



March 5, 2020

Agenda Item # 15
Date 3/25/20

SERVED VIA CERTIFIED MAIL

Mr. Fred Mytty, Dodge County Clerk,
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 Community Health Resources f/k/a Fremont Health
Attn: Board of Trustees
450 East 23rd Street
Fremont, NE 68025

RECEIVED
2020 MAR -9 PM 12:24
DODGE COUNTY NEBRASKA
FRED MYTTY, COUNTY CLERK

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

Dear Mr. Mytty, and members of the Fremont Community Health Resources Board of Trustees:

One or about August 30, 2019 a claim was filed pursuant to the Nebraska Political Subdivisions Tort Claims Act, Neb. Rev. St. §13-901, *et seq.* on behalf Katie M. Owen (“Ms. Owen”), individually, and Austin J. Owen (“Mr. Owen” and together with Ms. Owen, the “Claimants”), individually.

As noted in our letter dated August 30, 2019(attached hereto as Exhibit A and incorporated herein by reference), on September 4, 2018, Ms. Owen, the mother of Mr. Owen presented to the Emergency Department of Fremont Health. She arrived at or near 8:00 a.m. via ambulance, with altered mental status and right sided weakness and dysfunction. Ms. Owen was seen by Drs. Cunningham and Miceli, and other employees and/or agents of the Hospital. Over the course of many hours, Ms. Owen’s condition remained poor. After a brief examination prior to noon on September 4, 2018, Dr. Sullivan told that family his concerns and that he would order a STAT MRI, as he believed the Emergency Department had “missed a stroke.” Nevertheless, not until approximately 1:30 p.m. that day, over ninety (90) minutes after the family were told a “STAT



MRI” was to be done, as the MRI actually performed. The family were told the MRI demonstrated a “severe left temporal and left occipital lobe stroke.” Ms. Owen’s condition, a cerebral vascular event, was undiagnosed and untreated, and ultimately lead to significant physical impairment, blindness and other medical and neurological damages.

The Dodge County Clerk and the Fremont Community Health Resources Board of Trustees acknowledged receipt of the August 30, 2019, claim letter on September 4, 2019.

Inasmuch as this matter has not been resolved within the six-month timeframe set by Neb. Rev. Stat. §13-906, you are hereby notified that this claim is hereby withdrawn.

Sincerely,

/s/ Patrick Cullan
Patrick Cullan M.D., J.D.

Cc: Steve Pribnow
Linda McClain
Larry Shepard



August 30, 2019

15
9-11-2019

SERVED VIA PERSONAL SERVICE

Mr. Fred Mytty, Dodge County Clerk,
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 Community Health Resources f/k/a Fremont Health
Attn: Board of Trustees
450 East 23rd Street
Fremont, NE 68025

RECEIVED
2019 SEP -4 AM 11:29
DODGE COUNTY HEALTH RESOURCES
FRED MYTTY, COUNTY CLERK

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

Dear Mr. Mytty, and members of the Fremont Community Health Resources 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 the political subdivision responsible. Fremont Community Health Resources ("FCHR") organized under Neb. Rev. Stat. § 23-3501, et. seq., were the owner(s) and operator(s) 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") at all times relevant herein.

Furthermore, the Office of the Dodge County Clerk has indicated that claims are to be filed with it and addressed to Mr. Mytty. This letter is also being filed with the Board of Trustees of Fremont Community Health Resources: Steve Pribnow, Linda McClain, and Larry Shepard. 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 Katie M. Owen (“Ms. Owen”), individually, and Austin J. Owen (“Mr. Owen” and together with Ms. Owen, the “Claimants”), individually.

This law firm represents Ms. Owen, individually, and Mr. Owen, individually. Please direct all future communications regarding their 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 Community Health Resources (“FCHR”)
- 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”)
- Methodist Fremont Health, a Nebraska corporation (the “MFH”)
- Methodist Physicians Clinic, a Nebraska corporation (the “MPC”)
- Any and all agents, servants, or employees (of Dodge County, FCHR, Fremont Health, FHC, the Foundation, FHP, MFH and/or MPC, that provided care and treatment to Ms. Owen on or about September 4, 2018, including but not limited to:
 - Brian H Cunningham, M.D. (“Dr. Cunningham”); and
 - Rachel Miceli, M.D. (“Dr. Miceli”); and
 - James L Sullivan, M.D. (“Dr. Sullivan”); and
 - Nursing Staff (spelling as reflected in the medical records):

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 8:00 a.m. and 5:00 p.m. on Tuesday, September 4, 2018. 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.¹ FCHR is governed by a three (7)-member Board of Trustees appointed by the Dodge County Board of Supervisors.

