

CAUSE NO. CC-19-05509-E

WILDA JENNIFFER ROJAS GRATEROL,
Individually and as Guardian of CARLOS
DAVID CASTRO ROJAS, an incapacitated
person,

Plaintiffs,

vs.

CASEY MARTIN, CRNA; MALLORIE
CLINE, MD; US ANESTHESIA PARTNERS
OF TEXAS, PA; and BAYLOR UNIVERSITY
MEDICAL CENTER,

Defendants.

IN THE COUNTY COURT AT LAW

No. ____

DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION,
REQUEST FOR DISCLOSURE, AND
JURY DEMAND

Plaintiffs Wilda Jenniffer Rojas Graterol, Individually and as Guardian of Carlos David Castro Rojas, an incapacitated person, file this Original Petition, Request for Disclosure, and Jury Demand against Defendants Casey Martin, CRNA; Mallorie Cline, MD; US Anesthesia Partners of Texas, PA and Baylor University Medical Center. In their Petition, Plaintiffs assert claims arising from catastrophic permanent injuries to Carlos David Castro Rojas that were caused by Defendants' negligent conduct. Plaintiffs pray that Defendants will be held accountable for their actions and for their damages as set forth below.

Plaintiffs request a jury trial and at that trial will prove the following:

I.
PARTIES

1. Plaintiff Wilda Jenniffer Rojas Graterol, as Guardian of Carlos Castro Rojas, an incapacitated person, is an individual residing in Dallas County, Texas. Her ward, Carlos David Castro Rojas, an

incapacitated person, is her biological son and has been declared an incapacitated person by Probate Court No. 2 of Dallas, County, Texas as the result of Defendants' negligence.

2. At all relevant time periods, incapacitated Plaintiff Carlos David Castro Rojas was a resident of Dallas County, Texas.

3. Defendant Casey Martin, CRNA ("Martin") is a registered nurse anesthetist licensed to practice in the State of Texas who may be served at her place of business:

**US Anesthesia Partners of Texas, PA
6606 Lyndon B. Johnson Frwy., Suite 200
Dallas, TX 75240**

4. Defendant Mallorie Cline, MD ("Cline") is a physician licensed to practice in the State of Texas who may be served at her place of business:

**US Anesthesia Partners of Texas, PA
6606 Lyndon B. Johnson Frwy., Suite 200
Dallas, TX 75240**

5. Defendant US Anesthesia Partners of Texas, PA ("USAPT") is a Texas professional association with a principle place of business in Harris County, Texas and may be served through its registered agent for service of process:

**Corporation Service Company
d/b/a CSC-Lawyers Incorporating Service Company
211 E. 7th St., Suite 620
Austin, TX 78701**

6. Defendant Baylor University Medical Center ("BUMC") is a Texas nonprofit corporation with a principle place of business in Dallas County, Texas and may be served through its agent for service of process:

**CT Corporation System
1999 Bryan St., Suite 900
Dallas, Texas 75201-3136**

II.
VENUE AND JURISDICTION

7. Venue is proper in Dallas County pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE §15.002(a)(1) because all or a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred in Dallas County.

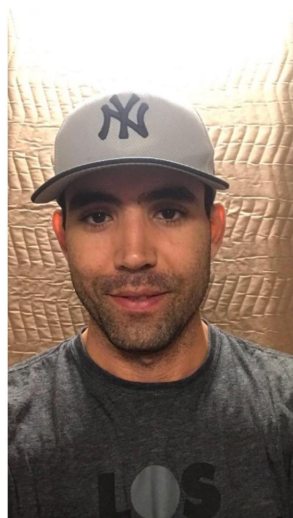
8. Plaintiffs are complying with TEXAS CIVIL PRACTICE & REMEDIES CODE § 74.053 and not specifying an amount of money claimed as damages other than to assert that this Court has jurisdiction because the amount in controversy exceeds the minimum jurisdictional amounts of the Court.

