

SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

HAROLD L. FOLLEY,

Plaintiff,

v.

UNITED SURGICAL PARTNERS
INTERNATIONAL, INC., a Delaware corporation,
NEW MEXICO ORTHOPAEDIC
SURGERY CENTER, L.P., (a subsidiary of
United Surgical Partners International, Inc.) and
CHRISTOPHER P. PATTON, D.O.,

Defendants.

COMPLAINT FOR VIOLATIONS OF UNIFORM HEALTH-CARE DECISIONS ACT

PLAINTIFF HAROLD L. FOLLEY, (hereinafter “Mr. Folley”), through the undersigned counsel, brings this action pursuant to the Uniform Health-Care Decisions Act, NMSA 1978, § 24-7A-1 (1997) through § 24-7A-18 (1995) (hereinafter “the UHCDA”). Mr. Folley respectfully submits that Defendants are violating the UHCDA by refusing to honor any advance directives or living wills of any of their patients.

JURISDICTION and VENUE

1. Jurisdiction of this Court is invoked pursuant to the Uniform Health-Care Decisions Act and New Mexico common law.
2. This Court possesses proper subject matter and personal jurisdiction over the parties.
3. Venue is appropriate in the Second Judicial District pursuant to NMSA 1978, § 38-3-1 (1988).

4. The events that gave rise to this complaint occurred in Bernalillo County, New Mexico.

PARTIES

5. Mr. Folley is a resident of the State of New Mexico, County of Bernalillo, City of Albuquerque.

6. Defendant United Surgical Partners International, Inc., is a Delaware corporation headquartered in Dallas, Texas.

7. Defendant New Mexico Orthopaedic Surgery Center, L.P., is a limited partnership doing business in the State of New Mexico, County of Bernalillo, City of Albuquerque. Defendant New Mexico Orthopaedic Surgery Center, L.P. is a subsidiary of Defendant United Surgical Partners International, Inc.

8. Defendants United Surgical Partners International, Inc. and New Mexico Orthopaedic Surgery Center, L.P. (hereinafter collectively referred to as “Defendant New Mexico Orthopaedic”) has a facility located in the State of New Mexico, County of Bernalillo, City of Albuquerque. Defendant New Mexico Orthopaedic is a “health-care institution” as defined by the UHCDA, NMSA 1978, § 24-7A-1H (1997) (“‘health-care institution’ means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business”).

9. Defendant Patton is a physician licensed to practice medicine in New Mexico who practices at Defendant New Mexico Orthopaedic’s facility in Albuquerque, New Mexico. Defendant Patton is a “health-care provider” as defined by the UHCDA, NMSA 1978, § 24-7A-1I (1997) (“‘health-care provider’ means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession”).

ALLEGATIONS OF FACT PERTINENT TO ALL COUNTS

10. At all times material to this action, and continuously since October 7, 1994, Mr. Folley has had both a Living Will and a Durable General Power of Attorney, including the power to make directives regarding medical treatment, which instruments are fully valid and enforceable under the law of New Mexico. Other written advance directives have also been in effect during this time, addressed to Mr. Folley's designated Attorney – in – fact.

11. Mr. Folley has spinal stenosis for which he receives periodic spinal blocks from the Defendant Patton to control recurring pain.

12. Mr. Folley receives the periodic spinal blocks from Defendant Patton at Defendant New Mexico Orthopaedic's facility in Albuquerque, New Mexico.

13. On or about April 8, 2005, Mr. Folley went into Defendant New Mexico Orthopaedic's facility for treatment for his spinal stenosis.

14. On or about April 8, 2005, Mr. Folley was handed a form entitled "Consent for Medical Procedure" (a copy of which is attached hereto as Exhibit 1) by office staff at Defendant New Mexico Orthopaedic's facility.

15. On or about April 8, 2005, Mr. Folley was asked to sign the "Consent for Medical Procedure" form in order to receive medical care from Defendant Patton at Defendant New Mexico Orthopaedic's facility.

16. The "Consent for Medical Procedure" form contains the following paragraph:

6. I understand that this facility does not honor a request for "Do Not Resuscitate" status and/or Advance Directives or Living Wills.

17. Defendant Patton has never discussed advance directives or living wills with Mr. Folley.

18. Neither Defendant Patton nor Defendant New Mexico Orthopaedic has ever made an

effort to transfer Mr. Folley to another health-care provider who will honor Mr. Folley's advance directives or living will.

19. On or about April 22, 2005, Mr. Folley, through his attorney, contacted Defendant Patton regarding his objections to Paragraph 6 of the "Consent for Medical Procedure" form.

20. On or about May 31, 2005, through its attorney, Defendant New Mexico Orthopaedic responded to Mr. Folley's letter that Defendant New Mexico Orthopaedic "has a policy of not complying with advance directives for reasons of conscience"

21. Upon information and belief, Defendants are intentionally not complying with advance directives because of a reason or reasons other than one of conscience.

22. Upon information and belief, Defendants are intentionally not complying with advance directives in order to limit their risk of liability for medical malpractice.

23. Upon information and belief, Defendant Patton is intentionally not complying with advance directives because of his professional relationship with New Mexico Orthopaedics.

24. Mr. Folley is seventy years old.

25. Mr. Folley suffers from a congenital heart valve condition.

26. On or about May 18, 2005, Mr. Folley underwent heart surgery to have the heart valve replaced.

COUNT I
(DEFENDANT NEW MEXICO ORTHOPAEDIC)
(VIOLATION OF NMSA 1978, § 24-7A-7D (1997))

27. Plaintiff incorporates by reference all preceding allegations as if fully set forth herein.

28. In pertinent part, NMSA 1978, § 24-7A-7D (1997) provides:

D. Except as provided in Subsections E and F of this section, a health-care provider or health-care institution providing care to a patient shall comply:

(1) before and after the patient is determined to lack capacity, with an individual instruction of the patient made while the patient had capacity

29. NMSA 1978, § 24-7A-7E (1997) provides:

E. A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a policy of the health-care institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

30. By not complying with advance directives because of a reason or reasons other than one of conscience, Defendant New Mexico Orthopaedic has intentionally violated NMSA 1978, § 24-7A-7D (1997).

31. By failing to communicate any “policy of not complying with advance directives for reasons of conscience,” Defendant New Mexico Orthopaedic has intentionally violated NMSA 1978, § 24-7A-7D (1997).

32. Defendant New Mexico Orthopaedic is intentionally violating the UHCDA by refusing to honor any and all advance directives or living will, because the UHCDA does not permit Defendant New Mexico Orthopaedic to issue a “blanket” rejection of any and all advance directives.