Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
2/4/2002	Filing: Civil Complaint Paid by: Ogg, Cordes, Murphy & Ignelzi Receipt number: 1837650 Dated: 02/04/2002 Amount: $80.00 (Check) Four CC Sheriff	No Judge
2/11/2002	Praecipe For Entry of Appearance on behalf of Defendant, Mary C. Kruszewski, M.D. Filed by s/John W. Blasko, Esq. Cert of Svc no cc	No Judge
2/19/2002	Praecipe For Appearance on behalf of DuBois Regional Medical Center and Patrick Shilala. Filed by s/David R. Johnson, Esq. Certificate of Service no cc	No Judge
2/22/2002	Preliminary Objections to Plaintiffs' Complaint filed on behalf of Mary C. Kruszewski, M.D., filed by s/John W. Blasko No CC	No Judge
2/25/2002	Preliminary Objections. Filed by s/Thomas B. Anderson, Esq. Certificate of Service no cc	No Judge
	Praecipe To Enter Appearance on Behalf of the Defendant, JERJIE T. ALAJAJI, M.D. filed by s/Alan R. Krier, Esq. Certificate of Service no cc	No Judge
	Preliminary Objections to Complaint. Filed by s/Alan R. Krier, Esq. Certificate of Service no cc	No Judge
3/11/2002	Certificate of Service, Defendant Kruszewski's Interrogatories & Request for Production (Set One), Request for Production (Set Two) and Expert Interrogatories upon Philip A. Ignelzi, Esq. and Amy Acheson, Esq. Filed by, s/John W. Blasko, Esq. no cc	No Judge
3/12/2002	Amended Complaint In Civil Action. Filed by s/Amy Acheson, Esq. Certificate of Service 1 cc to Sheriff	No Judge
3/18/2002	Verification of Amended Complaint in Civil Action, filed by Amy Acheson, Esq. s/Michele L. Herzing s/Jeffrey R. Jarvis No CC	No Judge
3/21/2002	P.O.'s to Amended Complaint. Filed by s/Alan R. Krier, Esq. Certificate of Service no cc	No Judge
	P.O.'s to Plaintiffs' Amended Complaint Filed on Behalf of Defendant Mary C. Kruszewski, M.D. Filed by s/Signature Illegible Cert of Svc no cc	No Judge
3/25/2002	Preliminary Objections to Amended Complaint, filed by s/Thomas B. Anderson, Esq. No CC	No Judge
	Notice of Service, Preliminary Objections to Amended Complaint, Brief in Support, upon Amy Acheson, Esq., John W. Blasko, Esq., and Alan Krier, Esq., filed by s/Thomas B. Anderson, Esq. No CC	No Judge
4/1/2002	Praecipe for Appearance, on behalf of Russell E. Cameron, s/David R. Johnson, Esq. No CC	No Judge
4/9/2002	Response to Preliminary Objections of Defendant Mary C. Kruszewski. Filed by s/Amy Acheson, Esq. Certificate of Service no cc	No Judge
	Response to Preliminary Objections of Defendant DuBois Regional Medical Center. Filed by s/Amy Acheson, Esq. Certificate of Service no cc	No Judge
	Response to Preliminary Objections of Defendant Jerjie T. Alajaji, M.D. Filed by s/Amy Acheson, Esq. Certificate of Service no cc	No Judge
4/15/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
4/17/2002	Certificate of Service, Answers and Objections to First Set of Interrogatories and Request for Productions of Documents Directed to Defendant, Mary C. Kruszewski upon attorneys of record. s/Richard K. Laws, Esq. no cc	No Judge

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
4/26/2002	✓ Preliminary Objections to Amended Complaint, Brief in Supoort and Order of Court Filed on Behalf of Russell E. Cameron. Filed by s/David R. Johnson, Esq. Certificate of Service 1 cc Atty Johnson	John K. Reilly Jr.
5/2/2002	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	John K. Reilly Jr.
5/13/2002	✓ Stipulation For Discontinuance of Defendant PATRICK SHILALA -ONLY no cc	John K. Reilly Jr.
6/17/2002	✓ Order NOW, this 12th day of June, 2002 upon consideration of Preliminary O jections filed on behalf of all Defendants above-named and argument and briefs thereon, it is the Order of this Court that said Objections be and are hereby sustained to the extent that Plaintiffs' claims for loss of filial consortium and negligent infliction of Emotional Distress shall be and are hereby dismissed.... S/JKR 1 CC Atty. Acheson, Blasko, Johnson, Krier.	Fredric Joseph Ammerman
7/12/2002	✓ Second Amended Complaint In Civil Action. Filed by s/Michael A. Murphy, Esq. Verification s/Michele L. Herzing s/Jeffrey R. Javis Certificate of Service no cc	John K. Reilly Jr.
7/25/2002	✓ Stipulation of Counsel in Lieu of Preliminary Objections. s/Amy Acheson, Esq. s/Richard K. Laws, Esq. Certificate of Service no cc	John K. Reilly Jr.
7/29/2002	✓ Answer With New Matter Of Mary C. Kruszewski, M.D. To Plaintiffs' Second Amended Complaint. s/Richard K. Laws, Esq. Verification s/Mary C. Kruszewski, D.O. Certificate of Service no cc	John K. Reilly Jr.
7/31/2002	✓ Answer to Second Amended Complaint with New Matter, filed on behalf of Defendnant Jerjis T. Alajaji, MD, filed by Atty. Krier.	John K. Reilly Jr.
8/12/2002	✓ Plaintiffs' Reply to New Matte of Defendant, Mary C. Krusezwski, filed by Atty. Acheson No Cert. Copies.	John K. Reilly Jr.
8/23/2002	✓ Answer To Second Amended Complaint and New Matter. Filed by s/Thomas B. Anderson, Esq. Verification s/Gregory J. Volpe s/Russell E. Cameron Certificate of Service no cc	John K. Reilly Jr.
8/26/2002	✓ Plaintiffs' Reply to New Matter of Defendant Jerjie T. Alajaji. filed by s/Amy Acheson, Esq. Verification s/Michele L. Herzing s/Jeffrey R. Jarvis Certificate of Service no cc	John K. Reilly Jr.
9/5/2002	✓ Plaintiffs' Reply to New Matter of Defendant Dubois Regional Medical Center and Certificate of Service filed by Atty. Acheson. No CC.	John K. Reilly Jr.
2/21/2003	✓ Certificate of Service, Notice of Taking Oral Depositions of Plaintiffs this 20th day of Feb.,2003 upon AMY ACHESON, ESQ., DAVID R. JOHNSON, ESQ. and ALAN R. KRIER, ESQ. filed by s/John W. Blasko, Esquire no cc	John K. Reilly Jr.
3/13/2003	✓ Certificate of Service, Amended Notice of Taking Oral Depositions of Plaintiffs upon: AMY ACHESON, ESQ; DAVID R. JOHNSON, ESQ. and ALAN R. KRIER, ESQ. s/JOHN W. BLASKO, ESQ. no cc	John K. Reilly Jr.
8/7/2003	✓ Plaintiffs' Reply To New Matter Of Defendant Russell Cameron. filed by s/Amy Acheson, Esquire Verification s/Michelle Herzing Certificate of Service no cc	John K. Reilly Jr.
2/6/2004	✓ Motion to Compel Answers to Writte Discovery Requests from Defendants DuBois Regional Medical Center and Russell E. Cameron, filed by Atyy. Acheson no Cert. Copies.	John K. Reilly Jr.

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
2/11/2004	ORDER OF COURT, AND NOW, this 10th day of February, 2004, re: Plaintiffs' Motion to Compel. by the Court, s/FJA, P.J. 1 cc Atty Acheson	Fredric Joseph Ammerman
4/28/2004	Motion To Compel Plaintiffs To Answer Expert Interrogatories And/Or Produce Expert Reports. filed by, s/John WE\. Blasko, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
5/3/2004	ORDER OF COURT, AND NOW, this 3rd day of May, 2004, re: Plaintiffs to produce and serve on the Defendant within 30 days from the date hereof full and complete Answers or expert Reports (medical and non-medical) to Defendant's Expert Interrogatories or be barred from producing expert (medical and non-medical) testimony at the time of trial. by the Court, s/FJA, P.J. 4 cc Atty Blasko	Fredric Joseph Ammerman
5/7/2004	Plaintiffs' Motion For Reconsideration. filed by, s/Amy Acheson, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
5/10/2004	Motion To Compel Defendant Kruszewski To Answer Expert Interrogatories And/Or Produce Experty Reports. filed by, s/Amy Acheson, Esq. Certificate of Service no cc	Fredric Joseph Ammerman
	Motion To Compel Plaintiffs To Answer Expert Interrogatories And/Or Produce Expert Reports. filed by, s/David R. Johnson, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
5/11/2004	ORDER OF COURT, AND NOW, to wit, this 11th day of May, 2004, re: Defendant Kruszewski shall produce and serve upon Plaintiffs, within 30 days after receipt of Plaitniffs' expert reports, full and complete Answers or Expert Reports (medical and non-medical) to Plaintiffs' expert interrogatories or be barred from producing expert (medical or non-medical) testimony at the time of trial. by the Court, s/FJA, P.J. 1 cc to Atty	Fredric Joseph Ammerman
	ORDER OF COURT, AND NOW, this 11th day of May, 2004, re: Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis, shall produce and serve on the Defendant, within 30 days from the date hereof full and complete answers or expert reports (medical and non-medical) to Defendants' expert interrogatories or be barred from produce expert (medical and non-medical) testimony at the time of trial. by the Court, s/FJA, P.J. 1 cc to Atty	Fredric Joseph Ammerman
5/13/2004	ORDER, AND NOW, this 12th day of May, 2004, re: Plaintiffs' Motion For Reconsideration has been scheduled for the 14th day of June, 2004, at 10:30 a.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 5 cc Atty Acheson	Fredric Joseph Ammerman
	ORDER OF COURT, AND NOW, to wit, this 12th day of May, 2004, re: Order of Court dated May 3, 2004 is STAYED until further Order of this Court. by the Court, s/FJA, P.J. 2 cc Atty Acheson	Fredric Joseph Ammerman
5/18/2004	Motion to Compel Defendants DuBois Regional Medical Center and Russell E. Cameron to Answer Expert Interrogatories and/or Produce Expert Reports. No cc.	Fredric Joseph Ammerman
5/20/2004	Response To Motion To Compel Defendants DuBois Regional Medical Center And Russell E. Cameron To Answer Expert Interrogatories And/Or Produce Expert Reports. filed by, s/David R. Johnson, Esquire Certificate of Service no cc	Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
5/20/2004	ORDER, AND NOW, this 20th day of May, 2004, re: Argument on Plaintiffs' Motion For Reconsideration has been RESCHEDULED from June 14, 2004 to Thursday, June 24, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 1 cc Attys Johnson, Krier, Blasko, and Acheson	Fredric Joseph Ammerman
	ORDER, AND NOW, this 20th day of May, 2004, re: Argument on Plaintiffs' Motion to Compel Defendants DuBois Regional Medical Center and Russell E. Cameron to Answer Expert Interrogatories and/or Produce expert Reports scheduled for the 24th day of June, 2004, at 1:30 p.m. in Courtroom 1. by the Court, s/FJA, P.J. 4 cc Atty Acheson w/service memo	Fredric Joseph Ammerman
5/25/2004	Plaintiffs' Motion For Stay Of May 11, 2004 Order And For Reconsideration. filed by, s/Amy Acheson, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
5/26/2004	Response Of The Defendant Mary C. Kruszewski To Plaintiffs' Motion For Reconsideration. filed by, s/John W. Blasko, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
5/27/2004	Answer With New Matter To Plaintiffs' Motion To Compel Answers To Experts Interrogatories And/Or Produce Expert Reports. filed by, s/John W. Blasko, Esq. Certificate no cc	Fredric Joseph Ammerman
	ORDER OF COURT, AND NOW, to wit, this 26th day of May, 2004, re: Order of Court dated May 11, 2004 is STAYED until further Order of this Court. by the Court, s/FJA, P.J. 3 cc Atty Acheson	Fredric Joseph Ammerman
	ORDER, AND NOW, this 27th day of May, 2004, re: Argument on Plaintiffs' Motion for Sray of May 11, 2004 Order and for Reconsideration filed on May 25, 2004, scheduled for the 24th day of June, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 4 cc Atty Acheson w/Rule Re: Service	Fredric Joseph Ammerman
6/1/2004	Motion To Compel Further Responses To Discovery. filed by, s/Alan R. Krier, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
6/7/2004	Request For Argument/Hearing And Now, this 3rd day of June, 2004, argument with regard to Defendant's, JERJIE T. ALAJAJI, M.D., Motion to Compel is scheduled for the 24th day of June, 2004, at 1:30 p.m. in Courtroom #1. by the Court, s/FJA, P.J. 1 cc to Atty Krier	Fredric Joseph Ammerman
6/25/2004	Order, NOW, this 24th day of June, 2004, parties stipulate and agree as follows: 1. Plaintiffs shall file their expert reports on or before October 31, 2004; 2. Defendants shall file their expert reports on or before January 31, 2005; 3. Plaintiffs shall have by no later than February 28, 2005, to file a rebuttal report. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attys Acheson, Blasko, D. Johnson, Krier	Fredric Joseph Ammerman
1/31/2005	Expert Report and Curriculum Vitae of W. Scott Morse, M.D., filed by s/Alan R. Krier, Esq. No CC	Fredric Joseph Ammerman
2/4/2005	Plaintiffs' Motion for Enlargement of Time in Which to Serve Rebuttal Expert Reports, filed by Atty. Acheson 1 Cert. to Atty.	Fredric Joseph Ammerman
2/7/2005	Notice of Service of Plaintiffs' Expert Reports, on October 26, 2004 served upon all Defendants. Filed by s/ Amy Acheson, Esquire.	Fredric Joseph Ammerman
2/9/2005	Motion against Plaintiffs' Motion for Enlargement of Time in which to serve Rebuttal Expert Reports filed by Atty. Blasko. No CC.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
2/9/2005	AND NOW to wit, this 8th day of February, 2005, it is hereb ORDERED that Defs. shall forthwith deliver to Plffs' counsel all pathology slides, body tissue and/or other such materials of Plaintiffs, and Plffs shall have 120 days from thie date of said delivery to file rebuttal expert reports. s/FJA 1 CC to Atty.	Fredric Joseph Ammerman
	Answer To Plaintiffs' Motion for Enlargement of Time in which to serve Rebuttal Expert Reports, filed by s/ John W. Blasko, Esquire. No CC	Fredric Joseph Ammerman
	Notice of Service Of Plaintiffs' Expert Reports, upon all defendants on Oct. 26, 2004. Filed by /s/ Amy Acheson, Esquire. No CC	Fredric Joseph Ammerman
2/14/2005	Order, NOW, this 14th day of Feb., 2005, the Court being in receipt of Plaiintiffs' Motion for Enlargement of Time in Which to Serve Rebuttal Expert Reports and any other outstanding discovery issues; it is the Order of this Court that a hearing on this Motion be scheduled for the 10th of March, 2005, at 1:30 p.m. in courtroom No. 1 of the Clfd. Co. Courthouse. The Court's Order of Feb. 8, 2005, requiring defendants to deliver test materials to the Plaintiffs is RESCINDED. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Acheson, Blasko, D. Johnson, and Krier.	Fredric Joseph Ammerman
3/11/2005	Order, filed Cert. to Atty. Acheson, Blasko, Johnson & Krier NOW, this 10th day of March, 2005, RE: Plaintiff's Motion for Enlargement of Time. Order of Court as follows (see original)	Fredric Joseph Ammerman
7/21/2005	Motion For Leave to Have Substitute Counsel Attend Call Of List, filed by s/ David R. Johnson, Esquire. No CC	Fredric Joseph Ammerman
	Order, this 21st day of July, 2005, Ordered that substitute counsel may attend the call of the list in the case above captioned on July 28, 2005. By The Court: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Johnson	Fredric Joseph Ammerman
7/22/2005	Entry of Appearance, on behalf of Plantiffs, please enter appearances of Gary J. Off, Esquire, Michael A. Murphy, Esquire, Amy Acheson, Esquire and Philip A. Egnelzi, Esquire. Filed by s/ Amy Acheson, Esquire, Gary J. Ogg, Esquire, and Michael A. Murphy, Esquire. 1CC to Atty, copy to C/A	Fredric Joseph Ammerman
7/26/2005	Defendant Alajaji's Motion in Limine with Respect to Plaintiffs' Proposed Expert Report(s) and Testimony, filed by s/Alan R. Krier, Esq. No CC	Fredric Joseph Ammerman
7/29/2005	Request For Argument/Hearing, NOW, this 29th day of July, 2005, argument with regard to Defendant Jerjie T. Alajaji, M.D., Motion in Limine is scheduled for the 11th day of August 2005, in Courtroom 1 in the Clfd. Co. Courthouse at 11:00 a.m. By The Court, /s/ Fredric J. Ammerman, Esquire. 7CC Atty Krier	Fredric Joseph Ammerman
8/2/2005	Defendant DuBois Regional Medical Center's Motion in Limine, filed by s/David R. Johnson, Esq. No CC	Fredric Joseph Ammerman
	Defendant Cameron's Motion in Limine with Respect to Plaintiffs' Proposed Expert Reports and Testimony, filed by s/David R. Johnson, Esq. No CC	Fredric Joseph Ammerman
8/3/2005	Request For Argument/Hearing, AND NOW, this 2nd day of August, 2005, argument with regard to Defendant Russell E. Cameron's motion in limine is scheduled for the 11th day of August, 2005 at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty w/memo	Fredric Joseph Ammerman
	Request For Argument/Hearing, And Now, this 2nd day of August, 2005, argument with regard to Defendant DuBois Regional Medical Center's motion in limine is scheduled for the 11th day of August 2005, at 11:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC To Atty. w/memo	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
8/4/2005	✓Certificate of Service, filed. I, Amy Acheson, Esquire , hereby certify that a true and correct copy of the within Pre-Trail Statement was served on this 3rd day of August 2005 to John W. Blasko Esq., Alan R. Krier Esq., David R. Johnson Esq. filed by s/ Amy Acheson Esquire. NO CC.	Fredric Joseph Ammerman
8/5/2005	✓Certificate of Service, filed. I hereby certify that a true and correct copy of the Pre-Trial Memorandum was served on Amy Acheson Esquire, David R. Johnson Esquire Esquire, Thomas B. Anderson Esquire, and Alan R. Krier Esquire on August 4, 2005, filed by s/ John W. Blasko Esquire. No CC.	Fredric Joseph Ammerman
8/10/2005	✓Plaintiffs' Response in Opposition To Defendant Alajaji's Motion in Limine To Preclude Certain Expert Testimony, filed by s/ Amy Acheson, Esquire. no CC	Fredric Joseph Ammerman
8/15/2005	✓Affidavit of Service filed. Notice has been made by facsimile to plaintiffs' attorney and other counsel of record that argument will occur on Defendants' motion in limine on August 11, 2005 at 11:00 a.m. filed by s/ David R. johnson Esquire. No CC.	Fredric Joseph Ammerman
	✓Order, filed Cert. to Atty. Blasko, Krier, Johnson & Acheson NOW, this 15th day of August, 2005, RE: Pre Trial Confernce. Jury Selection to be held on Aug. 18, 2005. See Original Order.	Fredric Joseph Ammerman
8/16/2005	✓Order of Court, dated August 15, 2005, it is hereby ORDERED that Russell Cameron M.D. is dismissed as a defendant in the matter above-captioned. BY THE COURT: /s/ Fredric J. Ammerman. 4CC Atty Johnson.	Fredric Joseph Ammerman
8/17/2005	✓Order of Court, dated August 16, 2005, filed. it is hereby ORDERED, ADJUDGED AND DECREED that argument on defendant, DuBois Regional Medical Center's Motion in Limine is rescheduled to occur on the 9th day of September 2005 at 2:00 p.m. BY THE COURT: /s/ Fredric J. Ammerman, Judge. 4CC Atty Johnson.	Fredric Joseph Ammerman
	✓Order, NOW, this 17th day of August 2005, it is the ORDER of this court that Defendant Dr. Alajaji's Motion in Limine to Preclude Certain Expert Testimony be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC	Fredric Joseph Ammerman
8/22/2005	✓Affidavit of Service filed. Service has been made by U.S. Mail to all counsel of Record of the following orders: Order dated August 15, 2005, dismissing Dr. Cameron as a defendant in the case and Order dated August 16, 2005, scheduling argument on DRMC's motion in limine for September 9, 2005 at 2:00 p.m. filed by s/David R. Johnson Esquire. No CC.	Fredric Joseph Ammerman
9/1/2005	✓ Order, NOW, this 31st day of August, 2005, it is Ordered that argument on defendant, DuBois Regional Medical Center's Motion in Limine is rescheduled to occur on the 27th day of September, 2005, at 1:30 p.m. All motions to preclude evidence/Motions in Limine filed by any party prior to September 21, 2005 will also be argued at that time. By The Court: /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Murphy w/memo Re: service	Fredric Joseph Ammerman
9/6/2005	✓Affidavit of Service filed. Sept. 2, 2005, copy of Judge Ammerman's August 31, 2005 Order served upon: Alan R. Krier, Esquire; John W. Blasko, Esquire; David R. Johnson, Esquire; and William A. Shaw. Filed by s/ Michael A. Murphy, Esquire. 1CC to Atty	Fredric Joseph Ammerman
9/12/2005	✓ Plaintiffs' Objections To Cross Examination Of Expert Dr. Steven Klepper's Videotaped Trial Deposition Taken September 1, 2005. Filed by s/ Michael A. Murphy, Esquire. 1CC Atty.	Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
9/16/2005	✓Order, NOW, this 15th day of Sept., 2005, the Court being in receipt of Plaintiffs' Objections to Cross Examination of Expert Dr. Steven Klepper's Videotaped Trial Deposition Taken September 1, 2005; it is the Order of this Court that argument on said Objections are scheduled for the 27th day of September, 2005 at 1:30 p.m. in Courtroom No. 1. By The Court, /s/Fredric J. Ammerman, Pres. Judge. 1CC Attys: Acheson, Ignetzi, Ogg, Murphy, Blasko, D. Johnson, Krier	Fredric Joseph Ammerman
9/20/2005	✓Plaintiffs' Response in opposition to Defendant DuBois Regional Medical Center's Motion in Limine to Preclude Certain Expert Testimony, filed by Atty. Acheson no cert. copies.	Fredric Joseph Ammerman
	✓Plaintiff's Motion in Limine to Preclude Defendant DuBois Regional Medical Center's Expert. filed by Atty. Acheson no cert. copies.	Fredric Joseph Ammerman
	✓Plaintiff's Motion in Limine to Preclude Nursing Opinion Testimony Proffered by Defendant DuBois Regional Medical Center, filed by Atty. Acheson no cert copies	Fredric Joseph Ammerman
	✓Plaintiff's Motion to Preclude Portions of Dr. Botti's Expert Report and Testimony at Trial., filed by Atty. Acheson no cert. copies.	Fredric Joseph Ammerman
	✓Plaintiff's Motion in Limine to Preclude Expert Testimony by Emanuel Rubin, filed by Atty. Acheson no cert. copies.	Fredric Joseph Ammerman
	✓Plaintiff's Motion in Limine to Preclude Defendant Jerjie T. Alaji's Expert., filed by Atty. Acheson no cert. copies.	Fredric Joseph Ammerman
	✓Plaintiffs' Motion to Preclude Evidence Concerning Minor Decendent's Level of Mental or Physical Function, filed by Atty. Acheson no cert. copies.	Fredric Joseph Ammerman
	✓Plaintiffs' Motion to Preclude Questioning and Evidence Regarding Plaintiffs' Work Habits. filed by Atty. Acheson no cert. copies.	Fredric Joseph Ammerman
9/21/2005	✓Four Part Motion In Limine Re Preclusion of Inappropriate Expert Testimony, filed by s/ John W. Blasko, Esquire. No CC	Fredric Joseph Ammerman
	✓Plaintiff's 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 by s/Amy Acheson, Esq. No CC	Fredric Joseph Ammerman
9/22/2005	✓Order AND NOW, this 22nd 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 27th day of September 2005, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC atty Acheson	Fredric Joseph Ammerman
	✓Order AND NOW, this 22nd 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 27th day of September, 2005, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3 CC atty Acheson.	Fredric Joseph Ammerman
	✓Order AND NOW, this 22nd 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 27th day of September 2005, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC atty Acheson.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
9/22/2005	✓Order AND NOW, this 22nd 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 that argument on said Motion has been scheduled for the 27th day of September, 2005, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3 CC atty Acheson	Fredric Joseph Ammerman
	✓Order AND NOW, this 22nd 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 27th day of September 2005, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC atty Acheson.	Fredric Joseph Ammerman
	✓Order AND NOW, this 22nd 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 27th day of September 2005 at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC atty Acheson.	Fredric Joseph Ammerman
	✓Order AND NOW, this 22nd 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 27th day September 2005, at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC atty Acheson.	Fredric Joseph Ammerman
	✓Order AND NOW, this 22nd day of September, 2005, upon consideration of Plaintiffs' Motion to Exclude Evidence and Expert Testimony Regarding Advice Allegdly Given by Dr. Jruszewski to Plaintiff prior to the Pregnancy at Issue in this case filed in the above cpationed matter, it is the Order of the Court that argument on said Motion has been scheduled for the 27th day of September 2005 at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC atty Acheson.	Fredric Joseph Ammerman
	✓Answer of Defendant, Mary C. Kruszewski D.O. to the Plaintiffs' Objections to Cross Examination of Dr. Steven Kleeper's Videotaped Trial Depostition taken September 1, 2005, filed by John W. Blasko Esq. No CC.	Fredric Joseph Ammerman
	✓Order AND NOW, the 21st 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: /s/ Fredric J. Ammerman P. Judge. 4CC atty Blasko.	Fredric Joseph Ammerman
9/26/2005	✓Plaintiffs' Motion to Supplement Pretrial Statement Based Upon Newly Produced Evidence By Defendant on August 22, 2005, filed by s/ Amy Acheson, Esquire. No CC	Fredric Joseph Ammerman
	✓Answer To Plaintiffs' Motion In Limine To Preclude Expert Testimony By Emanuel Rubin, filed by s/ John W. Blasko, Esquire. No CC	Fredric Joseph Ammerman
	✓Answer to Plaintiffs' Motion to Preclude Portions of Dr. Botti's Expert Report and Testimony at Trial, filed by s/ John W. Blasko. No CC	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
9/26/2005	✓ Affidavit Of Service and Order of Sept. 21, 2005, copy of Judge Ammerman's Order of Sept. 21, 2005, Order re Defendant Kruszewski's Motion in Limine, was served upon counsel of record: Amy Acheson, Esquire, Michael A. Murphy, Esquire, Gary J. Ogg, Esquire, Alan R. Krier, Esquire, and David R. Johnson, Esquire, Thomas B. Anderson, Esquire, on Sept. 23, 2005. Filed By S/ John W. Blasko, Esquire. No CC	Fredric Joseph Ammerman
9/27/2005	✓ 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, filed by s/ Brad Korinski, Esquire. No CC	Fredric Joseph Ammerman
	✓ Answer of Defendant, Mary C. Kruszewsli, 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, filed by s/ John W. Blasko Esq. NO CC.	Fredric Joseph Ammerman
	✓ Answer of Defendant, Mary C. Kruszewski, D.O. to Plaintiffs' Motion to Preclude Evidence concerning minor/decedent's level of mental or Physical Function, filed by John W. Blasko Esq. No CC.	Fredric Joseph Ammerman
	✓ Answer of Defendant, Mary C. Kruszewski, D.O. to Plaintiffs' Motion to Preclude Questioning and Evidence Regarding Plaintiffs' work habits, filed by s/ John W. Blasko Esq. NO CC.	Fredric Joseph Ammerman
	✓ Answer with New matter to Plaintiffs' Motion to Supplement Pre-Trail Statement, filed by s/ John W. Blasko Esq. NO CC.	Fredric Joseph Ammerman
	✓ Order AND NOW, this 27th day of September, 2005, it is hereby ORDERED that plaintiffs' Pretrial Statement shall be, and hereby is, supplemented to include Dr. Jelsema's September 19, 2005 report attached to Plaintiffs' Motion Exhibit "C". BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 4CC atty Acheson.	Fredric Joseph Ammerman
9/28/2005	✓ Response And Objection To Plaintiffs' Motion to Supplement Pretrial Statement, filed by s/ Alan R. Krier, Esquire. No CC	Fredric Joseph Ammerman
	✓ Response to Plaintiff's Motion in Limine Regarding Expert, Dr. W. Scott Morse filed by s/ Alan R. Krier Esq. No CC.	Fredric Joseph Ammerman
10/3/2005	✓ Order NOW, this 29th 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: /s/ Fredric J. Ammerman, P. Judge. 1CC attys: Acheson, Ignelzi, Ogg, Murphy, Blasko, S. Johnson, and Krier	Fredric Joseph Ammerman
	✓ Motion In Limine To Strike The Sept. 19, 2005 Report of Plaintiffs' Liability Expert, Dr. Jelsema, filed by s/ Brad R. Korinski, Esquire. No CC	Fredric Joseph Ammerman
10/5/2005	✓ Motion to Strike Plaintiff's Late Expert Report and/or Preclude inappropriate Expert Testimony, filed by Atty. Blasko no cert. copies.	Fredric Joseph Ammerman
	✓ Order, NOW, this 4th day of Oct., 2005, after consideration of the Four Part Motion in Limine filed on behalf of Def. Mary C. Kruszewski on Sept. 21, 2005, the Court hereby finds as follows: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys A. Acheson, Blasko, D. Johnson, Krier	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
10/6/2005	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 deterime if a factual/medical basis for the same will be presented. 2. Plaintiffs' Objections number 1 and 10 are HEREBY GRANTED. 3. Plaintiffs' Objection numbered 6,9,11 and 12 are DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, J. Blasko, D. Johnson and A. Krier.	Fredric Joseph Ammerman
10/11/2005	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: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, Blasko, Johnson, and Krier.	Fredric Joseph Ammerman
	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 of obstetrical imaging. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1 CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, Blasko, D. Johnson and Krier	Fredric Joseph Ammerman
	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. Robin Rubin on behalf of Defendant, Kruszewski, the Court determines that the Motion be and is HEREBY DENIED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, Blasko, Johnson and Krier	Fredric Joseph Ammerman
	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 Plaintiff's 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: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, J. Blasko, D. Johnson, A. Krier.	Fredric Joseph Ammerman
	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: /s/ Fredric J. Ammerman, P. Judge. 1CC attys: Acheson, Ignelzi, Ogg, M. Murphy, Blasko, Johnson, Krier.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date		Judge
10/11/2005	✓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: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, Blasko, Johnson, and Krier	Fredric Joseph Ammerman
	✓Order NOW this 10th day of October, after consideration of Plaintiffs' Motion in Limine filed September 21, 2005 to preclude any evidence or expert testimony regarding advise allegedly given by Dr. Kruszewski to Plaintiff prior to the pregnancy at issued 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 the case. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge., P. Judge. 1CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, Blasko, Johnson, and Krier.	Fredric Joseph Ammerman
10/13/2005	✓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 Kruszewki 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: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Krier, Acheson, Ignelzi, Murphy, Ogg, Blasko, Johnson	Fredric Joseph Ammerman
	✓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, subsection (a), (b), and (g), Defendant's Motion be and is HEREBY GRANTED. The Plaintiffs will be precluded from introducing any evidence or testimony as refernced 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 refernced therein. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Krier, Acheson,k Ignelzi, Murphy, Ogg, Blasko, Johnson.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date	Selected Items	Judge
10/17/2005	Notice to Attend and Testify Shawn Welsh, RN, filed by Gary J. Ogg Esq. No CC.	Fredric Joseph Ammerman
	Notice to Attend and Testify Sheri Kizina, RN filed by s/ Gary J. Ogg Esq. No CC.	Fredric Joseph Ammerman
	Notice to Attend and Testify Susan Ball Heverley, RN, filed by s/ Gary J. Ogg Esq. No CC.	Fredric Joseph Ammerman
	Notice to Attend and Testify Sherry Mazza, RN, filed by s/ Gary J. Ogg Esq. No CC.	Fredric Joseph Ammerman
	Notice to Attend and Testify Colleen R. Russell, RN, filed by s/ Gary J. Ogg Esq. No cc.	Fredric Joseph Ammerman
	Notice to Attend and Testify Melissa Dixon, RN filed by s/ Gary J. Ogg Esq. NO CC.	Fredric Joseph Ammerman
	Notice to Attend and Testify Gloria A. Bennett, RN filed by s/ Gary J. Ogg Esq. No CC.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Michelle Herzing, Jeffrey A. Jarvis, Janell Herzing vs. Mary Kruszewski, DuBois Regional Medical Center, Patrick Shilala, Jerjie T. Alajaji, Russell E. Cameron MD

Civil Other

Date	Selected Items	Judge
10/18/2005	✓ Motion For Reconsideration of Court Order Dated October 10,2005 Precluding The Expert Report of Barbara Schouchoff, RN. No CC	Fredric Joseph Ammerman
10/19/2005	✓ 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. Filed by s/ Brad Korinski, No CC	Fredric Joseph Ammerman
10/20/2005	✓ 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: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, Blasko, D. Johnson and Krier.	Fredric Joseph Ammerman
	✓ 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: Plaintiffs' shall be permitted to introduce evidence related to the alleged breach of the nursing standard of case based upon the allegation contained in parargraph 6, subsections (d), (e) and (f); Defendant's request to Preclude Plaintiffs' Nursing Expert's Testimony is HEREBY DENIED; 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: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Acheson, Ignelzi, Ogg, M. Murphy, Blasko, D. Johnson and Krier.	Fredric Joseph Ammerman
10/24/2005	✓ Points for Charge, filed by J. Blasko No CC (filed per Judge Ammerman)	Fredric Joseph Ammerman

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, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

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

Ogg, Cordes, Murphy & Ignelzi, L.L.P.
Firm #568
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Pittsburgh, PA 15222
Phone: 412/471-8500
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JURY TRIAL DEMANDED

FILED

FEB 0 4 2002

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,	CIVIL DIVISION
	No. G.D.
Plaintiff,	Code: 007

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI

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 2nd Street
Clearfield, PA 16830
(814) 765-2641, Extension 5982

IN THE COURT OF COMMON PLEAS OF CLARION 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.
Plaintiff,	Code: 007

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

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. PATRICK SHILALA, 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.

9. JERJIS 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.

COUNT I
WRONGFUL DEATH – Estate of JANELL HERZING vs. All Defendants

10. Paragraphs 1 through 9, inclusive, are incorporated herein by reference as if set forth at length.

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

12. 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.

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

14. 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.

15. 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.

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

17. 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.

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

19. Defendant Shilala had a duty to be certain to communicate Plaintiff MICHELLE HERZING's test results and physical condition in a timely manner to Defendant Kruszewski and to provide Plaintiffs with proper medical care and treatment on November 30, 2000.

20. 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.

21. 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.

22. Also on December 1, 2000, Defendant Alajaji interpreted a biophysical profile of Minor-Plaintiff as "6/8", using an incorrect gestational age of 31-3/7 weeks. This error was not recognized, corrected or acted upon in a timely manner by any of the Defendants.

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

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

32. At approximately 11:15 a.m., an attempt was made to communicate Plaintiffs' condition by telephone to Defendant Kruszew3ski, who was unavailable.

33. 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 heat tones and that Defendant Kruszewski would come to the hospital after another meeting she was attending.

34. 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.

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

36. 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.

37. At all times relevant to the matters set forth in this Complaint, each of the individual Defendants was the agent, servant and/or employee of each other individual Defendant, and was acting while in and upon the business of each said Defendant, and while in the course of employment by each said Defendant.

38. At all times relevant to the matters set forth in this Complaint, Defendants Shilala and Alajaji, 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 Defendant DuBois Regional, and were acting while in and upon the business of Defendant DuBois Regional and while in the course of their employment by Defendant DuBois Regional.

39. 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 all Defendants and were acting while in and upon the business of said Defendants and while in the course of their employment by said Defendants.

40. Defendants and their agents, servants and/or employees failed to exercise the judgment and skills of reasonable health care providers under the circumstances, and were 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 Plaintiff's test results and physical condition in a timely manner;

g. In failing to property read, analyze, interpret and/or act upon radiological, ultrasound and laboratory studies performed on Plaintiffs beginning on November 15, 2000;

h. In failing to adequately monitor, test and act upon the condition of Minor-Plaintiff beginning on November 15, 2000;

i. In failing to perform Doppler studies of the umbilical artery;

j. In failing to adequately obtain, maintain and capture a fetal heart rate showing Plaintiffs' condition;

k. In failing to obtain and act upon appropriate and timely consultations with medical specialists beginning on November 15, 2000, including material-fetal medicine consultations;

l. In delivering Minor-Plaintiff vaginally;

m. In failing to perform a proper and timely Cesarean delivery of Minor-Plaintiff.

n. In failing to ensure Plaintiffs were appropriately monitored and cared for by qualified medical physicians and surgeons;

o. In failing to obtain and act upon an oxytocin challenge test in a timely and appropriate manner;

p. In administering and/or causing to be administered Cytotec to Plaintiff;

q. In failing to make, implement and follow an appropriate plan for Plaintiffs' prenatal care and delivery;

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;

t. In causing Minor-Plaintiff to suffer intracranial hemorrhage; and

41. 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.

42. 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 estate expenses because of JANELL HERZING's death;

c. Extended pain and suffering, emotional distress and being actually present to view the neglectful practice by Defendants;

d. Loss and denial of the services, assistance, guidance and companionship of Janell Hezing;

e. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING;

f. Expenses incurred in the administration of JANELL HERZING's estate;

g. Loss of the ability to maintain and sustain any family relationship; and

h. Other losses and damages recoverable by law.

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

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

43. Paragraphs 1 through 42, inclusive, are incorporated herein by reference as if set forth at length.

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

45. 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.

46. 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.

47. 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.

48. 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, Shilala and Alajaiji referred to herein, along with the other factors, which gave Plaintiffs the impression that an agent, employee and/or servant relationship existed between them.

49. 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.

50. In holding out Defendants Kruszewski, Shilala and Alajaji 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.

51. 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.

52. 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.

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

54. 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.

55. 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.

56. 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.

57. 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.

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

59. 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 emergency department, radiology department, and/or labor and delivery department, 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;

f. In failing to have its labor and delivery department, radiology department and/or emergency department staffed with properly trained and experienced physicians and nurses;

g. In failing to comply with the needs of Plaintiffs with regard to necessary intervention by qualified medical health care practitioners and physicians;

h. In having in its employ individuals inadequate to deal with the signs and symptoms exhibited by Plaintiffs and to act upon them in a manner calculated to preserve the health and safety of Plaintiffs;

i. In failing to properly identify Plaintiffs' problems and respond to them in a timely fashion; and

j. In causing Plaintiffs' physical condition to deteriorate and in causing them to suffer injuries and damages, including the death of minor Plaintiff.

60. 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 and demands a trial by jury.

COUNT III
SURVIVAL – Plaintiffs vs. All Defendants

61. Paragraphs 1 through 60 are incorporated herein as if set forth at length.

62. 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 throughout her birth and until the time of her death;

b. Deprivation of JANELL HERZING's ability to enjoy the ordinary pleasures of life;

c. Impairment of JANELL HERZING's general health, strength and vitality;

d. JANELL HERZING's loss of earnings less the cost of her maintenance;

e. Medical expenses incurred on her behalf;

f. Emotional distress suffered by Plaintiffs; and

g. Other losses and damages permitted by law.

WHEREFORE, Plaintiffs demand judgment in a sum in excess of the applicable arbitration limits and demand a trial by jury.

COUNT IV
NEGLIGENCE – Michelle Herzing vs. All Defendants

63. Paragraphs 1 through 62 are incorporated herein as if set forth at length.

64. 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.

65. 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.

66. 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.

67. 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 in a sum in excess of the applicable arbitration limits and demand a trial by jury.

COUNT V
EMOTIONAL DISTRESS – Plaintiffs v. All Defendants

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

69. On November 30 through December 5, 2000, at the time when Minor-Plaintiff was suffering the symptoms Defendants' negligence in causing Minor-Plaintiff to suffer intracranial hemorrhage and other injuries, and at a time when Minor-Plaintiff's condition was not being treated properly, Plaintiff MICHELLE HERZING was present and observed the failure to treat Minor-Plaintiff and appreciated Minor-Plaintiff's physical distress which resulted from Defendants' negligence.

70. As a result of the foregoing, Plaintiff MICHELLE HERZING suffered severe emotional distress manifested by both emotional and physical symptoms, including fear, panic, helplessness, anxiety, sleeplessness and depression.

WHEREFORE, Plaintiffs claim damages against Defendants in a sum in excess of the applicable arbitration limit and demand a trial by jury.

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



Amy Acheson, Esquire

VERIFICATON

We, MICHELE L. HERZING and JEFFREY R. JARVIS, hereby verify that we have read the foregoing COMPLAINT IN 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

Michele L. Herzing

Jeffrey R. Jarvis

Jeffrey R. Jarvis

Date: January 30, 2002

FILED Atty pd. 80.00
m 10:30 BA
FEB 04 2002
4 cc shff

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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading: PRAECIPE FOR ENTRY OF APPEARANCE

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

Counsel of Record for this
Party: JOHN W. BLASKO

Court I.D. No.: 06787

RICHARD K. LAWS
Court I.D. No. 82369

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

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

Counsel of Record for
Adverse Party:
Philip A. Igneizi, Esquire

Dated: 2/8/02

FILED

FEB 11 2002

William A. Shaw
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,	)	
Plaintiffs,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendant, MARY C. KRUSZEWSKI, M.D., in the above matter.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____

JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant,
Mary C. Kruszewski, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 2/18/02

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Praecipe for Entry of Appearance, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 8 day of February, 2002, to the attorney(s) of record:

Philip A. Igneizi, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

Patrick Shilala, M.D.
DuBois Regional Medical Center
100 Hospital Avenue
Dubois, PA 15801

Jerjis T. Alajaji, M.D.
DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
RICHARD K. LAWS
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,

Vs.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

PRAECIPE FOR APPEARANCE

Code: 007

Filed on behalf of DuBois Regional Medical Center and Patrick Shilala, two 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
FEB 19 2002
William A. Shaw
Prothonotary

PRAECIPE FOR APPEARANCE

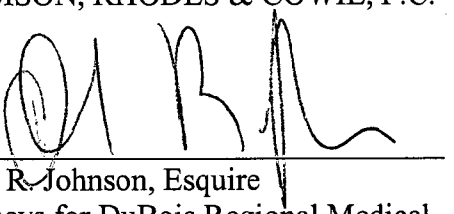
TO: WILLIAM SHAW, PROTHONOTARY

Kindly enter our appearance on behalf of DuBois Regional Medical Center and Patrick Shilala, two of the defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center and Patrick Shilala, two of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE has been served upon the following counsel of record and same placed in the U.S. Mails on this 14th day of July, 2002:

Amy Acheson, Esquire
Ogg, Cordes, Murphy & Ignelzi, LLP
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center and Patrick Shilala, two of the defendants.

FILED

FEB 19 2002

11:45 p.m

William A. Shaw
Prothonotary

no cc

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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading:
PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

Counsel of Record for this Party: JOHN W. BLASKO

Court I.D. No.: 06787

RICHARD K. LAWS
Court I.D. No. 82369

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

Counsel of Record for Adverse Party:
Philip A. Igneizi, Esquire

Dated: 2/21/02

FILED

FEB 22 2002

William A. Shaw
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,	)	
Plaintiffs,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT FILED ON BEHALF OF MARY C. KRUSZEWSKI, M.D.

AND NOW comes Defendant, MARY C. KRUSZEWSKI, M.D., by and through her attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the within Preliminary Objections to Plaintiffs' Complaint:

I. Brief Procedural and Factual History

1. The instant medical malpractice action is brought by Plaintiffs, Michelle Herzing and Jeffrey Jarvis, individually and in their own right, and as Administrators of the Estate of Janell Herzing and alleges negligence in connection with the care and treatment provided to the Plaintiff-mother during a pregnancy. See Complaint at ¶¶ 12-35.

2. In response to Plaintiffs' Complaint, Dr. Kruszewski files Preliminary Objections on the following grounds: (1) Motion to Strike / Motion for a Pleading in Conformance with Pa.R.C.P. 1020(a) for Failing to Plead Separate Causes of Action Against the Defendants within

Separate Counts of the Complaint; (2) Demurrer / Motion to Dismiss Plaintiff-Parents' Claim for Loss of Filial Consortium; (3) Demurrer / Motion to Dismiss Plaintiffs' Claim for Negligent Infliction of Emotional Distress; and, (4) Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a).

II. Motion To Strike / Motion for a Pleading in Conformance with Pa.R.C.P.1020(a)

3. Paragraphs 1 and 2 are incorporated by reference.

4. Defendant, Dr. Kruszewski, raises a Preliminary Objection to Plaintiffs' Complaint based upon Plaintiffs' failure to set forth the allegations of their Complaint so as to conform with the requirements of Pa.R.C.P. 1020(a).

5. In this regard, Pa.R.C.P. 1020(a) states that: "Each cause of action and any special damage related thereto **shall be stated in a separate count** containing a demand for relief."

6. In a prejudicially confusing and complicated fashion, Plaintiffs have failed to divide their Complaint into separate Count headings, but instead have lumped all allegations as to the individual Defendants within single Counts. See Complaint at Counts I, III, IV and V.

7. The Plaintiffs' Complaint alleges negligence as to several health care providers, which according to the Complaint would have been involved in performing different roles in the course of care and treatment as described within the Complaint.

8. Based upon the foregoing, Plaintiffs' attempt to simply lump their allegations of negligence and damages within single Counts of the Complaint is prejudicially confusing, complicated and improper, and as such directly violative of Pa.R.C.P. 1020(a).

WHEREFORE, Defendant, Dr. Kruszewski, respectfully requests that this Honorable Court strike Counts I, III, IV and V of Plaintiffs' Complaint for failure to conform to rule of Court, and Order Plaintiffs to amend their Complaint in conformance with Pa.R.C.P. 1020(a).

III. Demurrer / Motion to Dismiss Plaintiff Parents' Claim for Loss of Filial Consortium

9. Paragraphs 1 through 8 are incorporated by reference.

10. Within Paragraphs 42(d) and (g) of Count I and Paragraph 67 of Count IV, Plaintiffs assert a claim for loss of filial consortium on behalf of the minor decedent.

11. Specifically, Paragraphs 42(d) and (g) and Paragraph 67 assert the following:

> "42. The persons entitled by law to recover damages for Janell Herzing's wrongful death, identified herein, have sustained the following damages and losses:
>
> . . . .
>
> (d) **Loss and denial of the services, assistance, guidance and companionship** of Janell Hezing [sic];
>
> . . . .
>
> (g) **Loss of the ability to maintain and sustain any family relationship**;
>
> . . . .
>
> 67. 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."

12. Inasmuch as Paragraphs 42(d) and (g) and Paragraph 67 attempt to do so, Plaintiffs have failed to state a claim upon which relief can be granted as to all claims for loss of filial consortium.

13. It is well settled that Pennsylvania Appellate Courts have expressly limited loss of consortium claims to the **husband/wife relationship**, and when called upon to do so, have **consistently refused** to extend the loss of consortium theory of recovery to the **parent/child context**. See e.g. Quinn v. Pittsburgh, 243 Pa. 521, 90 A. 353 (1914); Jackson v. Tasty Cake, Inc., 437 Pa. Super. 34, 648 A.2d 1214 (1994); Wapner v. Somers, 428 Pa.Super. 187, 630 A.2d 885 (1993); McCaskill v. Philadelphia Housing Authority, 419 Pa. Super. 313, 615 A.2d 382 (1992); Schroeder v. Ear, Nose and Throat Assoc., 383 Pa. Super. 440, 557 A.2d 21 (1989); Brower by Brower v. City of Philadelphia, 124 Pa. Cmwlth. 586, 557 A.2d 48 (1989).

14. In the wake of the foregoing Appellate Court cases, Courts of Common Pleas throughout this Commonwealth have routinely sustained preliminary objections, such as the present, by holding that Pennsylvania law, without question, does not permit recovery for loss of consortium outside of the spouse context. See i.e. Estate of Matthews v. Township of Millcreek, PICS Case No. 00-0592 (Erie Cty., March 13, 2000)(rejecting any notion that Wrongful Death Act permits parents to recover for loss of their child's consortium); Balest v. Krafick, PICS Case No. 99-1847 (Westmoreland Cty., Sept. 3, 1999)(rule that loss of consortium applies only to spouses, i.e. Quinn v. City of Pittsburgh, supra, "has remained undisturbed and, consequently, is still prevailing law in Pennsylvania"); Verity v. Hershey Medical Center, No. 98-CV 3547 (Lackawanna Cty., May 17, 1999)(parents cannot recover for loss of companionship and services that child could have provided parents had he not died); Pawlak v. Wharton Township, PICS Case No. 99-2490 (Fayette Cty., Dec. 9, 1999)(refusing to allow plaintiff to pursue damages for loss of filial support in a wrongful death action over death of minor daughter); Chang v. Camelback Ski Corp., PICS Case No. 99-2199 (Monroe Cty., Aug. 30, 1999)(loss of consortium claims valid only for husband and wife); and, DeHass v. Healthsouth, Inc., et al., No. 1999-2038 (Centre Cty., Feb.20, 2000)(refusing to expand the concept of tort liability in the area of claims for loss of filial consortium even if claim is limited specifically to 'financial' losses).

15. Based upon the foregoing, Plaintiffs should not be permitted to advance a loss of filial consortium claim on behalf of Plaintiffs' Minor-decedent (Paragraphs 42(d) and (g) and Paragraph 67) and said claim(s) should be dismissed from Plaintiffs' Complaint, with prejudice.

WHEREFORE, it is respectfully requested that this Honorable Court sustain the within Demurrer to Paragraphs 42 (d) and (g) and Paragraph 67 of Plaintiffs' Complaint, and in doing so, strike, and dismiss, said Paragraphs from Plaintiffs' Complaint, with prejudice.

IV. Demurrer / Motion to Dismiss Plaintiffs' Claim(s) for Negligent Infliction of Emotional Distress

16. Paragraphs 1 through 15 are incorporated by reference.

17. Within Paragraphs 42(c) and 62(f) of the Complaint, Plaintiffs plead a legally unsupported claim for "emotional damages" by alleging that, as a result of the Defendants' negligence, they have personally sustained "extended pain and suffering, emotional distress and being actually present to view the neglectful practice by Defendants (i.e. 42(c))" and "emotional distress (i.e. 62(f))."

18. Within Paragraphs 68 through 70 of the Complaint (Count V), Plaintiffs, in a purely redundant and duplicative fashion, make a separate claim for "negligent infliction of emotional distress" based upon the allegation that they have personally "suffered severe emotional distress manifested by both emotional and physical symptoms, including fear, panic, helplessness, anxiety, sleeplessness and depression."

19. As can be seen, Plaintiffs' "negligent infliction of emotional distress claim" (Count V) seeks to recover damages that are identical to that pled within Plaintiffs previously asserted claims for "emotional damages" at Paragraphs 42(c) and 62(f).

20. Because the claim for "emotional damages" asserted at Paragraphs 42(c) and 62(f) and the claim for "negligent infliction of emotional distress" at Count V are both brought by the Plaintiffs and there is no discernable difference between the theories of relief and/or injuries alleged and/or damages sought with respect to these claims, it would be unfairly prejudicial and legally improper to permit such claims to proceed, and same are unnecessarily duplicative.

21. Because Pennsylvania law prohibits litigants from obtaining unfair duplicative recoveries, and Plaintiffs' claims asserting "negligent infliction of emotional distress" are simply

duplicative of Plaintiffs' pleaded claims for "emotional damages," it is requested that the within demurrer be granted and that Plaintiffs' claims for "emotional damages" (Paragraphs 42(c) and 62(f)) and "negligent infliction of emotional distress" (Count V) be dismissed, with prejudice.

22. In addition to the foregoing, Plaintiffs' Count V claim of "negligent infliction of emotional distress" is also legally unsupportable where Plaintiffs' factual allegations do not support such a claim as a matter of law.

23. The purported basis of Plaintiffs' Count V claim can be found at Paragraphs 69 and 70 of the Complaint which allege the following:

> "69. **On November 30 through December 5, 2000**, at the time when Minor-Plaintiff was suffering the symptoms [sic] Defendants' negligence in causing Minor-Plaintiff to suffer intracranial hemorrhage and other injuries, and at a time when Minor-Plaintiff's condition was **not being treated properly**, Plaintiff MICHELLE HERZING **was present and observed the failure to treat Minor-Plaintiff and appreciated Minor-Plaintiff's physical distress which resulted from Defendants' negligence.**
>
> 70. As a result of the foregoing Plaintiff MICHELLE HERZING suffered **severe emotional distress manifested by both emotional and physical symptoms, including fear, panic, helplessness, anxiety, sleeplessness and depression**."

24. Within the foregoing Paragraphs, Plaintiffs apparently base their "negligent infliction of emotional distress claim" on the witnessing of purportedly negligent treatment, i.e. specifically a purported failure to treat, covering a period of several days, i.e. November 30 through December 5, 2000.

25. Based upon such allegations, there is no question that the events upon which Plaintiffs base their "sensory and contemporaneous" observation spanned a period of five days.

26. Furthermore, there is no question that the purported negligence involves a failure to treat as opposed to any appreciable act of negligence committed upon a close relative of the Plaintiffs as the "negligent infliction of emotional distress" doctrine has contemplated.

27. Plaintiffs fail to plead facts sufficient to satisfy the elements of the "negligent infliction of emotional distress" doctrine, and indeed misapply this already volatile doctrine which has typically been reserved to scenarios presenting a plaintiff's **simultaneous** observation of **appreciable negligence** being committed on a close relative with **no time** in which to soften the blow of the **immediate and identifiable emotional impact**.

28. Moreover, the factual allegations of the Complaint demonstrate a further misapplication of the negligent infliction of emotional distress doctrine because of the fact that the harm alleged, "intracranial hemorrhage and other injuries," which was allegedly due to the purported malpractice of Defendants, was not readily apparent to Plaintiffs, nor was there an apparent causal relationship between the harm alleged and the alleged medical negligence.

29. Thus, Plaintiffs have failed to state a claim for "negligent infliction of emotional distress," and therefore this claim should be dismissed as a matter of law.

WHEREFORE, it is respectfully requested that this Honorable Court sustain the within Demurrer to Paragraphs 42(c) and 62(f) of Plaintiffs' Complaint alleging claims for "emotional damages" and Count V of Plaintiffs' Complaint setting forth a claim for "negligent infliction of emotional distress" and dismiss said claims from Plaintiffs' Complaint, with prejudice.

V. Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa. R.C.P. 1019(a)

30. Paragraphs 1 through 28 are incorporated by reference.

31. Pennsylvania Rule of Civil Procedure1019(a) requires that the material facts on which a cause of action or defense is based be stated in concise and summary form.

32. Where a pleading fails to conform to this rule, Rule 1028(a)(3) provides that a party may file preliminary objections on the basis of insufficient specificity.

33. Defendant Dr. Kruszewski raises the within Preliminary Objection on the basis that several of the allegations of negligence set forth within Plaintiffs' Complaint are prejudicially vague, overly broad, compounded, duplicative and insufficiently specific.

34. The allegations objected to on behalf of Dr. Kruszewski are as follows:[1]

"17. 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.**

. . . .

36. **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.

. . . .

40. Defendants and their agents, servants and/or employees failed to exercise the judgment and skills of reasonable health care providers under the circumstances, and were 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;

. . .

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 Plaintiff's test results and physical condition in a timely manner**;

---

[1]Objectionable phrasing is in bold.

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 adequately monitor, test and act upon the condition of Minor-Plaintiff** beginning on November 15, 2000;

. . .

k. **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 failing to ensure Plaintiffs **were appropriately monitored and cared for by qualified medical physicians and surgeons**;

. . .

q. **In failing to make, implement and follow an appropriate plan** for Plaintiffs' prenatal care and delivery;

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;

t. **In causing Minor-Plaintiff to suffer intracranial hemorrhage.**

. . . .

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

. . . .

h. **Other losses and damages recoverable by law.**

(See Complaint at ¶¶17; 36; 40 (including subparagraphs (a)-(c); (e)-(h); (k); (n); (q)-(t)); 42(h)).

35. The above-quoted allegations of Plaintiffs' Complaint assert boilerplate, overly broad, and prejudicially vague allegations of negligence, which are improper, imprecise, and devoid of factual support. As such, they are in complete derogation of the well settled fact pleading rules of this Commonwealth and must be stricken from Plaintiffs' Complaint.

36. Within Paragraph 17, Plaintiffs allege that, during an emergency room admission of November 30, 2000, "no attempt was made to **assess the well-being or physical condition** of minor Plaintiff." Such pleading does nothing to focus the triable issues in the case and fails to provide factual specificity with respect to what Plaintiffs are contending should have been done at this time, and perhaps more importantly by whom. Indeed, such vague pleading is only rendered further objectionable by way of Plaintiffs' failure to divide their allegations of negligence as to the named Defendants into separate Counts as required by Pa.R.C.P. 1020.

37. At Paragraph 36, Plaintiffs allege in wholly conclusory and factually insufficient manner that Defendants "**[failed] to treat Plaintiffs' for preeclampsia and/or severe preeclampsia in a timely and proper manner**." Such pleading is entirely open-ended and factually insufficient and can only be used as a means for Plaintiffs to expand their theories of liability at a later time in these proceedings to Defendants' substantial prejudice.

38. At Paragraph 40, subparagraphs (a) through (c) and (e), Plaintiffs allege that Dr. Kruszewski was negligent in "**failing to treat** Plaintiff's persistently elevated systolic and diastolic blood pressures **in a timely and appropriate manner**;" "**failing to diagnose and/or treat** plaintiff's preeclampsia and/or severe preeclampsia **in a timely and appropriate manner;" failing to obtain, maintain, test and act upon in a timely and appropriate manner** minor Plaintiff's fetal heart rate; and in "**failing to diagnose, treat and/or act upon** Plaintiff's proteinuria **in a timely and appropriate manner."** These averments are factually deficient in that they fail to inform Dr. Kruszewski what it was in terms of treatment or tests that she should or could have done or performed to appropriately and timely treat and/or diagnose Plaintiff's elevated blood pressures and/or preeclampsia. Furthermore, such averments fail to identify the ways in which Dr. Kruszewski should have "acted upon" testing related to Plaintiff's fetal heart

rate and/or "acted upon" Plaintiff's proteinuria and/or what it was about such findings that required timely action above and beyond that actually taken.

39. At Paragraph 40, subparagraphs (f) through (h), Plaintiffs allege that Dr. Kruszewski was negligent in "**failing to communicate to the other Defendants Plaintiff's test results and physical condition in a timely manner**;" "**failing to properly read, analyze, interpret and/or act upon** radiological, ultrasound and laboratory studies performed on Plaintiffs beginning on November 15, 2000;" and, in **"failing to adequately monitor, test and act upon the condition of Minor-Plaintiff** beginning on November 15, 2000. These averments do nothing in terms of informing Dr. Kruszewski as to what tests results and/or physical findings she should failed to properly communicate and/or to whom such results and/or findings should have been communicated to. Moreover, the objected-to allegations fail to identify the specific ways in which Dr. Kruszewski failed to properly read, analyze, interpret and/or act upon the general types of studies referenced, nor do the allegations provide any specific indication as to the ways in which Dr. Kruszewski failed to adequately monitor, test and act upon the condition of minor-Plaintiff, as vaguely alleged within Paragraph 40(h).

40. Such pleading is directly violative of the well settled fact pleading rules of this Commonwealth where it is generally understood, that in **any** medical malpractice lawsuit the alleged negligent act will generally occur during the physician's examination, diagnosis, or treatment of the patient. In failing to **clearly and specifically** identify how or in what ways Dr. Kruszewski was allegedly negligent in this **particular instance**, and with this **particular patient(s)**, the Plaintiffs' Complaint undermines the policies supporting the fact-pleading rules of this Commonwealth, to Defendant's substantial prejudice.

41. At Paragraphs 40(k) and (n), Plaintiffs allege negligence in **"failing to obtain and act upon appropriate and timely consultations with medical specialists** beginning on November 15, 2000, including material-fetal medicine consultations; and, in "failing to ensure Plaintiffs **were appropriately monitored and cared for by qualified medical physicians and surgeons**." Plaintiffs provide no indication as to the specific types of specialists and/or qualified medical physicians and surgeons that should have been consulted as alleged, which is further prejudicial when one considers the remaining allegations of Plaintiffs' Complaint which fail to specifically identify the points of time and/or areas of treatment that mandated any such consultations as contended.

42. At Paragraphs 40(r) and (s), Plaintiffs allege negligence 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, in **"causing Plaintiffs' physical condition to deteriorate** and in **causing Plaintiffs to suffer injuries** due to severe preeclampsia and/or preeclampsia." Plaintiffs provide no indication as to what it was that Dr. Kruszewski could or should have done to cure and/or arrest the disease process alleged and fail to specify how Dr. Kruszewski caused Plaintiffs' physical condition to deteriorate or caused other injuries as vaguely alleged.

