

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Calendar # _____
325 (d) _____

Tabetha Rodriguez

Plaintiff(s),

PRELIMINARY CONFERENCE ORDER

Pursuant to Part 202 of the Uniform Civil
Rules for the Supreme Court

- against -

All Women's Health & Medical
Services, P.C., et al.

Defendant(s),

HON. Stanley Green

Preliminary Conference Part

Index Number 308557/09

Conference Date 3-27-12

APPEARANCES: **Plaintiff:** Tabetha Rodriguez
 Firm: Scott Gilman, ESQ.
 By Attorney: " " " Phone: _____
 Carrier: _____ Phone: 212-549-9499 Coverage Amount: _____

Defendant 1: All Women's Health & Medical Services, Gary Dresden American Medical
 Firm: Greer Fitzhugh
 By Attorney: Ellen August Phone: _____
 Carrier: N/A Phone: 212-695-8100 Coverage Amount: _____

Defendant 2: Estate of Knorr
 Firm: Dwyer & Taglia
 By Attorney: Gary Dwyer Phone: 212-227-6000
 Carrier: MLMEC Phone: _____ Coverage Amount: _____

Defendant 3: _____
 Firm: _____
 By Attorney: _____ Phone: _____
 Carrier: _____ Phone: _____ Coverage Amount: _____

- I INSURANCE COVERAGE:** To be furnished within 30 days.
- II BILL OF PARTICULARS:**
- 1. Not submitted: Bill of Particulars to be served by _____
 - 2. Served: 2(a). Satisfactory 2(b). Unsatisfactory
 - 3. Supplemental bill of particulars to be served _____ *as appropriate*
 - 4. Bill of particulars for affirmative defenses to be served _____
- Dr. Knorr regarding paragraphs 2, 4(a-b), 7(a, c) of Social Security Act, 12(c-d), 13, 14 and 16 with ASB remaining defendants, itemize specific liability and 30 days after completion of deposition of depositions.*
- III MEDICAL REPORTS AND HOSPITAL AUTHORIZATIONS:**
- 1. Furnished (Except: _____)
 - 2. Medical reports or authorizations for records to be served *with 30 days*
 - 3. Hospital authorizations to be served *prescribe of other copies*
- Authorizations for all treaty obligations prior to and subsequent to alleged malpractice, including Dr. Knorr, including and 30 days after deposition, Greenwich Hospital, primary care physician, All Women's Health, GHE, Pharmacia*
- IV PHYSICAL EXAMINATION:**
- 1(a). Held 1(b). Waived
 - 1(c). Examination of plaintiff
 To be held within 45 days after designation
 Defendant to designate physician(s) within 7 days of plaintiff's EBT
 - 2(a). Physician's report furnished
 - 2(b). Copy of physician's report to be furnished to plaintiff
 within 15 days of examination.

PRELIMINARY CONFERENCE ORDER

V EXAMINATION BEFORE TRIAL: 1. Plaintiff Defendants All parties.
 2. To be held at see additional directives
Date: _____ Time: _____
 3. Held (Except: _____) Waived

VI OTHER DISCLOSURE: 1. None
 2. All parties to exchange names and addresses of all witnesses, opposing parties' statements, and photographs. If none, an affirmation to that effect shall be exchanged.
 3. Authorizations for plaintiff's employment records (IRS) including W-2 for period 5 years prior to alleged malpractice to date
 4. All Women's to produce complete chart and sonogram images and to identify person who performed sonogram
 5. To be completed within _____

VII IMPLAIDER ACTIONS: 1(a). None 1(b). To be commenced 90 days after all EBT's.

VIII DESIGNATED FOR TRANSFER: 1(a). CPLR 325 (c)
 1(b). CPLR 325 (d)

IX ADDITIONAL DIRECTIVES: See attached page for additional directives

X ALL PARTIES: Are directed to complete discovery on or before _____ and appear for a compliance conference on 6/2/12

Any statutory stays of disclosure due the pendency of motions pursuant to CPLR 3211, 3212 and 3213 are vacated.

Counsel will be required to justify, at the Compliance Conference, failure to adhere to the discovery schedule set forth herein.

In the event of non-compliance, costs or other sanctions may be imposed.

This constitutes the decision and order of this court.

Dated: 3-27-12 Enter: A. Green

STANLEY GREEN
J.S.C.

Parties must adhere to all dates contained herein relating to the completion of items in this order. Counsel may not enter into any adjournments without further order of this court.

T. Rodriguez
All Women's Health

DISCOVERY ORDER

X. ADDITIONAL DIRECTIVES: The examinations before trial will be held as follows

① Tatetha Rodriguez on or before 9/15/12

② All Women's Health & Medical Services, P.C.

on or before 10/13/12

~~③ Dr. Gary Dresden on or before Dresden 10/27~~

Plaintiff to designate witness from All Women's to be deposed by 9/15/12

Plaintiff to provide authorizations for facilities and providers where abortion procedure performed after visit by All Women's Health and psych providers.

Plaintiff's counsel to furnish copies of all records and diagnostic studies in possession and duplicating cost of defense.

Plaintiff to respond to discovery demands of Dr. Knorr and other defendants

All discovery within 30 days.

Δ Estate of William Knorr, MD to provide all of Dr. William Knorr's records relating to diagnosis, examination and treatment of TR

Δ Estate of William Knorr, MD to produce all documents ~~related~~ re: professional ^{and business} relationships with co-defendants

to provide above within 30 days

**Bronx County Supreme Court
COMPLIANCE CONFERENCE ORDER
Part IA-11**

Present: Hon. Stanley Green
Tabetha Rodriguez, X

Index No. 908557 109

Plaintiff(s),

- against -

All Women's Health, Med. Soc., P.C.,
et al.,

Defendant(s).

Date RJI filed: 10/25/2016

-----X

UPON the Preliminary Conference Order dated 3/27/2012, and following a Compliance Conference held on 6/12/2012, and it appearing that disclosure was previously ordered herein and has not been completed, or that additional disclosure is warranted, it is hereby

ORDERED that disclosure shall proceed and be completed in accordance herewith; and it is further

ORDERED that proceedings directed herein shall be completed on or before the dates set forth. No adjournments, postponements or alterations of this order are permitted without the Court's written approval, and none may be had upon the stipulation of the parties alone; and it is further

ORDERED that disclosure demands now known to be necessary which are not raised at this conference are deemed to be waived, unless otherwise ordered by the Court; and it is further

ORDERED that any statutory stays of disclosure due to the pendency of motions pursuant to CPLR §§ 3211, 3212 and 3213 are vacated; and it is further

ORDERED that any parties failing to appear at this conference shall be bound by the terms of this order; and it is further

COMPLIANCE CONFERENCE ORDER

ORDERED that the outstanding discovery shall be provided as follows:

1. INSURANCE COVERAGE: To be provided by (already provided by Dr. Korr)

2. BILL OF PARTICULARS: A. Response to be provided by _____;

Dated: _____

X B. Supplemental Bill of Particulars as to items:

~~As to Dr. Korr: Q2, 4(a-b), 7(a,c), 11, 12(c-d), 13, 14, 16~~
~~As to remaining Δs, please specify liability by to each Δ within 30~~
To be served by 30 days ~~of EBT~~ days of T. + EBT

C. D & I by _____ to be served by _____;

X D. Responses to Dr. Korr's D & I dated _____ to be served by within 45 days;

3. AUTHORIZATIONS:

X A. For Medical Records (specifically for the pharmacy records of the treating physicians, to the extent not yet provided) to be served by 30 days;

X B. Authorizations for Plaintiff's:

____ Employment Records;

X W-2 Records for Period 5 years prior to date of alleged malpractice

____ Other (Specify) _____;

To be served by: 30 days

C. For _____ to be served by _____;

4. EXAMINATION BEFORE TRIAL:

X Plaintiff _____ Defendant X All Parties

X A. To Be Held On 3/12/2013 at 1:00 p.m.
At 1:00 or unless otherwise agreed, the Bronx Supreme Court Building, Room 118.
Any EBT's not completed on said date will be continued on 3/19/2013

B. Limitations: _____

C. Post EBT demands to be served by _____ and must be responded to by _____.

NOTE:
NO POSTPONEMENTS
ARE PERMITTED
WITHOUT COURT
APPROVAL.

4/1 Dr. Korr's
be held
on or
before
3/19/2013

FAILURE TO COMPLY WITH THIS SCHEDULE WILL RESULT IN THE PRECLUSION OF THE OFFENDING PARTY OR WAIVER OF EBT BY NON-APPEARING PARTY, UNLESS OTHERWISE ORDERED BY THE COURT.

COMPLIANCE CONFERENCE ORDER

5. PHYSICAL EXAMINATION:

- A. Defendant to designate physician(s) in writing by 30 days of 11/7/13 ;
- B. Examination to be held by 30 days after designation
- C. Copy of physician's report to be furnished within 30 days of examination.

- FAILURE TO TIMELY DESIGNATE WILL RESULT IN A WAIVER OF SUCH EXAMINATION, UNLESS OTHERWISE ORDERED BY THE COURT.
- FAILURE TO COMPLY WILL RESULT IN PLAINTIFF'S PRECLUSION FROM OFFERING ANY EVIDENCE AT TRIAL REGARDING THEIR PHYSICAL CONDITION, UNLESS OTHERWISE ORDERED BY THE COURT.

6. OTHER DISCLOSURE:

- A. None.
- B. All parties to exchange names and addresses of all witnesses, opposing parties' statements and photographs. If none, an affirmation to that effect shall be exchanged by 45 days.
- C. Other: All women's to produce complete charts and sonogram images and for identify person who performed sonograms
To be served by 45 days ;

and it is further

ORDERED that plaintiff _____ shall serve and file a Note of Issue and Certificate of Readiness on or before _____. The failure to file a Note of Issue as required by this order may subject the plaintiff to fines. Plaintiff may not file a Note of Issue unless all discovery due by plaintiff has been completed pursuant to this order. A party that files a Note of Issue where that party has not complied with this order may be subject to costs and/or sanctions; and it is further

ORDERED that failure to comply with the directives and schedule detailed herein will result in either a *waiver of the item requested* or *the preclusion of items or testimony of the offending party's evidence at the time of trial.* and/or *the imposition of costs and sanctions,* unless otherwise ordered by the Court.

cc 4/27/13

DATED: 1/17/13

ENTER:

[Signature]

J.S.C.
STANLEY GREEN

Index #: 0308557/2009 ()	Calendar #:	Case Age: 816 days
Case Status: Active	Post Judgment Status:	
Disposition Date:	Jury Status:	
Action Type: MEDICAL MALPRACTICE	Note of Issue Date:	
Curr. Court Part: COMPLIANCE CONF MED MAL PART	Complexity Indicator: Complex	
Assgn Justice: STANLEY GREEN - MED MAL	Estimated Trial Time:	
Post Judgment Justice:	Case Identifier: DISM-PC	
Case Description:	Injury Type:	
	Personal #:	
Compliance Conf Schedule Date:	Compliance Conf Date: 6/12/2012 00:00:00	
Latest Compliance Conf Date: 1/17/2013 00:00:00		

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
SUZANNE KNORR, AS EXECUTRIX OF THE
ESTATE OF WILLIAM KNORR, M.D.,

Defendants.
-----X

INSYNC

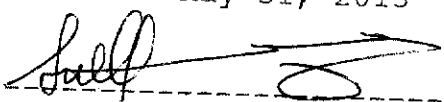
STIPULATION OF
DISCONTINUANCE

FILE

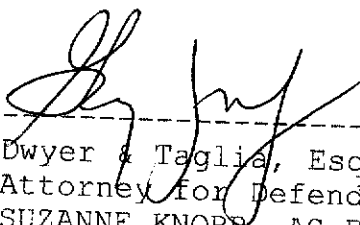
Index No.: 308557/09

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above-entitled action be, and the same hereby is discontinued with prejudice without costs to either undersigned party as against each other. The stipulation may be filed with the Clerk of the Court without further notice.

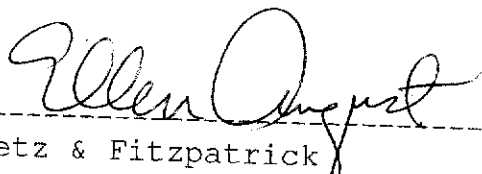
DATED: New York, New York
May 31, 2013



Scott Gilman, Esq.
Attorney for Plaintiff
380 Lexington Avenue, 17th Flr.
New York, NY 10168
212-599-9999



Dwyer & Taglia, Esqs.
Attorney for Defendant,
SUZANNE KNORR, AS EXECUTIVE OF THE
ESTATE OF WILLIAM KNORR, M.D.
By: Gary Dwyer, Esq.
111 John Street, Suite 620
New York, NY 10038
212-227-6000



Goetz & Fitzpatrick
Attorney for Defendants,
ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC
by: Ellen August, Esq.
One Penn Plaza
New York, NY 10119
212-695-8100

Gilman Credit Card

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

SUMMONS

-against-

Index #

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Date Filed:

Defendants.

-----X

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the plaintiff's attorney(s) within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after the service is complete where service is made in any other manner than by personal delivery within the State of New York.

The Plaintiff has designated BRONX County as the place of trial on the basis that it is the county in which the plaintiff resides.

Dated: October 14, 2009



SCOTT GILMAN, ESQ.
Attorney for Plaintiff(s)
380 Lexington Avenue, 17th Flr
New York, New York 10168
(212) 599-9999

TO THE ABOVE NAMED DEFENDANTS:

TAKE NOTICE that this is an action for personal injuries suffered by TABETHA RODRIGUEZ on or about April 23, 2007, caused by the negligence of the defendants; the relief sought is recovery of money damages for the plaintiff's injuries, pain and suffering; in case of your failure to appear, judgment may be taken against you in an amount that exceeds the jurisdictional limits of all lower courts with interest from April 23, 2007, together with the costs and disbursements of this action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

VERIFIED COMPLAINT

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.:

Defendants.
-----X

Plaintiff, TABETHA RODRIGUEZ, complaining of the defendants, by her attorney, Scott Gilman, Esq., alleges upon information and belief:

1. At all times hereinafter mentioned, plaintiff TABETHA RODRIGUEZ, born 8/19/87, was and still is a citizen of the State of New York and resident of the County of Bronx.

2. At all times hereinafter mentioned, defendant GARY A. DRESDEN, M.D., was a physician duly licensed to practice medicine in the State of New York.

3. At all times hereinafter mentioned, defendant JANE DOE, M.D., is a fictitious name for the as yet unidentified person who held herself out as a duly licensed physician licensed to practice medicine in the State of New York, who consulted with the plaintiff on or about April 23, 2007 and told her that she was not then and had not been pregnant as previously determined by MIA WRIGHT, M.D. on or about April 11, 2007.

4. At all times hereinafter mentioned, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., was a domestic professional corporation.

5. Upon information and belief, at all times hereinafter mentioned, defendant AMERICAN MEDICAL MGMT. INC, was a domestic corporation.

6. Upon information and belief, at all times hereinafter mentioned, defendant AMERICAN MEDICAL MGMT, INC, was a foreign corporation.

7. Upon information and belief, at all times mentioned herein, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

8. Upon information and belief, at all times mentioned herein, defendant AMERICAN MEDICAL MGMT, INC managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

9. Upon information and belief, at all times mentioned herein, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

10. Upon information and belief, at all times mentioned herein, defendant AMERICAN MEDICAL MGMT, INC owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

11. Upon information and belief, at all times mentioned herein, GARY A. DRESDEN, M.D., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

12. Upon information and belief, at all times mentioned herein, JANE DOE, M.D., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

13. Upon information and belief, at all times mentioned herein, defendant GARY A. DRESDEN, M.D. owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

14. Upon information and belief, at all times mentioned herein, defendant JANE DOE, M.D. owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

15. Upon information and belief, at all times herein mentioned, defendant, Jane Doe, M.D. had a contract regarding professional employment with defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

16. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

17. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, GARY A. DRESDEN, M.D.

18. At all relevant times, when plaintiff received medical care and treatment at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., she was a patient of JANE DOE, M.D.

19. At all relevant times, when plaintiff received medical care and treatment at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., she was a patient of GARY A. DRESDEN, M.D.

20. This action falls within one or more exceptions as provided in CPLR Sec. 1602.

21. At all relevant times, defendant, GARY A. DRESDEN, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

22. At all relevant times, defendant, JANE DOE, M.D. was a licensed physician engaged in the practice of her profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

23. Upon information and belief, at all relevant times, defendant, GARY A. DRESDEN, M.D. held herself out to the public as a competent and skillful physician, capable, experienced and skilled in obstetrics and gynecology.

24. At all relevant times, defendant, JANE DOE, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

25. Upon information and belief, at all times herein mentioned, defendant, JANE DOE, M.D. limited her medical practice to obstetrics and gynecology.

26. Upon information and belief, at all times herein mentioned, defendant, JANE DOE, M.D. limited her medical practice to obstetrics and gynecology.

27. On April 11, 2007, plaintiff TABETHA RODRIGUEZ consulted with MIA WRIGHT, M.D. as a physician to attend her and assess the state of her health and physical condition.

28. After examination and testing on April 11, 2007, the plaintiff was informed by MIA WRIGHT, M.D. that she was pregnant.

29. Thereafter, on or about April 23, 2007, plaintiff presented at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. with the intention of terminating an unwanted pregnancy, and after examination and testing, she received a consultation from JANE DOE, M.D. and other persons thereat (the name(s) of whom are to date, unknown) that she was not pregnant and therefore, could not undergo a procedure to terminate the unwanted pregnancy.

