



Defendant, RICHARD R. CUNNINGHAM, M.D., has been served and answered herein.

Plaintiffs allege that the damages sustained exceed the minimum jurisdictional limits of this Court.

## II. VENUE

Venue of this action is proper in Harris County, Texas, because the events and injuries which are the basis of this lawsuit took place in Harris County, Texas, and the Defendants reside and conduct business in Harris County.

## III. REQUIRED NOTICE

Pursuant to Section 4.01 of the Texas Medical Malpractice Act, Plaintiffs gave Defendants notice of the matters complained of herein. All conditions precedent have been performed or have occurred prior to the filing of this lawsuit. However, a time for making disposition of said claim has expired and the Defendants have failed and refuse to dispose of this claim, forcing the Plaintiffs to file this lawsuit in order to secure legal redress of wrongs alleged.

## IV. FACTS AND ALLEGATIONS

It has become necessary to file this lawsuit due to the various acts and omissions of negligence, generally, by Defendants, Douglas A. Karpen M.D., hereinafter "Karpen", Richard Cunningham, M.D., hereinafter "Cunningham" and Women's Pavilion, Inc., hereinafter "Pavilion", in their care and treatment of Nicolette Cormier, a minor who was pregnant, while performing or attempting to perform a third trimester abortion upon her. These acts and omissions were a proximate cause of injuries sustained by Nicolette Cormier, Ashley Cormier, and Peggy Cormier as described below.

**V.**

On or about August 7, 1991, Nicolette Jean Cormier, hereinafter "Nicolette", phoned Pavilion, from her home in Louisiana, to get counseling for her pregnancy. Nicolette was 16 years of age at the time. The agents and employees of Pavilion encouraged the minor Nicolette to proceed with a late trimester abortion. Nicolette was advised that this procedure would cost \$895.00, but the price would increase weekly as the pregnancy progressed.

On or about August 17, 1991, Nicolette called Pavilion to schedule an appointment. At that time she was told that the price for the abortion would be \$1,050.00.

**VI.**

On or about August 21, 1991, Nicolette drove to Houston alone for the abortion. She did not notify her parents or obtain any parental consent for the abortion, nor did the counselor at Pavilion request any such parental consent. Immediately thereafter, Nicolette was told the cost of the procedure had increased to \$1,800.00. She was told also that she had to pay in full before the procedure would be commenced. Nicolette left Pavilion in order to try and pawn her jewelry to cover the additional cost of the abortion. She was unable to raise the necessary funds and began to drive back to Louisiana. However, as a last effort, she borrowed the money and returned to the Pavilion the next day, August 22, 1991.

**VII.**

After paying Pavilion \$1800.00 for the abortion, Nicolette was told one laminaria implant would be inserted during the first stage of the D & E procedure. However without her

consent or knowledge Dr. Karpen's nurse, with Dr. Karpen's expressed authorization, inserted six (6) laminaria into her cervix to initiate dilation and begin the abortion procedure. After this procedure, Nicolette was told to return later that day for the second stage of the procedure.

#### VIII.

Shortly thereafter Nicolette returned to her aunt's house in Houston and learned that her mother, Peggy Cormier (hereinafter "Peggy"), had come to Houston from Louisiana looking for Nicolette. Later that day, Nicolette Cormier began feeling the first stages of the laminaria procedure. The baby was moving around and Nicolette became scared. The counseling at the clinic did not prepare her for this, nor did they explain the procedure, the developmental stage of the baby, the effect on her and her baby and/or the risks involved in the abortion procedure.

#### IX.

The minor Nicolette Cormier told Peggy that she had changed her mind, and didn't want to proceed with the abortion. Immediately thereafter, both mother and daughter returned to the Pavilion together to meet and discuss with Dr. Karpen the removal of the laminaria and reversal of the abortion procedure.

#### X.

Dr. Karpen became defensive and hostile and failed to answer basic questions including, but not limited to, the following:

- a. How would the fetus, Nicolette's unborn child, be disposed of;
- b. What was the present stage of development of the baby;
- c. What would happen during the D & E procedure and what was it about;
- d. What was a D & E procedure; and

- e. What kind of complications could Nicolette expect, and what kind of emergency arrangements could be made to care for her.

**XI.**

In violation of his patient's request, Dr. Karpen encouraged Nicolette to have the abortion by telling her not to let her mother influence her decision. He also made other representations to her and her mother, including, that no one reversed or could reverse the procedure this far along, and that removal of the laminaria could and would pose a serious health threat to Nicolette.

