

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

MARY ANN KITA,

Plaintiff,

vs.

2017-001330-NH

No. 17- -NH
Hon.

JAMES M. BIERNAT, JR.

ST. JOHN MACOMB-OAKLAND HOSPITAL,
KATHERINE L. BOYD, M.D., P.C., ST. JOHN
PROVIDENCE, ASCENSION HEALTH, MAGDY
HANNA, M.D., P.C., KATHERINE BOYD, M.D., and
MAGDY HANNA, M.D.,
Jointly & Severally,

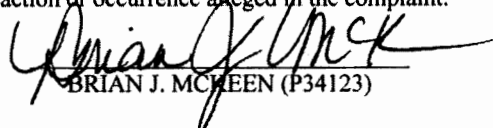
Defendants.

BRIAN J. McKEEN (P34123)
DAVID T. TIRELLA (P79456)
McKEEN & ASSOCIATES, P.C.
Attorney for Plaintiff
645 Griswold St., Suite 4200
Detroit, MI 48226
(313) 961-4400

FILED
2017 APR 10 A 10 5
HON. CLARENCE L. HAMILTON

PLAINTIFF'S COMPLAINT WITH AOM AND DEMAND FOR JURY TRIAL

There is no other civil action pending, or previously filed and dismissed, transferred, or otherwise disposed of arising out of the transaction or occurrence alleged in the complaint.


BRIAN J. McKEEN (P34123)

NOW COMES Plaintiff, Mary Ann Kita, by and through her attorneys, McKeen & Associates, P.C., and for her Complaint and Demand for Jury Trial hereby states the following:

1. The amount in controversy exceeds Twenty-Five Thousand (\$25,000.00) Dollars, excluding costs, interest and attorney fees and is otherwise within the jurisdiction of this court.
2. The cause of action arose in the County of Macomb, State of Michigan.

McKeen & Associates, P.C. • 645 Griswold Street, Suite 4200 • Detroit, MI 48226 • (313) 961-4400

3. That Plaintiff Mary Ann Kita was at all times relevant a resident of the County of Oakland, State of Michigan.

4. Defendant St. John Macomb-Oakland Hospital was at all times relevant hereto a health institution conducting business in the County of Macomb, State of Michigan.

5. Defendant Katherine L. Boyd, M.D., P.C. was at all times relevant hereto a health institution conducting business in the County of Macomb, State of Michigan.

6. Defendant St. John Providence was at all times relevant hereto a health institution conducting business in the County of Macomb, State of Michigan.

7. Defendant Ascension Health was at all times relevant hereto a health institution conducting business in the County of Macomb, State of Michigan.

8. Defendant Magdy Hanna, M.D., P.C. was at all times relevant hereto a health institution conducting business in the County of Macomb, State of Michigan.

9. Defendant Katherine Boyd, MD was at all times relevant hereto a licensed and practicing physician, specializing in Obstetrics & Gynecology, conducting business in the County of Macomb, State of Michigan.

10. Defendant Magdy Hanna, MD was at all times relevant hereto a licensed and practicing physician, specializing in Obstetrics & Gynecology, conducting business in the County of Macomb, State of Michigan.

11. Ms. Kita suffered from large fibroids, and uterine bleeding.

12. She presented to Dr. Katherine Boyd for evaluation, who negligently advised her that she should undergo a robotic or vaginal hysterectomy to rid herself of the inconvenience of the sporadic bleeding.

13. Furthermore, Dr. Boyd improperly recommended performing the hysterectomy robotically, which was not an appropriate choice for a patient such as Ms. Kita.

14. Dr. Boyd also did not advise Ms. Kita of the risks of the surgery, nor did she obtain a proper informed consent.

15. On October 9, 2014, Ms. Kita underwent the robotic-assisted laparoscopic vaginal hysterectomy with bilateral salpingo-oophorectomy and myomectomy by Dr. Boyd at St. John Macomb Hospital.

16. Dr. Magdy Hanna assisted.

17. During the procedure, negligent surgical technique was utilized.

18. Additionally, an umbilical hernia containing small bowel and a 500 gram fibroid were identified, as well as other indications to convert the procedure to an open surgery.

19. However, the procedure was continued robotically.

20. Due to the negligent type of surgery, and negligent surgical technique, Dr. Boyd and/or Dr. Hanna severely lacerated Ms. Kita's bladder, and left ureter.

