STATE OF MAINE, OXFORD, SS		SUPERIOR COURT CIVIL ACTION DOCKET NO.:
LYNN RATHBUN, Plaintiff v. STEPHENS MEMORIAL HOSPITAL, Defendant	* * * * * * * * * * * *	**COMPLAINT**

NOW COMES Plaintiff, Lynn Rathbun, and states as follows:

Parties

1. Plaintiff Lynn Rathbun is a resident of the Town of Norway, County of Oxford, State of Maine.

2. Defendant Stephens Memorial Hospital (SMH) is a registered Maine nonprofit corporation doing business in the Town of Norway, County of Oxford, State of Maine.

System Failure, Agency, Direct and Vicarious Liability

3. Like any corporation, SMH acts through its employees and its agents, including medical doctors, mid-level providers, physical and occupational therapists, dieticians, technicians, nurses and other staff and personnel who combine to create a system of health-care delivery to a patient.

4. Some of these hospital staff and personnel are required to document their actions in the patient's medical chart, and therefore can be identified in the chart; others are not required to document their actions, but their participation and involvement in the system of medical care may nonetheless be critical to meeting the standard of reasonable care. All references to SMH

within this Complaint are intended to be inclusive of all employees or agents of the hospital—whether specifically identified in the medical chart or not; or specifically identified by name in this Complaint or not—who participated in and collectively comprised the system of medical care relied upon by Plaintiff while she was admitted to the hospital, and which Plaintiff alleges, through this Complaint, failed to comply with reasonable standards for delivery of medical care in a hospital-based setting.

5. Plaintiff alleges that each and every person involved in the system of medical care upon which she relied while she was treated at Defendant's hospital was, if not a W-2 employee, an actual or implied agent of the hospital, because each person had authority conferred by the hospital to participate in Plaintiff's medical care while she was at the hospital and Plaintiff reasonably believed and relied upon the belief that SMH would appropriately select, in both quality and quantity, sufficient personnel with the necessary qualifications, experience, training and supervision to fulfill his or her role within the system of medical care, such that the system as a whole was safe, met the needs of Plaintiff as a patient and thus complied with the standard of reasonable medical care expected of a hospital like SMH.

6. In this Complaint, Plaintiff specifically contends that SMH was <u>directly</u> negligent based upon the hospital's negligent hiring, training, staffing, supervision, policies, communication, documentation, medical record-keeping, culture and systems, as well as <u>vicariously liable</u> for the negligence of each and every one of its personnel whose conduct, either individually or in combination with other personnel, contributed to the failure of such individual(s) and the system to meet the standard of reasonable care to Plaintiff.

Facts

7. On June 24, 2019, Lynn Rathbun underwent a planned laparoscopic hysterectomy with bilateral salpingectomy and cystoscopy, which due to complications during surgery was changed to an abdominal hysterectomy.

8. SMH's employee or agent, Dr. Jeannette Andrews, D.O., performed this procedure, along with other providers, nurses and staff support provided by SMH.

9. An essential part of any surgery requires that no foreign object used as part of the surgery be left inside the patient when the surgery is concluded. Allowing a foreign object to remain in the patient causes numerous potential complications and risks to the patient, including the need for additional surgery to evacuate the foreign object, bleeding, infection and damage to internal organs, nerves, and other structures. Allowing foreign objects to remain inside a patient may result in significant injury or death to the patient.

10. As a result, all surgeons and hospitals are required to have adequate training and systems to prevent retained foreign objects in surgery. This includes compiling a detailed listing of items used in surgery and confirming that all such items are present and accounted for after the procedure ensuring that no foreign object is missing and retained in the patient.

11. In this case, during the hysterectomy, Defendant left a retained Rumi Koh cup in Lynn's vaginal opening.

12. Post-operatively, Lynn experienced severe gas pains and was not able to void.

13. Lynn was discharged home on June 25, 2019.

14. On July 8, 2019, Lynn had a post-operative follow-up with Dr. Andrews. Lynn reported a feeling of vaginal fullness and tenderness in her lower abdomen.

