# IN THE IOWA DISTRICT COURT IN AND FOR FAYETTE COUNTY

KELLI HAUN, DORNA HARTGRAVE, CHARLES NICOLAY, SHIRLEY ZIEGLER, KEITH KOILE AND SHERRY MEIKE,

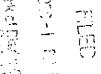
Plaintiffs,

VS.

PERRY COMEAU, KEITH BARNHILL AND WHEATON FRANCISCAN HEALTHCARE-IOWA, INC. d/b/a MERCY HOSPITAL PAIN CLINIC, No. LACVL A C V 05 2412

PETITION AT LAW

(Jury Demanded)



Defendants.

Plaintiffs, Kelli Haun, Dorna Hartgrave, Charles Nicolay, Shirley Ziegler, Keith Koile and Sherry Meike, for their cause of action against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-Iowa, Inc. d/b/a Mercy Hospital Pain Clinic, state:

- 1. Plaintiff Kelli Haun is and at all material times has been a resident of Oelwein, Fayette County, Iowa.
- 2. Plaintiff Dorna Hartgrave is currently a resident of Milwaukee, Wisconsin, who resided in Fayette County, Iowa at times relevant to this matter.
- 3. Plaintiff Charles Nicolay is and at all material times has been a resident of Oclwein, Fayotte County, Iowa.
- 4. Plaintiff Sherry Meike is and at all material times has been a resident of Oelwein, Fayette County, Iowa.
- 5. Plaintiff Shirley Ziegler is and at all material times has been a resident of Oelwein, Fayette County, Iowa.
- 6. Plaintiff Keith Koile is and at all material times has been a resident of Fairbank, Fayette County, Iowa.
- 7. Defendant Wheaton Franciscan Healthcare-Iowa, Inc. d/b/a Mercy Hospital Pain Clinic ("Wheaton Franciscan" or "Mercy Hospital") is a corporation organized and

existing under the laws of Iowa and in the business of operating healthcare clinics and hospitals throughout the Midwest, including Mercy Hospital located in Oelwein, Iowa.

- 8. Upon information and belief, Defendant Perry Comeau is and at all material times has been a resident of Oelwein, Fayette County, Iowa and at all times material to this action, a registered nurse anesthetist employed by or acting as an agent of Defendant Wheaton Franciscan at the Mercy Hospital Pain Clinic ("Pain Clinic").
- 9. Upon information and belief Defendant Keith Barnhill was at all times material to this action residing in and/or providing medical care in Oelwein, Fayette County, Iowa and a registered nurse anesthetist, employed by or acting as an agent of Defendant Wheaton Franciscan at the Pain Clinic.
- 10. Plaintiffs are all former patients of Defendants Comeau and Barnhill, who received treatment at the Pain Clinic. Their claims arise out of the same series of transactions and involve questions of law or fact common to all of them and therefore Plaintiffs have joined in this action pursuant to IOWAR. Civ. P. 1.232.

# **FACTUAL BACKGROUND**

- 11. Defendant Wheaton Franciscan operated a Pain Clinic or "Pain Referral Center" (as it is called in Plaintiffs' medical records) at Mercy Hospital beginning in late 2007 and carly 2008. Defendant Comeau acted as a nurse anesthetist during the times relevant to this lawsuit. In November 2008, Defendant Wheaton Franciscan remodeled a portion of Mercy Hospital to specifically accommodate a pain clinic and announced to the public that it had opened the Mercy Hospital Pain Clinic. Defendant Comeau was named as the director of the Pain Clinic and continued to act, as a nurse anesthetist. Defendant Barnbill was also a nurse anesthetist at the Pain Clinic.
- 12. The Pain Clinic provided treatment to persons suffering from chronic, painful conditions. The treatment provided at the Pain Clinic largely included various types of injections.