43. Likewise, Paragraphs 40(q) and (t) allege in wholly conclusory and vague fashion that Dr. Kruszewski was negligent in **"failing to make, implement and follow an appropriate plan** for Plaintiffs' prenatal care and delivery;" and, in **"causing Minor-Plaintiff to suffer intracranial hemorrhage.**" Not unlike the previous objected-to averments, Paragraphs 40(q) and (t) are factually insufficient in that they fail to inform the Defendant what an appropriate plan would have consisted of and/or what it was about the plan in place that was deficient and fail to

specifically set forth the ways in which Defendant caused Minor-Plaintiff to suffer intracranial hemorrhage. Such pleading is completely improper and must be stricken from the Complaint.

44. Finally, Paragraph 42(h) contains the entirely open-ended and completely improper allegation that the Defendants' alleged negligence caused Plaintiffs "other losses and damages recoverable by law." Such improper pleading has no place in a fact pleading jurisdiction and as such must be stricken from the Complaint.

45. In addition to the above noted objected-to averments, Dr. Kruszewski also objects to averments contained within Paragraphs 28, 37-40, and 64-66, which apparently seek to hold her liable for the acts and/or omissions of various unnamed "agents, servants, and/or employees." In doing so, Plaintiffs fail to identify who these various "agents, servants and/or employees" are/ were and fail to indicate how or in what ways Dr. Kruszewski had any right to control the actions and omissions of such unnamed individuals.

46. Such pleading is in direct violation of Appellate Court case law, which requires those asserting an agency relationship to allege, as a minimum, facts which:

> "1. identify the agent by name or appropriate description; and
> 2. set forth the agent's authority and how the tortious acts of the agent either fall within the scope of that authority or if authorized were ratified by the principal."

See Alumni Association v. Sullivan v. Kappa Chapter of Sigma Chi Fraternity, 369 Pa. Super. 596, 535 A.2d 1095 (1987); Willinger v. Mercy Catholic Medical Center, 241 Pa. Super. 456, 362 A.2d 280 (1976); Daro v. Keystone 5, 10, 25 One Dollar Stores, Inc., 50 Dauph. Co. 134 (1949).

47. Without Plaintiffs specifically identifying the identities of the numerous unnamed persons and/or providers referenced within the objected-to Paragraphs of Plaintiffs' Complaint,

Dr. Kruszewski is without notice of the specific allegations being brought against her and of the individual persons and/or providers involved in the care that is being criticized.

48. Similarly, the prejudicial averments of the objected-to Paragraphs leave Dr. Kruszewski with no way of knowing whether she could have ratified the alleged acts and/or omissions of the unnamed persons and/or providers mentioned, or if such unnamed persons and/or providers were even subject to any right of control by her at the time of the alleged negligence.

49. In all, the objected-to subparagraphs, referenced herein above, fail to comply with Pennsylvania Rule of Civil Procedure No. 1019(a), as well as, the principals enunciated in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983), and other cases.

50. If the objected-to allegations are not stricken, or properly re-pled, Dr. Kruszewski will be forced to defend against any and every conceivable theory of malpractice at trial.

51. Because the challenged subparagraphs fail to sufficiently apprize Dr. Kruszewski of the tortious conduct which Plaintiffs assert, she is unable to appropriately respond or adequately prepare a defense to such allegations.

52. Furthermore, the foregoing factual deficiencies of the challenged allegations are prejudicial inasmuch as the inability to prepare a defense to these allegations may result in waiver of various defenses and objections pursuant to Pa. R.C.P. 1032.

WHEREFORE, it is respectfully requested that this Motion to Strike / Motion for a More Specific Pleading be granted and that this Honorable Court enter an Order striking the following paragraphs and subparagraphs, or in the alternative, ordering Plaintiffs to file a more specific pleading with respect thereto: Paragraphs 17, 28, 36 through 40 (including subparagraphs (a)-(c); (e)-(h); (k); (n); (q)-(t)); 42(h); and, 64 through 66.

Respectfully Submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____

JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
MARY C. KRUSZEWSKI, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 2/21/02

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Preliminary Objections to Plaintiffs' Complaint, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 21 day of February, 2002, to the attorney(s) of record:

Philip A. Igneizi, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

Patrick Shilala, M.D.
DuBois Regional Medical Center
100 Hospital Avenue
Dubois, PA 15801

DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

Jerjis T. Alajaji, M.D.
DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
Mary C. Kruszewski, M.D.

FILED
16
FEB 22 2002
10/11:16 P.m
William A. Shaw
Prothonotary
Bar no cc

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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

PRELIMINARY OBJECTIONS

Code: 007

Filed on behalf of DuBois Regional Medical Center and Patrick Shilala, two of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

NOTICE TO PLEAD

To the Plaintiffs:

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days of service hereof or a default judgment may be entered against you.

Thomas B. Anderson

Attorneys for DuBois Regional Medical Center and Patrick Shilala, two of the defendants.

FILED

FEB 25 2002
m/11:05/noCC
William A. Shaw
Prothonotary

PRELIMINARY OBJECTIONS

NOW COME DuBois Regional Medical Center and Patrick Shilala, two of the defendants, by and through their counsel, Thomson, Rhodes & Cowie, P.C. and file the following preliminary objections to plaintiffs' complaint and state as follows:

1. This case involves wrongful death and survival claims related to the death of stillborn minor plaintiff, as well as claims of negligence and emotional distress brought by Michelle Herzing.

2. Plaintiffs' claims relate to care and treatment Michelle Herzing received in November and December of 2000 during her pregnancy with Janell Herzing.

3. Plaintiffs allege that the defendants failed to properly treat Michelle Herzing for preeclampsia resulting in Janell Herzing being delivered stillborn.

A. Motion to strike Paragraphs 42(c), (d), (e), (g) and (h)

4. In paragraph 42, which is incorporated into paragraph 60, plaintiffs set forth allegations of damages sought pursuant to Pennsylvania's wrongful death statute. The damages sought in paragraph 42 are as follows:

> "c. Extended pain and suffering, emotional distress and being actually present to view the neglectful practice by Defendants;
>
> d. Loss and denial of the services, assistance, guidance and companionship of Janell Hezing;
>
> e. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING;
>
> g. Loss of the ability to maintain and sustain any family relationships; and
>
> h. Other losses and damages recoverable by law."

5. The allegations set forth in subparagraphs (c), (d), (e) and (g) seek damages which are not recoverable under Pennsylvania's wrongful death statute.

6. The above-referenced subparagraphs improperly assert claims for parental and filial consortium. Accordingly, paragraph 42(c), (d), (e), and (g) should be stricken from the complaint.

7. Paragraph 42(h) merely asserts a claim for "other losses and damages recoverable by law."

8. The claim set forth in paragraph 42(h) is vague, conclusory and fails to adequately advise these defendants of the nature of the damages sought by the plaintiffs.

9. Accordingly, paragraph 42(h) should be stricken from the complaint, or in the alternative, plaintiff should be required to more specifically plead the damages sought in their action for wrongful death.

WHEREFORE, paragraphs 42(c), (d), (e), (g) and (h) should be stricken from plaintiffs' complaint.

B. Motion to strike Paragraph 62(b), (c), (e), (f), and (g).

10. In paragraph 62, plaintiffs set forth allegations of damages sought pursuant to Pennsylvania statute regarding survival actions. The damages sought in paragraph 62 are as follows:

"b. Deprivations of JANELL HERZING's ability to enjoy the ordinary pleasures of life;

c. Impairment of JANELL HERZING's general health, strength and vitality;

e. Medical expenses incurred on her behalf;

f. Emotion distress suffered by Plaintiffs; and

g. Other losses and damages permitted by law."

11. The allegations set forth in paragraph 62(b), (c), (e), and (f) seek damages which are not recoverable under Pennsylvania's Survival Act. Accordingly, these subparagraphs should be stricken from the complaint.

12. The allegations set forth in paragraph 62(g) are vague and conclusory and fail to adequately advise these defendants of the damages sought by the plaintiffs. Accordingly, paragraph 62(g) should be stricken from the complaint, or in the alternative, plaintiffs should be required to more specifically plead the damages sought in their survival action.

WHEREFORE, paragraph 62(b), (c), (e), (f) and (g) should be stricken from plaintiffs' complaint.

C. Demurrer to Count V of the complaint entitled *"EMOTIONAL DISTRESS"*

13. In Count V of the complaint, Michelle Herzing asserts a claim for a negligent infliction of emotional distress.

14. Michelle Herzing claims that over a six to seven day time period, her unborn child suffered "an intracranial hemorrhage and other injuries." (Complaint, ¶69)

15. Michelle Herzing bases her claim upon an allegation that during the above-referenced period of time, "when Minor-Plaintiff's condition was not being treated properly, Plaintiff MICHELLE HERZING was present and observed the failure to treat Minor-Plaintiff and appreciated Minor-Plaintiff's physical distress which resulted form Defendants' negligence." (Complaint, ¶69)

16. Michelle Herzing allegedly suffered fear, panic, helplessness, anxiety, sleeplessness and depression as a result. (Complaint, ¶70)

17. Under the circumstances and facts alleged in this case, plaintiff Michelle Herzing has not set forth a viable claim for negligent infliction of emotional distress.

18. Plaintiff Michelle Herzing has not identified any specific traumatic event which was caused by these defendants, which proximately caused her emotional distress.

19. Plaintiff Michelle Herzing has also failed to identify any bodily harm or physical impact from the alleged mental disturbance which was brought on by the observance of a specific traumatic event.

20. Michelle Herzing's alleged injuries were not foreseeable based upon the facts alleged in the complaint.

WHEREFORE, plaintiff Michelle Herzing has failed to set forth a viable claim for negligent infliction of emotional distress and Count V of the complaint should be dismissed.

D. Motion to strike paragraph 59(g) through (j), or in the alternative, motion for more specific pleading.

21. In paragraph 59, plaintiffs allege that DuBois Regional Medical Center was negligent in the following particulars:

> "g. In failing to comply with the needs of Plaintiffs with regard to necessary intervention by qualified medical health care practitioners and physicians;
>
> h. In having in its employ individuals inadequate to deal with the signs and symptoms exhibited by Plaintiffs and to act upon them in a manner calculated to preserve the health and safety of Plaintiffs;
>
> i. In failing to properly identify Plaintiffs' problems and respond to them in a timely fashion; and
>
> j. In causing Plaintiffs' physical condition to deteriorate and in causing them to suffer injuries and damages, including the death of minor Plaintiff."

22. The above-referenced subparagraphs are vague and conclusory and fail to set forth material facts upon which the allegations are based and fail to adequately advise DuBois Regional Medical Center of the nature of the acts or omissions which are alleged to have caused harm or damages to the plaintiffs.

23. Accordingly, paragraphs 59(g) through (j) fail to comply with the requirements of Pennsylvania Rule of Civil Procedure 1019(a) and said allegations should be stricken from the complaint.

24. In the alternative, plaintiffs should be required to file an amended complaint more specifically pleading the facts upon which the allegations set forth in paragraphs 59(g) through (j) are based.

WHEREFORE, DuBois Regional Medical Center, one of the defendants, respectfully requests this Honorable Court strike paragraphs 59(g) through (j) of plaintiffs' complaint for lack of conformity of the law.

E. Motion to strike all references to claims of Jeffrey A. Jarvis, individually, and in his own right.

25. The caption of this case references claims of Jeffrey A. Jarvis, individually, and in his own right.

26. Counts III and V are allegedly brought by "Plaintiffs."

27. There are no allegations in the complaint and no causes of action which would permit recovery on the part of Jeffrey A. Jarvis, individually, and in his own right. The survival action must be brought by the administrator(s) of the decedent's estate and the emotional distress claim set forth in Count V relates only to Michelle Herzing.

WHEREFORE, the complaint should be amended to eliminate all references to claims by Jeffrey A. Jarvis, individually, and in his own right.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

Thomas B. Anderson

David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for DuBois Regional Medical Center and Patrick Shilala, two of the defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Preliminary Objections** has been served upon the following counsel of record and same placed in the U.S. Mails on this 22nd day of February, 2002:

Amy Acheson, Esquire
Philip A. Ignelzi, 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

THOMSON, RHODES & COWIE, P.C.

Thomas B. Anderson

David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for DuBois Regional Medical Center
and Patrick Shilala, two 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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

Code: 007

ORDER OF COURT

AND NOW, this _____ day of _____, 2002, it is hereby ORDERED, ADJUDGED and DECREED that DuBois Regional Medical Center's and Patrick Shilala's, two of the defendants', preliminary objections are SUSTAINED. Paragraphs 42(c), (d), (e), (g) and (h) and 62(b), (c), (e), (f) and (g) are stricken from plaintiffs' complaint. Count V of the complaint is dismissed. Paragraphs 59(g) through (j) are also stricken from plaintiffs' complaint. All references to claims brought on behalf of Jeffrey A. Jarvis, individually, and in his own right, are removed from the complaint.

BY THE COURT:

_____J.

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.

: IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

: CIVIL ACTION - LAW

: NO. G.D. 02-169 CD

: **PRAECIPE TO ENTER APPEARANCE**

: Filed on Behalf of Defendant:

: **JERJIE 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

FILED

FEB 25 2002
10/1:23/nxc
William A. Shaw
Prothonotary

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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

PRAECIPE TO ENTER APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance in the above-captioned matter for and on behalf of the Defendant, **JERJIE T. ALAJAJI, M.D.**

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: _____

Alan R. Krier, Esquire
PA I.D. #06672
Attorney for Defendant,
JERJIE T. ALAJAJI, M.D.

Dated: February 19, 2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing **Praecipe to Enter Appearance** on all counsel of record and/or parties of interest by depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 22nd day of February, 2002, 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
(Attorney for Plaintiff)

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801
(814)238-4926
(Attorney for Mary C. Kruszewski, M.D.)

Patrick Shilala, M.D.
DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: _____

Alan R. Krier, Esquire
PA I.D. #06672
Attorney for Defendant,
JERJIE T. ALAJAJI, M.D.

CP

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.	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW NO. G.D. 02-169 CD **PRELIMINARY OBJECTIONS TO COMPLAINT** Filed on Behalf of Defendant: **JERJIE 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

FILED

FEB 25 2002

M/11:23/nocc

William A. Shaw
Prothonotary

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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

AND NOW, comes Defendant, JERJIE T. ALAJAJI, M.D., by and through his Attorneys, JUBELIRER, CAROTHERS, KRIER & HALPERN, and files the within Preliminary Objections to Plaintiffs Complaint and in support thereof avers as follows:

I. DEMURRER

1. This is a suit claiming medical malpractice was allegedly committed by each of the Defendants in connection with the stillbirth of the deceased minor.

2. The physician Defendants are in different specialties and participated in different aspects of Decedents care.

3. The Complaint alleges in paragraph 37 that each Defendant was the agent, servant or employee of each other Defendant but sets forth no facts to support this broad allegation.

4. Paragraph 39 further alleges that all of the physicians, nurses or other healthcare personnel who observed, cared for or treated Plaintiffs were the agents servants or employees of all Defendants and were acting in the scope of their employment with Defendants but sets forth no facts to support this allegation.

5. Nowhere in the Complaint are the alleged employees identified nor are specific activities identified to any particular "employee".

6. Paragraph 40 catalogues approximately 20 allegedly negligent acts of the Defendants either by their own act or through the actions of the unnamed agents, servants or employees.

7. The Complaint does not state which acts were committed by which Defendants and does not state which servants of which Defendants committed which acts attributable to that Defendant or how this Defendant had a duty of care in connection with these allegations.

8. Pa. R.C.P. 1019 requires that the material facts upon which a cause of action is based shall be stated in concise and summary form.

9. Pa. R.C.P. 1020 states that each cause of action shall be set forth in a separate count.

10. The Complaint is a masterpiece of ambiguity and obfuscation as it is impossible to determine what acts of negligence are attributable to this Defendant and what person or persons known or unknown committed acts allegedly attributable to this Defendant.

11. The Complaint is incomprehensible and fails to set forth a cause of action against this Defendant.

12. The Complaint, Count III at paragraph 62 claims Survival Action damages for pain, suffering, anguish and inconvenience of the Decedent as well as loss of enjoyment of life, impairment of general health strength and vitality, emotional distress suffered by Plaintiffs and other losses and damages permitted by law.

13. The Decedent was a stillborn fetus whose heartones were apparently nonexistent prior to delivery.

14. There is no cause of action for loss of enjoyment of life impairment of health or concious pain and suffering or emotional distress for a stillborn fetus.

15. There is no cause of action in the survival claim for the emotional distress of the parents and no cause of action of the parents individually in the survival action.

16. There are no facts set forth in the Complaint giving rise to a claim for negligent infliction of emotional distress is set forth in Count IV.

17. There are no other damages allowed by law other than specifically asserted in Count I of the Complaint.

18. There is no cause of action, as set forth in Count I, for the loss of guidance and companionship of a child (in this case a stillborn fetus) and no cause of action by parents for loss of ability to maintain and sustain any family relationship between a child and parents.

WHEREFORE, Defendant prays that the Complaint be dismissed.

II. MOTION TO STRIKE AND/OR FOR MORE SPECIFIC COMPLAINT

19. Defendant incorporates herein paragraphs 1 - 18 of the Preliminary Objection as though set forth at length.

20. The Complaint fails to identify which of the acts complained of are acts of this Defendant and which persons are alleged to be this Defendant's employees for whose acts he would be responsible as heretofore set forth.

21. It is accordingly impossible for this Defendant to determine what is being alleged against him and what duty or duties of care have allegedly been violated.

22. Paragraph 50 a, b and e contain allegations of failure to treat but do not set forth what treatment was not afforded.

23. Paragraph 40 g alleges failure to properly read, analyze interpret or act upon studies performed on Plaintiffs but does not identify the studies or identify what actions were not taken thereon.

24. Paragraph 40 h alleges failure to monitor, test and act upon the condition of Plaintiff but does not state what actions or tests were not performed by this Defendant or what conditions are referred to.

25. Paragraph 40 k alleges failure to obtain timely specialty consultations but does not identify what specialty consultations this Defendant should have obtained other than "material-fetal" medicine or when they should have been obtained.

26. Paragraph 40 r alleges failure to cure hypertension in Plaintiffs and permitting it to continue but does not state what action or inactions of this Defendant are referred to and allows virtually any cause of action or theory of negligence to be asserted.

27. Paragraph 40 s alleges that Defendant allowed Plaintiffs condition to deteriorate but does not say what actions of Defendant are referred to and allows virtually any cause of action or theory of negligence to be alleged.

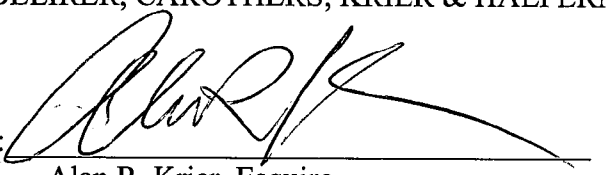
28. Paragraph 40 t alleges that Defendant caused Minor-Plaintiff to suffer intracranial hemorrhage but does not state what acts of this Defendant are referred to and allows virtually any cause of action or theory of negligence to be alleged.

29. The allegations of Paragraph 40 generally and in the particulars above stated are vague and open ended, fail to apprise Defendant of the cause of action asserted against him and represent the type of allegations determined by the appellate courts to be subject to preliminary objections in Connor v. Allegheny General Hospital 501 Pa 306, 461 A.2d 600 (1983).

WHEREFORE, Defendant prays that the Complaint be stricken or Plaintiff be ordered to file a more specific Complaint.

Respectfully submitted,

JUBELIRER, CAROTHERS, KRIER & HALPERN

BY: 

Alan R. Krier, Esquire
PA I.D. #06672
Park View Center, 10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603
(814) 943-1149
Attorney for Defendant,
JERJIE T. ALAJAJI, M.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing **Preliminary Objections to the Complaint** on all counsel of record and/or parties of interest by depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 21st day of February, 2002, 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
(Attorney for Plaintiff)

John W. Blasko, Esquire
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811 University Drive
State College, PA 16801
(814)238-4926
(Attorney for Mary C. Kruszewski, M.D.)

Patrick Shilala, M.D.
DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

DuBois Regional Medical Center
100 Hospital Avenue
DuBois, PA 15801

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: _____

Alan R. Krier, Esquire
PA I.D. #06672
Attorney for Defendant,
JERJIE 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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Kruszewski's Interrogatories & Request for Production (Set One), Request for Production (Set Two) and Expert Interrogatories in the above-referenced matter were mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 7th day of March, 2002, to Philip A. Ignelzi, Esquire & Amy Acheson, Esquire, 245 Fort Pitt Boulevard, Pittsburgh, PA 15222; David R. Johnson, Esquire & Linton L. Moyer, Esquire, 1010 Two Chatham Center, Pittsburgh, PA 15219; and Alan R. Krier, Esquire, P. O. Box 2024, Altoona, PA 16603.

FILED

MAR 11 2002
m/1:01/noCC
William A. Shaw
Prothonotary

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: John W. Blasko/cj
JOHN W. BLASKO
Attorneys for Defendant
MARY C. KRUSZEWSKI, D. O.

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

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

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JURY TRIAL DEMANDED

FILED

MAR 12 2002
M/ 12:45 cm
William A. Shaw
Prothonotary
1 cert to Sheriff

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 2nd 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.	

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. JERJIS 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.

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

10. Paragraphs 1 through 9, inclusive, are incorporated herein by reference as if set forth at length.

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

12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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.

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

19. Defendant Cameron had a duty to be certain to communicate Plaintiff MICHELLE HERZING's test results and physical condition in a timely manner to Defendant Kruszewski and to provide Plaintiffs with proper medical care and treatment on November 30, 2000.

20. 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.

21. 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.

22. Also on December 1, 2000, Defendant Alajaji interpreted a biophysical profile of Minor-Plaintiff as "6/8", using an incorrect gestational age of 31-3/7 weeks. This error was not recognized, corrected or acted upon in a timely manner by any of the Defendants.

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

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

32. At approximately 11:15 a.m., an attempt was made to communicate Plaintiffs' condition by telephone to Defendant Kruszew3ski, who was unavailable.

33. 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 heat tones and that Defendant Kruszewski would come to the hospital after another meeting she was attending.

34. 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.

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

36. 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.

37. At all times relevant to the matters set forth in this Complaint, each of the individual Defendants was the agent, servant and/or employee of each other individual Defendant, and was acting while in and upon the business of each said Defendant, and while in the course of employment by each said Defendant.

38. 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.

39. 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.

40. 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 property read, analyze, interpret and/or act upon radiological, ultrasound and laboratory studies performed on Plaintiffs beginning on November 15, 2000;

h. In failing to adequately monitor, test and act upon the condition of Minor-Plaintiff beginning on November 15, 2000;

i. In failing to perform Doppler studies of the umbilical artery;

j. In failing to adequately obtain, maintain and capture a fetal heart rate showing Plaintiffs' condition and act upon the same;

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

l. In failing to auscultate the fetal heart rate;

m. In failing to perform fetal scalp gas sampling;

n. In failing to obtain and act upon appropriate and timely consultations with medical specialists beginning on November 15, 2000, including material-fetal medicine consultations;

o. In delivering Minor-Plaintiff vaginally;

p. In failing to perform a proper and timely Cesarean delivery of Minor-Plaintiff.

q. In failing to ensure Plaintiffs were appropriately monitored and cared for by qualified medical physicians and surgeons;

r. In failing to obtain and act upon an oxytocin challenge test in a timely and appropriate manner;

s. In administering and/or causing to be administered Cytotec to Plaintiff;

t. In failing to make, implement and follow an appropriate plan for Plaintiffs' prenatal care and delivery;

u. 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;

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

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

41. 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.

42. 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 value of the services, society and comfort that JANELL HERZING would have given to her family;

d. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING;

e. Expenses incurred in the administration of JANELL HERZING's estate; and

f. Loss of the ability to maintain and sustain any family relationship.

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

43. Paragraphs 1 through 42, inclusive, are incorporated herein by reference as if set forth at length.

44. 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 properly read, analyze, interpret and/or act upon radiological, ultrasound and laboratory studies performed on Plaintiffs beginning on November 15, 2000;

d. In failing to perform Doppler studies of the umbilical artery;

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

f. In failing to make, implement and follow an appropriate plan for Plaintiffs' prenatal care and delivery;

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

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

45. 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.

46. 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 value of the services, society and comfort that JANELL HERZING would have given to her family;

d. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING;

e. Expenses incurred in the administration of JANELL HERZING's estate; and

f. Loss of the ability to maintain and sustain any family relationship.

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

47. Paragraphs 1 through 46, inclusive, are incorporated herein by reference as if set forth at length.

48. 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

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

49. 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.

50. 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 value of the services, society and comfort that JANELL HERZING would have given to her family;

d. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING;

e. Expenses incurred in the administration of JANELL HERZING's estate; and

f. Loss of the ability to maintain and sustain any family relationship.

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

51. Paragraphs 1 through 50, inclusive, are incorporated herein by reference as if set forth at length.

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

53. 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.

54. 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.

55. 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.

56. 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, Alajaiji 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.

57. 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.

58. 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.

59. 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.

60. 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.

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

62. 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.

64. 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.

65. 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.

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

67. 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;

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;

g. In failing to comply with the needs of Plaintiffs with regard to necessary intervention by qualified medical health care practitioners and physicians;

h. In having in its employ individuals inadequate to deal with the signs and symptoms exhibited by Plaintiffs and to act upon them in a manner calculated to preserve the health and safety of Plaintiffs;

i. In failing to properly identify Plaintiffs' problems and respond to them in a timely fashion; and

j. In causing Plaintiffs' physical condition to deteriorate and in causing them to suffer injuries and damages, including the death of minor Plaintiff.

68. 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

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

70. 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;

b. Deprivation of JANELL HERZING's ability to enjoy the ordinary pleasures of life;

c. Impairment of JANELL HERZING's general health, strength and vitality; and

d. 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

71. Paragraphs 1 through 70 are incorporated herein as if set forth at length.

72. 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.

73. 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.

74. 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.

75. 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.

COUNT VII
EMOTIONAL DISTRESS – Plaintiffs v. All Defendants

76. Paragraphs 1 through 75 are incorporated herein as if set forth at length.

77. On November 30 through December 5, 2000, at the time when Minor-Plaintiff was suffering the symptoms Defendants' negligence in causing Minor-Plaintiff to suffer intracranial

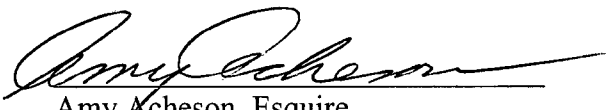
hemorrhage and other injuries, and at a time when Minor-Plaintiff's condition was not being treated properly, Plaintiff MICHELLE HERZING was present and observed the failure to treat Minor-Plaintiff and appreciated Minor-Plaintiff's physical distress which resulted from Defendants' negligence.

78. In addition, Plaintiff MICHELLE HERZING was present and aware at the time when she was in the process of delivering her minor daughter.

79. As a result of the foregoing, Plaintiff MICHELLE HERZING suffered severe emotional distress manifested by both emotional and physical symptoms, including fear, panic, helplessness, anxiety, sleeplessness and depression.

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

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



Amy Acheson, Esquire

CERTIFICATE OF SERVICE

I, AMY ACHESON, Esquire, hereby certify that a true and correct copy of the foregoing **AMENDED COMPLAINT IN CIVIL ACTION** was forwarded to the following counsel of record, this 11th day of March, 2002, by regular United States mail, postage prepaid, and addressed as follows:

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

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center and Patrick Shilala)

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)



Amy Acheson, Esquire

FILED

MAR 1 2 2002

William A. Shaw
Prothonotary

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

VERIFICATION OF 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

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

FILED
MAR 18 2002
m/9:33/nocc
William A. Shaw
Prothonotary

VERIFICATON

We, MICHELE L. HERZING and JEFFREY R. JARVIS, hereby verify that we have read the foregoing, 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: March 10, 2002

CERTIFICATE OF SERVICE

I, AMY ACHESON, Esquire, hereby certify that a true and correct copy of the foregoing **VERIFICATION OF AMENDED COMPLAINT IN CIVIL ACTION** was forwarded to the following counsel of record, this 13th day of March, 2002, by regular United States mail, postage prepaid, and addressed as follows:

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

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

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)



Amy Acheson, Esquire

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.

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: NO. G.D. 02-169 CD
:
:
: **PRELIMINARY OBJECTIONS TO**
: **AMENDED COMPLAINT**
:
:
: Filed on Behalf of Defendant:
:
: **JERJIE 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

FILED

MAR 21 2002
10/11.18/no cc
William A. Shaw
Prothonotary

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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

AND NOW, comes Defendant, JERJIE T. ALAJAJI, M.D., by and through his Attorneys, JUBELIRER, CAROTHERS, KRIER & HALPERN, and files the within Preliminary Objections to Plaintiffs Amended Complaint and in support thereof avers as follows:

I. DEMURRER

1. This is a suit claiming medical malpractice was allegedly committed by each of the Defendants in connection with the stillbirth of the deceased minor.

2. The physician Defendants are in different specialties and participated in different aspects of Decedents care.

3. The Amended Complaint alleges in paragraph 37 that each Defendant was the agent, servant or employee of each other Defendant but sets forth no facts to support this broad allegation.

4. Nowhere in the Amended Complaint are the alleged employees identified nor are specific activities identified to any particular "employee".

5. Paragraph 44 sets forth that Defendant Dr. Alajaji and his agents, servants and or employees committed the acts of negligence enumerated.

6. When read with paragraph 37, Pa. R.C.P. the Amended Complaint does not state which acts were committed by which Defendants and does not state which servants of which Defendants committed which acts attributable to the Defendants or how this Defendant had a duty of care in connection with the allegations against other Defendants or what the basis is for the employment relationship.

7. Pa. R.C.P. 1019 requires that the material facts upon which a cause of action is based shall be stated in concise and summary form.

8. The Amended Complaint is vague and ambiguous and fails to set forth a cause of action against Defendant Alajaji.

9. The Amended Complaint in paragraph 46 claims damages for loss of ability to maintain and sustain a family relationship. The wrongful death act does not provide for recovery of such damages.

10. The Amended Complaint, Count V at paragraph 70 claims Survival Action damages for pain, suffering, anguish and inconvenience of the Decedent as well as loss of enjoyment of life, impairment of general health strength and vitality.

11. The Decedent was a stillborn fetus whose heartones were apparently nonexistent prior to delivery.

12. There is no cause of action for loss of enjoyment of life impairment of health or concious pain and suffering or emotional distress for a stillborn fetus.

13. The Amended Complaint in Count VI alleges that Plaintiff Michelle Herzing suffered persistently high blood pressure, preeclampsia and severe preeclampsia from which she suffered injuries including eye injuries, impairment of her health and nervous shock.

14. There are no facts pled that would establish a cause of action against Dr. Alajaji for those alleged injuries.

15. The Amended Complaint in Count VII attempts to assert a claim for negligent infliction of emotional distress but does not set forth sufficient facts to sustain the elements of such a claim does not identify a traumatic event and does not aver that Plaintiff appreciated the actions of the Defendants as negligent when they occurred.

WHEREFORE, Defendant prays that the Complaint be dismissed.

MOTION TO STRIKE AND/OR FOR MORE SPECIFIC COMPLAINT

16. Defendant incorporates herein paragraphs 1 - 17 of the Preliminary Objection as though set forth at length.

17. The Amended Complaint fails to identify which agents, servants or employees of Defendant committed which acts.

18. Paragraph 37 attempts to assess responsibility for the acts of each Defendant on every other Defendant by asserting that each Defendant was the agent, servant or employee of each other Defendant.

19. Such an allegation in effect destroys any effort to separate the causes of action against each Defendant and makes it impossible to determine what is being alleged against this Defendant.

20. Paragraph 44c alleges failure to properly read, analyze interpret or act upon studies performed on Plaintiffs but does not identify the studies or identify what actions were not taken thereon.

21. Paragraph 44 e alleges failure to obtain timely specialty consultations but does not identify what specialty consultations this Defendant should have obtained other than "material-fetal" medicine or when they should have been obtained or how this Defendant had a duty to obtain them.

22. Paragraph 44 f alleges failure to make, implement and follow an appropriate plan for Plaintiffs prenatal care and delivery but does not set forth any facts giving rise to a duty therefore on the part of Dr. Alajaji who is a radiologist and is not responsible for Plaintiffs prenatal care and delivery.

23. Paragraph 44 g alleges that Defendant allowed Plaintiffs condition to deteriorate but does not say what actions of Defendant are referred to and allows virtually any cause of action or theory of negligence to be alleged.

24. Paragraph 44 h alleges that Defendant caused Minor-Plaintiff to suffer intracranial hemorrhage but does not state what acts of this Defendant are referred to and allows virtually any cause of action or theory of negligence to be alleged.

25. The allegations of Paragraph 44 generally and in the particulars above stated are vague and open ended, fail to apprise Defendant of the cause of action asserted against him and represent the type of allegations determined by the appellate courts to be subject to preliminary objections in Connor v. Allegheny General Hospital 501 Pa 306, 461 A.2d 600 (1983).

WHEREFORE, Defendant prays that the Complaint be stricken or Plaintiff be ordered to file a more specific Complaint.

Respectfully submitted,

JUBELIRER, CAROTHERS, KRIER & HALPERN

BY: _____

Alan R. Krier, Esquire
PA I.D. #06672
Park View Center, 10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603
(814) 943-1149
Attorney for Defendant,
JERJIE T. ALAJAJI, M.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing **Preliminary Objections to the Amended Complaint** on all counsel of record and/or parties of interest by depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 20th day of March, 2002, 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
(Attorney for Plaintiff)

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801
(814)238-4926
(Attorney for Mary C. Kruszewski, M.D.)

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219
(Attorney for DuBois Regional Medical Center and Patrick Shilala)

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: _____
Alan R. Krier, Esquire
PA I.D. #06672
Attorney for Defendant,
JERJIE T. ALAJAJI, 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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading:
PRELIMINARY OBJECTIONS TO PLAINTIFFS' AMENDED COMPLAINT

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

Counsel of Record for this Party: JOHN W. BLASKO

Court I.D. No.: 06787

RICHARD K. LAWS
Court I.D. No. 82369

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

Counsel of Record for Adverse Party:
Philip A. Igneizi, Esquire

FILED

MAR 21 2002
m/11:51/noCC
William A. Shaw
Prothonotary

Dated: 3/20/02

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, annd RUSSELL E. CAMERON,	)	
Defendants.	)	

PRELIMINARY OBJECTIONS TO PLAINTIFFS' AMENDED COMPLAINT FILED ON BEHALF OF DEFENDANT MARY C. KRUSZEWSKI, M.D.

AND NOW comes Defendant, MARY C. KRUSZEWSKI, M.D., by and through her attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the within Preliminary Objections to Plaintiffs' Amended Complaint:

I. Brief Procedural and Factual History

1. On or about January 30, 2002, Plaintiffs filed this medical malpractice action individually and in their own right, and as Administrators of the Estate of Janell Herzing. Plaintiffs allege negligence in connection with the care and treatment provided to the Plaintiff-mother during a pregnancy. See Complaint at ¶¶ 12-35.

2. In response to Plaintiffs' Original Complaint, Dr. Kruszewski filed Preliminary Objections on several grounds. Prior to argument, Plaintiffs filed an Amended Complaint which unfortunately does not correct most of the Objections previously raised.

3. As a result, Defendant Dr. Kruszewski files Preliminary Objections to Plaintiffs' Amended Complaint on the following grounds: (1) Motion to Strike / Motion for a Pleading in Conformance with Pa.R.C.P. 1020(a); (2) Demurrer / Motion to Dismiss Plaintiff-Parents' Claim for Loss of Filial Consortium; (3) Demurrer / Motion to Dismiss Plaintiffs' Claim for Negligent Infliction of Emotional Distress; and, (4) Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a).

II. Motion To Strike / Motion for a Pleading in Conformance with Pa.R.C.P.1020(a)

4. Paragraphs 1 and 3 are incorporated by reference.

5. Dr. Kruszewski must again raise a Preliminary Objection to Plaintiffs' Amended Complaint based upon Plaintiffs' continued failure to set forth the allegations of their Complaint so as to conform with the requirements of Pa.R.C.P. 1020(a).

6. In this regard, Pa.R.C.P. 1020(a) states that: "Each cause of action and any special damage related thereto **shall be stated in a separate count** containing a demand for relief."

7. In a prejudicially confusing and complicated fashion, Plaintiffs continue in failing to divide the allegations of their Complaint into separate Count headings, as required by law. See Complaint at Counts I, V, VI and VII.

8. Within Count I, Plaintiffs set forth a Wrongful Death claim as to Dr. Kruszewski, however proceed to include allegations of negligence as to Defendant Drs. Cameron and Alajaji, as well as other unnamed health care providers for which Dr. Kruszewski had no control. See Complaint at ¶¶11, 16-19, 22, 24-28, 31, 36-40.

9. Likewise, Counts V, VI and VII, which are deficient in and of themselves continue to set forth claims as to "all Defendants" which is improper as prejudicially confusing and improper as a matter of law.

10. The Plaintiffs' Amended Complaint alleges negligence as to several health care providers, which according to the Amended Complaint would have been involved in performing different roles in the course of care and treatment as described within the Amended Complaint.

11. Based upon the foregoing, Plaintiffs' failure to divide the allegations and Counts of their Complaint into separate Count headings, as required by law, is prejudicially confusing, complicated and improper, and as such directly violative of Pa.R.C.P. 1020(a).

WHEREFORE, Defendant, Dr. Kruszewski, respectfully requests that this Honorable Court strike Counts I, V, VI an VII of Plaintiffs' Amended Complaint, and Order Plaintiffs to amend their Complaint in conformance with Pa.R.C.P. 1020(a).

III. Demurrer / Motion to Dismiss Plaintiff Parents' Claim for Loss of Filial Consortium

12. Paragraphs 1 through 11 are incorporated by reference.

13. Within Paragraphs 42(c) and (f) of Count I and Paragraph 75 of Count VI, Plaintiffs continue to assert a claim for loss of filial consortium on behalf of the minor decedent.

14. Specifically, Paragraphs 42(c) and (f) and Paragraph 75 assert the following:

> "42. The persons entitled by law to recover damages for Janell Herzing's wrongful death, identified herein, have sustained the following damages and losses:
>
> . . . .
>
> (c) **Deprivation of the value of the services, society and comfort that JANELL HERZING would have given to her family;**
>
> . . . .
>
> (f) **Loss of the ability to maintain and sustain any family relationship**;
>
> . . . .
>
> 75. 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."

15. Inasmuch as Paragraphs 42(c) and (f) and Paragraph 75 continue to do so, Plaintiffs fail to state a claim upon which relief can be granted as to claims for loss of filial

consortium.

16. It is well settled that Pennsylvania Appellate Courts have expressly limited loss of consortium claims to the **husband/wife relationship**, and when called upon to do so, have **consistently refused** to extend the loss of consortium theory of recovery to the **parent/child context**. See e.g. Quinn v. Pittsburgh, 243 Pa. 521, 90 A. 353 (1914); Jackson v. Tasty Cake, Inc., 437 Pa. Super. 34, 648 A.2d 1214 (1994); Wapner v. Somers, 428 Pa.Super. 187, 630 A.2d 885 (1993); McCaskill v. Philadelphia Housing Authority, 419 Pa. Super. 313, 615 A.2d 382 (1992); Schroeder v. Ear, Nose and Throat Assoc., 383 Pa. Super. 440, 557 A.2d 21 (1989); Brower by Brower v. City of Philadelphia, 124 Pa. Cmwlth. 586, 557 A.2d 48 (1989).

17. In the wake of the foregoing Appellate Court cases, Courts of Common Pleas throughout this Commonwealth have routinely sustained preliminary objections, such as the present, by holding that Pennsylvania law, without question, does not permit recovery for loss of consortium outside of the spouse context. See i.e. Estate of Matthews v. Township of Millcreek, PICS Case No. 00-0592 (Erie Cty., March 13, 2000)(rejecting any notion that Wrongful Death Act permits parents to recover for loss of their child's consortium); Balest v. Krafick, PICS Case No. 99-1847 (Westmoreland Cty., Sept. 3, 1999)(rule that loss of consortium applies only to spouses, i.e. Quinn v. City of Pittsburgh, supra, "has remained undisturbed and, consequently, is still prevailing law in Pennsylvania"); Verity v. Hershey Medical Center, No. 98-CV 3547 (Lackawanna Cty., May 17, 1999)(parents cannot recover for loss of companionship and services that child could have provided parents had he not died); Pawlak v. Wharton Township, PICS Case No. 99-2490 (Fayette Cty., Dec. 9, 1999)(refusing to allow plaintiff to pursue damages for loss of filial support in a wrongful death action over death of minor daughter); Chang v. Camelback Ski Corp., PICS Case No. 99-2199 (Monroe Cty., Aug. 30, 1999)(loss of consortium

claims valid only for husband and wife); and, DeHass v. Healthsouth, Inc., et al., No. 1999-2038 (Centre Cty., Feb.20, 2000)(refusing to expand the concept of tort liability in the area of claims for loss of filial consortium even if claim is limited specifically to 'financial' losses).

18. Based on the foregoing, Plaintiffs should not be permitted to advance a loss of filial consortium claim on behalf of Plaintiffs' Minor-decedent (Paragraphs 42(c) and (f) and Paragraph 75) and said claim should be dismissed from the Amended Complaint, with prejudice.

WHEREFORE, it is respectfully requested that this Honorable Court sustain the within Demurrer to Paragraphs 42(c) and (f) and Paragraph 75 of Plaintiffs' Amended Complaint, and in doing so, strike, and dismiss, said Paragraphs, with prejudice.

IV. Demurrer / Motion to Dismiss Plaintiffs' Claim(s) for Negligent Infliction of Emotional Distress

19. Paragraphs 1 through 18 are incorporated by reference.

20. Within Paragraphs 76 through 79 of the Amended Complaint (Count VII), Plaintiffs continue to set forth a legally unsupportable claim for for "negligent infliction of emotional distress" based upon the allegation that they have personally "suffered severe emotional distress manifested by both emotional and physical symptoms, including fear, panic, helplessness, anxiety, sleeplessness and depression."

21. Plaintiffs' Count VII claim of "negligent infliction of emotional distress" remains legally unsupportable when Plaintiffs' fact averments fail to support this claim as a matter of law.

22. The purported basis of Plaintiffs' Count VII claim can be found at Paragraphs 77 and 79 of the Amended Complaint which allege the following:

> "77. **On November 30 through December 5, 2000**, at the time when Minor-Plaintiff was suffering the symptoms [sic] Defendants' negligence in causing Minor-Plaintiff to suffer intracranial hemorrhage and other injuries, and at a time when Minor-Plaintiff's condition was **not being treated properly**, Plaintiff

MICHELLE HERZING **was present and observed the failure to treat Minor-Plaintiff and appreciated Minor-Plaintiff's physical distress which resulted from Defendants' negligence.**

78. In addition, Plaintiff MICHELLE HERZING **was present and aware at the time when she was in the process of delivering her minor daughter**.

79. As a result of the foregoing Plaintiff MICHELLE HERZING suffered **severe emotional distress manifested by both emotional and physical symptoms, including fear, panic, helplessness, anxiety, sleeplessness and depression**."

23. Within the foregoing Paragraphs, Plaintiffs continue to base their "negligent infliction of emotional distress claim" on the witnessing of purportedly negligent treatment, i.e. specifically a purported failure to treat, covering a period of several days, i.e. November 30 through December 5, 2000.

24. Based upon such allegations, there is no question that the events upon which Plaintiffs base their "sensory and contemporaneous" observation spanned a period of five days.

25. Furthermore, there is no question that the purported negligence involves a failure to treat as opposed to any appreciable act of negligence committed upon a close relative of the Plaintiffs as the "negligent infliction of emotional distress" doctrine has contemplated.

26. Plaintiffs fail to plead facts sufficient to satisfy the elements of the "negligent infliction of emotional distress" doctrine, and indeed misapply this already volatile doctrine which has typically been reserved to scenarios presenting a plaintiff's **simultaneous** observation of **appreciable negligence** being committed on a close relative with **no time** in which to soften the blow of the **immediate and identifiable emotional impact**.

27. Moreover, the factual allegations of the Amended Complaint demonstrate a further misapplication of the negligent infliction of emotional distress doctrine because of the fact that the harm alleged, "intracranial hemorrhage and other injuries," which was allegedly due

to the purported malpractice of Defendants, was not readily apparent to Plaintiffs, nor was there an apparent causal relationship between the harm alleged and the alleged medical negligence.

28. Plaintiffs mere insertion of the averment that Plaintiff Herzing "was present and aware at the time" of delivering her minor daughter does nothing to change the unsupportable nature of Plaintiffs' improper claim. See Complaint at ¶78.

29. Thus, Plaintiffs have failed to state a claim for "negligent infliction of emotional distress," and therefore this claim should be dismissed as a matter of law.

WHEREFORE, it is respectfully requested that this Honorable Court sustain the within Demurrer to Plaintiffs' claim for "negligent infliction of emotional distress" and dismiss said claims from Plaintiffs' Amended Complaint, with prejudice.

V. Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa. R.C.P. 1019(a)

30. Paragraphs 1 through 29 are incorporated by reference.

31. Pennsylvania Rule of Civil Procedure1019(a) requires that the material facts on which a cause of action or defense is based be stated in concise and summary form.

32. Where a pleading fails to conform to this rule, Rule 1028(a)(3) provides that a party may file preliminary objections on the basis of insufficient specificity.

33. Defendant Dr. Kruszewski raises the within Preliminary Objection on the basis that several of the allegations of negligence set forth within Plaintiffs' Amended Complaint remain prejudicially vague, overly broad, compounded, duplicative and insufficiently specific.

34. The allegations objected to on behalf of Dr. Kruszewski are as follows:[1]

"17. During this Emergency Department admission, Plaintiff, Michelle Herzing

---

[1]Objectionable phrasing is in bold.

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.**

. . . .

36. **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.

. . . .

40. 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;

. . .

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 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 adequately monitor, test and act upon the condition of Minor-Plaintiff** beginning on November 15, 2000;

. . .

j. **In failing to adequately obtain, maintain and capture** a fetal heart rate showing Plaintiffs' condition **and act upon same**;

. . .

n. **In failing to obtain and act upon appropriate and timely consultations with medical specialists** beginning on November 15, 2000, including material-fetal medicine consultations;

. . .

q. In failing to ensure Plaintiffs **were appropriately monitored and cared for by qualified medical physicians and surgeons**;

r. In failing to **obtain and act upon** an oxytocin challenge test **in a timely and appropriate manner**;

. . .

t. **In failing to make, implement and follow an appropriate plan** for Plaintiffs' prenatal care and delivery;

u. **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**;

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

w. **In causing Minor-Plaintiff to suffer intracranial hemorrhage**.

(See Complaint at ¶¶17; 36; 40 (including subparagraphs (a)-(c); (e)-(h); (j); (n); (q)-(r), (t)-(w)).

35. The above-quoted allegations of Plaintiffs' Amended Complaint continue to assert boilerplate, overly broad, and prejudicially vague allegations of negligence, which are improper, imprecise, and devoid of factual support.

36. Within Paragraph 17, Plaintiffs allege that, during an emergency room admission of November 30, 2000, "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**" Such pleading does nothing to focus the triable issues in the case and fails to provide factual specificity with respect to what Plaintiffs are contending should have been done at this time, and perhaps more importantly by whom. Indeed, such vague pleading actually expands the triable issues in this case and permits Plaintiffs the language by which to prejudicially expand their theories of

negligence at a later date to Defendant's substantial prejudice.

37. At Paragraph 36, Plaintiffs allege in wholly conclusory and factually insufficient manner that Defendants "**[failed] to treat Plaintiffs' for preeclampsia and/or severe preeclampsia in a timely and proper manner.**" Such pleading is entirely open-ended and factually insufficient and can only be used as a means for Plaintiffs to additionally expand their theories of liability at a later time in these proceedings to Defendants' substantial prejudice.

38. At Paragraph 40, subparagraphs (a) through (c); (e) and (r) Plaintiffs allege that Dr. Kruszewski was negligent in "**failing to treat** Plaintiff's persistently elevated systolic and diastolic blood pressures **in a timely and appropriate manner;**" "**failing to diagnose and/or treat** plaintiff's preeclampsia and/or severe preeclampsia **in a timely and appropriate manner;**" **failing to obtain, maintain, test and act upon in a timely and appropriate manner** minor Plaintiff's fetal heart rate; in "**failing to diagnose, treat and/or act upon** Plaintiff's proteinuria **in a timely and appropriate manner;**" and, in "**failing to obtain and act upon** an oxytocin challenge test **in a timely and appropriate manner.**"

39. The foregoing averments remain factually deficient in that they fail to inform Dr. Kruszewski what it was in terms of treatment or tests that she should or could have done or performed to appropriately and timely treat and/or diagnose Plaintiff's elevated blood pressures and/or preeclampsia. Furthermore, such averments fail to identify the ways in which Dr. Kruszewski should have "acted upon" testing related to Plaintiff's fetal heart rate, Plaintiff's proteinuria, or Plaintiff's oxytocin challenge test and/or what it was about such findings that required timely action above and beyond that actually taken.

40. At Paragraph 40, subparagraphs (f) through (h) and (j), Plaintiffs allege that Dr. Kruszewski was negligent in "**failing to communicate to the other Defendants Plaintiff's test**

results and physical condition in a timely manner;" "**failing to properly read, analyze, interpret and/or act upon** radiological, ultrasound and laboratory studies performed on Plaintiffs beginning on November 15, 2000;" in "**failing to adequately monitor, test and act upon the condition of Minor-Plaintiff** beginning on November 15, 2000; and in "**failing to adequately obtain, maintain and capture** a fetal heart rate showing Plaintiffs' condition **and act upon same.**" These averments do nothing in terms of informing Dr. Kruszewski as to what tests results and/or physical findings she should failed to properly communicate and/or to whom such results and/or findings should have been communicated to. Moreover, the objected-to allegations fail to identify the specific ways in which Dr. Kruszewski failed to properly read, analyze, interpret, obtain, maintain and/or act upon the general types of studies referenced, nor do the allegations provide any specific indication as to the ways in which Dr. Kruszewski failed to adequately monitor, test and act upon the condition of minor-Plaintiff or the results of fetal heart rate monitoring, which is all vaguely alleged within Paragraph 40(h) and (j).

41. Such pleading is directly violative of the well settled fact pleading rules of this Commonwealth where it is generally understood, that in **any** medical malpractice lawsuit the alleged negligent act will generally occur during the physician's examination, diagnosis, or treatment of the patient. In failing to **clearly and specifically** identify how or in what ways Dr. Kruszewski was allegedly negligent in this **particular instance**, and with this **particular patient(s)**, the Plaintiffs' Complaint undermines the policies supporting the fact-pleading rules of this Commonwealth, to Defendant's substantial prejudice.

42. At Paragraphs 40(n) and (q), Plaintiffs allege negligence in **"failing to obtain and act upon appropriate and timely consultations with medical specialists** beginning on November 15, 2000, including material-fetal medicine consultations; and, in "failing to ensure

Plaintiffs **were appropriately monitored and cared for by qualified medical physicians and surgeons**." Plaintiffs provide no indication as to the specific types of specialists and/or qualified medical physicians and surgeons that should have been consulted as alleged, which is further prejudicial when one considers the remaining allegations of Plaintiffs' Amended Complaint which fail to specifically identify the points of time and/or areas of treatment that mandated any such consultations as contended.

43. At Paragraphs 40(u) and (v), Plaintiffs allege negligence 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, in "**causing Plaintiffs' physical condition to deteriorate** and in **causing Plaintiffs to suffer injuries** due to severe preeclampsia and/or preeclampsia." Plaintiffs provide no indication as to what it was that Dr. Kruszewski could or should have done to cure and/or arrest the disease process alleged and fail to specify how Dr. Kruszewski caused Plaintiffs' physical condition to deteriorate or caused other injuries as vaguely alleged.

44. Likewise, Paragraphs 40(t) and (w) allege in wholly conclusory and vague fashion that Dr. Kruszewski was negligent in **"failing to make, implement and follow an appropriate plan** for Plaintiffs' prenatal care and delivery;" and, in **"causing Minor-Plaintiff to suffer intracranial hemorrhage.**" Not unlike the previous objected-to averments, Paragraphs 40(t) and (w) are factually insufficient in that they fail to inform the Defendant what an appropriate plan would have consisted of and/or what it was about the plan in place that was deficient and fail to specifically set forth the ways in which Defendant caused Minor-Plaintiff to suffer intracranial hemorrhage. Such pleading is completely improper and must be stricken from the Complaint.

45. In addition to the above noted objected-to averments, Dr. Kruszewski also objects to averments contained within Paragraphs 28, 37-40, and 72-75, which apparently seek to hold her liable for the acts and/or omissions of various unnamed "agents, servants, and/or employees." In doing so, Plaintiffs fail to identify who these various "agents, servants and/or employees" are/ were and fail to indicate how or in what ways Dr. Kruszewski had any right to control the actions and omissions of such unnamed individuals.

46. Such pleading is in direct violation of Appellate Court case law, which requires those asserting an agency relationship to allege, as a minimum, facts which:

> "1. identify the agent by name or appropriate description; and
> 2. set forth the agent's authority and how the tortious acts of the agent either fall within the scope of that authority or if authorized were ratified by the principal."

See Alumni Association v. Sullivan v. Kappa Chapter of Sigma Chi Fraternity, 369 Pa. Super. 596, 535 A.2d 1095 (1987); Willinger v. Mercy Catholic Medical Center, 241 Pa. Super. 456, 362 A.2d 280 (1976).

47. Without Plaintiffs specifically identifying the identities of the numerous unnamed persons and/or providers referenced within the objected-to Paragraphs of Plaintiffs' Amended Complaint, Dr. Kruszewski is without notice of the specific allegations being brought against her and of the individual persons and/or providers involved in the care that is being criticized.

48. Similarly, the prejudicial averments of the objected-to Paragraphs leave Dr. Kruszewski with no way of knowing whether she could have ratified the alleged acts and/or omissions of the unnamed persons and/or providers mentioned, or if such unnamed persons and/or providers were even subject to any right of control by her at the time of the alleged negligence.

49. In all, the objected-to averments, referenced herein above, fail to comply with Pennsylvania Rule of Civil Procedure No. 1019(a), as well as, the principals enunciated in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983), and other cases.

50. If the objected-to allegations are not stricken, or properly re-pled, Dr. Kruszewski will be forced to defend against any and every conceivable theory of malpractice at trial.

51. Because the challenged averments fail to sufficiently apprize Dr. Kruszewski of the tortious conduct which Plaintiffs assert, she is unable to appropriately respond or adequately prepare a defense to such allegations.

52. Furthermore, the foregoing factual deficiencies of the challenged allegations are prejudicial inasmuch as the inability to prepare a defense to these allegations may result in waiver of various defenses and objections pursuant to Pa. R.C.P. 1032.

WHEREFORE, it is respectfully requested that this Motion to Strike / Motion for a More Specific Pleading be granted and that this Honorable Court enter an Order striking the following paragraphs and subparagraphs, or in the alternative, ordering Plaintiffs to file a more specific pleading with respect thereto: Paragraphs 17, 28, 36 through 40 (including subparagraphs (a)-(c); (e)-(h); (j); (n); (q)-(r), (t)-(w)); and, 72 through 75.

Respectfully Submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____

JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
MARY C. KRUSZEWSKI, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 5/20/01

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Preliminary Objections to Plaintiffs' Amended Complaint, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 20 day of March, 2002, to the attorney(s) of record:

Philip A. Igneizi, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

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

Alan R. Krier, Esquire
Park View Center
Ten Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
RICHARD K. LAWS
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,

Vs.

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

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT, BRIEF IN SUPPORT AND ORDER OF COURT

Code: 007

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

Counsel of Record for This Party:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

NOTICE TO PLEAD

To the Plaintiffs:

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days of service hereof or a default judgment may be entered against you.

Thomas B. Anderson

Attorneys for DuBois Regional Medical Center, one of the defendants.

FILED

MAR 25 2002
m/1:30/ no cc
William A. Shaw
Prothonotary

POs

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

NOW COMES DuBois Regional Medical Center, one of the defendants, by its counsel, Thomson, Rhodes & Cowie, P.C. and file the following preliminary objections to plaintiffs' amended complaint and state as follows:

1. This case involves wrongful death and survival claims related to the death of stillborn minor plaintiff, as well as claims of negligence and emotional distress brought by Michelle Herzing.

2. Plaintiffs' claims relate to care and treatment Michelle Herzing received in November and December of 2000 during her pregnancy with Janell Herzing.

3. Plaintiffs allege that the defendants failed to properly treat Michelle Herzing for preeclampsia resulting in Janell Herzing being delivered stillborn.

A. Motion to strike Paragraphs 42(c), (d) and (f)

4. In paragraph 42, which is incorporated into paragraph 51, plaintiffs set forth allegations of damages sought pursuant to Pennsylvania's wrongful death statute. The damages sought in paragraph 42 are as follows:

> c. Deprivation of the value of the services, society and comfort that JANELL HERZING would have given her family;
>
> d. Deprivation of the financial support and all pecuniary benefits they would have received from JANELL HERZING;
>
> f. Loss of the ability to maintain and sustain any family relationships.

5. The allegations set forth in subparagraphs (c), (d)and (f) seek damages which are not recoverable under Pennsylvania's wrongful death statute.

6. The above-referenced subparagraphs improperly assert claims for parental or filial consortium. Accordingly, paragraph 42(c), (d) and (f) should be stricken from the amended complaint.

WHEREFORE, paragraphs 42(c), (d) and (f) should be stricken from plaintiffs' amended complaint.

B. Motion to strike Paragraph 70(b) and (c).

7. In paragraph 70, plaintiffs set forth allegations of damages sought pursuant to Pennsylvania statute regarding survival actions. The damages sought in paragraph 70 are as follows:

b. Deprivations of JANELL HERZING's ability to enjoy the ordinary pleasures of life;

c. Impairment of JANELL HERZING's general health, strength and vitality;

8. The allegations set forth in paragraph 70(b) and(c) seek damages which are not recoverable under Pennsylvania's Survival Act. Accordingly, these subparagraphs should be stricken from the amended complaint.

WHEREFORE, paragraph 70(b) and (c) should be stricken from plaintiffs' amended complaint.

C. Demurrer to Count VII of the amended complaint entitled *"EMOTIONAL DISTRESS"*

9. In Count VII of the amended complaint, Michelle Herzing asserts a claim for negligent infliction of emotional distress.

10. Michelle Herzing claims that over a six to seven day time period, her unborn child suffered "an intracranial hemorrhage and other injuries." (Amended Complaint, ¶77)

11. Michelle Herzing bases her claim upon an allegation that during the above-referenced period of time, "when Minor-Plaintiff's condition was not being treated properly, Plaintiff MICHELLE HERZING was present and observed the failure to treat Minor-Plaintiff and appreciated Minor-Plaintiff's physical distress which resulted form Defendants' negligence." (Id.) She also alleges that she was "present and aware at the time when she was in the process of delivering her minor daughter." (Amended Complaint, ¶78)

12. Michelle Herzing allegedly suffered fear, panic, helplessness, anxiety, sleeplessness and depression as a result. (Amended Complaint, ¶79)

13. Under the circumstances and facts alleged in this case, plaintiff Michelle Herzing has not set forth a viable claim for negligent infliction of emotional distress.

14. Plaintiff Michelle Herzing has not identified any specific traumatic event which was caused by this defendant, which proximately caused her emotional distress.

15. Plaintiff Michelle Herzing has also failed to identify any bodily harm or physical impact from the alleged mental disturbance which was brought on by the observance of a specific traumatic event.

16. Michelle Herzing's alleged injuries were not foreseeable based upon the facts alleged in the complaint.

WHEREFORE, plaintiff Michelle Herzing has failed to set forth a viable claim for negligent infliction of emotional distress and Count VII of the amended complaint should be dismissed.

D. Motion to strike paragraph 67(g) through (j), or in the alternative, motion for more specific pleading.

17. In paragraph 67, plaintiffs allege that DuBois Regional Medical Center was negligent in the following particulars:

> g. In failing to comply with the needs of Plaintiffs with regard to necessary intervention by qualified medical health care practitioners and physicians;
>
> h. In having in its employ individuals inadequate to deal with the signs and symptoms exhibited by Plaintiffs and to act upon them in a manner calculated to preserve the health and safety of Plaintiffs;
>
> i. In failing to properly identify Plaintiffs' problems and respond to them in a timely fashion; and
>
> j. In causing Plaintiffs' physical condition to deteriorate and in causing them to suffer injuries and damages, including the death of minor Plaintiff.

18. The above-referenced subparagraphs are vague and conclusory and fail to set forth material facts upon which the allegations are based and fail to adequately advise DuBois Regional Medical Center of the nature of the acts or omissions which are alleged to have caused harm or damages to the plaintiffs.

