

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY
CIVIL DIVISION**

NANCY D. BERRY and JOHN BERRY,

Plaintiffs,

Case No.: 03-4296 CI-15

vs

Division:

GEORGE L. WARREN, M.D.;
CATHY M. BALBIN, D.O., and
LARGO ANESTHESIA ASSOCIATES,

UCN#522003CA 004296 XXCICI

Defendants.

FILED
St. Petersburg Branch
03 MAY 30 PM 2:25
Kathleen F. DeBaker
Clerk Circuit/County Court

COMPLAINT

COME NOW, Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, by and through their undersigned attorneys, and file this their Complaint against the Defendants, GEORGE L. WARREN, M.D. (hereinafter referred to as "WARREN, M.D."), CATHY M. BALBIN, D.O. (hereinafter referred to as "BALBIN, D.O."), and LARGO ANESTHESIA ASSOCIATES, (hereinafter referred to as "LARGO ANESTHESIA"), and state as follows:

Jurisdiction and Identification of Parties

1. This is an action for damages in excess of FIFTEEN THOUSAND and NO/100 DOLLARS (\$15,000.00).
2. At all times material and relevant hereto, Nancy D. Berry and John Berry, were husband and wife over the age of eighteen (18) years and residents of the city of St. Petersburg, Pinellas County, Florida.

FILED
PINELLAS COUNTY, FLORIDA
4/27/03 05:10:20 PM
42-03-00029601 BERRY NANCY D
SECTION 15
00001 2010 - 0000494
CASE # = 522003CA004296XXCICI
FILED CHARGE 1 \$10.00
DEPT 0001 2 \$10.00
TOTAL: \$20.00
CHECK AMT. TENDERED: \$15.50
CHANGE AMOUNT: \$4.50

3. Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, have complied with any and all conditions precedent to bringing this action, including compliance with Florida Statutes, Chapter 766.

4. At all times material and relevant hereto, Defendant, BALBIN, D.O., was and is a medical doctor duly licensed to practice that profession in the State of Florida, and held herself out to the public as a competent and skillful osteopathic physician, practicing in the area of anesthesiology and capable of properly diagnosing and/or treating illnesses and diseases, in the care and treatment of patients, presenting medical problems such as those presented by the Plaintiff, NANCY D. BERRY, herein, as more particularly described hereinafter.

5. At all times material and relevant hereto, Defendant, WARREN, M.D., was and is a medical doctor duly licensed to practice that profession in the State of Florida, and held himself out to the public as a competent psychiatrist, capable of properly diagnosing and/or treating illnesses and diseases, in the care and treatment of patients, presenting medical problems such as those presented by the Plaintiff, NANCY D. BERRY, herein, as more particularly described hereinafter.

6. At all times material and relevant hereto, Defendant, LARGO ANESTHESIA, a duly existing professional association formed under the laws of the State of Florida, and is and was doing business in Pinellas County, Florida. Further, at all times material and relevant hereto, Defendant, BALBIN, D.O., was an agent, servant, and/or employee, or, in the alternative, the ostensible agent, servant, and/or employee of the Defendant, LARGO ANESTHESIA, and was acting in the course and scope of her agency and/or employment therewith.

Facts Giving Rise to Claim

7. Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, adopt and reallege all prior material paragraphs as if fully set forth herein.

8. On or about February 1, 2001, Plaintiff, NANCY D. BERRY, presented herself at Sun Coast Hospital for the purposes of receiving electroconvulsive ("ECT") treatment therapy from Defendant, WARREN, M.D., for purposes of receiving medical care and treatment for complaints of depression. As a result, Defendant, WARREN, M.D., undertook the care and treatment and medical management of Plaintiff, NANCY D. BERRY, for the purposes of evaluating any and all aspects of her medical complaints and conditions, and providing the necessary tests and examinations to determine whether the Plaintiff, NANCY D. BERRY, had a need for medical care and treatment.

9. On or about February 1, 2001, Defendant, BALBIN, D.O., did provide anesthesia to Plaintiff, NANCY D. BERRY, in conjunction with the ECT treatment given by defendant, WARREN, M.D.

10. On or about February 1, 2001, Defendant, BALBIN, D.O., failed to administer a muscle relaxant and put a hard, rigid bite in Plaintiff's mouth.

11. On or about February 1, 2001, Plaintiff, NANCY D. BERRY, had a full seizure, bit down on the hard airway and broke off her left front tooth and displaced several teeth, as well as a dental implant.

