

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

JOANN PELLOCK, individually and as)	
personal representative of the ESTATE OF)	LAW NO. LACV103756
RICHARD J. PELLOCK, deceased, and)	
MITCHELL PELLOCK individually,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
JAMES WIETERS, CRNA; MISSISSIPPI)	PLAINTIFFS' TRIAL BRIEF
VALLEY ANESTHESIOLOGY, P.C.;)	
JACOB WAGNER, M.D., DUBUQUE)	
SURGERY, P.C., ALEX HORCHAK, M.D.,)	
and UNITYPOINT HEALTH FINLEY)	
HOSPITAL, an Iowa non-profit Corporation,)	
)	
Defendants.)	
)	

COMES NOW Plaintiffs, and for their Trial Brief state to the Court as follows:

FACTUAL BACKGROUND

On January 5, 2015, Plaintiff – Decedent Richard Pellock was admitted to UnityPoint Health Finley Hospital in Dubuque, Iowa, where he underwent a surgical procedure by Dr. Alex Horchak to address Mr. Pellock’s bladder cancer. The surgical procedure was successful in eradicating the cancer, however, postoperatively, Mr. Pellock developed an ileus and abdominal distension.

Between January 9, 2015 and January 11, 2015, Mr. Pellock had emesis and nausea, was noted as being bloated and Mr. Pellock’s stomach was distended. Hospital nursing staff also observed the presence of dark drainage in Mr. Pellock’s pelvic drain. Hospital nursing staff alerted Dr. Horchak of Mr. Pellock’s presenting symptoms.

On January 11, 2015, at 5:52 a.m. a complete acute abdominal series PA chest x-ray was

ordered by Dr. Alex Horchak. The impression of the complete acute abdominal series PA chest x-ray by the radiologist, Dr. Adam Rulnick, was ileus versus partial small bowel obstruction with distended bowel loops with air-fluid levels seen. On January 11, 2015 at approximately 7:00 a.m., Dr. Adam Rulnick provided a preliminary report of his radiology impression of the complete acute abdominal series PA chest x-ray to Dr. Alex Horchak and/or Dr. Jacob Wagner.

On January 11, 2015, at approximately 6:03 a.m., Dr. Alex Horchak ordered an inpatient consultation to general surgery for Mr. Pellock to see Dr. Jacob Wagner. On January 11, 2015, at approximately 7:08 a.m., Mr. Pellock was seen in consultation by Dr. Jacob Wagner. Mr. Pellock reported to Dr. Jacob Wagner that he felt bloated during the examination. Dr. Jacob Wagner observed Mr. Pellock had a “significantly distended abdomen” during his examination of Mr. Pellock. Dr. Wagner, after consultation with Dr. Horchak, recommended Mr. Pellock undergo exploratory laparotomy surgery to rule out bowel injury or anastomotic leak.

Consequently, on January 11, 2015 at approximately 7:30 a.m., Mr. Pellock was admitted to the operating suite and after the induction of general anesthesia by James Weikers, CRNA, Mr. Pellock sustained a significant aspiration. James Weikers, CRNA, did not perform a preoperative evaluation of Mr. Pellock before induction of anesthesia.

Prior to Richard Pellock being intubated by James Weikers, CRNA, the defendants James Weikers, CRNA, Dr. Jacob Wagner, and Dr. Alex Horchak knew or should have known Mr. Pellock presented with nausea, a bloated and distended abdomen, distended bowl loops with air fluid levels, stool coming out of Mr. Pellock’s Jackson-Pratt drain, and a full stomach and therefore, every precaution should have been taken to avoid aspiration at induction.

Nevertheless, the defendants James Weikers, CRNA, Dr. Jacob Wagner, and Dr. Alex Horchak did not pass a nasogastric tube into Mr. Pellock prior to the induction of general

anesthesia. James Weiters, CRNA, did not perform a rapid sequence induction of general anesthesia. James Weiters, CRNA, waited too long for the 1mg/kg of administered succinylcholine to take effect. James Weiters, CRNA, and Dr. Jacob Wagner did not order or perform diagnostic and therapeutic fiberoptic bronchoscopy of the tracheal bronchial tree after the emesis and aspirated was observed by him. James Weiters, CRNA, and Dr. Jacob Wagner did not order or obtain a chest X- ray of Mr. Pellock after the emesis and aspiration occurred.

Despite Mr. Pellock having aspirated, on January 11, 2015 at approximately 10:54 a.m., Dr. Jacob Wagner proceeded with surgical intervention and discovered an anastomotic leak in Mr. Pellock's bowel that he repaired. Postoperatively, Mr. Pellock developed hypoxia and hypotension and was transferred to the intensive care unit of UnityPoint Health Finley Hospital where he died of severe bilateral aspiration pneumonia because of aspiration of gastric contents into his lungs during anesthesia.