- 13. Commencing in late 2007 and through March 2009, when the Pain Clinic closed, Defendants Comeau and Barnhill, with assistance and active support of Defendant Wheaton Franciscan, knowingly engaged in a pattern of providing to Plaintiffs and other patients unnecessary and excessive pain injections and related procedures for the purpose of generating income for all of the Defendants. Defendants jointly concealed from Plaintiffs and other patients the lack of a medical basis or justification for the type and frequency of treatment provided to Plaintiffs, and often provided treatment beyond the expertise of Defendants Comeau and Barnhill without the consent or knowledge of Plaintiffs' treating physicians. Some of the details of the treatment provided by Defendants to Plaintiffs are outlined below.
- 14. Additionally, Defendants repeatedly and routinely used billing codes for procedures that were not consistent with the procedure that was actually performed. For example, Defendants repeatedly and unnecessarily injected bactofen into the epidural space along with steroid injections; however, probably because this procedure is unnecessary, Defendants billed patients and patients' insurance carriers, including Plaintiffs' insurance carriers, for an epidural myelogram and interpretation of an epidural myelogram, which are invalid charges for this procedure.
- 15. Plaintiffs all received treatment at the Pain Clinic, including but not limited to, injections.
- 16. In the fall of 2008 local physicians and the medical staff at Mercy Hospital began to voice concerns to the hospital administration at Defendant Wheaton Franciscan regarding the care that their patients were receiving at the Pain Clinic, including their concerns that their patients were being overtreated and overcharged and that Defendants Comeau and Barnhill were providing treatment beyond their scope of expertise and without adequate supervision from the medical staff. The hospital administration of Defendant Wheaton Franciscan refused to take any corrective action in response to local physicians' concerns.

- 17. In September 2008, the medical staff at Mercy Hospital voted unanimously to restrict the hospital privileges of Defendants Comeau and Barnhill; however, contrary to this recommendation, the Hospital Board granted privileges to Defendants Comeau and Barnhill well beyond those recommended by the medical staff.
- 18. Because Defendant Wheaton Franciscan refused to take any corrective action in response to the local physicians' complaints, commencing in January 2009, an independent physician reviewed the records of the clinic and found that in fact many patients, including Plaintiffs, had been overcharged and overtreated by Defendants. Only then did Plaintiffs first begin to learn that the treatment provided by Defendants was in violation of the standard of care, largely unnecessary and excessive, and that Plaintiffs and their insurance carriers had been grossly overcharged.
- Immediately upon learning that an outside physician had discovered and identified Defendants' scheme of excessively treating and excessively charging patients, Defendant Wheaton Franciscan closed the Pain Clinic; however, Defendant Wheaton Franciscan concealed and misrepresented to the public the reason for closing the Pain Clinic.
- 20. Plaintiffs were all subjected to excessive treatment, including excessive injections, overcharging and treatment below the standard of care, including but not limited to the excessive treatment and overcharging outlined below.
- 21. Plaintiff Kelli Haun began receiving treatment at the Pain Clinic in late 2007, around the time that the Pain Clinic opened, and continued to receive treatment through October of 2008 for occipital headaches. Plaintiff Haun was referred to the Pain Clinic by her family physician, Dr. Clay Halfberg.
- 22. Defendants Comean and Barnbill prescribed and performed unnecessary medical treatment for Ms. Haun, including but not limited to 1) an excessive number of trigger point injections; 2) fluoroscopic guidance of trigger point injections; 3) use of baclofen with trigger point injections; and 4) prescription of unnecessary medications.

- 23. Defendants Comeau and Barnhill also ordered multiple unnecessary tests for Ms. Haun including a bone density scan, x-rays, mammography and blood tests.
- 24. Defendants Comeau and Barnhill also provided treatment and diagnosis in areas of medicine well beyond pain management, for which they were not licensed or qualified, including but not limited to ordering an EKG for an abnormal heart rate, ordering an ultrasound of the gallbladder, prescribing vaccinations and altering Ms. Haun's diet. Defendants Comeau and Barnhill also diagnosed Ms. Haun with ostcoarthritis of the knees and purported to provide treatment for this condition. Additionally, Defendants Comeau and Barnhill discontinued Ms. Haun's use of Paxil, an antidepressant and anxiety medication, which was prescribed by another physician who was treating Ms. Haun for depression and anxiety, and then prescribed Ms. Haun Wellbutrin, a different type of antidepressant, resulting in a negative reaction by Ms. Haun.
- 25. As a result of the excessive and unneeded care provided by Defendants, Ms. Haun suffered physical, mental and emotional injuries.
- 26. Plaintiff Dorna Hartgrave received treatment at the Pain Clinic from March 2008 through July 2008. Plaintiff Hartgrave was referred to the Pain Clinic by her family physician for treatment of low back pain with radiation into her lower extremities.
- 27. Defendants Comeau and Barnhill prescribed and performed unnecessary medical treatment for Ms. Hartgrave, including but not limited to 1) an excessive number of epidural steroid injections; 2) injection of baclofen into the epidural space; and 3) prescription of unnecessary medications.
- 28. Defendants Comeau and Barnhill also ordered multiple unnecessary tests for Ms. Hartgrave including a mammogram, extensive blood work, body scan or nuclear test and a DEXA Scan.
- 29. Defendants Comeau and Barnhill also diagnosed Ms. Hartgrave with rheumatoid arthritis when Ms. Hartgrave's symptoms and clinical examination did not warrant that diagnosis.

