

02-169-CD

Herzing vs DemCat

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right, and  
as Administrators of the Estate of JANELL  
HERZING, a minor, deceased,

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

Defendants.

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

**PLAINTIFFS' MOTION TO PRECLUDE  
EVIDENCE CONCERNING MINOR  
DECEDENT'S LEVEL OF MENTAL OR  
PHYSICAL FUNCTION**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Amy Acheson, Esquire  
PA ID#50506

Michael A. Murphy, Esquire  
PA ID#55846

Gary J. Ogg, Esquire  
PA ID#34515

Ogg, Cordes, Murphy & Ignelzi  
Firm No. 568  
245 Fort Pitt Boulevard  
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412.471.8500  
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**JURY TRIAL DEMANDED.**

**FILED**

SEP 20 2005

m/1230 / l/105

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

Defendants.

**PLAINTIFFS' MOTION TO PRECLUDE EVIDENCE CONCERNING MINOR  
DECEDENT'S LEVEL OF MENTAL OR PHYSICAL FUNCTION**

AND NOW, come Plaintiffs, by and through their counsel, and respectfully request this Honorable Court to enter an Order precluding Defendants from offering evidence concerning your Plaintiff's minor decedent, Janell Herzing's mental condition, and in support hereof, state the following:

1. At the trial deposition of Plaintiff's economic expert, Dr. Steven Klepper of Carnegie Mellon University, Defendants' counsel posed objectionable questions concerning the minor decedent Janell's mental retardation or disability.
2. This trial deposition, which occurred on September 1, 2005, was the first time Defendants have raised questions concerning some speculative mental or physical disability of this baby. In essence, this baby was healthy and viable, but died in her mother's womb when Defendants failed to deliver her in the face of the mother's extreme hypertensive condition.

3. There is no factual basis for Defendants' line of questioning which was created out of whole cloth by defense counsel and is entirely speculative.

4. The Defendants should be precluded by this Court from proceeding to manufacture diminished mental capacity which quite obviously is Defendants' desperate attempt to decreasing their own exposure to liability.

5. But for the negligence of Defendants, Janell Herzing, a full term viable infant, would have been delivered alive and would have had certain lifetime earnings and/or earning capacity. Plaintiffs will prove these economic losses and damages at trial using, *inter alia*, Dr. Klepper's testimony.

6. No party has submitted any expert report concerning the minor decedent's mental capacity, disability or level of functioning.

7. Specifically, no Defendant has submitted any expert report which states that minor decedent Janell would have been mentally disabled or unable to earn income as set forth in detail in Dr. Klepper's report and testimony.

8. To allow any of the Defendants to posit this entirely line of questioning would be so prejudicial as to virtually eliminate the possibility for a fair trial.

9. Moreover, to allow such questioning or testimony would wrongly admit expert opinion testimony outside the scope of the expert reports, and as such would be patently improper.

10. Plaintiffs' objections in this regard as to Dr. Klepper's trial deposition are set forth in their previously filed formal objections, a copy of which is attached hereto as Exhibit A.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order precluding all references at trial to any diminished mental capacity or disability of Janell

Herzing, a minor decedent, including without limitation, all such references in, the testimony of  
Dr. Klepper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy Acheson", written over a horizontal line.

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

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**PLAINTIFFS' OBJECTIONS TO CROSS  
EXAMINATION OF EXPERT DR. STEVEN  
KLEPPER'S VIDEOTAPED TRIAL  
DEPOSITION TAKEN SEPTEMBER 1,  
2005**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Amy Acheson, Esquire  
PA ID#50506

Michael A. Murphy, Esquire  
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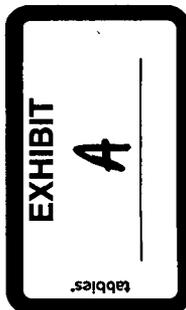
**JURY TRIAL DEMANDED.**

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

SEP 12 2005

Attest.

*William B. Shaw*  
Prothonotary/  
Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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Defendants.

**PLAINTIFFS' OBJECTIONS TO CROSS EXAMINATION OF EXPERT DR. STEVEN  
KLEPPER'S VIDEOTAPED TRIAL DEPOSITION TAKEN SEPTEMBER 1, 2005**

AND NOW, come Plaintiffs, by and through their counsel, and respectfully submit the following Objections to the cross examination of Dr. Steven Klepper during his videotape trial deposition on September 1, 2005, and in support hereof, state the following objections:

1. Page 32, Line 14. Question: "Can you tell the jury in Clearfield why you won't come out there and testify?"

The question is argumentative and suggests that a deposition for use at trial, which are permitted by this Court's Pretrial Order, is somehow improper or worthy of less credence than live testimony. In fact, the standard civil jury instructions specifically tells the jury that the opposite is true, namely, that testimony under oath, whether by deposition or live at trial, is equally worthy of their attention. Pa. SSJI (civ) 2.05.

2. Page 36, Line 6 through Page 37, Line 12. Question: "Plaintiff's expert states...should be a diagnosis of intrauterine growth restriction while this child was in utero, meaning it would have a **physical or mental problem**. Were you aware of that?" (emphasis added.)

The question mischaracterizes the evidence of record, including Plaintiffs' expert report, and assumes facts that are not in evidence, nor will ever be in evidence. Specifically, the question suggests that the problems Janell Herzing suffered in utero would have resulted in Janell suffering physical or mental problems **as a child and an adult**. Plaintiffs' hypothetical to Professor Klepper, which was not objected to by any defendant, was based upon the following statement from Dr. Jelsema's report: "To a reasonable degree of medical certain, had appropriate care been provided to Ms. Herzing, her baby daughter Janell would have been born alive and healthy." November 30, 2001 report at page 1. There is no defense expert who has filed a report which supports the premise of defense counsel's question, namely that Janell Herzing would have been born with physical and mental problems. Therefore, the question lacks foundation and is improper.

3. Page 38, Line 8 through Line 13. Question: "But in preparing your report you were not aware of that this stillborn child had a medical problem..."

For the same reasons listed above, this line of questioning is improper because there is not, nor will there be, any foundation for defense counsel's suggestion that Janell Herzing would have suffered "medical problems" which have any relevance to Professor Klepper's testimony.

4. Page 40, Line 2 through 20. Question: "...Mrs. Herzing is - say in excess of 400 pounds. And if this stillborn child who was a female also would have the same problem, wouldn't this affect that child's ability to get a job?"

Defense counsel's question assumes a fact not in evidence and which will not be in evidence, namely that the child would have been the same weight as the mother. None of the defendants' experts provide any support for that assumption and, therefore, the question is without foundation and is irrelevant.

5. Page 41, Line 13 through Page 42, Line 4. Question: "...In this particular case that the mother had made excuses not to go to work and got doctors' notes to be excused from work and was not a reliable worker, would that affect your projection of this stillborn child's life expectancy to earn - well, I don't know, worklife expectancy to earn the money that you testify to?"

The question is again without foundation and assumes facts that are not in evidence, particularly that "the mother made excuses not to go to work" and "was not a reliable worker".

6. Page 42, Line 21 through Page 43, Line 6. Question: "You're telling us real-life factors that the mother or father here how they treat each other, what her health is, their - other than your education, none of those are relevant to you in determining projections that you made here in this case, is that correct?"

The question had been asked and answered; specifically it was asked and answered on Page 42, Line 6 through 12, when Professor Klepper conceded that his projections were based upon statistics.

7. Page 43, Line 13 through Page 44, Line 3. Question: "If you were to assume that the stillborn child had a brain hemorrhage which was established by autopsy...and that

**may affect her mentality, could we conclude that she may not have been a high school graduate?" (emphasis added.)**

For the reasons previously set forth, there is no and there will be no medical evidence connecting any of the problems the child had in utero with a brain injury, certainly not one that would have affected her ability to graduate from high school. Therefore the question is without foundation.

8. Page 44, Line 24 through Page 46, Line 1. Question: "Assume the brain hemorrhage would cause a mental or a physical incapacity..."

For the reasons previously stated, there is no evidence to support that hypothetical and the question should be stricken. There is no medical evidence which suggests any limitation on the child's ability to obtain an education or earn a living.

9. Page 47, Line 24 through Page 48, Line 9. Question: "And in assuming those figures, you made no deduction, for instance, that out in Clearfield where we have some unemployment problems that there may be a downturn in the economics locally that she would not have a job..."

The question assumes facts not in evidence. There is no proposed witness that who will testify that there are "unemployment problems" or a "downturn in the economics locally" which would have prevented Janell Herzing from being able to be employed in Clearfield. Therefore, the question is improper and should be stricken.

10. Page 49, Line 2 through Line 13. Question: "...looking at statistics because in real life don't you have economic downturns. Don't you have layoffs. Don't you have strikes...Aren't those real-life factors you have to consider?"

As set forth above, that question was answered previously on at least two occasions.

11. Page 52, Line 10 through Page 53, Line 22. Question: "...would you agree that those factors are real-life factors that someone would consider in determining the worth of a stillborn child?"

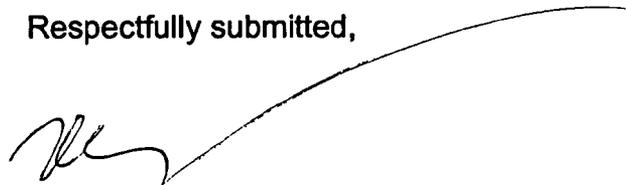
The question was asked and answered, as defense counsel conceded.

12. Page 64, Line 22 through Page 65, Line 8. Question: "Are you aware...of studies that have been performed that indicate that individuals who are grossly obese or clinically obese...have a likelihood to not earn as much as individuals who are not overweight?"

The question is improper because, as previously stated, there is no medical evidence in this case that tie the weight of **Janell Herzing** to the weight of the mother. Therefore, while arguably it would be proper to cross-examine an expert about studies which are relevant to an issue in the case, there is no medical evidence from which the jury could reasonably conclude that Janell Herzing would have been "grossly obese or clinically obese". Therefore any study discussing the effect of obesity on earning capacity is totally irrelevant to any issue for the jury's consideration.

WHEREFORE, Plaintiffs respectfully request that the Court sustain Plaintiff's objections to the cross-examination of Professor Steven Klepper.

Respectfully submitted,



---

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

**CERTIFICATE OF SERVICE**

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' MOTION TO PRECLUDE EVIDENCE CONCERNING MINOR DECEDENT'S LEVEL OF MENTAL OR PHYSICAL FUNCTION** to be served on the following via regular United States first class mail, postage prepaid, on this 19<sup>th</sup> day of September, 2005:

Alan R. Krier, Esquire  
Jubelirer, Carothers, Krier & Halpern  
Park View Center  
10 Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603  
(Counsel for Jerjie T. Alajaji)

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
(Counsel for DuBois Regional Medical Center and Russell Cameron)

John W. Blasko, Esquire  
McQuaide, Blasko, Schwartz, Fleming  
& Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(Counsel for Mary C. Kruszewski)

  
\_\_\_\_\_  
Amy Acheson, Esquire

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RUSSELL E. CAMERON

Defendants.

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

**PLAINTIFFS' MOTION TO PRECLUDE  
QUESTIONING AND EVIDENCE  
REGARDING PLAINTIFFS' WORK  
HABITS**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Amy Acheson, Esquire  
PA ID#50506

Michael A. Murphy, Esquire  
PA ID#55846

Gary J. Ogg, Esquire  
PA ID#34515

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**JURY TRIAL DEMANDED.**

**FILED**

SEP 20 2005

m/12:30/w

William A. Shaw  
Prothonotary

NO CENT COPIES

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REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

Defendants.

**PLAINTIFFS' MOTION TO PRECLUDE QUESTIONING AND EVIDENCE  
REGARDING PLAINTIFFS' WORK HABITS**

AND NOW, come Plaintiffs, by and through their counsel, and respectfully request that this Honorable Court enter an Order precluding questioning, testimony and evidence regarding Plaintiffs' work habits, and in support thereof, state the following:

1. At the trial deposition of Dr. Klepper, an economic expert, defense counsel engaged in a line of questioning regarding whether Plaintiff Mother was an unreliable worker and other work habits. Plaintiffs' objections to these particular questions are set forth in their previously filed objections.
2. This line of questioning is improper because:
  - a. it lacks factual foundation;
  - b. it is irrelevant since Plaintiffs' economic expert does not rely upon the parent's earnings but rather upon average expected wages; and

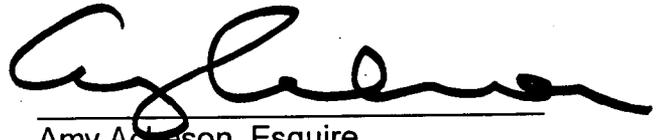
c. if permitted at trial it would have the effect of prejudicing the jury against Plaintiff severely.

3. No Defendant has filed an economic expert report.

4. As a result of the foregoing, any probative value of this line of questioning (which Plaintiffs submit is nil) is certainly outweighed by the resulting confusion and prejudice.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order precluding the aforesaid line of questioning and evidence at trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy Acheson", written over a horizontal line.

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

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EXAMINATION OF EXPERT DR. STEVEN  
KLEPPER'S VIDEOTAPED TRIAL  
DEPOSITION TAKEN SEPTEMBER 1,  
2005**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

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PA ID#50506

Michael A. Murphy, Esquire  
PA ID#55846

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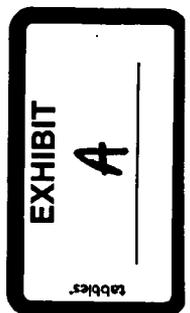
**JURY TRIAL DEMANDED.**

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statement filed in this case.

SEP 12 2005

Attest.

*William L. He*  
Prothonotary/  
Clerk of Courts



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The question is argumentative and suggests that a deposition for use at trial, which are permitted by this Court's Pretrial Order, is somehow improper or worthy of less credence than live testimony. In fact, the standard civil jury instructions specifically tells the jury that the opposite is true, namely, that testimony under oath, whether by deposition or live at trial, is equally worthy of their attention. Pa. SSJI (civ) 2.05.

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The question mischaracterizes the evidence of record, including Plaintiffs' expert report, and assumes facts that are not in evidence, nor will ever be in evidence. Specifically, the question suggests that the problems Janell Herzing suffered in utero would have resulted in Janell suffering physical or mental problems **as a child and an adult**. Plaintiffs' hypothetical to Professor Klepper, which was not objected to by any defendant, was based upon the following statement from Dr. Jelsema's report: "To a reasonable degree of medical certain, had appropriate care been provided to Ms. Herzing, her baby daughter Janell would have been born alive and healthy." November 30, 2001 report at page 1. There is no defense expert who has filed a report which supports the premise of defense counsel's question, namely that Janell Herzing would have been born with physical and mental problems. Therefore, the question lacks foundation and is improper.

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For the same reasons listed above, this line of questioning is improper because there is not, nor will there be, any foundation for defense counsel's suggestion that Janell Herzing would have suffered "medical problems" which have any relevance to Professor Klepper's testimony.

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Defense counsel's question assumes a fact not in evidence and which will not be in evidence, namely that the child would have been the same weight as the mother. None of the defendants' experts provide any support for that assumption and, therefore, the question is without foundation and is irrelevant.

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The question had been asked and answered; specifically it was asked and answered on Page 42, Line 6 through 12, when Professor Klepper conceded that his projections were based upon statistics.

7. Page 43, Line 13 through Page 44, Line 3. Question: "If you were to assume that the stillborn child had a brain hemorrhage which was established by autopsy...and that

may affect her mentality, could we conclude that she may not have been a high school graduate?" (emphasis added.)

For the reasons previously set forth, there is no and there will be no medical evidence connecting any of the problems the child had in utero with a brain injury, certainly not one that would have affected her ability to graduate from high school. Therefore the question is without foundation.

8. Page 44, Line 24 through Page 46, Line 1. Question: "Assume the brain hemorrhage would cause a mental or a physical incapacity..."

For the reasons previously stated, there is no evidence to support that hypothetical and the question should be stricken. There is no medical evidence which suggests any limitation on the child's ability to obtain an education or earn a living.

9. Page 47, Line 24 through Page 48, Line 9. Question: "And in assuming those figures, you made no deduction, for instance, that out in Clearfield where we have some unemployment problems that there may be a downturn in the economics locally that she would not have a job..."

The question assumes facts not in evidence. There is no proposed witness that who will testify that there are "unemployment problems" or a "downturn in the economics locally" which would have prevented Janell Herzing from being able to be employed in Clearfield. Therefore, the question is improper and should be stricken.

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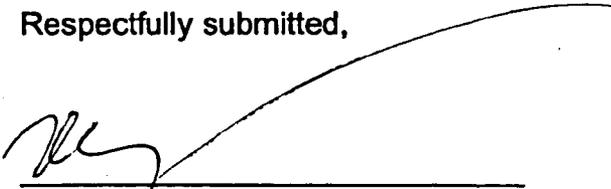
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The question is improper because, as previously stated, there is no medical evidence in this case that tie the weight of **Janell Herzing** to the weight of the mother. Therefore, while arguably it would be proper to cross-examine an expert about studies which are relevant to an issue in the case, there is no medical evidence from which the jury could reasonably conclude that Janell Herzing would have been "grossly obese or clinically obese". Therefore any study discussing the effect of obesity on earning capacity is totally irrelevant to any issue for the jury's consideration.

WHEREFORE, Plaintiffs respectfully request that the Court sustain Plaintiff's objections to the cross-examination of Professor Steven Klepper.

Respectfully submitted,



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Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

**CERTIFICATE OF SERVICE**

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the  
**PLAINTIFFS' MOTION TO PRECLUDE QUESTIONING AND EVIDENCE**  
**REGARDING PLAINTIFFS' WORK HABITS** to be served on the following via regular  
United States first class mail, postage prepaid, on this 19<sup>th</sup> day of September, 2005:

Alan R. Krier, Esquire  
Jubelirer, Carothers, Krier & Halpern  
Park View Center  
10 Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603  
(Counsel for Jerjie T. Alajaji)

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
(Counsel for DuBois Regional Medical Center and Russell Cameron)

John W. Blasko, Esquire  
McQuaide, Blasko, Schwartz, Fleming  
& Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(Counsel for Mary C. Kruszewski)

  
\_\_\_\_\_  
Amy Acheson, Esquire

**FILED**

SEP 20 2005

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading  
FOUR PART MOTION IN LIMINE  
RE PRECLUSION OF INAPPROPRIATE  
EXPERT TESTIMONY

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: Sept. 20, 2005

**FILED** <sup>no cc</sup>  
ml10:45/01  
SEP 21 2005 (60)

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )	
JARVIS, individually, in their own right, )	Civil Action-Medical Professional
and as ADMINISTRATORS OF THE )	Liability Action
ESTATE OF JANELL HERZING, a )	
minor, deceased, )	
Plaintiffs, )	NO. G.D. 02-169 CD
vs. )	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS )	
REGIONAL MEDICAL CENTER, )	
JERJIE T. ALAJAJI, and RUSSELL )	
E. CAMERON, )	
Defendants. )	

**FOUR PART MOTION IN LIMINE OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.  
RE PRECLUSION OF INAPPROPRIATE EXPERT TESTIMONY**

AND NOW, comes Defendant, Mary Kruszewski, D.O. by and through her attorneys,  
McQuaide Blasko, and files the within Motion in Limine, as follows:

1. The purpose of this Motion in Limine is four-fold:
  - (1) To preclude Plaintiffs from pursuing theories at trial which have been discussed within Plaintiffs' expert reports, but which were not pleaded in Plaintiffs' Amended Complaint;
  - (2) To preclude Plaintiffs from asserting an informed consent-based theory in a case where no such theory has been pled and where there was no operative or surgical procedure;
  - (3) To preclude Plaintiffs from presenting at trial a publication by the American College of Obstetricians and Gynecologists as substantive evidence of the applicable standard of care; and
  - (4) To preclude Plaintiffs from seeking to apply hospital nursing policies to the conduct of a Defendant-physician.

## **I. MOTION IN LIMINE RE: THEORIES WHICH HAVE NOT BEEN PLED**

2. The operative facts in this case, of which this Court is now well aware, concern the care and treatment rendered by the Defendant-physicians, as well as the DRMC nursing staff, in the course of Michelle Herzing's pregnancy. Due to various factors which were unavoidable and beyond the control of the various medical professionals involved, the fetus was found to be non-viable prior to an induced vaginal delivery, which occurred on December 5, 2000.

3. The Plaintiffs' Second Amended Complaint, which was filed on or about July 10, 2002, consists of 17 pages and 72 paragraphs. (*See* Second Amended Complaint, attached hereto as Exhibit "A.").

4. Plaintiffs' theories against Dr. Kruszewski are set forth within Count I. The numerous theories of negligence raised against this Defendant are set forth in quite specific detail within paragraph 38, which contains 21 subparagraphs.

5. Despite the great quantity of allegations contained within the Second Amended Complaint, the Plaintiffs' ob-gyn expert raises a number of theories which are not pleaded. (*See* reports of Russel D. Jelsema, M.D., dated November 30, 2001 (Exhibit "B") and October 13, 2004 (Exhibit "C")).

6. The following theories are raised by Dr. Jelsema as criticisms of Dr. Kruszewski in his reports, but were not pleaded by Plaintiffs:

- Alleged failure by Dr. Kruszewski to come to immediately come to the hospital on December 4, 2000 after being called by the nurses [*See* Exhibit B at page 8 - "...the standard of care for VBAC (vaginal birth after cesarean) required the immediate availability of the obstetrician."];
- Alleged failure to discuss potential risks and benefits of vaginal delivery with the patient [*See* Exhibit B at page 8];

- Alleged failure to personally examine the patient at the hospital on November 30, 2000 [*See Exhibit C at p. 2*];
- Alleged failure to recommend hospital admission to the patient on November 15 and November 30, 2000 [*See Exhibit C at p. 2*];
- Alleged failure to recommend transferring the patient to a level II hospital [*See Exhibit C at p. 2*].

7. Nowhere within Paragraph 38, nor within the entirety of Plaintiffs' Second Amended Complaint, are any of these allegations set forth.

8. Pennsylvania case law has long required that *allegata meet probata*; or that the pleading be consistent with the proof at trial.

9. It is error to permit a plaintiff to introduce evidence at trial which materially varies from the pleadings.

10. Those theories listed herein-above in paragraph 6 are materially different from any of the numerous specifically-pled theories within the Second Amended Complaint.

11. Plaintiffs filed a Second Amended Complaint which is extraordinarily detailed, lengthy, and specific. Nevertheless, the Second Amended Complaint does not contain allegations that Dr. Kruszewski was negligent for failing to immediately come to the hospital when called on December 4; nor for failing to examine the patient on November 30, nor for failing to recommend admission to the hospital on November 15 or November 30; nor for failing to transfer the patient to a level III hospital.

12. The allegations relating to a failure to discuss risks and benefits of vaginal delivery are not only missing from the Second Amended Complaint, but are not appropriate in a case such as this under Pennsylvania law (discussed below).

13. Amendment of the pleadings at this late date and on the eve of trial would be improper and prejudicial, especially after Plaintiffs have already filed an original Complaint and an Amended Complaint prior to the Second Amended Complaint. Amendments to add new theories are not permitted after the statute of limitations has expired.

14. Under controlling Pennsylvania case law, Plaintiffs may not proceed at trial under theories which have not been pled. Therefore, Dr. Jelsema should be precluded from testifying on the subject of any theories of liability which have not been specifically pleaded within the Second Amended Complaint.

WHEREFORE, the Defendant, Mary Kruszewski, D.O. respectfully requests that this Honorable Court grant the within Motion in Limine and thereby preclude Plaintiffs from introducing any evidence or testimony at trial on the subject theories which have not been specified in the Second Amended Complaint, including the following:

- Alleged failure by Dr. Kruszewski to come to immediately come to the hospital on December 4, 2000 after being called by the nurses;
- Alleged failure to discuss potential risks and benefits of vaginal delivery with the patient;
- Alleged failure to personally examine the patient at the hospital on November 30, 2000;
- Alleged failure to recommend hospital admission to the patient on November 15 and November 30, 2000;
- Alleged failure to recommend transferring the patient to a level II hospital.

## **II. MOTION IN LIMINE RE: INFORMED CONSENT - BASED THEORIES**

15. As discussed above, Dr. Jelsema's first expert report contains a claim that Dr. Kruszewski should have documented and discussed the potential risks and benefits of vaginal

delivery in this case. [*See* Exhibit B at page 8]. Such theories are improper because same have not been pleaded.

16. As an additional basis for preclusion, the medical situation in this case is not one for which a physician is bound to obtain a formal informed consent from the patient.

17. It has long been the law in Pennsylvania that a physician must obtain informed consent from a patient before performing a surgical or operative procedure. Informed consent, however, has not been required in cases involving non-surgical procedures.

18. Pennsylvania Courts, and now the Pennsylvania legislature, have *not* imposed the duty of obtaining informed consent upon physicians who perform vaginal deliveries.

19. Per the Medical Care Availability and Reduction of Error (MCARE) Act, at 40 P.S. § 1303.504, the circumstances under which physicians must obtain informed consent are specifically set forth. Vaginal delivery is not within the definition of a “procedure” for which informed consent must be obtained.

WHEREFORE, the Defendant, Mary Kruszewski, D.O. respectfully requests that this Honorable Court grant the within Motion in Limine and thereby preclude Plaintiffs from introducing any evidence or allegations at trial or pursuing any theory related to informed consent and/or the failure to advise the patient of the risks and alternatives to vaginal delivery.

### **III. MOTION IN LIMINE RE: USE OF PUBLICATION AS STANDARD OF CARE**

20. At page 9 of Dr. Jelsema’s first report [Exhibit “B”], he states an opinion that it was against the standard of care for Dr. Kruszewski to use the medication Cyotec in this case, and that doing so contributed to uterine rupture, as described by “The American College of

Obstetricians and Gynecologists Committee on Obstetric Practice's Committee Opinion Number 228, November 1999." [See Exhibit "B" at p. 9].

21. Dr. Jelsema also quotes directly from this particular publication.

22. Under Pennsylvania law, it is improper for an expert to introduce into evidence statements appearing in a learned treatise as substantive proof of the information set forth therein.

*See, inter alia, Majdic v. Cincinnati Machine Co.*, 370 Pa. Super. 611, 537 A.2d 334 (*en banc* 1988), *cert. denied*, 520 Pa. 594, 552 A.2d 249.

23. Learned writings which are offered to prove the truth of the matters therein are hearsay and may not properly be admitted into evidence for consideration by the jury.

WHEREFORE, the Defendant, Mary Kruszewski, D.O. respectfully requests that this Honorable Court grant the within Motion in Limine and thereby preclude Plaintiffs from introducing medical literature as substantive evidence at trial.

**IV. MOTION IN LIMINE RE: APPLICATION OF NURSING POLICIES  
AGAINST DR. KRUSZEWSKI, PHYSICIAN DEFENDANT**

24. In his second report, Dr. Jelsema apparently attempts to construct a theory whereby DRMC policies which govern nursing practice are utilized to criticize Dr. Kruszewski.

25. The rather confusing passage in question is reproduced below:

**Dr. Kruszewski failed to meet the standard of care on December 3, when she failed to ensure that Ms. Herzing's baby would receive continuous monitoring.** While Dr. Kruszewski stated that in her opinion, continuous monitoring is not necessarily better (citation omitted), and that continuous monitoring was not "absolutely necessary" (citation omitted), the DuBois Regional Medical Center **maternity policies** clearly describe the need for continuous fetal monitoring for women undergoing cervical ripening with Cytotec and for women attempting vaginal birth after cesarean. Per the "Fetal Monitoring" protocol, the **nursing staff** was to "Maintain quality tracing of the fetal hart [sic] rate and uterine contraction pattern", and to "notify the physician if unable to obtain a quality fetal monitoring tracing". **If continuous fetal monitoring was not**

**“absolutely necessary”, why would it be necessary for the nurse to notify the physician if the nursing staff was unable to obtain quality tracings?** Failing to ensure continuous fetal monitoring directly resulted in the nursing staff’s failure to detect the fetal heart rate changes that resulted in Ms. Herzing’s baby’s death.”

[See Exhibit C at p. 3, *emphasis added*].

26. While this passage is somewhat difficult to follow, it appears that Dr. Jelsema is contending that Dr. Kruszewski’s opinion that continuous monitoring was not “absolutely necessary” is somehow contradicted by DRMC policies which relate to a nurse’s duty to contact a physician when the nurse is unable to obtain quality fetal tracings.

27. This twisted reasoning would constitute inappropriate testimony for several reasons.

28. First and perhaps most obvious is the fact that nurses and physicians are governed by completely different standards of care. Dr. Jelsema may certainly testify as to the ways in which Dr. Kruszewski, in his opinion, failed to comply with the standards of care applicable to physicians practicing in the field of obstetrics. However, it is a completely different thing to state or imply that Dr. Kruszewski was negligent on the basis of a policy which directs nursing conduct.

29. It appears that DRMC nursing policies may be used to measure the conduct of DRMC nurses in this case. It is a far different matter to apply these standards in criticizing a physician.

30. Furthermore, this line of testimony should be precluded on the basis of Pennsylvania Rule of evidence 403. The probative value of such a course of criticism is outweighed by the danger of confusing and misleading the jury.

31. This attempted theory also misrepresents the obvious facts in this case. Monitoring by nurses is required only when ordered by a physician (and in fact, Plaintiffs' expert criticizes this Defendant for failing to ensure that such monitoring was carried out). If such an order is placed, then obviously the physician will want to know if there is any difficulty with monitoring. Therefore, it is reasonable to require nurses to notify physicians immediately if there is a problem with monitoring.

32. However, it is illogical to conclude that this nursing policy somehow mandates or sheds light upon a physician's duty to order monitoring in the first place. The risk of misleading and confusing the jury with this sort of testimony is obvious and should be avoided.

WHEREFORE, the Defendant, Mary Kruszewski, D.O. respectfully requests that this Honorable Court grant the within Motion in Limine and thereby preclude Plaintiffs from introducing any DRMC policies relative to nursing care for the purpose of criticizing or advancing any theories of liability against this physician defendant.

Respectfully Submitted,

MCQUAIDE BLASKO

BY



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Dated: Sept. 20, 2005



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, as Administrators of the Estate of  
JANELL HERZING, a minor, deceased, and  
MICHELLE HERZING, individually in her own  
right,

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER AND  
JERJIE T. ALAJAJI, AND RUSSELL E.  
CAMERON,

Defendants.

CIVIL DIVISION

No. 02-169-CD

Code: 007

SECOND AMENDED COMPLAINT IN  
CIVIL ACTION

Filed on behalf of Plaintiffs

Counsel for this party:

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JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, as Administrators of the Estate of JANELL HERZING, a minor, deceased, and MICHELLE HERZING, individually in her own right,

CIVIL DIVISION

No. 02-169-CD

Code: 007

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER AND JERJIE T. ALAJAJI, AND RUSSELL E. CAMERON,

Defendants.

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed with out you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:**

**David Meholick, Court Administrator  
Clearfield County Courthouse  
One North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
(814) 765-2641, Extension 5982**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, as Administrators of the Estate of JANELL HERZING, a minor, deceased, and MICHELLE HERZING, individually in her own right,

CIVIL DIVISION

No. 02-169-CD

Code: 007

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER AND JERJIE T. ALAJAJI, AND RUSSELL E. CAMERON,

Defendants.

**SECOND AMENDED COMPLAINT IN CIVIL ACTION**

1. MICHELLE HERZING, Plaintiff herein, is a resident of Clearfield County, Pennsylvania, and is the mother of JANELL HERZING, a minor, deceased, another Plaintiff herein.
2. JEFFREY R. JARVIS, Plaintiff herein, is a resident of Clearfield County, Pennsylvania, and is the father of JANELL HERZING, a minor, deceased, another Plaintiff herein.
3. Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, were appointed Administrators of the Estate of JANELL HERZING, deceased, by the Register of Wills of Clearfield County, Pennsylvania, at No. 2002-21.
4. Plaintiffs, as Administrators of the Estate of JANELL HERZING, deceased, bring this action on their own behalf and on behalf of all persons entitled to recover damages for the wrongful death of JANELL HERZING pursuant to 42 Pa. C.S.A. Section 8301. Plaintiffs also

bring this action to recover damages on behalf of the Estate of JANELL HERZING pursuant to 42 Pa. C.S.A. Section 8302.

5. The names and addresses of all persons entitled by law to recover damages for JANELL HERZING's wrongful death and their relationship to the decedent are:

MICHELLE HERZING, mother  
406 Kuntz Street  
DuBois, PA 15801

JEFFREY R. JARVIS, father  
406 Kuntz Street  
DuBois, PA 15801

6. MARY C. KRUSZEWSKI, Defendant herein, is an individual who resides and/or practices medicine in Clearfield County, Pennsylvania, and at all times relevant hereto was a licensed physician in the Commonwealth of Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant held herself out to be a health care provider who possessed skill and knowledge in obstetrics, and further, held herself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

7. DUBOIS REGIONAL MEDICAL CENTER (herein after referred to as "DuBois Regional"), Defendant herein, is a corporation chartered and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business in DuBois, Clearfield County, Pennsylvania. At all times relevant to the matters set forth herein, this Defendant owned, operated, possessed and maintained a general hospital and, through physicians and other health care personnel at said hospital, provided medical, obstetrical and emergency services to Plaintiffs and other patients.

8. JERJIE T. ALAJAJI, Defendant herein, is an individual and a licensed physician in the Commonwealth of Pennsylvania who resides and/or practices medicine in DuBois, Clearfield

County, Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant was an employee, agent, ostensible agent and/or on the medical staff of Defendant DuBois Regional, and held himself out to be a health care provider who possessed skill and knowledge in radiology and, further, held himself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

9. RUSSELL E. CAMERON, Defendant herein, is an individual and a licensed physician in the Commonwealth of Pennsylvania who resides and/or practices medicine in DuBois, Clearfield County, Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant was an employee, agent, ostensible agent and/or on the medical staff of Defendant DuBois Regional, and held himself out to be a health care provider who possessed skill and knowledge in emergency medicine, and, further, held himself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

#### **FACTUAL BACKGROUND**

10. Beginning on or about July 3, 2000, Plaintiff MICHELLE HERZING, who was then pregnant with minor Plaintiff deceased, sought, received and came under the obstetrical care and treatment of Defendant Kruszewski. Plaintiff MICHELLE HERZING, had been under the care of Defendant Kruszewski for her prior pregnancies, including her 1996 pregnancy in which she was diagnosed with severe preeclampsia at 34 weeks gestation, and which resulted in Cesarean section delivery of a live infant.

11. On or about July 14, 2000, Defendant Kruszewski estimated Plaintiff MICHELLE HERZING's delivery date to be December 30, 2000.

12. On or about September 6, 2000, Plaintiff MICHELLE HERZING, underwent an ultrasound on orders of Defendant Kruszewski that demonstrated fetal measurements consistent with her estimated gestational age.

13. On November 15, 2000, at approximately 33 weeks gestation, Plaintiff MICHELLE HERZING again presented for prenatal physical examination by Defendant Kruszewski. Urine tests were performed on orders of Defendant Kruszewski. The test results demonstrated an elevated uric acid level.

14. On November 30, 2000, Plaintiff MICHELLE HERZING presented at Defendant DuBois Regional's Emergency Department where Defendant Cameron performed physical examination of Plaintiff MICHELLE HERZING.

15. During this Emergency Department admission, Plaintiff MICHELLE HERZING was found to have blood pressures by Dynamap of 226/133 at 8:08 p.m. and more than 300 gm/dl urine protein. She was found to have increased hemoglobin, increased creatinine and increased uric acid over November 15, 2000 values. During this Emergency Department admission, no attempt was made to assess the well-being or physical condition of minor Plaintiff by fetal heart monitor, ultrasound, or in any other manner.

16. On November 30, 2000, Defendant Cameron diagnosed Plaintiff MICHELLE HERZING with "bronchitis/bronchospasm" and discharged her to home.

17. On December 1, 2000, at or about 2:36 p.m., Plaintiff again presented to Defendant DuBois Regional and was admitted by telephone order of Defendant Kruszewski. At this time, Plaintiff MICHELLE HERZING was approximately 36-1/7 weeks pregnant with JANELL  
-HERZING.

18. On December 1, 2000, following Plaintiffs' hospital admission, Defendant Kruszewski performed physical examination of Plaintiff MICHELLE HERZING, at which time her blood pressure was 227/114. Her creatinine was elevated at 1 mg/dl.

19. Also on December 1, 2000, Defendant Alajaji interpreted a biophysical profile of Minor-Plaintiff as "6/8", using a gestational age of 31-3/7 weeks.

20. Furthermore, throughout the period November 30 through December 5, 2000, Plaintiff MICHELLE HERZING continued to have persistent elevated blood pressures.

21. Throughout the period November 30 through December 5, 2000, Defendant Kruszewski and the other physicians and health care personnel caring for Plaintiffs were unable to maintain adequate capture of the fetal heart tones.

22. On December 1, 2000, the health care personnel caring for Plaintiffs at DuBois Regional recorded a baseline fetal heart rate of 130s-140s in 30 seconds of capture.

23. On December 2, 2000, the health care personnel caring for Plaintiffs recorded at least two variable decelerations from a baseline of 140 beats per minute during an approximately one minute period of capturing fetal heart tones.

24. On December 3, 2000, at approximately 4:00 p.m., the health care personnel caring for Plaintiffs noted a fetal heart rate baseline in the 130s during a short period of capture.

25. Throughout the period from November 30, 2000 through delivery of minor Plaintiff. Defendants Kruszewski and DuBois Regional, through its agents, servants and/or employees, were unable to obtain a reassuring fetal heart rate pattern for JANELL HERZING.

26. Beginning on December 3, 2000, Defendant Kruszewski ordered the administration of Cytotec to Plaintiff MICHELLE HERZING for cervical ripening, despite this Defendant's knowledge of Plaintiff's prior Cesarean delivery.

27. On December 4, 2000, a fetal heart rate baseline was captured at 12:00 a.m. of "120s" and maternal blood pressure of 171/87. The next recorded blood pressure was 194/100 at 9:49 a.m. on December 4, 2000.

28. Beginning at approximately midnight on December 4, 2000, the health care personnel caring for Plaintiffs were completely unable to capture Plaintiffs' fetal heart tones.

29. At approximately 11:15 a.m., an attempt was made to communicate Plaintiffs' condition by telephone to Defendant Kruszewski, who was unavailable.

30. At approximately 11:45 a.m. on December 4, 2000, Defendant Kruszewski telephoned the health care personnel caring for Plaintiffs at DuBois Regional and informed them she was aware of their inability to capture fetal heart tones and that Defendant Kruszewski would come to the hospital after another meeting she was attending.

31. On December 4, 2000 at or about 12:50 p.m., Defendant Kruszewski performed artificial rupture of the membranes with meconium staining and thereafter applied at least two different scalp electrodes to minor-Plaintiff.

32. Minor-Plaintiff was delivered stillborn at approximately 9:30 a.m. on December 5, 2000 by induced vertex vaginal delivery performed by Defendant Kruszewski.

33. As a result of Defendants' breaches of the duties owed to Plaintiffs in failing to treat Plaintiffs' for preeclampsia and/or severe preeclampsia in a timely and proper manner, Plaintiffs suffered the personal injuries and damages described hereafter.

34. At all times relevant to the matters set forth in this Complaint, Defendants Alajaji and Cameron, and the other health care personnel who observed, cared for and/or treated Plaintiffs - at Defendant DuBois Regional, were the agents, servants and/or employees of Defendants Kruszewski and/or DuBois Regional, and were acting while in and upon the business of Defendants

Kruszewski and/or DuBois Regional and while in the course of their employment-by said Defendants.

35. At all times relevant to the matters set forth in this Complaint, the physicians, nurses and other health care personnel who observed, cared for and/or treated Plaintiffs were the agents, servants and/or employees of Defendants Kruszewski and/or DuBois Regional and were acting while in and upon the business of said Defendants and while in the course of their employment by said Defendants.

**COUNT I**  
**WRONGFUL DEATH – Estate of JANELL HERZING vs. Defendant Kruszewski**

36. Paragraphs 1 through 35, inclusive, are incorporated herein by reference as if set forth at length.

37. Defendants, at all relevant times, acted as Plaintiffs' health care providers and, as such, undertook and/or owed duties of care to Plaintiffs.

38. Defendant Kruszewski, her agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

a. In failing to treat Plaintiff's persistently elevated systolic and diastolic blood pressures in a timely and appropriate manner;

b. In failing to diagnose and/or treat Plaintiff's preeclampsia and/or severe preeclampsia in a timely and appropriate manner;

c. In failing to obtain, maintain, test and act upon in a timely and appropriate manner minor Plaintiff's fetal heart rate;

d. In failing to use December 30, 2000 as the due date in reading and/or interpreting ultrasound studies of Plaintiffs;

e. In failing to diagnose, treat and/or act upon Plaintiff's proteinuria in a timely and appropriate manner;

- f. In failing to communicate to the other Defendants with respect to Plaintiff's test results and physical condition in a timely manner;
- g. In failing to properly read, analyze, interpret and/or act upon radiological, ultrasound and laboratory studies performed on Plaintiffs beginning on November 15, 2000;
- h. In failing to perform Doppler studies of the umbilical artery;
- i. In failing to adequately obtain, maintain and capture a fetal heart rate showing Plaintiffs' condition and act upon the same;
- j. In failing to institute and maintain continuous electronic fetal monitoring;
- k. In failing to auscultate the fetal heart rate;
- l. In failing to perform fetal scalp gas sampling;
- m. In failing to obtain and act upon appropriate and timely consultations with medical specialists beginning on November 15, 2000, including material-fetal medicine consultations;
- n. In delivering Minor-Plaintiff vaginally;
- o. In failing to perform a proper and timely Cesarean delivery of Minor-Plaintiff.
- p. In failing to ensure Plaintiffs were appropriately monitored and cared for by qualified medical physicians and surgeons;
- q. In failing to obtain and act upon an oxytocin challenge test in a timely and appropriate manner;
- r. In administering and/or causing to be administered Cytotec to Plaintiff;
- s. In failing to make, implement and follow an appropriate plan for Plaintiffs' prenatal care and delivery;
- t. In failing to cure and/or arrest the hypertensive disease processes in the bodies of Plaintiffs and/or in permitting such processes to develop and/or continue; and
- u. In causing Plaintiffs' physical condition to deteriorate and in causing Plaintiffs to suffer injuries due to severe preeclampsia and/or preeclampsia.

39. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

40. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

- a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;
- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Kruszewski in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT II**  
**WRONGFUL DEATH – Estate of JANELL HERZING v. Jerjie T. Alajaji**

41. Paragraphs 1 through 40, inclusive, are incorporated herein by reference as if set forth at length.

42. Defendant Alajaji and his agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

- a. In failing to use December 30, 2000 as the due date in reading and/or interpreting ultrasound studies of Plaintiffs;
- b. In failing to communicate to Defendant Kruszewski Plaintiffs' test results and physical conditions in a timely manner;

- c. In failing to correlate Plaintiff's clinical medical condition and medical history with ultrasound in interpreting the fetal ultrasound study;
- d. In failing to perform Doppler studies of the umbilical artery;
- e. In incorrectly interpreting the fetal ultrasound;
- f. In formulating an inherently flawed, incorrect and falsely reassuring biophysical profile;
- g. In failing to properly correlate Plaintiffs' prior ultrasound study in reading and interpreting the December, 2000 radiological findings; and
- h. In making erroneous fetal measurements of minor-Plaintiff.

43. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

44. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

- a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;
- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Alajaji in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT III**  
**WRONGFUL DEATH – Estate of JANELL HERZING v. Russell E. Cameron**

45. Paragraphs 1 through 44, inclusive, are incorporated herein by reference as if set forth at length.

46. Defendant Cameron and his agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

a. In failing to treat Plaintiff's persistently elevated systolic and diastolic blood pressures in a timely and appropriate manner;

b. In failing to diagnose and/or treat Plaintiff's preeclampsia and/or severe preeclampsia in a timely and appropriate manner;

c. In failing to institute and maintain continuous electronic fetal monitoring;

d. In failing to diagnose, treat and/or act upon Plaintiff's proteinuria in a timely and appropriate manner;

f. In failing to communicate to Defendant Kruszewski Plaintiff's test results and physical condition in a timely manner;

k. In failing to obtain and act upon appropriate and timely consultations with medical specialists, including maternal-fetal medicine consultations;

r. In failing to cure and/or arrest the hypertensive disease processes in the bodies of Plaintiffs and/or in permitting such processes to develop and/or continue;

s. In causing Plaintiffs' physical condition to deteriorate and in causing Plaintiffs to suffer injuries due to severe preeclampsia and/or preeclampsia; and

s. In causing Minor-Plaintiff to suffer intracranial hemorrhage.

47. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

48. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;

- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Cameron in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT IV**  
**WRONGFUL DEATH – Estate of JANELL HERZING vs. DuBois Regional Hospital**

49. Paragraphs 1 through 48, inclusive, are incorporated herein by reference as if set forth at length.

50. Defendant DuBois Regional had a duty and responsibility to Plaintiffs, its patients, and to the public to furnish appropriate and competent medical care.

51. As part of its duties and responsibilities, DuBois Regional had an obligation to establish policies and procedures, and have competent medical personnel, to provide that appropriate medical care and treatment would be conducted within its institution and organization to patients such as Plaintiffs.

52. Acting through its administrators, various boards, committees, shareholders and individuals, Defendant DuBois Regional was responsible for the standards of professional practice by members of its staff in the manner set forth herein.

53. At all relevant times, Defendant DuBois Regional had a duty to select and retain only competent physicians, nurses, technicians, and other health care providers. It had a duty to oversee, supervise and coordinate the efforts of all persons rendering medical care and treatment within its

walls, including, but not limited to, the formulation and enforcement of adequate and appropriate rules, procedures and policies to discharge its duty outlined above.

54. At all relevant times, DuBois Regional acted through its duly authorized agents, servants and/or employees as set forth more fully above, who conducted themselves within the scope of their agency and/or employment. This conduct included, but was not limited to, conduct of Defendants Kruszewski, Alajaji and Cameron referred to herein, along with the other factors, which gave Plaintiffs the impression that an agent, employee and/or servant relationship existed between them.

55. At all relevant times, DuBois Regional acted through its duly authorized agents, servants and/or employees as set forth more fully above, had a duty to formulate, adopt and enforce policies and procedures to ensure that adequately trained physicians, nurses, technicians and other health care providers were consulted promptly to assess and treat any and all symptoms exhibited by, or requests made by, a patient which called for special skills or expertise.

56. In holding out Defendants Kruszewski, Alajaji and Cameron as its agents, servants and/or employees, Defendant DuBois Regional created an ostensible agency relationship with said Defendants and permitted said Defendants to use its facilities to treat patients.

57. At all relevant times, Defendant DuBois Regional owed Plaintiffs a duty to oversee all persons who rendered medical care and treatment within its facility and specifically owed a duty to oversee the conduct of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers.

58. At all relevant times, Defendant DuBois Regional owed Plaintiffs the duty to formulate, adopt and enforce rules or policies requiring physicians, or those with staff privileges, to

obtain consultations when a patient's needs exceed their own medical knowledge, skill and/or experience.

59. Defendant DuBois Regional owed a direct duty to Plaintiffs to provide, select, and retain, only competent physicians, staff and employees.

60. Defendant DuBois Regional failed to supply that quality of care and competence of properly skilled and trained personnel, including physicians, nurses, technicians and other health care providers as set forth in this Complaint.

63. Defendant DuBois Regional permitted physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers to attend to Plaintiffs when it knew, or should have known, that they were unable, by virtue of their training and/or experience, to adequately safeguard the life and welfare of Plaintiffs.

61. At all relevant times, the work of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers, was so intimately associated with the medical function of DuBois Regional that DuBois Regional controlled or had a right to control their acts. Because of the relationship which existed, DuBois Regional is liable for the negligence of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers.

62. At all relevant times, DuBois Regional knew, or should have known, of the negligent acts and/or omissions as set forth in this Complaint. Despite this actual or constructive knowledge of the negligent treatment of Plaintiffs, DuBois Regional did nothing to ensure their safety.

63. Defendant DuBois Regional had an obligation to provide adequate health care and treatment to individuals such as Plaintiffs.

64. Defendant DuBois Regional, and its agents, servants and/or employees failed to

properly treat and care for Plaintiffs and were negligent and carele~~ss~~<sup>s</sup> in some or all of the following particulars:

a. In employing and/or contracting the services of each of the individual Defendants;

b. In causing and/or permitting each of the individual Defendants to examine, evaluate, diagnose and/or treat Plaintiffs;

c. In failing to determine whether each of the individual Defendants had sufficient training, experience and expertise to treat patients such as Plaintiffs;

d. In failing to make and enforce sufficient policies and procedures, and/or employing sufficient and competent personnel and/or owning, using or possessing adequate equipment, to ensure proper and adequate monitoring, observation, evaluation, reporting and action on Plaintiffs' maternal and fetal well-being such as fetal heart rates;

e. In failing to oversee the services being performed in its hospital facility, including its emergency, radiology, prenatal, obstetrical and/or labor and delivery departments, with particular reference to a patient such as Plaintiff MICHELLE HERZING, who presented with the symptoms and history with which Plaintiff presented on November 30, 2000 and thereafter; and

f. In failing to have its hospital facility, including its prenatal, obstetrical, labor and delivery, radiology, and/or emergency departments staffed with properly trained and experienced physicians and nurses.

65. As a result of the conduct of Defendant DuBois Regional, its agents, servants and/or employees, Plaintiff suffered the injuries and damages described in paragraph 42 of this Complaint, which paragraph is incorporated herein by reference.

WHEREFORE, Plaintiffs MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim compensatory damages against Defendant DuBois Regional Hospital in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT V**  
**SURVIVAL – Plaintiffs vs. All Defendants**

66. Paragraphs 1 through 65 are incorporated herein as if set forth at length.

67. As a direct and proximate result of the previously described negligent conduct of Defendants, Plaintiffs suffered the following damages:

- a. JANELL HERZING's pain, suffering, anguish, and inconvenience until the time of her death; and
- b. JANELL HERZING's loss of earnings less the cost of her maintenance.

WHEREFORE, Plaintiffs demand judgment against Defendants in a sum in excess of the applicable arbitration limits, together with costs of suit, and demand a trial by jury.

**COUNT VI**  
**NEGLIGENCE – Michelle Herzing vs. All Defendants**

68. Paragraphs 1 through 67 are incorporated herein as if set forth at length.

69. As a result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff MICHELLE HERZING suffered persistently elevated blood pressures, preeclampsia and severe preeclampsia. She suffered eye injury, damage to her vision, and other serious injuries and impairments, and her general health has been impaired. She suffered nervous shock and her nervous system has been impaired. Some or all of these injuries are permanent in nature.