30. Defendant, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. undertook as women's health care providers to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

31. Defendant, JANE DOE, M.D. undertook as a physician at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

32. Upon information and belief, defendant, GARY A DRESDEN, M.D. undertook as a physician to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

33. Upon information and belief, at all times herein mentioned, each of the answering defendants assisted with and participated in the medical care rendered to the plaintiff patient in connection with the pregnancy she presented with in April, 2007.

34. Each of the defendants herein failed to use reasonable or proper skill in their efforts to diagnose and treat the plaintiff, in that they negligently consulted, told and permitted the plaintiff to believe that she was not pregnant when in fact she was; permitted the pregnancy to continue, despite her lawful and reasoned decision to terminate the unwanted pregnancy; and despite her request and instructions to the defendants to terminate her pregnancy, the defendants unreasonably, negligently and carelessly permitted the plaintiff's pregnancy to continue while causing the plaintiff to erroneously believe she was not pregnant, ultimately causing an unnecessarily prolonged & complicated medical course. All of the foregoing causing and exacerbating the plaintiff great physical and emotional pain and trauma.

35. At all relevant times, the aforementioned care of the plaintiff relating to the above described pregnancy was by members, associates, partners, or agents, servants and employees of the defendants.

36. The aforementioned injuries and damages to plaintiff were caused solely by the negligence of the defendants, their agents, servants and employees.

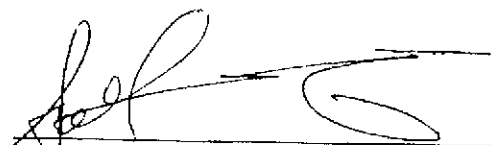
37. As a result of the negligence of the defendants, plaintiff's pregnancy was unnecessarily prolonged and became aggravated, she suffered great pain and was and still is greatly injured in her health and was obliged to and did expend large sums of money in an endeavor to terminate her pregnancy. Plaintiff was rendered sore, sick, lame and disabled, suffered shock to her nervous system, suffered and continues to suffer emotional and psychological injury, was prevented from attending to her usual duties and activities and will in the future be so prevented, was forced to incur medical expenses and will incur same in the future, all to her damage in an amount that exceeds the monetary jurisdiction of all lower courts which would otherwise have jurisdiction.

38. Upon information and belief, Gary A. Dresden, M.D. is the sole owner and the operator of ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

39. As owner and operator of ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., defendant GARY A. DRESDEN, M.D. is vicariously liable for the negligence of his employees, and more particularly is liable to plaintiff for the negligence of his employees which resulted in the injuries and damages suffered by the above named plaintiff.

WHEREFORE, plaintiff, TABETHA RODRIGUEZ, demands judgment against the defendants herein in an amount that exceeds the jurisdictional limitations of all lower courts, together with interest, costs and disbursements of this action, and such other and further relief as to this court may seem just, proper and equitable.

Dated: New York, New York
October 14, 2009

A handwritten signature in black ink, appearing to read 'Scott Gilman', written over a horizontal line.

Scott Gilman, Esq.
Attorney for Plaintiffs
380 Lexington Avenue, 17th Floor
New York, New York 10168
(212) 599-9999

AFFIRMATION

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

SCOTT GILMAN, an attorney duly admitted to practice law before the Courts of the State of New York does hereby affirm the following under the penalties of perjury:

I am the attorney of record for the defendant in the within action. I have read the foregoing Verified Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true. The reason this verification is made by me and not the plaintiff is that the plaintiff resides in a county other than the county where my office is located.

Dated: New York, New York
October 14, 2009


SCOTT GILMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

TABETHA RODRIGUEZ,

Index No:

Plaintiffs,

-against-

Certificate of
Merit

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Defendants.

SCOTT GILMAN, ESQ., certifies and affirms the truth of the following statements
pursuant to CPLR § 3012-a:

1. I am an attorney duly admitted to practice law in the Courts of the State of New York.
- a. That I am the attorney for the plaintiffs herein, and as such am fully familiar with all of the facts and circumstances surrounding this matter.
- b. That I submit this certification pursuant to the requirements of CPLR §3012-a.
- c. That I have reviewed the available facts of this case.
- d. That I have consulted with at least one physician or podiatrist who is licensed to practice in this state or any other state and who I reasonably believe is knowledgeable in the relevant issues involved in the particular action and that I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of the within action.

Dated: New York, New York
October 14, 2009



SCOTT GILMAN, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

VERIFIED AMENDED
COMPLAINT

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.
-----X

Plaintiff, TABETHA RODRIGUEZ, complaining of the defendants, by her attorney, Scott Gilman, Esq., alleges upon information and belief:

1. At all times hereinafter mentioned, plaintiff TABETHA RODRIGUEZ, born 8/19/87, was and still is a citizen of the State of New York and resident of the County of Bronx.
2. At all times hereinafter mentioned, defendant GARY A. DRESDEN, M.D., was a physician duly licensed to practice medicine in the State of New York.
3. At all times hereinafter mentioned, defendant WILLIAM KNORR, M.D., who was previously unidentified and referred to in the caption and elsewhere in the plaintiff's Verified Complaint as JANE DOE, M.D. was a physician duly licensed to practice medicine in the State of New York.
4. At all times hereinafter mentioned, the defendant who was previously unidentified and referred to in the caption and elsewhere in the plaintiff's Verified Complaint as JANE DOE, M.D., and who is now known to be William Knorr M.D., was a duly licensed physician licensed to practice medicine in the State of New York, who consulted with the plaintiff on or about April 23, 2007 and told here that she was not then and had not been pregnant as previously determined by MIA WRIGHT, M.D. on or about April 11, 2007.

5. At all times hereinafter mentioned, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., was a domestic professional corporation.
6. Upon information and belief, at all times hereinafter mentioned, defendant AMERICAN MEDICAL MGMT, INC, was a domestic corporation.
7. Upon information and belief, at all times hereinafter mentioned, defendant AMERICAN MEDICAL MGMT, INC, was a foreign corporation.
8. Upon information and belief, at all times mentioned herein, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.
9. Upon information and belief, at all times mentioned herein, defendant AMERICAN MEDICAL MGMT, INC managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.
10. Upon information and belief, at all times mentioned herein, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.
11. Upon information and belief, at all times mentioned herein, defendant AMERICAN MEDICAL MGMT, INC owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.
12. Upon information and belief, at all times mentioned herein, GARY A. DRESDEN, M.D., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.
13. Upon information and belief, at all times mentioned herein, WILLIAM KNORR, M.D., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.
14. Upon information and belief, at all times mentioned herein, defendant GARY A. DRESDEN, M.D. owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

15. Upon information and belief, at all times mentioned herein, defendant WILLIAM KNORR, M.D. in part or whole, the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

16. Upon information and belief, at all times herein mentioned, defendant, WILLIAM KNORR, M.D. had a contract regarding professional employment with defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

17. Upon information and belief, at all times herein mentioned, defendant, WILLIAM KNORR, M.D. had a contract regarding professional employment with defendant GARY A. DRESDEN, M.D.

18. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

19. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, GARY A. DRESDEN, M.D.

20. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, WILLIAM KNORR, M.D.

21. At all relevant times, when plaintiff received medical care and treatment at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., she was a patient of WILLIAM KNORR, M.D.

22. At all relevant times, when plaintiff received medical care and treatment at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., she was a patient of GARY A. DRESDEN, M.D.

23. This action falls within one or more exceptions as provided in CPLR Sec. 1602.

24. At all relevant times, defendant, GARY A. DRESDEN, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

25. At all relevant times, defendant, WILLIAM KNORR, M.D. was a licensed physician engaged in the practice of her profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

26. Upon information and belief, at all relevant times, defendant, GARY A. DRESDEN, M.D. held himself out to the public as a competent and skillful physician, capable, experienced and skilled in obstetrics and gynecology.

27. At all relevant times, defendant, WILLIAM KNORR, M.D. held himself out to the public as a competent and skillful physician, capable, experienced and skilled in obstetrics and gynecology.

28. At all relevant times, defendant, WILLIAM KNORR, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

29. Upon information and belief, at all times herein mentioned, defendant, WILLIAM KNORR, M.D. limited his medical practice to obstetrics and gynecology.

30. Upon information and belief, at all times herein mentioned, defendant, GARY A. DRESDEN, M.D. limited his medical practice to obstetrics and gynecology.

31. On April 11, 2007, plaintiff TABETHA RODRIGUEZ consulted with MIA WRIGHT, M.D, as a physician to attend her and assess the state of her health and physical condition.

32. After examination and testing on April 11, 2007, the plaintiff was informed by MIA WRIGHT, M.D. that she was pregnant.

33. Thereafter, on or about April 23, 2007, plaintiff presented at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. with the intention of terminating an unwanted pregnancy, and after examination and testing, she received a consultation from WILLIAM KNORR, M.D. and other persons thereat (the name(s) of whom are to date, unknown) that she was not pregnant and therefore, could not undergo a procedure to terminate the unwanted pregnancy.

34. Defendant, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. undertook as women's health care providers to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

35. Defendant, WILLIAM KNORR, M.D. undertook as a physician at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

36. Upon information and belief, defendant, GARY A DRESDEN, M.D. undertook as a physician to attend and care for plaintiff and to use reasonable and proper skill in his efforts to diagnosis and treat plaintiff.

37. Upon information and belief, at all times herein mentioned, each of the answering defendants assisted with and participated in the medical care rendered to the plaintiff patient in connection with the pregnancy she presented with in April, 2007.

38. Each of the defendants herein failed to use reasonable or proper skill in their efforts to diagnose and treat the plaintiff, in that they negligently consulted, told and permitted the plaintiff to believe that she was not pregnant when in fact she was; permitted the pregnancy to continue, despite her lawful and reasoned decision to terminate the unwanted pregnancy; and despite her request and instructions to the defendants to terminate her pregnancy, the defendants unreasonably, negligently and carelessly permitted the plaintiff's pregnancy to continue while causing the plaintiff to erroneously believe the she was not pregnant, ultimately causing an unnecessarily prolonged & complicated medical course. All of the foregoing causing and exacerbating the plaintiff great physical and emotional pain and trauma.

39. At all relevant times, the aforementioned care of the plaintiff relating to the above described pregnancy was by members, associates, partners, or agents, servants and employees of the defendants.

40. The aforementioned injuries and damages to plaintiff were caused solely by the negligence of the defendants, their agents, servants and employees.

41. As a result of the negligence of the defendants, plaintiffs pregnancy was unnecessarily prolonged and became aggravated, she suffered great pain and was and still is greatly injured in her health and was obliged to and did expend large sums of money in an endeavor to terminate her pregnancy. Plaintiff was rendered sore, sick, lame and disabled, suffered shock to her nervous system, suffered and continues to suffer emotional and psychological injury, was prevented from attending to her usual duties and activities and will in the future be so prevented, was forced to incur medical expenses and will incur same in the future, all to her damage in an amount that exceeds the monetary jurisdiction of all lower courts which would otherwise have jurisdiction.

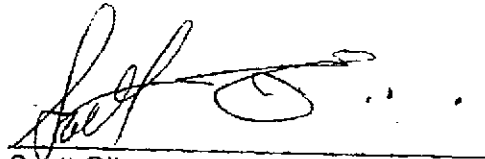
42. Upon information and belief, Gary A. Dresden, M.D. is the sole owner and the operator of ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

43. As owner and operator of ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., defendant GARY A. DRESDEN, M.D. is vicariously liable for the negligence of his agents, servants and employees, and more particularly is liable to plaintiff for the negligence of his employees which resulted in the injuries and damages suffered by the above named plaintiff.

44. Defendants, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., GARY A. DRESDEN, M.D. & AMERICAN MEDICAL MGMT, INC., were negligent in their hiring and retention of WILLIAM KNORR, M.D. in their failure to properly train and/or supervise WILLIAM KNORR, M.D. and in their failure to exercise due care regarding WILLIAM KNORR, M.D.'s examination, diagnosis and treatment of the plaintiff.

WHEREFORE, plaintiff, TABETHA RODRIGUEZ, demands judgment against the defendants herein in an amount that exceeds the jurisdictional limitations of all lower courts, together with interest, costs and disbursements of this action, and such other and further relief as to this court may seem just, proper and equitable.

Dated: New York, New York
September 13, 2010



Scott Gilman, Esq.
Attorney for Plaintiffs
380 Lexington Avenue, 17th Floor
New York, New York 10168
(212) 599-9999

AFFIRMATION

STATE OF NEW YORK)

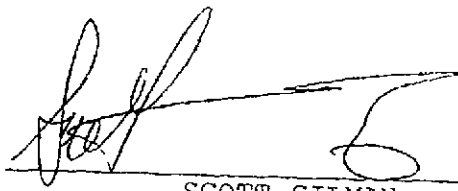
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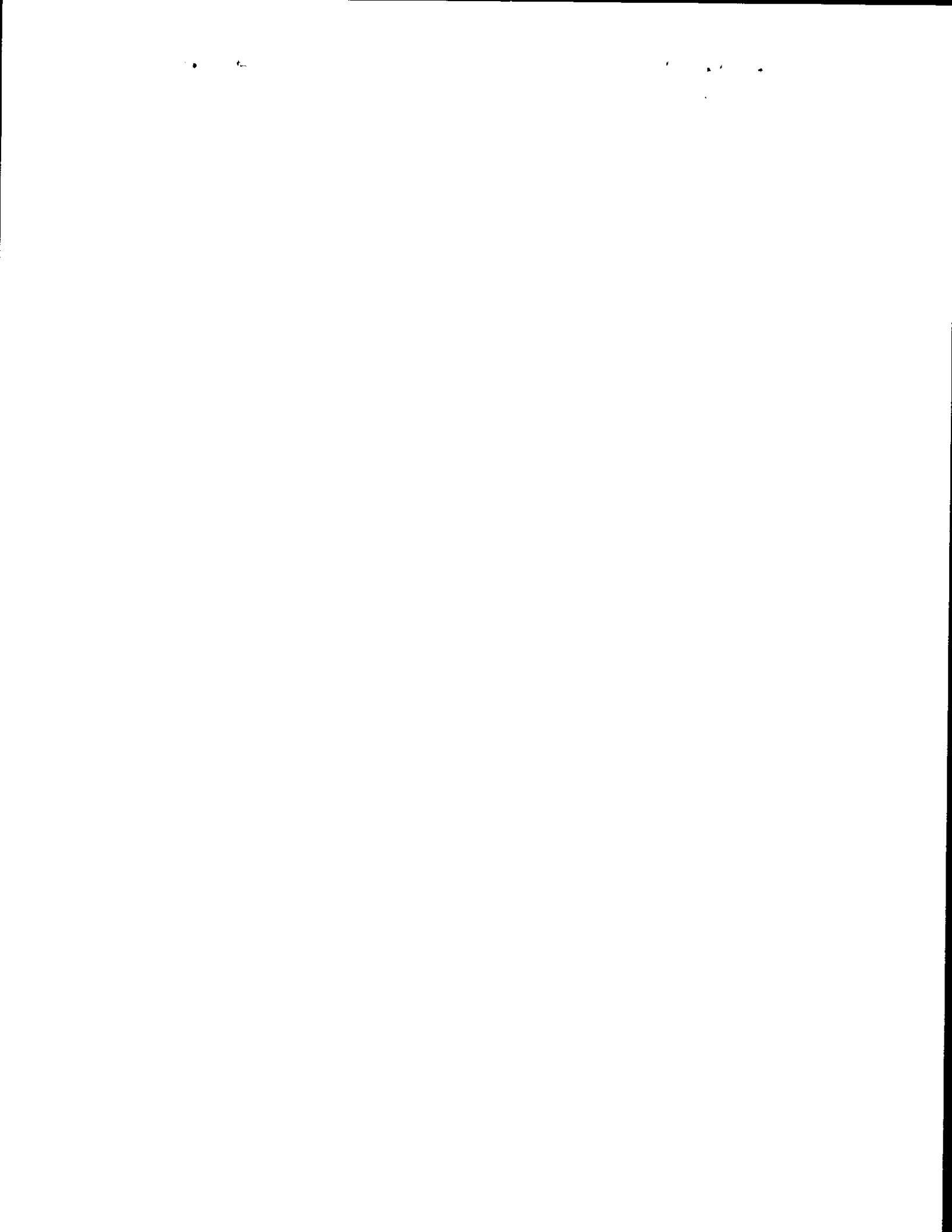
COUNTY OF NEW YORK)

SCOTT GILMAN, an attorney duly admitted to practice law before the Courts of the State of New York does hereby affirm the following under the penalties of perjury:

I am the attorney of record for the defendant in the within action. I have read the foregoing Verified Amended Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true. The reason this verification is made by me and not the defendant is that the defendant is located in a county other than the county where my office is located.

