

IN THE IOWA DISTRICT COURT IN AND FOR DUBUQUE COUNTY

JOANN PELLOCK, individually, and)	
as personal representative of the)	
ESTATE OF RICHARD J. PELLOCK,)	
deceased, and MITCHELL PELLOCK,)	
individually,)	
)	
Plaintiffs,)	CASE No. LACV103756
)	
vs.)	
)	
JAMES WIETERS, CRNA;)	
MISSISSIPPI VALLEY)	
ANESTHESIOLOGY, P.C.; JACOB)	
WAGNER, M.D., DUBUQUE)	
SURGERY, P.C., ALEX HORCHAK,)	
M.D., UNITYPOINT HEALTH FINLEY)	
HOSPITAL, an Iowa non-profit)	
Corporation,)	
)	
Defendants.)	
)	

PLAINTIFF’S AMENDED PETITION AT LAW AND JURY DEMAND

COME NOW, the Plaintiffs, Joann Pellock, individually, and as personal representative of the Estate of Richard J. Pellock, deceased, and Mitchell Pellock, individually, and for their cause of action against the Defendants James Wieters, CRNA, Mississippi Valley Anesthesiology, P.C., Jacob Wagner, M.D., Dubuque Surgery, P.C., Alex Horchak, M.D., and UnityPoint Health Finley Hospital state as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff – Decedent Richard Pellock was at all times material hereto, a resident of Cassville, Grant County, Wisconsin.

2. Plaintiff Joann Pellock is a resident of Cassville, Grant County, Wisconsin. Joann Pellock is the duly appointed personal representative of the Estate of Richard Pellock. At all times material hereto, Richard Pellock and Joann Pellock were husband and wife.

3. Plaintiff Mitchell Pellock is a resident of Cassville, Grant County, Wisconsin. Mitchell Pellock is the adult biological son of the decedent, Richard Pellock.

4. Defendant James Wieters, CRNA, is a resident of Dubuque County, Iowa and at all times material hereto was a certified registered nurse anesthetist licensed to practice anesthesiology under the laws of the State of Iowa and was practicing anesthesiology within the scope of his employment as an agent, servant, or employee of defendant Mississippi Valley Anesthesiology, P.C., in Dubuque, Iowa, and held himself out to the public, including to the Plaintiff – Decedent Richard Pellock, as having specialized knowledge and skill possessed by a specialist in the field of medicine.

5. At all relevant times, defendant Mississippi Valley Anesthesiology, P.C. was a corporation organized under the laws of the State of Iowa, with its principal place of business in Dubuque, Iowa. The registered agent for the corporation is Mark Bainbridge, D.O., 1515 Delhi Street, Suite 300, Dubuque, Iowa, 52001.

6. Defendant Jacob Wagner, M.D., is a resident of Dubuque County, Iowa and at all times material hereto was a medical doctor specializing in general surgery and duly licensed to practice medicine under the laws of the State of Iowa, was practicing medicine within the scope of his employment as an agent, service or employee of defendant Dubuque Surgery, P.C. in Dubuque, Iowa, and held himself out to the public, including to the Plaintiff – Decedent Richard Pellock, as having specialized knowledge and skill possessed by a specialist in the field of medicine.

7. At all relevant times, defendant Dubuque Surgery, P.C. was a corporation organized under the laws of the State of Iowa, with its principal place of business in Dubuque, Iowa. The registered agent for the corporation is Jacob Wagner, M.D., 1515 Delhi Street, Dubuque, Iowa, 52001.

8. Defendant Alex Horchak, M.D., is a resident of Dubuque County, Iowa and at all times material hereto was a medical doctor specializing in urology and duly licensed to practice medicine under the laws of the State of Iowa, was practicing medicine within the scope of his employment as an agent, service or employee of defendant UnityPoint Health Finley Hospital in Dubuque, Iowa, and held himself out to the public, including to the Plaintiff – Decedent Richard Pellock, as having specialized knowledge and skill possessed by a specialist in the field of medicine.

9. At all relevant times, defendant UnityPoint Health Finley Hospital was a non-profit corporation organized under the laws of the State of Iowa, with its principal place of business in Dubuque, Iowa. The registered agent for the non-profit corporation is David Brandon, 350 North Grandview Avenue, Dubuque, Iowa, 52001.

10. The damages resulting from the injuries alleged herein exceed the jurisdictional amount for small claims court and were sustained to a significant degree in Dubuque County, Iowa.

COMMON ALLEGATIONS

11. In October 2014, Plaintiff – Decedent Richard Pellock was diagnosed by Dr. Alex Horchak with non-metastatic bladder cancer.

