

OAKLAND COUNTY

08-090476-NH



JUDGE JOHN J. McDONALD
CUMMINGS, SHAU v KALO, JACOB

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
OAKLAND COUNTY CLERK

SHAUNTY CUMMINGS,

2008 APR -1 A 11: 09

Plaintiff,

BY: _____
DEPUTY COUNTY CLERK

-vs-

NO. 08

NH

JACOB KALO, M.D. and
WESTERN WOMEN'S CENTER,

Defendants.

HOWARD J. VICTOR (P27811)
Attorney for Plaintiffs
30445 Northwestern Highway, Suite 380
Farmington Hills, MI 48334
(248) 737-9101

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action not between these parties arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a judge in this Court.

Howard J. Victor
HOWARD J. VICTOR (P27811)

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, SHAUNTY CUMMINGS, by and through counsel, WORSHAM & VICTOR, P.C., and for her cause of action against the Defendants, JACOB KALO, M.D. and WESTERN WOMEN'S CENTER, presents unto this Honorable Court the following:

COUNT I
GENERAL ALLEGATIONS

1. That the Plaintiff, SHAUNTY CUMMINGS, is a resident of the City of Southfield, County of Oakland, State of Michigan.

2. That the Defendant, WESTERN WOMEN'S CENTER, is a Michigan Corporation having its principal place of business located at 6765 Orchard Lake Road in the City of West Bloomfield, County of Oakland, State of Michigan 48322.

3. That the Defendant, JACOB KALO, M.D., is a duly licensed physician in the State of Michigan and was, at all times relevant herein, an employee, agent, servant, officer and/or representative of WESTERN WOMEN'S CENTER acting within the scope of such capacity.

4. That the incident giving rise to this Complaint against Defendants arose in City of West Bloomfield, County of Oakland, State of Michigan.

5. That the amount in controversy is in excess of Twenty-five Thousand (\$25,000.00) Dollars.

6. That Shaunty Cummings is a 25 year old female.

7. That on or about November 15, 2006, a home pregnancy test indicated that Ms. Cummings may be pregnant. She contacted Jacob Kalo, M.D. and/or Western Women's Center on November 16, 2006 to schedule an appointment to confirm and possibly terminate her pregnancy. Ms. Cummings was given and kept an appointment date of November 18, 2006.

8. That on November 18, 2006, Ms. Cummings was seen by Dr. Kalo at Western Women's Center.

9. That she reported that her LMP was October 12, 2006. By way of history, it was noted that she had a positive pregnancy test.

10. That she underwent a pelvic exam and an ultrasound was performed, and she was told that a small spot could be seen and that they could proceed with an abortion.

11. That no blood was drawn at this visit.

12. That on November 18, 2006, Dr. Kalo performed suction and curettage.
13. That no specific follow up instructions were given or noted.
14. That at the conclusion of the procedure, Dr. Kalo documented that he submitted tissue to a lab for pathology.
15. That according to the certified medical records, the tissue was "entered" as received by LabCorp Livonia on November 21, 2006.
16. That the pathology report, authored by Smita Bhatt, M.D. on November 22, 2006, reflects that no evidence of chorionic villi or trophoblastic elements were seen. Dr. Bhatt concluded that one "cannot exclude ectopic pregnancy".
17. That on November 22, 2006, Dr. Kalo and/or another agent or employee of Western Women's Center contacted Ms. Cummings and scheduled her for a return visit on November 24, 2006. No urgency was conveyed and no reason was given for the visit.
18. That on November 24, 2006, Ms. Cummings returned to Dr. Kalo and the Western Women's Center.
19. That she voiced complaints of abdominal pain and occasional spotting.
20. That a beta hCG was done and reported as 2833. An ultrasound was performed and interpreted to reveal a possible ectopic pregnancy.
21. That Ms. Cummings was simply told to return in 72 hours for additional testing.
22. That again, no urgency was conveyed, no explanation was given, and no options were discussed.
23. That on November 27, 2006, Ms. Cummings returned to Dr. Kalo and Western Women's Center as instructed.
24. That she again complained of abdominal pain and occasional spotting.
25. That a repeat beta was done and reported as 5547.

