

THE COLLERAN FIRM

as other healthcare providers, some of whom participated in and rendered medical care to Tracie McNamee. Consequently, this defendant is liable vicariously for any and all negligent acts and/or omissions committed by Lynn Michel, C.R.N.P. and any other real and/or ostensible agent, servant and/or employee in their care and treatment of plaintiff under and by virtue of the laws of agency of the Commonwealth of Pennsylvania.

3. Defendant, Pathnet Esoteric Laboratory Institute, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and/or the State of California. Defendant's principle place of business is located at 7247 Hayverhurst Street, Unit A-3, Van Nuys, California 91406. Plaintiff is asserting a professional liability claim against this defendant. At all times material to this Complaint, defendant conducted business in the Commonwealth of Pennsylvania. At all times material hereto, this defendant conducted business in Philadelphia County. At all times material to this Complaint, defendant employed as its real and/or ostensible agents, servants and/or employees physicians, cytotechnicians, cytopathologists, pathologists and various other healthcare professionals who are involved in reviewing pathology specimens of plaintiff. Defendant is vicariously liable for the negligence of its real and/or ostensible agents, servants and/or employees in their review, interpretation, accession and diagnosis of pathology slides pertaining to plaintiff as described in this Complaint.

4. Defendant, Pathnet Esoteric Laboratory Institute, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and/or the State of Texas. Defendant's principle place of business is located at 1017 Central Parkway North, #130, San Antonio, Texas 78232. Plaintiff is asserting a professional liability claim against this defendant. At all times material to this Complaint, defendant conducted business in the Commonwealth of

THE COLLERAN FIRM

Pennsylvania. At all times material hereto, this defendant conducted business in Philadelphia County. At all times material to this Complaint, defendant employed as its real and/or ostensible agents, servants and/or employees physicians, cytotechnicians, cytopathologists, pathologists and various other healthcare professionals who are involved in reviewing pathology specimens of plaintiff. Defendant is vicariously liable for the negligence of its real and/or ostensible agents, servants and/or employees in their review, interpretation, accession and diagnosis of pathology slides pertaining to plaintiff as described in this Complaint.

5. Defendant, Pathnet Esoteric Laboratory Institute - South, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and/or the State of Texas. Defendant's principle place of business is located at 1017 Central Parkway North, #130, San Antonio, Texas 78232. Plaintiff is asserting a professional liability claim against this defendant. At all times material to this Complaint, defendant conducted business in the Commonwealth of Pennsylvania. At all times material hereto, this defendant conducted business in Philadelphia County. At all times material to this Complaint, defendant employed as its real and/or ostensible agents, servants and/or employees physicians, cytotechnicians, cytopathologists, pathologists and various other healthcare professionals who are involved in reviewing pathology specimens of plaintiff. Defendant is vicariously liable for the negligence of its real and/or ostensible agents, servants and/or employees in their review, interpretation, accession and diagnosis of pathology slides pertaining to plaintiff as described in this Complaint.

6. At all times material hereto, the aforementioned defendants owed plaintiff the duty to render medical care and pap smear interpretations in accordance with applicable standards of care. For reasons articulated herein, defendants violated important standards of care in their care and

THE COLLERAN FIRM

treatment of plaintiff, Tracie McNamee, and caused her serious harm. Defendants are individually as well as jointly and/or severally liable to plaintiff, Tracie McNamee, for the injuries they caused.

7. This is a professional liability (medical malpractice) action.

8. On or about August 1, 1999, plaintiff, Tracie McNamee, underwent a pap smear. The pap smear was performed at Planned Parenthood of Southeastern Pennsylvania. The pap smear was forwarded to Pathnet for review and interpretation.

9. On or about August 9, 1999, defendant, Pathnet Esoteric Laboratory Institute, through its real and/or ostensible agents, servants and/or employees including pathologists, cytopathologists and cytotechnicians, reviewed and interpreted Tracie McNamee's pap smear. Defendants issued a formal diagnosis suggesting that the specimen was "negative for malignant cells and within normal limits."

