

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO.:

15-3356D

EEVA VASQUEZ, PPA,)
HERICA VASQUEZ, and)
HERICA VASQUEZ, Individually)
Plaintiffs,)

VS.)

BRIGHAM & WOMEN'S HOSPITAL,)
DR. DAVID I. SHALOWITZ, M.D.,)
DR. STEPHANIE E. DUKHOVNY, M.D.,)
DR. KATHERINE D. POCIUS, M.D.,)
DR. JULIANNA SCHANTZ-DUNN, M.D.,)
DR. DOE, and DR. KELL, M.D.)
Defendants,

MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

2015 NOV -4 AM 11:13

CLERK & MAGISTRATE OFFICE
CIVIL CLERK'S OFFICE

COMPLAINT AND DEMAND FOR JURY TRIAL

PARTIES

1. Plaintiff, Eeva Vazquez, is a minor child residing in Jamaica Plain, Suffolk County, Massachusetts 02130.
2. Plaintiff, Herica Vazquez, is the natural mother and next friend of Eeva Vazquez and is an adult residing in Jamaica Plain, Suffolk County, Massachusetts, 02130.
3. Defendant, Brigham & Women's Hospital, is a duly organized Massachusetts entity providing medical services to the public with a primary place of business located at 75 Francis Street, Boston, Suffolk County, Massachusetts 02115.
4. Defendant, Dr. David I. Shalowitz, M.D., was at all times relevant hereto a physician providing medical services at Brigham & Women's Hospital located at 75 Francis Street, Boston, Suffolk County, Massachusetts 02115. (#19681)

5. Defendant, Dr. Stephanie E. Dukhovny, M.D., was at all times relevant hereto a physician providing medical services at Brigham & Women's Hospital located at 75 Francis Street, Boston, Suffolk County, Massachusetts 02115. (*attending obstetrician #16924*)
6. Defendant, Dr. Katherine D. Pocius, M.D., was at all times relevant hereto a physician providing medical services at Brigham & Women's Hospital located at 75 Francis Street, Boston, Suffolk County, Massachusetts 02115. (*a fourth year obstetrical resident #18505*)
7. Defendant, Dr. Julianna Schantz-Dunn, M.D., was at all times relevant hereto a physician providing medical services at Brigham & Women's Hospital located at 75 Francis Street, Boston, Suffolk County, Massachusetts 02115. (*Maternal Fetal Medicine Fellow #32972*)
8. Defendant, Dr. Doe, M.D., was at all times relevant hereto a physician providing medical services at Brigham & Women's Hospital located at 75 Francis Street, Boston, Suffolk County, Massachusetts 02115. (*First year OB resident #33108*)
9. Defendant, Dr. Kell, M.D., was at all times relevant hereto a physician providing medical services at Brigham & Women's Hospital located at 75 Francis Street, Boston, Suffolk County, Massachusetts 02115.

FACTS

10. On November 3, 2012, the Plaintiff, Ms. Herica Vasquez, was a 35/1 pregnant, 22 year old admitted to the Brigham Women's Hospital for evaluation of elevated blood pressure.
11. On November 6, 2012, three days after the Ms. Herica Vasquez was evaluated at the Brigham Women's Hospital, Ms. Herica Vasquez was diagnosed with HELLP Syndrome, which is severe pre-eclampsia.
12. After diagnosis, the Defendant, Dr. David I. Shalowitz, M.D. made the decision to terminate the pregnancy by the induction of labor (IOL) on November 6, 2012 at 12:00 P.M., even though the Cervical Bishop Score was 0 and predicted a low probability of successful induction. Defendant, Dr. Stephanie E. Dukhovny, M.D., who was the attending obstetrician, approved this decision.
13. IOL was continued for over twelve hours and eventually stopped on November 7, 2012 at 2:00 A.M. by Defendant, Dr. Katherine D. Pocius, M.D., because contractions and

fetal heart rates became too difficult to monitor. Defendant Dr. Katherine D. Pocius, M.D., at that moment, recommended a cesarean section and communicated the recommended plan to Defendant Dr. Stephanie E. Dukhovny, M.D., but deferred her decision to the primary antepartum team.

