SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

IA-25

10-18

1A-25

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HEATHER GREEN,

Plaintiff,

Index No: 18234/06

- against -

AFFIRMATION IN OPPOSITION

PLANNED PARENTHOOD OF NEW YORK CITY, INC., ROSEMARY GARRETT and SUSAN RUBIN, MD.,

Defendants.

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EDWARD A. RUFFO, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I am a member of the law firm of DANKNER & MILSTEIN, P.C., attorneys for plaintiff, HEATHER GREEN in this matter.

2. This Affirmation is submitted in opposition of the instant motion by defendants, seeking summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR § 3212.

3. The motion should be denied because numerous questions of fact exists regarding whether the defendants failed to diagnose and treat ectopic pregnancy. Both are alleged to constitute deviations from good and accepted medical practice.

4. It is undisputed that plaintiff, Heather Green, presented to the Bronx office of Planned Parenthood of New York City, Inc., on October 18, 2005 to terminate an early pregnancy.

5. The pregnancy was confirmed with urine sensitivity. A sonogram performed by defendant Rosemarie Garrett (Sonographer) identified a well defined shape measuring 2.4 x 2.8 cm within the endometrium of plaintiff's uterus. The report of this sonogram is annexed hereto as **Exhibit "A"**. Thereafter, plaintiff underwent a vacuum aspiration. The report of this procedure is

annexed hereto as **Exhibit "B"**.

6. Plaintiff then underwent a post-procedure sonogram, the report of which is annexed hereto as **Exhibit "C"**. Both sonogram reports indicate the fallopian tubes to be unremarkable.

7. Two (2) days after the procedure, plaintiff was rushed to Bellevue Hospital with a fallopian tube rupture, secondary to an ectopic pregnancy. These records which are annexed to movant's papers as Exhibit "K, confirm that the ectopic pregnancy was readily diagnosed by sonogram. Absent from defendants Exhibit "K" is the surgical pathology report annexed hereto as **Exhibit "D"**. Pathology was consistent with a large (3 cm) ectopic pregnancy.

8. Planned Parenthood, by its agents, servants and employees, not once, but twice missed the existence of an ectopic pregnancy on sonogram. Such constitutes a deviation from good and accepted practice and is enough to deny this motion.

9. Defendants rely upon the opinions of Obstetrician/Gynecologist, Mohammad Momtaz, MD. Dr. Momtaz, accepts as true, defendant Rubin's testimony that she advised plaintiff of the potentiality of an ectopic pregnancy. He ignores plaintiff's deposition testimony denying that an ectopic pregnancy was ever mentioned. *See*, deposition of Heather Green, annexed hereto as Exhibit "F" to movant's papers, page 63.

10. Due to the competing testimony, an issue of fact exists as to whether or not ectopic pregnancy was discussed. Since plaintiff herein is the non-moving party, the inference created must be drawn in her favor, thus concluding that it was not mentioned. Such constituted a further deviation from good and accepted practice since the tissue removed and tissue examination from plaintiff's uterus contained no features of an intra-uterine pregnancy. Even assuming that ectopic pregnancy was indeed suspected and discussed, defendants still departed from good and accepted practice by not immediately referring her for in-hospital treatment.

11. Annexed hereto as **Exhibit "E"** is the affidavit of plaintiff's expert, Lawrence Borow, MD., which states specifically how defendants deviated from good and accepted practice and that contrary to Dr. Momtaz's assertions, prompt treatment of the ectopic pregnancy would have saved plaintiff's fallopian tube and enhanced her fertility.

13. Finally, defendants make an issue of the fact that the plaintiff did not return to Planned Parenthood for follow-up Beta HCG serum testing as indicated. Even if she had done so, the events giving rise to the liability alleged herein would not have changed. She collapsed that same day before such testing would have yielded results.

WHEREFORE, it is respectfully requested that defendants motion be denied in all respects and the Court grant such further and other relief it deems just and appropriate.

Dated: New York, New York
October 15, 2007

EDWARD A. RUFFO

Ultrasound Exam

GREEN, HEATHER
26 BLEECKER STREET Inst:-N
NEW YORK, NY 10012 V:857664
GDR/DOB/MRH: F 03/05/67 400-484514
SRC DT/ACCT: 10/18/05 187565.0
IN CO: ALL SVCS MDCD V4
IN/GP: TW53230M

8/25/05
LMP

1999
C-section

I. Uterus ☐ Antiverted ☐ Mid Axial ☒ Retroverted ☐ Abnormalities _____

II. Pregnancy a) ☒ Singleton ☐ Twin ☐ Multiple # _____
☐ No evidence of intra uterine pregnancy

b) Gestational age by:

☒	gestational sac	2.2 cm	6 weeks
☐	GRL	_____ mm	_____ weeks
☐	BPD	_____ mm	_____ weeks
☐	FL	_____ mm	_____ weeks

