SHORT FORM ORDER

INDEX No. 09-27041
CAL. No. 11-00199MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 21 - SUFFOLK COUNTY

PRESENT:

Hon. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

MOTION DATE 8-10-11 ADJ. DATE: 1-11-12
Mot. Seq. # 001 - MD

LORESHA THOMAS,	:	SILBERSTEIN, AWAD & MIKLOS, P.C.
	:	Attorney for Plaintiff
Plaintiff,	:	600 Old Country Road, Suite 412
- against -	:	Garden City, New York 11530
	:	
PLANNED PARENTHOOD HUDSON PECONIC, INC.,	:	McALOON & FRIEDMAN, P.C.
	:	Attorney for Defendant
	:	123 Williams Street, 25th Floor
Defendant.	:	New York, New York 10038

Upon the following papers numbered 1 to 35 read on this motion for summary judgment ; Notice of Motion/ Order to Show Cause and supporting papers (001) 1 - 19 ; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 20-28 ; Replying Affidavits and supporting papers 29-32 ; Other 33-35 ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that motion (001) by the defendant Planned Parenthood Hudson Peconic, Inc. for summary judgment dismissing the complaint is denied.

This is a medical malpractice action wherein the plaintiff, Loresha Thomas, alleges that during the performance of a second trimester abortion on April 18, 2009, the defendant, Planned Parenthood Hudson Peconic, Inc., by its staff, negligently perforated her uterus, resulting in her having to undergo an hysterectomy and suffer other permanent injury.

The defendant seeks summary judgment dismissing the complaint on the bases that it was not negligent in performing the abortion; that there was no iatrogenic perforation of the plaintiff's uterus; that the rupture occurred spontaneously at a scar on the uterus resulting from a previous cesarean section; and that such rupture at the scar is a known risk associated with the use of the drug Misoprostol; and she was advised of such risk prior to the procedure.

While a motion for summary judgment is required to be made within 120 days of the filing of the note of issue, which was February 2, 2010 in the instant action, the parties have submitted a copy of a signed and "so ordered" stipulation permitting the defendant to serve the motion for summary judgment by July 8, 2011. This motion is therefore deemed timely, having been served July 1, 2011.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (***Friends of Animals v Associated Fur Mfrs.,*** 46 NY2d 1065, 416 NYS2d 790 [1979]; ***Sillman v Twentieth***

Century-Fox Film Corporation, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v N.Y.U. Medical Center***, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v N.Y.U. Medical Center***, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212[b]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (***Castro v Liberty Bus Co.,*** 79 AD2d 1014, 435 NYS2d 340 [2d Dept 1981]).

The requisite elements of proof in a medical malpractice action are (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of injury or damage (***Holton v Sprain Brook Manor Nursing Home***, 253 AD2d 852, 678 NYS2d 503 [2d Dept 1998], *app denied* 92 NY2d 818, 685 NYS2d 420). To prove a prima facie case of medical malpractice, a plaintiff must establish that defendant's negligence was a substantial factor in producing the alleged injury (*see* ***Derdiarian v Felix Contracting Corp.***, 51 NY2d 308, 434 NYS2d 166 [1980]; ***Prete v Rafla-Demetrious,*** 221 AD2d 674, 638 NYS2d 700 [2d Dept 1996]). Except as to matters within the ordinary experience and knowledge of laymen, expert medical opinion is necessary to prove a deviation or departure from accepted standards of medical care and that such departure was a proximate cause of the plaintiff's injury (*see* ***Fiore v Galang***, 64 NY2d 999, 489 NYS2d 47 [1985]; ***Lyons v McCauley,*** 252 AD2d 516, 517, 675 NYS2d 375 [2d Dept 1998], *app denied* 92 NY2d 814, 681 NYS2d 475; ***Bloom v City of New York,*** 202 AD2d 465, 465, 609 NYS2d 45 [2d Dept 1994]).