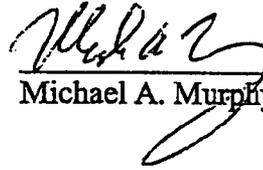
70. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has been forced to incur medical and other expenses for doctors, hospitals and therapeutic care and treatment, and she will be forced to incur additional expenses for like items in the future.

71. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has suffered, and/or will suffer in the future, loss of earnings.

72. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has suffered and will suffer in the future, the loss of the services, earnings and/or companionship of her daughter, the Minor-Plaintiff.

WHEREFORE, Plaintiff MICHELLE HERZING demands judgment against Defendants in a sum in excess of the applicable arbitration limits and demand a trial by jury.

Ogg, Cordes, Murphy & Ignelzi, L.L.P.

A handwritten signature in cursive script, appearing to read "Michael A. Murphy", is written over a horizontal line. The signature is fluid and extends to the right, crossing the line.

Michael A. Murphy, Esquire





West  
Michigan  
Obstetricians &  
Gynecologists P.C.

November 30, 2001

David A. Kreuze, M.D.  
Stephen F. Rechner, M.D.  
Darla M. Olson, M.D.  
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Amy Acheson  
Ogg, Cordes, Murphy & Ignelzi, L.L.P.  
Riverview Place  
245 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222

RE: Michelle Herzing

Dear Ms. Acheson:

I have had the opportunity to review the following medical records regarding Michelle Herzing:

- 1) Medical records from DuBois Regional Medical Center including November 30 – December 6, 2001.
- 2) Mary C. Kruszewski D.O. office records

I am a maternal-fetal medicine specialist, board certified in obstetrics and gynecology as well as maternal-fetal medicine. I am an associate professor in the Department of Obstetrics and Gynecology at Michigan State University. I am a partner at West Michigan Obstetrics and Gynecology, and my private practice is entirely devoted to the care of women with or at risk for complicated pregnancies.

I have reviewed the above listed medical records. Based upon my training, education, and experience, I find the care provided for Michelle Herzing and her stillborn daughter Janelle to be below the standard of care expected of physicians and nurses caring for pregnant women. To a reasonable degree of medical certainty, had appropriate care been provided to Ms. Herzing, her baby daughter Janelle would have been born alive and healthy.

In order for you to have a clearer understanding of my opinions in this matter, I will summarize my findings in her care and discuss the pertinent facts.

## CASE SUMMARY

Michele Herzing was a 32 year-old G3P0111 woman who received her prenatal care for her third pregnancy with Mary Kruszewski D.O.

Her first pregnancy had resulted in a miscarriage in 1993, and she had had a dilatation and curettage. In 1996, with her second pregnancy, she had presented to DuBois Regional Medical Center Emergency Room with chest pain. She was found to have elevated blood pressure of 175/124, diagnosed with preeclampsia and admitted by obstetrician Michael Kush M.D. She was subsequently diagnosed with severe preeclampsia at 34 weeks gestation, and had a cesarean section under general anesthesia. That baby, her son Derek, weighed 3lbs 6oz. The placental pathology report by Gregory Suslow M.D. described "288.0 gm slightly hypo-mature placenta with areas of mild subchorionic and intervillous fibrin deposition as well as area of infarction".

With her third pregnancy, her due date was December 30, 2000. She was initially seen on July 3, 2000 at 14 weeks of pregnancy, and weighed 324 lbs. Her blood pressure was 124/82. On July 17, Dr. Kruszewski wrote a note "Michele Herzings estimated due date is 12-30-00". On August 4, she had a normal maternal serum triple test. She had an ultrasound on September 6 that demonstrated measurements consistent with her gestational age. On October 3, she had a normal 1-hour glucola, and hemoglobin 13.2.

She had six prenatal visits, the last occurring on November 15, when she was 33 weeks pregnant. No weight was recorded and her blood pressure was 126/84. She had edema "legs 2+", and "protein ++++". She was to have her next appointment in "1" week, and to obtain "PIH labs". Those labs demonstrated an elevated uric acid 5.1 mg/dl. The other labs were normal. Ms. Herzing subsequently missed her next appointment.

Ms. Herzing was seen at DuBois Regional Medical Center Emergency Room on November 30 with chief complaint of "wheezing & coughing, head & chest congestion onset 1420 (2:20pm)". Her blood pressure was recorded as 207/112, pulse 96, respirations 36, and pulse oximetry 94%. Per the physician, Patrick Shilala MD's exam at 4:45 p.m., she was "8 months", and the "Dx" was "Bronchitis/Bronchospasm". Dr. Mars was notified at 1805 (6:05 pm). Laboratory testing drawn at 6:14pm demonstrated hemoglobin 14.8gm, increased; creatinine 1.0, increased from her November 15 value; and uric acid 5.0, increased. Urinalysis demonstrated ">300mgm/dl" protein". Repeat blood pressure with "adult cuff on L wrist" demonstrated blood pressures of 236/142 and 214/128. At 8:00pm, "FHT 132 heard" and "BP rechecked, see Dynamap". Dynamap blood pressures were 226/133 at 8:08pm and 290/123 at 8:10pm. "Other instructions" were "See Dr. Mars in am". Ms. Herzing was subsequently discharged home.

Dr. Kruszewski wrote in an untimed office note dated the following day, December 1, that she had spoken with Ms. Herzing by telephone. Dr. Kruszewski noted "Her BP was up" in the emergency room, and "Advised her that the baby could die if she is not taken care of". Later that day, she was readmitted to DuBois Regional Medical Center at 2:36pm. Untimed admitting telephone orders by Dr. Kruszewski stated "2 Gm Na diet", "EFM 20 min q shift or if (decreased) FM, UC's" and "BPP today (with) AFI, S/D ratio". Nursing notes timed 3:05pm recorded a blood pressure of 209/115. Dr. Kruszewski's "Admit Note" timed 3:35pm, stated "BP 227/114" and "Cx FT/25%/posterior/ soft/vertex". Her "Imp:" was "1 IUP at 35<sup>6</sup> weeks" "2 "elevated BP" "3 R/O pre-eclampsia". Her "Plan:" included "1 Labs ordered", "2 "will start labetolol 100mgs BID", "3 24<sup>0</sup> urine starting 12-2", "4 Await labs and deliver if necessary". Her creatinine returned 1.0 mg/dl, elevated. The biophysical profile interpreted by Dr. Jerjis T. Alajaji described "IMPRESSION: SINGLE LIVE GESTATION IN CEPHALIC PRESENTATION WITH AN AGE OF 31-WEEKS 3-DAYS. AMNIOTIC FLUID INDEX OF 12. BIOPHYSICAL PROFILE IS 6/8". In fact, Ms. Herzing was 36 1/7 weeks pregnant. Although Dr. Kruszewski had ordered "BPP today (with) AFI, S/D ratio", the ultrasound report makes no mention regarding the ordered "S/D ratio" study.

A nursing note at 5:30pm describes "pt expresses frustration at self for staff difficulty in locating fhts due to gross obesity, self-degrading comments made despite reassurance by staff". A nursing note timed 6:00pm recorded "Phy. notify (GAB): difficulty in capturing and maintaining FHTs due to pt obesity, Dr. aware of limited capture without orders to continue present effort". Other nursing notes describe "FHR baseline(GAB): 130s-140s in 30 seconds of capture", and "long-term variabi (GAB) not determined due to short capture of FHTs".

On December 2, nursing notes recorded the blood pressures ranging from 198/102 to 165/84. At 12:30am, the nursing notes state under fetal well being, EFM "q shift", and "unable to capture continuous FHT's due to maternal obesity. Toco hand held fetal movements audible with FHT's captured by Doppler 140s-150s". The fetal monitor strips panels 46807-46812 demonstrate very little recorded fetal heart rate.

At 8:00am, the nursing notes state "intermittent q shift" and "EFM (EW): 20 min q shift. Unable to capture FHTs Intermittent FHT heard at 140's". A separate nursing note at 8:00am describes "FHR baseline(EW): picked up at !40S Intermittently unable to capture" and "longterm variabi(EW): Unable to determine". Dr. Kruszewski wrote at 9:40am, "BP 180s-190s/90s-100s". Her impression remained "Elevated BP, possible pre-eclampsia". Her plan remained "1 24 hr urine in progress" and "2 Repeat labs in AM".

At 2:00pm, nursing notes recorded "FHT's 140s unabel to maintain capture FHR. Many attempts made with assistance of 3 RNs.". At 3:45pm, "unable to maintain capture due to

pt gross obesity", "unable to visualize or maintain EFM capture long enough to ascertain", and "FHR baseline(GAB): 130s-140s with minimal long term variability during the 1+ minute of obtain capture" were noted. This strip, panel 46818, demonstrates two variable decelerations from the briefly recorded baseline of 140 beats per minute.

On December 3, Ms. Herzing's 3rd hospital day, nursing notes recorded a blood pressure of 173/104 at 1:00am and 207/104 at 8:02am. They also recorded at 1:00am "unable to capture FHTs due to maternal obesity. Abdomen scanned with doppler fetal movement audible but unable to capture heart tones". Dr. Kruszewski's 8:45am note describes "BP ranging from 150-180- systolic/80's-low 100s diastolic". Her impression remained "(increased) BP, possible pre-eclampsia". Her plan included "Induce if necessary".

At 10:49am, nursing notes describe "unable to capture FHTs. Michele verbalizes 'I can feel the baby move'". Subsequent nursing notes at 1:53pm stated "FHR 140s LLQ. obtained with much difficulty and assistance of 2 RNs". Nursing notes recorded a blood pressure 192/100 and 182/100 at 4:00pm. A 4:00pm nursing note regarding fetal movement recorded "active decreased". The fetal heart rate pattern was described as "FHR baseline(CRR): 130s", "longterm variabi(CRR): min. to average during six min. strip; difficult to capture fhts for a prolonged period of time due to pt. being obese", and longterm variability "decreased average". The fetal monitor strips from panel 36884-33696 demonstrate very little recorded fetal heart rate. Contractions every 2 minutes are seen on panels 36795-36798.

Two hours later, the nursing staff "updated" Dr. Kruszewski of the "B/P readings". They further recorded "no additional orders received for tx. of b/ps: will monitor bp closely". A 6:00pm nursing note regarding fetal movement described "decreased", FHR baseline "130s", and longterm variability "decreased". Nursing notes also describe "fhts q 30 min. as ordered once cytotec inserted until pt. becomes more active". In the patient progress notes, the "FHT's obtained Q 30 min as ordered".

At 6:05pm, Dr. Kruszewski wrote, "24<sup>0</sup> urine came back showing 19gms of protein. BP still running 170s-180s over low 100's. Will start induction (with) Cytotec 25mg. We will be unable to do continually monitoring due to pts size". "Will monitor FHT's q 30 min and have pt. report CTXs until cx dilated enough to place IUPC and fetal scalp electrode". "Cx now FT/25%/soft/ballotable vertex".

On December 4, Ms. Herzing's 4th hospital day, nursing notes recorded a blood pressure of 171/87 at 12:00am. The next recorded blood pressure was 194/100 at 9:49am. Nursing notes also described "FHT's prn while awake tonite until active labor". At 12:00am, the FHR baseline was "120s". At 1:00am, the labor flow sheet stated "Sleeping soundly on L side, not disturbed. SW". Similar notes at 4:00am, 5:00am, and 6:00am described the

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patient sleeping. The 7:00am note stated "? audible 170's". The patient progress notes describe "attempted to get FHT's x 1-hr 30min. Able to audibly get FHT's for 2-4 beats but not able to capture anything on strip. States 'the baby is very active'. She is feeling much activity. Attempted to get heart tones with doppler and also tried on pt's back - still unable to capture. Will try periodically".

Dr. Kruszewski's 7:35am note describes "BP stable". "Cx 2cm/25%/-3/vertex". The plan was "AROM when possible (with) IUPC and scalp electrode placement". The patient progress note at 10:00am describes "Attempt to capture fetal heart tones (with) monitor and doppler. Remain unable to capture on monitor. Questionable audible 130's. Pt states fetus is active. Will continue to try". At 11:15am, "Dr. Marys office notified - she is busy (with) pt and will call back". At 11:45, "Dr. Mary called back. Aware of being unable to capture heart tones. Instructed to insert next Cytotec and she will be over after meeting to rupture membranes and apply FSE. Continue unable to capture heart tones. Audible in scant periods for 2-3 sec. SVE shows 2cms 25%. Cytotec 25mcg inserted as ordered at 12pm".

Later that day, Dr. Kruszewski's 2:15pm note described "AROM was performed at 12:50pm. Meconium staining noted. Cx 3-4cm/50%/-3/vertex. Scalp electrode was applied with erratic pickup (per nursing notes, after Dr. Kruszewski ruptured membranes, she applied at least two different scalp electrodes). An ultrasound interpreted by Dr. Robert J. Boron described "There is no fetal movement seen or evidence of fetal heart rate. IMPRESSION: FETAL DEMISE". and no fetal heart motion was identified". From 12:00am until the documentation of fetal demise, the only documented fetal heart rate was obtained at 7:00am and 10:00am. Ms. Herzing was 36 4/7 weeks pregnant.

On December 5, at 9:31am, Ms. Herzing delivered her stillborn daughter Janelle. The preliminary autopsy report by Gregory Suslow M.D. described "This stillborn female fetus, 4 lbs 20 oz (1871gm), of 36 weeks gestational age (by dates), 32+/-2 weeks (by measurements), was delivered vaginally by induction to a 32 year old, pre-eclamptic, obese (450 pounds) white female, G30111. Cessation of fetal heart tones were noted around midnight 12/04/00, before artificial rupture of membranes. Preliminary Autopsy findings communicated to Dr. Kruszewski at 1645 on 12-6-00 revealed the following: 1. Large intracranial hemorrhage (probable cause of intrauterine fetal demise). 2. Severe uteroplacental insufficiency with multiple placental infarctions, intervillous thrombosis, and acute chorioamnionitis".

The final autopsy report of December 13 described no congenital abnormalities. In Dr. Suslow's "Clinico-Pathologic Correlation", he states "The combined effects of a premature cerebral vasculature (particularly in the subventricular germinal matrix layer), a vertex

vaginal delivery, an elevated vascular resistance associated with pre-eclampsia, most likely led to the fatal intracranial hemorrhage”.

Nursing notes timed 11:34am describe the placenta as having “multiple areas of calcification” and “grossly calcified”. The placental pathology report by Gregory Suslow M.D. described a “271.2gm slightly hypomature placenta with multiple areas of infarction, intervillous thrombosis, and necrotizing intervillitis”.

Ms. Herzing was discharged on December 6 with Procardia XL for blood pressure control.

#### OPINION

It is my opinion that the care provided for Michelle Herzing and her unborn daughter, Janelle, was below the standard of care expected of physicians and nurses caring for pregnant women. To a reasonable degree of medical certainty, had appropriate care been provided to Ms. Herzing, her baby daughter Janelle would have been born alive and healthy. In addition to the failures delineated in the “Case Summary” above, more specific criticisms of her care are as follows.

Ms. Herzing’s care providers who failed to meet the standard of care include the emergency room physician Dr. Shilala. Dr. Kruszewski, the radiologist Dr. Alajaji and the nursing staff at DuBois Regional Medical Center. While each of these care providers gave substandard care in their own right, as a group they failed in their communication with each other in regards their care for Ms. Herzing.

Dr. Shilala failed to communicate with Dr. Kruszewski regarding Ms. Herzing’s proteinuria, elevated creatinine, and elevated blood pressures at the time of her emergency room evaluation on November 30. Had Dr. Kruszewski been informed of the this information by Dr. Shilala, she would have recommended that Ms. Herzing be admitted, as occurred when Ms. Herzing was evaluated in the emergency room with her 2<sup>nd</sup> pregnancy, and subsequently admitted with preeclampsia by Dr. Kush.

The radiologist Dr. Alajaji’s failed to communicate with Dr. Kruszewski to learn of Ms. Herzing’s December 30 due date prior to preparing the ultrasound report of December 1. This lack of communication resulted in the failure to diagnose intrauterine growth restriction. Had this communication occurred, the diagnosis of intrauterine growth restriction would have been made. Had the diagnosis of growth restriction been made, Doppler studies of the umbilical artery would have been performed. In fact, besides ordering a biophysical profile, which had been performed, Dr. Kruszewski had also

ordered "S/D ratio", a Doppler study of the umbilical cord. Dr. Alajaji's failure to perform the Doppler studies because of the presence of intrauterine growth restriction and Dr. Kruszewski's order was below the standard of care.

After the report was placed on the chart, Dr. Kruszewski's failure to communicate to Dr. Alajaji regarding the wrong due date error and the failure to perform the ordered "S/D" ratio was below the standard of care. Dr. Kruszewski's failure to communicate also resulted in the ultrasound report being left uncorrected. Dr. Kruszewski knew that Ms. Herzing was 36-week pregnant, not 31 weeks. Dr. Kruszewski should have recognized the incorrect gestational age, and that the fetal measurements consistent with 31 weeks in a 36 week fetus represented fetal growth restriction.

Upon recognition of intrauterine growth restriction, the diagnosis of severe preeclampsia would have been made, and delivery recommended. Delivery should also have been recommended based upon Ms. Herzing's persistently elevated systolic and diastolic blood pressures.

Dr. Kruszewski failure to meet the standard of care started on November 15 at the time of Ms. Herzing's prenatal visit. Based upon Ms. Herzing's 4+ proteinuria at 33 weeks gestation, with her history of prior preterm severe preeclampsia, and her history of placental infarctions, Dr. Kruszewski should have admitted Ms. Herzing to the hospital, obtained a maternal-fetal medicine consultation, an obstetrical ultrasound, and a 24 hour urine protein collection. Such management is required to meet the standard of care for pregnant women such as Ms. Herzing with her clinical evidence of preeclampsia, as well as her history of preterm preeclampsia and placental infarctions.

In fact, Dr. Kruszewski met the standard of care when on December 1, because of elevated blood pressures, she admitted Ms. Herzing, obtained an obstetrical ultrasound, and ordered a 24 urine protein collection. The ultrasound demonstrated the above findings, and Ms. Herzing's blood pressures remained elevated. With these findings, the diagnosis of severe preeclampsia should have been made on December 1. Had Ms. Herzing been delivered upon her diagnosis of severe preeclampsia on December 1, her baby daughter would have been born alive and healthy.

The nursing staff also failed to communicate. When Ms. Herzing was admitted, the nursing staff failed to obtain a technically adequate fetal heart rate monitor strip. As such, the fetal heart rate could not be considered reassuring. This failure to obtain a technically adequate monitor strip was below the standard of care for obstetrical nurses. The nurses informed Dr. Kruszewski of their difficulties in monitoring the Ms. Herzing's baby. Even Ms. Herzing was frustrated by the nurses' inability to obtain an adequate monitor strip. The absence of a reassuring fetal heart rate precludes conservative management of

preeclampsia. Dr. Kruszewski's apparent lack of concern should have prompted the nursing staff to access the chain of command to notify another obstetrician of their concerns for evaluating fetal wellbeing.

It was below the standard of care for Dr. Kruszewski to fail to diagnose severe preeclampsia before the 24-hour urine protein collection returned on December 3. Ms. Herzing's blood pressures were persistently elevated from admission until the time that the 24-hour protein returned.

When Dr. Kruszewski did diagnose severe preeclampsia, she should have recommended delivery by cesarean, as did Dr. Kush with Ms. Herzing's prior pregnancy with a similar diagnosis of preterm severe preeclampsia. In addition, Ms. Herzing now had a uterine scar, and was at risk for uterine rupture and fetal injury should she attempt vaginal birth after cesarean (VBAC). While VBAC was not below the standard of care, the standard of care for VBAC required the immediate availability of the obstetrician. Dr. Kruszewski took more than 1 hour to come from the office to evaluate Ms. Herzing when the nurses called Dr. Kruszewski at 11:45am on December 4. It would appear that she was not immediately available. In addition, the standard of care requires the presence of a reassuring fetal heart rate before proceeding with VBAC. The nurses had been unable to obtain a reassuring fetal heart rate pattern on an intermittent basis for the three prior days. This fact made the probability of continuous monitoring during labor extremely unlikely.

Finally, the standard of care regarding VBAC requires that the fetus can be delivered quickly in the event of a non-reassuring fetal heart rate pattern. It is difficult to provide emergent anesthesia, and deliver a fetus safely and quickly in a woman who is as obese as Ms. Herzing, especially with her history of abdominal scar tissue from her prior cesarean. The standard of care requires documentation that the potential risks and benefits for mother and fetus be discussed and documented in the medical record. I could find no such discussion in the prenatal chart or medical record. Because of the above listed difficulties, VBAC should not have been recommended for Ms. Herzing. A repeat cesarean should have been recommended.

When the decision to attempt VBAC was made, an oxytocin challenge test should have been ordered by Dr. Kruszewski before cervical ripening. Many growth-restricted fetuses such as Ms. Herzing's do not tolerate labor. While a negative test would not eliminate the possibility of a non-reassuring fetal heart rate occurring, it would make possibility of a non-reassuring fetal heart rate less likely than if a positive test result had been obtained. As such, before cervical ripening and labor induction, an oxytocin challenge test should have been performed.

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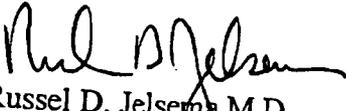
It was below the standard of care for Dr. Kruszewski to use Cytotec (misoprostol) for cervical ripening in a woman with history of prior cesarean. The association of misoprostol and uterine rupture was well described in the American obstetrical literature by November 30, 2000. In fact, The American College of Obstetricians and Gynecologists Committee on Obstetric Practice's Committee Opinion Number 228, November 1999 "Induction of Labor With Misoprostol" states "There have been reports of uterine rupture following misoprostol use for cervical ripening in patients with prior uterine surgery. Thus, until reassuring studies are available, misoprostol is not recommended for cervical ripening in patients who have had prior cesarean delivery". Also, the use of misoprostol requires the presence of a reassuring fetal heart rate pattern, something that the nursing staff had been unable to obtain. The above referenced Committee Opinion also states "Patients undergoing such therapy should receive fetal heart rate and uterine activity monitoring".

With regards to the nursing staff, it was below the standard of care to attempt to monitor the fetal heart rate through the maternal back, and to permit the Ms. Herzing to sleep during the early morning of December 4, without evaluating the fetal heart rate pattern. It was also below the standard of care to place the 12:00pm misoprostol dose without a reassuring fetal heart rate pattern.

If better communication had occurred between Ms. Herzing's care providers, including her physicians and nurses, and had a plan for her pregnancy been made, implemented, and followed, her baby daughter would have born alive and healthy. If appropriate fetal monitoring had occurred, abnormalities would have been detected that would have prompted delivery. To a reasonable degree of medical certainty, had appropriate care been provided to Ms. Herzing, her baby daughter Janelle would have been born alive and healthy.

These are my major opinions. Should additional records become available, I reserve the right to amend my opinion.

Sincerely,

  
Russel D. Jelsema M.D.  
Maternal-Fetal Medicine

Enc.: curriculum vitae



I have had the opportunity to review the additional materials regarding Michelle Herzing:

- 1) Maternity Policies DuBois Regional Medical Center;
- 2) Nursing Competencies;
- 3) Depositions: Mary Kruszewski D.O. April 10, 2003 (66 pages); Shawn Welsh R.N. April 28, 2004 (56 pages); Jerjis T. Alajaji M.D. April 28, 2004 (29 pages); Sheri Kuzina R.N. August 4, 2004 (13 pages); Colleen R. Russell R.N. August 4, 2004 (19 pages); Melissa Dixon R.N. August 4, 2004 (16 pages); Gloria Bennett R.N. August 4, 2004 (37 pages); Sherri Mazza R.N. August 4, 2004 (21 pages); Susan B. Haverly R.N. August 4, 2004 (61 pages).

My opinion remains unchanged. The care provided for Michelle Herzing and her unborn daughter, Janelle, was below the standard of care expected of physicians and nurses caring for pregnant women. The new materials that I have been provided reinforce the following opinions expressed in my November 6, 2001 report.

Dr. Alajaji, the radiologist, acknowledged in his deposition that he interpreted Ms. Herzing's December 1 ultrasound (P8 L17), that the ultrasound "tech would scan the patient, and then discharge her" (P13 L17), and that "in the medical arts building, there is not access to prior records on a stat basis" (P16 L24). He also stated, "since the prior record was not available, I was not required to go beyond the present study" (P25 L5). None of these reasons are valid. Whether the records were available or not, Dr. Alajaji or the technician only had to ask Ms. Herzing the due date that her obstetrician Dr. Kruszewski was using, or they could have contacted Dr. Kruszewski. Asking a mother her due date is a simple question, frequently asked by ultrasound technicians and physicians who perform and interpret obstetrical ultrasounds. The question is asked because the measurements that will be performed must be compared to a due date, a "reference point" to determine adequacy of growth. Similarly, when pediatricians measure a child to determine growth during childhood, they use the child's birth date as a "reference point" to determine if the child is growing appropriately.

Dr. Alajaji stated that "Any time there is a stat study in the medical arts building, there's no prior record" (P18 L9), and he did not think it was important to review any prior films on Ms. Herzing in order to read her films (P18 L25). He further stated that "the main purpose of an obstetrical ultrasound" is to measure the fetus (P23 L25), that "this study was done to assess the size of the fetus" (P23 L20) and "the ultrasound was requested to assess the size of the fetus and to obtain a biophysical profile" (P23 L10). Dr. Alajaji further stated that he could have made the diagnosis of intrauterine growth restriction if he had "an older ultrasound performed" earlier in pregnancy (P24 L10), and that without a prior film, he could not make the diagnosis of intrauterine growth restriction. Prior

ultrasound films are not required to make the diagnosis of intrauterine growth restriction. If available, they confirm the due date being used by the obstetrical care provider. However, with many women, the prior films are unavailable, and the established due date is used. Had the due date of December 30 been used as a "reference point", the diagnosis of intrauterine growth restriction would have been made by Dr. Alajaji. Had that diagnosis been made, Dr. Kruszewski would have made the diagnosis of severe preeclampsia on December 1, and delivery would have occurred prior to December 3 when Ms. Hertzling's labor was induced.

Dr. Kruszewski failed to meet the standard of care on November 15 when she failed to recommend hospital admission for Ms. Hertzling based upon her 4+ proteinuria at 33 weeks gestation, her history of prior preterm severe preeclampsia, and her history of placental infarctions. In her deposition, Dr. Kruszewski acknowledged that Ms. Hertzling had 4+ protein (P25 L2), and that preeclampsia was on her differential diagnosis that day (P26 L4). If Dr. Kruszewski thought preeclampsia was a possible diagnosis, the standard of care required that she recommend hospital admission for Ms. Hertzling.

Dr. Kruszewski failed to meet the standard of care on November 30 when she failed to recommend hospital admission for Ms. Hertzling when Dr. Kruszewski had been informed by Dr. Shilala at Dubois Regional Medical Center Emergency Room of Ms. Hertzling's proteinuria, elevated creatinine, and elevated blood pressures. In her deposition, Dr. Kruszewski acknowledged she did not go in to the hospital personally to evaluate Ms. Hertzling. She did not see Ms. Hertzling because "she was scheduled for an appointment the next day and my plan was to admit her to the hospital at that time" (P33 L15), and "because I felt that her condition was worsening and that probably she would need to have the baby delivered" (P33 L25). If Ms. Hertzling's condition was worsening enough on November 30 to require admission on December 1, she should have been admitted on November 30. To fail to do so was below the standard of care.

Dr. Kruszewski failed to meet the standard of care on December 1 when she failed to recommend delivery after the ultrasound interpreted by Dr. Alajaji showed intrauterine growth restriction, and Ms. Hertzling's blood pressures remained elevated. At the time of Ms. Hertzling's Emergency Room visit, Dr. Kruszewski "felt that her condition was worsening and that probably she would need to have the baby delivered" (P33 L25), and the purpose of Ms. Hertzling's admission to DuBois Regional Medical Center Labor and Delivery unit on December 1 was to get her blood pressure under control, test for preeclampsia and then to induce and to deliver the baby (P34 L15). Clearly, Dr. Kruszewski recognized the seriousness of Ms. Hertzling's condition, and the need to move quickly towards delivery, which is the appropriate treatment for preeclampsia. Unfortunately, Dr. Kruszewski did not induce labor on December 1 because Ms. Hertzling's "blood pressure wasn't under control" (P34 L21) and she did not consider delivery on December 2 (P39 L24). Uncontrolled blood pressure with preeclampsia is

one of the primary reasons to induce labor. After labor induction has started, blood pressure can be controlled with medication. While Dr. Kruszewski started a medication (labetalol) to control Ms. Herzing's blood pressure, she did not increase the dosage when Ms. Herzing's blood pressures remained elevated and she did not start inducing Ms. Herzing's labor. Waiting for blood pressure control only increased the risk of complications for both Ms. Herzing and her baby.

Dr. Kruszewski failed to meet the standard of care on December 1, when she failed to recommend transferring Ms. Herzing to a level III hospital after the nursing staff at DuBois Regional Medical Center was unable to monitor adequately Ms. Herzing's baby's fetal heart rate. In her deposition, Dr. Kruszewski stated, "I ordered that the fetal heart tones be auscultated about every half hour" (P44 L16), and that she knew "that they were having trouble getting the heart tones for any significant periods of time" (P46 L4). Dr. Kruszewski stated that the first she knew of difficulty monitoring Ms. Herzing's baby was on December 4 (P46 L17) when she was seeing Ms. Herzing (P50 L12). Dr. Kruszewski stated that the reason the nurses could not monitor Ms. Herzing's baby was "because the straps or the girdle were too small" (P51 L16) to keep the fetal monitor on Ms. Herzing's body (P51 L20). Dr. Kruszewski further stated that she has never had another patient that she could not monitor (P52 L19). In this situation, the standard of care required that Dr. Kruszewski transfer Ms. Herzing to a hospital that could provide continuous monitoring. Dr. Kruszewski acknowledged that Ms. Herzing was a high-risk pregnancy (P58 L1), and that with prior patients, Dr. Kruszewski had recommended that high-risk patients be transferred to other hospitals (P58 L1). As such, Dr. Kruszewski should have recommended transfer to another hospital. To fail to do so was below the standard of care.

Dr. Kruszewski failed to meet the standard of care on December 3, when she failed to ensure that Ms. Herzing's baby would receive continuous monitoring. While Dr. Kruszewski stated that in her opinion, continuous monitoring is not necessarily better (P52 L10), and that continuous monitoring was not "absolutely necessary" (P52 L7), the DuBois Regional Medical Center maternity policies clearly describe the need for continuous fetal monitoring for women undergoing cervical ripening with Cytotec and for women attempting vaginal birth after cesarean. Per the "Fetal Monitoring" protocol, the nursing staff was to "Maintain quality tracing of the fetal hart rate and uterine contraction pattern", and to "notify the physician if unable to obtain a quality fetal monitoring tracing". If continuous fetal monitoring was not "absolutely necessary", why would it be necessary for the nurse to notify the physician if the nursing staff was unable to obtain quality tracings? Failing to ensure continuous fetal monitoring directly resulted in the nursing staff's failure to detect the fetal heart rate changes that resulted in Ms. Herzing's baby's death.

The nursing staff that provided care for Ms. Herzing failed to meet the standard of care by failing to follow their own labor and delivery unit's policies and protocols regarding fetal heart rate monitoring.

Nurse Bennett acknowledged in her deposition that she admitted Ms. Herzing (P7 L16) on December 1, and that at admission, Ms. Herzing's blood pressure was 219/36 (P13 L3). Nurse Bennett further stated that the orders were to "monitor 20 minutes every shift" (P25 L5), that "if it was capturing sporadically, it would not have captured long enough to print out" (P19 L5), that "at 1800 that the doctor was notified of the difficulty in capturing and maintaining fetal hart rate tracing due to the patient obesity." (P15 L7), that "I would have told her" that "I was unable to do so (capture the fetal heart rate) for the 20 minutes that she had ordered" (P 29 L 14), and that the "doctor (was) aware of limited capture without orders to continue present effort" (P28 L16). Nurse Bennett further stated that Dr. Kruszewski "did not express that she wanted that continued at that point" (P29 L24), and "what I got from her was that she was satisfied that we had obtained capture of heart tones, that she had the ultrasound report, and that we did not need to again on our shift pursue fetal heart rate tracing" (P30 L8). Nurse Bennett agreed that she did not write down any of what Dr. Kruszewski said (P30 L14). Since she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Bennett should have accessed her chain of command.

Nurse Kizina provided care for Ms. Herzing from 11:00 PM December 1 to 7:00 AM December 2. In her deposition, she stated that external fetal monitoring was "to be done every shift" per the "physician's orders (P9L7). Nurse Kizina further stated that at 1:00 AM during her shift, Ms. Herzing's blood pressure was "173/104" (P10 L23), that she did not repeat Ms. Herzing's blood pressure during her shift (P 11 L1), and that she did not "remember" any physician giving her information regarding Ms. Herzing and her elevated blood pressures (P12 L24). Nurse Kizina also was assigned to care for Ms. Herzing on December 2 from 11:00 PM to 7 AM on December 3. As for Nurse Bennett, since Nurse Kizina could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Kizina should have accessed her chain of command.

Nurse Bennett was assigned to care for Ms. Herzing again on December 2, on the 3:00-11:00 PM shift. In her deposition she stated that at 3:45 PM on December 2, "I had two minutes of tracing" (P35 L9), and that while the physician orders had not changed, "it was verbally stated that she had been aware of our difficulty and that if we had obtained fetal heart tones that was sufficient" (P35 L13). Nurse Bennett further stated that "it was not so much the length as just the presence of fetal heart tones if we were able to get them" (P35 L19). As noted above in my criticisms of Nurse Bennett's care on December 1, since she could neither complete Dr. Kruszewski's orders nor follow her own policies

and protocols, Nurse Bennett should have accessed her chain of command on the evening of December 3.

Nurse Russell was assigned to care for Ms. Herzing on December 3, on the 3:00-11:00 PM shift. In her deposition, Nurse Russell acknowledged that she was Ms. Herzing's primary nurse (P6 L25), that at 4:00 PM Ms. Herzing's blood pressure was "192 over 110" on an automated blood pressure cuff (P8 L7), that she did not "recall" if she verified that elevated blood pressure with a manual cuff (P8 L17), and that this pressure was "so high" (P12 L3). Nurse Russell also confirmed that she was caring for Ms. Herzing when Dr. Kruszewski "decided to induce her and inserted a Cytotec pill" at 6:00 PM (P7 L18). Nurse Russell stated that she placed the external fetal monitor on Ms. Herzing at 6:06 PM (P9 L20), and that Dr. Kruszewski was present at that time (P10 L5). Nurse Russell read from her nursing note, which stated that Dr. Kruszewski was "updated on patient's blood pressure", that "no further orders received as far as blood pressure readings", and that "fetal heart tones obtained every 30 minutes as ordered until patient cervix dilates further" (P10 L17). These orders directly contradicted DuBois Regional Medical Center's own policy regarding fetal monitoring during Cytotec usage. Subsequently, at 9:45 PM, Nurse Russell appropriately "made her (Dr. Kruszewski) aware of the blood pressure because they were high" (P11 L23). Nurse Russell stated that she "called her because I was concerned about the blood pressure being elevated, but", "she didn't say anything more" (P17 L20), and that when she called Dr. Kruszewski regarding Ms. Herzing's blood pressure, Nurse Russell usually gives "a full assessment of what's going on" (P13 L20). At the 9:45 PM phone call with Dr. Kruszewski, Nurse Russell was told that the nursing staff was to "monitor prn during 11:00 to 7:00 shift" (P14 L25). As noted above in my criticisms of Nurse Bennett's and Nurse Kizina's care on December 1 and 2, since she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Russell should have accessed her chain of command on the evening of December 3.

Nurse Walsh was assigned to care for Ms. Herzing on December 3, on the 11:00 PM to 7 AM December 4 shift. In her deposition, Nurse Walsh stated that the nursing supervisor was the access point for Nurse Walsh accessing the chain of command (P14 L6). She further acknowledged that one of her duties was to assess the fetal well being of Ms. Herzing's baby (P24 L14), and that Dr. Kruszewski had told the nursing staff that they could use the Doppler to intermittently record Ms. Herzing's fetal heart rate (P25 L10). Nurse Walsh further noted that in spite of a physician order to listen to the fetal heart rate every 30 minutes, she did not do so on the morning of December 4 (P26 L11). She only listened to the fetal heart rate at "12 a.m. and again at 3 A.M." (P26 L16). Nurse Walsh stated that no documentation or order stated that Ms. Herzing was not to be awakened (P33 L16), that usually she would document such an order (P34 L2), and that she does not know why such an order was not recorded (P36 L15). Nurse Walsh acknowledged that Ms. Herzing's blood pressure at 7:00 AM was "216 over 120" (P43 L14), and that

she was not concerned about that blood pressure (P43 L17). Nurse Walsh stated that prior to placing the 7:00 AM dose of Cytotec, the nursing staff "auscultated the heart tone with the Doppler" (P46 L9). Nurse Walsh stated that she never found the need to go up the chain of command (P53 L13). As noted above in my criticisms of Nurse Bennett's, Nurse Kizina's, and Nurse Russell's care on December 1 and 2, since she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Walsh should have accessed her chain of command on the morning of December 4.

With Nurse Walsh, Nurse Dixon also took care of Ms. Herzing on December 3, on the 11:00 PM to 7 AM December 4 shift. She stated in her deposition that she "used a Doppler" to determine the fetal heart rate (P10 L8). Like Nurse Walsh, Nurse Dixon stated that "no order" was written that permitted Ms. Herzing to sleep without being disturbed (P10 L20), but that "we had talked to Dr. Mary and asked her about" not disturbing Ms. Herzing, but "we don't have an order" (P10 L25). Further agreeing with Nurse Walsh, Nurse Dixon stated that Nurse Walsh did not make any notes or documentation "about the phone call" to Dr. Kruszewski (P11 L25). Nurse Dixon also stated that she did not record any physician orders during that shift (P12 L3), that she did not attempt to speak with Dr. Kruszewski (P13 L25), and that the physician orders that she was under were "to auscultate fetal heart tones q 30 minutes until scalp electrode" "can be placed" (P14 L17). As noted above in my criticisms of Nurse Bennett's, Nurse Kizina's, Nurse Russell's, and Nurse Walsh's care on December 1, 2, and 3, since she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Dixon should have accessed her chain of command on the morning of December 4.

Nurse Heverly was assigned to care for Ms. Herzing on December 4, on the 7:00 AM to 3:00 PM shift. In her deposition, Nurse Heverly stated that she received shift report from Nurse Walsh at 7:00 AM, and that Nurse Walsh stated that "there was just a concern with being able to capture the fetal heart tones on the strip" (P9 L6). Dr. Kruszewski was "fully aware" of the nurses difficulty with finding the fetal heart rate at 7:30 AM (P59 L5). Nurse Heverly stated that she remembered, "audibly hearing what we thought were heart tones, but not being able to capture for a long time on the strip" (P9 L18), and that "we had never had a patient quite --- with that much difficulty. We were even trying to get heart tones through her back" (P10 L21), and that when they listened at shift change, they were hearing heart tones on the "left side of her lower back" (P17 L23). Nurse Heverly, with fourteen years of obstetrical nursing experience, stated that she had "never tried in the back before. So I didn't know if it ever would" (P20 L8). Nurse Haverly stated that she did not think the fetal heart rate machine was having trouble printing (P11 L8).

It was below the standard of care for the nursing staff to attempt to monitor the fetal heart rate through Ms. Herzing's back. The reason that Nurse Heverly had never attempted to

monitor the fetal heart rate through a mother's back is that the back muscles and bones of the mother's back prevent the monitor from being able to hear the baby's heart beat.

Nurse Heverly further stated that she documented Dr. Kruszewski placing Cytotec (P12 L22), that "when we insert Cytotec, they always have to be on the monitor" (P14 L6),

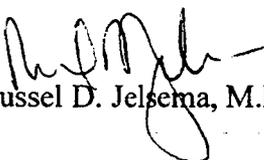
and that "it's just policy (hospital)" (P14 L18) that continuous fetal heart rate monitoring was required upon insertion of Cytotec" (P14 L24). Nurse Heverly stated that she was not "sure" what she meant when she wrote "attempted to get fetal heart tones times an hour and 30 minutes" (P13 L22), and that with regard to attempting to monitor the fetal heart rate, "you don't just give up after ten minutes" (P18 L20). Nurse Heverly also stated, "Dr. Mary was aware that we were unable to get heart tones and keep her on the monitor. So she did say that we could get them periodically. She didn't have to be on continuous monitor because it hurt the patient because she was so large. So we were allowed to get intermittent heart rate" (P25 L24). Nurse Heverly acknowledged that "we're supposed to write" verbal orders, but that no verbal order regarding fetal monitoring was written (P26 L17). At 10:00 AM, Nurse Heverly was "not sure if we were capturing them, you know, long enough to count" the fetal heart rate" (P30 L10), and that at 11:15 AM, she called Dr. Kruszewski regarding her inability to capture the fetal heart rate (P32 L12). Nurse Heverly noted that although she had told Dr. Kruszewski of her inability to record Ms. Herzing's baby's heart beat, Dr. Kruszewski ordered her to "insert next Cytotec" (P32 L18). When given the order to place the next Cytotec in the absence of a reassuring fetal heart rate pattern, the standard of care required that Nurse Haverly advise Dr. Kruszewski to come immediately to the hospital to evaluate Ms. Herzing in person. If Dr. Kruszewski refused, Nurse Heverly should have contacted her chain of command, which according to Nurse Haverly was "Jeannie Roseman" (P28 L5).

Nurse Haverly made another phone call to Dr. Kruszewski at 11:45 AM, and stated in her deposition "I'm just assuming that I made her aware that we just weren't sure about the fetal heart tones" (P33 L19). Again, the standard of care required that Nurse Haverly advise Dr. Kruszewski to come immediately to the hospital to evaluate Ms. Herzing in person. If Dr. Kruszewski refused, Nurse Heverly should have contacted her chain of command. Instead of advising Dr. Kruszewski to come to the hospital or accessing her chain of command, Nurse Heverly inserted the Cytotec at 12:00 PM (P34 L2). Nurse Heverly acknowledged that no documentation of the fetal heart rate exists at the time that she inserted the Cytotec at 12:00 PM (P34 L17), and that she was unable to measure "accurately" the fetal heart rate at that time (P35 L10). Nurse Heverly further acknowledged that the nurses could have attached Velcro straps end on end for more length, so as to better fit Ms. Herzing (P47 L17), but that they did not try end to end Velcro (P49 L 9). As noted above in my criticisms of Nurse Bennett's, Nurse Kizina's, Nurse Russell's, Nurse Walsh's and Nurse Dixon's care on December 1, 2, 3, and 4 since

October 13, 2004  
Michelle Hertzog  
Page 8

she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Heverly should have accessed her chain of command on the morning of December 4.

Sincerely,

  
Russel D. Jelsema, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
 )  
Plaintiffs, )  
 )  
 ) NO. G.D. 02-169 CD  
 )  
 ) JURY TRIAL DEMANDED  
vs. )  
 )  
 )  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
 )  
 )  
Defendants. )

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Four Part Motion in Limine of Defendant, Mary C. Kruszewski, D.O. RE Preclusion of Inappropriate Expert Testimony, in the above-referenced matter was mailed via Federal Express, on this 20<sup>th</sup> day of September, 2005, to the attorney(s) of record:

Amy Acheson, Esquire  
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McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Mary C. Kruszewski, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right, and  
as Administrators of the Estate of JANELL  
HERZING, a minor, deceased,

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

Defendants.

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

**PLAINTIFFS' MOTION TO EXCLUDE  
EVIDENCE AND EXPERT TESTIMONY  
REGARDING ADVICE ALLEGEDLY  
GIVEN BY DR. KRUSZEWSKI TO  
PLAINTIFF PRIOR TO THE PREGNANCY  
AT ISSUE IN THIS CASE**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Amy Acheson, Esquire  
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Michael A. Murphy, Esquire  
PA ID#55846

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**JURY TRIAL DEMANDED.**

**FILED** *no*  
*m* 12:33 *cc*  
SEP 21 2005

*WAC*  
*WAC*  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right, and  
as Administrators of the Estate of JANELL  
HERZING, a minor, deceased,

Plaintiffs,

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

Defendants.

**PLAINTIFFS' MOTION TO EXCLUDE EVIDENCE AND EXPERT TESTIMONY  
REGARDING ADVICE ALLEGEDLY GIVEN BY DR. KRUSZEWSKI TO PLAINTIFF  
PRIOR TO THE PREGNANCY AT ISSUE IN THIS CASE**

AND NOW, come Plaintiffs, by and through their counsel, and respectfully request that this Honorable Court enter an order excluding evidence and expert testimony regarding advice allegedly given by Defendant Kruszewski to Plaintiff prior to the pregnancy at issue in this case, and in support hereof, state the following:

1. There is reason to believe that Defendants will attempt to elicit testimony concerning advice supposedly given to the Plaintiff mother by Defendant Kruszewski before Plaintiff mother became pregnant with Janell in the year 2000.

2. The pregnancy with Janell during the year 2000 is the period of time at issue in this case, and more specifically, the breaches of standards of medical care by Defendants beginning in November, 2000. In sum, when confronted with a

preeclampsic mother carrying a viable infant, Defendants failed to deliver the infant while the mother lay in the hospital for days in early December 2000. Had the child been delivered, both she and the mother would be alive and healthy.

3. For example, Defendant Kruszewski has filed an expert report by Dr. Botti which report discusses alleged attempts by Kruszewski to address Ms. Herzing's weight, contraceptive methods and hypertension in 1996 and 1997. (Botti report, p. 2, paragraph 2).

4. Even if true, this is too remote in time to have any relevance to the issues in this trial.

5. This same defense expert admits that plaintiff "had no findings of hypertension during her first visit and on subsequent visits until November 30 2000." (Botti report, p. 2, paragraph 3).

6. There is no causative relation between the medical care and treatment meted out to plaintiff during this pregnancy in November and December 2000, and advice about contraception, weight loss and hypertension supposedly given to plaintiff beforehand, particularly three and four years beforehand.

7. Defendants appear to be attempting a backdoor method of introducing a theory of contributory negligence into this case. This is not proper evidence of contributory negligence. Defendants are essentially attempting to elicit evidence or opinion that Ms. Herzing should not have gotten pregnant in the first place, and that, once pregnant, the death of her child was inevitable. (Botti report, p. 4, Summary).

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order excluding all such evidence and testimony at the trial of this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy Acheson", written over a horizontal line.

Amy Acheson, Esquire

Michael A. Murphy, Esquire

Gary J. Ogg, Esquire

**CERTIFICATE OF SERVICE**

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the  
**PLAINTIFFS' MOTION TO EXCLUDE EVIDENCE AND EXPERT TESTIMONY  
REGARDING ADVICE ALLEGEDLY GIVEN BY DR. KRUSZEWSKI TO PLAINTIFF  
PRIOR TO THE PREGNANCY AT ISSUE IN THIS CASE** to be served on the following  
via regular United States first class mail, postage prepaid, on this 20<sup>th</sup> day of  
September, 2005:

Alan R. Krier, Esquire  
Jubelirer, Carothers, Krier & Halpern  
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(Counsel for Jerjie T. Alajaji)

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
(Counsel for DuBois Regional Medical Center and Russell Cameron)

John W. Blasko, Esquire  
McQuaide, Blasko, Schwartz, Fleming  
& Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(Counsel for Mary C. Kruszewski)

  
\_\_\_\_\_  
Amy Acheson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY :  
A. JARVIS, individually, in their own :  
right, and as Administrators of the :  
Estate of JANELL HERZING, a minor, :  
deceased :

vs.

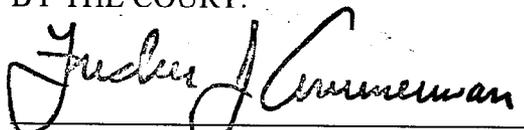
: No. 02-169-CD  
:  
:

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
JERJIE T. ALAJAJI and RUSSELL :  
E. CAMERON :

**ORDER**

AND NOW, this 22<sup>nd</sup> day of September, 2005, upon  
consideration of Plaintiffs' Motion to Preclude Questioning and Evidence  
Regarding Plaintiffs' Work Habits filed in the above captioned matter, it is the  
ORDER of the Court that argument on said Motion has been scheduled for the  
27<sup>th</sup> day of September, 2005, at 1:30 P.M. in Courtroom  
No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

FILED

013:28/BA  
SEP 22 2005

3cc

Amy Acheson

William A. Shaw

Prothonotary/Clerk of Courts

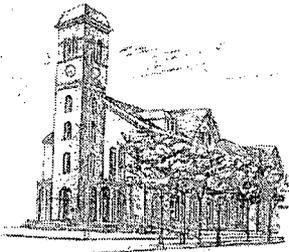
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**FILED**

SEP 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts

41



Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY :  
A. JARVIS, individually, in their own :  
right, and as Administrators of the :  
Estate of JANELL HERZING, a minor, :  
deceased :

vs.

: No. 02-169-CD  
:  
:

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
JERJIE T. ALAJAJI and RUSSELL :  
E. CAMERON :

ORDER

AND NOW, this 22<sup>nd</sup> day of September, 2005, upon  
consideration of Plaintiffs' Motion to Preclude Evidence Concerning Minor  
Decedent's Level of Mental or Physical Function filed in the above captioned  
matter, it is the ORDER of the Court that argument on said Motion has been  
scheduled for the 27<sup>th</sup> day of September, 2005, at 1:30  
P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield,  
PA.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

FILED

013:29871  
SEP 22 2005

300  
Amy Acheson

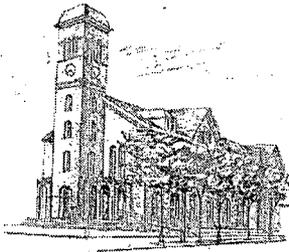
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

SEP 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts

4



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

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The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY :  
A. JARVIS, individually, in their own :  
right, and as Administrators of the :  
Estate of JANELL HERZING, a minor, :  
deceased :

vs.

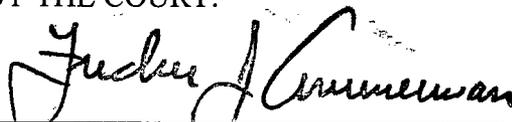
: No. 02-169-CD  
:  
:

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
JERJIE T. ALAJAJI and RUSSELL :  
E. CAMERON :

**ORDER**

AND NOW, this 22<sup>nd</sup> day of September, 2005, upon  
consideration of Plaintiffs' Motion In Limine to Preclude Defendant Jerjie T.  
Alajaji's Expert filed in the above captioned matter, it is the ORDER of the Court  
that argument on said Motion has been scheduled for the 27<sup>th</sup> day of  
September, 2005, at 1:30 P.M. in Courtroom No.  
1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED 3CC

013:35/301  
SEP 22 2005  

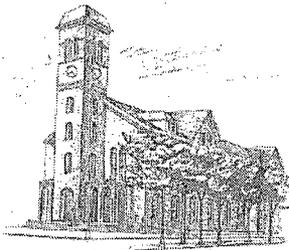

Amy Acheson

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

SEP 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY :  
A. JARVIS, individually, in their own :  
right, and as Administrators of the :  
Estate of JANELL HERZING, a minor, :  
deceased :

vs.