III. Fetal heart activity ☐ pos. ☐ neg.

IV. Placenta position
☐ anterior ☐ posterior ☐ low lying
☐ partial previa ☐ total previa

V. Adnexa
☒ Adnexa bilaterally inspected
☐ Ovaries visualized bilaterally
☐ Adnexal mass

Note: UPT is positive (urgent).
↑ sens preg (+)
(=) ZP
(=) YS

Comments: Retroverted uterus shows focal echogenic area within endometrium with fluid filled area ill defined shape measures 2.4 x 2.8 cm. Both adn. areas appear clear

Sonographer Signature / Print

Provider Signature / Print

Rosemary Garrett
Sonographer

SUSAN RUBIN, M.D.
LISC #230942
BR8786646

Name Green- Heather

Chart # 40048454

Ultrasound Exam

Date of Birth 3/5/67

Today's Date 10/18/05

8/25/05 LMP

1 C-section

I. Uterus — Anteverted / Mid-Axial / Retroverted — Abnormalities _____

II. Pregnancy a) Singleton / Twin / Multiple # _____
No evidence of intra uterine pregnancy

b) Gestational age by:

gestational sac	_____mm	_____weeks
CRL	_____mm	_____weeks
BPD	_____mm	_____weeks
FL	_____mm	_____weeks

III. Fetal heart activity pos. neg.

IV. Placenta position

anterior posterior low lying
partial previa total previa

V. Adnexa

Adnexa bilaterally inspected
Ovaries visualized bilaterally
Adnexal mass

Comments Post Surgical AB Sono Shows (-) IUP (-)GS No RPC Seen. Endo Both AOV. Areas Appear Clear

Sonographer Signature / Print

Rosemary Garrett
Sonographer

Provider Signature / Print

SUSAN RUBIN

Bellevue Hospital Center
Chart Review Print

Location	Patient Name	Patient Number	Visit Number	Age	Sex
DIS-15W W510	Green,Heather	3065040	3065040-1	39Y	F

Attending Physician
Lee,Dingding Kelly

Unscheduled Ob/Gyn - CoPath
Event Time: Fri 21 Oct 05 1632 Status: complete

Tue, 25 Oct 05 1621 Documented by

Dx : Patient: GREEN,HEATHER

Specimen #: BG05-2803
Accessioned: 10/21/05

Pathologist: Dorota A. Popiolek, M.D.

Tissue Source:
ECTOPIC PREGNANCY

FINAL DIAGNOSIS:
TUBAL ECTOPIC PREGNANCY:
- FALLOPIAN TUBE WITH ECTOPIC PREGNANCY.

Dorota A. Popiolek, M.D.
10/25/05

Physician Notification:
{None given}

Clinical Diagnosis and History:
{None given}

Pre-Operative Diagnosis:
{None given}

Gross Description:
TUBAL ECTOPIC PREGNANCY
The specimen is received fixed in formalin labelled "ectopic pregnancy" and consists of a fallopian tube measuring 6 cm in length and 0.5 cm in average diameter. The proximal portion of the fallopian tube is dilated and measures 3 x 2.5 x 2.5 cm and is has transmural defect in the wall. On section, the fallopian tube is hemorrhagic and contains tan-brown, soft material. Also received is one piece of tan-white, soft tissue measuring 3 x 2 x 1 cm consisting of placental tissue, umbilical cord and fetus. Representative sections are submitted as 1A-C.

Bellevue Hospital Center
Chart Review Print

Location	Patient Name	Patient Number	Visit Number	Age	Sex
DIS-15W W510	Green,Heather	3065040	3065040-1	39Y	F

Attending Physician
Lee,Dingding Kelly

Unscheduled Ob/Gyn - CoPath -- cont'd

Hemogram Auto Diff w/rflx to Manual Diff

Collection Time: 22 Oct 05 1134 Result Time: 22 Oct 05 1241
Collected by: FletcherN Resulted by: JimenezGlr
Specimen: LavEDTA(12476382) Status: complete

WBC(10^9/L)	8 5	(4.8 - 10.8)
RBC(10^12/L)	2 49	(4.20 - 5.40)
Hgb (g/dL)	7 4	(12 - 16)
Hct (%)	22.0	(37 - 47)
MCV (fL)	84.4	
MCH (pg)	29.8	(27 - 31)
MCHC(g/dL)	35.3	(32 - 36)
RDW (%)	15.4	(12 - 15)
Plt(10^9/L)	193	(150 - 400)
MPV (fL)	7 7	(7.4 - 10.4)
Neut (%)	76.4H	(44 - 70)
Lymp (%)	18.4L	(20 - 45)
Mono (%)	4 0	(2 - 10)
Eos (%)	0 9L	(1 - 4)
Baso (%)	0 3	(0.0 - 2.0)
Neut #	6 5	(2.1 - 7.6)
Lymp #	1 6	(0.9 - 4.9)
Mono #	0 3	(0.1 - 1.0)
Eos #	0 1L	(0.0 - 0.5)
Baso #	0 0	(0.0 - 0.1)
Mn Diff?	manual diff not needed	

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* * * End of Report * * *

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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HEATHER GREEN,

Plaintiff,

- against -

PLANNED PARENTHOOD OF NEW YORK CITY, INC., ROSEMARY GARRETT and SUSAN RUBIN, MD.,

Defendants.

