

PATRICIA LOPEZ

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STATE OF NEW MEXICO
IN THE DISTRICT COURT
SECOND JUDICIAL DISTRICT

James J. Rios

Havona Madama
1701 Kenyon St. NW
Washington, D.C. 20010

Plaintiff

against

University of New Mexico Hospital
2211 Lomas Blvd. NE
University of New Mexico
Albuquerque, NM 87106

and

J. L. Johnson
UNMH
2211 Lomas Blvd. NE
University of New Mexico
Albuquerque, NM 87106

and

Sauna Jamison
UNMH
2211 Lomas Blvd. NE
University of New Mexico
Albuquerque, NM 87131

Defendants

Summons (es) Issued

No. CV- '95 05038

COMPLAINT TO RECOVER DAMAGES
(Assault, Battery, Medical Malpractice and Intentional
Infliction of Severe Emotional Distress)

COMES NOW the plaintiff, Havona Madama (PLAINTIFF), pro se, and brings these claims for assault, battery, medical malpractice and intentional infliction of severe emotional distress against the University of New Mexico Hospital (UNMH), J. L. Johnson (JOHNSON), and Sauna Jamison (JAMISON), and

states:

PARTIES

1. JOHNSON practiced medicine in the Women's Health Clinic of UNMH during the events contained in this complaint.
2. JAMISON practiced medicine in the Women's Health Clinic of UNMH during the events contained in this complaint.
3. UNMH is responsible for any and all actions of JOHNSON and JAMISON occurring within the scope of their duties at UNMH.
4. All actions taken against PLAINTIFF by JOHNSON and JAMISON occurred within the scope of their duties at UNMH.
5. UNMH is liable for all PLAINTIFF's damages resulting from the actions of JOHNSON and JAMISON on June 24, 1993.

JURISDICTION

6. UNMH, JOHNSON and JAMISON, were employees or agents of the State of New Mexico during the events contained in this complaint.
7. All actions against PLAINTIFF by DEFENDANTS were committed in the University of New Mexico Hospital, Albuquerque, New Mexico.
8. PLAINTIFF's claims against DEFENDANTS are tort claims, pursuant to New Mexico Tort Claims Act, 41-4-1 to 41-4-27, N.M.S.A. 1978.
9. PLAINTIFF presented a notice of claim to UNMH risk management within ninety days of the occurrence, pursuant to 41-4-16 N.M.S.A. 1978.

10. A New Mexico Medical Review Commission decision is unnecessary because DEFENDANTS are not qualified health care providers, pursuant to the New Mexico Medical Malpractice Act, 41-5-1 to 41-5-28, N.M.S.A. 1978.

11. Pursuant to paragraphs 6-10, the District Court for the Second Judicial District has original jurisdiction in this matter pursuant to 41-4-18 N.M.S.A. 1978.

12. Pursuant to paragraphs 6-11, the District Court for the Second Judicial District has venue pursuant to 41-4-18 N.M.S.A. 1978.

BACKGROUND

13. PLAINTIFF received a pap smear at the UNMH Women's Health Clinic on or about June 9, 1993.

14. PLAINTIFF received a phone call at work from UNMH Women's Health Clinic on June 23, 1993.

15. UNMH Women's Center informed PLAINTIFF that her pap smear was irregular, identifying carcinoma in situ.

16. UNMH Women's Center informed PLAINTIFF that she was scheduled for a colposcopy appointment on June 24, 1993.

17. PLAINTIFF arrived for the colposcopy appointment accompanied by Gregg Brande.

18. Mr. Brande remained in PLAINTIFF's company throughout the entire appointment.

19. PLAINTIFF was asked to sign a consent form for a biopsy by Kathy Wallhagen, R.N.

20. PLAINTIFF refused to sign the consent form.

21. Ms. Wallhagen assured PLAINTIFF the doctor would not perform the biopsy without PLAINTIFF's consent.
22. JOHNSON told PLAINTIFF she would perform the colposcopy and biopsy.
23. PLAINTIFF informed JOHNSON of PLAINTIFF's fear of metastasis.
24. PLAINTIFF informed JOHNSON that PLAINTIFF would not consent to removal of cervical tissue.
25. JOHNSON performed a colposcopy and pap smear on PLAINTIFF.
26. JOHNSON told PLAINTIFF that visual examination of the cervix showed it consistent with the laboratory results.
27. JAMISON consulted with JOHNSON regarding the colposcopy.
28. PLAINTIFF asked about the colposcopy discussion between JOHNSON and JAMISON.
29. JAMISON told PLAINTIFF to shut up.
30. PLAINTIFF felt a pain in her vagina.
31. PLAINTIFF verbalized her discomfort.
32. JAMISON crossed PLAINTIFF's hands over her stomach, pressed them down and told PLAINTIFF to breathe.
33. JOHNSON performed a biopsy and endocervical curettage on PLAINTIFF.
34. JOHNSON informed PLAINTIFF results would be available in two weeks.
35. PLAINTIFF asked about her condition.
36. JOHNSON refused to comment, except to state PLAINTIFF

would require treatment, possibilities ranging from laser therapy to a complete hysterectomy.

