

COMMONWEALTH OF MASSACHUSETTS

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SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
C.A.#:

16-0170B

SAMAN GHARONY a minor,
by and through his Mother and Next
Friend, SIVETH SO.

Plaintiffs,

vs.

REBECCA JESSEL, M.D.,
JESSICA OPAKU-ANANE, M.D.,
ROBERT BARBIERI, M.D., and
BRIGHAM AND WOMEN'S HOSPITAL,
its agents, assigns and employees,

Defendants.

SUFFOLK COUNTY COURT
MICHAEL JOSEPH DONOVY
CLERK/MAGISTRATE
2016 JAN 19 PM 12:23

COMPLAINT

I. JURISDICTION AND VENUE

1.1 Plaintiff Saman Gharony is a minor child who brings this action by and through his mother and next friend Siveth So who was at all times pertinent hereto a resident of Suffolk County in the Commonwealth of Massachusetts.

1.2 At all times relevant to this matter, Defendant, Rebecca Jessel, M.D. was a physician licensed to practice medicine in the Commonwealth of Massachusetts who was practicing in Suffolk County.

1.3 At all times relevant to this matter, Defendant, Jessica Opaku-Anane, M.D. was a physician licensed to practice medicine in the Commonwealth of Massachusetts who was practicing in Suffolk County.

1.4 At all times relevant to this matter, Defendant, Robert Barbieri, M.D. was a physician licensed to practice medicine in the Commonwealth of Massachusetts who was practicing in Suffolk County.

1.5 At all times relevant to this matter, the Defendant, Brigham and Women's Hospital, its agents and employees, was a medical facility with a principal place of business in the City of Boston, County of Suffolk, and licensed to practice its profession within the Commonwealth of Massachusetts.

II. FACTS

Plaintiffs re-allege paragraphs 1.1 through 1.5 as though fully set forth herein.

2.1 On or about August 7, 2012 through October 6, 2012, Plaintiff Siveth So presented for prenatal care with the Defendants, Brigham and Women's Hospital, by and through its agents, servants, representatives and/or employees.

2.2 Plaintiff Siveth So's prenatal care was remarkable for risk factors associated with shoulder dystocia, which should have prompted a discussion and offer of cesarean section.

2.3 On or about October 6, 2012, Ms. So presented to Brigham and Women's Hospital for labor and delivery of her son Saman Gharony.

2.4 Defendants, Rebecca Jessel, M.D., Jessica Opaku-Anane, M.D., and Robert Barbieri, M.D., and Brigham and Women's Hospital, by and through its agents, servants or employees, negligently proceeded with a vaginal delivery of Saman Gharony, including but not limited to failing to appropriately counsel Sivieth So on her increased risks for shoulder dystocia with fetal injury and the availability of cesarean section to avoid those risks, and failure to utilize appropriate shoulder dystocia release techniques upon recognition of shoulder dystocia.

2.5 As a direct and proximate result of this negligence, Saman Gharony sustained a permanent brachial plexus injury, as well as the other damages set forth below. In sum, the

Defendants failed to adhere to the applicable standard of care as required by law in the care and treatment of the Plaintiffs Siveth So both prenatally and during the delivery of Saman Gharony, a minor, on or about October 6, 2012.

2.6 These acts and/or omissions constitute negligence and were a proximate cause of Plaintiffs' injuries and damages in this case.

III. LIABILITY AND CAUSATION

Plaintiffs re-allege paragraphs 1.1 through 2.6 as though fully set forth herein.

A. Defendant Rebecca Jessel, M.D.

3.1 Defendant Rebecca Jessel, M.D., owed the Plaintiffs a duty to act as reasonably prudent healthcare provider in her care and treatment of Siveth So and Saman Gharony.

3.2 Defendant Rebecca Jessel, M.D., individually, and/or by and through her agents, servants, representatives, and/or employees, acting in the course and scope of their employment, was negligent in failing to adhere to the applicable standard of care in the care and treatment of Plaintiff; and, this negligence was a direct and proximate cause of the injuries and damages sustained by the minor Plaintiff in this case.

