

\$250.00
Inv. # 2722
Form 10
[Rule 3.25]



COURT FILE NUMBER 1703-03068

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS AMBER ATHWAL, an infant by her
litigation representative, ANAHAT
ATHWAL, an infant by her litigation
representative, RAMANDEEP SINGH,
ARSHINDER KAUR, and HER MAJESTY THE
QUEEN IN RIGHT
OF ALBERTA

DEFENDANTS DR. WILLIAM R. MATHER, W.R. MATHER
PROFESSIONAL CORPORATION, TASNEEM
ALI, DR. JOHN DOE, KIM DOE, JANE DOE I,
JANE DOE II, JANE DOE III, and JANE DOE
IV, JANE DOE V

DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT Duncan Embury and Sonia Nijjar
Neinstein LLP
1200 Bay Street, Suite 700
Toronto, ON M5R 2A5
Telephone: (416) 969-3700
Facsimile: (416) 920-8358
File: 15701

Ellen K. Embury
Dunphy Best Blocksom LLP
517-10 Ave S.W., Suite 800
Calgary, AB T2R 0A8
Telephone: (403) 750-1128
Facsimile: (403) 269-8911
File: 37232.003

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

Identities of the Parties

1. The Plaintiff Amber Athwal is a 5-year-old girl, born January 7, 2012. Amber suffered profound neurological injuries on September 7, 2016 while under the care of the Defendants. Amber's injuries were caused by a lack of oxygen to her brain over a sustained period of time and were entirely avoidable through the provision of basic medical care.
2. The Plaintiffs, Ramandeep Singh ("Mr. Singh") and Arshinder Kaur ("Mrs. Kaur"), are the parents of the infant Plaintiffs Amber Athwal ("Amber") and Anahat Athwal ("Anahat"). All of the Plaintiffs reside together in the City of Edmonton, in the Province of Alberta.
3. The Defendant, Dr. William R. Mather ("Dr. Mather"), is a dentist specializing in sedation dentistry and practicing in the City of Edmonton, in the Province of Alberta. At all material times, Dr. Mather was the owner and practicing dentist at the Clinic referenced throughout this claim.
4. The Defendant, W.R. Mather Professional Corporation ("the Corporation") is a Dental Professional Corporation registered under Corporate Access Number 20322339 in the City of Edmonton, in the Province of Alberta. The Corporation has its registered address at 10175-101 Street, Suite 2500 in the City of Edmonton, in the Province of Alberta ("the Clinic"). The Corporation provides dental services at the Clinic located at 10060 Jasper Avenue NW, Suite 503 in the City of Edmonton, in the Province of Alberta, and is responsible in fact and in law for the acts and omissions of its agents, servants, and employees.
5. The Defendant, Tasneem Ali ("Nurse Ali"), is a Registered Nurse who was, at all material times, practicing in the City of Edmonton, in the Province of Alberta. Nurse Ali was present at the Clinic at all material times on September 7, 2016.
6. The Defendant, Dr. John Doe ("Dr. Doe"), is a physician and/or dentist who was present at the Clinic and assisted in providing care to Amber on September 7, 2016. Despite repeated requests, the Plaintiffs are unaware of the full identity of this Defendant, whose identity is known to the Defendant Dr. Mather. The Plaintiffs will move to substitute the proper identity of Dr. Doe as soon as they become so aware.
7. The Defendant, Kim Doe, is a person who was present at the Clinic at all material times on September 7, 2016. Kim Doe was the individual who placed a call to Emergency Medical Services at or around 12:30 p.m. on September 7, 2016. Despite repeated requests, the Plaintiffs are unaware of the full identity of this Defendant, whose identity is known to the Defendant Dr. Mather. The Plaintiffs will move to substitute the proper identity of Kim Doe as soon as they are provided with the information necessary to do so.

8. The Defendants, Jane Doe I, Jane Doe II, Jane Doe III, Jane Doe IV and Jane Doe V (collectively "Jane Doe I through Jane Doe V") are other persons present during the dental and anaesthetic procedures performed on Amber at the Clinic on September 7, 2016 including, but not limited to any nurses, registered dental assistants, dental hygienists or other health practitioners or staff who were in any way involved in the treatment and care provided to Amber. Despite repeated requests, the Plaintiffs are unaware of the full identity of these Defendants, whose identity or identities are known to the Defendant Dr. Mather. The Plaintiffs will move to substitute the proper identity of Jane Doe as soon as they are provided with the information necessary to do so.

