

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUFFOLK SUPERIOR COURT  
CIVIL ACTION NO. 19-0119H

AMANDA DAVIS,  
Plaintiff )

vs. )

ALICE MARK, MD, )  
PLANNED PARENTHOOD LEAGUE OF )  
MASSACHUSETTS, INC., )  
JOSHUA M. MULARELLA, MD, )  
CAMBRIDGE PUBLIC HEALTH )  
COMMISSION d/b/a CAMBRIDGE HEALTH )  
ALLIANCE and CAMBRIDGE HEALTH )  
ALLIANCE PHYSICIANS ORGANIZATION, )  
Defendants )

**COMPLAINT &  
JURY DEMAND**

2019 JAN 14 A 10 45  
MICHAEL J. MURPHY  
CLERK / MAJESTY COURT

**PARTIES**

1. The plaintiff, AMANDA DAVIS, is an individual residing in Chelsea, Suffolk County, Massachusetts.
2. The defendant, Alice Mark, MD, is a licensed practicing physician who at all times material hereto had a usual place of business at 1055 Commonwealth Avenue, Boston, Suffolk County, Massachusetts.
3. The defendant, Planned Parenthood League of Massachusetts, Inc. (hereinafter "Planned Parenthood"), is a Massachusetts corporation with a principal and/or usual place of

business at 1055 Commonwealth Avenue, Boston, Suffolk County, Massachusetts, that at all times material hereto provided pregnancy termination services.

4. The defendant, Joshua M. Mularella, MD, is a licensed practicing physician who at all times material hereto had a usual place of business at 1493 Cambridge Street, Cambridge, MA 02139.
5. The defendant, Cambridge Public Health Commission d/b/a Cambridge Health Alliance (hereinafter "CHA"), is an entity created by statute with a principal place of business at 1493 Cambridge Street in Cambridge, Middlesex County, Massachusetts, and a public employer within the meaning of G.L. c. 258, *et. seq.*, that at all times material hereto provided health care, through its employees, contractors and agents, to patients at its various campuses and affiliated locations, including CHA Cambridge Hospital.
6. The defendant, Cambridge Health Alliance Physicians Organization, Inc. (hereinafter "CHAPO"), is a Massachusetts corporation with a principal place of business at 1493 Cambridge Street in Cambridge, Middlesex County, Massachusetts, that at all times material hereto was wholly owned by, and/or affiliated with, CHA, and which employed, and/or contracted with, physicians who provided health care services at CHA campuses, including CHA Cambridge Hospital.

### FACTS COMMON TO ALL COUNTS

7. At all times material hereto, Alice Mark, MD, represented and held herself out to be an Obstetrician/Gynecologist (“hereinafter “OB/GYN”), physician and surgeon, skilled in the treatment of various illnesses and conditions, and, in particular, represented to the plaintiff that she was knowledgeable, competent and qualified to perform an abortion procedure on her in February of 2016.
8. At all times material hereto, Joshua Mularella, MD, represented and held himself out to be a physician, skilled in the treatment of various illnesses and conditions, and, in particular, represented to the plaintiff that he was knowledgeable, competent and qualified to care and treat her in March of 2016.
9. On or about February 4, 2016, the plaintiff, then twenty-one (21) years old and of limited financial means, presented to Dr. Mark at Planned Parenthood in Boston, Massachusetts, for a first-term surgical abortion.
10. On or about that date, Dr. Mark confirmed the ten (10) week gestational age of the pregnancy, performed the surgical abortion procedure with the assistance of ultrasound guidance (due to difficulty with dilation), then purportedly conducted a gross tissue exam of the removed products, declared the pregnancy “terminated” and discharged the plaintiff.
11. The standard(s) of medical care applicable to the average qualified OB/GYN at that time provided that an OB/GYN conducting an abortion procedure in a clinic setting confirm that the abortion was in fact completed and that all products of conception removed *via*

examination employing the flotation of tissue and backlighting, pathological examination, ultrasound (hereinafter "US") and/or other diagnostic procedure(s).