12. In December 2014, Dr. Horchak recommended Mr. Pellock undergo radical cystoprostatectomy to remove the tumor and cancer in the bladder.

13. On January 5, 2015, Plaintiff – Decedent Richard Pellock was admitted to UnityPoint Health Finley Hospital in Dubuque, Iowa, where he underwent a robotic-assisted laparoscopic radical cystoprostatectomy with ileal loop urinary diversion by Dr. Alex Horchak.

14. The surgical procedure was successful in eradicating Mr. Pellock’s bladder cancer however, postoperatively, Mr. Pellock developed an ileus and abdominal distension.

15. On January 9, 2015, at approximately 5:00 p.m., hospital nursing staff notified Dr. Alex Horchak that Mr. Pellock had an emesis and nausea.

16. On January 10, 2015, at approximately 6:08 p.m., hospital nursing staff notified Dr. Alex Horchak that Mr. Pellock was bloated.

17. On January 11, 2015, at approximately 12:27 a.m., hospital nursing staff observed Mr. Pellock’s stomach was distended.

18. Hospital nursing staff also observed the presence of dark drainage in Mr. Pellock’s pelvic drain.

19. Hospital nursing staff alerted Dr. Horchak of Mr. Pellock’s presenting symptoms.

20. On January 11, 2015, at 5:52 a.m. a complete acute abdominal series PA chest x-ray was ordered by Dr. Alex Horchak.

21. The impression of the complete acute abdominal series PA chest x-ray by the radiologist, Dr. Adam Rulnick, was ileus versus partial small bowel obstruction with distended bowel loops with air-fluid levels seen.

22. On January 11, 2015 at approximately 7:00 a.m., Dr. Adam Rulnick provided a preliminary report of his radiology impression of the complete acute abdominal series PA chest x-ray to Dr. Alex Horchak and/or Dr. Jacob Wagner.

23. On January 11, 2015, at approximately 6:03 a.m., Dr. Alex Horchak ordered an inpatient consultation to general surgery for Mr. Pellock to see Dr. Jacob Wagner.

24. On January 11, 2015, at approximately 7:08 a.m., Mr. Pellock was seen in consultation by Dr. Jacob Wagner.

25. Mr. Pellock reported to Dr. Jacob Wagner that he felt bloated during the examination.

26. Dr. Jacob Wagner observed Mr. Pellock had a “significantly distended abdomen” during his examination of Mr. Pellock.

27. Dr. Wagner, after consultation with Dr. Horchak, recommended Mr. Pellock undergo exploratory laparotomy surgery to rule out bowel injury or anastomotic leak.

28. Consequently, on January 11, 2015 at approximately 7:30 a.m., Mr. Pellock was admitted to the operating suite and after the induction of general anesthesia by James Weiteers, CRNA, Mr. Pellock sustained a significant aspiration.

29. James Weiteers, CRNA, did not perform a preoperative evaluation of Mr. Pellock before induction of anesthesia.

30. Prior to Richard Pellock being intubated by James Weiteers, CRNA, the defendants James Weiteers, CRNA, Dr. Jacob Wagner, and Dr. Alex Horchak knew or should have known Mr. Pellock presented with nausea, a bloated and distended abdomen, distended bowel loops with air fluid levels, stool coming out of Mr. Pellock’s Jackson-Pratt drain, and a full stomach and therefore, every precaution should have been taken to avoid aspiration at induction.

31. Nevertheless, the defendants James Weiteers, CRNA, Dr. Jacob Wagner, and Dr. Alex Horchak did not pass a nasogastric tube into Mr. Pellock prior to the induction of general anesthesia.

32. James Weiteers, CRNA, did not perform a rapid sequence induction of general anesthesia and he did not apply cricoid pressure during the induction of anesthesia.

33. James Weiteers, CRNA, waited too long for the 1mg/kg of administered succinylcholine to take effect.

34. James Weiteers, CRNA, and Dr. Jacob Wagner did not order or perform diagnostic and therapeutic fiberoptic bronchoscopy of the tracheal bronchial tree after the emesis and aspirated was observed by him.

35. James Weiteers, CRNA, and Dr. Jacob Wagner did not order or obtain a chest X-ray of Mr. Pellock after the emesis and aspiration occurred.

36. Despite Mr. Pellock having aspirated, on January 11, 2015 at approximately 10:54 a.m., Dr. Jacob Wagner proceeded with surgical intervention and discovered an anastomotic leak in Mr. Pellock's bowel that he repaired.

