

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

AZAVIER PRESTON, a Minor,
By and Through His Mother, Natural
Guardian and Next Friend,
ANGELA WILLIAMS
2215 Bunts Rd.
Lakewood, Ohio 44107

and

ANGELA WILLIAMS, Individually
2215 Bunts Rd.
Lakewood, Ohio 44107

PLAINTIFFS,

v.

JANICE M. DUKE, M.D.
One Wyoming Street
Suite 4130
Dayton, Ohio 45409

and

GOUHAR KHAN, M.D.
3070 N. 51ST St.
Suite 601
Milwaukee, Wisconsin 53210

and

GOUHAR KHAN, M.D.
c/o Statutory Agent
Miami Valley Hospital
One Wyoming Street
Dayton, Ohio 45409

and

CASE NO. 2012 CV 05941

JUDGE: GREGORY F. SINGER

FIRST AMENDED
COMPLAINT WITH
AFFIDAVIT OF MERIT
ATTACHED HERETO

(Jury Demand Endorsed Hereon)

EALENA CALLENDER, M.D.)
101 Eaton Street)
Suite 300)
Hampton, Virginia 23669)

and)
)

EALENA CALLENDER, M.D.)
c/o Statutory Agent)
Miami Valley Hospital)
One Wyoming Street)
Dayton, Ohio 45409)

and)
)

ANDRE HARRIS, M.D.)
One Elizabeth Place)
5th Floor, Suite M)
Dayton, Ohio 45417)

and)
)

HEATHER A. KLEINHENZ, M.D.)
8381 State Route 119)
Maria Stein, Ohio 45860)

and)
)

LAURA M. RUSSELL, C.N.M.)
One Wyoming Street)
Dayton, Ohio 45409)

and)
)

MIAMI VALLEY HOSPITAL CENTER)
FOR WOMENS HEALTHCARE)
c/o Statutory Agent)
Miami Valley Hospital)
One Wyoming Street)
Dayton, Ohio 45409)

and)
)

WRIGHT STATE PHYSICIANS)
WOMEN'S HEALTH CARE)
c/o Statutory Agent)
Margaret M. Dunn)
5100 SPRINGFIELD PIKE SUITE 400)
DAYTON, OH 45431)

and)

MIAMI VALLEY HOSPITAL)
c/o Statutory Agent)
Dale E. Creech, Jr.)
40 W. 4th St. Suite 1800)
Dayton, Ohio 45402)

and)

ABC, INC I-III)
(Professional Corporation and/or)
Limited Liability Corporations)
whose business names and addresses)
are unknown at the time of filing)
this Complaint))

and)

JOHN DOE, M.D. I-III)
(Physicians and/or resident physicians)
whose real names and addresses are)
unknown at the time of filing this)
Complaint))

Defendants.)

and)

THE OHIO DEPARTMENT OF JOB)
AND FAMILY SERVICES (Medicaid))
c/o Michael B. Colbert, Director)
30 E. Broad St.)
32nd Floor)
Columbus, Ohio 43215)

and
CARESOURCE
230 N. Main St.
Dayton, Ohio 45402
New Party Defendants

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Now comes Plaintiffs, by and through counsel, and states for their Complaint as follows:

INTRODUCTION

1. At all times relevant, Angela Williams was, and is, the natural parent and guardian of her minor son, Azavier Preston.
2. At all times times relevant, Angela Williams and Azavier Preston resided in Montgomery County, Ohio.
3. At all times relevant, Janice Duke, M.D. was, and is, a physician licensed to practice medicine in the State of Ohio and provided care to Plaintiff Angela Williams and her unborn son in Montgomery County, Ohio. Dr. Duke had a duty to provide prudent and safe care.
4. At all times relevant, Miami Valley Hospital Center For Womens Healthcare and/or ABC, Inc. I-III were corporations formed for the purpose of providing medical care and services through its officers, directors, employees, actual agents, apparent agents or servants who were duly licensed to practice medicine in the State of Ohio.
5. At all times relevant, Janice Duke, M.D. was an officer, director, employee, actual agent, apparent agent or servant of the corporations listed in paragraph 4 and/or said corporations' predecessor or successor.

6. At all times relevant, Wright State Physicians Women's Health Care and/or ABC, Inc. I-III were corporations formed for the purpose of providing medical care and services through its officers, directors, employees, actual agents, apparent agents or servants who were duly licensed to practice medicine in the State of Ohio.

7. At all times relevant, Janice Duke, M.D. was an officer, director, employee, actual agent, apparent agent or servant of the corporations listed in paragraph 6 and/or said corporations' predecessor or successor.

8. At all times relevant, Gouhar Kahn, M.D. was, and is, a physician licensed to practice medicine in the State of Ohio and provided care to Plaintiff Angela Williams and her unborn son in Montgomery County, Ohio. Dr. Khan had a duty to provide prudent and safe care.

