

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

FILED
JUN 18 2014

KATHERINE QUAKA,)	22 ND JUDICIAL CIRCUIT
)	CIRCUIT CLERK'S OFFICE
Plaintiff,)	BY <u>[Signature]</u> DEPUTY
vs.)	No. 1222-CC10151
)	Div. No. 1
DAVID LOUIS EISENBERG,)	
)	
-and-)	
)	
PLANNED PARENTHOOD OF THE ST. LOUIS)	Medical Malpractice
REGION AND SOUTHWEST MISSOURI,)	Jury Trial Demanded
)	
Defendant.)	

ENTERED
JUN 20 2014
SR

**PLAINTIFF'S FIRST AMENDED
PETITION**

Plaintiff Katherine Quaka for her first amended petition and causes of action against defendants David Louis Eisenberg, M.D. and Planned Parenthood of the St. Louis Region and Southwest Missouri for medical malpractice, states as follows:

ALLEGATIONS COMMON TO BOTH COUNTS

1. Plaintiff brings this action based on professional negligence by each defendant which arose during plaintiff's care and treatment by the defendants beginning on or about September 10, 2010, and which culminated in plaintiff suffering a severe infection that substantially jeopardizes her health including her ability to become pregnant and bear a child.

2. At all times mentioned herein Defendant Planned Parenthood of the St. Louis Region and Southwest Missouri (hereinafter "Planned Parenthood") is a Missouri non-profit corporation in good standing.

3. At all times mentioned herein defendant Planned Parenthood provided surgical and non-surgical medical care to patients, including plaintiff Katherine Quaka.

4. Planned Parenthood, at all relevant times, was a health care provider that maintained treatment offices in the City of St. Louis, Missouri.

5. The conduct described herein as it relates to Planned Parenthood occurred by reason of the acts and omissions of agents and/or employees of Planned Parenthood, including its physicians and staff members, and specifically defendant David Louis Eisenberg, acting within the course and scope of their employment or agency as agents, employees or representatives of defendant Planned Parenthood.

6. At all times relevant herein, defendant David Louis Eisenberg, M.D. was a healthcare provider who held himself out to be a competent medical doctor specializing in gynecology and obstetrics, capable of affording patients proper and skillful medical care.

7. At all relevant times, defendant David Louis Eisenberg, M.D., was acting and holding himself out and being held out by defendant Planned Parenthood to be

its agent, and was rendering medical, gynecological and obstetrics care and treatment as an agent of and on behalf of defendant Planned Parenthood.

8. Defendant David Louis Eisenberg, M.D. represented himself to be reasonably competent and skillful and capable of properly administering care and treatment and was required to exercise and use that degree of skill and learning ordinarily used in the same or similar circumstances by others engaged in said defendant's profession.

9. Plaintiff Katherine Quaka began treating with Planned Parenthood on or about September 10, 2010 for the purpose of terminating a pregnancy.

10. After a medication procedure begun on or about September 17, 2010, Planned Parenthood conducted a dilation and curettage (hereinafter "D & C") surgical procedure on plaintiff that took place on or about October 5, 2010.

11. The D & C is an invasive, out-patient surgical procedure conducted through the vaginal opening and into the uterus.

12. During the D & C surgical procedure on or about October 5, 2010, plaintiff's cervix was perforated and lacerated with a surgical instrument.

13. The perforation and laceration was treated by suturing.

14. Defendant Planned Parenthood's post-operative medical report acknowledged and recorded the perforation and laceration of the cervix.

15. Said wound to the plaintiff's cervix posed a foreseeable and substantial risk of infection.

16. Among the types of infections this wound posed is from the beta hemolytic strep.

17. The beta hemolytic strep is a bacteria that is commonly found benignly in the area of the woman's cervix but can become infectious and harmful when introduced into a wound.

18. Defendant Planned Parenthood did not perform a culture on plaintiff to determine the potential presence of infectious bacteria, including beta hemolytic strep.

19. Following the D & C surgical procedure, defendant permitted plaintiff to return home the same day.

20. On or about 3:55 p.m. on October 10, 2010, plaintiff called defendant Planned Parenthood to report on her physical condition and seeking medical advice and follow-up treatment.

21. On said date and at said time plaintiff correctly reported:

- a. She had slight bleeding with moderate to severe uterine cramps,
- b. She reported that her cervix had been perforated and sutured in a procedure on October 5, 2010; and
- c. She stated that the first two days of recovery were pain-free but that the last days she had been taking Advil every four hours and had pain which was getting more severe.

22. Defendant Planned Parenthood scheduled plaintiff for a follow-up appointment for Monday October 11, 2010.

23. On October 11, 2010, plaintiff telephoned defendant Planned Parenthood and informed it that she was having more pain, that she had a spiking temperature and that she was having diarrhea.

24. On [10-11-10] a nurse with the last name of Pippen (as an employee and agent of defendant Planned Parenthood) advised plaintiff to go to an Emergency Room and to use a hot water bottle or heating pad in the meantime.

