

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CASE NO. 3-12-cv-620-S



PLAINTIFF

v.

UNITED STATES OF AMERICA

DEFENDANT

* * * * *

COMPLAINT FOR DAMAGES UNDER THE FEDERAL TORT CLAIMS ACT

Plaintiff, Michael D. Nash (“Nash”), by counsel, for his Complaint against the Defendant, United States of America, states as follows:

INTRODUCTION

1. This is an action against the Defendant United States of America under the Federal Tort Claims Act, (28 U.S.C. §2671, *et seq.*) and 28 U.S.C. §1346(b)(1), for negligence and professional malpractice in connection with medical care provided to Plaintiff Nash by the Department of Veterans Affairs at the Lexington Veterans Affairs Medical Center.

2. The claims herein are brought against the Defendant pursuant to the Federal Tort Claims Act (28 U.S.C. §2671, *et seq.*) and 28 U.S.C. §1346(b)(1), for money damages as compensation for personal injuries caused by the Defendant’s negligence.

3. Plaintiff Nash has fully complied with the provisions of 28 U.S.C. § 2675 of the Federal Tort Claims Act. *Standard Form 95 attached as Exhibit 1.*

4. This suit has been timely filed, in that Plaintiff Nash timely served notice of his claim on both the Department of Veterans Affairs and the United States Department of Justice

less than two years after the incident forming the basis of this suit.

5. Plaintiff Nash is now filing this Complaint pursuant to 28 U.S.C. § 2401(b) after receiving the Department of Veterans Affairs' July 9, 2012 notice of "final denial of administrative claim." *Administrative Tort Claim Denial Letter attached as Exhibit 2.*

PARTIES, JURISDICTION AND VENUE

6. Plaintiff Nash is, and at all times relevant hereto was, a resident of Jefferson County, Kentucky.

7. Defendant United States of America, through its agency, the Department of Veterans Affairs, operates the Veterans Affairs Medical Center located at [REDACTED]

8. Defendant United States of America, including its directors, officers, operators, administrators, employees, agents, and staff at the Lexington VA Medical Center are hereinafter collectively referred to as "Lexington VA Medical Center."

9. At all times relevant to this Complaint, the Lexington VA Medical Center held themselves out to the Plaintiff and eligible beneficiaries, as a provider of high quality health care services, with the expertise necessary to maintain the health and safety of patients like the Plaintiff.

10. At all times relevant to this Complaint, the directors, officers, operators, administrators, employees, agents, and staff were employed by and/or acting on behalf of the Defendant. Furthermore, the Defendant is responsible for the negligent acts of their employees and agents under respondeat superior.

11. Jurisdiction is proper under 28 U.S.C. § 1346(b)(1).

12. Venue is proper under 28 U.S.C. § 1402(b) in that all, or a substantial part of the

acts and omissions forming the basis of these claims occurred in the Western District of Kentucky.

FACTUAL ALLEGATIONS

13. On or about October 28, 2010, Mr. Nash underwent a malleable penile prosthesis placement procedure and circumcision at the Lexington VA Medical Center.

14. During the course of Mr. Nash's post-operative hospital stay, Lexington VA Medical Center staff applied ice packs to Mr. Nash's penile area to reduce pain and swelling.

15. Upon information and belief, Lexington VA Medical Center staff allowed the aforementioned ice packs to remain on Mr. Nash's penile area for approximately 19 hours, in violation of the standard of care.

16. As a result of the Lexington VA Medical Center's negligence, Mr. Nash experienced severe frostbite on his penis, which led to gangrene of his glans penis.

17. As a result of the gangrene, on or around November 18, 2010, Mr. Nash underwent a partial penectomy, in which a five (5) inch section of his penis was removed. Mr. Nash continues to receive medical treatment for his condition.

18. Additionally, Mr. Nash has endured significant mental and emotional distress and trauma as a result of his injuries.

CAUSES OF ACTION

COUNT I – NEGLIGENCE

19. Plaintiff Nash realleges and reincorporates each and every allegation above as if fully set forth herein.

20. The Defendant had a duty to provide ordinary care, and to exercise that standard and degree of care and skill required of health care providers, consistent with the expertise that the Defendant presented to the community at large.

21. The Defendant breached its duty of care to Mr. Nash.

22. At all times relevant to this Complaint, the Defendant had a duty to hire competent operators, administrators, employees, agents and staff in order to meet its standards of quality of care of its patients, including Mr. Nash. The Defendant knew, or should have known, that the medical staff of the facility was not properly trained, and/or supervised, in a manner necessary to provide a level of care for Mr. Nash that met all applicable legal requirements; that demonstrated the standard and degree of care and skill required of competent health care providers; and was consistent with the expertise that the Defendant presented to the community at large.

23. The Defendant breached its duty by negligently hiring incompetent, inexperienced and/or unqualified operators, administrators, employees, agents and staff.

24. The Defendant had a duty to retain only competent and adequately trained operators, administrators, employees, agents and staff in order to meet its standards of quality of care of its patients, including Mr. Nash.

25. The Defendant breached its duty by negligently retaining incompetent, inexperienced, unqualified and/or inadequately trained operators, administrators, employees, agents and staff.

26. As a direct and proximate result of Defendant's negligence, Mr. Nash sustained serious and permanent personal injuries in and about his body; he has incurred medical expenses, and other damages, and will continue to incur medical expenses, and other damages in the future;

he was forced to endure pain, suffering and mental anguish, and will continue to endure pain, suffering, and mental anguish in the future; he has suffered a loss of the enjoyment of life, and will continue to suffer a loss of the enjoyment of life in the future; and he has lost wages, and will continue to lose wages in the future.

27. The acts and/or omissions set forth above would constitute a claim under the law of the State of Kentucky.

28. The Defendant is liable pursuant to 28 U.S.C. 1346(b)(1).

**COUNT II - VICARIOUS LIABILITY, RESPONDEAT SUPERIOR,
OSTENSIBLE AGENCY AND/OR AGENCY**

29. Plaintiff Nash realleges and reincorporates each and every allegation above as if fully set forth herein.

30. At all times relevant to this case, the directors, officers, operators, administrators, employees, agents, staff were employed by and/or acting on behalf of the Defendant.

31. At all relevant times to this Complaint, the directors, officers, operators, administrators, employees, agents and staff acted within their respective capacities and scopes of employment for the Defendant.

32. The directors, officers, operators, administrators, employees, agents and staff negligently and/or recklessly, directly and proximately caused personal injury to Mr. Nash, including both acts of omission and acts of commission.

33. As a direct and proximate result of Defendant's negligence, Mr. Nash sustained serious and permanent personal injuries in and about his body; he has incurred medical expenses, and other damages, and will continue to incur medical expenses, and other damages in the future; he was forced to endure pain, suffering and mental anguish, and will continue to endure pain, suffering, and mental anguish in the future; he has suffered a loss of the enjoyment of life, and

will continue to suffer a loss of the enjoyment of life in the future; and he has lost wages, and will continue to lose wages in the future.

34. The acts and/or omissions set forth above would constitute a claim under the law of the State of Kentucky.

35. The Defendant is liable pursuant to 28 U.S.C. 1346(b)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Michael D. Nash, does hereby pray that judgment be entered in his favor and against the Defendant as follows:

- 1) Medical expenses, lost wages, pain and suffering, future impairment, and loss of enjoyment of life totaling \$10,000,000.00; and
- 2) Costs and attorneys fees incurred in this civil action, together with such further and additional relief at law or in equity that this Court may deem proper.

Respectfully submitted,

