COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION

SUFFOLK, SS.

JENNIFER RAPER,
Plaintiff

vs.

PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, INC., and, ALLISON BRYANT, M.D.,
Defendants

No. SUCV2007-00909

2008 FEB 27 AM 11:41

**CONSOLIDATED STATEMENT OF MATERIAL FACTS AND RESPONSES THERETO**

**I. Defendants' Statement Of Material Facts Not Subject To Genuine Dispute Pursuant To Superior Court Rule 9A (B) (5) and Plaintiff's Responses**

1. In March of 2004, the plaintiff Jennifer Raper learned that she was pregnant for the tenth time. At the time, Ms. Raper was a 42 year old mother of four with a history of four births, three prior abortions and one miscarriage. Exhibit A, deposition of Jennifer Raper, pg. 21, 22.

**RESPONSE**

Admitted that Ms. Raper was pregnant for the tenth time in March 2004. Denied with respect to her natal history.

2. On April 9, 2004, Ms. Raper presented to Planned Parenthood League of Massachusetts, Inc., and Dr. Bryant performed an abortion. Ms. Raper signed a "First Trimester Abortion Consent" form which indicated among other things, the risk of "continued pregnancy". Exhibit A, pg. 32; Exhibit B, First Trimester Abortion Consent Form.

**RESPONSE**

Admitted.

3. At the time, Dr. Bryant was a Fellow in Maternal Fetal Medicine at Brigham & Woman's Hospital. Exhibit D. pg. 7. Beginning in 2002, she worked one or two days per month at Planned Parenthood, performing ten to twenty abortions per day. Exhibit D, pg. 13.

**RESPONSE**

Admitted.

4. Ms. Raper also signed Planned Parenthood's Request for the Provision of Surgery or Other Special Services/Procedures and a Request for the Provision of Medical Services both of which indicate that she had been given information about the risks and benefits of the procedure. Exhibit C, Planned Parenthood's Request of the Provision of Surgery or Other Special Services/ Procedures and Request for the Provision of Medical Services.

**RESPONSE**

Admitted.

5. Ms. Raper read the paperwork regarding the Consents prior to having the abortion performed on April 9, 2004, Exhibit A, pg. 34.

**RESPONSE**

Denied. Ms. Raper testified that she did not read the paperwork because she had abortions in the past. Exhibit A, pg. 34. She further testified that she was not aware of the specific risk of a continued pregnancy, Exhibit A, pg. 35.

6. While at Planned Parenthood, Ms. Raper was given adequate time to read the consent forms and did not ask any questions prior to the procedure. Exhibit A. pg. 37, 40.

**RESPONSE**

Admitted.

7. Prior to the abortion, an ultrasound was performed on Ms. Raper. Dr. Bryant reviewed both the ultrasound report and the images, prior to performing the procedure, Exhibit D, Deposition of Dr. Bryant, pg. 38, 39.

**RESPONSE**

Admitted.

8. Dr. Bryant gave a cervical block and dilation, and then introduced a suction tip catheter. After gross examination of the tissue, Dr. Bryant requested another ultrasound for incomplete tissue. Exhibit D, pg. 54, 56. In examining the products of conception after the termination at six weeks three days, Dr. Bryant looked for the presence of chorionic villi, gestational sac, and decidua

tissue, Exhibit D, pg. 46. She then did a repeat pass with the curette and removed additional tissue. Exhibit D, pg. 63, 65.

**RESPONSE**

Denied. The defendant testified that she had no independent memory of treating this patient and that she was relying on her business practice and her documentation.

9. Ms. Raper recalled two passes with the suction catheter. Exhibit A, pg. 32, 33, 42, 43.

**RESPONSE**

Admitted.

10. After the second pass with the suction catheter, Dr. Bryant again examined the tissue under a black light, in a specimen dish filled with water. Dr. Bryant performed a gross tissue examination and documented that she had identified decidua, chorionic villi, and the gestatinal sac, consistent with Planned Parenthood's written policy. Exhibit D, pg. 80. 83, 85. The volume of aspirated tissue correlated with the gestational age. Exhibit D, pg. 74.

**RESPONSE**

Denied, to the extent that the defendant has no independent memory of how she treated this patient and that she was relying on her business practice and documentation.

