

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

REGINA TETTEH)

Plaintiff,)

v.)

MI YONG KIM)

INDIVIDUALLY)

NOVA Women's Health Clinic, Inc.)

(a.k.a. NOVA Healthcare))

10400 Eaton Place, Suite 515)

Fairfax, VA 22030)

and)

NOVA Women's Health Clinic, Inc.)

(a.k.a, NOVA Healthcare))

Serve: Mi Yon Kim, Registered Agent)

10400 Eaton Place, Suite 515)

Fairfax, VA 22030)

and)

DR. JOEL MATCH, M,D,)

1850 Town Center Parkway, Suite 207)

Reston, VA 20190)

and)

UNKNOWN EMPLOYEES)

of NOVA Women's Health Clinic)

Defendants.)

2009 - 2641

CL _____

FILED
CIVIL INTAKE
09 FEB 24 PM 3:08
CLERK, CIRCUIT COURT
FAIRFAX, VA

COMPLAINT

COMES NOW the plaintiff, Regina Tetteh, by counsel, Richard E. Patrick, and Patrick Henry LLP and moves this Honorable Court for judgment against the defendants on the grounds and in the amount as hereinafter set forth:

I. INTRODUCTION

1. In this case, Defendant medical providers negligently failed to detect Plaintiff's ectopic or tubal pregnancy and instead, believing erroneously her pregnancy was in the uterus, performed an unwarranted abortion and left the Plaintiff alone for her fallopian tube to explode without medical care. The result was trauma to Plaintiff resulting from an abortion medical providers stated falsely to her was successful; pain and suffering, particularly from an exploding fallopian tube, but which Plaintiff believed was part of the recovery from the abortion process; and mental anguish from the traumatic process. Accordingly, Plaintiff, Regina Tetteh, by counsel, brings this action for judgment against the Defendant Mi Yong Kim, in her personal and individual capacity, Defendant NOVA Health Care for the actions of its employees which were in the scope of employment (the company is owned by Defendant Kim); Dr. Joel Match who performed the abortion with NOVA, and any unknown personnel whether employees of NOVA Healthcare or independent contractors, for assault and battery, medical malpractice, negligence, and negligent infliction of emotional distress in the amount of \$500,000 as well as other requested relief.

II. PARTIES AND JURISDICTION

2. Plaintiff Regina Tetteh is a resident of the Commonwealth of Virginia, and was so at the time of the medical care in question and at all other times relevant herein (hereinafter referred to as Plaintiff or Ms. Tetteh).

3. Defendant Mi Yong Kim, the owner NOVA Women's Health Clinic, Inc., was a licensed gynecologist and obstetrician in Virginia at the time Plaintiff was a patient with NOVA Women's Health Clinic. After treating patient, Defendant Kim surrendered her license and declined to obtain tail insurance for client's case despite her knowledge of a problem with the case, following, among other matters, an investigation of multiple counts of malpractice (unrelated to Plaintiff) by the Virginia Board of Medicine. Accordingly, Defendant Kim may be referred to as Defendant Kim, Dr. Kim, and Ms Kim, depending on the time period.

4. Defendant NOVA Women's Health Clinic, also known as NOVA Healthcare, is a company incorporated under the laws of the Commonwealth of Virginia (sometimes hereinafter referred to as "Defendant NOVA Healthcare," "Defendant NOVA" or "NOVA"), having its principal place of business in the County of Fairfax, Virginia. At all times relevant hereto, Defendant NOVA was owned and operated by Defendant Mi Yong Kim, among others, was a provider of abortions in Fairfax County, and hired Defendant Match. Ms. Kim and other employees of NOVA Healthcare acted as agents and servants of NOVA Women's Healthcare in the scope of their employment in Fairfax County, Virginia.

5. Defendant Joel Match, a licensed gynecologist and obstetrician in Virginia currently and at the time of treating Plaintiff at NOVA Health Clinic, performed abortions at the NOVA Health Care facility.