Chronology of Events

9. On September 2, 2016, Amber attended an appointment with her family dentist and underwent a routine dental examination. During that visit, Amber's family dentist recommended a referral to the Defendant Dr. Mather for further consultation.
10. On or about September 6, 2016, Mr. Singh and Mrs. Kaur received a telephone call from someone on behalf of Dr. Mather's Clinic. The Plaintiffs were advised that Dr. Mather had a last minute cancellation for the following morning, and an appointment was scheduled to take place at 9:30 a.m. on the following day, September 7, 2016.
11. At all material times, the Plaintiffs understood that the purpose of this late scheduled appointment was for a preliminary examination and consultation. The Plaintiffs were not provided with any further information nor given any instructions in advance of the last minute examination appointment.
12. Mr. Singh and Amber arrived at the Clinic at or around 9:30 a.m. on September 7, 2016.
13. Mr. Singh and Amber were directed to an examination room and were seen by Dr. Mather shortly thereafter.
14. Amber had not been seen or treated by Dr. Mather at any point prior to September 7, 2016.
15. During the initial examination and consultation, Dr. Mather advised Mr. Singh that Amber would require approximately four (4) dental extractions and possibly additional dental work (collectively referred to herein as "the Dental Work").
16. Dr. Mather advised that, due to another last minute cancellation in his schedule, he would perform the Dental Work under sedation at or around 11:00 a.m. that same morning.
17. Dr. Mather asked if Amber had eaten, and Mr. Singh advised that she had eaten bread and milk, and possibly additional food or drink, that morning between 8:15 a.m. and 8:30 a.m. Dr. Mather stated that he would perform the Dental Work under sedation around 11:00 a.m.
18. Mr. Singh and Amber returned to the procedure room at approximately 10:50 a.m. as directed by Dr. Mather.

19. Dr. Mather then administered the anesthetic agents Sevoflurane and Isoflurane to Amber, which produced a state of general anesthesia and proceeded to perform the Dental Work.
20. The Dental Work took approximately one hour to complete, during which time, to the knowledge of the Plaintiffs, Dr. Mather was responsible for performing both the Dental Work and also monitoring and administering the anesthetic agents, such that any ability Dr. Mather may have had to vigilantly monitor Amber's wellbeing during the Dental Work was necessarily compromised.
21. The Dental Work was completed at approximately 11:55 a.m. and Amber was placed in recovery.
22. The particulars of events between 11:55 a.m. and 12:35 p.m. are within the knowledge of Dr. Mather and the Defendants.
23. According to the only recorded notes, at or around 12:15 p.m., and despite the fact that Amber was or should have been on continuous, alarmed monitoring, the Defendant Ali apparently noticed for the first time that Amber was not breathing, she did not have a heartrate, and that Amber's oxygen saturation level was zero.
24. Prior to this time, neither Dr. Mather nor any of the other Defendants responsible for Amber's care had charted any vital signs or performed any assessment as to Amber's well-being since the time the procedure was completed.
25. At or around 12:30 p.m., the Defendant Kim Doe called Emergency Medical Services ("EMS").
26. The EMS arrived on scene at or around 12:35 p.m. and found Amber lying supine on the floor of the Clinic. Amber was unresponsive and apneic, her Glasgow Coma Score was 3, and her pupils were fixed and dilated at 7 mm.
27. At the time of EMS arrival, neither Dr. Mather nor any of the other Defendants were making any effort to ventilate Amber through the use of either bag valve mask ventilation, intubation, or other means. Dr. Mather and all of the other Defendants knew, or ought to have known, that Amber was not receiving oxygen to her brain and was suffering a critical medical emergency.
28. The EMS personnel immediately applied medically indicated and appropriate ventilation support, and Amber's oxygen stats quickly rose from a non-life sustaining level of zero to a normalized level of 98 per cent.
29. Amber was subsequently transported to the Stollery Children's Hospital, where she was diagnosed with a hypoxic brain injury.

Particulars of Negligence

30. The Defendant Dr. Mather owed a duty of care to the Plaintiffs and warranted that he was a competent, careful, and skillful dentist within his specialty of sedation dentistry and in particular

the administration of anesthetics, and that he would exercise all reasonable care and skill in his care and treatment of Amber.