12. The standard(s) of medical care applicable to the average qualified OB/GYN at that time further provided that an OB/GYN conducting an abortion procedure in a case such as the plaintiff's, where US guidance is required due to difficulty with dilation, confirm that the abortion was in fact completed and that all products of conception removed *via* US, pathological examination and/or other heightened diagnostic testing.
13. Moreover, the standard(s) of medical care applicable to the average qualified OB/GYN also provided that an OB/GYN conducting a gross tissue exam of the evacuated contents following an abortion procedure properly perform the exam and actually visualize a gestational sac and other items in the contents.
14. The standard(s) of medical care applicable to the average qualified OB/GYN further provided that an OB/GYN conduct a follow up consultation or examination with a patient within one (1) to two (2) weeks of an abortion procedure, to confirm that the patient is not suffering signs and symptoms suggestive of retained products of conception (hereinafter "RPOC"), and/or to return the patient's calls.
15. On or before her discharge from Planned Parenthood on February 4, 2016, Dr. Mark, and/or other providers at Planned Parenthood, obtained and recorded the plaintiff's correct phone number, and advised her that Dr. Mark and/or Planned Parenthood would call her to obtain her status, and/or to schedule a follow-up appointment, within two (2) weeks or sooner.

16. Neither Dr. Mark or anyone else at Planned Parenthood ever advised the plaintiff that prolonged bleeding and severe abdominal pain/cramping could be a sign that she had RPOC.
17. During the days following the February 4, 2016 procedure, the plaintiff suffered significant and continuous bleeding, abdominal pain and cramping.
18. Notwithstanding that Planned Parenthood had correctly recorded the plaintiff's phone number on or before February 4, 2016, neither Dr. Mark or anyone else from Planned Parenthood ever called her to obtain her post-abortion status, or to schedule a follow-up appointment.
19. Moreover, the plaintiff's repeated phone call messages to Dr. Mark and/or Planned Parenthood during the two (2) week period following her procedure were never returned.
20. Her debilitating symptoms having not resolved, and having received no reply from Dr. Mark and/or others at Planned Parenthood in response to her repeated phone calls and/or messages, the plaintiff presented at the CHA Cambridge Hospital Emergency Department on/or about March 15, 2016, where she was examined and treated by Joshua Mularella, MD.
21. Upon her presentation, Dr. Mularella noted that the plaintiff was "status post abortion at Planned Parenthood last month", and that she suffered from, *inter alia*, "heavy vaginal bleeding" and "lower abdominal cramping"; he further confirmed her vaginal bleeding and blood clots *via* a pelvic exam.

22. At the time of the plaintiff's presentation at CHA Cambridge Hospital, the standard of medical care applicable to the average qualified emergency physician, and/or general physician, required that an OB/GYN consultation and/or an ultrasound, or other diagnostic testing, be ordered when a patient presented with the symptoms and signs exhibited by the plaintiff, in order to determine RPOC.
23. Notwithstanding her confirmed symptoms and recent medical history, which plainly raised a strong suspicion of RPOC, Dr. Mularella discharged the plaintiff from the hospital with an incomplete diagnosis and without ruling out RPOC *via* US or other diagnostic testing, and/or seeking an OB/GYN consultation, all of which were available on-campus at Cambridge Hospital and/or at others CHA campuses or affiliated institutions.
24. As a result of Dr. Mularella's failure to properly diagnose and treat the plaintiff's condition, the RPOC were left inside the plaintiff's uterus, causing her great pain and morbidity.
25. Her symptoms having not abated, the plaintiff ultimately presented at the MGH Emergency Department on April 4, 2016, where a gynecological consultation summarily advised the need for an US, which in turn revealed to the plaintiff, for the first time, that the abortion procedure at Planned Parenthood had resulted in substantial RPOC; the plaintiff received appropriate medical treatment at MGH and was discharged.
26. On or about January 16, 2018, the plaintiff, in accordance with Massachusetts General Laws Chapter 258 § 4 and Chapter 231 § 60L, provided timely notice and presentment of the instant claims to the defendants. More than six (6) months thereafter no settlement has

been agreed to and no offer of settlement has been received. A copy of this notice and presentment is attached hereto as EXHIBIT A, sans attachments, and is incorporated herein pursuant to Mass. R. Civ. P. 10(c).

