

CAUSE NO. D-1-GN-12-000262

MEGAN FOSTER, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
PLANNED PARENTHOOD OF THE TEXAS CAPITAL REGION, INC. and ELISE DIANE ROBINSON SU, M.D., Defendants.	§	
	§	
	§	250 TH JUDICIAL DISTRICT

PLAINTIFF’S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, MEGAN FOSTER, complaining of Defendants PLANNED PARENTHOOD OF THE TEXAS CAPITAL REGIONS, INC. (hereinafter “Planned Parenthood”) and ELISE DIANE ROBINSON SU, M.D., and for cause of action would show this Court as follows:

I.

DISCOVERY

1.1 Plaintiffs intend to conduct discovery under Rule 190.3 (Level 2) of the Texas Rules of Civil Procedure.

II.

THE PARTIES

2.1 Plaintiff is an individual who can be contacted through counsel.

2.2 Defendant ELISE DIANE ROBINSON SU, M.D. is an individual who may be served with process at her last known place of employment, 201 E. Ben White Blvd., Austin, TX 78704.

2.3 The Registered Agent, Glenda J. Parks, could not be located at the Registered Office. Therefore, Defendant PLANNED PARENTHOOD is a corporation that can be served through the Secretary of State pursuant to the Texas Business Organizations Code §5.251 by serving duplicate copies of such process on the Secretary of State, who shall cause one of the copies thereof to be forwarded by certified mail, return receipt requested, addressed to PLANNED PARENTHOOD, at its Registered Office located at 707 Rio Grande St., Suite 200, Austin, TX 78701.

III.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

3.1 The amount in controversy exceeds the minimum jurisdictional limits of this Court. Venue is proper in Travis County, Texas as it is the county in which all or a substantial part of the events or omissions giving rise to these claims occurred. All conditions precedent to Plaintiff's right to recover herein and to the Defendants' liability have been performed or have occurred.

3.2 Plaintiff gave Defendants written notice of Plaintiff's claim at least 60 days before filing suit and fully complied with the terms of Texas Civil Practice & Remedies Code section 74.051 and 74.052. A copy of the notices are attached as Exhibit A and B.

IV.

FACTS

4.1 On November 20, 2009, Defendants administered Plaintiff a drug known as Cytotec/Misoprostol ("Cytotec") for cervical dilation. Not only has the FDA not approved this drug's use for cervical dilation, but in fact the manufacturer expressly prohibits its use for that purpose. This is not an example of "off-label" use, but rather us in direct contravention to the labels set forth by the manufacturer.

4.2 The true risks of this drug were not adequately explained. Instead, the consent form merely stated that possible side effects include nausea, vomiting, fever, hot flashes, chills, diarrhea, headache, dizziness, tiredness and back pain.

4.3 In fact, the true risks as stated by its own manufacturer include uterine rupture, uterine bleeding, uterine perforation, severe vaginal bleeding, retained placenta and pelvic pain. None of these risk appeared on the consent form for this drug. If these risks were in fact disclosed, no reasonable woman would then choose to use it. Furthermore, it was not necessary to administer this drug to Plaintiff due to previous pregnancies and deliveries and it was therefore negligent to administer it to her.

4.4 As a result of being improperly administered this drug and without Plaintiff's informed consent, on November 23, 2009 Plaintiff thereafter presented to Seton Hospital with severe uterine cramping and severe vaginal bleeding. Retained placenta was ultimately found, a known risk of Cytotec. The administration of this drug caused subsequent surgeries and additional damages as set forth below.

V.

CAUSES OF ACTION

A. Medical Negligence

5.1 The allegations contained in Paragraph 4.1-4.4 are hereby incorporated by reference.

5.2 Defendants Planned Parenthood and Dr. Robinson Su were negligent by administering Cytotec to Plaintiff.

5.3 Defendant Planned Parenthood is liable to Plaintiff for the breach of the duty of care by its nurses, Defendant's employee, because the employee's acts were performed while in the

employment of defendant, to further its business, and to accomplish the object for which the employee was hired. The employee's acts were within the course and scope of employment or within their authority delegated to the employee. The employee breached the duty of care by administering Cytotec to Plaintiff.

5.4 Defendants' breach of duty by negligently administering Cytotec to Plaintiff proximately caused injury to plaintiff, which resulted in the damages stated below.

