

UNITED STATE DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

DANIELLE MOLA,
Plaintiff

vs.

WINN WHEELER, R.N., AMY LIEF,
MARTHA GROVER, MAUREEN PAUL, M.D.,
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, COLLEEN PINCH, N.P.,
J.B.DOE, M.D. and JOSEPH M. SMITH
COMMUNITY HEALTH CENTER,
Defendants

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U.S. DISTRICT COURT
DISTRICT OF MASS.
No. 02-11195GAO

**MOTION OF DEFENDANTS WINN WHEELER, R.N.,
MAUREEN PAUL, M.D. AND PLANNED PARENTHOOD LEAGUE
OF MASSACHUSETTS FOR REFERRAL TO THE SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT OF THE COMMONWEALTH
OF MASSACHUSETTS FOR THE CONVENING OF A MEDICAL
MALPRACTICE TRIBUNAL PURSUANT TO M.G.L. C. 231, §60B**

Now come the defendants, Winn Wheeler, R.N., Maureen Paul, M.D. and Planned
Parenthood League of Massachusetts and move for an order referring this action to the Superior
Court Department of the Trial Court of the Commonwealth of Massachusetts, for the limited
purposes of convening a Medical Malpractice Tribunal hearing pursuant to M.G.L. c. 231, § 60B.

As grounds for said motion, the Defendants state the following:

1. This case was originally filed in Suffolk Superior Court on or about December 11,
2001. On June 14, 2002, the United States of America on behalf of defendants, Colleen Pinch,
N.P and the Joseph M. Smith Health Center, filed a Notice of Removal of the action to the
United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. §233. The
Attorney General of the United States, by the United States Attorney for the District of

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Massachusetts, certified pursuant to 42 U.S.C. §233(c) and 28 U.S.C. §2679(d), that the defendant, Joseph M. Smith Health Center was an entity receiving federal grant money from the United States Public Health Service and that defendant, Colleen Pinch, N.P., was acting within the scope of her employment as an employee of the Joseph M. Smith Health Center at the time of the alleged medical malpractice and was therefore an employee under the Federal Tort Claims Act. On July 15, 2002, the action was transferred to the United States District Court for the District of Massachusetts.

2. In the Amended Complaint, plaintiff is alleging malpractice, error, or mistake by defendants, Winn Wheeler, R.N., Maureen Paul, M.D. and Planned Parenthood League of Massachusetts, in their care and treatment of plaintiff Danielle Mola.

3. Pursuant to M.G.L. c. 231, § 60B,

[e]very action for malpractice, error or mistake against a provider of health care shall be heard by a tribunal consisting of a single justice of the superior court, a physician licensed to practice medicine in the commonwealth . . . and an attorney authorized to practice law in the commonwealth, at which hearing the plaintiff shall present an offer of proof and said tribunal shall determine if the evidence presented if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry or whether the plaintiff's case is merely an unfortunate medical result. (Emphasis added).

4. The medical malpractice tribunal is a screening mechanism created to discourage frivolous claims against health care providers. Lambley v. Kameny, 43 Mass. App. Ct. 277 (1997).

5. The medical malpractice tribunal applies to every action for malpractice without exception. Austin v. Boston Univ. Hosp., 372 Mass. 654, 660 (1977).

6. The defendants, Winn Wheeler, R.N., a nurse practitioner; Maureen Paul, M.D., a physician specializing in obstetrics and gynecology; and Planned Parenthood League of Massachusetts, a health care clinic, against whom allegations of medical malpractice have been made, are entitled to a preliminary hearing before a medical malpractice tribunal.

7. In Feinstein v. Massachusetts Gen. Hosp., 643 F. 2d 880 (1981), the Court held that a federal district court was required to refer an action for malpractice, error or mistake against a provider of health care arising under Massachusetts law to a medical malpractice tribunal convened pursuant to M.G.L. c. 231, § 60B. See also, Turner v. Sullivan, 937 F. Supp. 79 (D. Mass. 1996).

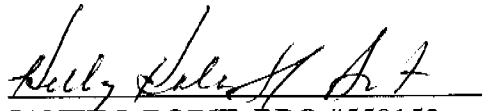
8. Plaintiff should not be permitted to evade the requirements of M.G.L. c. 231, § 60B, and preclude the defendants' rights as health care providers to a preliminary hearing as to whether the evidence proffered by the plaintiff, if properly substantiated, would support a case of malpractice, error or mistake.

9. Failing to apply the requirements of section 60B in malpractice actions brought in the federal court would encourage forum-shopping by plaintiffs wishing to avoid the screening procedure mandated in the Massachusetts courts. Feinstein, 643 F. 2d at 886.

10. In addition, failing to apply the requirements of section 60B in malpractice actions brought in the federal court would result in inequitable administration of the law by compelling a defendant sued in federal court to forego the procedural protection and substantive right to recovery of costs afforded by section 60B solely because of the fortuity that a federal court has subject matter jurisdiction. Feinstein, 643 F. 2d at 886.

11. Defendants, Winn Wheeler, R.N., Maureen Paul, M.D. and Planned Parenthood League of Massachusetts, seek only to have plaintiff's claims against them referred to the Superior Court for purposes of M.G.L. c. 231, § 60B. The case may then be remanded back to the United States District Court for purposes of discovery and trial, if appropriate.

WHEREFORE, the defendants, Winn Wheeler, R.N, Maureen Paul, M.D., and Planned Parenthood League of Massachusetts, respectfully request that this Court refer this matter to the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts for a Medical Malpractice Tribunal hearing pursuant to M.G.L. c. 231, § 60B.



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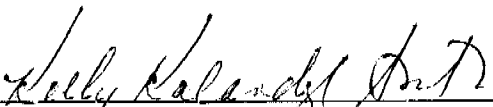
DATED: 9/23/02

UNITED STATE DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DANIELLE MOLA, Plaintiff)	
vs.)	No. 02-11195GAO
WINN WHEELER, R.N., AMY LIEF, MARTHA GROVER, MAUREEN PAUL, M.D., PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, COLLEEN PINCH, N.P., J.B.DOE, M.D. and JOSEPH M. SMITH COMMUNITY HEALTH CENTER, Defendants)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the within: **MOTION OF DEFENDANTS WINN WHEELER, R.N., MAUREEN PAUL, M.D. AND PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS FOR REFERRAL TO THE SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS FOR THE CONVENING OF A MEDICAL MALPRACTICE TRIBUNAL PURSUANT TO M.G.L. C. 231, §60B** upon all concerned parties by mail, postage prepaid addressed to: Barry D. Lang, Esquire, Barry D. Lang, M.D., P.C., 6 Beacon Street, Suite 505, Boston, MA 02108; and James J. McGovern, Assistant U.S. Attorney, U.S. Attorney's Office, J. Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 9200, Boston, MA 02210.



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DATED: 9/23/02