

4. As to Sinai-Grace Hospital and The Detroit Medical Center, duly licensed and accredited health care institutions, by and through their agents, actual and/or ostensible, servants, and/or employees, including but not limited to Karoline Puder, M.D., which hold themselves out to the public as being competent of rendering medical services, when presented with a patient exhibiting signs and symptoms such as those demonstrated by Michele Breech, owed a duty to:

- a. Timely and properly select, train and monitor its employees, servants, agents, actual or ostensible, and its staff of physicians, to insure that they were competent in all aspects of obstetrical care, including but not limited to the management of a patient with a history of preterm labor, shortened cervix, vasa previa and velamentous cord insertion, in compliance with the standard of care as described herein;
- b. Provide qualified medical staff with the proper training and ability to meet the patient's needs, including the ability to properly manage her care in accordance with the standard of care described herein;
- c. Adopt, implement and enforce policies and procedures for the management of a patient with a history of preterm labor, shortened cervix, vasa previa and velamentous cord insertion;
- d. Perform and appreciate a thorough history and physical examination;
- e. Provide proper obstetric services to a patient with a history of preterm labor, shortened cervix, vasa previa and VCI;
- f. Properly supervise and monitor the pregnancy of a patient with a history of preterm labor, shortened cervix, vasa previa and VCI;
- g. Recognize the inherent dangers to the fetus upon the rupture of the mother's membranes, including tearing of fetal vessels, resulting in blood loss and oxygen deprivation;
- h. Recognize that once the fetal vessel ruptures, any delay in delivery is detrimental to the fetus, prolonging its' blood loss and oxygen deprivation;
- i. Take proper precautions to prevent a patient with a history of preterm labor, shortened cervix, vasa previa and VCI from recurrent preterm labor, such as oral medications or a terbutaline pump;

- j. Hospitalize a patient with a history of preterm labor, shortened cervix, vasa previa and VCI at her third trimester so as to avoid any delay in performing a STAT c-section delivery should her membranes rupture;
- k. Plan for and schedule a cesarian section delivery for a patient with a history of preterm labor, shortened cervix, vasa previa and VCI prior to the mother experiencing labor or rupture of membranes, so as to avoid any danger to the infant;
- l. Inform the patient of the potentially serious risks of vasa previa and VCI and recommend hospitalization, and further advise the patient of the increased risk of maternal fetal hemorrhage if she is not hospitalized; and
- m. Any and all acts of negligence as identified through additional discovery.

5. It is my opinion that the staff and physicians of Sinai-Grace Hospital and The Detroit Medical Center, including but not limited to, Karoline Puder, M.D., failed to comply with the standard of care as enumerated above, and that said acts or omissions constitute a violation of the standard of care.

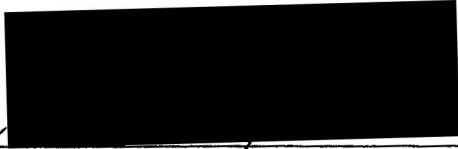
6. In order to have complied with the applicable standard of care, the above-named Defendants should have timely and properly done those things set forth in paragraphs 3 and 4 above.

7. Within a reasonable degree of medical certainty, as a direct and proximate result of the Defendants' joint and several negligence, Minor Plaintiff [REDACTED] suffered permanent neurological damages as a result of an intrapartum hypoxic ischemic insult secondary to blood loss and asphyxia resulting from the rupture of fetal vessels during Michele Breech's labor.

8. Within a reasonable medical probability, had Michele Breech been admitted to the hospital at 28 weeks gestation for monitoring, an elective c-section could have been performed prior to the rupture of membranes, or in the alternative, a STAT c-section delivery could have been immediately performed following spontaneous rupture of her membranes, thereby avoiding an unnecessary delay in [REDACTED] delivery, which allowed for intrapartum blood loss and

hypoxic ischemic insult, which resulted in permanent neurological damages, including but not limited to cerebral palsy (spastic quadriplegia), a seizure disorder, speech delays and severe cognitive impairment.

9. This Affidavit of Meritorious Claim is based upon information which has been presently reviewed and is subject to change or modification upon receipt of additional materials or information.


Boris Petrikovsky, M.D.