15. Dr. Andrews told Lynn that she was constipated and recommended that she try a stool softener.

16. On July 15, 2019, Lynn had another follow-up with Dr. Andrews wherein she reported pain, pressure, bleeding and discharge

17. On July 26, 2019, Lynn reported having pain with urination. She was tested for a UTI at Stephens Memorial Hospital, which resulted negative.

18. On July 30, 2019, Lynn again followed up with Dr. Andrews. Lynn reported ongoing pelvic fullness, pressure (rectal and vaginal), blockage with attempted bowel movement, pain with urination, tailbone pain and the inability to walk more than ½ mile due to pain.

19. Dr. Andrews performed a physical exam and was able to visualize the retained object in Lynn's vaginal opening.

20. Due to Lynn's pain and discomfort, Dr. Andrews performed urgent surgery to remove the retained object.

21. In addition to the upset and pain from an unplanned second surgery, the retained object has caused Lynn ongoing pain and required extensive and invasive ongoing care.

22. On October 3, 2019, Dr. Kathleen Martin at St. Mary's Women's Health Associates discussed with Lynn the possibility that she suffered pudendal nerve damage and discussed the need for further evaluation, possible pudendal nerve block and prescription options for pain control.

23. On October 24, 2019, Lynn began seeing physical therapist Jill Cramp at Select Physical Therapy for pelvic floor therapy twice weekly. Lynn continued this regimen through March 2020, when in-person care was discontinued in light of the COVID-19 pandemic. Lynn did

continue care via telemedicine and at-home therapy techniques until she was able to resume in-person care in July 2020.

24. In February 2020, Dr. Martin prescribed a compound cream of ketamine, gabapentin, amitriptyline and estrogen, and Lynn struggled with the powerful side effects of similar oral pain and muscle relief medications.

25. Dr. Martin referred Lynn to Dr. Mark Conway at St. Joseph's OB/GYN in Merrimack, New Hampshire.

26. On April 9, 2020, Dr. Conway diagnosed Lynn with pudendal neuralgia with myofascial pain and pelvic floor hypertonus with scar tissue restriction at the vaginal apex. He presented the possible option of a series of pudendal nerve blocks or pudendal nerve decompression, although also explaining that such treatment carried with it risks. Dr. Conway later discussed Lynn's case with physical therapist Elizabeth Akincilar at Pelvic Health & Rehabilitation Center, and decided instead to advise physical therapy as the first-line treatment.

27. Dr. Conway referred Lynn to physical therapy. Physical therapist Akincilar speculated that the nerve damage was the result of stretch injury from either surgery and that Lynn's comorbidities of fibromyalgia and chronic pain syndrome made Lynn's central nerve system more sensitive to the damage caused by the retained object.

Cause of Action – Professional Negligence

28. Plaintiff re-alleges all of the preceding allegations as if stated fully herein.

29. SMH (as defined above) was negligent in the care provided to Plaintiff Lynn Rathbun. The negligence included, but was not limited to, leaving a Rumi Koh cup in Lynn's vaginal opening at the conclusion of her June 24, 2019 surgery (a CMS "Never Event"); failing to take the required precautionary steps meant to prevent such retention; and failing to promptly

identify and remove the retained foreign object, resulting in significant and needless post-operative complications, pain and suffering and necessitating an additional surgical procedure and significant additional care.

30. SMH is directly negligent and by operation of law vicariously liable for the acts and omissions of its agents and employees, including without limitation Dr. Andrews.

31. As a direct and proximate result of the breach of the standard of care of SMH, Lynn has suffered damages including, but not limited to, medical expenses, pain, suffering and loss of enjoyment of life, all of which are ongoing and permanent in nature.

Dated: January 12, 2022

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