

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO  <b>Court Address:</b> 1100 Judicial Center Dr. Brighton, Colorado 80601 303-659-1161	DATE FILED: June 2, 2017 3:59 PM FILING ID: 7B629F048BE38 CASE NUMBER: 2017CV30884
<b>Plaintiff:</b> CENTURA HEALTH CORPORATION; CATHOLIC HEALTH INITIATIVES COLORADO D/B/A ST. ANTHONY NORTH HEALTH CAMPUS  v.  <b>Defendant:</b> LISA MELODY FRENCH	<b>▲ COURT USE ONLY ▲</b>
Traci L. Van Pelt, Atty. No. 26483 David A. Belsheim, Atty. No 43767 McConnell Fleischner Houghtaling, LLC 4700 South Syracuse Street, Suite 200 Denver, CO 80237 Phone Number: (303) 480-0400 Fax Number: (303) 458-9520 <a href="mailto:tvanpelt@mfhlegal.com">tvanpelt@mfhlegal.com</a> <a href="mailto:dbelsheim@mfhlegal.com">dbelsheim@mfhlegal.com</a> Attorneys for Plaintiffs	Case No.:  Division:
<b>COMPLAINT</b>	

Plaintiffs Centura Health Corporation and Catholic Health Initiatives Colorado, doing business as St. Anthony North Health Campus (together may be referred to as "Plaintiffs" or the "Hospital"), through their attorneys, McConnell Fleischner Houghtaling, LLC, hereby files their Complaint against Lisa French.

**Parties**

1. Centura Health ("Centura") is a Colorado non-profit corporation with a principal place of business at 9100 E. Mineral Circle, Centennial, Colorado 80112.

2. Catholic Health Initiatives Colorado, doing business as St. Anthony North Health Campus (the "Hospital") is a Colorado non-profit corporation with a principal place of business at 14300 Orchard Parkway, Westminster CO, 80023.

3. St. Anthony North Health Campus is managed and operated by Centura Health and is one of fifteen (15) hospitals in the Centura Health network.

4. Lisa French ("Ms. French") is an adult resident of Adams County, Colorado and resides at 2538 East 127<sup>th</sup> Court, Thornton CO 80241.

### **Jurisdiction and Venue**

5. The Court has jurisdiction over the lawsuit because the amount in controversy, \$229,112.13, exceeds the minimum \$15,000 jurisdictional requirement for civil actions in district court pursuant to C.R.S. § 13-6-104.

6. Venue is proper in Adams County under C.R.C.P. 98(c)(1) because Ms. French signed two contracts in Adams County and pursuant to those contracts, sought and received medical care and treatment in Adams County. The contracts between Plaintiffs and Ms. French were to be performed in Adams County. Ms. French resides in Adams County, Colorado.

### **Facts**

#### **A. Ms. French's Medical Treatment and Health Insurance**

7. On June 2, 2014, Ms. French underwent a surgical procedure commonly referred to as a "spinal fusion" to treat lower back pain.

8. Ms. French made the decision to undergo "spinal fusion" surgery. It was not performed as an emergent procedure. It is considered elective surgery.

9. Ms. French has health insurance through her employer. In 2014, Ms. French's employer was MYR Group, Inc., or a subsidiary of MYR Group, Inc. In 2014, MYR Group, Inc. had a self-funded ERISA plan (the "Plan") that provided health insurance for Ms. French.

10. In May and June of 2014, Ms. French presented her insurance card to representatives of Centura and St. Anthony North Health Campus. The insurance card identified Professional Benefit Administrators, Inc. ("PBA") as her "insurer" or Plan's "administrator" and provided "Family" coverage under the medical plan identified as PHCS. A copy of her insurance card is attached as Exhibit 1 to this Complaint.

11. On May 29, 2014, Ms. French was provided an estimate of Hospital charges for her scheduled June 2, 2014 surgery. The estimate was made using medical plan "PHCS Primary" instead of "PHCS Physicians Only." Ms. French's estimated patient responsibility was \$1,336.90. However, the estimate advised Ms. French that there may be significant variations between the estimate provided and actual charges, and that all claims would be subject to review by applicable insurers and subject to determinations of eligibility by the insurers.

12. St. Anthony North Health Campus did not – in 2014 – and does not – currently -- have a provider agreement or any other contract with the Plan, MYR Group, Professional Benefit Administrators ("PBA") or ELAP Services, LLC ("ELAP").

**B. The Patient-Hospital Contract**

13. On May 27, 2014 – six days before her scheduled surgery - Ms. French visited St. Anthony North Health Campus for pre-admission testing and services and registered at the time of her visit with the Hospital.

