

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CA NO. 88-7278

28

LORIE K. DOUCETTE, MICHAEL)
 DOUCETTE and THOMAS DOUCETTE,)
 Michael)
 Plaintiffs)
PPA Father and Next Friend)
 v. OF THOMAS Doucette)
 ARNOLD L. SPERLING, *M.D.*)
 Defendant)

A M E N D E D C O M P L A I N T

1. The Plaintiff Lorie K. Doucette is an individual, with a principal place of residence at 23½ Pleasant Street, Medford, Middlesex County, Massachusetts.
2. The Plaintiff Michael Doucette, is an individual, with a principal place of residence at 23½ Pleasant Street Medford, Middlesex County, Massachusetts.
3. The Plaintiff Thomas Doucette, is an individual, with a principal place of residence at 23½ Pleasant Street, Medford, Middlesex County, Massachusetts.
4. The Defendant Arnold Sperling, is a physician, licensed to practice medicine in the Commonwealth of Massachusetts, with a principal place of business at 58 Day Street, Somerville, Middlesex County, Massachusetts.

COUNT I

5. On or about March 29, 1988, Dr. Sperling was employed by the Plaintiff Lorie K. Doucette to abort her pregnancy.
6. The Defendant failed and neglected to abort the entire body of the unborn child.
6. The Defendant, in endeavoring to perform the abortion did not exercise the degree of care or skill ordinarily exercised by others of this profession, as stated above.
8. During the evening of March 31, 1988, the Plaintiff, Lorie K. Doucette, passed a developed baby's head.
9. As a direct and proximate result of the Defendant's negligent practice of medicine, the Plaintiff suffered bodily injury and extreme emotional and psychiatric distress and continues to suffer.

1989 Sep 25th
Filed in Court. (White J.)
attest: Susan Burke
Deputy Assistant Clerk

WHEREFORE, the Plaintiff, Lorie K. Doucette demands judgment against the Defendant, in an amount deemed appropriate and just by this Honorable Court, plus costs and attorney's fees.

COUNT II

Plaintiffs restate paragraph 1 through 9, incorporate them herein, and further state:

10. The Defendant failed to provide the medical treatment as agreed.
11. As a direct and proximate result of the Defendant's failure to perform according to his agreement with Plaintiff, Lorie K. Doucette, Plaintiff suffered bodily injury, extreme emotional and psychiatric distress and continues to suffer.

WHEREFORE, the Plaintiff, Lorie K. Doucette, demands judgment against the Defendant, in an amount deemed appropriate and just by this Honorable Court, plus costs and attorney's fees.

COUNT III

Plaintiffs restate paragraph 1 through 11, incorporate them herein, and further state:

12. The Defendant failed and neglected to abort the entire body of the unborn child from the Plaintiff, Lorie K. Doucette.
13. As a direct and proximate result of the Defendant's failure and negligence to provide medical treatment to the Plaintiff, Lorie K. Doucette, the Plaintiff, Michael Doucette, has suffered the loss of his wife's services, society, affection, companionship and consortium.

WHEREFORE, the Plaintiff, Micheal Doucette demands judgment against the Defendant, in an amount deemed appropriate and just by this Court, plus costs and attorney's fees.

COUNT IV

Plaintiffs restate paragraphs 1 through 13, incorporate them herein, and further state:

14. The Defendant failed and neglected to abort the entire body of the unborn child from the Plaintiff, Lorie K. Doucette.
15. As a direct and proximate result of the Defendant's failure and negligence to provide medical treatment to the Plaintiff, Lorie K. Doucette, the Plaintiff, Thomas Doucette, has suffered the loss of this mother's services, society, affection, companionship and consortium.

WHEREFORE, the Plaintiff, Thomas Doucette, demands judgment against the Defendant, in an amount deemed appropriate and just by this Court, plus costs and attorney's fees.

COUNT V

Plaintiffs restate paragraphs 1 through 15, incorporate them herein, and further state:

16. The Plaintiffs state that on or about March 29, 1988 the Defendant held himself out to Plaintiff Lorie K. Doucette to be a physician skilled in performing termination of pregnancies and as such, in consideration of compensation agreed to be paid by the Plaintiffs, the Defendant agreed and promised to terminate Plaintiff, Lorie K. Doucette's, pregnancy.
17. The Defendant did operate upon the Plaintiff, Lorie K. Doucette, on March 29, 1988 and did break the agreement by failure to completely remove the entire fetus but rather as a result of the procedure, he failed to remove the head of the fetus causing her bodily injury and mental anguish by passing the head and a large amount of blood.
18. As a result, the Plaintiff Lorie K. Doucette suffered great pain of body and mind, was caused to expend monies for medical care and medicines and was deprived of her ability to do normal responsibilities as a mother and wife.