21. They also caused her additional injuries, including, but not limited to, kidney injury, and vaginal muscle injury.

22. A urologist team was called in intraoperatively to attempt to repair Ms. Kita's injuries.

23. The urologists converted the surgery to open, and discovered the left ureter was too injured to salvage.

24. They also identified "two separate major lacerations" of the bladder.

25. They attempted to repair the injuries, but were limited in their ability to do so due to the severe nature of the injuries.

26. Subsequently, Ms. Kita has suffered severe pain, and is completely incontinent.

27. She has required multiple surgeries, and extensive other medical treatment.

28. She suffered numerous complications, including, but not limited to, fistulas, and frequent infections.

29. Ms. Kita has been advised she will need a urostomy.

30. Ms. Kita continues to suffer pain, urinary dripping, and other symptoms.

31. Her quality of life has been greatly and permanently reduced due to the negligence of the aforementioned healthcare providers.

COUNT I: MEDICAL NEGLIGENCE OF KATHERINE BOYD, M.D.

32. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

33. Defendant Katherine Boyd, M.D. was negligent, inter alia, in the following particulars, in that a licensed and practicing physician, board certified and specializing in Obstetrics & Gynecology, when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to timely and properly:

- a. Perform and appreciate a thorough history and physical examination;
- b. Determine the most prudent treatment for a patient such as Mary Ann Kita;
- c. Perform any and all relevant diagnostic studies on a patient such as Mary Ann Kita to ensure a timely and proper diagnosis is made, and the appropriate treatment is rendered for that diagnosis;
- d. Recognize that Ms. Kita is not an appropriate candidate for a robotic hysterectomy and/or a vaginal hysterectomy;
- e. Make a complete disclosure to Mary Ann Kita of all the risks involved in the proposed surgical procedure;
- f. Make a timely and complete disclosure of all risks, alternatives and/or possibilities of adverse outcomes in terms that are comprehensible and understandable, to allow Mary Ann Kita the opportunity to make an informed consent regarding the proposed surgical procedure;
- g. Recommend an open hysterectomy on a patient such as Mary Ann Kita instead of a robotic hysterectomy;
- h. Refrain from performing a robotic laparoscopic hysterectomy with morcellation of the uterus in a postmenopausal patient;

- i. Recognize that a robotic hysterectomy would only increase the risk of injury to the patient and refrain from recommending and/or performing one;
- j. Perform a robotic total laparoscopic hysterectomy in a safe and proper manner to avoid injury to surrounding organs, tissues and/or structures, including, but not limited to, bladder, ureter, kidneys, and vaginal muscles;
- k. Evaluate and revise the surgery as needed;
- l. Be sufficiently familiar and skilled with the technique required to avoid injury to the patient's surrounding organs, tissues and/or structures, including, but not limited to, the patient's bladder, ureter, kidneys, and vaginal muscles;
- m. Ensure proper care is taken to visualize, locate and identify all surrounding and adjacent organs, tissues and/or structures and take proper precautions to avoid causing injury to them, including, but not limited to, the bladder, ureter, kidneys, and vaginal muscles;
- n. Inspect any and all surrounding and adjacent tissues, organs, and/or other structures to identify any damage or injury that may have occurred;
- o. Use surgical equipment and other surgical items in a safe and proper manner;
- p. Refrain from causing the patient injury to her bladder, ureter, kidneys, and vaginal muscles and/or other surgical injuries;
- q. Supervise any and all residents, nurses, and other medical care providers;
- r. Consult with an appropriate specialist before, during, and/or after the surgery;

- s. Identify injuries to the bladder, ureter, kidneys, and vaginal muscles in a patient such as Mary Ann Kita during the surgery and ensure they are treated in a timely and proper manner;
- t. Communicate and coordinate with the patient's other healthcare providers to ensure she receives the best possible care and any and all abnormal symptoms are timely and properly worked-up;
- u. Transfer the patient to a medical facility equipped to handle a patient with complications such as those experienced by Mary Ann Kita;
- v. Any and all acts of negligence as identified through additional discovery.

34. Defendant Katherine Boyd, M.D. did none of these things, and such acts or omissions constitute professional negligence for which Defendant Katherine Boyd, M.D. is directly liable to Plaintiff.