26. That Ms. Cummings was simply told to return in 24 hours for further testing. Of course, once again, no urgency was conveyed, no explanation was given, and no options were discussed.

27. That on November 28, 2006, Ms. Cummings returned to Dr. Kalo and Western Women's Center as instructed. She again complained of abdominal pain, cramping, and occasional spotting.

28. That no additional testing was performed in the office on that date. Rather, Ms. Cummings was told, for the very first time, that she should go to the Emergency Room at Providence Hospital to have an ultrasound performed.

29. That Mrs. Cummings presented to the E.R. at Providence Hospital on November 28, 2006.

30. That the certified medical records reflect that Ms. Cummings reported complaints of abdominal pain, in the left lower quadrant, as well as occasional spotting, for 6 days. She described the pain as "8-9" on a scale of 1 to 10 at its worst.

31. That she was seen and evaluated by Gary March, M.D.

32. That a beta hCG was done and reported as 5405. An ultrasound was performed and interpreted to reveal an extra uterine pregnancy, most likely in the left Fallopian tube, with fetal heart motion detected. There was also left salpinx noted.

33. That thereafter, Ms. Cummings was admitted to "staff Ob/Gyn", Kevin Pothoven, M.D. was identified as the attending physician and Christine Morrison, M.D. entered certain orders for the patient.

34. That Ms. Cummings recalls being told that surgery was definitely her best and only option.

35. That Ms. Cummings was taken to the O.R. at approximately 3:50 am on November 29, 2006 for performance of an exploratory laparoscopy, salpingostomy, possible salpingectomy, and possible laparotomy.

36. That the surgeon was identified as Michelle Herman, D.O., and the assistant as Troy Williams, M.D. Intra-operatively, a salpingostomy was attempted, but the patient's left Fallopian tube was so dilated and distended from the growth of the embryo that it continued to bleed after the ectopic pregnancy had been removed.

37. That after several failed attempts to control the bleeding, a salpingectomy was performed. Subsequently, a pathology report authored by Jeanette Cheng, M.D. described changes in the patient's left Fallopian tube "consistent with ruptured ectopic gestation".

38. That Ms. Cummings has continued to suffer emotionally since these events.

39. That she has also lost earnings as a result of these events.

40. That as a result of the negligence and breach of the standard of care by the above-named Defendants, Plaintiff, SHAUNTY CUMMINGS, suffered the loss of her left fallopian tube.

41. That Plaintiff, SHAUNTY CUMMINGS, has also suffered permanent residual scarring, pain, suffering, discomfort, depression, disability, extensive medical expenses, economic loss and permanent damage to her reproductive organs resulting in the inability to procreate.

WHEREFORE, Plaintiff, SHAUNTY CUMMINGS, by and through counsel, WORSHAM & VICTOR, P.C., respectfully requests that this Honorable Court enter a judgment against Defendants, JACOB KALO, M.D. and WESTERN WOMEN'S CENTER, in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars which the trier of fact determines

Plaintiff has suffered, together with costs, fees and interest that she has so wrongfully been caused to sustain.

COUNT II
WESTERN WOMEN'S CENTER – NEGLIGENCE

42. That the Plaintiff, by and through counsel, WORSHAM & VICTOR, P.C., hereby incorporate by reference all the allegations set forth in Count I as if fully set forth herein.

43. That the Defendant, WESTERN WOMEN'S CENTER, by and through its agents, servants, officers, employees and/or representatives including, but not limited to, JACOB KALO, M.D., owed a duty to Plaintiff as a medical care provider and that said duties were breached by deviation from the standards of practice of medicine, which said breach of duties include by way of illustration and not limitation the following:

- a. By failing to timely and properly select, train and monitor its employees, servants, agents, actual or ostensible, or its staff of physicians, to ensure that they were competent;
- b. By failing to provide qualified medical staff to meet the requirements of obstetricians and gynecologists, and which doctors should have the proper training and ability to meet the patient's needs, including the ability to timely diagnose and treat an ectopic pregnancy and refrain from performing unnecessary abortions;
- c. By failing to timely diagnose and treat an ectopic pregnancy;
- d. By failing to timely and properly take an accurate history and physical;
- e. By failing to obtain the proper informed consent;
- f. By failing to recognize the signs and symptoms of ectopic pregnancy;
- g. By failing to perform and properly interpret the appropriate diagnostic tests, including but not limited to beta hCGs and ultrasound films, to rule out or confirm an ectopic pregnancy;
- h. By failing to immediately send the patient to the Emergency Room for further evaluation and treatment with regard to her ectopic pregnancy well before November 28, 2006