Dated: New York, New York
September 13, 2010


SCOTT GILMAN



Bronx County Clerk Administration System

Case Details

IndexNo: 308557-2009**Case File Date:** 10/20/2009**Index Type:** CT**Firm Name:** SCOTT GILMAN, ESQ.**Plaintiff:** TABETHA RODRIGUEZ**Defendent:** ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC, JANE DOE, M.D.**Notes:** SUMMONS & VERIFIED COMPLAINTCase Summary

Document Date	Document Type
10/20/2009	SUMMONS & VERIFIED COMPLAINT
04/20/2010	01 Affidavit of Service
05/03/2010	PROOF OF SERVICE
05/03/2010	PROOF OF SERVICE

1 2

1 2

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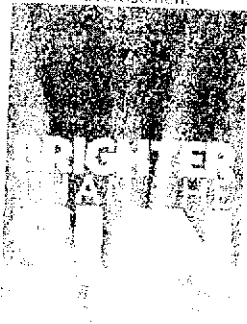
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Dr William H. Knorr

Memorial Photos Flowers

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Birth: Jun. 3, 1952
New City
Rockland County
New York, USA

Death: Feb. 19, 2009
White Plains
Westchester County
New York, USA

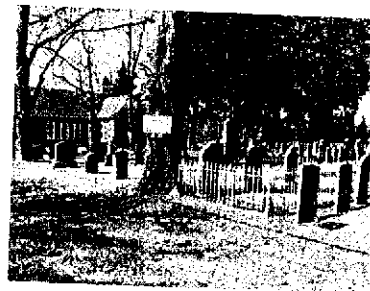
Dr. William Knorr died at the age of 56, after battling cancer. He was an OB/GYN Doctor, practicing in White Plains, New York and New Rochelle, New York. Also was a long time attending Physician at Sound Shore Medical Center. He was the past President of the Westchester OB/GYN Society. He was the son of Nellie and William Knorr, growing up in New York City, New York. While in College, he married Susan Lewis. He is survived by: His wife of 35 years, Susan Knorr, two sisters, Mary and Linda, and one brother, John, two daughters, Hetty and Tessa, and a son, Jacob, plus four grandchildren.

Burial:
[Brick Church Cemetery](#)
Spring Valley (New Hempstead)
Rockland County
New York, USA

Created by: [Bonnie Knapp- Wichita, K...](#)
Record added: Mar 03, 2009
Find A Grave Memorial# 34377195



Added by: [Bonnie Knapp- Wichita, Kansas](#)



Cemetery Photo

Added by: [Barbara Louise Faust Sienstra](#)

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Enjoy Eternity in Paradise and all the treasure of Heaven.
- [Bonnie Knapp- Wichita, Kansas](#)
Added: Mar 3, 2009

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AFFIDAVIT OF SERVICE BY MAIL

Meghan Schwencke, being duly sworn, hereby deposes and states:

I am over 18 years of age, not a party to this action, and reside in Richmond County.

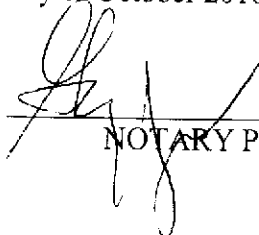
On the 21st day of October, 2010, I served an **NOTICE OF MOTION, AFFIRMATION AND EXHIBITS** upon the following attorney(s) at the address(es) designated by said attorney(s) by depositing a true copy of same in a postage paid, properly addressed envelope, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

SCOTT GILMAN, ESQ.
Attorney for Plaintiff
380 Lexington Avenue
New York, New York 10168
(212) 599-9999

GOETZ FITZPATRICK, LLP.
Attorneys for Defendants
ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C.,
GARY A. DRESDEN, M.D.,
and AMERICAN MEDICAL MGMT, INC.
One Penn Plaza
New York, New York 10119
(212) 695-8100


Meghan Schwencke

Sworn to on this 21st
day of October 2010



NOTARY PUBLIC

2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiff,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.

Defendants.
-----X

Index No.
308557/09

NOTICE OF MOTION

AFFIRMATION

AND

EXHIBITS

Gary J. Dwyer, Esq.
DWYER & TAGLIA, ESQS.
Attorneys for Defendant
WILLIAM KNORR, M.D.
111 John Street, Suite 620
New York, New York 10038
(212) 227-6000

FILED IN 308557/09

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

NOTICE OF
CROSS-MOTION

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.
-----X

PLEASE TAKE NOTICE THAT upon the annexed affirmation of Scott Gilman, Esq. affirmed the 8th day of December, 2010, the Affidavit of Tabetha Rodriguez, sworn to on the 8th day of December, 2010 and the exhibits annexed hereto, and upon all the proceedings and pleadings had herein, the plaintiff will move this Court at the Motion Support Office, Room 217, at the Supreme Court, State of New York, County of Bronx, at the Courthouse located at 851 Grand Concourse, Bronx, New York 10451 on the 17th day of December, 2010 at 9:30 a.m., or as soon thereafter as Counsel may be heard, for an Order pursuant to CPLR §305(a), 1002, 1003 & 1015: granting leave for issuance of a Supplemental Summons so as to join Suzanne Knorr as Executrix of the Estate of William Knorr, M.D., in the place and stead of William Knorr, M.D., deceased who was originally named in the within action as "Jane Doe, M.D." and to amend the caption to reflect the substitution; together with costs of this motion and such other and further relief as this Court may deem just, proper and equitable.

Dated: December 8, 2010
New York, New York



SCOTT GILMAN, ESQ.
Attorney for Plaintiff
380 Lexington Avenue, 17th Floor
New York, New York 10168
(212) 599-9999

12-17-10
JA-19

To: Dwyer & Taglia, Esqs.
Attorneys for Defendant, William Knorr, M.D.
111 John Street, Suite 620
New York, NY 10038
212-227-6000

Goetz Fitzpatrick, LLP
Attorneys for Defendants,
All Women's Health & Medical Services P.C.,
Gary A. Dresden, P.C., American Medical Mgmt, Inc.
One Penn Plaza
New York, NY 10119
212-695-8100

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

ATTORNEY
AFFIRMATION

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.
-----X

SCOTT GILMAN, an attorney duly admitted to practice law in the courts of the State of New York, affirms that the following statements are true under the penalty of perjury:

1. I am attorney of record for plaintiff and as such I am fully familiar with the facts and circumstances of the within action.

2. This affirmation is submitted in opposition to the defendant's motion for dismissal and in support of the plaintiff's cross-motion for leave to serve a Supplemental Summons upon Suzanne Knorr, as Executrix of the Estate of William Knorr, M.D. and to amend the caption of the within action to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
SUZANNE KNORR, AS EXECUTRIX OF THE
ESTATE OF WILLIAM KNORR, M.D.,

Index No.: 308557/09

Defendants.
-----X

3. The within action was commenced by virtue of the filing of a Summons, Verified Complaint and Certificate of Merit on October 20, 2009 (Exhibit A). Thereafter, an Answer on behalf of non-moving defendants, All Women's Health & Medical Services, P.C. (hereinafter referred to as All Women's), Gary A. Dresden, M.D. & American Medical Mgmt, Inc., dated August 26, 2010 was received on August 30, 2010, whereupon plaintiff's Amended Complaint was served on September 15, 2010. Thus, even assuming that defendant's Answer was served **and received** on the date it was authored (August 26, 2010), the plaintiff's Amended Complaint was timely served in accordance with the time frame set forth in CPLR §3025(b). By the movant's own admission, when timely served, the amendment is as of right and does not require leave of court. Moreover, contrary to the movant's allegations, the Amended Answer was filed with the Court on October 12, 2010 (See Exhibit B).

4. Based on the foregoing, the motion by defendant, William Knorr, M.D. (sued herein as Jane Doe, M.D.) to dismiss as the plaintiff's Amended Complaint was unauthorized is completely lacking in merit, no authorization being required.

5. The within action is one sounding in medical negligence. The plaintiff, Tabetha Rodriguez having presented to the offices of All Women's Health & Medical Services, P.C., an abortion clinic, for the first and only time on April 20, 2007, seeking to terminate a pregnancy. As is not uncommon, she did not present at the clinic with any particular physician in mind or requested. At the clinic, a history was taken, she was examined and underwent various testing, including a sonogram and she was thereafter counseled by Dr. William Knorr and others that she was not pregnant and that no abortion would or could be performed. As indicated in the plaintiff's annexed Affidavit, while she was counseled by Dr. Knorr, he never introduced himself by name or even stated that he was a medical doctor. He only met with her very briefly and only recently did she learn his name, that he was a physician and that he had passed away.

6. In light of the foregoing, when the plaintiff's Verified Complaint was filed, defendant Dr. Knorr was erroneously named in the caption and elsewhere as Jane Doe, M.D., although the Complaint(¶. 24) made clear that " At all relevant times, defendant, Jane Doe, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C." Further, the Complaint clearly sets forth that the defendant, erroneously identified as Jane Doe, M.D. was the physician at ALL WOMEN'S who incorrectly and negligently informed her that she was not pregnant and that she could not undergo an abortion thereby damaging her.

7. As at the time that the within action was commenced, the plaintiff was not aware of Dr. Knorr's identity or much less that he had passed away, this defendant was identified by a description of the facts of his involvement and captioned with a fictitious name.

8. Once the identity of this defendant was learned, the plaintiff timely amended her complaint to reflect his true name.

9. The plaintiff has only very recently received confirmation that defendant, Dr. William Knorr had passed away, that a Probate Petition was filed in Westchester County and that Letters Testamentary were issued to his surviving spouse, Suzanne Knorr. Suzanne Knorr thereafter acted and continues to act as Executrix of the Estate of Dr. William Knorr. A copy of the Letters is annexed hereto as Exhibit C Accordingly, plaintiff now seeks an Order granting leave to serve a Supplemental Summons upon Suzanne Knorr, as Executrix of the Estate of William Knorr, M.D. and amending the caption of the within action as set forth above.

10. The movant asserts that the plaintiff's Verified Amended Complaint should be dismissed as against William Knorr, M.D. based upon the expiration of the Statute of Limitations. Here too, the movant's argument for dismissal is failed in that he asserts, albeit without any support, that there are no applicable tolling exceptions.

11. CPLR §210 (b) specifically, tolls for eighteen months after death of a person liable, the running of a Statute of Limitations against which the plaintiff may commence an action against his Executor or Administrator. Thus, inasmuch as in the instant case, the cause of action accrued on April 23, 2007 and the decedent died on February 19, 2009, the Statute will not run until May 23, 2011. Perez v. National Westminster Bank, 158 A.D. 2d 361; 551 N.Y.S. 2d 41 (App. Div 1990). As the plaintiff is free to commence a new action against the Estate, there is no reason not to permit a Supplemental Summons to issue and the caption of the within action to be amended to reflect the joinder of the Estate.

12. The defendant also erroneously asserts that the claims in the Amended Complaint cannot relate back to those in the original Complaint. Although this is incorrect as a matter of law and the facts recited herein, the "relation back" doctrine only need come into play when the defendant successfully demonstrates that the Statute of Limitations has run. Anderson v. Montefiore Medical Center, 41 A.D.3d; 837 N.Y.S.2d 98 (2007). As the Statute of Limitations here has not run, the plaintiff need not rely on the relation back doctrine.

13. Even were the Statute of Limitations not tolled, contrary to the movant's contentions otherwise, the "relation back" doctrine would apply in the instant case, deeming the action timely commenced against William Knorr, M.D.

14. As set forth above, the within action was duly commenced on October 20, 2009. The Verified Complaint set forth, in detail, the facts upon which the action is grounded, including the involvement of the moving defendant, as set forth above. Since neither the name or home address of the defendant physician was known, a fictitious name was used and the amended pleadings were served upon the co-defendant's attorneys.

15. In Mondello v. New York Blood Center-Greater N.Y. Blood Program, 80 N.Y.2d 219, 590 N.Y.S.2d 19 (1992), the Court of Appeals adopted the three-prong test set forth in Brock v. Bua, 83 A.D.2d 61, 443 N.Y.S.2d 407 (1981) for the application of

the relation-back doctrine. The three conditions that must be satisfied for a new party to be joined after commencement and to have the claims against that party to relate back to claims asserted against another defendant are as follows: (1) the claims must arise out of the same conduct, occurrence or transaction; (2) the new party must be united in interest with the originally named defendant, and by reason of that relationship can be charged with such notice of the commencement of the action that he will not be prejudiced in defending the action on the merits; and (3) the new party knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties, the action would also have been brought against him. Anderson v. Montefiore Medical Center, 41 A.D.3d; 837 N.Y.S.2d 98 (2007) citing Cintron v. Lynn, 306 AD2d 118, 762 N.Y.S. 2d 355 (2003).

16. The claims raised against Dr. William Knorr raised in the Verified Amended Complaint are identical to those raised in the original Verified Complaint albeit with the exception that the original Complaint erroneously named Dr. Knorr as Jane Doe, M.D.

17. One can hardly argue that Dr. Knorr is not united in interest with Jane Doe, M.D. because even though the correct name was not used to name the defendant in the original Complaint, the party was identified factually with sufficient detail as to leave little doubt as to his true identity. As documents received from co-defendants after the commencement of the within action reveal, Dr. Knorr was the physician who reviewed, examined and consulted with the plaintiff on behalf of the co-defendants. (Exhibit D) Additionally, as is the usual and customary practice, the plaintiff sought the services of the All Women's abortion clinic and not those of Dr. Knorr specifically. Upon information and belief, Dr. Knorr took on the plaintiff as a patient as part of his business and professional relationship with the co-defendants and met with, examined and counseled the plaintiff at the offices and facilities of All Women's. Moreover, Dr. Knorr never even identified himself by name to the plaintiff. For all of the foregoing reasons, it is respectfully submitted that Dr. Knorr was clearly united-in-interest with the erroneously named defendant, Jane Doe, M.D. as well as the remaining co-defendants.

18. The relationship of the plaintiff herein and Dr. Knorr is analogous to that between a patient and an emergency room physician in that in both situations, the patient presents seeking medical treatment from the institution and not from any particular physician. It is well settled in such situations to permit the relation back theory to apply even in those cases where the physician is not employed by the hospital.

19. The third prong of the relation back doctrine is also satisfied. Since there was clearly a business and professional relationship between Dr. Knorr and All Women's, his Estate knew or should have known that, had the identity of "Jane Doe, M.D." been known at the time the action was commenced, his true name would have been used. Again, this is akin to the legion of cases wherein physicians are later joined by Supplemental Summons to legal actions where their united-in-interest partners, group practices or hospitals were the originally named as parties. EPTL §11-3.2 places the Executrix in the position of her decedent for purposes of the within legal action. As set forth above, Dr. Knorr's involvement and relationship with the co-defendants is set forth in detail in both the Verified Complaint and the Verified Amended Complaint. Further, other than nomenclature of the defendant, the allegations against the movant are identical and thus there is no mystery about the plaintiff's intent to bring the claims against Dr. William Knorr or his Estate.

20. Movant's attorneys have placed themselves in an untenable position. They have brought on a motion to dismiss in the name of a deceased party (Dr. William Knorr) even while asserting that a deceased party cannot continue to litigate after his death. An argument that obviously requires the denial of their motion.

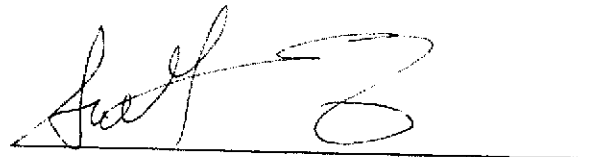
21. As demonstrated above, the Statute of Limitations against Suzanne Knorr as Executrix of the Estate of William Knorr, M.D. has not run and therefore in any event no prejudice can result from the joinder of the Estate.

22. Based on all of the foregoing, the plaintiff cross-moves pursuant to CPLR §305(a) for an Order permitting the plaintiff to issue a Supplemental Summons as set forth as Exhibit E and the Verified Amended Complaint (Exhibit B) in order to formally join the Estate in the within action.

23. No prior motion has been made for the relief sought herein by the plaintiff.

WHEREFORE, it is respectfully requested that this Court issue an Order denying the deceased defendant, William Knorr, M.D.'s motion in its entirety and granting the plaintiff's cross-motion for leave to amend the caption as indicated herein and issue a Supplemental Summons joining Suzanne Knorr, as Executrix of the Estate of William Knorr, M.D., as a party defendant, together with such other and further relief as this court may deem just and proper.

Dated: December 8, 2010
New York, New York

A handwritten signature in black ink, appearing to read "Scott Gilman", written over a horizontal line.

Scott Gilman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

ATTORNEY
AFFIRMATION

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.

-----X
State of New York
County of New York

TABETHA RODRIGUEZ being duly sworn states:

1. I am the plaintiff herein and make the within Affidavit from my own personal knowledge. I am fully familiar with the facts and circumstances of the within action.

2. On April 20, 2007 I presented at an abortion clinic known as All Women;s Health & Medical Services, P.C. located at 222 Mamaroneck Avenue, White Plains, New York 10605. I had made an appointment prior to April 20 by telephone. When I called to make the appointment, I did not request the services of any particular doctor as I was not aware of the names of the doctor's at the clinic, nor had I been referred to any particular doctor there.

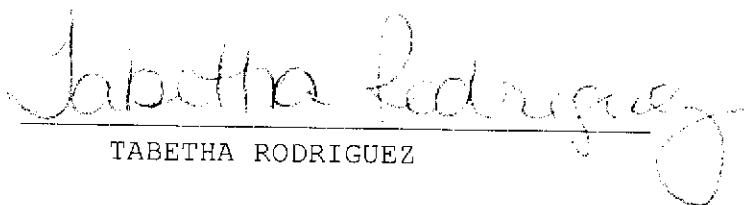
3. When I arrived at the clinic, I had contact with several people, who took my history, examined me, performed medical testing on me and counseled me. None of theses people, including the person who I have only recently learned to be a physician named Dr. William Knorr ever introduced themselves to me by name. In fact, I was never even informed that any of these people were medical doctors. All of the people who treated and examined me at the clinic, including Dr. Knorr gave me every impression that they were employees or other agents or representatives of the clinic.

