

DIANA ZALESKI

2002 JUN 26 AM 11:24

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SUMMIT COUNTY;
CLERK OF COURTS

CV 2002-06-3567

SANDRA DURBIN
593 Silvercrest
Wadsworth, Ohio 44281

CASE NO.:

JUDGE: ASSIGNED TO JUDGE BURNHAM UNRUH

Plaintiffs,

vs.

ERLINDA CHAND, M.D.
444 West Exchange St.
Akron, Ohio 44302

COMPLAINT:
MEDICAL MALPRACTICE

and

PLANNED PARENTHOOD
444 West Exchange St.
Akron, Ohio 44302

and

DENIS J. SLABY, M.D.
970 East Washington
Medina, Ohio 44256

(Jury Demand Endorsed Hereon)

and

JOHN DOE INC., #1,
OHIO CORPORATION
whose name and identity are currently
unknown

and

JEFFREY L. GARNER, M.D.
185 Wadsworth Road
Wadsworth, OH 44281

and

MEDINA COUNTY OB/GYN, INC.)
c/o Statutory Agent Robert J. Bux)
105 West Liberty Street)
Medina, Ohio 44256)
and)
JOHN DOE, M.D., D.O., Nos. 1-5)
whose name and identity are currently)
unknown)
Defendants.)

CAUSE OF ACTION

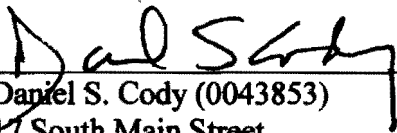
1. Plaintiff Sandra Durbin received professional medical services from Defendant Erlinda Chand, M.D. from on or about November 20, 2000 through May 16, 2001.
2. At all times relevant, Defendant Erlinda Chand, M.D. was an agent and/or employee of Defendant Planned Parenthood and operated within the course and scope of her employment and/or agency while providing medical services to Plaintiff Sandra Durbin.
3. Plaintiff Sandra Durbin received professional medical and surgical services from Defendants Denis J. Slaby, M.D. and Jeffrey L. Garner, M.D. at various times between May, 1997 and June, 1999 and thereafter.
4. At all times relevant, Defendant Denis J. Slaby, M.D. was an agent and/or employee of Defendant John Doe, Inc., Ohio Corporation whose name and identify are currently unknown and operated within the course and scope of his employment and/or agency while providing professional medical, surgical and urologic services to Plaintiff Sandra Durbin.
5. At all times relevant, Defendant Jeffrey L. Garner, M.D. was an employee and/or agent of Defendant Medina County OB/GYN, Inc. and operated within the course and scope of his employment with Defendant Medina County OB/GYN, Inc., while providing professional medical, surgical and gynecological services to Plaintiff Sandra Durbin.
6. Defendants as well as their agents and/or employees deviated from the appropriate standards of care that reasonably prudent health care providers

would have provided under the same or similar circumstances by failing to properly assess, diagnose and treat a pelvic mass located near her bladder.

7. On or about September 21, 2001, Plaintiff Sandra Durbin discovered that she had an undiagnosed and untreated leiomyosarcoma of her bladder.
8. As a direct and proximate result of the concurrent negligence of the Defendants, for which they are jointly and severally liable, Plaintiff has suffered injuries including permanent injury and damages including, but not limited to, pain and suffering, loss of the usual activities of life, loss of chance of a normal life expectancy, unnecessary medical bills both current and in the foreseeable future.

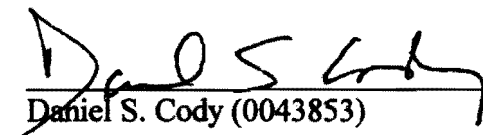
WHEREFORE, Plaintiff Sandra Durbin prays for damages in excess of \$25,000.00 dollars plus costs and interest as well as other relief this Court deems necessary and proper.

Respectfully submitted,


Daniel S. Cody (0043853)
17 South Main Street
Suite 201, at Maiden Lane
Akron, Ohio 44308
330/376-6766
Attorneys for Plaintiff

JURY DEMAND

Plaintiff Sandra Durbin demands a trial with the maximum number of jurors as permitted by law as to all issues in this case.


Daniel S. Cody (0043853)

IN THE COURT OF COMMON PLEAS, SUMMIT COUNTY, OHIO
CIVIL DIVISION

SANDRA DURBIN,

Plaintiff,

v.

ERLINDA CHAND, M.D., et al.,

Defendants.

.....

Case No. 2002-06-3567

Judge Brenda Burnham-Urban

SUMMIT COUNTY
CLERK OF COURTS

2002 AUG 20 AM 10:14

DIANA ZALESKI

**DEFENDANTS ERLINDA CHAND, M.D. AND PLANNED PARENTHOOD
OF SUMMIT, PORTAGE AND MEDINA COUNTIES'
ANSWER TO PLAINTIFF'S COMPLAINT**

NOW COME Defendants Erlinda Chand, M.D. and Planned Parenthood of Summit, Portage and Medina Counties and, for their Answer to Plaintiffs' Complaint, make the following admissions, denials and defenses.