----------x

PHYSICIAN'S AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Index No: 18234/06

STATE OF PENNSYLVANIA)
).ss:
COUNTY OF MONTGOMERY)

LAWRENCE BOROW, MD, being duly sworn, deposes and says

1. I am a Physician duly licensed to practice medicine in the State of Pennsylvania and I am Board Certified in Obstetrics and Gynecology. I maintain an office for the practice of medicine, where I routinely perform and interpret sonograms.

2. A copy of my Curriculum Vitae is annexed hereto.

3. I have been retained by plaintiff, Heather Green, to render expert medical opinions in the above captioned action.

4. I have reviewed the exhibits to the motion for Summary Judgment made by the defendants, which include the medical records from Planned Parenthood and Bellevue Hospital and all depositions taken in the action.

5. Based upon my review of the foregoing, it is my opinion within a reasonable degree of medical certainty that defendants departed from good and accepted practice in the care and treatment of Heather Green.

6. Defendants contend they complied the applicable standard of care by recognizing the possibility of an ectopic pregnancy and giving the plaintiff the option of going to the hospital for further evaluation.

7. If plaintiff's testimony is correct that ectopic pregnancy was never discussed, then clearly defendants departed from good and accepted medical practice as the likelihood of ectopic pregnancy should have been readily apparent on October 18, 2005.

8. Even if ectopic pregnancy was discussed, defendants still departed from good and accepted medical practice by not referring the plaintiff to the hospital for definitive treatment or otherwise arranging for emergent follow-up and care.

9. It is not disputed that plaintiff was pregnant when she presented to Planned Parenthood, but sonograms taken on the day of the procedure were reportedly "equivocal" for intra-uterine pregnancy.

10. The tissue removed after vacuum extraction failed to identify any of the features of an intra-uterine pregnancy.

11. In light of the foregoing, the index of suspicion of ectopic pregnancy was exceedingly high, such that plaintiff should have been immediately referred to the hospital for definitive treatment. Instead, defendants, let plaintiff go on her way, failed to insist that the serum HCG be returned on a stat basis, and purportedly only gave plaintiff the "option" of going to the hospital for further evaluation. Instead, plaintiff's condition required immediate diagnosis and treatment.

12. At the outset, the defendant's failure to diagnose the existence of an ectopic pregnancy on sonogram is a departure from good and accepted medical practice. It is undisputed that Bellevue Hospital readily diagnosed an advanced ectopic pregnancy on ultrasound 48 hours later. Moreover, the surgical pathology report from Bellevue Hospital identities a 3x2x1 cm tissue specimen containing products of conception in the proximal fallopian tube as opposed to an allegedly suspected cornual pregnancy by defendants.

13. Given the size and location of the specimen tissue, it is my opinion within a reasonable degree of medical certainty, that defendants departed from good and accepted medical practice in failing to diagnose the ectopic pregnancy on abdominal and intra-vaginal sonogram performed on October 18, 2005. This ectopic pregnancy was clearly missed on two ultrasound by defendants.

14. It is also my further opinion within a reasonable degree of medical certainty, that had the ectopic pregnancy been properly diagnosed within a reasonable time period, plaintiff was a candidate for a salpingotomy whereby an incision is made into the fallopian tube and the products of conception extracted. This would have served to save plaintiff's fallopian tube and enhanced her fertility. Now that she has lost her tube, she has sustained, at the very least, a fifty (50%) percent reduction in the likelihood of getting pregnant.

MB

15. For the foregoing reasons, defendants motion for Summary Judgment should be denied.

Dated: Bala Cynwyd, Pennsylvania
October 15, 2007

Lawrence Borow, MD
LAWRENCE BOROW, MD

Sworn to before me this
15 day of October, 2007

Thomas D. Coforio
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Thomas D. Coforio, Notary Public
Upper Darby Twp., Delaware County
My Commission Expires May 1, 2011
Member, Pennsylvania Association of Notaries

CURRICULUM VITAE
OF
LAWRENCE STEPHEN BOROW, M.D.

Personal Data

Office Address	146 Montgomery Avenue Bala Cynwyd, Pa. 19004 610-668-1170 Fax 610 668 7922
Born	April 19, 1944 in Philadelphia, Pa.
Marital Status	Married, One Child
Tax I.D.	23 2258355
Military Status	Captain, U.S. Army Reserve Medical Corps (Honorably Discharged)

Education:

September 1966 to June 1970	Degree: M.D. Temple University School Of Medicine Philadelphia, Pa.
September 1962 to June 1966	Degree: Bachelor of Arts in Biology (Minor in Anthropology) Franklin & Marshall College Lancaster, Pa.
September 1959 to June 1962	Lower Merion Senior High School Ardmore, Pa.