11. Ms. Raper spoke with someone at Planned Parenthood after the procedure about the necessity for follow up and indicated that she would be returning to her own provider for her post-procedure follow-up. Exhibit A, p. 33, 44; Exhibit L, Recovery Record from Planned Parenthood. She further understood the important of a follow-up visit, and signed a form indicating that she was aware of and understood the discharge instructions, Exhibit A. p. 36. Ms. Raper was discharged after receiving an injection of Depo-Provera and Plan B with refills. She understood that the shot of Depo-Provera was good for three months. Exhibit A, pg. 45, 46, 60, 61.

**RESPONSE**

Admitted in part, Denied in part. Plaintiff admits that she was asked if she will be following up with Planned Parenthood or some other health provider. She denies any inference that she was told that a follow-up was necessary to make sure the pregnancy was terminated. Rather, she was told that a follow-up was necessary to make sure she had no infection. Exhibit A, pg. 33.

12. On May 14, 2004 Ms. Raper presented to Mattapan Community Health Center (MCHC) for post-abortion follow-up. Ms. Raper informed both the staff and Dr. Eleonu that she had had an abortion on April 9, 2004, and was there for a follow-up visit. Exhibit A, pg. 55, 56.

**RESPONSE**

Admitted.

13. Dr. Eleonu is a board certified obstetrician/gynecologist, who trained at Boston City Hospital. Exhibit E, Physician Profile from Board of Registration in Medicine.

**RESPONSE**

Admitted.

14. Ms. Raper was told it was too soon prior (sic) to the abortion and that she should return in four to six weeks. Exhibit A, pg. 56, 57; Exhibit F, Records from Mattapan Community Health Center for May 14, 2004. No post-procedure check was performed. No vaginal examination was preformed. No urine testing was done. Ms. Raper was eleven weeks pregnant at that time. Exhibit I.

**RESPONSE**

Plaintiff admits that she testified that Dr. Eleonu or the nurse told her that no vaginal exam would be done at the May 14, 2004 visit because it was to soon prior (sic) the abortion.

Plaintiff further admits that, although she did not realize it at the time, she was eleven weeks pregnant by May 14, 2004.

The plaintiff denies that Mattapan Community Health Center (MCHC) made no post procedure check and further states that the Mattapan Health records of this encounter speak for themselves.

15. Ms. Raper did not call Planned Parenthood or Dr. Bryant after this visit or at any other time after April 9, 2004. Exhibit A, pg. 63.

**RESPONSE**

Admitted.

16. Ms. Raper believes she returned to the MCHC a "couple weeks later" in June, but doesn't recall whether a vaginal examination was performed at that time. Exhibit A, pg. 58, 59.

No record of that visit is included in the MCHC's records and plaintiff has failed to produce any evidence of that visit. Exhibit G, Affidavit of Janet J. Bobit.

**RESPONSE**

Neither admitted nor denied. The plaintiff was seen at MCHC on May 14, 2004 and then on July 16, 2004. There was no visit to MCHC in June.

17. On July 16, 2004, Ms. Raper returned to MCHC for an annual check-up and "family planning" visit. Although the uterus was described as normal, average in size, and anterior, she was 20 weeks pregnant at that time. Exhibit F, visit of July 16, 2004; Exhibit I. Blood work was performed, but no pregnancy test was ordered. She reported breast tenderness, which was attributed to Depo-Provera, even though she had only received the one shot of Depo-Provera on April 9, 2004, the effects of which she understood lasted for approximately three months. Exhibit A, p. 48, 60. Ms. Raper "told them (MCHC staff) in May, told them (MCHC staff) in June, told them (MCHC staff) in July" that she kept gaining weight, and they said "that the weight gain was natural." Exhibit A, pg. 62. Ms. Raper experienced 30-35 pounds of weight gain with her previous pregnancies, and with her 2004 pregnancy, she experienced even more weight gain. Exhibit A, p. 50. Dr. Eleonu is listed as the provider and signed the note. Exhibit F, visit of July 16, 2004.

**RESPONSE**

The plaintiff admits that she returned to MCHC for a gynecological exam on July 16, 2004. The exam that was conducted that day is set forth in the medical records. The plaintiff denies that she reported breast tenderness on July 16, 2004 as her testimony is unclear and the medical record of this encounter does not support that finding.

