

CAUSE NO. 2023-03060

**NATASHA MCWHORTER & OREN
MCWHORTER**
 Plaintiffs,
VS.

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**IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS**

**ELENA VERA, M.D., SUNITA PAL,
M.D., ZIAD HAIDAR, M.D., DEAN
NASSER, M.D., JANET ELIZONDO,
CRNA, ROSANNE RAMON RN,
MARTA TSENG, RN, KATLYN REES,
RN, and CHCA WOMAN'S HOSPITAL,
L.P. D/B/A THE WOMAN'S HOSPITAL
OF TEXAS A/D/B/A WOMAN'S
HOSPITAL OF TEXAS**
 Defendants.

189TH JUDICIAL DISTRICT

**DEFENDANTS ELENA VERA, M.D., SUNITA PAL, M.D., AND JANET ELIZONDO,
CRNA'S FIRST AMENDED ANSWER & JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Defendants, **ELENA VERA, M.D.; SUNITA PAL, M.D.; AND JANET ELIZONDO, CRNA,** Defendants in the above entitled and numbered cause, who hereby file this First Amended Answer and Jury Demand, and would respectfully show the Court as follows:

I. ANSWER

1. Defendants hereby assert a general denial, as authorized by TEX. R. CIV. P. 92.

II. CONTENTIONS

2. Each contention, defense, or due process right asserted herein is urged without waiver of any other contention, defense, or due process right pled and/or claimed by Defendants in this First Amended Answer. To the extent that affirmative defenses, contentions, or due process rights asserted herein conflict, Defendants plead them in the alternative. TEX. R. CIV. P. 84; TEX. R. CIV. P. 85.

3. Defendants aver that this is a healthcare liability claim. TEX. CIV. PRAC. & REM. CODE § 74.001(13).

4. Defendants plead a finding of negligence may not be based solely on evidence of a bad result to the claimant in question. TEX. CIV. PRAC. & REM. CODE § 74.303(e)(2). Rather, a bad result may be considered by the jury, along with the other evidence, in determining the issue of negligence. *Id.* The jury is the sole judge of the weight, if any, to be given to this kind of evidence. *Id.*

5. Defendants expressly invoke the damage limitations, provisions, and/or affirmative defenses authorized by Texas Civil Practice & Remedies Code §§ 41.002, 41.003, 41.004, 41.006, 41.007, 41.008, 41.012, 74.301, 74.302, 74.303, 74.503, the prejudgment interest limitations and/or provisions authorized by Texas Finance Code §§ 304.003 to 304.1045, or other statutes in this State restricting the amount of recovery in this cause. Defendants request that the Court disallow any award of prejudgment interest since any award by a jury already includes the change in the value of money from the time of the occurrence in question to the time of trial. Therefore, any award of prejudgment interest should be assessed on a jury verdict rendered at the time of the occurrence in question and not on a jury verdict rendered at the time of trial.

6. Defendants plead the plaintiffs' potential recovery of non-economic damages against Defendants is limited to an amount not to exceed \$250,000.00. TEX. CIV. PRAC. & REM. CODE § 74.301.

7. Defendants invoke their legal right to a reduction of any dollar verdict that may be rendered in this cause by credit for payments made by other persons/entities—including all former, current, and future defendants, settling persons/entities, and/or responsible third parties—as a result of jury findings against other persons/entities. In this connection, Defendants reserve the right under

Texas common law and under the Texas Civil Practice & Remedies Code to submit issues against parties who may be present in this case or absent from this case at the time the matter is passed to the jury for fact determinations. TEX. CIV. PRAC. & REM. CODE Ch. 32-33. To the extent that another person/entity has entered or does enter into a settlement with the plaintiff, Defendants affirmatively assert the negligence of each such settling person/entity was a proximate cause, a new and independent cause, and a sole proximate cause of the injuries claimed by the plaintiff. Defendants also request an offset to any judgment rendered against Defendants pursuant to § 33.001, *et seq.*, of the Texas Civil Practice & Remedies Code and preserve all rights of contribution for such credit. Defendants further request the Court submit said settling person's/entity's percentage of liability to the jury in order to determine comparative responsibility. TEX. CIV. PRAC. & REM. CODE § 33.001.

8. Pursuant to § 18.091 of the Texas Civil Practice and Remedies Code, the plaintiffs are required to prove any loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law. Defendants request the Court instruct the jury as to whether any recovery for compensatory damages sought by the plaintiffs is subject to federal or state income and/or estate taxes.

9. Defendants contend, regarding medical or healthcare expenses, the plaintiffs can recover only such expenses that were actually "paid or incurred." TEX. CIV. PRAC. & REM. CODE § 41.0105. That is, the plaintiffs are not entitled to an award of damages for medical bills for which no obligation to pay exists and/or ever existed.

10. Defendants reserve the right to request that payments of any medical, healthcare, or custodial services awarded be paid in whole or in part in periodic payments rather than in a lump

sum. TEX. CIV. PRAC. & REM. CODE § 74.503. Likewise, Defendants reserve the right to request that payments of any future damages other than medical, healthcare, or custodial services awarded be paid in whole or in part in periodic payments. *Id.*

11. At all times, reasonable, appropriate, and necessary medical care was provided to the plaintiff, and Defendants were not negligent in the care they provided to the plaintiff. Nothing they did or failed to do proximately caused or was the producing cause of the plaintiff's alleged injuries and/or damages.