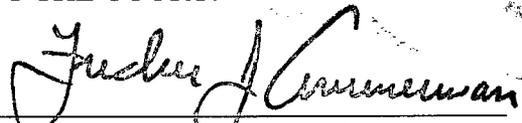
: No. 02-169-CD  
:  
:

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
JERJIE T. ALAJAJI and RUSSELL :  
E. CAMERON :

**ORDER**

AND NOW, this 22<sup>nd</sup> day of September, 2005, upon  
consideration of Plaintiffs' Motion In Limine to Preclude Defendant DuBois  
Regional Medical Center's Expert filed in the above captioned matter, it is the  
ORDER of the Court that argument on said Motion has been scheduled for the  
27<sup>th</sup> day of September, 2005, at 1:30 P.M. in Courtroom  
No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

FILED 3cc

013:3784  
SEP 22 2005

Atty Acheson

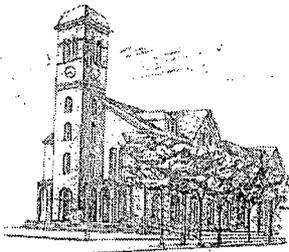
William A. Shaw

Prothonotary/Clerk of Courts

**FILED**

**SEP 22 2005**

William A. Shaw  
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY :  
A. JARVIS, individually, in their own :  
right, and as Administrators of the :  
Estate of JANELL HERZING, a minor, :  
deceased :

vs.

No. 02-169-CD

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
JERJIE T. ALAJAJI and RUSSELL :  
E. CAMERON :

**ORDER**

AND NOW, this 27<sup>th</sup> day of September, 2005, upon  
consideration of Plaintiffs' Motion In Limine to Preclude Nursing Opinion  
Testimony Proffered by Defendant DuBois Regional Medical Center filed in the  
above captioned matter, it is the ORDER of the Court that argument on said  
Motion has been scheduled for the 27<sup>th</sup> day of September, 2005, at  
1:30 P.M. in Courtroom No. 1, Clearfield County  
Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED 3cc  
013:47801 Amy Acheson  
SEP 22 2006 (M)

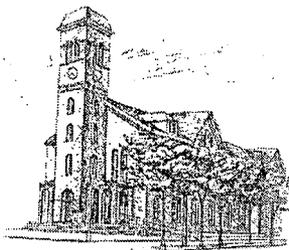
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**SEP 22 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

4



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY :  
A. JARVIS, individually, in their own :  
right, and as Administrators of the :  
Estate of JANELL HERZING, a minor, :  
deceased :

vs.

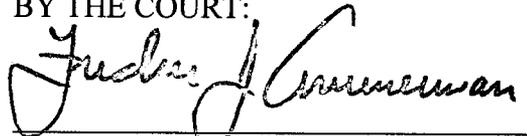
No. 02-169-CD

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
JERJIE T. ALAJAJI and RUSSELL :  
E. CAMERON :

**ORDER**

AND NOW, this 22<sup>nd</sup> day of September, 2005, upon  
consideration of Plaintiffs' Motion In Limine to Preclude Expert Testimony by  
Emanuel Rubin filed in the above captioned matter, it is the ORDER of the Court  
that argument on said Motion has been scheduled for the 27<sup>th</sup> day of  
September, 2005, at 1:30 P.M. in Courtroom No.  
1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

FILED 300

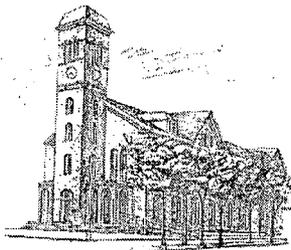
013:4761 Amy Acheson  
SEP 22 2005 (JM)

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**SEP 22 2005**

William A. Shaw  
Prothonotary/Clerk of Courts



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

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The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY :  
A. JARVIS, individually, in their own :  
right, and as Administrators of the :  
Estate of JANELL HERZING, a minor, :  
deceased :

vs.

: No. 02-169-CD  
:  
:

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
JERJIE T. ALAJAJI and RUSSELL :  
E. CAMERON :

**ORDER**

AND NOW, this 27<sup>th</sup> day of September, 2005, upon  
consideration of Plaintiffs' Motion to Preclude Portions of Dr. Botti's Expert  
Report and Testimony at Trial filed in the above captioned matter, it is the  
ORDER of the Court that argument on said Motion has been scheduled for the  
27<sup>th</sup> day of September, 2005, at 1:30 P.M. in Courtroom  
No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED<sup>3CC</sup>  
0/3:47/8d Amy Acheson  
SEP 22 2005 

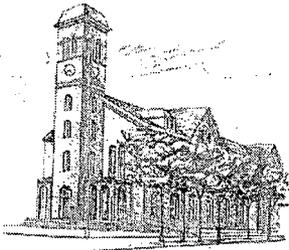
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

SEP 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts

*[Faint, illegible handwritten text]*



Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY :  
A. JARVIS, individually, in their own :  
right, and as Administrators of the :  
Estate of JANELL HERZING, a minor, :  
deceased :

vs.

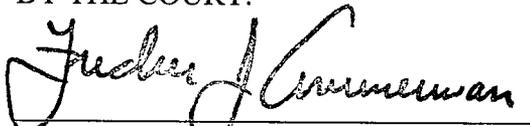
No. 02-169-CD

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
JERJIE T. ALAJAJI and RUSSELL :  
E. CAMERON :

**ORDER**

AND NOW, this 22<sup>nd</sup> day of September, 2005, upon  
consideration of Plaintiffs' Motion to Exclude Evidence and Expert Testimony  
Regarding Advice Allegedly Given by Dr. Kruszewski to Plaintiff Prior to the  
Pregnancy at Issue in this Case filed in the above captioned matter, it is the  
ORDER of the Court that argument on said Motion has been scheduled for the  
27<sup>th</sup> day of September, 2005, at 1:30 P.M. in Courtroom  
No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

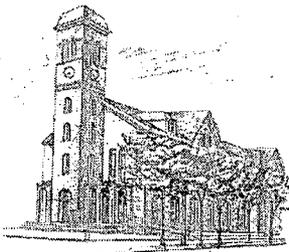
FILED 300  
013:47801 Anty Acheson  
SEP 22 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

SEP 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts

11-1  
-1-1  
10-1



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

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The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading ANSWER TO PLAINTIFFS' OBJECTIONS TO CROSS EXAMINATION OF DR. STEVEN KLEPPER'S VIDEOTAPED TRIAL DEPOSITION TAKEN SEPTEMBER 1, 2005

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: Sept. 21, 2005

FILED NOCC  
M1123181  
SEP 22 2005 (lm)

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
)  
) NO. G.D. 02-169 CD  
Plaintiffs, )  
) JURY TRIAL DEMANDED  
vs. )  
)  
)  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
)  
)  
Defendants. )

**ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.**  
**TO THE PLAINTIFFS' OBJECTIONS TO CROSS EXAMINATION**  
**OF DR. STEVEN KLEPPER'S VIDEOTAPED TRIAL**  
**DEPOSITION TAKEN SEPTEMBER 1, 2005**

1. It is agreeable that page 32, lines 14 through 25 and page 33, lines 1 through 5 may be deleted.

2. The Plaintiffs object to page 36, line 6 through page 37, line 12 as follows:

"Q. Well the plaintiffs' expert here, Dr. Jelsema or Jansema-- whatever it is, from Michigan states that while this child was in the womb or in utero that it had restrictive growth retardation, meaning that the child wasn't fully developed.

MR. MURPHY: I'll object. You're assuming facts not in evidence and mischaracterizing the report.

MR. BLASKO: Well, you're having this man testify--Dr Klepper testify rather than at trial at a separate videotape. So I have to assume that certain evidence will be proved by your expert. And if--if you want me to refer to his report, I'll refer to it.

BY MR. BLASKO:

Q. Dr. Klepper, plaintiffs' expert, Dr. Jelsema from Michigan states that--that there was a--should be a diagnosis of intrauterine growth restriction while this child was in utero, meaning it would have a physical or mental problem.

Were you aware of that?

MR. MURPHY: I'm objecting. You're mischaracterizing. Now you've got the report out, and now you're just adding facts to the case of--that are not in evidence.

BY MR. BLASKO:

Well, there was a diagnosis of intrauterine growth restriction. Were you aware of that, Doctor?

A. Not specifically."

The Plaintiffs' objection is that facts were assumed which were not in evidence. This objection would more properly be resolved at trial after all the testimony of the Plaintiffs' experts. The Plaintiffs' expert report specifically refers to "intrauterine growth restriction" which Defendant will pursue and question at the time of trial. The Plaintiffs made a decision to take the deposition of Dr. Klepper before trial, and, by doing so cannot assert as an objection now that the questions assumes facts not in evidence which cannot occur until the time of trial. The video of Dr. Klepper relates to damages, and, would appropriately be after the testimony on liability. Plaintiffs' expert, Dr. Jelsema, states in his report dated November 30, 2001, attached to the Pre-Trial that "this lack of communication (between Dr. Alajaji and Dr. Kruszewski), resulted in the failure to diagnose intrauterine growth restriction." That criticism will be subject to cross examination. Until Plaintiffs' expert testifies on direct and cross, it would be appropriate to defer a ruling on the objection at this time.

The second objection by Plaintiffs was that Defendant's questioning was a mischaracterization of the report. However, the question posed was that "intrauterine growth

restriction while this child was in utero meaning it would have a physical or mental problem” has never been answered, and, a new question was asked. Accordingly, the objection is moot.

3. Plaintiffs’ objection to page 38, lines 8 through 13 is as follows:

“Q. But in preparing your report you were not aware and plaintiffs’ counsel did not make you aware of their expert report saying that the stillborn child had a medical problem prior to birth, is that correct?”

MR. MURPHY: Same objection.”

The Court should reserve ruling on this objection until the time of trial for the reasons stated in Paragraph 2 above. Clearly, the Plaintiffs’ expert has stated there was a failure to diagnose intrauterine growth restriction which is the opposite of normal growth. Facts will be developed through direct and cross examination of the Plaintiffs’ experts as to what this means and the result. Thus, this would be more properly determined at the time of trial.

4. The objection under Paragraph 4 is to page 40, lines 2 through 20 as follows:

“Q. Well, the fact that the person is--say in this particular case Mrs. Herzing is say in excess of 400 pounds. And if this stillborn child who was a female also would have the same problem, wouldn’t this affect that child’s ability to get a job?”

MR. MURPHY: Objection.

A. I know of no study that--

MR. MURPHY: I have the same objection. We’re assuming facts that aren’t in evidence. There’s no--there’s no basis for that question. There’s no medical testimony to tying that to--you know, the weight of the mother with the weight of the baby. So you know again, I object to this line of questioning. Go ahead.

THE WITNESS: I know of no study that links the education and earnings of a child to the physical characteristics of the mother.”

The above would more properly be deferred until the time of trial. However, the standard jury instructions on life expectancy provides that “you (the jury) are to consider the Plaintiff’s health prior to the accident, her manner of living, her personal habits and other factors that may affect her duration of her life.” The Courts have further instructed in these cases that “all of the circumstances affecting the probable duration of the child’s life disclosed by the evidence must be considered by the jury, including such matters as sex, prior state of health, and manner of living, personal habits, individual characteristics, referrals of possible employment, health and age of her parents, and similar factors.” Under these circumstances, the manner of living and the personal habits of the mother would be relevant as a factor for the jury to consider.

5. Paragraph 5 sets forth the objection to the question on page 41, line 13 through page 42, line 4 as follows:

“Q. Okay. What about the fact if there’s a course of study (conduct) shown in this particular case that the mother had made excuses not to go to work and got doctors’ notes to be excused from work and was not a reliable worker, would that affect your projection of this stillborn child’s life expectancy to earn--well, I don’t know, worklife expectancy to earn the money that you testified to?”

MR. MURPHY: I object to the question. Again, it’s totally without foundation. Assuming facts that aren’t in evidence.

A. It would have no impact of my projection. There is no study that indicates any connection between such habits and the earnings of a child.”

As above noted, the only evidence which can be considered by the jury concerning the stillborn child would be the life and the environment into which she was born and raised by her mother. Although not conclusive, it would be relevant for the jury to consider in determining worklife expectancy. As set forth above, the Courts have held that this is appropriate for the jury

to consider. Again, until this evidence is established through the testimony of the Plaintiffs as well as the records of Dr. Kruszewski, the Court should defer its rulings.

6. Paragraph 6 objects to the question on page 42, line 21 through page 43, line 6 as follows:

“Q. Okay. And actually then what you’re telling us real-life factors that the mother or the father here how they treat each other, what her health is, their--other than your education, none of those are relevant to you in determining the projections that you made here in this case, is that correct?”

A. That’s correct.

MR. MURPHY: And I’m also going to object. This question has been asked and answered two or three different times.”

The objection that it was “asked and answered” is an inappropriate objection. Although Dr. Klepper relied on statistics, it is relevant to point out to the jury that the actual real-life factors were not considered by him except as to education. This is relevant for the jury to consider in damages.

7. Paragraph 7 asserts an objection to page 43, line 13 through page 44, line 3 which state as follows:

“Q. Well again, Mr. Murphy had made an assumption that this child was healthy. But if you would assume that the stillborn child had a brain hemorrhage which was established by autopsy here before birth, would that--and that may affect her mentality, could we conclude that she may not have been a high school graduate?”

MR. MURPHY: Same objection. Same objection. First of all, it’s been asked and answered. Secondly, you’re--there’s no facts in evidence establishing that.

A. I certainly could not conclude that. I’m not able to evaluate any kind of medical evidence and make some

conclusion based on that. A physician would have to be the one to make such an evaluation.”

The Plaintiffs’ counsel objected that it had been asked and answered which is an inappropriate objection. Plaintiffs further object that there is no evidence establishing same. Again we are not yet at trial. However, the autopsy report would be the evidence in this case and testified to by Plaintiffs’ pathologist, as well as Defendant’s pathologist states inter alia:

“FINAL ANATOMIC DIAGNOSIS:

1. Large intracranial hemorrhage (probably cause of intrauterine fetal demise.) ADDENDUM (12-27-00) : Histologic examination of the brain reveals marked global vascular congestion with focal disruption of the pia-arachnoid meninges and attached recent thrombus. Some early hypoxemic neuronal damage is present in the medullary olive regions, especially, consistent with an intracranial hemorrhage, in utero.”

This would be another instance where the Court should rule on this objection as the evidence is developed at the time of trial. Plaintiffs should not be able to preclude admissibility now simply because they elected to do a trial deposition before the trial.

8. Paragraph 8 asserts an objection to page 44, line 24 through page 46 through line 1 is as follows:

“Q. Assume the brain hemorrhage would cause a mental or physical incapacity--

MR. MURPHY: Again, there’s no--there’s no evidence--there’s no evidence tying any of the conditions of this child to the ability to graduate from high school or to life expectancy. That’s my objection.

BY MR. BLASKO:

Q. Assume as I indicated, Doctor.

A. Well, I’m not sure what you want me to assume. Do you want me to assume that she would not have been able to go to high school?

Q. Well, no. I'm saying if she didn't have the mental capacity or physical capacity because of a brain hemorrhage would you still assume that she would be working the number of years you state in your report?

A. Yes, Unless you'd tell me that somehow this impaired or restricted capacity would restrict her ability to go to school and achieve a high school diploma.

Q. Okay, And if you assumed that it some way restricted it, then your life--your work expectancy would be inappropriate, is that correct?

A. No. The work expectancy would be correct. What would change would be that she wouldn't achieve a high school education."

The objection is there is no evidence tying in the conditions of this child to the ability to graduate from high school or to life expectancy. However, as above indicated, very important to the determination of life expectancy would be the child's state of health. Further, it re-emphasizes that Dr. Klepper did not take into consideration the actual physical condition of the stillborn child. Evidently, he was not given any of the Plaintiffs' expert reports who interpreted those records and provided opinions. Nor had he been given the Defendants' expert reports.

9. The objection to page 47, line 24 through page 48, line 9 which is as follows:

"Q. And in assuming those figures, you made no deduction, for instance, that out in Clearfield where we have some unemployment problems that there may be a downturn in the economics locally that she would not have a job? You didn't--you didn't factor that in, is that correct?

MR. MURPHY: I'm going to object again. There's no facts in evidence supporting this question. I move to strike the question."

This question simply points out to the jury that Dr. Klepper only assumes statistical facts and did not take into consideration the possibility of a downturn in economics. This is appropriate cross examination when he has assumed certain figures as a basis for his opinions.

But those assumptions did not consider other factors such as an economic downturn. Dr.

Klepper's testimony assumes she will work every day her entire life without any economic problems occurring.

10. Paragraph 10 asserts an objection to page 49, line 2 through line 13 is as follows:

“Q: So what you are telling the jury here in Clearfield, Dr. Klepper, is that you're not really looking at the stillborn child's projected life. You're looking at statistics because in real life don't you have economic turndowns. Don't you have layoffs. Don't you have strikes. Don't you have companies such as Ms. Herzing here will testify she worked for and went bankrupt. Aren't those real-life factors you have to consider?”

The Plaintiffs' only objection is that it was answered previously. However, the questions specifically points out to the jury that the economist, Dr. Klepper, did not take into consideration the real-life problems of economic turndowns, layoffs, strikes, companies going bankrupt, etc. Indeed, Dr. Klepper stated “they're not only all real-life factors they're already reflected in my projection.” That is a question for the jury to decide.

11. Paragraph 11 asserts an objection to page 52, line 10 through page 53, line 22 as follows:

“Q. Let me ask you this, and I know that it may have been asked before about assumptions. That you assumed that she would not get sick. You assumed there would be no economic turndowns. You assumed there would be no labor strikes. You assumed that the people that she worked with would not go bankrupt. And you're saying they're part of the tables and it's all considered.

But would you agree that those factors are real-life factors that someone would consider in determining the worth of a stillborn child?

MR. MURPHY: I want to object to--first of all, you mischaracterized Professor Klepper's testimony. Secondly, the question has been asked at least three times.

A. The answer to your question is no. I have assumed in my projection in complete contradiction to what you just said. It reflects precisely that there would be periods of time when there would be strikes, layoffs, recessions. She would be sick. If I had not taken those things into account, instead of projecting her only working until age 50.9 I would have projected her working until age 65.

MR. BLASKO:

Q. How many--

A. I'm not finished.

I would have projected her working 47 years at least. Instead I projected her only working 32.9 years. The reason I projected her working so much less than 47 years is precisely because the average person spends part of their lifetime unable to work for various reasons that you enumerated. All of those, therefore, have been reflected in my projection."

Again, the objection is, it was asked and answered. The question is appropriate.

12. Paragraph 12 asserts an objection to page 64, line 22 through page 65, line 8 is as follows:

"Q. And with respect to an individual, you were asked about the issue of weight. Are you aware, sir of studies that have been performed which indicate that individuals who are grossly obese or clinically obese, as the physicians use the term, have a likelihood to not earn as much as individuals who are not overweight?"

MR. MURPHY: I object to the question. I don't know what the relevance of that question is in light of the issue we're discussing here.

A. I don't know of those studies."

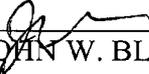
Again this is appropriate cross examination as to the knowledge or qualifications of Dr. Klepper as to the studies concerning obese workers. As a matter of common sense, it is a relevant factor for the jury to consider.

13. The Plaintiffs are essentially requesting the Court to exclude all cross examination of the Defendants because they elected to take Dr. Klepper's deposition prior to trial. Cross examination should be liberally granted in these cases.

WHEREFORE, it is requested that the objections be dismissed.

MCQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

BY

  
\_\_\_\_\_  
JOHN W. BLASKO  
Attorney for Defendant,  
Mary Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: Sept 21, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
 ) NO. G.D. 02-169 CD  
Plaintiffs, )  
 ) JURY TRIAL DEMANDED  
vs. )  
 )  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
 )  
Defendants. )

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O. TO THE PLAINTIFFS' OBJECTIONS TO CROSS EXAMINATION OF DR. STEVEN KLEPPER'S VIDEOTAPED TRIAL**, in the above-referenced matter was

mailed by federal express, overnight, on this 21<sup>st</sup> day of September, 2005, to the attorney(s) of record:

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222

Alan R. Krier, Esquire  
Park View Center, Ten Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16003

David R Johnson Esquire  
Thomas B. Anderson, Esquire  
1010 Two Chatham Center  
Pittsburgh, PA 15219

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Mary C. Kruszewski, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

Civil Action-Medical Professional Liability Action

NO. G.D. 02-169 CD

JURY TRIAL DEMANDED

ORDER

AND NOW, this 21<sup>st</sup> day of September, 2005, the Motion in Limine of Defendant, Mary C. Kruszewski, D.O. precluding inappropriate expert testimony is scheduled for September 27, 2005 at 1:30 p.m..

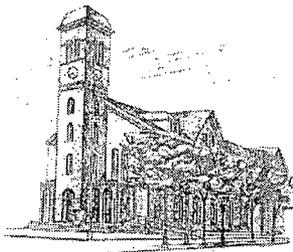
BY THE COURT,

BY Justice J. Cameron J.

FILED

0/2:03 LM 401 Atty Blasko  
SEP 22 2005 (LM)

William A. Shaw  
Prothonotary



Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased,

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI and RUSSELL E. CAMERON

Defendants.

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

**PLAINTIFFS' MOTION TO SUPPLEMENT PRETRIAL STATEMENT BASED UPON NEWLY PRODUCED EVIDENCE BY DEFENDANT ON AUGUST 22, 2005**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Amy Acheson, Esquire  
PA ID#50506

Michael A. Murphy, Esquire  
PA ID#55846

Gary J. Ogg, Esquire  
PA ID#34515

Ogg, Cordes, Murphy & Ignelzi  
Firm No. 568  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
412.471.8500  
412.471.8503 Fax

**JURY TRIAL DEMANDED.**

**FILED** *no cc*  
*m 11:27 AM*  
SEP 26 2005 *(GK)*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right, and  
as Administrators of the Estate of JANELL  
HERZING, a minor, deceased,

Plaintiffs,

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

Defendants.

**PLAINTIFFS' MOTION TO SUPPLEMENT PRETRIAL STATEMENT BASED UPON  
NEWLY PRODUCED EVIDENCE BY DEFENDANT ON AUGUST 22, 2005**

AND NOW, come Plaintiffs, by and through their counsel, and respectfully  
request that this Honorable Court enter an order permitting supplementation of Plaintiffs'  
Pretrial Statement as follows:

1. On August 22, 2005, Defendant Alajaji produced to Plaintiffs a document  
entitled "DuBois Regional Medical Center Radiology Department Ultrasound imaging  
intake record." (A copy of said document is attached hereto, made a part hereof and  
marked as Exhibit "A").

2. Although this document was covered by Plaintiffs' longstanding discovery  
requests, it was never produced or made available to Plaintiffs by any Defendant before  
August 22, 2005. (See, copy of transmittal letter attached hereto, made a part hereof  
and marked as Exhibit "B").

3. Plaintiffs would be prejudiced if not permitted to present expert testimony concerning this new document.

4. Plaintiffs' expert, Dr. Jelsema, has prepared a supplemental report dated September 19, 2005, addressing this new document, a copy of which is attached hereto, and made a part hereof, and marked as Exhibit "C"

5. Plaintiffs have acted diligently with respect to this report which is late through no fault of their own.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order permitting Plaintiffs to supplement their Pretrial Statement with the aforesaid Exhibit C.

Respectfully submitted,

A handwritten signature in cursive script that reads "Amy Acheson". The signature is written in black ink and is positioned above a horizontal line.

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

DUBOIS REGIONAL MEDICAL CENTER  
MR#: 410405 CI#: 436443  
NAME: HERZING, MICHELE L  
DATE: 12/01/00 1531  
ORD#: 0001

Check-in: 436443

Location: MAT-0302-01

Priority: \*\*ASAP\*\*

MR#: HERZING, MICHELE L

Date: 12/01/00 1531

Transport mode: PORT/BEDSIDE

Med. Rec. #: 410405

DOB: 07/11/68

Account #: 0033601408

Age: 32Y

Sex: F

Ht:

WT:

Precautions:

Isolation:

CI ID: ANDRYKA, WILLIAM D

42635 UI-PELVIC OB BPP

Ord Diag: ;HIGH BP

COMMENT: NEED AFI AND S/D RATIO

*Limited exam  
Due to Pt.  
Body Habitus  
400 lbs  
+ BOBUNAVS  
20cm  
Prum*

Ordering Physician: KRUSZEWSKI, MARY  
Referring Physician: REF:  
Consulting Physician:  
Admitting Physician: KRUSZEWSKI, MARY

EXHIBIT  
tabbles  
A

Law Offices of  
**JUBELIRER, CAROTHERS, KRIER & HALPERN**

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Robert C. Jubelirer  
Alan R. Krier  
Jane L. Carothers  
Anthony J. Zanon  
James R. Carothers

Bedford County Office:

118 South Juliana Street  
Bedford, Pennsylvania 15522  
814 623 1772 // FAX 814 623 6818

Of Counsel:  
Richard A. Carothers  
M. David Halpern

August 22, 2005

VIA: Facsimile & regular mail  
412-471-8503

Gary Ogg, Esquire  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222

RE: Herzing v. Alajaji  
No. 02-169-CD

Dear Gary:

Per our telephone conversation on today's date, enclosed is a copy of the intake record from the radiology department. The hand written note says, "Limited exam due to pt. bony habitus 400 plus pounds and subcutaneous edema" "Prelim."

Sincerely,

  
Alan R. Krier

ARK/bja

Enclosure

pc: David R. Johnson, Esquire (fax: 412-232-3498)  
John W. Blasko, Esquire (fax: : 814-234-5620)

**EXHIBIT**

tabbles

B



West  
Michigan  
Obstetricians &  
Gynecologists P.C.

September 19, 2005

David A. Kreuze, M.D.  
Stephen F. Rechner, M.D.  
Darla M. Olson, M.D.  
C. Lee Van Namen, M.D.  
Andrew J. Van Slooten, M.D.  
Renee J. Elderkin, M.D.  
Russel D. Jelsema, M.D.

Michael A. Murphy  
Ogg Cordes, Murphy, & Ignelzi, L.L.P.  
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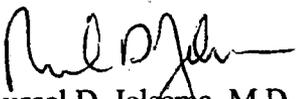
Susan L. VandenBosch, M.D.  
Jeffrey J. Dood, M.D.  
Susan K. Hicks, D.O.  
Melinda E. Johnson, M.D.  
Jane K. Cottingham, D.O.  
Fred A. Rohn, M.D.  
Carl P. Brandt, M.D.  
Cathe Reigle, R.N.C.  
Nurse Practitioner

RE: Michelle Herzing

Dear Mr. Murphy:

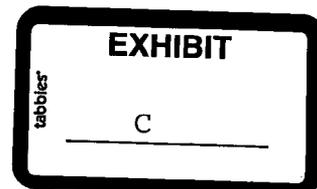
Enclosed please find my 4-page written supplemental report dated September 19, 2005 in the above referenced matter.

Sincerely,

  
Russel D. Jelsema, M.D.

enc: curriculum vitae

221 Michigan St. NE  
Suite 600  
Grand Rapids, MI 49503-2540  
(616) 774-7035  
(616) 774-4057 Fax  
(800) 901-8423



September 19, 2005  
Michelle Herzing  
Page 1

I have had the opportunity to review the additional materials regarding Michelle Herzing:

1) DuBois Regional Medical Center Radiology Department ultrasound imaging intake record.

My opinions remain unchanged. The care provided for Michelle Herzing and her unborn daughter, Janelle, was below the standard of care expected of physicians and nurses caring for pregnant women. The new materials that I have been provided reinforce the opinions expressed in my November 6, 2001 and October 13, 2004 reports.

The form states "Priority" "ASAP" (As Soon As Possible); the procedure is listed as "42635-UI-Pelvic BPP; the "Ord Diag" "HIGH BP"; the "Comment" "Need AFI and S/D ratio"; and "Ordering Physician" "Kruszewski, Mary". A hand written note stated "Limited Exam due to pt. Body Habitus 400+# & subcutaneous edema".

"Limited exam" is used commonly to describe an obstetrical ultrasound exam different from a "complete" exam. A complete, or standard, exam is one in which, besides measurements (as were done on Ms. Herzing's December 1 ultrasound); a survey or review of the fetal anatomy is performed. A limited exam is performed when a specific issue arises, such as determining cardiac motion, or fetal position.

Biophysical profile (BPP) ultrasound is a specialized ultrasound that evaluates the current fetal health by measuring the amniotic fluid volume (AFV) and monitoring fetal tone, movement, and breathing activity. In order to measure AFV, the sonographer must be able to visualize the fetus and the amniotic fluid. To evaluate the fetal tone and fetal movement, the sonographer must be able to visualize the fetal hand or other body part, watching for movement and observing the fetal tone. To evaluate breathing movement, the sonographer must observe the fetal chest for small, almost imperceptible movements of the chest, signifying fetal breathing movements. Proper performance of BPP requires well-trained, experienced, and patient sonographers. At the time of Ms. Herzing's December 1 ultrasound exam, the sonographer performed a BPP, obtaining a result of 6/8.

Babies of mothers with hypertension (such as Ms. Herzing) are at increased risk for intrauterine growth restriction (IUGR) and stillbirth. Doppler velocimetry studies have been proven to reduce the likelihood that a baby with IUGR will die in the mother's womb. Doppler velocimetry is an ultrasound procedure that is used by physicians to determine which IUGR fetuses are at greatest risk for stillbirth. Similar to BPP, Doppler velocimetry of the umbilical artery blood flow is another specialized ultrasound that evaluates fetal health. When IUGR is diagnosed, umbilical artery Doppler evaluation is very useful in determining the timing and type of delivery. The standard of care requires that umbilical artery Doppler is performed upon the diagnosis IUGR.

September 19, 2005  
Michelle Herzing  
Page 2

Each of the above-described obstetrical ultrasound procedures has a CPT code. "Complete" is 76805, "Limited exam" is 76815, BPP is 76819, and Doppler velocimetry is 76820.

Appropriately, on December 1, 2000 Dr. Kruszewski requested that the DuBois Regional Medical Center Radiology Department perform both a BPP and Doppler studies on Ms. Herzing's fetus. This is reflected on the ultrasound imaging intake record that noted "BPP" and "S/D ratio", another term for umbilical artery Doppler studies.

The handwritten comments "Limited Exam due to pt. Body Habitus 400+# & subcutaneous edema" reflects that this was not a "complete exam", and that the sonographers visualization was limited because of Ms. Herzing's size and skin swelling. However, the sonographer's visualization was not limited enough to prevent them from:

- 1) performing measurements of the fetal head, abdomen, and leg bone;
- 2) measuring the amniotic fluid volume;
- 3) evaluating fetal tone, movement, or breathing for the BPP.

If these components of the exam could have been performed, the Doppler studies could and should have been done. The standard of care in 2000 required that DuBois Regional Medical Center Radiology Department had ultrasound equipment that could perform both color Doppler and Doppler velocimetry. The use of this technology to perform umbilical artery Doppler studies in obese women such as Ms. Herzing is quite simple.

The amniotic fluid pocket nearest the fetal abdomen is visualized (if the sonographer could visualize and measure the abdominal circumference as well as the amniotic fluid volume, they could see a pocket of fluid nearest the abdomen, where a portion of the umbilical cord would be located), and the color Doppler is turned on and focused on that area. Color Doppler would easily visualize and identify segments of the baby's umbilical cord. The Doppler velocimetry gate would then be placed on that segment of cord, and the signal would be evaluated to determine if the umbilical artery or vein was being sampled. The umbilical arteries and vein are in the umbilical cord and run parallel to each other. If the signal was consistent with the umbilical artery, the S/D ratio could be determined. If the signal were consistent with the umbilical vein, the gate would be moved slightly, searching for an arterial signal. An experienced sonographer can locate the umbilical cord, find the umbilical artery signal and evaluate it in less than a minute. Obesity does not impact the ability to perform Doppler studies. In fact, while evaluating fetal anatomy is more difficult in obese patients, performing Doppler studies is not. Failing to perform Doppler studies as ordered by Dr. Kruszewski was below the standard of care.

If the staff at the DuBois Regional Medical Center Radiology Department were unable to perform the Doppler studies, the standard of care required that they inform Dr. Kruszewski that they were unable to complete the procedure as requested.

Upon receiving the knowledge that the staff at the DuBois Regional Medical Center Radiology Department were unable to perform the Doppler studies as she had ordered, the standard of care required that Dr. Kruszewski to either make arrangements to transfer Ms. Herzing to a regional perinatal care center that could perform the umbilical artery Doppler studies as Dr. Kruszewski had ordered and as the standard of care required, or Dr. Kruszewski should have made preparations for immediate delivery by cesarean section at DuBois Regional Medical Center.

---

With Dr. Kruszewski's knowledge that Ms. Herzing:

- 1) had severe preeclampsia with her first pregnancy;
- 2) had had a prior cesarean for severe preeclampsia with that pregnancy;
- 3) was now 35 6/7 weeks pregnant;
- 4) had an ultrasound that demonstrated IUGR;
- 5) had a BPP of 6/10 (since a reactive non-stress test was not present, two points could not be given), an equivocal result;
- 6) had not had umbilical Doppler studies performed as the standard of care required and with which Dr. Kruszewski had complied with by ordering "S/D ratio";

Dr. Kruszewski should have made recommendations for an immediate cesarean section or for transfer to a regional perinatal center.

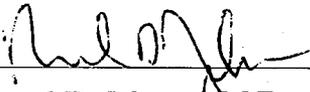
As stated above, the purpose of evaluating the umbilical artery with Doppler studies of a fetus with IUGR is to determine the timing and type of delivery. The diagnosis of IUGR placed Ms. Herzing's fetus at greatly increased risk for stillbirth. Without a reassuring Doppler study, Dr. Kruszewski had to assume that the Doppler studies would be non-reassuring, and proceed to immediate delivery. To fail to do so was below the standard of care.

The fetal demise that occurred within the next for 48 hours makes it very probable that had umbilical artery testing been performed by either the staff at the DuBois Regional Medical Center Radiology Department or a regional perinatal center, that an abnormal Doppler study would have been found. Had that abnormal signal been found, the standard of care would have required an immediate cesarean. Had a cesarean been done immediately on December 1, Ms. Herzing's baby daughter would have been born alive and well.

September 19, 2005  
Michelle Herzing  
Page 4

The ultrasound BPP score was 6/8. Since a reactive non-stress test was not obtained, the total BPP score was 6/10, equivocal. According to the ACOG Practice Bulletin Number 9, October 1999, such a score, "in the term fetus, this score generally should prompt delivery, whereas in the preterm fetus, it should result in a repeat BPP in 24 hours". This recommendation by ACOG is based upon the premise of a normal Doppler study, which was not present for Ms. Herzing. As such, the standard of care required immediate delivery by cesarean.

Sincerely,



---

Russel D. Jelsema, M.D.

**CERTIFICATE OF SERVICE**

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' MOTION TO SUPPLEMENT PRETRIAL STATEMENT BASED UPON NEWLY PRODUCED EVIDENCE BY DEFENDANT ON AUGUST 22, 2005** to be served on the following via facsimile and regular United States first class mail, postage prepaid, on this 23rd day of September, 2005:

Alan R. Krier, Esquire  
Jubelirer, Carothers, Krier & Halpern  
Park View Center  
10 Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603  
(Counsel for Jerjie T. Alajaji)

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
(Counsel for DuBois Regional Medical Center and Russell Cameron)

John W. Blasko, Esquire  
McQuaide, Blasko, Schwartz, Fleming  
& Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(Counsel for Mary C. Kruszewski)

  
\_\_\_\_\_  
Amy Acheson, Esquire

*Handwritten signature*

**FILED**

SEP 26 2005

William A Shaw  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading ANSWER TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE EXPERT TESTIMONY BY EMANUEL RUBIN

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: September 23, 2005

FILED

SEP 26 2005

m/12/45/14  
W. BRUCE A. SHAW

Prothonotary/Clerk of Courts

no c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )	
JARVIS, individually, in their own right, )	Civil Action-Medical Professional
and as ADMINISTRATORS OF THE )	Liability Action
ESTATE OF JANELL HERZING, a )	
minor, deceased, )	
Plaintiffs, )	NO. G.D. 02-169 CD
vs. )	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS )	
REGIONAL MEDICAL CENTER, )	
JERJIE T. ALAJAJI, and RUSSELL )	
E. CAMERON, )	
Defendants. )	

**ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.**  
**TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE**  
**EXPERT TESTIMONY BY EMANUEL RUBIN**

1. Paragraph 1 is admitted. A copy of Dr. Rubin's report is attached hereto, Exhibit "A." Dr. Rubin is testifying as an expert pathologist on his review of the medical records, and, in particular, the tissue slides taken from the autopsy of the baby, as well as the autopsy report, which were the tissue slides and report prepared by Dr. Gregory Suslow, DRMC Pathologist. Based on his review of those materials, Dr. Rubin appropriately concluded the length of time the fetus had been dead, the approximate time when the cerebral hemorrhage occurred, the time when certain changes in the placenta occurred leading to ureto placenta deficiency, and, as a result when the fetus began to experience anoxia leading to the cerebral hemorrhage. He concludes that based on the pathology, no intervention by Dr. Kruszewski could have saved the life of the fetus.

2. Paragraph 2 is denied. The Plaintiffs' understanding of Pennsylvania law as to reports being within a reasonable degree of medical certainty is misplaced. The Plaintiffs have the burden to prove their case through expert testimony within a reasonable degree of medical certainty. The "reasonable degree of certainty" applies only to Plaintiffs' experts since they have the burden, and, the Defendant need not prove that she is innocent of wrongdoing. Accordingly, Defendant's experts may testify in rebuttal to Plaintiffs' evidence with less than reasonable medical certainty. Further, Dr. Rubin concludes in his report as follows:

"On the basis of the clinico-pathologic correlations discussed above, I can state with reasonable medical certainty that Mrs. Herzing was treated well within accepted medical standards."

To avoid any doubt, we attach a copy of Dr. Rubin's letter dated September 22, 2005 which affirmed his prior report, Exhibit "B."

3. Dr. Rubin is a board certified pathologist, as per the attached curriculum vitae, Exhibit "C." There is no requirement that he have a subspecialty in perinatal or pediatric pathology. Indeed, Dr. Suslow of DRMC who performed the autopsy on the baby and prepared the microscopic slides and report on the placenta is not board certified in the subspecialty, (See excerpts of testimony of Dr. Suslow in another case, Exhibit "D"). Plaintiffs' expert pathologist relies on Dr. Suslow's slides and report in reaching her pathology opinions, even though Dr. Suslow has no subspecialty certification.

4. The Plaintiffs misconstrue Pennsylvania law as to the Frye standard. Dr. Rubin's reliance on the actual pathology slides, and microscopically examining them, together with a review of the autopsy reports and medical records is not novel, giving rise to the "junk scientist."

The Plaintiffs' expert pathologist relied on the same materials in rendering an expert report in this case.

5. Paragraph 5 is denied. Plaintiffs were provided Dr. Rubin's report on February 3, 2005. Thereafter, Plaintiffs retained their own expert pathologist, Theonia Boyd, M.D. who reviewed and responded to Dr. Rubin's report. The Plaintiffs, having had Dr. Rubin's report for over 8 months prior to the trial, and, their own pathologist review for over 5 months, cannot seriously assert they will be irretrievably prejudiced at trial.

WHEREFORE, it is requested that the Plaintiffs' Motion in Limine be dismissed with prejudice.

Respectfully Submitted,

MCQUAIDE BLASKO

BY

  
\_\_\_\_\_  
JOHN W. BLASKO  
Attorney for Defendant,  
Mary Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: Sept 23, 2005



*Emanuel Rubin, M.D.*  
*1505 Monk Road*  
*Gladwyne, PA 19035*

November 11, 2004

John W. Blasko  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699

**Re: Herzing v. Kruszewski**

Dear Mr. Blasko:

I have reviewed the clinical summary, medical records, pathology report, autopsy report and deposition transcripts with respect to the above named case. I have also examined the pathology slides microscopically.

**Medical Records**

Mrs. Herzing was a morbidly obese, pregnant woman who suffered from pre-eclampsia. The fetus was delivered at 33 weeks gestation by caesarean section on 1/23/96. On 7/3/00 she visited Dr. Kruszewski for her second pregnancy, who estimated that she would deliver on 12/31/00. During prenatal examinations until 11/11/00 there was no evidence of eclampsia, and blood pressures were within normal limits. On 11/15/00 proteinuria was noted, together with edema of the lower extremities, but her blood pressure was 126/84. On 11/20/00 Mrs. Herzing notified Dr. Kruszewski by phone that she was wheezing, and she prescribed Ampicillin. Despite efforts by Dr. Kruszewski's office to induce Mrs. Herzing to visit, she missed appointments for 11/22, 11/29, and 12/1/00.

The patient was seen in the Emergency Department of DuBois Regional Medical Center on 11/30/00 because of wheezing and coughing. Dr. Cameron diagnosed bronchitis and bronchospasm and noted a blood pressure of 207/112. Dr. Kruszewski was notified and requested laboratory studies. Despite an appointment scheduled with Dr. Kruszewski, Mrs. Herzing called on 12/1/00 that she would not keep the appointment. Dr. Kruszewski insisted that she be admitted to the hospital, where her weight was 449 pounds and blood pressure 227/114. Gestational age was estimated as 31 weeks, 3 days, and the biophysical profile was 6/8, with no fetal breathing. After antihypertensive therapy the blood pressure fell somewhat. The patient objected to a caesarean section, and Dr. Kruszewski took into consideration that she had bronchitis and difficulty breathing while sitting. She did not complain of blurred vision, headaches, neurological disturbances, or other symptoms associated with eclampsia. A vaginal delivery was planned. Owing to maternal obesity, it was difficult to determine the fetal heart rate, but

a Doppler study showed it to be in the 140/150 range. At 1:50 am on 12/3/00 the fetal heart rate was in the 140s, and fetal movements were detected. The fetal heart tones were difficult to capture at 1:00 am on 12/4/00. That afternoon Dr. Kruszewski ruptured the membranes and noted meconium staining. An ultrasound examination did not reveal a fetal heart rate, and on 12/5/00 at 9:30 am a stillborn female fetus was delivered.

#### **Pathology Report of Placenta (S00-5691)**

The placenta weighed 271 gm and measured 16x13x2 cm. The umbilical cord measured 54 cm in length and up to 2.3 cm in diameter. The cut section disclosed three blood vessels. The cord was edematous and slightly macerated, "consistent with a history of recent intrauterine fetal demise." Multiple areas of yellow-tan indurations varied from 2.0 to 1.0 cm in greatest dimension. The diagnoses by Dr. Suslow were slightly hypomature placenta with multiple areas of infarction, intervillous thrombosis, necrotizing intervillitis, and acute chorioamnionitis (without funisitis), grade II of III.

#### **Autopsy Report (DuBois, A-11)**

The fetus weighed 1871 gm at birth and 1830 gm postmortem. The crown-heel length was 46.0, crown-rump 32.0 and head circumference 33.0 cm. "These weights and measurements correspond to a gestational age of about 32+/- weeks. No gross abnormalities within the thoracic or abdominal cavities or in any of the organs were described. A subdural hematoma, consisting of about 150 cc of clotted blood, extended from the posterior fossa to the right fronto-parietal region. "This evidence of a large intracranial hemorrhage probably resulted in fetal demise." The hemorrhage was estimated to be within 24-48 hours. The brain was soft and slightly macerated.

Microscopic Examination showed autolysis in all organs, but no abnormal features.

In his clinico-pathologic correlation, the pathologist notes that severe pre-eclampsia threatens fetal survival and that vascular resistance may be manifested by multiple placental infarcts and intervillous thromboses. "The combined effects of a premature cerebral vasculature, a vertex vaginal delivery, an elevated vascular resistance associated with pre-eclampsia, most likely led to the fatal intracranial hemorrhage."

#### **Microscopic Examination of Pathology Slides by Dr. Rubin**

##### **Placenta (S00-5691)**

A total of 8 slides are examined.

**Diagnosis:** Acute chorioamnionitis, severe. Placental infarcts with calcifications, extensive. Thrombosis and acute intervillous inflammation. Umbilical cord without significant change.

## **Autopsy (A-11-00)**

A total of 14 slides are examined.

All organs show conspicuous autolytic changes, but no abnormalities are noted. There is a large amount of clotted blood on the surface of the brain, which displays well organized lines of Zahn. The age of the intracranial hemorrhage cannot be established precisely, but I estimate that it is 3-4 days old.

## **Deposition Transcripts**

### ***Mary C. Kruszewski, DO (4/10/03)***

Dr. Kruszewski is an obstetrician who practices in DuBois, Pa. On 11/30/00 Dr. Kruszewski made a diagnosis of pregnancy induced hypertension. Creatinine was increased from 0.8 to 1.0, AST from 16 to 23 and ALT from 24 to 30. In conjunction with high blood pressure, "she was starting to have some chemical changes that could indicate pre-eclampsia." She wished to admit the patient the next day to control hypertension and then induce labor and deliver the baby. Since the patient's blood pressure was not under control and the biophysical profile indicated that the baby was well, "we had a little time to be able to induce labor and get the baby delivered." The 24-hour urine obtained after admission indicated that Mrs. Herzing had significant pre-eclampsia. "Induction was started on 12/3. Dr. Kruszewski ordered that fetal heart tones be auscultated about every half hour, but the nurses had difficulty hearing them. The plan was to rupture the membranes and place internal monitors. Other aspects of the transcript are consistent with the medical records.

### ***Melissa Dickson (8/4/04)***

### ***Susan B. Heverley (8/4/04)***

These transcripts do not add to a medical analysis of the case.

## **Comment**

In summary this is the case of a morbidly obese woman with a history of pre-eclampsia who had evidence of early pre-eclampsia at about 36 weeks of pregnancy. Because of her medical condition and acceptable biophysical profile of the fetus, a vaginal delivery was attempted. However, the baby was stillborn.

The presence of extensive placental infarction, which I judge to be at least a week old, is a complication of pre-eclampsia, in which the combination of vasoconstriction and structural changes in the spiral arteries contribute to inadequate blood flow and placental ischemia. In this case the chorionic villi also showed signs of underperfusion. Moreover, acute chorioamnionitis is a well known risk factor for preterm labor and intrauterine hypoxia. Thus, The combination of pre-eclampsia, placental infarction, and chorioamnionitis conspired to bring about premature labor and fetal hypoxia.

At autopsy the presence of skin maceration and severe autolysis of all organs establish that the fetus had been dead for about 36 to 48 hours. However, the cerebral hemorrhage is older and probably predated fetal death by about 2 days. Under these circumstances a plausible scenario can be established. Between November 22 and November 27 extensive placental infarcts and chorioamnionitis developed, leading to uteroplacental insufficiency. As a result the fetus began to suffer from anoxia, which led to a spontaneous cerebral hemorrhage between November 29 and December 1. By this time the fetus was irreversibly damaged, although fetal heart tones were still detectable. However, the dye had already been cast, and the fetus inevitably expired before delivery was accomplished. I am firmly of the opinion that after Mrs. Herzing was admitted to the hospital on 12/1/00, no intervention by Dr. Kruszewski could have saved the life of the fetus.

On the basis of the clinico-pathologic correlations discussed above, I can state with reasonable medical certainty that Mrs. Herzing was treated well within accepted medical standards. Please feel free to call upon me for any further information.

Sincerely,

A handwritten signature in cursive script that reads "Emanuel Rubin". The signature is written in dark ink and is positioned above the printed name.

Emanuel Rubin, M.D.



**EMANUEL RUBIN, M.D.**  
**1505 Monk Road**  
**Gladwyne, PA 19035**

September 22, 2005

John W. Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699

**Re: Herzing v. Kruszewski**

Dear Mr. Blasko:

With regards to the above captioned matter, all of my opinions set forth in my report of November 11, 2004 are given within a reasonable degree of medical certainty.

Sincerely,

A handwritten signature in cursive script that reads "Emanuel Rubin". The signature is written in black ink and is positioned below the word "Sincerely,".

Emanuel Rubin, M.D.

ER/dc

Exhibit C

CURRICULUM VITAEEMANUEL RUBIN, M. D.

Date of Birth: December 5, 1928  
New York, NY

EDUCATION

College	Villanova University - B.S.	1950
Medical School	Harvard Medical School - M.D.	1954
Internship	Boston City Hospital, Boston, MA	1954-1955
Residency	Children's Hospital of Philadelphia Philadelphia, PA	1957-1958
Dazian Research Fellow in Pathology	Mount Sinai Hospital New York, NY	1958-1960
Advanced Clinical Fellow, American Cancer Society	Mount Sinai Hospital New York, NY	1960-1962

MILITARY SERVICE U. S. Navy, Lieutenant 1955-1957

BOARD  
CERTIFICATION Diplomate of American Board of  
Pathology (Anatomic and Clinical  
Pathology) 1962

HOSPITAL  
APPOINTMENTS The Mount Sinai Hospital, New York, NY

Assistant Attending Pathologist 1962-1964

Associate Attending Pathologist 1964-1968

Attending Pathologist and Director  
of Hospital Pathology Service 1968-1972

Pathologist-in-Chief 1971-1976

Hahnemann University Hospital,  
Philadelphia, PA.

Director of Laboratories 1977-1986

Thomas Jefferson University Hospital  
Philadelphia, PA

Attending Physician-in-Chief  
(Pathology) 1986-

ACADEMIC  
APPOINTMENTS

Mount Sinai School of Medicine of the  
City University of New York

Professor of Pathology 1966-1972

Irene Heinz and John LaPorte Given  
Professor of Pathology and  
Chairman of the Department 1972-1976

Hahnemann University School of Medicine,  
Philadelphia, Pa.

Professor and Chairman, Department  
of Pathology and Laboratory Medicine 1977-1986

University of Pennsylvania School  
of Medicine, Philadelphia, Pa.

