

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ASHLEY VAN PATTEN,

Plaintiff,

vs.

No.

SYLVIA M. OLONA, in her individual capacity, and  
PRESBYTERIAN MEDICAL SERVICES RIO  
RANCHO FAMILY HEALTH CENTER,

Defendants.

**COMPLAINT FOR CIVIL BATTERY, VIOLATION OF CONSTITUTIONAL  
RIGHT TO DUE PROCESS AND NEGLIGENCE**

Plaintiff, Ashley Van Patten, by her attorney, The Law Offices of Robert R. Cooper, by Ryan J. Villa, brings this Complaint for civil battery, negligence and violation of her constitutional right under the Due Process clause of the 5th Amendment to choose her form of contraception against the above-named Defendants. In support of this Complaint, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1346(b)(1).
2. Venue is proper in this district as Defendant Silvia Olona is a resident of New Mexico and Defendant Presbyterian Medical Services Rio Rancho Family Health Center is a corporation doing business within New Mexico, and all the acts complained of occurred in New Mexico.

**PARTIES**

3. Plaintiff is a resident of the State of New Mexico.

4. Defendant Silvia Olona is a resident of the State of New Mexico. At all times material hereto, she was a certified nurse practitioner, employed by Defendant Presbyterian Medical Services Rio Rancho Family Health Center, acting as an employee of the United States pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233.

5. Defendant Presbyterian Medical Services Rio Rancho Family Health Center (hereinafter RRFHC) is a corporation doing business in the State of New Mexico. At all times material hereto, RRFHC acted as an entity of the United States government under the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233.

### **FACTUAL BACKGROUND**

6. On or about January 17, 2007, Plaintiff, Ashley Van Patten, went to RRFHC for a routine medical procedure.

7. Ms. Van Patten was going to have the strings on her intrauterine device (IUD) shortened.

8. An IUD is a contraceptive device that is placed in the cervix and has a string that is used to remove the device if need be.

9. Ms. Van Patten first had the IUD inserted in June 2006 by a different health care provider.

10. Prior to the January appointment, Ms. Van Patten experienced discomfort from the IUD because of the IUD string being too long. Accordingly, Ms. Van Patten arranged to have the strings shortened at RRFHC.

11. Defendant, Silvia Olona, a certified nurse practitioner, saw Ms. Van Patten for the procedure on January 17, 2007.

12. As soon as Defendant Olona began speaking to Ms. Van Patten, she questioned her about her choice of contraception.

13. As Defendant Olona began the procedure, Ms. Van Patten felt Olona pull on the strings of the IUD. Ms. Van Patten felt a distinct pulling on the strings followed by a sharp pain in her uterus similar to a very strong menstrual cramp.

14. As that happened, Defendant Olona stated “Uh oh, I accidentally pulled out your IUD. I gently tugged and out it came.” She then explained, “I cut the string than went back and gently pulled and out it came. It must have not been in properly.”

15. Olona then stated, “having the IUD come out was a good thing.” She asked Ms. Van Patten if she wanted to hear her “take” on the situation. Without receiving a response, Defendant Olona stated, “I personally do not like IUDs. I feel they are a type of abortion. I don’t know how you feel about abortion, but I am against them. What the IUD does is take the fertilized egg and pushes it out of the uterus.”

16. Defendant Olona stated, “Everyone in the office always laughs and tells me I pull these out on purpose because I am against them, but it’s not true, they accidentally come out when I tug.”

17. At this point, Defendant Olona advised that Ms. Van Patten needed to take a pregnancy test. Ms. Van Patten did, and the test was negative.

18. Defendant Olona told Ms. Van Patten that it was better that she did not have the IUD because she could now use a “non-abortion” form of contraception. Defendant Olona suggested the deprovera (depo) shot or the pill, and made clear that she would not insert a new IUD. Because Ms. Van Patten was concerned about pregnancy, she opted to have the depo shot.

19. Defendant Olona informed Ms. Van Patten that the shot would not be effective for two weeks so she would have to use another form of contraception. Because Ms. Van Patten and her husband feared becoming pregnant during that two-week period, they abstained from having any intercourse.

20. At the time of the visit with Defendant Olona, Ms. Van Patten's IUD had been in place for approximately eight months.

21. The type of IUD Ms. Van Patten used, Mirena, can be expelled or palpitated. This usually occurs within the first three to six months of insertion. When the IUD is being expelled or palpitated, persons usually experience irregular bleeding, spotting or cramping. It is also more likely that a woman who has not had a child would expel or palpitate the IUD.

