

FILED

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CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

KARRIE K. YANKTON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendants.

CIVIL FILE NO. 16-5008

COMPLAINT

COMES NOW the Plaintiff Karrie K. Yankton, by and through legal counsel, and for her complaint, states as follows:

1. Plaintiff, Karrie K. Yankton is Native American and a member of the Oglala Sioux Tribe, residing in Pine Ridge, Oglala Lakota County, South Dakota.

2. At all times relevant hereto, the Department of Health and Human Services, a federal agency of the Defendant United States government, was and is now the owner, operator, and/or manager of the Pine Ridge Indian Health Service (IHS) Hospital in Pine Ridge, Oglala Lakota County, South Dakota. The Pine Ridge Indian Health Service Hospital is located within the exterior boundaries of the Pine Ridge Sioux Indian Reservation, and is legally obligated to provide health care services to Native Americans by statutory and treaty mandates.

JURISDICTION

3. At all times relevant hereto, the United States, the United States Department of Health and Human Services, and the Pine Ridge IHS Hospital, are legally obligated to provide health care services to Native Americans by statutory and treaty mandates. The Oglala Sioux Tribe and the Department of Health Human Services are covered under the Federal Tort Claims

Act (FTCA). A recent FTCA administrative claim was filed on June 4, 2012, naming those entities, and was denied on January 23, 2014. The Reconsideration of said initial denial was filed on July 18, 2014, which reconsideration was also denied on February 8, 2016. The Defendant did respond to the FTCA administrative claim, so there is a “denial” of said claim, for right-to-sue purposes. The FTCA claim was made to pursue FTCA remedies, and all of the medical care providers at the Pine Ridge IHS Hospital named herein are construed to be a federal officials under the FTCA.

4. The amount in controversy exceeds the jurisdictional requirements of this Court and venue is proper in this Court in that the Pine Ridge Indian Health Service Hospital operates within the exterior boundaries of the Pine Ridge Sioux Indian Reservation in Pine Ridge, Oglala Lakota County, South Dakota, and under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2401(b), 2671-80, 2672, and the Pine Ridge Indian Health Service Hospital had the care, custody and control of Plaintiff at all relevant times.

COUNT ONE: MEDICAL NEGLIGENCE

Plaintiff hereby incorporates Paragraphs Nos. One (1) through Four (4), above, in full.

5. On or about September 24th, 2010, the Plaintiff, Karrie K. Yankton, sought medical treatment at the Pine Ridge Indian Health Service Hospital in Pine Ridge, South Dakota for pain & swelling in her right heel/foot.

6. On or about September 24, 2010, the Plaintiff Karrie K. Yankton, was getting ready for work and had just taken a shower at her home in Pine Ridge, S.D.. She was barefoot and stepped backward, and felt a sharp piercing pain in her right heel, but did not see any other physical evidence of injury once she examined that area of her foot. It was painful, but she thought it was nothing serious. Plaintiff then reported to her place of employment. Over the next

hour or so, the pain became so intense that she couldn't apply any weight on her foot. Plaintiff Karrie K. Yankton was transported to the Pine Ridge IHS hospital emergency room for emergency medical treatment. Plaintiff was evaluated in the ER and an x-ray was ordered of her foot. About 15 minutes later, PA George Drago returned to the ER exam room and informed Plaintiff that she had a sewing needle lodged in her foot, and told Plaintiff that he was going to see if anyone was available to remove it. When the doctor returned, he asked her to come back to the Pine Ridge IHS Hospital the next week, as he would have to refer her out to get the needle removed. Plaintiff asked the doctor if she had to wait that long, and Drago told her that he was going to give her hydrocodone, a pain shot (Torodol), crutches and a tetanus shot. PA Drago instructed her to return on September 28, 2010, to elevate her foot and stay off of it, and that she was to return to the IHS Hospital for treatment. PA Drago did give her an "Emergency Room" note indicating that she had been seen in the Pine Ridge ER and was to be excused from her job from September 24 to September 29th, 2010. Those were the only instructions he gave to Plaintiff. Plaintiff stayed in bed all weekend and needed to have help getting up and physically moving around. Plaintiff's foot/heel started getting swollen, turned red and black, was throbbing, and she was in excruciating pain.