**XII.**

Based on these representations, Nicolette and her Mother, Peggy, agreed reluctantly to proceed with stage two. At this time, Dr. Karpen removed the previous laminaria and inserted sixteen (16) or eighteen (18) more.

**XIII.**

Later while continuing to progress through the laminaria procedure, Nicolette became very upset and again told her mother she didn't want to continue the procedure. At this time they put in an emergency call to the Pavilion and Dr. Karpen. However, it was not until sometime between 11:30 p.m. that same day, and midnight, that Dr. Karpen returned the call. Dr. Karpen first talked to Nicolette and asked her who was influencing her. He told her he would not meet her to remove the laminaria.

#### **XIV.**

Peggy saw her daughter become hysterical and took the phone away and spoke with Dr. Karpen. Dr. Karpen again made statements to Peggy that she was jeopardizing Nicolette's life, because she could bleed to death if she were to stop the procedure at this time. He said that a reversal at this stage had NEVER been done, and that no hospital would take Nicolette because of the laminaria implants. Peggy asked for a referral to another doctor and hospital but Dr. Karpen refused to give her a referral to reverse the procedure. Dr. Karpen also told Peggy they had taken up too much of his time.

#### **XV.**

However, Dr. Karpen told Peggy to meet him at Pavilion at 8:30 a.m. for an evaluation. Dr. Karpen said that at that time they could sign a release in the morning and then return to Louisiana and see an Obstetrician. Dr. Karpen did not meet them at Pavilion, but instead sent Dr. Cunningham. Dr. Cunningham told Peggy and Nicolette that he and Dr. Karpen had discussed the case and that they were against removing the laminaria and releasing her.

#### **XVI.**

Dr. Cunningham talked to Peggy and Nicolette for approximately thirty minutes and used high pressure scare tactics to get them to continue with the abortion. When they continued to refuse, he told them to look in the yellow pages for an anti-abortion group, forced them to sign a release, and told them they could leave the clinic.

#### **XVII.**

Immediately thereafter, Peggy and Nicolette sought and received emergency medical care at St. Joseph's Hospital in Houston, Texas. On August 23, 1991 Nicolette gave birth to a baby

girl weighing 1 pound, 13 ounces. She was named Ashley Renee Cormier (hereinafter "Ashley"). However, despite intensive life saving measures, Ashley died on February 17, 1992.

**XVIII.**

Plaintiff's would show that the Defendant, Pavilion, held itself out to the Plaintiffs, and the public in general, that it was a competently staffed and operated health care provider.

**XIX.**

The Defendants, Karpen and Cunningham, at all material times held themselves out to the Plaintiffs and to the public in general as being competent and qualified to provide proper and competent medical care.

**XX.**

At all material times hereto the physician/patient relationship existed between Plaintiffs and Defendants, Dr. Douglas A. Karpen and Dr. Richard Cunningham; and the hospital/patient relationship existed between Plaintiff's and Defendant Women's Pavilion, Inc.

**XXI.**

**CAUSES OF ACTION**

**1. Negligence per se**

Plaintiffs adopt and reallege paragraphs V through XX, above, and would show that Defendants, Pavilion and Dr. Karpen, were negligent in violating the laws of the State of Texas by intentionally and knowingly commencing an abortion procedure on Nicolette, who was pregnant with a viable unborn child at or beyond twenty-six (26) gestational weeks, in violation of the Texas Medical Practice Act, as amended Vernon's Tex. Civ. Stats Ann. art. 4495b, Sec. 4.011. Nicolette was in her third trimester of her pregnancy and Ashley Cormier was a viable fetus as that time. The abortion was not necessary to prevent the death of Nicolette, nor was

it necessary to prevent a substantial risk of serious impairment to the physical or mental health of Nicolette. The viable fetus did not have a severe and irreversible abnormality, as identified through reliable diagnostic procedures. Dr. Cunningham was negligent in violating said §4.011 when he pressured Nicolette and Peggy to continue with the abortion, and when he failed or refused to reverse the procedure by removing the laminaria from Nicolette. Such actions or omissions were negligent per se and a proximate cause of the Plaintiffs' injuries and damages sustained.

**XXII.**

**2. Negligence per se**

Further the Plaintiffs adopt and reallege paragraphs V through XX, above, and would show that the Defendants, Pavilion and Karpen, failed to receive lawful consent for commencement of the abortion, as required by §35.01 of the Texas Family Code. Nicolette was unable legally to consent to the abortion procedure per §35.01 (a)(4) of such code. Such actions or omissions were negligent per se and a proximate cause of Plaintiffs' injuries and damages sustained.