35. At all times relevant hereto, Defendant Katherine Boyd, M.D. was an employee, agent, servant, or ostensible agent of Defendants St. John Macomb-Oakland Hospital, Katherine L. Boyd, M.D., P.C., St. John Providence, Ascension Health, and Magdy Hanna, M.D., P.C.; therefore, Defendants St. John Macomb-Oakland Hospital, Katherine L. Boyd, M.D., P.C., St. John Providence, Ascension Health, and Magdy Hanna, M.D., P.C., are vicariously liable for the negligence of Defendant Katherine Boyd, M.D. pursuant to the Doctrine of Respondeat Superior and ostensible agency.

36. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, the above-referenced medical care providers failed to timely and properly treat Ms. Kita for uterine bleeding and fibroids by negligently suggesting and performing a robotic hysterectomy instead of more prudent treatment as indicated by her condition. Appropriate preoperative diagnostic studies were not performed to adequately assess her condition and determine her candidacy for the various treatment options. They failed to offer Ms. Kita more conservative or less invasive treatment. Instead, they chose to perform a hysterectomy using a robotic method which further increased the risk of injury to Ms. Kita. They

should have recommended an open procedure. Furthermore, Ms. Kita was not advised of the risks of the procedure in a comprehensible manner which negated her ability to provide informed consent. Then, during the surgery, the above-referenced healthcare providers failed to use proper surgical technique or convert the procedure to open as necessary. Due to the negligence of the aforementioned healthcare providers, Ms. Kita's bladder was severely lacerated, her left ureter was destroyed, and her kidneys and vaginal muscles were also injured.

37. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under Michigan's Statutory Law, and Common Law, whether known now or whether becoming known during the pendency of this case.

WHEREFORE, Plaintiff hereby requests an award of damages against the Defendants herein, jointly and severally, in whatever amount above Twenty-Five Thousand [\$25,000.00] dollars that Plaintiff is found to be entitled to, together with costs, interest and attorneys fees, as well as all other damages allowed under Michigan Law.

COUNT II: MEDICAL NEGLIGENCE OF MAGDY HANNA, M.D.

38. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

39. Defendant Magdy Hanna, M.D. was negligent, inter alia, in the following particulars, in that a licensed and practicing physician, board certified and specializing in Obstetrics & Gynecology, when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to timely and properly:

- a. Perform and appreciate a thorough history and physical examination;
- b. Determine the most prudent treatment for a patient such as Mary Ann Kita;
- c. Perform any and all relevant diagnostic studies on a patient such as Mary Ann Kita to ensure a timely and proper diagnosis is made, and the appropriate treatment is rendered for that diagnosis;

- d. Recognize that Ms. Kita is not an appropriate candidate for a robotic hysterectomy and/or a vaginal hysterectomy;
- e. Make a complete disclosure to Mary Ann Kita of all the risks involved in the proposed surgical procedure;
- f. Make a timely and complete disclosure of all risks, alternatives and/or possibilities of adverse outcomes in terms that are comprehensible and understandable, to allow Mary Ann Kita the opportunity to make an informed consent regarding the proposed surgical procedure;
- g. Recommend an open hysterectomy on a patient such as Mary Ann Kita instead of a robotic hysterectomy;
- h. Refrain from performing a robotic laparoscopic hysterectomy with morcellation of the uterus in a postmenopausal patient;
- i. Recognize that a robotic hysterectomy would only increase the risk of injury to the patient and refrain from recommending and/or performing one;
- j. Evaluate and revise the surgery as needed;
- k. Be sufficiently familiar and skilled with the technique required to avoid injury to the patient's surrounding organs, tissues and/or structures, including, but not limited to, the patient's bladder, ureter, kidneys, and vaginal muscles;
- l. Ensure proper care is taken to visualize, locate and identify all surrounding and adjacent organs, tissues and/or structures and take proper precautions to avoid causing injury to them, including, but not limited to, the bladder, ureter, kidneys, and vaginal muscles;
- m. Inspect any and all surrounding and adjacent tissues, organs, and/or other structures to identify any damage or injury that may have occurred;

- n. Use surgical equipment and other surgical items in a safe and proper manner;
- o. Refrain from causing the patient injury to her bladder, ureter, kidneys, and vaginal muscles and/or other surgical injuries;
- p. Supervise any and all residents, nurses, and other medical care providers;
- q. Consult with an appropriate specialist before, during, and/or after the surgery;
- r. Identify injuries to the bladder, ureter, kidneys, and vaginal muscles in a patient such as Mary Ann Kita during the surgery and ensure they are treated in a timely and proper manner;
- s. Communicate and coordinate with the patient's other healthcare providers to ensure she receives the best possible care and any and all abnormal symptoms are timely and properly worked-up;
- t. Transfer the patient to a medical facility equipped to handle a patient with complications such as those experienced by Mary Ann Kita;
- u. Any and all acts of negligence as identified through additional discovery.

