

1980

Velma Gladys Yates v. Vernal Family Health Center,
A Project of Division of Family And Community
Medicine, University of Utah; Uintah County
Hospital; Vernal Drug Company, A Utah
Corporation; And Gordon Lee Balka, M.D : Reply
Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Robert M. McRae; Attorney for Appellant

Recommended Citation

Reply Brief, *Yates v. Vernal Family Health Center*, No. 16602 (Utah Supreme Court, 1980).
https://digitalcommons.law.byu.edu/uofu_sc2/1875

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE
STATE OF UTAH

VELMA GLADYS YATES, :
Plaintiff-Appellant, :
vs. :
VERNAL FAMILY HEALTH CENTER, : Case No. 16602
a project of Division of :
Family and Community Medicine, :
University of Utah; UINTAH :
COUNTY HOSPITAL; VERNAL DRUG :
COMPANY, a Utah corporation; :
and GORDON LEE BALKA, M.D., :
Defendants-Respondents. :

REPLY BRIEF OF APPELLANT

Appeal from a Judgment of the
Fourth Judicial Court for Uintah County
Honorable Allen B. Sorensen, Judge

ROBERT M. McRAE
McRAE & DeLAND
72 East Fourth South, #355
Salt Lake City, UT 84111
Attorneys for Appellant

FILED

JUN 16 1980

William T. Evans
UTAH ATTORNEY GENERAL'S OFFICE
25 South Wolcott - University of Utah
Salt Lake City, UT 84112
Attorney for Respondent,
Vernal Family Health Center

Leonard H. Russon
HANSON, RUSSON, HANSON & DUNN
702 Kearns Building
Salt Lake City, UT 84101
Attorneys for Respondent,
Uintah County Hospital

John H. Snow
SNOW, CHRISTENSEN & MARTINEAU
700 Continental Bank Building
Salt Lake City, UT 84101
Attorneys for Respondent,
Vernal Drug Company

Gayle F. McKeachnie
McKEACHNIE AND ALLRED
53 South 200 East
Vernal, UT 84078
Attorneys for Respondent,
Vernal Drug Company

D. Gary Christian
KIPP AND CHRISTIAN
600 Commercial Club Building
Salt Lake City, UT 84111
Attorneys for Respondent,
Gordon Lee Balka, M.D.

IN THE SUPREME COURT
OF THE
STATE OF UTAH

VELMA GLADYS YATES,	:	
Plaintiff-Appellant,	:	
vs.	:	
VERNAL FAMILY HEALTH CENTER,	:	Case No. 16602
a project of Division of	:	
Family and Community Medicine,	:	
University of Utah; UINTAH	:	
COUNTY HOSPITAL; VERNAL DRUG	:	
COMPANY, a Utah corporation;	:	
and GORDON LEE BALKA, M.D.,	:	
Defendants-Respondents.	:	

REPLY BRIEF OF APPELLANT

Appeal from a Judgment of the
Fourth Judicial Court for Uintah County
Honorable Allen B. Sorensen, Judge

ROBERT M. McRAE
McRAE & DeLAND
72 East Fourth South, #355
Salt Lake City, UT 84111
Attorneys for Appellant

TABLE OF CONTENTS

ARGUMENT	1
THE NOTICE SERVED BY APPELLANT'S HUSBAND PROVIDED RESPONDENTS WITH THE INFORMATION REQUIRED BY 78-14-8, UTAH CODE ANN. AND IN NO WAY CAUSED ANY PREJUDICE TO RESPONDENTS	1

AUTHORITIES CITED

<u>Foil v. Balinger</u> , 601 P.2d 919 (1978)	2,5
<u>McGuire v. University of Utah Medical Center</u> , 603 P.2d 786 (1979)	2,5
<u>Scarborough v. Granite School District</u> , 531 P.2d 480 (1975)	4
<u>Vealey v. Clegg</u> , 601 P.2d 919 (1978).	1,5

