

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

ERICA SMITH,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

SERVE VIA CERTIFIED MAIL:  
U.S. Attorney for the Western  
District of Missouri  
Attention: Civil Process Clerk  
400 East 9th Street, Room 5510  
Kansas City, MO 64106

Case No. 2:18-cv-4263

AND

Attorney General of the United  
States  
Department of Justice  
Room 5111  
10th & Constitution Avenue, NW  
Washington, D.C. 20530

COMPLAINT

COMES NOW Plaintiff, Erica Smith, by and through her  
counsel of record, Matthew B. Woods, and for her causes of  
actions against Defendant, states and alleges as follows:

JURISDICTION, VENUE, AND PARTIES

1. This cause of action arises from Defendant's medical  
negligence that was exacerbated by an indifferent and

incompetent response to the medical emergency created by the negligence on Veterans Administration Hospital premises in Columbia, Missouri. Defendant's failure to promptly and appropriately diagnose Plaintiff's decedent's sepsis, in conjunction with prescribing medication that worsened that condition, subjected Plaintiff's decedent to further pain and suffering and ultimately to his death.

2. Jurisdiction in this court is proper under the Federal Torts Claims Act ("FTCA") at 28 U.S.C. § 1346(b) because the law of the state where the act or omission occurred determines the liability of the United States.
3. Venue in the Central Division of this Court is proper on all counts under 28 U.S.C. § 1402(b) (2000) and Local Rule 3.2(b) because the events or omissions giving rise to these claims occurred in Boone County, Missouri.
4. Plaintiff Erica Smith ("Plaintiff Smith") is an adult resident of Columbia, Boone County, Missouri.
5. Plaintiff's decedent ("Plaintiff's decedent") was Richard Williams, a veteran of the United States who was being treated at the Veterans Administration Hospital in Columbia, Missouri.
6. Defendant United States of America ("Defendant USA") is the only proper Defendant in an FTCA case, 28 U.S.C. § 2679.

7. At all relevant times, Defendant USA operated, controlled, and maintained the Veterans Administration Hospital in Boone County, Missouri, at which Plaintiff's decedent was a patient.

APPLICABLE LAW AND POLICY

8. Plaintiff incorporates by this reference each and every allegation contained in paragraphs 1-7 as if fully set forth herein verbatim.

9. The FTCA is the only available remedy which authorizes recovery for death caused by negligent federal government employees acting within the scope of their federal employment. 28 U.S.C. § 1346(b).

10. The FTCA is the exclusive remedy for all claims "allegedly arising from malpractice or negligence of a health care employee of the [Veteran's] Administration in furnishing health care or treatment while in the exercise of that employee's duties in or for the [Veteran's] Administration ... whose act or omission gave rise to such claim" *Richardson v. Department of Veteran Affairs*, 2006 WL 1348392 (W.D.Wash.)

11. The FTCA is the exclusive money damages remedy for negligent acts or omissions of federal government employees acting within the scope of their federal employment. 28 U.S.C. § 2679.

12. This Court has exclusive jurisdiction to hear FTCA claims. *Wood v. United States*, 961 F.2d 195, 197 (Fed. Cir. 1992).
13. Claimant has presented her an administrative tort claim to the appropriate government agency for adjudication before filing suit in federal court. 28 U.S.C. § 2675(a), which was presented to the appropriate government agency within two years of accrual. 28 U.S.C. § 2401(b).
14. Claimant can file a federal court complaint any time six months after presenting the claim if no agency action has been taken. 28 U.S.C. § 2401(b).
15. The FTCA provides that the law of the state where the act or omission occurred determines the liability of the United States. 28 U.S.C. § 1346(b), and the substantive tort law of the state determines whether the plaintiff has a valid cause of action. *Henderson v. United States*, 846 F.2d 1233 (9th Cir. 1988).
16. Plaintiff brings this action pursuant to RSMo § 537.080.
17. The Plaintiff is a member of the class of individuals authorized to pursue a wrongful death claim pursuant to RSMo § 537.080(1).



### FACTUAL ALLEGATIONS

18. On December 27<sup>th</sup>, 2016, Plaintiff's decedent, veteran Richard Williams checked himself into the Veterans Administration seeking help for shortness of breath.
19. Nearly all of Mr. Williams' and medical staff/personnel's movements and actions were recorded on videotape including his inability to breathe well.
20. Because of multiple deviations from standards of care by Veterans Administration employees, he died two days later on December 29<sup>th</sup> from anoxia secondary to laryngeal edema and sepsis complicated by multiple drug intoxication from Haldol and lorazepam.
21. The failures of the combined responsibility of the internal medicine team and the psychiatry team to work collaboratively to reassess medicinal therapies that might need to be changed given the patient's declining physical condition, in addition to labelling the obvious signs of sepsis and respiratory distress as a "behavioral condition," lead to Mr. Williams' untimely death.