40. Defendant Magdy Hanna, M.D. did none of these things, and such acts or omissions constitute professional negligence for which Defendant Magdy Hanna, M.D. is directly liable to Plaintiff.

41. At all times relevant hereto, Defendant Magdy Hanna, M.D. was an employee, agent, servant, or ostensible agent of Defendants St. John Macomb-Oakland Hospital, Katherine L. Boyd, M.D., P.C., St. John Providence, Ascension Health, and Magdy Hanna, M.D., P.C.; therefore, Defendants St. John Macomb-Oakland Hospital, Katherine L. Boyd, M.D., P.C., St. John Providence, Ascension Health, and Magdy Hanna, M.D., P.C., are vicariously liable for the negligence of Defendant Magdy Hanna, M.D. pursuant to the Doctrine of Respondeat Superior and ostensible agency.

42. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, the above-referenced medical care providers failed to timely and properly treat Ms. Kita for uterine bleeding and fibroids by negligently suggesting and performing a robotic hysterectomy instead of more prudent treatment as indicated by her condition. Appropriate preoperative diagnostic studies were not performed to adequately assess her condition and determine her candidacy for the various treatment options. They failed to offer Ms. Kita more conservative or less invasive treatment. Instead, they chose to perform a hysterectomy using a robotic method which further increased the risk of injury to Ms. Kita. They should have recommended an open procedure. Furthermore, Ms. Kita was not advised of the risks of the procedure in a comprehensible manner which negated her ability to provide informed consent. Then, during the surgery, the above-referenced healthcare providers failed to use proper surgical technique or convert the procedure to open as necessary. Due to the negligence of the aforementioned healthcare providers, Ms. Kita's bladder was severely lacerated, her left ureter was destroyed, and her kidneys and vaginal muscles were also injured.

43. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under Michigan's Statutory Law, and Common Law, whether known now or whether becoming known during the pendency of this case.

WHEREFORE, Plaintiff hereby requests an award of damages against the Defendants herein, jointly and severally, in whatever amount above Twenty-Five Thousand [\$25,000.00] dollars that Plaintiff is found to be entitled to, together with costs, interest and attorneys fees, as well as all other damages allowed under Michigan Law.

COUNT III: MEDICAL NEGLIGENCE OF ST. JOHN MACOMB-OAKLAND HOSPITAL

44. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

45. Defendant St. John Macomb-Oakland Hospital was negligent, inter alia, in the following particulars, in that a licensed and accredited health care facility, through its agents,

actual, and/or ostensible, servants, and/or employees, including, but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;
- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills based on patient presentation;
- d. Any and all acts of negligence as identified through additional discovery.

46. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, the above-referenced medical care providers failed to timely and properly treat Ms. Kita for uterine bleeding and fibroids by negligently suggesting and performing a robotic hysterectomy instead of more prudent treatment as indicated by her condition. Appropriate preoperative diagnostic studies were not performed to adequately assess her condition and determine her candidacy for the various treatment options. They failed to offer Ms. Kita more conservative or less invasive treatment. Instead, they chose to perform a hysterectomy using a robotic method which further increased the risk of injury to Ms. Kita. They should have recommended an open procedure. Furthermore, Ms. Kita was not advised of the risks of the procedure in a comprehensible manner which negated her ability to provide informed consent. Then, during the surgery, the above-referenced healthcare providers failed to use proper surgical technique or convert the procedure to open as necessary. Due to the negligence of the

aforementioned healthcare providers, Ms. Kita's bladder was severely lacerated, her left ureter was destroyed, and her kidneys and vaginal muscles were also injured.

47. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under Michigan's Statutory Law, and Common Law, whether known now or whether becoming known during the pendency of this case.

WHEREFORE, Plaintiff hereby requests an award of damages against the Defendants herein, jointly and severally, in whatever amount above Twenty-Five Thousand [\$25,000.00] dollars that Plaintiff is found to be entitled to, together with costs, interest and attorneys fees, as well as all other damages allowed under Michigan Law.

COUNT IV: MEDICAL NEGLIGENCE OF ST. JOHN PROVIDENCE

48. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

49. Defendant St. John Providence was negligent, inter alia, in the following particulars, in that a licensed and accredited health care facility, through its agents, actual, and/or ostensible, servants, and/or employees, including, but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;
- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills based on patient presentation;

d. Any and all acts of negligence as identified through additional discovery.

50. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, the above-referenced medical care providers failed to timely and properly treat Ms. Kita for uterine bleeding and fibroids by negligently suggesting and performing a robotic hysterectomy instead of more prudent treatment as indicated by her condition. Appropriate preoperative diagnostic studies were not performed to adequately assess her condition and determine her candidacy for the various treatment options. They failed to offer Ms. Kita more conservative or less invasive treatment. Instead, they chose to perform a hysterectomy using a robotic method which further increased the risk of injury to Ms. Kita. They should have recommended an open procedure. Furthermore, Ms. Kita was not advised of the risks of the procedure in a comprehensible manner which negated her ability to provide informed consent. Then, during the surgery, the above-referenced healthcare providers failed to use proper surgical technique or convert the procedure to open as necessary. Due to the negligence of the aforementioned healthcare providers, Ms. Kita's bladder was severely lacerated, her left ureter was destroyed, and her kidneys and vaginal muscles were also injured.

51. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under Michigan's Statutory Law, and Common Law, whether known now or whether becoming known during the pendency of this case.

WHEREFORE, Plaintiff hereby requests an award of damages against the Defendants herein, jointly and severally, in whatever amount above Twenty-Five Thousand [\$25,000.00] dollars that Plaintiff is found to be entitled to, together with costs, interest and attorneys fees, as well as all other damages allowed under Michigan Law.

COUNT V: MEDICAL NEGLIGENCE OF ASCENSION HEALTH

52. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

53. Defendant Ascension Health was negligent, inter alia, in the following particulars, in that a licensed and accredited health care facility, through its agents, actual, and/or ostensible,

servants, and/or employees, including, but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;
- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills based on patient presentation;
- d. Any and all acts of negligence as identified through additional discovery.

54. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, the above-referenced medical care providers failed to timely and properly treat Ms. Kita for uterine bleeding and fibroids by negligently suggesting and performing a robotic hysterectomy instead of more prudent treatment as indicated by her condition. Appropriate preoperative diagnostic studies were not performed to adequately assess her condition and determine her candidacy for the various treatment options. They failed to offer Ms. Kita more conservative or less invasive treatment. Instead, they chose to perform a hysterectomy using a robotic method which further increased the risk of injury to Ms. Kita. They should have recommended an open procedure. Furthermore, Ms. Kita was not advised of the risks of the procedure in a comprehensible manner which negated her ability to provide informed consent. Then, during the surgery, the above-referenced healthcare providers failed to use proper surgical technique or convert the procedure to open as necessary. Due to the negligence of the

aforementioned healthcare providers, Ms. Kita's bladder was severely lacerated, her left ureter was destroyed, and her kidneys and vaginal muscles were also injured.

55. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under Michigan's Statutory Law, and Common Law, whether known now or whether becoming known during the pendency of this case.

WHEREFORE, Plaintiff hereby requests an award of damages against the Defendants herein, jointly and severally, in whatever amount above Twenty-Five Thousand [\$25,000.00] dollars that Plaintiff is found to be entitled to, together with costs, interest and attorneys fees, as well as all other damages allowed under Michigan Law.

COUNT VI: MEDICAL NEGLIGENCE OF KATHERINE L. BOYD, M.D., P.C.

56. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

57. Defendant Katherine L. Boyd, M.D., P.C. was negligent, inter alia, in the following particulars, in that a licensed and accredited health care facility, through its agents, actual, and/or ostensible, servants, and/or employees, including, but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;
- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills based on patient presentation;

d. Any and all acts of negligence as identified through additional discovery.

58. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, the above-referenced medical care providers failed to timely and properly treat Ms. Kita for uterine bleeding and fibroids by negligently suggesting and performing a robotic hysterectomy instead of more prudent treatment as indicated by her condition. Appropriate preoperative diagnostic studies were not performed to adequately assess her condition and determine her candidacy for the various treatment options. They failed to offer Ms. Kita more conservative or less invasive treatment. Instead, they chose to perform a hysterectomy using a robotic method which further increased the risk of injury to Ms. Kita. They should have recommended an open procedure. Furthermore, Ms. Kita was not advised of the risks of the procedure in a comprehensible manner which negated her ability to provide informed consent. Then, during the surgery, the above-referenced healthcare providers failed to use proper surgical technique or convert the procedure to open as necessary. Due to the negligence of the aforementioned healthcare providers, Ms. Kita's bladder was severely lacerated, her left ureter was destroyed, and her kidneys and vaginal muscles were also injured.

59. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under Michigan's Statutory Law, and Common Law, whether known now or whether becoming known during the pendency of this case.

WHEREFORE, Plaintiff hereby requests an award of damages against the Defendants herein, jointly and severally, in whatever amount above Twenty-Five Thousand [\$25,000.00] dollars that Plaintiff is found to be entitled to, together with costs, interest and attorneys fees, as well as all other damages allowed under Michigan Law.

COUNT VII: MEDICAL NEGLIGENCE OF MAGDY HANNA, M.D., P.C.

60. Plaintiff repeats and re-alleges the allegations contained in all prior paragraphs of Plaintiff's Complaint as though fully incorporated herein.

61. Defendant Magdy Hanna, M.D., P.C. was negligent, inter alia, in the following particulars, in that a licensed and accredited health care facility, through its agents, actual, and/or

ostensible, servants, and/or employees, including, but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;
- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills based on patient presentation;
- d. Any and all acts of negligence as identified through additional discovery.

62. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, the above-referenced medical care providers failed to timely and properly treat Ms. Kita for uterine bleeding and fibroids by negligently suggesting and performing a robotic hysterectomy instead of more prudent treatment as indicated by her condition. Appropriate preoperative diagnostic studies were not performed to adequately assess her condition and determine her candidacy for the various treatment options. They failed to offer Ms. Kita more conservative or less invasive treatment. Instead, they chose to perform a hysterectomy using a robotic method which further increased the risk of injury to Ms. Kita. They should have recommended an open procedure. Furthermore, Ms. Kita was not advised of the risks of the procedure in a comprehensible manner which negated her ability to provide informed consent. Then, during the surgery, the above-referenced healthcare providers failed to use proper surgical technique or convert the procedure to open as necessary. Due to the negligence of the

aforementioned healthcare providers, Ms. Kita's bladder was severely lacerated, her left ureter was destroyed, and her kidneys and vaginal muscles were also injured.

63. As a consequence of the Defendants' negligence, Plaintiff further claims all elements of damages permitted under Michigan's Statutory Law, and Common Law, whether known now or whether becoming known during the pendency of this case.

WHEREFORE, Plaintiff hereby requests an award of damages against the Defendants herein, jointly and severally, in whatever amount above Twenty-Five Thousand [\$25,000.00] dollars that Plaintiff is found to be entitled to, together with costs, interest and attorneys fees, as well as all other damages allowed under Michigan Law.

Respectfully Submitted:

McKEEN & ASSOCIATES, P.C.



BRIAN J. McKEEN (P34123)
DAVID TIRELLA (P79456)
Attorneys for Plaintiff
645 Griswold St., Suite 4200
Detroit, MI 48226
(313) 961-4400

DATED: April 7, 2017

Re: Mary Ann Kita

AFFIDAVIT OF MERITORIOUS CLAIM OF STEVEN D. MCCARUS, M.D.

STATE OF FLORIDA)

)ss.

COUNTY OF OSCEOLA)

I, Steven D. McCarus, M.D., by this Affidavit, state that during the relevant time period at issue in this matter, I was a licensed and practicing physician, specializing in Obstetrics & Gynecology, and devoting a majority of my professional time for the preceding year to, the clinical practice of Obstetrics & Gynecology, and I attest to the following:

1. I have read the Notice of Intent to File a Claim in this action.
2. I have reviewed all of the medical records provided to me by Plaintiff's Counsel.
3. Katherine Boyd, M.D., a licensed and practicing physician, specializing in Obstetrics &

Gynecology, and an agent and/or employee of St. John Macomb-Oakland Hospital, Katherine L. Boyd, M.D., P.C., St. John Providence, Ascension Health, and Magdy Hanna, M.D., P.C., when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to timely and properly:

- a. Perform and appreciate a thorough history and physical examination;
- b. Determine the most prudent treatment for a patient such as Mary Ann Kita;
- c. Perform any and all relevant diagnostic studies on a patient such as Mary Ann Kita to ensure a timely and proper diagnosis is made, and the appropriate treatment is rendered for that diagnosis;
- d. Recognize that Ms. Kita is not an appropriate candidate for a robotic hysterectomy and/or a vaginal hysterectomy.