4. After taking my history, examining me and performing testing on me, I was told by the personnel at the clinic including, Dr. Knorr that I could not undergo an abortion because I was not pregnant.

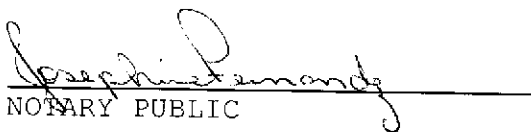
5. I later learned this determination was incorrect.

6. I never returned to the clinic and had no further personal contact with any of the personnel at the clinic.

7. I only learned of Dr. Knorr's death when my attorney informed me of this fact a short while ago.


TABETHA RODRIGUEZ

Sworn to before me this ^{8th} day
of December, 2010


NOTARY PUBLIC

JOSEPHINE FERNANDEZ
Notary Public, State of New York
No. 01PE4963394
Qualified in Bronx County
Commission Expires March 12, 2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

ATTORNEY
AFFIRMATION

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

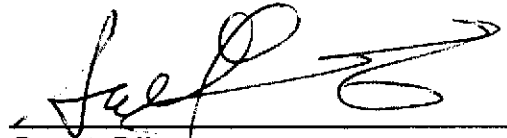
Index No.: 308557/09

Defendants.
-----X

SCOTT GILMAN, an attorney duly admitted to practice law in the courts of the State of New York, affirms that the following statements are true under the penalty of perjury:

1. I am attorney of record for plaintiff. I am a solo practitioner.
2. I will be out of the State on a family vacation from December 22, 2010 until January 4, 2011.
3. Accordingly, I am respectfully requesting that should the Court wish to entertain oral argument on the instant motion or cross-motion, that said argument be scheduled for a date subsequent to January 4, 2011.
4. The within Affirmation has been served upon both Defense Counsels together with the balance of plaintiff's moving papers annexed hereto, by overnight courier on the date below.

Dated: December 9, 2010
New York, New York



Scott Gilman



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

SUMMONS

-against-

Index #

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P C , GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Date Filed:


Defendants.
-----X

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the plaintiff's attorney(s) within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after the service is complete where service is made in any other manner than by personal delivery within the State of New York.

The Plaintiff has designated BRONX County as the place of trial on the basis that it is the county in which the plaintiff resides.

Dated: October 14, 2009



SCOTT GILMAN, ESQ.
Attorney for Plaintiff(s)
380 Lexington Avenue, 17th Flr
New York, New York 10168
(212) 599-9999

TO THE ABOVE NAMED DEFENDANTS:

TAKE NOTICE that this is an action for personal injuries suffered by TABETHA RODRIGUEZ on or about April 23, 2007, caused by the negligence of the defendants; the relief sought is recovery of money damages for the plaintiff's injuries, pain and suffering; in case of your failure to appear, judgment may be taken against you in an amount that exceeds the jurisdictional limits of all lower courts with interest from April 23, 2007, together with the costs and disbursements of this action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

VERIFIED COMPLAINT

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.
-----X

Plaintiff, TABETHA RODRIGUEZ, complaining of the defendants, by her attorney, Scott Gilman, Esq., alleges upon information and belief:

1. At all times hereinafter mentioned, plaintiff TABETHA RODRIGUEZ, born 8/19/87, was and still is a citizen of the State of New York and resident of the County of Bronx.
2. At all times hereinafter mentioned, defendant GARY A. DRESDEN, M.D., was a physician duly licensed to practice medicine in the State of New York.
3. At all times hereinafter mentioned, defendant JANE DOE, M.D., is a fictitious name for the as yet unidentified person who held herself out as a duly licensed physician licensed to practice medicine in the State of New York, who consulted with the plaintiff on or about April 23, 2007 and told here that she was not then and had not been pregnant as previously determined by MIA WRIGHT, M.D. on or about April 11, 2007.
4. At all times hereinafter mentioned, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., was a domestic professional corporation.
5. Upon information and belief, at all times hereinafter mentioned, defendant AMERICAN MEDICAL MGMT, INC, was a domestic corporation.

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JUL 13 2007
CLERK OF COURT
COUNTY OF BRONX

6. Upon information and belief, at all times hereinafter mentioned, defendant AMERICAN MEDICAL MGMT, INC, was a foreign corporation.

7. Upon information and belief, at all times mentioned herein, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

8. Upon information and belief, at all times mentioned herein, defendant AMERICAN MEDICAL MGMT, INC managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

9. Upon information and belief, at all times mentioned herein, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

10. Upon information and belief, at all times mentioned herein, defendant AMERICAN MEDICAL MGMT, INC owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

11. Upon information and belief, at all times mentioned herein, GARY A. DRESDEN, M.D., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

12. Upon information and belief, at all times mentioned herein, JANE DOE, M.D., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

13. Upon information and belief, at all times mentioned herein, defendant GARY A. DRESDEN, M.D. owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

14. Upon information and belief, at all times mentioned herein, defendant JANE DOE, M.D. owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

15. Upon information and belief, at all times herein mentioned, defendant, Jane Doe, M.D. had a contract regarding professional employment with defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

16. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

17. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, GARY A. DRESDEN, M.D.

18. At all relevant times, when plaintiff received medical care and treatment at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., she was a patient of JANE DOE, M.D.

19. At all relevant times, when plaintiff received medical care and treatment at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., she was a patient of GARY A. DRESDEN, M.D.

20. This action falls within one or more exceptions as provided in CPLR Sec. 1602.

21. At all relevant times, defendant, GARY A. DRESDEN, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

22. At all relevant times, defendant, JANE DOE, M.D. was a licensed physician engaged in the practice of her profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

23. Upon information and belief, at all relevant times, defendant, GARY A. DRESDEN, M.D. held herself out to the public as a competent and skillful physician, capable, experienced and skilled in obstetrics and gynecology.

24. At all relevant times, defendant, JANE DOE, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

25. Upon information and belief, at all times herein mentioned, defendant, JANE DOE, M.D. limited her medical practice to obstetrics and gynecology.

26. Upon information and belief, at all times herein mentioned, defendant, JANE DOE, M.D. limited her medical practice to obstetrics and gynecology.

27. On April 11, 2007, plaintiff TABETHA RODRIGUEZ consulted with MIA WRIGHT, M.D. as a physician to attend her and assess the state of her health and physical condition

28. After examination and testing on April 11, 2007, the plaintiff was informed by MIA WRIGHT, M.D. that she was pregnant.

29. Hereafter, on or about April 23, 2007, plaintiff presented at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. with the intention of terminating an unwanted pregnancy, and after examination and testing, she received a consultation from JANE DOE, M.D. and other persons thereat (the name(s) of whom are to date, unknown) that she was not pregnant and therefore, could not undergo a procedure to terminate the unwanted pregnancy.

30. Defendant, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. undertook as women's health care providers to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

31. Defendant, JANE DOE, M.D. undertook as a physician at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

32. Upon information and belief, defendant, GARY A DRESDEN, M.D. undertook as a physician to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

33. Upon information and belief, at all times herein mentioned, each of the answering defendants assisted with and participated in the medical care rendered to the plaintiff patient in connection with the pregnancy she presented with in April, 2007.

34. Each of the defendants herein failed to use reasonable or proper skill in their efforts to diagnose and treat the plaintiff, in that they negligently consulted, told and permitted the plaintiff to believe that she was not pregnant when in fact she was; permitted the pregnancy to continue, despite her lawful and reasoned decision to terminate the unwanted pregnancy; and despite her request and instructions to the defendants to terminate her pregnancy, the defendants unreasonably, negligently and carelessly permitted the plaintiff's pregnancy to continue while causing the plaintiff to erroneously believe she was not pregnant, ultimately causing an unnecessarily prolonged & complicated medical course. All of the foregoing causing and exacerbating the plaintiff great physical and emotional pain and trauma.

35. At all relevant times, the aforementioned care of the plaintiff relating to the above described pregnancy was by members, associates, partners, or agents, servants and employees of the defendants.

36. The aforementioned injuries and damages to plaintiff were caused solely by the negligence of the defendants, their agents, servants and employees.

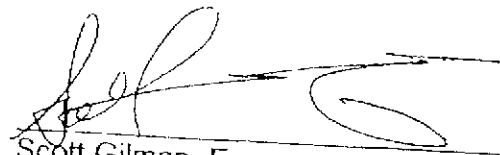
37. As a result of the negligence of the defendants, plaintiff's pregnancy was unnecessarily prolonged and became aggravated, she suffered great pain and was and still is greatly injured in her health and was obliged to and did expend large sums of money in an endeavor to terminate her pregnancy. Plaintiff was rendered sore, sick, lame and disabled, suffered shock to her nervous system, suffered and continues to suffer emotional and psychological injury, was prevented from attending to her usual duties and activities and will in the future be so prevented, was forced to incur medical expenses and will incur same in the future, all to her damage in an amount that exceeds the monetary jurisdiction of all lower courts which would otherwise have jurisdiction.

38. Upon information and belief, Gary A. Dresden, M.D. is the sole owner and the operator of ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

39. As owner and operator of ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., defendant GARY A. DRESDEN, M.D. is vicariously liable for the negligence of his employees, and more particularly is liable to plaintiff for the negligence of his employees which resulted in the injuries and damages suffered by the above named plaintiff.

WHEREFORE, plaintiff, TABETHA RODRIGUEZ, demands judgment against the defendants herein in an amount that exceeds the jurisdictional limitations of all lower courts, together with interest, costs and disbursements of this action, and such other and further relief as to this court may seem just, proper and equitable.

Dated: New York, New York
October 14, 2009

A handwritten signature in black ink, appearing to read 'Scott Gilman', written over a horizontal line.

Scott Gilman, Esq.
Attorney for Plaintiffs
380 Lexington Avenue, 17th Floor
New York, New York 10168
(212) 599-9999

AFFIRMATION

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

SCOTT GILMAN, an attorney duly admitted to practice law before the Courts of the State of New York does hereby affirm the following under the penalties of perjury:

I am the attorney of record for the defendant in the within action. I have read the foregoing Verified Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true. The reason this verification is made by me and not the plaintiff is that the plaintiff resides in a county other than the county where my office is located.

Dated: New York, New York
October 14, 2009


SCOTT GILMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

TABETHA RODRIGUEZ,

Index No:

Plaintiffs,

-against-

Certificate of
Merit

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

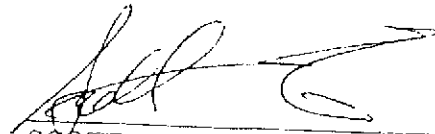
Defendants.

SCOTT GILMAN, ESQ., certifies and affirms the truth of the following statements

pursuant to CPLR § 3012-a:

1. I am an attorney duly admitted to practice law in the Courts of the State of New York.
 - a. That I am the attorney for the plaintiffs herein, and as such am fully familiar with all of the facts and circumstances surrounding this matter.
 - b. That I submit this certification pursuant to the requirements of CPLR §3012-a.
 - c. That I have reviewed the available facts of this case.
 - d. That I have consulted with at least one physician or podiatrist who is licensed to practice in this state or any other state and who I reasonably believe is knowledgeable in the relevant issues involved in the particular action and that I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of the within action.

Dated: New York, New York
October 14, 2009

A handwritten signature in black ink, appearing to read 'Scott Gilman', written over a horizontal line.

SCOTT GILMAN, ESQ.



AETNA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

VERIFIED AMENDED
COMPLAINT

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.
-----X

Plaintiff, TABETHA RODRIGUEZ, complaining of the defendants, by her attorney, Scott Gilman, Esq., alleges upon information and belief:

CLERK OF
BRONX COUNTY
D. PERAZZINI

10 OCT 12 AM 11:23

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1. At all times hereinafter mentioned, plaintiff TABETHA RODRIGUEZ, born 8/19/87, was and still is a citizen of the State of New York and resident of the County of Bronx.

2. At all times hereinafter mentioned, defendant GARY A. DRESDEN, M.D., was a physician duly licensed to practice medicine in the State of New York.

3. At all times hereinafter mentioned, defendant WILLIAM KNORR, M.D., who was previously unidentified and referred to in the caption and elsewhere in the plaintiff's Verified Complaint as JANE DOE, M.D. was a physician duly licensed to practice medicine in the State of New York.

4. At all times hereinafter mentioned, the defendant who was previously unidentified and referred to in the caption and elsewhere in the plaintiff's Verified Complaint as JANE DOE, M.D., and who is now known to be William Knorr M.D., was a duly licensed physician licensed to practice medicine in the State of New York, who consulted with the plaintiff on or about April 23, 2007 and told here that she was not then and had not been pregnant as previously determined by MIA WRIGHT, M.D. on or about April 11, 2007.

5. At all times hereinafter mentioned, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., was a domestic professional corporation.

6. Upon information and belief, at all times hereinafter mentioned, defendant AMERICAN MEDICAL MGMT, INC, was a domestic corporation.

7. Upon information and belief, at all times hereinafter mentioned, defendant AMERICAN MEDICAL MGMT, INC, was a foreign corporation.

8. Upon information and belief, at all times mentioned herein, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

9. Upon information and belief, at all times mentioned herein, defendant AMERICAN MEDICAL MGMT, INC managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

10. Upon information and belief, at all times mentioned herein, defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

11. Upon information and belief, at all times mentioned herein, defendant AMERICAN MEDICAL MGMT, INC owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

12. Upon information and belief, at all times mentioned herein, GARY A. DRESDEN, M.D., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

13. Upon information and belief, at all times mentioned herein, WILLIAM KNORR, M.D., managed and controlled the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

14. Upon information and belief, at all times mentioned herein, defendant GARY A. DRESDEN, M.D. owned the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

15. Upon information and belief, at all times mentioned herein, defendant WILLIAM KNORR, M.D. in part or whole, the women's health services facility located at 222 Mamaroneck Road, White Plains, New York.

16. Upon information and belief, at all times herein mentioned, defendant, WILLIAM KNORR, M.D. had a contract regarding professional employment with defendant ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

17. Upon information and belief, at all times herein mentioned, defendant, WILLIAM KNORR, M.D. had a contract regarding professional employment with defendant GARY A. DRESDEN, M.D.

18. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

19. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, GARY A. DRESDEN, M.D.

20. At all relevant times herein, plaintiff, TABETHA RODRIGUEZ was a patient of the defendant, WILLIAM KNORR, M.D.

21. At all relevant times, when plaintiff received medical care and treatment at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., she was a patient of WILLIAM KNORR, M.D.

22. At all relevant times, when plaintiff received medical care and treatment at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., she was a patient of GARY A. DRESDEN, M.D.

23. This action falls within one or more exceptions as provided in CPLR Sec. 1602.

24. At all relevant times, defendant, GARY A. DRESDEN, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

25. At all relevant times, defendant, WILLIAM KNORR, M.D. was a licensed physician engaged in the practice of her profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

26. Upon information and belief, at all relevant times, defendant, GARY A. DRESDEN, M.D. held himself out to the public as a competent and skillful physician, capable, experienced and skilled in obstetrics and gynecology.

27. At all relevant times, defendant, WILLIAM KNORR, M.D. held himself out to the public as a competent and skillful physician, capable, experienced and skilled in obstetrics and gynecology.

28. At all relevant times, defendant, WILLIAM KNORR, M.D. was a licensed physician engaged in the practice of his profession at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

29. Upon information and belief, at all times herein mentioned, defendant, WILLIAM KNORR, M.D. limited his medical practice to obstetrics and gynecology.

30. Upon information and belief, at all times herein mentioned, defendant, GARY A. DRESDEN, M.D. limited his medical practice to obstetrics and gynecology.

31. On April 11, 2007, plaintiff TABETHA RODRIGUEZ consulted with MIA WRIGHT, M.D. as a physician to attend her and assess the state of her health and physical condition.

32. After examination and testing on April 11, 2007, the plaintiff was informed by MIA WRIGHT, M.D. that she was pregnant.

33. Thereafter, on or about April 23, 2007, plaintiff presented at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. with the intention of terminating an unwanted pregnancy, and after examination and testing, she received a consultation from WILLIAM KNORR, M.D. and other persons thereat (the name(s) of whom are to date, unknown) that she was not pregnant and therefore, could not undergo a procedure to terminate the unwanted pregnancy.

34. Defendant, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. undertook as women's health care providers to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

35. Defendant, WILLIAM KNORR, M.D. undertook as a physician at ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C. to attend and care for plaintiff and to use reasonable and proper skill in their efforts to diagnosis and treat plaintiff.

36. Upon information and belief, defendant, GARY A DRESDEN, M.D. undertook as a physician to attend and care for plaintiff and to use reasonable and proper skill in his efforts to diagnosis and treat plaintiff.

37. Upon information and belief, at all times herein mentioned, each of the answering defendants assisted with and participated in the medical care rendered to the plaintiff patient in connection with the pregnancy she presented with in April, 2007.

38. Each of the defendants herein failed to use reasonable or proper skill in their efforts to diagnose and treat the plaintiff, in that they negligently consulted, told and permitted the plaintiff to believe that she was not pregnant when in fact she was; permitted the pregnancy to continue, despite her lawful and reasoned decision to terminate the unwanted pregnancy; and despite her request and instructions to the defendants to terminate her pregnancy, the defendants unreasonably, negligently and carelessly permitted the plaintiff's pregnancy to continue while causing the plaintiff to erroneously believe she was not pregnant, ultimately causing an unnecessarily prolonged & complicated medical course. All of the foregoing causing and exacerbating the plaintiff great physical and emotional pain and trauma.