III.
DISCOVERY PLAN

9. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190, Plaintiffs request that this action be conducted pursuant to Level 3 of TEXAS RULE OF CIVIL PROCEDURE 190.4 and asks that the Court enter an order consistent with the agreement of the parties.

IV.
FACTUAL BACKGROUND

10. Carlos Rojas was educated and trained as a mechanical engineer in his home country of Venezuela. When civil unrest and economic issues became unbearable, Carlos came to the United States on a temporary work permit to try and earn money to support his family in Venezuela.



11. Carlos was 27 years old when he arrived in Dallas and got a job hanging Christmas lights. While working on October 10, 2017, Carlos fell off a ladder, which caused him to break his leg and injure his knee. He was taken to Baylor University Medical Center for treatment and evaluation.

12. Emergency physician Elliot Row, MD was consulted, evaluated Carlos, and determined surgical intervention would be needed. Dr. Row admitted Carlos, and his surgery for open reduction with internal fixation of his left tibial plateau fracture and open repair of meniscus tear was scheduled for the following day, October 11, 2017.

13. On October 11, 2017 at 7:15 a.m., an anesthesia pre-op assessment was performed by anesthesiologist Dr. Mallorie Cline with a plan for general anesthesia. Carlos was taken to the operating room and anesthesia was started at 7:29 a.m. by nurse anesthetist Casey Martin.

14. The anesthesia record reveals that, between the hour of 0730-0830, Carlos's systolic blood pressure was charted at 108-110. No vasoactive medications were administered during this time period. Vasoactive medications affect a patient's blood pressure by contracting or relaxing the blood vessels, thereby causing the blood pressure to increase or decrease, depending on the medication given.

15. Between 0830-0950 (1 hour and 20 minutes), Carlos's systolic blood pressure was charted at 100-110 with one dip into the 80's (normal range 90-140). CRNA Martin gave multiple doses of vasoactive medications during this time interval even though the record reflects Carlos's blood pressure was unchanged from the prior hour. The need for multiple doses of vasoactive medications means that Carlos's blood pressure was actually much lower than was being recorded by CRNA Martin.

16. Also, between 0830-0930, Carlos's ETCO₂ was 30 mmHg or less (below the normal range of 35-45).¹ This is a warning sign of decreased blood flow to Carlos's brain.

17. When severe and prolonged hypotension (low blood pressure), which requires the administration of vasoactive medications, compounds an already significantly decreased and compromised cerebral blood flow, a severe anoxic ischemic brain injury²³ will most likely occur.

¹ETCO₂ is the amount of carbon dioxide (CO₂) expelled at the end of a breath. ETCO₂ allows a noninvasive method of measuring patient ventilation during anesthesia. Changes in ETCO₂ will occur before decreases in oxygen saturation.

²Anoxic or hypoxic ischemic brain injury is injury due to decreased blood supply and oxygen to the brain.

³Anoxic brain injury occurs when the brain is completely deprived of oxygen.

18. During the final phase of Carlos's surgery, between 0950-1030 (40 minutes), his systolic blood pressure was charted between 100-110. No vasoactive medications were given during this time period.

19. Sadly, Carlos's attending anesthesiologist, Dr. Mallorie Cline, was never in the operating room during his surgery, even though she was responsible for supervising CNRA Martin.

20. When Carlos's surgery ended, he was unresponsive. He was taken to the recovery room where Nurse Sandra Brummit performed neuro checks revealing a Glasgow Coma Score of 3 (comatose); however, no neurology consult was ordered despite Carlos's neurological compromise.

21. Nurse Brummit continued performing neuro checks on Carlos every 15 minutes. Although Carlos remained unresponsive and in need of immediate intervention, no neurology consult was ever ordered.

22. A CT of Carlos's head taken at 12:42 p.m. showed an hypoxic⁴ ischemic injury to his brain.

23. At 14:00 p.m., Carlos was transferred to the Intensive Care Unit. He was finally seen by a neurologist, Dr. Spencer Miller, who activated a "Code Stroke" at 15:12 p.m.

