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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH ANN NOGLE AND  
WILLIAM C. NOGLE,

Plaintiffs,

vs.

No. 74-040309-NM

J. GILBERTO HIGUERA, M.D.,  
DUMITRU - DAN TEODORESCU, M.D.,  
MIDWEST GYNECOLOGISTS, P.C., a  
Michigan corporation, PAM TOTH, d/b/a  
WOMEN'S ADVISORY CENTER, jointly and severally,

Defendants.

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SAMUEL I. BERNSTEIN (P10745)  
Attorney for Plaintiffs  
STANLEY C. SHAPIRO (P20286)  
Attorney for Plaintiffs

COMPLAINT AND DEMAND FOR  
JURY TRIAL

NOW COME the Plaintiffs herein, ELIZABETH ANN NOGLE and  
WILLIAM C. NOGLE, by and through their attorneys, SAMUEL I. BERNSTEIN  
and STANLEY C. SHAPIRO, and respectfully represent unto this Honorable  
Court as follows:

COUNT ONE

1. That the Plaintiffs, ELIZABETH ANN NOGLE and WILLIAM C. NOGLE, are residents of the County of Wayne, State of Michigan.
2. That defendant, PAM TOTH, d/b/a WOMEN'S ADVISORY CENTER, maintains her principal place of business in the City of Livonia, County of Wayne, State of Michigan.
3. That Defendant, J. GILBERTO HIGUERA, M.D., has an office and practices medicine in the City of Highland Park, County of Wayne, State of Michigan.
4. That at all times herein relevant, the defendant, DUMITRU - DAN

TEODORESCU, M.D., was and now is, a doctor of medicine, duly licensed to practice medicine in the State of Michigan.

5. That at all times herein relevant, the defendant, J. GILBERTO HIGUERA, M.D., was and now is a doctor of medicine, duly licensed to practice medicine in the State of Michigan.

6. That at all times herein relevant, the defendant MIDWEST GYNECOLOGISTS, P.C., was a Michigan professional corporation, duly organized and existing under the laws of the State of Michigan.

7. That on or about June 20, 1974 Plaintiff, ELIZABETH ANN NOGLE, contracted with Defendant PAM TOTH, d/b/a WOMEN'S ADVISORY CENTER, for compensation paid to said defendant for assistance in having the operative procedure known as an elective abortion performed upon her.

8. That on or about June 20th, 1974, an employee of the WOMEN'S ADVISORY CENTER referred Plaintiff, ELIZABETH ANN NOGLE, to MIDWEST GYNECOLOGISTS, P.C., where the abortion was to be performed, and that said employee was acting within the course and scope of her employment and/or agency, where the acts of negligence and malpractice hereinafter set forth and described were committed, thereby imposing vicarious liability upon said PAM TOTH, by reason of the doctrine of respondeat superior.

9. That on or about June 20, 1974 Plaintiff, ELIZABETH ANN NOGLE, contracted with Defendant, MIDWEST GYNECOLOGISTS, P.C., to have the operative procedure known as elective abortion performed upon her, for compensation to be paid therefor, and for that purpose, said Defendant, MIDWEST GYNECOLOGISTS, P.C., assigned DR. DUMITRU-DAN TEODORESCU, M.D., to perform the elective abortion upon the Plaintiff, ELIZABETH ANN NOGLE.

10. That defendant, MIDWEST GYNECOLOGISTS, P.C., held themselves out to the public, and to the Plaintiff, ELIZABETH ANN NOGLE, in particular, as skilled and competent physicians, with special skills in the field of surgery.

11. That Defendant, DUMITRU-DAN TEODORESCU, M.D., held himself out to the public, and to Plaintiff, ELIZABETH ANN NOGLE, in particular, as a skilled and competent physician, with special skills in the field of surgery.

12. That at all times hereinbefore and hereinafter mentioned, Defendant DUMITRU-DAN TEODORESCU, M. D., was on the staff of MIDWEST GYNECOLOGISTS, P.C., and was the apparent, implied and/or expressed agent, employee and/or servant of defendant, MIDWEST GYNECOLOGISTS, P.C., and was acting within the course and scope of his employment and/or agency when the acts of negligence and malpractice hereinafter set forth and described were committed, thereby imposing vicarious liability on Defendant, MIDWEST GYNECOLOGISTS, P.C., by reason of the doctrine of respondeat superior.