Mr. Pellock's acute hypoxic/hypercarbic respiratory failure was directly related to aspiration of gastric contents into his lungs during anesthesia. Richard Pellock was pronounced dead on January 11, 2015 at 11:00 a.m. by Dr. Jacob Wagner.

1. Medical Malpractice Claim Against James Wieters, CRNA and Mississippi Valley Anesthesiology, P.C.

Defendant Mississippi Valley Anesthesiology, P.C. has admitted that Defendant James Wieters was an employee of Mississippi Valley Anesthesiology, P.C. and at all material times acted within the scope of his employment.

With respect to Plaintiff's negligence claim against Defendant Mississippi Valley Anesthesiology, P.C. and Defendant Mississippi Valley Anesthesiology, P.C. and James Wieters, Plaintiff must prove all of the following propositions:

1. James Wieters was negligent in one or more of the following ways:
 - a. Failing to pass a nasogastric tube into Richard Pellock preoperatively on January 11, 2015 when it was known or should have been known that Mr. Pellock had:
 - (1) preoperative nausea and emesis;
 - (2) a bloated and distended abdomen;
 - (3) distended bowel loops with air fluid levels;
 - (4) stool emanating from Mr. Pellock's pelvic drain; and
 - (5) a full stomach.
 - b. Failing to perform rapid sequence induction of general anesthesia preoperatively on January 11, 2015.
 - c. Failing to order or perform diagnostic and therapeutic fiberoptic bronchoscopy of the tracheal bronchial tree after the emesis and aspirated was observed by him.
 - d. Failing to order or obtain a chest X-ray of Richard Pellock after the emesis and aspiration occurred, or
 - e. Waiting too long for the 1mg/kg of administered succinylcholine to take effect.
2. The negligence was a cause of damage to the plaintiff.
3. The amount of damage.

Iowa Civil Jury Instruction 1600.1 Negligence - Essentials For Recovery

II. Medical Malpractice Claim Against James Wagner, M.D. and Dubuque Surgery, P.C.

Defendant Dubuque Surgery, P.C. has admitted that Dr. James Wagner was an employee of Defendant Dubuque Surgery, P.C. at all material times and acted within the scope of his employment.

With respect to Plaintiff's negligence claim against Dubuque Surgery, P.C. and Dr. James Wagner Plaintiff must prove all of the following propositions:

1. James Wagner was negligent in one or more of the following ways:
 - a. Failing to pass a nasogastric tube into Richard Pellock preoperatively on January 11, 2015 when it was known or should have been known that Mr. Pellock had

- (1) preoperative nausea and emesis;
- (2) a bloated and distended abdomen;
- (3) distended bowel loops with air fluid levels;
- (4) stool emanating from Mr. Pellock's pelvic drain; and
- (5) a full stomach;

b. Failing to order or perform diagnostic and therapeutic fiberoptic bronchoscopy of the tracheal bronchial tree after the emesis and aspiration occurred and/or was reported to him and/or to seek an immediate pulmonary consult to have the bronchoscope performed; or

c. Failing to order or obtain a chest X-ray of Richard Pellock after the emesis and aspiration occurred and/or was reported to him.

2. The negligence was a cause of damage to the plaintiff.
3. The amount of damage.

Iowa Civil Jury Instruction 1600.1 Negligence - Essentials For Recovery

III. Medical Malpractice Claim Against Alex Horchak, M.D. and UnityPoint Health Finley Hospital

Defendant UnityPoint Health Finley Hospital has admitted that Dr. Alex Horchak was an employee of Defendant UnityPoint Health Finley Hospital at all material times and acted within the scope of his employment.

With respect to Plaintiff's negligence claim against UnityPoint Health Finley Hospital and Dr. Alex Horchak, Plaintiff must prove all of the following propositions:

1. Alex Horchak was negligent in one or more of the following ways:
 - a. Failing to pass a nasogastric tube into Richard Pellock preoperatively on January 11, 2015 when it was known or should have been known that Mr. Pellock had:
 - (1) preoperative nausea and emesis;
 - (2) a bloated and distended abdomen;
 - (3) distended bowel loops with air fluid levels;
 - (4) stool emanating from Mr. Pellock's pelvic drain; and
 - (5) a full stomach.

b. Allowing Mr. Pellock to have liquid at approximately 6:00 a.m. on January 11, 2015.

2. The negligence was a cause of damage to the plaintiff.

3. The amount of damage.

Iowa Civil Jury Instruction 1600.1 Negligence - Essentials For Recovery

IV. Damages

Richard Pellock died as a result of the Defendants' negligence. Plaintiff Joanne Pellock is seeking \$10,000,000.00 for past loss of spousal consortium. She is seeking \$15,000,000.00 for future loss of spousal consortium. Mitchell Pellock is seeking \$5,000,000.00 for the past loss of parental consortium and \$10,000,000.00 for the future loss of parental consortium.

By/s/ Dominic F. Pechota

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