In support of this motion (004), defendant submitted, inter alia, an attorney's affirmation; copies of the summons and complaint, the answer, and plaintiff's verified, and amended verified, and supplemental verified bills of particulars as to defendant Planned Parenthood and Dr. Timothy Ryntz; unsigned copies of the examination before trial of Loresha Thomas dated January 11, 2010, non-party witness Sharon Martin dated February 17, 2010; copies of the signed transcripts of the examinations before trial of Timothy Ryntz, M.D., Donna Wiemann dated December 7, 2010; copies of the plaintiff's medical records; and the affirmation of Deborah Nucatoa, M.D. The unsigned copy of the deposition transcripts are not in admissible form as required by CPLR 3212 (see ***Martinez v 123-16 Liberty Ave. Realty Corp.***, 47 AD3d 901, 850 NYS2d 201 [2d Dept 2008]; ***McDonald v Maus***, 38 AD3d 727, 832 NYS2d 291 [2d Dept 2007]; ***Pina v Flik Intl. Corp.***, 25 AD3d 772, 808 NYS2d 752 [2d Dept 2006]), are not accompanied by an affidavit or proof of service pursuant to CPLR 3116. However, in opposing this application, the plaintiff has submitted a copy of her deposition transcript, which is nearly illegible and fails to comport with CPLR 2101. Thus, this court has considered the transcript as submitted by the defendant.

Loresha Thomas testified that she was born in on August 21, 1986 and has never been married. She completed her high school education through tenth grade and was currently unemployed, but was seeking employment. She has health insurance through Medicaid. She has a daughter from her first pregnancy who was born October 27, 2006, by C-section at 37 weeks gestation "as they said the baby wasn't growing fast enough inside." The child receives social security disability for a heart condition. After her daughter was born, Ms. Thomas stated that she had a PAP smear which was positive for HPV, but she could not remember if she took medicine to treat it, but thereafter tested negative for HPV. She started taking DepoProvera injections for birth control after her daughter was born, but started gaining weight, so she stopped the injections. She had a second pregnancy, but terminated it with a pill which was administered through Planned Parenthood. Thereafter, she became pregnant a third time, 2009, however, decided to have an abortion due to financial concerns.

Ms. Thomas testified that she went to the West Islip Planned Parenthood on about April 15th or 16th, 2009 for an abortion of her third pregnancy, had a blood test and applied for health insurance which covers the procedure and a three month period thereafter. She was referred to the Smithtown Planned Parenthood office on April 18, 2009, as she was told she was too far along in her pregnancy to take the pill for the abortion at the West Islip Planned Parenthood office. She believed she was about 11 or 12 weeks pregnant. When she arrived at the Smithtown location, she showed the staff her ID and filled out some paperwork for insurance. She was then taken to a room where she watched a video describing the procedure. She testified that she knew there were risks associated with the procedure, but she could not recall what they were. When asked, she could not recall being advised that there could be a risk that she would need a hysterectomy, or that she could possibly die, as a result of a complication during the procedure. She did not recall the document entitled "cervical preparation" concerning the use of osmotic dilators and/or Misoprostol (Cytotec), although she stated that her signature appeared on the document providing the information.

She then had a sonogram and was advised that she was about thirteen and a half to fourteen weeks pregnant. Thereafter, she had some blood work performed, and signed some papers given to her by the nurse. She thought she read the forms. Subsequently, she went into a room where she was seen by Dr. Ryntz and a nurse who gave her some pills to soften her uterus or cervix. Thereafter, she was taken to a room where Dr. Ryntz and two nurses were present. She was placed on a table, and an intravenous was started. She then felt Dr. Ryntz insert a "metal thing" into her vagina. When she started to feel a sharp pain, she told the doctor to stop, but he advised her that the procedure was already started and that he could not stop. She testified that shortly after that, the doctor advised her that there was "just a minor complication," and that he was calling Stony Brook Hospital. The next thing she knew, the paramedics were at her side. When they moved her, she felt a gush of blood. Upon arrival to Stony Brook University Hospital, she was given a partial hysterectomy wherein her tubes and ovaries and cervix were left in place, and just the uterus was removed.

Timothy Ryntz, M.D. testified that he is licensed to practice medicine in New York and Massachusetts and is board certified in obstetrics and gynecology. He first started performing abortions in 2002. He had been employed by Planned Parenthood of New York City, and coordinated education and training programs (self-study materials concerning how to provide abortions) to residents of family medicine programs in New York City. He started working part-time for Planned Parenthood of Hudson Peconic in 2008. He was also employed by Columbia University and worked at Columbia Presbyterian of New York practicing obstetrics and gynecology.

