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IN THE CIRCUIT COURT FOR THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO. 04-CA-1202

DOUGLAS B. STALLEY, as  
guardian de son tort of the  
property of J.F., an incapacitated minor,

Plaintiff,

vs.

RANDALL B. WHITNEY, M.D.,  
JAMES SCOTT PENDERGRAFT, IV, M.D.,  
and ORLANDO WOMEN'S CENTER, INC.,  
a Florida corporation,

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, DOUGLAS B. STALLEY, as guardian de son tort of  
the property of J.F., a minor, by and through his undersigned counsel, and hereby sues the  
Defendants, RANDALL B. WHITNEY, M.D., JAMES SCOTT PENDERGRAFT, IV,  
M.D., and ORLANDO WOMEN'S CENTER, INC., a Florida corporation, and states as  
follows:

**GENERAL ALLEGATIONS**

1. This is an action for damages which exceed \$15,000.00, exclusive of attorneys' fees, interest and costs.
2. All conditions precedent to the filing of this action have been performed or have occurred, including compliance with all pre-suit requirements of Chapter 766,

Florida Statutes, compliance with all notification and other requirements of Section 768.28, Florida Statutes, and the filing of an automatic 90-day extension of the statute of limitations for medical malpractice causes of action pursuant to Section 766.104, Florida Statutes.

3. J.F. is an incapacitated minor who was born on November 16, 2001, in Orlando, Orange County, Florida and who is a resident of Orange County, Florida. Due to the nature of the allegations contained herein, and the events surrounding the child's birth, the pseudonym "J.F." is being used to protect the identity of the injured child and the pseudonym "C.H." is being used to protect the identity of the child's mother from public disclosure. The Defendants will suffer no prejudice resulting from the use of said pseudonyms.

4. At all times material, C.H. was and is a resident of Orange County, Florida and is the natural mother of J.F., a minor.

5. DOUGLAS B. STALLEY, Esquire, has petitioned the Orange County Probate Court to be appointed as guardian of the property of J.F., an incapacitated minor, for purposes of this lawsuit. Mr. STALLEY has not yet been appointed Guardian, but the undersigned counsel anticipates this appointment will occur imminently. The Plaintiff hereby files this Complaint as guardian de son tort of the property of J.F., an incapacitated minor, in accordance with the applicable statute of limitations period and will amend Plaintiff's Complaint upon Mr. STALLEY's appointment as guardian.

6. At all times material, the Defendant, RANDALL B. WHITNEY, M.D., (hereinafter referred to as "WHITNEY") was and is a physician duly licensed to practice in the State of Florida, with his principle place of business in Daytona Beach, Volusia County, Florida and his secondary place of business in Orlando, Orange County, Florida.

7. At all times material, the Defendant, JAMES SCOTT PENDERGRAFT, IV, M.D., (hereinafter referred to as "PENDERGRAFT") was and is a physician duly licensed to practice in the State of Florida, with his principle place of business in Orlando, Orange County, Florida.

8. At all times material, the Defendant, ORLANDO WOMEN'S CENTER, INC., was and is a Florida corporation, authorized to do business and providing medical services, in Orlando, Orange County, Florida.

9. At all times material to this action, Defendant WHITNEY was employed by and was acting within the course and scope of his employment with the ORLANDO WOMEN'S CENTER in his care and treatment of C.H..

10. At all times material to this action, Defendant WHITNEY was the agent and/or apparent agent of, and was acting within the course and scope of his agency with, the ORLANDO WOMEN'S CENTER in his care and treatment of C.H..

11. At all times material, Defendant WHITNEY held himself out as a specialist in the field of Obstetrics and Gynecology.

12. At all times material, Defendant WHITNEY also held himself out as having the ability to perform pregnancy terminations.

13. At all times material, Defendant PENDERGRAFT was the sole director and registered agent for the Defendant, ORLANDO WOMEN'S CENTER, and the sole director and registered agent for the entity which owns the ORLANDO WOMEN'S CENTER, 1103 Lucerne Terrace Corporation.

14. At all times material, Defendant PENDERGRAFT was the medical director of the ORLANDO WOMEN'S CENTER and was responsible for the proper operation of said clinic.