10. The aforementioned pap smear was misread and misreported. This pap smear actually reveals atypicality and cellular changes consistent with and potentially compatible with premalignant and/or malignant conditions. Defendants failed to appropriately report these pathologic findings and thus failed to appropriately interpret the pap smear at issue.

11. On or about August 21, 2001, plaintiff, Tracie McNamee, underwent a pap smear. The pap smear was performed at Planned Parenthood of Southeastern Pennsylvania. The pap smear was forwarded to Pathnet for review and interpretation.

12. On or about August 27, 2001, defendant, Pathnet Esoteric Laboratory Institute, through its real and/or ostensible agents, servants and/or employees including pathologists, cytopathologists and cytotechnicians, reviewed and interpreted Tracie McNamee's pap smear. Defendants issued a formal diagnosis suggesting that the specimen was "negative for malignant cells

THE COLLERAN FIRM

and within normal limits.”

13. The aforementioned pap smear was misread and misreported. This pap smear actually reveals atypicality and cellular changes consistent with and potentially compatible with premalignant and/or malignant conditions. Defendants failed to appropriately report these pathologic findings and thus failed to appropriately interpret the pap smear at issue.

14. On or about September 5, 2001, defendant, Pathnet Esoteric Laboratory Institute, issued their formal report pertaining to the pap smear in question to Planned Parenthood of Southeastern Pennsylvania. The formal report suggested that the pap smear was “within normal limits.”

15. Between the calendar year 1999 and the time of her ultimate diagnosis of cervical cancer, plaintiff presented to Planned Parenthood of Southeastern Pennsylvania on numerous occasions for gynecologic examinations. On the occasion of these office visits, plaintiff was seen, treated and evaluated by Lynn Michel, C.R.N.P., who at all times acted as the real and/or ostensible agent, servant and/or employee of Planned Parenthood of Southeastern Pennsylvania.

16. On or about August 1, 2000, plaintiff presented to the offices of Planned Parenthood of Southeastern Pennsylvania for examination. On this occasion, plaintiff was seen, treated and evaluated by real and/or ostensible agents, servants and/or employees of Planned Parenthood of Southeastern Pennsylvania. Plaintiff complained to the healthcare providers from Planned Parenthood of Southeastern Pennsylvania on this date of bleeding, particularly post coital bleeding and bleeding knot in conjunction with her normal menstrual cycle. Despite these complaints, the healthcare providers from Planned Parenthood did not perform diagnostic tests and studies designed to rule out cervical cancer.

THE COLLERAN FIRM

17. On or about October 9, 2001, plaintiff presented to the offices of Planned Parenthood of Southeastern Pennsylvania for examination. On this occasion, plaintiff was seen, treated and evaluated by Lynn Michel, C.R.N.P. who at all times acted as the real and/or ostensible agent, servant and/or employee of Planned Parenthood of Southeastern Pennsylvania. Plaintiff complained to Lynn Michel, C.R.N.P. from Planned Parenthood of Southeastern Pennsylvania on this date of bleeding, particularly post coital bleeding and bleeding knot in conjunction with her normal menstrual cycle. Despite these complaints, the healthcare providers from Planned Parenthood did not perform diagnostic tests and studies designed to rule out cervical cancer.

18. On or about September 4, 2002, plaintiff returned to Planned Parenthood for her annual examination. Plaintiff complained to the real and/or ostensible agent, servant and/or employee of Planned Parenthood who saw her on this date of painful intercourse and irregular bleeding.

19. As a result of these complaints, Planned Parenthood of Southeastern Pennsylvania referred plaintiff to Lisa Leoni, M.D.

20. On or about September 5, 2002, plaintiff presented to the office of Lisa Leoni, M.D. Dr. Leoni performed a cervical examination which revealed an abnormal appearing cervix. Dr. Leoni documented plaintiff's complaints of post coital bleeding. Dr. Leoni recommended colposcopy which was performed shortly after the visit referenced in this paragraph.

21. On or about October 5, 2002, plaintiff underwent biopsy of her cervix. The biopsy revealed invasive squamous cell carcinoma.