Graduate Hospital Clinical Experience

July 1971 to June 1974	Resident : Obstetrics & Gynecology Pennsylvania Hospital Philadelphia, Pa Director : Edward Wallach, M.D.
July 1970 to June 1971	Rotating Internship Pennsylvania Hospital Philadelphia, Pa.

Certification

American Board of Obstetricians & Gynecologists – 1976
National Board of Medical Examiners – 1971

Honors

Dean's Lists, Franklin & Marshall College, 1963-1964
1964-1965, 1965-1966

Other Educational Experience

Porter Scientific Society, Franklin & Marshall college
Zeta Beta Tau Fraternity, Franklin & Marshall College

Summer, 1966	Worked in the inpatient care unit Of the Phila. Psychiatric Center
Summer, 1967	Student Research Fellow "Induction of Ovulation in the Immature Cebus Monkey" Dr. Hector Castellanos Dept. of Obstetrics & Gynecology Temple University School of Medicine
Summer, 1968	Student Research Fellow "Antigenity of the Guinea Pig Fetal Membranes" Dr. Hector Castellanos Dept. of Obstetrics & Gynecology Temple University School of Medicine NIH Training Grant
Summer, 1970	"Species Variation in Drug Metabolism" Dr. R. R. Wiliams, Dept. of Biochemistry St. Mary's Hospital Medical School University of London

Subspecialty Interest	Early diagnosis & treatment of Abnormal cervical cytology by use Of the colposcope. Also the care & treatment of women and their daughters exposed to diethylstilbestrol during pregnancy.
	Physicians Advisor – Shoulder Dystocia Skills Competency Team 2003

Academic Appointments

Clinical Instructor	Department of Obstetrics & Gynecology University of Pennsylvania School of Medicine July 1973 to June 1974
Clinical Assistant	Division of Obstetrics & Gynecology Lankenau Hospital Wynnewood, Pa. July 1974 to October 1976
Clinical Associate	November 1976 to present

Faculty Appointments

Co-Director & Faculty Member	23rd Basic Colposcopic Course Of the American Society of Colposcopy & Colpomicroscopy Philadelphia, Pa. October 1975
Faculty Member	24th Basic Colposcopy Course of The American Society of Colposcopy & Colpomicroscopy Key Biscayne, Florida October 1976

Faculty Member	2nd, 3rd, 4th & 5th Annual Colposcopy & Cervical Neoplasia Symposium of Hahnemann Medical College and Philadelphia Colposcopy Society Philadelphia, Pa. 1977, 1978, 1979, 1980
Faculty Member	Cervical Neoplasia Symposium of Philadelphia Colposcopy Society Philadelphia, PA 1983, 1984, 1985

Professional Societies

Fellow – American Fertility Society – 1976
Fellow – American Society of Colposcopy & Cervical Pathology 1973
Founding Member – Philadelphia Colposcopy Society – 1976
Fellow – The College of Physicians of Philadelphia – 1981
Fellow – Obstetrical Society of Philadelphia – 1990
Member – Society of Laparoendoscopic Surgeons - 1999

Medical Staff Appointments

Active Staff	The Lankenau Hospital Wynnewood, Pa. Bryn Mawr Hospital, Bryn Mawr, Pa. Main Line Health Divison. Jefferson Health System

Licensures

Pennsylvania State Board of Medical Education & Licensures – 1970
Federal Drug Enforcement Administration – 1970

Special Recognition

Who's Who in the East, 17th Edition, 1979 – 80

Award of Excellence – Continuing Medical Education,
Pennsylvania Medical Society July 1999- July 2002
Pennsylvania Medical Society August 2002- July 2005

Committee Appointments & Officerships

American Society of Colposcopy & Cervical Pathology	Membership Committee
Philadelphia Colposcopy Society	Treasurer – 1977 – 1978 President – 1978 – 1980 Board of directors – 1980 – 1985
Lankenau Hospital Wynnewood, Pa.	Quality Assurance Committee Tumor Registry Performance Improvement Subcommittee OB/GYN Medical Quality Review Transfusion Committee Subcommittee Chairman 1977 – 1998
Mercy- Community Hospital Havertown, Pa.	Secretary/Treasurer of the Medical Staff 1979 – 1980 President – Elect of the Medical Staff 1980 – 1981 President of the Medical Staff 1980 – 1982 Executive Committee Tumor Registry Emergency Room Committee Utilization Review Committee Product Standardization Committee Long – Range Planning Committee Continuing Education & Accreditation Committee

Presentations

"Colposcopy: An Aid to Early Diagnosis & Management of Patients with Abnormal Pap Smears" and "The DES – Exposed Female", Lankenau Hospital, Pennsylvania Hospital, Jefferson Medical College, Haverford Community Hospital, Delaware County Memorial Hospital, and Abington Hospital.