The plaintiff further admits that she was aware she was gaining weight through out this period. The medical records of MCHC indicates that on 5/14/04 she weighed 235. (Height 5 ft.,8.5 inches); on 7/16/04 she weighed 244; on 9/15/04 she weighed 258.

The records indicate that the first time the patient complained of weight gain and feeling bloated was on 9/15/04 (Exhibit F).

On 9/26 the patient learned she was pregnant when she went to the emergency room of the New England Medical Center complaining of abdominal pain. (Exhibit H).

18. On or about August 6, 2004, Ms. Raper "noticed…how her stomach was forming." Exhibit A, pg. 63. On August 11, 2004, the nurse practitioner noted

that Ms. Raper had discontinued Depo-Provera and was requesting a tubal ligation. Exhibit F, visit of August 11, 2004.

**RESPONSE**

Denied to the extent that the plaintiff noticing that her stomach was getting larger in August suggests she should have considered she was pregnant. As she set forth in her full answer, she did not have the symptoms she had with her other pregnancies. She attributed her weight gain to the Depo-Provera. (Exhibit A, pg. 63.64)

19. On September 15, 2004, Ms. Raper returned to MCHC. She was seen by Cleopatra Ferrao, a Nurse Practitioner, and complained of weight gain and bloating. Her LMP was again noted to be February 24, 2004, a date prior to her abortion. She was noted to have a "very obese abdomen." The Nurse Practitioner questioned the cause of amenorrhea; noted that Ms. Raper had "been on Depo-Provera for a very long time," and noted that a urine serum HCG "pregnancy test" was "somehow not done today." Exhibit F, visit of September 15, 2004.

**RESPONSE**

Admitted.

20. On September 26, 2004, Ms. Raper presented to the New England Medical Center (NEMC) Emergency Department with complaint of weight gain of 33-35 pounds and intermittent abdominal pain, with no menses in seven months. Exhibit H, NEMC records. The records indicate Ms. Raper had seen a Nurse Practitioner at Mattapan Community Health Center" about the problem last week but states the doctor only did an EKG…Has seen PCP three times…symptoms attributed to Depo." Exhibit H. A pregnant test was performed at New England Medical Center, and it was determined that Ms. Raper was pregnant. The gestational age was estimated to be 30 to 32 weeks. A subsequent ultrasound exam on October 14, 2004 put the patient at 33 and 4/7 weeks. Exhibit H. She delivered a healthy baby girl on December 7, 2004, Exhibit H.

**RESPONSE**

Admitted.

21. Planned Parenthood received a waiver from the Massachusetts Department of Public Health with respect to pathologic analysis of abortal tissue. Exhibit J. Letter from the Massachusetts Department of Public Health, dated June 30, 2003. Pursuant to the waiver, in lieu of the requirement that all tissue samples be submitted to a pathology laboratory, a gross examination of all tissue specimens

(was to) be performed by the clinician who performed the procedure before the patient leaves the facility." Exhibit J.

**RESPONSE**

Denied to the extent that this paragraph suggests that the standard of care never requires pathologic confirmation of abortal tissue. As set forth in the protocols of Planned Parenthood that were being utilized by the staff at the time of the plaintiff's abortion, the clinician who evaluates the abortal tissue is required to positively identify the gestational sac.

If sac cannot be positively identified additional steps must be taken by clinician including pathologic analysis. (Exhibit M)

22. The Consent Form for First Trimester Abortions printed by the Massachusetts Department of Public Health specifically lists the risk of a continued pregnancy. Exhibit B.

**RESPONSE**

Admitted.

23. Ms. Raper had a first trimester abortion of April 9, 2004.

**RESPONSE**

Ms. Raper had a first trimester surgical abortion on April 9, 2004 as opposed to a medical abortion. The risks of a continued pregnancy following a medical abortion are higher. So much so that there is an absolute requirement that the patient have a follow-up exam to be sure that this method ended the pregnancy, (Exhibit B, pg. 1). There is no absolute requirement to have a follow-up exam after a surgical abortion (Dep. Anne Dixon, M.D. 30 (b) (6) witness for Planned Parenthood, Exhibit N, pg. 89).

## II. Plaintiff's Statement Of Material Facts Not Subject To Genuine Dispute Pursuant To Superior Court Rule 9A (B) (5) and Defendants' Repsonse

1. The defendant, Allison Bryant, M.D. performed a surgical abortion on Jennifer Raper on April 9, 2004.

**RESPONSE:**

Admitted.