6. Unknown Defendants includes unknown employees of Defendant NOVA Healthcare who provided medical care to Plaintiff as well as other unknown independent contractors, hired by NOVA Healthcare, who may have provided services to Plaintiff.

7. The matter in controversy exceeds exclusive of interest and costs, the jurisdictional minimum of this court.

8. This is a medical malpractice action arising in Fairfax County, Virginia, between Plaintiff and the Defendants, residents of or employed in Virginia, for injuries and other damages which arose in Fairfax County, Virginia.

9. Based on foregoing, jurisdiction and venue are proper in this Court.

III. STATEMENT OF FACTS

10. Ms. Regina Tetteh is a 34-year old native of Ghana, Africa. She immigrated to the United States and resides in Alexandria, Virginia. Ms. Tetteh's occupation is an Environmental Housekeeper at INOVA Hospital, Alexandria, Virginia.

11. In February 2007, a pregnant Ms. Tetteh, decided to terminate her pregnancy. NOVA Healthcare appeared to be a reasonable choice to her.

12. NOVA Healthcare's website advertised safe elective termination procedures via a multi-staged surgical process in the context of a state-of-the-art facility including sonogram rooms, vacuum/suction machines, spacious recovery facilities and resuscitation equipment. Further, NOVA Healthcare's website provided its surgical processes were under the leadership of board certified physicians who provided a range of gynecological services.

13. On Thursday, February 22, 2007, Ms. Tetteh visited NOVA Healthcare's medical facility. The NOVA staff commented that if the fetus was over 8 weeks, the procedure would have to be completed in Washington, DC. NOVA Healthcare did not explain that NOVA Healthcare refers more complicated elective termination cases to other doctors such as the

Washington Surgi-Clinic, and Dr. Cesare F. Santangelo's Obstetrics & Gynecology offices in Washington, D.C., and Chevy Chase, Maryland.

14. To the extent NOVA Healthcare performed lab work, significant portions are missing from Ms. Tetteh's medical records and have not been made available to Ms. Tetteh despite her request for it pursuant to Federal and State statutes.

15. Defendants advised Ms. Tetteh she was 8 weeks pregnant. That, however, was erroneous as she was 10-11 weeks pregnant at the time. Moreover, while Defendants informed Plaintiff her pregnancy was in her uterus, it was not as Plaintiff's fetus was lodged in her fallopian tube.

16. Defendants scheduled Ms. Tetteh for an elective termination surgical procedure on Saturday, February 24, 2007. On Saturday, February 24, 2007, during the preparation phase prior to the operation, again, Defendants failed to detect that Ms. Tetteh had an expanding ectopic pregnancy in her fallopian tube. Defendants relied, in significant part, upon ultrasounds which were taken improperly and in a manner below the standard of care. The result was incomplete and inaccurate information. Further, Defendants misinterpreted the defective ultrasound scans and reached the erroneous conclusion the fetus was in the uterus when in fact it was located in the fallopian tube.

17. Defendants proceeded to conduct an unnecessary abortion. However, to make matters worse, Defendants botched the elective termination procedure. Defendants sedated Plaintiff but failed to realize there was no pregnancy during the process.

18. Defendants believed they had removed a fetus and informed Plaintiff Tetteh the abortion was successful, but failed to engage in the proper post-operative procedures to verify the removal of the fetus. In executing the *Operative Notes*, Defendants wrote that an “8-week sized” fetus was removed from the uterus, when in fact it was not.

19. Defendants’ initial *Operative Notes* reflected the uterine cavity was aspirated “without” difficulty” and the patient tolerated the operation well.

20. Defendants’ initial *Gross Pathology Examination* revealed the products of the fetus it examined were the placenta and villi, and those tissues were “normal.” In the *Remarks* section of the *Gross Pathology Report*, Defendants wrote, “Return to evaluate in 2-3 weeks,” and Defendant Kim orally advised Plaintiff to return in 2-3 weeks.