- i. By failing to refrain from performing an unnecessary abortion;
- j. By failing to timely and properly treat Shaundy Cummings's ectopic pregnancy;
- k. By failing to obtain histologic confirmation in a timely fashion so that patients with abnormal pathology findings can be contacted immediately;
- l. By failing to immediately contact Shaundy Cummings and advise her of her potentially life-threatening ectopic condition well before November 28, 2006;
- m. By failing to provide the appropriate follow up care and treatment for Shaundy Cummings based on the information that was or should have been available.

44. That the Plaintiff's damages herein stated are a direct and proximate result of the negligence and the breach of the standards of practice of medicine by the Defendants as set forth above.

WHEREFORE, Plaintiff, SHAUNTY CUMMINGS, by and through counsel, WORSHAM & VICTOR, P.C., respectfully requests that this Honorable Court enter a judgment against Defendants, JACOB KALO, M.D. and WESTERN WOMEN'S CENTER, in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars which the trier of fact determines Plaintiff has suffered, together with costs, fees and interest that she has so wrongfully been caused to sustain.

COUNT III
JACOB KALO, M.D. - NEGLIGENCE

45. That the Plaintiff, by and through counsel, WORSHAM & VICTOR, P.C., hereby incorporate by reference all the allegations set forth in Counts I-II as if fully set forth herein.

46. That at all times relevant herein the Defendant, JACOB KALO, M.D., owed a duty to Plaintiff, SHAUNTY CUMMINGS, as a licensed physician in the State of Michigan by reason of physician-patient relationship and that said duties were breached by deviation from the

standards of practice of medicine, which said breach of duties include by way of illustration and not limitation the following:

- a. By failing to have the proper training and ability to meet the patient's needs, including the ability to timely diagnose and treat an ectopic pregnancy and refrain from performing unnecessary abortions;
- b. By failing to timely and properly take an accurate history and physical;
- c. By failing to obtain the proper informed consent;
- d. By failing to recognize the signs and symptoms of ectopic pregnancy;
- e. By failing to perform and properly interpret the appropriate diagnostic tests, including but not limited to beta hCGs and ultrasound films, to rule out or confirm an ectopic pregnancy;
- f. By failing to immediately send the patient to the Emergency Room for further evaluation and treatment with regard to her ectopic pregnancy well before November 28, 2006;
- g. By failing to refrain from performing an unnecessary abortion;
- h. By failing to timely and properly treat Shaanty Cummings's ectopic pregnancy;
- i. By failing to obtain histologic confirmation in a timely fashion so that patients with abnormal pathology findings can be contacted immediately;
- j. By failing to immediately contact Shaanty Cummings and advise her of her potentially life-threatening ectopic condition well before November 28, 2006;
- k. By failing to provide the appropriate follow up care and treatment for Shaanty Cummings based on the information that was or should have been available.

47. That the Plaintiff's damages herein stated are a direct and proximate result of the negligence and the breach of the standards of practice of medicine by the Defendants as set forth above.

WHEREFORE, Plaintiff, SHAANTY CUMMINGS, by and through counsel, WORSHAM & VICTOR, P.C., respectfully requests that this Honorable Court enter a judgment against Defendants, JACOB KALO, M.D. and WESTERN WOMEN'S CENTER, in an amount

in excess of Twenty-Five Thousand (\$25,000.00) Dollars which the trier of fact determines Plaintiff has suffered, together with costs, fees and interest that she has so wrongfully been caused to sustain.

WORSHAM & VICTOR, P.C.

BY: Howard J. Victor
HOWARD J. VICTOR (P27811)
Attorney for Plaintiff(s)
30445 Northwestern Hwy., #380
Farmington Hills, MI 48334
(248) 737-9101

DEMAND FOR JURY TRIAL

Plaintiff, by and through counsel, WORSHAM & VICTOR, P.C., hereby demands a trial by jury on all issues so triable herein.