39. At all relevant times, the aforementioned care of the plaintiff relating to the above described pregnancy was by members, associates, partners, or agents, servants and employees of the defendants.

40. The aforementioned injuries and damages to plaintiff were caused solely by the negligence of the defendants, their agents, servants and employees.

41. As a result of the negligence of the defendants, plaintiffs pregnancy was unnecessarily prolonged and became aggravated, she suffered great pain and was and still is greatly injured in her health and was obliged to and did expend large sums of money in an endeavor to terminate her pregnancy. Plaintiff was rendered sore, sick, lame and disabled, suffered shock to her nervous system, suffered and continues to suffer emotional and psychological injury, was prevented from attending to her usual duties and activities and will in the future be so prevented, was forced to incur medical expenses and will incur same in the future, all to her damage in an amount that exceeds the monetary jurisdiction of all lower courts which would otherwise have jurisdiction.

42. Upon information and belief, Gary A. Dresden, M.D. is the sole owner and the operator of ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C.

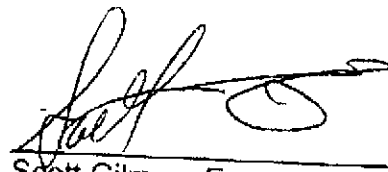
43. As owner and operator of ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., defendant GARY A. DRESDEN, M.D. is vicariously liable for the negligence of his agents, servants and employees, and more particularly is liable to plaintiff for the negligence of his employees which resulted in the injuries and damages suffered by the above named plaintiff.

44. Defendants, ALL WOMEN'S HEALTH & MEDICAL SERVICES P.C., GARY A. DRESDEN, M.D. & AMERICAN MEDICAL MGMT, INC., were negligent in their hiring and retention of WILLIAM KNORR, M.D. in their failure to properly train and/or supervise WILLIAM KNORR, M.D. and in their failure to exercise due care regarding WILLIAM KNORR, M.D.'s examination, diagnosis and treatment of the plaintiff.

WHEREFORE, plaintiff, TABETHA RODRIGUEZ, demands judgment against the defendants herein in an amount that exceeds the jurisdictional limitations of all lower courts, together with interest, costs and disbursements of this action, and such other and further relief as to this court may seem just, proper and equitable.

Dated: New York, New York
September 13, 2010

FILED: Nov 08 2010 Bronx County Clerk

A handwritten signature in black ink, appearing to read 'Scott Gilman', written over a horizontal line.

Scott Gilman, Esq.
Attorney for Plaintiffs
380 Lexington Avenue, 17th Floor
New York, New York 10168
(212) 599-9999

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Defendants.
-----X

AFFIRMATION OF
SERVICE


Index No.: 308557/09

SCOTT GILMAN, an attorney duly admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

On September 15, 2010, I served the annexed **Verified Amended Complaint** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

Goetz Fitzpatrick LLP
One Penn Plaza
New York, NY 10119

Dated: New York, New York
September 15, 2010



Scott Gilman



On the Date Written Below LETTERS are Granted by the Surrogate's Court, State of New York as follows:

Name of Decedent: William Henry Knorr
AKA William Knorr
Dr. William H Knorr
Dr. William H Knorr, MD
William H Knorr, MD
Dr. William Knorr, MD
William H Knorr

Date of Death: February 19, 2009

Domicile of Decedent: North Castle, New York

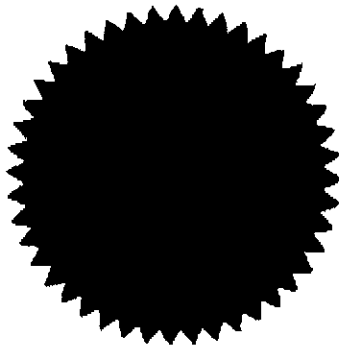
Fiduciary Appointed: Suzanne Knorr
Mailing Address: 5 Sterling Road South
Armonk NY 10504

Letters Issued: LETTERS TESTAMENTARY

Limitations: NONE

THESE LETTERS, granted pursuant to a decree entered by the court, authorize and empower the above-named fiduciary or fiduciaries to perform all acts requisite to the proper administration and disposition of the estate/trust of the Decedent in accordance with the decree and the laws of New York State, subject to the limitations and restrictions, if any, as set forth above.

Dated: June 19, 2009



IN TESTIMONY WHEREOF, the seal of the Westchester County Surrogate's Court has been affixed.

WITNESS, Hon Anthony A. Scarpino Jr., Judge of the Westchester County Surrogate's Court.

Charles T Scott, Esq., Chief Clerk

These Letters are Not Valid Without the Raised Seal of the Westchester County Surrogate's Court

Attorney for the Estate:
Anthony J Pieragostini
Anthony J Pieragostini Esq
126 Barker Street
Mount Kisco NY 10549





W. KNORR, M.D.

D. GLUCK, M.D.

D. GERBER, M.D.

222 MAMARONECK AVENUE, WHITE PLAINS, NEW YORK 10605
(914) 946-0050

pt Tabetha Rodriguez # 95143 Date 4-20-07

Insurance Company

- #90788 Antibiotic Injection.....
- #59840 Abortion.....
- #59841 D & E.....
- #TOP ABP Medical Abortion by RU486.....
- #76805 Sonogram.....
- #90742 RHogam/MicRhogam Inj.....
- #58301 IUD Removal.....
- #86006,A Pregnancy Test.....
- #MEQ.2,9 Methergine.....
- #J1055 Depo Provera.....
- TYLCOD Post-Lam Meds.....
- DOX Doxycycline.....
- MAP Morning After Pill.....
- Diagnosis..... 624.0

Signature

[Handwritten Signature]

M.D. Signature

iv. Bal	Today's Charges	Total Due	Cash	Check	Balance
	Insurance		15.00		Insurance
			<i>copy</i>		

ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C.

TRANSVAGINAL OBSTETRICAL SONOGRAM REPORT

Patient: L Rodriguez F Taketha # 95143

Date: M 4 D 20 YR 07

LMP: M 2 D 7 YR 07 / 1 weeks 07 days

Fetal #: 1 2 3

Position: vertex breech trans

FETAL MEASUREMENTS

BPD:	<u> </u> cm.	<u> </u> weeks	<u> </u> days
HC:	<u> </u> cm.	<u> </u> weeks	<u> </u> days
AC:	<u> </u> cm.	<u> </u> weeks	<u> </u> days
FL:	<u> </u> cm.	<u> </u> weeks	<u> </u> days
CR:	<u> </u> cm.	<u> </u> weeks	<u> </u> days
OGS:	<u> </u> cm.	<u> </u> weeks	<u> </u> days

Fetal Wt: grams

PLACENTA

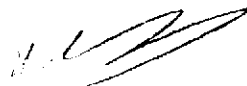
	<u> </u> anterior	<u> </u> posterior	<u> </u> fundal
	<u> </u> no previa	<u> </u> previa	<u> </u> low lying
	<u> </u> normal attach	<u> </u> abruption	<u> </u> other
Grade:	<u> </u> 1	<u> </u> 2	<u> </u> 3
Fluid:	<u> </u> normal	<u> </u> polyhydramnios	<u> </u> oligohydr
Heartbeat:	<u> </u> normal	<u> </u> slow	<u> </u> fast
Movement:	<u> </u> normal	<u> </u> increased	<u> </u> decreased

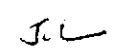
FETAL PARTS VISUALIZED AS NORMAL

<u> </u> stomach	<u> </u> bladder	<u> </u> spine
<u> </u> aorta	<u> </u> heart chamb.	<u> </u> kidneys
<u> </u> upper ext.	<u> </u> lower ext.	

COMMENTS: Endometrial cavity ~ 1.2 cm, NO IUP SEEN.

DIAGNOSIS: mt. placenta - next pregnancy

 , M.D.

 Sonographer

12

ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C.

NAME: Rodriguez, Tabetta DATE: 4/20/07 CHART# 95143

INTAKE:	Comments:
ARRIVAL TIME: <u>8:25</u>	
JUST SONO:	
ESCORT: <u>Harver</u>	
LMP: <u>2-7-07</u>	
CASH/CREDIT CARD: <u>1500</u> MEDICAID INSURANCE <u>GHI</u>	

EDUCATOR:
I HAVE EXPLAINED TO THE PATIENT:

- Alternatives to abortion
- Abortion procedure & post-op care
- Necessity for a follow-up visit in two weeks
- Requirement of escort
- Laminaria insertion and D&E
- Cytotec
- RU486 - Mifeprex
- Parental involvement if under 18
- The patient has read, understood and signed the consent form(s) with all questions answered

Initials:

Patient Educator signature: _____ Date: _____

LABORATORY:	Initials	Dr. Initials	Test Ordered
UCG:			Lmp 2/7/07 shut 1 day bleeding 4/9/07 Saw Dr Wright 4/11 had ⊕ home test + test + @ Dr Wright's office advised pt to Follow up @ Dr Wright. 4/20/07 <u>end</u>
ABBOTT: <u>neg</u>	<u>Ⓟ</u>		
RH: <u>Pos</u>	<u>Ⓟ</u>		
HCT: <u>41</u>	<u>46</u>		
PULSE:			
BP:			
WEIGHT:			
HEIGHT:			
CONTACTS:			

OPERATIVE

TIME INTO SURGICAL SUITE:

ANESTHESIA:

WEEKS BY SONO: No IUP seen

PT. would like contraception: NO OC PILLS

NOTES: Not done - not pregnant

W



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

SUPPLEMENTAL
SUMMONS

-against-

Index #: 308557/09

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
SUZANNE KNORR, AS EXECUTRIX OF THE
ESTATE OF WILLIAM KNORR, M.D.

Date Filed:


Defendants.
-----X

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the plaintiff's attorney(s) within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after the service is complete where service is made in any other manner than by personal delivery within the State of New York.

The Plaintiff has designated BRONX County as the place of trial on the basis that it is the county in which the plaintiff resides.

Dated: December 8, 2010



SCOTT GILMAN, ESQ.
Attorney for Plaintiff(s)
380 Lexington Avenue, 17th Flr
New York, New York 10168
(212) 599-9999

TO THE ABOVE NAMED DEFENDANTS:

TAKE NOTICE that this is an action for personal injuries suffered by TABETHA RODRIGUEZ on or about April 23, 2007, caused by the negligence of the defendants; the relief sought is recovery of money damages for the plaintiff's injuries, pain and suffering; in case of your failure to appear, judgment may be taken against you in an amount that exceeds the jurisdictional limits of all lower courts with interest from April 23, 2007, together with the costs and disbursements of this action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

AFFIRMATION OF
SERVICE

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.
-----X

SCOTT GILMAN, an attorney duly admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

On December 9, 2010, I served the annexed Notice of Cross-Motion, Attorney's **Affirmation, Affidavit of Tabettha Rodriguez and Exhibits** by depositing a true copy thereof enclosed in a post-paid wrapper, with Federal Express for next day delivery, addressed to:

Dwyer & Taglia, Esqs.
Attorneys for Defendant, William Knorr, M.D.
111 John Street, Suite 620
New York, NY 10038

Goetz Fitzpatrick, LLP
Attorneys for Defendants,
All Women's Health & Medical Services P.C.,
Gary A. Dresden, P.C., American Medical Mgmt, Inc.
One Penn Plaza
New York, NY 10119

Dated: New York, New York
December 9, 2010



Scott Gilman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,
-against-

REPLY
AFFIRMATION

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.
-----X

SCOTT GILMAN, an attorney duly admitted to practice law in the courts of the State of New York, affirms that the following statements are true under the penalty of perjury:

1. I am the attorney of record for the plaintiff herein and as such am familiar with the facts and circumstances set forth herein. This affirmation is submitted in reply to defendant, William Knorr's opposition to the plaintiff's instant cross-motion and in further support of said cross-motion.

2. The primary gravamen of Movant's opposition to Plaintiff's Cross-Motion is that she has failed to establish the necessary elements of the relation back doctrine and should be denied leave to serve a Supplemental Summons upon the Estate of William Knorr, M.D. This argument cannot prevail.

3. First, it is well settled that before a plaintiff is even caused to invoke the relation back doctrine, the defendant/movant must establish that the Statute of Limitations has run. Austin v. Interfaith Med. Ctr., 264 A.D. 2d 702, 694 N.Y.S. 2d 730; CPLR §203(c). In the case at bar, as set forth in my Affirmation in Support, the Statute of Limitations has not run (CPLR §210(b)) and accordingly, the plaintiff, therefore, need not resort to the relation back doctrine. Second, while Defense Counsel's Affirmation in Opposition states that "neither William Knorr, M.D., nor his 'estate representative' knew or should have known that, but for a mistake by the plaintiff as to the identity of the

2/7/19

proper parties, the action would also have been brought against him", no Affidavit of anyone with personal knowledge is submitted in support of this contention.

4. Additionally, Defendant seemingly argues that the toll set forth in CPLR §210(b) should not apply because the plaintiff has not acted with due diligence. This argument is misapplied and misplaced. The aforementioned toll is statutory and is silent as to any such requirement. There is no showing that the failure by plaintiff to name Dr. William Knorr in the original Summons and Verified Complaint was done in bad faith or has prejudiced anyone (see Austin v. Interfaith Med. Ctr., 264 A.D. 2d 702, 694 N.Y.S. 2d 730). Further, the case citation that Defense Counsel supplies is not relevant to the CPLR §210B) toll, but rather is raised in a case involving the application of the relation back doctrine.

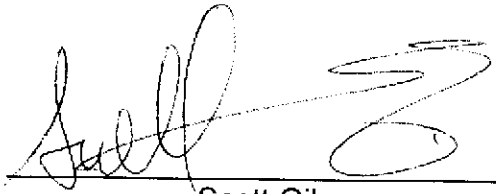
5. Contrary to Defense Counsel's arguendo, the Amended Complaint, setting forth all of the facts alleged the plaintiff's cause of action against the moving defendant is annexed as an exhibit to the plaintiff's cross-motion.

6. Finally, movant incorrectly argues that the Amended Complaint duly filed and served by the plaintiff was a nullity. To support this contention, movant relies on the holding in Marte v. Graber, 58 A.D. 3d 1, 867 N.Y.S. 2d 71. In Marte, however, the appellant was a sole defendant and the issue there was the service of an Amended Summons. In the case at bar, the movant is not the sole defendant, the plaintiff is not seeking to amend a Summons but rather to serve a Supplemental Summons and to amend the caption of an already duly commenced and pending action. Said action is not a nullity. Furthermore, as set forth in my Affirmation dated December 8, 2010, the opposition to the plaintiff's motion is submitted on behalf of a now deceased person (not his personal representative) which is itself a nullity or legal impossibility and therefore untenable.

7. For all of the foregoing reasons, it is respectfully submitted that good cause has been shown for the relief requested by plaintiff.

WHEREFORE, it is respectfully requested that this Court grant plaintiff's motion in its entirety together with such other and further relief as this deemed just and proper and deny defendant's motion in its entirety

Dated: February 9, 2011
New York, New York



Scott Gilman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,
-against-

AFFIRMATION OF
SERVICE

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.
-----X

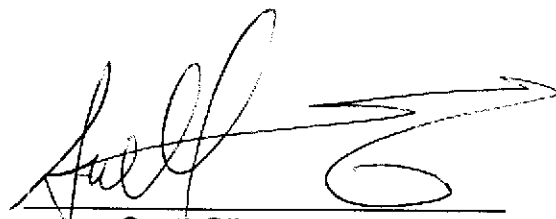
SCOTT GILMAN, an attorney duly admitted to practice law in the courts of the State of New York, affirms under the penalties of perjury:

On February 10, 2011, I served the annexed **Reply Affirmation** by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

Ellen August, Esq.
Goetz Fitzpatrick LLP
One Penn Plaza, Suite 4401
New York, NY 10119

Gary J. Dwyer, Esq.
Dwyer & Taglia, Esqs.
111 John Street, Suite 620
New York, NY 10038

Dated: New York, New York
February 10, 2011



Scott Gilman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiffs,

-against-

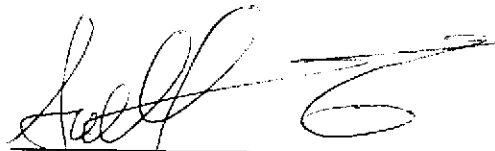
ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Index No.: 308557/09

Defendants.

-----X

REPLY AFFIRMATION



Scott Gilman, Esq.
Attorney for Plaintiffs
380 Lexington Avenue, 17th Floor
New York, New York 10168
(212) 599-9999

RECEIVED

AMERICAN MEDICAL SERVICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

TABETHA RODRIGUEZ,
Plaintiff,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.

Defendants.

-----X

**AFFIRMATION
IN OPPOSITION
TO PLAINTIFF'S
CROSS-MOTION**

Index No.
308557/09

1/21
FA-19

Gary J. Dwyer, Esq, an attorney duly admitted to practice law before the courts of the State of New York, affirms the following under penalty of perjury:

I am a member of the firm of Dwyer & Taglia, Esqs., attorneys for the deceased defendant, WILLIAM KNORR, M.D., sued herein as above. I submit this affirmation in opposition to the cross-motion by the plaintiff and in further support of the defendant's motion to dismiss this action based upon lack of jurisdiction, an unauthorized Amended Complaint and the expiration of statute of limitations.