19. Accordingly, paragraphs 67(g) through (j) fail to comply with the requirements of Pennsylvania Rule of Civil Procedure 1019(a) and said allegations should be stricken from the amended complaint.

20. In the alternative, plaintiffs should be required to file a second amended complaint more specifically pleading the facts upon which the allegations set forth in paragraphs 67(g) through (j) are based.

WHEREFORE, DuBois Regional Medical Center, one of the defendants, respectfully requests this Honorable Court strike paragraphs 67(g) through (j) of plaintiffs' amended complaint for lack of conformity of the law.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

Thomas B. Anderson

David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for DuBois Regional Medical Center, one of the defendants.

Order

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, and RUSSELL E. CAMERON

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

Code: 007

ORDER OF COURT

AND NOW, this _____ day of _____, 2002, it is hereby ORDERED, ADJUDGED and DECREED that DuBois Regional Medical Center's preliminary objections are SUSTAINED. Paragraphs 42(c), (d) and (f) and 70(b) and (c) are stricken from plaintiffs' amended complaint. Count VII of the complaint is dismissed. Paragraphs 67(g) through (j) are also stricken from plaintiffs' amended complaint.

BY THE COURT:

_____J.

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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

NOTICE OF SERVICE

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

FILED

MAR 25 2002

11:30 nocc

William A. Shaw
Prothonotary

NOTICE OF SERVICE OF PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT, BRIEF IN SUPPORT AND ORDER OF COURT

TO THE PROTHONOTARY:

Kindly take notice that a copy of defendant DuBois Regional Medical Center's **Preliminary Objections to Amended Complaint, Brief in Support and Order of Court** has been served upon counsel of record for the plaintiff:

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire
Ogg, Cordes, Murphy & Ignelzi, LLP
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

With a copy to the following counsel of record:

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

Served by first-class, U.S. mail, postage pre-paid, on this 21st day of March, 2002.

THOMSON, RHODES & COWIE, P.C.

Thomas B. Anderson

David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for DuBois Regional Medical Center
one of the defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Notice of Service of Preliminary Objections** has been served upon the following counsel of record and same placed in the U.S. Mails on this 21st day of March, 2002:

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire
Ogg, Cordes, Murphy & Ignelzi, LLP
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

John W. Blasko, Esquire
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THOMSON, RHODES & COWIE, P.C.

Thomas B. Anderson

David R. Johnson, Esquire
Thomas B. Anderson, 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, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

PRAECIPE FOR APPEARANCE

Code: 007

Filed on behalf of Russell E. Cameron, one of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

FILED

APR 0 1 2002

William A. Shaw
Prothonotary

PRAECIPE FOR APPEARANCE

TO: WILLIAM SHAW, PROTHONOTARY

Kindly enter our appearance on behalf of Russell E. Cameron, one of the defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Russell E. Cameron, one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE has been served upon the following counsel of record and same placed in the U.S. Mails on this 7th day of March, 2002:

Amy Acheson, Esquire
Ogg, Cordes, Murphy & Ignelzi, LLP
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

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State College, PA 16801

Alan Krier, Esquire
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Altoona, PA 16603

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Russell E. Cameron, one of the defendants.

FILED

APR 0 1 2002

1:15(m

William A. Shaw
Prothonotary

no c/c

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, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D. 02-1669-CD

Code: 007

RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT MARY C. KRUSZEWSKI

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

Ogg, Cordes, Murphy & Ignelzi, L.L.P.
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JURY TRIAL DEMANDED

FILED

APR 09 2002

William A. Shaw
Prothonotary

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.	

RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT MARY C. KRUSZEWSKI

AND NOW, come the Plaintiffs, by and through undersigned counsel, and make the following response to Defendant Mary C. Kruszewski's Preliminary Objections:

1. Admitted to the extent that Plaintiffs' Amended Complaint speaks for itself and is herein incorporated by reference as though set forth herein at length.

2. Admitted in part and denied in part. It is admitted that Defendant filed preliminary objections to Plaintiffs' Original Complaint and that Plaintiffs subsequently filed an Amended Complaint. It is denied that the Amended Complaint does not correct the objections previously raised. To the contrary, the Amended Complaint is proper, pled with requisite specificity, in accordance with applicable and relevant Pennsylvania case law and statutory authority, and is not subject to the whims of further preliminary objections.

3. Admitted to the extent that Defendant is summarily restating his instant pleading.

Plaintiffs incorporate by reference their instant responses to Defendant's preliminary objections as if set forth herein at length.

4. Paragraph 4 merely incorporates by reference previous paragraphs of Defendant's preliminary objections, and as such, no response is required from the Plaintiffs. Plaintiffs do, however, analogously incorporate by reference their corresponding answers to the subject paragraphs as if set forth herein at length.

5. Paragraph 5 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 5 is denied. It is denied that Plaintiffs' Amended Complaint fails to set forth allegations so as to conform with the requirements of Pa.R.C.P. 1020(a). To the contrary, the allegations in Plaintiffs' Amended Complaint are proper and in accordance with relevant and applicable Pennsylvania case law and statutory authority.

6. Admitted to the extent that Pa.R.C.P. 1020(a) speaks for itself.

7. Denied as stated. Plaintiffs' Amended Complaint clearly sets forth its allegations in an manner comporting with applicable and relevant Pennsylvania case law and statutory authority. In the alternative, Plaintiffs assert the right to revise their complaint pursuant to Pa.R.C.P. 1028.

8. Admitted in part and denied in part. It is admitted that Plaintiffs set forth a wrongful death claim against this Defendant in COUNT I. It is denied that the named paragraphs of COUNT I are misplaced, confusing, and/or detract in any way from a viable wrongful death claim against instant Defendant.

9. Paragraph 9 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 9 is denied as stated. COUNTS V, VI, and

VII of the Amended Complaint are not deficient or improper in any respect, and are not prejudicially confusing or improper as a matter of law. To the contrary, said COUNTS of the Amended Complaint clearly, specifically, and completely set forth claims against the named Defendants in accordance with Pennsylvania law. In the alternative, Plaintiffs assert the right to revise their complaint pursuant to Pa.R.C.P. 1028.

10. Admitted to the extent that the Amended Complaint speaks for itself.

11. Paragraph 11 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 11 is denied as stated. Plaintiffs' Amended Complaint is not in any respect prejudicially confusing, overly complicated, and improper, and does not violate Pa.R.C.P. 1020(a). To the contrary, the Amended Complaint clearly, specifically, and completely sets forth claims against the named Defendants and is in accordance with applicable and relevant Pennsylvania case law and statutory authority. In the alternative, Plaintiffs assert the right to revise their complaint pursuant to Pa.R.C.P. 1028.

12. Paragraph 12 merely incorporates by reference previous paragraphs of Defendant's preliminary objections, and as such, no response is required from the Plaintiffs. Plaintiffs do, however, analogously incorporate by reference their corresponding answers to the subject paragraphs as if set forth herein at length.

13. Denied as stated. The subject paragraphs set forth viable and effective claims for damages as a result of the minor decedent's wrongful death in conjunction with Defendant's negligence, acts, failures to act, commissions, and/or omissions.

14. Admitted to the extent that paragraph 14 accurately albeit partially restates portions of certain allegations contained in the subject paragraphs of the Amended Complaint,

and to the extent that said paragraphs in toto speak for themselves.

15. Paragraph 15 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 15 is denied. It is denied that said paragraphs fail to state a claim upon which relief can be granted. To the contrary, said paragraphs clearly, specifically, and completely state claims upon which relief can and should be granted.

16. Denied.

17. Denied.

18. Denied as stated. The subject paragraphs state viable claims upon which relief can and should be granted, and said claims should by no means be dismissed from the Amended Complaint with prejudice.

19. Paragraph 19 merely incorporates by reference previous paragraphs of Defendant's preliminary objections, and as such, no response is required from the Plaintiffs. Plaintiffs do, however, analogously incorporate by reference their corresponding answers to the subject paragraphs as if set forth herein at length.

20. Denied.

21. Paragraph 21 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 21 is denied. It is denied that COUNT VII of the Amended Complaint is legally unsupportable, and it is denied that Plaintiffs' fact averments fail to support this claim as a matter of law. To the contrary, COUNT VII and the within averments state a viable claim in accordance with existing and relevant Pennsylvania law.

22. Admitted to the extent that paragraph 22 partially restates certain allegations

contained in the subject paragraphs of the Amended Complaint, and to the extent that said paragraphs in toto speak for themselves.

23. Admitted to the extent that paragraph 23 summarily restates portions of certain allegations contained in the subject paragraphs of the Amended Complaint, and to the extent that said paragraphs in toto speak for themselves.

24. Denied.

25. Denied.

26. Paragraph 26 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 26 is denied. It is denied that Plaintiffs fail to plead facts sufficient to satisfy the elements of the "negligent infliction of emotional distress" doctrine, and it is denied that Plaintiffs in any respect misapply or misconstrue said doctrine and/or cause of action. To the contrary, Plaintiffs' Amended Complaint has satisfactorily set forth a viable claim for negligent infliction of emotional distress that is in accordance with applicable and relevant Pennsylvania law.

27. Denied.

28. Denied.

29. Paragraph 29 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 29 is denied. It is denied that Plaintiffs have failed to state a claim for negligent infliction of emotional distress, and it is denied that Plaintiffs' claim should be dismissed as a matter of law. To the contrary, Plaintiffs' Amended Complaint has satisfactorily set forth a viable claim for negligent infliction of emotional distress that is in accordance with applicable and relevant Pennsylvania law.

30. Paragraph 30 merely incorporates by reference previous paragraphs of Defendant's preliminary objections, and as such, no response is required from the Plaintiffs. Plaintiffs do, however, analogously incorporate by reference their corresponding answers to the subject paragraphs as if set forth herein at length.

31. Admitted to the extent that Pa.R.C.P. 1019(a) speaks for itself.

32. Admitted to the extent that Pa.R.C.P. 1019 and Pa.R.C.P. 1028(a)(3) speak for themselves.

33. Denied.

34. Admitted to the extent that Defendant is merely recounting the sections of the Amended Complaint to which she maintains preliminary objections. Plaintiffs do, however, deny the viability of the within objections and incorporate by reference their Responses to Defendant's Preliminary Objections as if set forth herein at length.

35. Paragraph 35 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 35 is denied. It is specifically denied that the quoted allegations of Plaintiffs' Amended Complaint assert boilerplate, overly broad, and prejudicially vague allegations of negligence which are ostensibly improper, imprecise, and devoid of factual support. To the contrary, the subject allegations and language are proper under Pennsylvania law.

36. Admitted in part and denied in part. It is admitted that paragraph 36 accurately albeit partially restates portions of paragraph 17 of the Amended Complaint. It is denied that these allegations are impermissibly vague and factually insufficient. It is further denied that said allegations expand the triable issues in this case and could be used for Plaintiffs to expand their

theories of liability at a later time in these proceedings to Defendants' alleged substantial prejudice. To the contrary, the subject allegations are proper under Pennsylvania law.

37. Admitted in part and denied in part. It is admitted that paragraph 37 accurately albeit partially restates portions of paragraph 36 of the Amended Complaint. It is denied that these allegations are wholly conclusory and factually insufficient. It is further denied that said allegations are entirely open-ended and could only be used for Plaintiffs to expand their theories of liability at a later time in these proceedings to Defendants' alleged substantial prejudice. To the contrary, these allegations are proper under Pennsylvania law.

38. Admitted to the extent that paragraph 38 accurately albeit partially restates portions of paragraph 40 of the Amended Complaint, and to the extent that paragraph 40 in toto speaks for itself.

39. Denied.

40. Admitted in part and denied in part. It is admitted that paragraph 40 accurately albeit partially restates portions of paragraph 40 of the Amended Complaint. It is denied that said averments are vague and not sufficient to identify and/or inform this Defendant of her alleged negligence, acts, failures to act, commissions, and/or omissions. To the contrary, said averments are proper under Pennsylvania law.

41. Denied.

42. Admitted in part and denied in part. It is admitted that paragraph 42 accurately albeit partially restates portions of paragraph 40 of the Amended Complaint. It is denied that said averments lack the requisite amount of specificity, and it is denied that said averments are in any respect prejudicial. To the contrary, said averments are proper under Pennsylvania law.

43. Admitted in part and denied in part. It is admitted that paragraph 43 accurately albeit partially restates portions of paragraph 40 of the Amended Complaint. It is denied that said averments lack the requisite amount of specificity. To the contrary, said averments are proper under Pennsylvania law.

44. Admitted in part and denied in part. It is admitted that paragraph 44 accurately albeit partially restates portions of paragraph 40 of the Amended Complaint. It is denied that said averments are factually insufficient and lack the requisite amount of specificity. It is further denied that said averments are improper, and it is denied that they should be stricken from the Complaint. To the contrary, said averments are proper under Pennsylvania law.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Paragraph 49 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 49 is denied. It is specifically denied that said averments fail to comply with Pa.R.C.P. 1019(a) and the principals enunciated in Connor v. Allegheny General Hosp., 501 Pa. 306, 461 A.2d 600 (1983) and other applicable and relevant cases. To the contrary, said averments are well within the confines of the applicable Pennsylvania Rules of Civil Procedure and conform to the letter and spirit of Connor and other applicable and relevant case law.

50. Denied.

51. Denied.

52. Denied.

WHEREFORE, Plaintiffs respectfully requests that this Honorable Court overrule in toto Defendant Mary C. Kruszewski's Preliminary Objections.

Respectfully submitted,

OGG, CORDES, MURPHY & IGNELZI, L.L.P.

By _____
Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

CERTIFICATE OF SERVICE

I, Philip A. Ignelzi, Esquire, do hereby certify that a true and correct copy of RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT MARY KRUSZEWSKI was served by regular United States mail, postage prepaid, postage prepaid, this 8th day of April, 2002, upon the following counsel of record, addressed as follows:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

FILED NO CC
m/11:12 BH
APR 09 2002

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,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D. 02-1609-CD

Code: 007

RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT DUBOIS REGIONAL MEDICAL CENTER

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

Ogg, Cordes, Murphy & Ignelzi, L.L.P.
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JURY TRIAL DEMANDED

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APR 09 2002

William A. Shaw
Prothonotary

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.	

RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT DUBOIS REGIONAL MEDICAL CENTER

AND NOW, come the Plaintiffs, by and through undersigned counsel, and make the following response to Defendant DuBois Regional Medical Center's Preliminary Objections:

1. Admitted.

2. Admitted to the extent that Plaintiffs' Amended Complaint speaks for itself and is herein incorporated by reference as though set forth herein at length.

3. Admitted to the extent that Plaintiffs' Amended Complaint speaks for itself and is herein incorporated by reference as though set forth herein at length.

4. Admitted to the extent that paragraph 4 accurately albeit partially restates certain allegations of paragraph 42 of the Amended Complaint, and to the extent that paragraph 42 indeed speaks for itself.

5. Paragraph 5 states conclusions of law to which no response is required. To the

extent that a response may be deemed necessary, paragraph 5 is denied. It is denied that the allegations set forth in said subparagraphs are not recoverable under Pennsylvania's wrongful death statute. To the contrary, these allegations are proper and in accordance with established Pennsylvania case law and/or statutory authority.

6. Paragraph 6 states conclusions of law to which no response is required. To the extent that a response may be deemed necessary, paragraph 6 is denied. It is denied that said subparagraphs improperly assert claims for parental or filial consortium and should be stricken from the Amended Complaint. To the contrary, the subject allegations are proper and in accordance with established Pennsylvania case law and/or statutory authority.

7. Admitted to the extent that paragraph 7 accurately albeit partially restates certain allegations of paragraph 70 of the Amended Complaint, and to the extent that paragraph 70 indeed speaks for itself.

8. Paragraph 8 states conclusions of law to which no response is required. To the extent that a response may be deemed necessary, paragraph 8 is denied. It is denied that said allegations seek damages not recoverable under Pennsylvania's Survival Act and should be stricken from the Amended Complaint. To the contrary, the subject allegations are proper and in accordance with established Pennsylvania case law and/or statutory authority.

9. Admitted to the extent that paragraph 9 accurately albeit partially restates the assertions in COUNT VII of the Amended Complaint, and to the extent that COUNT VII indeed speaks for itself.

10. Admitted to the extent that paragraph 10 accurately albeit partially restates the assertions in paragraph 77 of the Amended Complaint, and to the extent that paragraph 77 indeed

speaks for itself.

11. Admitted to the extent that paragraph 11 partially restates certain language contained in paragraphs 77 and 78 of the Amended Complaint. Moreover, Plaintiffs' allegations, when read in their entirety in COUNT VII of the Amended Complaint, set forth a viable and proper cause of action in negligent infliction of emotional distress.

12. Admitted to the extent that paragraph 12 accurately albeit partially restates the assertions in paragraph 79 of the Amended Complaint, and to the extent that paragraph 79 indeed speaks for itself.

13. Paragraph 13 states conclusions of law to which no response is required. To the extent that a response may be deemed necessary, paragraph 13 is denied. It is denied that Plaintiffs have not set forth a viable claim for negligent infliction of emotional distress. To the contrary, the Plaintiffs' allegations are proper and in accordance with established Pennsylvania case law and/or statutory authority.

14. Denied. To the contrary, the Amended Complaint speaks for itself and is incorporated herein by reference.

15. Denied. To the contrary, the Amended Complaint speaks for itself and is incorporated herein by reference.

16. Denied. To the contrary, the Amended Complaint speaks for itself and is incorporated herein by reference.

17. Admitted to the extent that paragraph 17 accurately albeit partially restates certain allegations of paragraph 67 of the Amended Complaint, and to the extent that paragraph 67 in toto speaks for itself.

18. Paragraph 18 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 18 is denied. It is specifically denied that said subparagraphs are vague and conclusory and allegedly fail to set forth material facts upon which the allegations are based and allegedly fail to advise Defendant of the nature of the acts or omissions which are alleged to have caused harm or damages to the Plaintiffs. To the contrary, the subject subparagraphs are proper, plead with requisite specificity, sufficient to apprise Defendant of the theories against which he must defend, and comport with established, applicable, and relevant Pennsylvania case and statutory authority.

19. Paragraph 19 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 19 is denied. It is specifically denied that said subparagraphs fail to comply with the requirements of Pa.R.C.P. 1019(a) and should be stricken from the Amended Complaint. To the contrary, Plaintiffs' allegations, when read in their entirety, are sufficient to place Defendant on notice of the theories against which he must defend and are well within the confines of the applicable Pennsylvania Rules of Civil Procedure.

20. Denied as stated. Plaintiffs' Amended Complaint has already been plead with requisite specificity and is in accordance with applicable Pennsylvania case law and statutory authority.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court overrule in toto Defendant DuBois Regional Medical Center's Preliminary Objections.

Respectfully submitted,

OGG, CORDES, MURPHY & IGNELZI, L.L.P.

By _____
Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

CERTIFICATE OF SERVICE

I, Philip A. Ignelzi, Esquire, do hereby certify that a true and correct copy of RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT DUBOIS REGIONAL MEDICAL CENTER was served by regular United States mail, postage prepaid, postage prepaid, this 8th day of April, 2002, upon the following counsel of record, addressed as follows:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

FILED NO CC

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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,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT JERJIE T. ALAJAJI, M.D.

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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JURY TRIAL DEMANDED

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William A. Shaw
Prothonotary

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.	

RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT JERJIE T. ALAJAJI, M.D.

AND NOW, come the Plaintiffs, by and through undersigned counsel, and make the following response to Defendant Alajaji's Preliminary Objections:

1. Denied as stated. Plaintiffs have filed a complaint sounding in medical malpractice against Defendants alleging *inter alia* negligence in conjunction with the stillborn birth of the deceased minor.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that paragraph 37 of the Amended Complaint alleges that each Defendant was the agent, servant, or employee of each other Defendant. It is denied that the Amended Complaint sets forth no facts to support this allegation. To the contrary, the Amended Complaint does in fact set forth specific facts that support the subject allegation(s), and Plaintiffs' resultant averments comport with applicable

Pennsylvania law.

4. Denied.

5. Denied as stated. Paragraph 44 sets forth *inter alia* that 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 were negligent and careless in some or all of the enumerated particulars.

6. Denied.

7. Paragraph 7 is a conclusion of law that requires no response. To the extent that a response may be deemed necessary, Pa.R.C.P. 1019 is a statutory authority that speaks for itself.

8. Paragraph 8 of Defendant Alajaji's Preliminary Objections states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 8 is denied. It is specifically denied that the Amended Complaint is vague and ambiguous and allegedly fails to set forth a cause of action against Defendant Alajaji. To the contrary, the Amended Complaint clearly, specifically , and completely sets forth a cause of action against Defendant Alajaji.

9. Admitted in part and denied in part. It is admitted that paragraph 9 accurately albeit partially restates paragraph 46 of the Amended Complaint. It is denied that the wrongful death act does not provide for recovery of said damages. To the contrary, allowance of recovery of said damages is permitted under the wrongful death act.

10. Admitted to the extent that paragraph 70 of the Amended Complaint speaks for itself.

11. Admitted in part and denied in part. It is admitted that the Decedent was stillborn.

It is denied that the Decedent's heart tones were nonexistent prior to delivery. To the contrary, the Amended Complaint sets forth time(s) when said heart tones were in fact detected.

12. Paragraph 12 states conclusions of law to which no response is required. To the extent that a response may be deemed necessary, paragraph 12 is denied. It is specifically denied that no cause of action exists for a stillborn child's loss of enjoyment of life, impairment of health, conscious pain and suffering, or emotional distress.

13. Admitted to the extent that COUNT VI of the Amended Complaint speaks for itself.

14. Denied.

15. Admitted in part and denied in part. It is admitted that COUNT VII of the Amended Complaint sets forth a claim for negligent infliction of emotional distress. It is denied that COUNT VII of the Amended Complaint does not set forth sufficient facts to sustain the elements of such a claim, does not identify a traumatic event, and does not aver that Plaintiff appreciated the actions of the Defendants as negligent when they occurred. To the contrary, COUNT VII of the Amended Complaint states a complete and viable claim for negligent infliction of emotional distress under Pennsylvania law.

16. Paragraph 16 merely incorporates previous paragraphs of Defendant's Preliminary Objections, and as such, no response is required from the Plaintiffs. Plaintiffs do, however, analogously incorporate by reference their corresponding responses to the subject paragraphs as if set forth herein at length.

17. Denied.

18. Denied.

19. Denied.

20. Admitted in part and denied in part. It is admitted that paragraph 44(c) of the Amended Complaint alleges *inter alia* a failure to properly read, analyze, interpret, and/or act upon studies performed on the Plaintiffs. It is denied that said paragraph does not identify the studies or identify what actions were not taken thereon. To the contrary, paragraph 44(c) of the Amended Complaint specifically refers to radiological, ultrasound, and laboratory studies that were performed on Plaintiffs beginning on November 15, 2000.

21. Admitted in part and denied in part. It is admitted that paragraph 21 accurately albeit partially restates the allegations in paragraph 44(e) of the Amended Complaint. It is denied that paragraph 44(e) fails to comply with the Pennsylvania Rules of Civil Procedure regarding specificity and notice. In the alternative, Plaintiffs assert the right to revise their complaint pursuant to Pa.R.C.P. 1028.

22. Admitted in part and denied in part. It is admitted that paragraph 22 accurately albeit partially restates the allegations in paragraph 44(f) of the Amended Complaint. It is denied that paragraph 44(f) does not set forth any facts giving rise to a duty on the part of Dr. Alajaji. To the contrary, specific facts are incorporated by reference that support the allegations in the paragraph in question, and Plaintiffs' averments comport with applicable Pennsylvania law.

23. Admitted in part and denied in part. It is admitted that paragraph 23 accurately albeit partially restates the allegations in paragraph 44(g) of the Amended Complaint. It is denied that paragraph 44(g) does not say what actions are referred to and allegedly allows virtually any cause of action or theory of negligence to be alleged. To the contrary, the subject allegations are proper, plead with requisite specificity, sufficiently narrow, and comport with

applicable Pennsylvania law.

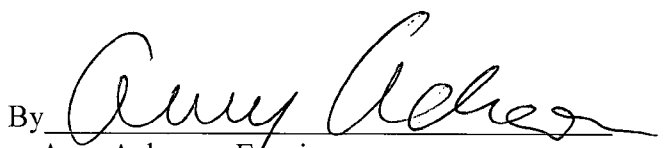
24. Admitted in part and denied in part. It is admitted that paragraph 24 accurately restates the allegations in paragraph 44(h) of the Amended Complaint. It is denied that paragraph 44(h) does not state what acts of this Defendant are referred to and allows virtually any cause of action or theory of negligence to be alleged. To the contrary, the subject allegations are proper, plead with requisite specificity, sufficiently narrow, and comport with applicable Pennsylvania law.

25. Paragraph 25 states conclusions of law to which no response is required. To the extent that a response is deemed necessary, paragraph 25 is denied. It is specifically denied that Plaintiffs' subject allegations are vague and open ended, fail to apprise Defendant of the cause of action asserted against him, and represent the type of allegations subject to preliminary objections as in Connor v. Allegheny General Hosp., 501 Pa. 306, 461 A.2d 600 (1983). To the contrary, Plaintiffs' subject allegations are proper, plead with requisite specificity, sufficient to apprise Defendant of the theories against which he must defend, and comport with Connor and other relevant Pennsylvania case law and statutory authority.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court overrule in toto Defendant Alajaji's Preliminary Objections.

Respectfully submitted,

OGG, CORDES, MURPHY & IGNELZI, L.L.P.

By 
Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

CERTIFICATE OF SERVICE

I, Philip A. Ignelzi, Esquire, do hereby certify that a true and correct copy of RESPONSE TO PRELIMINARY OBJECTIONS OF DEFENDANT JERJIE T. ALAJAJI, M.D. was served by regular United States mail, postage prepaid, postage prepaid, this 8th day of April, 2002, upon the following counsel of record, addressed as follows:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
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John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

FILED NO CC
APR 09 2002

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12056

HERZING, MICHELLE & JEFFREY A. JARVIS 02-169-CD

VS.

KRUSZEWSKI, MARY C. AI

COMPLAINT

SHERIFF RETURNS

NOW FEBRUARY 6, 2002 AT 9:45 AM EST SERVED THE WITHIN COMPLAINT ON DUBOIS REGIONAL MEDICAL CENTER, DEFENDANT AT EMPLOYMENT, 100 HOSPITAL AVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JUDITH J. STOTTISH, EX. SEC. A TRUE AND ATTESTED COPY OF THE ORIGNIAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: COUDRIET

NOW FEBRUARY 6, 2002 AT 9:45 AM EST SERVED THE WITHIN COMPLAINT ON JERJIE T. ALAJAJI, DEFENDANT AT EMPLOYMENT, D.R.M.C., 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JUDITH J. STOTTISH, EX. SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: COUDRIET

NOW FEBRUARY 6, 2002 AT 9:45 AM EST SERVED THE WITHIN COMPLAINT ON PATRICK SHILALA, DEFENDANT AT EMPLOYMENT, D.R.M.C., 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JUDITH J. STOTTISH, EX. SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: COUDRIET

NOW FEBRUARY 6, 2002 AT 10:10 AM EST SERVED THE WITHIN COMPLAINT ON MARY C. KRUSZEWSKI, OBSTETRICS & GYNECOLOGY, DEFENDANT AT EMPLOYMENT, 90 BEAVER DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO SHELIA OLOSKY, SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: COUDRIET

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12056

HERZING, MICHELLE & JEFFREY A. JARVIS — 02-169-CD

VS.

KRUSZEWSKI, MARY C. AI

COMPLAINT

SHERIFF RETURNS

Return Costs

Cost	Description
48.35	SHFF. HAWKINS PAID BY: ATTY
40.00	SURCHARGE PAID BY: ATTY

Sworn to Before Me This

15th Day Of April 2002

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

by Marilyn Hamp

Chester A. Hawkins
Sheriff

FILED

APR 15 2002
01:46
William A. Shaw
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,	)	
Plaintiffs,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that the Answers and Objections to First Set of interrogatories and Request for Production of Documents directed to Defendant, Mary C. Kruszewski,, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 16 day of April, 2002, to the attorney(s) of record:

Original
Philip A. Igneizi, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

True and correct copy
Alan R. Krier, Esquire
Park View Center, Ten Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

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

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
Mary C. Kruszewski, M.D.

FILED

APR 17 2002
m/1:38/nocc
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.

CIVIL DIVISION

No. 02-169-CD

Issue No.

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT, BRIEF IN SUPPORT AND ORDER OF COURT FILED ON BEHALF OF RUSSELL E. CAMERON

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

NOTICE TO PLEAD:

To: Plaintiff

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days of service hereof or a default judgment may be entered against you.

Attorneys for defendant.

FILED

APR 26 2002

William A. Shaw
Prothonotary

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT, BRIEF IN SUPPORT AND ORDER OF COURT FILED ON BEHALF OF RUSSELL E. CAMERON

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

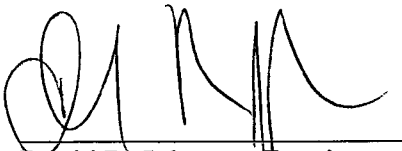
NOW COMES Russell E. Cameron, one of the defendants, by his attorneys, Thomson, Rhodes & Cowie, P.C., and files the following preliminary objections to amended complaint.

1. Dr. Cameron incorporates in its entirety the preliminary objections to amended complaint filed on behalf of DuBois Regional Medical Center.

WHEREFORE, Dr. Cameron respectfully requests that the court strike Paragraphs 42(c), (d) and (f) from plaintiffs' amended complaint; strike Paragraphs 70(b) and (c) from plaintiffs' amended complaint; dismiss Count VII of the amended complaint; and strike Paragraphs 67(g) through (j) of plaintiffs' amended complaint.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Russell Cameron, one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT, BRIEF IN SUPPORT AND ORDER OF COURT FILED ON BEHALF OF RUSSELL E. CAMERON has been served upon the following counsel of record by U.S. Mail on this 25th day of April, 2002:

Amy Acheson, Esquire
Philip A. Ignelzi, 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
Attorneys for Russell Cameron, one of the defendants.

FILED

APR 26 2002

m/11:10/ lcc atty Johnson

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,	)	CIVIL DIVISION
	)	No. 02-169-CD
Plaintiffs,	)	
Vs.	)	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,	)	
Defendants.	)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2002, it is hereby ORDERED, ADJUDGED and DECREED that Russell Cameron's preliminary objections are SUSTAINED. Paragraphs 42(c), (d) and (f) and 70(b) and (c) are stricken from plaintiffs' amended complaint. Count VII of the complaint is dismissed. Paragraphs 67(g) through (j) are also stricken from plaintiffs' amended complaint.

BY THE COURT:

_____J.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12232

HERZING, MICHELE & JEFFREY A. JARVIS, ADM. **02-169-CD**

VS.

KRUSZEWSKI, MARY C. AI

AMENDED COMPLAINT

SHERIFF RETURNS

NOW MARCH 15, 2002 AT 12:00 NOON EST SERVED THE WITHIN AMENDED COMPLAINT ON RUSSELL E. CAMERON, DEFENDANT AT EMPLOYMENT, D.R.M.C., 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MARGE KENNIS, RISK MANAGEMENT A TRUE AND ATTESTED COPY OF THE ORIGINAL AMENDED COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: COUDRIET

Return Costs

Cost	Description
35.35	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

2nd **Day Of** May **2002**

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Sheriff

FILED
01/4:00
MAY 02 2002

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,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D. 2002-169-CD

Code: 007

STIPULATION FOR DISCONTINUANCE OF DEFENDANT PATRICK SHILALA ONLY

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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

FILED

MAY 13 2002
m/ 8:30 (wp
William A. Shaw
Prothonotary
No c/c

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.
Plaintiff,	Code: 007
v.	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI	
Defendants.	

STIPULATION FOR DISCONTINUANCE OF DEFENDANT PATRICK SHILALA ONLY

To: Prothonotary of Clearfield County

Kindly discontinue the within action as against Defendant Patrick Shilala **ONLY** pursuant to Pa. R.C.P. 229.

Amy Acheson, Esquire
Ogg, Cordes, Murphy & Ignelzi
245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(Counsel for Plaintiffs)

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center and Patrick Shilala)

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

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)

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
Plaintiff,	No. G.D.
v.	Code: 007
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI	
Defendants.	

STIPULATION FOR DISCONTINUANCE OF DEFENDANT PATRICK SHILALA ONLY

To: Prothonotary of Clearfield County

Kindly discontinue the within action as against Defendant Patrick Shilala **ONLY** pursuant to Pa. R.C.P. 229.

Amy Acheson, Esquire
Opp, Cordes, Murphy & Ignelzi
245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(Counsel for Plaintiffs)

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center and Patrick Shilala)

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

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)

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.
Plaintiff,	Code: 007
v.	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI	
Defendants.	

STIPULATION FOR DISCONTINUANCE OF DEFENDANT PATRICK SHILALA ONLY

To: Prothonotary of Clearfield County

Kindly discontinue the within action as against Defendant Patrick Shilala **ONLY** pursuant to Pa. R.C.P. 229.

Amy Acheson, Esquire
Ogg, Cordes, Murphy & Ignelzi
245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(Counsel for Plaintiffs)

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center and Patrick Shilala)

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

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)

CERTIFICATE OF SERVICE

I, Amy Acheson, Esquire, do hereby certify that a true and correct copy of the Stipulation for Discontinuance of Defendant Patrick Shilala Only was forwarded by regular U. S. mail, postage prepaid, this 9th day of May, 2002, to the following:

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603



Amy Acheson, Esquire

FILED

MAY 13 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED

JUN 17 2002

William A. Shaw
Prothonotary

MICHELLE HERZING and JEFFREY A. JARVIS, as Administrators of the Estate of JANELL HERZING, a minor, dec'd., and MICHELLE HERZING, ind. in her own right :a

VS. : NO. 02-169-CD

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

O R D E R

NOW, this 12th day of June, 2002, upon consideration of Preliminary Objections filed on behalf of all Defendants above-named and argument and briefs thereon, it is the ORDER of this Court that said Objections be and are hereby sustained to the extent that Plaintiffs' claims for loss of filial consortium and negligent infliction of Emotional Distress shall be and are hereby dismissed.

It is the further Order of this court that the Plaintiff shall, within thirty (30) days from date hereof, file a Second Amended Complaint to correct the deficiencies in the First Amended Complaint as contained in Defendants' Preliminary Objections.

It is the further Order of this Court that

Plaintiffs shall, within twenty (20) days from date of completion of discovery, identify for all Defendants specific agents, servants and employees referred to in said Complaint.

BY THE COURT,

President Judge

FILED
JUN 17 2002
10:31
William A. Shaw
Prothonotary

1 cc Atty Amy Acheson
John Blasko
David R Johnson
Alan R. Knier

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:

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

FILED

JUL 12 2002
m/11:12 lnocc
William A. Shaw
Prothonotary

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 2nd 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 Kruszew3ski, 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 heat 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 property 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, Alajaiji 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.

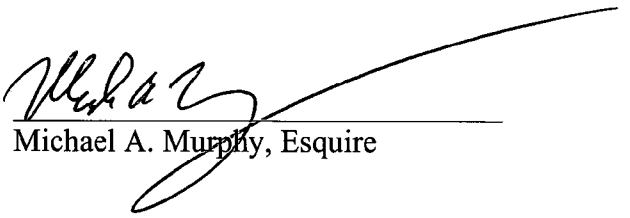
70. As a further result of the conduct of Defendants and their agents, servants and/or employees, Plaintiff has been forced to incur medical and other expenses for doctors, hospitals and therapeutic care and treatment, and she will be forced to incur additional expenses for like items in the future.

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

Michele L. Herzing

Jeffrey R. Jarvis

Jeffrey R. Jarvis

Date: _____, 2002

CERTIFICATE OF SERVICE

I, MICHAEL A. MURHPY, Esquire, hereby certify that a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT IN CIVIL ACTION** was forwarded to the following counsel of record, this 10th day of July, 2002, by regular United States mail, postage prepaid, and addressed as follows:

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

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

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)

Michael A. Murphy, Esquire

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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading
STIPULATION

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

Counsel of Record for this Party: JOHN W. BLASKO

Court I.D. No.: 06787

RICHARD K. LAWS
Court I.D. No. 82369

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

Counsel of Record for Adverse Party:
Amy Acheson, Esquire
Philip A. Igneizi, Esquire

FILED

JUL 25 2002
m/1:43/nocc
William A. Shaw
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,	)	
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.	)	

STIPULATION OF COUNSEL IN LIEU OF PRELIMINARY OBJECTIONS

It is hereby stipulated and agreed to by and between counsel for Plaintiffs and counsel for Defendant, Mary C. Kruszewski as follows:

1. Paragraph 72 of Plaintiffs' Second Amended Complaint shall be stricken with prejudice.

2. Defendant, Mary C. Kruszewski shall file an Answer with New Matter to Plaintiffs' Second Amended Complaint within thirty [30] days from the date of signature by all parties and filing of this Stipulation with the Court.

AMY ACHESON, ESQUIRE
245 Fort Pitt Boulevard
Pittsburgh, PA 15222
Counsel for Plaintiffs

Dated: 7/22/02

RICHARD K. LAWS, ESQUIRE
811 University Drive
State College, PA 16801
Counsel for Defendant
Mary C. Kruszeski,

Dated: 7/24/02

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Stipulation, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 24 day of July, 2002, to the attorney(s) of record:

Amy Acheson, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

Alan R. Krier, Esquire
Park View Center, Ten Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

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

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
RICHARD K. LAWS
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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading: ANSWER WITH NEW MATTER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

Counsel of Record for this
Party: JOHN W. BLASKO

Court I.D. No.: 06787

RICHARD K. LAWS
Court I.D. No. 82369

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

Counsel of Record for
Adverse Party:
Amy Acheson, Esquire
Philip A. Igneizi, Esquire

Dated: 7/26/02

FILED

JUL 29 2002
m/2:40 nocc
William A. Shaw
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,	)	
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.	)	

NOTICE TO PLEAD

TO: Plaintiffs
c/o Amy Acheson, Esquire
Philip A. Ignelzi, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

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, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____

JOHN W. BLASKO
RICHARD K. LAWS
Attorney for Defendant
Mary C. Kruszewski, D.O.
811 University Drive
State College, PA 16801

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,	)	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 WITH NEW MATTER OF MARY C. KRUSZEWSKI, M.D. TO PLAINTIFFS' SECOND AMENDED COMPLAINT

AND NOW comes the Defendant, Mary C. Kruszewski, M.D. , by and through her attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the within Answer with New Matter to Plaintiffs' Second Amended Complaint, as follows:

1-3. Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraphs 1 through 3, and, therefore, they are denied.

4-5. The averments of Paragraphs 4 and 5 are conclusions of law and/or statements of Plaintiffs' legal position and no response is necessary. To the extent that a response is necessary, the averments of Paragraphs 4 and 5 are denied pursuant to Pa.R.C.P. 1029(e).

6. Admitted.

7-9. The averments of Paragraphs 7 through 9 are directed toward other Defendants and thus no response is necessary.

FACTUAL BACKGROUND

10-12. Denied as stated. In response to the averments of Paragraphs 10 through 12, Answering Defendant incorporates by reference all relevant medical records, which more fully, completely and accurately set forth the presenting condition of Plaintiff and all care and treatment rendered thereafter, including times and dates associated therewith. To the extent that the averments of Paragraphs 10 through 12 differ from that set forth herein and/or that reflected within the relevant medical records, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

13. The averments of Paragraph 13 are conclusions of law and/or statements of Plaintiffs' legal position and no response is necessary. To the extent necessary, it is admitted only that Defendant provided care as reflected within the relevant medical records, which are incorporated by reference. To the extent that the averments of Paragraph 13 differ from that set forth herein and/or that reflected within the relevant medical records, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

14-16. The averments of Paragraphs 14 through 16 are directed toward a Defendant(s) other than that answering herein and no response is necessary. To the extent that a response is necessary, Answering Defendant incorporates by reference all relevant medical records, which more fully, completely and accurately set forth the presenting condition of Plaintiff and all care and treatment rendered thereafter, including times and dates associated therewith. To the extent that the averments of Paragraphs 14 through 16 differ from that set forth herein and/or that reflected within the relevant medical records, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

17-18. Denied as stated. In response to the averments of Paragraphs 17 through 18, Answering Defendant incorporates by reference all relevant medical records, which more fully, completely and accurately set forth the presenting condition of Plaintiff and all care and treatment rendered thereafter, including times and dates associated therewith. To the extent that the averments of Paragraphs 17 through 18 differ from that set forth herein and/or that reflected

within the relevant medical records, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

19. The averments of Paragraph 19 are directed toward a Defendant(s) other than that answering herein and no response is necessary. To the extent that a response is necessary, Answering Defendant incorporates by reference all relevant medical records, which more fully, completely and accurately set forth the presenting condition of Plaintiff and all care and treatment rendered thereafter, including times and dates associated therewith. To the extent that the averments of Paragraph 19 differ from that set forth herein and/or that reflected within the relevant medical records, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

20-21. The averments of Paragraphs 20 and 21 contain and/or imply statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments and/or implications of Paragraphs 20 and 21 to the extent that they assert allegations of negligence (whether direct or implied) are denied per Pa.R.C.P. 1029(e). Furthermore, the averments of Paragraphs 20 and 21 are denied per Pa.R.C.P. 1029(e) and/or denied as stated to the extent that they differ from that set forth herein and/or that reflected within the relevant medical records, which are incorporated by reference.

22-25. The averments of Paragraphs 22 through 25 are directed toward another Defendant(s) and/or contain and/or imply statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments and/or implications of Paragraphs 22 through 25 to the extent that they assert allegations of negligence (whether direct or implied) are denied per Pa.R.C.P. 1029(e). Answering Defendant incorporates by reference all relevant medical records, which more fully, completely and accurately set forth the presenting condition of Plaintiff and all care and treatment rendered thereafter, including times and dates associated therewith. To the extent that the averments of Paragraphs 22 through 25 differ from that set forth herein and/or that reflected

within the relevant medical records, said averments are further denied as stated and/or denied per Pa.R.C.P. 1029(e).

26-32. The averments of Paragraphs 26 through 32 are directed toward another Defendant and/or contain and/or imply statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments and/or implications of Paragraphs 26 through 32 to the extent that they assert allegations of negligence (whether direct or implied) are denied per Pa.R.C.P. 1029(e). Answering Defendant incorporates by reference all relevant medical records, which more fully, completely and accurately set forth the presenting condition of Plaintiff and all care and treatment rendered thereafter, including times and dates associated therewith. To the extent that the averments of Paragraphs 26 through 32 differ from that set forth herein and/or that reflected within the relevant medical records, said averments are further denied as stated and/or denied per Pa.R.C.P. 1029(e).

33-35. The averments of Paragraphs 33 through 35 are directed toward another Defendant and/or contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 33 through 35 are denied per Pa.R.C.P. 1029(e). Strict proof of all averments, including those asserting agency, is demanded.

COUNT I

WRONGFUL DEATH - Estate of JANELL HERZING vs. Defendant Kruszewski

36. Defendant hereby incorporates Paragraphs 1 through 35 of this Answer and New Matter as if the same were set forth at length herein.

37. The averments of Paragraph 37 are directed toward another Defendant and/or contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is required, it is admitted that Answering Defendant owed a duty of care to Plaintiffs in accordance with accepted medical standards of care. It is

admitted that Answering Defendant fulfilled said duty and any averments implying and/or asserting anything to the contrary are denied and/or denied per Pa.R.C.P. 1029(e).

38. The averments of Paragraph 38 (including subparagraphs (a) through (u)) contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 38 (including subparagraphs (a) through (u)), including those asserting agency, are denied per Pa.R.C.P. 1029(e). Strict proof of all averments is demanded.

39-40. The averments of Paragraphs 39 and 40 contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 39 and 40 are denied per Pa.R.C.P. 1029(e). Strict proof of all averments is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in her favor and against Plaintiffs, and that the Second Amended Complaint against her be dismissed, with prejudice.

COUNT II
WRONGFUL DEATH-ESTATE OF JANELL HERZING V. JERJIE T. ALAJAJI

41. Defendant hereby incorporates Paragraphs 1 through 40 of this Answer and New Matter as if the same were set forth at length herein.

42-44. The averments of Paragraphs 42 through 44 are directed toward another Defendant and/or contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 42 through 44 are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in her favor and against Plaintiff, and that the Second Amended Complaint against her be dismissed, with prejudice.

COUNT III
WRONGFUL DEATH-ESTATE OF JANELL HERZING V. RUSSELL E. CAMERON

45. Defendant hereby incorporates Paragraphs 1 through 44 of this Answer and New Matter as if the same were set forth at length herein.

46-48. The averments of Paragraphs 46 through 48 are directed toward another Defendant and/or contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 46 through 48 are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in her favor and against Plaintiff, and that the Second Amended Complaint against her be dismissed, with prejudice.

COUNT IV
WRONGFUL DEATH-ESTATE OF JANELL HERZING VS. DUBOIS REGIONAL HOSPITAL

49. Defendant hereby incorporates Paragraphs 1 through 48 of this Answer and New Matter as if the same were set forth at length herein.

50-65. The averments of Paragraphs 50 through 65 are directed toward another Defendant and/or contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 50 through 65 are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in her favor and against Plaintiff, and that the Second Amended Complaint against her be dismissed, with prejudice.

COUNT V
SURVIVAL-PLAINTIFFS VS. ALL DEFENDANTS

66. Defendant hereby incorporates Paragraphs 1 through 65 of this Answer and New Matter as if the same were set forth at length herein.

67. The averments of Paragraph 67 contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 67 are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in her favor and against Plaintiffs, and that the Amended Complaint against her be dismissed, with prejudice.

COUNT VI
NEGLIGENCE-MICHELLE HERZING VS. ALL DEFENDANTS

68. Defendant hereby incorporates Paragraphs 1 through 67 of this Answer and New Matter as if the same were set forth at length herein.

69-71. The averments of Paragraphs 69 through 71 are directed toward another Defendant and/or contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 69 through 71 are denied per Pa.R.C.P. 1029(e).

72. Stricken per Stipulation of Counsel.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in her favor and against Plaintiff, and that the Second Amended Complaint against her be dismissed, with prejudice.

NEW MATTER

73. Defendant raises all affirmative defenses of the Health Care Services Malpractice Act, 40 PS §1301.101 et. seq. As stated by Section 606 of the Health Care Services Malpractice Act, "[i]n the absence of a special contract in writing, a health care provider is neither a warrantor nor a guarantor of a cure."

74. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiffs' claims are time-barred due to the expiration of the applicable statute of limitations.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in her favor and against Plaintiffs, and that the Second Amended Complaint against her be dismissed, with prejudice.

Respectfully Submitted,
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____

JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Answering Defendant
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 7/26/02

VERIFICATION

The undersigned verifies that as a Defendant, he is authorized to make this verification in the within action; and that the statements made in the foregoing ANSWER WITH NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT, are true and correct to the best of his knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904, related to unsworn falsification to authority.

Mary C. Kruszewski, DO

MARY C. KRUSZEWSKI, D.O.

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer with New Matter to Plaintiffs' Amended Complaint, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 26 day of July, 2002, to the attorney(s) of record:

Amy Acheson, Esquire
Philip A. Igneizi, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

David R Johnson Esquire
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Alan R. Krier, Esquire
Park View Center, Ten Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
Mary C. Kruszewski, M.D.

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.

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: NO. G.D. 02-169 CD
:
:
: **ANSWER TO SECOND AMENDED**
: **COMPLAINT WITH NEW MATTER**
:
:
:
: 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

FILED
JUL 31 2002
m/10:53/ nocc
William A. Shaw
Prothonotary

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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

NOTICE TO PLEAD

TO PLAINTIFFS: MICHELLE HERZING and JEFFREY A. JARVIS
c/o Amy Acheson, Esquire
Philip A. Ignelzi, Esquire
Ogg, Cordes, Murphy & Ignelzi, L.L.P.
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

JUBELIRER, CAROTHERS, KRIER & HALPERN

By: _____

Alan R. Krier, Esquire
PA I.D. # 06672
Attorney for Defendant,
JERJIE T. ALAJAJI, M.D.

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 : : NO. G.D. 02-169 CD
v.	:
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:

DEFENDANT'S, JERJIS T. ALAJAJI, M.D., ANSWER TO SECOND AMENDED COMPLAINT WITH NEW MATTER

AND NOW, comes Defendant, JERJIS T. ALAJAJI, M.D., by and through his Attorneys, JUBELIRER, CAROTHERS, KRIER & HALPERN, and files the within Answer to Plaintiff's Second Amended Complaint with New Matter and states:

1. Admitted per medical record that Michelle Herzing is the mother of Janell Herzing. The remaining allegations are denied as Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

2. Admitted that Jeffrey R. Jarvis is an individual who claims fatherhood of the deceased minor. The remaining allegations are denied as Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

3. Admitted to the extent demonstrated by county records.

4. This allegation is a conclusion of law to which no answer is required.

5. Denied for after reasonable investigation answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

6. Admitted in part and denied in part. Defendant is without knowledge as to what Dr. Kruszewski held out to Plaintiff.

7. Admitted only as to identity of DuBois Regional Medical Center.

8. Admitted in part and denied in part. It is admitted that Jerjis T. Alajaji is a licensed physician practicing in DuBois – Dr. Alajaji's practice, however, is limited to radiology. It is admitted that Defendant is on the staff at DuBois Regional. It is denied that Defendant is an agent of DuBois Regional.

9. Admitted that Dr. Cameron is a licensed physician practicing in DuBois. The remaining allegations are neither admitted nor denied, as Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

10. Denied for after reasonable investigation answering Defendant is without information Or knowledge sufficient to form a belief as to the truth of the same.

11. Admitted only to the extent verified by accurate and pertinent medical records otherwise denied.

12. Admitted only to the extent verified by accurate and pertinent medical records otherwise denied.

13. Admitted only to the extent verified by accurate and pertinent medical records otherwise denied.

14. Admitted only to the extent verified by accurate and pertinent medical records otherwise denied.

15. Admitted in part and denied in part. It is admitted that the ER record demonstrates that the alleged BP and laboratory results were reported. The remaining allegations are denied as the Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

16. Admitted only to the extent verified by accurate and pertinent medical records otherwise denied.

17. Admitted only to the extent verified by accurate and pertinent medical records otherwise denied.

18. Admitted only to the extent verified by accurate and pertinent medical records otherwise denied.

19. Denied. The biophysical profile is not scored "using" gestational age.

20. Admitted only to the extent verified by accurate and pertinent medical records otherwise denied.

21. Denied for after reasonable investigation answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

22. Denied for after reasonable investigation answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

23. Denied pursuant to Pa.R.C.P. 1029.

24. Denied pursuant to Pa.R.C.P. 1029.

25. Denied pursuant to Pa.R.C.P. 1029.

26. Denied pursuant to Pa.R.C.P. 1029.

27. Denied pursuant to Pa.R.C.P. 1029.

28. Denied pursuant to Pa.R.C.P. 1029.

29. Denied pursuant to Pa.R.C.P. 1029.

30. Denied pursuant to Pa.R.C.P. 1029.

31. Denied pursuant to Pa.R.C.P. 1029.

32. Denied pursuant to Pa.R.C.P. 1029.

33. Denied. It is denied that this Defendant breached any duty owed to Plaintiff or that any alleged act or omission of this Defendant caused any harm to Plaintiff. On the contrary Defendant is a Radiologist and does not treat pre-eclampsia.

34. Denied. It is denied that this Defendant is the agent, servant or employee of DuBois Regional.

35. Denied. It is denied that this Defendant was or is the agent, servant or employee of DuBois Regional.

WHEREFORE, Defendant demands judgment in his favor.

COUNT I

36. Paragraphs 1 through 35 are incorporated as though herein set forth.

37 – 40 The allegations of these paragraphs relate to parties other than this Defendant and accordingly no answer is required.

WHEREFORE, the Defendant demands judgment in his favor.

COUNT II

41. Paragraphs 1 through 40 are incorporated as though herein set forth.

42. Denied. It is denied that Defendant acted through any agents, servants or employees. It is further denied that Defendant was negligent or that any acts of this Defendant caused any harm to Plaintiff. Defendant further answers as follows:

(a) Denied pursuant to Pa.R.C.P. 1029.

(b) Denied pursuant to Pa.R.C.P. 1029.

(c) Denied pursuant to Pa.R.C.P. 1029.

(d) Denied pursuant to Pa.R.C.P. 1029.

(e) Denied pursuant to Pa.R.C.P. 1029.

(f) Denied pursuant to Pa.R.C.P. 1029.

(g) Denied pursuant to Pa.R.C.P. 1029.

(h) Denied pursuant to Pa.R.C.P. 1029.

43. Denied. It is specifically denied that any actions of this Defendant increased the risk of harm to Janell Herzing or caused any conditions related to her death.

44. Denied for after reasonable investigation answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

WHEREFORE, Defendant demands judgment in his favor.

COUNT III

45-48. The allegations of these paragraphs relate to parties other than this Defendant and accordingly no answer is required.

WHEREFORE, Defendant demands judgment in his favor.

COUNT IV

49-65. The allegations of these paragraphs relate to parties other than this Defendant and accordingly no answer is required.

WHEREFORE, Defendant demands judgment in his favor.

COUNT V

66. Defendant incorporates paragraphs 1 through 65 as though herein set forth.

67. Denied. It is denied that this Defendant was negligent. The remaining allegations are denied as this Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

WHEREFORE, Defendant demands judgment in his favor.

COUNT VI

68. Defendant incorporates paragraphs 1 though 67 as though herein set forth.

69. Denied for after reasonable investigation answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

70. Denied for after reasonable investigation answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

71. Denied for after reasonable investigation answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

72. Denied. There is no cause of action for loss of filial companionship. Such allegations were ordered stricken by the Court. The remaining allegations are denied as this Defendant is without information or knowledge sufficient to form a belief as to the truth of the same.

WHEREFORE, Defendant demands judgment in his favor.

NEW MATTER

73. Defendant raises all affirmative defenses of the Health Care Services Malpractice Act, 40 PS § 1301.101 *et seq.* As stated by Section 606 of the Health Care Services Malpractice Act, "[i]n the

absence of a special contract in writing, a health care provider is neither a warrantor nor a guarantor of a cure."

74. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiffs' claims are time-barred due to the expiration of the applicable statute of limitations.

WHEREFORE, Defendant demands judgment in his favor.

Respectfully submitted,

JUBELIRER, CAROTHERS, KRIER & HALPERN

BY: _____

Alan R. Krier, Esquire
PA I.D. #06672
Park View Center, 10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603
(814) 943-1149
Attorney for Defendant,
JERJIS T. ALAJAJI, M.D.

VERIFICATION

I, **JERJIS T. ALAJAJI, M.D.,** hereby verify that the statements in the foregoing Answer to Plaintiffs' Second Amended Complaint with New Matter are true and correct to the best of my personal knowledge, information or belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

JERJIS T. ALAJAJI, M.D.

Date: 7/29/02

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing **Answer to Second Amended Complaint** on all counsel of record and/or parties of interest by depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 30th day of July, 2002, 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
(Attorney for Plaintiff)

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801
(814)238-4926
(Attorney for Mary C. Kruszewski, M.D.)

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219
(Attorney for DuBois Regional Medical Center and Patrick Shilala)

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: _____
Alan R. Krier, Esquire
PA I.D. #06672
Attorney 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 Administrators 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 DIVISION

No. G.D. 02-169-CD

Code: 007

PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT, MARY C. KRUSZEWSKI

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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

FILED

AUG 12 2002
m/9:38/noCC
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,	CIVIL DIVISION
Plaintiff,	No. G.D. 02-169 CD
v.	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI AND RUSSELL E. CAMERON	
Defendants.	

PLAINTIFFS' REPLY TO NEW MATTER OF
DEFENDANT, MARY C. KRUSZEWSKI

AND NOW, come Plaintiffs, MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased, by and through counsel, Ogg, Cordes, Murphy & Ignelzi, L.L.P. and Amy Acheson, Esquire and Philip A. Ignelzi, Esquire, and file their Reply to New Matter of Defendant, Mary C. Kruszewski, as follows:

73. Paragraph 73 is a legal conclusion which requires no response. To the extent a response is required, it is specifically denied that Defendant may raise "all affirmative defenses of The Health Care Services Malpractice Act" by way of her Paragraph 73.

74. Paragraph 74 states legal conclusions which require no response.

Ogg, Cordes, Murphy & Ignelzi, LLP

By _____
Amy Acheson, Esquire
PA I.D. #50506

245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Amy Acheson, Esquire, hereby certify that a true and correct copy of Plaintiffs' Reply to New Matter of Defendant, Mary C. Kruszewski, was forwarded to all counsel of record, by regular U.S. Mail, this 7th day of August, 2002, addressed as follows:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

_____
Amy Acheson, Esquire

VERIFICATON

We, MICHELE L. HERZING and JEFFREY R. JARVIS, hereby verify that we have read the foregoing PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT, MARY C. KRUSZEWSKI, 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

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.

CIVIL DIVISION

No. 02-169-CD

Issue No.

ANSWER TO SECOND AMENDED COMPLAINT AND NEW MATTER

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

NOTICE TO PLEAD

TO THE PLAINTIFF:

You are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days of service hereof or a default judgment may be entered against you.

Attorneys for DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

FILED

AUG 23 2002
m/1:30/no cc
William A. Shaw
Prothonotary

ANSWER TO SECOND AMENDED COMPLAINT
AND NEW MATTER

NOW COME DuBois Regional Medical Center and Russell E. Cameron, two of the defendants, by and through their counsel, Thomson, Rhodes & Cowie, P.C. and file the following answer and new matter in response to plaintiffs' second amended complaint [hereinafter complaint].

ANSWER

1. Defendants are advised and therefore believe and aver that the Pennsylvania Rules of Civil Procedure do not require them to set forth their answers and defenses except as stated below.

2. If and to the extent that any factual averment in the complaint is not responded to in the paragraphs which follow, said allegation is denied for the reason that, after a reasonable investigation, these defendants lack sufficient information or knowledge upon which to form a belief as to the truth of the averments therein.

3. Each of the paragraphs of this answer should be read so as to incorporate by reference each of the other paragraphs of this answer.

4. The following paragraphs of the complaint are denied for the reason that, after a reasonable investigation, these defendants have insufficient information or knowledge to form a belief as to the truth of the averments therein: 2, 3, 5, 10 through 13 and 48 (including subparagraphs (a) through (d)).

5. The following paragraphs of the complaint are admitted: 1, 9, 14 and 32.

6. The following paragraphs of the complaint refer solely to other defendants for which reason no response is required: 37 through 40 and 42 through 44 (including all subparagraphs of these paragraphs). To the extent that any responses are deemed necessary, said allegations are denied for the reason that, after reasonable investigation, these defendants have

insufficient information or knowledge to form a belief as to the truth of the averments therein. Moreover, the allegations set forth only contain conclusions of law to which no response is required.

7. Paragraph 6 of the complaint is admitted in part and denied in part. It is admitted that Dr. Kruszewski was a healthcare provider who possessed skill and knowledge in obstetrics. The remaining allegations are denied inasmuch as these defendants are without sufficient information or knowledge to form a belief as to the truth of the averments.

8. Paragraph 7 of the complaint is denied as stated. To the contrary, defendant is a non-profit healthcare institution located at the address specified in the complaint.

9. Paragraphs 34, 35, 54 and 55 of the complaint are denied for the reason that, after a reasonable investigation, these defendants have insufficient information or knowledge to form a belief as to the truth of the averments therein, because the identity of the alleged agents, servants and/or employees of these defendants is not specified or disclosed. The last sentence is also denied because the identity of the alleged agents, servants, employees, physicians and other healthcare personnel is not specified or disclosed. The allegations are also denied to the extent they allege plaintiff's state of mind which, after reasonable investigation, is unknown to defendant. It is denied that Drs. Kruszewski and Alajaji were agents, servants and/or employees of DuBois Regional Medical Center.

10. Paragraphs 36, 41, 45, 49, 66 and 68 of the complaint solely incorporate by reference other paragraphs, for which no separate response is required. However, to the extent that any additional response is deemed necessary, defendants incorporate by reference their answers to those paragraphs which have been incorporated by reference.

11. Paragraphs 46 (including all subparagraphs), 47, 50 through 53, 56 through 59, 61, 62, 63, 64 (including subparagraphs (a) through (f)), 67 (including subparagraphs (a) and (b)) and 69 through 71 of the complaint constitute conclusions of law to which no further response is required. However, if any response is deemed necessary, these paragraphs and sub-paragraphs are denied.

12. Paragraphs 15 through 31 of the complaint are denied for the reason that they incompletely, inaccurately and/or misleadingly describe events which occurred. While these paragraphs to some extent extract or reference words or phrases from the hospital chart, they do not reflect the context in which the notes were made and they ignore other words and phrases necessary to give fair meaning to the referenced language.

13. Paragraph 8 is admitted in part and denied in part. It is admitted that Dr. Alajaji is a physician in the field of radiology. The remaining allegations are denied. He was not an agent, servant or employee of the hospital.