WHEREFORE, Plaintiff, Lorie K. Doucette, demands judgment in an amount deemed appropriate and just by this Court, plus costs and attorney's fees.

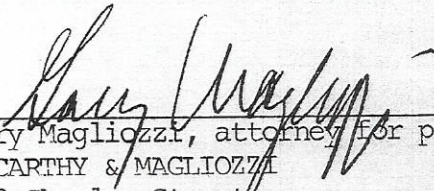
COUNT VI

Plaintiffs restate paragraphs 1 through 18, incorporate them herein, and further state:

19. The Defendant so negligently and unskillfully performed the abortion on March 29, 1988 and subsequently caused the Plaintiff Lorie K. Doucette, considerable bleeding and the painful discharge of the fetus' head and great pain and suffering of body and mind.

WHEREFORE, Plaintiff, Lorie K. Doucette, demands judgment against the Defendant in an amount deemed just and appropriate by this Court, plus costs and attorney's fees.

Respectfully submitted,



Gary Magliozzi, attorney for plaintiffs
McCARTHY & MAGLIOZZI
133 Charles Street
Boston, MA 02114
(617) 367-2011
B.B.O. #313420

DATED: Sept. 12, 1989

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS:

SUPERIOR COURT
NO: 88-7278

LORIE DOUCETTE and MICHAEL)
DOUCETTE,)
Plaintiffs)
)
VS.)
)
ARNOLD SPERLING, M.D.)
Defendant)

WITNESS LIST

✓	Lorie Doucette Woburn, Massachusetts	✓	Neil Finkler, M.D. Boston, Massachusetts
✓	Michael Doucette Woburn, Massachusetts		John Yeransian, M.D. Newton, Massachusetts
✓	Ethel Wiley Revere, Massachusetts	✓	Manlio LoConte, M.D. Lowell, Massachusetts
✓	Dennis Christensen, M.D. Wisconsin		Thomas Gutheil, M.D. (Goofile) Boston, Massachusetts
✓	Ruth Samad - <i>Psychologist</i> California	✓	STANTON Kessler, M.D. BOSTON/Wellesley
✓	Barry Sugarman, M.D. Woburn, Massachusetts		<i>family psychiatrist in Woburn</i>
✓	Arnold Sperling, M.D. Somerville, Massachusetts		
	Frank DiMasi, M.D. Revere, Massachusetts		
	Kenneth Krutt, M.D. Arlington, Massachusetts		
	Gloria Korta, M.D. Boston, Massachusetts		
	George Rowan, M.D. Woburn, Massachusetts		
	Moussa Menasha, M.D. Brookline, Massachusetts		

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
Civil Action
No. 88-7278

Lorie K. Doucette)
Michail Doucette and)
Lorie K. Doucette as)
Parent and Guardian)
of Thomas Doucette)
)
Plaintiffs,)
)
v.)
)
Arnold L. Sperling)
)
Defendant)

PLAINTIFF'S OFFER OF PROOF

This action is brought to recover for damages sustained as a direct and proximate result of the Defendant Arnold L. Sperling, M. D.'s negligent medical treatment.

As a direct and proximate result of the medical treatment rendered by Dr. Sperling, Lorie Doucette while at home discharged the head of a fetus the day after Dr. Sperling negligently performed an abortion.

This written Offer of Proof contains the following exhibits which will be offered at the trial of this action.

- (1) The Affidavit of Lorie Doucette;
- (2) The report of Stanton Kessler, M.D.;
- (3) The report of William A. Cook, M.D.;
- (4) The report of Barry Sugarman, M.D.;
- (5) Photograph of the fetus's head;
- (6) Malden Hospital Report
 - a. Dr. Natu
 - b. Dr. Strickland
 - c. Dr. DiMasi
- (7) Materials of Dr. Sperling to Lorie Doucette.