37. Postoperatively, Mr. Pellock developed hypoxia and hypotension and was transferred to the intensive care unit of UnityPoint Health Finley Hospital where he died of severe bilateral aspiration pneumonia because of aspiration of gastric contents into his lungs during anesthesia.

38. Mr. Pellock's acute hypoxic/hypercarbic respiratory failure was directly related to aspiration of gastric contents into his lungs during anesthesia.

39. Richard Pellock was pronounced dead on January 11, 2015 at 11:00 a.m. by Dr. Jacob Wagner.

COUNT I (Negligence – James Weitters, CRNA)

40. Plaintiffs hereby reallege the allegations contained in paragraphs 1-39 as if fully restated herein.

41. That the defendant James Weitters, CRNA, rendered professional medical services to Richard Pellock on January 11, 2015, and that he failed to exercise the ordinary care and medical skill in keeping with his profession, and in the areas of his profession in which he specialized, and in the manner in which he diagnosed, cared, treated and rendered medical services to Richard Pellock.

42. That the defendant James Weitters, CRNA, was negligent and breached the applicable standard of care, and that such negligence and breach included, but is not necessarily limited to one or more of the following ways:

a. Failing to pass a nasogastric tube into Richard Pellock preoperatively on January 11, 2015 when it was known or should have been known that Mr. Pellock had (1) preoperative nausea and emesis; (2) a bloated and distended abdomen; (3) distended bowel loops with air fluid levels; (4) stool emanating from Mr. Pellock's pelvic drain; and (5) a full stomach.

b. Failing to perform rapid sequence induction of general anesthesia preoperatively on January 11, 2015.

c. Failing to apply cricoid pressure during the induction of anesthesia on Richard Pellock;

d. Failing to order or perform diagnostic and therapeutic fiberoptic bronchoscopy of the tracheal bronchial tree after the emesis and aspirated was observed by him;

e. Failing to order or obtain a chest X-ray of Richard Pellock after the emesis and aspiration occurred.

f. Waiting too long for the 1mg/kg of administered succinylcholine to take effect.

g. Failing to seek an immediate pulmonary consult to perform diagnostic and therapeutic fiberoptic bronchoscopy of the tracheal bronchial tree after the emesis and aspiration occurred and/or was reported to him.

h. Failing to do a proper preoperative anesthesia evaluation; and

i. Failing to know the interval medical history of Richard Pellock between Mr. Pellock's first surgery on January 5, 2015 and second surgery on January 11, 2015.

43. The negligence of James Weiteers, CRNA, was a cause of the decedent Richard Pellock's injuries, death, and damages.

44. As a direct result of the negligence set forth above, Joann Pellock, as personal representative of the Estate of Richard J. Pellock, deceased, has incurred damages including, but not limited to, the following:

a. Pre-death physical and mental pain and suffering; and

b. Premature burial expenses.

45. That as a result of the negligence of James Weiteers, CRNA, Joann Pellock, individually, has incurred damages for past, present, and future loss of spousal consortium, and has lost the past, present, and future consortium, aid, affection, support and services of her husband Richard Pellock.

46. That as a result of the negligence of James Weiteers, CRNA, Mitchell Pellock, individually, has incurred damages for past, present, and future loss of parental consortium, and has lost the past, present, and future consortium, aid, affection, support and services of his father Richard Pellock.

COUNT II (Vicarious Liability - Mississippi Valley Anesthesiology, P.C.)

47. Plaintiffs hereby reallege the allegations contained in paragraphs 1-46 as if fully restated herein.

48. That the defendant James Weiteers, CRNA, was acting within the scope of his employment when the negligence as set forth in this Petition occurred; that said negligence was attendant to acts necessary and intended to accomplish the purpose of employment; and that Mississippi Valley Anesthesiology, P.C. is liable for the negligence of its agents and employees.

49. By reason of said negligence, Joann Pellock, as personal representative of the Estate of Richard J. Pellock, deceased, has incurred damages including, but not limited to, the following:

- a. Pre-death physical and mental pain and suffering; and
- b. Premature burial expenses.

50. That as a result of the causal negligence of the defendant James Weiteers, the plaintiff Joann Pellock, individually, has incurred damages for past, present, and future loss of spousal consortium, and has lost the past, present, and future consortium, aid, affection, support and services of her husband Richard Pellock.

51. That as a result of the causal negligence of the defendant James Weiteers, CRNA, the plaintiff Mitchell Pellock, individually, has incurred damages for past, present, and future loss of parental consortium, and of the aid, affection, support and services of his father Richard Pellock.

COUNT III (Negligence – Jacob Wagner, M.D.)