22. Subsequently, plaintiff underwent treatment at Temple University Hospital performed primarily by Enrique Hernandez, M.D. and radiation oncologists at that institution. Plaintiff was

THE COLLERAN FIRM

diagnosed with invasive squamous cell carcinoma of the cervix, stage II.

23. Following her diagnosis, plaintiff underwent debilitating surgery as well as debilitating chemoradiation. As a result of her cancer and the delayed diagnosis, plaintiff required debilitating, painful and disfiguring surgical procedures and adjuvant therapies.

24. As a result of the delayed diagnosis, plaintiff is at increased risk for cancer recurrence, metastasis, harm, morbidity and death. In addition, as a result of her disfiguring surgeries, plaintiff also required radical hysterectomy, radiation therapy, chemotherapy and ongoing surveillance.

25. At no time prior to her cancer diagnosis in October, 2002, did plaintiff know, understand or appreciate the fact that she had cervical cancer. At no time prior to the time of her diagnosis did plaintiff have reason, knowledge, belief or concern that her symptoms and medical conditions were the result of cervical cancer. Plaintiff at all times justifiably relied upon the advices, diagnoses and treatment of Planned Parenthood of Southeastern Pennsylvania and Pathnet Esoteric Laboratory Institute regarding gynecologic care and pap smear interpretations. Until such time that plaintiff discovered that she had cancer, plaintiff had no reason to question the competency of medical care rendered to her prior to the time of her diagnosis.

26. Plaintiff at all times acted appropriately and with due care in pursuit of her medical symptoms and her diagnosis. Plaintiff was not in a position to discover her illness until such time that a cervical biopsy was performed revealing cervical cancer.

27. The discovery rule is appropriate in this case.

28. Since the time of her cancer diagnosis, plaintiff has undergone painful radiation and administration of various chemotherapeutic agents.

29. Since the time of her cancer diagnosis, plaintiff has undergone numerous surgical

procedures and medical procedures. These procedures have been painful and debilitating.

30. Plaintiff lives with the knowledge that she is at increased risk for cancer recurrence and metastasis as a result of the delayed diagnosis.

31. Plaintiff's cancer was misdiagnosed by all of the defendants.

**COUNT ONE - NEGLIGENCE
TRACIE McNAMEE v. PLANNED PARENTHOOD
OF SOUTHEASTERN PENNSYLVANIA**

32. Plaintiff incorporates herein by reference each and every preceding paragraph of this Complaint as if each were set forth fully herein.

33. The negligent conduct of defendant, Planned Parenthood of Southeast Pennsylvania, acting individually as well as jointly and/or severally consisted of the following:

- a. vicarious liability for any and all real and/or ostensible agents, servants and/or employees in their care and treatment of Tracie McNamee who failed to timely and appropriately diagnose cervical cancer;
- b. vicarious liability for any and all real and/or ostensible agents, servants and/or employees in their care and treatment of Tracie McNamee who failed to associate plaintiff's symptoms of painful intercourse, vaginal bleeding, post coital bleeding, unusual bleeding as indicative of cellular changes of the cervix, premalignant conditions, malignant conditions and/or pathologic conditions requiring full and complete gynecologic work-up, biopsy, cancer screening and cancer treatment;
- c. vicarious liability for any and all real and/or ostensible agents, servants and/or employees in their care and treatment of Tracie McNamee who failed to obtain an adequate medical history at all times;
- d. vicarious liability for any and all real and/or ostensible agents, servants and/or employees in their care and treatment of Tracie McNamee who failed to perform careful, competent and thorough cervical, vaginal and gynecologic examinations at all times;

THE COLLERAN FIRM

- e. vicarious liability for any and all real and/or ostensible agents, servants and/or employees in their care and treatment of Tracie McNamee who failed to counsel plaintiff on the signs and symptoms of cervical cancer;
- f. vicarious liability for any and all real and/or ostensible agents, servants and/or employees in their care and treatment of Tracie McNamee who misdiagnosed plaintiff's condition; and
- g. vicarious liability for any and all real and/or ostensible agents, servants and/or employees in their care and treatment of Tracie McNamee who failed to refer plaintiff to gynecologists for tests and studies designed to detect cervical cancer at the earliest possible time.