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FLORIDA

- e. Make a complete disclosure to Mary Ann Kita of all the risks involved in the proposed surgical procedure;
- f. Make a timely and complete disclosure of all risks, alternatives and/or possibilities of adverse outcomes in terms that are comprehensible and understandable, to allow Mary Ann Kita the opportunity to make an informed consent regarding the proposed surgical procedure;
- g. Recommend an open hysterectomy on a patient such as Mary Ann Kita instead of a robotic hysterectomy;
- h. Refrain from performing a robotic laparoscopic hysterectomy with morcellation of the uterus in a postmenopausal patient
- i. Recognize that a robotic hysterectomy would only increase the risk of injury to the patient and refrain from recommending and/or performing one;
- j. Evaluate and revise the surgery as needed;
- k. Be sufficiently familiar and skilled with the technique required to avoid injury to the patient's surrounding organs, tissues and/or structures, including, but not limited to, the patient's bladder, ureter, kidneys, and vaginal muscles;
- l. Ensure proper care is taken to visualize, locate and identify all surrounding and adjacent organs, tissues and/or structures and take proper precautions to avoid causing injury to them, including, but not limited to, the bladder, ureter, kidneys, and vaginal muscles.
- m. Inspect any and all surrounding and adjacent tissues, organs, and/or other structures to identify any damage or injury that may have occurred;
- n. Use surgical equipment and other surgical items in a safe and proper manner;
- o. Refrain from causing the patient injury to her bladder, ureter, kidneys, and vaginal muscles and/or other surgical injuries;

- p. Supervise any and all residents, nurses, and other medical care providers;
- q. Consult with an appropriate specialist before, during, and/or after the surgery;
- r. Identify injuries to the bladder, ureter, kidneys, and vaginal muscles in a patient such as Mary Ann Kita during the surgery and ensure they are treated in a timely and proper manner;
- s. Communicate and coordinate with the patient's other healthcare providers to ensure she receives the best possible care and any and all abnormal symptoms are timely and properly worked-up;
- t. Transfer the patient to a medical facility equipped to handle a patient with complications such as those experienced by Mary Ann Kita.

4. Magdy Hanna, M.D., a licensed and practicing physician, specializing in Obstetrics & Gynecology, and an agent and/or employee of St. John Macomb-Oakland Hospital, Katherine L. Boyd, M.D., P.C., St. John Providence, Ascension Health, and Magdy Hanna, M.D., P.C., when presented with a patient exhibiting the history, signs and symptoms such as those demonstrated by Mary Ann Kita, had a duty to timely and properly:

- a. Perform and appreciate a thorough history and physical examination;
- b. Determine the most prudent treatment for a patient such as Mary Ann Kita;
- c. Perform any and all relevant diagnostic studies on a patient such as Mary Ann Kita to ensure a timely and proper diagnosis is made, and the appropriate treatment is rendered for that diagnosis;
- d. Recognize that Ms. Kita is not an appropriate candidate for a robotic hysterectomy and/or a vaginal hysterectomy.
- e. Make a complete disclosure to Mary Ann Kita of all the risks involved in the proposed surgical procedure;

- f. Make a timely and complete disclosure of all risks, alternatives and/or possibilities of adverse outcomes in terms that are comprehensible and understandable, to allow Mary Ann Kita the opportunity to make an informed consent regarding the proposed surgical procedure;
- g. Recommend and perform an open hysterectomy on a patient such as Mary Ann Kita instead of a robotic hysterectomy;
- h. Recognize that a robotic hysterectomy would only increase the risk of injury to the patient and refrain from recommending and/or performing one;
- i. Perform a robotic total laparoscopic hysterectomy in a safe and proper manner to avoid injury to surrounding organs, tissues and/or structures, including, but not limited to, bladder, ureter, kidneys, and vaginal muscles;
- j. Evaluate and revise the surgery as needed;
- k. Be sufficiently familiar and skilled with the technique required to avoid injury to the patient's surrounding organs, tissues and/or structures, including, but not limited to, the patient's bladder, ureter, kidneys, and vaginal muscles;
- l. Ensure proper care is taken to visualize, locate and identify all surrounding and adjacent organs, tissues and/or structures and take proper precautions to avoid causing injury to them, including, but not limited to, the bladder, ureter, kidneys, and vaginal muscles;
- m. Inspect any and all surrounding and adjacent tissues, organs, and/or other structures to identify any damage or injury that may have occurred;
- n. Use surgical equipment and other surgical items in a safe and proper manner;
- o. Refrain from causing the patient injury to her bladder, ureter, kidneys, and vaginal muscles and/or other surgical injuries;
- p. Supervise any and all residents, nurses, and other medical care providers;

- q. Consult with an appropriate specialist before, during, and/or after the surgery;
- r. Identify injuries to the bladder, ureter, kidneys, and vaginal muscles in a patient such as Mary Ann Kita during the surgery and ensure they are treated in a timely and proper manner;
- s. Communicate and coordinate with the patient's other healthcare providers to ensure she receives the best possible care and any and all abnormal symptoms are timely and properly worked-up;
- t. Transfer the patient to a medical facility equipped to handle a patient with complications such as those experienced by Mary Ann Kita.