14. At 5:47 A.M. on November 7, 2012, Defendant, Dr. David I. Shalowitz, M.D., noted that he was aware that IOL was stopped due to safety concerns and then at 8:30 A.M. Defendant, Dr. Kell, M.D., also noted awareness of the safety concerns but that they would discuss delivery plan.
15. At 1:00 P.M. on November 7, 2012 Ms. Herica Vasquez was evaluated and treated by Defendant, Dr. Doe performed artificial rupture of membranes, placed a fetal scalp electrode, and started IV oxytocin, all in order to accelerate the labor process.
16. The Defendant, Dr. Doe 2 administered an epidural anesthesia at 7:20 P.M. and administered an intrauterine pressure catheter at 8:00 P.M on November 7, 2012.
17. At 10:00 P.M. on November 7, 2012 Defendant, Dr. Katherine D. Pocius, M.D., confirmed finding a non-predictive category of fetal oxygenation status, however still did not administer the cesarean section delivery.
18. On November 9, 2012 at 3:30 A.M. the Plaintiff, Ms. Herica Vasquez was allowed to continue to push despite the Defendants notation of a significant caput and left occiput posterior position.
19. On November 9, 2012 at 6:35 A.M. the Eeva Vasquez was converted to the breech position and a cesarean section delivery was performed.
20. After birth, Eeva Vasquez was transferred to neonatal intensive care unit where she was diagnosed with Hypoxic Ischemic Encephalopathy and suffered major brain and neurological injuries.
21. Ms. Vasquez also sustained a long and difficult recovery, in which she sustained a major infection and dehiscence of her abdominal wall incision that required multiple treatments.

COUNT I – NEGLIGENCE AGAINST BRIGHAM & WOMEN’S HOSPITAL
(VICARIOUS LIABILITY)

22. The Plaintiffs re-allege, repeat and reaffirm paragraphs 1 through 21 and incorporate said allegations herein by reference.

23. At all relevant times the Defendant, Brigham & Women's Hospital, held itself out to the general public as a medical facility capable of providing appropriate medical care and treatment to patients and accepted Ms. Herica Vasquez and Eeva Vasquez as patients.
24. At all relevant times the Defendants identified in the complaint were the Plaintiff's physicians, they were servants, agents and/or employees of the Brigham & Women's Hospital and the hospital was vicariously liable for the negligence of all of the doctors listed above. The Defendant, Brigham & Women's Hospital, negligently and carelessly cared for Ms. Herica Vasquez including, but not limited to, the following:
- a. Failure by doctors to communicate treatment to patient, denying the Plaintiff the opportunity to make informed decisions regarding the course of her medical care;
 - b. Failure to communicate treatment options with all involved medical personnel
 - c. Failure to perform necessary and proper cesarean section for safe delivery, resulting in suffering, major injuries, and permanent damage;
 - d. Failure to observe, monitor and manage the plaintiff's labor and delivery; and
 - e. Negligent decision to perform induction of labor when there was a low probability of successful induction;

25. From November 6, 2012, and continuing thereafter, the defendant negligently, carelessly and/or unskillfully cared for and treated the plaintiff and deviated from the accepted standards of care, during, but not limited to, the dates hereinabove set forth.

26. As a direct and proximate result of the negligence and carelessness of the Defendant, Brigham & Women's Hospital, as hereinabove set forth, Ms. Herica Vasquez and Eeva Vasquez were caused to suffer pain, major injuries, and incurred medical expenses past and present.

WHEREFORE, the Plaintiff, Ms. Herica Vasquez, individually and as mother and next of friend of Eeva Vasquez, demands judgment against the Defendant, Brigham & Women's Hospital, in an amount that this Honorable Court shall deem just and proper, together with interest and costs.

COUNT II – NEGLIGENCE AGAINST DR. DAVID I. SHALOWITZ, M.D.