- 30. As a result of the excessive and unnecessary care provided by Defendants, Ms. Hartgrave has suffered and continues to suffer physical, mental and emotional injuries.
- 31. Plaintiff Charles Nicolay received treatment at the Pain Clinic from February 2008 through September 2008. Plaintiff Nicolay was referred to the Pain Clinic by his family physician for treatment of lower back pain with numbness in his lower extremitles.
- 32. Defendants Comeau and Barnhill prescribed and performed unnecessary medical treatment for Mr. Nicolay, including but not limited to 1) injection of baclofen into the epidural space; and 2) injection into the sacroiliac joint without any documentation showing that this injection was necessary.
- 33. Defendants Comeau and Barnhill also performed radiofrequency neurosomy for Mr. Nicolay on his right side because, according to the records, Mr. Nicolay had pain rated at 5 out of ten; however, if radiofrequency neurotomy had been a medically necessary and appropriate treatment, it should have been performed on the left side as well.
- 34. Defendants Comeau and Barnhill also failed to document in Mr. Nicolay's records his pain levels and the rationale for the multiple procedures to which Mr. Nicolay was subjected.
- 35. As a result of the excessive and unneeded care provided by Defendants, Mr. Nicolay has suffered and continues to suffer physical, mental and emotional injuries.
- 36. Plaintiff Shirley Ziegler received treatment at the Pain Clinic from February 2008 through March 2008. Plaintiff Ziegler was referred to the Pain Clinic by her family physician for treatment of bilateral shoulder pain.
- 37. Defendants Comeau and Barnhill prescribed and performed unnecessary medical treatment for Ms. Ziegler, including but not limited to multiple intra-articular Botox injections. Defendants Comeau and Barnhill performed these injections without documenting that any physical exam of Ms. Ziegler's shoulders was performed. Defendants Comeau and Barnhill also performed Botox injections within a month of each other instead of waiting the required three months between injections, which may limit Ms. Ziegler's ability to undergo

Botox injections in the future, should she have a condition which indicates the use of Botox injections.

- 38. Additionally, Defendants Comeau and Barnhill failed to advise Ms. Ziegler that Botox injections are not usually injected into the joints and therefore are not typically covered by medical insurance; nor did Defendants Comeau and Barnhill seek prior approval for the Botox injections from Ms. Ziegler's insurance carrier.
- 39. Defendants Comeau and Barnhill also failed to document in Ms. Ziegler's records her pain levels and the rationale for the multiple procedures Ms. Ziegler was subjected to.
- 40. As a result of the excessive and unneeded care provided by Defendants, Ms. Ziegler has suffered and continues to suffer physical, mental and emotional injuries.
- 41. Plaintiff Keith Koile received treatment at the Pain Clinic from June 2008 through August 2008. He was referred to the Pain Clinic by his family physician for treatment of low back pain radiating into his right hip and bilateral burning calf and foot pain.
- 42. Defendants Comeau and Barnhill prescribed and performed unnecessary medical treatment for Mr. Koile, including but not limited to 1) trigger point injections of the trapezius muscle and rhomboid minor; 2) cervical facet injections; and 3) cervical facet blocks.
- 43. Additionally, Defendants Comean and Barnhill performed the above treatment without performing the appropriate diagnostic testing and failed to perform a variety of testing that was indicated, including but not limited to CT scans, MRI scans, EMG, nerve conduction studies and vascular exam. Defendants Comean and Barnhill failed to determine whether Mr. Koile suffered cervical myelopathy or diabetic peripheral neuropathy, both potentially indicated by Mr. Koile's symptoms.
- 44. Defendant Comeau provided treatment and advice to Mr. Koile beyond his training and experience by advising Mr. Koile to discontinue, for seven days or more, Plavix, a drug that had been prescribed for him by a treating physician due to congestive heart failure.