This written Offer of Proof also contains an argument that the Plaintiff's have satisfied the requirements of M.G.L.A. c. 231, Sec. 60B, in that this action presents a legitimate question of liability appropriate

for further judicial review.

FACTS

1. The Plaintiff, Lorie Doucette is a twenty three year old married woman with one five year old son.
2. The defendant is a medical doctor specializing in Gynecology and Obstetrics licensed under the laws of the Commonwealth of Massachusetts.
3. In January of 1988, Mrs. Doucette's obstetrician confirmed that she was pregnant.
4. Mrs. Doucette's pregnancy with her first child had been very difficult and when there were signs of fetal distress, the baby was taken by cesarian delivery.
5. The second pregnancy started with Mrs. Doucette experiencing sharp pains, headaches, blurred vision and an elevated blood pressure.
6. During the early part of March 1988, an ultra sound revealed a small hemorage in her uterus which was causing sharp pains.
7. The pain became so intense that she was confined to bed.
8. Her husband and Mrs. Doucette at this time made the decision to terminate the pregnancy because of her previous and current medical problems.
9. Mrs. Doucette investigated a number of different people for this purpose and selected Arnold L. Sperling, M.D.
10. Dr. Sperling was selected because he specialized in obstetrics and gynecology and because he had a reputation of having terminated a large number of pregnancies
11. On March 29, 1988, Mrs. Doucette went to Dr. Sperling at his office at 58 Day Street, Somerville, Massachusetts at which time laminaria were inserted into the cervix to prepare it for an abortion by dialation and evacuation.
12. Mrs. Doucette was in her sixteenth week of gestation.
13. The following day, March 30th, she returned to Dr. Sperling's office and she was led into a room which contained a box with a hose full of blood and bloody paper towels.
14. She was placed on a table and given general anesthesia and the abortion was performed.

15. She went home that night and experienced cramping.
16. She had been given medicine which she took and she slept for a short time.
17. She woke up shortly thereafter screaming. Upon getting out of bed, she discharged a great deal of blood.
18. On March 31, 1988, Mrs. Doucette was still experiencing cramping and some bleeding. She was experiencing chills and she had a temperature of 104.2.
19. During this time she was in great pain and she was doing a great deal of thrashing.
20. At approximately eleven thirty (11:30) that night, Mrs. Doucette felt something inside her that was moving. She experienced an extremely sharp pain.
21. As she was walking to the bathroom, she felt another long pain and she discharged something on to the floor. She screamed and she felt in shock
22. The object was hard and it was covered with blood.
23. She picked it up. It was heavy and when she turned it over she discovered it was her baby's head. She saw its eyes, nose, ears, and mouth wide open (see exhibit A).
24. On April 8, 1988, Dr. DiMasi performed a D + C at the Malden Hospital.
25. That procedure revealed tissue fragments still remained in Mrs. Doucette's uterus and they were thereafter removed (see exhibit B).
26. A medical opinion concerning the negligence of Dr. Sperling was obtained from Dr. William A. Cook, Chairman, Department of Obstetrics and Gynecology at Akron General Medical Center and Northeastern Ohio University's College of Medicine (see curriculum vitae exhibit C).
27. It is Dr. Cook's opinion "...this bizarre but not unprecedented horror story is that the (botched) abortion by Dr. Sperling was a gross deviation from accepted standards of practice. When one undertakes to empty a uterus in the middle trimester of pregnancy it is absolutely mandatory to make sure you have removed the entire fetus...Furthermore, the whole problem, the bleeding, the cramping, the fever, the chilling, and the horrifying passage of the dead baby's blood stained head - could, with reasonable medical certainty, have been prevented by properly checking the removed fetal parts at the time of the evacuation"(see exhibit D).
28. Dr. Stanton Kessler Medical Examiner for Suffolk County Massachusetts

has certified that the tissue shown in Exhibit E is in fact the head of a fetus. (see exhibit F)

29. Mrs. Doucette has been suffering from a major affective disorder, depression and " post traumatic stress disorder chronic type. "

She has been diagnosed by her psychiatrist Dr. Barry Sugarman as "... suffering a major psychiatric illness and that this illness is proximately related and a direct consequence of the particular abortion experience, that is the passing of parts of this fetus in her home following her discharge from the hospital." (see exhibit G)

ARGUMENT

Lorie Doucette's offer of proof as to the negligence of Dr. Sperling should prevail at this tribunal because she has demonstrated:

- (1) That there was a doctor - patient relationship (see exhibit H)
- (2) That there is evidence that Dr. Sperling's performance did not conform to good medical practice (see Dr. Cook's Statement Exhibit D)
- (3) That damages resulted from that negligence (see Dr. Sugarman's Report Exhibit G), Kapp v. Ballantine, 380 Mass. 186 (1980), 402 N.E. 2d 463, Caughlin v. Bixon, 23 Mass App 639.