14. Paragraphs 33, 60, the first paragraph numbered 63 and 65 of the complaint are denied.

15. Paragraph 4 of the complaint is admitted in part and denied in part. It is admitted that plaintiff is making the allegations specified. However, any statement, suggestion or implication that these allegations have merit is denied.

16. Paragraph 72 has been voluntarily stricken from the complaint.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

NEW MATTER

17. Section 606 of the Healthcare Services Malpractice Act of Pennsylvania, 40 P.S. §1301.606 provides that in "the absence of a special contract in writing, a healthcare provider is neither a warrantor nor a guarantor of a cure." This provision is pleaded as an affirmative defense insofar as there was no special contract in writing in this case.

18. These defendants raise all affirmative defenses set forth or available as a result of the provisions in the Healthcare Services Malpractice Act of Pennsylvania, 40 P.S. §1301 et seq.

19. These defendants plead the applicability of the Pennsylvania Comparative Negligence Statute as an affirmative defense.

20. While denying all negligence and all liability, these defendants aver that if they are found to have been negligent in any respect, any liability resulting therefrom would be diminished or barred by operation of the Pennsylvania Comparative Negligence Statute.

21. Plaintiffs' complaint fails to state any cause of action against these defendants.

22. Defendants plead the doctrines of intervening and superseding causes as affirmative defenses.

23. Defendants plead "payment" as an affirmative defense to the extent that any amount less than the amount billed for medical services to the plaintiff after the alleged incident was accepted as payment in full.

24. Defendants are not liable for any pre-existing medical conditions which caused the claimed injuries and/or damages.

25. To the extent that evidence develops during discovery to demonstrate the application of the two schools of thought doctrine, defendants plead that doctrine as providing a complete defense for any alleged negligence and/or malpractice.

26. This defendant raises all affirmative defenses set forth or available as a result of the provisions of House Bill 1802 which became Pennsylvania law in 2002.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

VERIFICATION

I, Gregory J. Volpe in the capacity of Risk Manager at DuBois Regional Medical Center have read the foregoing ANSWER AND NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

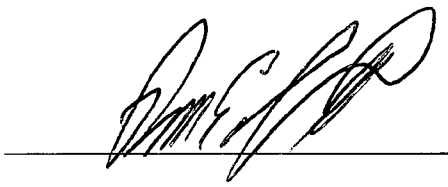
Gregory J Volpe

Date: 8-6-02

VERIFICATION

I, Russell E. Cameron, have read the foregoing ANSWER AND NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.



Date: 8/19/02

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 and same placed in the U.S. Mails on this 21st day of July, 2002:

Amy Acheson, Esquire
Philip A. Ignelzi, 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
Thomas B. Anderson, Esquire
Attorneys for DuBois Regional Medical Center
and Russell E. Cameron, two 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,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT JERJIE T. ALAJAJI

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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

FILED

AUG 26 2002

m/1:00/noCC
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,

Plaintiff,

v.

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

Defendants.

CIVIL DIVISION

No. G.D. 02-169 CD

PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT, JERJIS T. ALAJAJI

AND NOW, come Plaintiffs, MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased, by and through counsel, Ogg, Cordes, Murphy & Ignelzi, L.L.P. and Amy Acheson, Esquire and Philip A. Ignelzi, Esquire, and file their Reply to New Matter of Defendant Jerjis T. Alajaji, as follows:

73. Paragraph 73 is a legal conclusion which requires no response. To the extent a response is required, it is specifically denied that Defendant may raise "all affirmative defenses of The Health Care Services Malpractice Act" by way of her Paragraph 73.

74. Paragraph 74 states legal conclusions which require no response.

Ogg, Cordes, Murphy & Ignelzi, LLP

By _____
Amy Acheson, Esquire
PA I.D. #50506

245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500

Attorneys for Plaintiffs

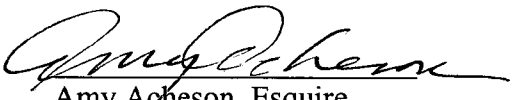
CERTIFICATE OF SERVICE

I, Amy Acheson, Esquire, hereby certify that a true and correct copy of Plaintiffs' Reply to New Matter of Defendant Jerjis T. Alajaji, was forwarded to all counsel of record, by regular U.S. Mail, this 13th day of August, 2002, addressed as follows:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219



Amy Acheson, Esquire

VERIFICATON

We, MICHELE L. HERZING and JEFFREY R. JARVIS, hereby verify that we have read the foregoing PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT JERJIE T. ALAJAJI, 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

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, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D. 02-169-CD

Code: 007

PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT DUBOIS REGIONAL MEDICAL CENTER

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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

FILED
SEP 05 2002
m/10:55/noCC
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,	CIVIL DIVISION No. G.D. 02-169 CD
Plaintiff,	
v.	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI AND RUSSELL E. CAMERON	
Defendants.	

PLAINTIFFS' REPLY TO NEW MATTER OF
DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER

AND NOW, come Plaintiffs, MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased, by and through counsel, Ogg, Cordes, Murphy & Ignelzi, L.L.P. and Amy Acheson, Esquire and Philip A. Ignelzi, Esquire, and file their Reply to New Matter of Defendant DuBois Regional Medical Center, as follows:

17. Paragraph 17 is a legal conclusion which requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 17 of Defendants' New Matter.

18. Paragraph 18 is a legal conclusion which requires no response. To the extent a response is required, it is specifically denied that Defendant may raise "all affirmative defenses of The Health Care Services Malpractice Act" by way of his Paragraph 18.

19. Paragraph 19 is a legal conclusion which requires no response.

20. Paragraph 20 is a legal conclusion which requires no response.

21. Paragraph 21 is a legal conclusion which requires no response.

22. Paragraph 22 is a legal conclusion which requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 22 of Defendants' New Matter.

23. Paragraph 23 is a legal conclusion which requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 23 of Defendants' New Matter.

24. Paragraph 24 is a legal conclusion which requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 24 of Defendants' New Matter.

25. Paragraph 25 is a legal conclusion which requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 25 of Defendants' New Matter.

26. Paragraph 26 is a legal conclusion which requires no response. To the extent a response is required, it is specifically denied that Defendant may raise "all affirmative defenses set forth or available as a result of House Bill 1802 by way of his Paragraph 26 of Defendant's New Matter.

Ogg, Cordes, Murphy & Ignelzi, LLP

By _____
Amy Acheson, Esquire
PA I.D. #50506

245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Amy Acheson, Esquire, hereby certify that a true and correct copy of Plaintiffs' Reply to New Matter of Defendant DuBois Regional Medical Center, was forwarded to all counsel of record, by regular U.S. Mail, this 27th day of August, 2002, addressed as follows:

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

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,	)	
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 Defendant's **Notice of Taking Oral Depositions of Plaintiffs** in the above-referenced matter was mailed by first class, postage prepaid, at the Post Office, State College, Pennsylvania, this 20th day of February, 2003, to Amy Acheson, Esquire; David R. Johnson, Esquire, 1010 Two Chatham Center, Pittsburgh, PA 15219 and Alan R. Krier, Esquire, Park View Center, 10 Sheraton Drive, P. O. Box 2024, Altoona, PA 16603.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
John W. Blasko, Esquire
Attorneys for Defendant
Mary C. Kruszewski, D. O.

FILED

FEB 21 2003

William A. Shaw
Prothonotary

FILED
FEB 21 2003
William A. Shaw
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,	)	
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 Defendant's **Amended Notice of Taking Oral Depositions of Plaintiffs** in the above-referenced matter was mailed by first class, postage prepaid, at the Post Office, State College, Pennsylvania, this 12th day of March, 2003, to Amy Acheson, Esquire; David R. Johnson, Esquire, 1010 Two Chatham Center, Pittsburgh, PA 15219 and Alan R. Krier, Esquire, Park View Center, 10 Sheraton Drive, P. O. Box 2024, Altoona, PA 16603.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: John W. Blasko/sf
John W. Blasko, Esquire
Attorneys for Defendant
Mary C. Kruszewski, D. O.

FILED

MAR 13 2003

William A. Shaw
Prothonotary

FILED NO CC
m/1207
MAR 13 2003

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,

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' REPLY TO NEW MATTER OF DEFENDANT RUSSELL CAMERON

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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

FILED

AUG 07 2003

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,

Plaintiff,

v.

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

Defendants.

CIVIL DIVISION

No. G.D. 02-169 CD

PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT, RUSSELL E. CAMERON

AND NOW, come Plaintiffs, MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased, by and through counsel, Ogg, Cordes, Murphy & Ignelzi, L.L.P. and Amy Acheson, Esquire and Philip A. Ignelzi, Esquire, and file their Reply to New Matter of Defendant Russell E. Cameron, as follows:

17. Paragraph 17 is a legal conclusion that requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 17 of Defendants' New Matter.

18. Paragraph 18 is a legal conclusion that requires no response. To the extent a response is required, it is specifically denied that Defendant may raise "all affirmative defenses of The Health Care Services Malpractice Act" by way of his Paragraph 18.

19. Paragraph 19 is a legal conclusion that requires no response.

20. Paragraph 20 is a legal conclusion that requires no response.

21. Paragraph 21 is a legal conclusion that requires no response.

22. Paragraph 22 is a legal conclusion that requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 22 of Defendants' New Matter.

23. Paragraph 23 is a legal conclusion that requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 23 of Defendants' New Matter.

24. Paragraph 24 is a legal conclusion that requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 24 of Defendants' New Matter.

25. Paragraph 25 is a legal conclusion that requires no response. To the extent a response is required, strict proof is required at the time of trial. After reasonable investigation, Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 25 of Defendants' New Matter.

26. Paragraph 26 is a legal conclusion that requires no response. To the extent a response is required, it is specifically denied that Defendant may raise "all affirmative defenses set forth or available as a result of House Bill 1802 by way of his Paragraph 26 of Defendant's New Matter.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant.

By _____

Amy Acheson, Esquire
PA I.D. #50506
245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500
Attorney for Plaintiffs

VERIFICATION

I, Michelle Herzing, hereby verify that I have read the foregoing Reply to New Matter, and that the statements contained therein are correct to the best of my 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 I make knowingly false averments I may be subject to criminal penalties.

Michelle L Herzing

Michelle Herzing

Date: July 30, 2003.

CERTIFICATE OF SERVICE

I, Amy Acheson, Esquire, hereby certify that a true and correct copy of Plaintiffs' Reply to New Matter of Defendant Russell E. Cameron, was forwarded to all counsel of record, by regular U.S. Mail, this 5th day of August, 2003, addressed as follows:

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

Amy Acheson, Esquire

FILED NO CC
m/ 10:43 BY
AUG 07 2003

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,

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

MOTION TO COMPEL ANSWERS TO WRITTEN DISCOVERY REQUESTS FROM DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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

FEB 06 2004

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.	

MOTION TO COMPEL ANSWERS TO WRITTEN DISCOVERY REQUESTS FROM DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON

AND NOW, come Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis as Administrators of the Estate of Janell Herzing, by and through their attorneys, and submit this Motion to Compel, and in support thereof, aver as follows:

1. This is action sounding in medical negligence.

2. On April 24, 2002, Plaintiffs served Defendant DuBois Regional Medical Center with a Request for Production of Documents.

3. On May 23, 2003, Plaintiffs served Defendant DuBois Regional Medical Center with an Electronic Data Interrogatories and Request for Production of Documents.

4. On June 3, 2003, Plaintiffs served Defendant DuBois Regional Medical Center with a Second Set of Interrogatories and Request for Production of Documents.

5. On July 17, 2003 Plaintiffs served Defendant DuBois Regional Medical Center with a Third Set of Interrogatories and Request for Production of Documents.

6. On July 25, 2003 Plaintiffs served upon Defendant Cameron with a First Set of Interrogatories and Request for Production of Documents.

7. As of the date hereof, Defendant DuBois has not answered any of said discovery requests.

8. As of the date hereof, Defendant Cameron has not answered said written discovery requests.

9. Plaintiffs' counsel has requested answers to written discovery from the non-responding Defendants', most recently by letter dated January 13, 2004, a copy of which is attached hereto as Exhibit "A". These Defendants have never replied to this letter.

10. Plaintiffs' are being prejudiced by these Defendants' recalcitrance and delay. As more and more time elapses, the prejudicial effect of the Defendants' delaying tactics will increase as memories fade.

WHEREFORE, Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis as Administrators of the Estate of Janell Herzing respectfully request that this Honorable Court enter an Order requiring these Defendants to answer the aforesaid discovery.

Respectfully submitted.

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

O , CORDES, MURPHY & IGNELZI, L.P.
ATTORNEYS AT LAW
RIVERVIEW PLACE
245 FORT PITT BOULEVARD
PITTSBURGH, PENNSYLVANIA 15222

(412) 471-8500

TELEFAX (412) 471-8503

AMY ACHESON

EDWARD P. ZEMPRELLI
OF COUNSEL

January 13, 2004

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

Re: Michelle Herzing and Jeffrey A. Jarvis, individually, in ther own right, and as Administrators of the Estate of Janell Herzing, a minor, deceased, v. Mary C. Kruszewski, DuBois Regional Medical Center, Patrick Shilala, and Jerjie T. Alajaji

Dear Dave:

I served you the following discovery requests pursuant to the Pennsylvania Rules of Civil Procedure on the following dates:

	Discovery Request	Date Served
1.	Plaintiffs' Request for Production of Documents Directed to Defendant, DuBois Regional Medical Center	4/24/02
2.	Plaintiffs' Electronic Data Interrogatories and Request for Production of Documents Directed to Defendant DuBois Regional Medical Center	5/23/03
3.	Plaintiffs' Second Set of Interrogatories and Request for Production of Documents Directed to Defendant DuBois Regional Medical Center	6/3/03
4.	Plaintiffs' Third Set of Interrogatories and Request For Production of Documents Directed to Defendant DuBois Regional Medical Center	7/17/03
5.	Plaintiffs' First Set of Interrogatories and Request for Production of Documents Directed to Defendant Russell Cameron	7/25/03

I intend to proceed with this case as quickly as possible on my client's behalf, and thus need to have your answers to these requests by the end of this month, January, 2004.

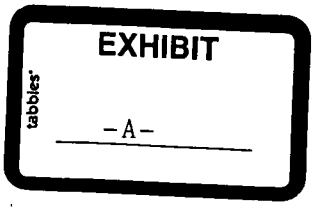
Thank you for your attention to this matter.

Very truly yours,

Amy Acheson

AA/dpe

cc: John W. Blasko, Esquire
Alan R. Krier, 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,	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 OF COURT

AND NOW, to wit, this 10 day of February, 2004, upon consideration of Plaintiffs' Motion to Compel, it is hereby ORDERED that Defendant DuBois Regional Medical Center shall serve on Plaintiffs within ~~fourteen (14)~~ twenty (20) FJA days from the date hereof answers to Plaintiffs' April 24, 2002, Request for Production of Documents Directed, Plaintiffs' May 23, 2003, Electronic Data Interrogatories and Request for Production of Documents, Plaintiffs' June 3, 2003, Second Set of Interrogatories and Request for Production of Documents, and Plaintiffs' Third Set of Interrogatories and Request for Production of Documents .

It is further ORDERED that Defendant Cameron shall serve on Plaintiffs within twenty (20) FJA ~~fourteen (14)~~ days from the date hereof answers to Plaintiffs' July 25, 2003 First Set of Interrogatories and Request for Production of Documents.

BY THE COURT:

J.

FILED

FEB 11 2004

William A. Shaw
Prothonotary

FILED
0 8:31 bA 1 CC Atty Acheson
FEB 11 2004
William A. Shaw
Prothonotary

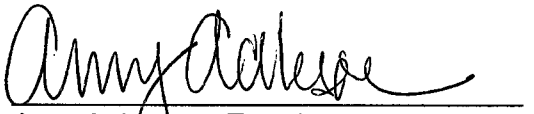
CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **MOTION TO COMPEL ANSWERS TO WRITTEN DISCOVERY REQUESTS FROM DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON** to be served on the following via regular United States first class mail, postage prepaid, on this 4th day of February, 2004:

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



Amy Acheson, Esquire



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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading
MOTION TO COMPEL PLAINTIFFS TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

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

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

Counsel of Record for Adverse Party:
Amy Acheson, Esquire
Philip A. Igneizi, Esquire

Dated: April 27, 2004

FILED

APR 28 2004

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,	)	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.	)	

MOTION OF DEFENDANT, MARY C. KRUSZEWSKI, D.O. TO COMPEL PLAINTIFFS TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

AND NOW, comes Defendant, Mary Kruszewski, D.O. by and through her attorneys, McQuaide, Blasko and files the within Motion to Compel Plaintiff to Answer Expert Interrogatories and/or Produce Expert Reports and avers as follows:

1. Over two years ago, on February 1, 2002 the Plaintiffs initiated this medical malpractice action by filing a Complaint.

2. On or about March 8, 2002, the Moving Defendant served on Plaintiffs' counsel Expert Interrogatories for answer by Plaintiffs. A copy of the Interrogatories are attached hereto and marked Exhibit "A."

3. The moving Defendant's expert interrogatories, inter alia, inquire about the identities and background of the Plaintiffs' medical an non-medical expert witnesses; the subject matter on which of Plaintiffs' expert witnesses (both medical and non-medical) are expected to

testify; the substance of each and every opinion which the Plaintiffs' expert witnesses (both medical and non-medical) are expected to render at the trial of this matter; together with a summary of the grounds for each such opinion; and, inquiries concerning the treatise and/or literature that Plaintiffs' experts have relied upon in formulating their opinions concerning the care and treatment involved in this case.

4. Plaintiffs responded to the foregoing Interrogatories on or about May 8, 2002, wherein as to medical experts they repeatedly stated: "Plaintiffs have not selected trial witnesses at this time" and "See Answer to Interrogatory #1."

5. Over a year after filing this lawsuit, the Plaintiffs took the medical deposition of the Defendant, Dr. Kruszewski on April 10, 2003. The Plaintiffs' depositions were taken on May 28, 2003.

6. As of the date of this Motion, Plaintiffs have neither provided defense counsel with any supplemental response to Defendant's Expert Interrogatories, nor have Plaintiffs supplied Defendant's counsel with any expert reports (medical or non-medical) which Plaintiffs will utilize during the trial of this matter.

7. Plaintiffs' failure to provide full and complete responses to Defendant's outstanding Expert Interrogatories place Plaintiffs in direct violation of Pa.R.C. P. 4003.5 and 4007.4.

8. The general rule relating to the discovery of experts and their testimony, and more specifically the discovery of the facts and opinions underlying such testimony, is contained at Pa.R.C.P. 4003.5, which provides, in pertinent part, as follows:

[a] Discovery of facts known and opinions held by an expert,

otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

[1] A party may through interrogatories require

[a] any other party to identify each person whom the other party expects to call as an expert witness at trial **and to state the subject matter on which the expert is expected to testify and**

[b] the other party to have each expert so identified by him state **the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion**. The party answering the interrogatories may file as his answer **a report of the expert or have the interrogatories answered by his expert**. The answer or separate report shall be signed by the expert.

. . .

[b] **If the identity of an expert witness is not disclosed in compliance with subdivision (a)(1) of this rule, he shall not be permitted to testify on behalf of the defaulting party at the trial of the action**. However, if the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief.

See Pa.R.C.P. 4003.5 (emphasis added).

9. Pa.R.C.P. 4007.4 places an **affirmative and automatic obligation** on Plaintiffs to seasonably supplemental all responses to discovery requests seeking expert information and/or reports such as that at issue herein.

10. In Sindler vs. Goldman, 309 Pa. Super. 7, 454 A.2d 1054 (1982), the Superior Court discussed the policy notions underlying the rules relating to the discovery of expert information as follows:

> "**The purpose of the discovery rules is to prevent surprise and unfairness and to allow a trial on the merits.** When expert testimony is involved, it is **even more crucial** that surprise be prevented, since the attorneys will not have the requisite knowledge of the subject on which to effectively rebut unexpected testimony. By allowing for early identity of expert witnesses and their conclusions, the opposing side can prepare to respond, appropriately instead of trying to match years of expertise on the spot. **Thus, the rule serves as more than a procedural technicality; it provides a shield to prevent the unfair advantage of having a surprise witness testify.**"

See Sindler, supra, 454 A/2d at 1056 (emphasis added).

11. Because of Plaintiffs' failure to provide responses to the Expert Interrogatories for over two years since filing this lawsuit and over a year since deposing Dr. Kruszewski, she is unduly prejudiced in the preparation of her defense of Plaintiffs' claims, and, the defense has not been provided with the requested expert information which would assist Defendant in accurately assessing a defense, conducting necessary investigation inquiries and preparing a defense to this action.

12. Pursuant to Pennsylvania Rule of Civil Procedure 4019(a)(1), the Court may make an appropriate order if: "(i) a party fails to serve answers, sufficient answers or objections to written interrogatories under Rule 4005", or "(vii) a party fails to respond to a request for production made under Rule 4009."

13. When acting under Pa.R.C.P. 4019(a), the court may make "an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or **prohibiting him from introducing into evidence designated documents, things or testimony**, or from introducing testimony of physical or mental condition." Se Pa..R.C.P. 4019(c)(2) (emphasis added).

14. Moving Defendant respectfully requests this Honorable Court issue an Order requiring Plaintiffs to provide full and complete supplemental responses to the outstanding

discovery requests and/or produce any and all expert report(s) (medical and non-medical) that Plaintiffs intend to utilize at the trial of this matter within thirty (30) days, or be precluded from producing, utilizing and/or mentioning any expert reports (or other information) against Moving Defendant at the trial of this matter.

WHEREFORE, Moving Defendant respectfully requests this Honorable Court to enter an Order attached to this Motion.

MCQUAIDE, BLASKO, SCHWARTZ,
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: 4/27/04

::ODMA\PCDOCS\DOCSLIB2\289289\1

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

DEFENDANT KRUSZEWSKI'S EXPERT INTERROGATORIES FOR ANSWER BY PLAINTIFFS

To: PLAINTIFFS
C/O Philip A. Ignelzi, Esquire &
Amy Acheson, Esquire

Please take notice that you are hereby required pursuant to the Pennsylvania Rules of Civil Procedure, to serve upon the undersigned, within thirty (30) days from service hereof, your answers to the Interrogatories in writing and under oath.

These shall be deemed to be continuing interrogatories. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your answers, you shall promptly furnish said information to the undersigned by supplemental answers.

McQUAIDE, BLASKO, SCHWARTZ
FLEMING & FAULKNER, INC.

By: _____
John W. Blasko

Definitions:

A. "Document" shall mean any writing (whether handwritten, typed, printed or otherwise made), drawing, graph, chart, photograph, phonograph record, or electronic or mechanical matter (including microfilm of any kind or nature, tape or recording), or other data compilations from which information can be obtained (translated, if necessary, into reasonably usable form), and shall include, without limiting the generality of the foregoing, all records, correspondence, telegrams, teletypes, agreements, studies, reports, drafts, memoranda, and computer print outs.

B. "Health care provider" means a person, corporation, facility, institution or other entity who provided health care or professional services as a physician, including a medical doctor and a doctor of osteopathy and a doctor of podiatry; psychiatrist or psychologist; chiropractor; therapist; hospital; nursing home; health maintenance organization; or an officer, employee or agent of any of them acting in the course and scope of his employment

C. "Incident" or "alleged incident" means actions or omissions upon which this action is purportedly based.

D. As used herein "identify", when used in reference to an individual, means his full name and present or last known residence and business address, his present or last known position or title and business affiliation, and his position at the time in question.

E. "Injury" means any bodily or mental harm or damage, including that as a result of a disease process.

F. "Person" means a natural person, firm, partnership, association, corporation, legal representative, and/or trustee.

G. "You" and/or "your" means Plaintiffs, his agents and employees and others acting on his behalf with regard to asserting the cause of action set forth in Plaintiff's Complaint in the above-captioned case.

H. "Decedent" means Janell Herzing.

Instructions for Answering Interrogatories:

A. In accordance with Pa.R.C.P. Rule 4005, the original of these written Interrogatories have been served upon you to be answered by the party served of, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.

B. When the Interrogatories request that documents be identified, an identification of it should include at least the following: author, addressee, type of document, date, subject matter, and the name and address of the person or party presently having custody of the document and any known copies of it.

C. In accordance with Pa.R.C.P. Rule 4006, written answers shall be inserted in the spaces provided in the Interrogatories. If there is sufficient space to answer an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.

D. In accordance with Pa.R.C.P. Rule 4006(b), a sufficient answer to such an Interrogatory shall be to specify the records from which the answer may be derived or ascertained.

E. Please file and serve answers to these Interrogatories in accordance with Pa.R.C.P. Rule 4006(a)(2).

INTERROGATORIES:

1. Please provide the name, business address and home address for each **medical expert** witness whom you intend to call at the trial of this case.

ANSWER:

2. For each **medical expert** witness identified in response to the above Interrogatory, please specify the following information relative to qualifications:

(You may attach a copy of each expert's curriculum vitae and list of publications in lieu of answering this Interrogatory)

(a) Colleges and medical or technical schools attended, dates of attendance, dates of graduation and degrees attained;
(b) The medical schools or hospitals where the witness pursued any internship or residency and the dates of such study;
(c) The specialties in which the witness has received certification by any board of medical specialty or professional organization, the date of such certification, and the identity of the board issuing such certification;
(d) All professional societies, academies, associations or other organized professional groups of which this expert is a member;
(e) All states in which the witness has ever been licensed and the states in which the witness is currently licensed;
(f) All hospitals where such witness has ever been granted staff privileges and the dates of such staff appointments, and for each such hospital, whether such hospital ever revoked or suspended such staff privileges;
(g) If the witness is not self-employed, state each address where the witness is employed; and
(h) All textbooks, treatises, papers, articles, or other writings which this witness has ever authored, and for each, the name of the article, publication, citation of the publication and date of publication.

ANSWER:

3. Please provide the name, business address and home address for each **non-medical expert** witness whom you intend to call at the trial of this case.

ANSWER:

4. For each **non-medical expert** witness identified in response to the above Interrogatory, please specify the following information relative to qualifications:

(You may attach a copy of each expert's curriculum vitae and list of publications in lieu of answering this Interrogatory)

(a) Colleges and/or technical schools attended, dates of attendance, dates of graduation and degrees attained;
(b) The specialties in which the witness has received certification by any board or professional organization, the date of such certification, and the identity of the board issuing such certification;
(c) All professional societies, academies, associations or other organized professional groups of which this expert is a member;
(d) All states in which the witness has ever been licensed and the states in which the witness is currently licensed;
(e) All textbooks, treatises, papers, articles, or other writings which this witness has ever authored, and for each, the name of the article, publication, citation of the publication and date of publication; and
(f) If the witness is not self-employed, state each address where the witness is employed.

ANSWER:

5. For each expert witness identified above (medical and non-medical), state the subject matter on which the expert is expected to testify.

ANSWER:

6. For each expert witness identified above (medical and non-medical), state the substance of each and every opinion which the expert is expected to render, and provide a summary of the grounds for each such opinion.

ANSWER:

7. List by title, author, and official citation, all treatises, articles, textbooks or any literature whatsoever, which the expert(s) identified above relied upon in formulating his or her opinions relative to this case or which the expert(s) intends to present, utilize or refer to during his or her trial testimony.

ANSWER:

8. For each expert witness identified above, state the number of times the expert has previously been retained for the purpose of either reviewing cases or for testifying in cases for Plaintiffs' counsel or by members of the law firm to which Plaintiffs' counsel belongs.

ANSWER:

9. For each expert witness identified above, state whether any such expert witness has had any past or present business or personal relationship with the Plaintiffs, Plaintiffs' counsel, or by of the law firm to which Plaintiffs' counsel belongs. If so, specify the persons involved and the nature of any such relationship.

ANSWER:

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By _____
JOHN W. BLASKO
Attorneys for Defendant
Mary C. Kruszewski, D. O.
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: 3/8/02

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion of Defendant, Mary C. Kruszewski, D.O. to Compel Plaintiffs to Answer Expert Interrogatories and/or or Produce Expert Reports, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 27th day of April, 2004, to the attorney(s) of record:

Amy Acheson, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

Alan R. Krier, Esquire
Park View Center, Ten Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

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

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

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

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FILED NO CC
APR 28 2004

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,	)	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.	)	

ORDER OF COURT

AND NOW, to wit, this 3 day of May, 2004, upon consideration of Defendant's Motion to Compel, it is hereby ORDERED that Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis, shall produce and serve on the Defendant, within thirty (30) days form the date hereof full and complete Answers or Expert Reports (medical and non-medical) to Defendant's Expert Interrogatories or be barred from producing expert (medical and non-medical) testimony at the time of trial.

BY THE COURT,

J.

FILED

MAY 03 2004

William A. Shaw
Prothonotary

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FILED
01:39PM 4cc atty Blanchard
MAY 03 2004
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,

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 FOR RECONSIDERATION

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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

MAY 07 2004

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.	

PLAINTIFFS' MOTION FOR RECONSIDERATION

AND NOW, come Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis as Administrators of the Estate of Janell Herzing, by and through their attorneys, and respectfully request that this Honorable Court reconsider the Defendant's Motion to Compel Expert Reports, and in support hereof state the following:

1. On or about Thursday, April 29, 2004, Plaintiffs received by mail Defendant Kruszewski's Motion to Compel expert reports.

2. On or about Monday, May 3, 2004, Plaintiffs notified the Court that Plaintiffs were opposing said Motion and requested the opportunity to submit a brief. (See Exhibit "A").

3. Plaintiffs were never afforded the opportunity to brief the issues nor oppose the motion.

4. Instead, on May 6, 2004 Plaintiffs received by mail from Defendant's Counsel a copy of the May 3rd Order of Court requiring Plaintiffs to file all expert reports within thirty days of May 3, 2004 – less than 30 days from Plaintiffs receipt of the Order. (See Exhibit "B").

5. Had Plaintiffs been afforded the opportunity to brief the issues, they would have addressed the following:

a. No trial date has been set and discovery is actively ongoing.

b. There are numerous fact witness depositions that remain to be taken of witnesses employed by or under the control of the Hospital.

c. These depositions remain to be taken because of the unavailability of the witnesses, and/or counsel for the hospital and/or Dr. Kruszewski.

d. Without completion of discovery, Plaintiff would be severely prejudiced by being required to obtain trial expert reports. The factual bases on which such reports would be based would by definition incomplete, which could result in flawed reports and, in turn, in substantial prejudice to the Plaintiffs' case.

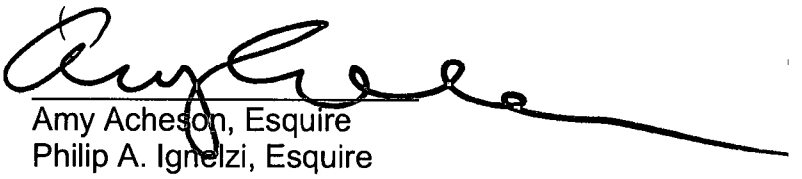
e. In addition, requiring Plaintiff to select trial experts and produce all expert reports within less than a 30 day period in itself will result in prejudice because of the compressed time frame.

f. Furthermore, Defendant Kruszewski's Motion should be denied because the relief requested is improper under the rules. Rule 1042.28 of the Pennsylvania Rules of Civil Procedure provides the proper mechanism by which the Defendant may require the filing of reports of 180 days.

6. As set forth above, Plaintiffs will suffer prejudice if the Order of Court dated May 3, 2004 stands.

7. Plaintiffs respectfully submit that in light of the above, the May 3 Order be modified so that the time period in which Plaintiffs be required to select trial experts and submit their reports be enlarged to 180 days.

Respectfully submitted.



Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

OGG, CORDES, MURPHY & IGNELZI, L.L.P.
ATTORNEYS AT LAW
RIVERVIEW PLACE
245 FORT PITT BOULEVARD
PITTSBURGH, PENNSYLVANIA 15222

(412) 471-8500

TELEFAX (412) 471-8503

AMY ACHESON

EDWARD P. ZEMPRELLI
OF COUNSEL

VIA OVERNIGHT MAIL

May 3, 2004

William A. Shaw
Prothonotary/Clerk of Courts
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Dave Meholick
Court Administrator
Clearfield County Court Administration
230 East Market Street
Clearfield, PA 16830

Re: Michelle Herzing and Jeffrey A. Jarvis, individually, in their own right, and as Administrators of the Estate of Janell Herzing, a minor, deceased
COMPLAINT IN CIVIL ACTION

Dear Mr. Shaw and Mr. Meholick:

We represent Plaintiffs in the above captioned action. We have now been served with Defendant Kruszewski's Motion to Compel dated April 27, 2004.

We wish to advise the Court that we oppose the Motion and request a briefing schedule so that we may have the opportunity to file a brief thereon.

Kindly transmit a copy of this letter to the chambers of Judge Ammerman.

Thank you for your attention to this matter.

Very truly yours,

Amy Acheson

Amy Acheson

AA/dpe
Enclosures

Cc: Alan R. Krier, Esquire
David R. Johnson, Esquire
John W. Blasko, Esquire
Richard K. Laws, Esquire

EXHIBIT
tabbies
-A-

MCQUAIDE BLASKO ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699 (814) 238-4926 FAX (814) 234-5620
Additional offices in Hershey and Hollidaysburg www.mcquaideblasko.com

May 4, 2004

Amy Acheson, Esquire
Ogg, Cordes, Murphy & Ignelzi, LLP
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

RE: Herzing v. Kruszewski, et al.

Dear Ms. Acheson:

Enclosed is the Court's Order requiring complete Answers to Expert Interrogatories (medical and non-medical) on or before June 2, 2004.

Very truly yours,

McQUAIDE BLASKO

BY JOHN W. BLASKO

JWB/nls
Enclosure
cc: David R. Johnson, Esquire (w/enc.)
cc: Alan R. Krier, Esquire (w/enc.)

MCQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

State College Office: John W. Blasko Thomas E. Schwartz R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slimak Mark Righter Daniel E. Bright Paul J. Tomczuk Janine C. Gismondi John A. Snyder April C. Simpson Allen P. Neely Pamela A. Ruest Katherine V. Oliver Katherine M. Allen Wayne L. Ashley Himes Kranich Chena L. Glenn-Hart Livinia N. Jones Cristin R. Barnes Matthew T. Rogers Frederick R. Battaglia Anthony A. Simon Russell A. Ve

Hershey Office: Grant H. Fleming Maureen A. Gallagher Michael J. Mohr Jonathan B. Stepanian Britt D. Russell

Hollidaysburg Office: Thomas M. Reese J. Benjamin Yeager

John G. Lowe (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

EXHIBIT
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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,	)	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.	)	

ORDER OF COURT

AND NOW, to wit, this 3 day of May, 2004, upon consideration of Defendant's Motion to Compel, it is hereby ORDERED that Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis, shall produce and serve on the Defendant, within thirty (30) days form the date hereof full and complete Answers or Expert Reports (medical and non-medical) to Defendant's Expert Interrogatories or be barred from producing expert (medical and non-medical) testimony at the time of trial.

BY THE COURT,

J.

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

MAY 03 2004

Attest.

Prothonotary/
Clerk of Courts

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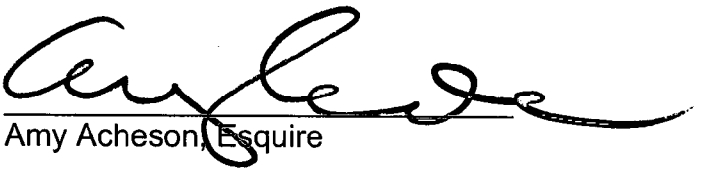
CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' MOTION TO RECONSIDERATION** to be served on the following via regular United States first class mail, postage prepaid, on this 6th day of May, 2004:

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



Amy Acheson, Esquire

FILED 10 cc
m/10:32 BY
MAY 07 2004
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,

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

MOTION TO COMPEL DEFENDANT KRUSZEWSKI TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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

MAY 10 2004

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.	

MOTION TO COMPEL DEFENDANT KRUSZEWSKI TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

AND NOW, come Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis as Administrators of the Estate of Janell Herzing, by and through their attorneys, and file the within Motion to Compel Defendant Kruszewski to Answer Expert Interrogatories and/or Produce Expert Reports and, in support hereof, state the following:

1. On or about February 11, 2002, Plaintiffs served on Defendant Kruszewski's certain expert interrogatories for answer by Defendant Kruszewski.

2. These expert interrogatories inquire about the identities and background of this Defendant's medical and non-medical expert witnesses, the subject matter on which said witnesses are expected to testify, the substance and summary of grounds of the opinions which are expected to be rendered at the trial of this case, and any authorities that these experts are relying upon in connection with their opinions.

3. Defendant Kruszewski responded to the foregoing interrogatories on or about April 16, 2002, wherein as to said experts Defendant Kruszewski stated her objections with the respect to scope of discovery, Defendant Kruszewski repeatedly stated

> Without waiving said Objections, the Defendant has not made a determination as to the expert(s) that will be utililized at the trial of this matter. A determination cannot be made until discovery is complete, and the Plaintiffs have provided a full and complete report of an expert who is expected to testify at the time of trial. Once a determination is made, Defendant will provide Plaintiffs with discoverable expert information as required under Pa.R.C.P. 4003.5 and/or related common law and procedural rules relating to the discovery of expert information.

A copy of said Interrogatories are attached hereto and marked as Exhibit "A".

4. As of the date of this Motion, Defendant Kruszewski has neither provided Plaintiffs with any supplemental response to their expert interrogatories, nor supplied Plaintiffs with any expert reports whatsoever.

5. On or about April 27, 2004, Defendant Kruszewski filed with this Court a motion seeking to compel Plaintiffs to answer expert interrogatories which are for all practical purposes identical to those at issue here. Defendant Kruszewski's motion to compel is the subject of Plaintiffs' Motion for Reconsideration which was filed on or about May 7, 2004.

6. Plaintiffs submit that the equities and law of the case mandate that to the extent that Plaintiffs are required to select trial experts and produce expert reports within a certain time frame, Defendant Kruszewski be compelled to do the same in response to Plaintiffs' expert interrogatories.

7. Certainly, to the extent that Pa.R.C.P. 4003.5 and Pa.R.C.P. 4007.4 apply to Defendant Kruszewski's discovery requests to Plaintiffs, they apply with equal force with respect to Plaintiffs' discovery requests to Defendant Kruszewski.

8. Likewise, to the extent that Defendant Kruszewski avers prejudice resulting from Plaintiffs' response that they have not selected trial experts or produced expert reports, Plaintiffs are prejudiced to the same extent by Defendant Kruszewski's identical response.

9. Plaintiffs respectfully request that this Honorable Court issue an order requiring Defendant Kruszewski to provide full and complete supplemental responses to the outstanding discovery requests and to produce any and all expert reports (medical and non-medical) that Defendant Kruszewski intends to utilize at the trial of this matter within thirty days of receipt of Plaintiffs' production of expert report(s) or be precluded from producing, utilizing, an/or mentioning any expert reports or other information against Plaintiffs at the trial of this matter.

WHEREFORE, Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis, as Administrators of the Estate of Janell Herzing, respectfully request that this Honorable Court enter the order attached hereto.

Respectfully submitted,

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

4/10

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, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D.

Code: 007

ANSWERS AND OBJECTIONS TO

FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT, MARY C. KRUSZEWSKI

Filed on behalf of Plaintiffs

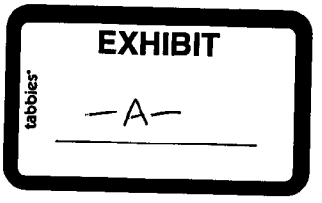
Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased,	CIVIL DIVISION
	No. G.D.
Plaintiff,	Code: 007
v.	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI	
Defendants.	

ANSWERS AND OBJECTIONS TO

PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT MARY C. KRUSZEWSKI

AND NOW, come Plaintiffs, MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased, by and through counsel, Ogg, Cordes, Murphy & Ignelzi, L.L.P. and Philip A. Ignelzi, Esquire, Michael A. Murphy, Esquire, and John D. Perkosky, Esquire, and requests that Defendant, Mary C. Kruszewski, answer the following Interrogatories and respond to the following Request for Production of Documents, under oath, pursuant to the Pennsylvania Rules of Civil Procedure, within thirty (30) days from the date of service hereof.

DEFINITIONS

1. "You", "Your", or "Defendant" shall mean MARY C. KRUSZEWSKI, individually and in her own right, as well as her agents, attorneys, accountants, consultants, independent contractors, employees, and any other individual or entity purporting to act on her behalf with respect to the matter in question.

2. "Communication" shall mean the transmittal of information in the form of facts, ideas, inquiries or otherwise.

3. "Document" is defined to be any writing, drawing, graph, chart, photograph, phono record, or other data compilation from which information can be obtained, translated, of necessary, by Defendant through detection devices into reasonably usable form.

4. "Concerning" means relating to, referring to, describing, evidencing or constituting.

5. The use of the singular form of any word includes the plural and vice versa.

6. The term "all" and "each" shall be construed as all and each.

7. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

8. "Plaintiff" or "Plaintiffs" shall mean MICHELLE HERZING and/or JEFFREY A. JARVIS, individually and in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased.

9. "Plaintiffs' decedent" shall mean JANELL HERZING, a minor, deceased.

1. State your name, address, and telephone number (both professional and residential).

ANSWER: Defendant objects to any request for residential address and/or telephone number in that same is not relevant to this action, nor likely to lead to the discovery of relevant evidence. Defendant is represented by undersigned counsel, with all questions and inquiries properly directed to the address and telephone number provided.

Richard K. Laws

Without waiving the foregoing objections, please see curriculum vitae attached as Exhibit "A."

2. To the extent you were associated or in partnership with any other medical practitioner at the time of the occurrence complained of in this action, state:

[a] The name, address, telephone number, and specialty and qualifications of each person with whom you were associated or in partnership;

[b] The nature of your business relationship;

[c] The date you formed the relationship;

[d] Whether the relationship still exists, and, if not, the reason and date it was terminated; and

[e] Whether any written agreement existed between you and your associates or partners, and, if so, the name, address, and telephone number of the person who has custody of the agreement.

ANSWER: Defendant was not associated or in partnership with any other medical practitioner at the time of the occurrence complained of in this action.

3. Do you now, or have you within the past three years, hold any ownership interest in any corporation or partnership which is not publicly traded? If so, identify the name of the entity, the shareholders or partners, your ownership interest and the nature of the business of the entity.

ANSWER: Defendant objects to this Interrogatory inasmuch as it seeks information not relevant to this action, nor likely to lead to the discovery of relevant evidence.

Richard K. Laws

Without waiving the foregoing objections, no.

4. What is the name and address of each medical school of which you are a graduate or attended and the inclusive dates you attended each school?

ANSWER: Please see curriculum vitae attached as Exhibit "A."

5. What is the name and address of the medical institution at which you served your internship and the inclusive dates you served such internship?

ANSWER: Please see curriculum vitae attached as Exhibit "A."

6. In what states are you now, or have you ever been licensed to practice medicine, and in which year did you receive your license to practice in each such state?

ANSWER: Please see curriculum vitae attached as Exhibit "A." By way of further response, Pennsylvania - 1989.

7. If you ever had a medical license suspended, revoked or terminated in any state or county, for each such license indicate:

[a] The state or authority which granted it; and

[b] Whether it was suspended, revoked or terminated, and whether it was ever reinstated or renewed, and, if so, on what date.

ANSWER: No suspension, revocation or termination has occurred.

8. If you have confined your medical practice to any particular specialty, state:

[a] The name of each specialty; and

[b] The inclusive dates you have practiced such specialty.

ANSWER: Please see curriculum vitae attached as Exhibit "A."

9. If you have had training in a medical specialty, for each such training, state:

[a] The name of the specialty involved;

[b] The name, address, and telephone number of each institution where you trained;

[c] The inclusive dates of your training;

[d] A description of the training program;

[e] The length of time you spent in each of the following:

[i] the diagnosis, treatment, and operative and post-operative care of problems in the specialty; and

[ii] the application of the basic sciences such as anatomy, pathology, zoology, bacteriology and biochemistry to the specialty.

ANSWER: Please see curriculum vitae attached as Exhibit "A." Dates and time period of training are so indicated. As to (e)(i), roughly 42 months. As to (e)(ii), roughly 6 months.

10. If you are now, or ever have been , a member or diplomat of any specialty board for each specialty board, state:

[a] The name, address, and telephone number of the specialty board;

[b] The inclusive dates of your membership;

[c] If no longer a member, the reason for the termination of your membership;

[d] The qualifications required in order to take the membership examination;

[e] The date you qualified to take the membership examination;

[f] The number of times you took the examination and the dates thereof; and

[g] The place you took the examination.

ANSWER: (a) Please see curriculum vitae attached as Exhibit "A."
(b) May of 1996 to present.
(c) N/A.
(d) through (g) seek information not relevant, nor likely to lead to the discovery of relevant information.

Richard K. Laws

11. If you have or ever had any staff privileges at, or association with, any hospital, for each hospital, state:

[a] Its name, address, and telephone number;

[b] The nature of your relationship to it;

[c] A description of each such privilege granted to you; and

[d] The inclusive dates each such privilege was held by you.

ANSWER: Please see curriculum vitae attached as Exhibit "A." By way of further response, Defendant advises as follows:

(a) DRMC;
(b) Active Staff; and

(a) Ridgway Hospital;
(b) Active Affiliate Staff
(c) through (d) seek information not relevant, nor likely to lead to the discovery of relevant information and/or seeks information protected by Pennsylvania's Peer Review Protection Act.

Richard K. Laws

12. If you have ever had any staff privilege revoked or curtailed at any hospital, for each such privilege, state:

[a] A description of it;

[b] Whether it was revoked or curtailed, and, if curtailed, in what way;

[c] The date it was revoked or curtailed;

[d] The reason it was revoked or curtailed; and

[e] The name of the disciplinary body which revoked or curtailed it.

ANSWER: Please see Answer and Objection to Interrogatory No. 11. Without waiving said objections, privileges have never been revoked or curtailed.

13. If you have every been connected in a teaching capacity with any medical institution, state:

[a] Its name, address, and telephone number;

[b] A description or designation of each position you hold or held and the inclusive dates thereof; and

[c] The name of each subject taught by you.

ANSWER: Please see curriculum vitae attached as Exhibit "A."

14. If you have ever written, co-written or contributed to a medical textbook, paper or article, state:

[a] Its title;

[b] If you were a co-author, the name, address and telephone number of each other author;

[c] The name and address of the publisher;

[d] The date of the original publication and of each reprint;

[e] If you were a co-author, what part was written by you;

[f] Whether you have ever made any alterations in it, and, if so, which part you altered and for what reason;

[g] Whether it is a required book in a medical school;

[h] The subject matter on which you wrote; and

[i] The title, edition, and name and address of the publisher of each printed publication in which it has appeared.

ANSWER: Please see curriculum vitae attached as Exhibit "A."

15. If at any time in your medical career you have received any award or honor, for each award or honor, state:

[a] A description or designation of it;

[b] The name, address, and telephone number of the institution from which it came;

[c] The achievement for which it was given; and

[d] The date and place you received it.

ANSWER: Please see curriculum vitae attached as Exhibit "A." By way of further response, "Reaching Out Award" / Pa Dept of Health / Providing service through the Health Beginnings Plus Program / November 16, 2001/ State College PA.

16. On or after November 30, 2000, did you communicate orally with any other physician concerning the diagnosis, care, treatment or management of Plaintiff, Michelle Herzing? If so,

[a] Set forth the date[s] and time[s] of each communication;

[b] Identify the physician[s] you communicated with;

[c] Set forth the substance of each communication;

[d] State whether each communication is documented in any writing, including the medical chart and, if so, identify the particular document or page of the medical chart.

ANSWER: For all such documented discussions during treatment relevant to this case, please see medical records, which are already believed to be in Plaintiffs' counsel's possession. By way of further response, Defendant advises that two conversations were had with Dr. Suslow. The first was to discuss initial autopsy results and the second was at some point in 2001. At that time, Dr. Suslow called Defendant and mentioned that Plaintiff had questions. Defendant indicated that she would talk to Plaintiff but was reluctant to initiate the call when Plaintiff had presumably already contacted an attorney.

17. In 2000, did you follow any policies, procedures, rules, regulations or guidelines concerning the timing, manner, method, or adequacy of monitoring fetal heart rates?

ANSWER: Yes, as well as possible given the difficulty of monitoring someone of Plaintiff's size and given the circumstances then and there existing.

18. In 2000, did you follow any policies, procedures, rules, regulations or guidelines concerning the use of cervical ripening drugs, including Cytotec?

ANSWER: Yes. Defendant Hospital should have copies.

19. In 2000, did you follow any policies, procedures, rules, regulations or guidelines concerning VBAC (vaginal birth after Cesarean delivery)?

ANSWER: Please see Answer to Interrogatory No. 18.

20. In 2000, did you follow any policies, procedures, rules, regulations or guidelines concerning the evaluation, testing, diagnosis, treatment and/or management of obstetrical patients with persistently elevated blood pressures, pre-eclampsia and/or severe pre-eclampsia?

ANSWER: Please see Answer to Interrogatory No. 18. Also, general ACOG guidelines.

21. In 2000, did you have or follow a protocol or usual practice for monitoring fetal heart rates? If so,

[a] Set it forth in full or produce a complete copy of it;

[b] State whether it has changed since December, 2000 and if so, set forth any changes; and

[c] With respect to Plaintiffs, state who was responsible for ensuring said protocol or practice was followed.

ANSWER: Yes. Defendant Hospital should have copies. As to (c), Nursing Staff applies monitors and notifies physician of problems if necessary.

22. In 2000, did you have or follow a protocol or usual practice for a situation in which fetal heart rate cannot be adequately captured and/or in which a reassuring fetal heart rate cannot be obtained? If so,

[d] Set it forth in full or produce a complete copy of it;

[e] State whether it has changed since December, 2000 and if so, set forth any changes; and

[f] With respect to Plaintiffs, state who was responsible for ensuring said protocol or practice was followed.

ANSWER: Yes. Defendant Hospital should have copies. As to (c), please see Plaintiff's medical records which are already believed to be in possession of Plaintiff's counsel.

23. If you have been an expert witness in a civil or criminal action, for each action state:

[a] The names of the parties to the action;

[b] The case caption of the action;

[c] A description of the subject matter of the action;

[d] The name of the party for whom you rendered any opinion;

[e] The name of the Court in which the action was filed;

[f] The name of the attorney representing the party for whom you rendered any opinion;

[g] Date[s] of your testimony;

[b] The substance of your opinion[s]

ANSWER: Objection. Defendant objects to this Interrogatory to the extent that it seeks information not relevant to this action, nor likely to lead to the discovery of relevant evidence.

Richard K. Laws

Without waiving the foregoing objections, no.

24. Have you ever been a party in any civil lawsuit other than the instant case?

ANSWER: Objection. Defendant objects to this Interrogatory to the extent that it seeks information not relevant to this action, nor likely to lead to the discovery of relevant evidence.

Richard K. Laws

25. If the answer to the preceding Interrogatory is anything but an unqualified negative, supply the following additional information as to each other lawsuit:

[a] Complete caption;

[b] Court in which filed and term and number;

[c] Whether you were plaintiff or defendant;

[d] Names and addresses of attorneys;

[e] Description of the claims raised in the lawsuit; and

[f] What disposition was made of the case, including any amount awarded by verdict or settlement.

ANSWER: Please see Answer to Interrogatory No. 24.

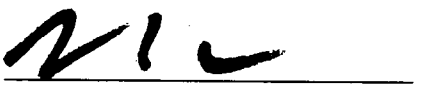
26. Have you ever been convicted of, pled guilty to, or pled nolo contendere to any crime or misdemeanor? If so, please state:

[a] Complete caption of the criminal proceeding;

[b] Court in which filed and term and number; and

[c] The crime or misdemeanor for which you were convicted, pled guilty or pled nolo contendere to, the date of this disposition, and your sentence or fine.

ANSWER: Objection. Defendant objects to this Interrogatory to the extent that it seeks information not relevant to this action, nor likely to lead to the discovery of relevant evidence.



Richard K. Laws

Without waiving the foregoing objections, no.

27. Have you ever been the subject of a Medicare, Medicaid or other type of medical fraud investigation?

ANSWER: Objection. Defendant objects to this Interrogatory to the extent that it seeks information not relevant to this action, nor likely to lead to the discovery of relevant evidence.

Richard K. Laws

Without waiving the foregoing objections, no.

28. At the time of the events complained of in the Complaint filed in this action, did you, on a regular basis, read any professional journals? If so, please list them.

ANSWER: Objection. Defendant objects to this Interrogatory to the extent that it uses the vague term "regular basis."

Richard K. Laws

Without waiving the foregoing objections, professional journals read by Defendant would include, Contemporary OB/GYN and Journal of Reproductive Medicine.

29. What obstetrical medical texts, if any, did you own or did you keep in your home or place of business at the time of the injuries complained of in the Complaint filed in this action?

ANSWER: Said medical texts, would include, Williams Obstetrics 18th Edition and Medicine of the Fetus and Mother.

30. Have you ever, to your knowledge, been a subject of a peer review investigation for any alleged wrongdoing or misconduct?

ANSWER: Objection. Defendant objects to this Interrogatory inasmuch as it seeks disclosure of information protected by Pennsylvania's Peer Review Protection Act and/or seeks information not relevant to this case, nor likely to lead to the discovery of relevant evidence.



Richard K. Laws

31. Other than as set forth in your answers to these Interrogatories, have you ever given sworn testimony? If so, set forth the complete caption of the case, the court number and term, the dates of your testimony, the names and addresses of the attorneys involved in the matter and the subject matter of your testimony.

ANSWER: Please see Objections to Interrogatory No. 30.

32. In November-December, 2000, were you aware of Plaintiff's obstetrical history, and, in particular, her 1996 pregnancy?

ANSWER: Yes.

33. Set forth any and all contraindications to Caesarean delivery of Plaintiff's Decedent of which you were aware and which existed beginning on November 15, 2000 through December 5, 2000.

ANSWER: Contraindications would include, Plaintiff being reluctant to undergo another Caesarean delivery. Also, morbid obesity would have caused significant morbidity.

34. Do you have in your possession or control any photographs, audiotapes, x-rays, sonograms, scans, films videotapes, slides or recordings, which depict Plaintiffs? If so, please attach the original photographs, films, videotapes, slides or recordings, or exact duplicate and indicate for each when it was taken and by whom.

ANSWER: None other than medical records which are already believed to be in Plaintiffs' counsel's possession. Please also check with Hospital counsel.

35. Are you aware of the existence of any photographs, audiotapes, x-rays, sonograms, scans, films, videotapes, slides or recordings depicting or relating to Plaintiffs? If so, describe the nature and current location of the same.

ANSWER: None other than medical records which are already believed to be in Plaintiffs' counsel's possession. Please also check with Hospital counsel.

36. State the name, home address and business address of each person whom you expect to call as an expert witness at trial on any issue. For each such person, state his or her occupation, and, if he/she specializes in a particular field, set forth is or her area of specialty.

ANSWER: Defendant objects to this Interrogatory to the extent that the same seeks information beyond the scope of Pa.R.C.P. 4003.5, Pa.R.C.P. 4004.3, the work product doctrine and/or related common law and procedural rules relating to the discovery of expert information.

Richard K. Laws

Without waiving said Objections, the Defendant has not made a determination as to the expert(s) that will be utilized at the trial of this matter. A determination cannot be made until discovery is complete, and, the Plaintiffs have provided a full and complete report of an expert who is expected to testify at the time of trial. Once a determination is made, Defendant will provide Plaintiffs with discoverable expert information as required under Pa.R.C.P. 4003.5 and/or related common law and procedural rules relating to the discovery of expert information.

40. For each such expert witness, state the substance of each and every fact which each expert is expected to utilize and/or testify to during his or her testimony.

ANSWER: Please see Answer and Objection to Interrogatory No. 36.

41. For each such expert witness, state the substance of each and every opinion to which the expert is expected to testify and for each opinion give a complete statement of the ground for such opinion.

ANSWER: Please see Answer and Objection to Interrogatory No. 36.

42. For each such expert witness, describe all materials supplied to the expert for review in this case.

ANSWER: Please see Answer and Objection to Interrogatory No. 36.

43. Identify all persons of whom you are aware who have any knowledge pertaining to the allegations of the complaint filed in this action or the allegations of any other pleading filed in this action. For each such person identified, set forth a brief statement of the person's knowledge.

ANSWER: Please see Plaintiff's relevant medical records for discoverable information.

44. Identify all non-expert witnesses who may testify on your behalf at the trial of this matter. For each such witness, set forth a brief statement of the testimony to be offered.

ANSWER: Objection. Defendant objects to this Interrogatory to the extent that it seeks information beyond the scope of Pa.R.C.P. 4003.5 and/or related common law and procedural rules relating to discovery of expert information and/or attorney-client privilege and/or the work-product doctrine and/or Pa.R.C.P. 4003.3 and/or Pennsylvania's Peer Review Protection Act.

Richard K. Laws

Without waiving said objections, Defendant has not yet determined the witnesses and/or exhibits to be used at trial. Once such a determination is made, this Interrogatory will be supplemented via Pre-Trial Statement or otherwise, as required under Pennsylvania Rules of Civil Procedure.

45. Identify every exhibit which will be offered on your behalf at the trial of this matter.

ANSWER: Please see Answer and Objection to Interrogatory No. 44.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

BY _____
JOHN W. BLASKO
RICHARD K. LAWS
Attorney for Defendant
Mary C. Kruszewski, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

MARY C. KRUSZEWSKI, D.O.
Obstetrics and Gynecology
90 Beaver Drive
DuBois PA 15801-2424

Curriculum Vitae

Present Position 1993-Present

Self Employed as a OB/GYN , on active staff at DuBois Regional Medical Center.

Postgraduate:

Philadelphia College of Osteopathic medicine 1989 -1993
OB/GYN Residency Program
Philadelphia, Pa.

Doctors Hospital, Inc. of Stark Co. 1988-1989
Massillon, Oh. (Rotating Internship)

Graduate:

Ohio University College of Osteopathic Medicine 1984-1988
Athens, Oh.
Degree: D.O.

Cleveland State University 1981-1984
Cleveland, Oh.
Degree: M.S.

Undergraduate: 1967-1971

Gannon University
Erie, Pa.
Degree: B.S.

Villa Maria Academy 1963-1967
Erie, Pa.

Certification & Licensure:

Board Certified Obstetrics & Gynecology

Diplomate National Board of Osteopathic Medical Examiners
State Medical License of Pennsylvania

Professional Society Memberships:

Member American College of Osteopathic Obstetricians and Gynecologists

Positions Held:

P & T Committee	7/94 to 2000
President of Obstetrics Committee	7/97 to Present
Cancer Committee	7/00 to Present

Preceptor for LECOM medical students
Preceptor for Physician Assistant students
from St. Francis and Gannon Universities

Personal:

Married: Robert J. (Sapp) Kruszewski
Owner: Central DuBois Bindery

Herzing v. Kruszewski

VERIFICATION

The undersigned verifies that as a Defendant, she is authorized to make this verification in the within action; and that the statements made in the foregoing ANSWERS AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT , MARY C. KRUSZEWSKI, are true and correct to the best of her knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904, related to unsworn falsification to authority.

MARY C. KRUSZEWSKI, ~~M.D.~~ D.O.

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that the Answers and Objections to First Set of interrogatories and Request for Production of Documents directed to Defendant, Mary C. Kruszewski,, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 16 day of April, 2002, to the attorney(s) of record:

Original
Philip A. Igneizi, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

True and correct copy
Alan R. Krier, Esquire
Park View Center, Ten Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

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

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
RICHARD K. LAWS
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,	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 OF COURT

AND NOW, to wit, this 11th day of May, 2004, upon consideration of Plaintiffs' Motion to Compel, it is hereby ORDERED that Defendant Kruszewski shall produce and serve upon Plaintiffs, within thirty (30) days after receipt of Plaintiffs' expert reports, full and complete Answers or Expert Reports (medical and non-medical) to Plaintiffs' expert interrogatories or be barred from producing expert (medical and non-medical) testimony at the time of trial.

BY THE COURT:

Judge J. Cummings

FILED

MAY 11 2004

William A. Shaw
Prothonotary/Clerk of Courts

1 cert to Atty

CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **MOTION TO COMPEL DEFENDANT KRUSZEWSKI TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS** to be served on the following via regular United States first class mail, postage prepaid, on this 7th day of May, 2004:

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

Amy Acheson, Esquire

FILED NO CC
m/1:25 BK
MAY 10 2004
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,

Vs.

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

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

MOTION TO COMPEL PLAINTIFFS TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

COUNSEL FOR PLAINTIFFS:
Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI
John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:
Alan Krier, Esquire

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

FILED NO
m/1:17BV cc
MAY 10 2004 @
William A. Shaw
Prothonotary/Clerk of Courts

MOTION TO COMPEL PLAINTIFFS TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

NOW COME DuBois Regional Medical Center and Russell E. Cameron, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion to compel plaintiffs to answer expert interrogatories and/or produce expert reports and avers as follows:

1. Over two years ago, on February 1, 2002 the plaintiffs initiated this medical malpractice action by filing a complaint.