- 45. As a result of the excessive and unneeded care provided by Defendants, Mr. Koile has suffered and continues to suffer physical, mental and emotional injuries.
- 46. Plaintiff Sherry Meike received treatment at the Pain Clinic from January 2008 through March 2009. She was referred to the Pain Clinic by a physician for treatment of lower back and log pain.
- 47. Defendants Comeau and Rambill prescribed and performed unnecessary medical treatment for Ms. Meike, including but not limited to 1) injection of baclofen into the epidural space; and 2) excessive epidural injections, sometimes performed within a week of a previous epidural injection.
- 48. Defendants Comean and Barnhill also failed to document in Ms. Meike's records her pain levels and the rationale for the multiple procedures Ms. Meike was subjected to.
- 49. As a result of the excessive and unneeded care provided by Defendants, Ms. Meike has suffered and continues to suffer physical, mental and emotional injuries.
- 50. Plaintiffs believed that the above-described treatment and testing was medically necessary and would benefit them. Plaintiffs also believed that Defendants were consulting with and being overseen by the physicians that referred Plaintiffs to the Pain Clinic.
- Defendants submitted billing statements and received payment for the abovedescribed unnecessary treatment from Plaintiffs and Plaintiffs' insurance carriers.

#### <u>COU</u>NT <u>I</u> NEGLIGENCE

- 52. Plaintiffs reallege and replead paragraphs 1 through 51 as if fully stated herein.
- 53. Defendants were negligent in the care that they provided to Plaintiffs, including but not limited to the following:
  - a. Failing to obtain informed consent for the procedures that they were performing;
  - Performing unnecessary and unnecded injections;

- Performing or ordering excessive and unneeded testing including laboratory work, x-rays and ultrasounds;
- d. Failing to consult and/or inform Plaintiffs' referring physicians regarding the care Defendants were providing to Plaintiffs;
- e. Practicing medicine beyond their training, experience and licensure as nurse anesthetists;
- f. Prescribing unnecessary and unneeded prescription medications;
- g. Failing to adequately document Plaintiffs' pain levels, progress or other information needed to appropriately treat Plaintiffs;
- h. Failing to perform the appropriate testing in order to accurately diagnose and treat Plaintiffs;
- i. Providing care below the standard of care; and
- Charging excessive amounts for their treatments.
- 54. Defendants' fault was a proximate cause of the injuries and damages sustained by Plaintiffs.
- 55. In addition to Defendant Wheaton Franciscan's own fault, Defendants Comeau and Barnhill were agents and/or employees of Defendant Wheaton Franciscan and were acting within the scope of their agency and/or employment at all relevant times, and therefore the fault of Defendants Comeau and Barnhill is imputed to Defendant Wheaton Franciscan. Further, Plaintiff's sought treatment from Defendant Wheaton Franciscan, through the Mercy Pain Clinic, and Defendants Comeau and Barnhill were acting as agents of Defendant Wheaton Franciscan at the time of providing treatment to Plaintiff's and therefore the fault of Defendants Comeau and Barnhill is imputed to Defendant Wheaton Franciscan.
- 56. As a result of Defendants' fault, Plaintiffs have suffered and will continue to suffer injuries and damages including but not limited to physical injury, mental and physical pain and suffering, loss of enjoyment of life, past medical expenses for inappropriate and unnecessary care, and past and future medical expenses for injuries caused by Defendants.
- 57. Defendants' above-described conduct constitutes willful and wanton disregard for the rights of Plaintiffs, entitling Plaintiffs to recover punitive damages.

58. Plaintiffs' damages exceed the jurisdictional requirement of Rule 6.3 of the Iowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs, Kelli Haun, Dorna Hartgrave, Charles Nicolay, Shirley Ziegler, Keith Koile and Sherry Meike pray for judgment against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-Iowa, Inc. in an amount that will fully and fairly compensate them for their injuries, losses and damages, for punitive damages, for interest as provided by law, the costs of this action and any other such relief as the Court deems proper.