52. Plaintiffs hereby reallege the allegations contained in paragraphs 1-51 as if fully restated herein.

53. That the defendant Dr. Jacob Wagner, rendered professional medical services to Richard Pellock on January 11, 2015, and that he failed to exercise the ordinary care and medical skill in keeping with his profession, and in the areas of his profession in which he specialized,

and in the manner in which he diagnosed, cared, treated and rendered medical services to Richard Pellock.

54. That the defendant Dr. Jacob Wagner was negligent and breached the applicable standard of care, and that such negligence and breach included, but is not necessarily limited to one or more of the following ways:

- a. Failing to pass a nasogastric tube into Richard Pellock preoperatively on January 11, 2015 when it was known or should have been known that Mr. Pellock had (1) preoperative nausea and emesis; (2) a bloated and distended abdomen; (3) distended bowel loops with air fluid levels; (4) stool emanating from Mr. Pellock's pelvic drain; and (5) a full stomach;
- b. Failing to order or perform diagnostic and therapeutic fiberoptic bronchoscopy of the tracheal bronchial tree after the emesis and aspiration occurred and/or was reported to him and/or to seek an immediate pulmonary consult to have the bronchoscope performed; and
- c. Failing to order or obtain a chest X-ray of Richard Pellock after the emesis and aspiration occurred and/or was reported to him.

55. The negligence of Dr. Jacob Wagner was a cause of the decedent Richard Pellock's injuries, death, and damages.

56. As a direct result of the negligence set forth above, Joann Pellock, as personal representative of the Estate of Richard J. Pellock, deceased, has incurred damages including, but not limited to, the following:

- a. Pre-death physical and mental pain and suffering; and
- b. Premature burial expenses.

57. That as a result of the negligence of Dr. Jacob Wagner, Joann Pellock, individually, has incurred damages for past, present, and future loss of spousal consortium, and has lost the past, present, and future consortium, aid, affection, support and services of her husband Richard Pellock.

58. That as a result of the negligence of Dr. Jacob Wagner, Mitchell Pellock, individually, has incurred damages for past, present, and future loss of parental consortium, and has lost the past, present, and future consortium, aid, affection, support and services of his father Richard Pellock.

COUNT IV (Vicarious Liability – Dubuque Surgery, P.C.)

59. Plaintiffs hereby reallege the allegations contained in paragraphs 1-58 as if fully restated herein.

60. That the defendant Dr. Jacob Wagner was acting within the scope of his employment when the negligence as set forth in this Petition occurred; that said negligence was attendant to acts necessary and intended to accomplish the purpose of employment; and that Dubuque Surgery, P.C. is liable for the negligence of its agents and employees.

61. By reason of said negligence, Joann Pellock, as personal representative of the Estate of Richard J. Pellock, deceased, has incurred damages including, but not limited to, the following:

- a. Pre-death physical and mental pain and suffering; and
- b. Premature burial expenses.

62. That as a result of the causal negligence of the defendant Dr. Jacob Wagner, the plaintiff Joann Pellock, individually, has incurred damages for past, present, and future loss of spousal consortium, and has lost the past, present, and future consortium, aid, affection, support and services of her husband Richard Pellock.

63. That as a result of the causal negligence of the defendant Dr. Jacob Wagner, the plaintiff Mitchell Pellock, individually, has incurred damages for past, present, and future loss of parental consortium, and of the aid, affection, support and services of his father Richard Pellock.

COUNT V (Negligence – Alex Horchak, M.D.)

64. Plaintiffs hereby reallege the allegations contained in paragraphs 1-63 as if fully restated herein.

65. That the defendant Dr. Alex Horchak, rendered professional medical services to Richard Pellock on January 11, 2015, and that he failed to exercise the ordinary care and medical skill in keeping with his profession, and in the areas of his profession in which he specialized, and in the manner in which he diagnosed, cared, treated and rendered medical services to Richard Pellock.

66. That the defendant Dr. Alex Horchak was negligent and breached the applicable standard of care in the following manner:

a. Failing to pass a nasogastric tube into Richard Pellock preoperatively on January 11, 2015 when it was known or should have been known that Mr. Pellock had (1) preoperative nausea and emesis; (2) a bloated and distended abdomen; (3) distended bowel loops with air fluid levels; (4) stool emanating from Mr. Pellock's pelvic drain; and (5) a full stomach.

b. Allowing Mr. Pellock to have liquid at approximately 6:00 a.m. on January 11, 2015.