B. Lack of Informed Consent

5.5 The allegations contained in Paragraph 4.1-4.4 are hereby incorporated by reference.

5.6 Defendants obtained plaintiff's consent to administer Cytotec without properly informing plaintiff of the inherent risks associated with Cytotec. A reasonable person would have refused Cytotec if the risks and hazards had been disclosed. Plaintiff was injured by the occurrence of an undisclosed risk. This failure to disclose the risks of the drug proximately caused injury to plaintiff, which resulted in the damages stated below.

VI.

DAMAGES

6.1 The allegations contained in Paragraphs 4.1 through 5.6 are hereby incorporated by reference.

6.2 As a direct and/or producing and/or proximate result of the acts and omissions of Defendants, Plaintiff has sustained substantial actual damages.

6.3 As a result of Defendants' negligence as stated above, Plaintiff has suffered bodily injuries. Plaintiff has further suffered physical pain and mental anguish in the past, in reasonable physical pain and mental anguish in the future, past medical care and expenses and in reasonable probability, future medical care and expenses, past lost wages and loss of earning capacity, in reasonable

probability future lost wages and loss of earning capacity, physical impairment in the past, and in reasonable probability, physical impairment in the future, and past and future disfigurement.

REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and, upon final trial, Plaintiff have Judgment against Defendants as requested above, and as follows:

1. Judgment against Defendants for all damages alleged in this petition;
2. Interest before and after judgment at the highest rate provided by law, until paid;
3. Costs of suit; and
4. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

MELTON & KUMLER, LLP
2705 Bee Cave Road, Suite 220
Austin, Texas 78746
(512) 330-0017 Telephone
(512) 330-0067 Facsimile

/s/ John F. Melton

John F. Melton
State Bar No. 24013155

ATTORNEYS FOR PLAINTIFFS

MELTON & KUMLER, L.L.P.
Attorneys at Law

John F. Melton *
Wylie E. Kumler

2705 Bee Cave Road, Suite 220
Austin, Texas 78746
(512) 330-0017 Telephone
(512) 330-0067 Facsimile

* Board Certified - Labor and Employment Law

March 8, 2010

Via CMRRR

Attention: Legal Department
Planned Parenthood of Austin Surgical & Sexual Health Services
201 E. Ben White Blvd.
Austin, TX 78704

Re: Patient: Megan Foster
Date of Birth: 12/29/81

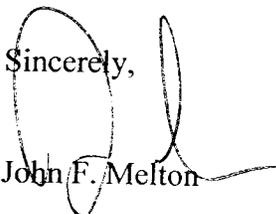
To Whom It May Concern:

This letter is to advise you that this firm represents Megan Foster. This notice is being sent pursuant to *Texas Civil Practice & Remedies Code* Section 74.051. We are investigating a potential health care liability claim.

Pursuant to, and in compliance with *Texas Civil Practice & Remedies Code* Section 74.052, enclosed is an authorization for you to obtain medical records regarding my client.

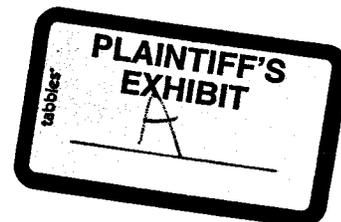
In addition, and pursuant to *Texas Civil Practice & Remedies Code* Section 74.051(d), please provide me with complete and unaltered copies of all medical records regarding my client within 45 days. Enclosed is an authorization signed by my client.

Thank you for your attention to this matter. If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

John F. Melton

Enclosure

cc: Megan Foster



MELTON & KUMLER, L.L.P.
Attorneys at Law

John F. Melton *
Wylie E. Kumler

2705 Bee Cave Road, Suite 220
Austin, Texas 78746
(512) 330-0017 Telephone
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* Board Certified - Labor and Employment Law

July 11, 2011

Via CMRRR

Dr. Elise Diane Rosenberg Su
201 E. Ben White Blvd.
Austin, TX 78704

Re: Patient: Megan Foster
Date of Birth: 12/29/81

To Whom It May Concern:

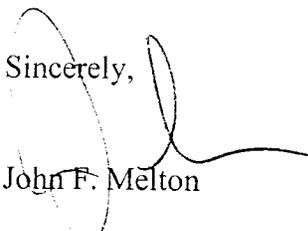
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Sincerely,


John F. Melton

Enclosure

cc: Megan Foster

