



December 27, 2019

Agenda Item # 20.  
Date JAN 15 2020

**SERVED VIA CERTIFIED MAIL**

Mr. Fred Mytty, Dodge County Clerk, and  
Ms. Linda McClain, Secretary for  
the Board of Trustees of Fremont Health  
or the official whose duty it is to maintain  
the official records of the political subdivision

Clerk of Dodge County  
435 North Park  
Fremont, NE 68025

Fremont Health  
Attn: Board of Trustees  
450 East 23<sup>rd</sup> Street  
Fremont, NE 68025

RECEIVED  
2019 DEC 30 PM 1:52  
DODGE COUNTY, NEBRASKA  
FRED MYTTY, COUNTY CLERK

RE: Claims Pursuant to Neb. Rev. Stat. §13-905

Dear Mr. Mytty, Ms. McClain, and other members of the Fremont Health Board of Trustees:

This letter is being filed with you pursuant to Neb. Rev. Stat. §13-905, in your respective capacities as the statutorily designated recipients of claims against Dodge County, Nebraska. The website<sup>1</sup> for Fremont Health, a Nebraska non-profit corporation organized under Neb. Rev. Stat. § 23-3501, et. seq. (“Fremont Health”), the owner and operator of that certain county hospital more commonly known as Fremont Health Medical Center, formerly known as Fremont Area Medical Center, located in Dodge County, Nebraska (the “Hospital”), indicates that Ms. McClain is the secretary to Fremont Health’s Board of Trustees.

<sup>1</sup> <http://www.fremonthealth.com/Leadership>

Furthermore, the Office of the Clerk of Dodge County has indicated that claims are to be filed with it and addressed to Mr. Mytty. Although this letter is being filed with Fremont Health and the Office of the Dodge County Clerk, a copy is being provided to the following members of the Board of Trustees whose members govern Fremont Health: Ken Beebe (Vice Chairman); Steve Pribnow (Treasurer); Jody Horner; Larry Shepard; and F. Thomas Waring, M.D. The claim, as noted outlined herein, is being made pursuant to the Political Subdivisions Tort Claims Act, Neb. Rev. St. §§ 13-901 to 13-928, *et seq.* (the "Act").

#### CLAIMANTS

The claimants in this matter are Madesyn L. Horner ("Madesyn") and Brenda L. Horner ("Brenda") and together with Madesyn, ("Claimants"), as natural mother and next friend of Madesyn .

This law firm represents Madesyn, individually, and Brenda, individually. Please direct all future communications regarding their respective claims referenced herein to our attention.

#### PERSONS/ENTITIES AGAINST WHOM CLAIM IS MADE

This claim is being made by Claimants against the following entities and persons (each, a "Defendant" and collectively, "Defendants"):

- Dodge County.
- Fremont Health.
- Fremont Health Clinic, a Nebraska non-profit corporation ("FHC").
- Fremont Health Foundation, a Nebraska non-profit corporation (the "Foundation").
- Fremont Health Partners, Inc., a Nebraska non-profit corporation (the "FHP").
- Any and all agents, servants, or employees (of Dodge County, Fremont Health, FHC, the Foundation and/or FHP, that provided care and treatment to Brenda and/or Madesyn on or about January 11, 2000, including but not limited to:
  - Monty R. Sellon, M.D. ("Dr. Sellon"); and
  - Nursing Staff (spelling as reflected in the medical records):
    - Any and all labor and delivery nursing staff;
    - L or I Belova, RN;

In addition, claims are being made against John and Jane Does 1-10, and John and Jane Does 11-20. John and Jane Does 1-10 are agents, servants, or employees of any Defendant who were on duty at the Hospital between approximately 9:00 a.m. and 11:59 p.m. on Tuesday, January 11, 2000. John and Jane Does 11-20 are agents, servants, or employees of any Defendant who had actual knowledge of the events giving rise to this claim, regardless of whether they were on or off duty during the above-described time frame. The real names of John and Jane Does 1-20 are presently unknown to Claimants.

### **BASIS OF CLAIMS: TIME AND PLACE**

As noted above, Fremont Health is a non-profit healthcare provider, chartered in 1940 by Dodge County<sup>2</sup> and is the owner and operator of the Hospital.