"Oral Changes in Pregnancy", Temple University School of Dentistry.

"Pregnancy Outcome in 98 Females Exposed to DES in Utero, Their Mothers and Non-Exposed Siblings" Clinical Meeting of the American Society of Colposcopy and Cervical Pathology, San Diego, California, February 1980.

"Reproductive Problems of the Female Athlete", Haverford Community Hospital.

"Update on DES – related Medical Problems", Lankenau Hospital

"Colposcopy of the Vulva & Vagina", Haverford Community Hospital, Lankenau Hospital, Pennsylvania Hospital.

"Premenstrual Syndrome – Fact or Fancy", Haverford Community Hospital.

"Exercise and the Pregnant Patient", Lankenau Hospital

"Shoulder Dystocia Prediction, Recognition and Treatment with the Shoulder Dystocia Drill " Main Line Health System Perinatal Mini Conference October 2003

Grand Rounds: " Asymptomatic Viral Shedding, Suppression of Genital Herpes, and Reduction of the Transmission of Genital Herpes" Department of Obstetrics & Gynecology, Main Line Health, Jefferson Health System, July 2004

Residents Lecture Series Lankenau Hospital 2006

1. Prediction Recognition and treatment of shoulder dystocia-update 2006.
2. Contemporary use of the Pessary in clinical practice
3. Management of Elevated CA-125.
4. Update and review of Genital Herpes

Residents Lecture Series Lankenau Hospital 2007

1. Elective pregnancy termination

Peer Reviewer

Obstetrics and Gynecology- Journal of the American College of Obstetrics and Gynecology – 2004 – 2005 – 2006 -2007

American College of Physicians – PIER Module – Peer Reviewer

Publications

Semm, Kurt. Atlas & Gynecologic Laparoscopy and Hysteroscopy Editor, Lawrence S. Borow, M.D. Philadelphia: W.B. Saunders 1977

Borow, Lawrence, M.D.
"Oral Changes During Pregnancy"
Periodontics, A Lecture Series. Editor, A. Schlossberg. Philadelphia: Temple University Press, 19782 pp. 88 – 92.

Borow, L., Corson, S., Reed, T. "Endoscopy- Recent Developments in Obstetrics and Gynecology." Philadelphia Medicine 35:167, Editor, F. Hutchins, Jr., 1979.

Borow, L. "Electronconization of the Cervix,"Collected Letters of the International Correspondence Society of Obstetricians and Gynecologists 20:139, 1979.

Mangan, C., Borow, L., Rubin, M., Mikula, J. "Pregnancy Outcome in 98 Females Exposed to DES in Utero, Their Mothers and Non-Exposed Sibling." Obstetrics and Gynecology 50:315-319, 1982

Bowers, E.J., Fried-Cassorla, Borow, L., M.J. Scholl, T. O., Strassman, H.D., Bowers, E. J., "Growth of Women Exposed to Diethylstilbestrol in Utero", Abstracts of the IV International Congress of Auxology Annals of Human Biology 1985; 12 (Supplement 1) : 48.

Fried-Cassolra, M., Borow, L., School, T. O., Strassman, H.D. Bowers, E. J., "Depression and Diethylstilbestrol Exposure in Women", The Journal of Reproductive Medicine Vol 32 No. 11, November, 1987.

October 2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----------X

HEATHER GREEN,

Plaintiff,

-against-

PLANNED PARENTHOOD OF NEW YORK CITY, INC., ROSEMARY GARRETT and SUSAN RUBIN, M.D.,

Defendants.

----------X

Index No. 18234/06

AFFIDAVIT

STATE OF NEW YORK)
)ss:
COUNTY OF NEW YORK)

MOHAMMAD MOMTAZ, M.D., being duly sworn deposes and says:

1) I am a physician licensed to practice medicine in the State of New York and I am board certified in obstetrics and gynecology.

2) I have been engaged in the active practice of obstetrics and gynecology for over 15 years.

3) In the course of my practice, I have been exposed to and/or treated numerous patients who have been suspected of having or have been diagnosed with an ectopic pregnancy.

4) I submit this affidavit in support of the defendants' motion for summary judgment.

5) In preparation for this affidavit, I have reviewed the following: plaintiff's Bills of Particulars; Heather Green's Planned Parenthood of New York City, Inc. (hereinafter "Planned Parenthood") medical records; Heather Green's Bellevue Hospital Center records; the deposition transcript of the plaintiff, Heather Green; the deposition transcript of defendant Rosemary Garrett, the sonographer at Planned Parenthood and; the deposition transcript of defendant Susan Rubin, M.D., the physician who treated Heather Green at Planned Parenthood.

6) After reviewing these materials, it is my opinion to a reasonable degree of medical certainty, that the defendants did not depart from accepted standards of medical practice

in their care and treatment of the plaintiff. Moreover, there were no departures from the standard of care which proximately caused any of the alleged injuries.

