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Good Morning, Mobridge!



Partly cloudy.  
High 40 to 45.  
Details, 2A

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## Waubay couple suing doctors, hospital



American News Photo by Dawn Dietrich

**Lawsuit filed:** After three surgeries to correct injuries from an auto accident in July 2002, Marilyn Zubke and her husband, David Zubke, say she is unable to work on their rural Waubay farm.

*Aberdeen surgeon allegedly botched surgery after accident*

By Christian Richardson  
American News Writer

At the exact second a semitrailer hit the back of Marilyn Zubke's pickup truck, at the precise moment the metal twisted and the glass shattered and her bones cracked, life began to change.

The instant the rural Waubay woman consented to surgery and a knife cut her skin and muscle, when metal hooks and rods were inserted to stabilize her spine, life was altered.

The 42-year-old woman recalls that

she was vulnerable during those moments — traumatized by the accident and lacking medical knowledge. She was told she had a compression fracture slightly above the middle of her back. The word paralysis scared her and she agreed to surgery at Avera St. Luke's Hospital, believing Dr. Britt M. Borden of Aberdeen would heal her.

After two operations in Aberdeen and a third corrective procedure in Minneapolis, she said she still lives in pain. She sleeps on her side, in a chair, never on her stomach and usually sparsely. She can no longer work on the Waubay farm she and her husband, David Zubke, own. Shovelng grain

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# Lawsuit: Some facts of surgery disputed

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and calving are out of the question, she said.

Marilyn Zubke states that she didn't ask for this life. She and her husband, represented by attorney Lee Schoenbeck of Watertown, are now suing Avera



St. Luke's, Dr. Borden and Sioux Falls surgeon Dr. Robert C. Suga, who had concurred that she needed a second operation. The suit claims that all were negligent and seeks more than \$300,000 in damages.

"I trusted him, that he was going to take care of me," Marilyn Zubke said of Borden.

Aberdeen attorney Reed Rasmussen, representing Avera St. Luke's, said Dr. Borden was given privileges to operate at the hospital, but is not an employee of the facility.

Rasmussen would not comment when asked if Borden's privileges have been suspended.

Borden, a physician at NeuroSpine of Aberdeen, has been operating in the Hub City since 2002. He and his attorney, Ed Evans of Sioux Falls, could not be reached for comment. Suga's attorney Roger A. Sudbeck of Sioux Falls, was also unavailable.

**Surgery facts in dispute:** On July 31, 2002, Marilyn Zubke was in the pivotal vehicle accident. Her first surgery was Aug. 1. Hooks and rods were supposed to be placed along six levels of vertebrae — the bones of the spinal column — above and below the fractured bone, allowing it to be stabilized, Marilyn Zubke believes. However, her lawsuit states Borden stopped at the fractured vertebra, instead of below it, increasing pressure on the break.

The fact has been disputed.

During an Oct. 10, 2003,

deposition — used to gather out-of-court testimony —

Borden stated that he did attach the hooks and rods above and below the fractured vertebra.

However, there were no X-rays taken after the completion of the first surgery to confirm the claims of either party.

**Second surgery:** On Aug. 14, 2002, Borden told Marilyn Zubke she needed a second operation because her bones were weak and the hooks and rods moved two vertebrae up her spine. He said during the Oct. 10, 2003, deposition, "I did go two levels below the fracture. The hooks pulled out and were displaced superiorly."

The Zubkes said they consulted with Dr. Suga before agreeing to the second procedure. "We wondered why a few days later we had to have a second surgery," said David Zubke.

On Aug. 22 Marilyn Zubke again went under the knife. Borden removed three intervertebral discs and two levels of vertebrae, replacing them with a metal cage, the lawsuit states. He then inserted hooks and rods that extended nine levels.

The rods in her back were inserted straight, rather than shaped to the contour of her spine. She said they were poking her in the back.

Unable to stand the pain, she went to a spine center in Minneapolis. There the rods were removed and longer screws were inserted, she said.

Schoenbeck said the case will go to trial next year in Day County Circuit Court. At that time he'll ask a jury to determine if Marilyn Zubke should be compensated for her \$317,844.62 in medical expenses and an undetermined amount for lost lifetime earnings.

**Legal entanglements:** According to court records provided by the plaintiffs, a malpractice lawsuit has previously been filed against Borden in Washington state. The document says he either carelessly or incorrectly operated on a patient. The outcome of the legal action is unclear.

The Zubkes hold St. Luke's accountable for granting Borden privileges at the hospital.

According to federal law, hospitals must review a doctor's background before bringing him on board.

The Code of Federal Regulations states that hospitals must search the National Practitioner Data Bank for information on a prospective doctor. The search must be conducted "at the time a physician . . . or other health care practitioner applies for a position on (a hospital's) medical staff, or for clinical privileges at the hospital," the law says.

"Any hospital which does not request the information as required . . . is presumed to have knowledge of any information reported to the Data Bank concerning this physician," it says.

Rasmussen would not comment when asked if St. Luke's ran a check on Borden before granting him hospital privileges.

The Zubkes are still in disbelief and expressed that they only wanted help from a qualified physician when they went to the hospital on that July day.

"You come in there in a vulnerable state. We're putting all our trust in them," David Zubke said.