# FAILURE TO OBTAIN INFORMED CONSENT

- 59. Plaintiffs reallege and replead paragraphs 1 through 58 as if fully stated herein.
- 60. Defendants failed to disclose to Plaintiffs that certain diagnostic testing, injections, prescription medications and other medical care were unnecessary or excessive for the treatment of the conditions for which Plaintiffs presented and/or unlikely to relieve Plaintiffs' symptoms. Defendants also failed to disclose that they were not consulting with or being supervised by Plaintiffs' referring physicians and that Defendants were practicing medicine beyond their field of expertise and licensure.
  - This material, undisclosed information was unknown to Plaintiffs.
- 62. Disclosure of this material information would have led a reasonable person in Plaintiffs' position to choose a different course of treatment, i.e., not undergo the excessive and inappropriate treatment provided by Defendants.
- 63. The failure of Defendants to obtain the informed consent of Plaintiffs for the above treatment was a proximate cause of injuries and damages suffered by Plaintiffs.
- 64. As a result of Defendants' failure to obtain informed consent, Plaintiffs have suffered and will continue to suffer injuries and damages including but not limited to physical injury, mental and physical pain and suffering, loss of enjoyment of life, past medical

expenses for unneeded and unnecessary care, and past and future medical expenses for injuries caused by Defendants.

- 65. Defendants' above-described conduct constitutes willful and wanton disregard for the rights of Plaintiffs, entitling Plaintiffs to recover punitive damages.
- 66. Plaintiffs' damages exceed the jurisdictional requirement of Rule 6.3 of the lowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs, Kelli Haun, Dorna Hartgrave, Charles Nicolay, Shirley Ziegler, Keith Koile and Sherry Meike pray for judgment against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-Iowa, Inc. in an amount that will fully and fairly compensate them for their injuries, losses and damages, for punitive damages, for interest as provided by law, the costs of this action and any other such relief as the Court deems proper.

# <u>COU</u>NT <u>HI</u> <u>MEDICAL BATTERY</u>

- 67. Plaintiffs reallege and replead paragraphs 1 through 66 as if fully stated herein.
- 68. Defendants intended to and did inflict harmful or offensive contact on the bodies of Plaintiffs by providing the above-described unnecessary medical care.
- 69. Plaintiffs did not consent to the above-described treatment and/or Defendants intentionally deviated from the consent provided by Plaintiffs and provided substantially different treatment.
- 70. 'The Defendants' medical battery of Plaintiffs was a proximate cause of injuries and damages suffered by Plaintiffs.
- 71. As a result of Defendants' medical bartery of Plaintiffs, Plaintiffs have suffered and will continue to suffer injuries and damages including but not limited to physical injury, mental and physical pain and suffering, loss of enjoyment of life, past medical expenses for unneeded and unnecessary care, and past and future medical expenses for injuries caused by Defendants.

- Defendants' medical battery of Plaintiffs constitutes willful and wanton 72. disregard for the rights of Plaintiffs, entitling Plaintiffs to recover punitive dumages.
- Plaintiffs' damages exceed the jurisdictional requirement of Rule 6.3 of the Iowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs, Kelli Haun, Dorna Hattgrave, Charles Nicolay, Shirley Ziegler, Keith Koile and Sherry Meike pray for judgment against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-Iowa, Inc. in an amount that will fully and fairly compensate them for their injuries, losses and damages, for punitive damages, for interest as provided by law, the costs of this action and any other such relief as the Court deems proper.

- Plaintiffs reallege and replead paragraphs 1 through 73 as if fully stated herein. 74. 75.
- Defendants violated Iowa Code Chapter 706A by committing specified unlawful acts as defined in the Act, including but not limited to:
  - a. Violation of Iowa Code § 714.1(3); and
  - b. Violation of Iowa Code § 507E.3(2).
- Defendants violated Iowa Code § 714.1(3) by obtaining the property of 76. Plaintiffs and their insurance carriers through deception. Defendants deceived Plaintiffs by knowingly creating or confirming Plaintiffs' false beliefs or impressions as to the existence or nonexistence of certain facts, including that the above-described medical treatment was reasonable and medically necessary, when Defendants knew that Plaintiffs' beliefs were false.
- Defendants also violated lowa Code § 714.1(3) by obtaining the property of Plaintiffs through deception. Defendants deceived Plaintiffs by failing to correct a false belief or impression as to the existence or nonexistence of certain facts, including that the abovedescribed medical treatment was reasonable and medically necessary, a fact which Defendants previously had created or confirmed.