Adjunct Professor of Biochemistry  
and Biophysics 1977-1988

Jefferson Medical College, Philadelphia

Gonzalo E. Aponte Professor of Pathology 1986-2003  
Chairman of the Department of  
Pathology and Cell Biology 1986-1994  
Chairman of the Department of  
Pathology, Anatomy and Cell Biology 1994-2003  
Gonzalo E. Aponte Professor of Pathology  
and Chairman Emeritus of the Department  
of Pathology, Anatomy and Cell Biology 2003-Present

HONORS

American Medical Writer's Association Award 1989  
For Best Medical Textbook of the Year

Doctor Honoris Causa 1994  
University of Barcelona

The F.K. Mostofi Distinguished Service Award 1996  
of U.S.-Canadian Academy of Pathology

NIH MERIT Award 1996-2006

Tom Kent Award of Group for Research in  
Pathology Education (GRİPE) 2001

NAMED LECTURER

Maude L. Menten Centennial Lecture -  
University of Pittsburgh School of Medicine 1987

Whipple Lecture -  
University of Rochester Medical Center - 1987

Chippy Friedman Memorial Lecture - Haifa University,  
Technion Medical School, Haifa, Israel - 1988

Maude Abbott Lecture -  
U. S.-Canadian Academy of Pathology - 1990

Reginald G. Mason Memorial Lecture -  
University of Utah School of Medicine - 1992

Marcus Wallenberg Symposium, Keynote Address:  
Alcohol and the Cell, Lund, Sweden - 1992

Jack M. Layton Lecture  
University of Arizona School of Medicine - 1994

Clifford Toren Memorial Lecture  
University of South Alabama School of Medicine 1994

Donald Svoboda Memorial Lecture  
University of Kansas Medical School 1995

CONSULTANTSHIPS

NIAAA - Biomedical Review Committee 1970-1974  
1981-1985

NIAAA (NIH)- Biochemistry, Physiology and  
Medicine Subcommittee of Alcohol  
Biomedical Research Review Committee 1990-1994

Ad Hoc Member  
NIH - Pathology B  
NHLBI

National Task Force for Alcohol 1971  
and Health, Department of Health, 1977  
Education and Welfare 1985

Representative of Association of Pathology  
Chairmen to Council of Academic Societies 1991-1994

Medical Advisory Council, Alcoholic  
Beverage Medical Research Foundation 1992-

EDITORIAL POSITIONS

EDITOR-IN-CHIEF Laboratory Investigation 1982-1995

CHAIRMAN OF  
EDITORIAL BOARD  
AND REVIEWING  
EDITOR Alcoholism: Clinical and Experimental Research

FIELD EDITOR  
(PATHOLOGY)

Quarterly Journal of Studies in Alcohol  
Federation Proceedings  
FASEB Journal

ASSISTANT EDITOR

Addiction Biology

EDITORIAL BOARDS

Laboratory Investigation  
Human Pathology  
Gastroenterology  
American Journal of Alcohol and Drug Abuse  
Substance and Alcohol Abuse  
Medicine and Chirurgie Digestives  
Alcohol and Alcoholism  
Alcohol Health and Research World  
Addiction Biology

MEMBERSHIPS

American Association of Pathologists  
U.S.-Canadian Academy of Pathology  
College of American Pathologists  
American Society for Biochemistry and Molecular Biology  
American College of Toxicology  
American College of Physicians  
American Gastroenterological Association  
American Association for the Study of Liver Diseases  
International Association for the Study of the Liver  
Research Society on Alcoholism  
International Society for Biomedical Research on Alcoholism  
Association of Pathology Chairmen (Vice-President 1988-90)

## PUBLICATIONS

### ORIGINAL CONTRIBUTIONS

1. Hutterer, F., Rubin, E., Singer, E.J. and Popper, H.: Alkali-soluble and insoluble collagen in infant, adult and cirrhotic liver. *Proc. Soc. Exp. Biol. Med.* 102:534-536, 1959.
2. Rubin, E. and Zak, F.G.: Pneumocystis carinii pneumonia in the adult. *New England J. Med.* 262:1315-1317, 1960.
3. Rubin, E. and Strauss, L.: Congenital absence of the right pulmonary artery. *Am. J. Cardiol.* 6: 344-350, 1960.
4. Popper, H., Rubin, E., Krus, S. and Schaffner, F.: Postnecrotic cirrhosis in alcoholics. *Gastroenterology* 39: 669-685, 1960.
5. Hutterer, F., Rubin, E., Singer, E.J. and Popper, H.: Quantitative relation of cell proliferation and fibrogenesis in the liver. *Cancer Res.* 21: 205-215, 1961.
6. Moschowitz, E., Rubin, E. and Strauss, L.: Hypertension of the pulmonary circulation due to congenital glomoid obstruction of the pulmonary arteries. *Am. J. Path.* 39: 75-93, 1961.
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8. Zak, F.G. and Rubin, E.: Histiocytic medullary reticulosis. *Am. J. Med.* 31: 813-819, 1961.
9. Rubin, E., Hutterer, F., Gall, E. Cs. and Popper, H.: Nature of increased protein and DNA in chronic hepatic injury. *Nature* 192: 886-887, 1961.
10. Paronetto, F., Rubin, E. and Popper, H.: Local formation of gamma globulin in the diseased liver, and its relation to hepatic necrosis. *Lab. Invest.* 11: 150-158, 1962.
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12. Hutterer, F., Rubin, E., Gall, E. Cs. and Popper, H.: Cortisone effect in stages of hepatic injury. A cytochemical, autoradiographic and histologic study. *Exp. Molec. Path.* 1: 85-95, 1962.
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15. Rubin, E., Camara, J., Grayzel, D.M. and Zak, F.G.: Radiation- induced cardiac fibrosis. *Am. J. Med.* 34: 71-75, 1963.

16. Rubin, E., Hutterer, F. and Popper, H.: Cell proliferation and fiber formation in chronic carbon tetrachloride intoxication. A morphologic and chemical study. *Am. J. Path.* 715-728, 1963.
17. Rubin, E., Hutterer, F., Danon, G. and Popper, H.: Deoxyribonucleic acid turnover in a heterogeneous population. The life span of hepatic ductular cells. *Lab. Invest.* 12: 657-662, 1963.
18. Rubin, E., Kohan, P., Fusayoshi, T. and Jacobson, J.H.: Experimental hepatic siderosis following portacaval shunt. *Proc. Soc. Exp. Biol. Med.* 115: 350-352, 1964.
19. Rubin, E., Masuko, K., Goldfarb, S. and Zak, F.G.: The role of cell proliferation in hepatic carcinogenesis. *Proc. Soc. Exp. Biol. Med.* 115: 381-384, 1964.
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21. Rubin, E.: The origin and fate of proliferated bile ductular cells. *Exp. Molec. Path.* 3: 279-386, 1964.
22. Masuko, K., Rubin, E. and Popper, H.: Proliferation of bile ducts in cirrhosis. *Arch. Path.* 78: 421-431, 1964.
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29. Rubin, E.: Differential blockade of deoxyribonucleic acid synthesis by ethionine. *Lab. Invest.* 15: 1509-1519, 1966.
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33. Rubin, E., Hutterer, F. and Popper, H.: Experimental hepatic fibrosis without hepatocellular regeneration. A kinetic study. *Am. J. Path.* 52: 111-119, 1968.

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37. Rubin, E., Gottlieb, C. and Vogel, P.: Syndrome of hepatitis and aplastic anemia. *Am. J. Med.* 45: 88-97, 1968.
38. Rubin, E. and Lieber, C.S.: Hepatic microsomal enzymes in man and rat: Induction and inhibition by ethanol. *Science* 162: 690-691, 1968.
39. Iturriaga, H., Posalaki, I. and Rubin, E.: Aggravation of hepatic necrosis by lysosomal injury. *Exp. Molec. Path.* 10: 231-239, 1969.
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### BOOK CHAPTERS, EDITORIALS, REVIEWS AND PUBLISHED LECTURES

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1           MR. SLIMAK: We discussed before Dr.  
2 Suslow's deposition my request that in the event  
3 there would be any objections to the deposition,  
4 I've asked that counsel raise his hand and signify  
5 that we should go off the record so that we can make  
6 any statement of the objection on the transcript and  
7 not on the videotape. Is that acceptable,  
8 Mr. Lozier?

9           MR. LOZIER: Yes.

10          MR. SLIMAK: Thank you. And I'll of course  
11 do the same.

12          MR. LOZIER: You'll keep typing. We'll  
13 just stop the video. 10:08 a.m.

14 BY MR. SLIMAK:

15          Q Good morning, Dr. Suslow, my name is Darryl  
16 Slimak, and I represent Dr. Nabil Arnouk as I  
17 indicated earlier on /TPAEUP. This is with regard  
18 to a lawsuit that has been failed by Mr. and Mrs.  
19 Hudak in the Court of Common Pleas. Generally  
20 speaking we just want to take your deposition  
21 largely to inquire with regard to your initial study  
22 of pathology specimen involving the placenta and  
23 umbilical cord arising out of Austin Hudak's birth  
24 at Punxsutawney Hospital which I understand then was  
25 transferred here to DuBois Regional Medical Center

1 for further evaluation. I want to start by asking  
2 you regarding your medical specialty?

3 A General surgical pathology, anatomic and  
4 clinical pathology.

5 Q So you're a physician in that area?

6 A Yes.

7 Q And where are we today for purposes of your  
8 deposition?

9 A At the medical arts building conference  
10 room across from the main hospital lab.

11 Q And that main hospital lab is the DuBois  
12 Regional Medical Center West?

13 A Yes.

14 Q With regard to your position as pathologist  
15 affiliated with the DuBois Hospital, are you in a  
16 general practice of pathology?

17 A Yes.

18 Q And is there more than one pathologist at  
19 DuBois?

20 A Yes.

21 Q Who are the other pathologists?

22 A The senior pathologist is my associate,  
23 Dr. Jose Costa.

24 Q As the senior pathologist, what's his  
25 responsibility?

1           A    He's the medical laboratory director.

2           Q    Dr. Suslow, what year did you first start  
3 in the private practice of pathology?

4           A    1993, July 6, I think is my contract date  
5 here.

6           Q    And is that the same time that you started  
7 working in the pathology laboratory at DuBois  
8 Regional Medical Center?

9           A    Yes.

10          Q    So as of May of 1997, you would have been  
11 working in this pathology laboratory approximately  
12 four years?

13          A    Yes.

14          Q    Have you ever been director in charge of a  
15 pathology laboratory?

16          A    I am just recently in the past year have  
17 been made a director of, a medical director of the  
18 Punxsutawney Area Hospital laboratory.

19          Q    Back in May of 1997, were you the director  
20 of the DuBois laboratory or not?

21          A    No. I was just a staff pathologist, as I  
22 am currently.

23          Q    Dr. Suslow, are you a specialist in  
24 placental pathology?

25          A    No, I am not.

1           Q    In your laboratory practice as a  
2 pathologist at DuBois Regional Medical Center, what  
3 type of tissues and materials were you looking at in  
4 a general sense on a day-to-day basis?

5           A    Well, we have a full spectrum of surgical  
6 pathology. Anything that comes out either small  
7 biopsies or large portions of bowels that may or may  
8 not have inflammation or tumors. For instance, we  
9 have radical mastectomies, prostectomies. Most of  
10 the organs in the body are represented except for  
11 the brain or the neurologic system. We don't have  
12 any, any sort of pathology related to that here.

13          Q    Dr. Suslow, is it fair to say that your  
14 practice of pathology is not specific to either  
15 pediatric tissues or maternal tissues or products of  
16 pregnancy or newborns, in other words, that you do  
17 not limit self to those areas?

18          A    That's correct.

19          Q    Have you ever been on the editorial staff  
20 of any pathology or medical journals?

21          A    No.

22          Q    Have you ever authored or co-authored any  
23 medical literature publications on issues of  
24 placental pathology or neonatal infection or  
25 placental infection?

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
Plaintiffs, ) NO. G.D. 02-169 CD  
vs. ) JURY TRIAL DEMANDED  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
Defendants. )

CERTIFICATE OF SERVICE

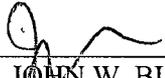
I hereby certify that a true and correct copy of the ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O. TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY BY EMANUEL RUBIN, in the above-referenced matter was mailed by first class, regular mail, on this 23<sup>rd</sup> day of September, 2005, to the attorney(s) of record:

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222

Alan R. Krier, Esquire  
Park View Center, Ten Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16003

David R Johnson Esquire  
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1010 Two Chatham Center  
Pittsburgh, PA 15219

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Mary C. Kruszewski, M.D.

**FILED**

**SEP 26 2005**

*William A. Shaw*  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, )  
and as ADMINISTRATORS OF THE )  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )

Plaintiffs, )

vs. )

MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL E. )  
CAMERON, )

Defendants. )

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading ANSWER TO PLAINTIFFS'  
MOTION TO PRECLUDE PORTIONS OF  
DR. BOTTI'S EXPERT REPORT AND  
TESTIMONY AT TRIAL

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

**FILED**

SEP 26 2005  
M12:45/2  
William A. Shaw (CK)  
Prothonotary/Clerk of Courts  
wa 4c

Dated: September 23, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )	
JARVIS, individually, in their own right, )	Civil Action-Medical Professional
and as ADMINISTRATORS OF THE )	Liability Action
ESTATE OF JANELL HERZING, a )	
minor, deceased, )	
Plaintiffs, )	NO. G.D. 02-169 CD
vs. )	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS )	
REGIONAL MEDICAL CENTER, )	
JERJIE T. ALAJAJI, and RUSSELL )	
E. CAMERON, )	
Defendants. )	

**ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.**  
**TO PLAINTIFFS' MOTION TO PRECLUDE PORTIONS OF DR. BOTTI'S**  
**EXPERT REPORT AND TESTIMONY AT TRIAL**

1. Paragraph 1 to the extent that it alleges that Dr. Botti's report is based upon misstatements of the record is denied. The copy of the report attached to the Motion is admitted. Dr. Botti, at no time, mischaracterized the records of the Plaintiff and drew his conclusions from the facts set forth in the records. If Dr. Botti misstated the records as alleged, the Plaintiffs may cross examine him on those alleged misstatements.

2. Paragraph 2 is denied.

a. Dr. Botti sets forth in his report that there were no findings of hypertension during Plaintiff Herzing's first visit with Dr. Kruszewski and on subsequent visits until November 30, 2000. She was a "no-show" for multiple appointments during her pregnancy including November 22 and November 29, 2000 which were the two crucial weeks prior to her hospitalization on December 1, 2000, during which time

the pre-eclampsia developed. He also sets forth that she was seen on November 15, 2000 and her blood pressure was normal. He states that when seen on November 30, 2000, her blood pressures were elevated when compared to the November 15, 2000 studies. He also states that on December 1, 2000, Dr. Kruszewski admitted her to the hospital and confirmed the findings of pre-eclampsia. The Plaintiffs have filed an expert report which states in effect that the crucial period for development of the pre-eclampsia was between November 15 and November 30, 2000. Dr. Botti's report concurs, and, the Plaintiffs are well aware of the issue of which they now complain.

b. Subparagraph (b) is denied. The testimony at trial will not be limited as to what Dr. Kruszewski testified in her deposition or that given by the Plaintiff, Herzing. Plaintiffs' counsel failed to ask appropriate follow-up questions at the deposition. Dr. Kruszewski will testify that there were numerous discussions with the Plaintiff Herzing during her prenatal visits relative to the Plaintiff's clear refusal to ever undergo another caesarean section. When Plaintiff Herzing came to the Hospital on December 1, 2000, she again re-emphasized she did not want undergo a caesarean section. This was confirmed on December 3, 2000.

3. Paragraph 3 is denied. Dr. Botti concludes as follows:

“Given the clinical details of Michelle's underlying medical conditions, her non-compliance to care at critical times, her restrictive refusal to have repeat cesarean delivery, and the development of additional complications before her hospitalization, **it is a reasonable medical certainty that Michelle was treated within acceptable medical standards** under unusual circumstances.”

The Plaintiffs' understanding of Pennsylvania law as to reports being within a reasonable degree of medical certainty is misplaced. The Plaintiffs have the burden to prove their case through expert testimony within a reasonable degree of medical certainty. The “reasonable degree of certainty” applies only to Plaintiffs' experts since they have the burden, and, the

Defendant need not prove that she is innocent of wrongdoing. Accordingly, Defendant's experts may testify in rebuttal to Plaintiffs' evidence with less than reasonable medical certainty.

4. Paragraph 4 is denied in that the quoted paragraph in Paragraph 3 clearly indicates that Dr. Botti gave his opinions within a reasonable degree of medical certainty. Further, it is standard practice in medical malpractice cases to have expert reports and testimony to have a "catchall" conclusion as Dr. Botti's report did here, the opinions are within a reasonable degree of medical certainty.

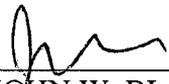
5. The Plaintiffs' motion, together with other motions they have filed in this case are all directed to exclude any adverse evidence and testimony, and, as such, are frivolous.

WHEREFORE, it is requested that Plaintiffs' Motion in Limine to preclude portions of Dr. Botti's expert report and testimony be dismissed, with prejudice, and, the Court award counsel fees and costs for defense of the motion.

Respectfully Submitted,

MCQUAIDE BLASKO

BY

  
\_\_\_\_\_  
JOHN W. BLASKO  
Attorney for Defendant,  
Mary Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: Sept 23, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
 )  
Plaintiffs, ) NO. G.D. 02-169 CD  
 )  
vs. ) JURY TRIAL DEMANDED  
 )  
 )  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
 )  
Defendants. )

CERTIFICATE OF SERVICE

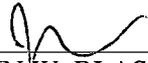
I hereby certify that a true and correct copy of the ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O. TO PLAINTIFFS' MOTION TO PRECLUDE PORTIONS OF DR. BOTTI'S EXPERT REPORT AND TESTIMONY AT TRIAL, in the above-referenced matter was mailed by first class, regular mail, on this 23<sup>rd</sup> day of September, 2005, to the attorney(s) of record:

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222

Alan R. Krier, Esquire  
Park View Center, Ten Sheraton Drive  
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David R Johnson Esquire  
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1010 Two Chatham Center  
Pittsburgh, PA 15219

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Mary C. Kruszewski, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading  
AFFIDAVIT OF SERVICE AND ORDER  
OF SEPTEMBER 21, 2005

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: Sept 23, 2005

**FILED**

SEP 26 2005  
13:30  
William A. Shaw  
Prothonotary/Clerk of Courts  
no c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
)  
Plaintiffs, ) NO. G.D. 02-169 CD  
)  
) JURY TRIAL DEMANDED  
)  
vs. )  
)  
)  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
)  
)  
Defendants. )

**AFFIDAVIT OF SERVICE**

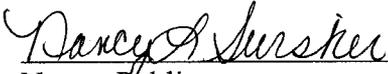
Before me, the undersigned authority, personally appeared John W. Blasko, Esquire, who, being duly sworn, deposes and says that a true and correct copy of Judge Ammerman's September 21, 2005, Order re Defendant Kruszewski's Motion in Limine, in the above-captioned case was served upon counsel of record: Amy Acheson, Esquire, Michael A. Murphy, Esquire, Gary J. Ogg, Esquire, 245 Fort Pitt Boulevard, Pittsburgh, PA 15222, Alan R. Krier, Esquire, Park View Center, Ten Sheraton Drive, Altoona, PA 16003 and David R Johnson Esquire, Thomas B. Anderson, Esquire, 1010 Two Chatham Center, Pittsburgh, PA 15219 by first class, regular mail on September 23, 2005.

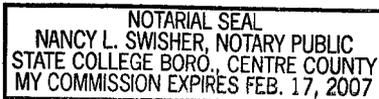
McQUAIDE, BLASKO, FLEMING  
& FAULKNER, INC.

BY  \_\_\_\_\_  
JOHN W. BLASKO

Sworn to and subscribed before me

this 23<sup>rd</sup> day of September, 2005.

  
\_\_\_\_\_  
Notary Public



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, )  
and as ADMINISTRATORS OF THE )  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
Plaintiffs, )

Civil Action-Medical Professional  
Liability Action

NO. G.D. 02-169 CD

JURY TRIAL DEMANDED

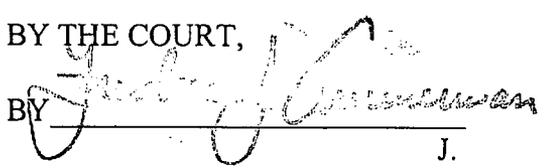
vs. )

MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
Defendants. )

**ORDER**

AND NOW, this 21<sup>st</sup> day of September, 2005, the Motion in Limine of  
Defendant, Mary C. Kruszewski, D.O. precluding inappropriate expert testimony is scheduled for  
September 27, 2005 at 1:30 p.m..

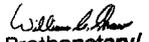
BY THE COURT,

BY   
J.

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

SEP 22 2005

Attest.

  
Prothonotary/  
Clerk of Courts

**FILED**

9/22/05

SEP 22 2005

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased,

Plaintiffs,

Vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

COUNSEL FOR PLAINTIFFS:

Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI

John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:

Alan Krier, Esquire

CIVIL DIVISION

No. 02-169-CD

Issue No.

**DEFENDANT DuBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE TO PRECLUDE PLAINTIFFS FROM PURSUING LIABILITY THEORIES AT TRIAL WHICH HAVE NOT BEEN PLEAD IN THEIR AMENDED COMPLAINT**

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for These Parties:

David R. Johnson, Esquire  
PA I.D. #26409

THOMSON, RHODES & COWIE, P.C.  
Firm #720  
1010 Two Chatham Center  
Pittsburgh, PA 15219

(412) 232-3400

**FILED**

no cc  
MJJ:01/01  
SEP 27 2005

GR

William A. Shaw  
Prothonotary/Clerk of Courts

DEFENDANT DuBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE  
TO PRECLUDE PLAINTIFFS FROM PURSUING LIABILITY THEORIES AT  
TRIAL WHICH HAVE NOT BEEN PLEAD IN THEIR AMENDED COMPLAINT

NOW COMES DuBois Regional Medical Center ("DRMC"), one of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion in limine:

1. DRMC is filing its motion in limine at this time to join in the similar motion in limine filed by co-defendant, Dr. Kruszewski. That motion also seeks to limit plaintiffs' liability theories at trial to those presented and plead by plaintiffs in their amended complaint. Should this Court grant Dr. Kruszewski's motion in limine, with that order then becoming the law of the case, the plaintiffs ability to advance non-plead liability theories at trial against DRMC should be equally limited. Moreover, the issue of plaintiffs' pursuit of legal theories not contained within the amended complaint has recently come to the fore with the plaintiffs filing of a motion to supplement their pre-trial statement, attached to which is a new report from plaintiffs' expert, Dr. Jelesma, addressing additional theories of liability against DRMC which have not otherwise been plead. For all of the above reasons, DRMC respectfully requests that this Court grant due consideration to its instant motion and entertain argument on same.

2. The relevant facts of this case pertain to the care and treatment rendered to Michelle Herzing at DRMC by the defendant-physicians and other healthcare personnel pursuant to Ms. Herzing's pregnancy. Because of complications unrelated to the professional negligence of any party, individual or entity, it was discovered on December 5, 2000 that Ms. Herzing's fetus was no longer viable.

3. The plaintiffs' second amended complaint, filed on July 10, 2002, consists of 17 pages and encompasses 72 total paragraphs. (A copy of the Second Amended Complaint is attached hereto as Exhibit "A").

4. Plaintiffs' liability theories against DRMC are set forth within Count IV. The various theories of negligence raised against DRMC are enumerated in specific detail within paragraph 64 and its 6 subparagraphs.

5. Despite the allegations contained within the second amended complaint, the plaintiffs' liability expert witness addresses a number of theories of which are not plead. The November 30, 2001, October 13, 2004 and September 19, 2005 of Russel D. Jelsema, M.D. are attached hereto as exhibits "B", "C," and "D," respectively.

6. The following theories are raised by Dr. Jelsema as criticisms of DRMC and its alleged, but nowhere were such bases of liability plead in the complaint - indeed, each time the plaintiffs submit a report from Dr. Jelesma, they are surreptitiously and improperly amending their complaint.

(a) The alleged failure of the nursing staff to meet the standard of care. (*See* Exhibit "B" at p. 6 - "... Ms. Herzing's care providers who failed to meet the standard of care include the ... nursing staff at DuBois Regional Medical Center).

(b) The alleged failure of the nursing staff to communicate with Dr. Kruszewski. (*See* Exhibit "B" at p. 8).

(c) The allegation that the nursing staff did not properly monitor the fetal heart rate. (*See* Exhibit "B" at p. 9 - "with regards to the nursing staff, it was below the standard of care to attempt to monitor the fetal heart rate through the maternal back, and to permit Ms. Herzing to sleep during the early morning of December 4 ... It was also below the standard of care to place the 12:00 p.m. misoprostol dose without a reassuring fetal heart pattern.").

(d) The allegation that the nursing staff failed to follow policies and procedures governing fetal heart rate monitoring. (*See* Exhibit "C" at p. 4 - "the nursing staff ... failed to meet the standard of care by failing to follow their own labor and delivery unit's policies and protocols regarding fetal heart rate monitoring.").

(e) Additional allegations concerning fetal heart rate monitoring by the nursing staff. (*See* Exhibit "C" at p. 6 - "It as below the standard of care for the nursing staff to attempt to monitor the fetal heart rate through Ms. Herzing's back.").

(f) Allegations that the nursing staff was negligent in not accessing their "chain of command." (*See* Exhibit "C" at pp. 7-8).

(g) The allegation (made less than a week ago) that the DRMC radiology staff failed to meet the standard of care. (*See* Exhibit "D" at pp. 2-3 - "Failing to perform Doppler studies as ordered ... was below the standard of care ... If the staff at the ... Radiology Department was unable to perform the Doppler studies, the standard of care required that they inform Dr. Kruszewski that they were unable to complete the procedure as requested.").

7. This defendant also incorporates by reference herein the pertinent paragraphs of Dr. Kruszewski's motion wherein she identifies those criticisms made against her plaintiffs' expert reports which have not been plead in the amended complaint.

8. Nowhere within paragraph 64, or elsewhere, are any of these allegations set forth. Simply put, plaintiffs have never plead a cause of actions for the negligence of the DRMC nursing staff or of the DRMC radiology department staff.

9. It is error for to permit a plaintiff to introduce evidence which materially differs from the facts alleged in the pleadings.

10. Amendment of the pleadings at this late date and on the eve of trial is improper and prejudicial, particularly after plaintiffs have filed an original and an amended complaint prior to the instant pleading. Amendments to add new theories are not permitted after the statute of limitations has expired.

11. Pennsylvania law mandates that plaintiffs may not proceed at trial under theories which have not been plead. Therefore, Dr. Jelsema should be precluded from testifying on subject of any theory of liability which has not been specifically plead in the second amended complaint.

WHEREFORE, DuBois Regional Medical Center, one of the defendants, respectfully requests that this Honorable Court grant the within motion in limine and thereby preclude plaintiffs from introducing any evidence or testimony at trial on the liability theories that have not been plead in the second amended complaint, including: the liability of DRMC for any negligence of its nursing staff, and the liability of DRMC for any negligence of its radiology department staff.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical  
Center, one of the defendants

JUL 12 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, as Administrators of the Estate of  
JANELL HERZING, a minor, deceased, and  
MICHELLE HERZING, individually in her own  
right,

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER AND  
JERIE T. ALAJAJI, AND RUSSELL E.  
CAMERON,

Defendants.

CIVIL DIVISION

No. 02-169-CD

Code: 007

**SECOND AMENDED COMPLAINT IN  
CIVIL ACTION**

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire  
PA Id #50506

Philip A. Ignelzi, Esquire  
PA Id #34286

Michael A. Murphy, Esquire  
PA Id #55846

Ogg, Cordes, Murphy & Ignelzi, L.L.P.  
Firm #568  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
Phone: 412/471-8500  
FAX: 412/471-8503

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, as Administrators of the Estate of JANELL HERZING, a minor, deceased, and MICHELLE HERZING, individually in her own right,

CIVIL DIVISION

No. 02-169-CD

Code: 007

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER AND JERJIE T. ALAJAJI, AND RUSSELL E. CAMERON,

Defendants.

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed with out you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

David Meholick, Court Administrator  
Clearfield County Courthouse  
One North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
(814) 765-2641, Extension 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, as Administrators of the Estate of JANELL HERZING, a minor, deceased, and MICHELLE HERZING, individually in her own right,

CIVIL DIVISION

No. 02-169-CD

Code: 007

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER AND JERJIE T. ALAJAJI, AND RUSSELL E. CAMERON,

Defendants.

**SECOND AMENDED COMPLAINT IN CIVIL ACTION**

1. MICHELLE HERZING, Plaintiff herein, is a resident of Clearfield County, Pennsylvania, and is the mother of JANELL HERZING, a minor, deceased, another Plaintiff herein.
2. JEFFREY R. JARVIS, Plaintiff herein, is a resident of Clearfield County, Pennsylvania, and is the father of JANELL HERZING, a minor, deceased, another Plaintiff herein.
3. Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, were appointed Administrators of the Estate of JANELL HERZING, deceased, by the Register of Wills of Clearfield County, Pennsylvania, at No. 2002-21.
4. Plaintiffs, as Administrators of the Estate of JANELL HERZING, deceased, bring this action on their own behalf and on behalf of all persons entitled to recover damages for the wrongful death of JANELL HERZING pursuant to 42 Pa. C.S.A. Section 8301. Plaintiffs also

bring this action to recover damages on behalf of the Estate of JANELL HERZING pursuant to 42 Pa. C.S.A. Section 8302.

5. The names and addresses of all persons entitled by law to recover damages for JANELL HERZING's wrongful death and their relationship to the decedent are:

MICHELLE HERZING, mother  
406 Kuntz Street  
DuBois, PA 15801

JEFFREY R. JARVIS, father  
406 Kuntz Street  
DuBois, PA 15801

6. MARY C. KRUSZEWSKI, Defendant herein, is an individual who resides and/or practices medicine in Clearfield County, Pennsylvania, and at all times relevant hereto was a licensed physician in the Commonwealth of Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant held herself out to be a health care provider who possessed skill and knowledge in obstetrics, and further, held herself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

7. DUBOIS REGIONAL MEDICAL CENTER (herein after referred to as "DuBois Regional"), Defendant herein, is a corporation chartered and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business in DuBois, Clearfield County, Pennsylvania. At all times relevant to the matters set forth herein, this Defendant owned, operated, possessed and maintained a general hospital and, through physicians and other health care personnel at said hospital, provided medical, obstetrical and emergency services to Plaintiffs and other patients.

8. JERJIE T. ALAJAJI, Defendant herein, is an individual and a licensed physician in the Commonwealth of Pennsylvania who resides and/or practices medicine in DuBois, Clearfield

County, Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant was an employee, agent, ostensible agent and/or on the medical staff of Defendant DuBois Regional, and held himself out to be a health care provider who possessed skill and knowledge in radiology and, further, held himself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

9. RUSSELL E. CAMERON, Defendant herein, is an individual and a licensed physician in the Commonwealth of Pennsylvania who resides and/or practices medicine in DuBois, Clearfield County, Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant was an employee, agent, ostensible agent and/or on the medical staff of Defendant DuBois Regional, and held himself out to be a health care provider who possessed skill and knowledge in emergency medicine, and, further, held himself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

#### **FACTUAL BACKGROUND**

10. Beginning on or about July 3, 2000, Plaintiff MICHELLE HERZING, who was then pregnant with minor Plaintiff deceased, sought, received and came under the obstetrical care and treatment of Defendant Kruszewski. Plaintiff MICHELLE HERZING, had been under the care of Defendant Kruszewski for her prior pregnancies, including her 1996 pregnancy in which she was diagnosed with severe preeclampsia at 34 weeks gestation, and which resulted in Cesarean section delivery of a live infant.

11. On or about July 14, 2000, Defendant Kruszewski estimated Plaintiff MICHELLE HERZING's delivery date to be December 30, 2000.

12. On or about September 6, 2000, Plaintiff MICHELLE HERZING, underwent an ultrasound on orders of Defendant Kruszewski that demonstrated fetal measurements consistent with her estimated gestational age.

13. On November 15, 2000, at approximately 33 weeks gestation, Plaintiff MICHELLE HERZING again presented for prenatal physical examination by Defendant Kruszewski. Urine tests were performed on orders of Defendant Kruszewski. The test results demonstrated an elevated uric acid level.

14. On November 30, 2000, Plaintiff MICHELLE HERZING presented at Defendant DuBois Regional's Emergency Department where Defendant Cameron performed physical examination of Plaintiff MICHELLE HERZING.

15. During this Emergency Department admission, Plaintiff MICHELLE HERZING was found to have blood pressures by Dynamap of 226/133 at 8:08 p.m. and more than 300 gm/dl urine protein. She was found to have increased hemoglobin, increased creatinine and increased uric acid over November 15, 2000 values. During this Emergency Department admission, no attempt was made to assess the well-being or physical condition of minor Plaintiff by fetal heart monitor, ultrasound, or in any other manner.

16. On November 30, 2000, Defendant Cameron diagnosed Plaintiff MICHELLE HERZING with "bronchitis/bronchospasm" and discharged her to home.

17. On December 1, 2000, at or about 2:36 p.m., Plaintiff again presented to Defendant DuBois Regional and was admitted by telephone order of Defendant Kruszewski. At this time, Plaintiff MICHELLE HERZING was approximately 36-1/7 weeks pregnant with JANELL  
-HERZING.

18. On December 1, 2000, following Plaintiffs' hospital admission, Defendant Kruszewski performed physical examination of Plaintiff MICHELLE HERZING, at which time her blood pressure was 227/114. Her creatinine was elevated at 1 mg/dl.

19. Also on December 1, 2000, Defendant Alajaji interpreted a biophysical profile of Minor-Plaintiff as "6/8", using a gestational age of 31-3/7 weeks.

20. Furthermore, throughout the period November 30 through December 5, 2000, Plaintiff MICHELLE HERZING continued to have persistent elevated blood pressures.

21. Throughout the period November 30 through December 5, 2000, Defendant Kruszewski and the other physicians and health care personnel caring for Plaintiffs were unable to maintain adequate capture of the fetal heart tones.

22. On December 1, 2000, the health care personnel caring for Plaintiffs at DuBois Regional recorded a baseline fetal heart rate of 130s-140s in 30 seconds of capture.

23. On December 2, 2000, the health care personnel caring for Plaintiffs recorded at least two variable decelerations from a baseline of 140 beats per minute during an approximately one minute period of capturing fetal heart tones.

24. On December 3, 2000, at approximately 4:00 p.m., the health care personnel caring for Plaintiffs noted a fetal heart rate baseline in the 130s during a short period of capture.

25. Throughout the period from November 30, 2000 through delivery of minor Plaintiff. Defendants Kruszewski and DuBois Regional, through its agents, servants and/or employees, were unable to obtain a reassuring fetal heart rate pattern for JANELL HERZING.

26. Beginning on December 3, 2000, Defendant Kruszewski ordered the administration of Cytotec to Plaintiff MICHELLE HERZING for cervical ripening, despite this Defendant's knowledge of Plaintiff's prior Cesarean delivery.

27. On December 4, 2000, a fetal heart rate baseline was captured at 12:00 a.m. of "120s" and maternal blood pressure of 171/87. The next recorded blood pressure was 194/100 at 9:49 a.m. on December 4, 2000.

28. Beginning at approximately midnight on December 4, 2000, the health care personnel caring for Plaintiffs were completely unable to capture Plaintiffs' fetal heart tones.

29. At approximately 11:15 a.m., an attempt was made to communicate Plaintiffs' condition by telephone to Defendant Kruszewski, who was unavailable.

30. At approximately 11:45 a.m. on December 4, 2000, Defendant Kruszewski telephoned the health care personnel caring for Plaintiffs at DuBois Regional and informed them she was aware of their inability to capture fetal heart tones and that Defendant Kruszewski would come to the hospital after another meeting she was attending.

31. On December 4, 2000 at or about 12:50 p.m., Defendant Kruszewski performed artificial rupture of the membranes with meconium staining and thereafter applied at least two different scalp electrodes to minor-Plaintiff.

32. Minor-Plaintiff was delivered stillborn at approximately 9:30 a.m. on December 5, 2000 by induced vertex vaginal delivery performed by Defendant Kruszewski.

33. As a result of Defendants' breaches of the duties owed to Plaintiffs in failing to treat Plaintiffs' for preeclampsia and/or severe preeclampsia in a timely and proper manner, Plaintiffs suffered the personal injuries and damages described hereafter.

34. At all times relevant to the matters set forth in this Complaint, Defendants Alajaji and Cameron, and the other health care personnel who observed, cared for and/or treated Plaintiffs at Defendant DuBois Regional, were the agents, servants and/or employees of Defendants Kruszewski and/or DuBois Regional, and were acting while in and upon the business of Defendants

Kruszewski and/or DuBois Regional and while in the course of their employment by said Defendants.

35. At all times relevant to the matters set forth in this Complaint, the physicians, nurses and other health care personnel who observed, cared for and/or treated Plaintiffs were the agents, servants and/or employees of Defendants Kruszewski and/or DuBois Regional and were acting while in and upon the business of said Defendants and while in the course of their employment by said Defendants.

**COUNT I**  
**WRONGFUL DEATH – Estate of JANELL HERZING vs. Defendant Kruszewski**

36. Paragraphs 1 through 35, inclusive, are incorporated herein by reference as if set forth at length.

37. Defendants, at all relevant times, acted as Plaintiffs' health care providers and, as such, undertook and/or owed duties of care to Plaintiffs.

38. Defendant Kruszewski, her agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

- a. In failing to treat Plaintiff's persistently elevated systolic and diastolic blood pressures in a timely and appropriate manner;
- b. In failing to diagnose and/or treat Plaintiff's preeclampsia and/or severe preeclampsia in a timely and appropriate manner;
- c. In failing to obtain, maintain, test and act upon in a timely and appropriate manner minor Plaintiff's fetal heart rate;
- d. In failing to use December 30, 2000 as the due date in reading and/or interpreting ultrasound studies of Plaintiffs;
- e. In failing to diagnose, treat and/or act upon Plaintiff's proteinuria in a timely and appropriate manner;

- f. In failing to communicate to the other Defendants with respect to Plaintiff's test results and physical condition in a timely manner;
- g. In failing to properly read, analyze, interpret and/or act upon radiological, ultrasound and laboratory studies performed on Plaintiffs beginning on November 15, 2000;
- h. In failing to perform Doppler studies of the umbilical artery;
- i. In failing to adequately obtain, maintain and capture a fetal heart rate showing Plaintiffs' condition and act upon the same;
- j. In failing to institute and maintain continuous electronic fetal monitoring;
- k. In failing to auscultate the fetal heart rate;
- l. In failing to perform fetal scalp gas sampling;
- m. In failing to obtain and act upon appropriate and timely consultations with medical specialists beginning on November 15, 2000, including material-fetal medicine consultations;
- n. In delivering Minor-Plaintiff vaginally;
- o. In failing to perform a proper and timely Cesarean delivery of Minor-Plaintiff.
- p. In failing to ensure Plaintiffs were appropriately monitored and cared for by qualified medical physicians and surgeons;
- q. In failing to obtain and act upon an oxytocin challenge test in a timely and appropriate manner;
- r. In administering and/or causing to be administered Cytotec to Plaintiff;
- s. In failing to make, implement and follow an appropriate plan for Plaintiffs' prenatal care and delivery;
- t. In failing to cure and/or arrest the hypertensive disease processes in the bodies of Plaintiffs and/or in permitting such processes to develop and/or continue; and
- u. In causing Plaintiffs' physical condition to deteriorate and in causing Plaintiffs to suffer injuries due to severe preeclampsia and/or preeclampsia.

39. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

40. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

- a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;
- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Kruszewski in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT II**  
**WRONGFUL DEATH – Estate of JANELL HERZING v. Jerjie T. Alajaji**

41. Paragraphs 1 through 40, inclusive, are incorporated herein by reference as if set forth at length.

42. Defendant Alajaji and his agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

- a. In failing to use December 30, 2000 as the due date in reading and/or interpreting ultrasound studies of Plaintiffs;
- b. In failing to communicate to Defendant Kruszewski Plaintiffs' test results and physical conditions in a timely manner;

- c. In failing to correlate Plaintiff's clinical medical condition and medical history with ultrasound in interpreting the fetal ultrasound study;
- d. In failing to perform Doppler studies of the umbilical artery;
- e. In incorrectly interpreting the fetal ultrasound;
- f. In formulating an inherently flawed, incorrect and falsely reassuring biophysical profile;
- g. In failing to properly correlate Plaintiffs' prior ultrasound study in reading and interpreting the December, 2000 radiological findings; and
- h. In making erroneous fetal measurements of minor-Plaintiff.

43. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

44. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

- a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;
- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Alajaji in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT III**  
**WRONGFUL DEATH – Estate of JANELL HERZING v. Russell E. Cameron**

45. Paragraphs 1 through 44, inclusive, are incorporated herein by reference as if set forth at length.

46. Defendant Cameron and his agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

a. In failing to treat Plaintiff's persistently elevated systolic and diastolic blood pressures in a timely and appropriate manner;

b. In failing to diagnose and/or treat Plaintiff's preeclampsia and/or severe preeclampsia in a timely and appropriate manner;

c. In failing to institute and maintain continuous electronic fetal monitoring;

d. In failing to diagnose, treat and/or act upon Plaintiff's proteinuria in a timely and appropriate manner;

f. In failing to communicate to Defendant Kruszewski Plaintiff's test results and physical condition in a timely manner;

k. In failing to obtain and act upon appropriate and timely consultations with medical specialists, including material-fetal medicine consultations;

r. In failing to cure and/or arrest the hypertensive disease processes in the bodies of Plaintiffs and/or in permitting such processes to develop and/or continue;

s. In causing Plaintiffs' physical condition to deteriorate and in causing Plaintiffs to suffer injuries due to severe preeclampsia and/or preeclampsia; and

s. In causing Minor-Plaintiff to suffer intracranial hemorrhage.

47. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

48. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;

- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Cameron in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT IV**  
**WRONGFUL DEATH – Estate of JANELL HERZING vs. DuBois Regional Hospital**

49. Paragraphs 1 through 48, inclusive, are incorporated herein by reference as if set forth at length.

50. Defendant DuBois Regional had a duty and responsibility to Plaintiffs, its patients, and to the public to furnish appropriate and competent medical care.

51. As part of its duties and responsibilities, DuBois Regional had an obligation to establish policies and procedures, and have competent medical personnel, to provide that appropriate medical care and treatment would be conducted within its institution and organization to patients such as Plaintiffs.

52. Acting through its administrators, various boards, committees, shareholders and individuals, Defendant DuBois Regional was responsible for the standards of professional practice by members of its staff in the manner set forth herein.

53. At all relevant times, Defendant DuBois Regional had a duty to select and retain only competent physicians, nurses, technicians, and other health care providers. It had a duty to oversee, supervise and coordinate the efforts of all persons rendering medical care and treatment within its

walls, including, but not limited to, the formulation and enforcement of adequate and appropriate rules, procedures and policies to discharge its duty outlined above.

54. At all relevant times, DuBois Regional acted through its duly authorized agents, servants and/or employees as set forth more fully above, who conducted themselves within the scope of their agency and/or employment. This conduct included, but was not limited to, conduct of Defendants Kruszewski, Alajaji and Cameron referred to herein, along with the other factors, which gave Plaintiffs the impression that an agent, employee and/or servant relationship existed between them.

55. At all relevant times, DuBois Regional acted through its duly authorized agents, servants and/or employees as set forth more fully above, had a duty to formulate, adopt and enforce policies and procedures to ensure that adequately trained physicians, nurses, technicians and other health care providers were consulted promptly to assess and treat any and all symptoms exhibited by, or requests made by, a patient which called for special skills or expertise.

56. In holding out Defendants Kruszewski, Alajaji and Cameron as its agents, servants and/or employees, Defendant DuBois Regional created an ostensible agency relationship with said Defendants and permitted said Defendants to use its facilities to treat patients.

57. At all relevant times, Defendant DuBois Regional owed Plaintiffs a duty to oversee all persons who rendered medical care and treatment within its facility and specifically owed a duty to oversee the conduct of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers.

58. At all relevant times, Defendant DuBois Regional owed Plaintiffs the duty to formulate, adopt and enforce rules or policies requiring physicians, or those with staff privileges, to

obtain consultations when a patient's needs exceed their own medical knowledge, skill and/or experience.

59. Defendant DuBois Regional owed a direct duty to Plaintiffs to provide, select, and retain, only competent physicians, staff and employees.

60. Defendant DuBois Regional failed to supply that quality of care and competence of properly skilled and trained personnel, including physicians, nurses, technicians and other health care providers as set forth in this Complaint.

63. Defendant DuBois Regional permitted physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers to attend to Plaintiffs when it knew, or should have known, that they were unable, by virtue of their training and/or experience, to adequately safeguard the life and welfare of Plaintiffs.

61. At all relevant times, the work of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers, was so intimately associated with the medical function of DuBois Regional that DuBois Regional controlled or had a right to control their acts. Because of the relationship which existed, DuBois Regional is liable for the negligence of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers.

62. At all relevant times, DuBois Regional knew, or should have known, of the negligent acts and/or omissions as set forth in this Complaint. Despite this actual or constructive knowledge of the negligent treatment of Plaintiffs, DuBois Regional did nothing to ensure their safety.

63. Defendant DuBois Regional had an obligation to provide adequate health care and treatment to individuals such as Plaintiffs.

64. Defendant DuBois Regional, and its agents, servants and/or employees failed to

properly treat and care for Plaintiffs and were negligent and careless in some or all of the following particulars:

- a. In employing and/or contracting the services of each of the individual Defendants;
- b. In causing and/or permitting each of the individual Defendants to examine, evaluate, diagnose and/or treat Plaintiffs;
- c. In failing to determine whether each of the individual Defendants had sufficient training, experience and expertise to treat patients such as Plaintiffs;
- d. In failing to make and enforce sufficient policies and procedures, and/or employing sufficient and competent personnel and/or owning, using or possessing adequate equipment, to ensure proper and adequate monitoring, observation, evaluation, reporting and action on Plaintiffs' maternal and fetal well-being such as fetal heart rates;
- e. In failing to oversee the services being performed in its hospital facility, including its emergency, radiology, prenatal, obstetrical and/or labor and delivery departments, with particular reference to a patient such as Plaintiff MICHELLE HERZING, who presented with the symptoms and history with which Plaintiff presented on November 30, 2000 and thereafter; and
- f. In failing to have its hospital facility, including its prenatal, obstetrical, labor and delivery, radiology, and/or emergency departments staffed with properly trained and experienced physicians and nurses.

65. As a result of the conduct of Defendant DuBois Regional, its agents, servants and/or employees, Plaintiff suffered the injuries and damages described in paragraph 42 of this Complaint, which paragraph is incorporated herein by reference.

WHEREFORE, Plaintiffs MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim compensatory damages against Defendant DuBois Regional Hospital in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT V**  
**SURVIVAL – Plaintiffs vs. All Defendants**

66. Paragraphs 1 through 65 are incorporated herein as if set forth at length.

67. As a direct and proximate result of the previously described negligent conduct of Defendants, Plaintiffs suffered the following damages:

a. JANELL HERZING's pain, suffering, anguish, and inconvenience until the time of her death; and

b. JANELL HERZING's loss of earnings less the cost of her maintenance.

WHEREFORE, Plaintiffs demand judgment against Defendants in a sum in excess of the applicable arbitration limits, together with costs of suit, and demand a trial by jury.

**COUNT VI**  
**NEGLIGENCE – Michelle Herzing vs. All Defendants**

68. Paragraphs 1 through 67 are incorporated herein as if set forth at length.

69. As a result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff MICHELLE HERZING suffered persistently elevated blood pressures, preeclampsia and severe preeclampsia. She suffered eye injury, damage to her vision, and other serious injuries and impairments, and her general health has been impaired. She suffered nervous shock and her nervous system has been impaired. Some or all of these injuries are permanent in nature.

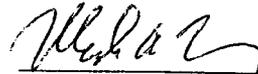
70. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has been forced to incur medical and other expenses for doctors, hospitals and therapeutic care and treatment, and she will be forced to incur additional expenses for like items in the future.

71. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has suffered, and/or will suffer in the future, loss of earnings.

72. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has suffered and will suffer in the future, the loss of the services, earnings and/or companionship of her daughter, the Minor Plaintiff.

WHEREFORE, Plaintiff MICHELLE HERZING demands judgment against Defendants in a sum in excess of the applicable arbitration limits and demand a trial by jury.

Ogg, Cordes, Murphy & Ignelzi, L.L.P.

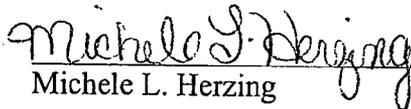


Michael A. Murphy, Esquire

VERIFICATON

I, MICHELE L. HERZING, hereby verify that we have read the foregoing SECOND AMENDED COMPLAINT IN A CIVIL ACTION, and that the statements contained therein are correct to the best of our personal knowledge, information or belief.

This statement and verification are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if we make knowingly false averments, we may be subject to criminal penalties.

  
Michele L. Herzing

  
Jeffrey R. Jarvis

Date: \_\_\_\_\_, 2002

Received DRJ

October 13, 2004  
Michelle Hertzing  
Page 1

OCT 28 2004

Place ( ) Exhibited on ( )  
Diary/ Note ( )  
Key Doc. ( )

I have had the opportunity to review the additional materials regarding Michelle Hertzing.

- 1) Maternity Policies DuBois Regional Medical Center;
- 2) Nursing Competencies;
- 3) Depositions: Mary Kruszewski D.O. April 10, 2003 (66 pages); Shawn Welsh R.N. April 28, 2004 (56 pages); Jerjis T. Alajaji M.D. April 28, 2004 (29 pages); Sheri Kuzina R.N. August 4, 2004 (13 pages); Colleen R. Russell R.N. August 4, 2004 (19 pages); Melissa Dixon R.N. August 4, 2004 (16 pages); Gloria Bennett R.N. August 4, 2004 (37 pages); Sherri Mazza R.N. August 4, 2004 (21 pages); Susan B. Haverly R.N. August 4, 2004 (61 pages).

My opinion remains unchanged. The care provided for Michelle Hertzing and her unborn daughter, Janelle, was below the standard of care expected of physicians and nurses caring for pregnant women. The new materials that I have been provided reinforce the following opinions expressed in my November 6, 2001 report.

Dr. Alajaji, the radiologist, acknowledged in his deposition that he interpreted Ms. Hertzing's December 1 ultrasound (P8 L17), that the ultrasound "tech would scan the patient, and then discharge her" (P13 L17), and that "in the medical arts building, there is not access to prior records on a stat basis" (P16 L24). He also stated, "since the prior record was not available, I was not required to go beyond the present study" (P25 L5). None of these reasons are valid. Whether the records were available or not, Dr. Alajaji or the technician only had to ask Ms. Hertzing the due date that her obstetrician Dr. Kruszewski was using, or they could have contacted Dr. Kruszewski. Asking a mother her due date is a simple question, frequently asked by ultrasound technicians and physicians who perform and interpret obstetrical ultrasounds. The question is asked because the measurements that will be performed must be compared to a due date, a "reference point" to determine adequacy of growth. Similarly, when pediatricians measure a child to determine growth during childhood, they use the child's birth date as a "reference point" to determine if the child is growing appropriately.