22. Ms. Van Patten did not experience any irregular bleeding, spotting or cramping or any other problems during the entire eight-month period she had the IUD in, prior to the visit with Defendant Olona. Ms. Van Patten has had one child.

23. The pain Ms. Van Patten felt when Defendant Olona was doing the procedure was consistent with the pain experienced when an IUD is intentionally removed.

24. After the removal, Ms. Van Patten experienced some bleeding and spotting.

25. Ms. Van Patten had another IUD inserted by a different healthcare provider on February 19, 2007. Because Olona had removed the IUD, Ms. Van Patten and her husband, Peter Van Patten abstained from having sexual intercourse until after February 19, 2007.

**COUNT I: CIVIL BATTERY AGAINST DEFENDANT SILVIA OLONA**

26. Plaintiff incorporates paragraphs 1 through 25 as if fully set forth herein.

27. Defendant Olona intentionally removed the IUD without Ms. Van Patten's consent to do so.

28. Defendant Olona's conduct fell below the standard of care in the medical industry, which requires consent by the patient prior to conducting any procedures.

29. Defendant Olona's conduct and actions constituted a civil battery upon Ms. Van Patten.

30. The intentional removal of the IUD proximately caused Ms. Van Patten damages and injuries.

31. Defendant Olona's actions arose out of the negligence in the performance of medical treatment.

32. Defendant Olona's actions were intentional, malicious, willful, and wanton.

WHEREFORE, Plaintiff requests compensatory damages against Defendant, including loss of consortium for her and her husband, Peter Van Patten, together with all costs and attorneys' fees.

**COUNT II: RESPONDEAT SUPERIOR AGAINST RRFHC SILVIA OLONA**

33. Plaintiff incorporates paragraphs 1 through 32 as if fully set forth herein.

34. Defendant Olona committed a civil battery upon Ms. Van Patten as a result of her failure to follow standards of care within the healthcare field while acting within the scope of her employment.

35. Defendant RRFHC is liable for that tort under the doctrine of respondeat superior.

WHEREFORE, Plaintiff requests compensatory damages against Defendant RRFHC, including loss of consortium for her and her husband, Peter Van Patten, together with all costs and attorneys' fees.

**COUNT III: VIOLATION OF DUE PROCESS RIGHT TO CHOICE OF  
CONTRACEPTION AGAINST DEFENDANT OLONA**

36. Plaintiff incorporates paragraphs 1 through 35 as if fully set forth herein.

37. Ms. Van Patten has a substantive right to the contraception of her choice under the liberty prong of the Due Process Clause of the Fifth Amendment to the United States Constitution.

38. The Due Process Clause requires that a woman's decision regarding her choice of contraception be made independently and privately, free of unwarranted governmental intrusion.

39. When Defendant Olona, acting as a federal employee and under color of federal authority, removed Ms. Van Patten's IUD without her permission, she violated this due process right.

40. This constitutional violation proximately caused Ms. Van Patten damages and injuries.

41. This violation was intentional, malicious, willful, wanton, obdurate and in gross and reckless disregard of Ms. Van Patten's constitutional right to choose her form of contraception.

WHEREFORE, Plaintiff Ashley Van Patten requests compensatory and punitive damages against Defendant Olona, including loss of consortium for her and her husband, Peter Van Patten, together with all costs and attorneys' fees.

**COUNT IV: NEGLIGENT RETENTION AND SUPERVISION AGAINST  
DEFENDANT RRFHC**

42. Plaintiff incorporates paragraphs 1 through 41 as if fully set forth herein.

43. Defendant RRFHC had a duty to exercise that care ordinarily used by a reasonably prudent and qualified healthcare employer in exercising its duties to retain, control and supervise its employees.

44. Defendant failed to use ordinary and reasonable care in retaining, controlling and supervising Defendant Olona when it had knowledge of her practice of removing IUDs from patients without their permission.

45. The acts and omissions of Defendant as set forth above proximately caused Ms. Van Patten damages and injuries.

WHEREFORE, Plaintiff, Ashley Van Patten requests compensatory damages against Defendants RRFHC, including loss of consortium for her and her husband, Peter Van Patten, together with all costs and attorneys' fees.

**JURY TRIAL DEMAND**

Plaintiff hereby requests a jury trial on all counts so triable.

Respectfully Submitted,

**The Law Office of Robert R. Cooper**

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/S/

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