

EXHIBIT 2



AlaFile E-Notice

01-CV-2012-001045.00

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ROBERTA CLARK VS PLANNED PARENTHOOD OF GEORGIA INC ET AL
01-CV-2012-001045.00

The following answer was FILED on 2/19/2013 11:43:25 AM

Notice Date: 2/19/2013 11:43:25 AM

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ROBERTA CLARK,)
)
)
 Plaintiff,)
)
)
 v.)
)
)
 PLANNED PARENTHOOD SOUTH-)
 EAST, INC.; PLANNED PARENTHOOD)
 OF GEORGIA, INC.; PLANNED)
 PARENTHOOD OF ALABAMA, INC.;)
 and DR. AQUA DON E. UMOREN,)
 M.D.; and, Fictitious parties, A through)
 I,)
)
)
 Defendants.)

CASE NO.: CV-2012-1045

ANSWER AND DEFENSES

COME NOW, Defendants Planned Parenthood Southeast, Inc. (“PPS”) and Aqua-Don E. Umoren, M.D. (“Dr. Umoren”) (PPS and Dr. Umoren may be collectively referred to as “Defendants”) and submit the following Answer to Plaintiff’s Complaint, as amended.

ANSWER TO SPECIFIC ALLEGATIONS

1. Requires no response.
2. Defendants are without information sufficient to admit or deny the allegations of ¶2 of Plaintiff’s Complaint.
3. Defendants admit that Plaintiff was under the care of Defendants in August 2010. The remaining allegations of ¶3 of Plaintiff’s Complaint are denied.
4. Defendants admit that PPS and Dr. Umoren are covered under the “Alabama Medical Liability Act” (“AMLA”) and that the claims asserted by Plaintiffs are subject to AMLA. Defendant PPS further admits that Defendant Dr. Umoren was working within the line and scope of his responsibilities at the time of the alleged events that give rise to Plaintiff’s Complaint. Defendants

deny that Planned Parenthood of Georgia, Inc. or Planned Parenthood of Alabama are proper defendants in this action or were entities in existence at the time of the alleged events giving rise to Plaintiff's Complaint. Except as expressly admitted herein, the remaining allegations of ¶4 of Plaintiff's Complaint as amended are denied.

5. Defendants adopt and incorporate herein the same responses set forth as to ¶4 of Plaintiff's Complaint, as amended.

6. Requires no response.

7. Defendants admit that medical treatment was provided to Plaintiff on or about August 20, 2010. Defendants deny any act or omission of their own gave rise to any alleged legal injury to Plaintiff.

8. Defendants admit that Plaintiff's claims are subject to the provisions and limitations of AMLA.

9. Defendants admit that on or about August 10, 2010 Defendants rendered certain medical services to Plaintiff. Defendants further admit the applicable standard of care owed for such services are set forth in AMLA. Except as expressly admitted herein, the remaining allegations of ¶9 of Plaintiff's Complaint, as amended, are denied.

10. - 13. Defendants admit that on or about August 10, 2010 and August 20, 2010, Plaintiff presented herself for certain services which were rendered by Defendants. The specific services rendered are described and set forth in Plaintiff's medical records, which will be produced to Plaintiff and speak for themselves. Except as expressly admitted herein, Defendants deny the remaining allegations in ¶¶10-13 of Plaintiff's Complaint, as amended.

14. Defendants deny the allegations of ¶14 of Plaintiff's Complaint, as amended.

15. Defendants admit that Plaintiff's medical records will reflect the medical services rendered to Plaintiff and such records speak for themselves. Except as expressly admitted herein, Defendants deny the remaining allegations in ¶15 of Plaintiff's Complaint, as amended.

16. - 19. Defendants are without knowledge or information sufficient to admit or deny the allegations of ¶¶16-19 of Plaintiff's Complaint, as amended. However, Defendants deny any of their acts or omissions caused injury to the Plaintiff.

COUNT ONE

20. Defendants adopt and incorporate by reference the responses to the allegations contained in ¶¶1-19 of Plaintiff's Complaint, as amended.

21. Defendants admit that the applicable standard of care for the rendition of medical services is set forth in AMLA. Except as expressly admitted herein, the remaining allegations of ¶21 of Plaintiff's Complaint, as amended, are denied.

22. - 25. The allegations in ¶¶22-25 of Plaintiff's Complaint, as amended, are denied.

COUNT TWO

26. Defendants adopt and incorporate by reference the responses to the allegations contained in ¶¶1-25 of Plaintiff's Complaint, as amended.

27. - 30. Defendants deny the allegations of ¶¶27-30 of Plaintiff's Complaint, as amended, and further deny Plaintiff is entitled to any requested relief.

COUNT THREE

31. Defendants adopt and incorporate by reference the responses to the allegations contained in ¶¶1-30 of Plaintiff's Complaint, as amended.