STATUTES CITED

Utah Code Ann., 78-14-8	1,2,4,6
Utah Code Ann., 78-14-12	3

IN THE SUPREME COURT
OF THE
STATE OF UTAH

VELMA GLADYS YATES,	:	
Plaintiff-Appellant,	:	
vs.	:	
VERNAL FAMILY HEALTH CENTER,	:	Case No. 16602
a project of Division of	:	
Family and Community Medicine,	:	
University of Utah; UINTAH	:	
COUNTY HOSPITAL; VERNAL DRUG	:	
COMPANY, a Utah corporation;	:	
and GORDON LEE BALKLA, M.D.,	:	
Defendants-Respondents.	:	

REPLY BRIEF OF APPELLANT

ARGUMENT

THE NOTICE SERVED BY APPELLANT'S HUSBAND
PROVIDED RESPONDENTS WITH THE INFORMATION
REQUIRED BY 78-14-8, UTAH CODE ANN. AND IN
NO WAY CAUSED ANY PREJUDICE TO RESPONDENTS.

Since its enactment in 1976, the Utah Health Care
Malpractice Act in general, and the notice of intent to com-
mence action of Section 8 in particular, have engendered
substantial litigation. In spite of this activity, it appears
that this case is one of first impression. In Vealey v. Clegg,

601 P.2d 919 (1978), Foil v. Balinger, 601 P.2d 144 (1979) and McGuire v. University of Utah Medical Center, 603 P.2d 786 (1979); this Court encountered the situation in which no notice of intent whatsoever was purported to have been provided by the plaintiff prior to the commencement of his medical malpractice action.

In the instant case, however, a letter was in fact served upon respondents pursuant to the mandate of 78-14-8. Respondents submit that said letter did not constitute the required notice since it identified Marzine Yates, husband of the appellant, as the claimant, while the subsequently filed Complaint was brought by appellant herself, and since it was couched in somewhat equivocal terms. Respondents further contend that even if the letter did provide the requisite notice of intent, that the notice was deficient in providing the information listed in Section 8. That is, the nature of the claim, the persons involved, the date, time and place of occurrence, the circumstances thereof, specific allegations of misconduct on the part of the prospective defendant, the nature of the alleged injuries and other damages sustained. It is also respondents contention that Section 8 of the Act requires strict compliance and that actual knowledge by respondents of the information to be provided by the notice is

immaterial.

A reasonable reading of the statute, however, coupled with an examination of the intent and purpose underlying its adoption, reveals the error of these assertions. It is clear from a reading of the legislature findings and declarations contained in 78-14-2, as well as the entire legislature history of the Act, that the notice requirement was adopted merely as a device to afford prospective medical malpractice defendants an opportunity to evaluate and resolve claims prior to the filing of a lawsuit. It is absurd to assert that this purpose is defeated and the statute is uncomplied with solely because the notice comes from a member of the prospective plaintiff's immediately family instead of from the prospective plaintiff herself. Regardless who provides and executes the notice, the contents of the notice enabling the prospective defendant to evaluate and settle the claim prior to suit remain the same. That is, the allegations of malpractice, the nature of the injuries, the nature of the claim, the persons involved and the time and place of occurrence. Thus, respondents were in no way prejudiced in their effort to evaluate the claim by the filing of the notice by appellant's husband.

It is equally clear that the use by appellant's husband, in the letter of intent, of several equivocations such as "potentially is asserting and claiming" and "may commence"

did not defeat the purpose of the notice provision, but, to the contrary, put respondents on notice that a claim was forthcoming and gave them the opportunity to investigate the circumstances and evaluate their liability.