2. The surgical abortion is performed by introducing a suction tipped catheter into the cervix and then into the uterus in order to remove the Products of Conception (POC) (Deposition Dr. Bryant, Exhibit D, pg. 54, 55).

**RESPONSE:**

Admitted that those are parts of the steps in performing a surgical abortion.

3. The POC are collected in a mesh filter and examined by the physician. (Exhibit D, pg. 55)

**RESPONSE:**

Denied in part. After the POC were collected in a filter, Dr. Bryant examined the tissue in a specimen dish filled with water under a black light. (Exhibit D, p. 67, 68)

4. Dr. Bryant indicated that Jennifer Raper's abortion was complicated, meaning that the suctioning of all the POC was incomplete. (Exhibit D, pg. 57)

**RESPONSE:**

Denied. Dr. Bryant testified that after the first pass of the suction curette and her first examination of the tissue, she thought there was likely scant tissue removed and called for an ultrasound to confirm if there was anything in the uterus. She marked "Complicated" on the medical record because she required an ultrasound to come in during the procedure. (Exhibit D, p. 56, 57).

5. Because of this, Dr. Bryant ordered an ultrasound to determine if any POC remained in the uterus. (Exhibit D, pg. 57, 58)

**RESPONSE:**

Denied in part. Dr. Bryant ordered an ultrasound during the procedure because after her examination of the tissue obtained after the first pass of the suction curette, she might not have seen sufficient villi and did not see the gestational sac and believed a scant amount of tissue had been obtained. (Exhibit D, p. 56, 67 - 68).

6. The results of this ultrasound were not recorded nor saved. (Exhibit D, pg. 60, 61)

**RESPONSE:**

Denied in part. Dr. Bryant testified that in accordance with Planned Parenthood League of Massachusetts, Inc.'s protocols an image documentation of a repeat ultrasound were not saved. The records reflect the findings of the ultrasound required another pass of the suction curette. (Exhibit D, p. 61- 63).

7. Based on Dr. Bryant's customary practice, the ultrasound would have shown incomplete tissue which would have necessitated the physician to repeat the suction procedure. (Exhibit D, pg. 63)

**RESPONSE:**

Denied. Dr. Bryant testified that based on her documentation in the medical record the ultrasound would have documented that there was incomplete tissue and that she would have done a repeat pass with the suction curette prior to completing the procedure. (Exhibit D, p. 62-63).

8. The documented record indicates to Dr. Bryant that she removed additional POC after the second procedure.

**RESPONSE:**

Admitted.

9. After the second suction procedure, the doctor examined the tissue using saline and a light. (Exhibit D, pg. 68, 69)

**RESPONSE:**

Denied in part. After the second pass of the suction curette, Dr. Bryant examined the tissue specimen in the back light with the tissue in a dish filled with water. (Exhibit D, p. 68, 74-75).

10. She did not perform any microscopic evaluation. (Exhibit D, pg. 69)

**RESPONSE:**

Admitted.

11. Dr. had discretion to send tissue to pathology if she had a question. (Exhibit D, pg. 74)

**RESPONSE:**

Denied in part. Dr. Bryant testified that based on clinical judgment, if there was a concern for the procedure, if there was a concern there might be abnormal pathology or there might be incomplete pathology, it was at the discretion of the clinician to send products of conception to pathology. (Exhibit D, p. 69 -70).

12. In order to identify POC after a surgical abortion, Planned Parenthood's protocols require that the doctor ***positively*** identify the gestational sac. (Exhibit D, pg. 72, Exhibit O)

**RESPONSE:**

Denied. Planned Parenthood League of Massachusetts, Inc.'s Procedure Manual states that Post-Procedure Management includes tissue evaluation. Gross examination of all tissue specimens must be performed by the clinician who performed the procedure and blood loss **must** be estimated. All findings **must** be recorded on the chart. Tissue evaluation is considered to be complete if all of the following occur: a) Placenta or membranes (preferably both) are positively identified; b) The volume of aspirated tissue correlates with the estimated gestational age; c) In pregnancies of 13 weeks LMP or more, all fetal parts are accounted for; d) If adequate placental or fetal tissue is not readily identifiable, the tissue **must** be examined by flotation in water and inspected, preferably utilizing back lighting. Those procedures should be done while the patient is still in the procedure room and **must** be done before the patient leaves the facility to determine if immediate remedial management is called for (e.g., reaspiration). (Exhibit O, Page 6, Section 10.a., emphasis in original).

