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May 18, 2016

To Whom it May Concern

Re: The Estate of Tyler Matthew Hayes, by Stacey Hayes and Matthew Hayes, Administrators, and Stacey Hayes, Individually v. Marcela Smid, M.D., Kathy Sue Higgins, C.N.M. and Margaret Jennings Cox, C.N.M.
15 C.V.S. 4195 (Durham County)
Our File No.: 225-267

Dear Sir or Madam:

I have the honor of representing Dr. Smid in a pending lawsuit brought by the Estate of Tyler Matthew Hayes and Stacey Hayes arising out of the care and treatment providing during Stacey Hayes' labor and delivery at UNC Hospitals, and the unfortunate death of newborn Tyler Hayes.

At the time of this delivery, Dr. Smid had just begun working as a maternal fetal medicine fellow at UNC Hospitals. Stacey Hayes was a patient of the UNC Midwife Service, so Dr. Smid had not been involved in Ms. Hayes' care until the day of delivery. It was the practice at UNC Hospitals that the midwife service independently cared for their patients on labor and delivery and would consult the ob/gyn service (including maternal fetal medicine fellows) only when a patient needed to be evaluated for operative vaginal delivery or possible C-section.

Ms. Hayes was a midwife patient who had strongly advocated with her caregivers for a natural delivery, but whose delivery had been induced because she was post-dates and had a nonreactive non-stress test. Ms. Hayes began active labor and pushing at approximately 9:30 am on August 20, 2013. At 12:00 after two and a half hours of pushing (only one and a half hours of which the nurse and midwife characterized as *effective* pushing), Margaret Jennings Cox, C.N.M. consulted Dr. Smid for possible operative vaginal delivery. Dr. Smid evaluated Ms. Hayes and determined that she was at +1 station, and therefore had not progressed enough for operative vaginal delivery. Dr. Smid did not believe, based on her review of the fetal monitor strip or any other parameter, that a cesarean section was indicated at that point--especially in a patient who clearly wanted to deliver vaginally if possible.

Thereafter Ms. Hayes continued to push with assistance of the midwife, Ms. Cox, and the labor and delivery nurse. After examination by Ms. Cox that revealed Ms. Hayes had progressed to +2 station she again consulted Dr. Smid for possible operative vaginal delivery at approximately 14:00.

Dr. Smid re-evaluated Ms. Hayes and found her to be complete and at +2 station in ROA. The fetal heart rate tracing at that time indicated the fetal heart rate was in the 130s with minimal to moderate variability with intermittent variable decelerations with recovery to baseline. Dr. Smid first attempted to apply forceps, but because she could not articulate them due to the baby's head position she abandoned them. While she attempted to apply the forceps, the fetus experienced heart decelerations down to the 70's at approximately 14:37. Dr. Smid then switched to a vacuum. An ob/gyn resident, Dr. Jim Casey, made the first vacuum attempt. Dr. Smid made the second vacuum attempt. Dr. Ivester, a maternal fetal medicine physician, made a third vacuum attempt. There was no descent noted on any attempt and they elected to proceed to a C-section. After the attempt at operative vaginal delivery, the fetal heart rate appeared to have recovered and resumed a baseline of 130s and was later documented by the nursing staff in the 150s.

The labor and delivery team unhooked various monitors, including Ms. Hayes' pulse oximeter, in preparation for transfer to the operating room for her cesarean section. The labor and delivery nurse contacted anesthesia, who arrived at or around 15:03. They entered the operating room at 15:05. Dr. Smid performed the C-section. She made the skin incision at 15:19 and delivered Tyler Hayes at 15:24. He had no tone upon delivery. His pupils were fixed and dilated. He had a nuchal cord and a PH of < 6.8. His Apgar scores were 0-0-2. Dr. Smid had no further involvement with Tyler Hayes after the delivery.