At this point, Carlos had been unresponsive for almost 5 hours.

24. An MRI of Carlos's brain taken at 15:53 p.m. was highly suggestive of diffuse hypoxic ischemic injury. At 21:44, Dr. Miller noted that the findings on the MRI of the brain "suggest significant hypoxic event with cortical laminar necrosis and deep white matter ischemia." In other words, Carlos's brain suffered such a severe lack of oxygen that it caused the death of brain cells in his cerebral cortex, and the deep white matter areas of the brain indicated a lack of oxygen or "ischemia." The MRI of the brain did not have the appearance of fat emboli/embolic (clot) strokes nor was it suggestive of active status epilepticus (active seizure activity).

25. Despite the fact Dr. Cline had never been in the operating room during her patient Carlos's surgery, she wrote a "CYA" post-anesthesia note the next day (October 12, 2017) which stated:

Patient's CT and MRI show ischemic/hypoxic injury though patient never had desaturation, hypovolemia or severe hypotension. His intraoperative case was uneventful. His echo does show a small PFO. He could have possibly had an embolic event, fat or embolic clot. . . . I explained that the patient's imaging shows a large anoxic/ischemic type insult but that there were no indicators during the surgery or immediately after to explain this finding. By

⁴Hypoxic brain injury occurs when there is decreased oxygen to the brain.

all intraoperative monitoring (EKG, pulse ox, blood pressure, end tidal CO2) the patient had a normal operative course without loss of oxygen or blood flow.

In other words, on her review of the intraoperative events, she could find no documentation where the patient demonstrated low oxygen levels, low circulating blood flow or fluid levels, or low blood pressure to explain the brain injury.

26. However, in contravention of Dr. Cline's self-serving note, on October 13, 2017, Dr. Miller wrote his own note:

MRI brain, CT head, and CT-A head/neck in correlation with the history, is most suggestive of global anoxic injury. If this turns out to be hypoxic injury, it would have to result from hypovolemic hypoxemia from hypotension during surgery. However, due to some oddities in the imaging findings, there is some concern for potential other causes of the findings, which are certainly not as likely as a hypoperfusion hypoxemia during surgery, but warrant work up, which was subsequently initiated.

27. Ten days later (October 23, 2017), Dr. Miller noted:

Saw patient in SICU on day of surgery eventually diagnosed Mr. Rojas with Hypoxic Ischemic Injury, though no report that he had a defined anoxic event per record review and my personal conversations with Surgeon, RNs, and CRNA (Martin) involved in his care start to finish on same date.

28. The following day (October 24, 2017), Dr. Miller noted:

Mr. Rojas has suffered a catastrophic anoxic brain injury. He is in a vegetative state at this time. I do not expect that he will be able to recover any more than he already has, he will progress to a persistent vegetative state.

29. A week later (October 31, 2017), Carlos was discharged to a long-term care facility for supportive care. He remained unresponsive from his severe anoxic brain injury at the time of his transfer.

30. Carlos exhibited clear signs of potential neurological compromise as he was in the operating room, and no intervention was initiated. Following surgery, he showed cleared signs of the need for emergent intervention to address his neurological compromise, but no neurological consult occurred for hours. The Defendants failed Carlos, and as a result, his life has been forever taken from him and left him in a persistent vegetative state. But what makes this unacceptable negligence more than negligence and requiring a punitive verdict is the unacceptable manner in which the medical records attempted to fraudulently conceal what truly happened to Carlos.

31. Carlos's mother, Wilda Rojas, has moved from Venezuela to Dallas to help care for her incapacitated son.

32. To date, Carlos remains in a long-term care facility, and he will need full time attendant care either in home or in a facility for the rest of his life.

33. As a result of the negligent and grossly negligent care provided to him at BUMC, Carlos is now under 24-hour care in a minimally responsive or semi-vegetative state. He is unable to walk or talk, is incontinent of bowel and bladder, and has the mental status of a young child.



V.