15. As the medical director of the ORLANDO WOMEN'S CENTER, Defendant PENDERGRAFT was responsible for formulating and/or overseeing the policies, procedures and operations of the facility, to specifically include, but not limited to, the following aspects:

- a). that all procedures performed at the facility, including pregnancy terminations, were performed by a licensed physician;
- b). the proper administration of labor-inducing medications at the clinic;
- c). that appropriate and thorough informed consent forms were given to patients of the clinic; and
- d). the appropriate management of a patient in active stage labor.

16. At all times material to this action, the staff who consulted with, examined, evaluated, and rendered treatment to C.H. at the ORLANDO WOMEN'S CENTER on November 15-16, 2001, to specifically include, but not limited to, Tanya Severance, Janet Rainer and Davela Cleveau, were the agents and/or apparent agents of, and were acting within the course and scope of their agency with, the ORLANDO WOMEN'S CENTER in their care and treatment of C.H..

17. On or about November 15, 2001, C.H. presented to the ORLANDO WOMEN'S CENTER for termination of what she believed to be a 16 to 20-week pregnancy.

18. On said date, C.H. was evaluated by staff members at the ORLANDO WOMEN'S CENTER, who concluded that she was 22.3 weeks pregnant. Defendant WHITNEY concurred in this assessment of gestational age.

19. Based upon the Defendants' assessment of gestational age and due to previous medical complications she had suffered with a prior, full-term pregnancy, C.H. elected to proceed with termination of this pregnancy.

20. On said date, C.H. gave her authorization and consent to allow Dr. WHITNEY, any physician designated or selected by Dr. WHITNEY, or any licensed physician associated with the ORLANDO WOMEN'S CENTER, to perform the pregnancy termination.

21. On November 15, 2001, Defendant WHITNEY prescribed the medication Cytotec, 200 mg, to induce labor in C.H. At approximately 1:30 p.m. on November 15, 2001, staff members of the ORLANDO WOMEN'S CENTER began administration of this labor-inducing agent, in the same dosage amount, and at hourly intervals, from 1:30 p.m. on November 15, 2001 until approximately 12:00 a.m. (midnight) on November 16, 2001.

22. Defendant WHITNEY authorized, and the staff of the ORLANDO WOMEN'S CENTER administered, twelve 200 mg. doses of Cytotec to C.H. over an 11-hour period of time.

23. At approximately 1:00 a.m. on November 16, 2001, C.H. was instructed to and/or allowed to leave the ORLANDO WOMEN'S CENTER while in active labor. Thereafter, she presented to the Emergency Room at Orlando Regional Medical Center, where she gave birth, via cesarean section, to a viable female child with APGAR scores of 3/3 and a weight of 555 grams.

24. Despite being administered labor-inducing medications at the ORLANDO WOMEN'S CENTER for over twelve (12) hours, C.H. was never, at any time on November 15-16, 2001, personally evaluated, examined or treated by Dr. WHITNEY or any licensed physician associated with the ORLANDO WOMEN'S CENTER.

25. As a direct and proximate result of the negligence of the Defendants, described more fully herein, the child, J.F., was born prematurely and has suffered bodily injury and resulting pain and suffering, impairment, disability, inconvenience, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of ability to earn money and aggravation of a previously-existing condition.

26. The aforementioned injuries to J.F. are permanent, within a reasonable degree of medical probability and she will continue to suffer the losses in the future.

**CLAIM AGAINST RANDALL WHITNEY, M.D.**

The Plaintiff hereby re-adopts and re-alleges paragraphs 1-26, above, and further alleges as follows:

27. Defendant WHITNEY had a duty to exercise reasonable care consistent with accepted and prevailing professional standards of care and with that level of care, skill,

and treatment recognized as acceptable, adequate, and appropriate by similar and reasonably careful care givers and health care providers, in his treatment of C.H.

28. Defendant WHITNEY breached his duty to care owed to C.H., in that he provided negligent diagnosis, care and treatment of C.H. and her fetus, including, but not limited to:

- a). Failing to personally evaluate, examine or treat C.H.;
- b). Failing to personally evaluate, examine C.H. or her fetus for gestational age;
- c). Authorizing and/or prescribing improper amounts of labor inducing agents to C.H.; and/or
- d). Instructing, authorizing or permitting C.H. to leave the ORLANDO WOMEN'S CENTER in active labor on November 16 2001.