21. Defendants informed Ms. Tetteh the elective termination procedure was a success and she was ready to depart the abortion facility, which was housed in an office building complex. At that time, however, Ms. Tetteh was experiencing great pain and discomfort. She was bleeding, weak, dizzy and needed to be carried to the vehicle upon discharge – hardly appropriate conditions for release of a patient.

22. From the Saturday of the operation to the following Tuesday, February 27th, Ms. Tetteh experienced excruciating pain, lower abdominal and pelvic pain, bled extensively, was unable to eat, felt nauseated and vomited continually, among other symptoms. Ms. Tetteh believed this pain was part of the recovery process from the abortion, as she had no reason to suspect her life was in danger from an ectopic pregnancy since she was under the care of two gynecologists and obstetricians who made no mention of it.

23. At the insistence of Ms. Tetteh's fiancé, Defendant Kim allowed Ms. Tetteh to visit the NOVA Healthcare office on February 27th. Another substandard sonogram was performed and interpreted incorrectly. In addition to missing the ectopic pregnancy again, Defendant Kim acknowledged to Ms. Tetteh that NOVA Healthcare and Defendant Match failed to properly perform the elective termination or abortion the previous Saturday.

24. Although Ms. Tetteh exhibited great discomfort, great pain, heavy blood loss, inability to sleep, constant nausea, vomiting, and distress, Defendant Kim declined to send Ms. Tetteh to the emergency room or even refer her to a more comprehensive obstetrical practice. Rather, Defendant Kim set that following Saturday, March 3, 2007, as the date for a second abortion procedure. Defendant Kim planned to perform and complete the elective termination at that time. For that reason, Defendant Kim issued misoprostol to Ms. Tetteh and directed her in writing and orally to take it several hours before the elective termination procedure on Saturday, March 3rd. Misoprostol, an analog of prostaglandin E¹, causes the cervix to soften and the uterus to contract resulting in the expulsion of the uterine contents. Although manufactured for another problem, it is widely used as an abortion agent.

25. The *Recovery Record* notes reveal that although the patient had "pain nausea & vomiting," Defendant Kim planned to perform a "repeat procedure." Accordingly, Defendant Kim issued Ms. Tetteh misoprostol in a small white paper medicine tablet container, and wrote the following words on Tuesday, February 27, 2007:

take Misoprostol in A-M

Kim

Defendant Kim then released Ms. Tetteh to return to her home at a point in which Ms. Tetteh's fallopian tube contained a fetus, and the growing mass in her fallopian tube continued to expand, marching her body to the edge of death at any moment.

26. By Friday, March 2, 2007, Ms. Tetteh's deteriorating condition intensified. She withered in unbearable pain from, among other symptoms, sharp lower abdominal, pelvic pain, abnormally heavy vaginal bleeding, pounding headache, oscillating feelings of extreme heat and cold in her body temperature, weakness in her knees and legs, lower back pain, dizziness, and vomiting. Her body was beyond the breaking point as she collapsed on the floor of her home. She crawled for a distance hoping to reach a telephone but was unable to do so. When her fiancé arrived at the home, he observed her collapsed condition and called 911.

27. The emergency crew took her to the emergency room of the place of her employment, INOVA Hospital of Alexandria. Ms. Tetteh advised the physicians that she had undergone an abortion. INOVA physicians examined Ms. Tetteh and determined she was suffering from a life-threatening, 11-week old, ectopic pregnancy which warranted immediate removal of the left fallopian tube instead of an approach which might allow for removal of the threat while maintaining the fallopian tube. INOVA physicians removed her left fallopian tube through a procedure known as a salpingectomy.

28. At the end of the day, INOVA saved Ms. Tetteh's life. Ms. Tetteh was hospitalized for approximately 4 days, and spent a month at home convalescing. She experienced depression and distress, and still suffers from pain and trauma from the event.

29. On Saturday, March 3rd, Ms. Tetteh's fiancé informed Defendant Kim of the hospitalization. Stunned, Defendant Kim acknowledged error. When the fiancé asked about compensation Defendant Kim directed NOVA Healthcare to return the abortion fee of approximately four hundred ninety dollars (\$490), but denied the fiancé's request for a receipt.