Subscribed and sworn to before me
on this 19th day of February 2009
Eugene Osnis
Notary Public, NY State County NY
My Commission Expires: 10/23/2010

EUGENE OSNIS
Notary Public, State of New York
No. 010S6154254
Qualified In Kings County
Commission Expires October 23, 2010.

Certificate on file in NY County.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MICHELE BREECH, as Next Friend
of [REDACTED] JR., a Minor,

Plaintiff,

Case No. 09-

NH

vs.

Hon.

LISA LYNN CARDWELL, M.D.,
DMC PRIMARY CARE SERVICE II
d/b/a NORTHWEST WOMEN'S CARE,
KAROLINE PUDER, M.D.,
GAGANDEEP BRAR, M.D.,
KEY-CHYANG LIANG, M.D.
SINAI HOSPITAL OF GREATER DETROIT
D/B/A SINAI-GRACE HOSPITAL and
THE DETROIT MEDICAL CENTER,
Jointly and Severally,

Defendants.

BRIAN J. McKEEN (P34123)
McKEEN & ASSOCIATES, P.C.
Attorneys for Plaintiff
645 Griswold Street, Suite 4200
Detroit, Michigan 48226
(313) 961-4400

AFFIDAVIT OF MERITORIOUS CLAIM

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

I, MICHAEL BERKE, M.D., by this Affidavit, state that during the relevant time period at issue in this matter, I was a licensed and practicing physician, specializing in and devoting the majority of my clinical practice to Obstetrics and Gynecology, and attest to the following:

1. That I have read the Notice of Intent to File Claim prepared on behalf of [REDACTED]
[REDACTED] a Minor.

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2. That I have reviewed all of the medical records supplied to me by the law firm of McKee & Associates, P.C. in connection with the allegations set forth in the Notice of Intent to File a Claim, including:

- a. Prenatal Records
- b. Sinai-Grace Hospital 11/16/04 Admission
- c. Sinai-Grace Hospital - Labor & Delivery Admission
- d. Sinai-Grace Hospital - Partial NICU Records

3. As to Lisa Lynn Cardwell, M.D., as a duly licensed and practicing physician, specializing in Obstetrics and Gynecology, when presented with a patient exhibiting signs and symptoms such as those demonstrated by Michele Breech, owed a duty to:

- a. Perform and appreciate a thorough history and physical examination;
- b. Provide proper obstetric services to a patient with a history of preterm labor, shortened cervix, vasa previa and velamentous cord insertion (VCI);
- c. Properly supervise and monitor the pregnancy of a patient with a history of preterm labor, shortened cervix, vasa previa and VCI;
- d. Timely refer a patient with a history of preterm labor, shortened cervix, vasa previa and VCI to a Maternal-Fetal-Medicine specialist for high risk prenatal care and delivery;
- e. Recognize the inherent dangers to the fetus upon the rupture of the mother's membranes, including tearing of fetal vessels, resulting in blood loss and oxygen deprivation;
- f. Recognize that once the fetal vessels rupture, any delay in delivery is detrimental to the fetus, prolonging its' blood loss and oxygen deprivation;
- g. Take proper precautions to prevent a patient a history of preterm labor, shortened cervix, vasa previa and VCI from recurrent preterm labor, such as oral medications or a terbutaline pump;
- h. Hospitalize a patient with a history of preterm labor, shortened cervix, vasa previa and VCI at her third trimester so as to avoid any delay in performing a STAT c-section delivery should her membranes rupture;

- i. Plan for and schedule a cesarian section delivery for a patient with a history of preterm labor, shortened cervix, vasa previa and VCI prior to the mother experiencing labor or rupture of membranes, so as to avoid any danger to the infant;
- j. Inform the patient of the potentially serious risks of vasa previa and VCI and recommend hospitalization, and further advise the patient of the increased risk of maternal fetal hemorrhage if she is not hospitalized; and
- k. Any and all acts of negligence as identified through additional discovery.