Despite the arguments presented by the plaintiff's counsel, no jurisdiction was obtained over DR. KNORR or his estate as this individual was deceased at the time the purported Amended Complaint was served. Thus, pursuant to Marte v. Garber, 58 A.D.3d 1, 567 N.Y.S.2d 71 (1st Dept. 2008), the action must be dismissed as the purported Amended Complaint is a nullity.

While the plaintiff's counsel seeks an order permitting the issuance of a purported Supplemental Summons to name the executrix of DR. KNORR's estate as a defendant, such a request for relief should be denied. Firstly, the purported Supplemental Summons attached as Exhibit "E" to the cross-motion by the plaintiff is defective as it does not provide the requisite notice required to permit a cause of action against the estate of DR. KNORR. Most notably, the statement at the bottom of this purported Supplemental Summons does not spell out a cause of action or constitute a prima facie showing of a purported cause of action against DR. KNORR. Thus, the request to allow that alleged supplemental pleading to be served should be similarly denied.

An order of the court is necessary dismissing the purported Amended Complaint as such was not authorized nor did it obtain jurisdiction over the estate of DR. KNORR. The plaintiff's belated attempt to now seek leave of court is respectfully too late and must not be granted.

The plaintiff's cross-motion is defective in the failure to submit an appropriate proposed pleading. If the court grants the motion pending by DR. KNORR to dismiss the purported Amended Complaint since no jurisdiction was obtained over DR. KNORR, then that Amended Complaint can not be pieced together with the defective Supplemental Summons to formulate a pleading. Rather, the failure to submit a concise proposed pleading to the court

with the request for a proposed amendment renders the plaintiff's position meritless.

The plaintiff's counsel argues that the "relation back" doctrine is applicable to this case. However, the statements set forth in the affidavit of TABETHA RODRIGUEZ and the attached pages of the medical records that are unauthenticated and annexed to the plaintiff's cross-motion do not serve to establish the applicability of this doctrine. The suit can only be deemed timely under the relation back theory (C.P.L.R. 203 [b]) based upon a finding of DR. KNORR's "unity of interest" with ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C. However, the plaintiff bears the burden of proof with respect to each element of this exception. See: Austin v. Interfaith Medical Center, 264 A.D.2d 702, 703, 694 N.Y.S.2d 730, 732 (2nd Dept. 1999); McCabe v. Friedman, 277 A.D.2d 432, 717 N.Y.S.2d 228, 229 (2nd Dept. 2000); and Kaczmarek v. Benedictine Hospital, 176 A.D.2d 1183, 1184, 575 N.Y.S.2d 617, 618 (3rd Dept. 1991).

The plaintiff is respectfully unable to establish the three (3) prongs of the test that are necessary to evoke the relation back doctrine. Most notably, neither DR. KNORR, who died on February 9, 2009, nor his estate representative, "knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties, the action would have also have been brought against him." Thus, the elements of the "relation back" doctrine that are necessary to apply it are absent under

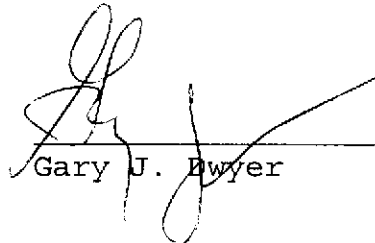
the facts and the deficient showing by the plaintiff in this case.

The absence of due diligence prevents the plaintiff from claiming the tolling exception. In this case, DR KNORR's name was clearly on the medical records that the plaintiff presents as an exhibit to the cross-motion requesting that the doctrine be evoked. However, by having these records, the plaintiff has demonstrated the lack of due diligence in evoking this exception. See: Berg v. John J. Mather Memorial Hospital, 131 A.D.2d 618, 516 N.Y.S.2d 702 (2nd Dept. 1987) (disallowing relation back exception where physician's name was clearly set forth in the hospital record).

It is abundantly clear, therefore, that the plaintiff is unable to satisfy the three (3) prong test necessary to evoke the relation back doctrine. Thus, this court must deny that request and enter a dismissal of the purported action against deceased defendant, DR. KNORR, which is a nullity.

WHEREFORE, it is respectfully requested that the plaintiff's motion be denied and the motion by defendant DR. KNORR to dismiss this action be granted in its entirety.

Dated: January 18, 2011
New York, New York



Gary J. Dwyer

AFFIDAVIT OF SERVICE BY MAIL AND FACSIMILE


Meghan Schwencke, being duly sworn, hereby deposes and states:

I am over 18 years of age, not a party to this action, and reside in Richmond County.

On the 18th day of January, 2011, I served an **AFFIRMATION IN OPPOSITION TO PLAINTIFF'S CROSS MOTION** upon the following attorney(s) at the address(es) designated by said attorney(s) by depositing a true copy of same in a postage paid, properly addressed envelope, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

SCOTT GILMAN, ESQ.
Attorney for Plaintiff
380 Lexington Avenue
New York, New York 10168
(212) 599-9999

GOETZ FITZPATRICK, LLP.
Attorneys for Defendants
ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C.,
GARY A. DRESDEN, M.D.,
and AMERICAN MEDICAL MGMT, INC.
One Penn Plaza, Suite 4401
New York, New York 10119
(212) 695-8100


Meghan Schwencke

Sworn to on this 18th
day of January 2011


NOTARY PUBLIC

ELEONORA M. MIGLIACCIO
NOTARY PUBLIC- STATE OF NEW YORK
NO. 02M16199804
QUALIFIED IN QUEENS COUNTY
COMM EXP 01-20-2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiff,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.

Defendants.
-----X

Index No.
308557/09

AFFIRMATION IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION

Gary J. Dwyer, Esq.
DWYER & TAGLIA, ESQS.
Attorneys for Defendant
WILLIAM KNORR, M.D.
111 John Street, Suite 620
New York, New York 10038
(212) 227-6000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Return Date: 1/21/11

-----X
TABETHA RODRIGUEZ, :

Index No. 308557/09

Plaintiff, :

-against- :

AFFIRMATION
OF NO OPPOSITION
ON CROSS-MOTION

ALL WOMEN'S HEALTH AND MEDICAL SERVICES :
P.C., GARY A. DRESDEN, M.D., AMERICAN :
MEDICAL MGMT, INC., JANE DOE, M.D., :

Defendants. :

-----X

ELLEN AUGUST, an attorney admitted to practice before the Courts of the State of New York, affirms pursuant to CPLR §2106:

1. I am a partner in the law firm of Goetz Fitzpatrick LLP, attorneys for defendants All Women's Health and Medical Services P.C. ("All Women's"), Gary A. Dresden ("Dresden") and American Medical Mgmt., Inc. ("AMM"), and as such I am familiar with the facts and circumstances herein.

2. I make this affirmation to advise the Court that defendants All Women's, Dresden and AMM have no objection to the relief requested in plaintiff's cross-motion.

3. The decedent William Knorr, M.D. ("Dr. Knorr") rendered professional medical services at the health care facility that All Women's operates.

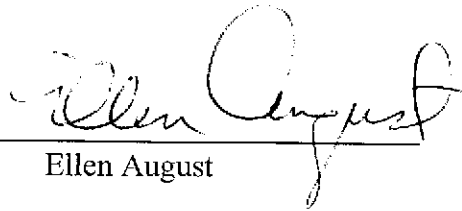
4. On information and belief, Dr. Knorr was the only physician who rendered professional medical services to the plaintiff at All Women's.

5. On behalf of All Women's, this firm served its answer to the complaint on August 26, 2010. The plaintiff served an amended complaint on September 15, 2010, which was timely.

1-21-11

6. Based on the foregoing, and for all the reasons set forth in plaintiff's cross-motion, defendants All Women's, Dresden and AMM take the position that Suzanne Knorr, as Executrix of the Estate of William Knorr, M.D., should be joined as a party in this action and that such joinder will obviate the need for separate actions.

Dated: December 20, 2010
New York, New York



Ellen August

W:\CFremer\Medical Liab\Rodríguez\M\EA. Afr.wpd

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Return Date: 1/21/11

-----X
TABETHA RODRIGUEZ,

Index No. 308557/09

Plaintiff,

-against-

AFFIDAVIT OF SERVICE

ALL WOMEN'S HEALTH AND MEDICAL SERVICES :
P.C., GARY A. DRESDEN, M.D., AMERICAN :
MEDICAL MGMT, INC., JANE DOE, M.D., :

Defendants. :

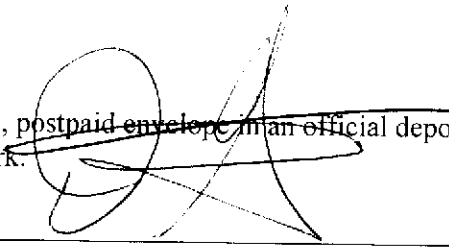
-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Dawn Gentz, being duly sworn, says, I am not a party to the action, am over the age of 18 years, and resides in Nassau County, New York, and on December 21, 2010, served the within **Affirmation of No Opposition on Cross-Motion** upon:

Scott Gilman, Esq.
Attorney for Plaintiff
380 Lexington Avenue
New York, New York 10168
(212) 599-9999

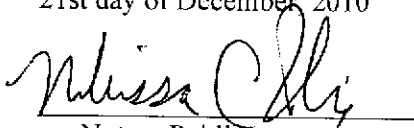
Gary J. Dwyer, Esq.
Dwyer & Taglia, Esqs.
Attorney for Defendant, William Knorr, M.D.
111 John Street, Suite 620
New York, New York 10038
(212) 227-6000

by depositing a true copy of same in a properly addressed, postpaid envelope in an official depository of the United States Post Office within the State of New York.



Dawn Gentz

Sworn to before me on this
21st day of December, 2010


Notary Public

MELISSA C. IACOBELLIS
Notary Public, State of New York
No. 4972184
Qualifies in Nassau County
Commission Expires September 24, 2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,
Plaintiff,

SUPPLEMENTAL
AFFIRMATION

-against-

Index No.
308557/09

ALL WOMEN'S HEALTH & MEDICAL
SERVICES, P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT., INC.,
and JANE DOE, M.D.

Defendants.

11/19
A-1

-----X
Gary J. Dwyer, Esq., an attorney duly admitted to practice law in the State of
New York, affirms under penalty of perjury:

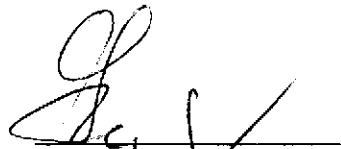
I am a member of the firm of Dwyer & Taglia, Esqs., attorneys for the
deceased defendant, William Knorr, M.D, sued herein as above. I am familiar with
the facts and circumstances of this matter.

I submit this supplemental affirmation in further support of the within
motion seeking a dismissal, pursuant to C.P.L.R. § 3211(a), due to the lack of
jurisdiction over deceased Dr. William Knorr, plaintiffs' attempt to name Dr. Knorr
by way of an unauthorized Amended Complaint, and based upon the expiration of
the statute of limitations.

We just received the certified Death Certificate for Dr. Knorr. Annexed as Exhibit "E" is a copy of the Death Certificate. If the original is required by the Court, it will be provided. This establishes without a doubt that Dr. Knorr passed away on February 19, 2009. Accordingly, the motion to dismiss must be granted.

WHEREFORE, it is respectfully requested that the motion to dismiss this action as to Dr. Knorr be granted in all respects.

Dated: October 27, 2010
New York, New York



Gary J. Dwyer, Esq.
DWYER & TAGLIA, ESQS.
Attorneys for Defendant
WILLIAM KNORR, M.D.
111 John Street, Suite 620
New York, New York 10038
(212) 227-6000



DEPARTMENT OF HEALTH
CERTIFICATE OF DEATH

STATE FILE NUMBER

3404

REGISTER NUMBER
115

1. NAME: FIRST **William** MIDDLE LAST **Knorr**

2. SEX: MALE FEMALE

3A. DATE OF DEATH: MONTH **02** DAY **19** YEAR **2009**

3B. HOUR: **9:50** P.M.

4A. PLACE OF DEATH: (Check one)
 HOSPITAL: ODA ER HOSPITAL OUTPATIENT HOSPITAL INPATIENT NURSING HOME PRIVATE RESIDENCE HOSPICE FACILITY OTHER (Specify):

4B. IF FACILITY, DATE ADMITTED: MONTH **02** DAY **16** YEAR **2009**

4C. NAME OF FACILITY: (If not facility, give address) **Sound Shore Medical Center**

4D. LOCALITY: (Check one and specify) CITY VILLAGE TOWN **New Rochelle**

4E. COUNTY OF DEATH: **Westchester**

4F. MEDICAL RECORD NO.: **552549**

4G. WAS DECEDENT TRANSFERRED FROM ANOTHER INSTITUTION? (If yes, specify institution name, city or town, county and state)
 NO YES

5. DATE OF BIRTH: MONTH **06** DAY **03** YEAR **1952**

6A. AGE IN YEARS: **56** yrs

6B. IF UNDER 1 YEAR ENTER: months days

6C. IF UNDER 1 DAY ENTER: hours minutes

7A. CITY AND STATE OF BIRTH: (If not USA, Country and Region/Province) **Suffern, NY**

7B. IF AGE UNDER 1 YEAR, NAME OF HOSPITAL OF BIRTH:

8. SERVED IN U.S. ARMED FORCES? (Specify years) YES NO

9. DECEDENT OF HISPANIC ORIGIN? Check the boxes that best describe whether the decedent is Spanish/Hispanic/Latino:
 A No, Not Spanish/Hispanic/Latino
 B Yes, Mexican, Mexican American, Chicano
 C Yes, Puerto Rican
 D Yes, Cuban
 E Yes, Other Spanish/Hispanic/Latino (Specify):

10. DECEDENT'S RACE: Check one or more races to indicate what the decedent considered himself or herself to be:
 A White/Caucasian B Black or African American C Asian Indian D Chinese
 E Filipino F Japanese G Korean H Vietnamese
 J Native Hawaiian K Guamanian or Chamorro M Samoan
 N American Indian or Alaska Native (specify)
 P Other Asian (specify) R Other Pacific Islander (specify)
 S Other (specify)

11. DECEDENT'S EDUCATION: Check the box that best describes the highest degree or level of school completed at the time of death:
 1 ≤ 8th grade 2 9th-12th grade, no diploma 3 High school graduate or GED
 4 Some college credit, but no degree 5 Associate's degree 6 Bachelor's degree
 7 Master's degree 8 Doctorate/Professional degree

12. SOCIAL SECURITY NUMBER: **085-44-5283**

13. MARITAL STATUS: NEVER MARRIED MARRIED WIDOWED DIVORCED SEPARATED

14. SURVIVING SPOUSE: Enter name if married or separated. If surviving spouse is wife, enter maiden name. **Suzanne Lewis**

15A. USUAL OCCUPATION: (Do not enter retired) **Physician**

15B. KIND OF BUSINESS OR INDUSTRY: **OB/Gyn**

15C. NAME AND LOCALITY OF COMPANY OR FIRM: **Self employed**

16A. RESIDENCE: (State or Country if not USA) **New York**

16B. County or Region/Province if not USA: **Westchester**

16C. LOCALITY: (Check one and specify) CITY VILLAGE TOWN **North Castle**

16F. IF CITY OR VILLAGE, IS RESIDENCE WITHIN CITY OR VILLAGE LIMITS? YES NO IF NO, SPECIFY TOWN:

16D. STREET AND NUMBER OF RESIDENCE: **5 Sterling Road South**

16E. ZIP CODE: **10504**

16G. ZIP CODE: **North Castle**

17. NAME OF FATHER: FIRST **William** MI LAST **Knorr**

18. MAIDEN NAME OF MOTHER: FIRST **Nellie** MI LAST **Mackey**

19A. NAME OF INFORMANT: **Suzanne Knorr**

19B. MAILING ADDRESS: (include zip code) **5 Sterling Rd South, Armonk, NY 10504**

20A. 1 BURIAL 2 CREMATION 3 REMOVAL 4 HOLD 5 DONATION
 MONTH **02** DAY **23** YEAR **2009**

20B. PLACE OF BURIAL, CREMATION, REMOVAL OR OTHER DISPOSITION: **Brick Church Cemetery**

20C. LOCATION: (City or town and state) **Spring Valley, NY**

21A. NAME AND ADDRESS OF FUNERAL HOME: **Ballard-Durand Funeral Home**
2 Maple Avenue
White Plains, NY 10601

21B. REGISTRATION NUMBER: **00115**

22A. NAME OF FUNERAL DIRECTOR: **Matthew J. Fiorillo**

22B. SIGNATURE OF FUNERAL DIRECTOR: *[Signature]*

22C. REGISTRATION NUMBER: **01192**

23A. SIGNATURE OF REGISTRAR: *[Signature]*

23B. DATE FILED: MONTH **02** DAY **20** YEAR **2009**

24A. BURIAL OR REMOVAL PERMIT ISSUED BY: *[Signature]*

24B. DATE ISSUED: MONTH **02** DAY **20** YEAR **2009**

ITEMS 25 THRU 33 COMPLETED BY CERTIFYING PHYSICIAN -- OR -- CORONER/CORONER'S PHYSICIAN OR MEDICAL EXAMINER

25A. CERTIFICATION: To the best of my knowledge, death occurred at the time, date and place and due to the causes stated.
 Certifier's Name: **Netanel Bertozzi, MD** License No.: **170296** Signature: *[Signature]* Month **2** Day **19** Year **09**