**XXIII.**

**3. Civil Conspiracy**

Further, Plaintiffs adopt paragraphs V through XX above, and would show that the Defendants, Pavilion and Karpen conspired to perform an unlawful third trimester abortion and without lawful consent. In addition, Cunningham joined such conspiracy, and furthered its objectives of the performance of an unlawful abortion upon Nicolette. Such actions or omissions were unlawful and were proximate cause of Plaintiffs' injuries and damages sustained.



**XXIV.**  
**4. Assault and Battery**

Further, Plaintiffs adopt and reallege paragraph V through XX and paragraph XXIII above, and would show that Pavilion and Karpen committed assault and battery upon Nicolette, since Karpen commenced an abortion procedure upon her without lawful consent under §35.01 of the Texas Family Code. Such actions or omissions were a proximate cause of the Plaintiff's injuries and damages.

Further, Plaintiffs would show that Pavilion and Karpen committed assault and battery upon Ashley since Karpen commenced an abortion procedure upon Nicolette without lawful consent under §35.01 of the Texas Family Code. Such actions or omissions were a proximate cause of the Plaintiff's injuries and damages.

**XXV.**  
**5. Negligence-all Defendants**

Further, Plaintiffs adopt and reallege paragraphs V through XX above, and would show that the Defendants, Karpen, Cunningham, and Pavilion were negligent generally, and in one or more of the following particulars:

1. Attempting to perform and continuing to perform an illegal third trimester abortion;
2. Failing to inform and advise Nicolette of the increased risks and complications from such an abortion;
3. Failing to obtain parental or other lawful consent prior to commencing the abortion upon Nicolette;
4. Negligently stating the lack of development of Ashley;
5. By inserting an additional sixteen (16), or eighteen (18) laminaria into Nicolette;

6. Making false and misleading statements to Nicolette about the development of Ashley, in order to gain Nicolette's consent by fear to perform the abortion;
7. By inserting an additional sixteen (16) or eighteen (18) laminaria in Nicolette with the intent of killing Ashley and with a conscious disregard for Ashley's life;
8. By causing Nicolette to go into premature labor, causing serious bodily injury to Ashley;
9. By failing to complete the total care of Nicolette and Ashley;
10. By failing to provide continuity of care to Nicolette as long as her case required attention; and
11. In abandonment of Nicolette and Ashley.

Each such act or omission, singularly or in combination with each other, constitutes negligence which proximately caused the injuries and damages Plaintiffs sustained.

**XXVI.**

**6. Negligence-- Karpen and Cunningham**

Further, Plaintiffs adopt herein paragraphs V through XX, above, and would show that Karpen and Cunningham acted negligently and in a grossly negligent manner in one or more of the following;

1. failing to remove the original laminaria when Nicolette so requested;
2. knowingly and intentionally making false and misleading statements with a conscious disregard for the injury these statements would cause Ashley, through Nicolette and Peggy's reliance on them;
3. failing to inform Nicolette fully about her pregnancy and the procedure, preventing Nicolette from making an informed decision about having an abortion;
4. by causing Nicolette to remain in labor overnight, with the intent to ensure the labor would progress beyond the time it could be stopped, thus aggravating the injuries sustained by Ashley;
5. in failing to refer Nicolette to a hospital that could have reversed the procedure early on and could have kept the pregnancy intact, with a knowing and reckless

disregard of Nicolette's choice to save Ashley's life;

6. failing to provide a minimum standard of care, and in abandoning their patients in such a way as to protect the life of Ashley, once Nicolette made it clear that she wanted the abortion procedure stopped;
7. by delaying the reversal of the abortion procedure with a conscious disregard for the effect this would have on Ashley and her chances for survival; and
8. in failing to provide total patient care for Nicolette and Ashley.

Each such act or omission, singularly or in combination with each other, constitutes negligence which proximately caused the injuries and damages Plaintiffs sustained.

**XXVII.**

**7. Intentional Infliction of Emotional Distress**

Further, Plaintiffs adopt and reallege paragraphs V through XX, above, and would show that the Defendants intentionally inflicted emotional distress upon Nicolette and Peggy by making false and misleading statements as identified above, in order to inflict fear, emotional distress, pain and injury upon Nicolette and Peggy, in order to coerce them into allowing the abortion to continue. Such actions were a proximate cause of Plaintiff's injuries.