14. On May 27, 2014, Ms. French signed a contract with Centura, the “Patient-Hospital Contract.” The Patient-Hospital Contract Ms. French signed on May 27, 2014 is attached as Exhibit 2.

15. On May 27, 2014, Ms. French signed the “Patient Bill of Rights.” The Patient Bill of Rights Ms. French signed on May 27, 2014 is attached as Exhibit 3.

16. On May 27, 2014, Ms. French was given copies of the Patient-Hospital Contract and the Patient Bill of Rights to take home.

17. On June 2, 2014, Ms. French arrived at St. Anthony North Health Campus for her spinal fusion procedure.

18. On June 2, 2014, Ms. French was again provided with copies of the Patient-Hospital Contract and Patient Bill of Rights. On June 2, 2014, Ms. French again signed both the Patient-Hospital Contract and the Patient Bill of Rights. (Exhibits 4 and 5).

19. The Contracts Ms. French signed – on May 27 and June 2 – are identical.

They state, in pertinent part:

1. CONSENT FOR HEALTH CARE SERVICES. I voluntarily consent to and authorize the rendering of health care services, including routine hospital services, diagnostic procedures, intravenous therapy, medications, injections, laboratory services and other services or procedures ... **I understand that my rights and responsibilities with regard to my care are described in more detail on the Patient Bill of Rights Document.** (Emphasis in original.)

2. INDEPENDENT PRACTITIONERS. I understand that many professionals who provide care to me in the hospital are not employees or agents of the Hospital.... **I understand that, in some cases, these professional may not**

be participating providers under my insurance plan. The Hospital recognizes it can be both frustrating and costly because I may be responsible for out of network costs or other costs because the professional does not have a contract with my insurance plan. I understand it is my responsibility to verify whether professional providing my care are participating under my insurance coverage. (Emphasis in original.)

[¶]

5. FINANCIAL AGREEMENT. I understand that there is no guarantee of reimbursement or payment from any insurance company or other payor. I acknowledge full financial responsibility for, and agree to pay, all charges of the Hospital and of physicians rendering services not otherwise paid by my health insurance or other payor. Estimated patient responsibility is due at the time of service or following the medical screening exam. Any remaining charges are and payable upon receipt of the bill.... If payment is not made within 90 days after receipt of the bill, a delinquent charge or interest at the maximum legal rate may be added. I agree to pay all reasonable legal expenses necessary for the collection of any debt. I acknowledge and understand that any refund that I may be owed will first be applied to any outstanding balance, and the remainder will be forwarded to the address on file with the Hospital. **I consent to be contacted by regular mail, by e-mail or by telephone (including cell phone number) regarding any matter related to my account by the Hospital or any entity to which the Hospital assigns my account...** (Emphasis in original.)

[¶]

7. ASSIGNMENT FOR DIRECT PAYMENT. I authorize and direct payment of any insurance or healthcare benefits otherwise payable to me for health care services or goods be made directly to the Hospital and my physicians.... I understand that **I am financially responsible to the Hospital or my physicians for charges not covered or paid pursuant to this authorization.** (Emphasis added.)

[¶]

10. ACKNOWLEDGEMENT OF PATIENT RIGHTS AND RESPONSIBILITIES. I acknowledge that I understand that the Patient Bill of Rights document includes information on my rights and responsibilities as a patient, as well as information about how to bring concerns or grievances to the appropriate parties. **I agree to accept the consequences if I disregard my rights and responsibilities.** (Emphasis added.)

I ACKNOWLEDGE THAT I HAVE READ THIS FORM AND UNDERSTAND ITS CONTENTS AND HAVE RECEIVED A COPY HEREOF. I FURTHER ACKNOWLEDGE THAT I AM THE PATIENT, OR PERSON DULY AUTHORIZED EITHER BY THE PATIENT OR OTHERWISE, TO SIGN THIS AGREEMENT, CONSENT TO, AND ACCEPT ITS TERMS. (Emphasis in original.)

20. The Patient Rights and Responsibilities signed by Ms. French on May 27 and June 2, 2014, are identical and state, in pertinent part:

**You have the right to...**

1. Be informed of your patient rights in advance of receiving or discontinuing care when possible.

[¶]

27. Request and receive, prior to the initiation of non-emergency care or treatment, the charges (or estimate of charges) for routine, usual, and customary services and any co-payment, deductible or non-covered charges, as well as the facility's general billing procedures including receipt and explanation of an itemized bill. This right is honored regardless of the source(s) of payment.

**Patient Responsibilities:  
You have the responsibility to...**

1. Ask questions and promptly voice concerns.

[¶]

10. Understand and honor your financial obligations related to your care, including your own insurance coverage. (Emphasis added.)