She has satisfied the requirements of M.G.L. 231 sec 60B in that this tribunal can find that "...the evidence presented and substantiated is sufficient to raise a legitimate question of liability..."

In 1978 the Supreme Judicial Court held in Little v. Rosenthal, 382 N.E. 2d 1037 (1973), that in evaluating evidence submitted by a plaintiff in a medical malpractice claim, " the tribunal's task should be compared to a trial judge's function in ruling on a defendant's motion for directed verdict." Little v. Rosenthal, supra, at 1039. Under this standard, a finding for the defendant in a medical malpractice case should be entered "only when (in) construing the evidence most favorable to the plaintiff, it is still insufficient to support a verdict in his favor." Girard v. Crawford, 13 Mass App 916, 430 N.E. 2d 851 (1982). For the purpose of such

a motion, all evidence favorable to the plaintiff must be accepted as true.

Dr. William E. Cook, a qualified expert, evaluated the facts of the case stating:

(a) in order to prepare his opinion he examined the records of the case and the medical treatment provided by Dr. Sperling to Lorie Doucette,

(b) in his professional judgment the plaintiff, Lorie Doucette, did not receive medical care consistent with the proper standards of medical practice; and

Dr. Barry Sugarman, Mrs. Doucette's treating psychiatrist, in his professional opinion has determined that her "major psychiatric illness is directly and causally related to the negligence of Dr. Sperling in failing to remove the fetus' head during the abortion."

A jury accepting the testimony of these two experts as true, would be warranted in returning a verdict for the plaintiffs.

The standard to which Dr. Sperling, holding himself out as a specialist, must be held as that of the standard of care and skill of the average member of the profession practicing the specialty, taking into account the advances in the profession. Bruse v. Belinkoff, 354 Mass 102, 235 N.E. 2d 793 (1968).

Dr. Cook's opinion of Dr. Sperling's care for Mrs. Doucette in failing to remove the fetus' head during the abortion raises a serious and legitimate issue of negligence for a jury.

The plaintiffs, therefore have offered evidence indicating a duty owed, a breach of that duty and an injury which is the direct result and proximately caused by the breach.

CONCLUSION

The Plaintiff, Lorie Doucette, has presented an offer of proof consisting of her affidavit and medical reports of three experts.

All of these statements, when taken as true, are sufficient to show negligence on the part of Dr. Sperling in failing to complete the abortion causing Mrs. Doucette severe psychiatric damage, Sugino v. Harvard Community Health Plan, 380 Mass 464 (1980).

Therefore, the plaintiffs respectfully submit that there is a legitimate question of liability presented and that the plaintiffs should be allowed to proceed without the imposition of a statutory bond.

Respectfully submitted by
their attorney,



Timothy J. McCarthy
McCarthy & Magliozzi
133 Charles Street
Boston, Massachusetts 02114
(617) 367-2011

Dated: 6/20/89

Affidavit
of
Lorie K. Doucette

I, Lorie K. Doucette, of 23 1/2 Pleasant Street, Malden, do make the following statements of fact under oath and I state that they are true to the best of my knowledge and belief.