2. On or about April 24, 2002, the moving defendants served on plaintiffs' counsel expert interrogatories, as part of a larger set of interrogatories. The questions pertaining to experts are attached hereto as Exhibit A.

3. Plaintiffs responded to the interrogatories on or about October 25, 2002, and stated as follows: "To the extent this interrogatory seeks expert opinion, it is objected to as beyond the scope of permissible discovery. Subject to and without waiving the aforesaid objection, the information sought by this interrogatory will be provided to defendants in accordance with the Pennsylvania Rules of Civil Procedure." Plaintiffs' answers to Interrogatories are attached hereto as Exhibit B.

4. Over a year after filing this lawsuit, the plaintiffs took the medical deposition of the defendant, Dr. Kruszewski on April 10, 2003. The plaintiffs' depositions were taken on May 28, 2003.

5. As of the date of this motion, plaintiffs have neither provided defense counsel with any supplemental response to defendants' expert interrogatories, nor have plaintiffs supplied defendants' counsel with any expert reports (medical or non-medical) which plaintiffs will utilize during the trial of this matter.

6. Plaintiffs' failure to provide full and complete responses to defendants' outstanding expert interrogatories place plaintiffs in direct violation of Pa. R.C.P. 4003.5 and 4007.4.

7. The general rule relating to the discovery of experts and their testimony, and more specifically the discovery of the facts and opinions underlying such testimony, is contained at Pa. R.C.P. 4003.5, which provides, in pertinent part, as follows:

> (a) Discovery of facts known and opinions held by an expert,
>
> otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:
>
> (1) A party may through interrogatories require
>
> (a) Any other party to identify each person whom the other party expects to call as an expert witness at trial **and to state the subject matter on which the expert is expected to testify and**

(b) The other party to have each expert so identified by him state **the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.** The party answering the interrogatories may file as his answer **a report of the expert or have the interrogatories answered by his expert.** The answer or separate report shall be signed by the expert.

...

(b) **If the identity of an expert witness is not disclosed in compliance with subdivision (a)(1) of this rule, he shall not be permitted to testify on behalf of the defaulting party at the trial of the action.** However, if the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief.

See Pa. R.C.P. 4003.5 (emphasis added).

8. Pa. R.C.P. 4007.4 places an **affirmative and automatic obligation** on plaintiffs to seasonably supplement all responses to discovery requests seeking expert information and/or reports such as that at issue herein.

9. In Sindler v. Goldman, 309 Pa. Super. 7, 454 A.2d 1054 (1982), the Superior Court discussed the policy notions underlying the rules relating to the discovery of expert information as follows:

> **"The purpose of the discovery rules is to prevent surprise and unfairness and to allow a trial on the merits.** When expert testimony is involved, it is **even more crucial** that surprise be prevented, since the attorneys will not have the requisite knowledge of the subject on which to effectively rebut unexpected testimony. By allowing for early identity of expert witnesses and

> their conclusions, the opposing side can prepare to respond, appropriately instead of trying to match years of expertise on the spot. **Thus, the rule serves as more than a procedural technicality; it provides a shield to prevent the unfair advantage of having a surprise witness testify."**

See Sindler, supra, 454 A.2d at 1056 (emphasis added).

10. Because of plaintiffs' failure to provide responses to the expert interrogatories for over two years since filing this lawsuit and over a year since deposing Dr. Kruszewski, defendants are unduly prejudiced in the preparation of their defense of plaintiffs' claims, and the defense has not been provided with the requested expert information which would assist defendants in accurately assessing a defense, conducting necessary investigation inquiries and preparing a defense to this action.

11. Pursuant to Pennsylvania Rule of Civil Procedure 4019(a)(1), the court may make an appropriate order if: "(i) a party fails to serve answer, sufficient answers or objections to written interrogatories under Rule 4005", or "(vii) a party fails to respond to a request for production made under Rule 4009."

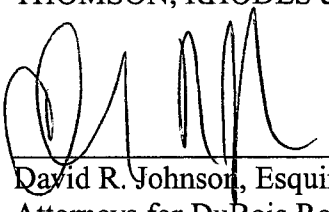
12. When acting under Pa. R.C.P. 4019(a), the court may make "an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or **prohibiting him from introducing into evidence designated documents, things or testimony**, or from introducing testimony of physical or mental condition." See Pa. R.C.P. 4019(c)(2) (emphasis added).

13. Moving defendants respectfully request this Honorable Court issue an order requiring plaintiffs to provide full and complete supplemental responses to the outstanding discovery requests and/or produce any and all expert report(s) (medical and non-medical) that plaintiffs intend to utilize at the trial of this matter within 30 days, or be precluded from producing, utilizing and/or mentioning any expert reports (or other information) against moving defendants at the trial of this matter.

WHEREFORE, moving defendants respectfully request this Honorable Court to enter an order attached to this motion.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

52. Identify by name and present address any witnesses, or any persons who possess facts or knowledge, or who are believed by you to have information relevant to the occurrence of the matter which forms the basis for the complaint in this case.

ANSWER:

53. Provide a summary of the information believed to be known by each person listed in the preceding interrogatory.

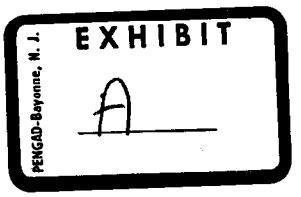
ANSWER:

54. State the name and present address of any person who you or your attorneys expect to call as an expert, opinion or custom witness at time of trial on any subject.

ANSWER:

55. For each person named in response to the preceding interrogatory, supply the following information:

(a) State the subject matter on which the person is expected to testify;



(b) State the substance of facts and opinions to which the person is expected to testify;

(c) State a summary of the grounds for each opinion which the person is expected to express.

Note: Answers to this interrogatory should be signed by each named person or answered in a report signed by the named person in accordance with the Pennsylvania Rules of Civil Procedure.

ANSWER:

56. For each person identified in responding to the preceding two interrogatories, supply the following information:

(a) Describe with particularity all information and documents submitted to the named person for the purpose of preparing that person to express opinions concerning the subject matter of this litigation;

(b) Describe with particularity all information and documents relied upon by the named person in forming his opinion concerning the subject matter of this litigation which have not been identified in response to the preceding sub-interrogatory;

(c) Furnish a curriculum vitae or equivalent statement of the educational background, professional activities and employment, if any, of each such person;

(d) If the person is a medical practitioner, provide the following information:

1. State the individual's medical specialty, if any;

2. If the following information has not been provided in response to the preceding sub-interrogatories, state whether the individual has been certified for practice in any medical specialty and, if he has, identify each board or other organization which has certified the individual;

3. If the following information has not been provided in response to the preceding sub-interrogatories, identify each hospital staff affiliation of the individual and describe the character of the affiliation (e.g., courtesy, active, emeritus, etc.). Also, supply the address of each hospital;

(e) List all publications by the named person upon subjects pertinent to the subject matter of this litigation and his expected testimony.

ANSWER:

57. Identify by date and author any reports issued to you, your attorney or representatives by any person identified in response to the preceding three interrogatories.

ANSWER:

58. State whether Michelle Herzing or Jeffrey Jarvis have been a party plaintiff or a party defendant to any lawsuits or to any arbitration proceedings or to any government agency actions, other than the instant case. If you have, supply the following information with respect to each such action:

(a) The name and address of the original parties;

pregnancy, and the Complaint in Civil Action filed I the instant action, as amended.

54. State the name and present address of any person who you or your attorneys expect to call as an expert, opinion or custom witness at time of trial on any subject.

ANSWER: **To the extent this Interrogatory seeks expert opinion, it is objected to as beyond the scope of permissible discovery. Subject to and without waiving the aforesaid objection, the information sought by this Interrogatory will provided to Defendants in accordance with the Pennsylvania Rules of Civil Procedure.**

55. For each person named in response to the preceding interrogatory, supply the following information:

(a) State the subject matter on which the person is expected to testify;

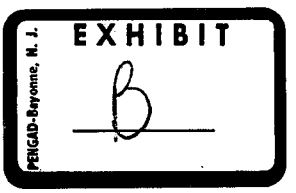
(b) State the substance of facts and opinions to which the person is expected to testify;

(c) State a summary of the grounds for each opinion which the person is expected to express.

Note: Answers to this interrogatory should be signed by each named person or answered in a report signed by the named person in accordance with the Pennsylvania Rules of Civil Procedure.

ANSWER: **See answer and objection to Interrogatory No. 54 above.**

56. For each person identified in responding to the preceding two interrogatories, supply the following information:



(a) Describe with particularity all information and documents submitted to the named person for the purpose of preparing that person to express opinions concerning the subject matter of this litigation;

(b) Describe with particularity all information and documents relied upon by the named person in forming his opinion concerning the subject matter of this litigation which have not been identified in response to the preceding sub-interrogatory;

(c) Furnish a curriculum vitae or equivalent statement of the educational background, professional activities and employment, if any, of each such person;

(d) If the person is a medical practitioner, provide the following information:

1. State the individual's medical specialty, if any;

2. If the following information has not been provided in response to the preceding sub-interrogatories, state whether the individual has been certified for practice in any medical specialty and, if he has, identify each board or other organization which has certified the individual;

3. If the following information has not been provided in response to the preceding sub-interrogatories, identify each hospital staff affiliation of the individual and describe the character of the affiliation (e.g., courtesy, active, emeritus, etc.). Also, supply the address of each hospital;

(e) List all publications by the named person upon subjects pertinent to the subject matter of this litigation and his expected testimony.

ANSWER: **See answer and objection to Interrogatory No. 54 above.**

57. Identify by date and author any reports issued to you, your attorney or representatives by any person identified in response to the preceding three interrogatories.

ANSWER: **See answer and objection to Interrogatory No. 54 above.**

CERTIFICATION OF SERVICE

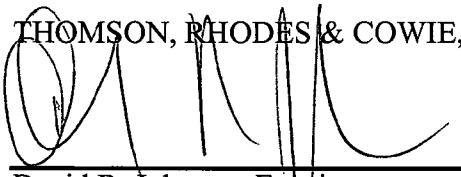
I hereby certify that a true and correct copy of the within MOTION TO COMPEL PLAINTIFFS TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS has been served upon the following counsel of record and same placed in the U.S. Mails on this 6th day of May, 2004:

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
Attorneys for DuBois Regional Medical Center and Russell E. Cameron, two 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,	)	CIVIL DIVISION
	)	
	)	No. 02-169-CD
Plaintiffs,	)	
Vs.	)	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,	)	
Defendants.	)	

FILED

MAY 11 2004

01:50 lw

William A. Shaw

Prothonotary/Clerk of Courts

1 CERT TO ATTY

ORDER OF COURT

AND NOW, this 11th day of May, 2004, upon consideration of defendants' motion to compel, it is hereby ordered that plaintiffs, Michelle Herzing and Jeffrey A. Jarvis, shall produce and serve on the defendant, within 30 days from the date hereof full and complete answers or expert reports (medical and non-medical) to defendants' expert interrogatories or be barred from producing expert (medical and non-medical) testimony at the time of trial.

BY THE COURT:

Fredric J. Ammerman J.

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	:	

FILED

MAY 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 12th day of May, 2004, upon consideration of Plaintiffs' Motion for Reconsideration, it is the ORDER of the Court that argument on said Motion has been scheduled for the 14 day of June, 2004, at 10:30 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED 5 cc Atty Acheson w/service memo
01:16 BH
MAY 13 2004

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 OF COURT

AND NOW, to wit, this 12 day of May, 2004, upon consideration of Plaintiffs' Motion to Reconsideration, it is hereby ORDERED that the Order of Court dated May 3, 2004 is STAYED until further order of this Court.

BY THE COURT:

J.

FILED

MAY 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 2cc
d 1:10 BA Atty Acheson
MAY 13 2004

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,

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

MOTION TO COMPEL DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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

MAY 18 2004

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,	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.

MOTION TO COMPEL DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

AND NOW, come Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis as Administrators of the Estate of Janell Herzing, by and through their attorneys, and file the within Motion to Compel and, in support hereof, state the following:

1. On February 19, 2002 and on July 25, 2003, Plaintiffs served on Defendants Hospital and Cameron, respectively, certain expert interrogatories.

2. These expert interrogatories inquire about the identities and background of this Defendant's medical and non-medical expert witnesses, the subject matter on which said witnesses are expected to testify, the substance and summary of grounds of the opinions which are expected to be rendered at the trial of this case, and any authorities that these experts are relying upon in connection with their opinions.

3. Defendants responded to the foregoing interrogatories on or about April 27, 2002, wherein as to said experts, Defendants stated objections with the respect to scope of discovery, and repeatedly stated: "None known at this time." A copy of said Interrogatories are attached hereto and marked as Exhibit "A" and Exhibit "B".

4. As of the date of this Motion, neither Defendant Hospital nor Defendant Cameron have provided Plaintiffs with any supplemental response to their expert interrogatories, nor supplied Plaintiffs with any expert reports whatsoever.

5. On or about May 5, 2004, these Defendants filed with this Court a motion seeking to compel Plaintiffs to answer expert interrogatories which are for all practical purposes identical to those at issue here. Defendants' motion to compel is the subject of Plaintiffs' Motion for Reconsideration which was filed on or about May 17, 2004.

6. Plaintiffs submit that the equities and law of the case mandate that to the extent that Plaintiffs are required to select trial experts and produce expert reports within a certain time frame these Defendants be compelled to do the same in response to Plaintiffs' expert interrogatories.

7. Certainly, to the extent that Pa.R.C.P. 4003.5 and Pa.R.C.P. 4007.4 apply to these Defendants' discovery requests to Plaintiffs; they apply with equal force with respect to Plaintiffs' discovery requests to these Defendants.

8. Likewise, to the extent that these Defendants aver prejudice resulting from Plaintiffs' response that they have not selected trial experts or produced expert reports, Plaintiffs are prejudiced to the same extent by these Defendants identical response.

9. Plaintiffs respectfully request that this Honorable Court issue an order requiring these Defendants to provide full and complete supplemental responses to the

outstanding discovery requests and to produce any and all expert reports (medical and non-medical) that they intend to utilize at the trial of this matter within thirty days of receipt of Plaintiffs' production of expert report(s) or be precluded from producing, utilizing, an/or mentioning any expert reports or other information against Plaintiffs at the trial of this matter.

WHEREFORE, Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis, as Administrators of the Estate of Janell Herzing, respectfully request that this Honorable Court enter the order attached hereto.

Respectfully submitted,



Amy Acheson, Esquire
Philip A. Ignelzi, 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,

Vs.

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

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

ANSWERS AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT, DUBOIS REGIONAL MEDICAL CENTER

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

EXHIBIT
tabbies
-A-

35. If any statements were obtained by you or on your behalf from any person concerning any matter relating to this action, for each statement state:

a. Name, address, telephone number and occupation of person who made it;

b. Name, address, telephone number and occupation of person who obtained it;

c. Whether written, sound recorded or oral and, if written or sound recorded, the name, address and telephone number of the person who has custody of it; and

d. Please attach a copy of each statement.

ANSWER: None.

36. To the extent there is any person who has knowledge or information concerning this case whose name and address is not listed in the preceding answers to interrogatories, for each person state:

a. Name, address and telephone number;

b. Address of the place where he is employed; and

c. His/her occupation and job title.

ANSWER: None presently known.

37. State the name, home address and business address of each person whom you expect to call as an expert witness at trial on any issue. For each such person, state his or her occupation, and, if s/he specializes in a particular field, set forth his or her area of specialty.

ANSWER: None known at this time.

38. Set forth the qualifications of each expert witness. In doing so, list the school each attended, including years of attendance and degrees received, experience in particular fields, the names and addresses of employers and years of employment, and a list of all publications each person authored, co-authored or assisted in preparing, including the title of the work and a complete citation for purposes of locating the work. In addition, please produce a curriculum vitae for each expert.

ANSWER: Not applicable.

39. For each expert listed above, state whether s/he has even testified as an expert witness in any civil or criminal matter. If so, list the complete caption(s), the court in which s/he testified, the number and term, the party on whose behalf the testimony was sought, the nature of the matter, a summary of his or her testimony, and the verdict or settlement in the matter.

ANSWER: Objected to as exceeding the permissible scope of discovery.

40. For each expert listed above, has said expert ever been denied privileges or had his or her privileges suspended or otherwise limited at any hospital or other health care facility? If so, set forth the name and address of the involved institution, the date such action was taken, the nature of the action taken, and a complete statement of the reasons why such action was taken.

ANSWER: Objected to as exceeding the permissible scope of discovery.

41. For each such expert witness, state the substance of each and every fact which each expert is expected to utilize and/or testify to during his or her testimony.

ANSWER: Objected to as exceeding the permissible scope of discovery.

42. For reach such expert witness, state the substance of each and every opinion to which the expert is expected to testify and for each opinion give a complete statement of the ground for such opinion.

ANSWER: Objected to as exceeding the permissible scope of discovery.

43. For each such expert witness, describe all materials supplied to the expert for review in this case.

ANSWER: Objected to as exceeding the permissible scope of discovery.

44. Identify all non-expert witnesses who may testify on your behalf at the trial of this matter. For each such witness, set forth a brief statement of the testimony to be offered.

ANSWER: Not known at this time. Presumably, the healthcare providers identified in the medical records will testify at time of trial.

45. Identify every exhibit which will be offered on your behalf at the trial of this matter.

ANSWER: Not known at this time.

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.

CIVIL DIVISION

No. 02-169-CD

Issue No.

ANSWERS AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT RUSSELL E. CAMERON

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

EXHIBIT
tabbies
-B-

30. Do you have in your possession or control any photographs, audiotapes, x-rays, sonograms, scans, films, videotapes, slides or recordings, which depict plaintiff? If so, please attach the original photographs, films, videotapes, slides or recordings, or exact duplicates and indicate for each when it was taken and by whom.

ANSWER: I have no personal materials regarding this case other than information and documents which have been provided to me by counsel and copies of the plaintiff's hospital medical records.

31. Are you aware of the existence of any photographs, audiotapes, x-rays, sonograms, scans, films videotapes, slides or recordings depicting or relating to plaintiff? If so, describe the nature and current location of the same.

ANSWER: My counsel has acquired the patient's medical records and radiographic films.

32. State the name, home address and business address of each person whom you expect to call as an expert witness at trial on any issue. For each said person, state his or her occupation, and, if she/he specializes in a particular field, set forth his or her area of specialty.

ANSWER: Not known at this time.

33. Set forth the qualifications of each expert witness. In doing so, list the school each attended, including years of attendance and degrees received, experience in particular fields, the names and addresses of employers and years of employment, and a

list of all publications each person authored, co-authored or assisted in preparing, including the title of the work and a complete citation for purposes of locating the work. In addition, please produce a curriculum vitae for each expert.

ANSWER: Objected to as exceeding the permissible scope of discovery.

34. For each expert listed above, state whether she/he has ever testified as an expert witness in any civil or criminal matter. If so, list the complete caption(s) , the court in which she/he testified, the number and term, the party on whose behalf the testimony was sought, the nature of the matter, a summary of his or her testimony, and the verdict or settlement in the matter.

ANSWER: Objected to as exceeding the permissible scope of discovery.

35. for each expert listed above, has said expert ever been denied privileges or had his or her privileges suspended or otherwise limited at any hospital or other health care facility? If so, set forth the name and address of the involved institution, the date such action was taken, the nature of the action taken, and a complete statement of the reasons why such action was taken.

ANSWER: Objected to as exceeding the permissible scope of discovery.

36. For each such expert witness, state the substance of each and every fact which each expert is expected to utilize and/or testify to during his or her testimony.

ANSWER: Objected to as exceeding the permissible scope of discovery.

37. For each such expert witness, state the substance of each and every opinion to which the expert is expected to testify and for each opinion give a complete statement of the ground for such opinion.

ANSWER: This interrogatory is objected to. It exceeds the permissible scope of discovery. Without waiving this objection, but subject to it, defendant responds as follows: At such time as it is determined who the defendant will call as an expert at time of trial, an expert report, signed by the expert, will be produced in accordance with the pretrial rules.

38. For each such expert witness, describe all materials supplied to the expert fore review in this case.

ANSWER: Objected to as exceeding the permissible scope of discovery.

39. Identify all persons of whom you are aware who have any knowledge pertaining to the allegations of the complaint filed in this action or the allegations of any other pleading filed in this action. For each such person identified, set forth a brief statement of the person's knowledge.

ANSWER: Plaintiffs, the healthcare providers identified in the medical records.

40. Identify all non-expert witnesses who may testify on your behalf at the trial of this matter. For each such witness, set forth a brief statement of the testimony to be offered.

ANSWER: Not known at this time.

CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **MOTION TO COMPEL DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS** to be served on the following via regular United States first class mail, postage prepaid, on this 17th day of May, 2004:

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

M 11:27 BA Noce

MAY 18 2004

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.

CIVIL DIVISION

No. 02-169-CD

Issue No.

RESPONSE TO MOTION TO COMPEL DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

COUNSEL FOR PLAINTIFFS:
Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI
John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:
Alan Krier, Esquire

FILED

MAY 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

RESPONSE TO MOTION TO COMPEL DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

NOW COME DuBois Regional Medical Center and Russell E. Cameron, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following response to motion to compel answer to expert interrogatories and/or produce expert reports.

1. This lawsuit is a professional liability claim which was filed by the plaintiffs in 2002. Plaintiffs have not filed any expert reports and, at this juncture, the hospital does not know what theory of liability the plaintiffs might assert against the defendants.

2. The plaintiffs have filed a motion to compel answers to expert interrogatories and to require defendants to produce expert reports.

3. Plaintiffs' motion requests that the defendants file said reports 30 days after receipt of plaintiffs' reports.

4. The relief requested by the plaintiffs places the defendants in an entirely unfair position. The plaintiffs have had two years to develop this case. During that time they have not produced any expert report. It would be highly prejudicial to require the defendants to produce reports within 30 days of receiving plaintiffs' reports.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within RESPONSE TO MOTION TO COMPEL DEFENDANTS DUBOIS REGIONAL MEDICAL CENTER AND RUSSELL E. CAMERON TO ANSWER EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS has been served upon the following counsel of record by facsimile on this 18th day of May, 2004:

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 Johnson/SMD

David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

FILED no cc
MAY 20 2004
11:21 BM
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	:	
vs.	:	No. 02-169-CD
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI and RUSSELL E. CAMERON	:	

ORDER

AND NOW, this 20th day of May, 2004, it is the ORDER of the Court that argument on Plaintiffs' Motion for Reconsideration has been rescheduled from June 14, 2004 to **Thursday, June 24, 2004 at 1:30 P.M.**, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Judge J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

MAY 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 1cc
02:50 BY Attys Johnson, Kries,
MAY 20 2004 Blasko, Acheson

William A. Shaw
Prothonotary/Clerk of Courts

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

FILED

MAY 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

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 20th day of May, 2004, upon consideration of Plaintiffs' Motion to Compel Defendants DuBois Regional Medical Center and Russell E. Cameron to Answer Expert Interrogatories and/or Produce Expert Reports, it is the ORDER of the Court that argument on said Motion has been scheduled for the 24 day of June, 2004, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Judge J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED 4cc
02:46 BM
MAY 20 2004 Atty Acheson w/ service memo

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,

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 FOR STAY OF MAY 11, 2004 ORDER AND FOR RECONSIDERATION

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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

MAY 25 2004
m/12:00/
William A. Shaw
Prothonotary/Clerk of Courts
No c/c

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 FOR STAY OF MAY 11, 2004 ORDER AND FOR RECONSIDERATION

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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

JURY TRIAL DEMANDED.

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.	

PLAINTIFFS' MOTION FOR STAY OF MAY 11, 2004 AND FOR RECONSIDERATION

AND NOW, come Plaintiffs, Michelle Herzing and Jeffrey A. Jarvis as Administrators of the Estate of Janell Herzing, by and through their attorneys, and respectfully request that this Honorable Court stay the May 11, 2004 Order and schedule argument for reconsideration of the Motion to Compel Expert Reports filed by Defendants DuBois Regional Medical Center and Russell E. Cameron, and in support hereof state the following:

1. On or about Friday, May 7, 2004, Plaintiffs received by mail Defendants DuBois Regional Medical Center and Russell E. Cameron's Motion to Compel expert reports.

2. On or about Monday, May 10, 2004, Plaintiffs notified the Court that Plaintiffs were opposing said Motion and requested the opportunity to submit a brief. (See Exhibit "A").

3. Plaintiffs were never afforded the opportunity to brief the issues nor oppose the motion.

4. Instead, on or about May 13, 2004, Plaintiffs received by mail a copy of the May 11, 2004 Order of Court requiring Plaintiffs to file all expert reports within thirty days of May 11, 2004 – less than 30 days from Plaintiffs' receipt of the Order.

5. Had Plaintiffs been afforded the opportunity to brief the issues, they would have addressed the following:

a. No trial date has been set and discovery is actively ongoing.

b. There are numerous fact witness depositions that remain to be taken of witnesses employed by or under the control of the Hospital.

c. These depositions remain to be taken because of the unavailability of the witnesses, and/or counsel for the hospital and/or Dr. Kruszewski.

d. Without completion of discovery, Plaintiff would be severely prejudiced by being required to obtain trial expert reports. The factual bases on which such reports would be based would by definition incomplete, which could result in flawed reports and, in turn, in substantial prejudice to the Plaintiffs' case.

e. In addition, requiring Plaintiff to select trial experts and produce all expert reports within less than a 30 day period in itself will result in prejudice because of the compressed time frame.

f. Furthermore, Defendant DuBois Regional Medical Center's and Russell E. Cameron's Motion should be denied because the relief requested is improper under the rules. Rule 1042.28 of the Pennsylvania Rules of Civil Procedure provides the proper mechanism by which the Defendant may require the filing of reports of 180 days.

6. As set forth above, Plaintiffs will suffer prejudice if the Order of Court dated May 11, 2004 stands.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court stay the May 11, 2004 Order of Court pending further argument, and schedule argument on Defendants DuBois Regional Medical Center's and Russell E. Cameron's Motion to Compel Expert Reports.

Respectfully submitted.

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

C..., CORDES, MURPHY & IGNELZI, L.L.P.
ATTORNEYS AT LAW
RIVERVIEW PLACE
245 FORT PITT BOULEVARD
PITTSBURGH, PENNSYLVANIA 15222

(412) 471-8500

TELEFAX (412) 471-8503

AMY ACHESON

EDWARD P. ZEMPRELLI
OF COUNSEL

VIA OVERNIGHT MAIL

May 10, 2004

President Judge Fredric J. Ammerman
Clearfield County Court
230 East Market Street
Clearfield, PA 16830

Re: Michelle Herzing and Jeffrey A. Jarvis, individually, in their own right, and as Administrators of the Estate of Janell Herzing, a minor, deceased
No. G.D. 02-169-CD

Dear President Judge Ammerman:

On behalf of Plaintiffs, we respectfully submit the enclosed alternative proposed Order of Court with respect to Plaintiffs' Motion for Reconsideration in the above captioned case.

We request argument on said Motion, and further request argument and briefing on the motion we received on Friday, namely Defendants Hospital and Cameron's Motion to Compel expert reports.

Thank you for your attention to this matter.

Very truly yours,

Amy Acheson

AA/dpe
Enclosures

Cc: Alan R. Krier, Esquire
David R. Johnson, Esquire
John W. Blasko, Esquire
Richard K. Laws, Esquire

EXHIBIT
tabbies
-A-

CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' MOTION FOR STAY OF MAY 11, 2004 ORDER AND FOR RECONSIDERATION** to be served on the following via regular United States first class mail, postage prepaid, on this 24TH day of May, 2004:

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
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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading
RESPONSE TO PLAINTIFFS' MOTION FOR RECONSIDERATION

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

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

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

Counsel of Record for Adverse Party:
Amy Acheson, Esquire
Philip A. Igneizi, Esquire

Dated: May 25, 2004

FILED

MAY 26 2004

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,	)	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.	)	

RESPONSE OF THE DEFENDANT MARY C. KRUSZEWSKI TO PLAINTIFFS' MOTION FOR RECONSIDERATION

1. Paragraph 1 is admitted.

2. It is admitted that Plaintiffs notified the Court as alleged.

3. Paragraph 3 is admitted for the reason that the Plaintiffs have no defense to the issues raised by Dr. Kruszewski's Motion to Compel expert responses, in that, the pleadings were closed on July 30, 2002, Dr. Kruszewski's deposition was taken on April 10, 2003, and the Plaintiffs have had possession of the medical records of Dr. Kruszewski for over 3½ years. Accordingly, the Plaintiffs have all information necessary for an expert review of Dr. Kruszewski's care and treatment of the Plaintiff wife.

4. Paragraph 4 is admitted.

5. The alleged issues of Paragraph 5 are denied:

(a) It is admitted that a trial date has not been set for the reason that Plaintiffs have not timely pursued discovery as to the Co-Defendants, DRMC, Dr. Alajaji, and Dr. Cameron. The first time the Plaintiffs requested or moved for any oral discovery against the Co-Defendants was on February 18, 2004 over two years after Plaintiffs initiated the malpractice action, and, in over three years, since the date of the incident of December, 2000.

(b) Subparagraph (b) is denied. Defendant Kruszewski is unaware of the "numerous fact witness depositions" that have to be taken by the Plaintiffs of the Defendant Hospital. The Plaintiffs' first contact to schedule any depositions of the Defendant Hospital was on February 18, 2004. Moreover, in response to Dr. Kruszewski's interrogatories on May 8, 2002, as to witnesses, the Plaintiffs failed to list the name, address, or summary of witnesses' knowledge. Nor have Plaintiffs over the last two years seasonably supplemented their responses as required by Pa.R.C.P. 4007.4(1).

(c) Subparagraph (c) is denied insofar as it alleges Dr. Kruszewski's counsel was unavailable. The only time that Dr. Kruszewski's counsel was unavailable for depositions was on March 25, 2004, when Plaintiffs' counsel unilaterally scheduled the depositions when counsel was out of the Country. These were promptly rescheduled and took place on April 28, 2004.

(d) Subparagraph (d) is an argument without any basis or merit. Plaintiffs have had their medical records some time before filing the suit on February 1, 2002. Thereafter, Plaintiffs conducted a detailed deposition of Defendant Mary C. Kruszewski on April 10, 2003, and, the Plaintiffs have had the medical records which set forth in detail the factual basis of Dr. Kruszewski's treatment in excess of 3½ years.

(e) Subparagraph (e) is denied. Presumably, Plaintiffs had an expert review prior to filing suit, and, if not, should have had Dr. Kruszewski's deposition and records of her care and treatment reviewed in a timely fashion, since her deposition was taken over a year ago, and, the medical records have been available for over three years.

(f) Subparagraph (f) is denied. Pa.R.C.P. 1042.28 does not foreclose responses to expert interrogatories. Rule 1042.28 is simply an alternative method for obtaining expert reports.

6. Paragraph 6 is denied. The Plaintiffs' counsel, being experienced, is well aware of the requirement for an expert report. The Plaintiffs have had the deposition testimony of Dr. Kruszewski for in excess of a year, and, they have had the medical records for over three years, all of which would be sufficient for an expert review.

7. Plaintiffs' request for an extension of six months is unreasonable in view of the posture of the case.

8. The Plaintiffs' Motion for Reconsideration of Court's Order of May 3rd should be dismissed for the following reasons:

(a) Over two years ago, on February 2, 2002, Plaintiffs initiated this malpractice action by filling a Complaint.

(b) On July 10, 2002, Plaintiffs filed a Second Amended Complaint. On July 26, 2002, Defendant Kruszewski filed an Answer with New Matter thereby closing the pleadings on that date.

(c) At the close of the pleadings, the deposition of Dr. Kruszewski was scheduled for Friday, August 30, 2002 but postponed because counsel for one of the Defendants was in an automobile accident. On January 20, 2003, Plaintiffs' counsel scheduled Dr. Kruszewski's deposition for April 10, 2003, which deposition was taken.

(d) At the deposition of April 10, 2003, Plaintiffs had the opportunity to explore in detail with Dr. Kruszewski her care and treatment of Plaintiff wife as set forth in her office records as well as the medical records of the DuBois Regional Medical Center.

(e) The Plaintiffs took no further action to schedule any witnesses from the DuBois Regional Medical Center or the Co-Defendants, Dr. Alajaji or Dr. Cameron until February 18, 2004, when Plaintiffs again unilaterally scheduled some depositions, without contacting counsel for Dr. Kruszewski.

(f) Meanwhile, the Defendant Kruszewski has not received any Plaintiffs' expert reports setting forth the theory of liability against Dr. Kruszewski which is legally required for the Plaintiffs to prove a prima facie case against Dr. Kruszewski.

(g) The Defendant Kruszewski should not be penalized by Plaintiffs' failure to conduct discovery against the Co-Defendants and their respective employees, agents and servants.

(h) The Plaintiffs' inactions in pursuing discovery against the Co-Defendants is not a basis for depriving Dr. Kruszewski of the theory or theories of liability against her so that a defense can be prepared.

(i) In the interest of justice, Dr. Kruszewski should be apprised of Plaintiffs' expert theory or theories of liability, especially since Plaintiffs have filed this suit over two years ago on February 7, 2002, and, have had ample time to have the case for review.

WHEREFORE, it is requested that the Motion for Reconsideration be dismissed with prejudice.

MCQUAIDE, BLASKO, SCHWARTZ,
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: 5/25/04

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Response of the Defendant, Mary C. Kruszewski, D.O. to Plaintiffs' Motion for Reconsideration, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 25th day of May, 2004, to the attorney(s) of record:

Amy Acheson, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

Alan R. Krier, Esquire
Park View Center, Ten Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

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

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

FILED no cc
m/12:57 BK
MAY 26 2004

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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading ANSWER WITH NEW MATTER TO PLAINTIFFS' MOTION TO COMPEL ANSWERS TO EXPERTS INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

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

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

Counsel of Record for
Adverse Party:
Amy Acheson, Esquire
Philip A. Igneizi, Esquire

Dated: May 26, 2004

FILED

MAY 27 2004

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,	)	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.	)	

NOTICE TO PLEAD

TO: Plaintiffs
c/o Amy Acheson, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

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, SCHWARTZ,
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: May 26, 2004

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,	)	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 WITH NEW MATTER OF THE DEFENDANT MARY C. KRUSZEWSKI TO PLAINTIFFS' MOTION TO COMPEL ANSWERS TO EXPERT INTERROGATORIES AND/OR PRODUCE EXPERT REPORTS

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted for the reason as set forth in the Defendant's Answer to the Interrogatory "a determination [by Dr. Kruszewski] cannot be made until discovery is complete and the Plaintiffs have provided a full and complete report of an expert who is expected to testify at the time of trial. Once a determination is made, Defendant will provide Plaintiffs with discoverable expert information as required under Pa.R.C.P. 4003.5 and/or related, law and

procedure rules relating to discovery of expert information." Plaintiffs' counsel knows that Dr. Kruszewski cannot provide an expert report until Plaintiffs' expert's theory or theories are known.

5. Paragraph 5 is admitted. The Plaintiffs have filed and an Order has been entered for argument on the reconsideration. The basis for Plaintiffs' Motion for Reconsideration is that their discovery as to other Defendants has not been completed.

6. Paragraph 6 is contrary to the established practice in medical malpractice cases. The law and practice in the Commonwealth of Pennsylvania is that in order that a Plaintiff prove an action for medical malpractice, they must show that Dr. Kruszewski owed a duty to the patient; that Dr. Kruszewski breached that duty; the breach of duty was the proximate cause or a substantial factor in bringing about the harm suffered by the Plaintiffs; and, the damage suffered by the Plaintiffs were a direct result of the harm. The burden of proof is on the Plaintiffs who must offer expert testimony to testify as to a reasonable degree of medical certainty that the acts of Dr. Kruszewski deviated from good and acceptable standards, and, that such deviation was a substantial factor of the harm suffered. The allegations by Plaintiffs in Paragraph 6 indicate that Plaintiffs have attempted to reverse and place the burden on Dr. Kruszewski. This lawsuit was filed by Plaintiffs, not Dr. Kruszewski. Plaintiffs' position is contrary to the Rules of Civil Procedure laws of Pennsylvania.

7. Paragraph 7 is denied as stated. Although the Rules of Civil Procedure are applicable to all parties, averments set forth in Paragraph 6 are incorporated herein. More recently, the Supreme Court has recognized and codified this long standing rule by providing

additional Rules of Civil Procedure applicable to medical malpractice providing that after the Plaintiff has furnished expert reports to the Defendant physicians, the Plaintiff may thereafter request the same from the Defendants. See Pa.R.C.P. 1042.29(2). The Pennsylvania Rules of Civil Procedure also now require Plaintiffs to file a Certificate of Merit when filing a professional negligent case.

8. Paragraph 8 is denied. The Plaintiffs have the burden of proof in this case, they have filed a Complaint making certain allegations, and, it is their responsibility to provide expert reports to apprise Defendant Kruszewski of the theory or theories on which she will be required to defend. Any expert report by the Defendant would be in response to Plaintiffs' expert reports. Any allegations by Plaintiffs that they are prejudiced is illusory. The burden is not Dr. Kruszewski to prove or disprove Plaintiffs' cause of action. Plaintiffs' assertions of prejudice are devoid of merit.

9. Paragraph 9 is a statement of Plaintiffs' legal position, and for the reasons set forth in the Answers to Paragraphs 5, 6, 7 and 8, the request should be denied.

WHEREFORE, Defendant Mary Kruszewski, D.O. request that the Court dismiss the Plaintiffs' Motion to Compel Defendant Kruszewski to answer expert interrogatories and/or produce expert reports.

NEW MATTER

10. The Plaintiffs' Motion is contrary to recognized practice, rules of Court, and, the law of the Commonwealth which places the burden on the Plaintiffs to produce an expert report on the theory or theories of liability to be asserted against Dr. Kruszewski. After production of Plaintiffs' report, Dr. Kruszewski, then knowing the basis of Plaintiffs' accusations, would have an expert report in response thereto.

11. The Plaintiffs are not prejudiced, in that, they have had the advantage of Dr. Kruszewski's full testimony on her care and treatment of the Plaintiff/wife since the deposition of April 10, 2003, and, the Plaintiffs have failed to take any other deposition or have failed to commence any other discovery depositions from any of the Co-Defendants until a request made by letter of February 18, 2004 which is over 2 years after the commencement of the action, and, over 3 ½ years from the date of the alleged malpractice.

12. The Plaintiffs by filing the instant action and making certain allegations, knew or should have known that their burden in the case can only be satisfied by the testimony of an expert medical physician, whose report is required to be furnished to Defendant Kruszewski. Defendant Kruszewski does not have the burden of any proof in this case, and, indeed, does not need to produce any expert testimony.

13. The Plaintiffs' Motion to have Defendant Kruszewski produce reports before Plaintiffs file their reports would disrupt the efficient and just administration of justice in medical malpractice cases.

14. The Motion of the Plaintiffs is baseless and without merit, and, as such, the Defendant should be awarded costs and counsel fees in defending the same.

15. The basis for Plaintiffs' Motion being baseless, it is requested that Dr. Kruszewski be required to file their expert reports 120 days after receipt of Plaintiffs' reports.

WHEREFORE, it is requested that the Plaintiffs' Motion to Compel be dismissed, and, that the Plaintiffs be assessed with Defendant's counsel fees in defending the same.

MCQUAIDE, BLASKO, SCHWARTZ,
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: 5/24/04

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer of the Defendant, Mary C. Kruszewski, D.O. to Plaintiffs' Motion to Compel Answers to Expert Interrogatories and/or Produce Expert Reports in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 26th day of May, 2004, to the attorney(s) of record:

Amy Acheson, Esquire
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

Alan R. Krier, Esquire
Park View Center, Ten Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

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

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

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

FILED
m/12:53 BK
MAY 27 2004
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,

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

ORDER OF COURT

AND NOW, to wit, this 26 day of May, 2004, upon consideration of Plaintiffs' Motion for Stay of May 11, 2004 and for Reconsideration, it is hereby ORDERED that the Order of Court dated May 11, 2004 is STAYED until further order of this Court.

BY THE COURT:

J.

FILED

MAY 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 3cc
01 3:00 BSA Atty Acheson
MAY 27 2004
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	:	
vs.	:	No. 02-169-CD
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI and RUSSELL E. CAMERON	:	

ORDER

AND NOW, this 27 day of May, 2004, upon consideration of Plaintiffs' Motion for Stay of May 11, 2004 Order and for Reconsideration filed on May 25, 2004, it is the ORDER of the Court that argument on said Motion has been scheduled for the 24 day of June, 2004, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

FILED

MAY 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
MAY 27 2004
William A. Shaw
Prothonotary/Clerk of Courts

4 cc
Atty Acheson
Rule Re: service

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.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. G.D. 02-169 CD

Motion to Compel Further Responses to Discovery

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

JUN 0 1 2004

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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

REQUEST FOR ARGUMENT / HEARING

AND NOW, this 3rd day of June, 2004, argument with regard to Defendant's, JERJIE T. ALAJAJI, M.D., Motion to Compel is scheduled for the **24th day of June, 2004, at 1:30 p.m. in Courtroom # 1.**

BY THE COURT:

J.

FILED

JUN 07 2004

William A. Shaw
Prothonotary

FILED

010:21 BB 1 CC to Atty Krier

JUN 07 2004

William A. Shaw
Prothonotary

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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

ORDER

AND NOW, this ___ day of _____, 2004, upon Motion of JUBELIRER, CAROTHERS, KRIER & HALPERN, Attorneys for Defendant, JERJIE T. ALAJAJI, M.D., and upon consideration of the attached Motion to Compel, it is

ORDERED, DIRECTED AND DECREED, that Plaintiffs shall provide complete responses to this Defendant's Discovery, within twenty (20) days. If Plaintiffs fail to provide said responses, they shall suffer sanctions as this Court deems appropriate.

BY THE COURT:

_____

J.

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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

MOTION TO COMPEL

NOW, comes Defendant, JERJIE T. ALAJAJI, M.D., by his Attorneys JUBELIRER, CAROTHERS, KRIER & HALPERN, and files the within Motion to Compel and in support thereof avers the following:

1.

The above-captioned medical malpractice action was commenced by the filing of a Complaint on or about February 4, 2002.

2.

These Defendants filed their Answer to Plaintiff's Second Amended Complaint on or about July 30, 2002.

4.

On May 16, 2002, this Defendant forwarded to Plaintiffs, a Request for Production of Documents. A true and correct copy of said Request for Production of Documents (with responses) is attached hereto as Exhibit "A."

5.

Also on May 16, 2002, this Defendant forwarded to Plaintiffs, Interrogatories entitled "First Set of Interrogatories." A true and correct copy of said First Set of Interrogatories (with responses) is attached hereto as Exhibit "B."

6.

Plaintiffs forwarded responses to the aforesaid Interrogatories and Request for Production of Documents on or about August 6, 2002. The responses included, inter alia, various objections and indications that information was being compiled for future production.

7.

Plaintiffs' counsel responded to Request No. 4 (Any and all expert reports containing information discoverable as provided by the Pennsylvania Rules of Civil Procedure) that "Expert reports will be provided in accordance with the Pennsylvania Rules of Civil Procedure. Trial witnesses have not been selected."

8.

Plaintiffs' counsel also raised objections to general interrogatories 2(a) – 2(m), 3, 4, 5 and 6. Any other response included therein made vague references to the medical records. Plaintiffs have not issued supplemental responses.

9.

The information sought by these interrogatories falls well within the scope of discovery, are not overly vague, and are far from harassing as characterized by Plaintiffs' counsel. Moreover, the interrogatories cannot reasonably be considered "premature" as Plaintiffs' counsel asserted, insofar as over 1 ½ years have passed since these responses and objections were issued.

10.

Similarly, in response to general interrogatories 10, 15 and 17, Plaintiffs indicated that certain financial information was being calculated without providing any specific figures or responses. These responses have not been supplemented or updated since the original answers were served.

11.

An no time since August 6, 2002, has Plaintiffs' counsel supplemented their responses to the aforesaid Interrogatories and Request for Production of Documents.

WHEREFORE, Defendant, JERJIE T. ALAJAJI, M.D., request this Honorable Court to enter an Order providing that Plaintiff's counsel shall provide complete responses to this Defendant's, First Set of Interrogatories and Request for Production of documents, within twenty (20) days, or suffer sanctions as this Court deems appropriate.

Respectfully submitted,

JUBELIRER, CAROTHERS, KRIER & HALPERN

BY: _____

Alan R. Krier, Esquire
Anthony J. Zanoni, Esquire
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603
(814) 943-1149
Attorneys for this Defendant

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, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D.

Code: 007

PLAINTIFFS' RESPONSE TO DEFENDANT, JERJIE T. ALAJAJI, M.D.'S REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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

Exhibit A

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
Plaintiff,	No. G.D. 02-169 CD
v.	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI AND RUSSELL E. CAMERON	
Defendants.	

PLAINTIFFS' RESPONSE TO DEFENDANT, JERJIE T. ALAJAJI, M.D.'S REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS

AND NOW, come Plaintiffs, MICHELLE HERZING and JEFFREY A. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased, by and through counsel, Ogg, Cordes, Murphy & Ignelzi, L.L.P. and Amy Acheson, Esquire and Philip A. Ignelzi, Esquire, and file their Response to Defendant, Jerjie T. Alajaji, M.D.'s Request for Production of Documents Directed to Plaintiffs, as follows:

1.

With the exception of medical records and x-rays, any and all documents which you intend to rely upon or introduce at the trial of this matter.

RESPONSE: Plaintiffs have not yet made a determination as to which documents will be relied upon or introduced at the time of trial.

2.

All statements, signed or unsigned, transcripts of recorded statements or interviews of any person or witness relating to, referring to or describing any of the events or injuries described in Plaintiffs pleadings.

RESPONSE: Plaintiffs have no statements as defined by Pennsylvania Rules of Civil Procedure 4003.4.

3.

All written investigation notes pertaining to the injury or any fact(s) which formed the basis of this lawsuit, whether signed or not.

RESPONSE: To the extent that this Request purports to seek information outside the scope of discovery permitted by the Pennsylvania Rules of Civil Procedure, and/or protected by the attorney-client privilege and/or the attorney work product doctrine, it is objected to. Subject to and without waiving said objection, none.

4.

Any and all expert reports containing information discoverable as provided by the Pennsylvania Rules of Civil Procedure.

RESPONSE: Expert reports will be provided in accordance with the Pennsylvania Rules of Civil Procedure. Trial witnesses have not been selected.

5.

All radiology and sonogram films concerning the pregnancy.

RESPONSE: These films have been formally requested in discovery to Defendants in this case and are not yet in possession of Plaintiffs.

6.

With the exception of any medical records and x-rays, any and all documents prepared by Plaintiffs or by any insurer, insurance representative, agent or anyone acting on your behalf except your attorneys, during the investigation of the incident in question.

RESPONSE: To the extent that this Request purports to seek information outside the scope of discovery permissible by the Pennsylvania Rules of Civil Procedure and/or protected by the attorney-client privilege and/or the attorney work product doctrine, it is objected to. Subject to and without waiving said objections, none.

7.

With the exception of any medical records and x-rays, any and all documents prepared by Plaintiffs or by any insurer, insurance representative, agent or anyone acting on your behalf except your attorneys, during the investigation of the incident in question.

RESPONSE: This Request is identical to Request No. 6. See above.

8.

With the exception of any medical records and x-rays, any and all demonstrative or other physical evidence which you intend to rely upon, introduce, or in any way utilize at the trial of this case.

RESPONSE: Demonstrative or other trial exhibits have not been selected.

9.

If the Plaintiffs are claiming work loss due to the occurrence, please furnish the following:

a. Complete Federal and State Tax Returns for the three (3) years prior to the occurrence.
b. Wage statements for the three (3) months prior to the occurrence.

RESPONSE: **See attached.**

10.

All documents or other items of tangible evidence identified in the Interrogatories.

RESPONSE: This Request is unintelligible and is objected to as vague and overbroad. To the extent it can be understood and subject to objection, see attached.

Ogg, Cordes, Murphy & Ignelzi, LLP

By _____
Amy Acheson, Esquire
PA I.D. #50506

245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Amy Acheson, Esquire, hereby certify that a true and correct copy of Plaintiffs' Response to Defendant, Jerjie T. Alajaji, M.D.'s Request for Production of Documents Directed to Plaintiffs was forwarded to all counsel of record, by regular U.S. Mail, this 6th day of August, 2002, addressed as follows:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

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,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA, AND JERJIE T. ALAJAJI

Defendants.

CIVIL DIVISION

No. G.D.

Code: 007

PLAINTIFFS' ANSWERS TO DEFENDANT, JERJIE T. ALAJAJI, M.D.'S FIRST SET OF INTERROGATORIES DIRECTED TO PLAINTIFFS

Filed on behalf of Plaintiffs

Counsel for this party:

Amy Acheson, Esquire
PA Id #50506

Philip A. Ignelzi, Esquire
PA Id #34286

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

Exhibit B

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
Plaintiff,	No. G.D. 02-169 CD
v.	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI AND RUSSELL E. CAMERON	
Defendants.	

PLAINTIFFS' ANSWERS TO DEFENDANT, JERJIE T. ALAJAJI, M.D.'S FIRST SET OF INTERROGATORIES DIRECTED TO PLAINTIFFS

AND NOW, come Plaintiffs, MICHELLE HERZING and JEFFREY R. JARVIS, individually, in their own right, and as Administrators of the Estate of JANELL HERZING, a minor, deceased, by and through counsel, Ogg, Cordes, Murphy & Ignelzi, L.L.P. and Amy Acheson, Esquire and Philip A. Ignelzi, Esquire, and file their Answers to Defendant, Jerjie T. Alajaji, M.D.'s Interrogatories Directed to Plaintiffs, as follows:

1. Identify all persons who assisted in providing information to answer these Interrogatories.

   ANSWER: **Plaintiffs and their attorneys.**

2. Identify each and every fact, each and every document, each and every record and each item of evidence that establishes or tends to establish the following contentions of the Plaintiff.

   a. That Defendant Alajaji incorrectly interpreted or scored the Biophysical Profile of December 1, 2000.

b. That Defendant Alajaji "observed, cared for and/or treated" Plaintiff other than administrating and scoring the Biophysical Profile of December 1, 2000.

c. That Defendant Alajaji was the agent, employee or servant of the other Defendants in this case as set forth in Paragraph 7 of the Complaint.

d. That the other Defendants in this case were agents, servants or employees of Defendant Alajaji as set forth in Paragraph 7 of the Complaint.

e. That Defendant Alajaji used the "due date" in scoring the Biophysical Profile as set forth in Paragraph 44(a) of the Complaint.

f. That Defendant Alajaji failed to communicate to Defendant Kruszewski the test results and physical condition in a timely manner as set forth in Paragraph 44(b).

g. That Defendant Alajaji analyzed and interpreted radiological, ultrasound and laboratory studies performed on Plaintiff other than the Biophysical Profile on December 1, 2000 as set forth in Paragraph 44(c).

h. That Defendant Alajaji was requested to perform a Doppler study of the umbilical artery as set forth in Paragraph 44(d).

i. That Defendant Alajaji had the duty to order consults on another doctor's patient as set forth in Paragraph 44(e).

j. That Defendant Alajaji had a duty to make, implement and follow a plan for Plaintiff's prenatal care and delivery as set forth in Paragraph 44(f).

k. That Defendant Alajaji caused Plaintiff's physical condition to deteriorate as set forth in Paragraph 44(g).

l. That Defendant Alajaji caused the Plaintiff to suffer injuries due to severe preeclampsia and/or preeclampsia as set forth in Paragraph 44(g).

m. That Defendant Alajaji caused minor Plaintiff to suffer intracranial hemorrhage as set forth in Paragraph 44(h).

ANSWER: **(a) through (m). These Interrogatories are objected to as being premature contention interrogatories, interposed for purposes of harassment in that discovery has just commenced and is ongoing. They are further objected to to the extent they seek information outside the scope of discovery permitted by the Pennsylvania Rules of Civil Procedure. Subject to and without waiving said objections, the facts sought are equally available to Defendant Alajaji and may be ascertained by reference to Plaintiffs' medical records from DuBois Regional Medical Center for December, 2000, her medical records from Defendants Kruszewski, and the autopsy of minor-Plaintiff, all of which, Plaintiff believes, have been provided to and are in the possession of the Defendants.**

3. Explain in detail according to Plaintiffs' understanding, now Defendant Alajaji utilized the "due date" in scoring the Biophysical Profile and thereby reached an allegedly incorrect score.

ANSWER: **This Interrogatory is objected to in that it is harassing and so vague as to be incapable of answer. It is further objected to as premature in that this action has just been commenced, discovery requests have been served on Defendants and depositions have not yet been taken. It is further objected to to the extent it seeks information outside the scope of Pennsylvania Rules of Civil Procedure. Subject to and without waiving the aforesaid objections, the information sought by this interrogatory is available to Defendant as it is to Plaintiffs via Plaintiffs' medical records from the pregnancy, labor and delivery of 2000, as well as Plaintiff's medical records from her prior pregnancy, medical records from DuBois Regional Medical Center.**

4. Identify each person Plaintiff believes was acting as the agent, servant or employee of Defendant Alajaji in the treatment of Plaintiff Michelle Herzing and with respect to each person so identified, identify the acts of such person that you believe are attributable to Dr. Alajaji through the doctrine of respondeat superior or any other agency theory.

ANSWER: **This Interrogatory is objected to in that it is harassing and so vague as to be incapable of answer. It is further objected to as premature in that this action has just been commenced, discovery requests have been served on Defendants and depositions have not yet been taken. It is further objected to to the extent it seeks information outside the scope of Pennsylvania Rules of Civil Procedure. Subject to and without waiving the aforesaid objections, the information sought by this interrogatory is available to Defendant as it is to Plaintiffs via Plaintiffs' medical records from the pregnancy, labor and delivery of 2000, as well as Plaintiff's medical records from her prior pregnancy, medical records from DuBois Regional Medical Center.**

5. Identify each fact, record, document or other evidence which establishes or tends to establish that the "due date" set forth in the Biophysical Profile performed by Dr. Alajaji had an adverse effect on the treatment rendered by Dr. Kruszewski or any other healthcare providers.

ANSWER: **This Interrogatory is objected to in that it is harassing and so vague as to be incapable of answer. It is further objected to as premature in that this action has just been commenced, discovery requests have been served on Defendants and depositions have not yet been taken. It is further objected to to the extent it seeks information outside the scope of Pennsylvania Rules of Civil Procedure. Subject to and without waiving the aforesaid objections, the information sought by this interrogatory is available to Defendant as it is to Plaintiffs via Plaintiffs' medical records from the pregnancy, labor and delivery of 2000, as well as Plaintiff's medical records from her prior pregnancy, medical records from DuBois Regional Medical Center.**

6. Explain fully and in detail in what respect Dr. Alajaji "failed to exercise the judgment and skills of a reasonable healthcare provider under the circumstances" as set forth in Paragraph 44 of the Complaint and identify each and every document, record and each item of evidence that establishes or tends to establish Plaintiffs' contention.

ANSWER: **This Interrogatory is objected to in that it is harassing and so vague as to be incapable of answer. It is further objected to as premature in that this action has just been commenced, discovery requests have been served on Defendants and depositions have not yet been taken. It is further objected to to the extent it seeks information outside the scope of Pennsylvania Rules of Civil Procedure. Subject to and without waiving the aforesaid objections, the information sought by this interrogatory is available to Defendant as it is to Plaintiffs via Plaintiffs' medical records from the pregnancy, labor and delivery of 2000, as well as Plaintiff's medical records from her prior pregnancy, medical records from DuBois Regional Medical Center.**

7. Have you, or anyone acting on your behalf, obtained from any witness or person any reports, statements, recordings, memorandum, testimony or documents, whether signed or not and whether prepared by someone other than the said person or witness or not, concerning the facts in this cause of action?

ANSWER: **To the extent this Interrogatory seeks information outside the scope of discovery permitted by the Pennsylvania Rules of Civil Procedure, and/or which is protected by the attorney-client privilege, it is objected to. Subject to and without waiving said objections, Plaintiff has no statements pursuant to Rule 4003.4.**

8. If the answer to the proceeding Interrogatory is in the affirmative, please state the following:

a. Name and address of witness or person referred to:

b. Date of taking or making the same:

c. Name and address of person in whose possession the same now is:

d. Name, address, employer and telephone number of the person making or taking the same; and

e. Name, address and employer of the person at whose request the same was made or taken.

ANSWER: **N/A.**

9. If you are presently under treatment for any physical or mental condition as a result of the alleged occurrence, please state:

a. The name(s) and address(es) of each doctor, person, physician, practitioner or other medical provider rendering care and treatment to you;

b. All diagnosis made concerning your condition, giving the date of each; and

c. All prognosis made concerning your condition, giving the date of each.

Plaintiff is under the care of David Kairys, D.O. and is to see him annually.

10. Please list all medical and non-medical expenses which you claim to have sustained as a result of the alleged occurrence and for each such expense, please state the date the expense was incurred, the name of the provider, the identity of the person or entity who made payment or an indication that the expense remains unpaid, and the nature of the expense and the reason for incurring the same. With respect to medical bills submitted to providers list the amount actually paid by health insurance or other payor.

ANSWER: **Expenses are being computed and will be supplied.**

11. Identify each element of wrongful death damages claimed and state amount of the claim, the factual basis for the claim and the basis for calculation of the amount.

ANSWER: **The following expenses have been compiled as of this date:**

Mohney-Yargar Funeral Chapel, Inc.	**$260.00**
Lakelawn Memorial Park (grave services)	**$400.00**
Burial plot	**$650.00**

12. Have you ever been a party, either Plaintiff or Defendant, in any lawsuit other than the instant case?

ANSWER: **No, however, Plaintiff, Michelle Herzing, was party to a Human Relations Commission proceeding after she was laid off from her employment at Intech P/M Stainless as a result of the subject malpractice.**

13. If the answer to the preceding Interrogatory is in the affirmative, supply the following additional information as to each such other lawsuit:

a. Complete caption;

b. Court in which filed and term and number; and

c. What disposition was made of case.

ANSWER: (a) **Unknown**
(b) **HRC**
(c) **The total sum of $300.00 was paid to Plaintiff.**

14. Have you ever made a claim for personal injuries in your lifetime and if so please indicate whether said claim resulted in compensation being paid to you.

ANSWER: **None recalled.**

15. List each and every item of monetary damage you are claiming as a result of the occurrence and not heretofore listed in Paragraph 10 and with respect to each items explain its relationship to the occurrence.

ANSWER: **Damages are being computed and will be provided.**

16. Identify each fact, document or other item of evidence which supports the claim of the estate for Janell Herzing's pain and suffering, anguish and inconvenience prior to death.

ANSWER: **To the extent this Interrogatory seeks expert opinion, it is objected to as beyond the scope of permissible discovery. Subject to and without waiving the aforesaid objection, the information sought by this Interrogatory is available to Defendant as it is to Plaintiffs via those medical records previously supplied.**

17. State the amount claimed for Janell Herzing's loss of earnings and the basis for the calculation of the amount claimed.

ANSWER: **This amount has not been calculated at this time.**

18. Identify each fact, document or other item of evidence which supports Plaintiffs' claim for wrongful death benefits.

ANSWER: **This Interrogatory is objected to as incapable of response since the term "wrongful death benefits" is undefined and unintelligible.**

19. Identify all medical or other records and all medical or other providers relating to treatment of Plaintiffs' alleged emotional distress in Count VII.

ANSWER: **This Interrogatory is objected to in that this Count was dismissed by Order of Court.**

20. Identify all exhibits and all documents of tangible or demonstrative evidence that Plaintiffs intend to use, utilize or introduce in the trial of the case.

ANSWER: **Trial exhibits have not yet been selected.**

21. Identify each witness, other than experts, that Plaintiffs intend to call at the trial of the case and with respect to each witness give a brief summary of the facts to which the witness will testify.

ANSWER: **Plaintiffs have not yet selected trial witnesses.**

22. If the Plaintiffs are claiming work loss due to the occurrence please state the following:

a. The date each Plaintiff was absent from work due to the occurrence;

b. The wage or salary of each Plaintiff, the total amount claimed as wage loss and the method of calculation;

c. The reason why Plaintiff was absent from work on the dates in question;

d. The names of Plaintiffs' employer(s) and job title of each Plaintiff.

Plaintiff Michelle Herzing is not presently employed outside the home. She was laid off from Intech at the time of and as a result of the incident.

Plaintiff Jeffrey R. Herzing is employed by Alpine Pressed Metals, Tanner Street, Ridgeway, Pennsylvania 15853, as a laborer. He has been employed by Alpine for approximately 2 years and and makes $11.75 per hour. He missed work on December 1, 4 and 5, 2000 due to Plaintiff Michelle Herzing's hospitalization for which he was not paid, and he missed December 6, 7 and 8, 2000 for the funeral of Plaintiff's decedent Janell Herzing, for which his company paid him.

Ogg, Cordes, Murphy & Ignelzi, LLP

By _____
Amy Acheson, Esquire
PA I.D. #50506

245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500

Attorneys for Plaintiffs

Dated: 8/5, 2002.