**COUNT 1 - NEGLIGENCE vs. ALICE MARK, MD**

27. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.
28. At the time(s) of her care and treatment of the plaintiff, a physician-patient relationship existed between Alice Mark, MD, and the plaintiff.
29. At all times material hereto, Alice Mark, MD, owed to the plaintiff a duty to exercise the reasonable care and skill of the average, qualified OB/GYN in treating and caring for her, which included confirming that the abortion was in fact complete and that there were no RPOC.
30. The defendant, Alice Mark, MD, negligently breached this duty of care in failing to properly perform a first-term abortion upon the plaintiff, in failing to confirm that the procedure was complete, in failing to confirm the absence of RPOC, in failing to properly perform a sufficient gross tissue examination to determine that the abortion was complete and that there was no RPOC, and in failing to confirm that the abortion was complete and that there was no RPOC *via* US (which was available and had been used in the procedure), flotation of tissue, backlighting, pathology and/or other diagnostic procedures.

31. The defendant, Alice Mark, MD, also negligently performed the gross tissue examination that was purportedly made, as RPOC would not ordinary occur in the absence of such negligence, and there is no other explanation for the RPOC in this case (Edwards v. Boland, 41 Mass. App. Ct. 375 (1996) rev. denied 423 Mass. 1113).
32. The defendant, Alice Mark, MD, further negligently breached this duty of care in failing to properly follow up with the plaintiff after the abortion procedure, in failing to schedule a follow-up appointment with her, in failing to return the plaintiff's phone calls, and/or causing someone else at Planned Parenthood to return her calls, and in failing to advise the plaintiff of the symptoms and signs of RPOC.
33. As a direct and proximate result of said acts and omissions of the Alice Mark, MD, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant, Alice Mark, MD, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

**COUNT 2 – NEGLIGENCE vs. PLANNED PARENTHOOD**

34. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.



35. At all times material hereto, Planned Parenthood, and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, owed a duty to the plaintiff to provide appropriate medical care to her at Planned Parenthood in Boston.

36. At all times material hereto, Planned Parenthood, and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, negligently breached this duty of care by failing to provide proper care and treatment to the plaintiff, and in failing to implement procedures and protocols that would prevent RPOC, and/or ensure that a follow up consultation with the plaintiff was performed and her calls returned.

37. As a direct and proximate result of said acts and omissions of Planned Parenthood, by and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant Planned Parenthood, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

**COUNT 3 – NEGLIGENCE vs. JOSHUA MULARELLA, MD**

38. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

39. At the time(s) of his care and treatment of the plaintiff, a physician-patient relationship existed between Joshua Mularella, MD, and the plaintiff.

40. At all times material hereto, Joshua Mularella, MD, owed to the plaintiff a duty to exercise the reasonable care and skill of the average, qualified emergency and/or general physician in treating and caring for her, which included ordering an OB/GYN consultation and confirmation of RPOC *via* US or other diagnostic procedure(s) upon her presentation to Cambridge Hospital in March of 2016.

41. The defendant, Joshua Mularella, MD, negligently breached this duty of care in failing to properly diagnose the plaintiff's condition, in failing to order an OB/GYN consultation, in failing to order a US or other diagnostic testing for RPOC, and in discharging the plaintiff from the hospital.

42. As a direct and proximate result of said acts and omissions of Joshua Mularella, MD, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant, Joshua Mularella, MD, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

**COUNT 4 - NEGLIGENCE vs. CHA & CHAPO**

43. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

44. At all times material hereto, CHA and CHAPO, and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, owed a duty to the plaintiff to provide appropriate medical care to her at CHA Cambridge Hospital.

