST) providing explicit direction of Rodney's wishes to forego life sustaining care. Harrison depo, pp. 38-40, 44. St. Peter's staff was to request a copy of the advance directives and POLST and have them scanned

into the St. Peter's system. Harrison depo, p. 36. Rodney further advised that he wanted to have a DNR/DNI order entered. Harrison depo, p. 34.

At 11:12 am on March 18, 2016, Dr. Kreisberg entered the electronic order confirming Rodney's resuscitation status as DNR/DNI while admitting Rodney to St. Peter's. Harrison depo, p. 62, Kriesberg depo, p. 19-20. Verification of Rodney's DNR/DNI status was to be documented in his electronic chart. Hodgskiss depo, p. 73. A blue dot was to be affixed to Rodney's physical chart to signify his "no code" (DNR/DNI) status. Hodgskiss depo, p. 116. Finally, Rodney was to be fitted with a blue arm band indicating to all providers his DNR/DNI status. Hodgskiss depo, pp. 73-74; St. Peter's Patient Safety/Identification and DNR/DNI Policies, attached respectively as Exhibits B and C.

On March 21st at 11:15 am, the ICU called Rodney's treating medical floor nurse, Nicole Hodgskiss (formerly Peebles), indicating that Rodney was in asystole (cardiac arrest). Hodgskiss depo, pp. 63-64. Hodgskiss found Rodney in the restroom propped against the wall and unresponsive. *Id.* Hodgskiss pulled the emergency cord located in the bathroom. Hodgskiss depo, p. 66. Nobody came. Hodgskiss depo, p. 67. Hodgskiss' attempts to use St. Peter's mobile dispatch system (Vocera) to call for help also failed because it "wasn't working properly." *Id.* Hodgskiss then pushed the blue code button in Rodney's room. Hodgskiss depo, pp. 70-72.

While responding to the code blue call, the St. Peter's staff had "confusion about [Rodney's] code status." Hodgskiss depo, p. 72. Specifically, there was confusion as to "[w]hether he was DNR or a full code." *Id.* Proceeding under confusion, and without verification of Rodney's code status, Dr. Harrison started compressions. Hodgskiss depo, pp. 73-77. Shortly thereafter, the code team consisting of approximately "ten

plus” individuals arrived. Hodgskiss depo, pp. 76, 78-79. When the code team arrived, Rodney was moved to the bed and CPR was administered by multiple providers.

Hodgskiss depo, pp. 78-79, 81-82. As CPR (compressions and ventilation) continued, epinephrine was taken from the crash cart and administered to Rodney. Hodgskiss depo, pp. 82-83. None of the “ten plus” St. Peter’s providers responding to Rodney’s code spoke up to cease the resuscitation. Hodgskiss depo, p. 76.

At approximately 11:25 a.m., St. Peter’s nurse, Holly Ireland, called Rodney’s wife, Cheryl O’Donnell, who confirmed Rodney’s DNR/DNI status. Hodgskiss depo, p. 85; O’Donnell depo, pp. 35, 37. Life saving measures continued for approximately 10 minutes until Ireland communicated Rodney’s “no code” wishes with the providers in Rodney’s room. Hodgskiss depo, p. 86; March 21, 2016 Resuscitation Minutes, Attached as Exhibit D. Dr. Harrison believes Dr. Andy Coil may have likewise notified the resuscitating providers that they were inappropriately “coding someone who was a DNR.” Harrison depo, p. 90. Regardless of who finally put an end to resuscitation efforts, by the time the St. Peter’s providers confirmed Rodney was DNR/DNI, he was back to breathing independently and had a pulse. Hodgskiss depo, p 86.

Rodney was transferred to the ICU. Harrison depo, p. 18; Ex. D. There he was first notified that he had been resuscitated, contrary to his DNR/DNI wishes and order. O’Donnell depo, p. 39-40. Rodney was “very, very upset.” O’Donnell depo, p. 40. He was bleeding into his chest because of the aggressive and lengthy resuscitation efforts. O’Donnell depo, p. 41. Rodney was deeply offended by the hospital’s conduct, expressing he “would have been in a better peaceful place right now if they would have just left [him] alone.” O’Donnell depo, p. 43. It remained Rodney’s wishes that no “life sustaining measures” be taken. O’Donnell depo, p. 47.

On March 22, 2016, while in the ICU, Rodney suffered a bradycardiac arrest, becoming unresponsive. Harrison depo, p. 109; St. Peter's medical record (3/22/16), attached as Exhibit E. He was moved to the bed, ventilated with a face mask and an Ambu® manual resuscitator, and given atropine, epinephrine and dopamine to restore his slowing heart rate. Harrison depo, p. 109.

Following his resuscitation(s), Rodney was offered a pacemaker to address his symptoms of slowing heart rate, drop in blood pressure, breathing stoppage and the resulting discomfort. See Harrison depo, p. 82; O'Donnell depo, pp. 50-51. Ultimately, Rodney agreed to the pacemaker recommended and later required a replacement pacemaker to address his symptoms and quality of life. See Harrison depo, pp. 114-115; O'Donnell depo, p. 50-51, 57-58.