**XXVIII.**

**8. Fraud**

Further, the Plaintiffs adopt paragraphs V through XX above, and would show that Defendants are guilty of fraud by making knowingly false representations, on which Defendants knew Plaintiffs would rely, and on which Plaintiffs did rely, with the intent to cause serious harm to Peggy, Nicolette, and Ashley. Such actions were a proximate cause of Plaintiffs' injuries and damages sustained.

**XXIX.**  
**10. Wrongful Death**

Further, Plaintiffs adopt and reallege paragraphs V through XX, above, and would show that Defendants caused the wrongful death of Ashley. This cause of action is brought pursuant to Tex. Rev. Civ. Stat. Ann. §71.001 et seq., against Defendants jointly and severally, by Nicolette as the heir of Ashley for the prenatal injuries sustained as specified above, and for all damages sustained and recoverable under such statutory law.

**XXX.**  
**11. Loss of Companionship of Ashley**

Further, Plaintiffs adopt and reallege paragraphs V through XX above, and would show that the Defendants' conduct complained of above resulted in damages to Nicolette and Peggy for the loss of companionship and society of Ashley, mental anguish, and funeral expenses caused by the death of Ashley. Nicolette and Peggy hereby sue the Defendants for such damages. The Defendants' conduct complained of was a proximate cause of Plaintiffs' injuries and damages sustained.

**XXXI.**  
**GROSS NEGLIGENCE**

The wrongful acts and omissions of Defendants, as specified in paragraph V through XXX above, were undertaken with an evil intent to harm Ashley. Such acts and omissions also harmed and injured Nicolette and Peggy. Such acts and omissions were aggravated by that kind of willfulness, wantonness, and malice for which the law allows the imposition of exemplary damages. Defendants' conduct was intentional, willful, wanton, and without justification or excuse, and Defendants acted with gross indifference to the rights of Nicolette, Peggy and

Ashley. Plaintiffs Peggy, and Nicolette sue for damages in such an amount as may be found proper under the facts and circumstances.

**XXXII.**

Further, upon trial of this case, Plaintiffs would show that the injuries sustained by them, and alleged herein, were the proximate result of Defendants' acts and omissions; and that they are entitled to have the Jury in this cause separately consider, and determine a sum of money for each element of damages that will fairly and reasonably compensate them for the injuries, damages and losses incurred and to be incurred by them. From the date of the incidents at issue, until the time of trial of this case, those elements of damages to be considered separately and individually, for the purposes of determining the sum of money that will fairly and reasonably compensate Plaintiffs for each element, are as follows:

1. Physical pain Plaintiffs have suffered, from the date of the incidents in question up to the time of trial;
2. The mental anguish, pain and suffering the Plaintiffs have suffered, from the date of the incident in question, up to the time of trial;
3. The amount of reasonable medical expenses necessarily incurred in the treatment of Plaintiffs injuries, from the date of the incidents in question, up to the time of trial;
4. The loss of any earnings sustained by the Plaintiffs, from the date of the incident in question, up to the time of trial;
5. Funeral expenses for Ashley, and the loss of companionship or society as to Ashley.

**XXXIII.**

From the time of this trial into the future, Plaintiffs are expected to have the Jury consider and determine a sum of money to compensate them reasonably for damages sustained

as a result of the conduct complained of, as follows:

1. Physical pain Plaintiffs will suffer from the time of trial into the future;
2. The mental anguish the Plaintiffs will suffer from the time of trial into the future;
3. The amount of reasonable medical expenses necessarily incurred in the treatment of Plaintiffs' injuries from the time of trial into the future; and
4. The loss of any earnings resulting from the Plaintiffs' injuries from the time of trial into the future.

Nothing Plaintiffs did or failed to do, caused, or in any way contributed to the causing of the occurrences in question. On the contrary, the occurrences in question and the injuries and damages suffered by the Plaintiffs were proximately caused as a result of the negligence and gross negligence of the Defendants in their care and treatment or lack thereof, of Nicolette and Ashley. Plaintiffs would show that the Defendants, on the occasions in question, failed to exercise that degree of care as would have been exercised by a reasonably prudent physician and clinical healthcare provider in the same or similar circumstances, and that this was a proximate cause of the occurrence in question and the injuries and damages sustained and to be sustained by the Plaintiffs.

#### XXXIV.

Plaintiffs would show that the Pavilion is responsible for any willful, negligent, or grossly negligent act by, or attributable to it by, its employer, agents, staff, servants, and/or physicians acting in the course and scope of their employment or contractual relationship with Pavilion. Plaintiffs would show that the Pavilion held itself out to the public and Plaintiffs to be staffed and operated competently. Therefore, it is liable vicariously for the action of its

employees, agents, staff and servants and physicians acting within the scope of their contractual relationship with Pavilion. Pavilion has the right to conduct all such reviews within the scope of the conduct complained of above.