45. At all times material hereto, CHA and CHAPO, and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, negligently breached this duty of care by failing to provide proper oversight, supervision, care and treatment to the plaintiff, and in failing to provide a proper and correct diagnosis of her condition.

46. As a direct and proximate result of said acts and omissions of the defendants, by and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendants, CHA and/or CHAPO, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

REQUESTS FOR RELIEF

Wherefore, the plaintiff requests that this court:

1. Enter judgment for the plaintiff on all counts of her complaint;
2. Award the plaintiff damages as determined at trial, including punitive damages and attorney's fees, plus interest and costs as provided by law; and
3. Grant the plaintiff such other relief as the court deems necessary, appropriate, equitable or just.

JURY DEMAND

The plaintiff demands a jury trial on all issues so triable.

The Plaintiff,  
AMANDA DAVIS,  
By her attorney,

Dated: January 14<sup>th</sup>, 2019

  
\_\_\_\_\_

ROSS E. SCHREIBER

BBO#: 639643

8 FANEUIL HALL MARKETPLACE

THIRD FLOOR

Boston, MA 02109

(617) 742-1981

res@schreiberlawboston.com

THE SCHREIBER LAW FIRM LLC  
BOSTON

8 FANEUIL HALL MARKETPLACE  
3RD FLOOR  
BOSTON MA 02109  
T: 617.973.5120  
F: 617.973.6406



FILE COPY

ATTORNEY ROSS E. S.  
DIRECT LINE 617.742.1981  
res@schreiberlawboston.com

January 16, 2018

Via Certified Mail

Joshua M. Mularella, MD  
c/o CHA Everett Hospital  
103 Garland Street  
Everett, MA 02149

Via Certified Mail

Mr. Patrick Wardell  
Chief Executive Officer  
Cambridge Public Health Commission  
d/b/a Cambridge Health Alliance  
1493 Cambridge Street  
Cambridge, MA 02139

Via Certified Mail

Mr. David Porell  
Chief Administrative Officer  
Cambridge Health Alliance Physicians Organization  
1493 Cambridge Street  
Cambridge, MA 02139

Via Certified Mail

Alice Mark, MD  
c/o Planned Parenthood League of MA, Inc.  
1055 Commonwealth Avenue  
Boston, MA 02215.

Via Certified Mail

Jennifer Childs-Roshak, MD  
President and Chief Executive Officer  
Planned Parenthood League of MA, Inc.  
1055 Commonwealth Avenue  
Boston, MA 02215

Re: Amanda Davis - Notice of Claim(s) Pursuant to G.L. c. 231 § 60L  
& Presentment To Public Employer(s) Pursuant to G.L. c. 258 § 4

To the above-named parties:

Please be advised that this office represents Ms. Amanda Davis in connection with medical malpractice claims arising out of a negligent abortion procedure(s) performed by Dr. Alice Mark at Planned Parenthood on 02/04/2016, and for injuries caused by Dr. Joshua Mularella's negligent failure to subsequently diagnose and properly treat Amanda at a Cambridge Health Alliance hospital on 03/15/2016.

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CERTIFIED MAIL  
Domestic  
For delivery to  
EVERETT  
Certified Mail  
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Extra Service  
 Return Receipt  
 Return Receipt with Signature  
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 Adult Signature Required  
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Street  
City, State, ZIP+4<sup>®</sup>  
PS Form 3849, October 2015

Notwithstanding that this notice is being forwarded to Cambridge Health Alliance ("CHA"), and *ergo* to its wholly owned or controlled subsidiary/division, Cambridge Health Alliance Physicians Organization ("CHAPO"), as presentments pursuant to G.L. c. 258, § 4, the plaintiff contends that Dr. Mularella does *not* meet the criteria of a "public employee" for purposes of G.L. c. 258 § 2, et. seq. See, e.g., Kelley v. Rossi, 395 Mass. 659, 661-663 (1985). Similarly, insofar as Planned Parenthood is considered a "public employer" under the statute, the plaintiff contends that Dr. Mark also does not meet the public employee criteria.