32. - 34. Defendants deny the allegations in ¶¶32-34 of Plaintiff's Complaint, as amended, to the extent such allegations claims for relief are intended to be asserted against Defendants.

All other allegations and prayers for relief contained in Plaintiff's Complaint, as amended, are denied.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiff's claims are subject to and limited by the provisions of Alabama Medical Liability Act, §6-5-40, *et seq.*

SECOND DEFENSE

No acts or omissions of Defendants caused any legally cognizable injury to the Plaintiff.

THIRD DEFENSE

Defendants did not breach any applicable duty or standard of care owed to Plaintiff.

FOURTH DEFENSE

Plaintiff's claims are, or may be, barred by Plaintiff's failure to mitigate her own injury or made the injury or damage worse.

FIFTH DEFENSE

Plaintiff's claims are, or may be, barred by Plaintiff's informed consent, recognition and acceptance of the risk attendant with the medical services provided, or the alleged injury or damage was an unavoidable "known risk" that occurs without any negligence.

SIXTH DEFENSE

Plaintiff's claims are, or may be, barred by (1) Plaintiff's failure to disclose important

information (ii) the Plaintiff's prognosis or condition was not worsened by Defendants' alleged acts or omissions or (iii) there was an intervening or superceding event following Defendants' alleged acts or omissions that broke the chain of events linking the Defendants' alleged acts or omissions to the Plaintiff's alleged injury or damage.

SEVENTH DEFENSE

Plaintiff's claims are, or may be, barred in whole or in part by Plaintiff's own contributory negligence.

EIGHTH DEFENSE

Plaintiff's claims are, or may be, barred by Plaintiffs own assumption of the risk.

NINTH DEFENSE

All or some of the alleged damages claimed by Plaintiffs were not proximately caused by the alleged acts and omissions of Defendants, but are attributable to and are the responsibility of persons other than Defendants who have not been made a party to this action.

TENTH DEFENSE

Plaintiff's claims are, or may be, barred because no act or omission on the part of Defendants or attributable to Defendants either caused or proximately caused or contributed to any damage Plaintiff may have sustained.

ELEVENTH DEFENSE

Plaintiff's claims are, or may be, barred because any act or omission on the part of Defendants or attributable to Defendants, are not the sole cause or the sole proximate cause to any damage Plaintiff may have sustained.

TWELFTH DEFENSE

Plaintiff's claims are, or may be, barred because acts or omission by others, or attributable to other persons, proximately caused and contributed to any damage Plaintiff may have sustained.

THIRTEENTH DEFENSE

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

FOURTEENTH DEFENSE

Plaintiff's claims are, or may be, barred in whole or in part by laches.

FIFTEENTH DEFENSE

Plaintiff's claims are, or may be, barred based upon the fact that any and all agreements or other duties were fully performed by Defendants.

SIXTEENTH DEFENSE

Plaintiff's complaint fails to state a claim upon which relief can be granted.

SEVENTEENTH DEFENSE

Plaintiff's claims are, or may be, barred because Defendants have not breached any duty or standard of care.

EIGHTEENTH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, the Defendants deny they are guilty of conduct referable to which punitive damages could or should be awarded, and deny that Plaintiff has produced clear and convincing evidence sufficient to support or sustain the imposition of punitive damages against these Defendants.

NINETEENTH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, Plaintiff cannot

recover punitive damages against these Defendants because such an award, which is penal in nature, would violate Defendants' constitutional rights protected under the Alabama Constitution of 1901, as amended (the "Alabama Constitution"), and the Constitution of the United States ("the United States Constitution"), unless Defendants are afforded the same procedural safeguards as are criminal Defendants, including, but not limited to, the right to avoid self-incrimination, the right to forego production and disclosure of any incriminating documents, and the right to the requirement of a level of proof beyond a reasonable doubt.

TWENTIETH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, subjecting Defendants to punitive damages, or affirming an award of punitive damages against Defendants in this case, would amount to and constitute a denial of due process as afforded by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and by the Due Process Clause of Article 1, Section 13 of the Alabama Constitution, as a deprivation of property without due process, or standards or criteria of due process, based upon the following grounds and circumstances, separately and severally assigned:

- (a) any award of punitive damages against these Defendants under the evidence in this case would necessarily be based upon an evidentiary standard less than a standard of proof of beyond a reasonable doubt;
- (b) there is a lack of reasonable standards necessary to instruct the jury on the propriety and amount of any punitive damages award, and such an award is subject to no predetermined limits;
- (c) use of the Alabama Pattern Jury Instructions in instructing the jury as to the award of punitive damages, and the amount of such an award, does not provide sufficient guidance or standards for the award or amount of punitive damages;