30. The fiancé then requested a copy of Ms. Tetteh's medical records. Defendant Kim inquired why he wanted a copy, and he persisted with his request. She directed him to return the next week. When Ms. Tetteh called for her records, she was directed they would be available on a certain date but she was required to "call" first.

31. The medical records contain facial inconsistencies. For example, initially, the *Operative Note* stated the uterine cavity was aspirated *without difficulty*. However, a line was drawn through the encircled *without difficulty* and the document was changed to reflect that the uterine cavity was aspirated *with difficulty*, which was subsequently circled.

32. Likewise, the initial notation in the *Gross Pathology Examination* noted the tissue was consistent with a "complete abortion of 8 weeks." Subsequently, the 8-week age of the fetus was stricken.

33. Moreover, the initial *Gross Pathology Examination* stated definitely that NOVA Healthcare examined and found placenta and villi "products of [the] conception." Subsequently, NOVA Healthcare lined out those determinations and checked that the material it found was "Decidua" (lining of the uterus).

34. The initial *Remarks* in the *Gross Pathology Examination* noted Ms. Tetteh was to "Return to evaluate in 2 weeks." Subsequently, NOVA Healthcare struck through weeks, inserted the number "2" and revised the notation to read: "Return to evaluate in 2-3 days."

35. Likewise, Defendants claim that methotrexate that was administered to Ms. Tetteh at 1:05 pm following surgery is belied by its records on the whole as the *Anesthesia Record* reflects that while Propofol, Versed, Fentanyl, Kekorolac, Pitocin, and other drugs were administered, methotrexate was not among them from 12:45 through 1:05 – the time the *Operative Note* claims to have injected the patient with methotrexate. Moreover, The *Anesthesia Record* reveals at 1:05 pm Ms. Tetteh was talking.

IV. CAUSES OF ACTION

COUNT I – Negligence

36. Plaintiff incorporates paragraphs 1- 35, above.

37. Defendants NOVA Healthcare, Kim and Match had a duty of care to Plaintiff to ensure that a reliable sonogram was performed, conducted and interpreted as this was a principal basis for the decision to conduct an abortion on Plaintiff.

38. The parties conducting the ultrasound or sonogram did so in a substandard manner, below the medical standard of care, and the parties interpreting the ultrasound results or sonogram did so in a substandard manner. The result was, among other factors, an insufficient sonogram, or ultrasound or radiological examination of the hip area to determine accurately the location in the body of the sonogram results or the fetus. Consequently, Defendants reached the substandard and wrong determination that the fetus in the sonogram was in the uterus, when in fact it was in the fallopian tube.

39. That breach of duty of care, caused the Defendants to misled Plaintiff into believing an abortion was appropriate. Instead of receiving accurate medical information, Defendants provided materially inaccurate information because Plaintiff should have been rushed to more intensive medical care before her fallopian tube exploded rather than to waste time undergoing an unwarranted and invasive suction procedure styled as an abortion which physically and emotional injured Plaintiff.

40. The Defendants' substandard performance and interpretation of the ultrasound or sonogram was the proximate cause of the injurious and unwarranted abortion procedure since Plaintiff had no pregnancy in her uterus.

41. Defendants have the duty of care to provide surgical procedures which have a therapeutic value and which are conducted in a proper manner.

42. Defendants violated the duty of care to Plaintiff because the operation was unwarranted. The patient did not need an abortion because she did not have a pregnancy in the uterus. Rather the patient fetus was located in her fallopian tube. In reaching the erroneous decision that the fetus was in the uterus, the Defendants relied upon a negligently performed and misinterpreted sonogram, and failed, among other reasons, to employ laboratory tests that would have revealed certain chemicals far too low for a proper pregnancy in the uterus – any one of which is sufficient for breach of duty.

