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COUNSEL/PARTIES OF RECORD

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CLERK OF DISTRICT COURT
DISTRICT OF NEVADA

BY:  DEPUTY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA
AT LAS VEGAS, NEVADA**

TRACIE MARIE HENDRICKS)
5461 Chevrolet Blvd., #303)
Parma Heights, Ohio 44130)

Plaintiff,)

v.)

A-Z WOMEN'S CENTER)
1670 E. Flamingo Road, Suite C)
Las Vegas, Nevada 89119)

WILLIAM D. RAMOS, MD, LTD.)
d.b.a. A-Z Women's Center)
a.k.a. A-Z Women's Center of Las Vegas)
f.k.a. A-Z Women's Medical Group)
C/O Robert L. Bolick, Ltd. (Resident Agent))

6060 West Elton Ave., Suite A)
Las Vegas, Nevada 89107)

WILLIAM D. RAMOS, MD)
2550 E. Desert Inn Road)
Las Vegas, Nevada 89121)

Case No. CV-S-03-1338-RCJ-LRL

**PLAINTIFF TRACIE M. HENDRICKS'
AMENDED COMPLAINT**

(Jury Demand Endorsed Hereon)

11

)
SPOON, BARTHOLOMEW & BOYD,)
A Professional Corporation,)
a.k.a. Las Vegas OB/GYN Associates,)
C/O Edward C. Spoon, Jr., MD (Res. Ag.))
2010 Goldring Ave., Suite 200)
Las Vegas, Nevada 89106)
)
SUSAN L. BOYD, MD)
2010 Goldring Ave., Suite 200)
Las Vegas, Nevada 89106)
)
ARTHUR H. HERPOLSHEIMER, MD)
1701 N. Green Valley Pkwy. #3-B)
Henderson, Nevada 89104)
)
JOHN DOE, Individual)
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JOHN DOE, Individual)
)
JANET DOE, Individual)
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JANET DOE, Individual)
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JOHN DOE, Entity)
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JOHN DOE, Entity)
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JOHN DOE, Entity)
)
Defendants.)

NOW COMES the above Plaintiff, Tracie Marie Hendricks (hereinafter “Plaintiff
Hendricks”), by and through undersigned counsel, Jihad M. Smaili, Esq., and hereby alleges the
following for her Complaint:

Nature of the Action

This is an action under the Federal Court’s Diversity Jurisdiction, pursuant to 28 U.S.C.
1332, and under certain sections of the Nevada Revised Statutes, policies and at common law, to

correct physical and psychological/mental injuries to Plaintiff Hendricks, and to make whole Plaintiff Hendricks.

Jurisdiction

This Court has jurisdiction over Plaintiff Hendricks' claims based upon 28 U.S.C. Section 1332 since there exists complete diversity between Plaintiff Hendricks and Defendants and the amount in controversy well exceeds \$75,000, excluding interest, attorney fees and costs.

Furthermore, personal jurisdiction exists since all of the Defendants listed herein meet the test of minimum contacts with this forum, Plaintiff Hendricks resides in the State of Ohio, and the place of injury took place within this District and Division.

Venue

Venue is proper in this District pursuant to 28 U.S.C. Section 1391, 42 U.S.C. Section 12117(a), since the entirety of the alleged facts were committed in this District, and, upon information and belief, the records relevant to such acts and/or omissions are maintained and administered in this District, and Plaintiff Hendricks was injured in this District by Defendants.

Parties

1. Plaintiff Hendricks is a resident of, and is domiciled in, the State of Ohio, City of Parma Heights, and at all times relevant to this action was a patient of Defendants and was treated at their facilities. Plaintiff Hendricks sustained extensive and permanent injuries in Las Vegas, Nevada, located within this District;
2. Defendant William D. Ramos, MD, LTD, d.b.a. A-Z Women's Center, a.k.a. A-Z Women's Center of Las Vegas, f.k.a. A-Z Women's Medical Group (hereinafter "Defendant A-Z") is a Professional Corporation incorporated under the laws of the State of Nevada on July 7, 1997, having File No. C14482-1997, with the sole shareholder/owner being Defendant William

D. Ramos, MD (hereinafter “Defendant Ramos”), and the Resident Agent for said corporation being Robert L. Bolick, LTD. Defendant A-Z has its principal place of business in Las Vegas, Nevada.