67. The negligence of Dr. Alex Horchak was a cause of the decedent Richard Pellock's injuries, death, and damages.

68. As a direct result of the negligence set forth above, Joann Pellock, as personal representative of the Estate of Richard J. Pellock, deceased, has incurred damages including, but not limited to, the following:

a. Pre-death physical and mental pain and suffering; and
b. Premature burial expenses.

69. That as a result of the negligence of Dr. Alex Horchak, Joann Pellock, individually, has incurred damages for past, present, and future loss of spousal consortium, and has lost the past, present, and future consortium, aid, affection, support and services of her husband Richard Pellock.

70. That as a result of the negligence of Dr. Jacob Horchak, Mitchell Pellock, individually, has incurred damages for past, present, and future loss of parental consortium, and has lost the past, present, and future consortium, aid, affection, support and services of his father Richard Pellock.

COUNT VI (Vicarious Liability – UnityPoint Health Finley Hospital)

71. Plaintiffs hereby reallege the allegations contained in paragraphs 1-70 as if fully restated herein.

72. That the defendant Dr. Alex Horchak was acting within the scope of his employment when the negligence as set forth in this Petition occurred; that said negligence was attendant to acts necessary and intended to accomplish the purpose of employment; and that UnityPoint Health Finley Hospital is liable for the negligence of its agents and employees.

73. By reason of said negligence, Joann Pellock, as personal representative of the Estate of Richard J. Pellock, deceased, has incurred damages including, but not limited to, the following:

- a. Pre-death physical and mental pain and suffering; and
- b. Premature burial expenses.

74. That as a result of the causal negligence of the defendant Dr. Alex Horchak, the plaintiff Joann Pellock, individually, has incurred damages for past, present, and future loss of spousal consortium, and has lost the past, present, and future consortium, aid, affection, support and services of her husband Richard Pellock.

75. That as a result of the causal negligence of the defendant Dr. Alex Horchak, the plaintiff Mitchell Pellock, individually, has incurred damages for past, present, and future loss of parental consortium, and of the aid, affection, support and services of his father Richard Pellock.

WHEREFORE, the Plaintiffs, Joann Pellock, individually, and as personal representative of the Estate of Richard J. Pellock, deceased, and Mitchell Pellock, individually, pray for judgment against James Wieters, CRNA, Mississippi Valley Anesthesiology, P.C., Jacob Wagner, M.D., Dubuque Surgery, P.C., Alex Horchak, M.D., and UnityPoint Health Finley Hospital jointly and severally to fully and fairly compensate them for the injuries and damages they sustained as a result of Defendants' negligence, plus interest and costs as provided by law, and for such other and further relief as is equitable in the premises.

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By /s/ Nicolas C. Rowley
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ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

COME NOW the Plaintiffs, Joann Pellock, individually, and as personal representative of the Estate of Richard J. Pellock, deceased, and Mitchell Pellock, individually, by and through the undersigned attorneys and request a trial by jury on all matters.

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ATTORNEYS FOR PLAINTIFFS

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

JOANN PELLOCK, individually, and as personal representative of the ESTATE OF RICHARD J. PELLOCK, deceased, and MITCHELL PELLOCK, individually,)	
)	
Plaintiffs,)	CASE NO. LACV103756
)	
vs.)	
)	ANSWER AND JURY DEMAND OF
JAMES WIETERS, CRNA; MISSISSIPPI VALLEY ANESTHESIOLOGY, P.C.;)	DEFENDANTS JAMES WIETERS,
JACOB WAGNER, M.D.; DUBUQUE SURGERY, P.C.; ALEX HORCHAK, M.D.;)	CRNA AND MISSISSIPPI VALLEY
UNITYPOINT HEALTH FINLEY HOSPITAL, an Iowa non-profit corporation,)	ANESTHESIOLOGY, P.C., TO
)	PLAINTIFFS' AMENDED
Defendants.)	PETITION AT LAW

COME NOW Defendants, James Wieters, CRNA and Mississippi Valley
Anesthesiology, P.C., and for their Answer to Plaintiffs' Amended Petition at Law and
Jury Demand, state:

PARTIES, JURISDICTION & VENUE

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. It is admitted that at all times relevant, James Wieters, CRNA, was a certified, registered nurse anesthetist licensed to practice anesthesiology under the laws of the State of Iowa and was practicing anesthesiology within the scope of his

employment with Defendant, Mississippi Valley Anesthesiology, P.C., in Dubuque, Iowa. The remaining allegations of Paragraph 4 not specifically admitted are denied.

