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**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 WEI WUA PENG, individually and as personal representative of TIEBAO HAUNG, deceased, and LANGYUE IHUANG, Plaintiffs, vs. COMMONWEALTH GOVERNMENT DEPARTMENT OF HEALTH, COMMONWEALTH HEALTH CENTER, NASSER CHAHMIRZADI, and NORMA S. ADA. Defendants.

9 } Civil Action No. 06-0050

10 } ORDER GRANTING DEFENDANT NORMA ADA'S 12(b)(6) MOTION TO DISMISS

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I. INTRODUCTION

THIS MATTER came for hearing on June 1,2006 at 1:30 p.m. to address Respondents' Motion to Dismiss. Counsel Robert Torres appeared for Defendant Dr. Ada Counsel Gregory **Baka** appeared for Defendant Dr. **Chahmirzadi**. Attorney **General** David Lochabay appeared on behalf of the Commonwealth Defendants, Department of Health and Commonwealth Health Center. Counsel Matthew Smith appeared on behalf of Plaintiffs. Having considered the **oral** and written submissions of the parties **and** the applicable law, this Court is prepared to issue its ruling.

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II. DISCUSSION

2 Dr. Ada's Motion to Dismiss is grounded in Com. R Civ. 12(b)(6), which allows for the dismissal
3 of claims for which the recognized law provides no relief. A motion to dismiss is therefore solely aimed
4 at attacking the pleadings.

5 Since Com. R. Civ. P. 8 requires only a "short and plain statement of the claim showing that the
6 pleader is entitled to relief," there is "a powerful presumption against rejecting pleadings for failure to
7 state a claim." *Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 386 (5th Cir. 1985). Consequently, a
8 motion to dismiss for failure to state a claim upon which relief can be granted will succeed only if from
9 the complaint it appears beyond doubt that plaintiffs can prove no set of facts in support of their claim
10 that would entitle them to relief *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999) (*emphasis added*).

11 The burden is upon the movants to establish beyond doubt that the Plaintiffs action is one upon
12 which the law recognizes no relief . **All** allegations of material fact are taken as true and construed in the
13 light most favorable to the **non-moving** party. The Court in examining the pleadings **will** assume all **well-**
14 **plead** facts are true and draw reasonable inferences to determine whether they support a legitimate cause
15 of action. See *Cepeda v. Hefner*, 3 N.M.I. 121, 127-78 (1992); *In re Adoption of Magofna*, 1 N.M.I.
16 449, 454 (1990); *Enesco Corp. v. Price/Costco, Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998). In reviewing
17 the sufficiency of the complaint, the "issue is not whether a **plaintiff will** ultimately prevail but whether the
18 claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94
19 S.Ct. 1683, 1686 (1974). "[I]t may appear on the face of the pleadings that recovery is very remote and
20 unlikely but that is not the test." *Id.*

Plaintiffs complaint for damages alleges two main causes of action against all Defendants: negligence and gross negligence. Specifically, Plaintiffs' complaint alleges that the Defendants' individual and collective negligence led to the wrongful death of one of the plaintiffs, Baby Huang, shortly after Huang was born. In a medical malpractice action grounded in negligence, a well-plead complaint must allege facts which, at the very least, support the essential elements for negligence. See Com. R. Civ. P. 8.

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2 Negligence is simply "conduct which **falls** below the standard established by law for the protection
3 of others against **unreasonable** risk of harm." RESTATEMENT(SECOND) OF TORTS § 282 (1965).
4 Consequently, to sustain an action in negligence against another, Plaintiff must plead facts which support
5 that 1) Plaintiff was owed a duty of care by Defendant; and 2) Defendant's acts or omissions fell below
6 the prescribed standard of care. To recover money, **Plaintiff** must additionally show that Defendant's
7 negligent acts or omissions proximately and legally caused harm to the Plaintiff.

8 Dr. Ada's motion to dismiss contends that Plaintiffs have failed to plead **sufficient** facts to sustain
9 an action of negligence against her because she **claims** that a physician-patient relationship is a
10 prerequisite to a duty being imposed on a physician to exercise professional care for another and that no
11 physician-patient existed between Dr. Ada and Baby Huang before Baby Huang suffered its life-ending
12 injuries which gave occasion for this lawsuit. **Thus**, an inquiry must be made as to whether the law
13 requires a physician-patient relationship to exist in order to impose a professional duty of care on upon a
14 physician to a patient, and if so, whether a patient-physician relationship existed between Baby **Huang**
15 and Dr. Ada which gave rise to a professional duty of care before Baby Huang sustained it's fatal injuries.
16 The Court agrees with Defendant. .

17 The first query appears to be one that has not been pronounced upon by the legislature or
18 discussed thoroughly by the Commonwealth judiciary. Therefore, the Court must apply the common law
19 of the several states as it is presented in the Restatement **insofar** as it is representative of the laws of the
20 United States. See 7 CMC § 3401. Unfortunately, the Restatement does not speak directly to the
21 question posed.

