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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

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SUPERIOR COURT
SHERMAN SULLIVAN
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SUPERIOR COURT
CIVIL ACTION NO. 972291

KYLE MORIN, PPA KRISTEN MORIN,
KRISTEN MORIN AND JEFFREY MORIN,
Plaintiffs,

V.

MOLLY E. CLARK, M.D., CHRISTINE
JUST, C.N.M. AND WOMEN'S HEALTH
ASSOCIATES, INC.,
Defendants.

C

**MOTION OF DEFENDANT MOLLY E. CLARK, M.D.
FOR PROTECTIVE ORDER**

The defendant Molly E. Clark, M.D. hereby moves for a protective order with respect to the deposition notice served by the plaintiffs requesting that her deposition take place on November 4, 1997 at 10:00 AM In support of this Motion, Dr. Clark states as follows:

INTRODUCTION

In this medical malpractice action, the plaintiffs allege that on June 12, 1996 and June 13, 1996 the defendants Dr. Clark and Nurse-Midwife Christine Just were negligent in their care and treatment of the plaintiff Kristen Morin. As a result of the defendants' alleged negligence, the plaintiffs assert that the minor plaintiff Kyle Morin suffered severe and permanent personal injuries. The plaintiffs Kristen and Jeffrey Morin have

for a protective order
The motion to stay the deposition of Dr. Clark is
allowed for three months or until after the
malpractice tribunal, whichever occurs earlier.
~~_____~~
Mayer But CW J 11/21/97

MB

Edward T. McDonough, Jr. MD

2447 Rosa Lane
Punta Gorda, FL 33950

Board of American Board
Obstetrics and Gynecology

(941) 575-4914

April 16, 1997

Andrew C. Meyer, Jr.
MUBIN & MEYER
41 Tremont Street
Boston, MA 02111

Re: Kristen and Kyle Morin

Dear Attorney Meyer:

I am a physician licensed to practice medicine in New York, Maine and Massachusetts. I am certified by the American Board of Obstetrics and Gynecology. I am familiar with the standard of care as it pertained to the average qualified obstetrician and nurse midwife in Massachusetts in 1996. I have attached my curriculum vitae.

At your request I have reviewed the pertinent medical records of Kristen and Kyle Morin including the Women's Health Associates prenatal care from 10/24/95 - 6/10/96; non-stress test reports and tapes from 6/6/96 and 6/10/96; office records of internist Erica Johnson, M.D. from 2/1/96 - 7/29/96; Newton Wellesley Hospital records for cervical check and fetal monitoring on the morning of 6/12/96; for labor and fetal monitoring on 6/12/96 - 6/13/96, delivery on 6/13/96, newborn nursery care on 6/13/96 - 6/14/96, and the subsequent records of Kyle Morin.

Kyle Morin was born by Cesarean section delivery on 6/13/96 at 41+ weeks gestation, after a labor remarkable for multiple signs of fetal stress and distress for at least six hours prior to delivery. Kyle emerged from the delivery without spontaneous respirations and a thick meconium stained amniotic fluid. He was given Apgars of 4 and 6. No cord blood was taken, but Kyle's initial blood gas pH after resuscitation was only 7.05. Kyle seized within hours of delivery and required transfer to Children's Hospital for treatment of seizures and hypoxic-ischemic encephalopathy.

In 1995, Kristen Morin was a 31-year-old woman anticipating the delivery of her first baby. She began prenatal care at the Women's Health Associates in Wellesley on 10/24/95. EDC was set at 4/4/96 based on a LMP of 8/28/95. The pregnancy was remarkable for Group B Strep isolated from a urine specimen on 10/18/95. No cervical or anal cultures were taken by the care providers at Women's Health Associates to establish whether Ms. Morin carried beta Strep in areas that could potentially affect her fetus. Gestational diabetes was ruled out.


In my professional opinion to a reasonable degree of medical certainty the care and treatment rendered Kristen Morin by Molly Clark, M.D. fell below the accepted standard of care at the time for the average qualified obstetrician when:

- 1) Dr. Clark failed at first assessment on or around 9:10 p.m., to note the lack of fetal heart rate variability as an early sign of loss of oxygenation by the fetus, and the fetal tachycardia and hyperactive contraction pattern as signs that warranted confirmation of fetal well-being by scalp pH;
- 2) Dr. Clark failed take a scalp pH and failed to place an intrauterine pressure catheter after she ruptured the membranes;
- 3) Dr. Clark, in the absence of confirmation of fetal well-being, failed to expedite delivery shortly after she examined Ms. Morin at 9:10 p.m. or at least after the decreased variability, fetal tachycardia and late decelerations continued after placement of the internal scalp electrode;
- 4) Dr. Clark failed to respond appropriately to the repetitive late decelerations and fetal tachycardia that continued through the remaining five and a half hours of labor;
- 5) Dr. Clark performed an inappropriate attempt at vacuum extraction from +1 station between 1:45 and 1:55 a.m.;
- 6) Dr. Clark delayed operative delivery further by taking time to repair the episiotomy before finally performing a Cesarean section at 2:22 a.m.

As a direct result of Dr. Clark's failure to render care in accordance with the accepted standard of care at the time for the average qualified obstetrician Kyle Morin suffered hypoxic ischemic injury. Had Dr. Clark provided care in accordance with the accepted standard of care, she would have delivered Kyle Morin by Cesarean section shortly after 9:10 p.m. Had this been done, with reasonable medical certainty, Kyle Morin would have been delivered without injury.

In conclusion, the care and treatment rendered Kristen Morin by Christine Just, CNM, Molly Clark, M.D. and the Woman's Health Associates of Wellesley fell below the accepted standard of care at the time for the average qualified obstetrician and nurse midwife resulting in severe and permanent injury to Kyle Morin.

Sincerely,


Edward McDonough, M.D.