Dr. Ryntz testified that on April 18, 2009, Loresha Thomas was scheduled for an abortion at Planned Parenthood. As he was performing the procedure, he thought a perforation of the uterus may have occurred. He performed an ultrasound to determine the location of the instruments in the uterine cavity because he received no fetal parts back when he suctioned inside the uterus. Because he viewed the instrument below the fetus on the ultrasound, he believed there may have been a posterior perforation of the uterus. He therefore had Ms. Thomas transferred to Stony Brook University Hospital. He called Stony Brook several times over the following days to follow up on her condition, but did not know the names of the physicians he spoke with. He stated he was advised by the physician who performed the hysterectomy at Stony Brook that the cesarean section scar ruptured at the lower anterior portion of the uterus. He was further advised that the vertex of the fetus was virtually in the perforation at the lower uterine segment, anteriorly.

When asked if he had an opinion within a reasonable degree of medical certainty how the perforation could have occurred, he stated that his suspicion was that since the perforation appeared to have occurred through the old uterine cesarean section scar, that it was associated with the use of Misoprostol which Ms.

Thomas received preoperatively. He continued that the contractions caused by the Misoprostol caused dehiscence (separation) of a section of the scar. He continued that Misoprostol is used to soften the cervix and it is the standard of care to administer it at Planned Parenthood to open the cervix between twelve to fourteen weeks gestational age, even with a patient who has had a prior cesarean section. He further stated that the pathology report indicated that there was a separation of the myometrium in the location of the prior cesarean section scar, and that there were two openings that connect with the flap of the loose myometrial tissue originating from the anterior inferior margin. He stated that the placenta was probably located anteriorly and that is why the placental tissue protruded through the more central opening. He continued that it appeared that the placenta separated from the lower portion of the uterus, and involved the inferior region where the separation of the uterine incision occurred. He opined that the fetal vertex passed through the opening between the uterine cavity and the abdominal cavity made by the separation as the uterus contracted, expelling the fetus. Dr. Ryntz continued that perforation can occur with any instrument during an abortion, but in this case, instruments did not cause the perforation. Dr. Ryntz testified that when he passed instruments into the uterus, they were passed beneath the fetus and remained posteriorly, while the fetus remained anteriorly, which is why he suspected a posterior perforation. Dr. Ryntz also testified as to the risks of the procedure and medication used. The risks included excessive bleeding requiring surgery, allergic reaction, and uterine rupture or tear requiring surgery. When he suspected perforation posteriorly, he ordered the administration of Methergine to help stop any bleeding.

Donna Wiemann testified that she was a medical assistant certified in New York State. She interned for 80 hours at an ob/gyn office in Smithtown after completion of the program. She stated her training program involved assisting for phlebotomy and EKG, but not particularly for abortions. She was employed by the defendant Planned Parenthood office and was working on April 18, 2009. Ms. Wiemann continued that the person reviewing the paperwork at Planned Parenthood sits down with the patient and goes over the consents, asking the patient if she read it and if she fully understood the risks involved. She further advises that there is only IV sedation. Thereafter, the patient's signature is witnessed. She did not assist with the ultrasound conducted by the ultrasound technician. She assisted Dr. Ryntz during the abortion procedure performed on Ms. Thomas by handing him what he needed. She did not observe any bleeding. She continued that the plaintiff was lying on the procedure table while the doctor was performing the procedure. She testified that the plaintiff did not speak at all during the procedure, and she did not hear the plaintiff ask to have the procedure stopped. She remembered Dr. Ryntz abruptly stopping the procedure, pushing his chair away and telling her he needed assistance. She went out of the room to get assistance, but did not thereafter return to the plaintiff's room. She learned afterwards that the plaintiff was transferred to a hospital.

The defendant's expert, Deborah Nucatola, M.D. affirms that she is licensed to practice medicine in New York and California and sets forth her educational background and experience practicing medicine in obstetrics and gynecology, and family planning. She sets forth the materials and records reviewed and relates her opinions based upon a reasonable degree of medical certainty. It is Dr. Nucatola's opinion that the defendant, Planned Parenthood Hudson Peconic, Inc. did not depart from accepted standards of practice in the care and treatment of Loresha Thomas when she presented for an elective second trimester termination of pregnancy on April 18, 2009.

Dr. Nucatola continued that Ms. Thomas was a 22 year old female who presented with her third pregnancy. She had one prior cesarean delivery and one prior termination of pregnancy by abortion. Her last menstrual period was January 17, 2009, making her 13 weeks pregnant by date, and fourteen weeks by sonogram. Upon presenting to the facility, Ms. Thomas met with various members of the medical staff. A medical history was obtained and she was counseled on the risks, benefits, and alternatives of abortion. She

watched a videotape which described the abortion procedure, and was given the risks, benefits and alternatives to abortion. She stated that Ms. Thomas read the consent forms which specifically stated the risks of undergoing an elective second trimester surgical abortion, and that she signed the form which specifically includes the risks of uterine rupture, which can result in a hysterectomy.

