

he went to the THR Rockwall emergency room for help. Emergency department doctors diagnosed Justin with ileitis and a perforated ileum. They consulted with Katherine Rose Makohon, MD, and she admitted Justin to the hospital for further evaluation and management of his condition.

The next morning, Dr. Makohon examined Justin and scheduled him for an open small bowel resection and possible colectomy that afternoon. Texas Health Hospital Rockwall employees Mary J. Hamel, RN, Joel T. Catanzano, Amanda E. Jones, RN, and Pamela J. Riley, CST assisted Dr. Makohon in the operating room. The hospital employees who staffed the surgery and Dr. Makohon were all expected to participate in sponge, needle, and instrument counts at multiple junctures during the procedure.

Counts are performed to prevent the retention of foreign bodies and, thus, increase patient safety. Careful counting and documenting by the surgical team are meant to ensure all foreign objects are accounted for at the end of the procedure. All members of the surgical team are required to be involved in the process of performing counts. Doctors and hospital employees assisting surgeries are all expected to be trained and well versed in the policies and procedures for performing counts.

According to records from the small bowel resection surgery, a total of four sponge, needle, and instrument counts occurred during the operation. Dr. Makohon was supposed to participate and have notice of each count. However, according to records, that was not the case when she operated on Justin in June 2022. On at least one occasion Dr. Makohon did not participate in and was not provided notice of a count procedure.

When she ultimately closed the incision she made in Justin's abdomen, the foreign object count was short one sponge. The discrepancy was not charted, and the missing sponge was left inside of Justin Martin's abdomen.

Justin Martin remained in the hospital for another five days. During that time Dr. Makohon and THR Rockwall discharged Justin home five days later on June 27, 2021. Throughout the course of his hospital stay, Justin reported severe abdominal pain primarily located at the site of his incision and continued to display elevated white blood cell counts indicative of infection.

Two weeks after the surgery a big gush of pinkish fluid rushed out of Justin's abdomen while he was walking. Justin arrived back at THR Rockwall's emergency room by ambulance. Doctors there found "foul smelling drainage" weeping out of Dr. Makohon's surgical incision. Justin's blood work revealed additional signs of infection and inflammation. He was admitted with a preliminary diagnosis of an intraabdominal abscess measuring approximately 12 cm near the site of the recent surgery.

The next day, a subsequent review of the CT scan taken in the emergency room located a "narrow rectangular object in the abdomen that was suspicious to {Dr. Makohon] as a foreign body." The suspected foreign body measured 10 cm by 1.5 cm. Undergoing another surgery to drain the abscess and look for the suspected foreign body was Justin's only choice. On July 6, 2021, Dr. Makohon opened the incision and internal sutures from the first surgery she performed on Justin. The second surgery confirmed what doctors feared— a laparotomy sponge had been left inside of Justin. The area

surrounding the sponge was full of pus and infected.

Justin found himself in incredible pain at the re-entered surgery site after the second surgery. The infection and inflammation caused by the retained sponge and related abscess required providers to institute wound care protocols, including leaving the long, deep incision open and placing a wound vac that required frequent changes. The pain and trauma took an emotional toll on Justin. Even with Morphine his pain level still rated as high as 10/10. Justin's white blood cell count also remained high and a wound culture quickly revealed the presence of E. Coli bacteria in the wound.

Doctors ultimately discharged Justin from the hospital with a wound vac and home health assistance arrangements in place eleven days after he arrived reporting a big gush of pinkish fluid coming out of the incision Dr. Makohon made in the first surgery. The negligence of THR Rockwall's employees and Dr. Makohon caused Justin Martin to endure past and future damages.

DISCOVERY CONTROL PLAN

1. Justin Martin will conduct discovery under Level III of TEXAS RULE OF CIVIL PROCEDURE 190.4.

PARTIES

2. Defendant Katherine Rose Makohon, MD, is an individual who resides in Rockwall County, Texas. She can be served at her residence 2003 Sleepy Hollow Lane, Rockwall, Texas 75032 or wherever she may be found.

3. Defendant Lakeside Surgery, P.A. is a domestic for-profit professional association

with a principal place of business in Rockwall County, Texas. It may be served by serving its registered agent, Katherine Rose Makohon, 2003 Sleepy Hollow Lane, Rockwall, Texas 75032.

4. Defendant Rockwall Regional Hospital, LLC d/b/a Texas Health Presbyterian Hospital Rockwall is a domestic limited liability company with a principal place of business in Tarrant County, Texas. It can be served through its registered agent Donald B. Collins, 612 E. Lamar Boulevard, Suite 1400, Arlington, Texas 76011

4. Defendant Amanda E. Jones, RN, is an individual who resides in Dallas County, Texas. She can be served at her residence 1078 E. Interstate 30, Apartment 109, Garland, Texas or wherever she may be found.