37. PLAINTIFF ran into the stairwell of UNMH.

38. PLAINTIFF sobbed uncontrollably for ten minutes.

39. PLAINTIFF has experienced anxiety as a result of the incidents contained in paragraphs 11-38.

40. PLAINTIFF has experienced depression as a result of the incidents contained in paragraphs 11-38.

41. PLAINTIFF has experienced sleep disorders as a result of the incidents contained in paragraphs 11-40.

42. PLAINTIFF has experienced lack of concentration, affecting her graduate studies, as a result of the incidents contained in paragraphs 11-41.

43. PLAINTIFF experiences a continuing fear of metastasis, which may have occurred from the biopsy, as a result of the incidents contained in paragraphs 11-38.

44. PLAINTIFF, who qualifies for free medical care, is unable emotionally to utilize such services as a result of incidents contained in paragraphs 11-43.

45. PLAINTIFF, who qualified for free UNMH health care services, retained private health care services, for her irregular pap smear, at her own expense, as a result of the incidents contained in paragraphs 11-41.

46. PLAINTIFF suffers a fear of medical personnel which hampers her ability to receive necessary check ups for surgery completed in July 1993, as a result of the incidents contained

in paragraphs 11-41.

COUNT I
(Assault)

47. PLAINTIFF realleges the preceding allegations of the above paragraphs and incorporates the same as though fully set forth herein.

48. JAMISON told PLAINTIFF to shut up and held PLAINTIFF down.

49. When JAMISON told PLAINTIFF to shut up, she made PLAINTIFF apprehensive she would not properly treat PLAINTIFF's medical condition.

50. When JAMISON held PLAINTIFF down, she made PLAINTIFF apprehensive JOHNSON and JAMISON would perform a biopsy on her without her consent.

51. JAMISON assaulted PLAINTIFF.

52. PLAINTIFF seeks such damages as are reasonable.

COUNT II
(Battery)

53. PLAINTIFF realleges the preceding allegations of the above paragraphs and incorporates the same as though fully set forth herein.

54. JOHNSON performed a biopsy and endocervical curettage on PLAINTIFF without her consent.

55. JOHNSON battered PLAINTIFF.

56. PLAINTIFF seeks such damages as are reasonable.

COUNT III
(Medical Malpractice)

57. PLAINTIFF realleges the preceding allegations of the above paragraphs and incorporates the same as though fully set forth herein.

58. JAMISON told PLAINTIFF to shut up when PLAINTIFF asked about her condition.

60. JOHNSON refused to communicate to PLAINTIFF information PLAINTIFF needed to know about her condition, treatments and potential hazards from the biopsy and endocervical curettage.

61. JOHNSON and JAMISON neglected their duty to inform PLAINTIFF.

62. JOHNSON and JAMISON neglected their duty to obtain PLAINTIFF's informed consent.

63. JAMISON assaulted PLAINTIFF and assisted JOHNSON in the commission of a battery against PLAINTIFF, during a medical procedure.

64. JOHNSON battered PLAINTIFF, during a medical procedure.

65. JOHNSON and JAMISON committed medical malpractice against PLAINTIFF.

66. PLAINTIFF seeks such damages as are reasonable, pursuant to 41-5-4 N.M.S.A. 1978.

COUNT IV
(Intentional Infliction of Emotional Distress)

67. PLAINTIFF realleges the preceding allegations of the above paragraphs and incorporates the same as though fully set

forth herein.

68. JAMISON assaulted PLAINTIFF and assisted JOHNSON in the commission of battery against PLAINTIFF.

69. JOHNSON battered PLAINTIFF and refused to give her information on her condition.

70. The conduct of JOHNSON and JAMISON gives rise to liability for intentional infliction of severe emotional distress because it was extreme and outrageous behavior.

71. JOHNSON intended to cause PLAINTIFF emotional distress because she removed tissue from PLAINTIFF's cervix after PLAINTIFF refused to consent to the procedure and informed JOHNSON that she feared the procedure would lead to metastasis, knowing, or recklessly disregarding the fact, these events would cause PLAINTIFF emotional distress.

72. JAMISON intended to cause PLAINTIFF emotional distress because she told PLAINTIFF to shut up and held her down while JOHNSON performed a procedure to which PLAINTIFF refused to consent, knowing, or recklessly disregarding the fact, these events would cause PLAINTIFF emotional distress.

73. JOHNSON and JAMISON intentionally inflicted severe emotional distress to PLAINTIFF.

74. PLAINTIFF seeks such damages as are reasonable.


PRAYER FOR RELIEF

PLAINTIFF asks the Court to award PLAINTIFF such damages as are reasonable pursuant to the New Mexico Tort Claims Act, 41-4-1 to 41-4-27 N.M.S.A. 1978, and the New Mexico Medical Malpractice Act, 41-5-1 to 41-5-28 N.M.S.A. 1978, to compensate PLAINTIFF, court costs and any additional relief the Court deems appropriate.

DEMAND FOR AUDIO RECORDING

PLAINTIFF demands an audio recording of the trial.

June 16, 1995


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PRO SE