Dr. Nucatola described the abortion procedure, and discussed the administration of Misoprostol, a synthetic prostaglandin drug which is used to induce labor or dilate the cervix in preparation of surgical abortion, especially in the second trimester. Ms. Thomas was advised of the rare, but commonly accepted, risk of uterine rupture, when the uterus opens via tearing of the uterine wall, associated with the use of Misoprostol. After the administration of Misoprostol, and after a two hour waiting period to allow the cervix, or lower portion of the uterus, to soften and dilate, Ms. Thomas was brought to the procedure room and was sedated by a certified registered nurse anesthetist. Dr. Timothy Ryntz examined Ms. Thomas and determined that the cervical dilation was adequate to safely perform the abortion. Dr. Ryntz introduced a suction catheter through the vagina, through the cervix and into the uterus. When Dr. Ryntz turned on the suction machine, he observed that there were no products of conception being returned. With the assistance of staff at Planned Parenthood, Dr. Ryntz utilized a sonogram to visualize the uterine cavity and observed that the tip of the catheter was posterior to the products of conception, and that the products of conception were above the catheter tip.

Dr. Nucatola continued that, generally, if the sonogram image reveals that the tip of the catheter is posterior to the fetus and placenta, and the products of conception are in the uterine cavity, an operating physician can reasonably believe that the posterior (rear) uterine wall has been perforated. Following emergency protocol, Dr. Ryntz had Ms. Thomas transferred to Stony Brook University Hospital emergency room where she was diagnosed with a possible uterine perforation. She underwent a diagnostic laparoscopy, exploratory laparotomy, cervical dilation and curettage, supracervical hysterectomy and lysis of adhesions. Dr. Nucatola states that the surgeon, Dr. Daniel Kiefer, wrote in his operative report that the uterine perforation was through the site of the previous cesarean scar encompassing the right aspect of the uterine incision. The perforation extended into the broad ligament with perforation of the anterior broad ligament by the fetal vertex, revealing that the fetus migrated through the now open cesarean section scar and damaged the blood vessels of the broad ligament, specifically, the uterine artery. Therefore, a decision was made to remove Ms. Thomas' uterus, which was an appropriate treatment for this complication.

Dr. Nucatola continued that the pathologist noted that there was no clear tract or perforation through the uterine wall and that the defect in the uterus occurred at the location of the scar from the previous cesarean section. Placental tissue was also noted to protrude through the opening in the uterus at the rupture site of the open cesarean section scar. Dr. Nucatola adds, that in reviewing the operative report and the pathology report, it is noted that no posterior perforation was found as there was no perforation through the posterior wall of the uterus as Dr. Ryntz had thought occurred. She continued that the only opening in the uterus was at the sight of the previous cesarean section scar at the anterior of the uterus. Dr. Nucatola stated that no actual perforation through and through was found that was caused by an instrument being placed in the uterus at Planned Parenthood.

Dr. Nucatola continued that there was no mechanical perforation of the uterus and that Ms. Thomas actually suffered a uterine rupture at the previous cesarean section scar secondary to the administration of Misoprostol. When this occurred, the fetus exited the uterus and penetrated the broad ligament. During the surgery at Stony Brook, when the fetal parts were removed from the uterine artery section of the broad ligament, Ms. Thomas started bleeding, resulting in the need for an hysterectomy. Dr. Nucatola stated that had there been a mechanical perforation of the uterus at Planned Parenthood, there would have been a posterior perforation

through and through, and that was not present. Dr. Nucatola added that Misoprostol caused the uterus to contract, an intended purpose of the medication, and during the contraction, she believes, the uterine scar from the previous cesarean section dehisced, resulting in the uterine rupture. Dr. Nucatola stated that it is unfortunate that Ms. Thomas suffered this known and accepted, but rare, complication. She added that studies show that the expulsion of the fetus into the broad ligament is a complication that can occur in a second trimester termination of pregnancy, and often happens secondary to uterine rupture. Dr. Nucatola concluded that employees of Planned Parenthood, and Dr. Ryntz, acted in accordance with the proper standard of practice, that the abortion procedure was properly performed, and that Ms. Thomas received adequate informed consent.