31. Dr. Mather breached his contractual and fiduciary obligations to exercise all reasonable care and skill in the care and treatment of Amber.
32. The Defendant Nurses, the Defendants Kim Doe, Jane Doe I through Jane Doe V, and the Defendant Dr. John Doe, each owed a duty of care to the Plaintiffs and warranted that they were competent and skillful health professionals and that they would exercise all reasonable care and skill in their treatment and monitoring of Amber both during and after the Dental Work.
33. The Defendant Corporation owed a duty of care to the Plaintiffs and warranted that it would and could provide and arrange for competent, careful, and skillful dental treatment for Amber and that it would and could provide facilities and equipment necessary in her care and treatment.
34. The Dental Work and anesthetic procedure should never have been recommended or performed on September 7, 2016 in light of Amber's actual circumstances and the fact that she had consumed solid food, including, but not limited to, bread and milk, less than eight hours prior to the Dental Work and anesthetic procedure, which consumption constitutes an absolute contraindication to the administration of anesthetic agents. This information was known to Dr. Mather and the other Defendants herein or, alternately, was available to them through the most basic examination and history-taking, and the failure to consider or act on that information constitutes a breach of the most basic standards of safe and prudent dental and anesthetic care.
35. Amber sustained severe injuries as a direct result of the Defendants' failures with respect to the treatment, monitoring, and resuscitation efforts, if any, made on September 7, 2016. The Defendants, and each of them, failed to employ proper or any protocol in the use and administration of general anesthesia and in the monitoring of Amber; failed to recognize the situation as emergent; failed to intervene in a timely manner; failed to use and apply instruments and equipment properly; and failed to ensure the use of proper resuscitation efforts.
36. At some point shortly after the completion of the procedure and during a time when basic standards of safe patient care required ongoing and continuous monitoring of her vital signs, Amber's airway was compromised such that, in her unconscious state she required medical intervention in order to protect her airway and to ensure proper oxygen flow to her brain.
37. Oxygen deprivation represents a clear medical emergency and would have been obvious to any attentive observer and would have demonstrated immediate abnormalities on any properly maintained and functioning monitors. The signs of oxygen deprivation were either missed or entirely ignored by Dr. Mather and the other Defendants herein and, in either event, the Defendants' respective failures to properly monitor an unconscious and vulnerable child in the post-operative period fall well below the basic standards of safe patient care.

38. In light of the oxygen deprivation and Amber's airway compromise, Amber required immediate airway support which represents the first emergency response which should have been known to Dr. Mather and the other Defendants herein and constitutes a basic knowledge requirement expected of any health care worker.
39. Amber was not provided with this most basic and life sustaining support by Dr. Mather or any of the other Defendants and instead was left to suffer the catastrophic effects of a sustained lack of oxygen to her brain until EMS personnel were finally called and arrived on scene.
40. The Plaintiffs state that their damages were caused by the negligence and breach of fiduciary duty of the Defendants, and each of them, the particulars of which include but are not limited to the following:

AS AGAINST THE DEFENDANT DR. WILLIAM MATHER:

- (a) He failed to take a proper history of Amber;
- (b) He failed to conduct a proper examination of Amber;
- (c) He failed to properly assess and/or evaluate Amber including an assessment of her weight, medical status, medications, family history, or other relevant inquiries;
- (d) He failed to properly assess any fasting interval;
- (e) He failed to document and/or record any evaluation or assessment of Amber;
- (f) He failed to maintain and/or complete a proper dental record;
- (g) He recommended and then performed an unnecessary dental procedure;
- (h) He failed to obtain proper or any consent for the dental procedure;
- (i) He failed to obtain proper or any consent for the anesthetic procedure;
- (j) He failed to complete any surgical safety check;
- (k) He failed to take and/or check Amber's vital signs prior to beginning the procedure;
- (l) He failed to chart and/or maintain a proper or complete anesthetic record;
- (m) He administered sedation and/or general anesthesia agents to Amber when he knew or ought to have known that Amber had not fasted;
- (n) He administered sedation and/or general anesthesia agents improperly or without skill;
- (o) He used improper anesthetic technique;