FIRST DEFENSE

1. Defendants admit that Plaintiff received professional services from Defendant Erlinda Chand, M.D. Further answering, upon information and belief, those services were rendered between November 20, 2000 and May 16, 2001. During that period, Plaintiff received medical services from other, unrelated practitioners.

2. Defendants admit the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiff's Complaint.

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. Defendants deny the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendants deny the allegations contained in Paragraph 8 of Plaintiff's Complaint.

SECOND DEFENSE

9. Defendants deny each and every allegation contained in Plaintiff's Complaint not specifically and expressly admitted herein to be true.

THIRD DEFENSE

10. Plaintiff's Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

FOURTH DEFENSE

11. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

FIFTH DEFENSE

12. Plaintiff's alleged injuries and damages were caused by acts or omissions of others whose conduct was not under the control or direction of these Defendants and for whose conduct these Defendants cannot be held responsible or liable.

SIXTH DEFENSE

13. Plaintiff's alleged injuries and damages were proximately caused by or were the result of intervening and/or superceding actions and/or omissions over which these Defendants had no control or right of control, and for which these Defendants are neither responsible nor liable.

SEVENTH DEFENSE

14. The care provided Plaintiff was in conformity with all applicable standards of care at all times.

EIGHTH DEFENSE

15. Plaintiff's alleged injuries and damages were caused, or contributed to, by Plaintiff's own negligence in an amount that was equal to or greater than the alleged negligence of Defendants, which negligence is specifically denied.

NINTH DEFENSE

16. Defendants are entitled to a setoff of damages and/or limitations of damages pursuant to law.

TENTH DEFENSE

17. Plaintiff has failed to join all parties necessary for just adjudication pursuant to Rules 19 and 19.1 of the Ohio Rules of Civil Procedure and/or have failed to pursue all or part of this action in the proper forum.

ELEVENTH DEFENSE

18. Plaintiff has assumed the risks of all alleged injuries and damages complained of in her Complaint.

TWELFTH DEFENSE

19. Plaintiff was fully advised of alternatives available for treatment of her condition and thereby assumed the risks that were clearly inherent therein in the management of her medical condition.

THIRTEENTH DEFENSE

20. Any acts or omissions on behalf of Defendants were not the direct and proximate cause of alleged injuries or damages of Plaintiff.

FOURTEENTH DEFENSE

21. Any claims of Plaintiff of informed consent are not applicable to these Defendants.

WHEREFORE, Defendants pray that Plaintiff's Complaint be dismissed and that they go hence without day and recover their costs herein expended.

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP



Alan T. Radnor (0005219)
F. Daniel Balmert (0013809)
P.O. Box 1008
Columbus, OH 43216-1008
(614) 464-6326
(614) 719-4917 (facsimile)

*Attorneys for Defendants Erlinda Chand, M.D.
and Planned Parenthood of Summit, Portage
and Medina Counties*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Defendants Erlinda Chand, M.D. and Planned Parenthood of Summit, Portage and Medina Counties' Answer to Plaintiff's Complaint was served, via ordinary United States mail, first-class postage prepaid, upon:

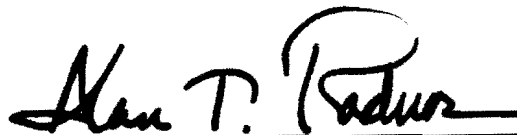
Daniel S. Cody, Esq.
17 South Main Street
Suite 201, at Maiden Lane
Akron, OH 44308
Attorney for Plaintiff

Jeffrey L. Garner, M.D.
185 Wadsworth Road
Wadsworth, OH 44281
Defendant

Gregory T. Rossi, Esq.
Hanna, Campbell & Powell, LLP
3737 Embassy Parkway
Suite 100
Akron, OH 44334
Attorney for Defendant
Denis J. Slaby, M.D.

Patrick J. Murphy, Esq.
Bonezzi Switzer Murphy
& Polito Co. L.P.A.
Leader Building, Suite 1400
526 Superior Avenue
Cleveland, OH 44114
Attorney for Defendant
Medina County OB/GYN, Inc.

this 19th day of August, 2002.



Alan T. Radnor

INTERROGATORY NO. 3:

Please state if you have any malpractice insurance that covers the allegations of the Complaint.

ANSWER: Yes.

INTERROGATORY NO. 4:

If the answer to the preceding Interrogatory is in the affirmative, please state:

a. the insurance carrier;

ANSWER: National Union

b. the policy number;

ANSWER: RMGLA2648255

c. the limits of such;

ANSWER: \$1 million per occurrence / \$3 million aggregate

d. the deductible, if any; and

ANSWER: \$500.00

e. the name and present address of the agent in charge of such policy.