7) Heather Green presented to Planned Parenthood's Bronx Center on October 18, 2006, for an elective termination of pregnancy. After filling out some history forms, she was seen by Rosemary Garrett, who performed a sonogram. She noted that the plaintiff's uterus was retroverted and within the uterus there was a 2 millimeter structure consistent with a gestational sac, but there was no fetal pole identified . Additionally, she scanned the adnexal area, which is the area between the uterus and the ovaries and she visualized the ovaries. At no point did she see any evidence of a viable pregnancy. In other words, at no point was a fetal heart beat identified. This is abnormal. Therefore, Ms. Garrett told Dr. Rubin, the physician who was going to be caring for Mr. Garrett that day, the results of the sonogram.

8) Dr. Rubin then saw the patient and advised her of the results of the sonogram. Specifically, she noted that the patient had a shoddy sac in the retroverted uterus. The sac within the uterus was consistent with a 6 week gestation on ultrasound, it had not fetal pole, meaning no fetal heart beat was identified within the sac or uterus. She also noted that the pregnancy appeared to be near cornuate, which means that the area of suspicion was near the area where the fallopian tube meets the uterus. The patient was given a pregnancy test, which was positive.

9) Dr. Rubin then spoke with the plaintiff and told her what she found. She told Ms. Green what her options for treatment were. She advised the plaintiff she could undergo a medical abortion or a surgical abortion to remove the shoddy sac. Alternatively, she could have a referral to a hospital for evaluation of a possible ectopic pregnancy. The reason Dr. Rubin told the plaintiff this was that she suspected the plaintiff may have an ectopic pregnancy, but it could not be ruled in or out at that time.

10) An ectopic pregnancy is a pregnancy which has implanted outside the uterus. This is an abnormal and potentially dangerous condition . This condition is usually diagnosed by serial blood tests (every 48 hours) and ultrasound is only about 70% accurate in diagnosis. Many

factors may decrease this accuracy i.e. a patient's weight and a history of previous surgery, which may have been contributing factors in this case.

11) Turning back to the care and treatment, after advising the patient of her options, the patient chose to undergo a vacuum aspiration abortion, i.e. the surgical option. Additionally, concerning her plan of care, Dr. Rubin spoke with Maureen Paul, M.D., her supervisor, who was located at the Manhattan offices of the Planned Parenthood and advised her of her plan. Dr. Paul agreed with the plan.

12) After performing the vacuum aspiration procedure, Dr. Rubin examined the contents of the specimen she removed from the patient's uterus. There were no products of conception identified, i.e., there was no pregnancy terminated by the procedure. Therefore, she had Ms. Garrett conduct another ultrasound.

13) The ultrasound showed an empty uterus, which meant that Dr. Rubin had removed the shoddy sac from the uterus. A scan of the adnexal areas and ovaries did not reveal any evidence of a pregnancy.

14) Dr. Rubin advised Ms. Green of what she saw and what this meant. She told her that she had either an early pregnancy loss (i.e. a miscarriage) or an ectopic pregnancy. She advised her of ectopic precautions which means that Ms. Green was informed of the signs and symptoms of an ectopic pregnancy and told that if she began to develop those symptoms, she should immediately go to the emergency room. Dr. Rubin also ordered a Beta HCG blood test and she advised the patient to return in 48 hours, i.e., October 20th, for a follow up Beta HCG blood test.

15) A Beta HCG test is a blood test which measures the amount of the hormone human chorionic gonadotropin. This hormone in produced in pregnancy. Serum, i.e. blood, pregnancy testing is generally based upon the detection of this hormone.

16) When faced with a possible ectopic pregnancy and no sonographic confirmation of the same, the standard of care is to perform what are known as serial Beta HCG tests. This is done by taking a sample of the patient's blood, measuring the HCG level and then having the patient return within 48 hours for further testing. If the patient has an ectopic pregnancy or is still pregnant, the HCG level in the blood will continue to rise at a certain rate. If it rises at this rate, then it is appropriate to refer the patient to a hospital for further care, as there is likely an ectopic pregnancy and surgery will probably be required to treat the ectopic pregnancy. Conversely, if the hormone levels decline between the performance of the serial Beta HCG tests, it is likely that the patient the patient does not have an ectopic pregnancy and surgical referral is not necessary. Incumbent upon this plan of care, is the patient following through on her responsibility to undergo the serial Beta HCG tests.

17) After Dr. Rubin explained ectopic precautions and the plan of care to the patient, Ms. Green was discharged from Planned Parenthood with instructions to return on October 20th. She experienced no complaints between the time she left Planned Parenthood and approximately 8:30 p.m. on October 20th, two days later.

18) On the morning of October 20th, the patient failed to appear at Planned Parenthood for her follow up Beta HCG test. Therefore, Ayesha Myers, a nurse at Planned Parenthood, called the plaintiff three times and left messages. The first two calls were at 11:00 a.m. and 1:00 p.m. respectively. The third call is not timed. Additionally, Dr. Rubin herself left the plaintiff a message to come in for her follow up Beta HCG test. None of the calls were returned by the plaintiff.