5. The allegations of Paragraph 5 are admitted.

6. Defendants make no answer to the allegations of Paragraph 6 as they are not directed to them.

7. Defendants make no answer to the allegations of Paragraph 7 as they are not directed to them.

8. Defendants make no answer to the allegations of Paragraph 8 as they are not directed to them.

9. Defendants make no answer to the allegations of Paragraph 9 as they are not directed to them.

10. Defendants admit that jurisdiction and venue are appropriate. The remaining allegations of Paragraph 10 not specifically admitted are denied.

COMMON ALLEGATIONS

11. Defendants have insufficient information to admit or deny the allegations of Paragraph 11 and they are, therefore, denied.

12. Defendants have insufficient information to admit or deny the allegations of Paragraph 12 and they are, therefore, denied.

13. Defendants have insufficient information to admit or deny the allegations of Paragraph 13 and they are, therefore, denied.

14. Defendants have insufficient information to admit or deny the allegations of Paragraph 14 and they are, therefore, denied.

15. Defendants have insufficient information to admit or deny the allegations of Paragraph 15 and they are, therefore, denied.

16. Defendants have insufficient information to admit or deny the allegations of Paragraph 16 and they are, therefore, denied.

17. Defendants have insufficient information to admit or deny the allegations of Paragraph 17 and they are, therefore, denied.

18. Defendants have insufficient information to admit or deny the allegations of Paragraph 18 and they are, therefore, denied.

19. Defendants have insufficient information to admit or deny the allegations of Paragraph 19 and they are, therefore, denied.

20. Defendants have insufficient information to admit or deny the allegations of Paragraph 20 and they are, therefore, denied.

21. Defendants have insufficient information to admit or deny the allegations of Paragraph 21 and they are, therefore, denied.

22. Defendants have insufficient information to admit or deny the allegations of Paragraph 22 and they are, therefore, denied.

23. Defendants have insufficient information to admit or deny the allegations of Paragraph 23 and they are, therefore, denied.

24. Defendants have insufficient information to admit or deny the allegations of Paragraph 24 and they are, therefore, denied.

25. Defendants have insufficient information to admit or deny the allegations of Paragraph 25 and they are, therefore, denied.

26. Defendants have insufficient information to admit or deny the allegations of Paragraph 26 and they are, therefore, denied.

27. Defendants have insufficient information to admit or deny the allegations of Paragraph 27 and they are, therefore, denied.

28. Defendants have insufficient information to admit or deny the allegations of Paragraph 28 and they are, therefore, denied.

29. The allegations of Paragraph 29 are denied.

30. The allegations of Paragraph 30 are denied.

31. The allegations of Paragraph 31 are denied.

32. The allegations of Paragraph 32 are denied.

33. The allegations of Paragraph 33 are denied.

34. The allegations of Paragraph 34 are denied.

35. Defendants have insufficient information to admit or deny the allegations of Paragraph 35 and they are, therefore, denied.

36. Defendants have insufficient information to admit or deny the allegations of Paragraph 36 and they are, therefore, denied.

37. Defendants have insufficient information to admit or deny the allegations of Paragraph 37 and they are, therefore, denied.

38. The allegations of Paragraph 38 are denied.

39. The allegations of Paragraph 39 are denied for lack of sufficient information.

COUNT I (Negligence - James Wieters, CRNA)

40. Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 39 as though fully set forth herein.

41. The allegations of Paragraph 41 are denied.

42. The allegations of Paragraph 42, including the allegations of all subparagraphs, are denied.

43. The allegations of Paragraph 43 are denied.

44. The allegations of Paragraph 44, including the allegations of all subparagraphs, are denied.

45. The allegations of Paragraph 45 are denied.

46. The allegations of Paragraph 46 are denied.

WHEREFORE, these Defendants respectfully request that Count I of Plaintiffs' Amended Petition at Law be dismissed and Plaintiffs' cost and for further relief as the Court deems just in the premises.

COUNT II (Vicarious Liability - Mississippi Valley Anesthesiology, P.C.)

47. Defendants reassert and incorporate by reference their answers to Paragraphs 1 through 46 as though fully set forth herein.

48. It is admitted that at all times relevant, Defendant, Wieters, was acting within the scope of his employment. The remaining allegations of Paragraph 48 not specifically admitted are denied.

49. The allegations of Paragraph 49, including the allegations of all subparagraphs, are denied.

50. The allegations of Paragraph 50 are denied.

51. The allegations of Paragraph 51 are denied.

WHEREFORE, these Defendants respectfully request that Count II of Plaintiffs' Amended Petition at Law be dismissed and Plaintiffs' cost and for further relief as the Court deems just in the premises.

COUNT III (Negligence - Jacob Wagner, M.D.)