WORSHAM & VICTOR, P.C.

BY: Howard J. Victor
HOWARD J. VICTOR (P27811)
Attorney for Plaintiff(s)
30445 Northwestern Hwy., #380
Farmington Hills, MI 48334
(248) 737-9101

AFFIDAVIT OF MERIT

IN RE: THE MEDICAL MALPRACTICE CLAIM OF SHAUNTY CUMMINGS

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

I, MICHAEL L. BERKE, M.D., being first duly sworn, depose and state as follows:

1. That I am a Board Certified physician in Obstetrics and Gynecology.
2. That I have reviewed the Notice of Intent to File a Claim prepared by the law firm of WORSHAM & VICTOR, P.C., on behalf of Shaunty Cummings.
3. That I have reviewed all of the medical records supplied to me by the law firm of WORSHAM & VICTOR, P.C., in connection with the allegations set forth in the Notice of Intent to File a Claim.
4. That I have formed the following opinions with regard to the Medical Malpractice Claim of Shaunty Cummings.

THE APPLICABLE STANDARD OF PRACTICE OR CARE:

1. **Jacob Kalo, M.D.**
 - A. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to have the proper training and ability to meet the patient's needs, including the ability to timely diagnose and treat an ectopic pregnancy and refrain from performing an unnecessary abortion;
 - B. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to timely and properly take an accurate history and physical;

- C. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to obtain the proper informed consent;
- D. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to recognize the signs and symptoms of ectopic pregnancy;
- E. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to perform and properly interpret the appropriate diagnostic tests, including but not limited to beta hCGs and ultrasound films, to rule out or confirm an ectopic pregnancy;
- F. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to immediately send the patient to the Emergency Room for further evaluation and treatment with regard to her ectopic pregnancy well before November 28, 2006;
- G. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to refrain from performing an unnecessary abortion;
- H. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to timely and properly treat Shaunty Cummings's ectopic pregnancy;
- I. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to obtain histologic confirmation in a timely fashion so that patients with abnormal pathology findings can be contacted immediately;

- J. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to immediately contact Shaunty Cummings and advise her of her potentially life-threatening ectopic condition well before November 28, 2006;
- K. The standard of care required that Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, owed a duty to provide the appropriate follow up care and treatment for Shaunty Cummings based on the information that was or should have been available.

2. Western Women's Center

- A. The standard of care required that Western Women's Center, a health care provider, owed a duty to timely and properly select, train and monitor its employees, servants, agents, actual or ostensible, or its staff of physicians, to ensure that they were competent;
- B. The standard of care required that Western Women's Center, a health care provider, owed a duty to provide qualified medical staff to meet the requirements of obstetricians and gynecologists, and which doctors should have the proper training and ability to meet the patient's needs, including the ability to timely diagnose and treat an ectopic pregnancy and refrain from performing unnecessary abortions;
- C. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, owed a duty to timely diagnose and treat an ectopic pregnancy;
- D. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, owed a duty to timely and properly take an accurate history and physical;

- E. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, owed a duty to obtain the proper informed consent;
- F. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, owed a duty to recognize the signs and symptoms of ectopic pregnancy;
- G. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, owed a duty to perform and properly interpret the appropriate diagnostic tests, including but not limited to beta hCGs and ultrasound films, to rule out or confirm an ectopic pregnancy;
- H. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, owed a duty to immediately send the patient to the Emergency Room for further evaluation and treatment with regard to her ectopic pregnancy well before November 28, 2006;
- I. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, owed a duty to refrain from performing an unnecessary abortion;
- J. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, owed a duty to timely and properly treat Shaanty Cummings's ectopic pregnancy well before November 28, 2006;

- K. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, owed a duty to obtain histologic confirmation in a timely fashion so that patients with abnormal pathology findings can be contacted immediately;
- L. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, owed a duty to immediately contact Shaanty Cummings and advise her of her potentially life-threatening ectopic condition well before November 28, 2006;
- M. The standard of care required that Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, owed a duty to provide the appropriate follow up care and treatment for Shaanty Cummings based on the information that was or should have been available.