1. I am twenty three (23) years old and I am married to Michael Doucette and we have a five year old son.
2. In January of 1988, I became pregnant for the second time.
3. My first pregnancy was very difficult and my son was delivered by cesarian section.
4. Early in the second pregnancy, I started experiencing sharp pains in my uterus, headaches, blurred vision and an elevated blood pressure.
5. Dr. DiMasi was my obstetrician and through a procedure of ultra sound he discovered a small hemorage in my uterus which was causing the sharp pain.
6. The pain became so intense that I became confined to bed.
7. Both my husband and myself made the decision to terminate my pregnancy because of my previous pregnancy and my current medical problems.
8. After investigating a number of different clinics for the purpose of terminating the pregnancy, I selected Dr. Arnold Sperling because he specialized in Obstetrics and Gynecology and he had a great deal of experience in terminating pregnancies.
9. On March 29, 1988 I went to Dr. Sperling at his offices at 58 Day Street, Somerville, Massachusetts at which time he inserted a seaweed like substance into my uterus to prepare it for the abortion by dialation and evacuation.
10. I was in my sixteenth week of gestation.
11. The following day, March 30, 1988, I returned with my husband to Dr. Sperling's office and I was led into a room which was filthy.
12. It contained a discarded box that contained a hose full of blood and bloody paper towels.
13. I was placed on a table and given general anesthesia and the abortion was performed.
14. I went home that night and I experienced severe cramping.
15. After sleeping for a short time, I woke up screaming. I got out of bed and

discharged a great deal of blood.

16. On March 31, 1988, I was still experiencing cramping and some bleeding. I began to have chills and then run a fever of 104.2
17. I was thrashing about kicking, screaming and biting my pillow.
18. I felt something hard in my uterus moving forwards being discharged. This caused me extremely sharp pain.
19. I left my bed to go to the bathroom. I felt another extremely long, sharp pain and I discharged something on to the floor.
20. I screamed and I felt numb. The object which I had discharged was hard and it was covered with blood.
21. I picked up the object. It was heavy and when I turned it over I saw that it was my baby's head.
22. I saw its eyes, nose, ears, and its mouth was wide open.
23. I immediately went into shock. I was hysterical and I was crying uncontrollably for many months thereafter.
24. I became completely withdrawn, being unable to care for myself, my child or my husband.
25. I had and continue to have reoccurring nightmares whenever I do sleep, of the baby all in parts talking to me.
26. I have had thoughts of killing myself because of this horrifying experience.

Sworn to under the pains and penalties of perjury

6-20-89

Lorie Doucette
Lorie Doucette

MALDEN HOSPITAL
DEPARTMENT OF RADIOLOGY

NAME: DOUCETTE, LORIE
FILM NUMBER: 130280
PHYSICIAN: DIMASI
DATE OF BIRTH: 10-31-65
MEDICAL RECORD #: NONE
LOCATION: OP PR

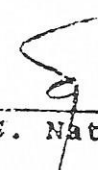
CLINICAL INFORMATION: HX: ? INCOMPLETE ABORTION BLEEDING.

DATE: April 2, 1988
READ: April 2, 1988
TRANSCRIBED: April 2, 1988

EXAM: SONOGRAPHY OF THE PELVIS: 76805.

REPORT: The uterus is enlarged and measures 10.6 X 6.1 X 10.5 cms. Increased echogenicity is noted in the region of the endometrial canal without significant fluid within the endometrial cavity. The echogenicity extends from the fundus to the cervical canal. The appearance may indicate retained products of conception. The ovaries reveal small cysts. No free fluid is noted in the cul de sac.

IMPRESSION: ENLARGED UTERUS WITH POSSIBLE RETAINED PRODUCTS OF CONCEPTION.


Shashikant S. Natu, M. D.
AD

PHYSICIAN

PATHOLOGY REPORT OF SURGICAL SPECIMEN

Path. No.
S-88-1504
 Unit Record No.
105800
 Patient Billing No.
1829654
 ER. No.

Note:

NAME Doucette, Lorie				SURGEON Dr. DiMasi	
SERVICE SDC	DATE 4/8/88	AGE 22	SEX F	ATT. PHYS.	
CLINICAL (PRE-OP.) DX. Post-abortion bleeding			ORGAN OR TISSUE SUBMITTED Uterine curettings		
POST-OP DX. Same					
OPERATION Suction D & C					

Multiple, irregular, pinkish-tan and hemorrhagic soft tissue fragments, aggregating 1.5 cm.

RYS (MS-in toto)

DIAGNOSIS:

Endometrial tissue fragments showing a mixture of menstrual, secretory and proliferative endometrium together with hemorrhagic portions of endometrium and myometrium showing dilated congested and thrombosed vessels consistent with subinvolution of placental site. No chorionic villi seen

**BENIGN
RYS**

GROSS	
BLOCK	
X-FILE	
SLIDES	8
SNOP:	
84-0002	

R. T. STRICKLAND, M.D., 4/11/88