The claim-related events occurred at the Hospital located at 450 East 23<sup>rd</sup> Street, Fremont, Nebraska 68025, on Tuesday, January 11, 2000, while Brenda was an obstetrical patient at the Hospital, and continued through to 2250, when Madesyn was delivered.

The precise time and location of the claim-relevant events are presently unknown to Claimants, but the undersigned believes this data to be sufficient to put Dodge County on notice of the time and place pursuant to Neb. Rev. St. § 13-905, so as to enable Dodge County to investigate the claim-related events.

### **BASIS OF CLAIM SUMMARY**

On January 11, 2000, Brenda, the mother of Madesyn, presented to the labor and delivery department at the Hospital. She was known to have a large for gestational age baby. Because it was known Brenda was carrying a large baby, she was scheduled for an induction of labor. The induction of labor was managed by the Hospital nurses and staff. Thus, Brenda received medical care and treatment throughout January 11<sup>th</sup> from various nurses and Hospital staff, including the administration of a high-alert medication, Pitocin. Immediately prior to delivery, a vacuum assisted delivery was attempted by Dr. Sellon. This failed. Instead, Dr. Sellon's use of the vacuum immediately led to a shoulder dystocia. The shoulder dystocia was negligently managed by Dr. Sellon and the hospital nurses and staff present at the delivery. Due to this negligence, Madesyn was seriously and permanently injured, suffering a brachial plexus injury to her right upper extremity. But for the negligence of the Hospital staff, this would not have occurred.

During the course of providing professional medical services to both Brenda and Madesyn, Defendants and/or their agents, subsidiaries, and/or employees failed to use the ordinary and reasonable care, skill, and knowledge possessed and used by other health care providers providing such services.

As a result of the negligent acts and/or omissions of one or more of Defendants, the shoulder dystocia occurred, and then was mismanaged causing a severe and permanent brachial plexus injury to Madesyn. This injury has caused significant past pain, suffering, injuries and damages to Claimants, and will continue to cause pain, suffering, injuries and damages to Claimants into the future. The Claimants specifically reserve the right to supplement the information in this letter concerning Defendants' negligent acts and/or omissions as new and/or additional information becomes available.

This letter shall constitute formal notice under the Act, that Madesyn, individually, and Brenda, individually, are asserting tort claims against Defendants, and each of them, for all injuries and damages, including those suffered Madesyn, and for her injuries and damages as a result of

---

<sup>2</sup> <http://www.fremonthhealth.com/about-fremont-health>



and/or arising from the aforementioned negligence of Defendants. These damages are presently unliquidated and will include all past medical expenses, lost wages, loss of future earning capacity, mental and physical pain and suffering, inconvenience, special damages, and general damages.

#### **DAMAGES**

As a direct and proximal cause of the negligence of the Defendants, and each of them, Madesyn suffered a severe and permanent brachial plexus injury. The brachial plexus is the network of nerves that sends signals from the spinal cord to the shoulder, arm and hand. As a direct result of the negligence of the Dr. Sellon, Madesyn's brachial plexus nerves were excessively stretched and ripped apart and torn. As a result, Madesyn experienced extreme physical, mental and emotional pain, suffering, distress, and anguish. Additionally, as this injury is permanent, Madesyn will continue to suffer from this injury throughout her life.

#### **DEMAND**

Pursuant to Neb. Rev. St. §13-922 and §13-926, Claimants demand \$1,250,000.00.

#### **MEDICAL BILLS AND RECEIPTS**

The Nebraska statutes that govern the content of a claim against Dodge County for personal injury, impose no obligation to provide medical bills and receipts at the time the claim is filed. However, if Dodge County wishes to discuss or negotiate a resolution to this claim, Claimants and their counsel are of course willing to cooperate in such a process.

#### **SUMMARY**

The aggregate conduct of the persons named and unnamed herein caused Madesyn to suffer extreme pain and suffering at her delivery, and directly caused her severe and permanent brachial plexus injury.

Sincerely,

*/s/ Patrick J. Cullan*

Patrick J. Cullan M.D., J.D.

Cc: Ken Beebe (Vice Chairman)  
Steve Pribnow (Treasurer)  
Jody Horner  
Larry Shepard  
F. Thomas Waring, M.D.  
Mark Novotny