### COUNT I - NEGLIGENCE AGAINST DEFENDANT UNITED STATES OF AMERICA

COMES NOW Plaintiff and for her cause of action against Defendant United States of America, states and alleges as follows:

22. Plaintiff incorporates paragraphs 1 through 21. by reference as though fully set forth herein verbatim.
23. Defendant United States of America, by and through its agents and employees, deviated from the standard of care that a medical specialist, physician, nurse, or licensed care practitioner would have performed in that it failed to use that degree of care that a medical specialist, physician, nurse, or licensed care practitioner would use under the same or similar circumstances.
24. Despite reports and direct comments by caregivers including providers on the Psychiatry service team of the patient looking very poorly and struggling to breath, the Internal Medicine consult was ordered as "routine" rather than "urgent" or other similar increased level of priority. As a result of this action, there was a 6-hour delay between the time the patient had clear signs of sepsis and an internal medicine team member arrived bedside to assess the patient.
25. The General Internal Medicine service team including residents and staff physicians failed to factor in very significant signs and symptoms of acute respiratory distress and severe physical illness during their evaluations on the date of death, December 29, 2016. These include but are not limited to:

- a. the presence of septic vital signs at 0705 that morning;
- b. gradual worsening oxygen saturation from date of admission to date of death with hypoxemia present the afternoon of death;
- c. tachypnea with use of accessory muscles of breathing;
- d. fever of 101.4.

26. Despite these easily observable and readily available findings, the Internal Medicine team dismissed the patient's alarming signs and symptoms and diagnosed him with "behavioral" rather than physical illness. Because of this major breach in the standard of care, the patient succumbed to his physical illness in a matter of hours.

27. Defendant United States of America, by and through its agents and/or employees, breached its duty of care to Decedent and was thereby negligent in one (1) or more of the following respects:

- a. Defendant failed to assess the medical situation properly;
- b. Defendant failed to recognize sepsis in Mr. Williams;
- c. Defendant failed to treat sepsis in Mr. Williams;
- d. Despite having increased work of breathing and hypoxemia, Defendant failed to provide supplemental oxygen to Mr. Williams;

e. Defendant failed to provide an IV antibiotic first and foremost. The choice of an oral antibiotic in the quinolone family (levofloxacin) to treat what the team listed as their top diagnosis, aspiration pneumonia, in a septic patient was highly inappropriate;

f. Defendant failed to transfer Mr. Williams to a medical floor for treatment. A patient with signs of sepsis and acute respiratory distress should have been transferred to a medical floor where nursing care is more familiar and better to care for a patient with these very serious medical conditions;

g. Lastly, Defendant's medical team failed to work collaboratively with the psychiatric team and together they should have recognized the need to avoid medications such as the combination of haloperidol and lorazepam that have ability to cause hypokinesia and sedate the patient to the point of him being unable to mechanically respond to his symptoms of acute respiratory failure.

28. The negligent acts or omissions set forth in paragraph 27 subparts a through g, separately and independently, and jointly and severally, were the direct and independent cause of Decedent's injuries including, but not limited to:

a. Respiratory failure;



b. Anoxia secondary to laryngeal edema and sepsis

c. Death.

29. As a direct and proximate result of the Defendant United States of America's negligence, as set forth herein directly caused the death of Plaintiffs' decedent Richard Williams, and his pain and suffering and personal injuries just prior to his death.

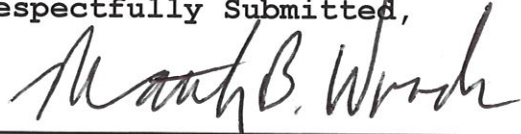
30. Had death not ensued, Decedent would have been entitled to recover damages from Defendant.

31. By reason of the foregoing premises, Plaintiff has been damaged and is entitled to recover fair and just damages pursuant to RSMo § 537.090 for the pecuniary losses suffered by the reason of the death of Decedent Richard Williams, funeral expenses, and the reasonable value of services, companionship, comfort, instruction, guidance, counsel, training and support Plaintiff has been deprived of by reason of the death of her father, together with any damages the deceased may have suffered between the time of his illness and his death as provided herein which include but are not limited to pain and suffering and emotional distress.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against the Defendant United States of America on Plaintiff's Complaint, award a fair and reasonable amount to

adequately compensate Plaintiff for all of her damages herein as well as costs of this action and attorneys' fees pursuant to 42 U.S.C. § 1988 (2000), and for such other and further relief as this Court deems just in the circumstances.

Respectfully Submitted,



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Matthew B. Woods

Missouri Bar No. 34740

**ENG &  
WOODS**

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