4. As to Northwest Women's Care, a duly licensed and accredited health care institution, by and through its agents, actual and/or ostensible, servants, and/or employees, including but not limited to Lisa Lynn Cardwell, M.D., which holds itself out to the public as being competent of rendering medical services, when presented with a patient exhibiting signs and symptoms such as those demonstrated by Michele Breech, owed a duty to:

- a. Timely and properly select, train and monitor its employees, servants, agents, actual or ostensible, and its staff of physicians, to insure that they were competent in all aspects of obstetrical care, including but not limited to the management of a patient with a history of preterm labor, shortened cervix, vasa previa and velamentous cord insertion, in compliance with the standard of care as described herein;
- b. Provide qualified medical staff with the proper training and ability to meet the patient's needs, including the ability to properly manage her care in accordance with the standard of care described herein;
- c. Adopt, implement and enforce policies and procedures for the management of a patient with a history of preterm labor, shortened cervix, vasa previa and velamentous cord insertion;
- d. Perform and appreciate a thorough history and physical examination;
- e. Provide proper obstetric services to a patient with a history of preterm labor, shortened cervix, vasa previa and VCI;
- f. Properly supervise and monitor the pregnancy of a patient with a history of preterm labor, shortened cervix, vasa previa and VCI;

- g. Timely refer a patient with a history of preterm labor, shortened cervix, vasa previa and VCI to a Maternal-Fetal-Medicine specialist for high risk prenatal care and delivery;
- h. Recognize the inherent dangers to the fetus upon the rupture of the mother's membranes, including tearing of fetal vessels, resulting in blood loss and oxygen deprivation;
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- m. Inform the patient of the potentially serious risks of vasa previa and VCI and recommend hospitalization, and further advise the patient of the increased risk of maternal fetal hemorrhage if she is not hospitalized; and
- n. Any and all acts of negligence as identified through additional discovery.

5. As to Sinai-Grace Hospital and The Detroit Medical Center, duly licensed and accredited health care institutions, by and through their agents, actual and/or ostensible, servants, and/or employees, including but not limited to Lisa Lynn Cardwell, M.D., which hold themselves out to the public as being competent of rendering medical services, when presented with a patient exhibiting signs and symptoms such as those demonstrated by Michele Breech, owed a duty to:

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vasa previa and velamentous cord insertion, in compliance with the standard of care as described herein;

- b. Provide qualified medical staff with the proper training and ability to meet the patient's needs, including the ability to properly manage her care in accordance with the standard of care described herein;
- c. Adopt, implement and enforce policies and procedures for the management of a patient with a history of preterm labor, shortened cervix, vasa previa and velamentous cord insertion;
- d. Perform and appreciate a thorough history and physical examination;
- e. Provide proper obstetric services to a patient with a history of preterm labor, shortened cervix, vasa previa and VCI;
- f. Properly supervise and monitor the pregnancy of a patient with a history of preterm labor, shortened cervix, vasa previa and VCI;
- g. Timely refer a patient with a history of preterm labor, shortened cervix, vasa previa and VCI to a Maternal-Fetal-Medicine specialist for high risk prenatal care and delivery;
- h. Recognize the inherent dangers to the fetus upon the rupture of the mother's membranes, including tearing of fetal vessels, resulting in blood loss and oxygen deprivation;
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- k. Hospitalize a patient with a history of preterm labor, shortened cervix, vasa previa and VCI at her third trimester so as to avoid any delay in performing a STAT c-section delivery should her membranes rupture;
- l. Plan for and schedule a cesarian section delivery for a patient with a history of preterm labor, shortened cervix, vasa previa and VCI prior to the mother experiencing labor or rupture of membranes, so as to avoid any danger to the infant;

m. Inform the patient of the potentially serious risks of vasa previa and VCI and recommend hospitalization, and further advise the patient of the increased risk of maternal fetal hemorrhage if she is not hospitalized; and

n. Any and all acts of negligence as identified through additional discovery.

6. It is my opinion that the staff and physicians of Northwest Women's Care, Sinai-Grace Hospital and The Detroit Medical Center, including but not limited to, Lisa Lynn Cardwell, M.D., failed to comply with the standard of care as enumerated above, and that said acts or omissions constitute a violation of the standard of care.

7. In order to have complied with the applicable standard of care, the above-named Defendants should have timely and properly done those things set forth in paragraphs 3, 4 and 5 above.