ANSWER: Not applicable.

INTERROGATORY NO. 5:

Please state the names and addresses of each and every lay witness the Defendants intend to call at that time of trial.

ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 6:

Please indicate the testimony upon which each lay witness will testify to.

ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 7:

Please identify each and every document or thing that will be produced and/or introduced at the time of trial.

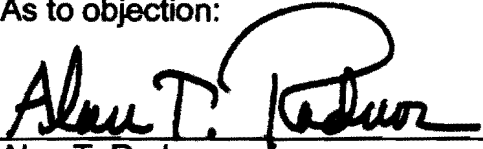
ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 8:

Please advise if you have every been a Defendant in any other medical malpractice action.

ANSWER: Objection. Prior claims are not relevant and will not lead to relevant information. Without waiving the objection, the answer is yes.

As to objection:

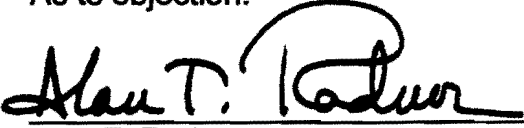

Alan T. Radnor

INTERROGATORY NO. 9:

If the answer to the preceding Interrogatory is in the affirmative, please indicate:

Objection. Prior claims are not relevant and will not lead to relevant information. Without waiving the objection, the answer is yes.

As to objection:


Alan T. Radnor

a. the case caption;

ANSWER: Monica Arnold v. Planned Parenthood and Erlinda Uy-Chand, M.D.
Jesse L. Minor and Sandra Minor v. Planned Parenthood, et al.

b. the county in which the action was filed;

ANSWER: Both actions were filed in Summit County.

c. the disposition of such case;

ANSWER: The Arnold case was settled; the Minor case was dismissed.

d. the name of the Plaintiff's counsel on such action;

ANSWER: Kim Hoover and Christina Simoudis, respectively.

e. the general medical subject matter of such action.

ANSWER: (Arnold) Alleged medical malpractice, negligence and battery
(Minor) Alleged medical malpractice / wrongful death

INTERROGATORY NO. 10:

Please advise if you have ever pled guilty, no contest, or have ever been convicted of a felony or a misdemeanor involving fraud or dishonesty.

ANSWER: No.

INTERROGATORY NO. 11:

If the answer to the preceding Interrogatory is in the affirmative, please state the date and type of conviction (offense).

ANSWER: Not applicable.

INTERROGATORY NO. 12:

Please advise if there has every been any disciplinary action by the Ohio Medical Board relative to your license.

ANSWER: No.

INTERROGATORY NO. 13:

If the answer to the preceding Interrogatory is in the affirmative, please state:

a. the type of disciplinary action;

ANSWER: Not applicable.

b. the offense for which you were charged; and

ANSWER: Not applicable.

c. the disposition of such.

ANSWER: Not applicable.

INTERROGATORY NO. 14:

Please state the names and addresses of any and all medical expert witnesses that these Defendants intend to call to testify at trial.

ANSWER: See answer to Interrogatory No. 2.

REQUEST FOR PRODUCTION NO. 1:

Provide a copy of the most current *curriculum vitae* of all medical expert witnesses identified in the preceding Interrogatory.

RESPONSE: Not applicable. See answer to Interrogatory No. 2.

INTERROGATORY NO. 15:

Please state the title of each and every article you have authored or co-authored, the date of publication, and journal or textbook in which they are published.

ANSWER: None.

INTERROGATORY NO. 16:

Have you ever acted as an expert in a medical malpractice case?

ANSWER: No.

INTERROGATORY NO. 17:

If the answer to the preceding Interrogatory is in the affirmative, please indicate:

a. the case caption;

ANSWER: Not applicable.

b. the county in which such was filed; and

ANSWER: Not applicable.

c. the general medical subject matter of such case.

ANSWER: Not applicable.

INTERROGATORY NO. 18:

Please state if you have ever been placed on notice by your insurance carrier that they are defending under reservation of rights.

ANSWER: No.

INTERROGATORY NO. 19:

If the answer to the preceding Interrogatory is in the affirmative, please indicate the basis upon which your insurance carrier takes the position that they are defending under reservation of rights.

ANSWER: Not applicable.

INTERROGATORY NO. 20:

List each and every corporate affiliation of these Defendants.

ANSWER: Planned Parenthood of Summit, Portage and Medina Counties, Inc.

INTERROGATORY NO. 21:

Identify by name and address the hospitals / medical centers to which Erlinda Chand, M.D., currently has admitting and/or surgical privileges.