THE MANNER IN WHICH IT IS CLAIMED THAT THE APPLICABLE STANDARD OF PRACTICE OR CARE WAS BREACHED:

- 1. **Jacob Kalo, M.D.**
 - A. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to have the proper training and ability to meet the patient's needs, including the ability to timely diagnose and treat an ectopic pregnancy and refrain from performing unnecessary abortions;
 - B. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to timely and properly take an accurate history and physical;

- C. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to obtain the proper informed consent;
- D. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to recognize the signs and symptoms of ectopic pregnancy;
- E. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to perform and properly interpret the appropriate diagnostic tests, including but not limited to beta hCGs and ultrasound films, to rule out or confirm an ectopic pregnancy;
- F. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to immediately send the patient to the Emergency Room for further evaluation and treatment with regard to her ectopic pregnancy well before November 28, 2006;
- G. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to refrain from performing an unnecessary abortion;
- H. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to timely and properly treat Shaanty Cummings's ectopic pregnancy;
- I. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to obtain histologic confirmation in a timely fashion so that patients with abnormal pathology findings can be contacted immediately;

- J. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to immediately contact Shaanty Cummings and advise her of her potentially life-threatening ectopic condition well before November 28, 2006;
- K. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to provide the appropriate follow up care and treatment for Shaanty Cummings based on the information that was or should have been available.

2. Western Women's Center

- A. Western Women's Center, a health care provider, breached the standard of care by failing to timely and properly select, train and monitor its employees, servants, agents, actual or ostensible, or its staff of physicians, to ensure that they were competent;
- B. Western Women's Center, a health care provider, breached the standard of care by failing to provide qualified medical staff to meet the requirements of obstetricians and gynecologists, and which doctors should have the proper *training and ability to meet the patient's needs, including the ability to timely diagnose and treat an ectopic pregnancy and refrain from performing unnecessary abortions;*
- C. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to timely diagnose and treat an ectopic pregnancy;
- D. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to timely and properly take an accurate history and physical;

- E.** Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, breached the standard of care by failing to obtain the proper informed consent;
- F.** Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, breached the standard of care by failing to recognize the signs and symptoms of ectopic pregnancy;
- G.** Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, breached the standard of care by failing to perform and properly interpret the appropriate diagnostic tests, including but not limited to beta hCGs and ultrasound films, to rule out or confirm an ectopic pregnancy;
- H.** Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, breached the standard of care by failing to immediately send the patient to the Emergency Room for further evaluation and treatment with regard to her ectopic pregnancy well before November 28, 2006
- I.** Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, breached the standard of care by failing to refrain from performing an unnecessary abortion;
- J.** Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, breached the standard of care by failing to timely and properly treat Shaunty Cummings's ectopic pregnancy;

- K. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to obtain histologic confirmation in a timely fashion so that patients with abnormal pathology findings can be contacted immediately;
- L. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to immediately contact Shaanty Cummings and advise her of her potentially life-threatening ectopic condition well before November 28, 2006;
- M. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, breached the standard of care by failing to provide the appropriate follow up care and treatment for Shaanty Cummings based on the information that was or should have been available.

THE ACTION WHICH SHOULD HAVE BEEN TAKEN TO ACHIEVE COMPLIANCE WITH THE STATUTE:

- 1. **Jacob Kalo, M.D.**
 - A. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, should have had the proper training and ability to meet the patient's needs, including the ability to timely diagnose and treat an ectopic pregnancy and refrain from performing an unnecessary abortion;
 - B. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaanty Cummings, should have timely and properly taken an accurate history and physical;

- C. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have obtained the proper informed consent;
- D. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have recognized the signs and symptoms of ectopic pregnancy;
- E. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have performed and properly interpreted the appropriate diagnostic tests, including but not limited to beta hCGs and ultrasound films, to rule out or confirm an ectopic pregnancy;
- F. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have immediately sent the patient to the Emergency Room for further evaluation and treatment with regard to her ectopic pregnancy well before November 28, 2006;
- G. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have refrained from performing an unnecessary abortion;
- H. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have timely and properly treated Shaunty Cummings's ectopic pregnancy;
- I. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have obtained histologic confirmation in a timely fashion so that patients with abnormal pathology findings could be contacted immediately;
- J. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have immediately contacted Shaunty Cummings and advise her of her potentially life-threatening ectopic condition well before November 28, 2006;

- K. Jacob Kalo, M.D., as a reasonable and prudent licensed physician, when presented with a patient such as Shaunty Cummings, should have provided the appropriate follow up care and treatment for Shaunty Cummings based on the information that was or should have been available.

