

MEDICAL MUTUAL LIABILITY  
INSURANCE SOCIETY OF MARYLAND  
225 International Circle  
Hunt Valley, Maryland 21030

Plaintiff

v.

DAVID M. O'NEIL, M.D.  
17 Fontana Lane  
Suite #201  
Baltimore, Maryland 21237

and

DAVID M. O'NEIL, M.D., P.A.  
17 Fontana Lane  
Suite #201  
Baltimore, Maryland 21237

Serve On: David M. O'Neil  
17 Fontana Lane  
Suite 201  
Baltimore, MD 21237

and

EDWARD H. WITHROW,  
Individually and as Parents  
and Next Friends of  
Edward Denver Osborne Withrow,  
a Minor  
P.O. Box 1216  
Wise, Virginia 24293

and

JACQUELINE SUE OSBORNE WITHROW,  
Individually and as Parents  
and Next Friends of  
Edward Denver Osborne Withrow,  
a Minor  
P.O. Box 1216  
Wise, Virginia 24293

Defendants

\* \* \* \* \*

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Medical Mutual Liability Insurance Society of  
Maryland, by its attorney, Gregory L. Vance, sues David M.  
O'Neil, M.D., David M. O'Neil, M.D., Edward H. Withrow,

IN THE  
CIRCUIT COURT  
OF MARYLAND  
FOR  
BALTIMORE COUNTY

CASE NO.:

Case: 03-C-99-001350  
CF-Civil Fili

MLSC 88.00  
Appearance Fee 10.00  
TOTAL 10.00  
\$100.00

COMMENT:  
medical mutual liability vs. o'neil

Receipt #197900002813  
Cashier: KK CCBACX081  
02/12/99 10:14am

CJ

BALTIMORE COUNTY

cert mail

individually and as next friend of Edward Denver Osborne Withrow, and Jacqueline Sue Osborne Withrow, individually and as next friend of Edward Denver Osborne Withrow, and for cause of action, says:

#### PARTIES

1. Plaintiff, Medical Mutual Liability Insurance Society of Maryland ("Medical Mutual"), is a non-stock corporation created and established pursuant to the Maryland Insurance Code and authorized to provide professional liability insurance in Maryland.

2. David M. O'Neil, M.D., is a physician, licensed to practice medicine in the State of Maryland.

3. David M. O'Neil, M.D., P.A., is a professional association, organized under the laws of the State of Maryland.

4. Edward H. Withrow and Jacqueline Sue Osborne Withrow, individually and on behalf of their minor son, Edward Denver Osborne Withrow (the "Withrows"), made a claim against David M. O'Neil, M.D., and David M. O'Neil, M.D., P.A., for professional malpractice in a case captioned Edward H. Withrow, et. al. v. David M. O'Neil, M.D., et. al., in the Health Claims Arbitration Office, Case No.: HCA: 97-138 (the "claim").

#### FACTUAL BACKGROUND

5. The Withrows assert in their claim that Edward Denver Osborne Withrow and his mother, Jacqueline Sue Osborne Withrow, suffered injuries as a result of obstetrical care rendered to them by David M. O'Neil, M.D., David M. O'Neil, M.D., P.A., and Dilip Guha-Ray, M.D., while acting as the agent, servant, and/or employee of David M. O'Neil, M.D., and/or David M. O'Neil, M.D., P.A.

6. Medical Mutual issued a claims made policy of professional liability insurance to David M. O'Neil, M.D., with effective dates of January 1, 1997 to January 1, 1998, with a retroactive date of December 24, 1985.

7. The care rendered, according to the claim, occurred between August 2, 1994 and March 26, 1995.

8. The claim was made in 1997.

9. The policy of insurance issued by Medical Mutual excluded from coverage any liability arising out of obstetrical care.

10. Medical Mutual is defending Dr. O'Neil and the P.A. for the claim under a reservation of rights.

11. Dr. Guha-Ray has not sought a defense or coverage from Medical Mutual for the claim, and he is entitled to none, since he is not an insured under the policy.

12. Medical Mutual seeks a declaration from this court of its rights and obligations under the policy, pursuant to Md. Code Ann., Cts. & Jud. Proc., §3-403 (1995).

#### COUNT I

13. Plaintiff incorporates by reference as if fully set forth in this Count paragraphs 1 through 12, and says further:


14. The policy of insurance issued by Medical Mutual excludes from coverage any liability arising from the rendering of obstetrical care.

15. The injuries alleged in the claim arise out of the rendering of obstetrical care.

WHEREFORE, Medical Mutual Liability Insurance Society of Maryland respectfully requests that this court enter a judgment, declaring that:

a) Medical Mutual Liability Insurance Society of Maryland has no obligation to indemnify David M. O'Neil, M.D., or David M. O'Neil, M.D., P.A., for any liability arising out of the claim; and

b) Such other and further relief as justice requires.

  
Gregory L. VanGeison  
Anderson, Coe & King, LLP  
Suite 2000  
201 North Charles Street  
Baltimore, Maryland 21201  
410-752-1630

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\*ALSO ADMITTED IN  
DISTRICT OF COLUMBIA

WRITER'S FAX: 410-752-\_\_\_\_\_

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G. C. A. ANDERSON  
(1898-1985)  
WARD B. COE, JR.  
(1913-1996)

COUNSEL  
FRANK J. VECELLA  
JOHN F. KING

February 9, 1999

Clerk  
Circuit Court of Maryland  
for Baltimore County  
County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204

Re: Medical Mutual Liability Insurance Society  
of Maryland v. David M. O'Neil, M.D., et al

Dear Mr. Clerk:

Enclosed for filing is a Complaint for Declaratory Judgment. I also enclose the Civil-Non-Domestic Case Information Report and a check for \$100.00 for the filing fee.

I would appreciate your preparing summonses for each of the Defendants, for service by certified mail, restricted delivery. Please return the summonses to me, so that I may have them served on the Defendants.

Thank you for your assistance in this matter.

Very truly yours,

  
Gregory L. VanGeison

GLV:mo  
enc.

GLV/523.13

MEDICAL MUTUAL LIABILITY  
INSURANCE SOCIETY  
OF MARYLAND

Plaintiff

v.

DAVID M. O'NEIL, M.D., et al.

Defendants

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No. 03-C-99-001350

\* \* \* \* \*

MEMORANDUM  
and  
ORDER

The Plaintiff in this Declaratory Judgment action, Medical Mutual Liability Insurance Society of Maryland (Medical Mutual), has moved for summary judgment. Its Motion is vehemently and verbosely opposed by its insureds, David M. O'Neil, M.D. and David M. O'Neil, M.D., P.A., as well as the Plaintiffs in the underlying health claims arbitration proceeding, Edward H. Withrow, et al. (the Withrows).