WHEREFORE, plaintiff demands judgment in her favor and against defendants in an amount in excess of any local arbitration limit plus costs and interest.

**COUNT TWO - NEGLIGENCE
TRACIE McNAMEE v. LYNN MICHEL, C.R.N.P.**

34. Plaintiff incorporates herein by reference each and every preceding paragraph of this Complaint as if each were set forth fully herein.

35. The negligent conduct of defendant, Lynn Michel, C.R.N.P., acting individually as well as jointly and/or severally consisted of the following:

- a. failing to timely and appropriately diagnose cervical cancer;
- b. failing to associate plaintiff's symptoms of painful intercourse, vaginal bleeding, post coital bleeding, unusual bleeding as indicative of cellular changes of the cervix, premalignant conditions, malignant conditions and/or pathologic conditions requiring full and complete gynecologic work-up, biopsy, cancer screening and cancer treatment;
- c. failing to obtain an adequate medical history at all times;
- d. failing to perform careful, competent and thorough cervical, vaginal and gynecologic examinations at all times;

THE COLLERAN FIRM

- e. failing to counsel plaintiff on the signs and symptoms of cervical cancer;
- f. negligently misdiagnosing plaintiff's condition; and
- g. failing to refer plaintiff to gynecologists for tests and studies designed to detect cervical cancer at the earliest possible time.

WHEREFORE, plaintiff demands judgment in her favor and against defendants in an amount in excess of any local arbitration limit plus costs and interest.

**COUNT THREE - NEGLIGENCE
TRACIE McNAMEE v. PATHNET
ESOTERIC LABORATORY INSTITUTE**

36. Plaintiff incorporates herein by reference each and every preceding paragraph of this Complaint as if each were set forth fully herein.

37. The negligent conduct of defendant, Pathnet Esoteric Laboratory Institute, acting individually as well as jointly and/or severally consisted of the following:

- a. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to appropriately interpret pap smears regarding Tracie McNamee;
- b. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to at all times appropriately interpret, review, diagnose and classify plaintiff's pap smears as identified in this Complaint;
- c. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to diagnose malignant and premalignant conditions on the pap smears identified in this Complaint;
- d. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have policies and procedures in place requiring that pap smears be reviewed by qualified pathologists and cytopathologists as opposed to cytotechnicians;
- e. vicarious liability for any and all real and/or ostensible agents, servants and/or

THE COLLERAN FIRM

employees for misdiagnosing plaintiff's condition;

- f. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to request additional pap smears in 1999 and 2001 in circumstances where the slides in question do not contain adequate diagnostic material;
- g. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have standards, policies and procedures in place for classifying, reporting and diagnosing pap smear specimens; and
- h. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have plaintiff's pap smears interpreted by staff pathologists.

WHEREFORE, plaintiff demands judgment in her favor and against defendants in an amount in excess of any local arbitration limit plus costs and interest.

**COUNT FOUR - NEGLIGENCE
TRACIE McNAMEE v. PATHNET
ESOTERIC LABORATORY INSTITUTE**

36. Plaintiff incorporates herein by reference each and every preceding paragraph of this Complaint as if each were set forth fully herein.

37. The negligent conduct of defendant, Pathnet Esoteric Laboratory Institute, acting individually as well as jointly and/or severally consisted of the following:

- a. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to appropriate interpret pap smears regarding Tracie McNamee;
- b. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to at all times appropriately interpret, review, diagnose and classify plaintiff's pap smears as identified in this Complaint;
- c. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to diagnose malignant and premalignant conditions on

THE COLLERAN FIRM

the pap smears identified in this Complaint;

- d. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have policies and procedures in place requiring that pap smears be reviewed by qualified pathologists and cytopathologists as opposed to cytotechnicians;
- e. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for misdiagnosing plaintiff's condition;
- f. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to request additional pap smears in 1999 and 2001 in circumstances where the slides in question do not contain adequate diagnostic material;
- g. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have standards, policies and procedures in place for classifying, reporting and diagnosing pap smear specimens; and
- h. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have plaintiff's pap smears interpreted by staff pathologists.