In support of the claims stated herein, please find attached hereto the following materials, which are incorporated herein by this reference and which include, in accordance with G.L. c. 231 § 60L(f), all treatment records related to said claims:

- Exhibit 1 - Medical Records from Planned Parenthood;
- Exhibit 2 - Medical Records from CHA;
- Exhibit 3 - Medical Records from Massachusetts General Hospital; and
- Exhibit 4 - Letter from Therapist Louisa Gould dated 01/03/2018.

### **Factual Basis For Claims**

On February 4, 2016, Ms. Amanda Davis, then twenty-one (21) years old and ten (10) weeks pregnant, underwent a first term abortion procedure at the Planned Parenthood facility at 1055 Commonwealth Avenue in Boston, Massachusetts. [See PP records]. Dr. Alice Mark performed the procedure. Upon her discharge that same day, Amanda was advised by Planned Parenthood that they would call her later to set up a follow-up appointment. They never did.

Immediately following the procedure Amanda experienced some vaginal bleeding. As time progressed, however, and even after two (2) weeks had passed, the bleeding became much more pronounced and constant, and included clots as large as a baseball. Amanda called Planned Parenthood four or five times, but on each occasion she was directed to leave a voicemail, which she did. Her calls were never returned. Within three weeks of the procedure Amanda had become so weak due to the prolonged heavy bleeding that she had to confine herself to bed. She suffered from debilitating fatigue and experienced fainting spells when attempting to walk or stand. She also experienced, *inter alia*, intense cramping and continuous lower abdominal pain during this time. She could not work or perform any kind of physical activity. As the weeks and month passed she became progressively more symptomatic.

On March 15, 2016, Amanda's concerned mother had her transported to the emergency department at Whidden Hospital (i.e., CHA Everett), where she was seen by Joshua M. Mularella, MD. [See CHA records]. Dr. Mularella noted that Amanda was "status post abortion at Planned Parenthood last month", and was then experiencing "heavy vaginal bleeding" and "lower abdominal cramping." He further confirmed the vaginal bleeding and blood clots *via* a pelvic exam. Notwithstanding her symptoms and known post-abortion status, Dr. Mularella failed to perform or order a pelvic ultrasound ("US") and/or other diagnostic or clinical testing with respect to Amanda's condition. Nor did he order or seek a gynecological consultation. Instead, he simply diagnosed her with "dysfunctional uterine bleeding," and

advised her that her symptoms were “most likely due to the change in hormones following the abortion.” He discharged her to home that same day.<sup>1</sup> Amanda’s symptomatology thereafter worsened and she continued to decline.

Her condition having not resolved, Amanda presented at Massachusetts General Hospital (“MGH”) on April 4, 2016, accompanied by her mother, “curled up in a ball” and with the same persistent symptoms. Her treatment providers there ordered a gynecology consultation and recognized the need for a pelvic US to confirm or rule out the existence of “retained products of conception.” [See MGH records]. The pelvic US revealed a “complex heterogeneous endometrial echocomplex measuring up to 2 cm with internal vascular flow”, indicative of retained products of conception (“RPOC”).<sup>2</sup> Amanda relates that her treatment providers at MGH advised her that about ¾ of the fetus had been retained.<sup>3</sup>

This was the first time Amanda was advised that the procedure at Planned Parenthood was incompletely performed, and it caused her severe emotional shock which has since been followed by a deep depression and mental anguish. Amanda’s condition was managed at MGH with Misoprostol. She was hospitalized and discharged the next day. Thereafter Amanda suffered the debilitating after-symptoms of the Misoprostol induced “second abortion”, i.e., heavy bleeding and cramping, for a number of weeks. She became anemic and was treated at CHA hospital facilities. [CHA records]. Only in May of 2016 did her vaginal bleeding substantially diminish.