- (p) He failed to properly secure Amber's airway prior to and during the procedure;
- (q) He used a nasopharyngeal mask for Amber's airway when he knew or ought to have known that it was unsafe to do so;
- (r) He failed to complete any intraoperative charting;
- (s) He failed to properly monitor the anesthetic administered to Amber during the procedure;
- (t) He failed to assess Amber's condition upon completion of the procedure;
- (u) He failed to assess Amber's recovery score or vitals;
- (v) He failed to monitor Amber post-operatively properly or at all;
- (w) He failed to ensure that Amber would receive the proper bedside monitoring;
- (x) He failed to ensure that Amber would receive proper care during the recovery period;
- (y) He allowed Amber to be in an unmonitored and/or unattended state post-operatively;
- (z) He failed to perform any resuscitative or rescue efforts upon learning of Amber's airway compromise and respiratory distress;
- (aa) He improperly applied rescue efforts;
- (bb) He failed to call the Emergency Medical Services in a timely manner or at all;
- (cc) He failed to apply cardiopulmonary resuscitation properly or at all;
- (dd) He failed to intubate Amber;
- (ee) He failed to provide manual ventilation to Amber;
- (ff) He failed to ensure effective ventilation in a timely and safe manner;
- (gg) He failed to follow any reasonable rescue protocol, including the Pediatric Advanced Life Support protocol;
- (hh) He practiced dental anesthesiology when he knew or ought to have known that he was not reasonably skilled or knowledgeable;
- (ii) He employed staff, servants, and agents he knew or ought to have known were lacking in reasonable care, skill, and ability to care for Amber;

- (jj) He failed to properly supervise, train, and instruct his staff or employees who were responsible for the care and treatment of Amber;
- (kk) He failed to have the proper equipment and facilities to ensure the proper care and treatment of Amber;
- (ll) He failed to properly maintain and service the equipment used to administer sedation and/or general anesthesia;
- (mm) He failed to have in operation an adequate system and adequate personnel to tend to the needs and requirements of patients including Amber;
- (nn) He failed to have the necessary policies or procedures and/or failed to follow his own policies and procedures in the treatment and care of patients including pediatric patients;
- (oo) He generally failed to exercise the knowledge, skill and care expected in providing anesthetic services to Amber; and
- (pp) Such further and other particulars as may be advised prior to trial.

AS AGAINST THE DEFENDANTS TASNEEM ALI and DR. JOHN DOE:

- (a) They failed to take a proper history of Amber;
- (b) They failed to conduct a proper examination of Amber;
- (c) They failed to properly assess and/or evaluate Amber including an assessment of her weight, medical status, medications, family history, or other relevant inquiries;
- (d) They failed to properly assess any fasting interval;
- (e) They failed to document and/or record any evaluation or assessment of Amber;
- (f) They failed to take and/or check Amber's vital signs prior to the commencement of the procedure;
- (g) They failed to properly secure Amber's airway prior to and during the procedure;
- (h) They failed to complete any intraoperative charting;
- (i) They failed to assess Amber's condition upon completion of the procedure;
- (j) They failed to assess Amber's recovery score or her vital signs;
- (k) They failed to properly monitor Amber post-operatively;
- (l) They failed to provide bedside monitoring of Amber post-operatively;

- (m) They allowed Amber to be in an unmonitored and/or unattended state post-operatively;
- (n) They failed to recognize Amber's signs of distress in a timely manner;
- (o) They failed to perform any resuscitative or rescue efforts upon finding Amber in respiratory distress;
- (p) They improperly applied rescue efforts;
- (q) They failed to call the Emergency Medical Services in a timely manner or at all;
- (r) They failed to apply cardiopulmonary resuscitation or applied it improperly;
- (s) They failed to intubate Amber;
- (t) They failed to provide manual ventilation to Amber;
- (u) They failed to ensure effective ventilation in a timely and safe manner;
- (v) They failed to follow any reasonable rescue protocol, including the Pediatric Advanced Life Support protocol;
- (w) They allowed Amber to be treated and cared for at the Clinic which they knew or ought to have known was not possessed with skilled and trained staff, facilities, and equipment to reasonably ensure the proper treatment of Amber; and
- (x) Such further and other particulars as may be advised prior to trial.