27. The Plaintiffs re-allege, repeat and reaffirm paragraphs 1 through 26 and incorporate said allegations herein by reference.

28. At all relevant times the Defendant, Dr. David I. Shalowitz, M.D., held himself out to the general public as a medical physician capable of providing appropriate medical care and treatment to patients and accepted the Ms. Herica Vasquez as a patient.
29. During the period Dr. David I. Shalowitz, M.D., was Ms. Herica Vasquez's physician, he negligently and carelessly cared for the Plaintiffs including, but not limited to, the following:
- a. Failure to observe, monitor and manage the plaintiff's labor and delivery;
 - b. Negligent decision to perform induction of labor when there was a low probability of successful induction;
 - c. Failure to perform necessary and proper cesarean section for safe delivery; and
 - d. Failure to communicate with other medical personnel and the plaintiff to allow for Ms. Herica Vasquez to make informed decisions regarding the course of her medical treatment.
30. From November 6, 2012, and continuing thereafter, the Defendant Dr. David I. Shalowitz, M.D., negligently, carelessly and/or unskillfully cared for and treated the plaintiff and deviated from the accepted standards of care, during, but not limited to, the dates hereinabove set forth.
31. As a direct and proximate result of the negligence and carelessness of the Defendant, Dr. David I. Shalowitz, M.D., as hereinabove set forth, Ms. Herica Vasquez and Eeva Vasquez were caused to suffer pain, major injuries, and incurred medical expenses past and present.

WHEREFORE, the Plaintiff, Ms. Herica Vasquez, individually and as mother and next of friend of Eeva Vasquez, demands judgment against the Defendant, Dr. David I. Shalowitz, M.D., in an amount that this Honorable Court shall deem just and proper, together with interest and costs.

COUNT III – NEGLIGENCE AGAINST DR. STEPHANIE E. DUKHOVNY, M.D.

32. The Plaintiffs re-allege, repeat and reaffirm paragraphs 1 through 30 and incorporate said allegations herein by reference.
33. At all relevant times the Defendant, Dr. Stephanie E. Dukhovny, M.D., held herself out to the general public as a medical physician capable of providing appropriate medical care and treatment to patients and accepted the Ms. Herica Vasquez as a patient.
-

34. During the period Dr. Stephanie E. Dukhovny, M.D., was Ms. Herica Vasquez's physician, she negligently and carelessly cared for Plaintiffs including, but not limited to, the following:

- a. Negligent management of the plaintiff's obstetrical care.
- e. Failure to observe, monitor and manage the plaintiff's labor and delivery;
- f. Negligent decision to perform induction of labor when there was a low probability of successful induction;
- g. Failure to perform necessary and proper cesarean section for safe delivery; and
- h. Failure to communicate with other medical personnel and the plaintiff to allow for Ms. Herica Vasquez to make informed decisions regarding the course of her medical treatment.

35. From November 6, 2012, and continuing thereafter, the Defendant Dr. Stephanie E. Dukhovny, M.D., negligently, carelessly and/or unskillfully cared for and treated the plaintiff and deviated from the accepted standards of care, during, but not limited to, the dates hereinabove set forth.

36. As a direct and proximate result of the negligence and carelessness of the Defendant, Dr. Stephanie E. Dukhovny, M.D., as hereinabove set forth, Ms. Herica Vasquez and Eeva Vasquez were caused to suffer pain, major injuries, and incurred medical expenses past and present.

WHEREFORE, the Plaintiff, Ms. Herica Vasquez, individually and as mother and next of friend of Eeva Vasquez, demands judgment against the Defendant, Dr. Stephanie E. Dukhovny, M.D., in an amount that this Honorable Court shall deem just and proper, together with interest and costs.

COUNT IV – NEGLIGENCE AGAINST DR. KATHERINE D. POCIUS, M.D.

37. The Plaintiffs re-allege, repeat and reaffirm paragraphs 1 through 36 and incorporate said allegations herein by reference.