#### Applicable Standard(s) of Care, Deviations & Liability

At all times material hereto, the standard of care applicable to the average qualified Obstetrician/Gynecologist required Dr. Mark to remove all products of conception when performing the abortion procedure upon her patient, Amanda Davis. Similarly, the applicable standard(s) of care required Dr. Mark, and/or Amanda’s other treatment providers at Planned Parenthood, to take all appropriate studies and examinations, including a properly performed ultrasound, to determine that all products of conception were in fact removed following the procedure, and/or to inspect and/or take a substantial inventory of the evacuated contents to ensure that she was not discharged therewith. The applicable standard(s) of care further required Dr. Mark, and/or Amanda’s other treatment providers at Planned Parenthood, to follow up with Amanda within two (2) weeks of the procedure to obtain a status on her post-abortion condition, and to evaluate her possible need for further treatment.

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<sup>1</sup> Later CHA records dated April 22, 2016 summarize this encounter as follows: “[the patient] [w]ent to Whidden ED, 3/15/16, ED provider felt to be a heavy menses after TAB, no further studies done, and patient was discharged home.”

<sup>2</sup> Blood tests also revealed low HGB/HCT levels, indicative of heavy and/or prolonged bleeding.

<sup>3</sup> A CHA physician described the RPOC in a 4/13/16 note as “retained fetal parts.”

Dr. Mark deviated from these standards of care in failing to remove all products of conception, and in failing to take and/or properly perform post-procedure examinations and/or studies to confirm that all products of conception were in fact removed, and/or in failing to diagnose and/or treat Amanda's post-operative condition. Moreover, not only did Dr. Mark and Planned Parenthood fail to follow up with Amanda in any way post-procedure, they never even returned her multiple phone calls and/or voice messages. Had Dr. Mark performed, *inter alia*, a proper post-procedure ultrasound, and/or a proper itemization of the removed products of conception, she would have been advised of the likelihood of substantial RPOC, and would have been able to immediately perform a second procedure and/or treat Amanda medically. Similarly, had Dr. Mark or Planned Parenthood followed up with Amanda in the weeks following the procedure, and/or returned her voicemails/calls, they would have been advised that she was suffering from symptomatology suggestive of RPOC, and could have had her return to the clinic and treated her medically, as was done at MGH months later. Unfortunately, and as a result of the deviations by Dr. Mark, and/or the other providers at Planned Parenthood, Amanda was caused to suffer the retention of substantial products of conception to her harm and injury.

Similarly, at all times material hereto, the standard(s) of care applicable to the average qualified emergency and/or general physician required Dr. Mularella to order a gynecological consult and diagnostic testing, including ultrasound, with respect to Amanda's presentation and treatment on 03/15/2016 at the CHA hospital. The medical history known to Dr. Mularella at the time, and Amanda's clinical presentation and symptoms, would have advised the average qualified emergency or general physician that he or she should consult an OBGYN and verify or rule out RPOC as a diagnosis. Dr. Mularella's failure to do either was a gross deviation(s) that caused Amanda Davis to remain undiagnosed/untreated, and to unnecessarily continue to suffer the retention of substantial products of conception to her harm and injury. See, e.g., Shirk v. Kelsey, 617 N.E.2d 152 (Ill. App. 1993) (jury verdict for plaintiff sustained where evidence indicated that Dr. failed to utilize ultrasound or otherwise confirm that abortion was complete); see, also, generally Margaret Vroman, Medical Malpractice in Performance of Legal Abortion, 69 ALR4th 875, 880 (West Supp. 2017) ("courts have recognized potential liability where the abortion was performed incompletely and all of the products of conception were not removed").