3.3 More specifically, this Defendant individually, and/or by and through her agents, servants, representatives, and/or employees, acting in the course and scope of their employment, was negligent in each of the following ways:

- a. Defendant Rebecca Jessel, M.D. was negligent and fell below the applicable standard of medical care by failing to properly care for Siveth So prenatally and during labor and delivery.
- b. Defendant Rebecca Jessel, M.D. was negligent and fell below the applicable standard of medical care by failing to properly care for Siveth So prenatally and during labor and delivery.

c. Defendant Rebecca Jessel, M.D. was negligent and fell below the applicable standard of medical care by failing to provide proper care and treatment to Plaintiffs Siveth So and Saman Gharony in a manner that was consistent with the appropriate standard of care.

d. Defendant Rebecca Jessel, M.D. was negligent in the obstetrical management of the care and treatment provided to Siveth So and Saman Gharony.

3.4 The negligence described above was a direct and proximate cause of the Plaintiffs' injuries and damages in this case. Plaintiffs reserve the right to plead additional acts of negligence in the future as discovery in this case commences.

B. Defendant Jessica Opaku-Anane, M.D.

3.5 Defendant Jessica Opaku-Anane, M.D., owed the Plaintiffs a duty to act as reasonably prudent healthcare provider in her care and treatment of Siveth So and Saman Gharony.

3.6 Defendant Jessica Opaku-Anane, M.D., individually, and/or by and through her agents, servants, representatives, and/or employees, acting in the course and scope of their employment, was negligent in failing to adhere to the applicable standard of care in the care and treatment of Plaintiffs; and, this negligence was a direct and proximate cause of the injuries and damages sustained by the minor Plaintiff in this case.

3.7 More specifically, this Defendant individually, and/or by and through her agents, servants, representatives, and/or employees, acting in the course and scope of their employment, was negligent in each of the following ways:

a. Defendant Jessica Opaku-Anane, M.D. was negligent and fell below the applicable standard of medical care by failing to properly care for Siveth So prenatally and during labor and delivery.

b. Defendant Jessica Opaku-Anane, M.D. was negligent and fell below the applicable standard of medical care by failing to properly care for Siveth So prenatally and during labor and delivery.

c. Defendant Jessica Opaku-Anane, M.D. was negligent and fell below the applicable standard of medical care by failing to provide proper care and treatment to Plaintiffs Siveth So and Saman Gharony in a manner that was consistent with the appropriate standard of care.

d. Defendant Jessica Opaku-Anane, M.D. was negligent in the obstetrical management of the care and treatment provided to Siveth So and Saman Gharony.

3.8 The negligence described above was a direct and proximate cause of the Plaintiffs' injuries and damages in this case. Plaintiffs reserve the right to plead additional acts of negligence in the future as discovery in this case commences.

C. Defendant Robert Barbieri, M.D.

3.9 Defendant Robert Barbieri, M.D., owed the Plaintiffs a duty to act as reasonably prudent healthcare provider in his care and treatment of Siveth So and Saman Gharony.

3.10 Defendant Robert Barbieri, M.D., individually, and/or by and through his agents, servants, representatives, and/or employees, acting in the course and scope of their employment, was negligent in failing to adhere to the applicable standard of care in the care and treatment of Plaintiffs; and, this negligence was a direct and proximate cause of the injuries and damages sustained by the minor Plaintiff in this case.

3.11 More specifically, this Defendant individually, and/or by and through his agents, servants, representatives, and/or employees, acting in the course and scope of their employment, was negligent in each of the following ways:

a. Defendant Robert Barbieri, M.D., was negligent and fell below the applicable standard of medical care by failing to properly care for Siveth So prenatally and during labor and delivery.

b. Defendant Robert Barbieri, M.D. was negligent and fell below the applicable standard of medical care by failing to properly care for Siveth So prenatally and during labor and delivery.

c. Defendant Robert Barbieri, M.D. was negligent and fell below the applicable standard of medical care by failing to provide proper care and treatment to Plaintiffs Siveth So and Saman Gharony in a manner that was consistent with the appropriate standard of care.

d. Defendant Robert Barbieri, M.D. was negligent in the obstetrical management of the care and treatment provided to Siveth So and Saman Gharony.

3.12 The negligence described above was a direct and proximate cause of the Plaintiffs' injuries and damages in this case. Plaintiffs reserve the right to plead additional acts of negligence in the future as discovery in this case commences.

D. Defendant Brigham and Women's Hospital

3.15 As an institution, Defendant Brigham and Women's Hospital, its employees, agents, and assigns, owed plaintiffs a duty to act as reasonably prudent healthcare providers in their care and treatment of Siveth So and Saman Gharony.