5. Defendant Pamela J. Riley, CST, is an individual who resides in Kaufman County, Texas. She can be served at her residence 10163 Bobwhite Lane, Terrell, Texas 75161 or wherever she may be found.

6. Defendant Mary J. Hamel, RN, is an individual who resides in Dallas County, Texas. She can be served at her residence 927 Via Del Sur, Mesquite, Texas 75150 or wherever she may be found.

7. Defendant Joel T. Catanzano, is an individual who resides in Rockwall County, Texas. He can be served at his residence 528 Indian Paintbrush, Fate, Texas 75087 or wherever he may be found.

8. Plaintiff Justin Martin resides in Rockwall County, Texas. The last three digits of his driver's license are 744.

JURISDICTION AND VENUE

9. Venue is also proper in Dallas County pursuant to TEXAS CIVIL PRACTICES & REMEDIES CODE § 15.002(a) because one or more Defendants resided in Dallas County at the time these events occurred.

10. Justin Martin is complying with TEXAS CIVIL PRACTICES & REMEDIES CODE § 74.053 and not specifying an amount of money claimed as damages other than to assert that this Court has jurisdiction because the amount in controversy exceeds the minimum jurisdictional amounts of the Court.

CAUSES OF ACTION

A. Count One: Negligence Against Dr. Makohon and Lakeside Surgery.

11. Plaintiff refers to the preceding paragraphs to support of his negligence claim.

12. At all times material hereto, Defendant Katherine Rose Makohon, MD was a surgeon and employee of Defendant Lakeside Surgery, P.A. and acting in the course and scope of her employment.

13. At all times material hereto, Dr. Makohon was Justin Martin's surgeon and owed Justin a duty to act as an ordinary prudent surgeon would act in the same or similar circumstances. Dr. Makohon negligently failed to provide appropriate care to Justin by failing to adhere to the standard of care, including but not limited to the following particulars:

- a. Failure to provide appropriate medical care,
- b. Leaving all or part of a lap sponge in Justin's abdomen,

- c. Failure to appropriately follow Justin post operatively,
- d. Failure to recognize or respond to signs of a retained foreign object,
- e. Failure to adhere to count procedure standards,
- f. Failure to ensure persons assisting during surgery performed counts correctly,
- g. Failure to ensure persons assisting during surgery followed appropriate count procedures,
- h. Failure to ensure persons assisting during surgery documented counts appropriately and accurately,
- i. Failure to properly monitor and respond to Justin's initial and subsequent complaints of pain and symptoms, and
- j. Failure to provide reasonable treatment to Justin.

14. Dr. Makohon's acts and/or omissions as set forth above foreseeably and proximately caused Justin to suffer from the retained sponge, which caused severe injuries to Justin that will have lifelong consequences. Defendants proximately caused Plaintiff's damages for which he brings this suit.

B. Count Two: Negligence Against THR Rockwall and its Employees.

15. Plaintiff refers to the preceding paragraphs to support of his negligence claim.

16. At all times material hereto, Defendants Amanda E. Jones, RN, Mary J. Hamel, RN, Joel T. Catanzano, and Pamela J. Riley, CST were employees of Defendant Rockwall Regional Hospital, LLC d/b/a Texas Health Presbyterian Hospital Rockwall (THR Rockwall) and acting in the course and scope of their employment.

17. At all times material hereto, the THR Rockwall employees were members of the

surgical team assisting with Justin Martin's June 22, 2021 surgery and owed Justin a duty to act as an ordinary prudent nurses, scrub technicians, and certified surgical technologists would act in the same or similar circumstances. These THR Rockwall employees negligently failed to provide appropriate care to Justin by failing to adhere to the standard of care, including but not limited to the following particulars:

- a. Failure to provide appropriate medical care,
- b. Leaving all or part of a lap sponge in Justin's abdomen,
- c. Failure to perform accurate sponge counts,
- d. Failure to recognize or respond to signs that a foreign object has been retained prior to leaving the operating room,
- e. Failure to adhere to count procedure standards,
- f. Failure to ensure persons assisting during surgery performed counts correctly,
- g. Failure to ensure persons assisting during surgery followed appropriate count procedures,
- h. Failure to ensure persons assisting during surgery documented counts appropriately and accurately,
- i. Failure to appropriately communicate with other members of the surgical team, including but not limited to, Dr. Makohon, and
- j. Failure to provide reasonable treatment to Justin.