These Defendants make no answer to the allegations of Count III as they are not directed to them. To the extent an answer is required, the allegations are denied.

COUNT IV (Negligence - Dubuque Surgery, P.C.)

These Defendants make no answer to the allegations of Count IV as they are not directed to them. To the extent an answer is required, the allegations are denied.

COUNT V (Negligence - Alex Horchak, M.D.)

These Defendants make no answer to the allegations of Count V as they are not directed to them. To the extent an answer is required, the allegations are denied.

COUNT VI (Negligence - UnityPoint Health Finley Hospital)

These Defendants make no answer to the allegations of Count VI as they are not directed to them. To the extent an answer is required, the allegations are denied.

DEFENSES

1. Iowa Code 147.136 applies and bars certain economic damages.
2. Chapter 668 applies to this case.

JURY DEMAND

These Defendants hereby demand trial by jury on all issues raised herein.



JENNIFER E. RINDEN AT0006606

for

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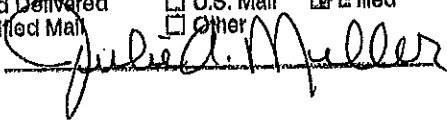
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this document was served upon counsel of record for each party to the action in compliance with Iowa R.C.P. 1.442(b) on:

June 14 20 17

By: Overnight Courier FAX Emailed
 Hand Delivered U.S. Mail E-filed
 Certified Mail Other

Signature 

ATTORNEYS FOR JAMES WIETERS, CRNA, and MISSISSIPPI VALLEY ANESTHESIOLOGY, P.C.

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IN THE IOWA DISTRICT COURT IN AND FOR DUBUQUE COUNTY

JOANN PELLOCK, individually, and as)
personal representative of the ESTATE OF)
RICHARD J. PELLOCK, deceased, and)
MITCHELL PELLOCK, individually,)

Case No. LACV103756

Plaintiffs,)

vs.)

**WAGNER & DUBUQUE SURGERY'S
ANSWER TO PLAINTIFFS' AMENDED
PETITION AT LAW**

JAMES WIETERS, CRNA; MISSISSIPPI)
VALLEY ANESTHESIOLOGY, P.C.;)
JACOB WAGNER, M.D., DUBUQUE)
SURGERY, P.C., ALEX HORCHAK, M.D. &)
UNITY POINT HEALTH FINLEY)
HOSPITAL, an Iowa non-profit Corporation,)

Defendants.)

Defendants Jacob Wagner, M.D. and Dubuque Surgery, P.C., by their attorneys, Lane & Waterman LLP, for their Answer to Plaintiffs' Amended Petition at Law, state:

PARTIES, JURISDICTION & VENUE

1-3. Deny for lack of information the allegations of paragraphs 1 through 3.

4-5. These Defendants make no answer to the allegations of paragraphs 4 and 5 as they are not directed to them.

6-7. Admit the allegations of paragraphs 6 and 7.

8-9. These Defendants make no answer to the allegations of paragraphs 8 and 9 as they are not directed to them.

10. Admit that jurisdiction and venue are proper, but deny the remaining allegations.

COMMON ALLEGATIONS

11-21. Deny for lack of information the allegations of paragraphs 11 through 21.

22. Admit Dr. Wagner reviewed Mr. Pellock's chest x-ray that was done before the surgery, but deny the remaining allegations for lack of information.

23. Admit that Dr. Alex Horchak ordered an inpatient general surgery consultation for Mr. Pellock to see Dr. Wagner, but deny for lack of information the remaining allegations of paragraph 23.

24-27. Admit the allegations of paragraphs 24 through 27.

28. Admit that on January 11, 2015, at approximately 7:30 a.m., Mr. Pellock was admitted to the operating suite, but deny the remaining allegations of paragraph 28.

29. Deny the allegations of paragraph 29.

30. Admit Dr. Wagner knew of the issues presented by Mr. Pellock that are documented in his consultation of January 11, 2015 and took every precaution, but deny the remaining allegations of paragraph 30.

31. Admit that a nasogastric tube was not placed prior to the induction of general anesthesia, but deny the remaining allegations of paragraph 31.

32-33. Deny the allegations of paragraphs 32 and 33.

34. Admit the allegations of paragraph 34 as to Dr. Wagner, but deny for lack of information the allegations as to Weitzers.

35. Deny the allegations of paragraph 35 as to Dr. Wagner, but deny for lack of information the allegations as to Weitzers.

36. Admit Dr. Wagner proceeded with surgical intervention and discovered an anastomotic leak in Mr. Pellock's bowel that he repaired, but deny the remaining allegations of paragraph 36.

