

STATE OF VERMONT  
BENNINGTON COUNTY, SS

BENNINGTON SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

RACHEL L. MIDDLESTEADT )  
Plaintiff )  
v. )  
SOUTHERN VERMONT WOMEN'S MEDICAL )  
CENTER, DR. GOLD, THE BENNINGTON )  
FAMILY PRACTICE, P.A. PAUL GRAETHER, )  
And John Does I-V )  
Defendants )

**COMPLAINT:**

Negligence  
Res Ipsa Loquitor  
Medical Malpractice  
Punitive Damages

NOW COMES the Plaintiff, Rachel L. Middlesteadt, by and through undersigned counsel and by way of complaint against the Defendants, and each of them, alleges:

1. At all times relevant to this cause of action, the Plaintiff, Rachel L. Middlesteadt, was a resident of Bennington County in the State of Vermont.
2. The Defendant, Southern Vermont Women's Health Center upon information and belief at all times relevant to this cause of action was and still is a Vermont Corporation with a principal place of business at 187 North Main Street in Rutland, Vermont.
3. The Defendant, Dr. Gold, is, and was at all times relevant to this lawsuit, a physician duly licenses to practice his profession in the State of Vermont, with offices at 187 North Main Street in Rutland, Vermont, where service of process will be had upon him. Upon information and belief, the Southern Vermont Women's Health Center is the professional corporation of the individual Dr. Gold, and Plaintiff hereby claims against the Defendant Dr. Gold and his corporation.

4. Upon information and belief, the Defendant Bennington Family Practice at all times relevant to this cause of action was and still is a Vermont Corporation with a principal place of business at 140 Hospital Drive, Bennington, Vermont.
5. At all times relevant to this cause of action, P.A. Paul Graether was the agent, servant and employee of the Defendant, Bennington Family Practice and at all times relevant to this cause of action was acting in the course and scope and service and agency and employment of the Bennington Family Practice.
6. The Plaintiff's cause of action against the Bennington Family Practice and P.A. Paul Graether arises from (A) their residence in Bennington County, State of Vermont; (B) committing negligence and medical malpractice and other tortious acts in Bennington County, State of Vermont; (C) causing tortious injury in Bennington County, State of Vermont; (D) having sufficient minimum contacts with the County of Bennington, State of Vermont, so as to confer personal jurisdiction over them. The amount in controversy, exclusive of interest and costs, exceeds the minimum jurisdictional requirements of the Bennington Superior Court.
7. The Plaintiff's cause of action against the Southern Vermont Women's Health Center and Dr. Gold arises from their (A) transacting business in Bennington County, State of Vermont; (B) causing tortious injury to a Bennington County resident; and (C) having sufficient minimum contacts with the County of Bennington, State of Vermont, so as to confer personal jurisdiction over them. The amount in controversy, exclusive of interest and costs, exceeds the minimum jurisdictional requirements of the Bennington Superior Court.

8. At all times relevant to this cause of action, Dr. Gold was the agent, servant and employee of the Southern Vermont Women's Health Center, and at all times relevant to this cause of action was acting in the course and scope and employment and agency of the Southern Vermont Women's Health Center.
9. At all times relevant to this cause of action, the Plaintiff, Rachel L. Middlesteadt was in the exercise of ordinary care and caution for her own safety and well-being without any contributory negligence on her part.
10. On January 17, 1996, the Plaintiff was admitted to the Southern Vermont Women's Health Center where she was diagnosed as being 6.5 weeks pregnant. The Plaintiff underwent an elective procedure known as vacuum aspiration to terminate her pregnancy. During the procedure, a speculum was inserted into the Plaintiff's vagina. Her cervix was exposed and grasped with a tenaculum. A paracervical block was instilled at 3 and 9 o'clock, using a total of 20 ml. of % zylocaine. The Plaintiff's uterus was sounded to 9 cm and her cervix was progressively dilated to 23 mm. A 7 mm cannula was then inserted into her uterine cavity in an attempt to aspirate the products of conception.
11. At all times relevant to this cause of action,, a doctor-patient relationship existed between the Plaintiff and the Southern Vermont Women's Health Center, and the Bennington Family Practice, and Defendant P.A. Paul Graether.

The true names and capacity, whether individual, corporate, associate or otherwise of Defendants, Southern Vermont Women's Health Center and John Does I-V, inclusive, are unknown to the Plaintiff, who therefore sues said Defendants by said fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is negligently or otherwise responsible in some manner for the events and happenings herein referred to and negligently or otherwise caused injuries and damages proximately thereby to the Plaintiff as herein alleged.