The Motion seeks separate, judicial declarations that Dr. O'Neil and his associates are entitled to, at best, very limited coverage for the claims of the Withrows under policy number 22619 08. (David M. O'Neil, M.D. named insured and referred to in the Motion and hereafter as "the individual policy") and no coverage under policy number 14481 02, (David M. O'Neil, M.D., P.A. and Gynemed Surgi-Center named insureds and referred to in the Motion and hereafter as "the organization policy").

The Health Claims Arbitration proceeding was filed in 1997, and Medical Mutual has defended Dr. O'Neil in that case from the outset. However, by letter dated December 16, 1998, counsel for Medical Mutual advised him, for the first time, that the individual policy "provides no coverage for any claim asserted against you which arises out of obstetrical care" and, therefore, Medical Mutual "will continue to defend you in this action, under a reservation of rights".

Medical Mutual later acknowledged that its reservation of rights letter was in error as to the exclusion and that Dr. O'Neil and the P.A. are entitled to coverage under the individual policy for " 'prenatal care and abortions through the first trimester only' ". (Med.Mut. Reply Memo, p.8). More importantly, its Reply Memorandum also acknowledges that:

... since there is an amorphous 'prenatal' care allegation in the underlying mal-practice action, and that allegation could potentially include the one visit that Mrs. Withrow made to Dr. O'Neil during the first trimester, Medical Mutual will continue to defend the doctor and the P.A. under the Individual Policy, subject to its reservation of its rights.

The Defendants contend that it would be inappropriate to render a summary declaratory judgment regarding the extent of the coverage under the individual policy because there are a number of factual disputes that can only be resolved at trial. For

example, they claim that there is no recognized definition for the word "obstetrics" and that the subsequent amendment to that exclusion could be interpreted to afford coverage for anything that happens following prenatal care. This Court finds it unnecessary to answer all of the claims regarding factual disputes and other defenses because, in light of Medical Mutual's concession that there may be coverage, there simply is no justiciable issue at this time. This clearly is a case where the coverage dispute under the individual policy is so intertwined with the claims in the underlying tort action that declaratory relief must await the outcome of that trial.

Medical Mutual never sent a reservation of rights letter to the insureds named in the organization policy because it has a retro-active date of August 23, 1996, more than 14 months after the date of the alleged negligence and, therefore, the policy simply does not apply. The Defendants have raised a number of grounds for denying summary judgment as to this policy including mutual mistake of fact, estoppel, etc. However, they failed to note that this request for declaratory relief is not before the Court. The Complaint for Declaratory Judgment, filed on February 12, 1999, seeks relief only as to Medical Mutual's rights and obligations under the individual policy. (See paragraphs 6 to 12). It does not even mention the organization policy.



Consequently, the Court is being asked to render an advisory opinion, which it is not permitted to do.

The Motion for Summary Judgment is DENIED.

Date:

May 10, 2000

Judge

Robert E. Cahill, Jr.

Copies sent to:

Gregory L. VanGeison, Esq.  
Gertrude C Bartel, Esq.  
Charles Matz, Esq.  
Andrew E. Greenwald, Esq.



In or about August 1996, Dr. O'Neil filed an application for coverage for Gynemed Surgi-Center, P.A. ("the Surgi-Center").<sup>2</sup> Pease Deposition, Exhibit B, pp. 17 and 38-39. Dr. O'Neil is the sole stockholder of the Surgi-Center; and all of the employees of the Surgi-Center are employees of David M. O'Neil, M.D., P.A. O'Neil Deposition, Exhibit C, pp. 10 and 16.

Shortly thereafter, in August 1996, Medical Mutual issued a professional liability insurance policy for Dr. O'Neil individually and a second, separate policy that covered the P.A. and the SurgiCenter. Pease Deposition, Exhibit B, p. 17. When the broker of record sent the completed application and documentation for coverage for the P.A. and the SurgiCenter to Medical Mutual, he did so under cover of a memorandum dated August 22, 1996 (the "Eisenberg Memorandum"), in which he stated:

I am not certain as to the retroactive date for the Surgi-Center, however, *the retroactive date for David O'Neil, M.D., P.A. should remain 12/24/85.*

(emphasis supplied) (See Pease Deposition, Exhibit B, p. 20, and Exhibit 5 thereto, a copy of the Eisenberg Memorandum.)<sup>3</sup>

Because of an error by Medical Mutual, Eisenberg & Associates, or both of them, however, when Medical Mutual issued the policy for the P.A. and the SurgiCenter, the "retroactive date" on the face of the policy, for both insureds, was "8/23/96." (See

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<sup>2</sup> GyneMed Surgi-Center, P.A. was formed to be a licensed "surgicenter" pursuant to the applicable Medicare rules. O'Neil Deposition, Exhibit C, p. 11.

<sup>3</sup> Medical Mutual produced the Eisenberg Memorandum to Dr. O'Neil and the P.A. during discovery in this case.

IN THE HEALTH CLAIMS ARBITRATION OFFICE OF MARYLAND

EDWARD H. WITHROW  
and JACQUELINE SUE WITHROW,  
Individually and as Parents  
and Next Friends of  
EDWARD DENVER WITHROW, A Minor

Claimants

vs.

DAVID M. O'NEIL, M.D., et al.

Health Care  
Providers

HCA No: 97-138

HEALTH CARE PROVIDERS DAVID M. O'NEIL, M.D.  
AND DAVID M. O'NEIL, M.D.P.A.'S RESPONSES TO  
CLAIMANT'S REQUEST FOR PRODUCTION OF DOCUMENTS

Come now the Health Care Providers, David M. O'Neil, M.D. and David M. O'Neil, M.D., P.A. by and through their attorneys, Brian J. Nash, Esquire, Marian L. Hogan, Esquire, and the firm of Wharton, Levin, Ehrmantraut, Klein & Nash, P.A., and in Response to Request for Production of Documents propounded by Plaintiff, states as follows:

I. General Objections

To the extent applicable, the following general objections are made to each and every request whether or not specifically stated in the response thereto. Any response by the Health Care Providers to any request is made without waiver of any general objection.

1. Health Care Providers object to each and every request to the extent it calls for the production of "any" and "all" documents that refer to or discuss a topic on the grounds that such request is overbroad, unduly burdensome and oppressive. Health Care

**REQUEST NUMBER 8:**

Please attach a copy of all personnel files relating to all physicians who cared for the adult Claimant for labor and delivery, and the minor Claimant, including but not limited to requests for privileges, and including files of "moonlighters".

**RESPONSE TO REQUEST NUMBER 8:**

I do not have any such personnel files.