CAUSES OF ACTION AND CLAIMS FOR RELIEF

A. **Count One: Negligence of Casey Martin, CRNA; Mallorie Cline, MD; and US Anesthesia Partners of Texas, PA.**

34. Plaintiffs incorporate the above paragraphs by reference.

35. At all relevant times, Casey Martin was a registered nurse anesthetist and employee of US Anesthesia Partners of Texas and acting in the course and scope of her employment. Further, at all relevant times, Mallorie Cline was an anesthesiologist and employee of US Anesthesia Partners of Texas and acting in the course and scope of her employment.

36. At all relevant times, Defendant Martin was Carlos's treating nurse anesthetist and owed a duty to Carlos to act as an ordinarily prudent nurse anesthetist would in the same or similar circumstances. In addition, at all relevant times, Defendant Cline was Carlos's treating anesthesiologist and owed a duty to Carlos to act as an ordinarily prudent physician would in the same or similar circumstances. Defendants Martin and Cline negligently and grossly negligently

failed to provide appropriate care to Carlos by failing to adhere to the standard of care, including but not limited to the following particulars:

- a. Failure to provide ordinary and acceptable monitoring of vital signs, specifically, Carlos's systolic blood pressure and mean arterial pressure;
- b. Failure to maintain adequate central nervous system oxygenation during Carlos's surgical procedure;
- c. Failure to maintain Carlos's ETCO₂ at a level at which his cerebral blood flow is not decreased;
- d. Failure to intervene in response to signs of probable neurological compromise during the procedure;
- e. Failure to postoperatively recognize, evaluate, diagnose, and treat Carlos's unexplained unresponsiveness in the recovery room;
- f. Failure to examine Carlos's vital signs and neurological status when he arrived in the recovery room;
- g. Failure to activate a "Code Stroke" per National Institute of Neurological Disorders and Comprehensive Level 1 Stroke Facility Guidelines when Carlos failed to regain consciousness after being transferred from the OR to the recovery room; and
- h. Failure to seek immediate neurologic evaluation when Carlos remained unresponsive while in the recovery room.

37. Defendants Martin and Cline's acts or omissions foreseeably and proximately caused Carlos to suffer from a devastating hypoxic ischemic anoxic brain injury and subsequent vegetative state. Defendants Martin and Cline are the proximate cause of Plaintiffs' damages for which they bring this suit.

C. Count Two: Negligence of Baylor University Medical Center

38. Plaintiffs incorporate the above paragraphs by reference.

39. At all times, the nurses and health care providers at BUMC treating Carlos were acting in the course and scope and in furtherance of their employment as nurses and health care providers with BUMC. As a result, BUMC is vicariously liable for the negligence of the nurses and health care providers treating Carlos.

40. The nurses and health care providers at BUMC treating Carlos negligently fell below the standard of care for such nurses and health care providers in the same or similar circumstances, including but not limited to the following particulars:

- a. Failure to activate a “Code Stroke” per Comprehensive Level 1 Stroke Facility Guidelines when Carlos failed to regain consciousness after being transferred from the OR to the recovery room;
- b. Failure to act as a patient advocate and activate the chain of command when both CRNA Martin and Dr. Cline failed to activate a “Code Stroke” when Carlos failed to regain consciousness after being transferred from the OR to the recovery room;
- c. Failure to act as a patient advocate and activate the chain of command when both CRNA Martin and Dr. Cline failed to seek immediate neurologic evaluation when Carlos remained unresponsive while in the recovery room; and
- d. Failure to properly assess Carlos, recognize signs of neurological compromise, and to advocate for Carlos, including obtaining timely consults and interventions.

41. BUMC and its employees’ acts or omissions foreseeably and proximately caused Carlos to suffer from an irreversible ischemic anoxic brain injury and subsequent vegetative state. This entity is the proximate cause of Plaintiffs’ damages for which they bring this suit.

