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7 SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

8 [REDACTED], an individual, )

9 Plaintiff, )

No. )

10 vs. )

COMPLAINT FOR INJURIES AND  
DAMAGES

11 ALEXANDER ORTOLANO, MD, and )  
12 JANE DOE ORTOLANO, husband and wife )  
13 individually and on behalf of the marital )  
14 community composed thereof; and ARBOR )  
HEALTH CARE FOR WOMEN, PC, a )  
Washington State Corporation, )

[ ] ELECTING VOLUNTARY  
ARBITRATION

[X] DECLINING VOLUNTARY  
ARBITRATION

15 Defendants. )

16 COMES NOW the Plaintiff [REDACTED] by and through her attorney of record,  
17 Michael A. Maxwell of Maxwell Graham, P.S., and alleges the following for cause of action:

18 **I. PARTIES, JURISDICTION AND VENUE**

19 1.1 Plaintiff is a resident of Benton County, Washington.

20 1.2 Defendant Alexander Ortolano, MD, is a resident of Benton County,  
21 Washington.

22 1.3 It is not known whether Defendant Alexander Ortolano is married, the name  
23 Jane Doe Ortolano is added, should he be so.

24 1.4 Defendant Arbor Health Care for Women, PC, is a Washington State  
25 Corporation domiciled in Benton County.  
26

1.5 The Benton County Superior Court has subject matter jurisdiction over this action, has personal jurisdiction over the parties, and is an appropriate venue for this action.

## II. FACTS

2.1 At all times material to the matters complained of herein, Defendant Ortolano was acting within the scope of his employment with Defendant Arbor Health Care for Women, PC.

2.2 In January 2013 Plaintiff [REDACTED] established care with Defendant Ortolano for obstetrical care.

2.3 On March 07, 2013, Plaintiff [REDACTED] delivered her daughter at Kaldec Hospital, attended by Dr. Ortolano.

2.4 During the delivery of the placenta, Defendant Ortolano was observed falling asleep.

2.5 Upon waking up Defendant Ortolano tugged on the umbilical cord repeatedly. Eventually he removed the placenta but failed to observe that the placenta was not whole and intact which indicated that part of the placenta had been retained in Plaintiff [REDACTED] uterus.

2.6 In tugging on the umbilical cord and failing to note that the placenta was not whole and therefore a portion had been retained in Plaintiff [REDACTED] uterus, Defendant Ortolano failed to exercise the degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances.

2.7 After medication prescribed to expel the retained placenta, Plaintiff underwent dilation and curettage surgery to remove the retained placenta on March 27, 2013.

2.8 After the dilation and curettage surgery, Plaintiff ██████ consulted with Defendant Ortolano regarding tubal ligation as a means of permanent birth control, Defendant Ortolano instead recommended Plaintiff ██████ have Essure coils placed in her fallopian tubes, claiming placing the Essure coils would be a less invasive procedure.

1           2.9     When recommending the Essure procedure, Defendant Ortolano failed to  
2 inquire as to whether Plaintiff [REDACTED] had a sensitivity to nickel, a serious contraindication for  
3 Essure.

4           2.10   By failing to ascertain whether Plaintiff [REDACTED] was sensitive to nickel before  
5 recommending and implanting the Essure device, Defendant Ortolano failed to exercise the  
6 degree of care, skill, and learning expected of a reasonably prudent health care provider at that  
7 time in the profession or class to which he or she belongs, in the state of Washington, acting in  
8 the same or similar circumstances.

9           2.11   Defendant Ortolano scheduled Plaintiff [REDACTED] for the Essure procedure on  
10 April 24, 2013 four weeks after the dilation and curettage procedure for the retained placenta.

11          2.12   By failing to wait six weeks after the dilation and curettage procedure to  
12 implant the Essure device in Plaintiff [REDACTED], Defendant Ortolano failed to exercise the degree  
13 of care, skill, and learning expected of a reasonably prudent health care provider at that time  
14 in the profession or class to which he or she belongs, in the state of Washington, acting in the  
15 same or similar circumstances.

16          2.13   On April 24, 2013 Dr. Ortolano performed the Essure implantation on Plaintiff  
17 [REDACTED]. Dr. Ortolano first implanted an Essure coil in the right fallopian tube without incident.  
18 During the implantation of the left coil, Dr. Ortolano struggled to place the coil in the left tube,  
19 Plaintiff [REDACTED] found the procedure to be extraordinarily painful and requested Defendant  
20 Ortolano stop the procedure.

21          2.14   Defendant Ortolano and his staff advised Plaintiff [REDACTED] that procedure  
22 should not be stopped. Dr. Ortolano's staff brought Plaintiff [REDACTED] father from the waiting  
23 room to the procedure room to comfort Plaintiff [REDACTED] and resumed the procedure.