3. Defendant Ramos is the owner/shareholder of Defendant A-Z, and is a duly licensed and accredited medical doctor. Defendant Ramos resides and is domiciled in the State of Nevada, City of Las Vegas. Defendant Ramos is a full-time abortion provider in the State of Nevada and is a board-certified OB/GYN.¹

4. Defendant Spoon, Bartholomew & Boyd, A Professional Corporation, a.k.a. Las Vegas OB/GYN Associates (hereinafter “Defendant OB/GYN Associates”), is a Professional Corporation incorporated under the laws of the State of Nevada on July 24, 1997, having File No. C15865-1997, with its Resident Agent being Edward C. Spoon, Jr., MD. Officers/Shareholders of the Corporation include Brent F. Bartholomew, MD, President, Edward C. Spoon, MD, Secretary, and Susan L. Boyd, MD, Treasurer. Defendant OB/GYN Associates operate a 10,000 square foot facility in Las Vegas, Nevada, wherein numerous medical procedures are performed.²

5. Defendant Susan L. Boyd (hereinafter “Defendant Boyd”) is an officer/shareholder/owner of Defendant OB/GYN Associates, is OB/GYN board-eligible, and practices medicine in Las Vegas, Nevada;

6. Defendant Arthur H. Herpolsheimer (hereinafter “Defendant Herpolsheimer”) is an OB/GYN physician duly licensed to practice medicine in the State of Nevada;

¹ See www.drmos.com

² See www.lvobgyn.com

Allegations of Fact

7. Paragraphs 1-6 are hereby incorporated by reference as if fully rewritten hereon;
8. Plaintiff Hendricks was born on July 8, 1972 in Cleveland, Ohio. In 1993, Plaintiff Hendricks moved to Las Vegas, Nevada. Immediately prior to the events alleged herein, Plaintiff Hendricks was employed by the Riviera Casino and Hotel as a game show host/model, and was married;
9. Around November, 2000, Plaintiff Hendricks discovered she was pregnant, after having been married for about one (1) year. Due to irregular bleeding, Plaintiff was referred to Defendant Ramos at Defendant A-Z for a procedure to involuntarily end her pregnancy. On or about January 12, 2001, Defendant Ramos performed a dilatation and curettage, more commonly known as a "D and C" in the medical field. A "D and C" involves the scraping and collection of tissue (endometrium) from inside the uterus in order to terminate a pregnancy;
10. The "D and C" procedure lasted approximately fifteen (15) minutes. Plaintiff Hendricks was awakened by a nurse and immediately felt sharp pains. While getting dressed, she noticed that she was still bleeding. She was given a sanitary napkin and sent home;
11. Plaintiff Hendricks arrived home and slept. She later awoke that same night to use the bathroom. As she was getting up from her bed, she noticed a puddle of blood on her mattress. When she stood up, objects resembling "green pieces of liver meat" were falling out of her vagina, along with blood. She felt sharp pain. Her stepdaughter took her to the ER immediately, along with the objects that fell out of her.
12. At Lake Mead Hospital, Tests were performed, including an ultrasound and x-rays, and the OBGYN discovered that at least 40% of the fetus was still inside of her. Her bleeding was somewhat controlled, she was given an IV and pain medication;

13. Defendant Ramos initially informed Lake Mead Hospital personnel and Plaintiff Hendricks' original OB/GYN that he would complete the abortion. However, Defendant Ramos refused to get involved, and was described as being upset that Plaintiff Hendricks had gone to the hospital;

14. She was discharged soon thereafter that same night and was told to go see Defendant Ramos. Her discharge paperwork indicated that she had had an "incomplete abortion";

15. Plaintiff Hendricks went to Defendant Ramos' office the next day. Defendant Ramos, after reviewing Plaintiff's medical records, insisted that Plaintiff Hendricks sign paperwork guaranteeing that she would not get anyone else involved, but she refused. Thereafter, Defendant Ramos informed Plaintiff Hendricks that the remaining portion of the fetus would "push itself out," and that she should take two pills that he gave to her in a small yellow envelope. He refused to complete the abortion. Plaintiff Hendricks took the pills as directed;