ANSWER: Summa Health System
525 East Market Street
Akron, Ohio 44304

INTERROGATORY NO. 22:

Identify each and every expert witness Defendants intend to call to testify at trial and attach a copy of the expert's *curriculum vitae* to the Interrogatories

ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 23:

State the statute of limitations that bars Plaintiff's claims as stated in the Fourth Affirmative Defense of Defendants' Answer to Plaintiff's Complaint.

ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 24:

Identify by name(s) and address(es) of the person, persons or entity whose acts, conducts and/or omissions was not under the control of these Defendants which caused the Plaintiff's injuries as stated in the Fifth Affirmative Defense of Defendants' Answer to Plaintiff's Complaint.

ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 25:

Identify the intervening and/or superceding actions and/or omissions over which these Defendants had no control or right of control, and for which these Defendants are neither responsible nor liable in causing Plaintiff's injuries and damages as set forth as these Defendants' Sixth Affirmative Defense in their Answer to Plaintiff's Complaint.

ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 26:

Explain how Plaintiff's own negligence in an amount that was equal to or greater than the alleged negligence of Defendants caused her own injuries and damages as set forth as these Defendants' Eighth Affirmative Defense in their Answer to Plaintiff's Complaint.

ANSWER: This is a comparative negligence claim based on the medical records and failure of plaintiff to follow up as represented in those records. See answer to Interrogatory No. 2.

INTERROGATORY NO. 27:

Provide a copy of each and every document or any materials evidencing that these answering Defendants are entitled to a set off as set forth as these Defendants' Ninth Defense in their Answer to Plaintiff's Complaint.

ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 28:

Identify all the parties whom Plaintiff failed to join for just adjudication pursuant to Rules 19 and 19.1 of the Ohio Rules of Civil Procedure and/or how Plaintiff has failed to pursue all or part of this action in the proper form as set forth as Defendants' Tenth Defense in their Answer to Plaintiff's Complaint.

ANSWER: See answer to Interrogatory No. 2.

INTERROGATORY NO. 29:

Identify all the risks that Plaintiff has assumed which caused her injuries and damages as set forth as these Defendants' Eleventh Defense in their Answer to Plaintiff's Complaint.

ANSWER: Plaintiff was aware of the involved mass and did not address it. See answer to Interrogatory No. 2.

REQUEST FOR PRODUCTION NO. 2:

Provide a copy of your office chart for Sandra Durbin.

RESPONSE: Attached.

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP

A handwritten signature in black ink, appearing to read "Alan T. Radnor", is written over a horizontal line.

Alan T. Radnor (0005219)
F. Daniel Balmert (0013809)
P.O. Box 1008
Columbus, OH 43216-1008
(614) 464-6326
(614) 719-4917 (facsimile)

*Attorneys for Defendants Erlinda Chand, M.D.
and Planned Parenthood of Summit, Portage
and Medina Counties*

CERTIFICATE OF SERVICE

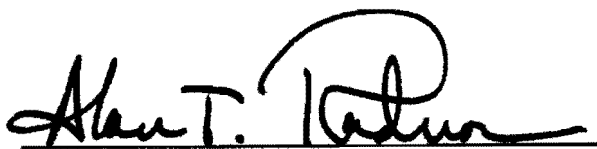
The undersigned hereby certifies that a true and accurate copy of the foregoing Defendants Erlinda Chand, M.D. and Planned Parenthood of Summit, Portage and Medina Counties' Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents was served, via ordinary United States mail, first-class postage prepaid, upon:

Daniel S. Cody, Esq.
17 South Main Street
Suite 201, at Maiden Lane
Akron, OH 44308
Attorney for Plaintiff

Gregory T. Rossi, Esq.
Hanna, Campbell & Powell, LLP
3737 Embassy Parkway
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Akron, OH 44334
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Leader Building, Suite 1400
526 Superior Avenue
Cleveland, OH 44114
Attorney for Defendants
Jeffrey I. Garner, M.D. and Medina County
OB/GYN, Inc.

this 25th day of October, 2002.


Alan T. Radnor

CERTIFICATE OF SERVICE


The undersigned hereby certifies that a true and accurate copy of the foregoing Notice of Service of Discovery Responses was served, via ordinary United States mail, first-class postage prepaid, upon:

Daniel S. Cody, Esq.
17 South Main Street
Suite 201, at Maiden Lane
Akron, OH 44308
Attorney for Plaintiff

Gregory T. Rossi, Esq.
Hanna, Campbell & Powell, LLP
3737 Embassy Parkway
Suite 100
Akron, OH 44334
Attorney for Defendant
Denis J. Slaby, M.D.

William Bonezzi, Esq.
Bonezzi Switzer Murphy
& Polito Co. L.P.A.
Leader Building, Suite 1400
526 Superior Avenue
Cleveland, OH 44114
Attorney for Defendants
Medina County OB/GYN, Inc. and
Jeffrey I. Gamer, M.D.

this 25th day of October, 2002.



Alan T. Radnor