**REQUEST NUMBER 9:**

A complete job description of each and every one of your employees or other personnel who had any contact with the adult Claimant and the minor Claimant.

**RESPONSE TO REQUEST NUMBER 9:**

The only employees or other personnel in my office who would have had contact with the adult and/or minor Claimant would have been support staff such as receptionists and/or secretaries in my office at the time. None of these individuals are currently employed by me and I do not believe I have a complete job description of any of my former employees in writing at present.

**REQUEST NUMBER 10:**

All reports or other writings made to you in the ordinary course of business by and of personnel on your staff or in your employ, or of the professional corporation, pertaining to the manner and method in which the adult Claimant and the minor Claimant were treated.

**RESPONSE TO REQUEST NUMBER 10:**

Any such writings would be contained within the medical records already in Claimants' possession. I did not alter and/or change any.

LAW OFFICES

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E. DALE ADKINS, III  
JAMES A. ROTHSCHILD  
M. BRADLEY HALLWIG  
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WARD B. COE, JR.  
(1913-1996)

COUNSEL  
FRANK J. VECCELLA  
JOHN F. KING

December 16, 1998

David M. O'Neil, M.D.  
17 Fontana Lane  
Suite 201  
Baltimore, Maryland 21237

Dear Dr. O'Neil:

As you know, Medical Mutual has been defending you in the action filed against you in Maryland's Health Claims Arbitration Office, captioned Edward H. Withrow, et. al. v. David M. O'Neil, M.D., et. al., HCA No.: 97-138. The claim concerns obstetrical services provided by Dr. Dilip Guha-Ray in the fall of 1994 and the spring of 1995. The claim alleges that Dr. Guha-Ray was acting as your agent and/or employee while rendering obstetrical care to Jacqueline Sue Osborne Withrow during that time period.

The policy of professional liability insurance issued to you by Medical Mutual, policy number: MDD 0022619 08, excluded from coverage

any liability for any 'incident' arising out of 'professional services' routinely performed within the scope of any Specialty, Procedure or Technique designated in the Schedule.

Form 33010. The specialty identified in the policy as excluded is "OBSTETRICS." In addition, the declarations page, which forms a part of the policy, identifies your practice as "MEDICINE SURGEON - GYNECOLOGY - NO OBSTETRICS."

We are writing to advise you that the policy issued to you by Medical Mutual provides no coverage for any claim asserted against you which arises out of obstetrical care. Therefore, if a judgment is entered against you in the above-referenced action for obstetrical care that you rendered, or for obstetrical care rendered by another, such as Dr. Guha-Ray, the policy issued by Medical Mutual will not pay.

C99.350

CM

MEDICAL MUTUAL LIABILITY  
INSURANCE SOCIETY OF MARYLAND  
225 International Circle  
Hunt Valley, Maryland 21030

Plaintiff

v.

DAVID M. O'NEIL, M.D.  
17 Fontana Lane  
Suite #201  
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EDWARD H. WITHROW,  
Individually and as Parents  
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and

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Defendants

IN THE

CIRCUIT COURT

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CASE NO.:

Case: 03-C-99-001350  
CF-Civil Fili

MLSC 88.00  
Appearance Fee 10.00  
TOTAL \$100.00

COMMENT:  
medical mutual liability vs. o'neil

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Cashier: KK CORACOX081  
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\* \* \* \* \*

# COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Medical Mutual Liability Insurance Society of  
Maryland, by its attorney, Gregory L. REYNOLDS, sues David M.  
O'Neil, M.D., David M. O'Neil, M.D., Edward H. Withrow,

99 FEB 12 10:10:05  
BALTIMORE COUNTY

Post mail

individually and as next friend of Edward Denver Osborne Withrow, and Jacqueline Sue Osborne Withrow, individually and as next friend of Edward Denver Osborne Withrow, and for cause of action, says:

#### PARTIES

1. Plaintiff, Medical Mutual Liability Insurance Society of Maryland ("Medical Mutual"), is a non-stock corporation created and established pursuant to the Maryland Insurance Code and authorized to provide professional liability insurance in Maryland.

2. David M. O'Neil, M.D., is a physician, licensed to practice medicine in the State of Maryland.

3. David M. O'Neil, M.D., P.A., is a professional association, organized under the laws of the State of Maryland.

4. Edward H. Withrow and Jacqueline Sue Osborne Withrow, individually and on behalf of their minor son, Edward Denver Osborne Withrow (the "Withrows"), made a claim against David M. O'Neil, M.D., and David M. O'Neil, M.D., P.A., for professional malpractice in a case captioned Edward H. Withrow, et. al. v. David M. O'Neil, M.D., et. al., in the Health Claims Arbitration Office, Case No.: HCA: 97-138 (the "claim").

#### FACTUAL BACKGROUND

5. The Withrows assert in their claim that Edward Denver Osborne Withrow and his mother, Jacqueline Sue Osborne Withrow, suffered injuries as a result of obstetrical care rendered to them by David M. O'Neil, M.D., David M. O'Neil, M.D., P.A., and Dilip Guha-Ray, M.D., while acting as the agent, servant, and/or employee of David M. O'Neil, M.D., and/or David M. O'Neil, M.D., P.A.



6. Medical Mutual issued a claims made policy of professional liability insurance to David M. O'Neil, M.D., with effective dates of January 1, 1997 to January 1, 1998, with a retroactive date of December 24, 1985.

7. The care rendered, according to the claim, occurred between August 2, 1994 and March 26, 1995.

8. The claim was made in 1997.

9. The policy of insurance issued by Medical Mutual excluded from coverage any liability arising out of obstetrical care.

10. Medical Mutual is defending Dr. O'Neil and the P.A. for the claim under a reservation of rights.

11. Dr. Guha-Ray has not sought a defense or coverage from Medical Mutual for the claim, and he is entitled to none, since he is not an insured under the policy.

12. Medical Mutual seeks a declaration from this court of its rights and obligations under the policy, pursuant to Md. Code Ann., Cts. & Jud. Proc., §3-403 (1995).

#### COUNT I

13. Plaintiff incorporates by reference as if fully set forth in this Count paragraphs 1 through 12, and says further:

14. The policy of insurance issued by Medical Mutual excludes from coverage any liability arising from the rendering of obstetrical care.

15. The injuries alleged in the claim arise out of the rendering of obstetrical care.

12/19

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GREGORY L. VANGEISON  
WRITER'S DIRECT FAX (410) 752-9173

December 9, 2002

VIA FACSIMILE (410) 583-7529

The Honorable John Grason Turnbull, II  
Circuit Court for Baltimore County  
County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204-0754

RE: Medical Mutual Liability Insurance Society of Maryland  
v. David M. O'Neil, M.D., et al.  
Case No.: 03-C-99-001350

Dear Judge Turnbull:

I am writing on behalf of all counsel in this action. The above-captioned case is scheduled for a trial on the merits on December 19, 2002. All counsel in the case agree that the trial of the case should be postponed until January of 2004.