AS AGAINST THE DEFENDANT W. R. MATHER PROFESSIONAL CORPORATION:

- (a) It failed to properly supervise, train, and instruct its staff or employees who were responsible for the care and treatment of Amber;
- (b) It employed staff that it knew or ought to have known were lacking in reasonable care, skill, and ability to assess, supervise, and treat Amber;
- (c) It failed to have the proper equipment and facilities to ensure the proper care and treatment of Amber;
- (d) It failed to properly maintain and service the equipment used to administer sedation and/or general anesthesia;
- (e) It failed to have in operation an adequate system and adequate personnel to tend to the needs and requirements of patients, including pediatric patients;

- (f) It failed to have an adequate system and adequate personnel to respond to emergency situations;
- (g) It failed to have the necessary policies or procedures and/or it failed to follow its own policies and procedures in the treatment and care of its patients;
- (h) It failed to rectify the deficiencies in its policies and procedures for the treatment and care of its patients which deficiencies it knew or ought to have known existed by reason of previous incidents and damages involving other patients;
- (i) It fell below the standard of care in the staff, equipment, and facility it provided for the care and treatment of patients including Amber; and
- (j) Such further and other particulars as may be advised prior to trial.

AS AGAINST THE DEFENDANTS KIM DOE, JANE DOE I, JANE DOE II, JANE DOE III, JANE DOE IV, and JANE DOE V:

- (a) They allowed Amber to be treated and cared for at the Clinic which they knew or ought to have known was not possessed with skilled and trained staff, facilities, and equipment to reasonably ensure the proper treatment of Amber;
 - (b) They failed to call the Emergency Medical Services in a timely manner when they knew or ought to have known that their failure to do so would be severely harmful to Amber;
 - (c) They lack in reasonable care, skill, and ability to treat and care for Amber;
 - (d) They failed to adhere to the proper policies and procedures established for the care and treatment of patients including pediatric patients; and
 - (e) Such further and other particulars as may be advised prior to trial.
41. As a direct and foreseeable result of the negligence and breaches of the contractual, and common law duties of the Defendants, or one or more of them, Amber has suffered and will continue to suffer a devastating neurological injury which will result in a significant loss of earning capacity, an inability to form an interdependent relationship, expenses for her cost of care, expenses for her future cost of care, as well as an inability to perform valuable services such as housekeeping.
42. Mr. Singh and Mrs. Kaur have shouldered the burden of caring for a catastrophically injured child and will continue to shoulder that burden. In addition, Mr. Singh and Mrs. Kaur have suffered a loss of income and earning capacity.
43. The Plaintiffs plead and rely upon the doctrines of informed consent, failure to disclose, and breach of contract.

44. The Plaintiff, Her Majesty the Queen in Right of Alberta, claims for the cost of health services provided to Amber, or which will likely be provided to Amber in the future for the injuries suffered as a result of the wrongful acts or omission of the Defendants as alleged herein, pursuant to the *Crown's Right of Recovery Act*, SA 2009, c C-35.

Remedy sought:

45. The Plaintiffs claim:

As regards to the Infant Plaintiff, Amber Athwal:

- (a) General damages for pain, suffering and loss of enjoyment of life in the amount of \$400,000.00;
- (b) Damages for loss of income, loss of earning capacity and competitive advantage, cost of care, future cost of care, loss of ability to perform valuable services such as housekeeping, loss of interdependent relationship, and gross-up in the sum of \$20,000,000.00;
- (c) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1;
- (d) Costs; and
- (e) Such further and other relief as this Honourable Court deems just.

As regards to the Infant Plaintiff, Anahat Athwal:

- (a) General damages of \$100,000.00;
- (b) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, C. J-1;
- (c) Costs; and
- (d) Such further and other relief as this Honourable Court deems just.

As regards to Mr. Singh and Mrs. Kaur:

- (a) General damages of \$500,000.00 each;
- (b) Damages for loss of income and loss of income earning capacity in the sum of \$5,000,000;
- (c) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, C. J-1;
- (d) Costs; and
- (e) Such further and other relief as this Honourable Court deems just.

As regards to Her Majesty the Queen in Right of Alberta:

- (a) Damages for the cost of health services provided or to be provided to the infant Plaintiff, Amber Athwal, to date, plus the costs of health services thereafter, full particulars of which will be proven at the trial of this action;
- (b) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, C. J-1;
- (c) Costs; and
- (d) Such further and other relief as this Honourable Court deems just.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiffs' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiffs against you