13. That at all times pertinent hereto, numerous other persons were employed by said defendant, MIDWEST GYNECOLOGISTS, P.C., including nurses, and other personnel, under the supervision and control of Defendant, MIDWEST GYNECOLOGISTS, P.C., which individuals took part in the care and treatment of Plaintiff, ELIZABETH ANN NOGLE, and were acting as the express, apparent and/or implied agents, servants or employees of Defendant, MIDWEST GYNECOLOGISTS, P.C., when the acts of negligence and malpractice hereinafter complained of were committed, thereby imposing vicarious liability upon the defendant, MIDWEST GYNECOLOGISTS, P.C., by reason of the doctrine of respondeat superior.

14. That all defendants, jointly and severally, made implied and express warranties to the Plaintiff, ELIZABETH ANN NOGLE, and to others, that the facilities under their control were safe, sanitary, sterile, and uncontaminated facilities, and that personnel, supplies and equipment in those facilities were safe, sanitary, sterile and uncontaminated,

15. That the defendants, J. GILBERTO HIGUERA, M.D., individually, and MIDWEST GYNECOLOGISTS, P.C., owed Plaintiff, ELIZABETH ANN NOGLE, a duty to provide competent and qualified physicians, surgeons, nurses and other medical personnel and assistants for the care and treatment of Plaintiff, ELIZABETH ANN NOGLE.

16. That Defendant, DUMITRU-DAN TEODORESCU, M.D., owed Plaintiff, ELIZABETH ANN NOGLE, a duty to possess that degree of knowledge and skill ordinarily possessed by similar physicians and surgeons specializing in the field of gynecology, and to exercise that degree of skill and knowledge which is ordinarily possessed and exercised by similar physicians and surgeons specializing in the field of gynecology in this and similar communities.

17. That defendants, and each of them, individually and by and through their duly authorized agents, servants and/or employees, in disregard of their duties and obligations owed to Plaintiff, ELIZABETH ANN NOGLE, and at variance with the standards of practice of the medical community, were guilty of acts and omissions constituting negligence and malpractice in the following particulars:

(A) Failure to diagnose and treat Plaintiff, ELIZABETH ANN NOGLE, in accordance with the standards of similar physicians and surgeons specializing in the field of gynecology and surgery in this and similar communities.

- (B) Failure to possess the requisite degree of knowledge and skill necessary for the proper performance of the operative procedure known as an abortion.
- (C) Failure to exercise and employ the requisite degree of knowledge and skill in the performance of the operative procedure known as an abortion, such that Plaintiff's uterus was perforated, and part of the fetus was still remaining after the abortion.
- (D) Failure to take proper precautions and to make proper observations to insure that the operative site be kept sterile, and that proper antibiotic therapeutics be administered, so as to avoid infection.
- (E) Failure to exercise the requisite degree of skill and knowledge in the use of surgical and operative equipment during said surgical procedure upon Plaintiff.
- (F) Negligently and improperly failing to perform proper diagnosis, and negligently and improperly failing to determine whether the Plaintiff was over twelve (12) weeks pregnant, thus negligently and improperly failing to determine whether the surgical procedure should have been done in a hospital.
- (G) Knowingly doing an abortion on a woman who is over twelve (12) weeks pregnant, where the inherent risk of said operation dictated that said operation be done in a hospital.
- (H) Negligently and improperly failing to advise Plaintiff, ELIZABETH ANN NOGLE, at the time of the abortion that there could be complications due to the fact that she was over twelve (12) weeks pregnant.

- (I) Negligently and improperly ;failing to send specimens removed from Plaintiff to a pathologist for a full and complete pathological analysis, to determine if the fetus had been completely removed.
- (J) Negligently failing to have adequate laboratory facilities to assist the surgeon to determine whether the fetus was completely removed in the abortion.
- (K) Negligently and improperly failing to render proper post-operative care, including failure to assist the Plaintiff, who was in a weakened condition, forcing her to attempt to dress herself, letting her fall off the operating table onto the dirty floor, not assisting the Plaintiff, who was allowed to vomit on the operating table, forcing Plaintiff to leave the doctor's office while in a weakened condition.
- (L) Negligently and improperly failing to advise Plaintiff, ELIZABETH ANN NOGLE, prior to the aforesaid operation for an abortion, that the operation could cause post-operative problems, including a perforated uterus, infection, and possible subsequent surgery to correct any possible complications from surgery.
- (M) Negligently and improperly failing to heed the subjective complaints of the Plaintiff, ELIZABETH ANN NOGLE subsequent to the operation that she was in extreme pain and weakness at a time when said complaints were initially made, so the defendants should be sufficiently apprised of the existence of a perforated uterus and infection, and to further thereafter fail to perform

immediate care to mitigate said damages.