21. Ms. French's surgical procedure began on June 2, 2014, after she signed the Patient-Hospital Contract and the Patient Bill of Rights for the second time. She spent three nights in the Hospital and was discharged on June 6, 2014.

22. No one at Centura or St. Anthony North Health Campus made any oral representations to Ms. French that she would not be responsible for her Hospital bill, nor did anyone make any oral representations to her regarding the price she would be charged.

23. The Patient-Hospital Contract obligates Ms. French, personally, to pay Centura/St. Anthony North Health Campus charges that were not paid by her insurer.

**C. Centura's Chargemaster**

24. St. Anthony North Health Campus maintains a comprehensive listing of its charges for billable services – known as the “chargemaster.” The chargemaster rates are pre-determined rates for the medical services provided to patients.

25. The same chargemaster is used for all patients at St. Anthony North Health Campus. An estimate of the charges for a particular procedure using the chargemaster rates is available on patient request. The Patient Bill of Rights disclosed that Ms. French had the right to request and receive the estimate of charges for routine, usual, and customary services and any co-payment, deductible or non-covered charges, as well as the facility's general billing procedures including receipt and explanation of an itemized bill.

26. Pursuant to the Patient-Hospital Contracts, St. Anthony North Health Campus billed Ms. French for the services provided to her. Ms. French was provided with itemized Hospital bills (“the Bills”) for her services. Copies of the Bills are attached as Exhibit 6.

27. The prices reflected on the Bills were calculated using St. Anthony North Health Campus's hospital computer billing system and reflect the market standard rate St. Anthony North Health Campus charges all patients based upon the chargemaster. Each line of the bill included a code with a specific pre-determined charge for the service provided. These rates were established before Ms. French's procedure and are uniform for patients at St. Anthony North Health Campus. These rates are the pre-determined rates based upon the chargemaster.

28. Based upon the chargemaster rates, St. Anthony North Health Campus charged Ms. French \$2,379.34 for the services provided on May 27, 2014 and \$301,330.14 for the services provided on June 2-6, 2014. Ms. French paid \$1,000 on May 30, 2014. Following an "audit" by ELAP, Ms. French's health insurance Plan paid \$550.53 for the May 27, 2014 treatment and \$73,046.82 for the June 2, 2014 surgery.

29. The outstanding balance due pursuant to the Patient-Hospital Contracts is \$229,112.13, an amount ascertained by adding pre-determined rates for the medical services provided to Ms. French.

**D. St. Anthony North Health Campus/Centura's Efforts to Collect**

30. Since 2014, St. Anthony North Health Campus/Centura made multiple attempts to collect the outstanding balance due pursuant to the Patient-Hospital Contracts. St. Anthony North Health Campus/Centura provided Ms. French with notice of her debt prior to assigning the debt to a licensed collection agency.

31. St. Anthony North Health Campus/Centura has incurred, and continues to incur, legal expenses for the collection of Ms. French's outstanding balance.



**E. ELAP's Business Model**

32. ELAP offers a program for employer-sponsored health plans. ELAP advertises that its program significantly lowers a company's health care costs by paying a medical provider or hospital's "actual costs" plus a "fair margin" instead of the full amount of charges or a negotiated contractual rate.

33. ELAP retained the law firm of Lewis, Brisbois, Bisgaard & Smith, LLP ("Lewis Brisbois"). Lewis Brisbois jointly represented Ms. French, ELAP, MYR Group, PBA and the Plan.

34. Lewis Brisbois attorneys, on behalf of Ms. French and ELAP, sent multiple letters to St. Anthony North Health Campus/Centura challenging the validity of the Patient-Hospital Contracts, the reasonableness of Ms. French's charges, and the outstanding balance due.

35. The arguments presented by Ms. French's and ELAP's attorneys mirror ELAP's advertised business model for paying a hospital's "actual cost" plus a "fair margin."

36. There is substantial identity of interest between ELAP and Ms. French. ELAP, through its representation by Ms. French's lawyers, is virtually represented. Ms. French and ELAP's interests are the same.

37. ELAP is in privity with Ms. French.

**First Claim for Relief**  
**(Request for Declaratory Judgment)**

38. Plaintiffs incorporate by reference the allegations of paragraphs 1-37 as if fully set forth herein.

39. This Court has the power to declare and determine any question of construction or validity of the Patient-Hospital Contracts and has the power to declare the rights, status and other legal relations between the parties herein whether or not any other further relief is or could be claimed. C.R.S. § 13-51-105, et seq.; C.R.C.P. 57.

40. Plaintiffs and Ms. French entered into contracts for services, the Patient-Hospital Contracts, on May 27 and June 2, 2014 as provided above.