16. Defendant Ramos was clearly upset that Plaintiff Hendricks had gone to the hospital;

17. Plaintiff Hendricks bled profusely throughout the next few days. As she was in the bathroom taking a shower in preparation to seeing her original OB/GYN, she became dizzy, fell to the floor of the bathroom while still bleeding. An ambulance was summoned and she was transported to Summerlin Hospital;

18. Plaintiff Hendricks was then sent by ambulance to the office of Defendant Boyd. Plaintiff Hendricks was examined, underwent an ultrasound, given some shots and medications (Lortab/Vicatin). The bleeding did not stop. The ultrasound revealed that the partial fetus was still fully inside of her;

19. Plaintiff Hendricks was then sent to Defendant Boyd's private office. Defendant Boyd decided to perform another "D and C" at the Las Vegas Surgery Center. The bleeding and sharp

pain continued;

20. Plaintiff Hendricks became despondent and attempted suicide. Defendant Boyd finally performed a complete “D and C” on or about January 16, 2001. Plaintiff Hendricks was then sent home with orders to take prescribed pain medicine. However, the pain did not go away and she continued to bleed;

21. A few days later, after the bleeding and pain did not abate, Plaintiff Hendricks went to see Defendant Boyd. Defendant Boyd examined her, and wanted to treat Plaintiff Hendricks’ pain;

22. Approximately three (3) days later, Plaintiff Hendricks again went to see Defendant Boyd since the pain and bleeding continued. Defendant Boyd prescribed other name brand pain killers and other medications. The pain and bleeding continued, and Plaintiff Hendricks continued to see Defendant Boyd for several more days;

23. Pain in the lower abdomen and bleeding were becoming worse. Defendant Boyd later suggested an exploratory laparoscopy. Defendant Boyd insisted on being able to “go back in and look around”;

24. On April 12, 2001, Plaintiff Hendricks underwent another laparoscopy performed by Defendant Boyd. Prior to the performance of the laparoscopy, Defendant Boyd promised Plaintiff Hendricks that the laparoscopy would only be exploratory, without any other procedures being performed;

23. Plaintiff Hendricks woke up from the laparoscopy and saw a clear cup with a white plastic tube inside on top of a nearby table. Plaintiff Hendricks was informed by a nurse that the tube was found inside of her, and that the tube had perforated her uterus. The tube was the tip of the suction mechanism used in “D and Cs.”

24. Dr. Boyd had performed an incision during the laparoscopy in order to remove the tube.

The perforation in the uterus was not repaired. Plaintiff Hendricks felt sharp pain in her abdomen, and discovered that she had been cut by Defendant Boyd during the procedure;

25. Defendant Boyd did not speak with Plaintiff Hendricks after the procedure, and suspiciously disappeared. Plaintiff Hendricks was sent home without being told anything else about the tube, which is currently in undersigned counsel's possession;

26. A few days later, Plaintiff Hendricks attempted to contact Defendant Boyd for a few days thereafter, but Defendant Boyd did not return any of her calls;

27. No one informed Plaintiff Hendricks at any time that she was in any danger or risk of permanent injury;

28. Subsequently, Plaintiff Hendricks' became ill and she was unable to use the bathroom. She again went to Summerlin Hospital, where a specialist informed her that her kidneys had collapsed, and placed a catheter in her thigh. She was given medication for her kidneys, and continued to take her pain medication;

29. While at the hospital, a doctor called and informed Defendant Boyd of what had transpired, and requested Defendant Boyd's presence;

30. Defendant Boyd sent someone else in her place;

31. Plaintiff Hendricks spent four (4) days at Summerlin Hospital, and finally her kidneys began to function again;

32. Subsequent to Plaintiff Hendricks' discharge from Summerlin, she went to Defendant Boyd's office. Defendant Boyd was present and prepared for Plaintiff Hendricks, along with records and other documentation, and Defendant Boyd placed the blame for the tube being left inside of her squarely on Defendant Ramos;