2. Western Women's Center

- A. Western Women's Center, a health care provider, should have timely and properly selected, trained and monitored its employees, servants, agents, actual or ostensible, or its staff of physicians, to ensure that they were competent;
- B. Western Women's Center, a health care provider, should have provided qualified medical staff to meet the requirements of obstetricians and gynecologists, and which doctors should have the proper training and ability to meet the patient's needs, including the ability to timely diagnose and treat an ectopic pregnancy and refrain from performing an unnecessary abortion;
- C. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, should have timely diagnosed and treated an ectopic pregnancy;
- D. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, should have timely and properly taken an accurate history and physical;
- E. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, should have obtained the proper informed consent;
- F. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, should have recognized the signs and symptoms of ectopic pregnancy;

- G. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, should have performed and properly interpreted the appropriate diagnostic tests, including but not limited to beta hCGs and ultrasound films, to rule out or confirm an ectopic pregnancy;
- H. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, should have immediately sent the patient to the Emergency Room for further evaluation and treatment with regard to her ectopic pregnancy well before November 28, 2006;
- I. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, should have refrained from performing an unnecessary abortion;
- J. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, should have timely and properly treated Shaanty Cummings's ectopic pregnancy;
- K. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, should have obtained histologic confirmation in a timely fashion so that patients with abnormal pathology findings could be contacted immediately;
- L. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaanty Cummings, should have immediately contacted Shaanty Cummings and advised her of her potentially life-threatening ectopic condition well before November 28, 2006;

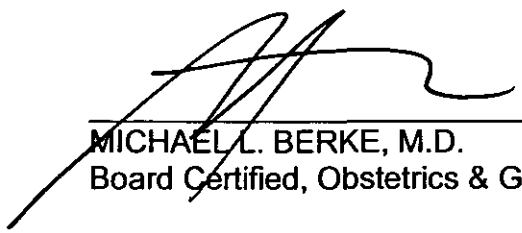
- M. Western Women's Center, a health care provider, via its agents and employees, including but not limited to Jacob Kalo, M.D., when presented with a patient such as Shaunty Cummings, should have provided the appropriate follow up care and treatment for Shaunty Cummings based on the information that was or should have been available.

THE MANNER IN WHICH THE BREACH OF THE STANDARD OF PRACTICE OR CARE WAS THE PROXIMATE CAUSE OF INJURY:

The failure of **Jacob Kalo, MD, and the medical staff of Western Women's Center**, to timely diagnose and properly treat Shaunty Cummings's ectopic pregnancy resulted in the need for emergency surgery and the removal of her left fallopian tube. In addition, Shaunty Cummings also suffered an unnecessary abortion, severe pain, discomfort, disability, residual scarring, bleeding, economic loss and disability, as well as permanent damage to her reproductive organs.

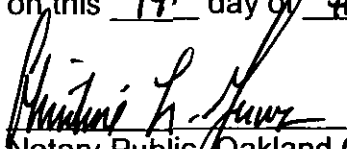
If there had been a proper diagnosis and notification and treatment had been timely administered, surgical intervention and the loss of the fallopian tube could have been avoided.

THIS AFFIDAVIT OF MERIT IS BASED UPON INFORMATION WHICH HAS BEEN PRESENTLY REVIEWED AND IS SUBJECT TO CHANGE OR MODIFICATION UPON RECEIPT OF ADDITIONAL OR FURTHER INFORMATION.



 MICHAEL L. BERKE, M.D.
 Board Certified, Obstetrics & Gynecology

Subscribed and sworn to before me
 on this 19th day of February, 2008



 Notary Public, Oakland County, MI
 My commission expires: 2-4-2014
 Acting in Oakland County, MI