

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ASHLEY VAN PATTEN,

Plaintiff,

vs.

Civil No. 1:09-cv-0034 DJS/RLP

UNITED STATES OF AMERICA,

Defendants.

SECOND AMENDED COMPLAINT FOR NEGLIGENCE

Plaintiff, Ashley Van Patten, by her attorney, The Law Offices of Robert R. Cooper, by Ryan J. Villa, brings this Complaint for negligence against the United States of America. In support of this Complaint, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and the FTCA, 28 U.S.C. §§ 1346(b)(1), 2401(b) and 2671 *et seq.*
2. Venue is proper in this district as all the acts complained of occurred in New Mexico.

PARTIES

3. Plaintiff is a resident of the State of New Mexico.
4. Defendant, United States of America has deemed Rio Rancho Family Health Center (RRFHC) and its employees eligible for FTCA coverage pursuant to FSHCAA, 42 U.S.C. § 233.

FACTUAL BACKGROUND

5. Plaintiff presented at RRFHC on January 17, 2007, for an evaluation of her IUD, a birth control device.

6. Prior to the January appointment, Ms. Van Patten experienced discomfort from the IUD as the IUD string may have been too long. Accordingly, Ms. Van Patten arranged to have the strings shortened at RRFHC on January 17, 2007.

7. As Defendant's provider began the procedure, Ms. Van Patten felt the provider pull on the strings of the IUD. Ms. Van Patten felt a distinct pulling on the strings followed by a sharp pain in her uterus similar to a very strong menstrual cramp.

8. As that happened, the provider stated, "Uh oh, I accidentally pulled out your IUD. I gently tugged and out it came." She then explained, "I cut the string then went back and gently pulled and out it came. It must have not been in properly."

9. During the procedure, the IUD was removed. Plaintiff had not requested that the IUD be removed.

10. At this point, the provider advised that Ms. Van Patten needed to take a pregnancy test. Ms. Van Patten did, and the test was negative.

11. Defendant's provider offered a depo provera injection for birth control, but did not offer to insert another IUD.

12. Defendant's provider informed Ms. Van Patten that the shot would not be effective for two weeks, so she would have to use another form of contraception. Because Ms. Van Patten and her husband feared becoming pregnant during that two-week period, they abstained from having any intercourse.

13. At the time of the visit with Defendant RRFHC, Ms. Van Patten's IUD had been in place for approximately eight months.

14. The type of IUD Ms. Van Patten used, Mirena, can be expelled. This usually occurs within the first three to six months of insertion. When the IUD is being expelled, persons usually experience irregular bleeding, spotting or cramping. It is also more likely that a woman who has not had a child would expel the IUD.

15. Ms. Van Patten did not experience any irregular bleeding, spotting or cramping or any other problems during the entire eight-month period she had the IUD in, prior to the visit with Defendant RRFHC. Ms. Van Patten has had one child.

16. The pain Ms. Van Patten felt when Defendant's deemed employee was doing the procedure was consistent with the pain experienced when an IUD is intentionally removed.

17. After the removal, Ms. Van Patten experienced some bleeding and spotting.

18. Ms. Van Patten had another IUD inserted by a different healthcare provider on February 19, 2007. Because Defendant had removed the IUD, Ms. Van Patten and her husband, Peter Van Patten abstained from having sexual intercourse until after February 19, 2007.

MEDICAL NEGLIGENCE

19. Plaintiff incorporates paragraphs 1 through 18 as if fully set forth herein.

20. RRFHC providers had a duty to exercise that care ordinarily used by reasonably prudent and qualified healthcare providers in exercising care in providing birth control methods.

21. RRFHC providers failed to use ordinary and reasonable care in the care and treatment of Plaintiff.

22. The acts and omissions of Defendant as set forth above proximately caused Ms. Van Patten damages and injuries.

WHEREFORE, Plaintiff, Ashley Van Patten requests compensatory damages against the United States including loss of consortium for her and her husband, Peter Van Patten, together with all costs.

Respectfully submitted,

THE LAW OFFICE OF ROBERT R. COOPER

_____/S/_____
RYAN J. VILLA
Counsel for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2009, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Virgil Lewis
Assistant United States Attorney
Attorney for Defendants
P.O. Box 607
Albuquerque, NM 87103-0607

_____/S/_____
RYAN J. VILLA