25. Plaintiff went to the Emergency Room of Barnes-Jewish Hospital on October 11, 2010.

26. After spending approximately two and half hours waiting to be seen by a physician, plaintiff contacted nurse Pippen at defendant Planned Parenthood to explain the delay in ER evaluation.

27. Nurse Pippen discussed the plaintiff's case with Susan Bender, a Nurse Practitioner for defendant Planned Parenthood.

28. After series of discussions, nurse Pippen instructed plaintiff to return to defendant Planned Parenthood on the morning of October 12, 2010 at 7:00 a.m. for follow-up evaluation and treatment.

29. On October 12, 2010, Plaintiff was examined by defendant Planned Parenthood.

30. She had a temperature of 100 degrees Fahrenheit the prior day and reported pain in her right lower quadrant of her abdomen.

31. A sonogram showed an empty uterus, normal adnexa and fluid in the cul-de-sac.

32. She showed slight tenderness in the cervical area.

33. A Complete Blood Count (hereinafter "CBC") was drawn and showed elevated white blood cell count.

34. Elevated white blood cell count is an indication of an infection.

35. The CBC further showed plaintiff's neutrophils percentage was 77.8 and the lymphocyte percentage was 11.7.

36. These results are above normal and are indications of an infection.

37. As part of the October 12, 2010 examination, Defendant David Louis Eisenberg provided a medical consult.

38. Defendant Eisenberg thereby became a medical treater of plaintiff and his medical opinions and orders were considered and acted upon in the care and treatment of plaintiff.

39. At the conclusion of the October 12, 2010 examination and testing, the defendants made an incorrect diagnosis regarding plaintiff's complaint and physical condition of pelvic pain secondary to gastroenteritis.

40. At the time defendants made the erroneous diagnosis, plaintiff was suffering from a beta hemolytic strep infection introduced through the wound of her cervix.

41. Defendants failed to treat plaintiff for a beta hemolytic strep infection.

42. As a direct and proximate cause of defendants failure to diagnose and treat plaintiff's beta hemolytic strep infection, the infection continued to spread and worsen.

43. On or about October 14, 2010, plaintiff sought treatment at the Emergency Room of St. Clair Hospital.

44. The Emergency Room physician called defendant Planned Parenthood to obtain detailed information regarding plaintiff's history and condition.

45. A Dr. Stoddard (believed to be an employee and agent of defendant Planned Parenthood) was provided the message of the St. Clair Hospital Emergency Room inquiry.

46. Dr. Stoddard failed to return the call or otherwise contact the St. Clair Hospital or its medical care providers.

47. On or about October 15, 2010, plaintiff was admitted to Barnes-Jewish Hospital.

48. She was diagnosed with sepsis, peritonitis with a surgical abdomen, an ileus and pyosplinx and purulent pelvic and abdominal ascites.

49. She was subsequently additionally diagnosed with Toxic Shock Syndrome and septic shock.

50. Said diagnosis and maladies suffered by plaintiff were directly and proximately caused by the failure of defendants to appropriately diagnose and treat the underlying beta hemolytic strep infection.

51. Said maladies caused plaintiff to become severely ill and required her hospitalization for an extended period of time, including in the Intensive Care Unit.

52. Plaintiff was caused to undergo intrusive medical procedures including laparoscopy, gastric lavage and placement on a ventilator.

53. As a direct and proximate cause of the failure of defendants to appropriately diagnose and treat the beta hemolytic strep infection, plaintiff has suffered significant and diagnosable mental injury, including Post-Traumatic Stress Disorder.

COUNT I

Plaintiff states her cause of action in this Count I against defendant David Louis Eisenberg, M.D. as follows:

54. Plaintiff adopts by reference and incorporates paragraphs 1 through 53 of this Petition as if fully stated herein.

55. Defendant David Louis Eisenberg, M.D. negligently failed to use the skill and learning ordinarily used under the same or similar circumstances by applicable

members of said defendant's profession, and was thereby due to failure to properly treat and diagnose plaintiff.

56. More specifically but without limitation defendant David Louis Eisenberg was negligent in one or more of the following respect in the evaluation, care, treatment and diagnosis of plaintiff:

a. Defendant failed to warn plaintiff to avoid taking a bath for at least seven days following the surgical procedure on 10-5-10;

b. Defendant failed to inform or advise plaintiff that water from a bath could enter her uterus through her dilated cervix and cause her to develop an infection;

c. Defendant failed to examine the plaintiff on 10/12/10 at Planned Parenthood;

d. Defendant failed to review the CBC results he ordered in consultation with nurse Bender on 10/12/10;

e. Defendant failed to inform the plaintiff that a pelvic infection was being considered in the differential diagnosis on 10/12/10;

f. Defendant failed to rule out a pelvic infection on 10/12/10; and

g. Defendant failed to promptly follow up with a repeat CBC and complete exam on 10/13/10.

57. The negligent acts and omissions of defendant David Louis Eisenberg, M.D., as described above, any and all of which, taken either separately or with another, caused or contributed to cause plaintiff's damages.