18. THR Rockwall's employees' acts and/or omissions as set forth above foreseeably and proximately caused Justin to suffer from the retained sponge, which caused severe injuries to Justin that will have lifelong consequences. Defendants proximately caused Plaintiff's damages for which he brings this suit.

C. Count Three: Gross Negligence Against All Defendants.

19. Plaintiff refers to the preceding paragraphs to support of his gross negligence claim.

20. Defendants' conduct described above was substantially more than ordinary carelessness or inadvertence. Rather, the conduct rises to the level of gross negligence and malice, as those terms are defined by law under section 41.001(11) of the TEXAS CIVIL PRACTICES & REMEDIES CODE. Leaving the lap sponge in Justin's abdomen and the failure to respond to the clear and evident retained object constitutes such an entire want of care as to indicate that the acts or omissions in question were the result of conscious indifference to Justin's rights, welfare, and safety. Moreover, Defendants' acts and omissions of involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Justin when Defendants had actual, subjective awareness of the risks involved, such that their conduct amounts to conscious indifference to Justin's rights, welfare, and safety.

21. For this gross negligence, Plaintiff specifically pleads for exemplary damages.

AGENCY

22. Plaintiff refers to the preceding paragraphs to support of his claims.

23. At material times, Dr. Makohon was an employee and/or agent of Defendant Lakeside Surgery, P.A., and acting in the course and scope of her employment or agency in furtherance of her employer's or principal's business. Therefore, Defendant Lakeside Surgery, P.A. is liable for the conduct of Dr. Makohon.

24. At material times, Amanda E. Jones, RN, Mary J. Hamel, RN, Joel T. Catanzano, and Pamela J. Riley, CST were employees and/or agents of Defendant Rockwall Regional Hospital, LLC d/b/a Texas Health Presbyterian Hospital Rockwall (THR Rockwall), and acting in the course and scope of their employment or agency in furtherance of their employer's or principal's business. Therefore, Defendant THR Rockwall is liable for the conduct of Amanda E. Jones, RN, Mary J. Hamel, RN, Joel T. Catanzano, and Pamela J. Riley, CST.

PRE-SUIT NOTICE

25. Pursuant to TEXAS CIVIL PRACTICES & REMEDIES CODE § 74.051(a), timely pre-suit Notice along with an "Authorization Form for Release of Protected Health Information" in compliance with § 74.052(c) was sent to one or more Defendants via certified mail, return receipt requested, which is sufficient as to all.

TEXAS RULE OF CIVIL PROCEDURE 193.7 NOTICE

26. Justin Martin gives notice to Defendants that he intends to use all discovery responses as evidence at trial in accordance with such right and privileges established by the TEXAS RULES OF CIVIL PROCEDURE 193.7.

U.S. LIFE TABLES

27. Notice is hereby given that Justin Martin intends to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

REQUEST FOR A JURY TRIAL

28. Justin Martin requests a jury trial on all issues so triable and submits the applicable

fee contemporaneously with the filing of this Petition.

DAMAGES

29. As the result of Defendants' actions, individually and jointly, Justin Martin suffered and incurred damages, including but not limited to:

- a. Physical pain and suffering incurred in the past and future,
- b. Physical impairment in the past and future,
- c. Disfigurement incurred in the past and future,
- d. Mental anguish incurred in the past and future,
- e. Lost wages in the past and future,
- f. Loss of earning capacity in the past and future, and
- g. Reasonable and necessary medical expenses incurred in the past and future.

30. Justin Martin seeks all damages allowable under law, including but not limited to, court costs, pre-judgment interest, and post-judgment interest.

31. Moreover, Defendants' conduct described above constituted gross negligence. As such, Justin Martin will show that he is entitled to exemplary damages.

32. The above damages exceed the minimal jurisdiction of this Court, and Justin Martin asks for full recovery of such damages following a trial by jury.

PRAYER

Justin Martin asks that Katherine Rose Makohon, MD, Lakeside Surgery, P.A., Rockwall Regional Hospital, LLC d/b/a Texas Health Presbyterian Hospital Rockwall, Amanda E. Jones, RN, Mary J. Hamel, RN., Joel T. Catanzano, and Pamela J. Riley, CST be served with citations directing them to appear and answer this Petition and, when a

final determination of these causes of action is made, that he receive a judgment against these Defendants awarding him damages, costs of court, pre-judgment and post-judgment interest, and all further relief to which he may be justly entitled.

Respectfully Submitted,



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Associated Case Party: JUSTIN MARTIN

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