¹ <http://www.fremonthealth.com/about-fremont-health>

The claim-related events occurred at the Hospital located at 450 East 23rd Street, Fremont, Nebraska 68025, on or about Tuesday, September 4, 2018, while Ms. Owen was a patient at the Hospital. It is believed Ms. Owen arrived via Emergency Medical Service (“EMS”) at the Emergency Department of Fremont Health at or near 0800 on September 4, 2018. She was admitted to Fremont Health several hours later. Thereafter, after it was discovered that she was having a cerebral vascular event, she was transferred to another facility in Omaha.

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 September 4, 2018, Ms. Owen, the mother of Mr. Owen presented to the Emergency Department of Fremont Health. She arrived at or near 8:00 a.m. via ambulance, with altered mental status and right sided weakness and dysfunction. Ms. Owen was seen by Drs. Cunningham and Miceli, and other employees and/or agents of the Hospital. Over the course of many hours, Ms. Owen’s condition remained poor. After a brief examination prior to noon on September 4, 2018, Dr. Sullivan told that family his concerns and that he would order a STAT MRI, as he believed the Emergency Department had “missed a stroke.” Nevertheless, not until approximately 1:30 p.m. that day, over ninety (90) minutes after the family were told a “STAT MRI” was to be done, as the MRI actually performed. The family were told the MRI demonstrated a “severe left temporal and left occipital lobe stroke.” Ms. Owen’s condition, a cerebral vascular event, was undiagnosed and untreated, and ultimately lead to significant physical impairment, blindness and other medical and neurological damages.

During the course of providing professional medical services to Ms. Owen, 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, Ms. Owen’s condition remained undiagnosed, her condition was allowed to deteriorate, she suffered conscious pain and suffering, and incurred sever and permanent injuries and damages. 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 the Claimants are asserting tort claims against defendants noted herein for all injuries and damages, including those suffered by Ms. Owen as a result of and/or arising from the aforementioned negligence of said 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 aforementioned negligence, Ms. Owen has experienced, and will continue to experience extreme physical, mental and emotional pain, suffering, distress, and anguish. She has incurred severe and permanent physical and neurological damages, including brain damage, loss of vision, physical and emotional damage, weakness, dysfunction and cognitive damage. She has suffered a loss of earning capacity, incurred medical damages, and will continue to incur medical damages. Claimants reserve the right to amend their claimed damages as new information becomes available.

DEMAND

Pursuant to Neb. Rev. St. §13-922 and §13-926, Claimants demand \$2,250,000.00.

MEDICAL BILLS AND RECEIPTS

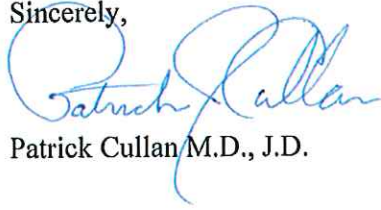
The Nebraska statutes that govern the content of a claim against Dodge County for personal injury and death, impose no obligation to provide medical bills and receipts at the time the claim is filed. However, if Dodge County wishes to discuss or negotiate a resolution to this claim, Claimants and their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

SUMMARY AND CAVEAT

The aggregate conduct of the persons named and unnamed herein caused Ms. Owen to suffer a stroke, leaving her with severe and permanent neurological damages. Claimants respectfully represent that the lack of intervention by the defendants noted herein as Ms. Owen demonstrated signs and symptoms consistent with a cerebral vascular event over numerous hours demonstrates willful and wanton conduct and gross negligence by such defendants and is so shocking to the conscience of any reasonable person, that punitive damages are warranted.

The caveat, of course, is the obvious one that the purpose of Neb. Rev. St. § 13-905 is to notify Dodge County of an event or series of events giving rise to potential tort liability so that Dodge County may investigate and determine whether to settle a claim without litigation. Nothing in the Act requires a claimant to absolutely establish Dodge County's liability in the notice, and nothing in the Act permits the notice to in any way limit the theories of recovery possible against Dodge County as a result of the events, including but not limited to any wrongful death or survival action, if Dodge County declines to settle within the six (6)-month time frame provided by the Act. Claimants and their counsel retain the right to file any and all claims and utilize any and all theories of recovery allowed by Nebraska law if a suit is filed arising out of the events occurring on or about September 4, 2018.

Sincerely,



Patrick Cullan M.D., J.D.

Cc: Steve Pribnow
Linda McClain
Larry Shepard