- (N) Failure to comply with the appropriate regulations of the United States Government and the State of Michigan, in regard to the maintenance of hospital and clinic facilities.
- (O) Failure to take proper precautions, and to make proper observations, to insure that the operative instruments were kept sterile and were in proper working order.
- (P) Negligently and improperly failing to have an agreement with a nearby hospital for emergency treatment of patients.
- (Q) Negligently and improperly failing to take a pregnancy test before performing an abortion.
- (R) Negligently and improperly failing to have sufficient nurses and failing to have Registered Nurses with special training in gynecology and surgery.
- (S) Negligently and improperly performing multiple abortions at one time, and in one evening, without having adequate staff or facilities to handle the excessive load of over twenty (20) abortions in the span of four to six hours.
- (T) Negligently and improperly doing two abortions simultaneously, and leaving Plaintiff in order to do an abortion on another party, and returning without taking the proper sterilization procedures.
- (U) Negligently and improperly failing to take an adequate history from Plaintiff, ELIZABETH ANN NOGLE.
- (V) That J. GILBERTO HIGUERA, M. D., in violation of the laws of the State of Michigan, and the ethics of the

medical profession established the WOMEN'S ADVISORY CENTER to indirectly advertise for abortions, and further, defendant, J. GILBERTO HIGUERA, M.D., paid illegal kickbacks to referral agencies, referring abortion patients to his clinic.

(W) That Defendant PAM TOTH negligently and improperly referred Plaintiff, ELIZABETH ANN NOGLE, to MIDWEST GYNECOLOGISTS, P.C., when she knew, or should have known that said clinic was not competent to perform the abortion, that it was overcrowded, and that said Defendant, PAM TOTH, d/b/a WOMEN'S ADVISORY CENTER, should have advised Plaintiff to have her abortion performed in a hospital, and that said Defendant knew of numerous allegations of malpractice at MIDWEST GYNECOLOGISTS, P.C. and should not have referred Plaintiff, ELIZABETH ANN NOGLE to said clinic, and that said defendant illegally paid kickbacks in cash directly to Dr. Higuera, that said defendant failed to supply Plaintiff with a receipt for the cash received for her referral service, and the defendant did not disclose to her client, Plaintiff ELIZABETH ANN NOGLE, that said defendant, PAM TOTH, was on the payroll at that time of J. GILBERTO HIGUERA, M.D., and had a separate fee-splitting arrangement with him.

18. That as a direct and proximate result of defendants' acts and omissions, constituting negligence and malpractice, as aforesaid, Plaintiff, ELIZABETH ANN NOGLE has suffered and will continue to suffer severe, grievous and permanent injuries, disabilities and



damages, the full extent and character of which are not yet known or as yet fully determined, but which include and are not limited to the following:

- (A) Perforation of the uterus.
- (B) Hormonal imbalance.
- (C) Pain, suffering, discomfort, disability and extreme physical and emotional suffering.
- (D) Severe and continuing embarrassment, humiliation, anxiety, tension and permanent emotional disorders, including the loss of the natural enjoyments of life.
- (E) Small bowel obstruction.
- (F) Surgery and extended hospitalization for total abdominal hysterectomy, right salpingectomy, excision of peri-uterine abscess, small bowel resection, removal of the right fallopian tube, removal of the small bowel, multiple adhesions and external scarring, and possible future surgery and future complications.
- (G) Expenditures for medical services, doctors, medicines, medicinal things and substances, along with possible future surgery in attempting to effectuate a cure for said conditions, past, present and future.
- (H) Inability to have additional children.

WHEREFORE, Plaintiff, ELIZABETH NOGLE, claims judgment against the defendants, J. GILBERTO HIGUERA, M.D., DUMITRU-DAN TEODORESCU, M.D., MIDWEST GYNECOLOGISTS, P.C., a Michigan corporation, PAM TOTH, d/b/a WOMEN'S ADVISORY CENTER, jtly. and sev., in the amount of Three Million (\$3,000,000.00) Dollars, together