Dr. Alajaji stated that "Any time there is a stat study in the medical arts building, there's no prior record" (P18 L9), and he did not think it was important to review any prior films on Ms. Hertzing in order to read her films (P18 L25). He further stated that "the main purpose of an obstetrical ultrasound" is to measure the fetus (P23 L25), that "this study was done to assess the size of the fetus" (P23 L20) and "the ultrasound was requested to assess the size of the fetus and to obtain a biophysical profile" (P23 L10). Dr. Alajaji further stated that he could have made the diagnosis of intrauterine growth restriction if he had "an older ultrasound performed" earlier in pregnancy (P24 L10), and that without a prior film, he could not make the diagnosis of intrauterine growth restriction. Prior



ultrasound films are not required to make the diagnosis of intrauterine growth restriction. If available, they confirm the due date being used by the obstetrical care provider. However, with many women, the prior films are unavailable, and the established due date is used. Had the due date of December 30 been used as a "reference point", the diagnosis of intrauterine growth restriction would have been made by Dr. Alajaji. Had that diagnosis been made, Dr. Kruszewski would have made the diagnosis of severe pre-eclampsia on December 1, and delivery would have occurred prior to December 3 when Ms. Herzing's labor was induced.

Dr. Kruszewski failed to meet the standard of care on November 15 when she failed to recommend hospital admission for Ms. Herzing based upon her 4+ proteinuria at 33 weeks gestation, her history of prior preterm severe preeclampsia, and her history of placental infarctions. In her deposition, Dr. Kruszewski acknowledged that Ms. Herzing had 4+ protein (P25 L2), and that preeclampsia was on her differential diagnosis that day (P26 L4). If Dr. Kruszewski thought preeclampsia was a possible diagnosis, the standard of care required that she recommend hospital admission for Ms. Herzing.

Dr. Kruszewski failed to meet the standard of care on November 30 when she failed to recommend hospital admission for Ms. Herzing when Dr. Kruszewski had been informed by Dr. Shilala at Dubois Regional Medical Center Emergency Room of Ms. Herzing's proteinuria, elevated creatinine, and elevated blood pressures. In her deposition, Dr. Kruszewski acknowledged she did not go in to the hospital personally to evaluate Ms. Herzing. She did not see Ms. Herzing because "she was scheduled for an appointment the next day and my plan was to admit her to the hospital at that time" (P33 L15), and "because I felt that her condition was worsening and that probably she would need to have the baby delivered" (P33 L25). If Ms. Herzing's condition was worsening enough on November 30 to require admission on December 1, she should have been admitted on November 30. To fail to do so was below the standard of care.

Dr. Kruszewski failed to meet the standard of care on December 1 when she failed to recommend delivery after the ultrasound interpreted by Dr. Alajaji showed intrauterine growth restriction, and Ms. Herzing's blood pressures remained elevated. At the time of Ms. Herzing's Emergency Room visit, Dr. Kruszewski "felt that her condition was worsening and that probably she would need to have the baby delivered" (P33 L25), and the purpose of Ms. Herzing's admission to DuBois Regional Medical Center Labor and Delivery unit on December 1 was to get her blood pressure under control, test for preeclampsia and then to induce and to deliver the baby (P34 L15). Clearly, Dr. Kruszewski recognized the seriousness of Ms. Herzing's condition, and the need to move quickly towards delivery, which is the appropriate treatment for preeclampsia. Unfortunately, Dr. Kruszewski did not induce labor on December 1 because Ms. Herzing's "blood pressure wasn't under control" (P34 L21) and she did not consider delivery on December 2 (P39 L24). Uncontrolled blood pressure with preeclampsia is

one of the primary reasons to induce labor. After labor induction has started, blood pressure can be controlled with medication. While Dr. Kruszewski started a medication (labetalol) to control Ms. Herzing's blood pressure, she did not increase the dosage when Ms. Herzing's blood pressures remained elevated and she did not start inducing Ms. Herzing's labor. Waiting for blood pressure control only increased the risk of complications for both Ms. Herzing and her baby.

Dr. Kruszewski failed to meet the standard of care on December 1, when she failed to recommend transferring Ms. Herzing to a level III hospital after the nursing staff at DuBois Regional Medical Center was unable to monitor adequately Ms. Herzing's baby's fetal heart rate. In her deposition, Dr. Kruszewski stated, "I ordered that the fetal heart tones be auscultated about every half hour" (P44 L16), and that she knew "that they were having trouble getting the heart tones for any significant periods of time" (P46 L4). Dr. Kruszewski stated that the first she knew of difficulty monitoring Ms. Herzing's baby was on December 4 (P46 L17) when she was seeing Ms. Herzing (P50 L12). Dr. Kruszewski stated that the reason the nurses could not monitor Ms. Herzing's baby was "because the straps or the girdle were too small" (P51 L16) to keep the fetal monitor on Ms. Herzing's body (P51 L20). Dr. Kruszewski further stated that she has never had another patient that she could not monitor (P52 L19). In this situation, the standard of care required that Dr. Kruszewski transfer Ms. Herzing to a hospital that could provide continuous monitoring. Dr. Kruszewski acknowledged that Ms. Herzing was a high-risk pregnancy (P58 L1), and that with prior patients, Dr. Kruszewski had recommended that high-risk patients be transferred to other hospitals (P58 L1). As such, Dr. Kruszewski should have recommended transfer to another hospital. To fail to do so was below the standard of care.

Dr. Kruszewski failed to meet the standard of care on December 3, when she failed to ensure that Ms. Herzing's baby would receive continuous monitoring. While Dr. Kruszewski stated that in her opinion, continuous monitoring is not necessarily better (P52 L10), and that continuous monitoring was not "absolutely necessary" (P52 L7), the DuBois Regional Medical Center maternity policies clearly describe the need for continuous fetal monitoring for women undergoing cervical ripening with Cytotec and for women attempting vaginal birth after cesarean. Per the "Fetal Monitoring" protocol, the nursing staff was to "Maintain quality tracing of the fetal heart rate and uterine contraction pattern", and to "notify the physician if unable to obtain a quality fetal monitoring tracing". If continuous fetal monitoring was not "absolutely necessary", why would it be necessary for the nurse to notify the physician if the nursing staff was unable to obtain quality tracings? Failing to ensure continuous fetal monitoring directly resulted in the nursing staff's failure to detect the fetal heart rate changes that resulted in Ms. Herzing's baby's death.

The nursing staff that provided care for Ms. Herzing failed to meet the standard of care by failing to follow their own labor and delivery unit's policies and protocols regarding fetal heart rate monitoring.

Nurse Bennett acknowledged in her deposition that she admitted Ms. Herzing (P7 L16) on December 1, and that at admission, Ms. Herzing's blood pressure was 219/36 (P13 L3). Nurse Bennett further stated that the orders were to "monitor 20 minutes every shift" (P25 L5), that "if it was capturing sporadically, it would not have captured long enough to print out" (P19 L5), that "at 1800 that the doctor was notified of the difficulty in capturing and maintaining fetal heart rate tracing due to the patient obesity." (P15 L7), that "I would have told her" that "I was unable to do so (capture the fetal heart rate) for the 20 minutes that she had ordered" (P 29 L 14), and that the "doctor (was) aware of limited capture without orders to continue present effort" (P28 L16). Nurse Bennett further stated that Dr. Kruszewski "did not express that she wanted that continued at that point" (P29 L24), and "what I got from her was that she was satisfied that we had obtained capture of heart tones, that she had the ultrasound report, and that we did not need to again on our shift pursue fetal heart rate tracing" (P30 L8). Nurse Bennett agreed that she did not write down any of what Dr. Kruszewski said (P30 L14). Since she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Bennett should have accessed her chain of command.

Nurse Kizina provided care for Ms. Herzing from 11:00 PM December 1 to 7:00 AM December 2. In her deposition, she stated that external fetal monitoring was "to be done every shift" per the "physician's orders (P9L7). Nurse Kizina further stated that at 1:00 AM during her shift, Ms. Herzing's blood pressure was "173/104" (P10 L23), that she did not repeat Ms. Herzing's blood pressure during her shift (P 11 L1), and that she did not "remember" any physician giving her information regarding Ms. Herzing and her elevated blood pressures (P12 L24). Nurse Kizina also was assigned to care for Ms. Herzing on December 2 from 11:00 PM to 7 AM on December 3. As for Nurse Bennett, since Nurse Kizina could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Kizina should have accessed her chain of command.

Nurse Bennett was assigned to care for Ms. Herzing again on December 2, on the 3:00-11:00 PM shift. In her deposition she stated that at 3:45 PM on December 2, "I had two minutes of tracing" (P35 L9), and that while the physician orders had not changed, "it was verbally stated that she had been aware of our difficulty and that if we had obtained fetal heart tones that was sufficient" (P35 L13). Nurse Bennett further stated that "it was not so much the length as just the presence of fetal heart tones if we were able to get them" (P35 L19). As noted above in my criticisms of Nurse Bennett's care on December 1, since she could neither complete Dr. Kruszewski's orders nor follow her own policies

and protocols, Nurse Bennett should have accessed her chain of command on the evening of December 3.

Nurse Russell was assigned to care for Ms. Herzing on December 3, on the 3:00-11:00 PM shift. In her deposition, Nurse Russell acknowledged that she was Ms. Herzing's primary nurse (P6 L25), that at 4:00 PM Ms. Herzing's blood pressure was "192 over 110" on an automated blood pressure cuff (P8 L7), that she did not "recall" if she verified that elevated blood pressure with a manual cuff (P8 L17), and that this pressure was "so high" (P12 L3). Nurse Russell also confirmed that she was caring for Ms. Herzing when Dr. Kruszewski "decided to induce her and inserted a Cytotec pill" at 6:00 PM (P7 L18). Nurse Russell stated that she placed the external fetal monitor on Ms. Herzing at 6:06 PM (P9 L20), and that Dr. Kruszewski was present at that time (P10 L5). Nurse Russell read from her nursing note, which stated that Dr. Kruszewski was "updated on patient's blood pressure", that "no further orders received as far as blood pressure readings", and that "fetal heart tones obtained every 30 minutes as ordered until patient cervix dilates further" (P10 L17). These orders directly contradicted DuBois Regional Medical Center's own policy regarding fetal monitoring during Cytotec usage. Subsequently, at 9:45 PM, Nurse Russell appropriately "made her (Dr. Kruszewski) aware of the blood pressure because they were high" (P11 L23). Nurse Russell stated that she "called her because I was concerned about the blood pressure being elevated, but", "she didn't say anything more" (P17 L20), and that when she called Dr. Kruszewski regarding Ms. Herzing's blood pressure, Nurse Russell usually gives "a full assessment of what's going on" (P13 L20). At the 9:45 PM phone call with Dr. Kruszewski, Nurse Russell was told that the nursing staff was to "monitor prn during 11:00 to 7:00 shift" (P14 L25). As noted above in my criticisms of Nurse Bennett's and Nurse Kizina's care on December 1 and 2, since she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Russell should have accessed her chain of command on the evening of December 3.

Nurse Walsh was assigned to care for Ms. Herzing on December 3, on the 11:00 PM to 7 AM December 4 shift. In her deposition, Nurse Walsh stated that the nursing supervisor was the access point for Nurse Walsh accessing the chain of command (P14 L6). She further acknowledged that one of her duties was to assess the fetal well being of Ms. Herzing's baby (P24 L14), and that Dr. Kruszewski had told the nursing staff that they could use the Doppler to intermittently record Ms. Herzing's fetal heart rate (P25 L10). Nurse Walsh further noted that in spite of a physician order to listen to the fetal heart rate every 30 minutes, she did not do so on the morning of December 4. (P26 L11). She only listened to the fetal heart rate at "12 a.m. and again at 3 A.M." (P26 L16). Nurse Walsh stated that no documentation or order stated that Ms. Herzing was not to be awakened (P33 L16), that usually she would document such an order (P34 L2), and that she does not know why such an order was not recorded (P36 L15). Nurse Walsh acknowledged that Ms. Herzing's blood pressure at 7:00 AM was "216 over 120" (P43 L14), and that

she was not concerned about that blood pressure (P43 L17). Nurse Walsh stated that prior to placing the 7:00 AM dose of Cytotec, the nursing staff "auscultated the heart tone with the Doppler" (P46 L9). Nurse Walsh stated that she never found the need to go up the chain of command (P53 L13). As noted above in my criticisms of Nurse Bennett's, Nurse Kizina's, and Nurse Russell's care on December 1 and 2, since she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Walsh should have accessed her chain of command on the morning of December 4.

With Nurse Walsh, Nurse Dixon also took care of Ms. Herzing on December 3, on the 11:00 PM to 7 AM December 4 shift. She stated in her deposition that she "used a Doppler" to determine the fetal heart rate (P10 L8). Like Nurse Walsh, Nurse Dixon stated that "no order" was written that permitted Ms. Herzing to sleep without being disturbed (P10 L20), but that "we had talked to Dr. Mary and asked her about" not disturbing Ms. Herzing, but "we don't have an order" (P10 L25). Further agreeing with Nurse Walsh, Nurse Dixon stated that Nurse Walsh did not make any notes or documentation "about the phone call" to Dr. Kruszewski (P11 L25). Nurse Dixon also stated that she did not record any physician orders during that shift (P12 L3), that she did not attempt to speak with Dr. Kruszewski (P13 L25), and that the physician orders that she was under were "to auscultate fetal heart tones q 30 minutes until scalp electrode" "can be placed" (P14 L17). As noted above in my criticisms of Nurse Bennett's, Nurse Kizina's, Nurse Russell's, and Nurse Walsh's care on December 1, 2, and 3, since she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Dixon should have accessed her chain of command on the morning of December 4.

Nurse Heverly was assigned to care for Ms. Herzing on December 4, on the 7:00 AM to 3:00 PM shift. In her deposition, Nurse Heverly stated that she received shift report from Nurse Walsh at 7:00 AM, and that Nurse Walsh stated that "there was just a concern with being able to capture the fetal heart tones on the strip" (P9 L6). Dr. Kruszewski was "fully aware" of the nurses difficulty with finding the fetal heart rate at 7:30 AM (P59 L5). Nurse Heverly stated that she remembered, "audibly hearing what we thought were heart tones, but not being able to capture for a long time on the strip" (P9 L18), and that "we had never had a patient quite --- with that much difficulty. We were even trying to get heart tones through her back" (P10 L21), and that when they listened at shift change, they were hearing heart tones on the "left side of her lower back" (P17 L23). Nurse Heverly, with fourteen years of obstetrical nursing experience, stated that she had "never tried in the back before. So I didn't know if it ever would" (P20 L8). Nurse Heverly stated that she did not think the fetal heart rate machine was having trouble printing (P11 L8).

It was below the standard of care for the nursing staff to attempt to monitor the fetal heart rate through Ms. Herzing's back. The reason that Nurse Heverly had never attempted to

monitor the fetal heart rate through a mother's back is that the back muscles and bones of the mother's back prevent the monitor from being able to hear the baby's heart beat.

Nurse Heverly further stated that she documented Dr. Kruszewski placing Cytotec (P12 L22), that "when we insert Cytotec, they always have to be on the monitor" (P14 L6),

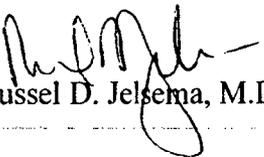
and that "it's just policy (hospital)" (P14 L18) that continuous fetal heart rate monitoring was required upon insertion of Cytotec" (P14 L24). Nurse Heverly stated that she was not "sure" what she meant when she wrote "attempted to get fetal heart tones times an hour and 30 minutes" (P13 L22), and that with regard to attempting to monitor the fetal heart rate, "you don't just give up after ten minutes" (P18 L20). Nurse Heverly also stated, "Dr. Mary was aware that we were unable to get heart tones and keep her on the monitor. So she did say that we could get them periodically. She didn't have to be on continuous monitor because it hurt the patient because she was so large. So we were allowed to get intermittent heart rate" (P25 L24). Nurse Heverly acknowledged that "we're supposed to write" verbal orders, but that no verbal order regarding fetal monitoring was written (P26 L17). At 10:00 AM, Nurse Heverly was "not sure if we were capturing them, you know, long enough to count" the fetal heart rate" (P30 L10), and that at 11:15 AM, she called Dr. Kruszewski regarding her inability to capture the fetal heart rate (P32 L12). Nurse Heverly noted that although she had told Dr. Kruszewski of her inability to record Ms. Herzing's baby's heart beat, Dr. Kruszewski ordered her to "insert next Cytotec" (P32 L18). When given the order to place the next Cytotec in the absence of a reassuring fetal heart rate pattern, the standard of care required that Nurse Haverly advise Dr. Kruszewski to come immediately to the hospital to evaluate Ms. Herzing in person. If Dr. Kruszewski refused, Nurse Heverly should have contacted her chain of command, which according to Nurse Haverly was "Jeannie Roseman" (P28 L5).

Nurse Haverly made another phone call to Dr. Kruszewski at 11:45 AM, and stated in her deposition "I'm just assuming that I made her aware that we just weren't sure about the fetal heart tones" (P33 L19). Again, the standard of care required that Nurse Haverly advise Dr. Kruszewski to come immediately to the hospital to evaluate Ms. Herzing in person. If Dr. Kruszewski refused, Nurse Heverly should have contacted her chain of command. Instead of advising Dr. Kruszewski to come to the hospital or accessing her chain of command, Nurse Heverly inserted the Cytotec at 12:00 PM (P34 L2). Nurse Heverly acknowledged that no documentation of the fetal heart rate exists at the time that she inserted the Cytotec at 12:00 PM (P34 L17), and that she was unable to measure "accurately" the fetal heart rate at that time (P35 L10). Nurse Heverly further acknowledged that the nurses could have attached Velcro straps end on end for more length, so as to better fit Ms. Herzing (P47 L17), but that they did not try end to end Velcro (P49 L 9). As noted above in my criticisms of Nurse Bennett's, Nurse Kizina's, Nurse Russell's, Nurse Walsh's and Nurse Dixon's care on December 1, 2, 3, and 4 since

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she could neither complete Dr. Kruszewski's orders nor follow her own policies and protocols, Nurse Heverly should have accessed her chain of command on the morning of December 4.

Sincerely,

  
Russel D. Jelsema, M.D.



West  
Michigan  
Obstetricians &  
Gynecologists P.C.

November 30, 2001

Received DRJ

OCT 28 2004

Place ( ) Date ( )  
Diary ( )  
Copy to file ( ) Copy to Doc. ( )

David A. Kreuze, M.D.  
Stephen F. Rechner, M.D.  
Darla M. Olson, M.D.  
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Amy Acheson  
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Riverview Place  
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Pittsburgh, Pennsylvania 15222

RE: Michelle Herzing

Dear Ms. Acheson:

I have had the opportunity to review the following medical records regarding Michelle Herzing:

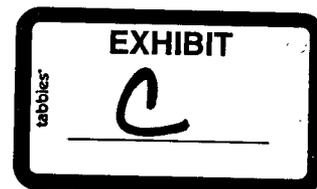
- 1) Medical records from DuBois Regional Medical Center including November 30 – December 6, 2001.
- 2) Mary C. Kruszewski D.O. office records

221 Michigan St. NE  
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Grand Rapids, MI 49503-2540  
(616) 774-7035  
(616) 774-4057 Fax  
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I am a maternal-fetal medicine specialist, board certified in obstetrics and gynecology as well as maternal-fetal medicine. I am an associate professor in the Department of Obstetrics and Gynecology at Michigan State University. I am a partner at West Michigan Obstetrics and Gynecology, and my private practice is entirely devoted to the care of women with or at risk for complicated pregnancies.

I have reviewed the above listed medical records. Based upon my training, education, and experience, I find the care provided for Michelle Herzing and her stillborn daughter Janelle to be below the standard of care expected of physicians and nurses caring for pregnant women. To a reasonable degree of medical certainty, had appropriate care been provided to Ms. Herzing, her baby daughter Janelle would have been born alive and healthy.

In order for you to have a clearer understanding of my opinions in this matter, I will summarize my findings in her care and discuss the pertinent facts.



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## CASE SUMMARY

Michele Herzing was a 32 year-old G3P0111 woman who received her prenatal care for her third pregnancy with Mary Kruszewski D.O.

Her first pregnancy had resulted in a miscarriage in 1993, and she had had a dilatation and curettage. In 1996, with her second pregnancy, she had presented to DuBois Regional Medical Center Emergency Room with chest pain. She was found to have elevated blood pressure of 175/124, diagnosed with preeclampsia and admitted by obstetrician Michael Kush M.D. She was subsequently diagnosed with severe preeclampsia at 34 weeks gestation, and had a cesarean section under general anesthesia. That baby, her son Derek, weighed 3lbs 6oz. The placental pathology report by Gregory Suslow M.D. described "288.0 gm slightly hypo-mature placenta with areas of mild subchorionic and intervillous fibrin deposition as well as area of infarction".

With her third pregnancy, her due date was December 30, 2000. She was initially seen on July 3, 2000 at 14 weeks of pregnancy, and weighed 324 lbs. Her blood pressure was 124/82. On July 17, Dr. Kruszewski wrote a note "Michele Herzings estimated due date is 12-30-00". On August 4, she had a normal maternal serum triple test. She had an ultrasound on September 6 that demonstrated measurements consistent with her gestational age. On October 3, she had a normal 1-hour glucola, and hemoglobin 13.2.

She had six prenatal visits, the last occurring on November 15, when she was 33 weeks pregnant. No weight was recorded and her blood pressure was 126/84. She had edema "legs 2+", and "protein ++++". She was to have her next appointment in "1" week, and to obtain "PIH labs". Those labs demonstrated an elevated uric acid 5.1 mg/dl. The other labs were normal. Ms. Herzing subsequently missed her next appointment.

Ms. Herzing was seen at DuBois Regional Medical Center Emergency Room on November 30 with chief complaint of "wheezing & coughing, head & chest congestion onset 1420 (2:20pm)". Her blood pressure was recorded as 207/112, pulse 96, respirations 36, and pulse oximetry 94%. Per the physician, Patrick Shilala MD's exam at 4:45 p.m., she was "8 months", and the "Dx" was "Bronchitis/Bronchospasm". Dr. Mars was notified at 1805 (6:05 pm). Laboratory testing drawn at 6:14pm demonstrated hemoglobin 14.8gm, increased; creatinine 1.0, increased from her November 15 value; and uric acid 5.0, increased. Urinalysis demonstrated ">300mgm/dl" protein". Repeat blood pressure with "adult cuff on L wrist" demonstrated blood pressures of 236/142 and 214/128. At 8:00pm, "FHT 132 heard" and "BP rechecked, see Dynamap". Dynamap blood pressures were 226/133 at 8:08pm and 290/123 at 8:10pm. "Other instructions" were "See Dr. Mars in am". Ms. Herzing was subsequently discharged home.

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Dr. Kruszewski wrote in an untimed office note dated the following day, December 1, that she had spoken with Ms. Herzing by telephone. Dr. Kruszewski noted "Her BP was up" in the emergency room, and "Advised her that the baby could die if she is not taken care of". Later that day, she was readmitted to DuBois Regional Medical Center at 2:36pm. Untimed admitting telephone orders by Dr. Kruszewski stated "2 Gm Na diet", "EFM 20 min q shift or if (decreased) FM, UC's" and "BPP today (with) AFI, S/D ratio". Nursing notes timed 3:05pm recorded a blood pressure of 209/115. Dr. Kruszewski's "Admit Note" timed 3:35pm, stated "BP 227/114" and "Cx FT/25%/posterior/ soft/vertex". Her "Imp." was "1 IUP at 35<sup>6</sup> weeks" "2 "elevated BP" "3 R/O pre-eclampsia". Her "Plan:" included "1 Labs ordered", "2 "will start labetalol 100mgs BID", "3 24<sup>0</sup> urine starting 12-2", "4 Await labs and deliver if necessary". Her creatinine returned 1.0 mg/dl, elevated. The biophysical profile interpreted by Dr. Jerjis T. Alajaji described "IMPRESSION: SINGLE LIVE GESTATION IN CEPHALIC PRESENTATION WITH AN AGE OF 31-WEEKS 3-DAYS. AMNIOTIC FLUID INDEX OF 12. BIOPHYSICAL PROFILE IS 6/8". In fact, Ms. Herzing was 36 1/7 weeks pregnant. Although Dr. Kruszewski had ordered "BPP today (with) AFI, S/D ratio", the ultrasound report makes no mention regarding the ordered "S/D ratio" study.

A nursing note at 5:30pm describes "pt expresses frustration at self for staff difficulty in locating fhts due to gross obesity, self-degrading comments made despite reassurance by staff". A nursing note timed 6:00pm recorded "Phy. notify (GAB): difficulty in capturing and maintaining FHTs due to pt obesity, Dr. aware of limited capture without orders to continue present effort". Other nursing notes describe "FHR baseline(GAB): 130s-140s in 30 seconds of capture", and "long-term variabi (GAB) not determined due to short capture of FHTs".

On December 2, nursing notes recorded the blood pressures ranging from 198/102 to 165/84. At 12:30am, the nursing notes state under fetal well being, EFM "q shift", and "unable to capture continuous FHT's due to maternal obesity. Toco hand held fetal movements audible with FHT's captured by Doppler 140s-150s". The fetal monitor strips panels 46807-46812 demonstrate very little recorded fetal heart rate.

At 8:00am, the nursing notes state "intermittent q shift" and "EFM (EW): 20 min q shift. Unable to capture FHTs Intermittent FHT heard at 140's". A separate nursing note at 8:00am describes "FHR baseline(EW): picked up at !40S Intermittently unable to capture" and "longterm variabi(EW): Unable to determine". Dr. Kruszewski wrote at 9:40am, "BP 180s-190s/90s-100s". Her impression remained "Elevated BP, possible pre-eclampsia". Her plan remained "1 24 hr urine in progress" and "2 Repeat labs in AM".

At 2:00pm, nursing notes recorded "FHT's 140s unabel to maintain capture FHR. Many attempts made with assisstance of 3 RNs.". At 3:45pm, "unable to maintain capture due to

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pt gross obesity", "unable to visualize or maintain EFM capture long enough to ascertain", and "FHR baseline(GAB): 130s-140s with minimal long term variability during the 1+ minute of obtain capture" were noted. This strip, panel 46818, demonstrates two variable decelerations from the briefly recorded baseline of 140 beats per minute.

On December 3, Ms. Herzing's 3rd hospital day, nursing notes recorded a blood pressure of 173/104 at 1:00am and 207/104 at 8:02am. They also recorded at 1:00am "unable to capture FHTs due to maternal obesity. Abdomen scanned with doppler fetal movement audible but unable to capture heart tones". Dr. Kruszewski's 8:45am note describes "BP ranging from 150-180- systolic/80's-low 100s diastolic". Her impression remained "(increased) BP, possible pre-eclampsia". Her plan included "Induce if necessary".

At 10:49am, nursing notes describe "unable to capture FHTs. Michele verbalizes 'I can feel the baby move'". Subsequent nursing notes at 1:53pm stated "FHR 140s LLQ. obtained with much difficulty and assistance of 2 RNs". Nursing notes recorded a blood pressure 192/100 and 182/100 at 4:00pm. A 4:00pm nursing note regarding fetal movement recorded "active decreased". The fetal heart rate pattern was described as "FHR baseline(CRR): 130s", "longterm variabi(CRR): min. to average during six min. strip; difficult to capture fhts for a prolonged period of time due to pt. being obese", and longterm variability "decreased average". The fetal monitor strips from panel 36884-33696 demonstrate very little recorded fetal heart rate. Contractions every 2 minutes are seen on panels 36795-36798.

Two hours later, the nursing staff "updated" Dr. Kruszewski of the "B/P readings". They further recorded "no additional orders received for tx. of b/ps: will monitor bp closely". A 6:00pm nursing note regarding fetal movement described "decreased", FHR baseline "130s", and longterm variability "decreased". Nursing notes also describe "fhts q 30 min. as ordered once cytotec inserted until pt. becomes more active". In the patient progress notes, the "FHT's obtained Q 30 min as ordered".

At 6:05pm, Dr. Kruszewski wrote, "24<sup>0</sup> urine came back showing 19gms of protein. BP still running 170s-180s over low 100's. Will start induction (with) Cytotec 25mg. We will be unable to do continually monitoring due to pts size". "Will monitor FHT's q 30 min and have pt. report CTXs until cx dilated enough to place IUPC and fetal scalp electrode". "Cx now FT/25%/soft/ballotable vertex".

On December 4, Ms. Herzing's 4th hospital day, nursing notes recorded a blood pressure of 171/87 at 12:00am. The next recorded blood pressure was 194/100 at 9:49am. Nursing notes also described "FHT's prn while awake tonite until active labor". At 12:00am, the FHR baseline was "120s". At 1:00am, the labor flow sheet stated "Sleeping soundly on L side, not disturbed. SW". Similar notes at 4:00am, 5:00am, and 6:00am described the

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patient sleeping. The 7:00am note stated "? audible 170's". The patient progress notes describe "attempted to get FHT's x 1-hr 30min. Able to audibly get FHT's for 2-4 beats but not able to capture anything on strip. States 'the baby is very active'. She is feeling much activity. Attempted to get heart tones with doppler and also tried on pt's back - still unable to capture. Will try periodically".

Dr. Kruszewski's 7:35am note describes "BP stable". "Cx 2cm/25%/-3/vertex". The plan was "AROM when possible (with) IUPC and scalp electrode placement". The patient progress note at 10:00am describes "Attempt to capture fetal heart tones (with) monitor and doppler. Remain unable to capture on monitor. Questionable audible 130's. Pt states fetus is active. Will continue to try". At 11:15am, "Dr. Marys office notified - she is busy (with) pt and will call back". At 11:45, "Dr. Mary called back. Aware of being unable to capture heart tones. Instructed to insert next Cytotec and she will be over after meeting to rupture membranes and apply FSE. Continue unable to capture heart tones. Audible in scant periods for 2-3 sec. SVE shows 2cms 25%. Cytotec 25mcg inserted as ordered at 12pm".

Later that day, Dr. Kruszewski's 2:15pm note described "AROM was performed at 12:50pm. Meconium staining noted. Cx 3-4cm/50%/-3/vertex. Scalp electrode was applied with erratic pickup (per nursing notes, after Dr. Kruszewski ruptured membranes, she applied at least two different scalp electrodes). An ultrasound interpreted by Dr. Robert J. Boron described "There is no fetal movement seen or evidence of fetal heart rate. IMPRESSION: FETAL DEMISE". and no fetal heart motion was identified". From 12:00am until the documentation of fetal demise, the only documented fetal heart rate was obtained at 7:00am and 10:00am. Ms. Herzing was 36 4/7 weeks pregnant.

On December 5, at 9:31am, Ms. Herzing delivered her stillborn daughter Janelle. The preliminary autopsy report by Gregory Suslow M.D. described "This stillborn female fetus, 4 lbs 20 oz (1871gm), of 36 weeks gestational age (by dates), 32+/-2 weeks (by measurements), was delivered vaginally by induction to a 32 year old, pre-eclamptic, obese (450 pounds) white female, G30111. Cessation of fetal heart tones were noted around midnight 12/04/00, before artificial rupture of membranes. Preliminary Autopsy findings communicated to Dr. Kruszewski at 1645 on 12-6-00 revealed the following: 1. Large intracranial hemorrhage (probable cause of intrauterine fetal demise). 2. Severe uteroplacental insufficiency with multiple placental infarctions, intervillous thrombosis, and acute chorioamnionitis".

The final autopsy report of December 13 described no congenital abnormalities. In Dr. Suslow's "Clinico-Pathologic Correlation", he states "The combined effects of a premature cerebral vasculature (particularly in the subventricular germinal matrix layer), a vertex

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vaginal delivery, an elevated vascular resistance associated with pre-eclampsia, most likely led to the fatal intracranial hemorrhage”.

Nursing notes timed 11:34am describe the placenta as having “multiple areas of calcification” and “grossly calcified”. The placental pathology report by Gregory Suslow M.D. described a “271.2gm slightly hypomature placenta with multiple areas of infarction, intervillous thrombosis, and necrotizing intervillitis”.

Ms. Herzing was discharged on December 6 with Procardia XL for blood pressure control.

#### OPINION

It is my opinion that the care provided for Michelle Herzing and her unborn daughter, Janelle, was below the standard of care expected of physicians and nurses caring for pregnant women. To a reasonable degree of medical certainty, had appropriate care been provided to Ms. Herzing, her baby daughter Janelle would have been born alive and healthy. In addition to the failures delineated in the “Case Summary” above, more specific criticisms of her care are as follows.

Ms. Herzing’s care providers who failed to meet the standard of care include the emergency room physician Dr. Shilala. Dr. Kruszewski, the radiologist Dr. Alajaji and the nursing staff at DuBois Regional Medical Center. While each of these care providers gave substandard care in their own right, as a group they failed in their communication with each other in regards their care for Ms. Herzing.

Dr. Shilala failed to communicate with Dr. Kruszewski regarding Ms. Herzing’s proteinuria, elevated creatinine, and elevated blood pressures at the time of her emergency room evaluation on November 30. Had Dr. Kruszewski been informed of the this information by Dr. Shilala, she would have recommended that Ms. Herzing be admitted, as occurred when Ms. Herzing was evaluated in the emergency room with her 2<sup>nd</sup> pregnancy, and subsequently admitted with preeclampsia by Dr. Kush.

The radiologist Dr. Alajaji’s failed to communicate with Dr. Kruszewski to learn of Ms. Herzing’s December 30 due date prior to preparing the ultrasound report of December 1. This lack of communication resulted in the failure to diagnose intrauterine growth restriction. Had this communication occurred, the diagnosis of intrauterine growth restriction would have been made. Had the diagnosis of growth restriction been made, Doppler studies of the umbilical artery would have been performed. In fact, besides ordering a biophysical profile, which had been performed, Dr. Kruszewski had also

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ordered "S/D ratio", a Doppler study of the umbilical cord. Dr. Alajaji's failure to perform the Doppler studies because of the presence of intrauterine growth restriction and Dr. Kruszewski's order was below the standard of care.

After the report was placed on the chart, Dr. Kruszewski's failure to communicate to Dr. Alajaji regarding the wrong due date error and the failure to perform the ordered "S/D" ratio was below the standard of care. Dr. Kruszewski's failure to communicate also resulted in the ultrasound report being left uncorrected. Dr. Kruszewski knew that Ms. Herzing was 36-week pregnant, not 31 weeks. Dr. Kruszewski should have recognized the incorrect gestational age, and that the fetal measurements consistent with 31 weeks in a 36 week fetus represented fetal growth restriction.

Upon recognition of intrauterine growth restriction, the diagnosis of severe preeclampsia would have been made, and delivery recommended. Delivery should also have been recommended based upon Ms. Herzing's persistently elevated systolic and diastolic blood pressures.

Dr. Kruszewski failure to meet the standard of care started on November 15 at the time of Ms. Herzing's prenatal visit. Based upon Ms. Herzing's 4+ proteinuria at 33 weeks gestation, with her history of prior preterm severe preeclampsia, and her history of placental infarctions, Dr. Kruszewski should have admitted Ms. Herzing to the hospital, obtained a maternal-fetal medicine consultation, an obstetrical ultrasound, and a 24 hour urine protein collection. Such management is required to meet the standard of care for pregnant women such as Ms. Herzing with her clinical evidence of preeclampsia, as well as her history of preterm preeclampsia and placental infarctions.

In fact, Dr. Kruszewski met the standard of care when on December 1, because of elevated blood pressures, she admitted Ms. Herzing, obtained an obstetrical ultrasound, and ordered a 24 urine protein collection. The ultrasound demonstrated the above findings, and Ms. Herzing's blood pressures remained elevated. With these findings, the diagnosis of severe preeclampsia should have been made on December 1. Had Ms. Herzing been delivered upon her diagnosis of severe preeclampsia on December 1, her baby daughter would have been born alive and healthy.

The nursing staff also failed to communicate. When Ms. Herzing was admitted, the nursing staff failed to obtain a technically adequate fetal heart rate monitor strip. As such, the fetal heart rate could not be considered reassuring. This failure to obtain a technically adequate monitor strip was below the standard of care for obstetrical nurses. The nurses informed Dr. Kruszewski of their difficulties in monitoring the Ms. Herzing's baby. Even Ms. Herzing was frustrated by the nurses' inability to obtain an adequate monitor strip. The absence of a reassuring fetal heart rate precludes conservative management of

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preeclampsia. Dr. Kruszewski's apparent lack of concern should have prompted the nursing staff to access the chain of command to notify another obstetrician of their concerns for evaluating fetal wellbeing.

It was below the standard of care for Dr. Kruszewski to fail to diagnose severe preeclampsia before the 24-hour urine protein collection returned on December 3. Ms. Herzing's blood pressures were persistently elevated from admission until the time that the 24-hour protein returned.

When Dr. Kruszewski did diagnose severe preeclampsia, she should have recommended delivery by cesarean, as did Dr. Kush with Ms. Herzing's prior pregnancy with a similar diagnosis of preterm severe preeclampsia. In addition, Ms. Herzing now had a uterine scar, and was at risk for uterine rupture and fetal injury should she attempt vaginal birth after cesarean (VBAC). While VBAC was not below the standard of care, the standard of care for VBAC required the immediate availability of the obstetrician. Dr. Kruszewski took more than 1 hour to come from the office to evaluate Ms. Herzing when the nurses called Dr. Kruszewski at 11:45am on December 4. It would appear that she was not immediately available. In addition, the standard of care requires the presence of a reassuring fetal heart rate before proceeding with VBAC. The nurses had been unable to obtain a reassuring fetal heart rate pattern on an intermittent basis for the three prior days. This fact made the probability of continuous monitoring during labor extremely unlikely.

Finally, the standard of care regarding VBAC requires that the fetus can be delivered quickly in the event of a non-reassuring fetal heart rate pattern. It is difficult to provide emergent anesthesia, and deliver a fetus safely and quickly in a woman who is as obese as Ms. Herzing, especially with her history of abdominal scar tissue from her prior cesarean. The standard of care requires documentation that the potential risks and benefits for mother and fetus be discussed and documented in the medical record. I could find no such discussion in the prenatal chart or medical record. Because of the above listed difficulties, VBAC should not have been recommended for Ms. Herzing. A repeat cesarean should have been recommended.

When the decision to attempt VBAC was made, an oxytocin challenge test should have been ordered by Dr. Kruszewski before cervical ripening. Many growth-restricted fetuses such as Ms. Herzing's do not tolerate labor. While a negative test would not eliminate the possibility of a non-reassuring fetal heart rate occurring, it would make possibility of a non-reassuring fetal heart rate less likely than if a positive test result had been obtained. As such, before cervical ripening and labor induction, an oxytocin challenge test should have been performed.

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Page 9

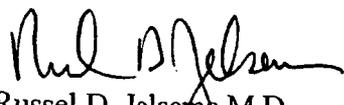
It was below the standard of care for Dr. Kruszewski to use Cytotec (misoprostol) for cervical ripening in a woman with history of prior cesarean. The association of misoprostol and uterine rupture was well described in the American obstetrical literature by November 30, 2000. In fact, The American College of Obstetricians and Gynecologists Committee on Obstetric Practice's Committee Opinion Number 228, November 1999 "Induction of Labor With Misoprostol" states "There have been reports of uterine rupture following misoprostol use for cervical ripening in patients with prior uterine surgery. Thus, until reassuring studies are available, misoprostol is not recommended for cervical ripening in patients who have had prior cesarean delivery". Also, the use of misoprostol requires the presence of a reassuring fetal heart rate pattern, something that the nursing staff had been unable to obtain. The above referenced Committee Opinion also states "Patients undergoing such therapy should receive fetal heart rate and uterine activity monitoring".

With regards to the nursing staff, it was below the standard of care to attempt to monitor the fetal heart rate through the maternal back, and to permit the Ms. Herzing to sleep during the early morning of December 4, without evaluating the fetal heart rate pattern. It was also below the standard of care to place the 12:00pm misoprostol dose without a reassuring fetal heart rate pattern.

If better communication had occurred between Ms. Herzing's care providers, including her physicians and nurses, and had a plan for her pregnancy been made, implemented, and followed, her baby daughter would have born alive and healthy. If appropriate fetal monitoring had occurred, abnormalities would have been detected that would have prompted delivery. To a reasonable degree of medical certainty, had appropriate care been provided to Ms. Herzing, her baby daughter Janelle would have been born alive and healthy.

These are my major opinions. Should additional records become available, I reserve the right to amend my opinion.

Sincerely,

  
Russel D. Jelsma M.D.  
Maternal-Fetal Medicine

Enc.: curriculum vitae

I have had the opportunity to review the additional materials regarding Michelle Herzing:

- 1) DuBois Regional Medical Center Radiology Department ultrasound imaging intake record.

My opinions remain unchanged. The care provided for Michelle Herzing and her unborn daughter, Janelle, was below the standard of care expected of physicians and nurses caring for pregnant women. The new materials that I have been provided reinforce the opinions expressed in my November 6, 2001 and October 13, 2004 reports.

The form states "Priority" "ASAP" (As Soon As Possible); the procedure is listed as "42635 UI-Pelvic BPP; the "Ord Diag" "HIGH BP"; the "Comment" "Need AFI and S/D ratio"; and "Ordering Physician" "Kruszewski, Mary". A hand written note stated "Limited Exam due to pt. Body Habitus 400+# & subcutaneous edema".

"Limited exam" is used commonly to describe an obstetrical ultrasound exam different from a "complete" exam. A complete, or standard, exam is one in which, besides measurements (as were done on Ms. Herzing's December 1 ultrasound); a survey or review of the fetal anatomy is performed. A limited exam is performed when a specific issue arises, such as determining cardiac motion, or fetal position.

Biophysical profile (BPP) ultrasound is a specialized ultrasound that evaluates the current fetal health by measuring the amniotic fluid volume (AFV) and monitoring fetal tone, movement, and breathing activity. In order to measure AFV, the sonographer must be able to visualize the fetus and the amniotic fluid. To evaluate the fetal tone and fetal movement, the sonographer must be able to visualize the fetal hand or other body part, watching for movement and observing the fetal tone. To evaluate breathing movement, the sonographer must observe the fetal chest for small, almost imperceptible movements of the chest, signifying fetal breathing movements. Proper performance of BPP requires well-trained, experienced, and patient sonographers. At the time of Ms. Herzing's December 1 ultrasound exam, the sonographer performed a BPP, obtaining a result of 6/8.

Babies of mothers with hypertension (such as Ms. Herzing) are at increased risk for intrauterine growth restriction (IUGR) and stillbirth. Doppler velocimetry studies have been proven to reduce the likelihood that a baby with IUGR will die in the mother's womb. Doppler velocimetry is an ultrasound procedure that is used by physicians to determine which IUGR fetuses are at greatest risk for stillbirth. Similar to BPP, Doppler velocimetry of the umbilical artery blood flow is another specialized ultrasound that evaluates fetal health. When IUGR is diagnosed, umbilical artery Doppler evaluation is very useful in determining the timing and type of delivery. The standard of care requires that umbilical artery Doppler is performed upon the diagnosis IUGR.



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Each of the above-described obstetrical ultrasound procedures has a CPT code. "Complete" is 76805, "Limited exam" is 76815, BPP is 76819, and Doppler velocimetry is 76820.

Appropriately, on December 1, 2000 Dr. Kruszewski requested that the DuBois Regional Medical Center Radiology Department perform both a BPP and Doppler studies on Ms. Herzing's fetus. This is reflected on the ultrasound imaging intake record that noted "BPP" and "S/D ratio", another term for umbilical artery Doppler studies.

The handwritten comments "Limited Exam due to pt. Body Habitus 400+# & subcutaneous edema" reflects that this was not a "complete exam", and that the sonographers visualization was limited because of Ms. Herzing's size and skin swelling. However, the sonographer's visualization was not limited enough to prevent them from:

- 1) performing measurements of the fetal head, abdomen, and leg bone;
- 2) measuring the amniotic fluid volume;
- 3) evaluating fetal tone, movement, or breathing for the BPP.

If these components of the exam could have been performed, the Doppler studies could and should have been done. The standard of care in 2000 required that DuBois Regional Medical Center Radiology Department had ultrasound equipment that could perform both color Doppler and Doppler velocimetry. The use of this technology to perform umbilical artery Doppler studies in obese women such as Ms. Herzing is quite simple.

The amniotic fluid pocket nearest the fetal abdomen is visualized (if the sonographer could visualize and measure the abdominal circumference as well as the amniotic fluid volume, they could see a pocket of fluid nearest the abdomen, where a portion of the umbilical cord would be located), and the color Doppler is turned on and focused on that area. Color Doppler would easily visualize and identify segments of the baby's umbilical cord. The Doppler velocimetry gate would then be placed on that segment of cord, and the signal would be evaluated to determine if the umbilical artery or vein was being sampled. The umbilical arteries and vein are in the umbilical cord and run parallel to each other. If the signal was consistent with the umbilical artery, the S/D ratio could be determined. If the signal were consistent with the umbilical vein, the gate would be moved slightly, searching for an arterial signal. An experienced sonographer can locate the umbilical cord, find the umbilical artery signal and evaluate it in less than a minute. Obesity does not impact the ability to perform Doppler studies. In fact, while evaluating fetal anatomy is more difficult in obese patients, performing Doppler studies is not. Failing to perform Doppler studies as ordered by Dr. Kruszewski was below the standard of care.

If the staff at the DuBois Regional Medical Center Radiology Department were unable to perform the Doppler studies, the standard of care required that they inform Dr. Kruszewski that they were unable to complete the procedure as requested.

Upon receiving the knowledge that the staff at the DuBois Regional Medical Center Radiology Department were unable to perform the Doppler studies as she had ordered, the standard of care required that Dr. Kruszewski to either make arrangements to transfer Ms. Herzing to a regional perinatal care center that could perform the umbilical artery Doppler studies as Dr. Kruszewski had ordered and as the standard of care required, or Dr. Kruszewski should have made preparations for immediate delivery by cesarean section at DuBois Regional Medical Center.

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With Dr. Kruszewski's knowledge that Ms. Herzing:

- 1) had severe preeclampsia with her first pregnancy;
- 2) had had a prior cesarean for severe preeclampsia with that pregnancy;
- 3) was now 35 6/7 weeks pregnant;
- 4) had an ultrasound that demonstrated IUGR;
- 5) had a BPP of 6/10 (since a reactive non-stress test was not present, two points could not be given), an equivocal result;
- 6) had not had umbilical Doppler studies performed as the standard of care required and with which Dr. Kruszewski had complied with by ordering "S/D ratio";

Dr. Kruszewski should have made recommendations for an immediate cesarean section or for transfer to a regional perinatal center.

As stated above, the purpose of evaluating the umbilical artery with Doppler studies of a fetus with IUGR is to determine the timing and type of delivery. The diagnosis of IUGR placed Ms. Herzing's fetus at greatly increased risk for stillbirth. Without a reassuring Doppler study, Dr. Kruszewski had to assume that the Doppler studies would be non-reassuring, and proceed to immediate delivery. To fail to do so was below the standard of care.

The fetal demise that occurred within the next for 48 hours makes it very probable that had umbilical artery testing been performed by either the staff at the DuBois Regional Medical Center Radiology Department or a regional perinatal center, that an abnormal Doppler study would have been found. Had that abnormal signal been found, the standard of care would have required an immediate cesarean. Had a cesarean been done immediately on December 1, Ms. Herzing's baby daughter would have been born alive and well.

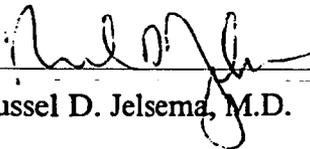
September 19, 2005

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The ultrasound BPP score was 6/8. Since a reactive non-stress test was not obtained, the total BPP score was 6/10, equivocal. According to the ACOG Practice Bulletin Number 9, October 1999, such a score, "in the term fetus, this score generally should prompt delivery, whereas in the preterm fetus, it should result in a repeat BPP in 24 hours". This recommendation by ACOG is based upon the premise of a normal Doppler study, which was not present for Ms. Herzing. As such, the standard of care required immediate delivery by cesarean.

Sincerely,



---

Russel D. Jelsema, M.D.

**CERTIFICATE OF SERVICE**

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' MOTION TO SUPPLEMENT PRETRIAL STATEMENT BASED UPON NEWLY PRODUCED EVIDENCE BY DEFENDANT ON AUGUST 22, 2005** to be served on the following via facsimile and regular United States first class mail, postage prepaid, on this 23rd day of September, 2005:

Alan R. Krier, Esquire  
Jubelirer, Carothers, Krier & Halpern  
Park View Center  
10 Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603  
(Counsel for Jerjie T. Alajaji)

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
(Counsel for DuBois Regional Medical Center and Russell Cameron)

John W. Blasko, Esquire  
McQuaide, Blasko, Schwartz, Fleming  
& Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(Counsel for Mary C. Kruszewski)

  
\_\_\_\_\_  
Amy Acheson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right, and  
as Administrators of the Estate of JANELL  
HERZING, a minor, deceased,

Plaintiffs,

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

Defendants.

**ORDER**

AND NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, it is hereby  
ORDERED that Plaintiffs' Pretrial Statement shall be, and hereby is, supplemented to  
include Dr. Jelsema's Septmeber 19, 2005 report attached to Plaintiffs' Motion as  
Exhibit "C".

BY THE COURT:

\_\_\_\_\_  
FREDRIC J. AMMERMAN  
President Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record via facsimile on this 26<sup>th</sup> day of Sept, 2005:

Amy Acheson, Esquire  
Philip A. Ignelzi, Esquire  
Ogg, Cordes, Murphy & Ignelzi, LLP  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
**Via Facsimile: 412-471-8503**

John W. Blasko, Esquire  
Richard K. Laws, Esquire  
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Altoona, PA 16603  
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THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical Center,  
one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading ANSWER TO PLAINTIFFS' MOTION TO EXCLUDE EVIDENCE AND EXPERT TESTIMONY REGARDING ADVICE ALLEGEDLY GIVEN BY DR. KRUSZEWSKI TO PLAINTIFFS PRIOR TO PREGNANCY AT ISSUE IN THIS CASE

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
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(814) 238-4926

Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: Sept 26, 2005

FILED NO CC  
012:4501  
SEP 27 2005

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
 )  
Plaintiffs, ) NO. G.D. 02-169 CD  
 )  
 ) JURY TRIAL DEMANDED  
vs. )  
 )  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
 )  
Defendants. )

**ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.  
TO PLAINTIFFS' MOTION TO EXCLUDE EVIDENCE AND  
EXPERT TESTIMONY REGARDING ADVICE ALLEGEDLY GIVEN  
BY DR KRUSZEWSKI TO PLAINTIFF PRIOR TO THE PREGNANCY  
AT ISSUE IN THIS CASE**

1. Paragraph 1 is admitted for it is appropriate to introduce evidence and testimony relative to Plaintiff Herzing's medical history. Indeed, the Plaintiffs' expert Russell D. Jelsema in his report dated November 30, 2001 sets forth in part, the past history of the Plaintiff, Ms. Herzing.

