

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JESSICA ARGUELLO

PLAINTIFF

v.

**HCA HEALTHCARE, INC.
DOING BUSINESS AS
ST. DAVID’S HEALTHCARE,
SOUTH AUSTIN HOSPITAL, AND
SOUTH AUSTIN SURGERY CENTER, LTD**

DEFENDANTS

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CIVIL ACTION NO. 1:21-cv-889

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

COMES NOW, Jessica Arguello, Plaintiff herein, and files Plaintiff’s Original Complaint against Defendant, HCA Healthcare, Inc., (hereinafter referred to as “HCA”), and alleges as follows:

INTRODUCTION

This is a medication error healthcare liability claim for money damages, arising from Defendant’s employees’ negligence in providing a surgeon with formalin in a syringe to inject into Plaintiff’s right hand instead of a syringe filled with a local anesthetic of 20 ml of 1% Lidocaine plain with Epinephrine, 0.25% Marcaine plain mixed in a 1:1 mixture the surgeon believed he was injecting. The negligence resulted in formalin being injected into Plaintiff’s dominant right hand soft tissue causing a chemical burn resulting in severe and permanently painful, impairing and disfiguring injury to

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Plaintiff's dominant right hand. Plaintiff has undergone four (4) surgeries to repair the damage without regaining the full use or range of motion of her dominant right hand.

A. PARTIES

1. Plaintiff is Jessica Arguello who is a citizen of the State of Texas.
2. Defendant HCA Healthcare, Inc., doing business as St. David's Healthcare, South Austin Hospital and South Austin Surgery Center, LTD is a corporation incorporated in the State of Tennessee and it may be served with process herein by serving its registered agent, CT Corporation, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136.
3. Defendant HCA Healthcare, Inc. is one of the leading health care services companies in the United States. As of December 31, 2020, HCA operated 185 hospitals, comprised of 178 general, acute care hospitals; five psychiatric hospitals; and two rehabilitation hospitals. In addition, HCA operated 121 freestanding surgery centers and 21 freestanding endoscopy centers. HCA's facilities are in 20 states and England.
4. HCA provides a comprehensive array of health care services. HCA's acute care hospitals typically provide a full range of services to accommodate such medical specialties as internal medicine, general surgery, cardiology, oncology, neurosurgery, orthopedics, and obstetrics, as well as diagnostic and emergency services. Outpatient and ancillary health care services are provided by HCA's general, acute care hospitals, freestanding surgery centers, freestanding emergency care facilities, urgent care facilities, walk-in clinics, diagnostic centers, and rehabilitation facilities. HCA's psychiatric hospitals provide a full range of mental health care services through inpatient, partial hospitalization, and outpatient settings.

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5. HCA owns, manages, or operates hospitals, freestanding surgery centers, freestanding emergency care facilities, urgent care facilities, walk-in clinics, diagnostic, and imaging centers, radiation and oncology therapy centers, comprehensive rehabilitation and physical therapy centers, physician practices and various other facilities. As of December 31, 2020, HCA owned and operated 178 general, acute care hospitals with 48,492 licensed beds. Most of HCA's general, acute care hospitals provide medical and surgical services, including inpatient care, intensive care, cardiac care, diagnostic care, diagnostic services, and emergency services. The general, acute care hospitals also provide outpatient services such as outpatient surgery, laboratory, radiology, respiratory therapy, cardiology, and physical therapy. As of December 31, 2020, HCA operated five psychiatric hospitals with 593 licensed beds, HCA's psychiatric hospitals provide therapeutic programs, including child, adolescent and adult psychiatric care and adolescent and adult alcohol and drug abuse treatment and counseling.

6. HCA also operates outpatient health care facilities, which include freestanding ambulatory surgery centers ("ASC's"), freestanding emergency care facilities, urgent facilities, walk-in clinics, diagnostic and imaging centers, comprehensive rehabilitation and physical therapy centers, radiation and oncology therapy centers, physician practices and various other facilities. These outpatient services are an integral component of HCA's strategy to develop comprehensive health care networks in select communities.

7. HCA's workforce is comprised of approximately 275,000 employees (as of December 31, 2020), including approximately 80,000 part-time employees.

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B. JURISDICTION

8. The court has jurisdiction over the lawsuit under 28 U.S.C. §1332(a)(1) because Plaintiff and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

C. DEMAND FOR JURY TRIAL

9. Plaintiff asserts her rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with the Federal Rule of Civil Procedure 38, a trial by jury on all issues.

D. CONDITIONS PRECEDENT

10. Federal courts sitting in diversity cases must apply state substantive law and federal procedural law.

11. Plaintiff has met all conditions precedent applicable to this matter under state substantive law and federal procedural law. Plaintiff complied with Tex. Civ. Prac. & Rem. Code §74.051 and §74.052 by serving the statutory required notice on St. David's Healthcare by certified mail, return receipt requested with the required Authorization for Release of Protected Health Information on July 20, 2021 as required by Tex. Civ. Prac. & Rem. Code §74.052. More than 60 days have passed since Defendant received notice of this health care liability claim.

12. Discovery is procedural and controlled under the Federal Rules of Civil Procedure. Rule 26 governs a party's duties to disclose experts, the timing of the disclosure and the content. Fed. R. Civ. P. 26(a)(2). Since Tex. Civ. Prac. & Rem. Code §74.351 conflicts with the Federal Rules, the Fifth Circuit has determined Rule 26 controls over §74.351. See *Passmore v. Baylor Health Care Syst.*, 823 F.3d 284 (5th Cir.

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2016), *reh'g en banc denied*. Since the Fifth Circuit has ruled that §74.351 conflicts with the Federal Rules and does not apply in federal court, Plaintiff has not filed her expert report(s) with this complaint and discovery should commence after Defendant answers pursuant to the federal and local rules.

E. FACTS

13. At all times material hereto, HCA owned, operated, and managed a surgery center in Travis County, Texas known as South Austin Surgery Center.

14. HCA is a healthcare entity. HCA is vicariously liable for the negligence of its employees, agents and/or servants including, but not limited to, all nurses and staff who provided surgical nursing care to Plaintiff on January 9, 2020, pursuant to the legal theory of *respondent superior*.

15. At all times material hereto, certified surgical technologist/scrub technicians, and operating room circulating registered nurses who were employees of HCA, while acting within the course and scope of such employment, provided professional certified surgical technologist/scrub technicians and operating room circulating nursing care to Plaintiff.

16. At all times material hereto, HCA employed M. Mayfield, certified surgical technologist/scrub technician in its surgery center.

17. At all times material hereto, M. Mayfield was an agent, servant, and/or employee of HCA was acting within the course and scope of such agency, service and/or employment on January 9, 2020, the date made the basis of this lawsuit.

18. At all times material hereto, HCA employed S. Thompson, R.N. as an operating room circulating nurse in its surgery center.

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