This case is a declaratory judgment action involving whether there exists insurance coverage for David M. O'Neil, M.D., and his professional association, for claims made against him in the case of Edward H. Withrow, et al v. David M. O'Neil, et al, pending in the Circuit Court for Baltimore City, Case No. 24-C-02-000178 (the "underlying malpractice action"). The underlying malpractice action has a trial date of October 27, 2003 and is scheduled to last three weeks.

Medical Mutual is defending Dr. O'Neil and his P.A. in the underlying malpractice action under a reservation of rights. All counsel to this declaratory judgment action agree that a trial of this case now would be premature. Expert discovery in the underlying malpractice action has not been completed, and fact issues relevant to whether Medical Mutual must provide indemnity for any judgment rendered may need to be resolved by the trial of the underlying malpractice action.

12/30/02

G. Van Geison web with  
agreed date  
discovery  
8/16/03  
any Tues/Weds/Thurs.  
Jan → March 2004

70 Board  
w/COMP  
adv. atty  
a qu

12/10/02  
PP Granted  
JCTB

off s/c  
Standard  
1-2 Day merits  
s/c cancelled

MEDICAL MUTUAL LIABILITY  
INSURANCE SOCIETY  
OF MARYLAND

Plaintiff

v.

DAVID M. O'NEIL, M.D., et al.

Defendants

IN THE

CIRCUIT COURT

FOR

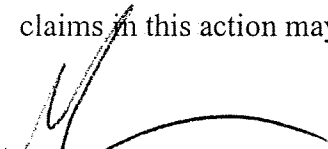
BALTIMORE COUNTY

Case No.: 03-C-99-001350

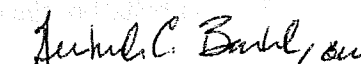
\* \* \* \* \*

**STIPULATION OF DISMISSAL WITH PREJUDICE**

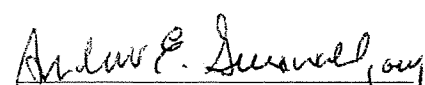
The parties, by their undersigned counsel, stipulate pursuant to Maryland Rule 2-506 that all claims in this action may be dismissed, with prejudice, costs to be paid by the plaintiff.

  
\_\_\_\_\_  
Gregory L. VanGeison  
Anderson, Coe & King, L.L.P.  
201 North Charles Street  
Suite 2000  
Baltimore, Maryland 21201  
(410) 752-1630

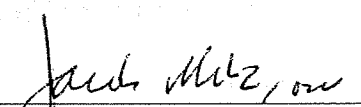
*Attorney for Plaintiff, Medical Mutual  
Liability Insurance Society of Maryland*

  
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(410) 752-6030

*Attorney for Defendants, David M.  
O'Neil, M.D., and David M. O'Neil  
M.D., P.A.*

  
\_\_\_\_\_  
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(301) 220-2200

*Attorneys for Defendants, Edward H. Withrow and  
Jacqueline Sue Osborne Withrow, individually and as  
Parents and Next Friends of Edward Denver Osborne  
Withrow*

  
\_\_\_\_\_  
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530 East Joppa Road  
Towson, Maryland 21286  
(410) 823-5805

**FILED FEB 02 2004**



MEDICAL MUTUAL LIABILITY  
INSURANCE SOCIETY  
OF MARYLAND

Plaintiff

v.

DAVID M. O'NEIL, M.D., et al.

Defendants

\*  
\*  
\*  
\*  
\*  
\*

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
Case No.: 03-C-99-001350

\* \* \* \* \*

**REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Medical Mutual Liability Insurance Society of Maryland, by its attorney,  
Gregory L. VanGeison, respectfully submits this memorandum in reply to the opposition  
memoranda filed on behalf of the defendants.

**INTRODUCTION**

For convenience, Medical Mutual will reply to the memoranda filed on behalf of  
the defendants in this single memorandum. The defendants' arguments to avoid  
summary judgment can be boiled down to the following: (1) Medical Mutual is estopped  
to deny coverage because its reservation of rights letter with regard to the Individual  
Policy<sup>1</sup> was issued too late and because the reservation of rights letter does not mention  
the retroactive date; (2) the retroactive date on the Organization Policy is the result of a  
mutual mistake; and (3) the exclusion in the Individual Policy is ambiguous. This  
memorandum will address each argument in the order presented above.

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<sup>1</sup> In its initial motion and in this motion Medical Mutual refers to policy MDD 022619 08 as the "Individual Policy" and policy MD9 0014481 as the "Organization Policy." The term "Individual Policy" is somewhat of a misnomer, though, since, for claims made involving incidents that occurred between 12/24/85 and 8/23/96, the "Individual Policy" provides coverage for both Dr. O'Neil and the P.A. See discussion, infra,

rights letter in any way mislead Dr. O'Neil *to his injury* and that he changed his position to the worse because of it. The Withrow's simply rely on a presumption that there was prejudice because Medical Mutual was defending, but such a presumption was rejected in the Neuman case. Indeed, the Withrow's attempt to distinguish the Neuman case, at pages 28-30 of their memorandum, proves the point against them. Had the Court of Appeals adopted the rule argued for by the Withrows, the insurer would have been estopped to deny coverage by the fact of its having defended without issuing a reservation of rights. In rejecting that rule, the Court of Appeals actually looked to the facts and found that there was no evidence presented of prejudice. It is clear that, were the Court of Appeals to permit the extension of *coverage* by estoppel, which it has never done to date, it would require evidence of *actual prejudice* to the insured. Here, there simply is no basis on the facts of this case to apply estoppel and create coverage where none existed before.<sup>3</sup>

## **2. The Organization Policy.**

Both the Withrows and Dr. O'Neil argue that Medical Mutual is estopped to assert that the claim in the underlying action falls outside of retroactive date of the Organization Policy because the reservation of rights letter does not raise that issue. The estoppel arguments made above apply equally to the Organization Policy. What is more, Medical Mutual is not, and never has, defended the P.A. or Dr. O'Neil under the Organization Policy. The reservation of rights letter specifically references the Individual

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He has known now for over a year that Medical Mutual will not pay a claim arising out of obstetrical care, but has not complained regarding the representation afforded him to him and his P.A. by Medical Mutual in the underlying case and has never asserted, as he could have, that he wishes to have counsel of his choosing defend the case. See Brohawn v. Transamerica Ins. Co., 276 Md. 396 (1975).

<sup>3</sup> Indeed, the case has lumbered through Health Claims and does not even have a trial date. The case very well may be waived to the Circuit Court before there is a trial in Health Claims.