9. At all times relevant, Gouhar Khan, M.D. was an officer, director, employee, actual agent, apparent agent or servant of the corporations listed in paragraph 4 and/or said corporations' predecessor or successor.

10. At all times relevant, Ealena Callender, M.D. was, and is, a physician licensed to practice medicine in the State of Ohio and provided care to Plaintiff Angela Williams and her unborn son in Montgomery County, Ohio. Dr. Callender had a duty to provide prudent and safe care.

11. At all times relevant, Ealena Callender, M.D. was an officer, director, employee, actual agent, apparent agent or servant of the corporations listed in paragraph 4 and/or said corporations' predecessor or successor.

12. At all times relevant, Andre Harris, M.D. was, and is, a physician licensed to practice medicine in the State of Ohio and provided care to Plaintiff Angela Williams and her unborn son in Montgomery County, Ohio. Dr. Harris had a duty to provide prudent and safe care.

13. At all times relevant, Andre Harris, M.D. was an officer, director, employee, actual agent, apparent agent or servant of the corporations listed in paragraph 4 and/or said corporations' predecessor or successor.

14. At all times relevant, Heather A. Kleinhenz, M.D. was, and is, a physician licensed to practice medicine in the State of Ohio and provided care to Plaintiff Angela Williams and her unborn son in Montgomery County, Ohio. Dr. Kleinhenz had a duty to provide prudent and safe care.

15. At all times relevant, Heather A. Kleinhenz, M.D. was an officer, director, employee, actual agent, apparent agent or servant of the corporations listed in paragraph 4 and/or said corporations' predecessor or successor.

16. At all times relevant, Laura M. Russell, C.N.M. was, and is, a certified nurse midwife licensed to practice nurse midwifery in the State of Ohio and provided care to Plaintiff Angela Williams and her unborn son in Montgomery County, Ohio. Laura M. Russell, C.N.M. had a duty to provide prudent and safe care.

17. At all times relevant, Laura M. Russell, C.N.M. was an officer, director, employee, actual agent, apparent agent or servant of the corporations listed in paragraph 4 and/or said corporations' predecessor or successor.

18. At all times relevant, Miami Valley Hospital was a hospital licensed by the State of Ohio to provide medical care to Plaintiff Angela Williams and her unborn son, Azavier Preston, through its employees, actual agents, apparent agents, and servants and in so doing, was required to meet accepted standards of care and had a duty to provide prudent, competent and safe medical care.

19. At all times relevant, Miami Valley Hospital provided care to Plaintiff Angela Williams and her unborn son, Azavier Preston, by and through its employees, actual agents, apparent agents and servants including but not limited to Janice Duke, M.D., Gouhar Khan, M.D., Ealena Callender, M.D., Andre Harris, M.D., Heather A. Kleinhenz, M.D. and Laura M. Russell, C.N.M., all of whom were acting within the course and scope of their employment, agency and/or master servant relationship in rendering said care. Miami Valley Hospital is vicariously liable for the negligent acts and omissions of its employees, actual agents, apparent agents and servants.

20. On or about December 2, 2004 Plaintiff Angela Williams began her prenatal care with Miami Valley Hospital Center For Womens Healthcare.

21. On or about January 31, 2005 Plaintiff Angela Williams was noted to have a bicornuate uterus, which caused her pregnancy to be considered high risk in nature, warranting close monitoring throughout her pregnancy.

22. While a patient at Miami Valley Hospital Center For Womens Healthcare, Plaintiffs Angela Williams and her unborn son Azavier Preston came under the care of Janice Duke, M.D., Gouhar Khan, M.D., Ealena Callender, M.D., Andre Harris, M.D., Heather A. Kleinhenz, M.D., Laura M. Russell, C.N.M. and/or other officers, directors, employees, actual agents, apparent agents and/or servants of Miami Valley Hospital Center For Womens Healthcare, all of whom were acting within the course and scope of their employment, agency and/or master servant relationship.

COUNT I – MEDICAL NEGLIGENCE

23. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 22 of this Complaint as fully set forth herein.

24. The medical care provided by Janice Duke, M.D., Gouhar Khan, M.D., Ealena Callender, M.D., Andre Harris, M.D., Heather A. Kleinhenz, M.D., Laura M. Russell, C.N.M. and/or John Doe I-III, M.D. fell below the appropriate standard of care and was otherwise negligent. Said deviations from the standard of care include, but are not limited to, failure to properly monitor and evaluate the growth of Angela Williams' unborn baby, failure to properly monitor and evaluate the well being of Angela Williams' unborn baby and failure to timely effectuate the delivery of Azavier Preston.