58. As a direct result thereof, plaintiff suffered a severe beta hemolytic strep infection that further caused sepsis, peritonitis with a surgical abdomen, an ileus and pyospinx and purulent pelvic and abdominal ascites, Toxic Shock Syndrome and septic shock; plaintiff has been required to undergo surgeries and subsequent medical procedures accompanied by pain, anesthetic risks and periods of recuperation, and will in the future have to undergo further medical procedures and need medical equipment with consequent medical expense, pain and suffering and periods of recuperation; plaintiff has suffered, and will in the future suffer, pain of body and anguish of mind and significant and diagnosed mental injury including Post-Traumatic Stress Disorder; plaintiff has suffered permanent disability and physical changes as a result of these conditions that includes a greatly reduced ability to conceive and bear a child; as a direct and proximate cause of such disability, plaintiff has sustained lost earnings and earning capacity; plaintiff has lost capacity for carrying out his daily activities due to her consequent injuries, and her capacity to enjoy life has been diminished, has sustained economic damages in the form of medical payments and expenses and will in the future sustain additional economic damages, all to plaintiff's damage.

59. The damages sought herein are not fully ascertainable at this time and are subject to proof at trial, but said damages are in excess of the sum of Twenty-Five Thousand Dollars (\$25,000.00), stated only for jurisdictional purposes of this Court.

WHEREFORE, plaintiff Katherine Quaka prays that this Court enter judgment in her favor and against defendant David Louis Eisenberg, M.D. in this Count I for such amount as will fairly and reasonably compensate plaintiff for her actual damages, as alleged herein, her costs incurred herein, and for such other and further relief favorable to plaintiff as the Court deems just and proper.

COUNT II

Plaintiff states her cause of action in this Count II against defendant Planned Parenthood as follows:

60. Plaintiff adopts by reference and incorporates paragraphs 1 through 59 of this Petition as if fully stated herein.

61. Defendant Planned Parenthood, by and through its physicians, residents, interns, nurses, staff members, employees, agents and representatives, including, but limited to, defendant David Louis Eisenberg (all of whom were acting within the course and scope of their employment and agency with Planned Parenthood) negligently failed to use the skill and learning ordinarily used under the same or similar circumstances by applicable members of said defendant's profession, and was thereby negligent.

62. More specifically but without limitation defendant Planned Parenthood, by and through its agents and employees, was negligent in one or more of the following respect in the evaluation, care, treatment and diagnosis of plaintiff:

- a. Defendant failed to warn plaintiff to avoid taking a bath for at least seven days following the surgical procedure on 10-5-10;
- b. Defendant failed to inform or advise plaintiff that water from a bath could enter her uterus through her dilated cervix and cause her to develop an infection;
- c. Defendant failed to competently and thoroughly examine the plaintiff on 10/12/10 at Planned Parenthood;
- d. Defendant failed to competently and thoroughly review the CBC results ordered in consultation with nurse Bender on 10/12/10;
- e. Defendant failed to inform the plaintiff that a pelvic infection was being considered in the differential diagnosis on 10/12/10;
- f. Defendant failed to rule out a pelvic infection on 10/12/10; and
- g. Defendant failed to promptly follow up with a repeat CBC and complete exam on 10/13/10.


63. The negligent acts and omissions of defendant Planned Parenthood, as described above, any and all of which, taken either separately or with another, caused or contributed to cause plaintiff's damages.

64. As a direct result thereof, plaintiff suffered a severe beta hemolytic strep infection that further caused sepsis, peritonitis with a surgical abdomen, an ileus and pyosplinx and purulent pelvic and abdominal ascites, Toxic Shock Syndrome and septic shock; plaintiff has been required to undergo surgeries and subsequent medical procedures accompanied by pain, anesthetic risks and periods of

recuperation, and will in the future have to undergo further medical procedures and need medical equipment with consequent medical expense, pain and suffering and periods of recuperation, plaintiff has suffered, and will in the future suffer, pain of body and anguish of mind and significant and diagnosed mental injury including Post-Traumatic Stress Disorder; plaintiff has suffered permanent disability and physical changes as a result of these conditions that includes a greatly reduced ability to conceive and bear a child; as a direct and proximate cause of such disability, plaintiff has sustained lost earnings and earning capacity; plaintiff has lost capacity for carrying out his daily activities due to her consequent injuries, and his capacity to enjoy life has been diminished, all to plaintiff's damage

65. The damages sought herein are not fully ascertainable at this time and are subject to proof at trial, but said damages are in excess of the sum of Twenty-Five Thousand Dollars (\$25,000.00), stated only for jurisdictional purposes of this Court.

WHEREFORE, plaintiff Katherine Quaka prays that this Court enter judgment in her favor and against defendant Planned Parenthood for the St. Louis Region and Southwest Missouri in this Count II for such amount as will fairly and reasonably compensate plaintiff for her actual damages, as alleged herein, her costs incurred herein, and for such other and further relief favorable to plaintiff as the Court deems just and proper.


By /s/ Gregory G. Fenlon
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Certificate of Service

A copy of the foregoing was filed electronically with the Court on May 22, 2014 and a copy was served on defense counsel Mark Feldhaus via the Court's electronic filing system.


/s/ Gregory G. Fenlon