12. On or about February 1, 2001, an abdominal x-ray was performed which showed, "a six by seven mm metallic density in the left upper quadrant consistent with ingested metallic foreign body of dental origin."

13. On or about February 1, 2001, Plaintiff, NANCY D. BERRY, presented herself to the offices of Dr. Daniel McSherry, D.M.D., for purposes of evaluation as a result of her broken tooth and other displaced teeth and implant.

14. That from February 1, 2001 until the present time, Plaintiff, NANCY D. BERRY, has continued to receive consultations and treatments for the many dental problems that she has sustained from the February 1, 2001 incident, including treatment for TMJ.

15. That as a direct and proximate result of the negligence of the Defendants, BALBIN, D.O.; WARREN, M.D.; and LARGO ANESTHESIA, in their care and treatment of Plaintiff, NANCY D. BERRY, Plaintiff, NANCY D. BERRY, has been seriously and permanently injured as hereinafter alleged.

COUNT I:
CLAIM AGAINST CATHY M. BALBIN, D.O.

16. Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, adopt and reallege all prior material paragraphs as if fully set forth herein.

17. At all times material and relevant hereto, Defendant, CATHY M. BALBIN, D.O., is and was an osteopathic physician holding herself out to the public, and more particularly to the Plaintiff herein, specializing in anesthesiology, and undertook to provide medical care and treatment for the Plaintiff, NANCY D. BERRY.

18. Defendant, BALBIN, D.O., owed a duty to Plaintiff, NANCY D. BERRY, to diagnose, advise, care for and treat Plaintiff, NANCY D. BERRY, and to provide and render that care in accordance with the accepted standards of medical care and treatment rendered by like physicians of similar skill in such cases in Pinellas County, Florida, and in any other similar medical communities.

19. Notwithstanding said duty, Defendant, BALBIN, D.O., was negligent in the following particulars, which negligence was either a direct or proximate cause or contributing cause of the injuries and damages suffered by the Plaintiff, NANCY D. BERRY:

- a. Failing to advise Plaintiff, NANCY D. BERRY, herein, of the alternative medical procedures available to her, in her care and treatment, and, as such, the procedures adopted and used by Defendant, BALBIN, D.O., were without the informed consent of the Plaintiff, NANCY D. BERRY, herein; and, further, had the alternatives been explained to the Plaintiff, NANCY D. BERRY, as a reasonable and prudent physician should have done, Plaintiff, NANCY D. BERRY, would not have consented to the procedures, actually utilized; and/or
- b. Failing to perform a proper examination or use a method of diagnosis which is usually approved and practiced by other members of the medical profession in this community, and in similar communities in the State of Florida possessing skills, learning, judgment, and being presented with similar components or symptoms by the patient; and/or
- c. Failing to use proper, recommended, and accepted diagnostic procedures to ascertain the true condition of the Plaintiff, NANCY D. BERRY.
- d. Failing to treat and examine Plaintiff, NANCY D. BERRY, to determine her true medical condition, when the nature of her difficulties could have, with the exercise of reasonable medical care, been discovered; and/or
- e. Failing to issue proper medical orders with respect to the care and treatment of the Plaintiff, NANCY D. BERRY; and/or
- f. Failing to properly document the Plaintiff, NANCY D. BERRY'S need for medical care and management; and/or
- g. Failing to issue proper medical orders with respect to the care and treatment of Plaintiff, NANCY D. BERRY; and/or
- h. Failing to properly monitor Plaintiff, NANCY D. BERRY'S medical condition; and/or
- i. Failing to have properly trained assistants, servants, agents, and/or employees to assist in the care of the Plaintiff, NANCY D. BERRY; and/or
- j. Failing to properly monitor the Plaintiff, NANCY D. BERRY'S medical condition in order to determine the Plaintiff, NANCY D. BERRY'S true condition; and/or

- k. Failing to properly examine the Plaintiff, NANCY D. BERRY; and/or
- l. Failing to properly treat and diagnose the Plaintiff, NANCY D. BERRY; and/or
- m. Negligent and careless performance of the electroconvulsive therapy (ECT) procedure on or about February 1, 2001; and/or
- n. Being otherwise negligent in the care, treatment and diagnosis and medical management of the Plaintiff, NANCY D. BERRY.

20. As a direct and proximate result of the negligence and carelessness of the Defendant, CATHY M. BALBIN, D.O., in providing and performing medical treatment and care, Plaintiff, NANCY D. BERRY, has suffered permanent bodily injury resulting in great pain and discomfort; inability to lead a normal life; great additional medical and related medical expenses for care and treatment of the damage done; loss of earnings, her earning capacity has been greatly and permanently impaired; she will continue to have pain, suffering, inability to lead a normal life, embarrassment, humiliation, and great discomfort in the future.