38. At all relevant times the Defendant, Dr. Katherine D. Pocius, M.D., held herself out to the general public as a medical physician capable of providing appropriate medical care and treatment to patients and accepted the Ms. Herica Vasquez as a patient.

39. During the period Dr. Katherine D. Pocius, M.D., was Ms. Herica Vasquez's physician, she negligently and carelessly cared for Plaintiffs including, but not limited to, the following:

- a. Failure to observe, monitor and manage the plaintiff's labor and delivery;
- b. Negligent decision to perform induction of labor when there was a low probability of successful induction;
- c. Negligent decision to perform induction of labor when there was a low probability of successful induction;
- d. Failure to perform necessary and proper cesarean section for safe delivery; and
- e. Failure to communicate with other medical personnel and the plaintiff to allow for Ms. Herica Vasquez to make informed decisions regarding the course of her medical treatment.

40. From November 6, 2012, and continuing thereafter, the Defendant Dr. Katherine D. Pocius, M.D., negligently, carelessly and/or unskillfully cared for and treated the plaintiff and deviated from the accepted standards of care, during, but not limited to, the dates hereinabove set forth.
41. As a direct and proximate result of the negligence and carelessness of the Defendant, Dr. Katherine D. Pocius, M.D., as hereinabove set forth, Ms. Herica Vasquez and Eeva Vasquez were caused to suffer pain, major injuries, and incurred medical expenses past and present.

WHEREFORE, the Plaintiff, Ms. Herica Vasquez, individually and as mother and next of friend of Eeva Vasquez, demands judgment against the Defendant, Dr. Katherine D. Pocius, M.D., in an amount that this Honorable Court shall deem just and proper, together with interest and costs.

COUNT V – NEGLIGENCE AGAINST DR. JULIANNA SCHANTZ-DUNN, M.D.

42. The Plaintiffs re-allege, repeat and reaffirm paragraphs 1 through 41 and incorporate said allegations herein by reference.
43. At all relevant times the Defendant, Defendant, Dr. Julianna Schantz-Dunn, M.D., held his/herself out to the general public as a medical physician capable of providing appropriate medical care and treatment to patients and accepted the Ms. Herica Vasquez as a patient.
44. During the period Dr. Julianna Schantz-Dunn, M.D., was Ms. Herica Vasquez's physician, he/she negligently and carelessly cared for Plaintiffs including, but not limited to, the following:
- a. Failure to observe, monitor and manage the plaintiff's labor and delivery;

- b. Negligent decision to perform induction of labor when there was a low probability of successful induction;
 - c. Negligent decision to perform induction of labor when there was a low probability of successful induction;
 - d. Failure to perform necessary and proper cesarean section for safe delivery; and
 - e. Failure to communicate with other medical personnel and the plaintiff to allow for Ms. Herica Vasquez to make informed decisions regarding the course of her medical treatment.
45. From November 6, 2012, and continuing thereafter, the Defendant Dr. Julianna Schantz-Dunn, M.D., negligently, carelessly and/or unskillfully cared for and treated the plaintiff and deviated from the accepted standards of care, during, but not limited to, the dates hereinabove set forth.
46. As a direct and proximate result of the negligence and carelessness of the Defendant, Dr. Julianna Schantz-Dunn, M.D., as hereinabove set forth, Ms. Herica Vasquez and Eeva Vasquez were caused to suffer pain, major injuries, and incurred medical expenses past and present.

WHEREFORE, the Plaintiff, Ms. Herica Vasquez, individually and as mother and next of friend of Eeva Vasquez, demands judgment against the Defendant, Dr. Julianna Schantz-Dunn, M.D., in an amount that this Honorable Court shall deem just and proper, together with interest and costs.

COUNT VI – NEGLIGENCE AGAINST DR. DOE, M.D.