19) At approximately 8:30 p.m. that evening, the plaintiff was in midtown Manhattan and she experienced pain in her abdomen. EMS was called and she was taken by ambulance to Bellevue Hospital Center. At Bellevue, she was evaluated for a possible ruptured ectopic

pregnancy. She was taken to the operating room, where a right salpingectomy was performed. This is the partial removal of the right fallopian tube. She was discharged from the hospital two days later.

20) On October 23rd, Dr. Rubin again called the patient. She spoke with Ms. Green, who informed Dr. Rubin that she had been at Bellevue for a ruptured ectopic pregnancy. She also told Dr. Rubin that she had been asymptomatic until the rupture. Dr. Rubin noted that the patient did not return to Planned Parenthood for her follow up appointment on the morning of October 20th, prior to the rupture.

21) According to the plaintiff's deposition testimony, as of January of 2006, she ceased to have any physical complaints related to the alleged negligence.

22) In reviewing the above materials, it is my opinion to a reasonable degree of medical certainty, that the defendants did not depart from the standard of care in their treatment of Heather Green.

23) First, concerning Rosemary Garrett, it is my opinion to a reasonable degree of medical certainty that she properly performed her sonogram and interpreted the results. It is my further opinion that she adequately communicated these results to Dr. Rubin. Concerning the fact that Ms. Garrett did not identify a tubal pregnancy when she scanned the adnexal areas and ovaries, this is not a sign of any negligence. As previously mentioned, ultrasound is not an absolute test and compounding factors, such as the patient's weight and history of previous surgery, may have complicated this test.

25) As a sonographer's duty is merely to report her findings to the treating physician and there is no dispute that Ms. Garrett did that in this case, it is my opinion to a reasonable degree of medical certainty that Rosemary Garrett adequately performed her job within the standard of care and did not commit malpractice.

26) Concerning Dr. Rubin, it is my opinion to a reasonable degree of medical certainty that the care and treatment she rendered was also appropriate. The records clearly indicate that Dr. Rubin suspected an ectopic pregnancy. She advised the patient of the same. She consulted with a more senior physician and they agreed on a plan of care for the patient. This included performing a procedure on the uterus to clean out the ill defined shoddy sac. This also included performing follow up Beta HCG tests on the patient, which is the appropriate way to treat a suspected, but not confirmed, ectopic pregnancy.

27) While there is always a risk of fallopian tube rupture in an ectopic pregnancy, one cannot send the patient to an operating room if there is not necessarily something to operate on, i.e., removal of the pregnancy from the tube. As such, the appropriate method for following a patient with a suspected ectopic is the initiation of serial Beta HCG tests, which will confirm or rule out ectopic pregnancy as a diagnosis. That was done in this case.

28) The patient was instructed to return two days later for her follow up Beta HCG test. The chart indicates that she was contacted four times during the day on October 20th, all prior to the time of the rupture, to come in for her follow up testing, yet she did not return any of the calls.

29) Concerning the rupture of the tube, I do not dispute that it is a very painful experience. That being said, assuming the plaintiff had not ruptured, her course of treatment would have been the same. Specifically, the patient would still have required surgical treatment for the ectopic pregnancy. The ectopic pregnancy was too far along to be treated medically with Methotrexate as the patient was beyond 6 weeks gestation. Moreover, Methotrexate, treatment of an ectopic pregnancy carries its own risks, including the need to go to the operating room if the Methotrexate does not work, which due to the timing of the rupture, it would not have worked.

30) The most likely treatment and essentially, the treatment of choice, for a patient such as Heather Green, is the performance of a salpingectomy. This is the removal of the tube

where the ectopic pregnancy has occurred. The other alternative surgical treatment is a salpingostomy. This involves the removal of the pregnancy from the fallopian tube through an incision and not partial removal of the tube itself. While this method is reserved for some cases where the pregnancy is smaller in size than it was in this case, the performance of a salpingostomy also leads to problems of its own, i.e., a very increased risk of a recurrent ectopic pregnancy in that tube which may lead to repeat surgery for the removal of the tube.

31) There are two ways to approach performing a salpingectomy, either laparoscopically, which is a minimally invasive surgical technique, or through an open laparotomy. This is a more invasive procedure in which the entire belly is opened. In Ms. Green's case, she was able to be treated laparoscopically, i.e., the minimally invasive , less painful method which has a much faster recovery.

32) Assuming she had not ruptured, Ms. Green still would have undergone a laparoscopic salpingectomy as her treatment of course. As such, from a surgical and treatment point of view, she would have likely wound up in the same position she is in now concerning what her future condition would be, i.e., she would have lost part of her right fallopian tube , no matter when the ectopic was diagnosed, which it would have been, had Ms. Green actually shown up for her appointment on October 20th.