- (d) any punitive damages award would not be subject to post-trial and appellate review on the basis of suitable and sufficient objective standards and criteria;
- (e) the power and authority imposed upon the jury under Alabama law as to the amount of punitive damages award is so relatively unfettered that there is lacking any reasonable or logical standard, uniform criteria, or guidance in the assessment of the amount of the award of punitive damages;
- (f) under Alabama law and procedure, there is no objective, logical, or rational relationship between the award, or the amount of the award, of punitive damages and Defendants alleged wrongful or culpable conduct;
- (g) under Alabama law and procedure, there is no objective, logical, or rational relationship between the award, or the amount of the award, of punitive damages and the interests or goals of the State of Alabama referable to the imposition or allowance of punitive damages;
- (h) under Alabama law and procedure, there is no objective or rational criteria for the amount of the award of punitive damages as relates or compares to the assessment of compensatory damages, or amount of compensatory damages;
- (i) an award of punitive damages should not be permitted to be assessed against these Defendants for unauthorized acts of an agent or agents without any additional requirement of knowledge or fault on the part of these Defendants;
- (j) an award of punitive damages should not be permitted to be assessed against these Defendants vicariously as a principal without any further proof of independent, wrongful conduct or ratification by Defendants;
- (k) Alabama procedures, pursuant to which amounts of punitive damages are awarded, permit the imposition of different penalties for the same or similar acts;
- (l) under Alabama law and procedures governing the award of assessment of punitive damages, there is no objective, logical, or reasonable standard or criteria which governs the award, or the amount of the award, of punitive damages;

- (m) the procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against these Defendants;
- (n) the procedures pursuant to which punitive damages are awarded are unconstitutionally vague;
- (o) the procedures pursuant to which punitive damages are awarded fail to provide a clear post-trial or appellate standard of review for an award of punitive damages;
- (p) the procedures pursuant to which punitive damages are awarded may permit the admission of evidence relative to punitive damages in the same proceedings during which liability and compensatory damages are determined; and
- (q) an award of punitive damages would constitute an arbitrary and capricious taking of property of Defendants without due process of law.

TWENTY-FIRST DEFENSE

To the extent punitive damages are sought in this or an amended complaint, Plaintiff is not entitled to punitive damages from these Defendants pursuant to the facts as alleged in Plaintiff's complaint.

TWENTY-SECOND DEFENSE

To the extent punitive damages are sought in this or an amended complaint, the claims of the Plaintiff for punitive damages against these Defendants are barred by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Alabama.

TWENTY-THIRD DEFENSE

To the extent punitive damages are sought in this or an amended complaint, imposition of punitive damages in this case against these Defendants would contravene the Commerce Clause of the United States Constitution in that such an award would constitute, if imposed, an undue and

unreasonable burden on interstate commerce.

TWENTY-FOURTH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, to award punitive damages against these Defendants in this case would have a chilling effect upon Defendants' rights to open access to the courts of this State, in violation of the United States Constitution and the Alabama Constitution, separately and severally.

TWENTY-FIFTH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, based upon Alabama procedures relative to punitive damages, which provide no objective, logical, or reasonable standards or criteria which govern the award, and the amount of the award, of punitive damages, Defendants are denied equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, §§ 1, 6, and 22 of the Alabama Constitution, separately and severally.

TWENTY-SIXTH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, Plaintiff's claims for punitive damages violates the rights of Defendants to due process and equal protection of the law as guaranteed by the Constitution of the United States and the Alabama Constitution in that the procedure for post-trial review of punitive damages set forth in *Hammond v. City of Gadsden*, and *Green Oil Company v. Hornsby* is unconstitutionally vague and inadequate in the following respects:

- (a) The *Hammond* and *Green Oil* procedure provides no clearly defined standard for courts to apply in reviewing punitive damages;

- (b) The *Hammond* and *Green Oil* procedure provides inadequate review as to the need to deter, whether deterrence has been accomplished, and whether punishment is appropriate for defendant;
- (c) The *Hammond* and *Green Oil* procedure provides inadequate review and a vague standard regarding the relationship of the punitive damage award to the harm;
- (d) The *Hammond* and *Green Oil* procedure does not address nor cure the lack of guidelines given the jury in the assessment of punitive damages;
- (e) This procedure is inadequate in that the trial court according to *Hammond* and *Green Oil* “may” take certain factors into account and these procedures lack predictable and objective standards of review, allow for inconsistent application of the factors, and allow for unpredictable and inconsistent results; and
- (f) The *Hammond* and *Green Oil* procedure fails to provide definite and meaningful constraints on jury discretion in awarding punitive damages.

TWENTY-SEVENTH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, the Alabama Supreme Court has decided the case styled *BMW of North America, Inc. v. Gore*. Defendants adopt by reference the defenses, criteria, limitations, and standards mandated by the Alabama Supreme Court in *Gore*.