WHEREFORE, Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, demand judgment and damages against the Defendant, CATHY M. BALBIN, D.O., **AND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

COUNT II:
CLAIM AGAINST LARGO ANESTHESIA ASSOCIATES, P.A.

21. Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, adopt and reallege all prior material paragraphs as if fully set forth herein.

22. Defendant, LARGO ANESTHESIA, through its agents, servants, and/or employees, acting in the course and scope of their employment, was negligent in the

following particulars, which negligence was either the direct and proximate cause, or the contributing cause of the injuries and damages suffered by the Plaintiff, NANCY D. BERRY:

- a. Failing to properly order, conduct, supervise, and/or interpret properly the medical symptoms presented by the Plaintiff, NANCY D. BERRY, starting on or about February 1, 2001; and/or
- b. Failing to order other or additional studies to confirm the Plaintiff, NANCY D. BERRY'S true medical condition; and/or
- c. Failing to communicate to the Plaintiff, NANCY D. BERRY, the available options of medical care and management; and/or
- d. Failing to properly select and train healthcare personnel, particularly, Defendant, BALBIN, D.O., so that competent medical care and treatment would be provided to patients presenting problems, such as the Plaintiff, NANCY D. BERRY'S, presenting medical condition, as more particularly described hereinabove; and/or
- e. Failing to provide competent medical staff and personnel to provide treatment and medical management to the Plaintiff, NANCY D. BERRY; and/or
- f. Being vicariously liable for the certain negligent acts of Defendant, BALBIN, D.O., as hereinabove alleged; and/or
- g. In being otherwise negligent in the care and treatment of Plaintiff, NANCY D. BERRY.

23. As a proximate result of the above-stated acts of the agents, servants, and/or employees of Defendant, LARGO ANESTHESIA, acting within the course and scope of their employment therewith, Plaintiff, NANCY D. BERRY, has suffered permanent bodily injury resulting in great pain and discomfort; inability to lead a normal life; great additional medical and related medical expenses for care and treatment of the damage done; loss of earnings, her earning capacity has been greatly and permanently impaired; she will continue to have pain, suffering, inability to lead a normal life, embarrassment, humiliation, and great discomfort in the future.

WHEREFORE, Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, demand judgment and damages against the Defendant, LARGO ANESTHESIA ASSOCIATES, P.A., AND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

COUNT III:
CLAIM AGAINST GEORGE L. WARREN, M.D.

24. Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, adopt and reallege all prior material paragraphs as if fully set forth herein.

25. At all times material and relevant hereto, Defendant, WARREN, M.D., is and was a medical doctor holding himself out to the public, and more particularly to the Plaintiff herein, specializing in psychiatry, and undertook to provide medical care and treatment for the Plaintiff, NANCY D. BERRY.

26. Defendant, WARREN, M.D., owed a duty to Plaintiff, NANCY D. BERRY, to diagnose, advise, care for and treat Plaintiff, NANCY D. BERRY, and to provide and render that care in accordance with the accepted standards of medical care and treatment rendered by like physicians of similar skill in such cases in Pinellas County, Florida, and in any other similar medical communities.

27. Notwithstanding said duty, Defendant, WARREN, M.D., was negligent in the following particulars, which negligence was either a direct or proximate cause or contributing cause of the injuries and damages suffered by the Plaintiff, NANCY D. BERRY:

- a. Failing to advise Plaintiff, NANCY D. BERRY, herein, of the alternative medical procedures available to her, in her care and treatment, and, as such, the procedures adopted and used by Defendant, WARREN, M.D., were without the informed consent of the Plaintiff, NANCY D. BERRY, herein; and, further, had the alternatives been explained to the Plaintiff, NANCY D. BERRY, as a reasonable and prudent physician should have done, Plaintiff, NANCY D. BERRY, would not have consented to the procedures, actually utilized; and/or