25. As a direct and proximate result of the above described negligence and deviations from the appropriate standard of care, Minor Plaintiff Azavier Preston sustained permanent injuries including, but not limited to, hypoxic ischemic injury to the brain, developmental delay, a loss of earning capacity over the course of his lifetime, as well as pain, suffering, emotional distress, disability and past or future medical expenses.

COUNT II – LOSS OF SERVICES/CONSORTIUM

26. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 25 of this Complaint as though fully set forth herein.

27. As a direct and proximate result of the aforementioned negligence and deviations from the appropriate standard of care, Angela Williams has sustained and will sustain in the future, emotional distress, loss of consortium, and the services and society of her son Azavier Preston.

28. As a further direct and proximate result of the aforementioned negligence and deviations from the appropriate standard of care, Angela Williams has incurred medical expenses and will incur medical and other expenses for the care of her son Azavier Preston in the future.

COUNT III – UNCONSTITUTIONALITY OF CIVIL RULE 10

29. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. Plaintiffs allege that the requirements of Civil Rule 10, as amended, effective July 1, 2005 are unconstitutional and are in violation of the Ohio and Federal Constitution on the basis of equal protection of the law and due process, and that said Rule imposes an undue burden on the class of Plaintiffs bringing medical claims in the State of Ohio.

COUNT VI

31. Plaintiffs restate the first, second, and third causes of action as if fully restated herein.

32. The following New Party Defendants have paid and/or provided benefits on behalf of the minor plaintiff Azavier Preston: Ohio Department of Job and Family Services (Reference Number unknown) and CareSource (Reference Number 10266479000) .

33. The above-referenced New Party Defendants may have rights of subrogation from any judgment in this action. Accordingly these subrogation claims should be determined or forever barred.

WHEREFORE, Plaintiffs demand judgment against the Defendants and New Party Defendants in an amount in excess of \$25,000.00 on each of the aforementioned Counts and whatever relief the Court deems just and equitable.

Respectfully submitted,

THE BECKER LAW FIRM



Michael F. Becker (0008298)

David W. Skall (0068740)

134 Middle Avenue

Elyria, OH 44035

Tel: 440/323-7070

Fax: 440/323-1879

Counsel for Plaintiffs

JURY DEMAND

Plaintiff hereby demands a trial by jury for all issues raised herein.



David W. Skall

SERVICE

Copies of the foregoing First Amended Complaint were sent by ordinary U.S. mail on this 29th day of April, 2013 to:

James P. Triona
The Triona Firm
2021 Auburn Avenue
Cincinnati, Ohio 45219
*Attorneys for Janice M. Duke, M.D. and
Wright State Physicians Women's Healthcare*

Neil F. Freund
Freund, Freeze & Arnold
Fifth Third Center
1 South Main Street, Suite 1800
Dayton, Ohio 45402
*Attorney for Gouhar Khan, M.D., Ealena Callender, M.D.,
Andre Harris, M.D., Heather A. Kleinhenz, M.D.,
Laura M. Russell, C.N.M., Miami Valley Hospital Center For Women's Healthcare,
Miami Valley Hospital*

David W. Skall

David W. Skall

**IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO**

AZAVIER PRESTON, ET AL.

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CASE NO.:

Plaintiffs,

JUDGE:

vs.

MIAMI VALLEY HOSPITAL, ET AL.

**AFFIDAVIT OF MERIT OF
CURTIS L. CETRULO, M.D.**

Defendants.

Curtis L. Cetrulo, M.D., being first duly sworn according to law, deposes and states as follows:

1. I am board certified in obstetrics and gynecology and maternal/fetal medicine.
2. I am licensed to practice medicine in the state of Massachusetts.
3. In 2005 I devoted at least 75% of my professional time to the active clinical practice of medicine or to the instruction of the same in an accredited institution.
4. I am familiar with the applicable standards of care for obstetricians and nurses providing obstetrical care in 2005.
5. Based upon my review of the medical records reasonably available at

this time, it is my professional opinion that the applicable standards of care were breached by physicians and nurses whose identities have not been fully determined at this time, that provided care to Angela Williams and her unborn child, Azavier Preston, at Miami Valley Hospitals Center for Woman's Healthcare during the months of May and June, 2005, including, but not limited to: Gouhar Khan, M.D., Ealena Callender, M.D., Janice M. Duke, M.D., Andre Harris, M.D., Heather A. Kleinhenz, M.D. and Laura M. Russell, C.N.M.

6. It is further my opinion that the above breaches in applicable standards of care were the direct and proximate causes of injuries to Azavier Preston.

Further Affiant sayeth naught.

C L Cetrulo MD
Curtis L. Cetrulo, M.D.

STATE OF Massachusetts)
COUNTY OF Dukes) ss:

Sworn to before me and subscribed in my presence this 9th day of July, 2012.

Lisa J Williston
Notary Public
Lisa J Williston