TWENTY-EIGHTH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, the demand for punitive damages would be subject to those limitations established by the Alabama legislature and set forth in Section 6-11-21, Code of Alabama. The Alabama Supreme Court’s action in abolishing the legislatively created cap on punitive damages was unconstitutional and is without effect. Under the Constitutions of the United States and the State of Alabama, the Alabama Supreme Court cannot

abolish the cap created by the legislature on punitive damages through this judicial decision. *See Honda Motor Company, Ltd. v. Oberg*, No. 93-644, n.9 (U.S. Sup. Ct. June 24, 1994).

TWENTY-NINTH DEFENSE

To the extent punitive damages are sought in this or an amended complaint, multiple punitive damage awards may potentially be assessed against Defendants in violation of the Constitution of the United States and the State of Alabama, in violation of Defendants' rights to due process and to a jury trial, and in violation of Defendants' rights against double jeopardy.

THIRTIETH DEFENSE

To the extent Plaintiff's claims for damages include a claim for punitive damages, Defendant relies on the principles in and applicable defenses arising from the United States Supreme Court's decision in the *BMW v. Gore* case.

THIRTY-FIRST DEFENSE

To the extent Plaintiff's claims for damages include a claim for punitive damages, Plaintiff's demand for punitive damages violates the due process clause of the Fourteenth Amendment of the United States Constitution to the extent the basis for the damages are irrational and not related to any legitimate governmental interest.

THIRTY-SECOND DEFENSE

To the extent Plaintiff's claims for damages include a claim for punitive damages, Plaintiff's demand for punitive damages violates the Sixth Amendment of the United States Constitution in that the Plaintiff's claim for punitive damages is penal in nature, and the defendant is entitled to the same procedural safeguards accorded to a criminal defendant under the Sixth Amendment.

THIRTY-THIRD DEFENSE

To the extent Plaintiff's claims for damages include a claim for punitive damages, Plaintiff's demand for punitive damages violates the self-incrimination clause of the Fifth Amendment of the United States Constitution in that the damages are penal in nature and the defendant is required to disclose documents and/or other evidence without the safeguard against self-incrimination set out in the Fifth Amendment of the United States Constitution.

THIRTY-FOURTH DEFENSE

To the extent Plaintiff's claim for damages include a claim for punitive damages, Plaintiff's demand for punitive damages violates the Fifth Amendment of the United States Constitution which prohibits deprivation of life, liberty or property except by due process of law to the extent the claim for punitive damages is not rationally related to an governmental interest.

THIRTY-FIFTH DEFENSE

To the extent Plaintiff's claims for damages include a claim for punitive damages, Plaintiff's demand for punitive damages violates the rights guaranteed by the United States Constitution in that the claim is penal in nature and the burden of proof upon the plaintiff is less than "beyond a reasonable doubt" which is required in criminal cases.

THIRTY-SIXTH DEFENSE

To the extent Plaintiff's claims for damages include a claim for punitive damages, Plaintiff's demand for punitive damages is unconstitutional under the Constitution of the State of Alabama, which provides in Article 1, Section 6, that no person shall be deprived of life, liberty or property except by due process of law, to the extent the punitive damages are not rationally related to any legitimate governmental interest.

THIRTY-SEVENTH DEFENSE

To the extent Plaintiff's claims for damages include a claim for punitive damages, Plaintiff's demand for punitive damages is unconstitutional under the Constitution of the State of Alabama, in that it violates Article 1, Section 6, by claiming that no person shall be deprived of life, liberty or property except by due process of law, in that the punitive damages claimed are penal in nature, and the plaintiff is required to meet a lesser burden of proof that the "beyond a reasonable doubt" burden of proof required in criminal cases.

THIRTY-EIGHTH DEFENSE

To the extent Plaintiff's claims for damages include a claim for punitive damages, Plaintiff's demand for punitive damages is unconstitutional under the Constitution of the State of Alabama, in that it violates Article 1, Section 6, by claiming punitive damages, which are penal in nature, while the defendant is compelled to disclose documents and/or evidence without a constitutional safeguard against self-incrimination.

THIRTY-NINTH DEFENSE

To the extent Plaintiff's claim for damages includes a claim for punitive damages, any award of punitive damages would, on the facts of this case, be impermissible under Ala. Code § 6-11-20 et seq.

FORTIETH DEFENSE

Defendants hereby give notice that they intend to rely upon such other affirmative or supplemental defenses as may become available or apparent during the course of discovery and thus reserve the right to amend its answer to assert any such defenses.

/s/ Charles A. McCallum, III

Charles A. McCallum, III

Eric D. Hoaglund

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CERTIFICATE OF SERVICE

This is to certify that on February 19, 2013, a true and correct copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which automatically notifies counsel as follows:

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