- 78. Defendants violated Iowa Code § 507E.3(2) by presenting or causing to be presented written documents to insurers in support of claims for payment knowing that the documents contained false information concerning a material fact, including but not limited to presenting insurers with documents stating or implying that certain procedures were medically necessary when in fact they were not and presenting insurers with documents stating that procedures were performed that were not in fact performed.
- 79. Defendants also violated lowa Code § 507E.3(2) by assisting, abetting, soliciting or conspiring with another to commit the acts described in the above paragraph.
- 80. Defendants also violated Chapter 706A by knowingly receiving proceeds from the above-specified unlawful activity to use or invest, directly or indirectly, in the establishment or operation of any enterprise.
- 81. Defendants also violated Chapter 706A by knowingly conducting the affairs of any enterprise through the above-described specified unlawful activity or knowingly participating directly or indirectly in any enterprise that Defendants knew was being conducted through specified unlawful activity.
- 82. Defendants violated Chapter 706A by allowing property owned or controlled by Defendants and services provided by Defendants to be used to facilitate the above-described specified unlawful activity.
- 83. Plaintiffs are aggrieved persons entitled to institute a civil proceeding for Defendants' violation of Chapter 706A.3 and recover three times their damages caused by Defendants, the costs and expenses associated with investigating and prosecuting this action and reasonable attorneys' fees.
- 84. As a result of Defendants' violation of Chapter 706A, Plaintiffs have suffered and will continue to suffer injuries and darrages including but not fimited to physical injury, loss of enjoyment of life, past medical expenses for unnecded and unnecessary care, and past and future medical expenses for injuries caused by Defendants.

85. Plaintiffs' damages exceed the jurisdictional requirement of Rule 6.3 of the Iowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs, Kelli Haun, Dorna Hartgrave, Charles Nicolay. Shirley Ziegler, Kelth Koile and Sherry Meike pray for judgment against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-lowa, Inc. in an amount that will fully and fairly compensate them for their injuries, losses and damages, for treble damages, for interest as provided by law, the costs and expenses of investigating and prosecuting this action, for attorneys' fees and any other such relief as the Court deems proper.

### <u>COUNT V</u> <u>UNJUST ENRICHMENT</u>

- 86. Plaintiffs reallege and replead paragraphs 1 through 85 as if fully stated herein.
- 87. Defendants received the benefit of and were enriched by receiving payments for the unnecessary medical care described above.
  - 88. The enrichment was at the expense of the Plaintiffs.
- 89. It would be unjust to allow Defendants to retain the benefits under the circumstances.
- 90. Plaintiffs' damages exceed the jurisdictional requirement of Rule 6.3 of the Iowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs, Kelli Haun, Dorna Hartgrave, Charles Nicolay, Shirley Ziegler, Keith Koile and Sherry Meike pray for judgment against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-lowa, Inc. in an amount that will fully and fairly compensate them for their injuries, losses and damages, for interest as provided by law, the costs of this action and any other such relief as the Court deems proper.

# COUNT VI NEGLIGENT MISREPRESENTATION

- 91. Plaintiffs reallege and replead paragraphs 1 through 90 as if fully stated herein.
- 92. At all relevant times, Defendants were in the business or profession of providing medical information and advice to persons such as Plaintiffs.
- 93. At all material times, Plaintiffs were members of the class of people for whom Defendants intended such information and advice to benefit or that Defendants knew would receive the information,
- 94. Defendants represented to Plaintiffs that they suffered from certain conditions, required certain medical treatment and/or diagnostic testing and that Defendants were consulting with or informing Plaintiffs' referring physicians regarding the treatment Defendants were providing. The details regarding Defendants' representations are set forth above in the Factual Background section.
  - 95. Defendants' representations were false.
- 96. Defendants failed to exercise reasonable care or competence in communicating or obtaining the above information.
- 97. Plaintiffs justifiably relied on Defendants' representations in obtaining the medical care described above.
- 98. Defendants intended or knew that Plaintiffs would be influenced by the above representations.
- 99. Defendants' misrepresentations were a proximate cause of the injuries and damages sustained by Plaintiffs.
- 100. As a result of Defendants' negligent misrepresentation, Plaintiffs have suffered and will continue to suffer injuries and damages including but not limited to physical injury, loss of enjoyment of life, past medical expenses for unneeded and unnecessary care, and past and future medical expenses for injuries caused by Defendants.