43. Defendants failed to conduct the comprehensive tests that reasonably would have revealed to them that Plaintiff had no pregnancy in the uterus, but had a life-threatening ectopic pregnancy warranting immediate medical attention.

44. The proximate causation of the failure to comply with the standard of care was an unwarranted abortion procedure performed for no reason. Further, the pain and recovery from the unwarranted the abortion masked the more invidious pain – and potentially lethal pain – Plaintiff experienced from the expanding fallopian tube. Thus, while Plaintiff suffered from the fallopian tube about to burst inside her body, the misdiagnosis and maltreatment by Defendants caused Patient to believe she was suffering from temporary post-abortion operation pains.

COUNT III – Assault and Battery

45. Plaintiff incorporates paragraphs 1 - 45, above.

46. Plaintiff did not consent to an unwarranted abortion procedure. As a result, the abortion procedure was unconsented to as Defendants represented erroneously that she had a pregnancy in the uterus and an abortion was the appropriate therapy to remove the fetus. However, Defendants relied upon an improperly conducted sonogram when informing Plaintiff she had a fetus in her uterus when, in fact, she did not.

47. Plaintiff did not issue her consent to an abortion procedure under those conditions. Thus, the touching by Defendants – including preparation for surgery, surgery, sedation, suction, and the administration of drugs – was not consented to, offensive, and actionable.

COUNT IV – Negligent Infliction of Emotional Distress

48. Plaintiff incorporates paragraphs 1 - 48, above.

49. The acts and omissions of Defendants complained herein were done in a negligent manner, without Plaintiff's consent, and were the direct and proximate cause of injuries to her.

50. First, Defendants informed Plaintiff she had a pregnancy in the uterus and that an abortion was an appropriate therapy when in fact, she did not have a pregnancy in the uterus and an abortion was not appropriate.

51. Second, Defendants informed Plaintiff her abortion was successfully completed and that the fetus had been removed, when in fact it had not.

52. Third, following the surgery as Plaintiff's pain intensified greatly and she experienced excruciating pain, Defendants had her believe she was suffering from the aftermath of the abortion procedure which would abate, when in fact her fallopian tube was expanding was about to burst.

53. Fourth, when Plaintiff's fallopian tube exploded while she was alone in her home, she suffered from unbearable pain and anguish and could have died. Had Defendants competently conducted a pregnancy examination, or been responsive to the great pain Plaintiff suffered after the abortion, Defendants could have coordinated the appropriate care for Plaintiff and she could have received advanced medical care without experiencing the bursting of the fallopian tube and the great pain and subsequent emotional trauma from her adverse experience.

54. Any one of these factors caused the emotional and psychological trauma and damages Plaintiff sustained and continues to suffer, including but not limited to severe emotional distress, psychological traumatization, depression, and Post Traumatic Stress Disorder.

55. While any of those factors in paragraph constitutes the negligent infliction of emotional distress, their cumulative effect is devastating. No patient undergoing an abortion, whether she is a princess or a maid from Africa, should endure such callousness.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Regina Tetteh, by counsel, respectfully demands judgment against defendants jointly and severally, and prays for the following relief:

1. General and special damages in their favor against each and every Defendant, jointly and severally in the total sum of \$500,000 (FIVE HUNDRED THOUSAND DOLLARS) in compensatory damages actual;
2. Punitive damages in the amount of \$1,000,000 (ONE MILLION DOLLARS)
3. Plaintiffs' costs herein expended; and
4. Any and all other relief to which Plaintiff may be justly entitled.

VI. JURY DEMAND

Plaintiff, Regina Tetteh, hereby demands a trial by jury in the above-entitled action.

Respectfully submitted,
REGINA TETTEH
By Counsel

PATRICK HENRY LLP

By: 

Richard E. Patrick, VSB #25293
PATRICK HENRY LLP
7619 Little River Turnpike
Suite 340
Annandale, Virginia 22003
(703) 256-7754
(703) 256-7883-fax
rpatrick@patrickhenry.net