2. Paragraph 2 is admitted to the extent that the present case is based on the care and treatment rendered by Dr. Kruszewski from May through December 5, 2000. However, the Plaintiffs' counsel, at jury selection, referred to the prior delivery of a child in 1996. As above stated the Plaintiffs' expert also includes these facts within his report as to the Plaintiffs' 1996 pregnancy and delivery. Accordingly, the Defendant Kruszewski is not limited simply to what

Plaintiffs contend or to that included in their expert report but may appropriately show any and all past medical history and advice given to the Plaintiff.

3. Paragraph 3 is admitted for the reason that it is relevant.

4. Paragraph 4 is inconsistent with Plaintiffs' expert report of Dr. Jelsema dated November 30, 2001 wherein he clearly sets forth the prior pregnancies, miscarriages, and hospitalization of the Plaintiff, Ms. Herzing.

5. Paragraph is admitted for the reason that there could be no findings of hypertension until November 30, 2000 because Plaintiff Herzing failed to keep her scheduled appointments with the Defendant Kruszewski.

6. Paragraph 6 is denied. The prior advice on contraception, weight loss and hypertension is appropriate evidence on causation for the jury to consider, and, simply because Plaintiffs contend otherwise is not a reason to exclude such evidence.

7. Paragraph 7 is denied. The medical history of the Plaintiff, together with her non-compliance in failing to keep her appointments of November 20, 29 and December 1, 2000 are evidence of comparative negligence, as well as issues relating to causation. These facts are intimately intertwined with the issue of causation of the Plaintiff's harm and whether the action or inactions of any of the party/Defendants, including Defendant Kruszewski, were or not a substantial factor and/or legal cause of the claimed harm in this case. The defense in any case is entitled to argue and present evidence that the Defendant's actions did not cause or was not a substantial factor in bringing about any of the Plaintiff's harm. This may be done by addressing the conduct of any person, whether or not the person is a party to the case. Here, the conduct of the Plaintiff Herzing would be relevant for the jury to consider in this matter.

WHEREFORE, Defendant Mary C. Kruszewski, D.O. respectfully requests that the Court dismiss the Plaintiffs' Motion to Exclude Evidence and Expert Testimony Regarding Advice Allegedly Given by Dr. Kruszewski to Plaintiff Prior to the Pregnancy at Issue in this case.

Respectfully Submitted,

MCQUAIDE BLASKO

BY



JOHN W. BLASKO  
Attorney for Defendant,  
Mary Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: 9/26/05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,	)	
	)	Civil Action-Medical Professional Liability Action
	)	
	)	NO. G.D. 02-169 CD
Plaintiffs,	)	
	)	JURY TRIAL DEMANDED
vs.	)	
	)	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,	)	
	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer of Defendant, Mary C. Kruszewski, D.O. to Plaintiffs' Motion to Exclude Evidence and Expert Testimony Regarding Advice Allegedly Given by Dr. Kruszewski to Plaintiff Prior to the Pregnancy at Issue, in the above-referenced matter was hand delivered on the 27th day of September, 2005, to the attorney(s) of record:

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire  
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Pittsburgh, PA 15222

Alan R. Krier, Esquire  
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David R Johnson Esquire  
Thomas B. Anderson, Esquire  
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Pittsburgh, PA 15219

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Mary C. Kruszewski, M.D.

**FILED**

**SEP 27 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading ANSWER TO PLAINTIFFS' MOTION TO PRECLUDE EVIDENCE CONCERNING MINOR/DECEDENT'S LEVEL OF MENTAL OR PHYSICAL CAPACITY

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

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Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: Sept 26, 2005

FILED *no cc*  
0112:4501  
SEP 27 2005

William A. Shaw  
Prothonotary Public

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
 )  
Plaintiffs, ) NO. G.D. 02-169 CD  
 )  
vs. ) JURY TRIAL DEMANDED  
 )  
 )  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
 )  
Defendants. )

**ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.**  
**TO PLAINTIFFS' MOTION TO PRECLUDE EVIDENCE CONCERNING**  
**MINOR/DECEDENT'S LEVEL OF MENTAL OR PHYSICAL FUNCTION**

1. Paragraph 1 is denied to the extent that it indicates Defendant's counsel posed objectionable questions of Dr. Steven Klepper. The questions were posed, in part on Plaintiffs' expert report that the child suffered intrauterine growth restriction.
2. Paragraph 2 is denied. The Defendant Kruszewski filed a pathology expert report of Dr. Rubin dated November 11, 2004 providing opinions that the fetus was not healthy. The Court should defer any ruling until the time of trial.
3. Paragraph 3 is denied. There is a medical factual basis for the cross examination.
4. Paragraph 4 is a statement of Plaintiffs' legal position to which a response is unnecessary.

5. Paragraph 5 is denied. The testimony of Dr. Klepper clearly indicates that his opinions were not based on real life factors as evidenced by the Plaintiffs' station in life, their home environment and other factors. All these are relevant, but Dr. Klepper did not consider these relevant factors.

6. Paragraph 6 is admitted for the reason that the subject matter concerning the mental capacity or level of functioning is appropriate cross examination. Further, the Plaintiffs' expert in giving his opinions relied on the education of the mother, Ms. Herzing, who did not complete her high school education as well as the father Jeffrey Jarvis who did not complete a high school education. Both of these factors can be considered by the jury in determining mental capacity or level of functioning of an offspring.

7. Paragraph 7 is denied as stated. There is no reason for any Defendant to submit an expert report on disability since Plaintiffs' economic expert, Dr. Klepper, was not provided any medical reports by Plaintiffs' counsel concerning intrauterine growth restriction, or, the real life factors of the Plaintiffs' environment.

8. Paragraph 8 is a statement of Plaintiffs' legal position to which a response is unnecessary. To an extent a response is necessary, the Plaintiffs in the present Motion as well as other Motions simply want to exclude any evidence which may be adverse to their position.

9. Paragraph 9 is a statement of Plaintiffs' legal position to which a response is unnecessary.

10. In response to Paragraph 10, the Defendant Kruszewski's Answer to Plaintiffs' Objections to Cross Examination of Dr. Steven Klepper's Videotaped Trial Deposition is by this reference incorporated herein.

WHEREFORE, Defendant Mary C. Kruszewski, D.O. respectfully requests that the Court dismiss the Plaintiffs' Motion to Preclude Evidence Concerning Minor Decedent's Level of Mental and Physical Function and have this case proceed at trial, at which time appropriate rulings can be made.

Respectfully Submitted,

MCQUAIDE BLASKO

BY



JOHN W. BLASKO  
Attorney for Defendant,  
Mary Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: 9/26/05



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading ANSWER TO PLAINTIFFS' MOTION TO PRECLUDE QUESTIONING AND EVIDENCE REGARDING PLAINTIFFS' WORK HABITS

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: Sept. 26, 2005

FILED *no cc*  
012:45 *BN*  
SEP 27 2005 *WN*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,	)	
	)	Civil Action-Medical Professional Liability Action
	)	
	)	
Plaintiffs,	)	NO. G.D. 02-169 CD
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,	)	
	)	
	)	
Defendants.	)	

**ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.  
TO PLAINTIFFS' MOTION TO PRECLUDE QUESTIONING  
AND EVIDENCE REGARDING PLAINTIFFS' WORK HABITS**

1. Paragraph 1 as to the cross examination of Dr. Klepper's economic expert regarding the Plaintiff/mother as being an unreliable worker and her other bad work habits is admitted. The Plaintiffs filed objections to the transcript to which the Defendant, Mary C. Kruszewski, D.O. has filed a response, which by this reference is incorporated herein. The mother's conduct of being an unreliable worker is important where the jury is considering the employment of a stillborn child. The prospective life of that child and environment to which she was born and raised by her mother, the Plaintiff Herzing, is relevant. This is a question which should be ruled on by the Court at the time of trial as to whether the jury can consider the evidence in determining work life expectancy and other matters.

2. Paragraph 2 is denied. These are the same objections which Plaintiffs asserted at the time of the deposition of their economic expert, Dr. Klepper. Their objections were based on lack of foundation which can only be established at the time of trial. The Plaintiffs strategically determined to take a trial deposition prior to the scheduled trial, and, cannot argue that the questions lack foundation, for it is not known what evidence will be developed at trial. Plaintiffs' objection that it is irrelevant since the Plaintiffs' expert does not rely on the parent's earnings is a baseless objection, in that, the very purpose of the cross examination was to establish that the economic expert did not consider all the true-life factors. The allegation that Plaintiffs would be prejudiced is simply a conclusory reiteration of similar allegations which Plaintiffs assert in all their Motions filed in this action.

3. Paragraph 3 that Defendant did not file an economic expert report is admitted, however, this does not preclude the Defendant from cross examining Plaintiffs' economist expert to point out to the jury the adequacy or inadequacy of his opinions.

4. Paragraph 4 is denied. Plaintiffs' allegations of Paragraph 4 indicate Plaintiffs' confusion as to the purpose of cross examination, the admissibility of evidence, and, the role of the jury to consider, under proper instructions, all matters at the time of deliberation.

WHEREFORE, Defendant Mary C. Kruszewski, D.O. respectfully requests that the Court dismiss the Plaintiffs' Motion to Preclude Questioning and Evidence Regarding Plaintiffs' Work Habits, and, assess costs, expenses and attorneys' fees for defense of this Motion.

Respectfully Submitted,

MCQUAIDE BLASKO

BY

  
\_\_\_\_\_

JOHN W. BLASKO  
Attorney for Defendant,  
Mary Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: 9/26/05



**FILED**

**SEP 27 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading ANSWER WITH NEW MATTER TO PLAINTIFFS' MOTION TO SUPPLEMENT PRE-TRIAL STATEMENT

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: Sept 26, 2005

**FILED** No. cc  
9/27/05 12:45 PM  
SEP 27 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, )  
and as ADMINISTRATORS OF THE )  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )

Plaintiffs, )

vs. )

MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )

Defendants. )

Civil Action-Medical Professional  
Liability Action

NO. G.D. 02-169 CD

JURY TRIAL DEMANDED

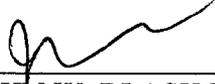
NOTICE TO PLEAD

TO: Plaintiffs

YOU ARE HEREBY notified to plead to the within Answer with New Matter within  
twenty (20) days from the date of service hereof or a default judgment may be entered against  
you.

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_

  
JOHN W. BLASKO  
Attorney for Defendant  
Mary C. Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: Sept. 26, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,	)	
	)	Civil Action-Medical Professional Liability Action
	)	
	)	NO. G.D. 02-169 CD
Plaintiffs,	)	
	)	JURY TRIAL DEMANDED
vs.	)	
	)	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,	)	
	)	
Defendants.	)	

**ANSWER WITH NEW MATTER**

**ANSWER OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.  
TO PLAINTIFFS' MOTION TO SUPPLEMENT PRE-TRIAL STATEMENT  
BASED UPON NEWLY PRODUCED EVIDENCE BY DEFENDANT  
ON AUGUST 22, 2005, AND, NEW MATTER OF DEFENDANT  
MARY C. KRUSZEWSKI, D.O. TO (a) STRIKE THE PLAINTIFFS'  
LATEST EXPERT REPORT AS TO DR KRUSZEWSKI;  
(b) TO EXCLUDE OR PRECLUDE EXPERT TESTIMONY ON  
NEW THEORIES SET FORTH IN THE REPORT AND NOT PLED;  
AND (c) IN THE ALTERNATIVE, TO CONTINUE THE CASE**

**ANSWER**

1. Paragraph 1 to the extent it alleges that the document entitled "DuBois Regional Medical Center Radiology Department Ultrasound Imaging Intake Record" was produced is admitted.
2. Paragraph 2 is denied as stated. The Plaintiffs were aware of the existence of all the information provided in the document entitled DuBois Regional Medical Center Radiology

Department Ultrasound Imaging Intake Record, in that, it is contained on the OB Ultrasound the Biophysical Profile Report provided by Dr. Alajaji on December 2, 2000, and, referred to in the deposition transcript of Dr. Alajaji taken by the Plaintiffs on April 28, 2004. Thus, the document did not provide any new information to Plaintiffs.

3. Paragraph 3 is denied. Plaintiffs were well aware of all the information contained in the alleged new document which they now use as an excuse for another supplemental expert report. The Plaintiffs would not be prejudiced.

4. The supplemental report of Dr. Jelsema dated September 19, 2005 is attached to the Motion, however, Defendant Kruszewski seeks to preclude or strike the same as hereinafter set forth.

5. Paragraph 5 is denied. All the information referred to in Dr. Jelsema's supplemental report were known to the Plaintiffs and Dr. Jelsema for years.

WHEREFORE, it is requested that the Plaintiffs' Motion be denied.

**NEW MATTER**

6. The Plaintiffs, under the guise of alleging that Co-Defendant, Alajaji, failed to provide a new document, have had as their expert, Dr. Jelsema prepare a supplemental report criticizing Dr. Kruszewski as follows:

- (a) failure to make arrangements to transfer Ms. Herzing to a regional perinatal care center that could perform the umbilical artery Doppler studies as ordered;
- (b) that Dr. Kruszewski had to assume that Doppler studies which were not ordered would have been non-reassuring;  
and

- (c) failure to comply with ACOG Practice Bulletin #9, October, 1999.

7. A Motion relative to these theories has previously been filed, as not being pled, and, as to the ACOG Memorandum, that the publication cannot be used to establish the standard of care.

8. The filing of this late report is prejudicial to the Defendant, Dr. Kruszewski, in view of the following:

- (a) On June 24, 2004, the parties stipulated, agreed to a Court Order that Plaintiffs were to file their reports by October 31, 2004, the Defendants on or before January 31, 2005, and, the Plaintiffs could have rebuttal on or before February 28, 2005. A copy of the Order is attached hereto marked Exhibit "A."
- (b) On March 10, 2005, on Motion of the Plaintiffs, the time was extended for the Plaintiffs to file a pathology report on or before May 31, 2005.
- (c) On August 11, 2005, a Pre-Trial Conference was held in the above matter.
- (d) In accordance with the local rules, all expert reports were to be filed with the Court at that time.
- (e) At no time did Defendant Dr. Kruszewski withhold any evidence or documents from the Plaintiffs which were relevant to the case.
- (f) The Plaintiffs have had the information set forth in the expert's supplemental report since they acquired copies of these records in 2002, and, were aware of the same because of various depositions taken, especially that of the Defendant Dr. Alajaji.
- (g) The Defendant Dr. Kruszewski would be severely prejudiced by virtue of these new theories raised although they have not been pled.

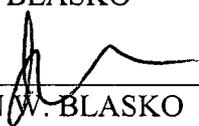
- (h) It is requested that theories be excluded as not being  
pled, or, in the alternative that the Court continue the  
case.

WHEREFORE, it is requested that the supplemental report be stricken and/or the case  
continued.

Respectfully Submitted,

MCQUAIDE BLASKO

BY

  
\_\_\_\_\_  
JOHN W. BLASKO  
Attorney for Defendant,  
Mary Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: 9/26/05



IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

MICHELLE E. HERZING and  
JEFFREY A. JARVIS,  
individually, in their own  
right, and as ADMINISTRATORS  
OF THE ESTATE OF JANELL  
HERZING, a minor, deceased

-VS-

No. 02-169-CD

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

O R D E R

NOW, this 24th day of June, 2004, the parties  
stipulate and agree as follows:

1. The Plaintiffs shall file their expert reports on or before October 31, 2004;
2. The Defendants shall file their expert reports on or before January 31, 2005;
3. The Plaintiffs shall have by no later than February 28, 2005, to file a rebuttal report.

BY THE COURT,

/s/ Fredric J. Ammerman

\_\_\_\_\_  
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUN 25 2004

Attest.

*William L. De*  
Prothonotary/  
Clerk of Courts



•  
•  
•

**FILED**

**SEP 27 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased,

CIVIL DIVISION

No. G.D. 02-169-CD

Plaintiffs,

Code: 007

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI and RUSSELL E. CAMERON

Defendants.

ORDER

AND NOW, to wit, this 27<sup>th</sup> day of September, 2005, it is hereby

ORDERED that Plaintiffs' Pretrial Statement shall be, and hereby is, supplemented to include Dr. Jelsema's Septmeber 19, 2005 report attached to Plaintiffs' Motion as Exhibit "C".

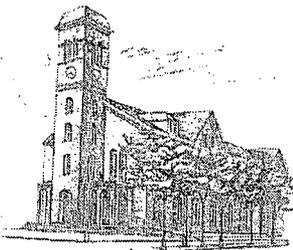
BY THE COURT:

*Fredric J. Ammerman*

FREDRIC J. AMMERMAN  
President Judge

FILED 4cc  
01:43:41 Amy Acheson  
SEP 27 2005

William A. Shaw  
Prothonotary/Clerk of Courts



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, And as ADMINSTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,  
Plaintiffs,  
v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,  
Defendants.

CIVIL ACTION - LAW  
NO. G.D. 02-169 CD

RESPONSE AND OBJECTION TO PLAINTIFFS' MOTION TO SUPPLEMENT PRETRIAL STATEMENT

Filed on Behalf of Defendant:  
JERJIS T. ALAJAJI, M.D.

Counsel for filing party:  
Alan R. Krier, Esquire  
PA I.D. #06672  
Park View Center  
Ten Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603  
(814) 943-1149

JURY TRIAL DEMANDED

FILED <sup>NO</sup> <sup>CC</sup>  
m11:24/01  
SEP 28 2005 (6)

William A. Shaw  
Prothonotary/Clerk of Courts

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, And as ADMINSTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased, Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
	:	
	:	CIVIL ACTION – LAW
	:	
v.	:	NO. G.D. 02-169 CD
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

**DEFENDANT’S, DR. JERJIS ALAJAJI, RESPONSE AND OBJECTION TO PLAINTIFFS’ MOTION TO SUPPLEMENT PRETRIAL STATEMENT**

AND NOW, comes the Defendant, Jerjie T. Alajaji, M.D., by and through his attorneys, Jubelirer, Carothers, Krier and Halpern, and files the within Response and Objection to Plaintiffs’ Motion to Supplement Pretrial Statement:

1. Admitted in part and denied in part. It is admitted that on August 22, 2005, Defendant forwarded a copy of Exhibit “A to Plaintiffs’ counsel. Defendant, however, is without knowledge as to whether Plaintiffs previously possessed this document and Defendant assumed Plaintiffs were in possession of the same.

2. Denied. Defendant was unaware that Plaintiffs did not have this document if that is indeed so.

3. Denied. Defendant denies this is a “new” document. Moreover, Plaintiffs deposed Dr. Alajaji on April 28, 2004. Although there was nothing preventing Plaintiffs’ counsel from doing so, Plaintiffs’ counsel at no time during the course of the deposition ever

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I served a true and correct copy of the foregoing RESPONSE AND OBJECTION TO PLAINTIFFS' MOTION TO SUPPLEMENT PRETRIAL STATEMENT on all counsel of record and/or parties of interest by FACSIMILE and depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 26<sup>th</sup> day of September, 2005, and addressed as follows:

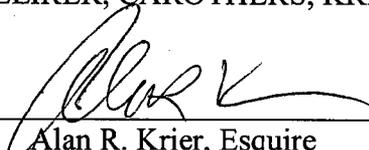
Amy Acheson, Esquire  
Philip A. Ignelzi, Esquire  
Ogg, Cordes, Murphy & Igneizi, L.L.P.  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
(412) 471-8500  
FAX: 412-471-8503  
(Attorney for Plaintiffs)

John W. Blasko, Esquire  
Richard K. Laws, Esquire  
McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
FAX: (814) 234-5620  
(Attorney for Mary C. Kruszewski, M.D.)

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
412-232-3400  
FAX: 412-232-3498  
(Attorney for DuBois Regional Medical Center and Russell E. Cameron)

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: \_\_\_\_\_

  
Alan R. Krier, Esquire  
Anthony J. Zanoni  
Attorneys for Defendant,  
JERJIS T. ALAJAJI, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. :  
JARVIS, individually, in their own right, :  
And as ADMINSTRATORS OF THE :  
ESTATE OF JANELL HERZING, a :  
minor, deceased, :  
Plaintiffs, :

v. :

MARY C. KRUSZEWSKI, DUBOIS :  
REGIONAL MEDICAL CENTER, :  
PATRICK SHILALA and JERJIE T. :  
ALAJAJI, :

Defendants. :

CIVIL ACTION - LAW

NO. G.D. 02-169 CD

RESPONSE TO PLAINTIFFS'  
MOTION IN LIMINE REGARDING  
EXPERT, DR. W. SCOTT MORSE

Filed on Behalf of Defendant:

**JERJIS T. ALAJAJI, M.D.**

Counsel for filing party:

Alan R. Krier, Esquire

PA I.D. #06672

Park View Center

Ten Sheraton Drive

P.O. Box 2024

Altoona, PA 16603

(814) 943-1149

JURY TRIAL DEMANDED

FILED NO  
m11:246t cc  
SEP 28 2005 LW

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I served a true and correct copy of the foregoing RESPONSE TO PLAINTIFFS' MOTION IN LIMINE REGARDING EXPERT, DR. W. SCOTT MORSE on all counsel of record and/or parties of interest by FACSIMILE and depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 26<sup>th</sup> day of September, 2005, and addressed as follows:

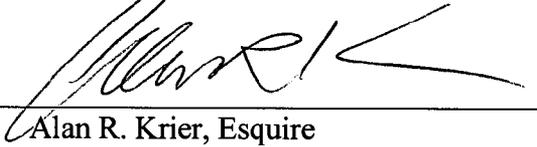
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245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
(412) 471-8500  
FAX: 412-471-8503  
(Attorney for Plaintiffs)

John W. Blasko, Esquire  
Richard K. Laws, Esquire  
McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
FAX: (814) 234-5620  
(Attorney for Mary C. Kruszewski, M.D.)

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
412-232-3400  
FAX: 412-232-3498  
(Attorney for DuBois Regional Medical Center and Russell E. Cameron)

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: \_\_\_\_\_

  
Alan R. Krier, Esquire  
Anthony J. Zaroni  
Attorneys for Defendant,  
JERJIS T. ALAJAJI, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS,  
individually, in their own right, and as Administrators  
of the Estate of JANELL HERZING, a minor, deceased,  
Plaintiffs

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

vs.

No. 02-169-CD

MARY C. KRUSZEWSKI, DUBOIS REGIONAL  
MEDICAL CENTER, JERJIE T. ALAJAJI, and  
RUSSELL E. CAMERON,  
Defendants

**ORDER**

NOW, this 29<sup>th</sup> day of September, 2005, after consideration of the Motion in  
Limine filed on behalf of Defendant DuBois Regional Medical Center on August 3, 2005; it is  
the ORDER of this Court that Defendant's Motion in Limine be and is hereby DENIED.

BY THE COURT,



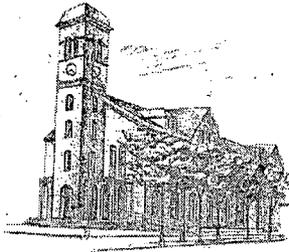
FREDRIC J. AMMERMAN  
President Judge

**FILED** *icc*  
*01115/01*  
OCT 03 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
*Acheson*  
*Ignetzi*  
*Egg*  
*Murphy*  
*Blasko*  
*S. Johnson*  
*Krier*

**FILED**

OCT 03 2005

William A. Shaw  
Prothonotary/Clerk of Court



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

  X   The Prothonotary's office has provided service to the following parties:

  X   Plaintiff(s)/Attorney(s)

  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased,

Plaintiffs,

Vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

COUNSEL FOR PLAINTIFFS:

Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI

John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:

Alan Krier, Esquire

CIVIL DIVISION

No. 02-169-CD

Issue No.

**MOTION IN LIMINE TO STRIKE THE  
SEPTEMBER 19, 2005 REPORT OF  
PLAINTIFFS' LIABILITY EXPERT, DR.  
JELSEMA**

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for These Parties:

David R. Johnson, Esquire  
PA I.D. #26409

Brad R. Korinski, Esquire  
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.  
Firm #720  
1010 Two Chatham Center  
Pittsburgh, PA 15219

(412) 232-3400

**FILED**  
M 11:48 AM  
OCT 03 2005

NO CC

GP

William A. Shaw  
Prothonotary/Clerk of Courts

MOTION IN LIMINE TO STRIKE THE SEPTEMBER 19, 2005  
REPORT OF PLAINTIFFS' LIABILITY EXPERT, DR. JELSEMA

NOW COMES DuBois Regional Medical Center ("DRMC"), one of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and files the following Motion in Limine.

1. At oral argument on September 27, 2005, this Honorable Court granted this defendant leave to file the instant Motion in Limine. In the interests of brevity and because of the short amount of time in which the Court must consider and rule upon this motion, this defendant incorporates by reference herein the Responsive Brief in Opposition to Plaintiffs' Motion to Supplement Pre-Trial Statement, which was filed with this Court on September 27, 2005. That Responsive Brief in Opposition and the exhibits attached thereto, are identical in both subject matter, argument and relief requested as this Motion in Limine.

2. By facsimile on Friday, September 23, 2005, the plaintiffs submitted a Motion to Supplement Pre-Trial Statement which attached an additional report from their liability expert, Dr. Jelsema, dated September 19, 2005.

3. The ostensible reason cited by plaintiffs for their request to submit another (the third) report from their liability expert is their purportedly recent receipt of a single page medical record reflective of an ultrasound imaging study performed upon mother-plaintiff on December 1, 2000.

4. As set forth and explained in this defendants' Responsive Brief in Opposition to Plaintiffs' Motion to Supplement Pre-Trial Statement, this new report from Dr. Jelsema is not rationally connected, either in scope or content, to the single page medical record pointed to by plaintiffs as the basis for the admission of this report.

5. Furthermore, this new report from Dr. Jelsema invokes two never before addressed liability theories against DRMC: for its alleged lack of appropriate ultrasound

equipment in its radiology department, and for the alleged negligence of the staff of its radiology department. Neither of these standard of care issues is mentioned in Dr. Jelsema's prior reports of November 20, 2001 and October 13, 2004.

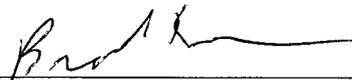
6. If Dr. Jelsema's report is admitted, DRMC will be required to defend itself - only a month before trial - on two totally unanticipated legal theories, and will, therefore, of necessity, be forced to retain new experts to respond to Dr. Jelsema's new and recent allegations. This is the very embodiment of the requisite prejudice necessary for a trial court to strike the admittance of an expert report and his or her testimony in conformance with that report.

7. If Dr. Jelsema's report is admitted, DRMC will suffer extreme and incurable prejudice for all the reasons stated above. Because trial is scheduled for October 21, 2005, and since DRMC will be in the position of being required to obtain new experts and reports, the admittance of Dr. Jelsema's report at this late date may require that DRMC seek a continuance of trial.

WHEREFORE, this defendant, DuBois Regional Medical Center, respectfully requests that this Honorable Court issue an Order: (a) striking the proposed September 19, 2005 report of plaintiffs' liability expert; and (b) precluding plaintiffs' liability expert from offering any testimony in conformance with, or based upon, his report of September 19, 2005.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



---

David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical  
Center, one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record by U.S. Mail on this 30th day of Sept, 2005:

Amy Acheson, Esquire  
Ogg, Cordes, Murphy & Ignelzi, LLP  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222

John W. Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801

Alan Krier, Esquire  
Jubelier, Carothers, Krier & Halpern  
10 Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603

THOMSON, RHODES & COWIE, P.C.

  
\_\_\_\_\_  
David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical Center,  
one of the defendants.

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**FILED**

OCT 03 2005

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
JANELL HERZING, a minor, deceased,

CIVIL DIVISION

No. 02-169-CD

Plaintiffs,

Vs.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER, and  
JERJIE T. ALAJAJI

Defendants.

ORDER OF COURT

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2005, it is hereby ORDERED that: (a) plaintiffs' proposed liability report of September 19, 2005 is hereby stricken; and (b) plaintiffs' liability expert, Dr. Jelsema, is hereby precluded and barred from offering any testimony in conformance with, or based upon, his report of September 19, 2005

BY THE COURT:

\_\_\_\_\_ J.

~~FILED~~

~~OCT 13 2005~~

~~William A. Shaw~~

~~Prothonotary, Clerk of Courts~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading  
MOTION TO STRIKE PLAINTIFFS' LATE  
EXPERT REPORT AND/OR PRECLUDE  
INAPPROPRIATE EXPERT TESTIMONY

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: 10/4/05

FILED

OCT 05 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
no 4/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,	)	
	)	Civil Action-Medical Professional Liability Action
	)	
	)	NO. G.D. 02-169 CD
Plaintiffs,	)	
	)	JURY TRIAL DEMANDED
vs.	)	
	)	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,	)	
	)	
	)	
Defendants.	)	

**DEFENDANT, MARY C. KRUSZEWSKI, D.O.**  
**MOTION TO STRIKE PLAINTIFFS' LATE EXPERT REPORT AND/OR**  
**PRECLUDE INAPPROPRIATE EXPERT TESTIMONY**

AND NOW, comes Defendant Mary C. Kruszewski, D.O. by and through her attorneys McQuaide Blasko, and files the within Motion in Limine representing the following:

1. The Motion is filed for the purpose of reiterating several grounds which were previously raised in this Defendant's Four-Part Motion in Limine, and applying same to a supplemental expert report which was belatedly provided by Counsel for Plaintiffs.
2. More specifically, the purpose of this Motion is three-fold:
  - a. To preclude the Plaintiffs from pursuing theories at trial which have been discussed within the Plaintiffs' supplemental report dated September 19, 2005, but which has not been pleaded in the Plaintiffs' original Complaint, Amended Complaint, or Second Amended Complaint.
  - b. To preclude Plaintiffs from presenting at trial a publication by the American College of Obstetricians and Gynecologists as substantive evidence of the applicable standard of care.
  - c. To strike report of Plaintiffs' expert, Russell D. Jelsema, M.D., dated September 19, 2005.

In the alternative, this Defendant requests that trial be continued.

3. The Plaintiffs have filed a Complaint, Amended Complaint and a Second Amended Complaint, the latter being filed on or about July 1, 2002, consisting of 17 pages and 72 paragraphs.

4. Plaintiffs' theories against Dr. Kruszewski are set forth within Count I. The numerous theories of negligence raised against Dr. Kruszewski are set forth in specific detail within Paragraph 38, which contains 21 subparagraphs.

5. As referenced above, Dr. Kruszewski previously filed a Four-Part Motion in Limine to preclude Plaintiffs from presenting theories at trial which have been discussed within the Plaintiffs' expert reports, but were not pleaded in the Second Amended Complaint. Another portion of said Motion in Limine seeks to preclude Plaintiffs from presenting at trial a publication by the American College of Obstetrician and Gynecologist as substantive evidence of the applicable standard of care. This Motion was argued before the Honorable Court on September 27, 2005. Said Motion together with the accompanying Brief are by this reference incorporated herein.

6. The Plaintiffs, under the guise of alleging that the Co-Defendant, Dr. Alajaji, failed to provide some documentation, have had their expert, Dr. Jelsema prepare a supplemental report dated September 19, 2005.

7. Although the Plaintiffs' supplemental report is dated September 19, 2005, the Plaintiffs did not provide a copy of the report on any of the parties until September 23, 2005. In an attempt to avoid the Court ordered deadlines for expert reports, the Plaintiffs ingeniously filed

a Motion to Supplement their Pre-Trial Statement, contrary to this Court's Order and Local Rules of Civil Procedure, as described below.

8. On June 24, 2004 the parties stipulated and agreed to a Court Order that Plaintiffs were to file their reports by October 31, 2004, Defendants on or before January 31, 2005, and Plaintiffs' rebuttal reports on or before February 28, 2005. A copy of the Order is attached hereto and marked Exhibit "A."

9. The Plaintiffs filed two reports from their expert, Dr. Jelsema, dated November 20, 2001 and October 13, 2004.

10. On March 10, 2005, on motion of the Plaintiffs, the time was extended for the Plaintiffs to file a pathology report by May 31, 2005.

11. On August 11, 2005, a Pre-Trial Conference was held in this case, and in accordance with the Local Rules, all experts reports were attached to the parties' respective Pre-Trial Memoranda and filed with the Court.

12. Despite the three Complaints filed by the Plaintiffs in this case, which contain a great number of allegations, the Plaintiffs' OB/GYN expert, Dr. Jelsema, has raised a number of theories which are not pleaded.

13. Despite the fact that Dr. Jelsema provided a report dated almost four years ago, November 30, 2001, the Plaintiffs on the eve of trial have filed a supplemental report dated September 19, 2005, asserting new theories.

14. Although the Plaintiffs allege a supplemental report was required in response to Co-Defendant's failure to provide documentation, the Plaintiffs, through Dr. Jelsema and his supplemental report, took advantage of the opportunity to further criticize Dr. Kruszewski on the following theories which were not pleaded.

- a. That “standard of care required Dr. Kruszewski to either make arrangements to transfer Ms Herzing to a regional perinatal care center that could perform the umbilical artery doppler studies as Dr. Kruszewski had ordered.” (P. 3 supplemental report)
- b. Dr. Kruszewski should have made recommendations for transfer to a regional perinatal center. (P. 3 supplemental report)
- c. That Dr. Kruszewski had to assume that Doppler studies, which were not, ordered would have been non-reassuring as to the fetus in this case (had such a study actually been done) (P. 3 supplemental report)

15. In addition, Dr. Jelsema’s supplemental report refers to the ACOG (American College of Obstetrics and Gynecology) Public Practice Bulletin No. 9, October, 1999, from which Dr. Jelsema quotes directly in an effort to articulate the applicable standard of care. Under Pennsylvania law, it is improper for an expert to introduce statements appearing in a learned treatise as a substantive proof the information set forth therein. Majdic v. Cincinnati Machine Co., 372 Pa. Super. 611, 537 A.2d 534 (1988).

16. Learned treatises or writings which offer to prove the truth of the matters asserted are hearsay and may not be admitted into evidence for consideration by the jury.

17. Similar issues were raised in Defendant’s Four-Part Motion in Limine re Preclusion of Inappropriate Expert Testimony, which was argued before this Court on September 27, 2005. These issues were also raised in Dr. Kruszewski’s Answer and New Matter to Plaintiffs’ Motion to Supplement the Pre-Trial Statement, filed on September 27, 2005.

18. The allegations of refusal to refer the patient to a perinatal center as well as the contention by Dr. Jelsema that Dr. Kruszewski should have assumed what Doppler studies would have shown, if completed, are materially different from any of the numerous specifically pled theories within the Second Amended Complaint. Amendment of the pleadings at this late date

and on the eve of the trial would be improper and prejudicial, especially after Plaintiffs have already filed an original, Amended, and Second Amended Complaint, and have filed two expert reports from Dr. Jelsema dated November 30, 2001 and October 13, 2004.

19. Under controlling Pennsylvania case law, Plaintiffs may not proceed at trial under theories which have not been pled, and Dr. Jelsema should be precluded from testifying on the subject of any theory of liability not specifically pleaded within the Second Amended Complaint.

20. The reference to the ACOG bulletin as substantive evidence of the standard of care should also be excluded

WHEREFORE, Dr. Kruszewski requests that this Honorable Court grant the within Motion in Limine and make a ruling as follows: (1) to preclude Plaintiffs from introducing any evidence or allegations at the trial related to any theories which have not been specified in the Second Amended Complaint, including allegations regarding transfer to a regional perinatal care center and regarding an assumption regarding what would have been shown on Doppler studies, which were not ordered; and (2) to preclude the Plaintiffs from introducing medical literature as substantive evidence of the standard of care. In the alternative, it is requested that trial in this case be continued until another term of Court.

Respectfully Submitted,

MCQUAIDE BLASKO

BY

  
\_\_\_\_\_  
JOHN W. BLASKO  
Attorney for Defendant,  
Mary Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: 10/4/05



IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

MICHELLE E. HERZING and  
JEFFREY A. JARVIS,  
individually, in their own  
right, and as ADMINISTRATORS:  
OF THE ESTATE OF JANELL  
HERZING, a minor, deceased

-VS-

No. 02-169-CD

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and  
RUSSELL E. CAMERON

O R D E R

NOW, this 24th day of June, 2004, the parties  
stipulate and agree as follows:

1. The Plaintiffs shall file their expert reports on or before October 31, 2004;
2. The Defendants shall file their expert reports on or before January 31, 2005;
3. The Plaintiffs shall have by no later than February 28, 2005, to file a rebuttal report.

BY THE COURT,

/s/ Fredric J. Ammerman

\_\_\_\_\_  
President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUN 25 2004

Attest.

*William L. Shaw*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
 ) NO. G.D. 02-169 CD  
Plaintiffs, )  
 ) JURY TRIAL DEMANDED  
vs. )  
 )  
MARY C. KRUSZEWSKI, DUBOIS )  
REGIONAL MEDICAL CENTER, )  
JERJIE T. ALAJAJI, and RUSSELL )  
E. CAMERON, )  
 )  
Defendants. )

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the DEFENDANT, MARY C. KRUSZEWSKI, D.O. TO STRIKE PLAINTIFFS' LATE EXPERT REPORT AND/OR PRECLUDE INAPPROPRIATE EXPERT TESTIMONY, in the above-referenced matter was mailed by first class, regular mail, on this 4<sup>th</sup> day of October, 2005, to the attorney(s) of record:

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222

Alan R. Krier, Esquire  
Park View Center, Ten Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16003

David R Johnson Esquire  
Thomas B. Anderson, Esquire  
1010 Two Chatham Center  
Pittsburgh, PA 15219

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_

JOHN W. BLASKO

Attorneys for Defendant  
Mary C. Kruszewski, M.D.

FILED

OCT 05 2005

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, :  
Individually, in their own right, and as Administrators :  
of the Estate of JANELL HEZING, a minor, deceased, :  
Plaintiffs, :

No. 02-169-CD

v. :

MARY C. KRUSZEWSKI, DUBOIS REGIONAL :  
MEDICAL CENTER, JERJIE T. ALAJAJI, and :  
RUSSELL E. CAMERON, :  
Defendants. :

**FILED**

OCT 05 2005

William A. Shaw

Prothonotary/Clerk of Courts

SENT TO ATTY'S  
R. CAMERON,

**ORDER**

NOW, this 4th day of October, 2005, after consideration of the Four Part Motion in **BLASIK**

Limine filed on behalf of Defendant Mary C. Kruszewski on September 21, 2005, the Court

D. JOHNSON

KRIER

HEREBY FINDS AS FOLLOWS:

1. Defendant's Motion to preclude theories not pled is HEREBY GRANTED, except, the Plaintiff shall be permitted to include evidence of the alleged failure to discuss risks and benefits of vaginal delivery.
2. Defendant's Motion related to Informed Consent based theories is HEREBY GRANTED in part and DENIED in part. The Plaintiff shall be precluded from introducing evidence at trial pursuing an informed consent based theory. The Plaintiff shall be permitted to introduce evidence of the alleged failure to advise the patient of the risks and alternatives to vaginal delivery.
3. Defendant's Motion to preclude medical literature as substantive evidence to establish the relevant standard of care is HEREBY GRANTED.

4. Defendant's Motion to preclude the application of DuBois Regional Medical Center nursing policies to the conduct of Defendant Kruszewski is HEREBY GRANTED.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Frederic J. Ammerman". The signature is written in black ink and is positioned above a horizontal line.

FREDERIC J. AMMERMAN  
President Judge

FILED  
OCT 05 2005  
William A. Straw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

NOW this 5th day of October 2005, after consideration of the Plaintiffs' Objections to Cross Examination of Expert Dr. Steven Klepper filed on September 12, 2005, the Court  
HEREBY FINDS AS FOLLOWS:

1. As to Objections numbered 2, 3, 4, 5, 7 and 8, the Court HEREBY DEFERS ruling until time of trial in order to determine if a factual/medical basis for the same will be presented.
2. Plaintiffs' Objections numbered 1 and 10 are HEREBY GRANTED.
3. Plaintiffs' Objections numbered 6, 9, 11 and 12 are DISMISSED.

BY THE COURT:

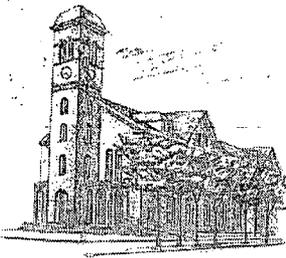
*Frederic J. Ammerman*  
 \_\_\_\_\_  
 FREDERIC J. AMMERMAN  
 President Judge

**FILED** *icc Atty's:*  
*el 3:35/04*  
 OCT 06 2005  
 William A. Shaw  
 Prothonotary/Clerk of Courts  
*Acheson*  
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*Ogg*  
*m. Murphy*  
*J. Blasko*  
*D. Johnson*  
*A. Krier*

**FILED**

**OCT 06 2005**

William A. Shaw  
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

\_\_\_\_\_ The Prothonotary's office has provided service to the following parties:

\_\_\_\_\_ Plaintiff(s)/Attorney(s)

\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, :  
Individually, in their own right, and as Administrators :  
of the Estate of JANELL HEZING, a minor, deceased, :  
Plaintiffs, :

No. 02-169-CD

v. :

MARY C. KRUSZEWSKI, DUBOIS REGIONAL :  
MEDICAL CENTER, JERJIE T. ALAJAJI, and :  
RUSSELL E. CAMERON, :  
Defendants. :

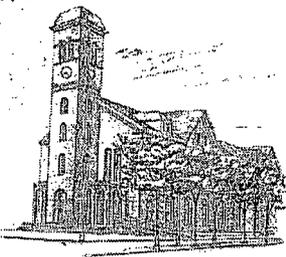
**ORDER**

NOW, this 10th day of October 2005, after consideration of Plaintiffs' Motion in Limine filed September 20, 2005 to preclude any evidence of Decedent's level of mental or physical capacity, the Court HEREBY DEFERS ruling until time of trial in order to determine if a factual/medical basis for the same will be presented.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED ICC  
01:10:16 BT  
OCT 11 2005  
William A. Shaw  
Prothonotary/Clerk of Court  
Atty: Acheson  
Ignelzi  
Ogg  
M. Murphy  
Blasko  
Johnson  
Kries



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

\_\_\_\_\_ The Prothonotary's office has provided service to the following parties:

\_\_\_\_\_ Plaintiff(s)/Attorney(s)

\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, :  
Individually, in their own right, and as Administrators :  
of the Estate of JANELL HEZING, a minor, deceased, : No. 02-169-CD  
Plaintiffs, :

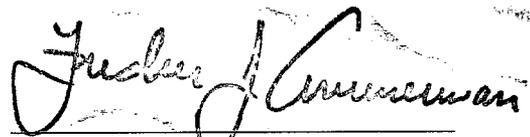
v. :

MARY C. KRUSZEWSKI, DUBOIS REGIONAL :  
MEDICAL CENTER, JERJIE T. ALAJAJI, and :  
RUSSELL E. CAMERON, :  
Defendants. :

**ORDER**

NOW this 10th day of October 2005, after consideration of Plaintiffs' Motion in Limine filed September 20, 2005 to exclude portions of expert testimony by Dr. Morse on behalf of Defendant Alajaji, the Court HEREBY DEFERS ruling on the Motion until time of trial to determine if Dr. Morse is qualified to testify regarding the standard of care for obstetrical imaging.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

FILED <sup>icc</sup>

*d10/16/05*  
OCT 11 2005

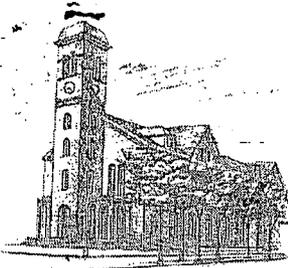
William A. Shaw  
Prothonotary/Clerk of Courts

*Atty's:*  
Acheson  
Ignelzi  
ogg  
M. Murphy  
Blasko  
D. Johnson  
Kries

**FILED**

OCT 1 1 2005

William A. Shaw  
Prothonotary/Clerk of Courts



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

NOW this 10th day of October 2005, after consideration of Plaintiffs' Motion in Limine filed September 20, 2005 to exclude portions of expert testimony by Dr. Rubin on behalf of Defendant Kruszewski, the Court determines that the Motion be and is HEREBY DENIED.

BY THE COURT:



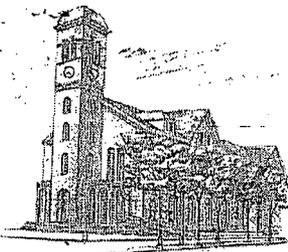
FREDRIC J. AMMERMAN  
President Judge

**FILED** *icc* *Atty's:*  
*09/10/10/2005* *Acheson*  
**OCT 11 2005** *Ignelzi*  
*W* *egg*  
 William A. Shaw  
 Prothonotary/Clerk of Courts  
*M. Murphy*  
*Blasko*  
*Johnson*  
*Kries*

**FILED**

OCT 11 2005

William A. Shaw  
Prothonotary/Clerk of Courts



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

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\_\_\_\_\_ The Prothonotary's office has provided service to the following parties:

\_\_\_\_\_ Plaintiff(s)/Attorney(s)

\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

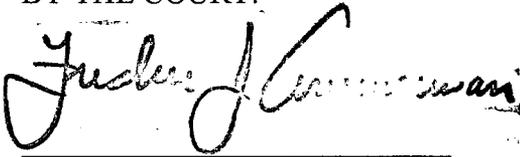
\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

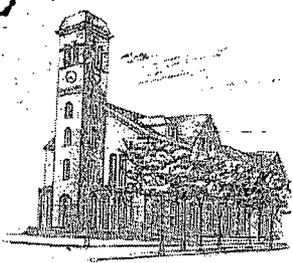
NOW this 10th day of October 2005, after consideration of Plaintiff's Motion in Limine filed September 20, 2005 to preclude any evidence of Plaintiffs' work habits, the Court HEREBY DEFERS ruling until time of trial in order to determine if a factual/medical basis for the same will be presented.

BY THE COURT:  
  
FREDRIC J. AMMERMAN  
President Judge

**FILED**<sup>icc</sup>  
 Attys:  
 Acheson  
 Ignelzi  
 dgg  
 m. Murphy  
 J. Blasko  
 D. Johnson  
 A. Krier

William A. Shaw  
 Prothonotary/Clerk of Courts

OCT 11 2005



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

NOW this 10th day of October 2005, after consideration of Plaintiffs' Motion in Limine filed September 20, 2005 to exclude the expert testimony of Barbara Schouchoff, R.N. on behalf of Defendant DuBois Regional Medical Center, the Court determines that the Motion be and is HEREBY GRANTED. The June 24, 2004 Order of Court required the filing of any Defense expert reports by January 31, 2005.

Further, the Plaintiffs' Motion in Limine filed September 20, 2005 to preclude certain opinion testimony of Defendant DuBois Regional Medical Center be and is HEREBY MOOT.

BY THE COURT:

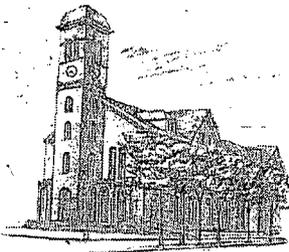
  
 FREDRIC J. AMMERMAN  
 President Judge

**FILED** 100 Attys:  
 0110:10031 Acheson  
 OCT 11 2005 Ignatz  
 William A. Shaw M. Murphy  
 Prothonotary/Clerk of Courts Blasko  
 Johnson  
 Kries

**FILED**

**OCT 11 2005**

William A. Shaw  
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

NOW this 10th day of October 2005, after consideration of Plaintiffs' Motion in Limine filed September 20, 2005 to exclude portions of expert testimony by Dr. Botti on behalf of Defendant Kruszewski, the Court determines that the Motion be and is HEREBY DENIED.

BY THE COURT:

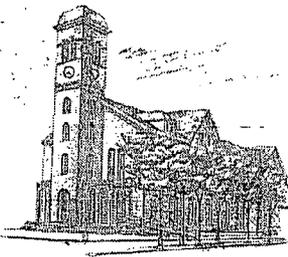
  
 FREDRIC J. AMMERMAN  
 President Judge

**FILED** ICC *Attys:*  
*10/10/05*  
 OCT 11 2005  
 William A. Shaw  
 Prothonotary/Clerk of Courts  
*Acheson*  
*Ignelzi*  
*ogg*  
*M. Murphy*  
*Blaske*  
*Johnson*  
*Kries*

**FILED**

OCT 11 2005

William A. Shaw  
Prothonotary/Clerk of Courts



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

\_\_\_\_\_ The Prothonotary's office has provided service to the following parties:

\_\_\_\_\_ Plaintiff(s)/Attorney(s)

\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

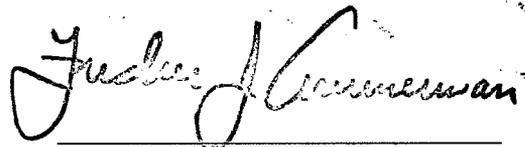
MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

NOW this 10th day of October 2005, after consideration of Plaintiffs' Motion in Limine filed September 21, 2005 to preclude any evidence or expert testimony regarding advice allegedly given by Dr. Kruszewski to Plaintiff prior to the pregnancy at issue is HEREBY GRANTED.

The probative value of evidence relating to Plaintiff-Mother's health and advice allegedly provided by Defendant Kruszewski prior to the 2000 pregnancy does not outweigh the danger of prejudice. Therefore, the Defendants shall be permitted to introduce evidence related only to the pregnancy at issue in this case.

BY THE COURT:



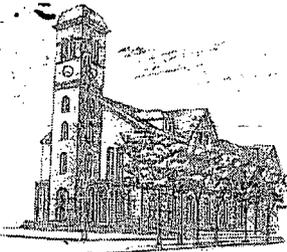
FREDRIC J. AMMERMAN  
President Judge

FILED

OCT 11 2005

William A. Shaw  
Prothonotary/Clerk of Courts

icc  
Atty's:  
Acheson  
Ignelzi  
egg  
m. Murphy  
Blasko  
Johnson  
Kries



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson -  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

X \_\_\_\_\_ The Prothonotary's office has provided service to the following parties:

X \_\_\_\_\_ Plaintiff(s)/Attorney(s)

X \_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS,  
Individually, in their own right, and as Administrators  
of the Estate of JANELL HEZING, a minor, deceased,  
Plaintiffs,

No. 02-169-CD

v.