CERTIFICATE OF SERVICE

I, Amy Acheson, Esquire, hereby certify that a true and correct copy of Plaintiffs' Answers to Defendant, Jerjie T. Alajaji, M.D.'s First Set of Interrogatories Directed to Plaintiffs was forwarded to all counsel of record, by regular U.S. Mail, this 6th day of August, 2002, addressed as follows:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

David R. Johnson, Esquire
Linton L. Moyer, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

Amy Acheson, Esquire

CERTIFICATE OF SERVICE

I HEREBY certify that on the 28th day of May, I served true and correct copies of the foregoing Motion to Compel on all counsel of record, by First Class, U.S. Mail, postage prepaid in Altoona, Pennsylvania, to wit:

Amy Acheson, Esquire
Philip A. Ignelzi, Esquire
Ogg, Cordes, Murphy & Igneizi, L.L.P.
245 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 471-8500
(Attorney for Plaintiff)

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801
(814) 238-4926
(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
(Attorney for DuBois Regional Medical Center and Patrick Shilala)

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: _____
Alan R. Krier, Esquire
Anthony J. Zanoni, Esquire
Attorney for Defendant,
JERJIS T. ALAJAJI, M.D.

FILED NO CC
m/ 11:17 BK
JUN 01 2004
William A. Shaw
Prothonotary/Clerk of Courts

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,

Judge J Ammerman

President Judge

FILED

JUN 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 2cc Attys Acheson, Blasko, D Johnson, Krier

JUN 25 2004

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,

v.

MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. G.D. 02-169 CD

Expert report and Curriculum Vitae of W. Scott Morse, M.D.

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 CC
JAN 31 2005
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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

EXPERT REPORT AND CURRICULUM VITAE OF W. SCOTT MORSE, M.D.

NOW, comes Defendant, **JERJIS T. ALAJAJI, M.D.,** by and through his Attorneys, JUBELIRER, CAROTHERS, KRIER & HALPERN, and files the following:

1. Expert Report dated December 18, 2004, authored by W. Scott Morse, M.D.

2. Curriculum Vitae of W. Scott Morse, M.D.

JUBELIRER, CAROTHERS, KRIER & HALPERN

BY: _____

Alan R. Krier, Esquire
PA I.D. #06672
Park View Center
Ten Sheraton Drive
Altoona, PA 16601
(814) 943-1149
Attorneys for Defendant,
Jerjis T. Alajaji, M.D.

DATE: January 28, 2005

3012 Alden Drive
Pittsburgh PA 15220
December 18, 2004

Alan R. Krier, Esq.
Jubelirer, Carothers, Krier & Halpern
Attorneys at Law
Park View Center
10 Sheraton Drive
Post Office Box 2024
Altoona PA 16603

Dear Mr. Krier:

At your request, I have reviewed the following records in the matter of Herzing v Alajaji, et al:

Plaintiff's Second Amended Complaint;

Dr. Alajaji's Answer to Second Complaint;

Deposition transcript of Dr. Kruszewski;

Deposition transcript of Jeffrey Jarvis;

Deposition transcript of Michelle Herzing;

Deposition transcript of Nurse Shawn Welsh;

Deposition transcript of Jerjis T. Alajaji;

Various medical records of Michelle Herzing from DuBois Regional Medical Center from the year 2000;

Various medical records of Dr. Kreszewski regarding Michelle Herzing's care;

Report of Russell D. Jelsema, M.D., dated 10/13/04;

Report of Dr. Stephen Klepper dated 5/25/04;

Report of Marilyn Stringer, Ph.D./CRNP, dated 9/15/04, authored on stationery from the University of Pennsylvania School of Nursing;

Copies of films from a sonogram done of Michelle Herzing at DRMC—East Division on 12/1/00 at approximately 3:19 pm;

Copies of sonographic images from DRMC—East Division done on Michelle Herzing on 12/4/00 at approximately 2:00 pm.

As you are aware, Michelle Herzing began seeing Dr. Kruszewski in July 2000 for care during her pregnancy. On November 30, 2000, Ms. Herzing came to the DuBois Regional Medical Center Emergency Department for bronchitis.

At the time of her admission, she was noted to have a blood pressure of 207/112 along with respirations of 36 per minute and a pulse of 96 per minute. She was afebrile. Her oxygen saturation was 94%. Her BUN and creatinine levels were within normal limits.

Ms. Herzing was discharged from the Emergency Department. The following day (12/1/00), she was admitted to DuBois Regional Medical Center on the service of Dr. Kruszewski.

That day, a fetal ultrasound and biophysical profile were ordered by Dr. Kruszewski. Fetal Movement, fetal tone, and volume of amniotic fluid were scored as normal. No fetal breathing movements were identified. Ms. Herzing's biophysical profile score was 6/8. A heartbeat of 140 was noted during the exam. Based on measurements taken during the ultrasound exam, the gestational age of the fetus was calculated to be 31 weeks and 3 days. Ultrasound dates calculated from anatomic fetal measurements at this time during a pregnancy characteristically have a range of plus or minus two weeks. On previous ultrasound of 9/6/00, gestational age was calculated at approximately 24 weeks. By last menstrual date and the 9/6/00 sonogram (both known to Dr Kruszewski at the time the 12/1 sonogram was done) a gestational age of about 36 weeks would have been expected.

On 12/4/00, Dr. Kruszewski ruptured Ms. Herzing's membranes. An ultrasound done that afternoon revealed no heartbeat and was consistent with fetal demise. The fetus was delivered stillborn on 12/5/00.

An autopsy was performed. This revealed a stillborn female fetus weighing 4 pounds and 20 ounces of 36 weeks gestational age by dates and 32 weeks plus or minus 2 weeks by measurements. A large intracranial hemorrhage was noted at the time of autopsy and thought to be the cause of fetal demise. Severe uteroplacental insufficiency with multiple placental infarctions and intervillous thromboses were noted. Findings consistent with acute chorioamnionitis were also present.

I have been asked to review this matter with respect to the care rendered to Michelle Herzing by Dr. Alajaji. My review indicates to me that the care rendered by Dr. Alajaji was within standards of good medical care for patients such as Ms. Herzing. I find no deviation from the standard care with respect to his interpretations of the sonographic images. His decision to fax a report citing his preliminary findings was also appropriate. I find no remarks in his deposition that would suggest any deviation from good standards of medical care.

With respect to the allegations made in Plaintiff's Complaint, I would offer the following comments:

Dr. Alajaji is alleged to have been negligent because he failed to use the December 30, 2000, date as the due date in reading or interpreting Ms. Herzing's ultrasound. There is no reason for him to have done this. His estimation of the gestational age of Janelle Herzing was based on measurements obtained during the ultrasound exam (and subsequently found at autopsy to be accurate). The Plaintiff's expected date of delivery was well known to Dr. Kruszewski. It would have been her decision to determine the relevance of this age discrepency based on knowledge of Ms. Herzing's history.

Dr. Alajaji is alleged to have been negligent because he did not convey the test results to Dr. Kruszewski in a timely manner. It is my understanding from the records noted above that the ultrasound was considered stat and that the results were available to Dr. Kruszewski soon after the exam was completed.

Dr. Alajaji is alleged to have been negligent because he did not perform a Doppler study of the patient's umbilical artery. It is my opinion that in this particular situation evaluation of the umbilical artery wave form would not have been helpful. Had the sonographer been able to identify it during the exam the waveform would have been normal or abnormal. If it had been seen and judged to be normal, it would not have changed the basic conclusion of the exam. That is, that the fetus was alive but its growth had been restricted. If it had been seen and noted to be abnormal it would have suggested intrauterine growth retardation as a cause, something that was already known to be present based on the other ultrasound findings.

Dr Alajaji is also accused of negligence for allegedly incorrectly interpreting the fetal ultrasound and formulating an inherently flawed and falsely reassuring biophysical profile. Again, there is nothing in the records I have reviewed that indicates that there is any error present in the interpretation of the ultrasound (indeed, the autopsy findings demonstrated that the estimation of gestational age that was performed at the time was correct) nor that the biophysical profile calculated was incorrect.

He is judged to have been negligent because he did not correlate the patient's prior ultrasound in reading and interpreting the December 2000 exam. As Dr. Kruszewski was intimately familiar with Michelle Herzing's history, there was no need for him to have done this.

Plaintiffs allege that Dr. Alajaji made erroneous measurements of the minor-plaintiff. This allegation is also false. A review of the autopsy indicates that Dr. Alajaji's calculations were correct.

With respect to the report authored by Dr. Jelsema, he notes on the first page of his report that Dr. Alajaji was negligent in not asking Ms. Herzing her due date. It appears his opinion is that had Dr. Alajaji done this he would have been able to make the diagnosis of intrauterine growth retardation. Given that Dr. Kruszewski was well aware of Ms. Herzing's due date and, in fact, had ordered the ultrasound on a stat basis and that the report was faxed immediately following the performance of the examination, Dr. Alajaji's decision not to pursue the patient's age or make the diagnosis of intrauterine growth retardation was reasonable. In this case, it had no obvious bearing on the outcome of this case as the child was not delivered that day or over the next few days.

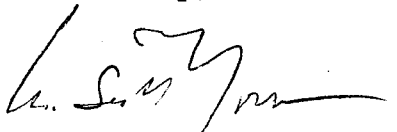
Dr. Jelsema's statement that Dr. Kruszewski needed the ultrasound report to make the diagnosis of pre-eclampsia Is not correct.

Dr. Stringer and Dr. Klepper make no comments as to the care delivered by Dr. Alajaji.

In summary, the records I have reviewed indicate to me that Dr. Alajaji's evaluation of Michelle Herzing on 12/1/00 was in keeping with good standards of medical and radiologic care. His estimation of the unborn fetus' size was accurate as was his calculation of the biophysical profile. The results of these tests were made available to Dr. Kruszewski shortly after the exam was completed. No deviation from the standard of care is apparent.

If I can be of help in clarifying these opinions, please do not hesitate to call.

Sincerely,



W. Scott Morse, M.D.

CURRICULUM VITAE

W. SCOTT MORSE, M.D.

PERSONAL:

Home Address:	3012 Alden Dr. Pittsburgh, PA 15220
Telephone:	(412) 531-5752
E-mail:	wsmmd@aol.com

Date of Birth:	July 18, 1951
Place of Birth:	Pittsburgh, PA

CURRENT POSITIONS:

Attending Department of Radiology, St. Clair Hospital, Pittsburgh, PA

Attending Department of Radiology, University of Pittsburgh Medical Centers-South Side Hospital Pittsburgh PA

1997-Present Clinical Instructor, Department of Emergency Medicine, University of Pittsburgh, Pittsburgh, PA

PAST POSITIONS

Attending: Department of Radiology, St. Francis Medical Center, Pittsburgh, PA 1994-2000

Attending: Department of Radiology, Forbes Health System, Pgh, PA 1994-00

Attending: Department of Radiology, Ohio Valley General Hospital, Pgh Pa 1994-00

Attending: St. Francis Hospital, New Castle PA 1998-99

Co-Director Radiology Residency Program, St. Francis Hospital 1997-99

Director Radiology Residency Program, St. Francis Hospital 1999-00

EDUCATION:

Undergraduate:

1969-1973 University of Pittsburgh, B.S. Physics (cum laude)

Medical School:

1974-1978 Hahnemann University, Philadelphia, PA
President, Junior Class
Honors, Neurology

Postgraduate Training:

1978-1979 Surgical Intern, University of Pittsburgh Affiliated Hospitals

1979-1980 Resident, Department of Radiology, University of Pittsburgh
1990-1993 Affiliated Hospitals

1993-1994 Fellow, Abdominal Imaging, Department of Radiology, University of Pittsburgh Affiliated Hospitals

1993-1994 Instructor, Department of Radiology, University of Pittsburgh Affiliated Hospitals

LICENSURE: Pennsylvania, MD-022571-E

CERTIFICATION:

1979 National Board of Medical Examiners
1986 American Board of Emergency Medicine. Recertification 1996
1993 American Board of Radiology
Advanced Trauma Life Support - Instructor
Advanced Cardiac Life Support - Provider
1992 Base Station Medical Command Course
1995 "B" Reader, National Institute for Occupational Safety and Health.
(Recertified 1999)

PROFESSIONAL APPOINTMENTS:

1980-1982	Attending Physician, Department of Emergency Medicine, Forbes Health System, Pittsburgh, PA
1982-1987	Director, Emergency Room, Forbes Regional Hospital, Pittsburgh, PA
1988-1990	President, Western Pennsylvania Emergency Physicians
1987-1990	Chairman, Department of Emergency Medicine, Forbes Health System, Pittsburgh, PA
1990-1994	Attending Physician, Department of Emergency Medicine, Forbes Health System, Pittsburgh, PA

OTHER POSITIONS:

1983-1990	President, Urgi-Care of Western Pennsylvania
4/90-7/90	Interim Chairman, Department of Emergency Medicine, Ohio Valley General Hospital, McKees Rocks, PA 15136

PROFESSIONAL ACTIVITIES:

1999-present	Co-Chairperson, Committee on Resident Affairs & Resident Seminars Pennsylvania Radiologic Society
1999-present	Treasurer, Pittsburgh Roentgen Ray Society
1998-1999	Utilization/Quality Improvement Committee Health America Health Plan
1994-1997	Trustee, Hahnemann University Alumni Association
1988-1990	Member, Board of Directors, Forbes Health System, Pittsburgh, PA
1986-1988	Consultant, Forbes Vantage Group

1984-1989 Associate Editor, Allegheny County Medical Society Bulletin

MEDICAL STAFF ACTIVITIES:

1989-1990	President, Forbes Health System Medical Staff
1988-1989	President-Elect, Forbes Health System Medical Staff
1987-1988	Vice-President, Forbes Health System Medical Staff
1984-1987	Secretary, Forbes Health System Medical Staff
1989-1990	Chairman, Executive Committee
1988	Chairman, By-Laws Committee
1984-1987	Chairman, Credentials Committee
1989-1990	Chairman, Joint Conference Committee
1996-Present	Utilization Review Committee Forbes Health System
1996-1997	Acting Chairman, Utilization Review Committee, Forbes Health System

MEDICAL SOCIETIES:

Fellow, American College of Emergency Physicians
Member, American Roentgen Ray Society
Member, Radiologic Society of North America
Member, American Medical Association 1994-1997
Member, Pennsylvania Medical Association
Member, Allegheny County Medical Society
Member, American Society of Emergency Radiology

HONORS:

1987	Golden Apple Award - Forbes Family Practice Residency
2000	Outstanding Contribution Award Philadelphia College of Osteopathic Medicine

PUBLICATIONS:

1. "Chest Radiography" in Effective Diagnostic Testing in Emergency Medicine. Wolfson A, and Paris P. W. B. Saunders & Co., 1996.

2. Poster presentation at the Annual Meeting of the American Society of Emergency Radiologists: "Magnetic Resonance Patterns of Radiographically Occult Fractures". Sevcik M, Ross G, Morse WS.

3. "Schwannoma: An Unusual Case of Sudden Chest Pain and Hemothorax", Rayburn T, Morse WS, Solomon N. Emergency Radiology, Vol. 3, No. 6, November-December 1996.

4. "Early Diagnosis of Herpes Simple Encephalitis" Morse WS, Punjwani N St. Francis Journal of Medicine Vol. 5, No. 1 1999

5. "Contrast -Enhanced CT for Acute Flank Pain Caused by Acute Renal Artery Occlusion" Amilineni V, Lackner DF, Morse WS, SrinivasN. American Journal of Radiology, 174:105-106. January 2000

6. "Imaging of Brain Tumors and the Revised WHO Classification. Srinivas N, Flint E, Amelinini V, Morse W. Presented at the RSNA Annual Meeting. Nov. 1999

7. "Imaging of Brain Neoplasms and the Revised WHO Classification. Srinivas N, Flint E, Morse W , D'Altorio RA, and Amilineni VK. Postgraduate Radiology 20: 159-174

INVITED PRESENTATIONS:

1. "CT of the Thorax"
Grand Rounds - September 9, 1993
Center for Emergency Medicine
University of Pittsburgh Medical Center

2. "Vascular Imaging"
Grand Rounds - February 20, 1992
Center for Emergency Medicine
University of Pittsburgh Medical Center

3. "Imaging of the Emergency Patient"
Resident Orientation - September 30, 1991
Emergency Medicine Residency
University of Pittsburgh Medical Center

4. "Cervical Spine Radiography"
Resident Orientation - September 30, 1991
Emergency Medicine Residency
University of Pittsburgh Medical Center

5. "Lower Extremity Radiology"
Grand Rounds - June 27, 1991
Center for Emergency Medicine
University of Pittsburgh Medical Center

6. "Emergency Radiology Topics"
Grand Rounds - March 21, 1991
Center for Emergency Medicine
University of Pittsburgh Medical Center

7. "Introduction to Emergency Radiology"
Center for Emergency Medicine
University of Pittsburgh Medical Center
September 6, 1994

8. "Pitfalls in Emergency Radiology"
Center for Emergency Medicine
University of Pittsburgh Medical Center
January 19, 1995

9. "High Risk Areas in Emergency Medicine"
Risk Management Forum of the Medical Inter-Insurance Exchange
June 7, 1996

10. "Emergency Radiology"
Moderator, Journal Club, Department of Emergency Medicine,
University of Pittsburgh Medical Center
December 5, 1996

11. "Spiral CT: New Frontiers in Emergency Medicine"
Scientific Assembly of the Pennsylvania Chapter of the American College of Emergency Medicine
April 17, 1997

12. "Explorations: A Career Series for Students"
Allegheny University of the Health Sciences
April 3, 1995

13. "Role of Contrast Enhanced CT in the Diagnosis of Acute FLank Pain Due to Renal Artery Occlusion" Amelineni V, Srinivas N, Morse W, Lackner D. Presented at the Society of Uroradiology Annual Meeting, May 1999

PUBLICATIONS: W. SCOTT MORSE MD

1. "Chest Radiography" in Effective Diagnostic Testing in Emergency Medicine. Wolfson A, and Paris P. W. B. Saunders & Co., 1996.

2. Poster presentation at the Annual Meeting of the American Society of Emergency Radiologists: "Magnetic Resonance Patterns of Radiographically Occult Fractures". Sevcik M, Ross G, Morse WS.

3. "Schwannoma: An Unusual Case of Sudden Chest Pain and Hemothorax", Rayburn T, Morse WS, Solomon N. Emergency Radiology, Vol. 3, No. 6, November-December 1996.

4. "Early Diagnosis of Herpes Simple Encephalitis" Morse WS, Punjwani N St. Francis Journal of Medicine Vol. 5, No. 1 1999

5. "Contrast -Enhanced CT for Acute Flank Pain Caused by Acute Renal Artery Occlusion" Amilineni V, Lackner DF, Morse WS, SrinivasN. American Journal of Radiology, 174:105-106. January 2000

6. "Imaging of Brain Tumors and the Revised WHO Classification. Srinivas N, Flint E, Amelinini V, Morse W. Presented at the RSNA Annual Meeting. Nov. 1999

7. "Imaging of Brain Neoplasms and the Revised WHO Classification. Srinivas N, Flint E, Morse W , D'Altorio RA, and Amilineni VK. Postgraduate Radiology 20: 159-174

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing **Expert Report of W. Scott Morse, M.D.** on all counsel of record and/or parties of interest by depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 28th day of January, 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
(Attorney for Plaintiff)

John W. Blasko, Esquire
Richard K. Laws, Esquire
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801
(814) 238-4926
(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 Patrick Shilala)

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: /s/ Alan R. Krier
Alan R. Krier, Esquire
PA I.D. #06672
Attorney for Defendant,
JERJIS T. ALAJAJI, M.D.

CA

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 FOR ENLARGEMENT OF TIME IN WHICH TO SERVE REBUTTAL EXPERT REPORTS

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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
FEB 04 2005
m/11:35
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to Atty

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.	

PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME IN WHICH TO SERVE EXPERT REPORTS

AND NOW, come Plaintiffs, by and through their undersigned attorneys, and respectfully request that this Honorable Court enter an Order enlarging the time in which Plaintiffs many serve rebuttal expert reports, and in support hereof, state the following:

1. Pursuant to the Order of this Court dated June 26, 2004 Plaintiffs served their expert reports upon Defendants on October 26, 2004.

2. The Order required Defendants to serve their expert reports no later than January 31, 2005, and requires Plaintiffs to serve rebuttal reports by February 28, 2005.

3. By letter dated January 31, 2005, and received by Plaintiffs' counsel on February 3, 2005, Defendant Kruszewski served two expert reports.

4. One of these was the report of Emanuel Rubin, M.D., dated November 11, 2004, a copy of which is attached hereto, made a part hereof and marked as Exhibit A.

5. Defendant's expert purports to have examined slides containing body tissues of the deceased minor Plaintiff and the Plaintiff mother's placenta.

6. Plaintiffs were unaware that any such pathology, body tissue slides or other materials existed, and have never examined the same.

7. Plaintiffs will be severely prejudiced unless they are afforded a fair opportunity to examine and evaluate these slides as well as all other such materials, and have rebuttal reports prepared.

8. Plaintiffs estimate that they will require an additional 120 days after they obtain these pathology materials.

WHEREFORE Plaintiffs respectfully request that this Honorable Court enter an Order enlarging the time in which Plaintiffs may serve rebuttal expert reports to 120 days after Defendants' delivery to Plaintiffs of all pathology materials and body tissues of Plaintiffs.

By: _____
Amy Adhesion, Esquire
Philip A. Ignelzi, Esquire

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

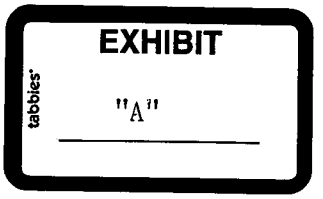
Dear Mr. Blasko:

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 hypo-mature placenta with multiple areas of infarction, intervillous thrombosis, necrotizing intervillositis, 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 (4/10/030

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,

Emanuel Rubin

Emanuel Rubin, M.D.

CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME IN WHICH TO SERVE REBUTTAL EXPERT REPORTS** to be served on the following via regular United States first class mail, postage prepaid, on this 3rd day of February, 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,

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

NOTICE OF SERVICE OF PLAINTIFFS' EXPERT REPORTS

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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 1CC
m/12:35 BA
FEB 07 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.

NOTICE OF SERVICE OF PLAINTIFFS' EXPERT REPORTS

Plaintiffs by and through their counsel file this Notice that pursuant to Order of Court, Plaintiffs served expert reports upon all Defendant's on October 26, 2004, by U.S. Mail, first class, postage prepaid.

By _____
Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **NOTICE OF SERVICE OF PLAINTIFFS' EXPERT REPORTS** to be served on the following via regular United States first class mail, postage prepaid, on this 3rd day of February, 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,

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

ORDER

AND NOW, to wit, this 8 day of February, 2005, it is hereby ORDERED that Defendants shall forthwith deliver to Plaintiffs' counsel all pathology slides, body tissue and/or other such materials of Plaintiffs, and Plaintiffs shall have 120 days from the date of said delivery to file rebuttal expert reports.

BY THE COURT,

J.

FILED

FEB 09 2005
01 10:15 lu
William A. Shaw
Prothonotary/Clerk of Courts
1 CERT TO ATTY

CA

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, PATRICK SHILALA and JERJIE T. ALAJAJI,

Defendants.

No.: G.D. 02-169 CD

Type of Case: Civil Action

JURY TRIAL DEMANDED

Type of Pleading
Answer to Plaintiffs' Motion for Enlargement of Time in which to serve Rebuttal Expert Reports

Filed on Behalf of Defendant
MARY C. KRUSZEWSKI

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

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

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

Counsel of Record for Adverse Party:
Amy Acheson, Esquire
Philip A. Igneizi, Esquire

Dated: 2/8/05

FILED
M 1:23 BM NOCC
FEB 09 2005
William A. Shaw
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,	)	
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 FOR ENLARGEMENT OF TIME IN WHICH TO SERVE REBUTTAL EXPERT REPORTS

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is denied as stated. Plaintiffs' counsel filed a Complaint on February 4, 2002 alleging a death in cause of action occurring in December 5, 2000. Over four years has passed since the death of the infant, and, over two years since the case was filed, and, during that period of time, the Plaintiffs and their counsel were in possession of an autopsy report which refers specifically microscopic slides and tissue.

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,	)	NO. G.D. 02-169 CD
vs.	)	JURY TRIAL DEMANDED
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

AND NOW, this this is still getting signed. ___, 2005, Plaintiffs' Motion for Enlargement of Time in w Reports is dismissed.

BY THE COURT,

_____

J.

CA

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	**NOTICE OF SERVICE OF PLAINTIFFS' EXPERT REPORTS**
Defendants.	Filed on behalf of Plaintiff
	Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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

FILED GK
M 12:47 GK NOCC
FEB 09 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,	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.

NOTICE OF SERVICE OF PLAINTIFFS' EXPERT REPORTS

Plaintiffs by and through their counsel file this Notice that pursuant to Order of Court, Plaintiffs served expert reports upon all Defendant's on October 26, 2004, by U.S. Mail, first class, postage prepaid.

By _____
Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **NOTICE OF SERVICE OF PLAINTIFFS' EXPERT REPORTS** to be served on the following via regular United States first class mail, postage prepaid, on this 3rd day of February, 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

CIVIL DIVISION

FILED
8/4:00 BCC
MAR 11 2005
William A. Shaw
Prothonotary/Clerk of Courts
$2 CC Attys:
Acheson
Blasko
& Johnson
Krier

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, PATRICK SHILALA, and JERJIE T. ALAJAJI	:	

O R D E R

NOW, this 10th day of March, 2005, upon agreement of counsel for the parties relative the Plaintiffs' Motion for Enlargement of Time, it is the ORDER of this Court as follows:

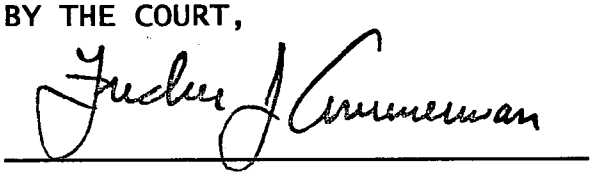
1. Plaintiff shall have until no later than May 31, 2005, in which to supply its pathology report to the Defense;

2. Defense shall have until no later than June 30, 2005, in which to supply the Plaintiff with any rebuttal pathology report;

3. The Court Administrator shall list the case

for trial by jury for the Fall 2005 Term of Court.

BY THE COURT,



President Judge

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

FILED cc Attys: Acheson Blasko DJohnson Krier
01:07 BOL
FEB 14 2005
William A. Shaw
Prothonotary/Clerk of Courts

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, PATRICK SHILALA, JERJIE T. ALAJAJI and RUSSELL E. CAMERON, Defendants	*	

ORDER

NOW, this 14th day of February, 2005, the Court being in receipt of Plaintiffs' Motion for Enlargement of Time in Which to Serve Rebuttal Expert Reports and any other outstanding discovery issues; it is the Order of this Court that a hearing on this Motion be scheduled for the 10 day of March, 2005, at 1:30 P m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

The Court's Order of February 8, 2005, requiring Defendants to deliver test materials to the Plaintiffs is RESCINDED.

BY THE COURT,

Frederic J. Ammerman

FREDERIC J. AMMERMAN
President Judge

FILED

FEB 1 4 2005

William A. Shaw
Prothonotary/Clerk of Courts

CA

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.

CIVIL DIVISION

No. 02-169-CD

Issue No.

MOTION FOR LEAVE TO HAVE SUBSTITUTE COUNSEL ATTEND CALL OF LIST

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

COUNSEL FOR PLAINTIFFS:
Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI
John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:
Alan Krier, Esquire

FILED NO CC
013:53BH
JUL 21 2005 GW
William A. Shaw
Prothonotary/Clerk of Courts

MOTION FOR LEAVE TO HAVE SUBSTITUTE COUNSEL ATTEND CALL OF LIST

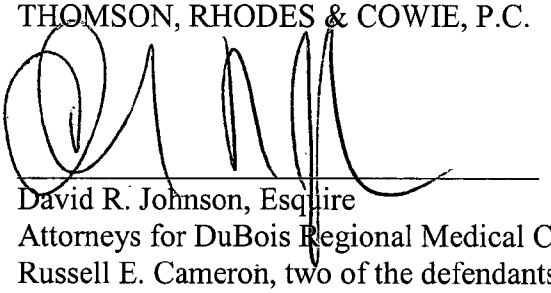
NOW COME DuBois Regional Medical Center and Russell E. Cameron, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following Motion for Leave to Have Substitute Counsel Attend Call of List.

1. Notice has been received of the call of the list in the case above captioned on July 28, 2005. Undersigned counsel will be trial counsel in the case and is available to attend the pretrial conference and jury selection. However, undersigned counsel was previously committed to being out of town on July 28.

2. Accordingly, leave is sought to allow an attorney other than trial counsel to attend the call of the list on July 28, 2005.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center and
Russell E. Cameron, two of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within MOTION FOR LEAVE TO HAVE SUBSTITUTE COUNSEL ATTEND CALL OF LIST has been served upon the following counsel of record by facsimile on this 19th day of July, 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
Attorneys for DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

FILED

JUL 21 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,

Plaintiffs,

Vs.

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

Defendants.

CIVIL DIVISION

No. 02-169-CD

ORDER OF COURT

AND NOW this 21st day of July, 2005, it is hereby ORDERED that substitute counsel may attend the call of the list in the case above captioned on July 28, 2005.

BY THE COURT:

Fredric J. Ammerman J.

FILED 1cc Atty Johnson
013:53/BK
JUL 21 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,

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

ENTRY OF APPEARANCE

Filed on behalf of Plaintiff

Counsel of Record for this Party:

Amy Acheson, Esquire
PA ID#50506

Philip A. Ignelzi, Esquire
PA ID#34286

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

JUL 22 2005
m/ 11:30 cm
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to Atty
copy to C/A

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.	

ENTRY OF APPEARANCE

To the Prothonotary,

Please enter the appearances of Gary J. Ogg, Esquire and Michael A. Murphy, Esquire in addition to that of Amy Acheson, Esquire and Philip A. Ignelzi, Esquire for Plaintiffs in the above captioned matter.

By _____
Amy Acheson, Esquire
Philip A. Ignelzi, Esquire

_____
Gary J. Ogg, Esquire

_____
Michael A. Murphy, Esquire

CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **ENTRY OF APPEARANCE** to be served on the following via regular United States first class mail, postage prepaid, on this 20th day of July, 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

CA

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,	CIVIL ACTION - LAW
v.	NO. G.D. 02-169 CD
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	MOTION IN LIMINE
	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 cc
m/10:33 BL
JUL 26 2005
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,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs,	:	CIVIL ACTION – LAW
v.	:	NO. G.D. 02-169 CD
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI,	:	
Defendants.	:	

REQUEST FOR ARGUMENT / HEARING

AND NOW, this 29 day of July, 2005, argument with regard to Defendant's', JERJIE T. ALAJAJI, M.D., Motion in Limine is scheduled for the 11th day of August, 2005, in Courtroom # 1 in the Clearfield County Courthouse. at 11:00 A.M.

BY THE COURT:

J.

FILED 7CC Atty Kriers
01 10:31 BK
JUL 29 2005

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, v. MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION – LAW NO. G.D. 02-169 CD

ORDER

AND NOW, this ____ day of _____, 2005, upon Motion of JUBELIRER, CAROTHERS, KRIER & HALPERN, Attorneys for Defendant, Jerjie T. Alajaji, M.D., and upon consideration of the attached Motion,

IT IS HEREBY ADJUDGED, ORDERED AND DECREED that Dr. Jelsema is precluded from offering an opinion regarding the standard of care required of Dr. Alajaji and/or any breach thereof or that any action of Dr. Alajaji was the cause of Plaintiff's harm.

BY THE COURT:

_____

J.

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
	:	NO. G.D. 02-169 CD
v.	:	
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, PATRICK SHILALA and JERJIE T. ALAJAJI, Defendants.	:	

DEFENDANT ALAJAJI'S MOTION IN LIMINE WITH RESPECT TO PLAINTIFFS' PROPOSED EXPERT REPORT(S) AND TESTIMONY

AND NOW, comes the Defendant, Jerjie T.Alajaji, M.D., by and through his attorneys, Jubelirer, Carothers, Krier and Halpern, and files the within Motion in Limine:

1. The above-captioned matter involves a medical malpractice action alleging, *inter alia*, that Defendant Alajaji was negligent in providing medical services to Plaintiff, leading to the still-birth of her infant.

2. Defendant Alajaji is a board-certified radiologist. A copy of his curriculum vitae is attached hereto marked Exhibit A.

3. In connection with the care provided to the expectant mother, Dr. Alajaji performed a STAT biophysical profile with fetal measurements on the fetus pursuant to orders of the expectant mother's primary care physician, Dr. Kruszewski.

4. Plaintiffs have provided expert reports from the following individuals:

a. Russel D. Jelsema, M.D. (medical expert)
b. Marilyn Stringer, PhD, CRNP, RDMS (nursing expert)
c. Dr. Steven Klepper (economist)

5. Dr. Jelsema has authored the only expert report critical of the services provided by Dr. Alajaji. A copy of his reports are attached hereto marked as Exhibit B.

6. Dr. Jelsema is board certified in several areas, none of which include radiology. A copy of his his curriculum vitae is attached hereto marked Exhibit C.

7. The Medical Care Availability and Reduction of Error Act (hereinafter "Mcare") contains certain requirements for expert testimony in medical malpractice actions.

8. In particular, 40 P.S. § 1303.512, of MCare requires that an expert testifying as to a physician's standard of care must meet the following criteria:

1. The expert must be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care;
2. Practice in the same subspecialty of the said defendant physician or in a subspecialty which has a substantially similar standard of care for the specific care at issue; or
3. In the event that the defendant physician is certified by an approved board, the expert must be board certified by the same or a similar approved board. 40 P.S. § 1303.512 (c).

9. Dr. Alajaji is a board certified radiologist. In contrast, Dr. Jelsema is board certified in obstetrics, gynecology and maternal/fetal medicine but not in radiology or in orthopedics.

10. No reasonable basis has been established suggesting Dr. Jelsema is "substantially familiar with the applicable standard of care" pertaining to radiologists under the circumstances present in this matter. Nor is there any evidence of record to suggest that Dr. Jelsema practices in Dr. Alajaji's specialty.

11. For these reasons, Dr. Jelsema is not competent to provide expert medical opinions relative to the standard of care required of Dr. Alajaji, a board certified radiologist.

12. The Mcare Act allows for the Court to waive the above indicated requirements, provided that the expert is trained in the diagnosis or treatment of the condition ***and*** the defendant physician provided care for that condition and such care was not within the physician's specialty or competence. P.S. § 1303.512 (d).

13. Dr. Jelsema opines that a failure to obtain a due date from the expectant mother, and a failure to make a diagnosis of retarded physical growth or intrauterine growth retardation (IUGR), was below the standard of care required of Dr. Alajaji under the circumstances. However, the evidence of record clearly indicates that Dr. Alajaji, as the radiologist, was requested only to perform a STAT biophysical profile; not to have rendered a diagnosis, which was reserved by and for Dr. Kruszewski to render upon receiving the results of the fetal measurements and would have been obvious to her based upon her own knowledge of Plaintiff's due date by prior sonogram and dates.

14. Accordingly, Dr. Jelsema is not competent to testify about the standard of care required of a radiologist relative to rendering a diagnosis IUGR upon an order for a STAT biophysical profile of a fetus.

15. The medical records available demonstrate that Dr. Kruszewski had no expectation that the radiologists at DRMC would include gestational age by dates (and/or by prior sonogram) in the ultrasound report. Attached hereto and made a part hereof as Exhibit "D" in the ultrasound report of Dr. Boron of the DRMC radiology department in Plaintiff's 1996 pregnancy performed upon the order of Dr. Kruszewski under similar circumstances. Also attached hereto as Exhibit "E" is the ultrasound report of Dr. Boron performed on 9/6/00 (the instant pregnancy) also on the order of Dr, Kruszewski. None of these ultrasounds record the EDC by dates. They simply furnish the OB with the gestational age by measurements. It was Dr. Kruszewski's expectation that she would correlate this information with the EDC in her chart.

16. Dr. Jelsema in his 10/13/04 report advocates that "Dr. Kruszewski failed to meet the standard 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." In his November 30, 2001 report, Dr. Jelsema states "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." Clearly Dr. Jelsema acknowledged that it is ultimately the obligation of the OB physician to compare gestational age by dates and by measurement and make the obvious diagnosis of IUGR regardless of whether the radiologist states the obvious or not. It is also clear that Dr. Kruszewski expected to make that diagnosis from the radiology information

17. The actions of Dr. Alajaji cannot as a matter of law be the legal cause of Plaintiff's harm and Dr. Jelsema should be precluded from rendering any opinion regarding causation as it relates to Dr. Alajaji as the record is devoid of any foundation therefor.

WHEREFORE, Defendant Alajaji respectfully requests that this Honorable Court grant the Motion in Limine, to preclude Dr. Jelsema from offering an opinion regarding the standard of care required of Dr. Alajaji and/or any breach thereof or that any action of Dr. Alajaji was the cause of Plaintiff's harm.

Respectfully submitted,

JUBELIRER, CAROTHERS, KRIER & HALPERN

BY: _____

Alan R. Krier, Esquire
PA I.D. 06672
Anthony J. Zanoni, Esquire
PA I.D. #62223
Park View Center, 10 Sheraton Drive
P.O. Box 2024
Altoona, PA 16603
(814) 943-1149
Attorneys for Defendant,
Jerjie T. Alajaji, M.D.

Jerjis T. Alajaji, M.D.
1404 Treasure Lake
DuBois, PA 15801
Phone 814-375-3261
Home Phone 814-371-6504
~~Email jerjis@penn.com~~

CURRICULUM VITAE

HOSPITAL EXPERIENCE

DuBois Regional Medical Center ***July 1997- present.***
100 Hospital Avenue
DuBois, PA 15801
Full-time Diagnostic Radiology and Vascular/Interventional

Physicians Memorial Hospital ***July 1995-March 1997***
701 E. Charles Street
P.O. Box 1070
LaPlata, MD 20646-1070
Full-Time Diagnostic Radiology and Vascular/Interventional

Greater Southeast Community Hospital ***January 1996 - June 1997***
1310 Southern Avenue, SE
Washington, D.C. 20032
Part-time Diagnostic Radiologist (weekend coverage)

Malcom Grow Medical Center ***April 1996 - June 1997***
1050 West Perimeter Road
Andrews Air Force Base, MD 20672
Part-time Sterling Medical Radiologist Provider

Veterans-Affairs Medical Center ***July 1994-June 1996***
Radiology Services
50 Irving Street, N.W.
Washington, D.C. 20422
Staff Radiologist, Full-time Vascular/Interventional
July 1995 -September 1996
Part-time Radiologist, Vascular Interventional

Suburban Hospital ***December 1994-June 1997***
9600 Old Georgetown Road
Bethesda, MD 20814
Part-time Diagnostic Radiologist (weekend and evening coverage)

Southern Maryland Hospital ***November 1994-June 1997***
7503 Suratts Road
Clinton, MD 20735
Part-time Diagnostic Radiologist (weekends)

EXHIBIT
A

ACADEMIC TRAINING

1990-1994	Penn State University, Hershey Medical Center, Hershey, PA. Four-year residency in Diagnostic Radiology, with advanced training in Vascular/Interventional Radiology, eligible for CAQ (Certificate of Added Qualification)
1988-1990	Brigham and Women's Hospital, Harvard Medical School, Boston, MA. Two-year residency in Nuclear Medicine.
1987-1988	Good Samaritan Hospital, affiliate of the Johns Hopkins Medical School, Baltimore, MD. One-year internship in Internal Medicine.
1986-1987	University of South Florida, Tampa, FL. One-year research assistantship in Nuclear Medicine.
1982-1986	Medical School, The American University of Beirut, Lebanon. Degree: M.D. with distinction.
1980-1982	American University of Beirut, Beirut, Lebanon. Major in Physics and Minor in Chemistry.
1980	French and Lebanese Baccalaureate Degree.

SPECIALTY BOARD CERTIFICATION

1994	American Board of Radiology
1991	American Board of Nuclear Medicine

STATE LICENSES

District of Columbia
Maryland
Massachusetts
Pennsylvania

PROFESSIONAL ASSOCIATIONS

American College of Radiology
American Roentgen Ray Society
Medical and Chirurgical Faculty of Maryland/Charles County Medical Society
Chesapeake Interventional Radiology Society

AWARDS

American College of Radiology Resident-in-Training Examination Scores:

1993-1994	89th Percentile
1992-1993	92nd Percentile
1991-1992	97th Percentile
1990-1991	99th Percentile

1991-1992 Annual Winner of Case of the Week in Pediatrics,
Penn State University, Hershey Medical Center,
Hershey, Pennsylvania

1991-1992 Annual Winner of Case of the Week in Neuroradiology,
Penn State University,
Hershey Medical Center,
Hershey, Pennsylvania

1991-1992 Annual winner of Program Director's award for Best Performance in Monthly Examinations for Academic Year,
Penn State University, Hershey Medical Center,
Hershey, Pennsylvania

1985 Alpha-Omega-Alpha Honor Medical Society

1982-1983 Human Morphology Probe Award for Best Annual Performance in Gross Anatomy, Histology, and Neuroanatomy,
American University of Beirut,
Beirut, Lebanon

STATUS

Permanent U.S. Resident

LANGUAGES

English, French, Arabic (speaking/reading/writing)

PUBLICATIONS

1. "Tc-99m MIBI SPECT in the Assessment of Myocardial Reperfusion After Percutaneous Transluminal Coronary Angioplasty". Clinical Nuclear Medicine 16(11):819-25, November 1991

2. "Plasma Levels of a Squamous Cell Carcinoma-Associated Antigen in Athymic Nude Mice Bearing Human Squamous Cell Carcinoma Xenografts of Oral Origin". Cancer 62(11):2291-6, December 1988



West
Michigan
Obstetricians &
Gynecologists P.C.

November 30, 2001

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.
Susan L. VandenBosch, M.D.
Jeffrey J. Dood, M.D.
Susan K. Hicks, D.O.
Melinda E. Johnson, M.D.
Cathe Reigle, R.N.C.
Nurse Practitioner

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

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.

EXHIBIT
B

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^{6} weeks" "2 "elevated BP" "3 R/O pre-eclampsia". Her "Plan:" included "1 Labs ordered", "2 "will start labetolol 100mgs BID", "3 24^{0} 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

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 fell 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, "24^0 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

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 audibley 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 intervillositis".

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 2nd 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.

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 pre-eclampia 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 ausculatated 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 Welsh 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

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.

CURRICULUM VITAE
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ADDRESSES

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PERSONAL DATA

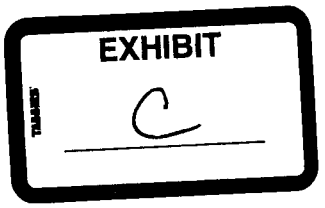
Date of Birth:	April 11, 1960
Place of Birth:	Zeeland, Michigan
Marital Status:	Married, Leann
Children:	Rebecca Jelsema
	Sarah Jelsema
	Timothy Jelsema

EDUCATION

1978 - 1982	Calvin College Grand Rapids, Michigan Bachelor of Science
1982 - 1986	Wayne State University School of Medicine Detroit, Michigan Medical Doctor

TRAINING

1986 - 1990	Resident, Obstetrics and Gynecology Butterworth Hospital Grand Rapids, Michigan
1990 - 1992	Fellow, Division of Maternal-Fetal Medicine Department of Obstetrics and Gynecology Hutzel Hospital/Wayne State University School of Medicine Detroit, Michigan
1991	Fellow, Division of Critical Care Anesthesia Department of Anesthesia Sinai Hospital/Wayne State University School of Medicine Detroit, Michigan



EMPLOYMENT

1992-1997	Butterworth Hospital
1997-current	West Michigan Obstetricians and Gynecologists, P.C.

POSITION

1989 - 1990	Butterworth Hospital Chief Resident, Obstetrics and Gynecology Grand Rapids, Michigan
1992 - 1997	Associate Director, Division of Maternal-Fetal Medicine Department of Obstetrics and Gynecology Butterworth Hospital Grand Rapids, Michigan
1994 - 1998	Director, Medical Student Clerkship, Butterworth Hospital Michigan State University College of Human Medicine

FACULTY APPOINTMENTS

1987 - 1990	Michigan State University, College of Human Medicine Resident Clinical Instructor Lansing, Michigan
1990 - 1992	Wayne State University/Hutzel Hospital Clinical Instructor, Obstetrics and Gynecology Detroit, Michigan
1992 - 1999	Michigan State University College of Human Medicine Assistant Professor, Obstetrics and Gynecology East Lansing, Michigan
1999 - present	Michigan State University College of Human Medicine Associate Professor, Obstetrics and Gynecology East Lansing, Michigan

CURRENT MEDICAL STAFF APPOINTMENTS

Spectrum Health, Grand Rapids; Active	1999-present
Gerber Hospital, Fremont; Courtesy	1997 - 1999
Munson Medical Center, Traverse City; Consultative	1996 - present
St. Mary's Hospital, Grand Rapids; Assoicate	1992 - 2004
United Memorial Hospital, Greenville; Courtesy	1997 – 2000
Mercy Hospital, Cadillac; Consultative	2000-present
Hackley Hospital, Muskegon; Consultative	2001-present

COMMITTEE APPOINTMENTS

Butterworth Hospital - Residency Council	1987 - 1990
Butterworth Hospital - Human Research Committee	1992 - 1993
Butterworth Hospital – Pharmacy and Therapeutics Committee	1993 – 1998
Spectrum Hospital – Pharmacy and Therapeutics Committee	1999 - 2000
Michigan State Medical Society Committee on Maternal/Perinatal Health, Subcommittee on Maternal Mortality	1993 - present
Butterworth Hospital - Board of Trustees Quality Assurance Committee	1992-1998
American College of Obstetrics & Gynecology, Committee On Adolescent Health Care, Adolescent Pregnancy Prevention Network	1997 - present
American College of Surgeons Michigan District #3 Committee on Applicants	2000 – 2002

MAJOR PROFESSIONAL SOCIETIES

American Medical Association, 1985
Michigan State Medical Society, 1985
Christian Medical Society, 1986
Alpha Omega Alpha - National Honor Medical Society, 1988
American College of Obstetrics and Gynecology, Fellow, 1996
American College of Surgeons, Associate Fellow, 1990; Fellow, 1996
Association of Professors in Gynecology and Obstetrics, 1990
Society of Perinatal Obstetricians, Associate Member, 1990; Member, 1997
Kent County Medical Society, 1992
International Society of Perinatal Obstetricians, 1995

LICENSURE AND CERTIFICATION

State of Michigan Medical License	#407131
Advanced Cardiac Life Support Provider	Recertified 3/26/91
Advanced Trauma Life Support Provider	Certified 6/29/91
Advanced Trauma Life Support Instructor	Recertified 4/1/96

BOARD CERTIFICATION

Diplomate, National Board of Medical Examiners, 1987 #322790
Diplomate, American Board of Obstetrics and Gynecology, Inc.,1994, #31354
Annual Board Certification Examination December, 2002; November 2003.
Diplomate, American Board of Obstetrics and Gynecology, Inc.,
Division of Maternal-Fetal Medicine, 1997, #31354M
Recertified Maternal-Fetal Medicine December, 2002; November 2003.

HONORS AND AWARDS

1988

American College of Obstetricians and Gynecologists
District V Junior Fellow Presentation
Second Place
Butterworth Annual Blocksma Research Award

1989

Alpha Omega Alpha - National Honor Medical Society
Berlex Foundation Resident Education Award

1990

Outstanding Resident in Gynecologic Endoscopy
American Association of Gynecologic Laparoscopists

1992

Outstanding Junior Faculty Award, 1991 - 1992
Department of Obstetrics and Gynecology
Wayne State University School of Medicine

1993

Leo J. Kenney Award
Teacher of the Year
Department of Obstetrics and Gynecology
Butterworth Hospital

1994

Leo J. Kenney Award
Teacher of the Year
Department of Obstetrics and Gynecology
Butterworth Hospital

Council on Resident Education in Obstetrics and Gynecology
National Faculty Award For Excellence in Resident Education

1995

The Best Doctors in America: Midwest Region (1996 - 1997)
Woodward/White, Aiken, South Carolina

Who's Who in Medicine and Healthcare, 1st Edition (1996 - 1997)
Marquis Who's Who in America

1996

Fellow, American College of Obstetricians and Gynecologists
March 1996
Fellow, American College of Surgeons

1997

Kenneth J. VanderKolk Award for Outstanding Contributions to the OB/GYN Residency Training Experience
Butterworth Hospital

1998

The Best Doctors in America (1998-1999)
Woodward/White, Aiken, South Carolina

2002

The Best Doctors in America (2001-2002)
Woodward/White, Aiken, South Carolina

2003 The Best Doctors in America (2003-2004)
Woodward/White, Aiken, South Carolina

EDITORIAL CONSULTANT

Obstetrics and Gynecology
1994 to present

Journal of Maternal-Fetal Medicine
1995 to present

OBG Management
1997 to present

Southern Medical Journal
1997

GRANT SUPPORT

Upjohn Protocol M/1350/0004/0005 IV Trospectomycin Sulfate for Gynecologic/Pelvic Infections, March 1991 - March 1992.

Siemens Ultrasound Guided Central Venous Access, June 1993 – 1994.

PUBLICATIONS: PEER REVIEW

1. Jelsema RD, Bhatia RK, Ganguly S. Use of intravenous amrinone in the short term management of refractory heart failure in pregnancy: A case report. *Obstetrics and Gynecology* 1991:78;935-936.

2. Jelsema RD, Bhatia RK, Zador IE, Bottoms SR, and Sokol RJ, Is placenta previa a determinant of pre-eclampsia? *Journal of Perinatal Medicine* 1992:19;485-488.

3. Jelsema RD, Zuidema LJ. First trimester diagnosed cervico-isthmic pregnancy resulting in term delivery. *Obstetrics and Gynecology* 1992:80;517-519.

4. Jelsema RD, Isada NB, Kazzi NJ, Sargent K, Harrison MR, Johnson MP, and Evans MI. Prenatal diagnosis of Brachmann-deLange Syndrome: Congenital diaphragmatic hernia not amenable to prenatal or neonatal repair. *Journal of Human Genetics* 1993:47;1022-1023.

5. Jelsema RD, Wittingen JA, VanderKolk, KJ. Continuous nonlocking single layer repair of the low transverse uterine incision. *The Journal of Reproductive Medicine* 1992:38;393-396.

6. Jelsema RD, Deppe, G, Isada, NB. Vaginal probe ultrasound guidance for internal jugular catheterization. *Journal of Gynecologic Surgery* 1992:8;243-245.

7. Jelsema RD, Treadwell MC, Goyert GL, Bhatia RK. The successful management of a pregnancy complicated by Noonan's syndrome and pulmonary hypertension. *Infertility* 1994:16.

8. Jelsema RD, Dombrowski, MP, Bottoms, SF. Glycosylated hemoglobin in pregnancy: affinity versus ion exchange chromatography. *The Journal of Maternal-Fetal Medicine* 1995:4;105-107.

9. Zettell LA, Jelsema RD, Isada NB. First trimester septic abortion due to Salmonella enteritidis oranienburg. *Infectious Disease in Obstetrics and Gynecology* 1995:2;239-241

10. Denonme GA, Jelsema RD, Waye JS, Burrows RF, Hayward CPM, Warkentin TE. Horsewood P, Smith JW, Zuidema LJ, Kelton JG. The prenatal identification of fetal compatibility in neonatal alloimmune thrombocytopenia using amniotic fluid and variable number of tandem repeat (VNTR) analysis. *The British Journal of Hematology* 1995:91;742-746.

11. Argo KM, Toriello HV, Jelsema RD, Zuidema LJ. Prenatal Findings in Chondrodysplasia Punctata, Tibia-Metacarpal Type. *Journal of Ultrasound in Obstetrics and Gynecology* 1996:8;350-354.

12. Lalley J, Jelsema R, Huzel P, Ransom S, Sokol R. The cost effectiveness of misoprostol versus prostaglandin E2 for second trimester termination of pregnancy. *Clinical Journal of Women's Health* 1(3): 149-156, 2001.

PUBLICATIONS: ABSTRACTS

1. Jelsema RD, Bhatia RK, Zador IE, Bottoms SF, Sokol RJ. Is placenta previa a determinant of pregnancy induced hypertension? Oral presentation at the Sixth International Symposium of the Fetus As A Patient, Detroit, Michigan, October 25-27, 1990. *Journal of Perinatal Medicine* (suppl. 1) 1990:18;52.

2. Jelsema RD, Isada NB, Harrison MR, Johnson MP, Kazzi NJ, and Evans MI. Prenatal diagnosis of Fryns syndrome: Congenital diaphragmatic hernia not amenable to prenatal repair. Poster presentation at the International Congress Human Genetics, Washington D.C., October 7 - 11, 1991. *American Journal of Human Genetics* (suppl) 1991:49;4.

3. Eustice MC, Mammen EF, Jacober SJ, Jelsema RD. Hyperaggregable platelets in whole blood of patients with diabetes mellitus. Poster presentation at the XIIIth International Congress of Thrombosis and Haemostasis, Amsterdam, Holland, July 2 - 5, 1991. XIIIth *International Congress of Thrombosis and Haemostasis, Proceedings*, 1991.

4. Renfroe YR, Jelsema RD, Bhatia RK, Bottoms SF, Zador IE, Sokol RJ. Placenta previa not associated with prior low segment cesarean. 11th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1991:164;392, A531.

5. Jelsema RD, Isada NB. Blood cultures in the initial evaluation of postpartum endometritis are not cost effective. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992:166;391, A422.

6. Jelsema RD, Dombrowski MP, Bottoms SF. Affinity chromatography: Excellent correlation with HgbA1C. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992: 166;391, 305 A91.

7. Jelsema RD, Eustice MC, Bottoms SF, Mammen EF. Platelet aggregability in pregnant diabetics is correlated with glycemic control but not duration of disease. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992:166.391, 305 A90.

8. Jelsema RD, Huzel P, Lalley J, Sokol R. The cost effectiveness based on total charge of misoprostol versus prostaglandin E2 for second trimester pregnancy termination. Poster presentation at the 18th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1998: 178; S77 A242.

9. Bacon-Baguley T, Lusis E, Warzynski M, Jelsema RD. Changes in platelet membrane proteins during normal pregnancy. Oral presentation at the American College of Obstetrics and Gynecology Annual Meeting. *Obstetrics and Gynecology* (supp) 2001:97:3S.

BOOKS AND CHAPTERS

1. Jelsema RD, Cotton DB. Cardiac Disease in Pregnancy; In *High Risk Pregnancy: Management Options.* Eds: James D, Stear P, Weiner C, Gonik B, W.B. Saunders: London, U.K. WB Saunders Co. LTD 1994.

2. Jelsema RD. Maternal Cardiovascular Disorders. In *Maternal Genetic Disease*, Eds: Isada NB, Drugan A., Johnson MP, Evans MI, Appleton & Lange, Stamford, Connecticut, 1995.

3. Jelsema RD, contributing author. Abnormal Obstetrics. In *Objectives for a Clinical Experience in Obstetrics and Gynecology*, 5th Ed. The Department of Obstetrics, Gynecology and Reproductive Biology, Michigan State University, 2002.

INVITED PRESENTATIONS

1. "Postpartum myocardial infarction associated with HELLP syndrome."
   a. Michigan State University, OB/GYN Research Day, March 29, 1988.
   b. The Grand Rapids Medical Education Council Research Day, May 10, 1988.

2. "Continuous non-locking single layer uterine suture at cesarean section."
   a. ACOG District V Annual Meeting, Junior Fellow Scientific Paper, October 13, 1998.
   b. Eleventh Annual British Virgin Island Conference, February 3, 1989.
   c. Michigan State Medical Society Conference on Maternal and Perinatal Health, Poster Presentation, March 22, 1989.
   d. Grand Rapids Education Council Research Day, May 9, 1989.
   e. ACOG Annual Meeting, Audio Visual Presentation, May 23, 1989.

3. "Is placenta previa a determinant of pregnancy induced hypertension?"
   a. Sixth International Symposium of the Fetus As A Patient, Detroit, Michigan, October 25, 1990.
   b. Resident and Fellow Day, Wayne State University School of Medicine, Department of Obstetrics and Gynecology, Detroit, Michigan, May 21, 1991.

4. "Acute abdominal pain in pregnancy: Non-obstetrical causes." Grand Rounds, Department of Emergency Medicine, Mt. Carmel Mercy Hospital, Detroit, Michigan, January 22, 1991.

5. "ABG's: Interpretation and Intervention." Department of Critical Care Nursing, Grand Rounds: Sinai Hospital, Detroit, Michigan November 21, 1991.

6. "Resident Training in Central Venous Catheter Placement: Use of Vaginal Ultrasound Probe to Improve Near-Field Visualization." CREOG and APGO Annual Meeting, Orlando, Florida. March 5, 6, 1992.

7. "Thyroid Disease in Pregnancy and its Potential Problems and Complications." Consortium for Osteopathic Graduate Medical Education and Training, East Lansing, Michigan, October 15, 1992.

8. "Premature Birth: Grams or Kilos?" Michigan Section of the American Obstetrics and Gynecology Annual Snow Meeting, Petoskey, Michigan, January 24, 1993.

9. "Chorionic Villus Sampling: What are the Risks?" Clinical Advances in Obstetrics and Gynecology: Challenges for the 90's. Michigan State University College of Human Medicine, Lansing, Michigan, February 25, 1993.

10 "Trauma in Pregnancy." 32nd Annual MSMS Conference on Maternal and Perinatal Health, Lansing, Michigan, March 25, 1993.

11. "The Critically Ill Gravida." MSMS Committee on Maternal and Perinatal Health, Crystal Mountain Resort, Thompsonville, Michigan, May 28, 1993.

12. "Cervical Ripening Advances in Preinduction of Labor." Fort Wayne Obstetrics and Gynecology Society, Fort Wayne, Indiana, November 17, 1993.

13. "Trauma in Pregnancy." Primary Care Update, Muskegon General Hospital, Muskegon, Michigan, February 23, 1994.

14. "Prostaglandins - The New Wonder Drugs." Southwest Michigan Perinatal Association Annual Meeting, Kalamazoo, Michigan, May 17, 1995.

15. "Maternal Thrombocytopenia." Michigan State Medical Society Committee on Maternal and Perinatal Health. Maternal, Perinatal, and Child Health Retreat, St. Clair, Michigan, May 25, 1995.

16. "What's New in Preeclampsia" and "What's New in Preterm Labor." Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN) and Munson Medical Center' 19th Annual Perinatal Conference: Innovations in Perinatal and Women's Health, Traverse City, Michigan, October 13, 1995.

17. "Prenatal Findings in Chondroplasia Punctata, Tibia-metacarpal Type." Poster presentation, the XI International Congress, "The Fetus as Patient", New York, New York, November 12, 1995.

18. "Fetal Renal Biopsy at 18 Weeks for Diagnosis of Infantile Polycystic Kidney Disease." Poster presentation, The XI International congress, "The Fetus as Patient", New York, New York, November 12, 1995.

19. "ATLS in the Obstetrics-Gynecology Residency." Poster presentation, CREOG & APGO 1996 Annual Meeting, Albuquerque, New Mexico, March 7, 1996.

20. "Trauma in Pregnancy: What Does ATLS Have to do With it Anyway?" Michigan State Medical Society: 35th Annual conference on Maternal and Fetal Health, Troy, Michigan, March 28, 1996.

21. "Trauma in Pregnancy: 2 Are More Than 1." Michigan Trauma Symposium Annual Meeting: Modern Diseases and Old Questions. Grand Rapids, Michigan, April 9, 1996.

22. "Teen and Adolescent Pregnancy." Western Michigan Osteopathic Association Spring Seminar, Muskegon, Michigan, April 17, 1996.

23. "Group B Strep - What Next?" Fort Wayne OB/GYN Society Meting, Fort Wayne, Indiana, May 8, 1996.

24. "Teen and Adolescent Pregnancy: Confronting the Issues." Fort Wayne OB/GYN Society Meeting, Fort Wayne, Indiana, May 9, 1996.

25. "Cervical Incompetence." All Michigan OB/GYN Review Course, Wayne State University, Detroit, Michigan, May 20, 1996.

26. "Birth Control - Depo-Provera; Sex and Society in the 90's", Indiana University/Purdue University, Fort Wayne, Indiana, September 7, 1996.

27. "What's New in Prenatal Diagnosis and Treatment?" Grand Rounds, Munson Medical Center, Traverse City, Michigan, November 22, 1996.

28. "Diabetes and Pregnancy: Preconception Counseling and Gestational Diabetes." "Diabetes Complications: The Role of the Primary Care Provider in Prevention and Management." American Diabetes Association; Grand Rapids, Michigan, December 5, 1996.

29. "Cervical Incompetence." All Michigan OB/GYN Review Course, Wayne State University, Ypsilanti, Michigan, May 19, 1997.

30. "Trauma in Pregnancy: What does ATLS Have to do With it Anyway?" Grand Rounds, Providence Hospital, Southfield, Michigan, September 24, 1997.