**XXXV.**

Further, the Defendants, Pavilion and Karpen failed to obtain informed consent from the Peggy and Nicolette for the Laminaria D & E procedure. Had the risks of such a procedure been so disclosed, the Plaintiffs, being persons of ordinary prudence, would have refused such treatment under the same or similar circumstances. These acts or omissions were a proximate cause of Plaintiffs' injuries.

Based upon information and belief Plaintiff contends that Defendant, Dr. Richard Cunningham, M.D., at all times relevant, was impaired by drug and/or alcohol abuse, and was receiving treatment for same. Plaintiff contends that Defendant, Dr. Richard Cunningham, M.D., was negligent in attempting to provide medical services to Plaintiff, Nicolette Cormier, while so impaired, and that such negligence was a proximate cause of Plaintiffs injuries for which Plaintiffs seek damage.

Pleading further, Plaintiffs' contend that Defendant, Women Pavilion, and Dr. Douglas Karpen M.D., knew or should have known of Dr. Cunningham's impairment, had they exercised ordinary care in contracting with or hiring of Dr. Richard Cunningham, M.D., and/or retention of Dr. Richard Cunningham, M.D. Such negligence was a proximate cause of Plaintiffs' injuries for which Plaintiffs seek damages.

**XXXVI.**

Plaintiffs reserve the right to amend this Original Petition as discovery progresses in the

case, and shall so amend to specify the amounts of compensatory and exemplary damages sought.

**XXXVII.**

Plaintiff requests a jury trial.

**XXXVIII.**

Plaintiffs request an amount of compensatory and exemplary damages in excess of the minimum jurisdictional limits of this Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants, Dr. Douglas Karpen, Dr. Richard Cunningham and Women's Pavilion, Inc., be cited to appear and answer the Original Petition, and, on final hearing, that Plaintiffs have judgment against Defendants for compensatory and exemplary damages in amounts to be specified in an amended pleading, and in excess of the minimum jurisdictional limits of the Court, together with interest at the lawful rate until judgment, post judgment interest at the lawful rate, costs of Court and for such other and further relief, at law or at equity, to which Plaintiffs are entitled justly to receive.



Respectfully submitted,

SOAPE BROWN McDERMOTT

  
CHARLES W. R. BROWN

State Bar No. 03101900

BRUCE W. BAIN

State Bar No. 01546700

Three Riverway, Suite 950

Houston, Texas 77056-1909


(713) 871-0660

Fax (713) 871-1861

ATTORNEY FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I, Charles W. R. Brown hereby certify that a true and correct copy of the foregoing has been served upon all counsel of record by certified mail return receipt requested, by hand delivery, and/or by telefax this the 16 day of December, 1993.

  
Charles W. R. Brown

by 

SOAPE BROWN McDERMOTT  
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

*m Brown*  
*dk*

G. DEAN SOAPE\*  
CHARLES W.R. BROWN\*\*  
JOSEPH A. McDERMOTT, III\*\*\*

ATTORNEYS AT LAW  
THREE RIVERWAY-SUITE 950  
HOUSTON, TEXAS 77056-1909  
TEL 713-871-0660  
FAX 713-871-1861

93:111010100  
93:111010100

PATRICK F. DOZARK'  
KNOX B. HUGHES  
BRUCE W. BAIN

BOARD CERTIFIED  
\*TAX LAW  
\*\*ESTATE PLANNING & PROBATE LAW  
\*\*\*OIL, GAS AND MINERAL LAW  
\*\*\*\*COMMERCIAL REAL ESTATE LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

G. DEAN SOAPE, JR.  
STAFF ACCOUNTANT  
ALSO LICENSED IN MINNESOTA

December 16, 1993

Katherine Tyra  
301 Fannin, room 105  
Houston, Texas 77002

RE: Peggy Cormier, et al vs Douglas A. Karpen, M.D., et al  
Cause No. 93-33063, 152nd Judicial District

Dear Ms. Tyra:

Enclosed is Plaintiffs' First Amended Petition, in the above-referenced case. Please file stamp the additional copy and return it to the courier.

Thank you for your courtesies.

Cordially,

SOAPE BROWN McDERMOTT

*Charles W. R. Brown*  
Charles W. R. Brown  
*RL*

CWRB:dek  
Enclosures

Unofficial Copy Office of Chris Dana, District Clerk