47. The Plaintiffs re-allege, repeat and reaffirm paragraphs 1 through 46 and incorporate said allegations herein by reference.
48. At all relevant times the Defendant, Defendant, Dr. Doe, M.D., held his/herself out to the general public as a medical physician capable of providing appropriate medical care and treatment to patients and accepted the Ms. Herica Vasquez as a patient.
49. During the period Dr. Doe, M.D., was Ms. Herica Vasquez's physician, he/she negligently and carelessly cared for Plaintiffs including, but not limited to, the following:
- a. Failure to observe, monitor and manage the plaintiff's labor and delivery;
 - b. Negligent decision to perform induction of labor when there was a low probability of successful induction;
 - c. Negligent decision to perform induction of labor when there was a low probability of successful induction;

- d. Failure to perform necessary and proper cesarean section for safe delivery; and
- e. Failure to communicate with other medical personnel and the plaintiff to allow for Ms. Herica Vasquez to make informed decisions regarding the course of her medical treatment.

50. From November 6, 2012, and continuing thereafter, the Defendant Dr. Doe, M.D., negligently, carelessly and/or unskillfully cared for and treated the plaintiff and deviated from the accepted standards of care, during, but not limited to, the dates hereinabove set forth.

51. As a direct and proximate result of the negligence and carelessness of the Defendant, Dr. Doe, M.D., as hereinabove set forth, Ms. Herica Vasquez and Eeva Vasquez were caused to suffer pain, major injuries, and incurred medical expenses past and present.

WHEREFORE, the Plaintiff, Ms. Herica Vasquez, individually and as mother and next of friend of Eeva Vasquez, demands judgment against the Defendant, Dr. Doe, M.D., in an amount that this Honorable Court shall deem just and proper, together with interest and costs.

COUNT VII – NEGLIGENCE AGAINST DR. KELL, M.D

52. The Plaintiffs re-allege, repeat and reaffirm paragraphs 1 through 46 and incorporate said allegations herein by reference.

53. At all relevant times the Defendant, Defendant, Dr. Kell, M.D., held him/herself out to the general public as a medical physician capable of providing appropriate medical care and treatment to patients and accepted the Ms. Herica Vasquez as a patient.

54. During the period Dr. Kell, M.D., was Ms. Herica Vasquez's physician, he/she negligently and carelessly cared for Plaintiffs including, but not limited to, the following:

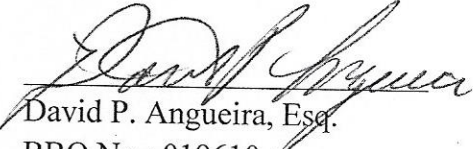
- a. Failure to observe, monitor and manage the plaintiff's labor and delivery;
 - b. Negligent decision to perform induction of labor when there was a low probability of successful induction;
 - c. Negligent decision to perform induction of labor when there was a low probability of successful induction;
 - d. Failure to perform necessary and proper cesarean section for safe delivery; and
 - e. Failure to communicate with other medical personnel and the plaintiff to allow for Ms. Herica Vasquez to make informed decisions regarding the course of her medical treatment.
-

55. From November 6, 2012, and continuing thereafter, the Defendant Dr. Kell, M.D., negligently, carelessly and/or unskillfully cared for and treated the plaintiff and deviated from the accepted standards of care, during, but not limited to, the dates hereinabove set forth.
56. As a direct and proximate result of the negligence and carelessness of the Defendant, Dr. Kell, M.D., as hereinabove set forth, Ms. Herica Vasquez and Eeva Vasquez were caused to suffer pain, major injuries, and incurred medical expenses past and present.

WHEREFORE, the Plaintiff, Ms. Herica Vasquez, individually and as mother and next of friend of Eeva Vasquez, demands judgment against the Defendant, Dr. Kell, M.D., in an amount that this Honorable Court shall deem just and proper, together with interest and costs.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS.

Respectfully Submitted,
The Plaintiffs,
By Their Attorney,



David P. Angueira, Esq.

BBO No.: 019610
Swartz & Swartz, P.C.
10 Marshall Street
Boston, MA 01208
(617) 742-1900

Dated: November 4, 2015