Having concluded in light of the Acts underlying purpose that the filing of the notice of intent by appellant's husband and his use of several equivocal statements did not operate to deprive the letter from obtaining the status of "notice", the question of what level of compliance with the informational provision of 78-14-8 is required and must be addressed. Respondents take the position that these informational provisions must be strictly complied with. Such a standard of strict compliance has been applied by this Court with regard to the notices of claim filed pursuant to the Utah Governmental Immunities Act. The rationale as expressed in Scarborough v. Granite School District, 531 P.2d 480 (1975) is as follows:

"The School District is a political subdivision of the state. Therefore, it would normally be immune from suit; and the right to sue is an exception created by statute. We have consistently held that where a cause of action is based upon a statute, full compliance with its requirements is a condition precedent to the right to maintain a suit."

Such a rationale does not exist with regard to medical malpractice actions. That is, the right to bring such an action is not the result of a statutory enactment waiving immunity sub

to state conditions.

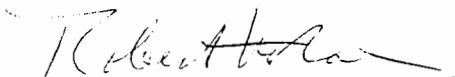
It should also be noted that there is a great difference between presenting a notice which is somewhat incomplete and in presenting no notice at all, as in Vealey, Foil, and McGuire, prospective defendants are sufficiently notified to enable them to at least investigate the merits of the claim and thus satisfy the purpose underlying the notice requirement. In the instant case, respondents were sufficiently apprised of the occurrence of the incident from which the claim would arise, that with the exercise of reasonable diligence they could have fully informed themselves as to the pertinent facts comprising the claim. In fact, respondents' access to the type of information to be provided in the notice was equal to if not greater than that of appellant since respondents were already in possession of appellant's medical records and had ready access to those persons privy to information regarding the alleged acts of malpractice.

In any event, an examination of the letter served on respondents reveals the following information: that the alleged malpractice occurred during the period from March 1976 to March 1978 consisting of negligent prescribing and dispensing of drugs and prescribed medicine, which drugs were prescribed by Respondent Balka in his capacity as agent for Respondent Vernal Family Health Center and dispensed by Respondent Vernal Drug

Company and which alleged malpractice resulted in seizures and a coma and injuries consisting of permanent mental impairment. This information, if not sufficient by itself to thoroughly inform respondents, was at least sufficient to alert them of the alleged malpractice so that an investigation and evaluation of the claim could be instigated.

Finally, the record totally fails to disclose the existence of any claim by respondents of prejudice in maintaining a defense on the merits due to the purported lack of notice or insufficiency of the notice of intent. This Court should continue 78-14-8 in such a manner as to give effect to the legislature's intent in enacting the Act. Such a construction would eliminate undue emphasis on technicalities and provide liberality in procedure to the end that this dispute be heard and determined on its substantive merits. Such liberality should especially be manifested in the instant case where no prejudice or disadvantage to any respondent will result.

RESPECTFULLY SUBMITTED this 13th day of June, 1980.



ROBERT M. McRAE
McRAE & DeLAND
Attorneys for Appellant
72 East Fourth South, #355
Salt Lake City, UT 84111

MAILED OR DELIVERED a copy of the foregoing Reply
Brief of Appellant, this 13th day of June, 1980, to the
following:

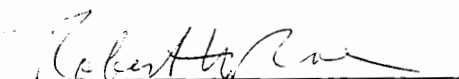
William T. Evans
Utah Attorney General's Office
Attorney for Vernal Family Health Center
25 South Wolcott - University of Utah
Salt Lake City, UT 84112

Leonard H. Russon
Hanson, Rysson, Hanson & Dunn
Attorneys for Uintah County Hospital
702 Kearns Building
Salt Lake City, UT 84101

John H. Snow
Snow, Christensen & Martineau
Attorneys for Vernal Drug Company
700 Continental Bank Building
Salt Lake City, UT 84101

Gayle F. McKeachnie
McKeachnie & Allred
Attorneys for Vernal Drug Company
53 South 200 East
Vernal, UT 84078

D. Gary Christian
Kipp and Christian
Attorneys for Gordon Lee Balka, M.D.
600 Commercial Club Building
Salt Lake City, UT 84111


ROBERT M. McRAE