Moreover, apart from the liability attaching to the individual negligence and medical malpractice of Dr. Mark and Dr. Mularella, Planned Parenthood League of MA, Inc., CHA, and/or CHAPO are all similarly potentially liable pursuant to G.L. c. 258 § 2, and/or common law principles of *respondeat superior*, (Dias v. Brigham Medical Associates, Inc., 438 Mass. 317, 319 (2002)), as well as for negligent supervision/training and/or hiring. See, e.g., Roe No. 1 v. Children's Hospital Medical Center, 469 Mass. 710, 714 (2014) ("there is little doubt that [hospital] had a duty to supervise and monitor [defendant's] conduct while he was employed as a physician there"); Copithorne v. Framingham Union Hospital, 401 Mass. 860 (1988) (hospital negligent in continuing MD's staff privileges after receiving notice of previous incidents of similar harms).

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Damages

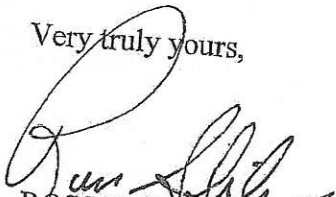
As a direct result of the negligently performed abortion by Dr. Mark, and Dr. Mularella's subsequent failure to timely diagnose and properly treat her condition, Amanda was caused to suffer unnecessary physical pain, hospitalization(s), emotional distress and morbidity. To this day Amanda continues to experience severe depression, anxiety and mental anguish from the memory of the shock that she suffered when being advised at MGH that the initial abortion had been incomplete. See Payton v. Abbot Labs, 386 Mass. 540 (1982) (Massachusetts recognizes a claim for negligent infliction of emotional distress against a physician); see, also, Ferrara v. Bernstein, 613 N.E.2d 542 (N.Y.2d 1993) (plaintiff's emotional distress resulted from negligently performed abortion). Specifically, *inter alia*, she suffers from loss of appetite and sleeplessness due to recurrent nightmares, has suicidal thoughts and experiences stomach pain, headaches and chest pain/shortness of breath when the memory reappears. Her treating therapist further opines that this experience has contributed to, and/or severely exacerbated, Amanda's post-traumatic stress disorder symptoms. [See Gould Letter].

In view of the preceding, and given the circumstances present in this case, the egregiousness of the deviations and the seriousness of the injuries sustained, and with a view to facilitating a fair resolution of this matter, on behalf of Amanda I am demanding \$200,000.00 to settle this case. See, e.g., Shirk v. Kelsey, 617 N.E.2d at 152 (after plaintiff's comparative negligence considered, jury awarded \$225,000.00 verdict); Bauman v. Bresnick, MD, et. al., JVR No. 45866 available at 1985 WL 352836 (N.Y. Sup.) (\$200,000.00 plaintiff's verdict in incomplete abortion case, including award for emotional distress).

Please contact this office at your earliest possible convenience to discuss this matter. Please also forward any medical information release form(s) you wish Amanda to execute, authorizing your access to her medical records. Notwithstanding that the potential public employers addressed herein have six (6) months in which to respond to this presentment under the statute, I would invite an earlier response(s). Needless to say, if the parties fail to respond to this presentment/notice within the respective statutory periods, I shall file the appropriate civil complaint on behalf of Amanda. I also shall reserve the right to supplement this letter, and the exhibits hereto, in the future.


Thank you for your attention to this matter. I look forward to speaking with you soon.

Very truly yours,

  
ROSS E. SCHREIBER

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Priority Mail  
provide proof of delivery  
to cover  
waiver  
receipt  
addressee  
with the  
to the  
artificial Mail  
inquiry.