41. Pursuant to the terms of the Patient-Hospital Contracts, Ms. French agreed to pay “all charges of the Hospital not otherwise paid by her health insurance or other payor,” interest at the “maximum legal rate,” and to pay “reasonable legal expenses necessary for the collection of any debt.”

42. The prices reflected on Ms. French’s Bills were calculated using St. Anthony North Health Campus’s hospital computer billing system and were based on the chargemaster rates, which are uniform, pre-determined rates.

43. The Patient-Hospital Contracts incorporate the Hospital’s chargemaster rates, which are pre-calculated by operation of law, for the price of services and supplies provided to patients. *See Portercare v. Lego*, 286 P.3d 525, 529 (Colo. 2012).

44. Because the Patient-Hospital Contracts incorporate an agreement to pay pre-calculated chargemaster rates, Ms. French cannot, as a matter of law, challenge the reasonableness of these rates. *See Portercare v. Lego*, 2009 CA0900, at pp. 3-4 (2013) (The Court of Appeals’ opinion is unpublished and is attached as Exhibit 7).

45. Therefore, Plaintiffs respectfully request the Court for a declaration as follows:

- a. The Patient-Hospital Contracts incorporate chargemaster rates for the price of services and supplies provided to patients, including Ms. French,
- b. A patient's promise to pay "all charges of the Hospital" is not an indefinite term and refers to the Hospital's prices set forth in its chargemaster,
- c. The phrase "all charges of the hospital" unambiguously refers to the Hospital's chargemaster and is not an open price term,
- d. The terms of the Patient-Hospital Contracts require Ms. French to pay all charges of the Hospital not otherwise paid by her health insurance or other payor, or \$229,112.13, interest at the maximum legal rate, and to pay reasonable legal expenses necessary for the collection of any debt.

**Second Claim for Relief**  
**(Breach of Contract)**

46. Plaintiffs incorporate by reference the allegations of paragraphs 1-45 as if fully set forth herein.

47. On May 27 and June 2, 2014, Ms. French entered into contracts, the Patient-Hospital Contracts, with Plaintiffs whereby Ms. French agreed to pay "all charges of the Hospital not otherwise paid by her health insurance or other payor," interest at the "maximum legal rate," and to pay "all reasonable legal expenses necessary for the collection of any debt" in return for medical care and treatment.

48. Plaintiffs substantially performed their part of the contracts by providing Ms. French with medical care and treatment pursuant to said contracts.

49. Ms. French failed to pay "all charges of the Hospital not otherwise paid by her health insurance or other payer," in the amount of \$229,112.13 for the care and treatment she received at the Hospital on May 27 and June 2, 2014.

50. Ms. French has materially breached her contracts with Plaintiffs. She has not paid all charges of the Hospital not paid by her health insurance or other payor as promised. She has not paid the reasonable legal expenses necessary for the collection of her debt.

**Third Claim for Relief**  
**(Claim on Account Stated)**

51. Plaintiffs incorporate by reference the allegations of paragraphs 1-48 as if fully set forth herein.

52. Plaintiffs presented Ms. French with statements of the balance owed by Ms. French to Plaintiffs. The amounts on the statements totaled \$229,112.13.

53. Plaintiffs and Ms. French have expressly or impliedly agreed that the amount owed was correct and accurately explained on the statements presented to Ms. French.

54. Ms. French currently owes Plaintiffs the amounts listed, \$229,112.13, on the statements presented to her.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in its favor and against Defendant Lisa French as follows:

A. For a declaratory judgment that:

- a. The Patient-Hospital Contracts incorporate chargemaster rates for the price of services and supplies provided to patients, including Ms. French,

- b. A patient's promise to pay "all charges of the Hospital" is not an indefinite term and refers to the Hospital's prices set forth in its chargemaster,
  - c. The phrase "all charges of the hospital" unambiguously refers to the Hospital's chargemaster and is not an open price term,
  - d. The terms of the Patient-Hospital Contracts require Ms. French to pay all charges of the Hospital not otherwise paid by her health insurance or other payor, or \$15,987.80, interest at the maximum legal rate, and to pay reasonable legal expenses necessary for the collection of any debt.
- B. For Plaintiffs' contractual damages of \$229,112.13, interest as permitted by law from the date of occurrence to the date of entry of judgment, as well as post-judgment interest until paid;
- C. For Plaintiffs' costs of suit and attorney fees as permitted by any applicable statute, law or contract;
- D. For any other relief that this Court deems just and proper under the circumstances.

Respectfully submitted this 2nd day of June, 2017.

McCONNELL FLEISCHNER HOUGHTALING, LLC

By: /s/ Traci L. Van Pelt  
Traci L. Van Pelt, Atty. No. 26483  
*Attorney for Plaintiffs Centura Health Corporation and St. Anthony*