Policy. As the Supplemental Affidavit of Wesley Foster, Jr., of Medical Mutual, attached as Exhibit 2, demonstrates, not only has Medical Mutual not defended the P.A. under a reservation of rights on the Organization Policy, it has not even administered a claim under that policy. Because there was never even a potentiality of coverage under the Organization policy – it is uncontradicted that, on the face of the policy, the incident complained of in the Withrow suit fell outside of the years of coverage – Medical Mutual never had an obligation to defend and has denied coverage under that policy by suing Dr. O’Neil, the P.A., and the Withrows, asserting that the P.A. has no coverage under the policy.

**B. THERE IS NO EVIDENCE OF A MUTUAL MISTAKE.**

Dr. O’Neil argues on behalf of the P.A. that the retroactive date on the Organization Policy, August 23, 1996, was a mutual mistake. He claims that there is a triable issue on whether the retroactive date for that policy should be December 24, 1985, the retroactive date on the Individual Policy, rather than August 23, 1996. His “evidence” for this argument is an August 22, 1996 memorandum from his broker, Brian K. Eisenberg, of Eisenberg Associates, to Medical Mutual, transmitting the application for the Organization Policy. In that memorandum, Mr. Eisenberg states: “I was not certain as to the retroactive date for the Surgi-Center, however, the retroactive date for David M. O’Neil, M.D., P.A., should remain 12/24/85.”

The retroactive date was not a mistake on Medical Mutual’s part. Affidavit of Kathleen Norton, Vice President of Underwriting, Medical Mutual Liability Insurance Society of Maryland, attached as Exhibit 1. Medical Mutual never intended that the retroactive date for the Organization Policy should be anything other than August 23,

1996. Medical Mutual issued the Organization Policy because it became aware that the P.A. had employees. During the time that Medical Mutual understood that Dr. O'Neil was operating a solo P.A., it insured the doctor and his P.A. on the same policy, with a shared limit. When it discovered that the exposure had changed, since the P.A. had employees, it issued a new policy for the P.A., with a separate limit. The two policies are coordinated so that, for claims made against the doctor and/or the P.A. for incidents that occurred after the retroactive date of the Individual Policy and before the retroactive date of the Organization Policy, coverage is provided under the Individual Policy, and the terms of that policy apply to the claim. Id. For claims made against the P.A. on incidents occurring after the retroactive date of the Organization Policy, the Organization Policy provides the coverage. There simply can be no argument that the retroactive date was a "mistake" on the part of Medical Mutual.

The Court of Appeals has considered a similar case and decided that there was no evidence of a "mutual mistake." In American Casualty Co. v. Ricas, 179 Md. 627 (1941), the insured purchased a car on June 15, 1938. Through his broker, that same day, he sought two policies of insurance, one for fire and theft and one for property damage and public liability. American Casualty issued the property damage and public liability policy effective June 23, 1938. In the meantime, on June 17, as luck would have it, the insured had an accident with the car. The insured sued for coverage, seeking a reformation of the policy, making the effective date of the policy June 15 rather than June 23. The Court of Appeals held that there was not "mutual mistake" and, therefore, no grounds for reformation. Id., at 633-34. The court's discussion is instructive:

*Insurance companies have a legal right to fix the terms and duration of policies issued by them, and they are not compelled to accept every application presented,*

and may stipulate upon what terms and for what period of time the risk will be accepted. Of course, any change in terms or time, from the application must be accepted by the insured, otherwise the policy would not become effective. The insured has a perfect right to refuse a policy not in accordance with his application. A contract of insurance must be assented to by both parties, either in person, or by their agents. The policy in this case was accepted after it was known that it would become effective on June 23<sup>rd</sup>, 1938. *One of the essential terms of an insurance policy is the time of commencement, and the period of risk undertaken by the insurer, and unless otherwise stated in the policy, or a contrary intention on the part of both the insurer and the insured is shown, a contract of insurance is deemed to have been made as of its date, and takes effect therefrom.*

Insurance policies are no different from any other contract when the rules of law governing the reformation of written agreements are to be applied. To justify the reformation of an insurance policy a proper case must be presented, and it is necessary that it appear, by appropriate proof, that a valid agreement exists, and that by reason of fraud, *or by mutual mistake on the part of both parties to the agreement, it does not conform with the actual agreement of the parties.*

Ricas, 179 Md. at 634 (emphasis added)(citations omitted); see also Flester v. Ohio Cas.

Ins. Co., 269 Md. 544, 556-57 (1973)(“it must be *conclusively* established that both parties understood the contract as it is alleged that it ought to have been expressed, and as in fact it was, but for the mistake alleged in reducing it to writing.”).

In the present case, there was no mutual mistake. The coordination of coverage for the P.A. between the two policies conclusively demonstrates that Medical Mutual meant for August 23, 1996 to be the retroactive date on the new policy. There is no evidence to prove the contrary. Indeed, the retroactive date was placed on the Declarations when the policy was issued, and the insured and his representative, Mr. Eisenberg, made no objection. The defendants cannot avoid summary judgment on the issue of when the retroactive date of the Organization Policy was supposed to be, since there is no evidence that Medical Mutual ever intended that the date be anything other than August 23, 1996.



**B. THE EXCLUSION FOR OBSTETRICS IN THE INDIVIDUAL POLICY IS NOT AMBIGUOUS.**

The exclusion for obstetrics, included within the Individual Policy, is not ambiguous, as is demonstrated by the discussion contained in Medical Mutual's original memorandum in support of its motion for summary judgment. Medical Mutual agrees, however, that it advised Dr. O'Neil that it would provide coverage under the policy for "prenatal care and abortions through the first trimester only." Therefore, if it were proven at trial that Dr. O'Neil breached the standard of care within the first trimester, and that the breach proximately caused the injuries complained of, the policy would provide coverage. Therefore, since there is an amorphous "prenatal" care allegation in the underlying malpractice action, and that allegation could potentially include the one visit that Mrs. Withrow made to Dr. O'Neil during the first trimester, Medical Mutual will continue to defend the doctor and the P.A. under the Individual Policy, subject to its reservation of its rights.

**CONCLUSION**

For the reasons stated above, Medical Mutual requests that summary judgment be granted in its favor on the Organization Policy and that the court declare that Medical Mutual has no obligation to afford coverage under that policy for the Withrow claims. Medical Mutual requests that the court enter summary judgment on the Individual Policy, declaring that Medical Mutual has no obligation to indemnify either Dr. O'Neil or David M. O'Neil, M.D., P.A., for any claims by the Withrow's for alleged breaches in the standard of care which occurred after the first trimester of Mrs. Withrow's pregnancy.