22 However, a thorough **survey** of several jurisdictions in the United States reveals that a physician-
23 patient relationship is an essential prerequisite which must be established before any duty of **professional**
24 care can be imposed upon a medical professional. See *Joseph v. McCann*, 147 P.3d 547 (Utah App.,
25 2006) (holding that as applied to medical malpractice claims, the plaintiff must demonstrate a physician-

1 patient relationship with the physician in order to establish the physician's duty of care); *Seeber v.*
2 *Ebeling*, 141 P.3d 1180 (Kan.App., 2006) (existence of a duty of care in a medical malpractice action is
3 dependent on the existence of a physician-patient relationship); *see also Crisp Regional Hosp., Inc. v.*
4 *Oliver*, 621 S.E.2d 554 (Ga.App., 2005); *Roberts v. Sankey*, 813 N.E.2d 1195 (Ind. App., 2004);
5 *Megally v. LaPorta*, 679 N.Y.S.2d 649 (N.Y.A.D. 2 Dept., 1998). Consequently, the Court requires a
6 physician-patient relationship to exist between Plaintiff and Defendant before it will ascribe any
7 professional duty of care to Defendant.

8 Even when taken in a light most favorable to Plaintiffs, their pleadings fail to support a claim for
9 medical malpractice negligence against Dr. Ada. Here, the only facts plead by Plaintiffs which personally
10 connect Dr. Ada to Baby Huang prior to Baby Huang sustaining its injuries are those found in paragraphs
11 6 and 31. The sole material fact in paragraph 6 alleges that Dr. Ada "attended the [allegedly flawed]
12 delivery of Baby Huang." Paragraph 31 imposes a duty upon both physicians, Dr. Ada and Dr.
13 Chahmirzadi "as the medical doctors present and/or involved in the delivery, assigned to and responsible
14 for the care, life and well-being of Plaintiffs, as admitted patients, had a professional duty to provide care
15 that did not fall below the accepted standard of care in their respective fields."

16 Plaintiffs argue that Dr. Ada's attendance of the birth of Baby Huang created a physician-patient
17 duty between Dr. Ada and Plaintiffs. However, case law and even the Restatement suggest that action
18 more than mere attendance must be present to attach a professional duty to an individual. *See*
19 RESTATEMENT (SECOND) TORTS §§ 323 and 324. The Restatement sections cited, although not directly
20 addressing the specific mechanics of a recognized physician-patient relationship, nevertheless propound
21 the scope of finding a relationship between individuals in which a duty is imposed on one for the care of
22 another. Here, the common element in these cases is that person upon whom a duty is imposed must
23 affirmatively undertake or accept the care of another, directly or by implication. Plaintiffs have failed to
24 establish this connection between Dr. Ada and Plaintiffs by demonstrating that Dr. Ada undertook any
25 action toward establishing a relationship with Plaintiffs which would require her to exercise a standard of

1 professional care commensurate with a reasonably prudent medical professional.

2 No Fright line rules establish exactly when a physician-patient relationship is created in the CNMI.
3 However, courts in other jurisdictions tend to examine the cases on their factual bases. See also *Prosise*
4 v. *Foster*, 544 S.E.2d 331 (Va., 2001) (finding that an attending physician in a teaching hospital and a
5 patient who was treated and seen only by two residents who did not consult attending physician had no
6 duty of care to patient); *Corbet v. McKinney*, 980 S.W.2d 166 (Mo.App.E.Dist., 1998) (Where consulted
7 physician merely undertakes to advise patient's treating physician, has no explicit contractual obligation
8 to patient, treating physician, or treating hospital to provide care); *Charleston v. Larson*, 696 N.E.2d 793
9 (Ill.App.1.Dist., 1998).

10 Here, Plaintiffs fail to cite facts which even remotely tie Dr. Ada's presence or status as attending
11 physician to the events surrounding Baby Huang's injuries. Although the Court should make reasonable
12 inferences, **inferring** any creation of a physician-patient relationship **from** Dr. Ada's "attendance" of Baby
13 Huang's delivery would force the Court to speculate, hypothesize, and read into the various meanings
14 and **significance** of the word "attended." This Court however **will** not strain to reach inferences **from**
15 insufficiently plead facts. *Govendo v. Pub. Land Corp.*, 2 N.M.I. **482** (1992).

16 Furthermore, because **Plaintiffs** are unable to establish any physician-patient relationship between
17 Dr. Ada and Plaintiffs by their direct allegations, the Court will certainly not **accept** the conclusory
18 allegations of Paragraph 31 as true. Quite simply, **Plaintiffs** have failed to make the factual connection
19 between Dr. Ada's "attendance" of the Baby Huang delivery and any supposed professional duty of care
20 that she allegedly owed to Baby Huang and other Plaintiffs.

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III. CONCLUSION

2 For the foregoing reasons, Respondents' Motion to Dismiss Defendant Dr. Norma Ada from
3 Plaintiffs' complaint is **GRANTED**.

5 | SO ORDERED this 29th day of December, 2006.



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