101. Plaintiffs' damages exceed the jurisdictional requirement of Rule 6.3 of the Iowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs, Kelli Haun, Dorna Hartgrave, Charles Nicolay, Shirley Ziegler, Keith Kolle and Sherry Meike pray for judgment against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-Iowa, Inc. in an amount that will fully and fairly compensate them for their injuries, losses and damages, for interest as provided by law, the costs of this action and any other such relief as the Court deems proper.

#### COUNT VII INTENTIONAL MISREPRESENTATION

- 102. Plaintiffs reallege and replead paragraphs 1 through 101 as if fully stated herein.
- 103. Defendants represented to Plaintiffs that they suffered from certain conditions, required certain medical treatment and/or diagnostic testing and that Defendants were consulting with or informing Plaintiffs' referring physicians regarding the treatment Defendants were providing. The details regarding Defendants' representations are set forth above in the Factual Background section.
- 104. Defendants' representations were material to Plaintiffs' decision to obtain the above-described medical treatment and/or diagnostic testing.
  - 105. Defendants' representations were false.
- 106. Defendants (1) knew that these representations were false; (2) recklessly disregarded the truth in making the representations; (3) represented that the statements were based on personal knowledge when in fact they were not; and/or (4) had a special relationship with Plaintiffs giving rise to a duty to disclose.
- 107. Defendants made these misrepresentations with the intent to deceive Plaintiffs into believing they required certain medical treatment and/or testing.
- 108. Plaintiffs justifiably relied on the representations in obtaining the medical care and testing.

- 109. Defendants' misrepresentations were a proximate cause of the injuries and damages sustained by Plaintiffs.
- 110. As a result of Defendants' intentional misrepresentations, Plaintiffs have suffered and will continue to suffer injuries and damages including but not limited to physical injury, loss of enjoyment of life, past medical expenses for unneeded and unnecessary care, and past and future medical expenses for injuries caused by Defendants.
- 111. Defendants' intentional misrepresentation constitutes willful and wanton disregard for the rights of Plaintiffs, entitling Plaintiffs to recover punitive damages.
- 112. Plaintiffs' damages exceed the jurisdictional requirement of Rule 6.3 of the lowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs, Kelli Haun, Dorna Hartgrave, Charles Nicolay, Shirley Ziegler, Keith Koile and Sherry Meike pray for judgment against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-lowa, Inc. in an amount that will fully and fairly compensate them for their injuries, losses and damages, for punitive damages, for interest as provided by law, the costs of this action and any other such relief as the Court deems proper.

## COUNT VIII CONSPIRACY

- 113. Plaintiffs reallege and replead paragraphs 1 through 112 as if fully stated herein.
- 114. Defendants knowingly and intentionally participated in a common scheme to prescribe, recommend and perform unnecessary medical treatment and testing.
- 115. The prescription, recommendation and performance of unnecessary medical treatment and testing were unlawful in the manner set forth in Counts I-VII.
- 116. Defendants' actions constitute willful and wanton disregard for the rights of Plaintiffs, entitling Plaintiffs to recover punitive damages.
- 117. Plaintiffs' damages exceed the jurisdictional requirement of Rule 6.3 of the Iowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs, Kelli Haun, Dorna Hartgrave, Charles Nicolay, Shirley Ziegler, Keith Koile and Sherry Meike pray for judgment against Defendants Perry Comeau, Keith Barnhill and Wheaton Franciscan Healthcare-Iowa, Inc. in an amount that will fully and fairly compensate them for their injuries, losses and damages, for punitive damages, for interest as provided by law, the costs of this action and any other such relief as the Court deems proper.

# JURY DEMAND

Pursuant to IOWA R. CIV. P. 1.902, Plaintiffs hereby demand a trial by jury of all issues triable to a jury.

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