

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR MIAMI
DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.:

GRACIELA GOMEZ McCALLUM,

Plaintiff,

v.

JOSE L. MARQUEZ, M.D., TENET
FLORIDA PHYSICIAN SERVICES, LLC, a
Florida limited liability company, PETER V.
GARCIA, M.D. and PETER V. GARCIA,
M.D., P.A., a Florida corporation,

Defendants.

COMPLAINT FOR DAMAGES

The Plaintiff, GRACIELA GOMEZ McCALLUM, sues the Defendants, JOSE L. MARQUEZ, M.D., TENET FLORIDA PHYSICIAN SERVICES, LLC, PETER V. GARCIA, M.D. and PETER V. GARCIA, M.D., P.A. and alleges as follows:

1. This is a medical negligence case in which the damages at issue are more than Fifteen Thousand (\$15,000.00) Dollars exclusive of costs, interest and attorney's fees.
2. At all times material hereto the Plaintiff, GRACIELA GOMEZ McCALLUM, was and is a resident of Miami-Dade County, Florida.
3. At all times material hereto, Defendant, JOSE L. MARQUEZ, M.D. (hereinafter "Defendant MARQUEZ"), was a physician engaged in the specialty of cardiology, and was practicing in Miami-Dade County, Florida. At all times material hereto, the Defendant

MARQUEZ was a physician responsible for the care and treatment of the Plaintiff, GRACIELLA GOMEZ McCALLUM.

4. At all times material hereto, the Defendant, TENET FLORIDA PHYSICIAN SERVICES, LLC., (hereinafter the "Defendant TENET"), a Florida limited liability company, was doing business in Miami-Dade County, Florida and was the employer of the Defendant MARQUEZ. The Defendant MARQUEZ was, at all times material hereto, acting within the course and scope of his employment with Defendant TENET.

5. At all times material hereto, the Defendant, PETER V. GARCIA, M.D., (hereinafter the "Defendant GARCIA") was a physician engaged in the specialty of cardiology, and at the time of the incident was practicing in Miami-Dade County, Florida. At all times material hereto, the Defendant GARCIA was a physician responsible for the care and treatment of the Plaintiff, GRACIELLA GOMEZ McCALLUM.

6. At all times material hereto, the Defendant PETER V. GARCIA, M.D., P.A. (hereinafter the "Defendant GARCIA P.A."), a Florida corporation, was doing business in Miami-Dade County, Florida and was the employer of the Defendant GARCIA. The Defendant GARCIA was, at all times material hereto, acting within the course and scope of his employment with the Defendant GARCIA P.A.

7. All of the acts described herein took place in Miami-Dade County, Florida.

8. The Plaintiff has complied with all common law and statutory conditions precedent to bringing this action.

9. Undersigned counsel for the Plaintiff hereby certifies that a reasonable investigation has been undertaken in connection with this case and said investigation has given rise to a good faith belief that grounds exist for an action against each named defendant.

FACTS

10. In 2008 the Plaintiff, GRACIELA GOMEZ McCALLUM, came under the care of the Defendants MARQUEZ and GARCIA for cardiology care and treatment.

11. The Plaintiff was diagnosed with cardiomyopathy and chronic atrial fibrillation and was placed on Coumadin therapy and also underwent placement of a biventricular automatic implantable cardioverter defibrillator (ICD) in March of 2008.

12. The Plaintiff continued to be followed by the Defendants for her cardiology care and regular interrogations of her ICD.

13. The Plaintiff was continued on Coumadin therapy to prevent the formation of clots developing and posing a risk for ischemic stroke.

14. In March and May of 2013, the Defendants made the decision to discontinue the use of Coumadin therapy despite her increased risk for the development clots.

15. On October 18, 2013 the Plaintiff, GRACIELA GOMEZ McCALLUM, suffered a stroke that was caused by a clot that had traveled to her brain.

16. As a direct and proximate result of the negligence of the Defendants, described more fully below, the Plaintiff, GRACIELA GOMEZ McCALLUM, has suffered permanent and debilitating neurological damage that has left her with paralysis on the left side of her body and cognitive difficulties necessitating 24 hour attendant care.