III. AFFIRMATIVE DEFENSES

12. Pleading additionally, or in the alternative, without waiver of the foregoing, Defendants affirmatively plead they are liable only for damages found by the trier of fact equal to its percentage of responsibility, if any. If in the unlikely event Defendants are found more than 50% liable, then they contend the joint and several liability provisions of Texas Civil Practice & Remedies Code § 33.013 and/or of Texas common law are inappropriate, are impermissible, and constitute a taking of property without due process of law in violation of the due process of law and/or due course of law provisions of the United States and Texas Constitutions. Moreover, the application of joint and several liability constitutes a constitutionally impermissible *ex post facto* law and an excessive fine prohibited by the Eighth Amendment of the United States Constitution as applied to the States through the Fourteenth Amendment. Joint and several liability also imparts liability that bears no reasonable relationship to actual damages caused or the degree of fault attributed to a defendant by the trier of fact. Therefore, it constitutes an impermissible deprivation of property without due process of law and due course of law and violates the right to a trial by jury as guaranteed by the United States and Texas Constitutions. Finally, joint and several liability violates the open courts

provision of the Texas Constitution in that damages imposed upon a defendant are not determined by the trier of fact.

13. Pleading additionally, or in the alternative, without waiver of the foregoing, Defendants contend the plaintiffs' injuries, if any, resulted from a superseding and intervening cause, or a new and independent cause, not reasonably foreseeable by Defendants, which became the immediate cause of the plaintiffs' damages. Any acts or omissions alleged by the plaintiffs as to Defendants were wholly remote and non-causative of the plaintiffs' damages.

14. Pleading additionally, or in the alternative, without waiver of the foregoing, Defendants would show that any injuries, damages, or liabilities complained of by the plaintiffs herein are the result, in whole or in part, of pre-existing conditions, injuries, diseases, and/or disabilities or subsequent conditions, injuries, diseases, and/or disabilities of the plaintiff and are not the result of any act or omission on the part of Defendants.

15. Pleading additionally, or in the alternative, without waiver of the foregoing, Defendants assert the occurrence in question was proximately caused by the acts or omissions of a person over whom Defendants had no control and over whom Defendants should not have had control.

16. Pleading additionally, or in the alternative, without waiver of the foregoing, Defendants assert the occurrence made the basis of this lawsuit was unavoidable, as that term is defined at law, and was not caused by the negligence of any party.

17. Pleading additionally, or in the alternative, without waiver of the foregoing, Defendants contend that at the time and on the occasion giving rise to this suit, there was a failure on the part of the plaintiffs to exercise that degree of care that an ordinarily prudent person would have exercised under the same or similar circumstances, and it was this contributory negligence on the part of the

plaintiff that proximately caused or contributed to any injuries or damages that may have been sustained. Defendants, therefore, plead the defense of contributory negligence.

18. Pleading additionally, or in the alternative, without waiver of the foregoing, Defendants contend the plaintiffs' causes of action are barred by the applicable Statute of Limitations. Tex. Civ. Prac. & Rem. Code § 74.251.

19. Pleading additionally, or in the alternative, without waiver of the foregoing, Defendants contend the plaintiffs has suffered no compensable damage or injury.

20. Defendants invoke the evidentiary standard for emergency medical care pursuant to TEX. CIV. PRAC. & REM. CODE § 74.153 and would require Plaintiffs prove, by a preponderance of the evidence, that Defendants, with willful and wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent medical professional in the same or similar circumstances. Defendants further invoke TEX. CIV. PRAC. & REM. CODE §74.154 requiring the Court to give the appropriate jury instructions.

IV. RIGHT TO BIFURCATED TRIAL

21. In the event the plaintiff pleads for exemplary damages, Defendants hereby request, a bifurcated trial on the issue of punitive damages, pursuant to Tex. Civ. Prac. & Rem. Code § 41.009.

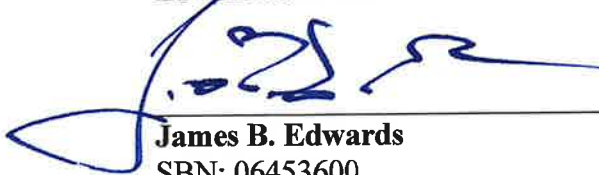
V. JURY DEMAND

22. Defendants hereby respectfully demand a trial by jury. The required fee has been tendered. Tex. R. Civ. P. § 216.

WHEREFORE, PREMISES CONSIDERED, Defendants **ELENA VERA, M.D.; SUNITA PAL, M.D.; AND JANET ELIZONDO, CRNA**, pray the plaintiffs take nothing by reason of this suit, that Defendants recover their costs, and for such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,

EDWARDS & GARCIA



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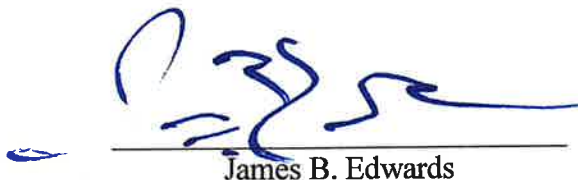
**ATTORNEYS FOR DEFENDANTS ELENA
VERA, M.D.; SUNITA PAL, M.D.; AND
JANET ELIZONDO, CRNA**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on all known counsel of record in accordance with Texas Rules of Civil Procedure on **this 31st day of August, 2023**

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James B. Edwards

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