Plaintiff is uncertain as to the true names and status of the Southern Vermont Women's Health Center Defendants, or whether said Defendants are corporations, general partnerships, limited partnerships, unincorporated associations, or otherwise. Plaintiff is informed and believes, and therefore alleges that said Defendants are duly licensed to do business, and were and are doing business under and by virtue of the laws of the State of Vt. When the true status of said Defendants is ascertained, Plaintiff prays leave of this Court to amend this Complaint accordingly.

12. Plaintiff further states that the Defendant, Dr. Gold, John Does I-V and the Southern Vermont Women's Health Center were professionally negligent and their conduct did fall below the standard of care of ordinary careful, skillful and prudent physicians in the handling of the Plaintiff's procedure. Furthermore, that as a result of Defendant's mishandling of the Plaintiff's first-trimester pregnancy, not all of her fetal tissue was removed, resulting in an incomplete abortion.

13. While Plaintiff was a patient at the Southern Vermont Women's Health Center on January 17, 1996, said Women's Health Center, by and through the agents and employees active within the course and scope of their employment, was negligent by failing to diagnose, recognize, test, detect and appropriately treat the procedure and complications incurred by the Plaintiff, Rachel L. Middlesteadt.
14. As a direct and proximate result of the Southern Vermont Women's Health Center's negligence, and the medical malpractice of Dr. Gold, John Does I-V and their agents, servants, and employees, the Plaintiff, Rachel L. Middlesteadt suffered an incomplete abortion at approximately nineteen weeks (19), gestation which resulted in permanent and irreparable mental and physical injury, pain and suffering, mental anguish and increased medical expenses.
15. The Defendant, Southern Vermont Women's Health Center failed to exercise reasonable and ordinary care, skill and diligence, and departed from the generally accepted and recognized standard of care or skill of the medical community in the care, assistance and treatment of the Plaintiff, and was therefore negligent in performing its duties to Plaintiff in one or more of the following particulars:
  - A) In failing to adopt or implement policies and procedures sufficient to provide for adequate care, assistance and treatment of the Plaintiff,
  - B) In failing to provide appropriate medical care, assistance, and treatment to Plaintiff under the circumstances;
  - C) In failing to provide proper follow-up care to the Plaintiff;
  - D) In failing to remove the fetal tissue during Plaintiff's procedure;

- E) In failing to pursue a further investigation to explain Plaintiff's pathology report, and in failing up with ultra-sound or a repeat pregnancy test.
  - F) Defendants failed to warn Plaintiff of the dangers in a missed or, incomplete abortion, specifically that if the products conception are retained for more than about six weeks, the Plaintiff may develop, among other things, a serious coagulation defect.
  - G) Defendants made an inadequate warning to the Plaintiff concerning the risks and dangers of a missed or incomplete abortion, and failed to provide any or proper follow-up instructions.
  - H) was negligent in its care of the Plaintiff.
  - I) failed to properly care for the Plaintiff.
  - J) Operated an inadequate, hazardous, unsafe, and below standard health center which created a hazard to the public and to the Plaintiff.
  - K) Abandoned the Plaintiff.
  - L) Failed to properly monitor the Plaintiff's condition.
  - M) Failed to provide adequate abortion service facilities.
16. All of the above referenced acts and or omissions by the Southern Vermont Women's Health Center, and its agents, servants, and employees, constituted departures from accepted standards of care.
17. The Defendant, Dr. Gold, and John Doe Defendants I-V, were negligent, careless, and reckless in the following acts of commission or omission in that:
- A) Failed to properly treat the Plaintiff.
  - B) Failed to properly monitor the Plaintiff;

- C) Abandoned the Plaintiff.
- D) Gave inadequate orders and instructions to the Health Center Staff regarding the follow up care of the Plaintiff.
- E) Improperly operated on the Plaintiff.
- F) Neglected to care for the Plaintiff in the manner in which he was obligated to do.
- G) Failed to advise and to obtain the informed consent of the Plaintiff with respect to the risks and dangers of an incomplete abortion.

17. As a direct and proximate result of one or more of the foregoing negligent acts or missions on the part of the Defendants, and each of them, the Plaintiff, Rachel L. Middlesteadt suffered a missed abortion as a result of which she had to undergo a second abortion at approximately twenty (20) weeks. Said second abortion required admission as an inpatient on April 12, 1996 at Triangle Women's Health Clinic in Chapel Hill, North Carolina. Plaintiff has sustained serious and permanent bodily injury, necessitating medical, surgical and related care, and the reasonable expense thereof. Great pain, distress and anxiety have been suffered and always will be suffered by Rachel L. Middlesteadt. She has required hospital and medical care, aid and attention and may require the same in the future. The emotional pain which is permanent in nature and will cause her life-long pain, humiliation, suffering, anxiety and embarrassment. The Plaintiff had to undergo another surgical procedure which was far more complex and complicated which was a direct and proximate result of the Defendants and each of them. There is a probability that she will have further complications in the future.