C. Count Three: Exemplary Damages

42. Plaintiffs incorporate the above paragraphs by reference.

43. The conduct of Defendants set forth above was substantially more than ordinary carelessness or inadvertence. Rather, the conduct rises to the level of gross negligence and malice, as those terms are defined by law. The failure to respond to the clear and evident warnings of acute neurological decline constitute such an entire want of care as to indicate that the acts or omissions in question were the result of conscious indifference to the rights, welfare or safety of Carlos Rojas. Moreover, those acts and omissions of Defendants involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Carlos when Defendants had actual, subjective awareness of the risk involved, such that the conduct amounts to conscious indifference to the rights, safety and/or welfare of Carlos Rojas.

44. For this gross negligence, Plaintiffs specifically plead for the recovery of exemplary damages.

VI.
AGENCY

45. At all relevant times, Casey Martin, CRNA and Mallorie Cline, MD were employees or agents of US Anesthesia Partners of Texas, PA and acting in the course and scope of their employment or agency and in furtherance of their employer's or principal's businesses. Therefore, US Anesthesia Partners of Texas, PA is liable for the conduct of Casey Martin, CRNA and Mallorie Cline, MD.

46. At all relevant times, the nurses and health care providers at Baylor University Medical Center were employees, agents or were subject to a right of control by BUMC and were acting in the course and scope of their employment, agency, or authority. Therefore BUMC is liable for the conduct of the nurses and health care providers at BUMC who cared for Carlos.

VII.
DAMAGES

A. Damages of Carlos David Castro Rojas.

47. As a direct and proximate result of the acts or omissions of the Defendants as set out above, Carlos seeks all damages to which he is entitled in law or equity, including but not limited to:

- a. Physical pain and suffering sustained in the past;
- b. Physical pain and suffering that, in reasonable probability, Carlos will sustain in the future;
- c. Mental anguish sustained in the past;
- d. Mental anguish that, in reasonable probability, Carlos will sustain in the future;
- e. Physical impairment sustained in the past;
- f. Physical impairment that, in reasonable probability, Carlos will sustain in the future;
- g. Loss of the enjoyment of life sustained in the past;
- h. Loss of the enjoyment of life that, in reasonable probability, Carlos will sustain in the future;
- i. Loss of consortium sustained in the past;

- j. Loss of consortium that, in reasonable probability, Carlos will sustain in the future;
- k. Reasonable and necessary medical expenses incurred in the past;
- l. Reasonable and necessary medical care expenses that, in reasonable probability, Carlos will incur in the future;
- m. Loss of earning capacity in the past; and
- n. Loss of earning capacity that, in reasonable probability Carlos will sustain in the future.

48. All of the above damages were proximately caused by the acts or omissions of Defendants, and for such damages, suit is brought for a sum in excess of the jurisdictional minimum of this Court.

B. Damages of Wilda Jenniffer Rojas Graterol.

49. As a direct and proximate result of the acts or omissions of the Defendants as set out above, Wilda seeks all damages to which she is entitled in law or equity, including but not limited to:

- a. Loss of services, consortium, companionship, and society sustained in the past;
- b. Loss of services, consortium, companionship, and society that, in reasonable probability, will be sustained in the future;
- c. Mental anguish in the past; and
- d. Mental anguish that, in reasonable probability, Wilda will sustain in the future.

50. All of the above damages were proximately caused by the acts or omissions of Defendants, and for such damages, suit is brought for a sum in excess of the jurisdictional minimum of this Court.