Rodney remained hospitalized at St. Peter's until he was discharged on April 1, 2016, and admitted to Big Sky Healthcare for rehabilitation care to facilitate his returning home. See Big Sky Healthcare medical records (4/1/8, 4/15/18), collectively attached as Exhibit F. Rodney presented with "massive bruises both upper arms and chest from compression [sic]". See Ex. F. Rodney received inpatient rehabilitation (physical therapy, occupational therapy) from April 1st until the 15th, when he was discharged home. See Ex. F. Despite the intensive rehabilitation, Rodney failed to regain his pre-resuscitation functional ability, leaving him dependent upon assistance with activities of daily living (dressing, bathing, toilet use, etc.) and full time oxygen. Ex. F; O'Donnell depo, pp. 49-50, 59, 73-75.

Rodney lived out the remainder of his life requiring assistance from his wife and in-home skilled nursing providers. Rodney survived for another nearly two years after his unauthorized resuscitations, suffering from substantial pain and physical debilitation.

In October of 2017, prior to his death, Rodney initiated this suit against St. Peter's Health and Dr. Harrison. Rodney died on March 16, 2018 of heart failure, cor pulmonale, and gastrointestinal bleeding. See Death Certificate, attached as Exhibit G. After his death, his wife Cheryl O'Donnell was named as Personal Representative of Rodney's Estate and was substituted as the plaintiff in this lawsuit.

LEGAL THEORIES ASSERTED BY PLAINTIFF

This is a medical malpractice case in which Cheryl O'Donnell, as personal representative of the Estate of Rodney Knoepfle, alleges St. Peter's Health and Dr. Harrison's conduct constituted breach of agreement, negligence, negligence per se, battery, negligence infliction of emotional distress, and violation of Rodney's constitutional rights. St. Peter's and Dr. Harrison's actions were inconsistent with the standards and procedures for advance directives (including DNR/DNI orders) for healthcare patients with advanced and serious illnesses where the risks and burdens of treatment outweigh the expected benefits and/or conflict with patient consent, autonomy, dignity, privacy, and wishes. Before Rodney was unlawfully resuscitated, he clearly communicated his DNR/DNI advanced directive to St. Peter's staff and Dr. Kreisberg. A lawfully binding order was entered, commanding St. Peter's and its staff to honor Rodney's DNR/DNI status. Defendants failed to abide by standard industry procedures and systemic implementation for hospitals in establishing and honoring patients' advance directives. Instead, Defendants engaged in a course of tortious conduct in direct contradiction to Rodney's binding advanced directives.

Defendants failed to take appropriate steps to protect Rodney from unauthorized treatment. These failures specifically include the failure to appropriately train and ensure staff complies with St. Peter's written policies and procedures, patient safety

rules, state law, and Rodney's clear wishes. St. Peter's Health and Dr. Harrison were negligent and breached the applicable standards of care for hospitals, doctors and/or hospital staff 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.

Defendants' actions were not consistent with the conduct expected of reasonable, caring, and compassionate professionals in similar circumstances. Further,

Defendants' actions fell well short of the acceptable ethical standards in contemporary medicine.

As a result of Defendant's conduct, Rodney suffered substantial damages. Rodney required invasive and expensive medical interventions. These interventions were foreseeable given his conditions, including congestive heart failure, atrial fibrillation, and bradycardia. The post-resuscitation treatments recommended and implemented by his medical providers included inpatient rehabilitation, in-home nursing care, pain management care, pacemaker implantation and revision, and ultimately hospice care. Rodney lived for nearly two additional years with increased debilitation and pain. He spent his remaining time tethered permanently to an oxygen tube and dependent upon his wife and in-home nursing care for assistance on activities of daily living. Ultimately, Rodney died slowly while his wife/caregivers attended to him.

Rodney's continued pain and physical debilitation, medical care, and emotional distress accrued solely as a result of Defendants conduct.

EVIDENTIARY AND PROCEDURAL ISSUES

1. Motions

The parties raised and briefed various evidentiary and procedural disputes that are likely to arise at trial in their respective summary judgment motions and motions in limine. The Court has issued its ruling on the motions. Plaintiff shall present her trial evidence in accord with the boundaries set forth in the Court's April 30, 2019 Order.

2. Exhibits

The parties have yet to express objections regarding the exhibits proposed for trial. Plaintiff believes the parties can amicably resolve any evidentiary dispute without

Court involvement. Plaintiff simply raises this matter now so as to alert the Court to the potential for dispute.

3. Discovery

Defendants have sought numerous depositions after the close of discovery. Dating back to October of 2018, our firms have corresponded to accomplish all necessary depositions for this case. As a courtesy, Plaintiff agreed to a limited number of depositions after the discovery closure deadline. These accommodations were limited to accomplishing depositions for St. Peter's Hospital's 30(b)(6) designated witnesses, Cheryl O'Donnell, and Dr. Rami Alharethi. Plaintiff has not agreed to any further discovery and noted her objection to any other depositions.

To facilitate full and fair discovery, Plaintiff has produced all medical records in her possession, made numerous offers to sign medical releases, and timely supplemented discovery. Given these efforts, Plaintiff cannot capitulate to dilatory requests to initiate discovery long after its closure.

4. Trial Subpoenas

Plaintiff is in the process of serving trial subpoenas upon the following St. Peter's individuals: Dr. Mark Kreisberg, Kari Parmer, Nichole Hodgskiss Peebles, and Holly Ireland. St. Peter's has designated and relied on each of these individuals as 30(b)(6) designees.

DATED this 2nd day of May, 2019.

KOVACICH SNIPES JOHNSON, P.C.

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that, on the 2nd day of May, 2018, I served by first class mail, postage prepaid, a true and legible copy of the foregoing **Plaintiff's Trial Brief** upon the following:

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