33. Defendant Boyd informed Plaintiff Hendricks that during the laparoscopy, she saw the

tube and had to perform an incision to remove it;

34. Defendant Boyd informed Plaintiff Hendricks that the pain stemmed from the perforated uterus, and that it was caught in time before infection could form around the uterus;

35. Defendant Boyd informed Plaintiff Hendricks that there was nothing to be done to repair the uterus, and that time would heal it;

36. Defendant Boyd then immediately ended her doctor-patient relationship with Plaintiff Hendricks after Plaintiff Hendricks refused to allow Defendant Boyd to perform another laparoscopy;

37. Plaintiff Hendricks attempted to reach Defendant Boyd after she was still experiencing pain, but Defendant Boyd refused to see her further;

38. Plaintiff Hendricks continued to have pain. She went to other hospitals in order to have a different doctor examine her and find the source of the pain, but no hospital or physician would treat her even though she had insurance coverage;

39. In the meantime, Defendant Herpolsheimer got involved;

40. A laparoscopy was yet again performed and no other objects were found inside Plaintiff Hendricks;

41. Her uterus was allegedly damaged;

42. Defendant Herpolsheimer informed Plaintiff Hendricks that the perforation in the uterus was consistent with the overly forceful, and even possibly sideways, insertion of the "D and C" device during one of the two "D and Cs";

43. Plaintiff Hendricks underwent nine (9) surgeries in Las Vegas in order to repair her uterus, the last one being in February/March/April, 2002. During this time, Plaintiff Hendricks began experiencing side-effects from all of the medications she was taking and developed back

pain and constipation;

44. On February 23, 2002, Defendant Herpolsheimer removed Plaintiff Hendricks' uterus, fallopian tubes, cervix and right ovary;

45. In 2002, Plaintiff spent several months in Utah with her sister. Thereafter, she moved back to Cleveland, Ohio;

46. While in Cleveland, Ohio and Utah, Plaintiff continued to experience excruciating back and stomach pain and found blood in her urine;

47. Plaintiff Hendricks was seen by a physician specializing in pain management at the Cleveland Clinic. She was then referred to an OBGYN doctor, whom later decided not to get involved for the same reason other physicians stayed away;

48. Plaintiff Hendricks has gone in and out of emergency rooms around the Cleveland area, but to no avail. Nothing worked. One local hospital even refused to treat her;

49. In November, 2002, it was discovered that Plaintiff Hendricks' right ovary, fallopian tubes, uterus and cervix were missing. Plaintiff Hendricks again attempted suicide. She spent four (4) days in a Cleveland hospital recovering. During her stay, she was visited by a psychiatrist, whom advised her to join a residential psychiatric recovery center;

50. The psychiatrist also ordered Plaintiff Hendricks not to even think about the injuries that she has sustained and/or litigation since she needed to cope and deal with her evolving emotional and mental state. She was a residential patient for approximately four (4) months. She had to leave since her insurance could not cover any days over four months;

51. Upon her discharge, Plaintiff Hendricks immediately checked into a state-funded psychiatric treatment center, which was free of charge, and remained there as a resident for an additional two and one-half (2 ½) months;

52. Plaintiff Hendricks currently lives with a friend in Cleveland. She continues to have suicidal tendencies;

53. Plaintiff Hendricks' last menstrual cycle was more than two (2) years ago. She is currently pre-menopausal. She has recently gone to the ER with severe pain and blood in her urine and stools. Also, an OBGYN specialist has discovered much adhesion;

54. Cleveland area physicians have found a "mass" on her left ovary;

55. Plaintiff Hendricks continues to also have pain from her scar tissue, and has developed nerve damage from same;

56. On October 1, 2003, Plaintiff Hendricks again began bleeding. A few Cleveland hospitals have refused to help (i.e. "walking lawsuit");

FIRST CAUSE OF ACTION

57. Paragraphs 1-56 are hereby incorporated by reference as if fully rewritten hereon;

58. Defendants Ramos, Boyd, A-Z, and OB/GYN Associates, their agents, servants and employees were grossly negligent in their medical diagnosis, care and treatment of Plaintiff Hendricks, by failing to exercise the required degree of care, skill, or knowledge amounting to an indifference to patient safety or welfare, and a conscious indifference to the consequences resulting from their actions, while she was under their care, specifically by their action in leaving a one-inch plastic tube inside of her, which punctured her uterus, pursuant to Nev. Rev. Stat. Section 41A.100(1)(a), rendering *res ipsa loquitur* applicable to the facts herein;