C. Exemplary Damages.

51. As set forth above, the conduct of Defendants was substantially more than ordinary carelessness or inadvertence. Rather, the conduct rises to the level of gross negligence and malice, as those terms are defined by law. The failure to respond to the clear and evident warnings of acute neurological decline constitute such an entire want of care as to indicate that the acts or omissions in question were the result of conscious indifference to the rights, welfare or safety of Carlos Rojas. Moreover, those acts and omissions of Defendants involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Carlos when Defendants Martin, Cline, and USAPT had actual, subjective awareness of the risk involved, such that the conduct amounts to

conscious indifference to the rights, safety or welfare of Carlos Rojas. Plaintiffs would show that the negligent acts or omissions of the Defendants, as set out above, constitute gross negligence, as that term is defined by law, so as to give rise to an award of exemplary or punitive damages, for which Plaintiffs now plead, jointly and severally, against these Defendants. Considering the nature of the wrong, the character of the conduct involved, the degree of culpability of Defendants, the situation and sensibilities of Defendants, the extent to which these Defendants' conduct offends a public sense of justice and propriety, and the net worth of these Defendants, Plaintiffs hereby plead for exemplary damages against Defendants. Additionally, by reason of such conduct, Plaintiffs are entitled to and therefore assert a claim for punitive and exemplary damages in an amount sufficient to punish and deter Defendants, and others like them, from such conduct in the future.

VIII.

PRE-JUDGMENT AND POST-JUDGMENT INTEREST

52. Plaintiffs request pre-judgment and post-judgment interest in accordance with the maximum legal interest rates allowable as interpreted under the laws of the State of Texas.

IX.

PRE-SUIT NOTICE

53. Pursuant to § 74.051 (a) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, timely pre-suit Notice along with an "Authorization Form for Release of Protected Health Information" in compliance with section 74.052(c) was sent to one or more defendants via certified mail, return receipt requested, which is sufficient notice as to all.

X.

REQUEST FOR A JURY TRIAL

54. Plaintiffs demand a jury trial on all issues so triable and submit the applicable fee contemporaneously with the filing of this Petition.

XI.

COMPLIANCE WITH TEXAS CIVIL PRACTICE & REMEDIES CODE § 74.351

55. Plaintiffs will comply with TEXAS CIVIL PRACTICE & REMEDIES CODE § 74.351(a) and tender expert reports to Defendants following their appearance and filing of answers.

XII.

REQUEST FOR DISCLOSURE

56. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 194, Defendants are requested to disclose the information and material described in Rule 194.2. The written responses to the above requests for disclosure should conform to Rule 194.3 and the materials, documents, and copies of same should be produced in compliance with Rule 194.4. The written responses, materials, and documents are to be delivered to ALDOUS \ WALKER LLP, 4311 Oak Lawn Ave., Suite 150, Dallas, TX 75219, as required following receipt of this request.

XIII.

PRAYER

57. Plaintiffs pray that Defendants be cited to appear and answer in this case, and that upon final determination of these causes of action, Plaintiffs receive a judgment against Defendants, jointly and severally, awarding the Plaintiffs as follows:

- a. Actual, compensatory, consequential, and exemplary damages in an amount in excess of the minimal limits of the Court against the named Defendants;
- b. Costs of Court;
- c. Pre-judgment interest at the highest rate allowed by law from the earliest time allowed by law;
- d. Interest on judgment at the highest legal rate from the date of judgment until collected; and
- e. All such other and further relief at law and in equity to which the Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

/s/ Charla G. Aldous

CHARLA G. ALDOUS
State Bar No. 20545235
caldous@aldouslaw.com

BRENT R. WALKER
State Bar No. 24047053
bwalker@aldouslaw.com

TIFFANY N. STANDLY
State Bar No. 24104601
tstandly@aldouslaw.com

ALDOUS \ WALKER ^{LLP}
4311 Oak Lawn Avenue, Suite 150
Dallas, TX 75219
Ph: (214) 526-5595
Fax: (214) 526-5525

BRUCE W. STECKLER
State Bar No. 00785039
bruce@stecklerlaw.com
R. DEAN GRESHAM
State Bar No. 24027215
dean@stecklerlaw.com
L. KIRSTINE ROGERS
State Bar No. 2433009
krogers@stecklerlaw.com

STECKLER GRESHAM COCHRAN PLLC
12720 Hillcrest Road, Suite 1045
Dallas, Texas 75230
Ph: (214) 432-2899
Fax: (214) 853-4367

ATTORNEYS FOR PLAINTIFFS