Based upon the foregoing, the defendant has demonstrated prima facie entitlement to summary judgment dismissing the complaint. The evidentiary submissions establish that the plaintiff's uterus ruptured, or dehisced and tore, at the site of the scar from the incision made into the anterior uterus during a previous cesarean section. The dehiscence, or opening of the scar, was a result of the administration of Misoprostol which caused uterine contractions. The Misoprostol was appropriately used to soften and dilate the cervix of the uterus to facilitate the entry of the instruments necessary to perform the abortion. The evidentiary submissions also establish that there was no posterior rupture of the uterus caused by Dr. Ryntz during the procedure. It has been further established that the defendant did not depart from good and accepted standards of care during the performance of the abortion, that there was nothing that was or was not done that proximately caused the injuries alleged by the plaintiff, and that the plaintiff was given proper informed consent.

To rebut a prima facie showing of entitlement to an order granting summary judgment by the defendant, the plaintiff must demonstrate the existence of a triable issue of fact by submitting an expert's affidavit of merit attesting to a deviation or departure from accepted practice, and containing an opinion that the defendant's acts or omissions were a competent-producing cause of the injuries of the plaintiff (*see* ***Lifshitz v Beth Israel Med. Ctr-Kings Highway Div.***, 7 AD3d 759, 776 NYS2d 907 [2d Dept 2004]; ***Domaradzki v Glen Cove OB/GYN Assocs.***, 242 AD2d 282, 660 NYS2d 739 [2d Dept 1997]). "Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. Such credibility issues can only be resolved by a jury" (***Bengston v Wang,*** 41 AD3d 625, 839 NYS2d 159 [2d Dept 2007]). Here, the plaintiff has opposed the defendant's motion and has submitted the affidavit of her expert, Dr. Bruce Halbridge, which affidavit does not redact the expert's name.

The plaintiff's expert, Dr. Halbridge, avers that he is licensed to practice medicine in New York and Texas but does not establish that he is board certified in any area of medicine. Nor does he set forth his areas of professional work experience upon which he bases such experience and familiarity with abortions. Although the defendant objects to the admission of the plaintiff's expert's affidavit into evidence on the basis that the plaintiff's expert does not set forth, except in a conclusory manner, that he is qualified to opine on the subject matter at issue, it is determined that this goes to the weight of the evidence, and this court will consider the plaintiff's expert's affidavit. The cases cited by defendant in raising such opposition to the plaintiff's expert's qualifications do not support defendant's argument. "While it is true that a medical expert need not be a specialist in a particular field in order to testify regarding accepted practices in that field...the witness nonetheless should be possessed of the requisite skill, training, education, knowledge ***or*** (*emphasis added)* experience from which it can be assumed that the opinion rendered is reliable" (***Ozugowski v City of New York***, 2011 NY Slip Op 9293 [App. Div. 2d Dept]; *see also,* ***Postlethwaithe v United Health Services*** Hospitals, 5 AD3d 892, 773 NYS2d 480 [2d Dept 2004]; ***Mustello v Berg***, 44 AD3d 1018, 845 NYS2d 86 [2d Dept 2007]; ***Behar v Coren***, 21 AD3d 1045, 803 NYS2d 629 [2d Dept 2005]). Here, it is determined that not only is the plaintiff's expert licensed to practice medicine in both New York and Texas, but he also completed a residency in obstetrics/gynecology at the Brookdale University Hospital Medical Center in Brooklyn, New York.

Accordingly, he has the necessary education to qualify as an expert. He does state, as well, that he is familiar with the accepted medical standards and practices applicable to Planned Parenthood Peconic, Inc. which provided obstetrical/gynecological care and treatment to Loresha Thomas during her elective termination of her pregnancy on April 18, 2009. Thus the expert affidavit of Bruce Halbridge, M.D. is considered over defendant's objection.

Bruce Halbridge, M.D. set forth the materials and medical records which he reviewed and states that his opinions are rendered within a reasonable degree of medical certainty. It is plaintiff's expert's opinion that there was substandard care in connection with the treatment rendered by Planned Parenthood Hudson Peconic, Inc. to Ms. Thomas during the surgical termination of pregnancy performed on April 18, 2009 by Dr. Ryntz, which departures were substantial factors in causing Ms. Thomas' severe and permanent personal injuries from that procedure.