18. Plaintiff at all times relevant to this cause of action was free of any contributory negligence.

19. Plaintiff requests a jury trial on all issues so triable.

#### COUNT II

20. Plaintiff repeats and realleges paragraphs one through nineteen of the first cause of action of this Complaint, and makes said paragraphs a part of this, the second cause of action, as though fully set forth herein.

21. That the Bennington Family Practice holds itself out, portends and otherwise informs the public, and more particularly in the instance of the Plaintiff that it had and possessed the requisite skill, competence, know-how, facilities, personnel, equipment, technology, and information to properly care and treat the Plaintiff.

22. That on or about , the Plaintiff, Rachel L. Middlesteadt entered Defendant's Family Practice at 140 Hospital Drive in Bennington, Vermont and entrusted herself entirely to the care of the Defendants and P.A. Paul Graether, and each of them, that the Plaintiff possessed no medical or professional knowledge nor did she have any facilities to care, diagnose, mend or cure herself.

23. That at all times mentioned herein, the Plaintiff, Rachel L. Middlesteadt, was in the exercise of ordinary care and caution for her own safety and was free of any contributory negligence.

24. At all times relevant to this cause of action, a patient-physician relationship existed between Rachel L. Middlesteadt and the Bennington Family Practice and its agents, servants, employees and P.A. Paul Graether.



25. That it was incumbent of the Defendant, Bennington Family Practice, and its agents, servants, and employees and P.A. Paul Graether who was and were a fiduciary by virtue of the above, to take appropriate precautions for its patient to wit: the highest degree of care commensurate with its facilities, knowledge, information, technology, and that the Defendants, and each of them, failed to do so.
26. That the Defendant, Bennington Family Practice, and its agents, servants, and employees, and in particular P.A. Paul Graether, after assuming the care and treatment of the Plaintiff, Rachel L. Middlesteadt L. Middlesteadt, then and there carelessly and negligently committed one or more of the following acts or omissions of corporate negligence and medical malpractice Interrogatory he treating the Plaintiff herein, as follows:
- A) Negligently, carelessly and/or improperly failed to render, aid, and service and follow-up care required of a family medical practice through its agents, servants, or employees to the Plaintiff, Rachel L. Middlesteadt;
  - B) Negligently, carelessly and improperly failed to take any to the proper tests or diagnostic procedures to check on the Plaintiff's condition;
  - C) negligently, carelessly and improperly performed or failed to perform a proper pelvic examination of the Plaintiff;
  - D) Negligently, carelessly and improperly reviewed the Plaintiff's pathology, laboratory and microscopic examination report;
  - E) Negligently, carelessly and improperly failed to utilize ultrasound and sonogram as a very reliable method for diagnosing the Plaintiff's incomplete abortion;

- F) Negligently, carelessly, and improperly failed to utilize a repeat pregnancy test or performing an ultrasound of the Plaintiff's pelvis and uterus to determine its contents;
- G) Negligently, carelessly and improperly failed to provide and / or utilize and equip adequate facilities, instruments, technology, and equipment taking into consideration the community wherein the Defendant's Family Practice is located and the degree of medical aid and service that a family medical practice in the Bennington area would ordinarily render;
- H) Negligently, carelessly and improperly failed to do all the necessary post-operative treatment necessary for the care and safety of the Plaintiff;
- I) Negligently, carelessly and improperly failed to treat the Plaintiff for the post-operative complications for which she suffered;
- J) Negligently, carelessly and improperly failed to provide competent physicians, and consultants necessary for the care, well-being and safety of the Plaintiff;
- K) Negligently entrusted the care and treatment of the Plaintiff, Rachel L. Middlesteadt to PA Pal Graether who carelessly and negligently treated the Plaintiff and who failed to order any diagnostic tests to confirm the Plaintiff's condition;
- L) The Bennington Family Practice carelessly and negligently employed and engaged incompetent and unskilled personnel including P.A. Paul Graether considering the nature of the medical services that the Defendants were rendering on behalf of the Plaintiff;

M) The Bennington Family Practice carelessly, negligently, improperly and unskillfully attended and treated the Plaintiff, Rachel L. Middlesteadt.