13. Dr. Bryant indicated that she identified the gestational sac. (Exhibit L)

**RESPONSE:**

Admitted that Dr. Bryant documented that she identified the gestational sac.

14. If the gestational sac is not removed during an abortion, a patient could have a continued pregnancy. (Exhibit D, pg. 73)

**RESPONSE:**

Denied in part. If the membranes are not positively identified, there can be consequences of the procedure, including continued pregnancy and ectopic pregnancy. (Exhibit D, p. 73).

15. If the gestational sac is removed, it is impossible for the pregnancy to continue. (Plaintiff Expert's opinion letter at Exhibit N).

**RESPONSE:**

Agreed that is what Plaintiff's expert's opinion letter states, but denied in substance.

16. In situations when the gestational sac cannot be positively identified, the patient must be given a written document entitled, ***Client Information Sheet When A Small Amount Of Pregnancy Tissue Was Obtained***. (Exhibit O)

**RESPONSE:**

Admitted.

17. Jennifer Raper was never given this document.

**RESPONSE:**

Admitted that Jennifer Raper was never given this document because the gestational sac was positively identified and it was not clinically indicated that she receive the sheet after the second reaspiration. (Exhibit D., p. 77).

18. Jennifer Raper was never verbally told by Dr. Bryant and/or any staff member of Planned Parenthood that the surgical abortion could have been unsuccessful. (Exhibit A, pg. 81)

**RESPONSE:**

Denied to the extent that plaintiff suggests that Ms. Raper was not advised of the risks of surgical abortions, including the risk of an incomplete abortion. (Exhibit B).

19. The plaintiff's expert, Mark Laser, M.D., has opined that the defendant, Dr. Bryant, departed from acceptable standards of medical practice in that Dr. Bryant incorrectly identified that she visualized the gestational sac. This would be impossible, since the pregnancy could not have continued if the gestational sac, and/or any part of it, were removed. (Exhibit N)

**RESPONSE:**

Denied in part; admitted in part. The letter speaks for itself. A continued pregnancy and/or retained products of conception were risks of the procedure. (Exhibit B).

20. Both the defendant's expert and the plaintiff's expert agree that the abortion of April 9, 2004 did not successfully terminate the pregnancy.

**RESPONSE:**

Admitted.

21. The defendant, Planned Parenthood of Massachusetts only provides abortion services up to 18 weeks, 6 day gestation.

**RESPONSE:**

Denied

22. The Plaintiff's decision to have an abortion was financially based. (Exhibit A pg 81)

**RESPONSE:**

Denied. At the time of the procedure, Ms. Raper stated that she did not want more children. She did not say anything about her decision being financially based. (Exhibit L).

23. After the abortion procedure, Ms. Raper received a birth control shot known as Depo-Provera.

**RESPONSE:**

Admitted.

24. The side effects of Depo-Provera include weight gain, breast tenderness and amenorrhea (no menstrual period). (Depo-Provera, info sheet, Exhibit P)

**RESPONSE:**

Admitted in part; denied in part. Defendants admit that the Depo-Provera information sheet that is attached as Exhibit P indicates that a possible side effect of Depo-Provera is weight gain, but that weight gain is described as being after a year of use. The Defendants admit that irregular, heavy or no bleeding are other possible side effects of Depo-Provera, but that lack of a period becomes increasingly more common after longer use (e.g., after a year of use). The Defendants admit that breast tenderness is another possible side effect of Depo-Provera. (Exhibit P).

25. Following her failed abortion, Ms. Raper developed symptoms of weight gain, breast tenderness and amenorrhea which she attributed to the Depo-Provera.. (Exhibit A, pgs. 63, 64)

**RESPONSE:**

Admitted.

Janet J Bobit

JANET J. BOBIT, BBO# 550152
Attorney for Defendants,
Planned Parenthood League
of Massachusetts, Inc. and Allison Bryant, M.D.



Barry C. Reed, Jr.

Barry C. Reed, Jr.
Attorney for the Plaintiff,
Jennifer Raper
Reed & Giordano