29. The above-described negligence was a direct and proximate cause of the damages described in paragraphs 25 through 26, above.

**CLAIM AGAINST JAMES SCOTT PENDERGRAFT, IV, M.D.**

The Plaintiff hereby re-adopts and re-alleges paragraphs 1-26, above, and further alleges as follows:

30. Defendant PENDERGRAFT had a duty to exercise reasonable care consistent with accepted and prevailing professional standards of care and with that level of care, skill, and treatment recognized as acceptable, adequate, and appropriate by similar and reasonably careful care givers and health care providers, in his supervision of the staff and physicians who treated C.H. at the ORLANDO WOMEN'S CENTER.

31. Defendant PENDERGRAFT breached his duty to care owed to patients of the ORLANDO WOMEN'S CENTER, and specifically C.H., in that he provided negligent diagnosis, care and treatment of C.H. and her fetus including, but not limited to:

- a). Failing to personally evaluate, examine or treat C.H.;
- b). Failing to personally evaluate, examine C.H. or her fetus for gestational age;
- c). Authorizing and/or prescribing improper amounts of labor inducing agents to C.H.; and/or
- d). Instructing, authorizing or permitting C.H. to leave the ORLANDO WOMEN'S CENTER in active labor on November 16, 2001.

32. The above-described negligence was a direct and proximate cause of the damages described in paragraphs 25 through 26, above.

**CLAIM AGAINST THE ORLANDO WOMEN'S CENTER**

The Plaintiff hereby re-adopts and re-alleges paragraphs 1-26, above, and further alleges as follows:

33. At all times material hereto, ORLANDO WOMEN'S CENTER was and is vicariously liable for the actions or omissions of its officers, directors, managers, agents, employees, servants, staff and/or contractors acting within the course and scope of their employment, service or agency with said Defendant.

34. At all times material hereto, ORLANDO WOMEN'S CENTER had a duty to properly train and supervise its agents, employees, servants, staff and/or contractors utilized by this Defendant in furtherance of its clinic operations.



35. At all times material hereto, ORLANDO WOMEN'S CENTER owed a duty to its patients, including C.H., to provide adequate and appropriate health care consistent with accepted and prevailing professional standards of care and with that level of care, skill, and treatment recognized as acceptable, adequate, and appropriate by similar and reasonably careful care givers and health care providers.

36. ORLANDO WOMEN'S CENTER breached its duty owed to C.H. in that, by the acts or omissions of its agents, servants, employees, staff and/or contractors, it provided negligent diagnosis, care and treatment of C.H. and her fetus, including, but not limited to:

- a). Failing to have a licensed physician personally evaluate, examine or treat C.H.;
- b). Failing to have a licensed physician personally evaluate, examine C.H. or her fetus for gestational age;
- c). Authorizing and/or prescribing improper amounts of labor inducing agents to C.H.; and/or
- d). Instructing, authorizing or permitting C.H. to leave the ORLANDO WOMEN'S CENTER in active labor on November 16, 2001.

37. The above-described negligence was a direct and proximate cause of the damages described in paragraphs 25 through 26, above.

WHEREFORE, the Plaintiff, DOUGLAS B. STALLEY, as guardian de son tort of the property of J.F., a minor, demands judgment against the Defendants, RANDALL B. WHITNEY, M.D., JAMES SCOTT PENDERGRAFT, IV, M.D., and ORLANDO WOMEN'S CENTER, INC., and further demands trial by jury.

**CERTIFICATE OF COMPLIANCE**

The undersigned counsel for the Plaintiff hereby certified that a reasonable investigation has been undertaken in connection with this case and said investigation has given rise to a good faith belief that reasonable grounds exist for an action against each named Defendant.

**THE FERNANDEZ FIRM**

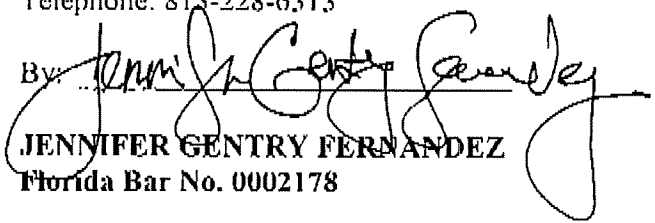
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