27. That as a direct and proximate result of one or more of the foregoing wrongful acts and omissions of the Defendant, Bennington Family Practice, and P.A. Paul Graether, and their agents, servants and employees, the Plaintiff, Rachel L. Middlesteadt, was improperly diagnosed and ill advised and was not told that she suffered an incomplete abortion and as a result, her pregnancy continued for an additional thirteen weeks and although her abortion was incomplete, the Defendants and especially P.A. Paul Graether, did not utilize and / or recommend ultrasound or any test whatsoever to determine whether the Plaintiff was still pregnant. As a result of the above stated negligence, the Plaintiff, Rachel L. Middlesteadt was admitted to a Triangle Women's Health Clinic where she was diagnosed as 19 weeks pregnant and had to undergo a Lamitel / Laminaria cervical dilator procedure in her cervix to terminate her pregnancy. Prior to the procedure, Plaintiff's doctor advised Plaintiff that she should have the procedure because her fetus may have been damaged during the first incomplete abortion. Therefore as a direct and proximate result of the said negligence and carelessness of the Defendants, and each of them, Plaintiff was caused to and did suffer severe and excruciating pain and distressing mental anguish as a result of having to go through an abortion at the nineteenth week of pregnancy. Plaintiff has suffered and for a long period of time to come will continue to suffer said pain and mental anguish as a result of said injuries.

28. As a result of the aforesaid injuries, Plaintiff has been generally damaged in a sum in excess of the jurisdictional limits of the Bennington Superior Court.
29. In the treatment of the aforesaid injuries, Plaintiff has incurred, and may in the future incur liability for physicians, surgeons, nurses, hospital care, medicine, x-rays, and other medical treatment the true and exact amount thereof being unknown to Plaintiff at this time, and Plaintiff prays leave to amend this Complaint accordingly when the true and exact cost thereof is ascertained by Plaintiff.
30. As a direct and proximate result of the said negligence and carelessness of the Defendants and each of them, Plaintiff has incurred and will incur, loss of income, wages, profits and commissions, a diminution of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff, and leave is requested to amend this Complaint to conform to proof at time of trial.
31. Plaintiff requests a jury trial on all issues so triable against the Bennington Family Practice and P.A. Paul Graether.

COUNT III

RES IPSA LOQUITUR

32. Plaintiff hereby repeats and incorporates by reference paragraphs one through thirty one of the first and second causes of action of this Complaint, and makes said paragraphs a part of this, the third cause of action, as through fully set forth herein.

33. During and as a direct and proximate result of the actions and omissions of Dr. Gold and the Southern Vermont Women's Health Center and John Does I-V, along with their agents, servants and employees during the procedure performed on the Plaintiff on or about January 17, 1996, the Plaintiff suffered an incomplete abortion at approximately six and one half weeks gestation. The negligence of the Defendants resulted in the Plaintiff having to undergo a second procedure at which time she was approximately nineteen weeks pregnant.
34. During the procedure at the Southern Vermont Women's Health Center, the Plaintiff, Rachel L. Middlesteadt entrusted Plaintiff completely to the care of the Defendants and each of them, and their agents, servants, and employees, and the damage and injury which she received was caused by the procedures, instruments, equipment, treatment and methods, which were and had been completely and exclusively under the Defendants direction, management and control, and in the normal course of events, the injuries and incomplete abortion would not have occurred if the Defendants, and each of them had used ordinary care while performing the procedure and utilizing the instruments and methods under their exclusive control and management. Wherefore, the Plaintiff hereby relies on the inference of negligence arising from the circumstances and general situation allowed under the doctrine of *res ipsa loquitur*.
35. As a proximate result of the negligence of the Defendants, and each of them, under the inference of *res ipsa loquitur*, Plaintiff sustained the injuries and damages hereinafter set forth.

COUNT FOUR  
PUNITIVE DAMAGES

36. Plaintiff hereby incorporates and repeats by reference paragraphs one through thirty five of the first, second and third causes of action of this Complaint, and makes said paragraphs a part of this, the fourth cause of action, as though fully set forth herein.
37. At all times herein mentioned, the Defendants, Bennington Family Practice, PA Paul Graether, as hereinafter set forth in failing to order any diagnostic tests or to properly refer the Plaintiff to a competent physician in light of her having undergone such a medical procedure to determine whether she had a complete or incomplete abortion constituted recklessness and gross negligence, and a conscious disregard for the safety of the Plaintiff. Plaintiff is therefore entitled to exemplary or punitive damages, which would serve to punish and make examples of these Defendants, and each of them, in an amount to be determined at trial.
38. Plaintiff requests a jury trial on all issues so triable in this fourth cause of action.

WHEREFORE, Plaintiff prays judgment against the Defendants, and each of them, as follows:

- 1) For general damages according to proof;
- 2) For exemplary or punitive damages according to proof;
- 3) For Plaintiff's loss of income, wages and earning potential according to proof;
- 4) For Plaintiff's medical and related damages according to proof;
- 5) For Plaintiff's costs of suit herein; and

- 6) For such other and further relief as to the Court that may seem just and proper.

Dated at Bennington, Vermont this \_\_\_\_\_ day of December, 1997.

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