3.16 Defendant Brigham and Women's Hospital, directly and by and through its agents, servants, representatives, and/or employees, acting in the course and scope of their employment, were negligent in their failure to use the applicable standard of care and treatment for the Plaintiffs; and, this negligence was a direct and proximate cause of the injuries and damages sustained by Plaintiffs in this case.

3.17 More specifically, Defendant Brigham and Women's Hospital, directly and by and through its agents, servants, representatives, and/or employees, and acting in the course and scope of their employment at the time of the Plaintiffs' care and treatment, were negligent in each of the following ways:

- a. The Defendant Brigham and Women's Hospital, and by and through its agents, servants, representatives, and/or employees were negligent and fell below the applicable standard of care by failing to properly care for Siveth So prenatally and during labor and delivery.
- b. The Defendant Brigham and Women's Hospital, directly and by and through its agents, servants, representatives, and/or employees were negligent and fell below the applicable standard of care by failing to properly care for Saman Gharony prenatally and during labor and delivery.
- c. The Defendant Brigham and Women's Hospital, directly and by and through its agents, servants, representatives, and/or employees were negligent fell below the applicable standard of care by failing to provide proper care and treatment to Siveth So and Saman Gharony in a manner that was consistent with the appropriate standard of care.
- d. The treating Defendant Brigham and Women's Hospital, directly and by and through its agents, servants, representatives, and/or employees were negligent and fell below the applicable standard of care by failing to appropriately manage the labor and delivery of Siveth So and Saman Gharony.

3.18 The negligence described above was a proximate cause of the Plaintiffs' injuries and damages in this case. The Plaintiffs reserve the right to plead additional acts of negligence in the future as discovery in this case commences.

3.19 **WHEREFORE**, the Plaintiffs demands judgment against the Defendants, Rebecca Jessel, M.D., Jessica Opaku-Anane, M.D., and Robert Barbieri, M.D., and Brigham and Women's Hospital, its employees, agents, and assigns, for the above- described injuries, together with interest and costs.

IV. VICARIOUS LIABILITY

Plaintiffs re-allege paragraphs 1.1 through 3.19 as though fully set forth herein.

4.1 At all material times in this case, Defendants, Rebecca Jessel, M.D., Jessica Opaku-Anane, M.D., and Robert Barbieri, M.D. were acting as the actual, implied or ostensible agents of Brigham and Women's Hospital.

4.2 Defendant Brigham and Women's Hospital is vicariously liable for the negligent conduct of its health care provider agents, servants, and/or employees under the doctrine of respondeat superior.

4.3 **WHEREFORE**, the Plaintiffs demands judgment against the Defendants, Rebecca Jessel, M.D., Jessica Opaku-Anane, M.D., and Robert Barbieri, M.D., and Brigham and Women's Hospital, by and through its agents, servants or employees, for the above- described injuries, together with interest and costs. ✓

V. DAMAGES

Plaintiffs re-allege paragraphs 1.1 through 4.3 as though fully set forth herein.

5.1 As a result of the negligent acts described above, minor Plaintiff Saman Gharony has sustained permanent injury, disability, loss of use, disfigurement, and scarring, has undergone and is reasonably expected to undergo surgery, PT/OT and other medical treatment in the future, and Plaintiffs have incurred and will continue to incur significant medical expenses, and has and will continue to incur the following past, present and future damages:

- a. Medical expenses and other expenses necessary for required care, including physical therapy, special education, occupational therapy, surgery, radiology, and other necessary therapies, treatments and/or other professional care and treatment;
- b. Non-medical care and services, including ongoing attendant care, functional modifications, and other required care and services;
- c. Loss of earning capacity;
- d. General damages, including past and future pain and suffering and damages for plaintiff's disability, scarring, loss of use and/or function, deformity, psychological, emotional, developmental, self esteem, loss of enjoyment of life, and other injuries related to or caused by the permanent injuries sustained in this case; and
- e. All other damages allowable under the law.

5.2 As a result of the negligent acts described above, Plaintiffs Siveth So and Saman Gharony have suffered damages, including medical, hospital, and medication expenses, loss of love and companionship, and injury to the parent-child relationship, for which defendants may be held liable. ✓

The aforesaid damages are in an amount to be proven at trial

VI. PRAYER FOR RELIEF

WHEREFORE, the plaintiff demands judgment against the Defendants for the above-described bodily injury, including pain, suffering, disfigurement, disability, loss of use, scarring and permanent and severe injury, and any other damages, together with interest and costs, and for such other relief as the Court deems just and reasonable.