59. As a direct and proximate result of said gross negligence by the Defendants, their agents, servants, and employees, Plaintiff Hendricks sustained, and continues to suffer, the loss of her uterus, fallopian tubes, right ovary and cervix, along with great and excruciating physical pain and mental anguish, loss of ability to reproduce, without limitation, and which she will continue

to so suffer for the remainder of her life;

60. As a further result of the gross negligence by the Defendants, their agents, servants, and employees, Plaintiff Hendricks incurred permanent impairment of future earning capacity and permanent impairment of the ability to have children, lead and enjoy a normal life, and severe, pervasive and permanent mental anguish, psychological and emotional injury, which required her admission to a psychiatric facility for a prolonged amount of time, and will likely require significant future psychiatric treatment, therapy and attention;

61. As a further result of the negligence by the Defendants, their agents, servants, and employees, Plaintiff Hendricks has required additional hospital, medical, and other care and treatment, and she will continue to require extensive care and treatment for the balance of her life, and thus incur substantial amount of financial losses;

62. All of the above-described consequences to Defendants' gross negligence were foreseeable to the reasonably prudent physician at the time the injuries to Plaintiff Hendricks took place;

63. As such, Plaintiff Hendricks prays for judgment against Defendants Ramos, Boyd, A-Z, and OB/GYN Associates, jointly and severally, in an amount exceeding Ten Million Dollars (\$10,000,000), along with costs, attorney fees, compensatory, punitive and consequential damages, economic (care, custody, out of pocket expenses and lost wages) and compensation for non economic damages (pain, suffering, disfigurement, physical impairment, and the like), mental, emotional and psychiatric injury and any other relief that this Court may find to be reasonable and appropriate;

SECOND CAUSE OF ACTION

64. Paragraphs 1-63 are hereby incorporated by reference as if fully rewritten hereon;

65. Defendant Herpolsheimer, his agents, servants and employees, were grossly negligent in their medical diagnosis, care and treatment of Plaintiff Hendricks, by failing to exercise the required degree of care, skill, or knowledge amounting to an indifference to patient safety or welfare, and a conscious indifference to the consequences resulting from their actions, while she was under their care, specifically by the action of Dr. Herpolsheimer in removing the entirety of Plaintiff Hendricks' reproductive capability, including her uterus, fallopian tubes, right ovary and cervix;

66. As a direct and proximate result of said negligence and/or gross negligence by Defendant Herpolsheimer, his agents, servants, and employees, Plaintiff Hendricks sustained, and continues to suffer, the loss of her uterus, fallopian tubes, right ovary and cervix, along with great and excruciating physical pain and mental anguish, loss of ability to reproduce, without limitation, and which she will continue to so suffer for the remainder of her life;

67. As a further result of the gross negligence by the Defendant Herpolsheimer, his agents, servants, and employees, Plaintiff Hendricks incurred permanent impairment of future earning capacity and permanent impairment of the ability to have children, and to lead and enjoy a normal life;

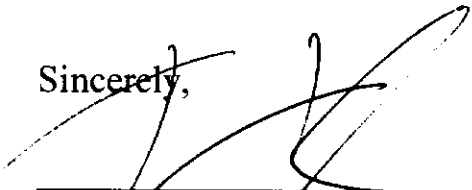
68. As a further result of the negligence of Defendant Herpolsheimer, his agents, servants, and employees, Plaintiff Hendricks has required additional hospital, medical, and other care and treatment, and she will continue to require extensive care and treatment for the balance of her life;

69. All of the above-described consequences to Defendant Herpolsheimer's gross negligence and/or negligence were foreseeable to the reasonably prudent physician at the time the injuries to Plaintiff Hendricks took place;

70. As such, Plaintiff Hendricks prays for judgment against Defendant Herpolsheimer in an amount exceeding Ten Million Dollars (\$10,000,000), along with costs, attorney fees, compensatory, punitive and consequential damages, economic (care, custody, out of pocket expenses and lost wages) and compensation for non economic damages (pain, suffering, disfigurement, physical impairment, and the like), mental, emotional and psychiatric injury and any other relief that this Court may find to be reasonable and appropriate;

WHEREFORE, Plaintiff Hendricks demands relief and judgment, as described herein, against Defendants, individually and/or severally, in an amount in excess of \$20,000,000, along with any and all other relief as this Court deems to be appropriate.