Dr. Halbridge stated that on April 18, 2009, Loresha Thomas presented to Planned Parenthood Hudson Peconic, Inc. for elective termination of pregnancy, where it was determined after ultrasound, that she was at approximately 14 weeks gestation. Prior to the procedure, she was administered Misoprostol, a drug commonly used to soften the cervix to prepare it for dilation, and after two hours, was taken to the operating room, where Dr. Ryntz, without performing a pelvic examination to determine the position of the uterus, began to dilate the cervix. Without being certain that he was in the endocervical can, Dr. Ryntz inserted a suction cannula catheter into the cervix to suction the fetus out of the uterus. He continued that when Dr. Ryntz suctioned the top of the fundus and down the sides of the uterus, there were no products of conception noted upon retracting the suction. Dr. Ryntz then performed an ultrasound which revealed what he believed was a posterior perforation of the uterine wall, ended the procedure, and had Ms. Thomas taken to Stony Brook University Hospital.

The plaintiff's expert states that upon arrival to Stony Brook, Ms. Thomas was evaluated by a gynecologist who confirmed by ultrasound that Ms. Thomas had sustained uterine perforations of the lower right lateral aspect of the anterior uterine wall, as well as two openings of the inferior margin, both with irregular borders, with one on the right lateral side, disruption of the placenta in those areas, and fetal retention. The fetal vertex was noted to be in the vascular right broad ligament outside the uterus. The plan was to terminate the pregnancy and perform a laparoscopy and/or laparotomy. He further set forth that the operative record reported "uterine perforation through the site of the previous cesarean scar encompassing the right aspect of the uterine incision. This extended into the broad ligament with perforation of the anterior broad ligament by fetal vertex." He continued that upon removal of the fetal head from the broad ligament, severe hemorrhaging occurred in the vascular broad ligament, causing the surgeon to perform a supracervical hysterectomy.

Dr. Halbridge opined that Dr. Ryntz departed from good and accepted standards of care by failing to perform a pelvic exam prior to dilating the cervix to determine and identify the position of the uterus; in failing to identify the position of the uterus; in failing to diagnose an anteverted uterus; in failing to adequately dilate the cervix; in failing to properly insert the dilator and suction cannula catheter and aim them in the proper direction through the cervix into the uterus; in failing to apply adequate traction to the cervix; in failing to realize that he was not in the cervical canal; in failing to realize that he was creating two new paths through the uterine wall which caused the fetus and the placenta to be pushed through the uterine wall; in failing to immediately recognize the perforation; and in failing to follow protocol in inserting the suction cannula catheter to the fundus to retrieve the placenta and products of conception. The plaintiff's expert further opined that Dr. Ryntz departed from good and accepted standards of care in perforating the uterus though the site of the previous caesarean section scar encompassing the right aspect of the uterine incision, and in failing to timely stop the abortion when Ms. Thomas complained of severe pain and asked him to stop. He continued that Dr.

Ryntz further departed from good and accepted standards of care in failing to perform an ultrasound at that point to determine if a perforation had occurred; in failing to apply proper traction to the cervix; and in failing to perform real-time sonography during the procedure to ascertain the location of the instrument's position in the endocervical canal. The plaintiff's expert set forth the bases for these opinions.

The plaintiff's expert further opined that there was no dehiscence in the uterine muscle wall in that the products of conception, including the head, would have come up anteriorly, through the front of the uterus, and this did not happen, as it occurred on the side of the uterus. He adds that there would be a very clean line with the scar separated and it would not bleed very much had there been dehiscence of the old scar. He stated that according to the pathology report, there is no indication of dehiscence. The tear of the caesarean scar could not have been the effects of the Misoprostal in the absence of strong uterine contractions, because the uterus was perforated by the dilator. The plaintiff's expert further set forth his disagreement with Dr. Nucotola's statements and opinions, especially at paragraph 18, with regard to causation of migration of the fetus, in that the plaintiff's expert opines that the migration was caused by the suction cannula pulling or pushing the fetus through and into the broad ligament, and not by the perforation.

Based upon the foregoing, the plaintiff's expert has raised sufficient factual issues to preclude summary judgment.

Accordingly, defendant Planned Parenthood's motion (001) for summary judgment dismissing the complaint is denied.

Dated: FEB 15 2012

J.S.C.
HON. JEFFREY ARLEN SPINNER

___ FINAL DISPOSITION _X_ NON-FINAL DISPOSITION