31. "Taking the Offensive: Winning the Obstetrics Malpractice Case." Resource Developments, Inc., Obstetrics & Gynecology Malpractice Seminar, San Antonio, Texas, October 9, 1997.

32. "Taking the Offensive: Winning the Obstetrics Malpractice Case." Resource Developments, Inc., Obstetrics & Gynecology Malpractice Seminar, San Diego, California, April 23, 1998.

33. "Cervical Incompetence." All Michigan OB/GYN Review Course, Troy, Michigan, May 18, 1998.

34. "Birth Trauma, High Risk Pregnancy & Fetal Monitor Strips." Resource Developments, Inc., Hospital Medical Negligence Seminar, Las Vegas, Nevada, October 23, 1998.

35. "CVS." Grand Rounds. Sparrow Hospital, Lansing, Michigan. November 17, 1998.

36. "Misoprostol Use in Pregnancy." 21st Annual British Virgin Islands Medical Conference. Butterworth Hospital Alumni Symposium. Tortola, British Virgin Islands. February 5, 1999.

37. "Cervical Incompetence" 9th Annual All Michigan OB/GYN Review Course, Southfield, Michigan, May 11, 1999.

38. "Diabetes in Pregnancy: What is the Big Deal?" 79th Annual Coller Penberthy Thirlby Medical Conference. Traverse City, Michigan, July 24, 1999.

39. "What Not to Say at Your Deposition" with Erin Gerrity of Smith, Haughey, Rice & Roegge. Grand Rounds, Munson Medical Center, Traverse City, Michigan, December 18, 1999.

40. "Antiobotics for Premature Labor: There Ain't No Free Lunch." Michigan Section of the American College of Obstetrics and Gynecology Annual Snow Meeting, Petoskey, Michigan, February 10, 2000.

41. "Clotting Disorders in Pregnancy: Who is Dr. Leiden Anyway?" 80th Annual Coller Penberthy Lecture Series, Traverse City, Michigan, June 17, 2000.

42. "Medical and Legal Aspects of Certified Nurse Midwifery in a Community Hospital", Porter Memorial Health System, Valparaiso, Indiana, January 18, 2001.

43. "Hot Topics in Obstetrics", War Memorial Hospital, Sault St. Marie, Michigan, February 15, 2001.

44. "Diabetes in Pregnancy: Perspective and State of Art from an Obstetrician's viewpoint", Michigan Diabetes Policy Advisory Council, Michigan Department of Community Health, Lansing, Michigan, February 28, 2000.

45. "Malpractice: Nine Things to Keep You Out of Court" and "Pre-Term Labor & Infections", Pediatric/Perinatal Update, Marquette, Michigan, September 5, 2002.

46. "Is It Time to Switch 1st Trimester Screening?", Spectrum Health Prenatal Genetics Conference, "The Future is Now", September 25, 2002

PUBLISHED LETTERS

1. Jelsema RD, Bhatia RK. Reduced frequency of hypertensive disorders in placenta previa. *Obstetrics and Gynecology* 1991:78;159-160

2. Jelsema RD. Comparing open laparoscopy with other techniques. Contemporary *Obstetrics and Gynecology* 1991:36;113-114.

3. Jelsema RD. Milrinone use in the pregnant ewe. *American Journal of Obstetrics and Gynecology* 1992:167;1157.

Family Name	First Name	Middle Initial	Age-Years	Room No.	Medical Record No.
HERZING,	MICHELE	L	27Y	MAT-0305-01	000410405

Requested By	Requested For	Hosp. No.
Dr. KRUSZEWSKI, MARY	Dr.	D9601700003

Date of Request	Date To Be Done	Time Done	X-ray No.
01/17/96		0733	115307

EXAM Requested:

UI-PELVIC OB BPP

REPORT:	Chk-in #	Order	Exam	
	115307	0004	42635	UI-PELVIC OB BPP

Ord Diag: 642.40-*MILD/NOS PREECLAMP-UNS

PELVIC OB ULTRASOUND:

There is a single intrauterine fetus in a cephalic presentation and longitudinal lie.

Fetal movement is seen with cardiac activity at a heart rate of 148 beats per minute. The umbilical artery SD ratio is normal at 2.48.

The fetal kidneys, bladder, spine, stomach and three-vessel cord are visualized.

There is a normal amount of amniotic fluid and the placenta is along the posterior wall in the upper uterine segment without placenta previa.

The biophysical printout is 8/8.

Biparietal diameter fetal head measurements correlate with a 31-week plus 4-day gestation. Head circumference measurements correlate with a 32-week plus 2-day gestation. Abdominal circumference measurements correlate with a 31-week plus 6-day gestation. Femoral length measurements correlate with a 32-week plus 4-day gestation. The average gestational age is 32 weeks and expected fetal weight at this stage of gestation is 1825 grams.

IMPRESSION: SINGLE INTRAUTERINE FETUS IN A CEPHALIC PRESENTATION AT 32 WEEKS OF GESTATION.

/Read By/ ROBERT J BORON
/Released By/ ROBERT J BORON

01/17/96 1341
BAC

EXHIBIT
D

RADIOLOGIST

Complete

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Ave, DuBois, PA 15801

HERZING,MICHELE L MAB Unit # 000410405
406 KUNTZ STREET
DUBOIS PA 15801 Age 32Y Acct # D0024500599

Date:09/06/00 Time:1006

KRUSZEWSKI,MARY
90 BEAVER DRIVE
DUBOIS PA 15801

Chk-in #	Order	Exam	
420532	0001	42618	UI-PELVIC OB COMPLETE

Ord Diag: V28.9-ANTENATAL SCREENING NOS

PELVIC OB ULTRASOUND - TWO FILMS:

History: Antenatal screening.

There is a single intrauterine fetus in a cephalic presentation and longitudinal lie. Fetal movement is seen with cardiac activity at a heart rate of 146 beats per minute.

The fetal spine, stomach, and three-vessel cord are visualized.

There is a normal amount of amniotic fluid, and the placenta is along the posterior wall in the upper uterine segment.

Biparietal diameter fetal head measurements correlate with a 22-week plus 4-day gestation. Head circumference measurements correlate with a 23-week plus 2-day gestation. Abdominal circumference measurements correlate with a 26-week plus 3-day gestation. Femoral length measurements correlate with a 25-week plus 1-day gestation. The average gestational age is 24 weeks plus 3 days. The expected fetal weight at this stage of gestation is 805 grams or 1 pounds 12 ounces.

IMPRESSION: SINGLE INTRAUTERINE FETUS IN CEPHALIC PRESENTATION AT 24 WEEKS PLUS 3 DAYS GESTATION.

NIA CODE: N

/READ BY/ ROBERT J BORON
/Released By/ ROBERT J BORON

09/06/00 1452
LLW

Complete

EXHIBIT
F

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing MOTION IN LIMINE (PLAINTIFFS' PROPOSED EXPERT REPORTS AND TESTIMONY) on all counsel of record and/or parties of interest by depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 22nd day of July, 2005, and addressed as follows:

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Philip A. Ignelzi, Esquire
Ogg, Cordes, Murphy & Igneizi, L.L.P.
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David R. Johnson, Esquire
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412-232-3400
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(Attorney for DuBois Regional Medical Center and Patrick Shilala)

JUBELIRER, CAROTHERS, KRIER AND HALPERN

BY: /s/ Alan R Krier
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 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 DIVISION

No. 02-169-CD

REQUEST FOR ARGUMENT/HEARING

AND NOW this 2nd day of August, 2005, argument with regard to Defendant Russell E. Cameron's motion in limine is scheduled for the 11th day of August, 2005, at 11:00 o'clock A.M./~~P.M.~~, in Courtroom 1 in the Clearfield County Courthouse.

BY THE COURT:

Fredric J. Ammerman J.

FILED

AUG 03 2005
01 10:45 (L)
William A. Shaw
Prothonotary/Clerk of Courts
1 CERT TO ATTY
W/memo

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.

CIVIL DIVISION

No. 02-169-CD

Issue No.

DEFENDANT CAMERON'S MOTION IN LIMINE WITH RESPECT TO PLAINTIFFS' PROPOSED EXPERT REPORTS AND TESTIMONY

Code: 007

Filed on behalf of Russell E. Cameron, one of the defendants.

COUNSEL FOR PLAINTIFFS:
Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI
John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:
Alan Krier, Esquire

Counsel of Record for These Parties:

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

THOMSON, RHODES & COWIE, P.C.
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FILED NO CC
m/11:35 BK
AUG 02 2005
William A. Shaw
Prothonotary/Clerk of Courts

DEFENDANT CAMERON'S MOTION IN LIMINE WITH RESPECT TO PLAINTIFFS' PROPOSED EXPERT REPORTS AND TESTIMONY

NOW COMES Russell E. Cameron, one of the defendants, by his attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion in limine:

1. This case involves a medical malpractice action arising out of the stillbirth of Janell Herzing. Dr. Cameron's only involvement with regard to the treatment and care of Michelle Herzing's was that he saw the patient in the emergency room at DuBois Regional Medical Center on November 30, 2000. After examining the patient, he spoke with Dr. Kruszewski, a co-defendant, who was Ms. Herzing's obstetrician/gynecologist. Dr. Kruszewski determined that the patient could be discharged from the hospital and should see Dr. Kruszewski the next day.

2. Dr. Cameron is board certified in emergency medicine. The care and treatment that he rendered was consistent with that specialization.

3. Plaintiffs have provided expert reports from the following individuals:

(a) Russell D. Jelsema, M.D. (an obstetrician/gynecologist);

(b) Marilyn Stringer, Ph.D., CRNP, RDMS (a nursing expert);

(c) Stephen Klepper (an economist); and,

(d) Theonia K. Boyd, M.D. (a pathologist).

4. Out of all the plaintiffs' experts, only Dr. Jelsema refers in any manner whatsoever to the emergency room visit. He does so in the context of a report dated November 30, 2001, attached hereto as Exhibit "A", which was prepared after having only reviewed the medical records and Dr. Kruszewski's office records. Notably, he does not even correctly identify Dr. Cameron as being the emergency room physician; rather, he has stated that Dr.

Shilala was the emergency room physician. In Dr. Jelsema's report, he alleges that *Dr. Shilala* deviated from the standard of care because he *failed to communicate with Dr. Kruszewski.* He then speculates about what Dr. Kruszewski would have done had information been provided to her by *Dr. Shilala.*

5. Dr. Jelsema then prepared a supplemental report dated October 13, 2004, attached hereto as Exhibit "B", after the depositions had been completed. In this report, he continues to refer to the emergency room physician as Dr. Shilala, but he offers no negative opinion about the emergency room care. Having reviewed the depositions, it became clear to Dr. Jelsema that there had been communications with Dr. Kruszewski. As a result, he opines at page 2 of his report as follows:

> "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. ..."

6. In view of the supplemental report by Dr. Jelsema, plaintiffs are left with no opinion which can in any manner be deemed critical of Dr. Cameron.

7. Moreover, even if one were to ignore the second report of Dr. Jelsema and presume that his references to Dr. Shilala in the first report were meant to refer to Dr. Cameron, there still would not be a basis for presentation of expert testimony against Dr. Cameron. The reason is that Dr. Jelsema is board certified in obstetrics and gynecology, but not in emergency medicine. A copy of Dr. Jelsema's Curriculum Vitae is attached hereto as Exhibit "C".

8. The Medical Care Availability and Reduction of Error Act (hereinafter "MCARE") contains specific requirements for expert testimony in medical malpractice cases.

9. Section 1303.512 of the MCARE Act requires that an expert testifying as to a physician's standard of care must meet the following criteria:

(1) The expert must be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care;

(2) Practice in the same subspecialty of the said defendant or in a subspecialty which has a substantially similar standard of care for the specific care at issue; or,

(3) In the event the defendant physician is certified by an approved board, the expert must be board certified by the same or similar approved board.

40 P.S. §1303.512(c).

10. Since Dr. Jelsema is not a board certified emergency room physician, he may not offer opinions against Dr. Cameron.

11. No reasonable basis has been established suggesting that Dr. Jelsema is "substantially familiar with the applicable standards of care" pertaining to emergency room physicians under the circumstances present in this case.

12. Nor is there any evidence of record to suggest that Dr. Jelsema practices in the area of emergency medicine.

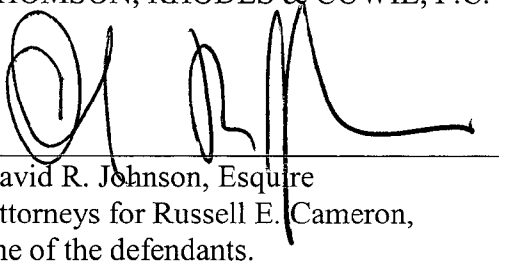
13. For all of the above reasons, Dr. Jelsema is not competent to provide expert medical opinions relative to the standard of care required of Dr. Cameron, a board certified emergency room physician.

WHEREFORE, Russell Cameron, M.D., respectfully requests that this Honorable Court grant a motion in limine to preclude Dr. Jelsema from offering any opinions to the effect that Dr. Cameron deviated from the applicable standard of care. Further, it is requested that the Court

enter a motion in limine precluding any argument by the plaintiffs that Dr. Cameron is or may be liable to the plaintiffs, since there is no expert testimony available to support any such claim.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Russell E. Cameron,
one of the defendants.



West
Michigan
Obstetricians &
Gynecologists P.C.

November 30, 2001

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.
Susan L. VandenBosch, M.D.
Jeffrey J. Dood, M.D.
Susan K. Hicks, D.O.
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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:

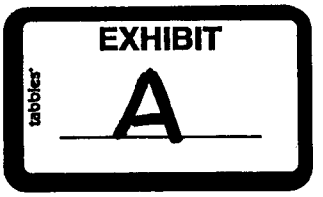
I have had the opportunity to review the following medical records regarding Michelle Herzing:

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 35^6 weeks" "2 "elevated BP" "3 R/O pre-eclampsia". Her "Plan:" included "1 Labs ordered", "2 "will start labetolol 100mgs BID", "3 24^0 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

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 fell 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, "24^0 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

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 audibley 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 intervillositis".

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 2nd 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.

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;

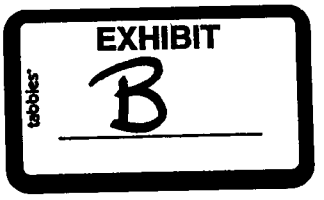
2) Nursing Competencies;

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 pre-eclampia 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 ausculatated 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 Welsh 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

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.

CURRICULUM VITAE
RUSSEL DALE JELSEMA, M.D.

ADDRESSES

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PERSONAL DATA

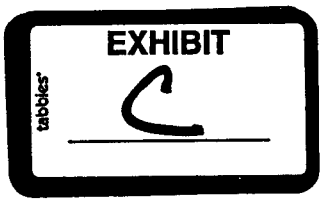
Date of Birth:	April 11, 1960
Place of Birth:	Zeeland, Michigan
Marital Status:	Married, Leann
Children:	Rebecca Jelsema
	Sarah Jelsema
	Timothy Jelsema

EDUCATION

1978 - 1982	Calvin College Grand Rapids, Michigan Bachelor of Science
1982 - 1986	Wayne State University School of Medicine Detroit, Michigan Medical Doctor

TRAINING

1986 - 1990	Resident, Obstetrics and Gynecology Butterworth Hospital Grand Rapids, Michigan
1990 - 1992	Fellow, Division of Maternal-Fetal Medicine Department of Obstetrics and Gynecology Hutzel Hospital/Wayne State University School of Medicine Detroit, Michigan
1991	Fellow, Division of Critical Care Anesthesia Department of Anesthesia Sinai Hospital/Wayne State University School of Medicine Detroit, Michigan



EMPLOYMENT

1992-1997	Butterworth Hospital
1997-current	West Michigan Obstetricians and Gynecologists, P.C.

POSITION

1989 - 1990	Butterworth Hospital Chief Resident, Obstetrics and Gynecology Grand Rapids, Michigan
1992 - 1997	Associate Director, Division of Maternal-Fetal Medicine Department of Obstetrics and Gynecology Butterworth Hospital Grand Rapids, Michigan
1994 - 1998	Director, Medical Student Clerkship, Butterworth Hospital Michigan State University College of Human Medicine

FACULTY APPOINTMENTS

1987 - 1990	Michigan State University, College of Human Medicine Resident Clinical Instructor Lansing, Michigan
1990 - 1992	Wayne State University/Hutzel Hospital Clinical Instructor, Obstetrics and Gynecology Detroit, Michigan
1992 - 1999	Michigan State University College of Human Medicine Assistant Professor, Obstetrics and Gynecology East Lansing, Michigan
1999 - present	Michigan State University College of Human Medicine Associate Professor, Obstetrics and Gynecology East Lansing, Michigan

CURRENT MEDICAL STAFF APPOINTMENTS

Spectrum Health, Grand Rapids; Active	1999-present
Gerber Hospital, Fremont; Courtesy	1997 - 1999
Munson Medical Center, Traverse City; Consultative	1996 - present
St. Mary's Hospital, Grand Rapids; Assoicate	1992 - 2004
United Memorial Hospital, Greenville; Courtesy	1997 – 2000
Mercy Hospital, Cadillac; Consultative	2000-present
Hackley Hospital, Muskegon; Consultative	2001-present

COMMITTEE APPOINTMENTS

Butterworth Hospital - Residency Council	1987 - 1990
Butterworth Hospital - Human Research Committee	1992 - 1993
Butterworth Hospital – Pharmacy and Therapeutics Committee	1993 – 1998
Spectrum Hospital – Pharmacy and Therapeutics Committee	1999 - 2000
Michigan State Medical Society Committee on Maternal/Perinatal Health, Subcommittee on Maternal Mortality	1993 - present
Butterworth Hospital - Board of Trustees Quality Assurance Committee	1992-1998
American College of Obstetrics & Gynecology, Committee On Adolescent Health Care, Adolescent Pregnancy Prevention Network	1997 - present
American College of Surgeons Michigan District #3 Committee on Applicants	2000 – 2002

MAJOR PROFESSIONAL SOCIETIES

American Medical Association, 1985
Michigan State Medical Society, 1985
Christian Medical Society, 1986
Alpha Omega Alpha - National Honor Medical Society, 1988
American College of Obstetrics and Gynecology, Fellow, 1996
American College of Surgeons, Associate Fellow, 1990; Fellow, 1996
Association of Professors in Gynecology and Obstetrics, 1990
Society of Perinatal Obstetricians, Associate Member, 1990; Member, 1997
Kent County Medical Society, 1992
International Society of Perinatal Obstetricians, 1995

LICENSURE AND CERTIFICATION

State of Michigan Medical License	#407131
Advanced Cardiac Life Support Provider	Recertified 3/26/91
Advanced Trauma Life Support Provider	Certified 6/29/91
Advanced Trauma Life Support Instructor	Recertified 4/1/96

BOARD CERTIFICATION

Diplomate, National Board of Medical Examiners, 1987 #322790
Diplomate, American Board of Obstetrics and Gynecology, Inc.,1994, #31354
Annual Board Certification Examination December, 2002; November 2003.
Diplomate, American Board of Obstetrics and Gynecology, Inc.,
Division of Maternal-Fetal Medicine, 1997, #31354M
Recertified Maternal-Fetal Medicine December, 2002; November 2003.

HONORS AND AWARDS

1988

American College of Obstetricians and Gynecologists
District V Junior Fellow Presentation
Second Place
Butterworth Annual Blocksma Research Award

1989

Alpha Omega Alpha - National Honor Medical Society
Berlex Foundation Resident Education Award

1990

Outstanding Resident in Gynecologic Endoscopy
American Association of Gynecologic Laparoscopists

1992

Outstanding Junior Faculty Award, 1991 - 1992
Department of Obstetrics and Gynecology
Wayne State University School of Medicine

1993

Leo J. Kenney Award
Teacher of the Year
Department of Obstetrics and Gynecology
Butterworth Hospital

1994

Leo J. Kenney Award
Teacher of the Year
Department of Obstetrics and Gynecology
Butterworth Hospital

Council on Resident Education in Obstetrics and Gynecology
National Faculty Award For Excellence in Resident Education

1995

The Best Doctors in America: Midwest Region (1996 - 1997)
Woodward/White. Aiken, South Carolina

Who's Who in Medicine and Healthcare, 1st Edition (1996 - 1997)
Marquis Who's Who in America

1996

Fellow, American College of Obstetricians and Gynecologists
March 1996
Fellow. American College of Surgeons

1997

Kenneth J. VanderKolk Award for Outstanding Contributions to the OB/GYN Residency Training Experience
Butterworth Hospital

1998

The Best Doctors in America (1998-1999)
Woodward/White, Aiken, South Carolina

2002

The Best Doctors in America (2001-2002)
Woodward/White, Aiken, South Carolina

2003 The Best Doctors in America (2003-2004)
Woodward/White, Aiken, South Carolina

EDITORIAL CONSULTANT

Obstetrics and Gynecology
1994 to present

Journal of Maternal-Fetal Medicine
1995 to present

OBG Management
1997 to present

Southern Medical Journal
1997

GRANT SUPPORT

Upjohn Protocol M/1350/0004/0005 IV Trospectomycin Sulfate for Gynecologic/Pelvic Infections, March 1991 - March 1992.

Siemens Ultrasound Guided Central Venous Access, June 1993 – 1994.

PUBLICATIONS: PEER REVIEW

1. Jelsema RD, Bhatia RK, Ganguly S. Use of intravenous amrinone in the short term management of refractory heart failure in pregnancy: A case report. *Obstetrics and Gynecology* 1991:78;935-936.

2. Jelsema RD, Bhatia RK, Zador IE, Bottoms SR, and Sokol RJ, Is placenta previa a determinant of pre-eclampsia? *Journal of Perinatal Medicine* 1992:19;485-488.

3. Jelsema RD, Zuidema LJ. First trimester diagnosed cervico-isthmic pregnancy resulting in term delivery. *Obstetrics and Gynecology* 1992:80;517-519.

4. Jelsema RD, Isada NB, Kazzi NJ, Sargent K, Harrison MR, Johnson MP, and Evans MI. Prenatal diagnosis of Brachmann-deLange Syndrome: Congenital diaphragmatic hernia not amenable to prenatal or neonatal repair. *Journal of Human Genetics* 1993:47;1022-1023.

5. Jelsema RD, Wittingen JA, VanderKolk, KJ. Continuous nonlocking single layer repair of the low transverse uterine incision. *The Journal of Reproductive Medicine* 1992:38;393-396.

6. Jelsema RD, Deppe, G, Isada, NB. Vaginal probe ultrasound guidance for internal jugular catheterization. *Journal of Gynecologic Surgery* 1992:8;243-245.

7. Jelsema RD, Treadwell MC, Goyert GL, Bhatia RK. The successful management of a pregnancy complicated by Noonan's syndrome and pulmonary hypertension. *Infertility* 1994:16.

8. Jelsema RD, Dombrowski, MP, Bottoms, SF. Glycosylated hemoglobin in pregnancy: affinity versus ion exchange chromatography. *The Journal of Maternal-Fetal Medicine* 1995:4;105-107.

9. Zettell LA, Jelsema RD, Isada NB. First trimester septic abortion due to Salmonella enteritidis oranienburg. *Infectious Disease in Obstetrics and Gynecology* 1995:2;239-241

10. Denonme GA, Jelsema RD, Waye JS, Burrows RF, Hayward CPM, Warkentin TE. Horsewood P, Smith JW, Zuidema LJ, Kelton JG. The prenatal identification of fetal compatibility in neonatal alloimmune thrombocytopenia using amniotic fluid and variable number of tandem repeat (VNTR) analysis. *The British Journal of Hematology* 1995:91;742-746.

11. Argo KM, Toriello HV, Jelsema RD, Zuidema LJ. Prenatal Findings in Chondrodysplasia Punctata, Tibia-Metacarpal Type. *Journal of Ultrasound in Obstetrics and Gynecology* 1996:8;350-354.

12. Lalley J, Jelsema R, Huzel P, Ransom S, Sokol R. The cost effectiveness of misoprostol versus prostaglandin E2 for second trimester termination of pregnancy. *Clinical Journal of Women's Health* 1(3): 149-156, 2001.

PUBLICATIONS: ABSTRACTS

1. Jelsema RD, Bhatia RK, Zador IE, Bottoms SF, Sokol RJ. Is placenta previa a determinant of pregnancy induced hypertension? Oral presentation at the Sixth International Symposium of the Fetus As A Patient, Detroit, Michigan, October 25-27, 1990. *Journal of Perinatal Medicine* (suppl. 1) 1990:18;52.

2. Jelsema RD, Isada NB, Harrison MR, Johnson MP, Kazzi NJ, and Evans MI. Prenatal diagnosis of Fryns syndrome: Congenital diaphragmatic hernia not amenable to prenatal repair. Poster presentation at the International Congress Human Genetics, Washington D.C., October 7 - 11, 1991. *American Journal of Human Genetics* (suppl) 1991:49;4.

3. Eustice MC, Mammen EF, Jacober SJ, Jelsema RD. Hyperaggregable platelets in whole blood of patients with diabetes mellitus. Poster presentation at the XIIIth International Congress of Thrombosis and Haemostasis, Amsterdam, Holland, July 2 - 5, 1991. XIIIth *International Congress of Thrombosis and Haemostasis, Proceedings*, 1991.

4. Renfroe YR, Jelsema RD, Bhatia RK, Bottoms SF, Zador IE, Sokol RJ. Placenta previa not associated with prior low segment cesarean. 11th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1991:164;392, A531.

5. Jelsema RD, Isada NB. Blood cultures in the initial evaluation of postpartum endometritis are not cost effective. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992:166;391, A422.

6. Jelsema RD, Dombrowski MP, Bottoms SF. Affinity chromatography: Excellent correlation with HgbA1C. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992: 166;391, 305 A91.

7. Jelsema RD, Eustice MC, Bottoms SF, Mammen EF. Platelet aggregability in pregnant diabetics is correlated with glycemic control but not duration of disease. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992:166.391, 305 A90.

8. Jelsema RD, Huzel P, Lalley J, Sokol R. The cost effectiveness based on total charge of misoprostol versus prostaglandin E2 for second trimester pregnancy termination. Poster presentation at the 18th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1998: 178; S77 A242.

9. Bacon-Baguley T, Lusis E, Warzynski M, Jelsema RD. Changes in platelet membrane proteins during normal pregnancy. Oral presentation at the American College of Obstetrics and Gynecology Annual Meeting. *Obstetrics and Gynecology* (supp) 2001:97:3S.

BOOKS AND CHAPTERS

1. Jelsema RD, Cotton DB. Cardiac Disease in Pregnancy; In *High Risk Pregnancy: Management Options.* Eds: James D, Stear P, Weiner C, Gonik B, W.B. Saunders: London, U.K. WB Saunders Co. LTD 1994.

2. Jelsema RD. Maternal Cardiovascular Disorders. In *Maternal Genetic Disease*, Eds: Isada NB, Drugan A., Johnson MP, Evans MI, Appleton & Lange, Stamford, Connecticut, 1995.

3. Jelsema RD, contributing author. Abnormal Obstetrics. In *Objectives for a Clinical Experience in Obstetrics and Gynecology*, 5th Ed. The Department of Obstetrics, Gynecology and Reproductive Biology, Michigan State University, 2002.

INVITED PRESENTATIONS

1. "Postpartum myocardial infarction associated with HELLP syndrome."
   a. Michigan State University, OB/GYN Research Day, March 29, 1988.
   b. The Grand Rapids Medical Education Council Research Day, May 10, 1988.

2. "Continuous non-locking single layer uterine suture at cesarean section."
   a. ACOG District V Annual Meeting, Junior Fellow Scientific Paper, October 13, 1998.
   b. Eleventh Annual British Virgin Island Conference, February 3, 1989.
   c. Michigan State Medical Society Conference on Maternal and Perinatal Health, Poster Presentation, March 22, 1989.
   d. Grand Rapids Education Council Research Day, May 9, 1989.
   e. ACOG Annual Meeting, Audio Visual Presentation, May 23, 1989.

3. "Is placenta previa a determinant of pregnancy induced hypertension?"
   a. Sixth International Symposium of the Fetus As A Patient, Detroit, Michigan, October 25, 1990.
   b. Resident and Fellow Day, Wayne State University School of Medicine, Department of Obstetrics and Gynecology, Detroit, Michigan, May 21, 1991.

4. "Acute abdominal pain in pregnancy: Non-obstetrical causes." Grand Rounds, Department of Emergency Medicine, Mt. Carmel Mercy Hospital, Detroit, Michigan, January 22, 1991.

5. "ABG's: Interpretation and Intervention." Department of Critical Care Nursing, Grand Rounds: Sinai Hospital, Detroit, Michigan November 21, 1991.

6. "Resident Training in Central Venous Catheter Placement: Use of Vaginal Ultrasound Probe to Improve Near-Field Visualization." CREOG and APGO Annual Meeting, Orlando, Florida. March 5, 6, 1992.

7. "Thyroid Disease in Pregnancy and its Potential Problems and Complications." Consortium for Osteopathic Graduate Medical Education and Training, East Lansing, Michigan, October 15, 1992.

8. "Premature Birth: Grams or Kilos?" Michigan Section of the American Obstetrics and Gynecology Annual Snow Meeting, Petoskey, Michigan, January 24, 1993.

9. "Chorionic Villus Sampling: What are the Risks?" Clinical Advances in Obstetrics and Gynecology: Challenges for the 90's. Michigan State University College of Human Medicine, Lansing, Michigan, February 25, 1993.

10 "Trauma in Pregnancy." 32nd Annual MSMS Conference on Maternal and Perinatal Health, Lansing, Michigan, March 25, 1993.

11. "The Critically Ill Gravida." MSMS Committee on Maternal and Perinatal Health, Crystal Mountain Resort, Thompsonville, Michigan, May 28, 1993.

12. "Cervical Ripening Advances in Preinduction of Labor." Fort Wayne Obstetrics and Gynecology Society, Fort Wayne, Indiana, November 17, 1993.

13. "Trauma in Pregnancy." Primary Care Update, Muskegon General Hospital, Muskegon, Michigan, February 23, 1994.

14. "Prostaglandins - The New Wonder Drugs." Southwest Michigan Perinatal Association Annual Meeting, Kalamazoo, Michigan, May 17, 1995.

15. "Maternal Thrombocytopenia." Michigan State Medical Society Committee on Maternal and Perinatal Health. Maternal, Perinatal, and Child Health Retreat, St. Clair, Michigan, May 25, 1995.

16. "What's New in Preeclampsia" and "What's New in Preterm Labor." Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN) and Munson Medical Center' 19th Annual Perinatal Conference: Innovations in Perinatal and Women's Health, Traverse City, Michigan, October 13, 1995.

17. "Prenatal Findings in Chondroplasia Punctata, Tibia-metacarpal Type." Poster presentation, the XI International Congress, "The Fetus as Patient", New York, New York, November 12, 1995.

18. "Fetal Renal Biopsy at 18 Weeks for Diagnosis of Infantile Polycystic Kidney Disease." Poster presentation, The XI International congress, "The Fetus as Patient", New York, New York, November 12, 1995.

19. "ATLS in the Obstetrics-Gynecology Residency." Poster presentation, CREOG & APGO 1996 Annual Meeting, Albuquerque, New Mexico, March 7, 1996.

20. "Trauma in Pregnancy: What Does ATLS Have to do With it Anyway?" Michigan State Medical Society: 35th Annual conference on Maternal and Fetal Health, Troy, Michigan, March 28, 1996.

21. "Trauma in Pregnancy: 2 Are More Than 1." Michigan Trauma Symposium Annual Meeting: Modern Diseases and Old Questions. Grand Rapids, Michigan, April 9, 1996.

22. "Teen and Adolescent Pregnancy." Western Michigan Osteopathic Association Spring Seminar, Muskegon, Michigan, April 17, 1996.

23. "Group B Strep - What Next?" Fort Wayne OB/GYN Society Meting, Fort Wayne, Indiana, May 8, 1996.

24. "Teen and Adolescent Pregnancy: Confronting the Issues." Fort Wayne OB/GYN Society Meeting, Fort Wayne, Indiana, May 9, 1996.

25. "Cervical Incompetence." All Michigan OB/GYN Review Course, Wayne State University, Detroit, Michigan, May 20, 1996.

26. "Birth Control - Depo-Provera; Sex and Society in the 90's", Indiana University/Purdue University, Fort Wayne, Indiana, September 7, 1996.

27. "What's New in Prenatal Diagnosis and Treatment?" Grand Rounds, Munson Medical Center, Traverse City, Michigan, November 22, 1996.

28. "Diabetes and Pregnancy: Preconception Counseling and Gestational Diabetes." "Diabetes Complications: The Role of the Primary Care Provider in Prevention and Management." American Diabetes Association; Grand Rapids, Michigan, December 5, 1996.

29. "Cervical Incompetence." All Michigan OB/GYN Review Course, Wayne State University, Ypsilanti, Michigan, May 19, 1997.

30. "Trauma in Pregnancy: What does ATLS Have to do With it Anyway?" Grand Rounds, Providence Hospital, Southfield, Michigan, September 24, 1997.

31. "Taking the Offensive: Winning the Obstetrics Malpractice Case." Resource Developments, Inc., Obstetrics & Gynecology Malpractice Seminar, San Antonio, Texas, October 9, 1997.

32. "Taking the Offensive: Winning the Obstetrics Malpractice Case." Resource Developments, Inc., Obstetrics & Gynecology Malpractice Seminar, San Diego, California, April 23, 1998.

33. "Cervical Incompetence." All Michigan OB/GYN Review Course, Troy, Michigan, May 18, 1998.

34. "Birth Trauma, High Risk Pregnancy & Fetal Monitor Strips." Resource Developments, Inc., Hospital Medical Negligence Seminar, Las Vegas, Nevada, October 23, 1998.

35. "CVS." Grand Rounds. Sparrow Hospital, Lansing, Michigan. November 17, 1998.

36. "Misoprostol Use in Pregnancy." 21st Annual British Virgin Islands Medical Conference. Butterworth Hospital Alumni Symposium. Tortola, British Virgin Islands. February 5, 1999.

37. "Cervical Incompetence" 9th Annual All Michigan OB/GYN Review Course. Southfield, Michigan, May 11, 1999.

38. "Diabetes in Pregnancy: What is the Big Deal?" 79th Annual Coller Penberthy Thirlby Medical Conference. Traverse City, Michigan, July 24, 1999.

39. "What Not to Say at Your Deposition" with Erin Gerrity of Smith, Haughey, Rice & Roegge. Grand Rounds, Munson Medical Center, Traverse City, Michigan, December 18, 1999.

40. "Antiobotics for Premature Labor: There Ain't No Free Lunch." Michigan Section of the American College of Obstetrics and Gynecology Annual Snow Meeting, Petoskey, Michigan, February 10, 2000.

41. "Clotting Disorders in Pregnancy: Who is Dr. Leiden Anyway?" 80th Annual Coller Penberthy Lecture Series, Traverse City, Michigan, June 17, 2000.

42. "Medical and Legal Aspects of Certified Nurse Midwifery in a Community Hospital", Porter Memorial Health System, Valparaiso, Indiana, January 18, 2001.

43. "Hot Topics in Obstetrics", War Memorial Hospital, Sault St. Marie, Michigan, February 15, 2001.

44. "Diabetes in Pregnancy: Perspective and State of Art from an Obstetrician's viewpoint", Michigan Diabetes Policy Advisory Council, Michigan Department of Community Health, Lansing, Michigan, February 28, 2000.

45. "Malpractice: Nine Things to Keep You Out of Court" and "Pre-Term Labor & Infections", Pediatric/Perinatal Update, Marquette, Michigan, September 5, 2002.

46. "Is It Time to Switch 1st Trimester Screening?", Spectrum Health Prenatal Genetics Conference, "The Future is Now", September 25, 2002

PUBLISHED LETTERS

1. Jelsema RD, Bhatia RK. Reduced frequency of hypertensive disorders in placenta previa. *Obstetrics and Gynecology* 1991:78;159-160

2. Jelsema RD. Comparing open laparoscopy with other techniques. Contemporary *Obstetrics and Gynecology* 1991:36;113-114.

3. Jelsema RD. Milrinone use in the pregnant ewe. *American Journal of Obstetrics and Gynecology* 1992:167;1157.

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 1st day of August, 2005:

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Ogg, Cordes, Murphy & Ignelzi, LLP
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Pittsburgh, PA 15222

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P.O. Box 2024
Altoona, PA 16603

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Russell E. Cameron,
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, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

CIVIL DIVISION

No. 02-169-CD

ORDER OF COURT

AND NOW this _____ day of _____, 2005, after consideration of the motion in limine filed on behalf of Defendant Russell E. Cameron, M.D., it is hereby ORDERED that:

1. Dr. Jelsema is precluded from offering any opinions to the effect that Dr. Cameron deviated from the applicable standard of care.

2. Plaintiffs are precluded from contending or arguing to the jury that Dr. Cameron is or may be liable to the plaintiffs or that Dr. Cameron deviated from the applicable standard of care.

BY THE COURT:

_____ J.

DEFENDANT DuBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE

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

1. This is a medical malpractice case in which the allegations against DuBois Regional Medical Center require expert testimony.

2. In general terms, this case involves the stillbirth of Janell Herzing, whose mother, Michelle Herzing, was the obstetrical patient of co-defendant Mary C. Kruszewski, M.D. The complaint alleges that the defendants deviated from the standard of care and that, as a result, the stillbirth occurred.

3. Plaintiffs' attorney has submitted two expert reports by Russell D. Jelsema, M.D., an obstetrician/gynecologist. Dr. Jelsema's reports are attached hereto as Exhibits "A" and "B".

4. Dr. Jelsema is trained as a physician. Attached as Exhibit "C" is Dr. Jelsema's Curriculum Vitae. He is not a nurse. Accordingly, he should be precluded from offering any opinion testimony to the effect that the nurses deviated from the applicable standard of care. Nonetheless, portion of his reports render such opinions. Defendant, therefore, is moving in limine to preclude Dr. Jelsema from offering opinions with regard to the standard of care for nurses and/or whether the nurses met the applicable standard of care.

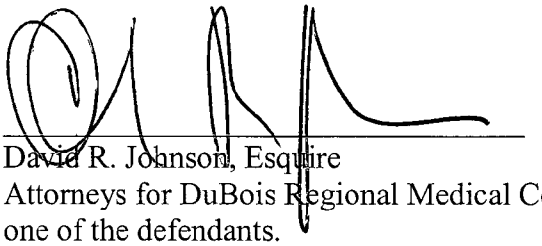
5. As a physician rather than a nurse, Dr. Jelsema is not competent to offer expert testimony with regard to the nursing standard of care

6. Additionally, defendant moves in limine to preclude any attorney or witness from referencing those portions of Dr. Jelsema's reports where he is critical of the hospital and the nurses.

WHEREFORE, defendant moves in limine to preclude Dr. Jelsema from offering any opinions as an expert witness at time of trial with regard to any alleged acts or omissions of the nurses, any applicable nursing standard of care and/or whether any acts or omissions by the nurses were a cause of the plaintiffs' injuries and damages. Defendant further requests an order of court which precludes all attorneys and witnesses from referencing any comments within Dr. Jelsema's reports which are critical of the hospital or its nurses.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



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



West
Michigan
Obstetricians &
Gynecologists P.C.

November 30, 2001

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.
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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 35^6 weeks" "2 "elevated BP" "3 R/O pre-eclampsia". Her "Plan:" included "1 Labs ordered", "2 "will start labetolol 100mgs BID", "3 24^0 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

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 fell 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, "24^0 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

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 audibley 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 intervillositis".

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 2nd 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.

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;

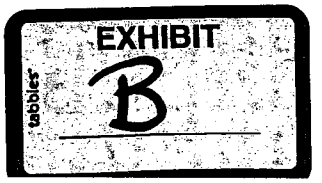
2) Nursing Competencies;

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 pre-eclampia 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 ausculatated 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 Welsh 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

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.

CURRICULUM VITAE
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PERSONAL DATA

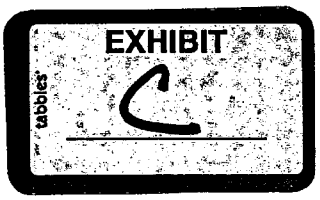
Date of Birth:	April 11, 1960
Place of Birth:	Zeeland, Michigan
Marital Status:	Married, Leann
Children:	Rebecca Jelsema
	Sarah Jelsema
	Timothy Jelsema

EDUCATION

1978 - 1982	Calvin College Grand Rapids, Michigan Bachelor of Science
1982 - 1986	Wayne State University School of Medicine Detroit, Michigan Medical Doctor

TRAINING

1986 - 1990	Resident, Obstetrics and Gynecology Butterworth Hospital Grand Rapids, Michigan
1990 - 1992	Fellow, Division of Maternal-Fetal Medicine Department of Obstetrics and Gynecology Hutzel Hospital/Wayne State University School of Medicine Detroit, Michigan
1991	Fellow, Division of Critical Care Anesthesia Department of Anesthesia Sinai Hospital/Wayne State University School of Medicine Detroit, Michigan



EMPLOYMENT

1992-1997	Butterworth Hospital
1997-current	West Michigan Obstetricians and Gynecologists, P.C.

POSITION

1989 - 1990	Butterworth Hospital Chief Resident, Obstetrics and Gynecology Grand Rapids, Michigan
1992 - 1997	Associate Director, Division of Maternal-Fetal Medicine Department of Obstetrics and Gynecology Butterworth Hospital Grand Rapids, Michigan
1994 - 1998	Director, Medical Student Clerkship, Butterworth Hospital Michigan State University College of Human Medicine

FACULTY APPOINTMENTS

1987 - 1990	Michigan State University, College of Human Medicine Resident Clinical Instructor Lansing, Michigan
1990 - 1992	Wayne State University/Hutzel Hospital Clinical Instructor, Obstetrics and Gynecology Detroit, Michigan
1992 - 1999	Michigan State University College of Human Medicine Assistant Professor, Obstetrics and Gynecology East Lansing, Michigan
1999 - present	Michigan State University College of Human Medicine Associate Professor, Obstetrics and Gynecology East Lansing, Michigan

CURRENT MEDICAL STAFF APPOINTMENTS

Spectrum Health, Grand Rapids; Active	1999-present
Gerber Hospital, Fremont; Courtesy	1997 - 1999
Munson Medical Center, Traverse City; Consultative	1996 - present
St. Mary's Hospital, Grand Rapids; Assoicate	1992 - 2004
United Memorial Hospital, Greenville; Courtesy	1997 – 2000
Mercy Hospital, Cadillac; Consultative	2000-present
Hackley Hospital, Muskegon; Consultative	2001-present

COMMITTEE APPOINTMENTS

Butterworth Hospital - Residency Council	1987 - 1990
Butterworth Hospital - Human Research Committee	1992 - 1993
Butterworth Hospital – Pharmacy and Therapeutics Committee	1993 – 1998
Spectrum Hospital – Pharmacy and Therapeutics Committee	1999 - 2000
Michigan State Medical Society Committee on Maternal/Perinatal Health, Subcommittee on Maternal Mortality	1993 - present
Butterworth Hospital - Board of Trustees Quality Assurance Committee	1992-1998
American College of Obstetrics & Gynecology, Committee On Adolescent Health Care, Adolescent Pregnancy Prevention Network	1997 - present
American College of Surgeons Michigan District #3 Committee on Applicants	2000 – 2002

MAJOR PROFESSIONAL SOCIETIES

American Medical Association, 1985
Michigan State Medical Society, 1985
Christian Medical Society, 1986
Alpha Omega Alpha - National Honor Medical Society, 1988
American College of Obstetrics and Gynecology, Fellow, 1996
American College of Surgeons, Associate Fellow, 1990; Fellow, 1996
Association of Professors in Gynecology and Obstetrics, 1990
Society of Perinatal Obstetricians, Associate Member, 1990; Member, 1997
Kent County Medical Society, 1992
International Society of Perinatal Obstetricians, 1995

LICENSURE AND CERTIFICATION

State of Michigan Medical License	#407131
Advanced Cardiac Life Support Provider	Recertified 3/26/91
Advanced Trauma Life Support Provider	Certified 6/29/91
Advanced Trauma Life Support Instructor	Recertified 4/1/96

BOARD CERTIFICATION

Diplomate, National Board of Medical Examiners, 1987 #322790
Diplomate, American Board of Obstetrics and Gynecology, Inc.,1994, #31354
Annual Board Certification Examination December, 2002; November 2003.
Diplomate, American Board of Obstetrics and Gynecology, Inc.,
Division of Maternal-Fetal Medicine, 1997, #31354M
Recertified Maternal-Fetal Medicine December, 2002; November 2003.

HONORS AND AWARDS

1988

American College of Obstetricians and Gynecologists
District V Junior Fellow Presentation
Second Place
Butterworth Annual Blocksma Research Award

1989

Alpha Omega Alpha - National Honor Medical Society
Berlex Foundation Resident Education Award

1990

Outstanding Resident in Gynecologic Endoscopy
American Association of Gynecologic Laparoscopists

1992

Outstanding Junior Faculty Award, 1991 - 1992
Department of Obstetrics and Gynecology
Wayne State University School of Medicine

1993

Leo J. Kenney Award
Teacher of the Year
Department of Obstetrics and Gynecology
Butterworth Hospital

1994

Leo J. Kenney Award
Teacher of the Year
Department of Obstetrics and Gynecology
Butterworth Hospital

Council on Resident Education in Obstetrics and Gynecology
National Faculty Award For Excellence in Resident Education

1995

The Best Doctors in America: Midwest Region (1996 - 1997)
Woodward/White. Aiken, South Carolina

Who's Who in Medicine and Healthcare, 1st Edition (1996 - 1997)
Marquis Who's Who in America

1996

Fellow, American College of Obstetricians and Gynecologists
March 1996
Fellow. American College of Surgeons

1997

Kenneth J. VanderKolk Award for Outstanding Contributions to the
OB/GYN Residency Training Experience
Butterworth Hospital

1998

The Best Doctors in America (1998-1999)
Woodward/White, Aiken, South Carolina

2002

The Best Doctors in America (2001-2002)
Woodward/White, Aiken, South Carolina

2003 The Best Doctors in America (2003-2004)
Woodward/White, Aiken, South Carolina

EDITORIAL CONSULTANT

Obstetrics and Gynecology
1994 to present

Journal of Maternal-Fetal Medicine
1995 to present

OBG Management
1997 to present

Southern Medical Journal
1997

GRANT SUPPORT

Upjohn Protocol M/1350/0004/0005 IV Trospectomycin Sulfate for Gynecologic/Pelvic Infections, March 1991 - March 1992.

Siemens Ultrasound Guided Central Venous Access, June 1993 – 1994.

PUBLICATIONS: PEER REVIEW

1. Jelsema RD, Bhatia RK, Ganguly S. Use of intravenous amrinone in the short term management of refractory heart failure in pregnancy: A case report. *Obstetrics and Gynecology* 1991:78;935-936.

2. Jelsema RD, Bhatia RK, Zador IE, Bottoms SR, and Sokol RJ, Is placenta previa a determinant of pre-eclampsia? *Journal of Perinatal Medicine* 1992:19;485-488.

3. Jelsema RD, Zuidema LJ. First trimester diagnosed cervico-isthmic pregnancy resulting in term delivery. *Obstetrics and Gynecology* 1992:80;517-519.

4. Jelsema RD, Isada NB, Kazzi NJ, Sargent K, Harrison MR, Johnson MP, and Evans MI. Prenatal diagnosis of Brachmann-deLange Syndrome: Congenital diaphragmatic hernia not amenable to prenatal or neonatal repair. *Journal of Human Genetics* 1993:47;1022-1023.

5. Jelsema RD, Wittingen JA, VanderKolk, KJ. Continuous nonlocking single layer repair of the low transverse uterine incision. *The Journal of Reproductive Medicine* 1992:38;393-396.

6. Jelsema RD, Deppe, G, Isada, NB. Vaginal probe ultrasound guidance for internal jugular catheterization. *Journal of Gynecologic Surgery* 1992:8;243-245.

7. Jelsema RD, Treadwell MC, Goyert GL, Bhatia RK. The successful management of a pregnancy complicated by Noonan's syndrome and pulmonary hypertension. *Infertility* 1994:16.

8. Jelsema RD, Dombrowski, MP, Bottoms, SF. Glycosylated hemoglobin in pregnancy: affinity versus ion exchange chromatography. *The Journal of Maternal-Fetal Medicine* 1995:4;105-107.

9. Zettell LA, Jelsema RD, Isada NB. First trimester septic abortion due to Salmonella enteritidis oranienburg. *Infectious Disease in Obstetrics and Gynecology* 1995:2;239-241

10. Denonme GA, Jelsema RD, Waye JS, Burrows RF, Hayward CPM, Warkentin TE. Horsewood P, Smith JW, Zuidema LJ, Kelton JG. The prenatal identification of fetal compatibility in neonatal alloimmune thrombocytopenia using amniotic fluid and variable number of tandem repeat (VNTR) analysis. *The British Journal of Hematology* 1995:91;742-746.

11. Argo KM, Toriello HV, Jelsema RD, Zuidema LJ. Prenatal Findings in Chondrodysplasia Punctata, Tibia-Metacarpal Type. *Journal of Ultrasound in Obstetrics and Gynecology* 1996:8:350-354.

12. Lalley J, Jelsema R, Huzel P, Ransom S, Sokol R. The cost effectiveness of misoprostol versus prostaglandin E2 for second trimester termination of pregnancy. *Clinical Journal of Women's Health* 1(3): 149-156, 2001.

PUBLICATIONS: ABSTRACTS

1. Jelsema RD, Bhatia RK, Zador IE, Bottoms SF, Sokol RJ. Is placenta previa a determinant of pregnancy induced hypertension? Oral presentation at the Sixth International Symposium of the Fetus As A Patient, Detroit, Michigan, October 25-27, 1990. *Journal of Perinatal Medicine* (suppl. 1) 1990:18;52.

2. Jelsema RD, Isada NB, Harrison MR, Johnson MP, Kazzi NJ, and Evans MI. Prenatal diagnosis of Fryns syndrome: Congenital diaphragmatic hernia not amenable to prenatal repair. Poster presentation at the International Congress Human Genetics, Washington D.C., October 7 - 11, 1991. *American Journal of Human Genetics* (suppl) 1991:49;4.

3. Eustice MC, Mammen EF, Jacober SJ, Jelsema RD. Hyperaggregable platelets in whole blood of patients with diabetes mellitus. Poster presentation at the XIIIth International Congress of Thrombosis and Haemostasis, Amsterdam, Holland, July 2 - 5, 1991. XIIIth *International Congress of Thrombosis and Haemostasis, Proceedings*, 1991.

4. Renfroe YR, Jelsema RD, Bhatia RK, Bottoms SF, Zador IE, Sokol RJ. Placenta previa not associated with prior low segment cesarean. 11th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1991:164;392, A531.

5. Jelsema RD, Isada NB. Blood cultures in the initial evaluation of postpartum endometritis are not cost effective. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992:166;391, A422.

6. Jelsema RD, Dombrowski MP, Bottoms SF. Affinity chromatography: Excellent correlation with HgbA1C. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992: 166;391, 305 A91.

7. Jelsema RD, Eustice MC, Bottoms SF, Mammen EF. Platelet aggregability in pregnant diabetics is correlated with glycemic control but not duration of disease. Poster presentation at the 12th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1992:166.391. 305 A90.

8. Jelsema RD, Huzel P, Lalley J, Sokol R. The cost effectiveness based on total charge of misoprostol versus prostaglandin E2 for second trimester pregnancy termination. Poster presentation at the 18th Annual Meeting of The Society of Perinatal Obstetricians. *American Journal of Obstetrics and Gynecology* (suppl) 1998: 178; S77 A242.

9. Bacon-Baguley T, Lusis E, Warzynski M, Jelsema RD. Changes in platelet membrane proteins during normal pregnancy. Oral presentation at the American College of Obstetrics and Gynecology Annual Meeting. *Obstetrics and Gynecology* (supp) 2001:97:3S.

BOOKS AND CHAPTERS

1. Jelsema RD, Cotton DB. Cardiac Disease in Pregnancy; In *High Risk Pregnancy: Management Options.* Eds: James D, Stear P, Weiner C, Gonik B, W.B. Saunders: London, U.K. WB Saunders Co. LTD 1994.

2. Jelsema RD. Maternal Cardiovascular Disorders. In *Maternal Genetic Disease*, Eds: Isada NB, Drugan A., Johnson MP, Evans MI, Appleton & Lange, Stamford, Connecticut, 1995.

3. Jelsema RD, contributing author. Abnormal Obstetrics. In *Objectives for a Clinical Experience in Obstetrics and Gynecology*, 5th Ed. The Department of Obstetrics, Gynecology and Reproductive Biology, Michigan State University, 2002.

INVITED PRESENTATIONS

1. "Postpartum myocardial infarction associated with HELLP syndrome."
   a. Michigan State University, OB/GYN Research Day, March 29, 1988.
   b. The Grand Rapids Medical Education Council Research Day, May 10, 1988.

2. "Continuous non-locking single layer uterine suture at cesarean section."
   a. ACOG District V Annual Meeting, Junior Fellow Scientific Paper, October 13, 1998.
   b. Eleventh Annual British Virgin Island Conference, February 3, 1989.
   c. Michigan State Medical Society Conference on Maternal and Perinatal Health, Poster Presentation, March 22, 1989.
   d. Grand Rapids Education Council Research Day, May 9, 1989.
   e. ACOG Annual Meeting, Audio Visual Presentation, May 23, 1989.

3. "Is placenta previa a determinant of pregnancy induced hypertension?"
   a. Sixth International Symposium of the Fetus As A Patient, Detroit, Michigan, October 25, 1990.
   b. Resident and Fellow Day, Wayne State University School of Medicine, Department of Obstetrics and Gynecology, Detroit, Michigan, May 21, 1991.

4. "Acute abdominal pain in pregnancy: Non-obstetrical causes." Grand Rounds, Department of Emergency Medicine, Mt. Carmel Mercy Hospital, Detroit, Michigan, January 22, 1991.

5. "ABG's: Interpretation and Intervention." Department of Critical Care Nursing, Grand Rounds: Sinai Hospital, Detroit, Michigan November 21, 1991.

6. "Resident Training in Central Venous Catheter Placement: Use of Vaginal Ultrasound Probe to Improve Near-Field Visualization." CREOG and APGO Annual Meeting, Orlando, Florida, March 5, 6, 1992.

7. "Thyroid Disease in Pregnancy and its Potential Problems and Complications." Consortium for Osteopathic Graduate Medical Education and Training, East Lansing, Michigan, October 15, 1992.

8. "Premature Birth: Grams or Kilos?" Michigan Section of the American Obstetrics and Gynecology Annual Snow Meeting, Petoskey, Michigan, January 24, 1993.

9. "Chorionic Villus Sampling: What are the Risks?" Clinical Advances in Obstetrics and Gynecology: Challenges for the 90's. Michigan State University College of Human Medicine, Lansing, Michigan, February 25, 1993.

10 "Trauma in Pregnancy." 32nd Annual MSMS Conference on Maternal and Perinatal Health, Lansing, Michigan, March 25, 1993.

11. "The Critically Ill Gravida." MSMS Committee on Maternal and Perinatal Health, Crystal Mountain Resort, Thompsonville, Michigan, May 28, 1993.

12. "Cervical Ripening Advances in Preinduction of Labor." Fort Wayne Obstetrics and Gynecology Society, Fort Wayne, Indiana, November 17, 1993.

13. "Trauma in Pregnancy." Primary Care Update, Muskegon General Hospital, Muskegon, Michigan, February 23, 1994.

14. "Prostaglandins - The New Wonder Drugs." Southwest Michigan Perinatal Association Annual Meeting, Kalamazoo, Michigan, May 17, 1995.

15. "Maternal Thrombocytopenia." Michigan State Medical Society Committee on Maternal and Perinatal Health. Maternal, Perinatal, and Child Health Retreat, St. Clair, Michigan, May 25, 1995.

16. "What's New in Preeclampsia" and "What's New in Preterm Labor." Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN) and Munson Medical Center' 19th Annual Perinatal Conference: Innovations in Perinatal and Women's Health, Traverse City, Michigan, October 13, 1995.

17. "Prenatal Findings in Chondroplasia Punctata, Tibia-metacarpal Type." Poster presentation, the XI International Congress, "The Fetus as Patient", New York, New York, November 12, 1995.

18. "Fetal Renal Biopsy at 18 Weeks for Diagnosis of Infantile Polycystic Kidney Disease." Poster presentation, The XI International congress, "The Fetus as Patient", New York, New York, November 12, 1995.

19. "ATLS in the Obstetrics-Gynecology Residency." Poster presentation, CREOG & APGO 1996 Annual Meeting, Albuquerque, New Mexico, March 7, 1996.

20. "Trauma in Pregnancy: What Does ATLS Have to do With it Anyway?" Michigan State Medical Society: 35th Annual conference on Maternal and Fetal Health, Troy, Michigan, March 28, 1996.

21. "Trauma in Pregnancy: 2 Are More Than 1." Michigan Trauma Symposium Annual Meeting: Modern Diseases and Old Questions. Grand Rapids, Michigan, April 9, 1996.

22. "Teen and Adolescent Pregnancy." Western Michigan Osteopathic Association Spring Seminar, Muskegon, Michigan, April 17, 1996.

23. "Group B Strep - What Next?" Fort Wayne OB/GYN Society Meting, Fort Wayne, Indiana, May 8, 1996.

24. "Teen and Adolescent Pregnancy: Confronting the Issues." Fort Wayne OB/GYN Society Meeting, Fort Wayne, Indiana, May 9, 1996.

25. "Cervical Incompetence." All Michigan OB/GYN Review Course, Wayne State University, Detroit, Michigan, May 20, 1996.

26. "Birth Control - Depo-Provera; Sex and Society in the 90's", Indiana University/Purdue University, Fort Wayne, Indiana, September 7, 1996.

27. "What's New in Prenatal Diagnosis and Treatment?" Grand Rounds, Munson Medical Center, Traverse City, Michigan, November 22, 1996.

28. "Diabetes and Pregnancy: Preconception Counseling and Gestational Diabetes." "Diabetes Complications: The Role of the Primary Care Provider in Prevention and Management." American Diabetes Association; Grand Rapids, Michigan, December 5, 1996.

29. "Cervical Incompetence." All Michigan OB/GYN Review Course, Wayne State University, Ypsilanti, Michigan, May 19, 1997.

30. "Trauma in Pregnancy: What does ATLS Have to do With it Anyway?" Grand Rounds, Providence Hospital, Southfield, Michigan, September 24, 1997.

31. "Taking the Offensive: Winning the Obstetrics Malpractice Case." Resource Developments, Inc., Obstetrics & Gynecology Malpractice Seminar, San Antonio, Texas, October 9, 1997.

32. "Taking the Offensive: Winning the Obstetrics Malpractice Case." Resource Developments, Inc., Obstetrics & Gynecology Malpractice Seminar, San Diego, California, April 23, 1998.

33. "Cervical Incompetence." All Michigan OB/GYN Review Course, Troy, Michigan, May 18, 1998.

34. "Birth Trauma, High Risk Pregnancy & Fetal Monitor Strips." Resource Developments, Inc., Hospital Medical Negligence Seminar, Las Vegas, Nevada, October 23, 1998.

35. "CVS." Grand Rounds. Sparrow Hospital, Lansing, Michigan. November 17, 1998.

36. "Misoprostol Use in Pregnancy." 21st Annual British Virgin Islands Medical Conference. Butterworth Hospital Alumni Symposium. Tortola, British Virgin Islands. February 5, 1999.

37. "Cervical Incompetence" 9th Annual All Michigan OB/GYN Review Course. Southfield, Michigan, May 11, 1999.

38. "Diabetes in Pregnancy: What is the Big Deal?" 79th Annual Coller Penberthy Thirlby Medical Conference. Traverse City, Michigan, July 24, 1999.

39. "What Not to Say at Your Deposition" with Erin Gerrity of Smith, Haughey, Rice & Roegge. Grand Rounds, Munson Medical Center, Traverse City, Michigan, December 18, 1999.

40. "Antiobotics for Premature Labor: There Ain't No Free Lunch." Michigan Section of the American College of Obstetrics and Gynecology Annual Snow Meeting, Petoskey, Michigan, February 10, 2000.

41. "Clotting Disorders in Pregnancy: Who is Dr. Leiden Anyway?" 80th Annual Coller Penberthy Lecture Series, Traverse City, Michigan, June 17, 2000.

42. "Medical and Legal Aspects of Certified Nurse Midwifery in a Community Hospital", Porter Memorial Health System, Valparaiso, Indiana, January 18, 2001.

43. "Hot Topics in Obstetrics", War Memorial Hospital, Sault St. Marie, Michigan, February 15, 2001.

44. "Diabetes in Pregnancy: Perspective and State of Art from an Obstetrician's viewpoint", Michigan Diabetes Policy Advisory Council, Michigan Department of Community Health, Lansing, Michigan, February 28, 2000.