MEDICAL MUTUAL LIABILITY  
INSURANCE SOCIETY OF MARYLAND,

Plaintiff,

v.

DAVID M. O'NEIL, M.D., et al.,

Defendants.

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No.: 03-C-99-001350

\* \* \* \* \*

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES  
IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Medical Mutual Liability Insurance Society Of Maryland ("Medical Mutual"), has moved for summary judgment against Defendants David M. O'Neil ("Dr. O'Neil") and David M. O'Neil, M.D., P.A., in the above-captioned declaratory judgment action. Plaintiff's motion should be denied. Plaintiff has failed to demonstrate that no genuine issues of material fact exist in this case, and that it is entitled to judgment as a matter of law.

Plaintiff, the insurer of Dr. O'Neil and his professional association, David M. O'Neil, M.D., P.A. (hereinafter, "the P.A.") claims that it is entitled to summary judgment on the question whether insurance coverage<sup>1</sup> exists for certain alleged acts of medical malpractice. Plaintiff asserts two bases for disclaiming coverage: (1) that the insurance policy issued to Dr. O'Neil has an exclusion for "obstetrics;" and (2) that the

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<sup>1</sup> For the purpose of this opposition memorandum, Dr. O'Neil and his P.A. use the term "coverage" generally, to refer to either the carrier's duty to defend, the duty to indemnify, or both.

insurance policy issued to the P.A. has a "retroactive date" of August 23, 1996. Because the malpractice alleged in the underlying action involves the delivery of a baby prior to August 23, 1996, Plaintiff contends the policies of insurance issued to Defendants do not provide any coverage for their claimed tortious acts. Both bases are, for the reasons stated below, completely without merit.

The underlying lawsuit arose from the birth in March 1995 of a child who is profoundly retarded and "developmentally delayed." Amended Statement of Claim, ¶¶ 14-16. (A photocopy of the Amended Statement of Claim is attached to this memorandum as Exhibit A). Dr. O'Neil and the P.A. have been sued directly for their own acts and vicariously for the negligent acts of another doctor, Dilip Guha-Ray, M.D. ("Dr. Ray"), who (according to claimants in the underlying case) was acting as the agent of Dr. O'Neil and his P.A. Amended Statement of Claim, Exhibit A, ¶¶ 17-19. In the Amended Statement of Claim, claimants allege that Franklin Square Hospital also was negligent. *Ibid.*

This Court should deny the insurer's motion for summary judgment because there exist genuine disputes regarding the following material facts, among others: (1) whether any acts of allegedly negligent prenatal care by Dr. O'Neil caused the alleged injuries to claimants; (2) what the scope was of the purported exclusion for "obstetrics" in the policy that covered Dr. O'Neil individually; (3) whether that purported exclusion encompassed all of the care provided by Dr. O'Neil to claimants; (4) what the intended

“retroactive date” was of the policy applicable to the P.A.; (5) whether the agent who procured the policy for Dr. O’Neil and his P.A. acted as the agent of Dr. O’Neil, the agent of Medical Mutual, or both; (6) what was the scope of the broker’s actual and apparent authority; (7) what duties the insurer and its agents had (or assumed) to ensure that Dr. O’Neil had appropriate coverage; and (8) whether they discharged those duties.

## I. BACKGROUND

The pleadings in this case and the underlying lawsuit, and the deposition testimony and related exhibits, establish the following facts.

In 1985, Dr O’Neil purchased professional liability insurance that covered both him personally and his P.A. *See, e.g.*, Deposition of Medical Mutual’s representative, Deborah Pease (“Pease Deposition”), pp. 40-41, and Exhibit 12 to the Pease Deposition. (A photocopy of the Pease Deposition and relevant exhibits is attached to this memorandum as Exhibit B.) The first policy period was from December 24, 1985, to December 24, 1986, and had a retroactive date of December 24, 1985. Exhibit 12 to Pease Deposition.

In August 1993, Dr. O’Neil wrote a letter to Medical Mutual, in which he informed Medical Mutual that he intended to stop practicing “Ob-Gyn” effective September 25, 1993; and he understood that he could “step down to a lower-rated policy classification ... without any gaps in coverage whatsoever.” Pease Deposition, Exhibit B, pp. 45-48; *also see* Exhibit 15 to the Pease Deposition, a copy of the August 1993 letter.

After receiving Dr. O'Neil's August 26, 1993, letter, Medical Mutual issued an insurance policy covering both Dr. O'Neil and his P.A. which included a "declarations page" that bore the words "Gynecology/Surgery--No Obstetrics." See Pease Deposition, Exhibit B, pp. 52-53; and Dr. O'Neil's January 1, 1995, letter to Medical Mutual, Exhibit 18 to the Pease Deposition.

In August 1994, Jacqueline Sue Osborne Withrow ("Ms. Withrow"), the claimant mother in the underlying malpractice case, first came to Dr. O'Neil's offices.

Amended Statement of Claim, Exhibit A, ¶ 6. Dr. O'Neil examined Ms. Withrow at that time, and also treated her on October 18, 1994. Deposition of David M. O'Neil, M.D. ("O'Neil Deposition"), pp. 85-86. (A photocopy of the O'Neil Deposition is attached as Exhibit C). Ms. Withrow was pregnant when Dr. O'Neil treated her. O'Neil Deposition, Exhibit C, pp. 36 and 85. Dilip Kumar Guha-Ray, M.D. ("Dr. Ray") also saw Ms. Withrow during the pregnancy. See, e.g., Deposition of Dilip Kumar Guha-Ray, M.D., pp. 40-41, 54, and 63-65. (A photocopy of the November 24, 1997, session of Dr. Ray's deposition is attached as Exhibit D). Ms. Withrow's baby was delivered on or about March 26, 1995. Amended Statement of Claim, Exhibit A, ¶ 2.

In January 1995, Dr. O'Neil wrote a letter to Medical Mutual in which he advised Medical Mutual that the "declaration sheet" for the policy issued to him and his P.A. for the 1994 policy year bore the phrase "Gynecology/Surgery--No Obstetrics." See Exhibit

18 to the Pease Deposition, Exhibit B. Dr. O'Neil further stated in his letter to Medical Mutual that he understood that:

to furnish first trimester obstetrics, including prenatal care, abortion, treating ectopic pregnancy and pregnancy complications, etc.

was still within the coverage provided to Dr. O'Neil and his P.A. by the Medical Mutual policy then in force. Exhibit 18 to Pease Deposition. In the same letter, Dr. O'Neil requested that Medical Mutual send him a letter confirming his understanding of the scope of the coverage provided. *Ibid.*

On or about January 20, 1995, Medical Mutual wrote back to Dr. O'Neil. (A photocopy of Medical Mutual's January 20, 1995, letter is attached to the Pease Deposition as Exhibit 19; *also see* Pease Deposition, Exhibit B, pp. 55-56.) In its letter, Medical Mutual advised Dr. O'Neil that the insurance policy then in force as to Dr. O'Neil and his P.A. did indeed provide coverage for "prenatal care," among other things. Medical Mutual's letter stated, in pertinent part,

You are currently rated for GYN-Surgery. This does allow for prenatal care and abortions through the 1<sup>st</sup> trimester only.