<b>CIVIL ACTION COVER SHEET</b>	DOCKET NUMBER <b>19-0119H</b>	<b>Trial Court of Massachusetts The Superior Court</b>	
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PLAINTIFF(S): <u>Amanda Davis</u> ADDRESS: <u>Chelsea, MA</u>	COUNTY: <u>Suffolk</u>
ATTORNEY: <u>Ross Schreiber</u> ADDRESS: <u>8 Faneuil Hall Marketplace, 3rd Floor Boston, MA 02109</u>	DEFENDANT(S): <u>Alice Mark, MD, Planned Parenthood League of Massachusetts, Inc., Joshua Mularella, MD, Cambridge Public Health Commission d/b/a Cambridge Health Alliance and Cambridge Health Alliance Physicians Organization</u> ADDRESS: <u>1055 Commonwealth Avenue, Boston, MA (Dr. Mark and Planned Parenthood) 1493 Cambridge Street, Cambridge, MA (Dr. Mularella, CHA and CHAPO)</u>
BBO: <u>639643</u>	

**TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)**

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
<u>B06</u>	<u>Medical Malpractice</u>	<u>A</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

\*If "Other" please describe: \_\_\_\_\_

**STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A**

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

**TORT CLAIMS**  
(attach additional sheets as necessary)

A. Documented medical expenses to date:	\$	
1. Total hospital expenses .....	\$	<u>@\$12,000.00</u>
2. Total doctor expenses .....	\$	_____
3. Total chiropractic expenses .....	\$	_____
4. Total physical therapy expenses .....	\$	_____
5. Total other expenses (describe below) .....	\$	<u>@\$1,000.00</u>
Treatment for emotional injury		
<b>Subtotal (A):</b>	<b>\$</b>	_____
B. Documented lost wages and compensation to date .....	\$	_____
C. Documented property damages to dated .....	\$	_____
D. Reasonably anticipated future medical and hospital expenses <u>Treatment for emotional injury</u> .....	\$	<u>@\$2,000.00</u>
E. Reasonably anticipated lost wages .....	\$	<u>@\$500.00</u>
F. Other documented items of damages (describe below) .....	\$	_____

G. Briefly describe plaintiff's injury, including the nature and extent of injury:  
 Retained products of conception remaining after failed abortion at Planned Parenthood caused plaintiff to suffer substantial and debilitating pain and bleeding. Planned Parenthood failed to follow up with plaintiff and she was thereafter misdiagnosed at Cambridge Hospital, causing her to continue to suffer pain and bleeding until properly diagnosed at MGH two months after the procedure. Upon discovery of incomplete abortion plaintiff suffered shock and emotional injury, and had to undergo further treatment. **TOTAL (A-F):\$** \$15,500.00

**CONTRACT CLAIMS**  
(attach additional sheets as necessary)

Provide a detailed description of claims(s): \_\_\_\_\_ **TOTAL: \$** \_\_\_\_\_

Signature of Attorney/Pro Se Plaintiff: X Ross Schreiber Date: 1-14-2019

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

**CERTIFICATION PURSUANT TO SJC RULE 1:18**

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X Ross Schreiber Date: 1-14-2019

**CIVIL TRACKING ORDER**  
(STANDING ORDER 1- 88)

DOCKET NUMBER

1984CV00119 **H**

**Trial Court of Massachusetts**  
**The Superior Court**



CASE NAME:

Amanda Davis vs. Alice Mark, M.D. et al

Michael Joseph Donovan, Clerk of Court

TO: File Copy

COURT NAME & ADDRESS

Suffolk County Superior Court - Civil  
Suffolk County Courthouse, 12th Floor  
Three Pemberton Square  
Boston, MA 02108

**TRACKING ORDER - A - Average**

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

**STAGES OF LITIGATION**

**DEADLINE**

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		04/16/2019	
Response to the complaint filed (also see MRCP 12)		05/14/2019	
All motions under MRCP 12, 19, and 20	05/14/2019	06/13/2019	07/15/2019
All motions under MRCP 15	03/09/2020	04/08/2020	04/08/2020
All discovery requests and depositions served and non-expert depositions completed	01/04/2021		
All motions under MRCP 56	02/02/2021	03/04/2021	
Final pre-trial conference held and/or firm trial date set			07/02/2021
Case shall be resolved and judgment shall issue by			01/13/2022

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to

DATE ISSUED

01/14/2019

ASSISTANT CLERK

Steven J Masse

PHONE

(617)788-8147