8. Within a reasonable degree of medical certainty, as a direct and proximate result of the Defendants' joint and several negligence, Minor Plaintiff [REDACTED] suffered permanent neurological damages as a result of an intrapartum hypoxic ischemic insult secondary to blood loss and asphyxia resulting from the rupture of fetal vessels during Michele Breech's labor.

9. Within a reasonable medical probability, had Michele Breech been admitted to the hospital at 28 weeks gestation for monitoring, an elective c-section could have been performed prior to the rupture of membranes, or in the alternative, a STAT c-section delivery could have been immediately performed following spontaneous rupture of her membranes, thereby avoiding an unnecessary delay in [REDACTED] delivery, which allowed for intrapartum blood loss and hypoxic ischemic insult, which resulted in permanent neurological damages, including but not limited to cerebral palsy (spastic quadriplegia), a seizure disorder, speech delays and severe cognitive impairment.

10. This Affidavit of Meritorious Claim is based upon information which has been presently reviewed and is subject to change or modification upon receipt of additional materials or information.



Michael Berke, MD.

Subscribed and sworn to before me
on this 16th day of March 2009
Devin A. Beatty
Notary Public, Wayne County MI
My Commission Expires: 02/16/2012

**MCKEEN
& ASSOCIATES, P.C.**
ATTORNEYS AND
C O U N S E L O R S

*Rec'd 6/17/08
cert. mail*

PENOBSCOT BUILDING
42ND FLOOR
645 GRISWOLD STREET
DETROIT • MICHIGAN 48226

BRIAN J. MCKEEN
TERRY A. DAWES
RAMONA C. HOWARD
EUEL W. KINSEY*

TELEPHONE (313) 961-4400 • FACSIMILE (313) 961-5985

TERRANCE J. CIROCCO**
SAULIUS D. POLTERAITIS
TERESA E. HOHMAN***
CAMERON R. GETTO****
JODY L. AARON
*Admitted to MI, TN, AR, MS, TX, PA, WI
**Admitted to MI, TN, AR, MS, PA, WI
***Admitted to MI, OH
****Admitted to MI, CO

June 13, 2008

SENT VIA CERTIFIED MAIL

Lisa Lynn Cardwell, M.D.

[REDACTED]
Southfield, MI 48034

Northwest Women's Care
d/b/a DMC Primary Care Services II
27209 Lahser Road, Suite 220
Southfield, MI 48034

Karoline Puder, M.D.

[REDACTED]
Detroit, MI 48235

University Women's Care
Sinai Grace Hospital
Department of Obstetrics & Gynecology
6071 West Outer Drive, Room 284
Detroit, MI 48235

Dr. Brar
c/o Sinai Grace Hospital
Attn: Risk Management
6071 West Outer Drive
Detroit, MI 48235

Keh-Chyang Liang, M.D.
Department of Neonatology
Sinai Grace Hospital
6071 West Outer Drive
Detroit, MI 48235

Sinai Grace Hospital
Attn: Risk Management
6071 West Outer Drive
Detroit, MI 48235

The Detroit Medical Center
Attn: Risk Management
Corporate Offices
3990 John R
Detroit, Michigan 48201

NOTICE OF INTENT TO FILE A CLAIM

Re:	Our Client:	Kelvin Breech, a Minor
	Date of Birth:	[REDACTED]
	Minor's Mother:	Michele Breech
	Date of Birth:	[REDACTED]
	Social Security #:	[REDACTED]

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HEALTH CARE PROVIDERS:

This Notice is intended to apply to the above listed health care professionals, entities, and/or facilities, as well as their employees or agents, actual or ostensible, who were involved and/or participated in the care and treatment of Michele Breech and [REDACTED] a Minor.

FACTUAL BASIS FOR CLAIM:

Michele Breech was twenty-eight years old when she became pregnant with Kelvin. Michele began her prenatal care on June 15, 2004, after a positive pregnancy test with Lisa L. Cardwell, M.D.

On July 15, 2004, Michele presented to The Detroit Medical Center (DMC) for an ultrasound to confirm dates and to rule out a threatened abortion due to complaints of vaginal bleeding. Karoline Puder, M.D. performed the ultrasound confirming a single gestation of 10 2/7 weeks. Michele was given a due date of February 8, 2005.