WHEREFORE, plaintiff demands judgment in her favor and against defendants in an amount in excess of any local arbitration limit plus costs and interest.

**COUNT FIVE - NEGLIGENCE
TRACIE McNAMEE v. PATHNET ESOTERIC
LABORATORY INSTITUTE - SOUTH**

38. Plaintiff incorporates herein by reference each and every preceding paragraph of this Complaint as if each were set forth fully herein.

39. The negligent conduct of defendant, Pathnet Esoteric Laboratory Institute - South, acting individually as well as jointly and/or severally consisted of the following:

- a. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to appropriately interpret pap smears regarding Tracie

THE COLLERAN FIRM

McNamee;

- b. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to at all times appropriately interpret, review, diagnose and classify plaintiff's pap smears as identified in this Complaint;
- c. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to diagnose malignant and premalignant conditions on the pap smears identified in this Complaint;
- d. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have policies and procedures in place requiring that pap smears be reviewed by qualified pathologists and cytopathologists as opposed to cytotechnicians;
- e. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for misdiagnosing plaintiff's condition;
- f. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to request additional pap smears in 1999 and 2001 in circumstances where the slides in question do not contain adequate diagnostic material;
- g. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have standards, policies and procedures in place for classifying, reporting and diagnosing pap smear specimens; and
- h. vicarious liability for any and all real and/or ostensible agents, servants and/or employees for failing to have plaintiff's pap smears interpreted by staff pathologists.

WHEREFORE, plaintiff demands judgment in her favor and against defendants in an amount in excess of any local arbitration limit plus costs and interest.

40. At all times material hereto, plaintiff was not contributorily or comparatively negligent.

CAUSE OF ACTION

COUNT SIX - DAMAGES

TRACIE McNAMEE v. ALL NAMED DEFENDANTS

41. Plaintiff incorporates herein by reference each and every preceding paragraph of this Complaint as if each were set forth fully herein.

42. As a result of the negligence of the defendants, plaintiff has suffered a worsening of her overall prognosis and a progression of her disease.

43. As a result of the negligence of the defendants, plaintiff has suffered extension of her disease to the point where her prognosis for survival is poor.

44. As a result of the negligence of the defendants, plaintiff has already undergone surgeries and painful radiation and chemotherapy treatments.

45. As a result of the negligence of the defendants, plaintiff has undergone extreme pain and suffering, physical, emotional and mental.

46. As a result of the negligence of the defendants, plaintiff has suffered loss of income and earning capacity.

47. As a result of the negligence of the defendants, plaintiff has suffered a loss of life's pleasures, embarrassment, humiliation, anxiety and a disruption of her daily habits and pursuits.

48. As a result of the negligence of the defendants, plaintiff has been relegated to a miserable life entirely devoted to caring for her illness all the while knowing that her prognosis is poor.

49. As a result of the negligence of the defendants, plaintiff has incurred and will continue to incur huge medical expenses.

THE COLLERAN FIRM

50. As a result of the negligence of the defendants, plaintiff is at risk for loss of vital organs due to the extent of her disease.

51. As a result of the negligence of the defendants, plaintiff lives with the reality that her prognosis is poor and that she will eventually die from her cancer.

WHEREFORE, plaintiff demands judgment in her favor and against defendants in an amount in excess of any local arbitration limit plus costs and interest.

THE COLLERAN FIRM

BY: 
FRANCIS T. COLLERAN, ESQUIRE

THE COLLERAN FIRM

VERIFICATION

I, Francis T. Colleran, Esquire, being duly sworn according to law, verify that the information contained in the foregoing is true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Plaintiff's Verification will be substituted immediately upon receipt.

THE COLLERAN FIRM

BY: 
FRANCIS T. COLLERAN, ESQUIRE