24          2.15   By continuing to advance the Essure device against excessive resistance and  
25 after complaints of excessive pain by Plaintiff [REDACTED], Defendant Ortolano failed to exercise  
26 the degree of care, skill, and learning expected of a reasonably prudent health care provider at

1 that time in the profession or class to which he or she belongs, in the state of Washington,  
2 acting in the same or similar circumstances.

3 2.16 On September 10, 2013 Plaintiff [REDACTED] underwent a routine  
4 hysterosalpingogram to evaluate whether the Essure devices had sealed both fallopian tubes.  
5 Defendant Ortolano read the hysterosalpingogram and dictated the report noting that the left  
6 tube had not sealed. Defendant Ortolano failed to note that contrast material had escaped the  
7 fallopian tubes indicating that the Essure devices had ruptured [REDACTED] fallopian tubes.

8 2.17 By failing to observe or diagnose the fallopian tube rupture or have the  
9 hysterosalpingogram read by a radiologist, Defendant Ortolano failed to exercise the degree  
10 of care, skill, and learning expected of a reasonably prudent health care provider at that time  
11 in the profession or class to which he or she belongs, in the state of Washington, acting in the  
12 same or similar circumstances.

### 13 III. CAUSE OF ACTION

14 3.0 As a direct and proximate result of Defendant Ortolano's failure to follow the  
15 standard of care as complained of herein, Plaintiff was injured and Plaintiff is entitled to  
16 compensation therefor in an amount to be proven at time of trial.

17 3.1 As a direct and proximate result of the failure to follow the standard of care as  
18 alleged herein, Plaintiff has incurred and will continue to incur medical expenses and other  
19 out-of-pocket expenses and is entitled to be compensated therefor.

20 3.2 As a direct and proximate result of the failure to follow the standard of care as  
21 alleged herein, Plaintiff has suffered and will continue to suffer physical pain and suffering  
22 and loss of enjoyment of life and is entitled to be compensated therefor.

23 3.3 As a direct and proximate result of the Defendants' failure to follow the  
24 standard of care as alleged herein, Plaintiff has suffered mental and emotional distress and is  
25 entitled to be compensated therefor.  
26

1           3.4     As the direct and proximate result of the Defendants' failure to follow the  
2 standard of care as alleged herein, Plaintiff has suffered loss of wages and benefits.

3           3.5     Plaintiff is entitled to recover her attorney's fees pursuant to RCW 4.84.

4           3.6     Plaintiff is entitled to costs and disbursements herein.

5                   **IV. LIMITED WAIVER OF CONFIDENTIALITY**

6           Plaintiff [REDACTED], pursuant to RCW 5.60.060, as amended by the laws of 1986,  
7 hereby grants limited waiver of the physician-patient privilege. The scope of this waiver is  
8 as follows:

9           A.     This waiver shall take effect regarding this lawsuit for personal injuries on  
10 the 89<sup>th</sup> day from the date the action was filed;

11          B.     This waiver shall be subject to such limitations as the Court may impose.  
12 The waiver shall at all times be limited by an order entered in connection  
13 therewith by the Benton County Superior Court; and

14          C.     This waiver shall only apply to the privilege which exists under RCW  
15 5.60.060 and shall not be deemed to be broader in its scope nor apply to physician-patient  
16 privileges nor governed by RCW 5.60.060. Constitutional rights of privacy, impairment  
17 or interference with the doctor/patient relationship, and other rights not governed by RCW  
18 5.60.060 regarding physician-patient relationships are not waived. This waiver is made  
19 solely to comply with the legal obligation required by the 1986 amendment to RCW  
20 5.60.060 requiring such waiver within 90 days of the filing of an action for personal  
21 injuries.

22                   **V. ARBITRATION**

23           Plaintiff declines voluntary arbitration.

24                   **VI. RELIEF**

25           WHEREFORE, the Plaintiff prays as follows:

26          1.     For a judgment in favor of Plaintiff and against the Defendants;

1           2.     For an award of damages in favor of the Plaintiff and against the Defendants  
2 in amounts to be proven at the time of trial;

3           3.     For an award of prejudgment interest at the statutory rate on Plaintiff's  
4 economic damages;

5           4.     For an award of prejudgment interest on Plaintiff's non-economic damages  
6 to the extent allowed by law;

7           5.     For an award of Plaintiff's costs and disbursements herein;

8           6.     For an award of reasonable attorney's fees; and

9           7.     For such further relief as to the Court and/or the jury seems just.

10  
11         DATED this 28th day of April, 2015

12  
13                                 MAXWELL GRAHAM, PS

14  
15         By: 

16                                 MICHAEL A. MAXWELL-WSBA # 21781  
17                                 Attorney for Plaintiff