On September 10, 2004, at approximately 18 weeks gestation, Michele presented to DMC for a repeat ultrasound due to her complaints of bleeding and cramping. Michele was diagnosed with vasa previa with velamentous cord insertion (VCI). Dr. Puder notified Dr. Cardwell of the findings.

On November 16, 2004, at approximately 28 weeks gestation, Michele presented to DMC for an ultrasound with Dr. Bernard Gonik. Dr. Gonik noted Michele to have vasa previa with velamentous insertion, as well as a shortened cervix of 21 mm. Dr. Cardwell was notified of the results and Michele was sent to Sinai-Grace Hospital in Detroit for further evaluation.

At approximately 1200, Michele presented to Sinai-Grace Hospital due to a shortened cervix. At the time of admission, she was not experiencing any vaginal bleeding or contractions. Michele was placed on a fetal monitor and was noted to be contracting. She was given magnesium sulfate, which eventually halted her pre-term labor. She also received betamethasone for fetal lung development. On November 18th, Dr. Puder was called in for a Maternal-Fetal-Medicine consultation and recommended that Michele be discharged home on bed rest. Dr. Cardwell discharged Michele that day.

With Michele's history of preterm labor, shortened cervix and vasa previa, she should have been kept inpatient for monitoring in the event that her membranes ruptured. If her membranes ruptured in the hospital, a STAT c-section delivery could have been performed to prevent maternal fetal hemorrhage. At the very least, Michele should have been given oral medications or possibly a terbutaline pump to prevent preterm labor with home monitoring.

On December 21, 2004, at approximately 0600, Michele's membranes spontaneously ruptured at home and she began bleeding heavily. Michele called the hospital en route to advise that she was on her way.

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Once she arrived to Labor and Delivery Triage at Sinai-Grace Hospital, a large blood clot was noted. A bedside ultrasound was performed recording a fetal heart rate between 50 and 60 bpm. Michele was taken from Triage to the Operating Room by Dr. Patel at 0705 for a STAT c-section.

Kelvin was delivered stillborn at 0714 at 33 weeks gestation. Kelvin's apgar scores were 0 at one minute, 0 at five minutes, 0 at ten minutes, 3 at fifteen minutes and 3 at twenty minutes. He was described as pale, limp and without a pulse or respiratory effort. Kelvin was suctioned, bagged with oxygen and intubated. Epinephrine was given through the ET tube and he was admitted to the NICU for mechanical ventilation and further care.

At 0749, Kelvin's labs were completed revealing a very low hemoglobin value of 6.6. An order for a blood transfusion was not given until 0900, therefore, he did not receive his transfusion until 0925. Knowing Kelvin's history, his treating physicians should have anticipated Kelvin's need for a blood transfusion and should have been prepared to order a transfusion immediately upon the availability of the laboratory results. Instead, there was a 70 minute delay from the time Kelvin's laboratory values were available until the time the order for a transfusion was given.

Kelvin was admitted to the NICU for 31 days, requiring 21 days of mechanical ventilation, umbilical venous and artery catheterizations and blood transfusions. His discharge diagnoses were respiratory distress syndrome, transient thrombocytopenia, severe asphyxia, hypoxic ischemic encephalopathy, seizure disorder, hypotension, anemia of prematurity, gastroesophageal reflux and hypocalcemia.

Kelvin suffers from cerebral palsy and is severely and permanently impaired both physically and mentally.

THE APPLICABLE STANDARD OF PRACTICE OR CARE:

- A. The standard of care required that **Lisa Lynn Cardwell, M.D.**, as a reasonable and prudent licensed physician, practicing and specializing in Obstetrics & Gynecology, when presented with a patient exhibiting signs and symptoms such as those demonstrated by Michele Breech, owed a duty to:
1. Perform and appreciate a thorough history and physical examination;
 2. Provide proper obstetric services to a patient with a history of preterm labor, shortened cervix, vasa previa and velamentous cord insertion (VCI);
 3. Properly supervise and monitor the pregnancy of a patient with a history of preterm labor, shortened cervix, vasa previa and VCI;
 4. Timely refer a patient with a history of preterm labor, shortened cervix, vasa previa