Certifier's Title: 0 Attending Physician 1 Physician acting on behalf of Attending Physician
 1 Coroner 2 Medical Examiner / Deputy Medical Examiner Address: **16 Gulion Pl New Rochelle, NY 10801**

25B. If coroner is not a physician, enter Coroner's Physician's name & title: License No.: Signature: Month Day Year

25C. If certifier is not attending physician, enter attending physician's name & title: License No.: Signature: Address: Month Day Year

26A. Attending physician attended deceased: FROM Month Day Year TO Month Day Year

26B. Deceased last seen alive by attending physician: Month Day Year **2 19 09**

26C. Pronounced Dead: ON **2 19 09** AT **9:50 P.M.**

27. MANNER OF DEATH: NATURAL CAUSE ACCIDENT HOMICIDE SUICIDE UNDETERMINED CIRCUMSTANCES PENDING INVESTIGATION

28. WAS CASE REFERRED TO CORONER OR MEDICAL EXAMINER? 0 NO 1 YES

29A. AUTOPSY? 0 YES 1 REFUSED 2

29B. IF YES, WERE FINDINGS USED TO DETERMINE CAUSE OF DEATH? 0 NO 1 YES

CONFIDENTIAL SEE INSTRUCTION SHEET FOR COMPLETING CAUSE OF DEATH CONFIDENTIAL

30. DEATH WAS CAUSED BY: (ENTER ONLY ONE CAUSE PER LINE FOR (A), (B), AND (C).)

PART I. IMMEDIATE CAUSE: **Septic shock** APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH: **3 days**

30. DEATH WAS CAUSED BY: (ENTER ONLY ONE CAUSE PER LINE FOR (A), (B), AND (C).)

DUE TO OR AS A CONSEQUENCE OF: **Metastatic melanoma** APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH: **1 year**

PART II. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO CAUSE GIVEN IN PART I (A):

31A. IF INJURY, DATE: MONTH DAY YEAR HOUR

31B. INJURY LOCALITY: (City or town and county and state)

31C. DESCRIBE HOW INJURY OCCURRED:

31D. PLACE OF INJURY:

31E. INJURY AT WORK? NO YES

32. WAS DECEDENT HOSPITALIZED IN LAST 12 MONTHS? NO YES

33A. IF FEMALE: 0 Not pregnant within last year 1 Pregnant at time of death 2 Not pregnant, but pregnant within 42 days of death

33B. DATE OF DELIVERY: MONTH DAY YEAR

34. IF DEATH OCCURRED IN A MOTOR VEHICLE, SPECIFY: 1 Driver/Operator 2 Passenger 3 Pedestrian

DECEASED
PARENTS
DISPOSITION
CERTIFIER
CAUSE OF DEATH



I HEREBY CERTIFY THAT THIS
IS A TRUE COPY

Rita Q. Colangelo

DEPUTY REGISTRAR OF VITAL STATISTICS
CITY OF NEW ROCHELLE, NEW YORK

AFFIDAVIT OF SERVICE BY MAIL

Meghan Schwencke, being duly sworn, hereby deposes and states:

I am over 18 years of age, not a party to this action, and reside in Richmond County.

On the 27th day of October, 2010, I served an **SUPPLEMENTAL AFFIRMATION** upon the following attorney(s) at the address(es) designated by said attorney(s) by depositing a true copy of same in a postage paid, properly addressed envelope, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

SCOTT GILMAN, ESQ.
Attorney for Plaintiff
380 Lexington Avenue
New York, New York 10168
(212) 599-9999

GOETZ FITZPATRICK, LLP.
Attorneys for Defendants
ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C.,
GARY A. DRESDEN, M.D.,
and AMERICAN MEDICAL MGMT, INC.
One Penn Plaza, Suite 4401
New York, New York 10119
(212) 695-8100


Meghan Schwencke

Sworn to on this 27th
day of October 2010


NOTARY PUBLIC

ELEONORA M. MIGLIACCIO
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02M6199804
QUALIFIED IN QUEENS COUNTY
COMM EXP. 01-20-2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiff,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.

Defendants.

Index No.
308557/09

-----X
SUPPLEMENTAL AFFIRMATION

Gary J. Dwyer, Esq.
DWYER & TAGLIA, ESQS.
Attorneys for Defendant
WILLIAM KNORR, M.D.
111 John Street, Suite 620
New York, New York 10038
(212) 227-6000

2018/11/19 PM 8:33

PART 19

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

-----X
RODRIGUEZ, TABELA

Index No. **0308557/2009**

- against -

Hon. **LUCINDO SUAREZ,**

Justice.

ALL WOMEN'S HEALTH & MED SVS, et al
-----X

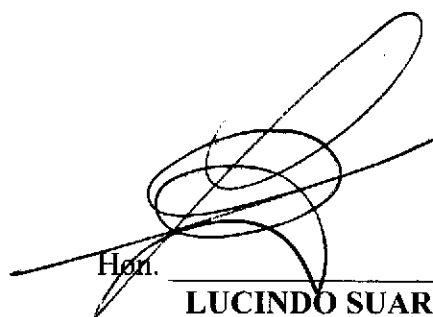
The following papers numbered 1 to **12** read on this motion, **DISMISSAL**

Noticed on **November 19, 2010** and duly submitted as No. **53** on the Motion Calendar of **February 17, 2011**

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1, 2, 3, 4	
Notice of Cross-Motion - Order to Show Cause - Exhibits and Affidavits Annexed	5, 6, 7, 8, 9	
Answering Affidavit and Exhibits	10, 11	
Replying Affidavit and Exhibits	12	
Sur-replying Affidavit and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers, defendant's motion to dismiss plaintiff's complaint and plaintiff's cross-motion are granted in part, in accordance with the annexed decision and order.

Dated: **03/01/2011**


 Hon. **LUCINDO SUAREZ, J.S.C.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

-----X

TABETHA RODRIGUEZ,

Plaintiff,

DECISION AND ORDER

Index No. 308557/2009

- against -

ALL WOMEN'S HEALTH & MEDICAL SERVICES
P.C., GARY A. DRESDEN, M.D., AMERICAN
MEDICAL MGMT., INC., and JANE DOE, M.D.,

Defendants.

-----X

PRESENT: Hon. Lucindo Suarez

Upon the notice of motion dated October 21, 2010 of defendant William Knorr, M.D. and the affirmation and exhibits submitted in support thereof; the supplemental affirmation dated October 27, 2010 of defendant William Knorr, M.D. and the exhibit annexed thereto; plaintiff's notice of cross-motion dated December 8, 2010 and the affirmations, affidavit, and exhibits submitted in support thereof; the affirmation of defendants All Women's Health and Medical Services P.C., Gary A. Dresden, M.D. and American Medical Mgmt., Inc. dated December 20, 2010; the affirmation in opposition dated January 18, 2011 of defendant William Knorr, M.D.; plaintiff's reply affirmation dated February 9, 2011; and due deliberation; the court finds:

Plaintiff Tabetha Rodriguez commenced this action in October 2009 against defendants All Women's Health & Medical Services P.C., Gary A. Dresden, M.D., American Medical Mgmt., Inc., and "Jane Doe, M.D." related to medical care she received from defendants on April 23, 2007. Nearly one year later, plaintiff served and filed an amended verified complaint alleging that "Jane Doe, M.D." was now known to be William Knorr, M.D. ("movant"). Movant now seeks an order pursuant to CPLR 3211(a) dismissing plaintiff's amended complaint on the grounds that plaintiff lacks jurisdiction over

him and that the applicable statute of limitations has run. Movant also argues the amended complaint that named movant as a defendant is a nullity. Plaintiff cross-moves pursuant to CPLR 305(a), 1002, 1003 and 1015 for an order granting her leave to serve a supplemental summons to join Suzanne Knorr, the executrix of the Estate of William Knorr, M.D., as a defendant and to amend the caption accordingly.

Movant contends that plaintiff's amended complaint is a jurisdictional nullity since it was served more than twenty (20) days after service of the original summons and complaint, without leave of court and without the consent of the parties. *See* CPLR 3025(a) and (b); *see Khedouri v. Equinox*, 73 A.D.3d 532, 901 N.Y.S.2d 221 (1st Dep't 2010); *Sutton Madison, Inc. v. 27 E. 65th St. Owners Corp.*, 68 A.D.3d 512, 889 N.Y.S.2d 901 (1st Dep't 2009). However, the non-moving defendants joined issue by service of their answer on August 26, 2010, and thus the period in which plaintiff could amend her complaint ran from date. *See* CPLR 3025(a). Plaintiff's amended complaint, served September 15, 2010 and filed October 12, 2010 is timely.

Movant also argues that no action may be commenced against a deceased person. The certificate of death establishes that movant died on February 19, 2009, eight months before plaintiff commenced the action and one and one-half years before plaintiff served the amended complaint. Since the "dead cannot be sued," plaintiff's action against movant is a nullity. *Marte v. Graber*, 58 A.D.3d 1, 3, 867 N.Y.S.2d 71, 72 (1st Dep't 2008).

Movant also submits that the action is barred by the applicable statute of limitations. An action based on medical malpractice must be commenced within two years and six months from the date of the injury. *See* CPLR 214-a. Plaintiff sustained her injury in April 2007 but did not commence her action against movant until October 2010. Thus, movant submits, plaintiff's action against him is also time-barred. *See Manko v. Mannor*, 68 A.D.3d 497, 889 N.Y.S.2d 448 (1st Dep't 2009).

Plaintiff in opposition does not dispute that the action cannot be brought against the decedent. Rather, plaintiff cross-moves for an order pursuant to CPLR 305(a), 1002, 1003 and 1015 granting her leave to serve a supplemental summons upon the executrix of movant's estate and for an order amending the caption to reflect the change. CPLR 210(b) provides that the first eighteen (18) months after the death of a person against whom a cause of action exists are not counted in the statute of limitations period. A cause of action for malpractice accrues from the date of the malpractice complained of, and the effect of applying CPLR 210(b) is to add eighteen (18) months onto the time provided for bringing a malpractice action. *See Glamm v. Allen*, 57 N.Y.2d 87, 439 N.E.2d 390, 453 N.Y.S.2d 674 (1982); *see also Perez v. Nat'l Westminster Bank*, 158 A.D.2d 361, 551 N.Y.S.2d 41 (1st Dep't 1990); *Chiaino v. Mitchell*, 149 Misc.2d 88, 560 N.Y.S.2d 615 (Sup. Ct. New York County 1990). Thus, an action against Suzanne Knorr as the executrix of movant's estate would be timely.

Movant submits that plaintiff's cross-motion is defective as the proposed supplemental summons fails to provide notice of the action. CPLR 305(b) states that a summons, if not served with the complaint, must contain "a notice stating the nature of the action and the relief sought, and, except in an action for medical malpractice, the sum of money for which judgment may be taken in case of death." Noncompliance with CPLR 305(b) renders the summons jurisdictionally defective and warrants dismissal of the action. *See Roth v. State Univ. of N.Y.*, 61 A.D.3d 476, 876 N.Y.S.2d 403 (1st Dep't 2009); *Schwartz v. Commissioner of Finance*, 172 A.D.2d 410, 570 N.Y.S.2d 914 (1st Dep't 1991). The proposed supplemental summons annexed to plaintiff's cross-motion, though, does contain "basic information concerning the nature of plaintiff's claim and the relief sought." *See Scaringi v. Elizabeth Broome Realty Corp.*, 191 A.D.2d 223, 594 N.Y.S.2d 242, 243 (1st Dep't 1993). Finally, as plaintiff does not seek to amend the allegations made in the complaint, a proposed pleading is not necessary and plaintiff has shown that she exercised due diligence in ascertaining movant's identity after commencing

the action. See CPLR 1024; cf. *Goldberg v. Boatmax://, Inc.*, 41 A.D.3d 255, 840 N.Y.S.2d 570 (1st Dep't 2007).

Accordingly, it is

ORDERED, that the motion of defendant William Knorr, M.D. to dismiss plaintiff's complaint against him is granted; and it is further

ORDERED, that plaintiff's cross-motion for leave to serve a supplemental summons upon Suzanne Knorr, as Executrix of the Estate of William Knorr, M.D., and the amend the caption to reflect the change is granted; and it is further

ORDERED, that the amended caption of the action shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiff,

Index No. 308557/2009

- against -

ALL WOMEN'S HEALTH & MEDICAL SERVICES
P.C., GARY A. DRESDEN, M.D., AMERICAN
MEDICAL MGMT., INC. and SUZANNE KNORR, AS
EXECUTRIX OF THE ESTATE OF WILLIAM KNORR,
M.D.,

Defendants.
-----X

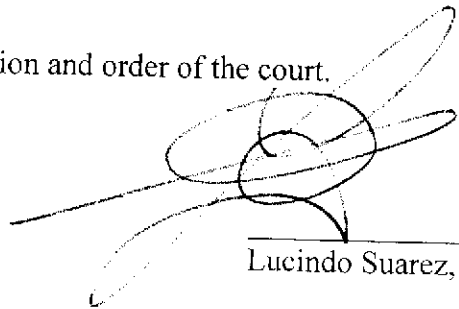
and it is further

ORDERED, that plaintiff shall serve the supplemental summons in the form annexed as Exhibit E to the moving papers within twenty (20) days after the date of service of this order with notice of its entry; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of defendant William Knorr, M.D. dismissing plaintiff's complaint against him.

This constitutes the decision and order of the court.

Dated: March 1, 2011

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Lucindo Suarez, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X STIPULATION

TABETHA RODRIGUEZ,
Plaintiff,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.

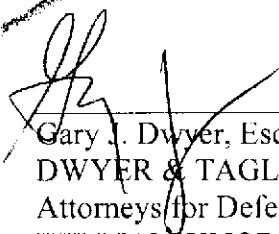
Index No.
308557/09

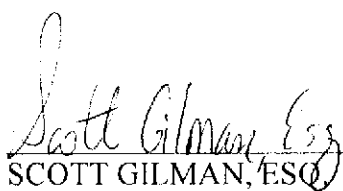
Defendants.

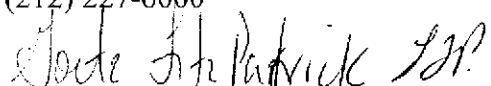
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IT IS HEREBY STIPULATED AND AGREED that the motion and cross-motion
scheduled before Honorable Lucindo Suarez, J.S.C., at the Bronx County Courthouse is
adjourned on consent to from December 17, 2010 to January 21, 2011. Opposition papers will
be served one week before the return date.

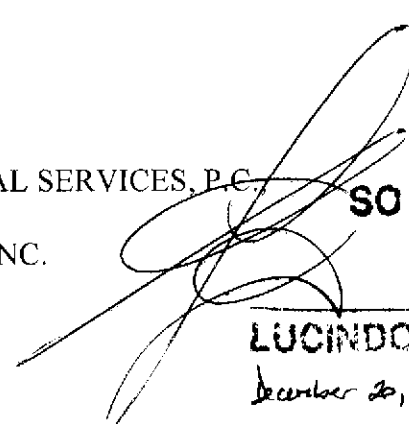
Dated: December 13, 2010
New York, New York


Gary J. Dwyer, Esq.
DWYER & TAGLIA, ESQS.
Attorneys for Defendant
WILLIAM KNORR, M.D.
111 John Street, Suite 620
New York, New York 10038
(212) 227-6000


SCOTT GILMAN, ESQ.
Attorney for Plaintiff
380 Lexington Avenue
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(212) 599-9999


GOETZ FITZPATRICK, LLP.
Attorneys for Defendants
ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C.
GARY A. DRESDEN, M.D.,
and AMERICAN MEDICAL MGMT, INC.
One Penn Plaza, Suite 4401
New York, New York 10119
(212) 695-810

SO ORDERED


LUCINDO SUAREZ, J.S.C.
December 20, 2010

12/17
FA-19
#60

12/13/2010 14:34 DWYER & TAGLIA, ESQS.

(FAX)12122276050

P.002/002

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiff,

STIPULATION

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.

Defendants.

Index No.
308557/09

-----X
IT IS HEREBY STIPULATED AND AGREED that the motion scheduled before
Honorable Lucindo Suarez, J.S.C., at the Bronx County Courthouse is adjourned on consent to
from December 17, 2010 to January 21, 2011. Opposition papers will be served one week before
the return date.

Dated: December 13, 2010
New York, New York

Gary J. Dwyer, Esq.
DWYER & TAGLIA, ESQS.
Attorneys for Defendant
WILLIAM KNORR, M.D.
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(212) 227-6000

SCOTT GILMAN, ESQ.
Attorney for Plaintiff
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GOETZ FITZPATRICK, LLP.
Attorneys for Defendants
ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C.,
GARY A. DRESDEN, M.D.,
and AMERICAN MEDICAL MGMT, INC.
One Penn Plaza, Suite 4401
New York, New York 10119
(212) 695-810

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----->
TABETHA RODRIGUEZ,
Plaintiff,

STIPULATION

-against-

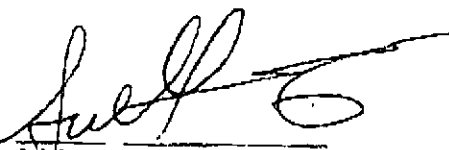
ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.
Defendants.

Index No.
308557/09

----->
IT IS HEREBY STIPULATED AND AGREED that the motion ^{re cross-motion} scheduled before
Honorable Lucindo Suarez, J.S.C., at the Bronx County Courthouse is adjourned on consent to
from December 17, 2010 to January 21, 2011. Opposition papers will be served one week before
the return date.