37. Admit Mr. Pellock developed hypoxia and hypotension and was transferred to the intensive care unit where he died, but deny the remaining allegations of paragraph 37 for lack of information.

38. Deny the allegations of paragraph 38.

39. Admit Dr. Wagner pronounced Mr. Pellock dead on January 11, 2015, but deny the remaining allegations of paragraph 39.

COUNTS I & II

Dr. Wagner and Dubuque Surgery, P.C. offer no response to the allegations of Counts I and II, paragraphs 40 through 51, because they are not directed against these Defendants. To the extent any are construed otherwise, those are denied.

COUNT III (Negligence – Jacob Wagner, M.D.)

52. Dr. Wagner and Dubuque Surgery, P.C. reassert their responses to paragraphs 1 through 51 above.

53. Admit Dr. Wagner rendered professional medical services to Mr. Pellock on January 11, 2015, but deny the remaining allegations of paragraph 53.

54-58. Deny the allegations of paragraphs 54-58.

WHEREFORE, Dr. Wagner and Dubuque Surgery, P.C. pray for judgment in their favor and against Plaintiff, with costs assessed to Plaintiff.

COUNT IV (Vicarious Liability – Dubuque Surgery, P.C.)

59. Dr. Wagner and Dubuque Surgery, P.C. reassert their responses to paragraphs 1 through 58 above.

60. Admit Dr. Wagner was acting within the scope of his employment, but deny the remaining allegations of paragraph 60.

61-63. Deny the allegations of paragraphs 61-63.

WHEREFORE, Dr. Wagner and Dubuque Surgery, P.C. pray for judgment in their favor and against Plaintiff, with costs assessed to Plaintiff.

COUNTS V & VI

Dr. Wagner and Dubuque Surgery, P.C. offer no response to the allegations of Counts V and VI, paragraphs 64 through 75, because they are not directed against these Defendants. To the extent any are construed otherwise, those are denied.

ADDITIONAL DEFENSES

These Defendants assert the following additional defenses:

1. These Defendants assert the application of Iowa's Comparative Fault Statute contained in Iowa Code Chapter 668.
2. Plaintiffs are not entitled to recover any alleged damages that have been or will be covered by collateral source payments as defined in Iowa Code § 147.136.

JURY DEMAND

These Defendants hereby request a trial by jury in this matter.

Dated: June 15, 2017

LANE & WATERMAN LLP

By: /s/ Robert V.P. Waterman, Jr.
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**ATTORNEYS FOR DEFENDANTS
JACOB WAGNER, M.D. AND
DUBUQUE SURGERY, P.C.**

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2017, I electronically filed the foregoing with the Dubuque County Clerk of Court using the Iowa Courts E-Filing system which will provide notification of such filing to all counsel of record.

By: /s/ Robert V.P. Waterman, Jr.

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

JOANN PELLOCK, individually and as
personal representative of the ESTATE
OF RICHARD J. PELLOCK, deceased,
and MITCHELL PELLOCK individually,

Plaintiffs,

vs.

JAMES WIETERS, CRNA; MISSISSIPPI
VALLEY ANESTHESIOLOGY, P.C.;
JACOB WAGNER, M.D., DUBUQUE
SURGERY, P.C., ALEX HORCHAK,
M.D., and UNITYPOINT HEALTH
FINLEY HOSPITAL, an Iowa non-profit
Corporation,

Defendants.

LAW NO. LACV103756

ANSWER TO PLAINTIFFS' AMENDED
PETITION OF ALEX HORCHAK, M.D.
AND UNITYPOINT HEALTH FINLEY
HOSPITAL

COME NOW the Defendants, Alex Horchak, M.D. and UnityPoint Health Finley
Hospital, and for their Answer to Plaintiffs' Amended Petition state:

In answer to Plaintiffs' Amended Petition, Defendants Alex Horchak, M.D. and
UnityPoint Health Finley Hospital, incorporate their previously filed Answer, Affirmative
Defenses, and Jury Demand, including denials of all adverse allegations, as if fully set forth
herein.

/s/ Kellen Bubach

Frederick T. Harris (AT0003198)

Kellen B. Bubach (AT0010885)

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Original Efiled.

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ATTORNEYS FOR WAGNER AND DUBUQUE SURGERY

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on this pleading on August 29, 2017 by:

<input type="checkbox"/> U.S. Mail.	<input type="checkbox"/> Facsimile
<input type="checkbox"/> Hand-Delivered	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Certified Mail	<input checked="" type="checkbox"/> E-File

Signature /s/ Kellen Bubach