Sincerely,



Jihad M. Smaili (OHIO-0069768)
1360 West 9th Street, Suite 310
Cleveland, Ohio 44113
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Trial Counsel for Plaintiff Hendricks
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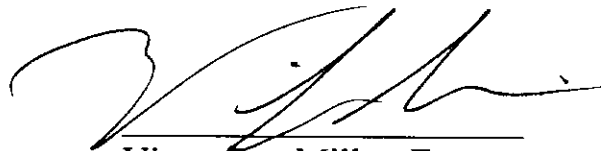
Victor Lee Miller, Esq.
Nevada Bar #002411
953 South Decatur Boulevard
Las Vegas, Nevada 89107
(702) 877-4779
Local Counsel for Plaintiff, Hendricks

Certificate of Service

I hereby certify that on January ¹⁹~~18~~, 2004, I deposited for mailing at Las Vegas, Nevada a true and correct copy of the above and foregoing Amended Complaint addressed as follows:

John H. Cotton, Esq.
2300 W. Sahara Avenue, Suite 420
Las Vegas, NV 89102
Attorney for Defendants Susan L. Boyd
And Spoon, Bartholomew & Boyd

Robert C. McBride, Esq.
7201 West Lake Mead Boulevard, Suite 400
Las Vegas, NV 89128
Attorney for Defendant William D. Ramos



Victor Lee Miller, Esq.
Local Counsel for Plaintiff
935 South Decatur Blvd.
Las Vegas, NV 89107


State of Ohio)
)
County of Cuyahoga) SS

Affidavit of Mohammad F. Sharbek, M.D., F.A.C.O.G.

NOW COMES Dr. Mohammad F. Sharbek, M.D., having been sworn an oath, and states the following as his affidavit:

1. My name is Mohammad F. Sharbek and my business address is 3600 Kolbe Road, Lorain, Ohio 44053;
2. I am a duly licensed physician by the State of Ohio Medical Board. I am also Board Certified in Obstetrics and Gynecology. I have practiced in this field for the past 24 years;
3. I have had the opportunity to examine the medical records of Tracie Hendricks, the Plaintiff in the current action. I have also reviewed Tracie Hendricks' medical records in connection with the medical services provided to her in the State of Nevada, specifically by Dr. William Ramos, Dr. Susan Boyd and Dr. Arthur Herpolsheimer;
4. As a result of the dilation and curettage procedures performed by Dr. Ramos and/or Dr. Boyd, a tip of a suction catheter was broken and left inside Tracie Hendricks' pelvis;
5. It is my professional opinion, by a reasonable degree of medical certainty, that the injuries sustained by Tracie Hendricks, specifically those associated with the dilation and curettage procedures, including the perforation of her uterus and subsequent loss of same, are supported by the medical records from Dr. Ramos, Dr. Boyd and Dr. Herpolsheimer;
6. It is also my professional opinion, by a reasonable degree of medical certainty, that the allegations made in the action in the United States District Court for the District of Nevada, are supported by the medical records of Tracie Hendricks;
7. It is also my professional opinion, by a reasonable degree of medical certainty, that the injuries sustained by Tracie Hendricks resulted from the actions and/or inaction of Dr. Ramos, Dr. Boyd and Dr. Herpolsheimer, which fall below the standard of medical care in the fields of OB/GYN and surgery.

Affiant Further Sayeth Naught.


Mohammad F. Sharbek, MD

Sworn to and subscribed before me this 17th day of January, 2004, in Cleveland, Ohio.

JIHAD M. SMAILI
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.


NOTARY PUBLIC
NO EXPIRATION DATE