Dated: December 13, 2010
New York, New York

Gary J. Dwyer, Esq.
DWYER & TAGLIA, ESQS.
Attorneys for Defendant
WILLIAM KNORR, M.D.
111 John Street, Suite 620
New York, New York 10038
(212) 227-6000



SCOTT GILMAN, ESQ.
Attorney for Plaintiff
380 Lexington Avenue
New York, New York 10168
(212) 512-9999

GOETZ FITZPATRICK, LLP.
Attorneys for Defendants
ALL WOMEN'S HEALTH & MEDICAL SERVICES, P.C
GARY A. DRESDEN, M.D.,
and AMERICAN MEDICAL MGMT, INC.
One Penn Plaza, Suite 4401
New York, New York 10119
(212) 695-810

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABELHA RODRIGUEZ,

Plaintiff,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.

Defendants.
-----X

Index No.
308557/09

STIPULATION

Gary J. Dwyer, Esq.
DWYER & TAGLIA, ESQS.
Attorneys for Defendant
WILLIAM KNORR, M.D.
111 John Street, Suite 620
New York, New York 10038
(212) 227-6000

03:10 PM 11/09/12

01/19/2011 13:19 DWYER & TAGLIA, Esqs.

STIPULATION

ADJOURNING MOTION

Rx Date/Time

01/19/2011 12:08

1,012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

308557-09

TABETHA RODRIGUEZ,

Plaintiff,

STIPULATION
ADJOURNING MOTION

-against-

Index No.: 308557/09

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC.,
JANE DOE, M.D.,


Defendants.


JA19
Y21


IT IS HEREBY STIPULATED AND AGREED that the defendant WILLIAM
KNORR, M.D.'S motion to dismiss and plaintiff, TABETHA RODRIGUEZ' motion
for leave to serve a Supplemental Summons which are presently returnable January 21,
2011 shall be adjourned to February 17, 2011.

A FAX copy of this stipulation shall be as effective as an original.

Dated: New York, New York
January 19, 2011


Goetz & Fitzpatrick
Attorneys for Defendants
All Women's Health & Medical
Services, P.C., Gary Dresden, M.D. &
American Medical Management, Inc.
by: Christina M. Kramer, Esq.
1 Penn Plaza *Ellen August*
New York, NY 10119
212-695-8700


Scott L. Man, Esq.
Attorney for Plaintiff
380 Lexington Avenue, 17th Floor
New York, New York 10168
(212) 3-8888


Dwyer & Taglia Esqs.
Attorneys for Defendant
William Chen, M.D.
111 Jc Street, Suite 620
New York, New York 10038
(212) 7-8000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

TABETHA RODRIGUEZ,

Plaintiffs,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT, INC,
JANE DOE, M.D.,

Defendants.

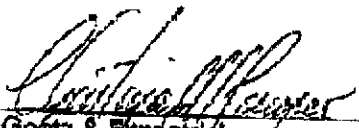
STIPULATION
ADJOURNING MOTION

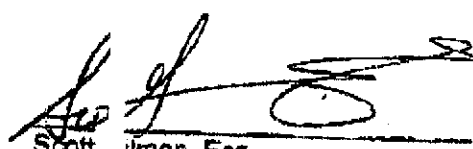
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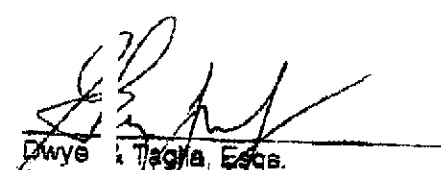
IT IS HEREBY STIPULATED AND AGREED that the defendant, WILLIAM
KNORR, M.D.'S motion to dismiss presently returns to the court on November 19, 2010 shall be
adjourned to December 17, 2010.

A FAX copy of this stipulation shall be as effective as an original.

Dated: New York, New York
November 8, 2010


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Goetz & Fitzpatrick
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(212) 677-6000

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11/19

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
TABETHA RODRIGUEZ,

Plaintiff,

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES, P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT., INC.,
and JANE DOE, M.D.

Defendants.
-----X

NOTICE OF
MOTION

Index No.
308557/09

LUCINDO SUAREZ
JUSTICE

OCT 26 2010

PLEASE TAKE NOTICE that upon the Affirmation of Gary J. Dwyer, Esq., dated October 21, 2010, and upon the prior pleadings, proceedings and annexed exhibits deceased defendant, William Knorr, M.D., sued herein as above, through his attorneys, Dwyer & Taglia, Esqs., will move this Court, before the Motion Support Office, Room 217, at the Supreme Court of Bronx County, 851 Grand Concourse, Bronx, New York, on the 19th day of November, 2010, at 9:30 a.m. or as soon thereafter as counsel can be heard for an order of dismissal, pursuant to C.P.L.R. § 3211(a), based upon the lack of jurisdiction over a deceased defendant for plaintiff's attempt to name Dr. Knorr by way of an unauthorized Amended Complaint, dated September 13, 2010, and based upon the expiration of the statute of limitations, and for such other relief as the Court deems warranted.

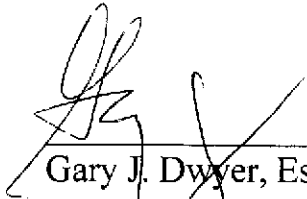
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PLEASE TAKE FURTHER NOTICE that answering affidavits, if any, must be served upon the undersigned attorneys at least seven (7) days before the return date, as provided by C.P.L.R. § 2214(b).

Dated: October 21, 2010
New York, New York



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X **AFFIRMATION**
TABETHA RODRIGUEZ,

Plaintiff,

Index No.
308557/09

-against-

ALL WOMEN'S HEALTH & MEDICAL
SERVICES, P.C., GARY A. DRESDEN, M.D.,
AMERICAN MEDICAL MGMT., INC.,
and JANE DOE, M.D.

Defendants.

-----X

Gary J. Dwyer, Esq., an attorney duly admitted to practice law in the State of
New York, affirms under penalty of perjury:

I am a member of the firm of Dwyer & Taglia, Esqs., attorneys for the
deceased defendant, William Knorr, M.D, sued herein as above. I am familiar with
the facts and circumstances of this matter.

I submit this affirmation in support of the within motion seeking a
dismissal, pursuant to C.P.L.R. § 3211(a), due to the lack of jurisdiction over
deceased Dr. William Knorr, plaintiffs' attempt to name Dr. Knorr by way of an
unauthorized Amended Complaint, and based upon the expiration of the statute of
limitations.

SUMMARY OF ARGUMENTS

The purported Amended Complaint as to Dr. William Knorr must be dismissed. Dr. Knorr passed away on February 19, 2009. Thus, any purported service or filing as to him was a nullity. Moreover, the caption only names "Jane Doe, M.D.", and it does not name Dr. Knorr as a party defendant.

In addition, there was no authority to proceed with an Amended Complaint. This proposed amended pleading was not filed, nor was leave of Court granted to proceed with it.

The statute of limitations as to alleged malpractice as to Dr. Knorr also bars the lawsuit as against him. It is alleged that Dr. Knorr rendered professional services on April 23, 2007. Thus, the lawsuit as against him needed to be interposed by October 23, 2009 to be timely. However, the purported Amended Complaint (which is unauthorized and a nullity), is dated September 13, 2010, and therefore, the claims against Dr. Knorr are barred by the applicable statute of limitations.

PROCEEDINGS

The plaintiff purportedly commenced an action against several defendants by way of a Summons and Complaint dated October 14, 2009 (Exhibit "A").

A purported "Verified Amended Complaint", dated September 13, 2010 (Exhibit "B") was recently served (defectively) without prior filing in Court and without leave of Court. The caption names two (2) companies, Gary A. Dresden,

M.D. and "Jane Doe, M.D". Dr. William Knorr is not named as a party defendant. However, it is alleged that Dr. Knorr was referred to in the caption and "elsewhere" as Jane Doe, M.D. (parag. 3).

It is undisputed that the purported Amended Complaint (Exhibit "B") was served without leave of Court (a copy of a print-out of the county clerk's file is annexed as Exhibit "C"). Moreover, this purported amended pleading was not filed with the Court. Therefore, it is unauthorized and a nullity.

Dr. William Knorr passed away on February 19, 2009. Your affirmant is attempting to obtain the Death Certificate. However, annexed as "Exhibit D" is the obituary from an internet site confirming that Dr. William Knorr passed away on February 19, 2009 in White Plains, Westchester County, New York. Since Dr. Knorr was not alive when the purported Amended Complaint was served, no jurisdiction could be obtained over this decedent. Moreover, the purported suit against him was a nullity and cannot be deemed to relate to the prior suit or original Complaint.

ARGUMENTS

POINT I

**THE ACTION WAS NOT PROPERLY
COMMENCED AGAINST DECEASED
DR. WILLIAM KNORR AND MUST BE DISMISSED**

Dr. William Knorr died on February 19, 2009 (see Exhibit "D"). Thus, the attempt to sue him after his death is a nullity. There can be no jurisdiction over an

individually named defendant who is deceased. Moreover, the purported unauthorized Amended Complaint cannot be corrected nor may the plaintiff relate the claims against Dr. Knorr to the original Complaint.

In Marte v. Graber, 58 A.D.3d 1, 867 N.Y.S.2d 71 (1st Dept. 2008), the plaintiff-inmate attempted to sue his prior attorney for legal malpractice. The defendant had died three (3) months before the filing of the Summons and Complaint. While the IAS Judge granted the inmate's motion to amend the summons and substitute a voluntary administrator for the deceased defendant and the Judge adhered to her decision upon reargument, the Appellate Division, First Department reversed. The appellate court ruled that the inmate did not properly commence the action and could not amend the summons to correct this fatal deficiency.

In Marte, the Appellate Division by Judge James Catterson, outlined the applicable law that any suit commenced against an individual defendant who is deceased before the filing of the Summons and Complaint is "a nullity since it is well established that the dead cannot be sued." 58 A.D.3d at page1; 867 N.Y.S.2d at page 72 (citing Jordan v. City of New York, 23 A.D.3d 436, 437, 807 N.Y.S. 2d 595, 597 (2nd Dept. 2005); Arbelaez v. Chun Kuei Wu, 18 A.D.3d 583, 795 N.Y.S. 2d 327 (2nd Dept. 2005); and Laurenti v. Teatom, 210 A.D.2d 300, 301, 619 N.Y.S.2d 754, 755 (2nd Dept. 1994).

In summarizing the appellate ruling, Judge Catterson wrote in Marte:

In this case, since the Summons and Complaint were filed after the death of Herman Graber, Marte had not properly commenced an action against Graber, and so Graber was never a *party* in the proceeding captioned Amin Marte v. Herman I. Graber, Index No. 402200/05. Thus, there was no party for whom substitution could be effected pursuant to C.P.L.R. 1015 (a). 58 A.D.3d at page 4; 867 N.Y.S.2d at page 73.

In this case, the purported suit against Dr. William Knorr is a nullity. The Amended Complaint was never filed nor was it authorized. Most significantly, the plaintiff cannot sue a dead person and cannot seek to have that nullity converted into an authorized pleading. Accordingly, the action as against Dr. William Knorr must be dismissed.

POINT II

**JURISDICTION WAS NOT OBTAINED
OVER DR. KNORR BECAUSE THE
AMENDED COMPLAINT WAS UNAUTHORIZED.**

The plaintiff was never given leave to serve a supplemental or amended summons or complaint. Nor did she seek (let alone obtain) a stipulation consenting to an amendment to name any additional defendants. Rather, her counsel simply placed Dr. Knorr's name on an Amended Complaint using the same index number purchased one (1) year earlier in connection with the filing of the original Summons

and Complaint. As such, the attempted amendment did not comply with C.P.L.R. § 1003 and § 3025(b) and constitutes a jurisdictional nullity.

C.P.L.R. § 3025(b) provides: “A party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it” (emphasis added).

An amendment to name a new party must also satisfy the identical requirement of C.P.L.R. § 1003 that provides:

Parties may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared, or once without leave of court within twenty days after service of the original summons or at anytime before the period for responding to that summons expires or within twenty days after service of a pleading responding to it.

There were no stipulations and no responsive pleadings were served in or about August or September 2010. Thus, the cited provisions cannot render the attempted amendment valid. As such, jurisdiction has not been obtained over Dr. Knorr since service of an unauthorized pleading is a jurisdictional nullity. Crook v. E.I. DuPont de Nemours Co., 181 A.D.2d 1039, 582 N.Y.S.2d 581 (4th Dept. 1992), aff'd 81 N.Y.2d 807, 611 N.E.2d 289, 595 N.Y.S.2d 388 (1993); Youngs v. Kissing Bridge Ski Corp., 216 A.D.2d 967, 628 N.Y.S.2d 925 (4th Dept. 1995); Britt v. Buffalo Municipal Housing Authority, 43 A.D.3d 1443, 843 N.Y.S.2d 890 (4th Dept. 2007); Andreyev v. Zito, 15 Misc.3d 1146(A), 841 N.Y.S.2d 818 (N.Y. S.Ct. 2007);

Rols Capitol Co. v. Beeten, 264 A.D.2d 724, 696 N.Y.S.2d 48 (2nd Dept. 1999); Mandel v. Waltco Truck Equipment Co., 243 A.D.2d 542, 663 N.Y.S.2d 106 (2nd Dept. 1997); Sadeghinia v. Pierre, 5 A.D.3d 658, 774 N.Y.S.2d 736 (2nd Dept. 2004); and Yonker v. Amol Motorcycles, Inc., 161 A.D.2d 638, 555 N.Y.S.2d 416 (2nd Dept. 1990).

In Andreyev, Judge Edward Burke expressed “the conditions imposed upon adding a new party to a pending action by C.P.L.R. § 1003 have been held, repeatedly, to be jurisdictional in nature. The failure to comply therewith thus constitutes a jurisdictional defect warranting dismissal of the claims interposed against the improperly added new party.” 15 Misc.3d 1146(A), 841 N.Y.S.2d 818.

The plaintiff in Rols brought a foreclosure action against several defendants, but the suit was dismissed as to three (3) of them based upon a lack of service. It named them again in a new summons which it started under the original index number. The Second Department ruled that such was “ineffective to either join [them] to the pending action or to commence a new action.” 264 A.D.2d 724, 696 N.Y.S.2d 48.

In Mandel, the plaintiff served a Complaint using an index number obtained in connection with a motion seeking pre-action discovery. He later purchased another index number that he used to file the previously served Summons/Complaint. Even though the defendant did not raise a jurisdictional defense, the Second Department

ruled that the action had to be dismissed. 243 A.D.2d 542, 663 N.Y.S.2d 107. It reasoned that the Summons/ Complaint brought under the initial index number was defective due to the lack of a new index number, and that the latter Summons/Complaint, while bearing a new index number and having been filed, had to be dismissed due to lack of service. Id.

In Sadeghinia, the plaintiff failed to name a party, so it placed his name on an Amended Complaint which his counsel filed using the same index number. Thus, the Second Department affirmed the IAS court's dismissal as to the newly added defendant. 5 A.D.3d 659, 774 N.Y.S.2d 736.

Thus, it is clear that the service of the Amended Complaint did not convey jurisdiction on Dr. Knorr so the action should be dismissed as to him.

POINT III

THE SUIT IS TIME-BARRED AS AGAINST DR. KNORR BASED UPON TREATMENT RENDERED IN APRIL 2007.

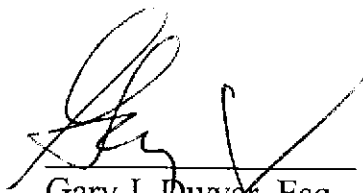
Based upon the date listed in the Amended Complaint (i.e., April 23, 2007) the statute of limitations has expired. Thus, in addition to showing that the Amended Complaint was authorized a plaintiff must also establish a tolling exception. See: Gordon v. Magun, 83 N.Y.2d 881, 612 N.Y.S.2d 373, 634 N.E.2d 974 (1994); Massie v. Crawford, 78 N.Y.2d 516, 577 N.Y.S.2d 223, 583 N.E.2d 935 (1991); Nykorchuck v. Henriques, 78 N.Y.2d 255, 573 N.Y.S.2d 434, 577 N.E.2d 1026

(1991); and Hall v. Luthra, 206 A.D.2d 890, 615 N.Y.S.2d 157 (4th Dept. 1994).

Here, no exception exists. Thus, there exists a third basis for dismissal of the action against Dr. Knorr.

Wherefore, it is respectfully requested that the Court enter an Order of Dismissal with prejudice in favor of defendant, William Knorr, M.D., or grant such relief as it deems appropriate.

Dated: October 21, 2010
New York, New York

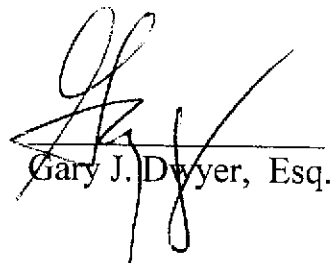


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ATTORNEY CERTIFICATION

Gary Dwyer, an attorney admitted to practice law in the State of New York, hereby affirms, pursuant to 22 N.Y.C.R.R. § 130-1.1(a), that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the annexed papers, including the **NOTICE OF MOTION AFFIRMATION and EXHIBITS** are not frivolous.

Dated: October 21, 2010
New York, New York



Gary J. Dwyer, Esq.