5. St. John Maccomb-Oakland Hospital, a duly accredited and licensed health care institution, by and through their agents, actual and/or ostensible, servants and/or employees, including but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., which holds itself out to the public as being competent of rendering medical services, when confronted with a patient with the signs and symptoms such as those demonstrated by Mary Ann Kita, owed a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;

6. St. John Providence, a duly accredited and licensed health care institution, by and through their agents, actual and/or ostensible, servants and/or employees, including but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., which holds itself out to the public as being competent of rendering

medical services, when confronted with a patient with the signs and symptoms such as those demonstrated by Mary Ann Kita, owed a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;
- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills.

7. Ascension Health, a duly accredited and licensed health care institution, by and through their agents, actual and/or ostensible, servants and/or employees, including but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., which holds itself out to the public as being competent of rendering medical services, when confronted with a patient with the signs and symptoms such as those demonstrated by Mary Ann Kita, owed a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;

- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills.

8. Katherine L. Boyd, M.D., P.C., a duly accredited and licensed health care institution, by and through their agents, actual and/or ostensible, servants and/or employees, including but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., which holds itself out to the public as being competent of rendering medical services, when confronted with a patient with the signs and symptoms such as those demonstrated by Mary Ann Kita, owed a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient;
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;
- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills.

9. Magdy Hanna, M.D., P.C., a duly accredited and licensed health care institution, by and through their agents, actual and/or ostensible, servants and/or employees, including but not limited to, Katherine Boyd, M.D., and Magdy Hanna, M.D., which holds itself out to the public as being competent of rendering medical services, when confronted with a patient with the signs and symptoms such as those demonstrated by Mary Ann Kita, owed a duty to:

- a. Select, employ, train and monitor its agents, actual and/or ostensible, servants, employees and/or its staff of physicians, nurses and residents, to ensure they were competent to perform adequate medical care for a patient.
- b. Ensure that appropriate policies and procedures are adopted and followed including, but not limited to, the timely and proper treatment of a patient suffering from fibroids and uterine bleeding, and the timely and proper performance of a hysterectomy;
- c. Refrain from performing a robotic hysterectomy without possessing the proper qualifications, experience, and skills.

10. It is my opinion, based upon the available information, as well as my training, knowledge, education and experience in Obstetrics & Gynecology, that there was a failure to do these acts listed above, and such omissions constitute violations of the applicable standard of care.

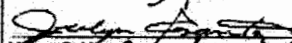
11. In order to have conformed to the standard of care, the above-named should have done those things listed in paragraphs 3 through 9, and the respective subsections above.

12. As a direct and proximate result of the above-listed breaches of the applicable standard of practice or care, the above-referenced medical care providers failed to timely and properly treat Ms. Kita for uterine bleeding and fibroids by negligently suggesting and performing a robotic hysterectomy instead of more prudent treatment as indicated by her condition. Appropriate preoperative diagnostic studies were not performed to adequately assess her condition and determine her candidacy for the various treatment options. They failed to offer Ms. Kita more conservative or less invasive treatment. Instead, they chose to perform a hysterectomy using a robotic method which further increased the risk of injury to Ms. Kita. They should have recommended an open or vaginal hysterectomy. Furthermore, Ms. Kita was not advised of the risks of the procedure in a comprehensible manner which negated her ability to provide informed consent. Then, during the surgery, the above-referenced healthcare providers failed to use proper surgical technique or convert the procedure to open as necessary. Due to the negligence of the aforementioned healthcare

providers, Ms. Kita's bladder was severely lacerated, her left ureter was destroyed, and her kidneys and vaginal muscles were also injured.

13. This opinion is based upon a review of the information to date and may or may not change upon review of additional materials.


Steven D. McCarus, M.D.

Subscribed and sworn to before me on
this 3rd day of April, 2017
 [Name]
Notary Public Osteola [County]
My Commission Expires: October 19, 2018