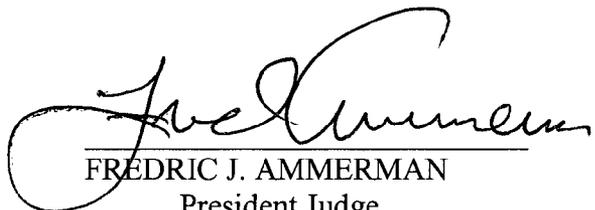
MARY C. KRUSZEWSKI, DUBOIS REGIONAL  
MEDICAL CENTER, JERJIE T. ALAJAJI, and  
RUSSELL E. CAMERON,  
Defendants.

**ORDER**

NOW, this 13th day of October 2005, after consideration of the Motions in Limine filed on behalf of Defendant DuBois Regional Medical Center and Defendant Kruszewski to strike the September 19, 2005 report of Plaintiffs' Expert Witness Dr. Jelsema, the Court determines that the Motion be and is HEREBY GRANTED. The Plaintiffs' expert, Dr. Jelsema is precluded from offering any testimony based upon the September 19, 2005 report.

Further, Defendant Kruszewski's request to preclude evidence and testimony not plead in Plaintiff's Second Amended Complaint related to Dr. Jelsema's September 19, 2005 report be and is HEREBY MOOT.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED  
OCT 13 2005

William A. Shaw  
Prothonotary/Clerk of Courts

icc Atty's: Kries  
Acheson  
Ignelzi  
Murphy  
Ogg  
Biasco  
Johnson

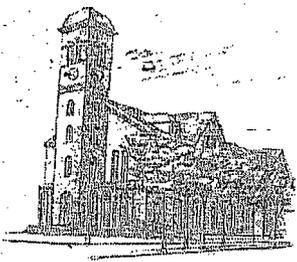
Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant



To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

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X \_\_\_\_\_ The Prothonotary's office has provided service to the following parties:

X \_\_\_\_\_ Plaintiff(s)/Attorney(s)

X \_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

NOW, this 13th day of October 2005, after consideration of the Motion in Limine to preclude evidence not plead in the Second Amended Complaint filed by Defendant DuBois Regional Medical Center on September 27, 2005, the Court HEREBY FINDS AS FOLLOWS:

1. As to the allegations contained in paragraph 6, subsections (a), (b), and (g), Defendant's Motion be and is HEREBY GRANTED. The Plaintiffs will be precluded from introducing any evidence or testimony as referenced therein.
2. As to the allegations contained in paragraph 6, subsections (c), (d), (e), and (f), Defendant's Motion be and is HEREBY DENIED. The Plaintiffs shall be permitted to introduce evidence and testimony as referenced therein.

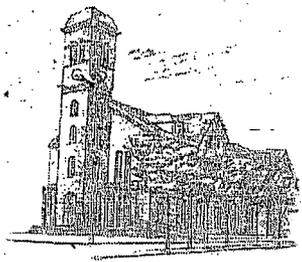
BY THE COURT:

  
 FREDRIC J. AMMERMAN  
 President Judge

**FILED**  
 014:00001  
 OCT 13 2005

William A. Shaw  
 Prothonotary/Clerk of Courts

*ice*  
*Amys*  
*Krier*  
*Acheson*  
*Ignetzi*  
*Murphy*  
*Ogg*  
*Blasko*  
*Johnson*



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

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The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
JANELL HERZING, a minor, deceased,

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

**NOTICE TO ATTEND AND TESTIFY  
SHAWN WELSH, RN**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gary J. Ogg, Esquire  
PA ID# 34515  
Michael A. Murphy, Esquire  
PA ID# 55846  
Amy Acheson, Esquire  
PA ID# 50506

Ogg, Cordes, Murphy & Ignelzi, LLP  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
(412) 471-8500  
Firm ID# 568

**JURY TRIAL DEMANDED.**

**FILED** *no cc*  
*m/11:26 AM*  
OCT 17 2005 *JS*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
JANELL HERZING, a minor, deceased,

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

**NOTICE TO ATTEND AND TESTIFY**

To: SHAWN WELSH, RN  
c/o David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
Two Chatham Center, 10<sup>th</sup> Floor  
112 Washington Place  
Pittsburgh, PA 15219-3499

1. You are hereby directed to come to the Clearfield County Court of Common Pleas, 230 E. Market Street, Clearfield, PA 16830, on Friday, October 21, 2005, at 9:00 a.m., to testify in the above-captioned case and to remain until excused.

2. If you fail to attend as required to this Notice to Attend and Testify, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Ogg, Cordes, Murphy & Ignelzi, LLP



Gary J. Ogg, Esquire

Michael A. Murphy, Esquire

Amy Acheson, Esquire

Attorneys for Plaintiffs

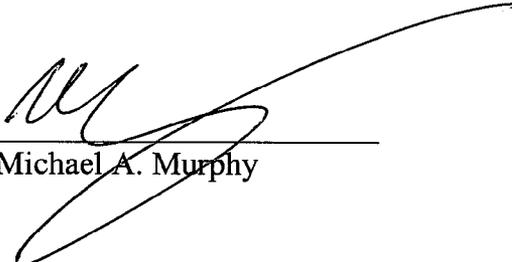
**CERTIFICATE OF SERVICE**

I, Michael A. Murphy, Esquire, hereby certify that a true and correct copy of the within Notice to Attend and Testify was served on this 14<sup>th</sup> day of October, 2005, via first-class mail, postage prepaid, on the following parties:

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
Two Chatham Center, 10<sup>th</sup> Floor  
112 Washington Place  
Pittsburgh, PA 15219-3499

John W. Blasko, Esquire  
McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801

Alan R. Krier, Esquire  
Park View Center  
Ten Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603

  
\_\_\_\_\_  
Michael A. Murphy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
JANELL HERZING, a minor, deceased,

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

**NOTICE TO ATTEND AND TESTIFY  
SHERI KIZINA, RN**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gary J. Ogg, Esquire

PA ID# 34515

Michael A. Murphy, Esquire

PA ID# 55846

Amy Acheson, Esquire

PA ID# 50506

Ogg, Cordes, Murphy & Ignelzi, LLP

245 Fort Pitt Boulevard

Pittsburgh, PA 15222

(412) 471-8500

Firm ID# 568

**JURY TRIAL DEMANDED.**

**FILED** *no cc*  
*m/1:26/31*  
OCT 17 2005 *UN*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
JANELL HERZING, a minor, deceased,

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

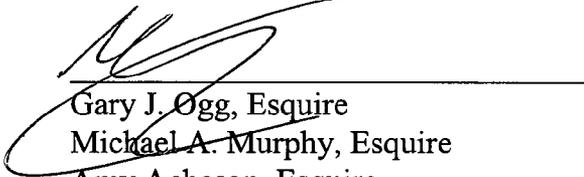
**NOTICE TO ATTEND AND TESTIFY**

To: SHERI KIZINA, RN  
c/o David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
Two Chatham Center, 10<sup>th</sup> Floor  
112 Washington Place  
Pittsburgh, PA 15219-3499

1. You are hereby directed to come to the Clearfield County Court of Common Pleas, 230 E. Market Street, Clearfield, PA 16830, on Friday, October 21, 2005, at 9:00 a.m., to testify in the above-captioned case and to remain until excused.

2. If you fail to attend as required to this Notice to Attend and Testify, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Ogg, Cordes, Murphy & Ignelzi, LLP



Gary J. Ogg, Esquire  
Michael A. Murphy, Esquire  
Amy Acheson, Esquire  
Attorneys for Plaintiffs

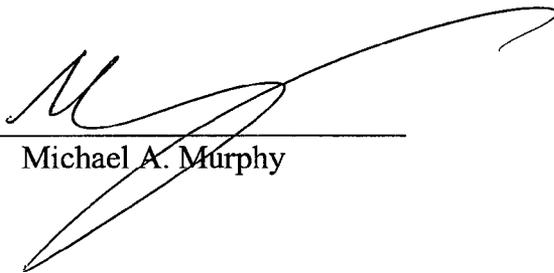
**CERTIFICATE OF SERVICE**

I, Michael A. Murphy, Esquire, hereby certify that a true and correct copy of the within Notice to Attend and Testify was served on this 14<sup>th</sup> day of October, 2005, via first-class mail, postage prepaid, on the following parties:

David R. Johnson, Esquire  
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112 Washington Place  
Pittsburgh, PA 15219-3499

John W. Blasko, Esquire  
McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801

Alan R. Krier, Esquire  
Park View Center  
Ten Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603



---

Michael A. Murphy

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PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
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v.

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Defendants.

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

**NOTICE TO ATTEND AND TESTIFY  
SUSAN BALL HEVERLEY, RN**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gary J. Ogg, Esquire

PA ID# 34515

Michael A. Murphy, Esquire

PA ID# 55846

Amy Acheson, Esquire

PA ID# 50506

Ogg, Cordes, Murphy & Ignelzi, LLP

245 Fort Pitt Boulevard

Pittsburgh, PA 15222

(412) 471-8500

Firm ID# 568

**JURY TRIAL DEMANDED.**

**FILED** No  
m/l: 2/6/05 CC  
OCT 17 2005 (LW)

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
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CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

**NOTICE TO ATTEND AND TESTIFY**

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Ogg, Cordes, Murphy & Ignelzi, LLP



Gary J. Ogg, Esquire

Michael A. Murphy, Esquire

Amy Acheson, Esquire

Attorneys for Plaintiffs

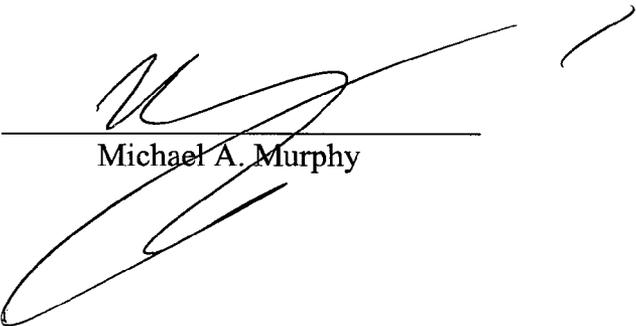
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State College, PA 16801

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Park View Center  
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P.O. Box 2024  
Altoona, PA 16603



---

Michael A. Murphy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
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Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

**NOTICE TO ATTEND AND TESTIFY  
SHERRY MAZZA, RN**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gary J. Ogg, Esquire  
PA ID# 34515  
Michael A. Murphy, Esquire  
PA ID# 55846  
Amy Acheson, Esquire  
PA ID# 50506

Ogg, Cordes, Murphy & Ignelzi, LLP  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
(412) 471-8500  
Firm ID# 568

**JURY TRIAL DEMANDED.**

**FILED** *vac*  
*mll:2634*  
OCT 17 2005 *(M)*  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
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CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

**NOTICE TO ATTEND AND TESTIFY**

To: SHERRY MAZZA, RN  
c/o David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
Two Chatham Center, 10<sup>th</sup> Floor  
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Ogg, Cordes, Murphy & Ignelzi, LLP



Gary J. Ogg, Esquire  
Michael A. Murphy, Esquire  
Amy Acheson, Esquire  
Attorneys for Plaintiffs

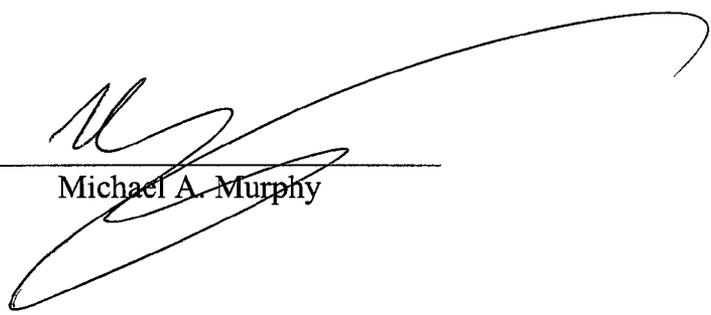
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P.O. Box 2024  
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---

Michael A. Murphy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
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Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
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RUSSELL E. CAMERON,

Defendants.

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

**NOTICE TO ATTEND AND TESTIFY  
COLLEEN R. RUSSELL, RN**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gary J. Ogg, Esquire

PA ID# 34515

Michael A. Murphy, Esquire

PA ID# 55846

Amy Acheson, Esquire

PA ID# 50506

Ogg, Cordes, Murphy & Ignelzi, LLP

245 Fort Pitt Boulevard

Pittsburgh, PA 15222

(412) 471-8500

Firm ID# 568

**JURY TRIAL DEMANDED.**

**FILED** *no cc*  
*m1:2lab*  
OCT 17 2005 *(initials)*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
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CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
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Defendants.

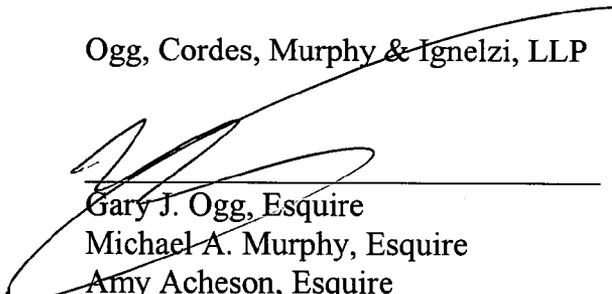
**NOTICE TO ATTEND AND TESTIFY**

To: COLLEEN R. RUSSELL, RN  
c/o David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
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112 Washington Place  
Pittsburgh, PA 15219-3499

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Ogg, Cordes, Murphy & Ignelzi, LLP



\_\_\_\_\_  
Gary J. Ogg, Esquire  
Michael A. Murphy, Esquire  
Amy Acheson, Esquire  
Attorneys for Plaintiffs

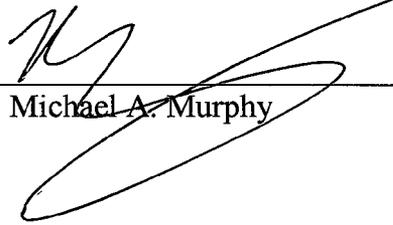
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P.O. Box 2024  
Altoona, PA 16603

  
\_\_\_\_\_  
Michael A. Murphy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
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Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
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RUSSELL E. CAMERON,

Defendants.

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

**NOTICE TO ATTEND AND TESTIFY  
MELISSA DIXON, RN**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gary J. Ogg, Esquire  
PA ID# 34515  
Michael A. Murphy, Esquire  
PA ID# 55846  
Amy Acheson, Esquire  
PA ID# 50506

Ogg, Cordes, Murphy & Ignelzi, LLP  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
(412) 471-8500  
Firm ID# 568

**JURY TRIAL DEMANDED.**

**FILED** *no cc*  
*m/l: 26894*  
OCT 17 2005 *(m)*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
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CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

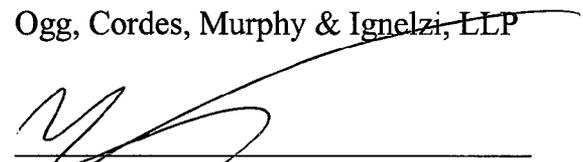
**NOTICE TO ATTEND AND TESTIFY**

To: MELISSA DIXON, RN  
c/o David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
Two Chatham Center, 10<sup>th</sup> Floor  
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Pittsburgh, PA 15219-3499

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Ogg, Cordes, Murphy & Ignelzi, LLP



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Gary J. Ogg, Esquire  
Michael A. Murphy, Esquire  
Amy Acheson, Esquire  
Attorneys for Plaintiffs

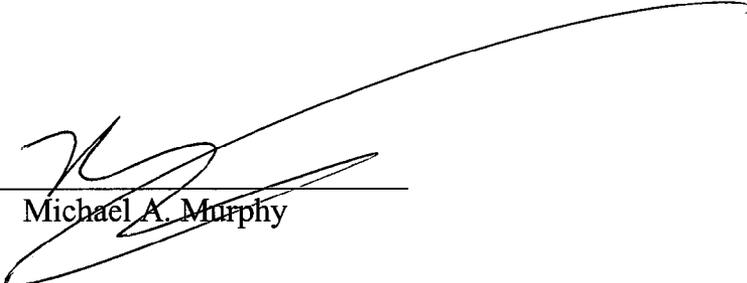
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\_\_\_\_\_  
Michael A. Murphy

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MICHELLE HERZING and JEFFREY A.  
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Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

**NOTICE TO ATTEND AND TESTIFY  
GLORIA A. BENNETT, RN**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Gary J. Ogg, Esquire  
PA ID# 34515

Michael A. Murphy, Esquire  
PA ID# 55846

Amy Acheson, Esquire  
PA ID# 50506

Ogg, Cordes, Murphy & Ignelzi, LLP  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
(412) 471-8500  
Firm ID# 568

**JURY TRIAL DEMANDED.**

**FILED** *no cc*  
*m/1:26/04*  
OCT 17 2005 

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
JANELL HERZING, a minor, deceased,

CIVIL ACTION - Medical Professional  
Liability Action

No. 02-169-CD

Plaintiffs,

v.

MARY C. KRUSZEWSKI; DUBOIS  
REGIONAL MEDICAL CENTER; and  
RUSSELL E. CAMERON,

Defendants.

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c/o David R. Johnson, Esquire  
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Ogg, Cordes, Murphy & Ignelzi, LLP



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Michael A. Murphy, Esquire  
Amy Acheson, Esquire  
Attorneys for Plaintiffs

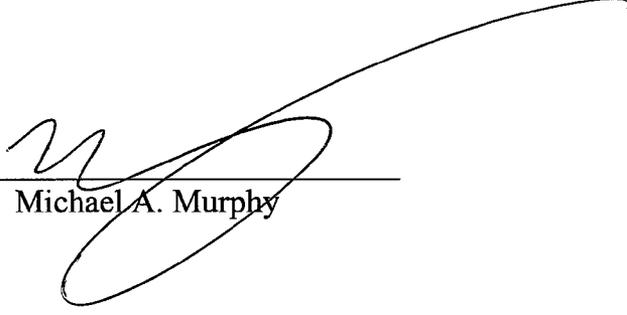
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\_\_\_\_\_  
Michael A. Murphy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased,

Plaintiffs,

Vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, and JERJIE T. ALAJAJI

Defendants.

COUNSEL FOR PLAINTIFFS:  
Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI  
John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:  
Alan Krier, Esquire

CIVIL DIVISION

No. 02-169-CD

Issue No.

**MOTION FOR RECONSIDERATION OF COURT ORDER DATED OCTOBER 10, 2005 PRECLUDING THE EXPERT REPORT OF BARBARA SCHOUCHOFF, RN**

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for These Parties:

David R. Johnson, Esquire  
PA I.D. #26409

Brad R. Korinski, Esquire  
PA I.D. #86831

THOMSON, RHODES & COWIE, P.C.  
Firm #720  
1010 Two Chatham Center  
Pittsburgh, PA 15219

(412) 232-3400

**FILED** *no cc*  
*m/10:33/01*  
OCT 18 2005 *(6)*

William A. Shaw  
Prothonotary/Clerk of Courts

MOTION FOR RECONSIDERATION OF COURT ORDER DATED  
OCTOBER 10, 2005 PRECLUDING THE EXPERT REPORT  
OF BARBARA SCHOUCHOFF, RN

NOW COMES DuBois Regional Medical Center ("DRMC"), one of the defendants, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion for reconsideration, whereby this defendant respectfully requests that this Honorable Court reconsider its above referenced Order of October 10, 2005.

1. On October 10, 2005, this Court granted the motion in limine filed by plaintiffs to strike the nursing expert report filed by this defendant. The effect of this Order is to preclude this defendant from presenting an expert witness to rebut the claims of nursing malpractice raised by the plaintiffs' in their expert reports. The Order greatly prejudices this defendant, and denies this defendant a fair trial.

2. This Court's above Order is contrary to established Pennsylvania law governing the preclusion of a party's expert report for failure to adhere to judicially established deadlines for the reasons noted below. With all due respect, defendant believes that under the particular circumstances pertaining to the Order, entry of the Order constitutes reversible error.

3. Additional expert reports have been liberally filed by all parties, except DRMC, up to and including the period of time after entry of the Order precluding DRMC's expert. These reports are all outside of the time frame imposed by the Court's June, 2004 Order, and, as evidence by the motions, briefs and cross-reports filed, have caused considerable pretrial chaos, as opposed to DRMC's report, which, when filed six months before trial, caused neither confusion, prejudice, delay, the need for a rebuttal report, or any other problem that could possibly warrant the drastic sanction of striking the report.

**A. Standard for Preclusion of an Expert Report as a Discovery Sanction:  
Necessity for a Finding of Prejudice**

4. The preclusion of an expert report (and thus of expert testimony) has been long characterized as a "drastic sanction," which should only be ordered where necessitated by compelling facts. Kemp v. Qualis, 473 A.2d 1369 (Pa. Super. 1984). There are no compelling facts necessitating the entry of such an order in this case.

5. It is established Pennsylvania law that a court's decision to preclude a party's expert report must be guided upon an analysis of whether the opposing party has sustained any prejudice by the late disclosure of the expert report. Curran v. Stradley, Ronon, Steven & Young, 521 A.2d 451 (Pa. Super. 1987); Feingold v. Southeastern Pa. Transp. Auth., 517 A.2d 1270 (Pa. 1986). "Assuming that a party has not acted in bad faith and has not misrepresented the existence of an expert expected to be called at trial, no sanction should be imposed unless the complaining party shows that he has been prejudiced from properly preparing his case for trial as a result of the dilatory disclosure." Kurian v. Anisman, 815 A.2d 152, 160 (Pa. Super. 2000). Instantly, there has been absolutely no prejudice. Plaintiffs were provided with the report as soon as it was secured. Plaintiffs possessed the report for one-half year prior to trial. Plaintiffs were provided with the report as soon as it was secured. Plaintiff possessed the report for one-half year prior to trial. The report raised no new issues. In fact, plaintiff has not even had to file a rebuttal report, because the report only rebuts plaintiffs' expert.

6. Prior to precluding a party's expert, there must be some judicial finding of prejudice based upon the presentation of the moving party that prejudice has in fact occurred. Miller v. Brass Rail Tavern, 664 A.2d 525 (Pa. 1995); Feingold v. Southeastern Pa. Transp. Auth., 517 A.2d 1270 (Pa. 1986); Pioneer Commercial Funding Corp. v. American Fin.

Mortgage Corp., 787 A.2d 269, 287 (Pa. Super. 2002); Cooper v. Burns, 545 A.2d 935 (Pa. Super. 1988); Linker v. Churnetski Trans., Inc., 520 A.2d 502 (Pa. Super. 1987); McDaniel v. Merck, Sharp and Dohme, 533 A.2d 436 (Pa. Super. 1987), appeal denied, 551 A.2d 215 (Pa. 1988). No such finding has been made in this case.

7. In concluding that prejudice has been suffered, the principle consideration is whether the opposing party learned of the expert report with enough time to respond appropriately. Christiansen v. Silfies, 667 A.2d 396 (Pa. Super. 1995) (expert report should be admitted absent prejudice or surprise to the opponent); Pentek, Inc. v. Meininger, 695 A.2d 812 (Pa. Super. 1997) (informing opposing party well before trial that an expert would be called, providing brief outline of testimony and disclosing identity of witness six days before trial represented sufficient notice); Freeman v. Maple Point, Inc., 574 A.2d 684 (Pa. Super. 1990); Aiello v. Southeastern Pa. Transp. Auth., 687 A.2d 399 (Pa. Cmwlt. 1996) (party aware of witness sixteen days before the start of trial). Unquestionably, plaintiff had sufficient time to respond had they felt the need to do so. However, this issues has not even been raised.

**B. Plaintiffs Have Failed to Identify Any Prejudice Which They  
Have Sustained on Account of the Late Disclosure of  
This Defendant's Report**

8. Plaintiffs' motion in limine to exclude this defendant's expert report does not even contain the word "prejudice." Plaintiffs have not even attempted to contend that they have suffered any prejudice (despite this being a predicate requirement under the above case law) for good reason: it is totally absent in this, as illustrated by the below facts.

9. This defendant's expert report was provided to plaintiffs on April 15, 2005, more than six months in advance of the scheduled trial date of October 21, 2005. This disclosure

provided plaintiffs with ample opportunity to respond to any of opinions contained within the report.

10. Plaintiffs cannot have been "surprised" by this defendant's expert report, as that report merely rebuts plaintiffs' own expert report which opines that this defendant's nurses failed to adhere to the nursing standard of care (as explained by plaintiff's retained obstetrician). This is not the type of situation wherein a party is made to secure a new expert in response to a new allegation or theory contained within an expert report (as is the case with plaintiff's late submitted September 19, 2005 expert report from their expert, Dr. Jelsema).

11. Indicative of the lack of prejudice suffered by the plaintiffs (beyond the fact they did not even address it in their motion) is that the plaintiffs waited five months to bring the timeliness of this defendant's expert report to the attention of the Court. Indeed, a pretrial conciliation occurred before this Court on August 11, 2005 during which the issue of this defendant's expert report was not even discussed.

12. Therefore, since no prejudice to the plaintiffs has been, or can be, shown, there is no legal basis on which to exclude this defendant's expert report for failure to comply with this Court's discovery order. Thus, this defendant respectfully requests that this Court reconsider and rescind its Order of October 10, 2005.

**C. In the Alternative, This Defendant Requests Leave of Court to  
File the Report in a Supplemental Pretrial Statement**

13. In the alternative, if this Court determines to not reconsider and rescind its Order of October 10, 2005, this defendant requests leave to file a supplemental pretrial statement which will attach the report of Barbara Schouchoff, RN to rebut the allegations of nursing malpractice

advanced by plaintiffs in their expert reports, including the report of plaintiffs' expert, Dr. Jelsema, submitted on September 19, 2005.

14. In support of its motion, this defendant avers that the granting of leave to file its expert report:

- (a) Will not cause prejudice to any party;
- (b) Will not delay trial;
- (c) Will be consistent with the fact that all of the parties have continued to file expert reports; and
- (d) Will alleviate the tremendous prejudice to DRMC that will ensue if it is precluded from calling a liability expert at time of trial.

WHEREFORE, DuBois Regional Medical Center, one of the defendants, respectfully requests that this Honorable Court reconsider its Order of October 10, 2005 precluding this defendant's expert report, and issue an Order rescinding the October 10, 2005 Order; in the alternative, this defendant requests leave of this Honorable Court to submit a supplement pretrial statement which will attach the report of Barbara Schouchoff, RN.

Respectfully Submitted,



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David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical Center,  
one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record by U.S. Mail on this 17<sup>th</sup> day of Oct, 2005:

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Brad Korinski

David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical Center,  
one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased,

Plaintiffs,

Vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER and JERJIE T. ALAJAJI,

Defendants.

COUNSEL FOR PLAINTIFFS:

Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI

John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:

Alan Krier, Esquire

CIVIL DIVISION

No. 02-169-CD

Issue No.

**MOTION IN LIMINE TO PRECLUDE PLAINTIFFS FROM PURSUING ANY LIABILITY THEORY BASED UPON AN ALLEGED BREACH OF THE NURSING STANDARD OF CARE, AND TO PRECLUDE THE TESTIMONY OF PLAINTIFFS' EXPERT, MARILYN STRINGER, Ph.D.**

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for These Parties:

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PA I.D. #26409

Brad R. Korinski, Esquire

THOMSON, RHODES & COWIE, P.C.

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FILED<sup>no</sup>  
m/10:32BH<sup>cc</sup>  
OCT 19 2005 (6)

William A. Shaw  
Prothonotary/Clerk of Courts

MOTION IN LIMINE TO PRECLUDE PLAINTIFFS FROM PURSUING  
ANY LIABILITY THEORY BASED UPON AN ALLEGED  
BREACH OF THE NURSING STANDARD OF CARE, AND TO  
PRECLUDE THE TESTIMONY OF PLAINTIFFS' EXPERT,  
MARILYN STRINGER, Ph.D.

NOW comes DuBois Regional Medical Center ("DRMC"), one of the defendants, and files the following motion in limine for the consideration of this Honorable Court.

1. The purpose of this motion in limine is two-fold: (1) to clarify the liability theories which plaintiffs may advance against DRMC at trial per this Court's Order of October 13, 2005; and (2) to preclude the testimony of plaintiffs' expert Marilyn Stringer, Ph.D., as Dr. Stringer's expert reports contain opinions critical of DRMC and its nursing staff which are not otherwise plead in the second amended complaint.

2. As this Court is aware, this case pertains to medical treatment provided to mother-plaintiff at DRMC by the defendant-physicians and other healthcare personnel pursuant to her pregnancy. Due to complications unrelated to the professional negligence of any of individuals or entities therein involved, it was discovered on December 5, 2000 that mother-plaintiff's fetus was no longer viable.

**A. Plaintiffs' Second Amended Complaint Contains No  
Allegation of Any Breach of the Nursing Standard of Care  
or Any Acts of Negligence by the DRMC Nursing Staff**

3. The operative pleading in this case is plaintiffs' second amended complaint filed on July 10, 2002. (Attached hereto as Exhibit "A").

4. The liability theories averred by plaintiffs against DRMC are contained within ¶ 64 of the second amended complaint. The totality of ¶ 64 is reproduced below.

"Defendant [DRMC], and its agents, servants and/or employees failed to properly treat and care for plaintiffs and were negligent and careless in some or all of the following particulars:

- a. In employing and/or contracting the services of each of the individual defendants;
- b. In causing and/or permitting each of the individual defendants to examine, evaluate, diagnose and/or treat plaintiffs;
- c. In failing to determine whether each of the individual defendants had sufficient training, experience and expertise to treat patients such as plaintiffs;
- d. In failing to make and enforce sufficient policies and procedures, and/or employing sufficient and competent personnel and/or owning, using or possessing adequate equipment, to ensure proper and adequate monitoring, observation, evaluation, reporting and action on plaintiffs' maternal and fetal well-being such as fetal heart rates;
- e. In failing to oversee the services being performed in its hospital facility, including its emergency, prenatal, obstetrical and/or labor and delivery departments, with particular reference to a patient such as plaintiff ..., who presented with the symptoms and history with which plaintiff presented on November 30, 2000 and thereafter; and
- f. In failing to have its hospital facility, including its prenatal, obstetrical, labor and delivery, radiology, and/or emergency departments staffed with properly trained and experienced physicians and nurses."

5. As is evident from the above, there is absolutely no allegation in the second amended complaint that the DRMC nursing staff acted in a negligent or careless manner toward plaintiffs or in any way breached the applicable nursing standard of care in the treatment rendered to plaintiffs.

6. Despite the fact that the second amended complaint does not contain an averment that the DRMC nurses breached any standard of care or were negligent in any manner, the plaintiffs have submitted the April 4, 2004 and September 15, 2004 reports of Marilyn Stringer, Ph.D. (attached hereto as Exhibits "B" and "C", respectively), a nursing expert, together with

reports from Russell D. Jelsema, M.D., an obstetrician, both of which set forth opinions critical of the DRMC nurses.

7. The opinions of Dr. Stringer, as noted below, make direct reference to specific acts of omission and commission undertaken by the DRMC nursing staff, none of which have any foundation or basis in the second amended complaint.

(a) "On December 4, 2000 ... the nursing care that [mother-plaintiff] received was NOT within the standard of care ... For instance ..., no nursing assessment ... was performed." (Exhibit "B," at p. 2).

(b) "Additionally, a nursing judgment NOT to assess fetal well being for approximately 7 hours in a high risk patient is NOT within the standard of nursing care." (Exhibit "B," at p. 2).

(c) "... to repeat the induction medication at 5:00 a.m. without determining the status of the unborn baby is NOT within the standard of care." (Exhibit "B," at p. 2).

(d) "Allowing 3 hours and 45 minutes to pass before notifying the primary care provider that assessment of fetal welling could not be determined is NOT within the standard of care. Between 7:30-9:00 a.m., the nurse does have documentation to support her attempts to monitor fetal well-being. Once again, between 9:00 a.m. and 11:15 a.m., the nurse did not attempt to monitor fetal heart tones and patient self report of contractions every 30 minutes as ordered by the physician. Once again, this is not within the standard of care." (Exhibit "B," p. 2).

(e) "... A nursing judgment to assess fetal heart tones 3 times during a 7 hour time period is not within the standard of care for a high risk intrapartal mother baby/dyad." (Exhibit "C," p. 2).

(f) "My expert opinion is that the nursing care delivered to [mother-plaintiff] was not within the standard of care. In particular, the nursing care delivered on December 4 between the hours of 1:30 a.m. until 7:00 a.m. were not within the standard of care. The nursing care delivered on December 4 between the hours of 9:00 to 11:15 a.m. were not within the standard of care. Within a reasonable degree of nursing

certainty, the actions and omissions of the nurses increased the risk of harm that was actually suffered in this case ... ." (Exhibit "C," p. 3).

8. Similar opinions to those of Dr. Stringer have been offered by Dr. Jelsema, plaintiffs' other expert. However, by offering such opinions, plaintiffs are advancing liability theories which have not been plead against DRMC in the second amended complaint; and, thus, each time the plaintiffs have submitted an expert report, they are, in actuality, improperly amending their pleadings.

**B. Pennsylvania Law Prohibits a Party from Pursuing Legal Theories at Trial Which Have Not Been Plead**

9. "A complaint must not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but it must also formulate the issues by summarizing the facts essential to support the claim." Baker, et al. v. Rangos, 324 A.2d 498 (Pa. Super. 1974), citing Pa. R.C.P. 1019(a).

10. A plaintiff cannot file a complaint which avers one cause of action, and then be permitted, on the eve of trial, to prove a different cause of action which has not been plead. Smith v. County of Allegheny, 155 A.2d 615, 616 (Pa. 1959). The purpose behind this prohibitory rule is that, if a plaintiff were permitted to proceed upon a cause of action not otherwise plead, this would permit the filing of a new cause of action beyond the statute of limitations. *See* Junk v. East End Fire Dept., 396 A.2d 1269, 1277 (Pa. 1978); Laursen v. General Hospital of Monroe County, 431 A.2d 237 (Pa. 1981); Reynolds v. Thomas Jefferson University Hospital, 676 A.2d 1205 (Pa. Super. 1996), appeal denied 700 A.2d 442 (Pa. 1996).

**C. The Prior Orders of This Court Act to Preclude  
Plaintiffs from Pursuing at Trial Any Liability Theories  
Concerning Breach of the Nursing Standard of Care  
Since Same Were Not Plead in the Second Amended Complaint**

11. Co-defendant Dr. Kruszewski has filed a motion in limine to limit plaintiffs' liability theories at trial to those presented and plead by plaintiffs in their second amended complaint. By Order dated October 4, 2005, this Court granted that motion as follows:

"Defendant's motion to preclude theories not plead is HEREBY GRANTED, except, the plaintiff shall be permitted to include evidence of the alleged failure to discuss risks and benefits of vaginal delivery."

12. Thus, since plaintiffs will not be permitted to pursue liability theories at trial against Dr. Kruszewski which have not been plead in the second amended complaint, plaintiffs should also be precluded from advancing any liability arguments against DRMC and its nurses which are not founded upon the pleadings.

13. Further, on September 27, 2005, this defendant submitted a "Motion in Limine to Preclude Plaintiffs from Pursuing Liability Theories at Trial Which Have Not Been Plead in Their Amended Complaint," which, in all material respects joined in the similar motion filed by Dr. Kruszewski. This Court partially granted that motion by Order of October 13, 2005 through the following language.

"As to the allegations contained within paragraph 6, subsections (a), (b), and (g), defendant's motion be and is HEREBY GRANTED. The plaintiffs will be precluded from introducing any evidence or testimony as referenced herein."

14. As to those allegations granted by the Court in its above Order (and, therefore, unable to be argued by plaintiffs at trial), subsection (a) of the motion, as directly quoted from this defendant's motion in limine, pertained to "the alleged failure of the nursing staff to meet the standard of care."

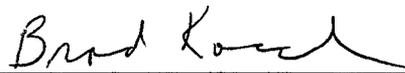
15. Thus, based on this Court's Order of October 13, 2005, the plaintiffs should not be able to argue at trial, either through introduction of evidence or by the testimony of expert witnesses, that DRMC and/or its nursing staff breached any nursing standard of care.

16. Additionally, premised upon this Court's Order of October 13, 2005 and on the above paragraphs of this motion, the testimony of plaintiffs' nursing expert, Dr. Stringer, should likewise be barred and prohibited since, as reflected by her attached reports, the only import of her testimony as a nursing expert is to opine that the DRMC nurses breached the standard of care - a theory of liability which is not plead within the second amended complaint.

WHEREFORE, DuBois Regional Medical Center, one of the defendants, respectfully requests that this Honorable Court grant the within motion in limine and thereby preclude the plaintiffs from introducing any evidence or testimony at trial based upon the alleged breach of the nursing standard of care (as same has not been plead in the complaint), and also to preclude the testimony of plaintiffs' expert, Marilyn Stringer, Ph.D.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



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David R. Johnson, Esquire

Brad R. Korinski, Esquire

Attorneys for DuBois Regional Medical Center, one  
of the defendants.

JUL 12 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, as Administrators of the Estate of JANELL HERZING, a minor, deceased, and MICHELLE HERZING, individually in her own right,

CIVIL DIVISION

No. 02-169-CD

Code: 007

Plaintiffs,

v.

**SECOND AMENDED COMPLAINT IN CIVIL ACTION**

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER AND JERIE T. ALAJAJI, AND RUSSELL E. CAMERON,

Filed on behalf of Plaintiffs

Counsel for this party:

Defendants.

Amy Acheson, Esquire  
PA Id #50506

Philip A. Ignelzi, Esquire  
PA Id #34286

Michael A. Murphy, Esquire  
PA Id #55846

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FAX: 412/471-8503

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, as Administrators of the Estate of JANELL HERZING, a minor, deceased, and MICHELLE HERZING, individually in her own right,

CIVIL DIVISION

No. 02-169-CD

Code: 007

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER AND JERJIE T. ALAJAJI, AND RUSSELL E. CAMERON,

Defendants.

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed with out you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:**

**David Meholick, Court Administrator  
Clearfield County Courthouse  
One North 2<sup>nd</sup> Street  
Clearfield, PA 16830  
(814) 765-2641, Extension 5982**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. JARVIS, as Administrators of the Estate of JANELL HERZING, a minor, deceased, and MICHELLE HERZING, individually in her own right,

CIVIL DIVISION

No. 02-169-CD

Code: 007

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER AND JERJIE T. ALAJAJI, AND RUSSELL E. CAMERON,

Defendants.

**SECOND AMENDED COMPLAINT IN CIVIL ACTION**

1. MICHELLE HERZING, Plaintiff herein, is a resident of Clearfield County, Pennsylvania, and is the mother of JANELL HERZING, a minor, deceased, another Plaintiff herein.
2. JEFFREY R. JARVIS, Plaintiff herein, is a resident of Clearfield County, Pennsylvania, and is the father of JANELL HERZING, a minor, deceased, another Plaintiff herein.
3. Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, were appointed Administrators of the Estate of JANELL HERZING, deceased, by the Register of Wills of Clearfield County, Pennsylvania, at No. 2002-21.
4. Plaintiffs, as Administrators of the Estate of JANELL HERZING, deceased, bring this action on their own behalf and on behalf of all persons entitled to recover damages for the wrongful death of JANELL HERZING pursuant to 42 Pa. C.S.A. Section 8301. Plaintiffs also

bring this action to recover damages on behalf of the Estate of JANELL HERZING pursuant to 42 Pa. C.S.A. Section 8302.

5. The names and addresses of all persons entitled by law to recover damages for JANELL HERZING's wrongful death and their relationship to the decedent are:

MICHELLE HERZING, mother  
406 Kuntz Street  
DuBois, PA 15801

JEFFREY R. JARVIS, father  
406 Kuntz Street  
DuBois, PA 15801

6. MARY C. KRUSZEWSKI, Defendant herein, is an individual who resides and/or practices medicine in Clearfield County, Pennsylvania, and at all times relevant hereto was a licensed physician in the Commonwealth of Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant held herself out to be a health care provider who possessed skill and knowledge in obstetrics, and further, held herself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

7. DUBOIS REGIONAL MEDICAL CENTER (herein after referred to as "DuBois Regional"), Defendant herein, is a corporation chartered and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business in DuBois, Clearfield County, Pennsylvania. At all times relevant to the matters set forth herein, this Defendant owned, operated, possessed and maintained a general hospital and, through physicians and other health care personnel at said hospital, provided medical, obstetrical and emergency services to Plaintiffs and other patients.

8. JERJIE T. ALAJAJI, Defendant herein, is an individual and a licensed physician in the Commonwealth of Pennsylvania who resides and/or practices medicine in DuBois, Clearfield

County, Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant was an employee, agent, ostensible agent and/or on the medical staff of Defendant DuBois Regional, and held himself out to be a health care provider who possessed skill and knowledge in radiology and, further, held himself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

9. RUSSELL E. CAMERON, Defendant herein, is an individual and a licensed physician in the Commonwealth of Pennsylvania who resides and/or practices medicine in DuBois, Clearfield County, Pennsylvania. At all times relevant to the matters set forth in this Complaint, this Defendant was an employee, agent, ostensible agent and/or on the medical staff of Defendant DuBois Regional, and held himself out to be a health care provider who possessed skill and knowledge in emergency medicine, and, further, held himself out to the public, including Plaintiff, MICHELLE HERZING, as being so qualified.

#### **FACTUAL BACKGROUND**

10. Beginning on or about July 3, 2000, Plaintiff MICHELLE HERZING, who was then pregnant with minor Plaintiff deceased, sought, received and came under the obstetrical care and treatment of Defendant Kruszewski. Plaintiff MICHELLE HERZING, had been under the care of Defendant Kruszewski for her prior pregnancies, including her 1996 pregnancy in which she was diagnosed with severe preeclampsia at 34 weeks gestation, and which resulted in Cesarean section delivery of a live infant.

11. On or about July 14, 2000, Defendant Kruszewski estimated Plaintiff MICHELLE HERZING's delivery date to be December 30, 2000.

12. On or about September 6, 2000, Plaintiff MICHELLE HERZING, underwent an ultrasound on orders of Defendant Kruszewski that demonstrated fetal measurements consistent with her estimated gestational age.

13. On November 15, 2000, at approximately 33 weeks gestation, Plaintiff MICHELLE HERZING again presented for prenatal physical examination by Defendant Kruszewski. Urine tests were performed on orders of Defendant Kruszewski. The test results demonstrated an elevated uric acid level.

14. On November 30, 2000, Plaintiff MICHELLE HERZING presented at Defendant DuBois Regional's Emergency Department where Defendant Cameron performed physical examination of Plaintiff MICHELLE HERZING.

15. During this Emergency Department admission, Plaintiff MICHELLE HERZING was found to have blood pressures by Dynamap of 226/133 at 8:08 p.m. and more than 300 gm/dl urine protein. She was found to have increased hemoglobin, increased creatinine and increased uric acid over November 15, 2000 values. During this Emergency Department admission, no attempt was made to assess the well-being or physical condition of minor Plaintiff by fetal heart monitor, ultrasound, or in any other manner.

16. On November 30, 2000, Defendant Cameron diagnosed Plaintiff MICHELLE HERZING with "bronchitis/bronchospasm" and discharged her to home.

17. On December 1, 2000, at or about 2:36 p.m., Plaintiff again presented to Defendant DuBois Regional and was admitted by telephone order of Defendant Kruszewski. At this time, Plaintiff MICHELLE HERZING was approximately 36-1/7 weeks pregnant with JANELL  
-HERZING.

18. On December 1, 2000, following Plaintiffs' hospital admission, Defendant Kruszewski performed physical examination of Plaintiff MICHELLE HERZING, at which time her blood pressure was 227/114. Her creatinine was elevated at 1 mg/dl.
19. Also on December 1, 2000, Defendant Alajaji interpreted a biophysical profile of Minor-Plaintiff as "6/8", using a gestational age of 31-3/7 weeks.
20. Furthermore, throughout the period November 30 through December 5, 2000, Plaintiff MICHELLE HERZING continued to have persistent elevated blood pressures.
21. Throughout the period November 30 through December 5, 2000, Defendant Kruszewski and the other physicians and health care personnel caring for Plaintiffs were unable to maintain adequate capture of the fetal heart tones.
22. On December 1, 2000, the health care personnel caring for Plaintiffs at DuBois Regional recorded a baseline fetal heart rate of 130s-140s in 30 seconds of capture.
23. On December 2, 2000, the health care personnel caring for Plaintiffs recorded at least two variable decelerations from a baseline of 140 beats per minute during an approximately one minute period of capturing fetal heart tones.
24. On December 3, 2000, at approximately 4:00 p.m., the health care personnel caring for Plaintiffs noted a fetal heart rate baseline in the 130s during a short period of capture.
25. Throughout the period from November 30, 2000 through delivery of minor Plaintiff. Defendants Kruszewski and DuBois Regional, through its agents, servants and/or employees, were unable to obtain a reassuring fetal heart rate pattern for JANELL HERZING.
26. Beginning on December 3, 2000, Defendant Kruszewski ordered the administration of Cytotec to Plaintiff MICHELLE HERZING for cervical ripening, despite this Defendant's knowledge of Plaintiff's prior Cesarean delivery.

27. On December 4, 2000, a fetal heart rate baseline was captured at 12:00 a.m. of "120s" and maternal blood pressure of 171/87. The next recorded blood pressure was 194/100 at 9:49 a.m. on December 4, 2000.

28. Beginning at approximately midnight on December 4, 2000, the health care personnel caring for Plaintiffs were completely unable to capture Plaintiffs' fetal heart tones.

29. At approximately 11:15 a.m., an attempt was made to communicate Plaintiffs' condition by telephone to Defendant Kruszewski, who was unavailable.

30. At approximately 11:45 a.m. on December 4, 2000, Defendant Kruszewski telephoned the health care personnel caring for Plaintiffs at DuBois Regional and informed them she was aware of their inability to capture fetal heart tones and that Defendant Kruszewski would come to the hospital after another meeting she was attending.

31. On December 4, 2000 at or about 12:50 p.m., Defendant Kruszewski performed artificial rupture of the membranes with meconium staining and thereafter applied at least two different scalp electrodes to minor-Plaintiff.

32. Minor-Plaintiff was delivered stillborn at approximately 9:30 a.m. on December 5, 2000 by induced vertex vaginal delivery performed by Defendant Kruszewski.

33. As a result of Defendants' breaches of the duties owed to Plaintiffs in failing to treat Plaintiffs' for preeclampsia and/or severe preeclampsia in a timely and proper manner, Plaintiffs suffered the personal injuries and damages described hereafter.

34. At all times relevant to the matters set forth in this Complaint, Defendants Alajaji and Cameron, and the other health care personnel who observed, cared for and/or treated Plaintiffs at Defendant DuBois Regional, were the agents, servants and/or employees of Defendants Kruszewski and/or DuBois Regional, and were acting while in and upon the business of Defendants

Kruszewski and/or DuBois Regional and while in the course of their employment by said Defendants.

35. At all times relevant to the matters set forth in this Complaint, the physicians, nurses and other health care personnel who observed, cared for and/or treated Plaintiffs were the agents, servants and/or employees of Defendants Kruszewski and/or DuBois Regional and were acting while in and upon the business of said Defendants and while in the course of their employment by said Defendants.

**COUNT I**  
**WRONGFUL DEATH – Estate of JANELL HERZING vs. Defendant Kruszewski**

36. Paragraphs 1 through 35, inclusive, are incorporated herein by reference as if set forth at length.

37. Defendants, at all relevant times, acted as Plaintiffs' health care providers and, as such, undertook and/or owed duties of care to Plaintiffs.

38. Defendant Kruszewski, her agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

- a. In failing to treat Plaintiff's persistently elevated systolic and diastolic blood pressures in a timely and appropriate manner;
- b. In failing to diagnose and/or treat Plaintiff's preeclampsia and/or severe preeclampsia in a timely and appropriate manner;
- c. In failing to obtain, maintain, test and act upon in a timely and appropriate manner minor Plaintiff's fetal heart rate;
- d. In failing to use December 30, 2000 as the due date in reading and/or interpreting ultrasound studies of Plaintiffs;
- e. In failing to diagnose, treat and/or act upon Plaintiff's proteinuria in a timely and appropriate manner;

- f. In failing to communicate to the other Defendants with respect to Plaintiff's test results and physical condition in a timely manner;
- g. In failing to properly read, analyze, interpret and/or act upon radiological, ultrasound and laboratory studies performed on Plaintiffs beginning on November 15, 2000;
- h. In failing to perform Doppler studies of the umbilical artery;
- i. In failing to adequately obtain, maintain and capture a fetal heart rate showing Plaintiffs' condition and act upon the same;
- j. In failing to institute and maintain continuous electronic fetal monitoring;
- k. In failing to auscultate the fetal heart rate;
- l. In failing to perform fetal scalp gas sampling;
- m. In failing to obtain and act upon appropriate and timely consultations with medical specialists beginning on November 15, 2000, including material-fetal medicine consultations;
- n. In delivering Minor-Plaintiff vaginally;
- o. In failing to perform a proper and timely Cesarean delivery of Minor-Plaintiff.
- p. In failing to ensure Plaintiffs were appropriately monitored and cared for by qualified medical physicians and surgeons;
- q. In failing to obtain and act upon an oxytocin challenge test in a timely and appropriate manner;
- r. In administering and/or causing to be administered Cytotec to Plaintiff;
- s. In failing to make, implement and follow an appropriate plan for Plaintiffs' prenatal care and delivery;
- t. In failing to cure and/or arrest the hypertensive disease processes in the bodies of Plaintiffs and/or in permitting such processes to develop and/or continue; and
- u. In causing Plaintiffs' physical condition to deteriorate and in causing Plaintiffs to suffer injuries due to severe preeclampsia and/or preeclampsia.

39. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

40. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

- a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;
- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Kruszewski in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT II**  
**WRONGFUL DEATH – Estate of JANELL HERZING v. Jerjie T. Alajaji**

41. Paragraphs 1 through 40, inclusive, are incorporated herein by reference as if set forth at length.

42. Defendant Alajaji and his agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

- a. In failing to use December 30, 2000 as the due date in reading and/or interpreting ultrasound studies of Plaintiffs;
- b. In failing to communicate to Defendant Kruszewski Plaintiffs' test results and physical conditions in a timely manner;

- c. In failing to correlate Plaintiff's clinical medical condition and medical history with ultrasound in interpreting the fetal ultrasound study;
- d. In failing to perform Doppler studies of the umbilical artery;
- e. In incorrectly interpreting the fetal ultrasound;
- f. In formulating an inherently flawed, incorrect and falsely reassuring biophysical profile;
- g. In failing to properly correlate Plaintiffs' prior ultrasound study in reading and interpreting the December, 2000 radiological findings; and
- h. In making erroneous fetal measurements of minor-Plaintiff.

43. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

44. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

- a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;
- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Alajaji in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT III**  
**WRONGFUL DEATH – Estate of JANELL HERZING v. Russell E. Cameron**

45. Paragraphs 1 through 44, inclusive, are incorporated herein by reference as if set forth at length.

46. Defendant Cameron and his agents, servants and/or employees failed to exercise the judgment and skills of a reasonable health care provider under the circumstances, and was negligent and careless in some or all of the following particulars:

a. In failing to treat Plaintiff's persistently elevated systolic and diastolic blood pressures in a timely and appropriate manner;

b. In failing to diagnose and/or treat Plaintiff's preeclampsia and/or severe preeclampsia in a timely and appropriate manner;

c. In failing to institute and maintain continuous electronic fetal monitoring;

d. In failing to diagnose, treat and/or act upon Plaintiff's proteinuria in a timely and appropriate manner;

f. In failing to communicate to Defendant Kruszewski Plaintiff's test results and physical condition in a timely manner;

k. In failing to obtain and act upon appropriate and timely consultations with medical specialists, including maternal-fetal medicine consultations;

r. In failing to cure and/or arrest the hypertensive disease processes in the bodies of Plaintiffs and/or in permitting such processes to develop and/or continue;

s. In causing Plaintiffs' physical condition to deteriorate and in causing Plaintiffs to suffer injuries due to severe preeclampsia and/or preeclampsia; and

s. In causing Minor-Plaintiff to suffer intracranial hemorrhage.

47. As a direct and proximate result of the conduct set forth, or as a result of an increased risk of harm, JANELL HERZING sustained serious conditions resulting in her death on December 5, 2000.

48. The persons entitled by law to recover damages for JANELL HERZING's wrongful death, identified herein, have sustained the following damages and losses:

a. Medical expenses for services and supplies incident to the treatment and subsequent death of JANELL HERZING;

- b. Funeral and administrators' expenses because of JANELL HERZING's death;
- c. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING; and
- d. Expenses incurred in the administration of JANELL HERZING's estate.

WHEREFORE, Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim damages against Defendant Cameron in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT IV**  
**WRONGFUL DEATH – Estate of JANELL HERZING vs. DuBois Regional Hospital**

49. Paragraphs 1 through 48, inclusive, are incorporated herein by reference as if set forth at length.

50. Defendant DuBois Regional had a duty and responsibility to Plaintiffs, its patients, and to the public to furnish appropriate and competent medical care.

51. As part of its duties and responsibilities, DuBois Regional had an obligation to establish policies and procedures, and have competent medical personnel, to provide that appropriate medical care and treatment would be conducted within its institution and organization to patients such as Plaintiffs.

52. Acting through its administrators, various boards, committees, shareholders and individuals, Defendant DuBois Regional was responsible for the standards of professional practice by members of its staff in the manner set forth herein.

53. At all relevant times, Defendant DuBois Regional had a duty to select and retain only competent physicians, nurses, technicians, and other health care providers. It had a duty to oversee, supervise and coordinate the efforts of all persons rendering medical care and treatment within its

walls, including, but not limited to, the formulation and enforcement of adequate and appropriate rules, procedures and policies to discharge its duty outlined above.

54. At all relevant times, DuBois Regional acted through its duly authorized agents, servants and/or employees as set forth more fully above, who conducted themselves within the scope of their agency and/or employment. This conduct included, but was not limited to, conduct of Defendants Kruszewski, Alajaji and Cameron referred to herein, along with the other factors, which gave Plaintiffs the impression that an agent, employee and/or servant relationship existed between them.

55. At all relevant times, DuBois Regional acted through its duly authorized agents, servants and/or employees as set forth more fully above, had a duty to formulate, adopt and enforce policies and procedures to ensure that adequately trained physicians, nurses, technicians and other health care providers were consulted promptly to assess and treat any and all symptoms exhibited by, or requests made by, a patient which called for special skills or expertise.

56. In holding out Defendants Kruszewski, Alajaji and Cameron as its agents, servants and/or employees, Defendant DuBois Regional created an ostensible agency relationship with said Defendants and permitted said Defendants to use its facilities to treat patients.

57. At all relevant times, Defendant DuBois Regional owed Plaintiffs a duty to oversee all persons who rendered medical care and treatment within its facility and specifically owed a duty to oversee the conduct of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers.

58. At all relevant times, Defendant DuBois Regional owed Plaintiffs the duty to formulate, adopt and enforce rules or policies requiring physicians, or those with staff privileges, to

obtain consultations when a patient's needs exceed their own medical knowledge, skill and/or experience.

59. Defendant DuBois Regional owed a direct duty to Plaintiffs to provide, select, and retain, only competent physicians, staff and employees.

60. Defendant DuBois Regional failed to supply that quality of care and competence of properly skilled and trained personnel, including physicians, nurses, technicians and other health care providers as set forth in this Complaint.

63. Defendant DuBois Regional permitted physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers to attend to Plaintiffs when it knew, or should have known, that they were unable, by virtue of their training and/or experience, to adequately safeguard the life and welfare of Plaintiffs.

61. At all relevant times, the work of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers, was so intimately associated with the medical function of DuBois Regional that DuBois Regional controlled or had a right to control their acts. Because of the relationship which existed, DuBois Regional is liable for the negligence of physicians, including but not limited to the individual Defendants, nurses, technicians and other health care providers.

62. At all relevant times, DuBois Regional knew, or should have known, of the negligent acts and/or omissions as set forth in this Complaint. Despite this actual or constructive knowledge of the negligent treatment of Plaintiffs, DuBois Regional did nothing to ensure their safety.

63. Defendant DuBois Regional had an obligation to provide adequate health care and treatment to individuals such as Plaintiffs.

64. Defendant DuBois Regional, and its agents, servants and/or employees failed to

properly treat and care for Plaintiffs and were negligent and careless in some or all of the following particulars:

- a. In employing and/or contracting the services of each of the individual Defendants;
- b. In causing and/or permitting each of the individual Defendants to examine, evaluate, diagnose and/or treat Plaintiffs;
- c. In failing to determine whether each of the individual Defendants had sufficient training, experience and expertise to treat patients such as Plaintiffs;
- d. In failing to make and enforce sufficient policies and procedures, and/or employing sufficient and competent personnel and/or owning, using or possessing adequate equipment, to ensure proper and adequate monitoring, observation, evaluation, reporting and action on Plaintiffs' maternal and fetal well-being such as fetal heart rates;
- e. In failing to oversee the services being performed in its hospital facility, including its emergency, radiology, prenatal, obstetrical and/or labor and delivery departments, with particular reference to a patient such as Plaintiff MICHELLE HERZING, who presented with the symptoms and history with which Plaintiff presented on November 30, 2000 and thereafter; and
- f. In failing to have its hospital facility, including its prenatal, obstetrical, labor and delivery, radiology, and/or emergency departments staffed with properly trained and experienced physicians and nurses.

65. As a result of the conduct of Defendant DuBois Regional, its agents, servants and/or employees, Plaintiff suffered the injuries and damages described in paragraph 42 of this Complaint, which paragraph is incorporated herein by reference.

WHEREFORE, Plaintiffs MICHELLE HERZING and JEFFREY R. JARVIS, on behalf of the Estate of JANELL HERZING, claim compensatory damages against Defendant DuBois Regional Hospital in a sum in excess of the applicable arbitration limits, together with costs of suit, and demands a trial by jury.

**COUNT V**  
**SURVIVAL – Plaintiffs vs. All Defendants**

66. Paragraphs 1 through 65 are incorporated herein as if set forth at length.

67. As a direct and proximate result of the previously described negligent conduct of Defendants, Plaintiffs suffered the following damages:

a. JANELL HERZING's pain, suffering, anguish, and inconvenience until the time of her death; and

b. JANELL HERZING's loss of earnings less the cost of her maintenance.

WHEREFORE, Plaintiffs demand judgment against Defendants in a sum in excess of the applicable arbitration limits, together with costs of suit, and demand a trial by jury.

**COUNT VI**  
**NEGLIGENCE – Michelle Herzing vs. All Defendants**

68. Paragraphs 1 through 67 are incorporated herein as if set forth at length.

69. As a result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff MICHELLE HERZING suffered persistently elevated blood pressures, preeclampsia and severe preeclampsia. She suffered eye injury, damage to her vision, and other serious injuries and impairments, and her general health has been impaired. She suffered nervous shock and her nervous system has been impaired. Some or all of these injuries are permanent in nature.

70. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has been forced to incur medical and other expenses for doctors, hospitals and therapeutic care and treatment, and she will be forced to incur additional expenses for like items in the future.

71. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has suffered, and/or will suffer in the future, loss of earnings.

72. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has suffered and will suffer in the future, the loss of the services, earnings and/or companionship of her daughter, the Minor Plaintiff.

WHEREFORE, Plaintiff MICHELLE HERZING demands judgment against Defendants in a sum in excess of the applicable arbitration limits and demand a trial by jury.

Ogg, Cordes, Murphy & Ignelzi, L.L.P.



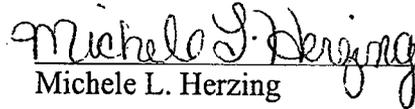
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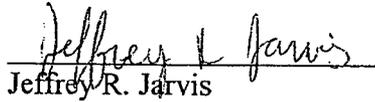
Michael A. Murphy, Esquire

VERIFICATON

I, MICHELE L. HERZING, hereby verify that we have read the foregoing SECOND AMENDED COMPLAINT IN A CIVIL ACTION, and that the statements contained therein are correct to the best of our personal knowledge, information or belief.

This statement and verification are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if we make knowingly false averments, we may be subject to criminal penalties.

  
Michele L. Herzing

  
Jeffrey R. Jarvis

Date: \_\_\_\_\_, 2002



School of Nursing  
Nursing Education Building  
420 Guardian Drive  
Philadelphia, PA 19104-6096  
Tel 215.898.8281

April 4, 2004

Ogg, Cordes, Murphy & Ignelizi, L.L.P.  
Attorneys at Law  
Riverview Place  
245 Fort Pitt boulevard  
Pittsburgh, Pennsylvania 15333

RE: Michelle Herzing

Dear Ms. Howard,

As per your request, I am providing you with my expert opinion regarding the nursing care provider to Michelle Herzing during her delivery hospitalization stay in December 2000. On December 1 at 3:35 PM Ms. Herzing was admitted as 36 weeks gestation (LMP was 3/25/00; EDD 12/30/00) for evaluation of elevated blood pressures ranging from 180s-190s/90s-100s. The previous day, 11/30/04, she had been seen in the Emergency Room for bronchitis and at that time was found to have a high blood pressure, rising BUN and creatinine along with other normal lab results. On December 1, 2000 her blood pressure was 227/114 with normal reflexes. By ultrasonic evaluation, her unborn baby's biophysical profile score was determined to be 6/8 (no fetal breathing noted) and gestational age growth was determined to be 31 weeks, 3 days. From admission until the time of induction, Michelle and her unborn baby received appropriate nursing care during her medical work up for elevated blood pressures.

On the evening of December 3 at 6:05 PM a medical decision was made to begin labor induction of Michelle due to elevated blood pressures and possible pre-eclampsia. Typically, during labor induction, continuous monitoring would be used to assess for uterine contractions and fetal heart tones. Due to Michelle's morbid obesity (449 pounds), continuous monitoring would not be possible until cervical dilation would allow placement of an internal uterine pressure catheter and a fetal scalp electrode. Prior to the time when cervical dilation would allow for internal surveillance, fetal heart tones were to be monitored and a patient self report of contractions would be elicited EVERY 30 MINUTES.

From December 3 at 6:05 PM until December 3 at 22:45 PM documentation is evident that supports nursing assessment of fetal heart tones and contraction every 30 minutes.

UNIVERSITY of PENNSYLVANIA



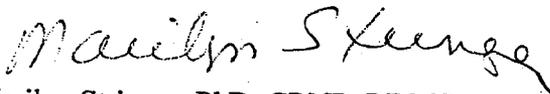
On December 4, 2000, from 1:38 AM until 7 AM the nursing care that Michelle Herzing received was NOT within the standard of care. Numerous breaches of the standard of care are noted in the record during this period of time. For instance, although a note is written numerous times that the patient was sleeping, no nursing assessments of the maternal and more importantly in this case, the unborn baby's status was performed. Essentially, Michelle did not receive nursing care during these hours. On December 4, 2000, at 1:08 AM is the last record that can provide evidence of a fetal heart rate. The nurses note indicating that fetal heart tones would be monitored while awake was NOT ordered, thereby proving that this nursing note and intervention were not within the standard of care. In other words, no medical order was written to support the nurse's intervention. Additionally, a nursing judgment NOT to assess fetal well being for approximately 7 hours in a high risk patient is NOT within the standard of nursing care. This unborn baby was determined at admission to be at risk due to the ultrasound assessment indicating over a 3 week lag in fetal growth. Therefore both the mother and her unborn baby were at risk for adverse perinatal outcomes. Once again, to repeat the induction medication at 5:00 AM without determining the status of the unborn baby is NOT within the standard of care.

At 7:30 am an attempt is made to assess fetal well being. The nurse states that audible FHTs are heard around the rate of 170s but is unable to obtain a fetal heart rate tracing. The nurse continues to have difficulty assessing the fetal heart rate and after 3 hours and 45 minutes decides to notify the physician. Allowing 3 hours and 45 minutes to pass before notifying the primary care provider that assessment of fetal welling could not be determined is NOT within the standard of care. Between 7:30-9:00am the nurse does have documentation to support her attempts to monitor fetal well being. Once again, between 9:00 AM and 11:15 AM the nurse did not attempt to monitor fetal heart tones and patient self report of contractions every 30 minutes as ordered by the physician. Once again, this is not within the standard of care.

In closing, my expert opinion is that the nursing care delivered to Michelle Herzing was not within the standard of care. In particular the nursing care delivered on December 4 between the hours of 1:30 AM until 7:00 AM were not within the standard of care. The nursing care delivered on December 4 between the hours of 9:00-11:15 AM were not within the standard of care.

Thank you for providing me the opportunity to review this case. Please feel free to contact me if I can be of further assistance.

Sincerely,



Marilyn Stringer, PhD, CRNP, RDMS  
Associate Professor/ Clinician Educator  
University of Pennsylvania



School of Nursing  
Nursing Education Building  
420 Guardian Drive  
Philadelphia, PA 19104-6096  
Tel 215.898.8281

September 15, 2004

Ogg, Cordes, Murphy & Ignelizi, L.L.P.  
Attorneys at Law  
Riverview Place  
245 Fort Pitt boulevard  
Pittsburgh, Pennsylvania 15333

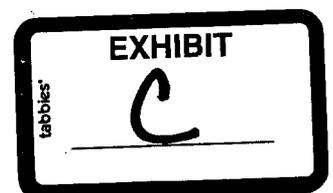
RE: Michelle Herzing

Dear Ms. Howard,

As per your request, I am providing you with my expert opinion regarding the nursing care provider to Michelle Herzing during her delivery hospitalization stay in December 2000. On December 1 at 3:35 PM Ms. Herzing was admitted as 36 weeks gestation (LMP was 3/25/00; EDD 12/30/00) for evaluation of elevated blood pressures ranging from 180s-190s/90s-100s. The previous day, 11/30/04, she had been seen in the Emergency Room for bronchitis and at that time was found to have a high blood pressure, rising BUN and creatinine along with other normal laboratory results. On December 1, 2000 her blood pressure was 227/114 with normal reflexes. By ultrasonic evaluation, her unborn baby's biophysical profile score was determined to be 6/8 (no fetal breathing noted) and gestational age growth was determined to be 31 weeks, 3 days. From admission until the time of induction, Michelle and her unborn baby received appropriate nursing care during her medical work up for elevated blood pressures.

On the evening of December 3 at 6:05 PM a medical decision was made to begin labor induction of Michelle due to elevated blood pressures and possible pre-eclampsia. Typically, during labor induction, continuous monitoring would be used to assess for uterine contractions and fetal heart tones. Due to Michelle's morbid obesity (449 pounds), continuous monitoring would not be possible until cervical dilation would allow placement of an internal uterine pressure catheter and a fetal scalp electrode. Prior to the time when cervical dilation would allow for internal surveillance, fetal heart tones were to be monitored and a patient self report of contractions would be elicited EVERY 30 MINUTES.

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From December 3 at 6:05 PM until December 3 at 22:45 PM documentation is evident that supports nursing assessment of fetal heart tones and contraction every 30 minutes. At 9:45PM Colleen Russell obtained a verbal order to modify patient assessments for monitoring and wrote "monitor PRN during 11-7 shift if pt. not in active labor". My expert opinion indicates that "monitor PRN" refers to fetal and uterine monitoring that is performed with standard fetal monitoring equipment such as their hospital owned Corometric fetal monitoring equipment.

On December 4, 2000, from 1:38 AM until 7 AM the nursing care that Michelle Herzing received was NOT within the standard of care. Numerous breaches of the standard of care are noted in the record during this period of time. For instance, although a note is written numerous times that the patient was sleeping, ONLY one nursing assessment of Michelle and her unborn baby's status was preformed. Essentially, Michelle did not receive nursing care during these hours. On December 4, 2000, at 3:00 AM is the last record that can provide evidence of a fetal heart rate. After performing the intervention of repeating the transvaginal medication for induction (cytotec), NO re-evaluation for drug response including maternal or fetal well being is performed. As stated previously, the verbal order written on the physician order sheet stated "monitor PRN during 11-7 shift if pt. not in active labor". Appropriate nursing judgment to determine when to monitor PRN was needed. The nurse caring for the patient did not utilize appropriate nursing judgment and therefore delivered substandard nursing care. Assessment and documentation of fetal heart tones and contractions after cytotec insertion at 3:00 AM is not documented, thereby proving that this nursing note and intervention were not within the standard of care. Most importantly, a nursing judgment to assess fetal heart tones 3 times during a 7 hour time period is not within the standard of care for a high risk intrapartal mother/baby dyad. This unborn baby was determined at admission to be at risk for fetal growth restriction due to the ultrasound assessment indicating over a 3 week lag in fetal growth. The maternal patient was determined to be at risk due to her diagnosis on 12/3/00 at 8:45am stating "elevated BP, possible pre-eclampsia". Therefore both the mother and her unborn baby were at risk for adverse perinatal outcomes.

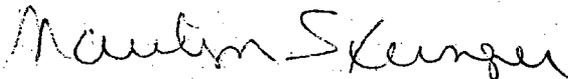
On 12/4/00 at 7:30 am an attempt is made to assess fetal well being. The nurse states that audible FHTs are heard around the rate of 170s but is unable to obtain a fetal heart rate tracing. The fetal monitor strip correlating to this period of time supports the inability to obtain an interpretable fetal monitor tracing. Only random marks are evidenced on the tracing. The nurse continues to have difficulty assessing the fetal heart rate and after 3 hours and 45 minutes decides to notify the physician. Allowing 3 hours and 45 minutes to pass before notifying the primary care provider that assessment of fetal welling could not be determined is NOT within the standard of care. Between 7:30-9:00am the nurse does have documentation to support her attempts to monitor fetal well being. Once again, between 9:00 AM and 11:15 AM the order by the physician to monitor fetal heart tones and patient self report of contractions every 30 minutes was not performed and therefore was not within standard of care. Since the verbal order specifically indicated monitoring PRN during 11-7 shift, the nurse on the 7-3 shift would need to refer to the previous order written on 12/3/00 at 5:50pm stating "auscultate FHTs

q 30 min until fetal scalp electrode and IUPC can be placed". If the nurse wanted to continue monitoring PRN as ordered from the previous shift, the nurse needed to obtain an order to continue PRN monitoring. The order was written for a specific time period only, 11-7. Once again, the nurse did not follow standard of care.

[In closing, my expert opinion is that the nursing care delivered to Michelle Herzing was not within the standard of care. In particular the nursing care delivered on December 4 between the hours of 1:30 AM until 7:00 AM were not within the standard of care. The nursing care delivered on December 4 between the hours of 9:00-11:15 AM were not within the standard of care. Within a reasonable degree of nursing certainty, the actions and omissions of the nurses increased the risk of the harm that was actually suffered in this case, namely, the infant died.]

Thank you for providing me the opportunity to review this case. Please feel free to contact me if I can be of further assistance.

Sincerely,



Marilyn Stringer, PhD, CRNP, RDMS  
Associate Professor/ Clinician Educator  
University of Pennsylvania

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
JANELL HERZING, a minor, deceased,

Plaintiffs,

Vs.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER, and  
JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

ORDER OF COURT

AND NOW, to wit, on this \_\_\_\_\_ day of October, 2005, upon consideration of the motion in limine to preclude plaintiffs from pursuing any liability theory based upon an alleged breach of the nursing standard of care, and to preclude the testimony of plaintiffs' expert, Marilyn Stringer, Ph.D., it is hereby ORDERED, ADJUDGED and DECREED that said motion is GRANTED.

Plaintiffs are prohibited from introducing any evidence or testimony that DuBois Regional Medical Center and/or any members of its nursing staff breached the standard of care toward the plaintiffs.

Plaintiffs are also barred and prohibited from introducing the testimony of Marilyn Stringer, Ph.D., as the all of the opinions expressed by Dr. Stringer address the issue of the breach of the nursing standard of care, a theory of liability which has not been plead by the plaintiffs in their second amended complaint.

\_\_\_\_\_  
J.

**CERTIFICATE OF SERVICE**

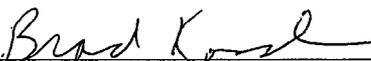
I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record by either facsimile transmission and/or U.S. Mail on this 18<sup>th</sup> day of Oct, 2005:

Amy Acheson, Esquire  
Philip A. Ignelzi, Esquire  
Ogg, Cordes, Murphy & Ignelzi, LLP  
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Pittsburgh, PA 15222

John W. Blasko, Esquire  
Richard K. Laws, Esquire  
McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801

Alan Krier, Esquire  
Jubelier, Carothers, Krier & Halpern  
10 Sheraton Drive  
P.O. Box 2024  
Altoona, PA 16603

THOMSON, RHODES & COWIE, P.C.

  
\_\_\_\_\_  
David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical Center, one  
of the defendants.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

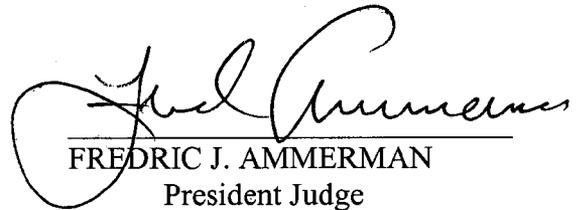
MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

NOW, this 19th day of October 2005, after consideration of Defendant DuBois Regional Medical Center's Motion for Reconsideration of the October 10, 2005 Order of Court Precluding the Expert Testimony of Nursing Expert Barbara Schouchoff, R.N., the Court determines that the Motion for Reconsideration is meritorious. Therefore, it is the Order of this Court that said Motion be and is hereby GRANTED.

Further, the Plaintiffs' Motion in Limine to Preclude Certain Opinion Testimony of Barbara Schouchoff, R.N. be and is hereby DENIED.

BY THE COURT:

  
 FREDRIC J. AMMERMAN  
 President Judge

**FILED**  
OCT 20 2005

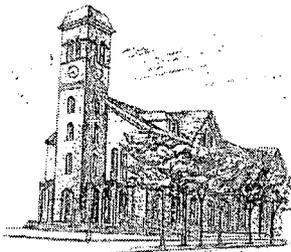
William A. Shaw  
Prothonotary/Clerk of Courts

*cc*  
 Arty: Acheson  
 Igneci  
 Ogg  
 m. Murphy  
 Blasko  
 D. Johnson  
 Krier

**FILED**

**OCT 20 2005**

William A. Shaw  
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

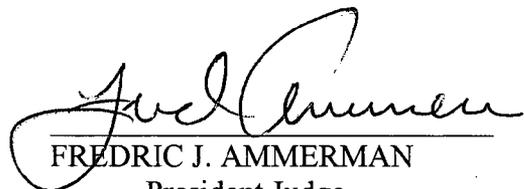
MICHELLE HERZING and JEFFREY A. JARVIS,	:	
Individually, in their own right, and as Administrators	:	
of the Estate of JANELL HEZING, a minor, deceased,	:	No. 02-169-CD
Plaintiffs,	:	
	:	
v.	:	
	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL	:	
MEDICAL CENTER, JERJIE T. ALAJAJI, and	:	
RUSSELL E. CAMERON,	:	
Defendants.	:	

**ORDER**

NOW, this 19th day of October 2005, after consideration of Defendant DuBois Regional Medical Center's Motion in Limine filed on October 19, 2005, the Court HEREBY FINDS AS FOLLOWS:

1. Plaintiffs' shall be permitted to introduce evidence related to the alleged breach of the nursing standard of care based upon the allegations contained in paragraph 6, subsections (d), (e) and (f). The paragraphs contain sufficient detail to allow related testimony of the alleged negligence.
2. Defendant's request to preclude Plaintiffs' Nursing Expert's testimony is HEREBY DENIED.
3. The Court withdraws the mistaken reference to paragraph 6, subsection (g) in the prior Order of October 13, 2005 relating to theories not plead in the Second Amended Complaint.

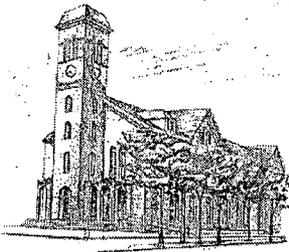
BY THE COURT:

  
 FREDRIC J. AMMERMAN  
 President Judge

**FILED**  
 02-21-301  
 OCT 20 2005

William A. Shaw  
 Prothonotary Clerk of Courts

1 CC Any's:  
 Acheson  
 Ignatzi  
 Ogg  
 M. Murphy  
 Blasko  
 D. Johnson  
 Krier



Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,

Plaintiffs,

vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading  
POINTS FOR CHARGE

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI

Counsel of Record for this  
Party: JOHN W. BLASKO  
Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for  
Adverse Party:  
Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire

Dated: 10/20/05

**FILED**

OCT 24 2005  
0/8:45/1003  
William A. Shaw  
Prothonotary/Clerk of Courts  
No CERT (0112)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )	
JARVIS, individually, in their own right, )	Civil Action-Medical Professional
and as ADMINISTRATORS OF THE )	Liability Action
ESTATE OF JANELL HERZING, a )	
minor, deceased, )	
)	NO. G.D. 02-169 CD
Plaintiffs, )	
)	JURY TRIAL DEMANDED
vs. )	
)	
MARY C. KRUSZEWSKI, DUBOIS )	
REGIONAL MEDICAL CENTER, )	
JERJIE T. ALAJAJI, and RUSSELL )	
E. CAMERON, )	
)	
Defendants. )	

DEFENDANT'S PROPOSED POINT FOR CHARGE # 1.

Under all the evidence and the law applicable to this case, I direct, as a matter of law, that you return a verdict in favor of Defendant Dr. Kruszewski and against the Plaintiffs.

ACCEPTED	_____
REFUSED	_____
COVERED	_____
MODIFIED	_____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 2.

In civil cases such as this one, the Plaintiffs have the burden of proving those contentions which entitle them to relief.

When a party has the burden of proof on a particular issue, their contention on that issue must be established by a fair preponderance of the evidence. The evidence establishes a contention by a fair preponderance of the evidence if you are persuaded that it is more probably accurate and true than not.

To put it another way, think, if you will, of an ordinary balance scale, with a pan on each side. Onto one side of the scale, place all of the evidence favorable to the plaintiffs; onto the other, place all of the evidence favorable to the defendant. If, after considering the comparable weight of the evidence, you feel that the scales tip, ever so slightly or to the slightest degree, in favor of the plaintiffs, your verdict must be for the plaintiffs. If the scales tip in favor of the defendant, or are equally balanced, your verdict must be for the defendant.

The burden of proof is on the Plaintiffs to establish that: (1) Dr. Kruszewski did not possess and employ the required skill and knowledge; or (2) did not exercise the care and judgment of a reasonable person in like cases, **and** that Plaintiffs claimed injuries either: (1) resulted from the failure on the part of Dr. Kruszewski to possess and employ the required skill and knowledge; or (2) resulted from her failure to exercise the care and judgment of a reasonable person in like circumstances. Dr. Kruszewski does not have the burden of proving anything, although she may, and has, offered evidence in this case.

If, after considering all of the evidence, you feel persuaded that these propositions are more probably true than not true, your verdict must be for the Plaintiffs. Otherwise, your verdict must be for Dr. Kruszewski.

Pennsylvania Suggested Standard Jury Instruction  
No. 5.50 (1981); Collins v. Hand, 431 Pa. 378, 246  
A.2d 398, 401 (1968); Donaldson v. Maffucci, 397  
Pa. 548, 156 A.2d 835, 838 (1959); MacDonald v.  
U.S., 767 F. Supp. 1295 (M.D. Pa. 1991), affirmed,  
983 F.2d 1051.

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S POINT FOR CHARGE # 3

Under the law that you must apply, a physician does not guarantee a favorable result when treating a patient. The mere fact that an unfortunate result, complication accidental occurrence, or bad outcome, followed Dr. Kruszewski's treatment is not sufficient to give rise to an inference or presumption of negligent medical treatment. A health care provider is neither a warrantor nor a guarantor of a cure. Please also keep in mind that Dr. Kruszewski is not negligent or responsible for any alleged harm or any claimed damage simply because a lawsuit has been filed against her.

Toogood v. Royal, 573 Pa. 245, 824 A.2d 1140 (2003); Ragan v. Steen, 29 Pa. Super. 515, 331 A.2d 724 (1974); Collins v. Hand, 431 Pa. 378, 246 A.3d 398, 400-401 (1968); Lambert v. Soltis, 422 Pa. 304, 221 A.2d 173, 175 (1966); 40 Pa.C.S.A. §1303.105, Medical Care Availability and Reduction of Error Act of 2002.

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S POINT FOR CHARGE # 4

Medicine is not an exact science. The practice of medicine cannot be condemned based on hindsight.

Toogood v. Royal, 573 Pa.. 245, 264, 824 A.2d  
1140, 1151 (2003)

ACCEPTED	_____
REFUSED	_____
COVERED	_____
MODIFIED	_____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 5

If a physician possesses reasonable and ordinary learning and skill, and uses care such as is ordinarily used in like or similar situations by physician of reasonable and average skill, she is not negligent even though the judgment which she arrives at may subsequently prove to be incorrect. A mere mistake in judgment on the part of a physician is not negligence, because the law does not require perfection. There is no requirement that a physician have prophetic insight or be infallible.

Toogood v. Royal, 573 Pa. 245, 263-265, 824 A.2d 1140, 1150-1151 (2003); Smith v. Yohe, 412 Pa. 94, 98-102, 194 A.2d 167, 170-171 (1963)

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 6

A physician, in treating a patient, does not guarantee a favorable result.

Ragan v. Steen, 29 Pa. Superior Ct. 515, 331 A.2d 724 (1974); Collins v. Hand, 431 Pa. 378, 246 A.2d 398, 400-401 (1968).

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 7

The law does not hold a physician liable for every unfortunate result which may occur. The mere fact that you may find that a complication, bad result or poor outcome followed Dr. Kruszewski's involvement in Plaintiff's care does not, in itself, establish any presumption or inference of negligence by Dr. Kruszewski.

Collins v. Hand, 431 Pa. 378, 246 A.2d 398, 401 (1968); Lambert v. Soltis, 422 Pa. 304, 221 A.2d 173, 175 (1966).

ACCEPTED	_____
REFUSED	_____
COVERED	_____
MODIFIED	_____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 8

The law does not require perfection, prophetic insight, or infallible judgment of a physician; it only requires that she possess a reasonable and average ability to carry out her professional work, and that she exercise reasonable care, skill, and judgment in doing so.

Incollingo v. Ewing, 444 Pa. 263, 282 A.2d 206, 213 (1971); Smith v. Yohe, 412 Pa. 94, 194 A.2d 167, 170-71 (1963); Duckworth v. Bennett, 320 Pa. 47, 181 A. 558, 559 (1953); Powell v. Risser, 375 Pa. 60, 99 A.2d 454, 456 (1953); Hodgson v. Bigelow, 335 Pa. 497, 7 A.2d 338, 342 (1939); Ward v. Garvin, 328 Pa. 395, 195 A. 885 (1938); English v. Free, 205 Pa. 624, 55 A. 777, 777-78 (1903).

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 9

An error in judgment on the part of the physician is not evidence of negligence. If a physician possesses reasonable and ordinary learning and skill, and uses care such as is ordinarily used in like or similar situations by physicians of reasonable and average skill, she is not negligent even though the judgment which she arrives at may subsequently prove to be incorrect.

Smith v. Yohe, 412 Pa. 94, 194 A.2d 167 (1963).

Toogood v. Rogal, 824 A.2d 1140, 1150, 1151 (Pa.) (2003)

ACCEPTED  
REFUSED  
COVERED  
MODIFIED

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEFENDANT'S POINT OF CHARGE # 10

Ordinary care is the care a reasonably careful person would use under the circumstances presented in this case. It is the duty of every person to use ordinary care not only for her own safety and the protection of her property, but also to avoid injury to others. What constitutes ordinary care varies according to the particular circumstances and conditions existing then and there. The amount of care required by the law must be in keeping with the degree of danger involved.

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 11

A physician must have and use the same knowledge and skill and exercise the same care as that which is usually had and exercised in the medical profession. A physician whose conduct does not meet this professional standard of care is negligent.

A physician who holds herself out as a specialist in a particular field of medicine must have and use the same knowledge and skill and exercise the same care as that which is usually had and exercised by other specialists in that same medical specialty. A specialist whose conduct does not meet this professional standard of care is negligent.

A physician must also keep informed of the contemporary developments in the medical profession or her specialty therein and she must use these current skills and knowledge. In other words, a physician is bound to be up to accepted and proven advances of the day in medical skills and knowledge. If she fails to inform herself of these advances or if she fails to employ these advances in the medical treatment of the patient she is negligent. Of course, a physician is not required to employ procedures or treatments which are still considered experimental or have not been confirmed as generally safe.

A physician must also use the same degree of care as would a reasonable person under the circumstances, and if she fails to do so she is negligent.

You must decide whether or not Dr. Kruszewski was negligent in any of these respects. In so doing, you must apply the standard of practice that existed for practitioners of the particular specialty in 2000, not 2005.

If you find that Dr. Kruszewski was negligent in any of these respects, then you must determine whether this negligence was a substantial contributing factor in bringing about the injuries of the Plaintiff. Only if you so find, may you return a verdict in favor of the Plaintiffs and against Dr. Kruszewski.

Pennsylvania Suggested Standard Jury Instruction No. 10.03A (1991).

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S POINT FOR CHARGE # 12

In order for Plaintiffs to recover against Dr. Kruszewski, the Plaintiffs must prove that the negligent conduct of Dr. Kruszewski was a substantial factor in bringing about the injury. This is what the law recognizes as legal cause. A substantial factor is an actual, real factor, although the result may be unusual or unexpected, but it is not a factor having no connection or only an insignificant connection to the injury, or an imaginary or fanciful factor.

A defendant may not be held liable, even if she is found to be negligent, if her negligence was not a substantial factor in bringing about harm to the plaintiff. Similarly, if other causes would have produced the harm independent of a particular defendant's negligence, that defendant is not liable.

Jones v. Montefiore Hospital, 494 Pa. 410, 431 A.2d 920, 923 (1981); Majors v. Broadhead Hotel, 416 Pa. 265, 205 A.2d 873, 878 (1965).

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE #13

A physician owes his patient a duty to employ that degree of knowledge, skill and care ordinarily possessed by members of the medical profession. There is no requirement that the physician be infallible, and, making a mistake is not negligence as a matter of law. The art of healing frequently calls for a balancing of risks and danger to a patient. Medical uncertainties exist because each patient is unique, and undesirable results occur even when the diagnosis is correct and the treatment properly administered.

Toogood v. Royal, 824 A.2d 1140, 150, 1151, Pa. (2003)

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 14

You are not permitted to determine your verdict based on sympathy for a party or guesswork, speculation, or conjecture.

Laubach v. Haigh, 433 Pa. 487, 252 A.2d 682, 683 (1969); Engle v. Spino, 425 Pa. 254, 228 A.2d 745, 747 (1967); Satovich v. Lee, 385 Pa. 133, 122 A.2d 212, 215 (1956); Gordon v. Trovato, 234 Pa. Super. 279, 338 A.2d 653, 657 (1975).

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 15

You cannot speculate as to the proximate cause of the death of which the Plaintiffs complain. Plaintiffs have the burden of proving that the death was caused by the allegedly negligent acts or omissions of Dr. Kruszewski, and if you are left to speculate or guess as to whether the death was the result of the allegedly negligent acts or omissions of Dr. Kruszewski, you must find in favor of Dr. Kruszewski.

Cwiakala v. Paal, 427 Pa. 322, 235 A.2d 145, 146-47 (1967); Laubach v. Haigh, 433 Pa. 487, 252 A.2d 682, 683 (1969); Gordon v. Trovato, 234 Pa. Super. 279, 338 A.2d 653, 657 (1975).

ACCEPTED: \_\_\_\_\_  
REFUSED: \_\_\_\_\_  
COVERED: \_\_\_\_\_  
MODIFIED: \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 16

The opinion of an expert is necessary to establish the standard of care required under the circumstances, that a deviation from said standard existed, and that the alleged injuries were proximately caused by the deviation from the standard of care. Expert testimony is necessary to establish the causal connection between the injury and the tortious conduct in those cases where the connection is not obvious, such as in this case.

Brannan v. Lankenau Hospital, 490 Pa. 588, 417 A.2d 196, 199 (1980); Maliszewski v. Rendon, 374 Pa.Super. 109, 542 A.2d 170, 172 (1988), appeal denied, 526 Pa. 617, 554 A.2d 510 (1988).

ACCEPTED: \_\_\_\_\_  
REFUSED: \_\_\_\_\_  
COVERED: \_\_\_\_\_  
MODIFIED: \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 17

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation may give his opinion as an expert as to any matter in which he is skilled. In determining the weight to be given to his opinion, you should consider the qualifications, experience and reliability of the expert and the reasons given for his opinion. You are not bound by an expert's opinion merely because he is an expert; you may accept or reject it, as in the case of other witnesses. Give it the weight, if any, to which you deem it entitled.

Pennsylvania Suggested Standard Jury  
Instruction 5.30 (1981).

ACCEPTED	_____
REFUSED	_____
COVERED	_____
MODIFIED	_____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 18

In resolving any conflict that may exist in the testimony of expert witnesses, you are entitled to weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and reliability of the expert witnesses, as well as the reasons for each opinion and the facts and other matters upon which it was based.

Pennsylvania Suggested Standard Jury  
Instruction 5.33 (1981).

ACCEPTED	_____
REFUSED	_____
COVERED	_____
MODIFIED	_____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 19

In general, the opinion of an expert has value only when you accept the facts upon which it is based. This is true whether the facts are assumed hypothetically by the expert, come from his personal knowledge, from some other proper source, or from some combination of these.

Questions may have been asked in which an expert witness was invited to assume that certain facts were true and to give an opinion based upon that assumption. These are called hypothetical questions. If you find that any material fact assumed in a particular hypothetical question has not been established by the evidence, you should disregard the opinion of the expert given in response to that question. (By material fact, we mean one which is important to the expert in forming his opinion.)

Similarly, if the expert has made it clear that his opinion is based on the assumption that a particular fact did not exist, and from the evidence you find that it did exist and that it was material, you should give no weight to the opinion so expressed.

Pennsylvania Suggested Standard Jury Instructions Nos. 5.31, 5.32 (1997); Battistone v. Benedetti, 385 Pa. 163, 122 A.2d 536, 539 (1956); Jackson v. United States Pipeline Co., 325 Pa. 436, 191 A. 165, 166 (1937), *quoted in* Gordon v. State Farm Life Ins. Co., 415 Pa. 256, 203 A.2d 320, 322 (1964).

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

DEFENDANT'S PROPOSED POINT FOR CHARGE # 20

Only if you find liability should you then go on to consider the second aspect of this case, which is the element of damages. It is the obligation of the Court to offer instructions concerning damages. These instructions, and any other references to damages, are not an indication of a belief by this Court as to whether damages should be awarded, or what factors you should consider. You may only consider the subject of damages if you first determine that Dr. Kruszewski was negligent and that Dr. Kruszewski is liable to the Plaintiffs for the injuries claimed. If you find that Dr. Kruszewski is not liable, then you should not consider the issue of damages.

Collins v. Hand, 431 Pa. 378, 246 A.2d 398, 401 (1968); Incollingo v. Ewing, 444 Pa. 263, 282 A.2d 206 (1971).

ACCEPTED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

FILED  
OCT 24 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
(File & per Judge Amersman)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, \*  
individually, in their own right, and as Administrators \*  
of the Estate of JANELL HERZING, a minor, deceased, \*  
Plaintiffs \*  
vs. \*  
MARY C. KRUSZEWSKI, \*  
Defendant \*

No. 02-169-CD

**SPECIAL VERDICT QUESTIONS**

TO THE JURY:

Please enter your verdict to the following questions:

**QUESTION NO. 1:**

Do you find that Dr. Mary C. Kruszewski was negligent:

X  
YES

NO

**FILED**  
OCT 26 2005  
8/31 3:35/ WMS  
William A. Shaw  
Prothonotary/Clerk of Courts

**INSTRUCTIONS:**

- (a) If you have answered "Yes" to Question No. 1, proceed to Question No. 2.
- (b) If you have answered "No" to Question No. 1, do not answer any more questions and return to the Courtroom after the jury foreperson has signed below.

**QUESTION NO. 2:**

If you answered "Yes" to Question No. 1, do you find that Dr. Mary C. Kruszewski's negligence was the factual cause in bringing about the death of Janell Herzing?

YES

X  
NO

**INSTRUCTIONS:**

- (a) If you have answered "Yes" to Question No. 2, proceed to Question No. 3.
- (b) If you answered "No" to Question No. 2, do not answer any more questions and return to the Courtroom after the jury foreperson has signed below.

**QUESTION NO. 3:**

If you have answered "Yes" to both Question No. 1 and 2, what amount of damages are awarded?

\$ \_\_\_\_\_

10/26/05  
Date

  
Jury Foreperson  
EDWARD W. DIETRICH

COURT OF COMMON PLEAS, CLEARFIELD COUNTY  
PENNSYLVANIA

CASE NO. 02-169-CD

Date of Jury Selection: August 18, 2005

Presiding Judge: Fredric J. Ammerman

Michelle Herzing and Jeffrey A. Jarvis, ind.  
in their own right, and as Admin of the  
Estate of Janell Herzing, a minor

Court Reporter: Cathy Provest

Date of Trial: Oct. 21, 24, 25, 26, 27 and 28, 2005

VS

Date Trial Ended: OCT 25, 05

Mary C. Kruszewski, DuBois Regional  
Medical Center and Jerjie T. Alajaji

MEMBERS OF THE JURY

- 1. Helen Lewis
- 2. William Gearhart
- 3. D. Blaine Carr
- 4. Rick Ricotta
- 5. Beth Shimel
- 6. Russell Shirey
- ALT #1 Melissa Lisi TO # 12

- 7. Edward Dietrick
- 8. Aaron Mills
- 9. Jennifer Porter
- 10. Cleo Rodgers
- 11. Virginia James
- 12. Frederick Foltz ← Excused
- ALT #2 Jason Kephart

PLAINTIFF'S WITNESSES:

- 1. Russel Jelsema MD
- 2. Theonia Boyd MD
- 3. Michelle Herzing
- 4. Steven Klepper videotape
- 5. ~~EMANUEL RUBIN MD~~
- 6. \_\_\_\_\_

DEFENDANT'S WITNESSES:

- 1. EMANUEL RUBIN MD
- 2. Sheila ELENSKY
- 3. MARY KRUSZEWSKI MD.
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

PLAINTIFF'S ATTY: Amy Acheson Esq

DEFENDANT'S ATTY: John W. Blasko Esq.,  
David R. Johnson Esq., and Alan R. Krier Esq.

ADDRESS TO JURY: \_\_\_\_\_

ADDRESS TO JURY: 10:33 AM 10/26/05

JUDGE'S ADDRESS TO JURY: 1:22 pm

JURY OUT: 2:00 pm JURY IN: 3:25 pm

VERDICT: \_\_\_\_\_

FOREPERSON: \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MICHELLE HERZING and JEFFREY )  
JARVIS, individually, in their own right, )  
and as ADMINISTRATORS OF THE )  
ESTATE OF JANELL HERZING, )  
a minor, deceased, )

Plaintiffs, )

vs. )

MARY C. KRUSZEWSKI, D.O., )  
Defendant. )

No.: 02-169 CD

Type of Case: Civil Action  
Medical Professional Liability Action

JURY TRIAL DEMANDED

Type of Pleading:  
PRAECIPE FOR ENTRY OF JUDGMENT  
ON THE JURY'S VERDICT

Filed on Behalf of Defendant  
MARY C. KRUSZEWSKI, D.O.

Counsel of Record for this  
Party: JOHN W. BLASKO

Court I.D. No.: 06787

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

811 University Drive  
State College, PA 16801  
(814) 238-4926

Counsel of Record for  
Adverse Party:  
AMY ACHESON  
GARY J. OGG  
MICHAEL A. MURPHY

Dated: November 7, 2005

**FILED** *Atty Blasko*  
*pd. 20.00*  
*08:40:00* *100 Amy: Blasko*  
NOV 08 2005 *Acheson*  
*Jgruetz*  
*ogg*  
William A. Shaw  
Prothonotary Clerk of Courts *m. Murphy*

(2)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. )  
JARVIS, individually, in their own right, ) Civil Action-Medical Professional  
and as ADMINISTRATORS OF THE ) Liability Action  
ESTATE OF JANELL HERZING, a )  
minor, deceased, )  
 )  
Plaintiffs, ) NO. G.D. 02-169 CD  
 )  
vs. ) JURY TRIAL DEMANDED  
 )  
MARY C. KRUSZEWSKI, )  
 )  
Defendant. )

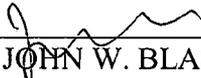
**PRAECIPE FOR ENTRY OF JUDGMENT ON THE JURY'S VERDICT**

TO THE PROTHONOTARY:

Please enter judgment on the jury verdict entered on October 26, 2005, in favor of Defendant, Mary C. Kruszewski, D.O., given that Post-Trial Motions have not been filed within 10 days, as required by Pa.R.C.P. 227.1(c).

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

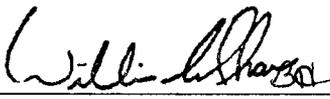
BY

  
\_\_\_\_\_  
JOHN W. BLASKO  
Attorney for Defendant,  
Mary C. Kruszewski, D.O.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: November 7, 2005

**JUDGMENT ENTERED ON THE JURY VERDICT OF OCTOBER 26, 2005 IN FAVOR OF DEFENDANT, MARY C. KRUSZEWSKI, D.O.. AND AGAINST PLAINTIFFS, MICHELLE HERZING AND JEFFREY JARVIS.**

Dated: 11/8/05

  
\_\_\_\_\_  
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as ADMINISTRATORS OF THE ESTATE OF JANELL HERZING, a minor, deceased,	)	
	)	Civil Action-Medical Professional Liability Action
	)	
	)	NO. G.D. 02-169 CD
Plaintiffs,	)	
	)	JURY TRIAL DEMANDED
vs.	)	
	)	
MARY C. KRUSZEWSKI,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

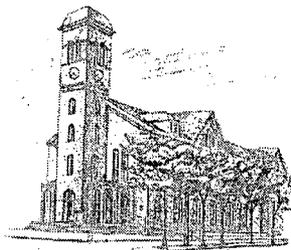
I hereby certify that a true and correct copy of the Praecipe for Entry of judgment on the Jury's Verdict in the above-referenced matter was mailed by first class, regular mail, on this 7<sup>th</sup> day of November, 2005, to the attorney(s) of record:

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Mary C. Kruszewski, M.D.





# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right, and  
as Administrators of the Estate of JANELL  
HERZING, a minor, deceased,

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER,  
JERJIE T. ALAJAJI and RUSSELL  
E. CAMERON,

Defendants.

CIVIL DIVISION

No.: GD 02-169-CD

Code: 007

**PRAECIPE TO SETTLE  
AND DISCONTINUE AGAINST  
DEFENDANT, DUBOIS  
REGIONAL MEDICAL  
CENTER**

Filed on behalf of: PLAINTIFFS  
Counsel of Record for this Party:

Amy Acheson, Esquire  
PA. I.D. # 50506

Michael A. Murphy, Esquire  
PA. I.D. # 55846

Gary J. Ogg, Esquire  
PA. I.D. # 34515

Ogg, Cordes, Murphy & Ignelzi, LLP  
245 Fort Pitt Boulevard  
Pittsburgh, PA 15222  
412-471-8500  
Firm I.D. # 568

**JURY TRIAL DEMANDED**

*EW*  
**FILED** *No cc*  
*m 11:34 AM* *2*  
**DEC 14 2005** *Cert. of*  
*Disc to Atty*

William A. Shaw  
Prothonotary/Clerk of Courts *Copy to*  
*CIA*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A.  
JARVIS, individually, in their own right,  
and as Administrators of the Estate of  
JANELL HERZING, a minor, deceased,

CIVIL DIVISION

No. 02-169-CD

Plaintiffs,

v.

MARY C. KRUSZEWSKI, DUBOIS  
REGIONAL MEDICAL CENTER and  
JERGIE T. ALAJAJI,

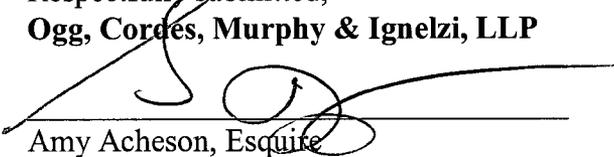
Defendants.

**PRAECIPE TO SETTLE AND DISCONTINUE AGAINST  
DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER**

TO: The Prothonotary

Please settle and discontinue the above captioned case at the above term and number and  
issue a Certificate of Settlement.

Respectfully submitted,  
**Ogg, Cordes, Murphy & Ignelzi, LLP**



---

Amy Acheson, Esquire  
Michael A. Murphy, Esquire  
Gary J. Ogg, Esquire  
Counsel for Plaintiffs

**FILED**

**DEC 14 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA**

 **COPY**

**CIVIL DIVISION**

**Michelle Herzing  
Jeffrey A. Jarvis  
Janell Herzing**

**Vs.**

**No. 2002-00169-CD**

**Mary Kruszewski  
DuBois Regional Medical Center  
Jerjie T. Alajaji**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on December 14, 2005, marked:

Settled and Discontinued against DuBois Regional Medical Center ONLY

Record costs in the sum of \$80.00 have been paid by Gary Ogg, Esq. Record costs in the sum of \$20.00 have been paid by John Blasko, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of December A.D. 2005.

---

William A. Shaw, Prothonotary