Exhibit 19 to Pease Deposition.

The terms "obstetrics" and "prenatal care," have never been defined by Medical Mutual in the policies it issued to Dr. O'Neil or the P.A., or in any other documents it has generated. Pease Deposition, Exhibit B, pp. 52-53; *also see* the documents attached to Exhibit 1 to Plaintiff's motion as Exhibits B and C, respectively.

Exhibit C to Exhibit 1 to Plaintiff's Motion For Summary Judgment). This demonstrably incorrect "retroactive date" forms the sole basis for Medical Mutual's request for summary judgment in its favor as to coverage for the P.A.

In or about March 1997, Ms. Withrow and Edward Withrow, individually and as parents and next friends of their son, Edward Denver Osborne Withrow (collectively, the "claimants") filed a claim against Dr. O'Neil, David M. O'Neil, M.D., P.A., and Dr. Ray in the Health Claims Arbitration Office of Maryland, seeking damages for alleged medical malpractice. *See* Exhibit A to Exhibit 1 to Plaintiff's Motion For Summary Judgment. The Withrows' claims arose from the birth in March 1995 of a child (the minor claimant in the underlying malpractice suit) who presently is "severely, overwhelmingly, and profoundly brain injured [*sic*]." *Id.*, ¶¶ 12 and 14. As noted above, claimants later filed an Amended Statement of Claim, adding Franklin Square Hospital as a defendant Health Care Provider. *See* Exhibit A hereto.

Neither the original Statement of Claim nor the Amended Statement of Claim set forth with specificity what allegedly negligent acts purportedly caused claimants' injuries. Claimants alleged generally:

That the Health Care Providers, and each of them, acting as agents (apparent or otherwise), servants and/or employees of each other, within the scope of their agency and/or employment, were negligent in: the failure to appropriately monitor the condition of the adult female Claimant during the prenatal period; in the failure to recognize problems that posed a significant and substantial danger to the minor Claimant; in failing to appropriately and timely deliver the minor Claimant; and otherwise failed

IN THE HEALTH CLAIMS ARBITRATION OFFICE OF MARYLAND

EDWARD H. WITHROW and  
JACQUELINE SUE OSBORNE WITHROW,  
Individually and as Parents  
and Next Friends of  
EDWARD DENVER OSBORNE WITHROW,  
A Minor  
P. O. Box 1216  
Wise, VA 24293

Claimants

vs.

HCA No: 97-138

DAVID M. O'NEIL, M.D.  
17 Fontana Lane, Suite 201  
Baltimore, MD 21237

and

DAVID M. O'NEIL, M.D., P.A.  
17 Fontana Lane, Suite 201  
Baltimore, MD 21237

SERVE:

Joseph M. Guida, P.A.  
Registered Agent  
15 S. Parke Street  
Aberdeen, MD 21001

and

DILIP GUHA-RAY, M.D.  
3507 North Charles Street  
Suite 202-B  
Baltimore, MD 21218

and

FRANKLIN SQUARE HOSPITAL  
CENTER, INC.  
9000 Franklin Square Drive  
Baltimore County, MD 21237

SERVE:

Charles Ross  
Registered Agent  
9000 Franklin Square Drive  
Baltimore County, MD 21237

Health Care  
Providers

Joseph  
Greenwald  
& Laake

Joseph M. Guida, P.A.  
34 Ivy Lane • Suite 400  
Crown Heights, Maryland 20770

11) 220-2200 • Fax 220-1214



AMENDED STATEMENT OF CLAIM

COME NOW, the Claimants, EDWARD H. WITHROW and JACQUELINE SUE OSBORNE WITHROW, Individually and as Parents and Next Friends of EDWARD DENVER OSBORNE WITHROW, a Minor, by and through counsel, Andrew E. Greenwald and the Law Offices of Joseph, Greenwald & Laake, P.A., and Jacob Matz and the Law Offices of Jacob Matz, P.A., and sue the Health Care Providers, DAVID M. O'NEIL, M.D., DAVID M. O'NEIL, M.D., P.A., DILIP GUHARAY, M.D., and FRANKLIN SQUARE HOSPITAL CENTER, INC., individually, jointly and severally, and as cause therefor states as follows:

JURISDICTION AND VENUE

The amount of this claim exceeds \$20,000.00 (more than the limit of the concurrent jurisdiction of the District Court). Venue is proper in Baltimore County and Baltimore City, Maryland.

PARTIES

1. The Claimants, EDWARD H. WITHROW and JACQUELINE SUE OSBORNE WITHROW, are the Parents and Next Friends of EDWARD DENVER OSBORNE WITHROW, a Minor, and reside at P.O. Box 1216, Wise, Virginia 24293.

2. The Claimant, EDWARD DENVER OSBORNE WITHROW, is an infant child born on or about March 26, 1995, whose natural parents are EDWARD H. WITHROW and JACQUELINE SUE OSBORNE WITHROW.

Joseph  
Greenwald  
& Laake

Joseph, Greenwald & Laake, P.A.  
104 Ivy Lane • Suite 400  
Towson, Maryland 21204

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3. The Health Care Providers, DAVID M. O'NEIL, M.D. and DAVID M. O'NEIL, M.D., P.A., are health care providers located at 17 Fontana Lane, Suite 201, Baltimore, Maryland 21237, who were charged with the care and treatment of the female adult Claimant and the minor Claimant.

4. The Health Care Provider, DILIP GUHA-RAY, M.D. is a health care provider located at 3507 North Charles Street, Suite 202-B, Baltimore, Maryland 21218, who was charged with the care and treatment of the female adult Claimant and the minor Claimant.

5. The Health Care Provider, FRANKLIN SQUARE HOSPITAL CENTER, INC., acting through its agents, servants and/or employees, is a hospital located at 9000 Franklin Square Drive, Baltimore County, Maryland 21237, providing obstetrical care for the adult female Claimant.

COUNT I

6. On or about August 2, 1994, the adult female Claimant sought the services of DAVID M. O'NEIL, M.D. and DAVID M. O'NEIL, M.D., P.A. for her prenatal care and treatment as well as for the labor and delivery of the minor Claimant.