COUNT I - NEGLIGENCE **DEFENDANT JOSE L. MARQUEZ, M.D.**

The Plaintiff realleges and incorporates all of the allegations contained in paragraphs (1) through (16) and further alleges as follows:

17. Defendant MARQUEZ had a duty to exercise reasonable care in his treatment of the Plaintiff.

18. Defendant MARQUEZ breached that duty and was negligent in his management and treatment of the Plaintiff, GRACIELA GOMEZ McCALLUM, in at least the following respects:

- (a) By discontinuing the use of the blood thinner Coumadin despite her history of chronic atrial fibrillation dating back numerous years;
- (b) Failing to confirm that Graciela Gomez McCallum was no longer experiencing atrial fibrillation by evaluating the reports from the download of her ICD; and
- (c) Failing to speak with her other treating Cardiologist Peter V. Garcia, M.D. regarding his findings and recommendations for continued management.

19. These acts and omissions were negligent and below the applicable standards of care for a physician practicing the specialty of cardiology in Miami-Dade County, Florida and similar medical communities, and were below the standard of care set forth in §766.102, Fla. Stat., below that level of care, skill and treatment which in light of all relevant circumstances, was considered appropriate by reasonably careful physicians in similar communities having the same facilities.

20. As a direct and proximate result of the negligence of Defendant MARQUEZ, the Plaintiff suffered the damages described in paragraphs (16) above and (29) below.

**COUNT II- VICARIOUS LIABILITY OF
DEFENDANT TENET FLORIDA PHYSICIAN SERVICES, LLC**

The Plaintiff realleges and incorporates all of the allegations contained in paragraphs (1) through (16) and further alleges as follows:

21. The Defendant TENET is liable to the Plaintiff for injuries sustained as a result of the negligence of the Defendant MARQUEZ in that, while providing care and treatment to the Plaintiff, GRACIELA GOMEZ McCALLUM, he was acting within the course and scope of his employment with the Defendant TENET.

22. As a direct and proximate result of the negligence of Defendants, the Plaintiff was caused to suffer the damages described in paragraphs (16) above and (29) below.

COUNT III - NEGLIGENCE
DEFENDANT PETER V. GARCIA, M.D.

The Plaintiff realleges and incorporates all of the allegations contained in paragraphs (1) through (16) and further alleges as follows:

23. Defendant GARCIA had a duty to exercise reasonable care in his treatment of the Plaintiff.

24. Defendant GARCIA breached that duty and was negligent in his management, care and treatment of the Plaintiff, GRACIELA GOMEZ McCALLUM, in at least the following respects:

- a) By incorrectly determining that she was no longer experiencing atrial fibrillation in March of 2013, a finding that directly contradicts the data downloaded from her implanted cardiac defibrillator (ICD); and
- b) Recommending that it was appropriate to discontinue the use of the blood thinner Coumadin;

25. These acts and omissions were negligent and below the applicable standards of care for a physician practicing the specialty of cardiology in Miami-Dade County, Florida and similar medical communities, and were below the standard of care set forth in §766.102, Fla. Stat., below that level of care, skill and treatment which in light of all relevant circumstances, was considered appropriate by reasonably careful physicians in similar communities having the same facilities.

26. As a direct and proximate result of the negligence of Defendant GARCIA, the Plaintiff suffered the damages described in paragraphs (16) above and (29) below.

**COUNT IV- VICARIOUS LIABILITY OF
DEFENDANT PETER V. GARCIA, M.D., P.A.**

The Plaintiff realleges and incorporates all of the allegations contained in paragraphs (1) through (16) and further alleges as follows:

27. The Defendant GARCIA P.A. is liable to the Plaintiff for injuries sustained as a result of the negligence of the Defendant GARCIA in that, while providing care and treatment to the Plaintiff, GRACIELA GOMEZ McCALLUM, he was acting within the course and scope of his employment with the Defendant TENET.

28. As a direct and proximate result of the negligence of Defendants, the Plaintiff was caused to suffer the damages described in paragraphs (16) above and (29) below.

DAMAGES

The Plaintiff realleges and incorporates all of the allegations contained in paragraphs (1) through (28) and further alleges as follows:

29. As a direct and proximate result of the Defendants negligence, the Plaintiff, GRACIELA GOMEZ McCALLUM suffered bodily injury which has resulted in pain and suffering, disability, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life, expense of hospitalization, and medical and attendant care and treatment and loss of earnings. These losses are permanent and the Plaintiff will suffer these losses in the future.

WHEREFORE, the Plaintiff, GRACIELA GOMEZ McCALLUM, demand judgments against the Defendants JOSE L. MARQUEZ, M.D., TENET FLORIDA PHYSICIAN SERVICES, LLC, PETER V. GARCIA, M.D. and PETER V. GARCIA, M.D., P.A., and all other relief deemed just and proper under the circumstances, and request trial by jury of all issues triable as of right by jury.

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DATED this 20th day of November, 2015.