45. "Malpractice: Nine Things to Keep You Out of Court" and "Pre-Term Labor & Infections", Pediatric/Perinatal Update, Marquette, Michigan, September 5, 2002.

46. "Is It Time to Switch 1st Trimester Screening?", Spectrum Health Prenatal Genetics Conference, "The Future is Now", September 25, 2002

PUBLISHED LETTERS

1. Jelsema RD, Bhatia RK. Reduced frequency of hypertensive disorders in placenta previa. *Obstetrics and Gynecology* 1991:78;159-160

2. Jelsema RD. Comparing open laparoscopy with other techniques. Contemporary *Obstetrics and Gynecology* 1991:36;113-114.

3. Jelsema RD. Milrinone use in the pregnant ewe. *American Journal of Obstetrics and Gynecology* 1992:167;1157.

4. Jelsema RD, Isada NB. Ultrasonographically guided subclavian vein catheterization in critical care obstetrics and gynecology oncology. *American Journal of Obstetrics and Gynecology* 1994:171;285.

5. Jelsema RD. The Case of Baby K; Cesarean for Anencephaly. *New England Journal of Medicine* 1994:331;1384.

6. Jelsema RD. Don't Make Chaperones Optional for Any Exam. *Medical Economics* 1996:73;13.

7. Jelsema RD. Question: Is CVS More Expensive than Genetic Amniocentesis? *OB/GYN Malpractice Prevention* 1997:4;40.

8. Jelsema RD. Safety Alert: Risk of Missed Diagnosis of Group B Streptococcal Infection. *Journal of the American Medical Association* 1997:278;1316-17.

9. Jelsema RD. Subcutaneous Terbutaline Pump. *The Journal of Reproductive Medicine* 1998: 43;401.

10. Jelsema RD. Nonobstetric Emergencies in Pregnancy. *American Journal of Obstetrics and Gynecology* 1998:179;558-559.

11. Jelsema RD. Pregnancy after Radical Vaginal Trachelectomy. *American Journal of Obstetrics and Gynecology* 1999:181;229-230.

12. Jelsema RD. Traditional Cerclage Removal. *OB-GYN News*; July, 2002.

13. Jelsema RD. Vacuum followed by forceps questioned. *OBG Management* July 2002.

14. Jelsema RD. Cost effectiveness of induction after preterm premature rupture of membranes. *American Journal of Obstetrics and Gynecology* 2003:189; 305.

15. Jelsema RD. Tocolysis timing. *OB-GYN News*; February, 2004.

16. Jelsema RD. Management of diabetes mellitus complicating pregnancy. *Obstetrics and Gynecology* 2004:103;586-587.

cvrdj/lso
3.23.04

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 1st day of Agust, 2005:

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THOMSON, RHODES & COWIE, P.C.

David R. Johnson, 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, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON,

Defendants.

CIVIL DIVISION

No. 02-169-CD

ORDER OF COURT

AND NOW this _____ day of _____, 2005, after consideration of the motion in limine filed on behalf of Defendant DuBois Regional Medical Center, it is hereby ORDERED that:

1. Plaintiffs' expert, Dr. Jelsema, is precluded from offering any expert testimony against DuBois Regional Medical Center for its nurses and, all persons, including witnesses or attorneys, are precluded referring to any reports by Dr. Jelsema which are critical of DuBois Regional Medical Center or its nurses.

BY THE COURT:

_____ J.

02-1169-CD CA

CERTIFICATE OF SERVICE

I, Amy Acheson, Esquire, hereby certify that a true and correct copy of the within **PRE-TRIAL STATEMENT** was served on this 3rd day of **August, 2005**, via first-class mail, postage prepaid, on the following parties of record:

John W. Blasko, Esquire
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Pittsburgh, PA 15219

Amy Acheson

FILED NO CC
01/2:36/04
AUG 04 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,

Plaintiffs,

v.

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

Defendants.

CIVIL DIVISION - Medical Professional Liability Action

No. 02-169-CD

PRE-TRIAL STATEMENT

Filed on behalf of Plaintiffs

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PA ID# 50506
Gary J. Ogg, Esquire
PA ID# 34515
Michael A. Murphy, Esquire
PA ID# 55846

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JURY TRIAL DEMANDED.

RECEIVED
AUG 0 4 2005
COURT ADMINISTRATOR'S OFFICE

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, PATRICK SHILALA and JERJIE T. ALAJAJI,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Pre-Trial Memorandum, in the above-referenced matter was mailed by regular United States first class mail, postage prepaid, on this 4th day of August, 2005, to the attorney(s) of record:

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McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

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

FILED NO CC
01:39 BL
AUG 05 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,

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' RESPONSE IN OPPOSITION TO DEFENDANT ALAJAJI'S MOTION IN LIMINE TO PRECLUDE CERTAIN EXPERT TESTIMONY

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.

FILED NO CC
013:04 BY
AUG 10 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.	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT ALAJAJI'S MOTION IN LIMINE TO PRECLUDE CERTAIN EXPERT TESTIMONY

AND NOW, come Plaintiffs, by and through their counsel, and submit the following response opposing Defendant Alajaji's Motion in Limine.

INTRODUCTION

The defendant radiologist in this case seeks to preclude expert testimony against him in advance of the upcoming trial. He argues that Dr. Jelsema, Plaintiffs' expert, is not sufficiently qualified to offer any opinion testimony against Dr. Alajaji, and seeks, essentially, dismissal of Plaintiffs' case against Dr. Alajaji before the trial begins.

Defendant Alajaji's motion borders on the specious, and must be denied for the reasons set forth herein.

A. Defendant Alajaji's Motion Must Be Denied Because It Lacks Foundation

First, Defendant Alajaji's Motion to Preclude Opinion Testimony is without foundation in that it goes far beyond the scope of the record. For this reason alone, his motion must be denied.

Defendant Alajaji's motion is based on what he argues are "indisputable inferences." In reality, his motion is based upon opinions and factual matters which are not properly before this Court. These "inferences" upon which Defendant Alajaji relies are nowhere part of the record of this case. To preclude opinion testimony pretrial based on Defendant Alajaji's own imaginatively drawn "inferences" would be manifestly unfair and obviously prejudicial to Plaintiffs right to have a finder of fact hear all the relevant evidence and make a determination of liability and damages against all the named Defendants including Defendant Alajaji.

Specifically, Defendant Alajaji bases his motion on "the indisputable inference that Dr. Kruszewski did not expect the radiologist to render a diagnosis for her patient." (Alajaji Motion at p. 5). He cannot cite to any portion of the record because this "inference" is not a fact appearing anywhere in the record.

It should be noted, moreover, that Defendant Alajaji (through his counsel) asked not a single question of any witness (apart from Plaintiffs) in any of the depositions in this case. He certainly could have, but failed to, inquire of Dr. Kruszewski herself

whether, and in precisely what regard, she relied upon Defendant Alajaji in the course of her treatment of Plaintiffs. He did not inquire either on that issue or on any issue whatsoever.

Defendant Alajaji also extrapolates and makes unsupported inferences from Plaintiffs' expert reports to elaborate on his theme. He goes on to allege that: "Clearly Dr. Jelsema acknowledged that it is ultimately the obligation of the OB physician to . . . make the obvious diagnosis of IUGR regardless of whether the radiologist states the obvious or not. It is also clear that Dr. Kruszewski expected to make that diagnosis from the radiology information." (Alajaji Motion at p. 6) (emphasis added). Interestingly, this is an admission of Defendant Alajaji's own failure to form or document what he now states was an "obvious," diagnosis. But equally important is the fact that Alajaji is creating out of whole cloth "facts" which are nowhere in the record. For example, there is no testimony, deposition, record, or statement that Defendant Kruszewski was to make a diagnosis.

Defendant Alajaji is arguing the ultimate issue, i.e., the relative fault of the defendants vis a vis one another. The apportionment of liability between these defendants should not, and cannot properly, be made before trial. These issues are, obviously, to be determined by the jury. The Fair Share Act has been ruled unconstitutional, and thus joint and several liability will apply to the jury determination. See Deweese v. Weaver, 2005 WL 1719711, ___ A.2d ___ (Pa. Cmmw. 2005).

Again, nowhere in the record does Dr. Kruszewski state that she did not expect Defendant Alajaji to formulate or document any diagnosis. She did not describe her expectations with respect to Defendant Alajaji's role in Plaintiffs' care. And, again, when

Defendant Alajaji's counsel had a full opportunity to discover this information, he asked Dr. Kruszewski no questions either by way of deposition or interrogatory. Furthermore, Dr. Jelsema will testify as to the standard of care specifically for obstetrical Doppler ultrasound and biophysical profiles, which is the care at issue as to Defendant Alajaji. Dr. Jelsema will testify that there were such standards of care applicable to Defendant Alajaji, and that they were breached, resulting in Janell's unnecessary death. See, Reports of Dr. Jelsema, Plaintiffs' Pretrial Statement.

B. If Held to the Same Standard Defendant Alajaji's Own Expert, on the Face of His Resume, Is Not Qualified to Testify

Defendant Alajaji's own "expert" does not appear, on the basis of his own curriculum vitae, to have substantial experience in interpreting obstetrical body images including biophysical profiles. Although Defendant Alajaji attempts to create an issue out of Dr. Jelsema's curriculum vitae, it would no doubt be highly unusual, if not unheard of, for a physician to list all of the specific examinations, tests and thought processes he or she uses in his or her practice. The fact that Dr. Jelsema's curriculum vitae does not set forth such information is totally irrelevant.

Indeed, Dr. Morse, Defendant Alajaji's expert does not list specific duties with respect to obstetrical body imaging and Doppler studies, or biophysical profiles of infants *en ventre sa mere.* Thus, the same criticism Dr. Alajaji levels at Dr. Jelsema can and should, be applied with equal force to Dr. Morse.

From a review of the curriculum vitae of Dr. Alajaji's expert (Dr. Morse) it is impossible to be certain that he has any substantial experience in particular care at

issue here. In fact, he is apparently qualified and practicing in the field of emergency medicine, and not obstetrics. Regardless of his board certification, Dr. Morse does not necessarily possess the requisite substantial familiarity with the particular standards of care at the time in question.

C. Defendant Alajaji Misleadingly Misstates the Applicable Legal Standard Under MCARE

Defendant Alajaji misstates the legal standard applicable to this issue. The legal standard applicable to this issue is whether the expert has substantial familiarity with the standard of care. Here, plaintiffs' expert, Dr. Jelsema, has substantial familiarity with the standards of care involved in radiology involving obstetrical body images and biophysical profiles, and his opinion testimony against Defendant Alajaji must be admitted. See also Herbert v. Parkview Hospital, 2004 Pa.Super. 287, 854 A.2d 1285 (2004); see also, B.K. ex rel. S.K. v. Chambersburg Hospital, 2003 Pa. Super. 386, 834 A.2d 1178 (2003), appeal denied, 577 Pa. 705, 847 A.2d 1276 (2004) (reversing trial Court's preclusion of pediatrician's testimony on emergency physician's standard of care); Gartland v. Rosenthal, 2004 Pa. Super. 134, 850 A.2d 671 (2004).

The fact that Dr. Jelsema has a different board certification than that of Defendant Alajaji is irrelevant to this determination. This fact only becomes relevant when the finder of fact considers the weight of the opinion testimony. The particular board certifications do not go to the competency or admissibility of the testimony.

In Herbert v. Parkview Hospital, supra, at 1291 – 1294, the Pennsylvania Superior Court decided this question of first impression under MCARE in favor of the

medical malpractice plaintiff. The Court held that the expert may offer opinion testimony where the expert is substantially familiar with the standard of care for the specific care at issue as of the time of the alleged breach. This is the applicable standard here, and is plainly on the face of the MCARE language. See, 40 P.S. Section 1303.512(c).

Furthermore, even if the Section 512(c) standard explained by the Herbert court is not met, the expert is permitted to testify pursuant to the saving clause, Section 512(e).

MCARE Section 512(e) provides:

> Otherwise adequate training, experience and knowledge. A court may waive both the same subspecialty and board certification requirements for experts testifying as to a standard of care if the court determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous five-year time period.

Here, it is obvious from Dr. Jelsema's expert reports that he is substantially familiar with the standard of care for the specific care at issue as of the time of the breach and/or is subject to a substantially similar standard of care for the specific care at issue. Simply because Defendant Alajaji and his hired expert dispute the standard of care articulated by Dr. Jelsema is not a reason to preclude Dr. Jelsema from testifying as to his opinion of the specific standard of care and breaches thereof.

D. Plaintiffs' Expert Satisfies the Applicable MCARE Standard and Must Be Permitted to Testify At Trial With Respect to Defendant Alajaji's Conduct

To preclude Dr. Jelsema's testimony as against Defendant Alajaji prior to trial would effectively result in the dismissal of Defendant Alajaji from the case prior to trial. Moreover, to do so would be contrary to the controlling precedent of the Pennsylvania Superior Court and the express language of the MCARE Act itself, unsupported by the record, and manifestly unfair to the Plaintiffs.

Gartland v. Rosenthal, supra, is a 2004 case almost directly on point, and not mentioned by Defendant Alajaji in his motion papers. There, the Superior Court reversed the trial court and held that a neurologist was qualified to give opinion testimony at trial regarding radiologist's standard of care in reading body images relating to neurological problems.

The Court used the MCARE Section 512 standard and found:

> In this case, . . . the plaintiffs filed Dr. Kamin's *curriculum vitae*, which showed that he was a neurologist. That established *prima facie* his qualifications to read X-rays in this case and to offer an opinion on what should have been done under the circumstances. The defendants did not produce any evidence to refute his apparent qualifications to read x-rays to make neurological decisions. While we would properly not find him qualified to render such an opinion if the radiologists were reading X-rays of a leg, we believe that at least at the summary judgment stage and on this records, his opinion on x-rays relating to neurological problems and the standard of care for radiologists reading such x-rays should have been allowed.

Gartland at 675-676.

Obstetricians who actively practice are certainly substantially familiar with, and subject to, the standard of care for obstetrical Doppler studies and biophysical profiles. To assert otherwise is disingenuous. For illustrative purposes, it should be noted that the American College of Obstetricians and Gynecologists published numerous standards specifically on antepartum biophysical profiles, stress testing, nonstress testing, obstetrical ultrasound, Doppler studies, and the like, all in effect at the relevant time. See, e.g., 2000 Compendium of Selected Publications (ACOG, December 31, 1999).

CONCLUSION

In conclusion, Defendant Alajaji's Motion in Limine should be denied. At best, it is premature and should properly be brought after *voir dire*. At worst, it is specious and without foundation in the factual record or controlling Pennsylvania law. Therefore, Plaintiffs respectfully submit, and hereby request, that this Court deny Defendant Alajaji's Motion in Limine.

Respectfully submitted,



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

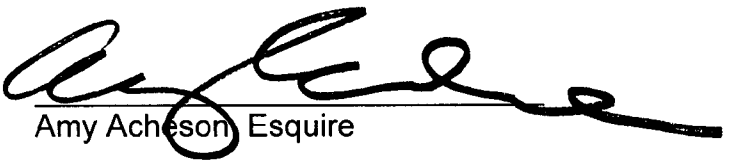
CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT ALAJAJI'S MOTION IN LIMINE TO PRECLUDE CERTAIN EXPERT TESTIMONY** to be served on the following via regular United States first class mail, postage prepaid, on this _9th_ day of August, 2005:

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(Counsel for Jerjie T. Alajaji)

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
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John W. Blasko, Esquire
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Amy Acheson, Esquire

CA

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.

CIVIL DIVISION

No. 02-169-CD

Issue No.

AFFIDAVIT OF SERVICE

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

Counsel of Record for These Parties:

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PA I.D. #26409

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COUNSEL FOR PLAINTIFFS:
Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI
John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:
Alan Krier, Esquire

FILED NO CC
m/10:01/BH
AUG 15 2005
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

Notice has been made by facsimile to plaintiffs' attorney and other counsel of Record that argument will occur on defendants' motion in limine on August 11, 2005 at 11:00 a.m. (the same time as the pretrial conference).

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

FILED

AUG 15 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

FILED
AUG 15 2005
0/11:56 cm
William A. Shaw
Prothonotary

cc to Atty J. Blasko
Atty A. Kiper
Atty D. Johnson
Atty A. Ackerson

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. 02-169-CD

ORDER

NOW, this 15th day of August, 2005, following Pre-Trial Conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on **Thursday, August 18, 2005 at 9:00 a.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

2. Jury Trial is hereby scheduled for **October 21, 24, 25, 26, 27, 28, 2005** commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

3. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than forty (40) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more than ten (10) days following completion of the deposition(s).

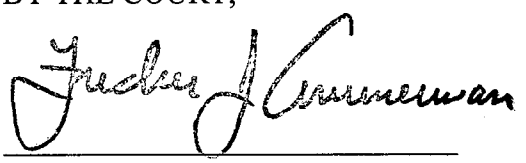
4. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of Trial shall submit said objections to the Court, in writing, no later than thirty (30) days prior to the commencement of Trial. All objections

shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall submit its brief in opposition to said objections no later than fifteen (15) days prior to the commencement of Trial.

5. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than thirty (30) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than fifteen (15) days prior to Trial.

6. At the time of Jury Selection the Plaintiffs shall have four (4) preemptory challenges, Dr. Kruszewski shall have two (2) preemptory challenges, DRMC shall have two (2) preemptory challenges and Dr. Alajaji shall two (2) preemptory challenges.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

AUG 15 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.

CIVIL DIVISION

No. 02-169-CD

ORDER OF COURT

AND NOW, this 15 day of August, 2005, with the consent and agreement of all parties, it is hereby ORDERED that Russell Cameron, M.D. is dismissed as a defendant in the matter above-captioned.

BY THE COURT:

FILED 4cc
01:34 Atty
AUG 16 2005 Johnson
William A. Shaw
Prothonotary/Clerk of Courts

FILED
AUG 16 2005
William A. Shaw
Prothonotary/Clerk of Courts

CA

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.

CIVIL DIVISION

No. 02-169-CD

ORDER OF COURT

AND NOW, this 16th day of August, 2005, it is hereby ORDERED, ADJUDGED and DECREED that argument on defendant, DuBois Regional Medical Center's Motion in Limine is rescheduled to occur on the 9th day of September, 20 05 at 2:00 ~~a.m.~~/p.m.

BY THE COURT:

Fredric J. Ammerman J.

FILED 4cc
01 3:30 BD Atty Johnson
AUG 16 2005
William A. Shaw
Prothonotary/Clerk of Courts

FILED
AUG 16 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.	*	No. 02-169-CD
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON, Defendants	*	

ORDER

NOW, this 17th day of August, 2005, it is the ORDER of this Court that Defendant Dr. Alajaji's Motion in Limine to Preclude Certain Expert Testimony be and is hereby DISMISSED.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED
01 2:07 BL
AUG 17 2005
William A. Shaw
Prothonotary/Clerk of Courts

cc Attys:
A. Acheson
P. Ignelzi
G. Ogg
M. Murphy
J. Blasko
D. Johnson
A. Krier

FILED

AUG 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,

Plaintiffs,

Vs.

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

Defendants.

CIVIL DIVISION

No. 02-169-CD

Issue No.

AFFIDAVIT OF SERVICE

Code: 007

Filed on behalf of DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

Counsel of Record for These Parties:

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

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

COUNSEL FOR PLAINTIFFS:
Amy Acheson, Esquire

COUNSEL FOR MARY C. KRUSZEWSKI
John W. Blasko, Esquire

COUNSEL FOR JERJIE T. ALAJAJI:
Alan Krier, Esquire

FILED NO CC
11:44 BL
AUG 22 2005
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

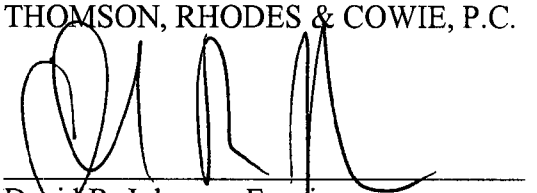
Service has been made by U.S. Mail to all counsel of Record of the following orders:

1. Order dated August 15, 2005, dismissing Dr. Cameron as a defendant in the case.

2. Order dated August 16, 2005, scheduling argument on DRMC's motion in limine for September 9, 2005 at 2:00 p.m.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center and Russell E. Cameron, two of the defendants.

FILED

AUG 22 2005

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. HERZING, 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.: 02-169-CD

ORDER OF COURT

AND NOW, this 31ST day of August, 2005, it is hereby ORDERED, ADJUDGED and DECREED that argument on defendant, DuBois Regional Medical Center's Motion in Limine is rescheduled to occur on the 27 day of September, 2005, at 1:30 p.m. All motions to preclude evidence/Motions in Limine filed by any party prior to September 21, 2005, will also be argued at that time.

BY THE COURT:

Fred Ammerman, J.

FILED
01/11:18 BY
SEP 01 2005
William A. Shaw
Prothonotary/Clerk of Courts
4 CC Atty Murphy
w/memo Re: service

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.

CIVIL DIVISION

No. 02-169-CD

ORDER OF COURT

AND NOW, this 16th day of August, 2005, it is hereby ORDERED, ADJUDGED and DECREED that argument on defendant, DuBois Regional Medical Center's Motion in Limine is rescheduled to occur on the 9th day of September, 2005 at 2:00 p.m.

BY THE COURT:

/s/ Fredric J. Ammerman J.

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

AUG 16 2005

Attest.

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.	*	No. 02-169-CD
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON, Defendants	*	

ORDER

NOW, this 15th day of August, 2005, following Pre-Trial Conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on **Thursday, August 18, 2005 at 9:00 a.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

2. Jury Trial is hereby scheduled for **October 21, 24, 25, 26, 27, 28, 2005** commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

3. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than forty (40) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more than ten (10) days following completion of the deposition(s).

4. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of Trial shall submit said objections to the Court, in writing, no later than thirty (30) days prior to the commencement of Trial. All objections

shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall submit its brief in opposition to said objections no later than fifteen (15) days prior to the commencement of Trial.

5. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than thirty (30) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than fifteen (15) days prior to Trial.

6. At the time of Jury Selection the Plaintiffs shall have four (4) preemptory challenges, Dr. Kruszewski shall have two (2) preemptory challenges, DRMC shall have two (2) preemptory challenges and Dr. Alajaji shall two (2) preemptory challenges.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

OGG, CORDES, MURPHY & IGNELZI, L.L.P.
ATTORNEYS AT LAW
RIVERVIEW PLACE
245 FORT PITT BOULEVARD
PITTSBURGH, PENNSYLVANIA 15222

(412) 471-8500
TELEFAX (412) 471-8503

MICHAEL A. MURPHY

EDWARD P. ZEMPRELLI
OF COUNSEL

August 26, 2005

The Honorable Fredric J. Ammerman
President Judge
Court of Common Pleas Clearfield County
Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Michelle Herzing and Jeffrey A. Jarvis, individually, in their own right, and as Administrators of the Estate of Janell Herzing, a minor, deceased v. Mary C. Kruszewski, DuBois Regional Medical Center, Jerjie T. Alajaji, and Russell E. Cameron.
No. GD 02-169 CD / Clearfield County
Trial Date: October 21, 2005

Dear Judge Ammerman:

I am co-counsel for the Plaintiff in the above-captioned case. I am writing in connection with your Order dated August 16, 2005, scheduling argument on Defendant DuBois Regional Medical Center's Motions in Limine for **September 9, 2005, at 2:00 p.m.** I have enclosed a copy of the Order. I am requesting a postponement of the hearing based upon the following.

As you know, following our Pre-Trial Conference, you issued an Order, dated August 15, 2005, directing parties to file motions regarding limitations or exclusions of evidence, including but not limited to Motions in Limine, thirty (30) days prior to the trial date of October 21, 2005. Pursuant to that Order, the deadline for filing such motions is **September 21, 2005.** It is anticipated that Plaintiff, as well as certain other Defendants, will be filing Motions in Limine prior to the due date established in your August 15th Order. I am writing to request that the Court set **one date after** September 21st to dispose of all parties' motions for exclusion of evidence/Motions in Limine, including the Motion presently before the Court filed by DuBois Regional Medical Center. It is respectfully suggested that judicial economy would be served by having one date where all motions could be resolved as opposed to handling motions on multiple occasions.

I have no problem w/ This but try to schedule the Hr. during Sept. not Oct.

I have discussed this matter with Attorney David Johnson, counsel for DuBois Regional Medical Center, who is the moving party in the only Motion presently before the Court. Attorney Johnson concurs that it would be in the interest of all parties and judicial economy to hear all motions on a date selected by the Court **after** September 21, 2005, the due date for all such motions. He also consented to my contacting the Court in regard to his presently pending Motion.

I have attached a proposed Order for your consideration.

Yours very truly,

Michael A. Murphy

Enclosure

cc: Alan R. Krier, Esquire (w/encl.)
John W. Blasko, Esquire (w/encl.)
David R. Johnson, Esquire (w/encl.)

MAM/bp

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
PHONE: (814) 765-2641
FAX: 1-814-765-7649

DAVID S. MEHOLICK
COURT ADMINISTRATOR

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

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 JERGIE T. ALAJAJI,

Defendants.

CIVIL DIVISION

No. 02-169-CD

AFFIDAVIT OF SERVICE

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

FILED

SEP 06 2005
m/1:35/
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to Atty

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 JERGIE T. ALAJAJI,

Defendants.

CIVIL DIVISION

No. 02-169-CD

AFFIDAVIT OF SERVICE

The following were served with Judge Ammerman's August 31, 2005, Order, attached, by first class mail on September 2, 2005, at the following addresses:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 15503

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide, Blasko, Schwartz, Flemming & Faulkner, Inc.
811 University Drive
State College, PA 16801

William A. Shaw
Clearfield County Clerk of Courts
P.O. Box 549
Clearfield, PA 15830-0361

Amy Acheson, Esquire
Michael A. Murphy, Esquire
Gary J. Ogg, Esquire
Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHELLE HERZING and JEFFREY A. HERZING, 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.: 02-169-CD

ORDER OF COURT

AND NOW, this 31ST day of August, 2005, it is hereby ORDERED, ADJUDGED and DECREED that argument on defendant, DuBois Regional Medical Center's Motion in Limine is rescheduled to occur on the 21 day of September, 2005, at 1:30 p.m. All motions to preclude evidence/Motions in Limine filed by any party prior to September 21, 2005, will also be argued at that time.

BY THE COURT:

Fred Cammeron, J.

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

SEP 01 2005

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Affidavit of Service was served upon all parties of record vis regular U.S. first class mail, postage prepaid, on this 2nd day of September, 2005, addressed as follows:

Alan R. Krier, Esquire
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
P.O. Box 2024
Altoona, PA 15503

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide, Blasko, Schwartz, Flemming & Faulkner, Inc.
811 University Drive
State College, PA 16801

William A. Shaw
Clearfield County Clerk of Courts
P.O. Box 549
Clearfield, PA 15830-0361

Michael A. Murphy, 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,

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' 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
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 1cc Atty
m/12:26 SEP 12 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,	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.	

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

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

ORDER

AND NOW to wit this _____ day of _____, 2005, it is hereby ordered that Plaintiff's objection to the Deposition of Professor Steven Klepper are **sustained** and these passages from the deposition are stricken.

BY THE COURT,

_____
President Judge

CERTIFICATE OF SERVICE

I, Michael A. Murphy, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' OBJECTIONS TO CROSS EXAMINATION OF EXPERT DR. STEVEN KLEPPER VIDEOTAPE TRIAL DEPOSITION TAKEN SEPTEMBER 1, 2005** to be served on the following via regular United States first class mail, postage prepaid, on this 9th 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)

Michael A. Murphy, Esquire

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 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 15th day of September, 2005, the Court being in receipt of Plaintiffs' Objections to Cross Examination of Expert Dr. Steven Klepper's Videotaped Trial Deposition Taken September 1, 2005; it is the Order of this Court that argument on said Objections are scheduled for the **27th day of September, 2005** at **1:30 p.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED
01/9:05/BL
SEP 16 2005
William A. Shaw
Prothonotary/Clerk of Courts

1cc Attys: Acheson
Ignelzi
Ogg
Murphy
Blasko
D. Johnson
Krier

FILED

SEP 16 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,

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' RESPONSE IN OPPOSITION TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE TO PRECLUDE CERTAIN EXPERT TESTIMONY

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
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JURY TRIAL DEMANDED.

FILED

SEP 2 0 2005

M/12:30/cm

William A. Shaw
Prothonotary

no c/c

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.	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE TO PRECLUDE CERTAIN EXPERT TESTIMONY

AND NOW, come Plaintiffs, by and through their counsel, and submit the following response opposing Defendant DuBois Regional Medical Center's Motion in Limine.

INTRODUCTION

The defendant hospital in this case seeks to preclude expert testimony by a board certified obstetrician gynecologist as to "nursing" standards of care. It argues that Dr. Jelsema, Plaintiffs' expert, is not sufficiently qualified to offer any opinion testimony against the hospital. This motion must be denied for the reasons set forth herein.

A thorough reading of Dr. Jelsema's report shows that he will state his opinions as to the obstetrical standards of care to be followed by health care personnel managing a patient such as Michelle Herzing.

Dr. Jelsema satisfies the legal standard applicable to this issue. The legal standard applicable to this issue is whether the expert has substantial familiarity with the standard of care. Here, plaintiffs' expert, Dr. Jelsema, has substantial familiarity with the standards of care involved with the in patient care, management and treatment of a pregnant patient, in this situation. His opinion testimony against Defendant DuBois Regional Medical Center must be admitted. See Herbert v. Parkview Hospital, 2004 Pa.Super. 287, 854 A.2d 1285 (2004); see also, B.K. ex rel. S.K. v. Chambersburg Hospital, 2003 Pa. Super. 386, 834 A.2d 1178 (2003), appeal denied, 577 Pa. 705, 847 A.2d 1276 (2004) (reversing trial Court's preclusion of pediatrician's testimony on emergency physician's standard of care); Gartland v. Rosenthal, 2004 Pa. Super. 134, 850 A.2d 671 (2004).

Dr. Jelsema has hands-on clinical practice and experience with inpatient obstetrics which, obviously includes supervision and direction of nurses and nursing care.

In Herbert v. Parkview Hospital, supra, at 1291 – 1294, the Pennsylvania Superior Court decided this question of first impression under MCARE in favor of the medical malpractice plaintiff. The Court held that the expert may offer opinion testimony where the expert is substantially familiar with the standard of care for the specific care at issue as of the time of the alleged breach. This is the applicable standard here, and is plainly on the face of the MCARE language. See, 40 P.S. Section 1303.512(c).

Furthermore, even if the Section 512(c) standard explained by the Herbert court is not met, the expert is permitted to testify pursuant to the saving clause, Section 512(e).

MCARE Section 512(e) provides:

> Otherwise adequate training, experience and knowledge. A court may waive both the same subspecialty and board certification requirements for experts testifying as to a standard of care if the court determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous five-year time period.

Here, it is obvious from Dr. Jelsema's expert reports that he is substantially familiar with the standard of care for the specific care at issue as of the time of the breach and/or is subject to a substantially similar standard of care for the specific care at issue.

DuBois Regional Medical Center cites the Yacoub case as dispositive of the issue at bar; it is not. The Yacoub court did not hold that a physician may not testify on nursing standards of care. Nor did it address in any way the familiarity of a board certified obstetrician with inpatient obstetrical patient management and nursing standards of care.

Indeed the Yacoub court applied the usual test: "whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. 805 A2d at 591.

At issue in that case was a spinal neurosurgeon expert who in recent years had opened clinics, rarely practices in a hospital setting; could not remember the last time he interacted with nurses; and never even interacted with internists expect to make a referral. 805 A.2d at 592. Therefore, it was evident that the spinal neurosurgeon had no familiarity with the inpatient nursing standard of care.

In contrast, as a practicing obstetrician and gynecologist, Dr. Jelsema as a matter of course and by definition practices in a hospital setting interacting with, directing and supervising the nursing care. He is in fact qualified by experience, training, and knowledge to testify fully in accordance with his reports.

CONCLUSION

In conclusion, Defendant DuBois Regional Medical Center's Motion in Limine should be denied according to controlling Pennsylvania law. Therefore, Plaintiffs respectfully submit, and hereby request, that this Court deny Defendant DuBois Regional Medical Center's Motion in Limine.

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' RESPONSE IN OPPOSITION TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE TO PRECLUDE CERTAIN EXPERT TESTIMONY** to be served on the following via regular United States first class mail, postage prepaid, on this 19th 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

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 IN LIMINE TO PRECLUDE DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S EXPERT

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 2 0 2005
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William A. Shaw
Prothonotary
no c/c

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.	

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S EXPERT

AND NOW, come Plaintiffs, by and through their counsel, and respectfully request that this Honorable Court enter an order precluding certain expert testimony to be offered at trial on behalf of Defendant DuBois Regional Medical Center, and in support hereof, state the following:

1. The June 24, 2004 Order of Court in this case required the filing of the parties' expert reports and set deadlines for the same. This Order was entered by this Honorable Court after appearances by counsel for all parties and argument thereon. A true and correct copy of said Order is attached hereto, made a part hereof and marked as Exhibit A.

2. The said Order of Court required Plaintiffs to file their expert reports no later than October 31, 2004.

3. The said Order of Court required all Defendants, including DuBois Regional Medical Center (hereinafter "DuBois"), to file all of their expert reports no later than January 31, 2005. Plaintiffs were then allowed a further 30 day period in which to file all rebuttal reports.

4. Defendant DuBois filed absolutely no expert reports whatsoever by the January 31, 2005 deadline.

5. Indeed, Defendant DuBois determined that it would not present any experts of its own at trial. Defendant DuBois decided to rely at trial on the experts who were identified by the other Defendants, Kruszewski and Alajaji.

6. Defendant DuBois provided written confirmation to Plaintiffs of its decision not to call its own experts at trial. A true and correct copy of the February 2, 2005 written confirmation is attached hereto, made a part hereof and marked as Exhibit B.

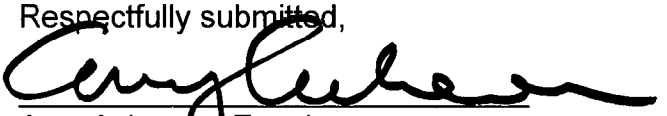
7. On or about August 4, 2005, Defendant DuBois filed its Pretrial Statement including an expert report dated April 13, 2005 by Barbara Schouchoff, R.N., a copy of which was provided to Plaintiffs on April 15, 2005.

8. According to Defendant DuBois's Pretrial Statement, Ms. Schouchoff will offer expert testimony on nursing standards of care and causation at trial on behalf of DuBois.

9. To permit Ms. Schouchoff to testify at trial would be manifestly unfair to Plaintiffs and directly contrary to the Orders of the Court.

WHEREFORE, Plaintiffs request that this Honorable Court enter an order precluding Barbara Schouchoff's testimony at trial and precluding her report from evidence at trial.

Respectfully submitted,



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

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. Prothonotary/ Clerk of Courts

EXHIBIT

tabbies

-A-

THOMSON, RHODES & COWIE, P.C.

Attorneys At Law

TWO CHATHAM CENTER, TENTH FLOOR
PITTSBURGH, PENNSYLVANIA 15219-3499

Facsimile (412) 232-3498
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Writer's Direct Dial
(412) 316-8662

E-mail: drj@trc-law.com

David R. Johnson

February 2, 2005

Michelle Herzing and Jeffrey A. Jarvis, individually, in their own right, and as Administrators of the Estate of Janell Herzing, a minor, deceased vs. Mary C. Kruszewski, DuBois Regional Medical Center, Patrick Shilala and Jerjie T. Alajaji. In the Court of Common Pleas of Clearfield County, Pennsylvania. Civil Division No. 02-169-CD. Our File No. 12518.

Amy Acheson, Esquire
Ogg, Cordes, Murphy & Ignelzi, LLP
245 Fort Pitt Boulevard
Pittsburgh, PA 15222

Dear Amy:

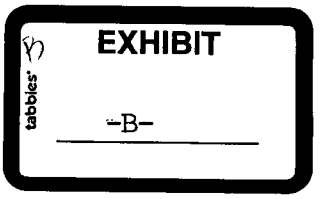
I just wanted to let you know that the hospital may call as witnesses at time of trial any of the experts who have been identified by the other defendants, and such experts would testify in accordance with the scope of their report.

Thank you.

Very truly yours,

David R. Johnson

DRJ/pko
cc: John W. Blasko, Esquire
Alan Krier, Esquire



CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENDANT DUBOIS REGIONAL MEDICAL CENTER'S EXPERT** to be served on the following via regular United States first class mail, postage prepaid, on this 19th 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 2 0 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,

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 IN LIMINE TO PRECLUDE NURSING OPINION TESTIMONY PROFFERED BY DEFENDANT DUBOIS REGIONAL MEDICAL CENTER

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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FILED
SEP 20 2005
m/12:30/
William A. Shaw
Prothonotary
no c/c

JURY TRIAL DEMANDED.

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.	

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE NURSING OPINION TESTIMONY PROFFERED BY DEFENDANT DUBOIS REGIONAL MEDICAL CENTER

AND NOW, come Plaintiffs, by and through their counsel, and respectfully request that this Honorable Court enter an order precluding certain expert testimony to be offered at trial on behalf of Defendant DuBois Regional Medical Center, and in support hereof, state the following:

1. Defendant DuBois Regional Medical Center has listed as an expert witness a nurse, Barabara Schouchoff, R.N.

2. Said expert is the subject of a separate Motion in Limine which requests the preclusion of her testimony.

3. In the event that the Court rules that its judicially mandated deadline should not be enforced as to DuBois, and permits Ms. Schouchoff to testify, then Plaintiffs respectfully request that her testimony be strictly limited to conform with the law of Pennsylvania.

4. Under Pennsylvania law, a nurse is not permitted to testify as to causation or diagnosis in a medical negligence action.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court prohibit Ms. Schouchoff from any testimony as to causation or diagnosis, and exclude all such portions of her reports.

Respectfully submitted,



Amy Aches[redacted], 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 IN LIMINE TO PRECLUDE NURSING OPINION TESTIMONY PROFFERED BY DEFENDANT DUBOIS REGIONAL MEDICAL CENTER** to be served on the following via regular United States first class mail, postage prepaid, on this 19th 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

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,

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 PORTIONS OF DR. BOTTI'S EXPERT REPORT AND TESTIMONY AT TRIAL

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

William A. Shaw
Prothonotary

NO CERT COPY

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.	

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

AND NOW, come Plaintiffs, by and through their counsel, and respectfully request that this Honorable Court enter an order precluding certain portions of Dr. Botti's expert report and testimony at trial, and in support hereof, state the following:

1. Certain portions of Dr. Botti's report are based upon misstatements of the record which should not be admitted at trial. A copy of his report is attached hereto, made a part hereof and marked as Exhibit A.

2. These misstatements are as follows:

   a. that Plaintiff mother was non-compliant "to care at critical times." (Botti report at p. 4). No such non-compliance at critical times are identified by Dr. Botti in his report.

b. that while "Dr. Kruszewski wished to proceed to cesarean delivery, Michelle stated that she did not wish to undergo repeat cesarian delivery." (Botti report, p. 3, paragraph 2). Dr. Botti characterizes this as a "restrictive refusal to have repeat cesarian delivery." (Botti report, p. 4). This statement is particularly egregious in that it is completely unsupported and indeed directly contradicted by the record. See, excerpts from deposition of Defendant Kruszewski and deposition of Michelle Herzing, attached hereto, made a part hereof and marked as Exhibit B.

3. In addition, certain important portions of Dr. Botti's report attempt to give opinions without meeting the requisite standard reasonable medical certainty. The entire first paragraph of Dr. Botti's "Summary" contains a string of statements, none of which are stated to the required threshold of certainty. This string of opinions includes his thoughts about:

(a). "subclinical chorioamnionitis . . . [which] may have been the final insult to a fetus;"

(b). intracranial problems "which may have already been present" at delivery;

(c). a "Hobson's choice" concerning "route of anesthesia;"

4. It is only his final sentence, which comprises the entire final paragraph of his report, which is stated to a reasonable degree of medical certainty.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order precluding certain portions of Dr. Botti's expert report and testimony as set forth above.

Respectfully submitted,



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

JOHN J. BOTTI, M.D.
380 NYE ROAD, HUMMELSTOWN, PA 17036

4 December 2004

John Blasko, Esquire
McQuaide Blasko
Attorneys at Law
811 University Drive
State College, PA 16801-2903

RE: Herzing vs. Kruszewski

Dear Attorney Blasko;

At your request, I have reviewed the documents pertaining to the above case and researched existing standards to provide you with this report. I have reviewed the following documents;

1. Amended Complaint;
2. Office records of Drs Kush and Kruszewski pertaining to Ms. Herzing from 1995 through 2000;
3. Dubois Regional Medical Center (DRMC) records from several occasions dating from 8/11/1994 to 12/6/2000, including autopsy and placental pathology;
4. Office records of David Kairys, D.O.;
5. Autopsy report from Dubois Regional Medical Center;
6. Deposition of Melissa Dixon, RN;
7. Deposition of Shawn Welsh, RN;
8. Deposition of Russell E. Cameron, MD;
9. Deposition of Gloria A. Bennett, RN:
10. Deposition of Susan B. Heverling, RN.
11. Microscopic reviews of autopsy slides by Emanuel Rubin, MD

Past medical history:
Michelle Herzing delivered her first child on 23 January 1996, at 33-34 weeks gestation, after being diagnosed with severe preeclampsia. A cesarean delivery was performed of a

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growth-restricted 3# 6 oz male. Michelle had suffered an earlier spontaneous abortion. She recovered without a requirement for immediate postpartum antihypertensives. Associated with her pregnancy were an increased body mass index (BMI) of 44.6, and a twenty-five pound weight increase through the first 30 weeks of pregnancy.

In 1996, Dr. Kruszewski attempted to address Michelle's weight problems and provided her with an effective contraceptive method. There was office evidence of hypertension on several occasions between pregnancies. In May 1997, Dr. Kruszewski directed Michelle to a primary care provider for pharmacological therapy of persistent hypertension. Michelle apparently never made an appointment for management of her hypertension. In not following Dr. Kruszewski's recommendation to improve her health, Michelle set a course to develop preeclampsia in the following pregnancy. Exogenous obesity and essential hypertension are known independent pre-existing risks for the development of preeclampsia and the combination increased her risk.

Index pregnancy:

Ms. Herzing was interviewed on 19 May 2000 for her third pregnancy; her first visit with Dr. Kruszewski followed on 3 July 2000. Her estimated due date was 30 December 2000, based on a sonographic study performed on 6 September 2000. Biometry was consistent with her last menstrual period for gestation. Michelle started this pregnancy about 40 pounds heavier (BMI =51) than at the onset of the previous pregnancy. She had no findings of hypertension during her first visit and on subsequent visits until November 30 2000. She was a no-show for multiple appointments during her pregnancy, including: 6/24, 7/24, 11/22, and 11/29.

On 15 November 2000, at 33 weeks gestation, Michelle's blood pressure was 126/84 but she had extensive proteinuria and dependent edema. Maternal weight was not recorded over the previous three visits and it is not clear whether this was by patient request or because the office scale could not record her weight. Lab values included high normal hemoglobin and hematocrit and increased uric acid values, but no other indicators of preeclampsia. On 20 November, she was treated with an antibiotic for bronchitis. The findings persisted on 28 November. It is not known whether or not Michelle was using ephedrine-based decongestants that have been associated with increased blood pressure responses.

On 30 November 2000, Michelle was treated in the Dubois Regional Medical Center emergency room for persistent upper airway disease, described as bronchitis, but consisting of inspiratory and expiratory wheezing and requiring management by beta-mimetic aerosol therapy. Recorded blood pressures were elevated, mostly by inaccurate methods, although she eventually had a hypertensive recording by an electronic device. Protein >300 mg/dL was documented with increased hemoglobin, creatinine, and uric acid compared to the November 15 studies. Serum glucose, electrolytes, liver enzymes, and platelets were normal. Fetal heart tones documented at 132/minute. She was given added treatment for her bronchitis with a plan to see Dr. Kruszewski the following morning. On

1 December she missed her appointment. She was admitted later in the day after Dr. Kruszewski insisted that she come to the hospital. Dr. Kruszewski examined Michelle in the hospital and confirmed findings of preeclampsia. A biophysical profile (BPP) and fetal size assessment was performed because of limitations of electronic recording of fetal heart rate. The BPP was reassuring at 6/8. Fetal size by biometry was consistent with intrauterine growth restriction. There were no other lab findings suggestive of severe preeclampsia on admission. Dr. Kruszewski started the antihypertensive labetolol at 100 mg BID. A 24-hour urine protein assessment was started. Examination of the cervix demonstrated a preinduction score of 2, with decreased potential for successful induction without ripening. Maternal weight was suggested to be about 450 pounds, but she was not weighed in the hospital and it is more likely that true weight was about 350 pounds, based on weights recorded in September.

On 2 December, Michelle's blood pressures were slightly improved but still in the hypertensive range. She was still coughing with wheezing on auscultation. She had no complaints of headache or other CNS signs. Fetal heart rate assessments were always difficult to obtain because of maternal habitus, and included documentation of variable decelerations of the fetal heart rate. On December 3 2000, fetal assessments were in the normal range. Because of the ultrasound findings suggesting intrauterine growth delay of the fetus and persistence of maternal hypertension, Dr. Kruszewski determined that delivery was necessary. While Dr. Kruszewski wished to proceed to cesarean delivery, Michelle stated that she did not wish to undergo repeat cesarean delivery. Dr. Kruszewski took into consideration Michelle's pulmonary condition and high probability of needing general anesthesia for cesarean delivery, and Cytotec was given for cervical ripening. Michele also received Proventil (Albuterol) aerosol that evening. for persistent wheezing, and repeated at 4-hour intervals through the night. Her respiratory rate and heart rate normalized after treatments. A 24-hour urine was calculated at 11.6 gm of protein and creatinine clearance of 75L/min, but based on maternal weight of 449 Lb, when she probably weighed 100 lb less. Coagulation and liver function studies were normal.

On December 4, fetal heart tones were recorded in the normal range at 0000 hrs. Maternal blood pressures ranged from 171/87 to 194/100. Fetal heart tones could not be heard reliably at 0730, but Michelle described a very active fetus. At 1000, nurse records audible FHR of 130/min, but still unable to obtain an electronic signal. Dr. Kruszewski examined Michele at 1256 and was unable to obtain fetal heart activity, either by external or internal electronic fetal monitoring, or by U/S.. When fetal membranes were ruptured meconium was found in the fluid but fetal heart tones could not be documented and a diagnosis of intrauterine fetal death was made. Michele delivered a stillborn, 1.87-kilogram female infant at 0930 after induction of labor and vaginal delivery. She received Rh immune globulin postpartum.

Additional pertinent findings:

On the day of delivery Michelle's white blood cell counts were increased to 26-27 thousand/cubic millimeter, without iatrogenic reasons, suggesting pre-existing infection or inflammatory response, not typically seen with preeclampsia. Her small airway disease had improved but placental microscopic examination noted acute chorioamnionitis,

grade II, as well as multiple infarctions and intervillous thrombi. Autopsy findings showed a large intracranial hemorrhage, hypoxemic neuronal damage, and evidence of a rate of autolysis suggesting length of demise of 24-48 hrs. Review of the intracranial microscopic information by Dr. Rubin estimates the timing of the intracranial abnormalities at 3-4 days before recorded fetal death, possibly before admission to hospital.

Summary:

Michelle Herzing's pregnancy was complicated by preexisting hypertension and massive obesity, both of which Dr. Kruszewski attempted to have Michelle address while not pregnant and receiving effective contraception from Dr. Kruszewski. Michelle's failure to seek further medical care for these disorders prior to her pregnancy contributed to her eventual development of complications in her pregnancy that ultimately led to the death of her daughter. Her underlying medical problems compounded by her desire not to have repeat cesarean delivery and the late pregnancy development of small airway disease presented Dr. Kruszewski with a virtual Hobson's choice of management, especially for route of anesthesia. Finally, the development of sub-clinical chorioamnionitis in a hard-to-monitor patient may have been the final insult to a fetus who had already had incurred intracranial problems that were undetectable before induction of delivery but which may have already been present.

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.

Sincerely,

John J. Botti, MD, FACOG

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. G.D. 02-169 CD
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON, Defendants	:	COPY

DEPOSITION OF: MICHELLE HERZING

TAKEN BY: DEFENDANT

BEFORE: MAUREEN L. PRITCHARD, RPR
NOTARY PUBLIC

DATE: MAY 28, 2003, 12:54 P.M.

PLACE: DUBOIS REGIONAL MEDICAL CENTER
25 EAST PARK AVENUE
DUBOIS, PA 15801

EXHIBIT
tabbies
B

Q -- your antepartum care; is that right?

A Yeah.

Q And it looks also from the records that through November 15, you had one, two, three, four, five, six appointments. Does that sound about right? Six occasions?

A Yeah.

Q And every time that you went to Dr. Mary during that pericd of time from July 2000 say to November 15, 200C, did you see her each time?

A Yes.

Q And each time did she take your blood pressure, do some lab work and things like that?

A The nurses usually would do that, yeah.

Q Did you have any discussion during that period of time concerning whether the child would be delivered by C-section or vaginally?

A I had told her that if it was possible to deliver this one natural, that I wanted to. But if it come down to having a cesarean again, I would, because I had one with my son, so --

Q And when you had the one with your son, you had some problems, too, with your incision after that child?

A Nothing real bad, no.

then.

Q So that your attitude concerning the cesarean section was the same that you had during the period of time that you saw Dr. Mary antepartum for your monthly visits and when you were admitted on December 1, 2000, you didn't really want a C-section, did you?

A Pardon me?

Q You did not want a C-section?

A If it come down to actually having to have it, I would have, yes.

Q So then your answer to my question is, yes, you wanted it?

MR. PERKOSKY: Objection. Yes, she wanted what?

MR. BLASKO: A cesarean section.

A Did I want the cesarean section? Well, I wanted to try to deliver the baby vaginally if I could, but if there was problems like I had with my son that it had to be done, I would have done the cesarean section, yes. Because the cesarean section with my son was not fun, but if I had to do it again, I would have.

BY MR. BLASKO:

Q Would it be a fair statement to say that

you were apprehensive concerning a C-section?

A I was what?

Q Apprehensive about going through a C-section?

A What do you mean?

Q That you were afraid of going through a cesarean section?

A Yes, I was a little, but if I had to do it, I would have. If it meant saving the little one's life, yes, I would have done it.

Q Was there any discussion with Dr. Mary concerning why you would do it if you saved the baby's life or anything?

A What was that?

Q Was there any discussion that you had at the time on December 1 in the afternoon when you signed the consent with Dr. Mary saying, well, if you had to do it to save the baby's life to do it?

A Yeah.

Q Tell me about that discussion.

A I don't remember if it was that day, but I do remember telling her at some point that, you know, if I had to have the cesarean section, I would.

Q So did it keep coming up while you were in

A Yeah, correct.

Q And do you feel she did something wrong?

A With what happened?

Q Yes.

A Well, I just feel that the cesarean probably should have been done sooner than the 5th.

MR. BLASKO: That's all I have. These young men may have some additional questions.

MR. PERKOSKY: Are you okay? Do you need a break?

THE WITNESS: I'm fine.

EXAMINATION

BY MR. KRIER:

Q Do you recall on December 1 being sent to see Dr. Alajaji for a physical profile?

A Yes.

Q How were you told to come there?

A That, I can't remember. I remember I went for it, but I don't remember how it came about.

Q Was that at the request of Dr. Mary?

A I think it probably was, yeah.

Q Did you have any conversations or discussions with Dr. Alajaji before the sonogram or

H SHA :\MISFORMS\OB-1 : OB-16

DuBois Regional Medical Center

Making the difference for life

410405 32Y MAT 0302-01 I/P
HERZING,MICHELE L
KRUSZEWSKI,MARY
07/11/68 F 12/01/00
167-64-4465 0033601408

REQUEST FOR ADMISSION OF SUPPORT PERSON TO LABOR AND DELIVERY ROOM AND AGREEMENT OF CONDITIONS

OBSTETRICS CONSENT

1. I have asked Dr. Kruszewski and the staff of the DuBois Regional Medical Center to attend me in connection with my obstetrical care (labor, delivery, and post delivery course).

2. I understand that most pregnancies require routine, standard care and result in a vaginal delivery. However, because of unpredictable problems which may arise during any pregnancy, in the course of labor, at the time of delivery or possibly even after delivery, operative intervention including the use of forceps, vacuum extraction or Cesarean Section may be deemed necessary.

3. I have had the opportunity to discuss various medical and surgical means for handling normal pregnancy with my physician(s), and in addition, have discussed those means which are instituted when potential complications arise.

4. I realize that during the course of my pregnancy, during labor or delivery, unforeseen conditions may be revealed which necessitate modification of the originally planned procedure or performance of a different procedure than anticipated. Accordingly, I authorize and request my physician(s) and such assistants as may be selected by him/her to perform such procedures as they consider necessary and advisable.

5. I have been informed that there are risks which are attendant to the performance of any surgical procedures. Among these risks are severe loss of blood, infection, cardiac arrest, anesthesia complications and neonatal injury.

6. I have been informed that the administration of anesthesia may be necessary in order to properly carry out these procedures. Various types of anesthesia applicable to my obstetrical care have been explained to me, together with the advantages and possible adverse complications.

   My desire at this time is to have General anesthesia for my obstetrical care, but I am aware of the fact that circumstances and conditions may necessitate a change in the selection of anesthesia. I prefer not to have Spinal anesthesia; but in an emergency, I consent to the anesthetic technique selected by the anesthesiologist in consultation with my attending obstetrician(s).

7. I am aware that the practice of medicine and surgery is not an exact science and results cannot always be anticipated, and I acknowledge that no guarantees have been made to me concerning the results of the proposed procedure(s).

8. This consent extends not only to the doctors to whom I have entrusted my care and others associated with and designated by them, but to the DuBois Regional Medical Center and its representatives, and I intend to assume the risk of possible unforeseen results and to be legally bound.

-OVER-

225

EXHIBIT B

DUBOIS REGIONAL MEDICAL CENTER
REQUEST FOR ADMISSION OF SUPPORT PERSON
TO LABOR AND DELIVERY ROOM AND
AGREEMENT OF CONDITIONS

OBSTETRICS CONSENT

9. I certify that I have read and fully understand this consent statement, which has been preceded by an explanation by my physician, that the explanations referred to were made by

Dr. _____ and are understood by me.

Witness

Signature of Patient

12/1/00
Date

4:30 pm
Time

Physician's Signature

CONSENT FOR ADMISSION TO OPERATING ROOM FOR CESAREAN BIRTH

The undersigned request admission of the support person to the Operating Room during the Cesarean Section delivery.

We agree to conform to the rules and regulation of the hospital and to comply with orders and directions of the attending physicians and nursing personnel. This includes leaving the Operating Room if the attending physician finds that appropriate and necessary.

We have been instructed as to practices and procedures in the Operating Room. We release the Medical Center, its employees and agents, as well as the physicians and his/her associates of any and all responsibility in the event the support person's attendance in the Operating Room leads to injury.

Mother's Signature: _____

Support Person 's Signature: _____

Witness: _____ Date _____

It is my opinion that each understand the conditions under which the support person will be admitted to the Operating Room and the rules and regulations of the Medical Center. The attendance of the support person during the birth of the child should not be a risk to the patient, child or support person.

Physician's Signature: _____

Date/Time _____

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
-vs-	:	NO. G.D. 02-169-CD
MARY C. KRUSZEWSKI, DUBOIS REGIONAL MEDICAL CENTER, JERJIE T. ALAJAJI, and RUSSELL E. CAMERON, Defendants	:	JURY TRIAL DEMANDED

ORIGINAL

DEPOSITION OF:	MARY C. KRUSZEWSKI
TAKEN BY:	PLAINTIFFS
BEFORE:	MARYANN CORNELIUS NOTARY PUBLIC
DATE:	APRIL 10, 2003, 12:26 P.M.
PLACE:	CONFERENCE ROOM 811 UNIVERSITY DRIVE STATE COLLEGE, PA 16801-6699

made at Dubois by you?

MR. JOHNSON: Object to the form of the question as being unclear.

MS. ACHESON: Do you want her to read it back?

THE WITNESS: As far as I know the hospital doesn't have a specific policy as, you know, these patients have to go to McGee or it's -- you know, it's up to the individual obstetrician.

BY MS. ACHESON:

Q All right. Prior to your conversations with Dr. Kush about the surgical delivery versus the Pitocin that you just described to us, had you ever during the period December 1st through that time considered performing a surgical delivery on Michelle?

A I didn't give it significant consideration because Michelle did not want another C-section.

Q Okay. And so did you mention the possibility of a surgical delivery to Michelle at any time during her hospitalization?

A I don't recall if I did or not.

Q Okay. And so how did you know that she didn't want another C-section, just from prior obstetrical visits?

A Yes.

Q So this was something that you learned from her, let's say, prior to November 15th?

A Yes.

Q Okay. Did you ever have a conversation with her after November 30th about, as far as you recall, about surgical delivery?

A Not that I recall.

Q Can you tell me, refresh my memory, you prescribed what medicines to bring down her blood pressure?

A Labetaol.

Q Labetaol. Was there any other medication that you prescribed along the way to try to reduce her pressure?

A No. Well, after -- after she delivered. When I sent her home, I put her on Procardia.

Q Okay. Now do you think the Labetaol worked, did it seem to bring her pressure down?

A Yes.

Q And can ycu show me -- well, I think it's easier if I show you. I am going to show you a couple of pages from the DuBois Hospital record and I, quite frankly, don't know what they call these pages (indicating).

A That looks like an O.B., like a labor -- it looks like a labor flow record.

Q Does it?

A Yes.

Q Okay. We'll call it the hospital labor flow record then except that's my only copy so if you can find it in your

CERTIFICATE OF SERVICE

I, Amy Acheson, do hereby certify that I caused a true and correct copy of the **PLAINTIFFS' MOTION TO PRECLUDE PORTIONS OF DR. BOTTI'S EXPERT REPORT AND TESTIMONY AT TRIAL** to be served on the following via regular United States first class mail, postage prepaid, on this ____ 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 2 0 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,

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 IN LIMINE TO PRECLUDE EXPERT TESTIMONY BY EMANUEL RUBIN

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

SEP 20 2005
m/12:30/w
William A. Shaw
Prothonotary
NO CERT COPIES

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.	

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE EXPERT TESTIMONY BY EMANUEL RUBIN

AND NOW, come Plaintiffs, by and through their counsel, and respectfully request that this Honorable Court enter an Order precluding certain expert testimony of Dr. Rubin to be offered at trial on behalf of Defendant Mary C. Kruszewski, and in support hereof, state the following:

1. Defendant Kruszewski has proffered an expert report authored by Emanuel Rubin, a Philadelphia doctor. (See, Defendant Kruszewski's Pretrial Statement).

2. The opinion portion of Dr. Rubin's report is not made within a reasonable degree of medical certainty, and must be precluded under Pennsylvania law.

3. Secondly, Dr. Rubin does not meet the expert requirements of the MCARE Act because he does not practice in the field of perinatal or pediatric pathology.

4. Finally, Dr. Rubin's report must be precluded under Pennsylvania law because it does not satisfy the test of Frye v. United States.

5. If Dr. Rubin is allowed to testify to the jury as to "plausible scenarios," and other unsupported conclusions, none of which satisfy the threshold requirements for admission of expert testimony, Plaintiffs will be irretrievably prejudiced at the trial.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order precluding the testimony of Dr. Rubin from the trial of this case.

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 IN LIMINE TO PRECLUDE EXPERT TESTIMONY BY EMANUEL RUBIN** to be served on the following via regular United States first class mail, postage prepaid, on this 19th 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,

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 IN LIMINE TO PRECLUDE DEFENDANT JERJIE T. ALAJAJI'S EXPERT

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
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245 Fort Pitt Boulevard
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JURY TRIAL DEMANDED.

FILED

SEP 20 2005

M/12:30/cc

William A. Shaw
Prothonotary

No cert. copies

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.	

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENDANT JERJIE T. ALAJAJI'S EXPERT

AND NOW, come Plaintiffs, by and through their counsel, and respectfully request that this Honorable Court enter an order precluding certain expert testimony to be offered at trial on behalf of Defendant Jerjie T. Alajaji, and in support hereof, state the following:

1. Defendant Alajaji has listed as his expert witness an emergency medicine radiologist who has no documented clinical practice or substantial familiarity with obstetrical imaging, or with the standards of care for obstetrical Doppler ultrasound and biophysical profiles, which are the standards of care at issue.

2. The opinion testimony of Defendant Alajaji's expert should be precluded to the extent that it purports to offer opinion as to the standards of care applicable to obstetrical imaging including obstetrical Doppler ultrasound and biophysical profiling.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order precluding or limiting the testimony of Defendant Alajaji's expert at trial.

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 IN LIMINE TO PRECLUDE DEFENDANT JERJIE T. ALAJAJI'S EXPERT** to be served on the following via regular United States first class mail, postage prepaid, on this 19th 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

Amy Acheson, Esquire

FILED
SEP 20 2005
William A. Shaw
Prothonotary