33) As such, after reviewing all these materials, it is my opinion to a reasonable degree of medical certainty that the defendants did not depart from the standard of care. Ms. Green was appropriately diagnosed and appropriately worked up for that diagnosis. Moreover, assuming that she had been surgically treated prior to her rupture, the surgical treatment still would have resulted in the same condition.

34) It is my opinion that this case is without merit and the allegations should be dismissed.

MOHAMMAD MOMTAZ, M.D.

Sworn to before me on
8th day of August, 2007

Leslie N. Davis
NOTARY PUBLIC

Leslie N. Davis
NOTARY PUBLIC, State of New York
No. 01DA6146570
Qualified in Bronx County
Term Expires: May 22, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----------x

HEATHER GREEN,

Plaintiff,

- against -

PLANNED PARENTHOOD OF NEW YORK CITY, INC., ROSEMARY GARRETT and SUSAN RUBIN, MD.,

Defendants.

----------x

VERIFIED COMPLAINT

Index # 18234-2006

Plaintiff, HEATHER GREEN, by her attorneys, DANKNER & MIESTEIN, P.C., as and for her Verified Complaint, alleges as follows

FIRST CAUSE OF ACTION

1. Plaintiff, HEATHER GREEN was and is a resident of the State of New York, County of New York.

2. Defendant, PLANNED PARENTHOOD OF NEW YORK CITY, INC., was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York and doing business in Bronx County at 349 East 149th Street, Bronx, New York 10451-5603.

3. Defendant ROSEMARY GARRETT was and is a Licensed Sonographer doing business in the State of New York, Bronx County at 349 East 149th Street, Bronx, New York 1045

4. Defendant SUSAN RUBIN, MD, was and is doing business in the State of New York County of Bronx and maintains an office for the practice of her profession at 349 East 149th Stree

Bronx, New York 10451-5603.

5. Defendant SUSAN RUBIN, MD, was and still is a Physician, duly licensed to practice medicine in the State of New York.

6. At all times hereinafter mentioned defendant SUSAN RUBIN, MD was and is an employee of defendant PLANNED PARENTHOOD OF NEW YORK CITY, INC.

7. At all times hereinafter mentioned defendant ROSEMARY GARRETT was and is an employee of defendant PLANNED PARENTHOOD OF NEW YORK CITY, INC.

8. Defendant PLANNED PARENTHOOD OF NEW YORK CITY, INC., held itself out to the public and more specifically to the plaintiff as an entity possessing the proper degree of skill and learning necessary to render medical services in accordance with good and accepted practices, and undertook to use reasonable care and diligence in the treatment of patients, including and in particular, Plaintiff, HEATHER GREEN.

9. Defendant ROSEMARY GARRETT, held herself out to the public and more specifically to the plaintiff as a Sonographer possessing the proper degree of skill and learning necessary to render medical services in accordance with good and accepted practices, and she undertook to use reasonable care and diligence in the treatment of patients, including and in particular, Plaintiff, HEATHER GREEN.

10. Defendant SUSAN RUBIN, MD., held herself out to the public and more specifically to the plaintiff as a physician possessing the proper degree of skill and learning necessary to render medical services in accordance with good and accepted practices, and she undertook to use reasonable care and diligence in the treatment of patients, including and in particular, Plaintiff HEATHER GREEN.

11. On or about October 18, 2005; defendants undertook and did render medical treatment services to plaintiff HEATHER GREEN.

12. Defendants, through its agents , services, representatives and employees were negligent and careless in the medical care and treatment rendered to and on behalf of plaintiff, HEATHER GREEN, in failing to diagnose an ectopic pregnancy and in failing to terminate her ectopic pregnancy.

13. As a result of the foregoing plaintiff, HEATHER GREEN, suffered serious and severe permanent personal injuries, including, but not limited to, conscious pain and suffering; loss of enjoyment of life, expenses for medical care and treatment, hospitalizations, medications, other expenses.

14. The injures and damages sustained by plaintiff HEATHER GREEN were caused by reason of the negligence and malpractice of the defendants, their agents, servants, representatives and employees with no negligence on the part of the plaintiff HEATHER GREEN contributing thereto.

15. The damages sought in this action exceed the jurisdictional limits of all lower courts which otherwise have jurisdiction.

16. The limitations and liabilities set forth in C.P.L.R. § 1601 do not apply.

17. The limitations and liabilities set forth in C.P.L.R. § 1601 do not apply by reason of one or more of the exceptions thereto set forth in C.P.L.R. § 1602.

WHEREFORE, Plaintiff, HEATHER GREEN, demands judgment against defendants PLANNED PARENTHOOD OF NEW YORK CITY, INC., ROSEMARY GARRETT and SUSAN RUBIN, MD., on the cause of action plus costs, disbursements and interest from the 18th day of October, 2005.

Dated: New York, New York
July 31, 2006

Yours, etc.,

DANKNER & MILSTEIN, P.C.

By: _____
EDWARD A. RUFFO
Attorneys for Plaintiff
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New York, New York 10022
(212)751-8000