7. That after seeing the Health Care Provider, DAVID M. O'NEIL, M.D., the adult female Claimant also came under the care of DILIP GUHA-RAY, M.D., acting individually and as an agent, (apparent or otherwise) servant and/or employee of the Health Care Provider, DAVID M. O'NEIL, M.D., P.A. and/or DAVID M. O'NEIL, M.D.

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& Laake

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Greenbelt, Maryland 20770

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8. That during her prenatal course, the adult female Claimant was sent by the Health Care Providers to FRANKLIN SQUARE HOSPITAL CENTER, INC. for numerous non-stress tests and sonograms to determine fetal well-being.

9. That despite indications that there were potential problems and dangers posed to the minor Claimant, including, but not limited to, a low amniotic fluid, the Health Care Providers, and each of them, failed to appropriately diagnose and care for the adult female Claimant and timely deliver the minor Claimant.

10. That on at least one occasion, prior to the actual delivery of the minor Claimant, the Health Care Provider, DILIP GUHA-RAY, M.D., indicated that the adult female Claimant would be induced and the baby would be delivered earlier.

11. That the adult female Claimant arrived at the hospital for early induction, only to find that the Health Care Provider, DILIP GUHA-RAY, M.D., was not there and no such induction took place.

12. That the adult female Claimant entered the FRANKLIN SQUARE HOSPITAL CENTER, INC. on or about the 26th of March, 1995, at which time late decelerations were noted as well as a reduction in the fetal heart rate.

13. Notwithstanding the above, the female adult Claimant was given Pitocin which was allowed to continue by Health Care Providers, and all of them, despite its injurious effect on the minor Claimant.

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Greenwald  
& Laake

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Greenbelt, Maryland 20770

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14. That the adult female Claimant was finally delivered by emergency Cesarean section on March 26, 1995 as a result of persistent bradycardia and loss of variability, at which time the minor Claimant was noted to have meconium aspiration, meconium below the cords, severe anemia, severe hypovolemia, jaundice, and asphyxia.

15. That at the time of his birth, the minor Claimant was noted additionally to be limp, pale and unresponsive, requiring intubation and suctioning, failed to respond, and was re-intubated.

16. That presently the minor Claimant is severely, overwhelmingly, and profoundly brain injured, is developmentally delayed, has severe, profound mental retardation, as well as other injuries, all of which conditions are permanent in nature.

17. That the Health Care Providers, and each of them, acting as agents (apparent or otherwise), servants and/or employees of each other, within the scope of their agency and/or employment, were negligent in: the failure to appropriately monitor the condition of the adult female Claimant during the prenatal period; in the failure to recognize problems that posed a significant and substantial danger to the minor Claimant; in failing to appropriately and timely deliver the minor Claimant; and otherwise failed to meet the appropriate and applicable standard of care, as well as committed other acts of negligence.

18. That the Health Care Providers, and each of them, acting individually and as agents (apparent or otherwise),

Joseph  
Greenwald  
& Laake

cph, Greenwald & Laake, P.A.  
04 Ivy Lane • Suite 400  
Crownsville, Maryland 20770

tel) 220-2200 • Fax 220-1214



David M. O'Neil, M.D., P.A.

OBSTETRICS / GYNECOLOGY

August 26, 1993

Debbie Pease  
Medical Mutual Insurance Company  
225 International Circle  
Hunt Valley, Maryland 21030

Ref: Request for decrease in Classification Ob/Gyn (Class Code 80153) to Gyn - Major Surgery (Class Code 80167) Policy# MDD-0022619-04

Dear Mrs. Pease:

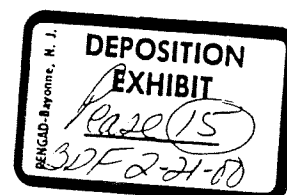
In accordance with Medical Mutual's underwriting rules please be advised that effective September 25, 1993, I intend to stop practicing Ob/Gyn (Class Code 80153). Currently I am performing 1st trimester abortions as I am treating patients through the completion of 14 weeks (98 days) of gestation. Please be advised that I am adhering to the definition of 1st trimester as defined by ACOG Obstetric-Gynecologic Terminology (see attachment). I will continue to practice Gyn - Major Surgery (Class Code 80167) and will continue to perform 1st trimester abortions within this Gyn classification.

I understand that I may step-down to a lower rated policy classification, i.e. Gyn - Major Surgery (Class Code 80167) without any gaps in coverage whatsoever. It is my understanding that any acts, errors, omissions or circumstances which may result in a future malpractice incident, claim or suit resulting from any Ob/Gyn activities occurring between 12/24/85 - 9/25/93 will be insured in accordance with the terms and provisions of my coverage during this period of time.

Sincerely,  
DAVID M. O'NEIL, M.D., P.A.

*D. O'Neil M.D.*  
David M. O'Neil, M.D.

SEP 3 1993





David M. O'Neil, M.D., F.A.C.O.G.

OBSTETRICS / GYNECOLOGY / INFERTILITY / UROGYNECOLOGY

1-6-95

Debbie Pease  
Medical Mutual Insurance Company  
225 International Circle  
Hunt Valley, MD 21030

REF: Policy # MDD-0022619-06

Dear Ms. Pease,

Upon review of the Declaration Page for the 1994 policy year, I noticed that the practice description indicates Gynecology/Surgery - No Obstetrics.

As my underwriting file will indicate it is my understanding that I am able to furnish first trimester obstetrics, including prenatal care, abortion, treating ectopic pregnancy, and pregnancy complications, etc.

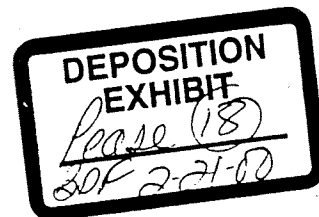
Would Medical Mutual be kind enough to forward a letter to me which specifically refers to coverage relating to first trimester obstetrics?

Your prompt response will be greatly appreciated.

Sincerely,

*D. O'Neil M.D.*

David M. O'Neil M.D.



JAN 1995

*1-10-95*

# MEDICAL MUTUAL

*Liability Insurance Society of Maryland*

January 20, 1995

David M. O'Neil, M.D.  
17 Fontana Lane  
Suite 201  
Baltimore, MD 21237

Policy # - MDD-0022619-06  
Policy Period - 1-1-95/1-1-96

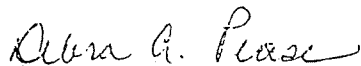
Dear Dr. O'Neil:

I have received your letter dated January 6, 1995 regarding first trimester obstetrics.

You are currently rated for GYN-Surgery. This does allow for prenatal care and abortions through the 1st trimester only.

If you should have any questions, please feel free to contact me.

Sincerely,



Debra A. Pease  
Senior Underwriter

DAP/ler

cc: Eisenberg & Associates