- b. Failing to perform a proper examination or use a method of diagnosis which is usually approved and practiced by other members of the medical profession in *this community, and in similar communities in the State of Florida* possessing skills, learning, judgment, and being presented with similar components or symptoms by the patient; and/or
- c. Failing to use proper, recommended, and accepted diagnostic procedures to ascertain the true condition of the Plaintiff, NANCY D. BERRY.
- d. Failing to make timely and proper tests, although adequate sources were available for making such tests to determine said Plaintiff, NANCY D. BERRY'S true medical condition; and/or
- e. Failing to treat and examine Plaintiff, NANCY D. BERRY, to determine her true medical condition, when the nature of her difficulties could have, with the exercise of reasonable medical care, been discovered; and/or
- f. Failing to issue proper medical orders with respect to the care and treatment of the Plaintiff, NANCY D. BERRY; and/or
- g. Failing to properly document the Plaintiff, NANCY D. BERRY'S need for medical care and management; and/or
- h. Failing to properly monitor Plaintiff, NANCY D. BERRY'S medical condition; and/or
- i. Failing to have properly trained assistants, servants, agents, and/or employees to assist in the care of the Plaintiff, NANCY D. BERRY; and/or
- j. Failing to properly monitor the Plaintiff, NANCY D. BERRY'S medical condition in order to determine the Plaintiff, NANCY D. BERRY'S true condition; and/or
- k. Failing to properly examine the Plaintiff, NANCY D. BERRY; and/or
- l. Failing to properly treat and diagnose the Plaintiff, NANCY D. BERRY; and/or
- m. Negligent and careless performance of the electroconvulsive therapy (ECT) procedure on or about February 1, 2001; and/or
- n. Negligent failure to perform and use a method of treatment as it relates to the aforesaid electroconvulsive therapy, which is usually approved and practiced by *other members of the healthcare profession in this community* and on similar learning, judgment, and being presented with similar components and symptoms by the patients; and/or

- o. Negligent failure to use an accepted treatment and procedure, in that the procedures adopted and utilized by the Defendant, WARREN, M.D., were performed in such a manner so as to injure the Plaintiff, NANCY D. BERRY; and/or
- p. Negligent failure to accurately and adequately record and document clinical findings and observations pertinent to the care and treatment of the Plaintiff, NANCY D. BERRY, in her medical charts; and or
- q. Being otherwise negligent in the care, treatment and diagnosis and medical management of the Plaintiff, NANCY D. BERRY.

28. As a direct and proximate result of the negligence and carelessness of the Defendant, WARREN, M.D., in providing and performing medical treatment and care, Plaintiff, NANCY D. BERRY, has suffered permanent bodily injury resulting in great pain and discomfort; inability to lead a normal life; great additional medical and related medical expenses for care and treatment of the damage done; loss of earnings, her earning capacity has been greatly and permanently impaired; she will continue to have pain, suffering, inability to lead a normal life, embarrassment, humiliation, and great discomfort in the future.

WHEREFORE, Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, demands judgment and damages against the Defendant, WARREN, M.D., **AND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**


COUNT IV
CLAIM ON BEHALF OF NANCY D. BERRY'S HUSBAND, JOHN BERRY

29. Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, adopt and reallege all prior material paragraphs as if fully set forth herein.

30. As a direct and proximate result of the aforesaid negligence and carelessness of Defendants, CATHY M. BALBIN, D.O.; GEORGE L. WARREN, M.D.; and LARGO ANESTHESIA ASSOCIATES, P.A.; herein, this Plaintiff's wife, NANCY D. BERRY, was

painfully and permanently injured, and this Plaintiff, JOHN BERRY, has had to spend money for hospitalization, medicine, therapy, and medical treatment for his wife because of this negligence and carelessness; and for travel necessary to secure same; and in the future will be compelled to incur similar expenses; and he has lost the comfort, services, society, and consortium of his wife, and will lose it in the future.

WHEREFORE, Plaintiffs, NANCY D. BERRY and JOHN BERRY, her husband, demand judgment and damages against the Defendants, CATHY M. BALBIN, D.O.; GEORGE L. WARREN, M.D.; and LARGO ANESTHESIA ASSOCIATES, P.A.; **AND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**


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Attorneys for Plaintiffs

PLAINTIFFS' CERTIFICATE OF REASONABLE INVESTIGATION

The undersigned counsel for the Plaintiffs herein hereby certifies that he has made a reasonable investigation as permitted by the circumstances which have given rise to this belief that grounds exist for the subject Complaint.

Deborah Fleming-Gomez for
JAMES W. CLARK, ESQUIRE

CERTIFICATE OF SERVICE

Pursuant to Florida Statutes, Section 766.106(2000), a copy of the Complaint herein is served on the Agency for Health Care Administration at Post Office Box 1400, Tallahassee, FL 32317-4000, via Certified U.S. Mail this 30th day of May, 2003.

Deborah Fleming-Gomez
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