7. Plaintiff returned to the Pine Ridge IHS Hospital on September 26, 2010 as she was in too much pain and was seen by a nurse in the ER. The nurse told Plaintiff that they could not give her a pain (Torodol) shot and that the Plaintiff would have to wait to be seen on Tuesday, September 28, 2010. Upon Plaintiff's visit the Pine Ridge IHS Hospital on September 28, 2010, her brother Craig Yankton went with her and talked with Dr. Smith and Joe Giago regarding the lack of care that Plaintiff experienced. Joe Giago, the Patient Rights Advocate, wrote an apology letter, regarding this issue. (Letter attached). It wasn't until the September 28,

2010 visit that Plaintiff's foot was actually treated and the "sewing needle" was actually removed. By that time, her pain had greatly increased, the foot became infected, and she had pain in her entire foot extending all the way up her right leg to her right thigh. It was later found out that Dr. Todd Smith the Orthopedic physician, at the Pine Ridge IHS Hospital, was actually available on Friday, September 24, 2010 and could have removed the needle, but that he was not asked to do so by any of the Hospital staff. The sewing needle was very dirty and likely caused a severe infection by remaining lodged in her foot for so long before being removed. Since the time of the needle removal procedure, Plaintiff has had to have several visits to the Pine Ridge IHS and had to be referred out to the Rapid City Regional Hospital for an MRI and bone scan for this permanent injury. Plaintiff had to have a steroid injection in her back for the pain in her foot also. On April 12, 2011, Plaintiff was admitted to the Pine Ridge IHS in severe pain in her spine and neck, that had started in her foot. She had to be air lifted to Scottsbluff Regional Hospital on April 13, 2011. Plaintiff was also seen at the Rehab Doctors in Rapid City, South Dakota for her foot pain and permanent injury. Since that time, Plaintiff has had constant foot pain, and nerve pain not only in her foot, but also in her right leg, thigh, and her back which she describes as a pain that continues to radiate up from her right foot, making it almost impossible to even sleep at nights. Plaintiff had trouble with her job as she is unable to perform her duties in the property and supply department which she has had for many years. This injury has been disabling to Plaintiff's every day functions. Plaintiff is unable to care for her grandchildren as she is unable to run, walk, lift them and play with them without experiencing excruciating pain. Plaintiff has had to rely on the help of her family to help her mobilize on a daily basis. Plaintiff's life has been completely affected by this permanent injury. Had the dirty needle been removed in a timely and reasonable fashion according to the reasonable standard of care, Plaintiff likely would

not have these permanent problems and disabilities. The lack of reasonable care occurred at the Pine Ridge IHS facility on September 24 through September 28, 2010.

8. The agents and employees of the Pine Ridge IHS Hospital, failed to exercise reasonable care and/or the level of care according to the standard of care required of a physicians' medical specialty and/or that of a medical professional, when they neglected to reasonably treat Plaintiff's foot condition and injury, in a timely and reasonable fashion.

9. As a further direct and proximate result of the negligence of the Defendant, as alleged herein, the Plaintiff Karrie K. Yankton suffered severe injuries as a result of Defendant's negligent acts, including, mental anguish, emotional distress, physical pain and suffering, loss of enjoyment of life, loss of income, loss of opportunity, loss of future earning capacity, worry, anxiety, humiliation, embarrassment, scarring, permanent disfigurement and disability, loss of consortium, past and future medical expense, and other consequential losses.

10. The Plaintiff has submitted a Federal Tort Claim administrative claim based on the medical negligence allegations herein, to the Pine Ridge Indian Health Service Hospital, the Department of Health and Human Services, and the United States of America, which claim was denied. A copy of that administrative claim and denial is attached as **Exhibit 1 & 2**.

WHEREFORE, Plaintiff requests judgement against the Defendant United States of America, and/or a jury trial or a trial to the Court as against the United States and as provided by the Federal Tort Claims Act, as follows:

1. For the actual expenses incurred in the treatment of the injuries sustained by Plaintiff in the subject incident and for the actual expenses, attorney fees and costs, and prejudgment interest on medical bills and other special damages.

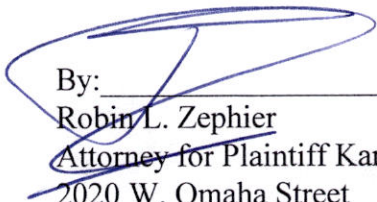
2. For such monetary compensation as shall fully compensate for the pain, suffering,

humiliation, embarrassment, disfigurement, emotional distress, future medical, anguish and loss of enjoyment of life sustained by Plaintiff to the date of trial and which is likely to continue into the future, in a sum to be determined by the Court in this case. As a further direct and proximate result of the negligence of the Defendant, as alleged herein, the Plaintiff Karrie K. Yankton suffered severe injuries as a result of Defendant's negligent acts, including, mental anguish, emotional distress, physical pain and suffering, loss of enjoyment of life, loss of income, loss of opportunity, loss of future earning capacity, worry, anxiety, humiliation, embarrassment, scarring, permanent disfigurement and disability, loss of consortium, past and future medical expense, and other consequential losses.

3. For other and further relief deemed just and necessary in this matter.

Dated this 5th day of August, 2016.

ABOUREZK, ZEPHIER & LAFLEUR, PC

By: 
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TRIAL BY JURY IS HEREBY DEMANDED