The NICU team took over care of Tyler Hayes in the operating room. They attempted resuscitation and he was intubated within 1 minute of life. Despite resuscitative efforts the NICU team determined that Tyler sustained severe hypoxic ischemic encephalopathy had multi system failure. After counseling from the NICU physicians, the Hayes elected to remove life sustaining measures and after he was extubated Tyler Hayes passed away.

Retrospectively, the delivery team has concluded that the heart rhythm in the 150s the monitor was picking up as probably the maternal heart rate rather than the baby's rate. Because the maternal pulse oximeter had been removed for transfer, the elevated maternal heart rate was not showing on the same monitor as the "fetal" heart rate, and the coincidence was not recognized. Sometime between the operative delivery attempt and the C-section, the baby's heart rate crashed, but was not picked up by the monitor or suspected by anyone caring for Ms. Hayes.

While Dr. Smid and all the providers involved were shocked by the unexpected outcome and feel terrible about this baby's death, no one at UNC has told us they believe she breached any standard of care applicable to her. Both maternal fetal medicine program director Dr. Robert Strauss and Dr. Thomas Ivester (the MFM attending who was also on duty the day of delivery)

have told us they believe Dr. Smid complied with her standard of care while working with Ms. Hayes.

This lawsuit was filed in December 2015. We have filed an answer on Dr. Smid's behalf denying any negligence, but discovery has only just begun. We are obtaining external reviews, and expect we will be able to present credible testimony supporting Dr. Smid's care. At this time, Dr. Smid and her insurance carrier have no plans to make any offer of settlement.

Our investigation thus far indicates that Dr. Smid is a very accomplished and well trained maternal fetal medicine fellow who encountered an unusual situation that unfortunately has led to a tragic death and an emotionally difficult lawsuit. Her status as a defendant in this suit is not an indicator of either any lack of ability or any lack of care on her part. I would therefore urge any credentialing officers reviewing this letter not to hold this pending lawsuit against Dr. Smid in reviewing her credentials.

If you have any questions, please do not hesitate to contact me. With best regards, I am

Sincerely,

Barry S. Cobb

Barry S. Cobb

BSC/kab

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May 20, 2016

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RE: ***Laticia Whitehead, individually and as mother and next friend of Love Whitehead, a minor, vs. The University of Chicago Medical Center d/b/a The University of Chicago Medicine, Kenneth Nunes, M.D., Lopa Pandya, M.D., Theresa Hamer, M.D. and Marcela Smid, M.D.***
Date of Loss: December 8, 2012
Court No.: 13 L 9425

Dear Dr. Smid:

This lawsuit was filed in 2013 and involves allegations of a failure to timely deliver by cesarean section on December 8 and 9, 2012. Ms. Whitehead presented to Triage on the night of 12/8/12 at 38 weeks gestation with a complaint of decreased fetal movement. The admitting History & Physical documented that the patient had not felt the baby move all day. She was planning to have a repeat C-section. Soon after Ms. Whitehead presented to Triage, she had a prolonged fetal heart rate deceleration with the pattern returning to reassuring. The resident team was being closely supervised by the attending, who was making the management decisions. The attending made a decision to try to postpone the C-section as long as the strip remained reassuring, because the patient had eaten a large greasy meal just prior to coming to the hospital. When a second prolonged deceleration occurred an hour and a half later, the team proceeded to delivery. The Complaint alleges the failure to timely perform a C-section resulted in hypoxic ischemic encephalopathy to the fetus and neurologic complications. The neonatal chart reveals there was an underlying in utero problem with the baby, who had very low hemoglobin (2.5) at delivery, together with other abnormalities that are not likely related to events around the time of delivery. The neonatology attending indicates there was likely an event that occurred a week or so prior to delivery and testified that the events of 12/8/12 and 12/9/12 did not likely contribute to any injury.

Very truly yours,

LOWIS & GELLEN LLP

Pamela L. Gellen
Pamela L. Gellen

PLG/msy