COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT
Civil Action No. 2179CV00584

ELVIRA TORRES,
JUAN TORRES,
ALESANDRA SOSA, PPA ELVIRA
TORRES
LISANDRA VEGA, PPA ELVIRA
TORRES AND
JUAN CARLOS TORRES, JR., PPA
ELVIRA TORRES
Plaintiff,
V.
ADRIENNE TRAN, M.D.,
RAVNET THIND, M.D.,
KEITH REISINGER-KINDLE, D.O,
SHIVA NIAKAN, D.O.,
SARAH NATHAN, M.D.,
MEGAN MILLER, M.D.,
IAN GOLDSMITH, M.D.,
EILEAN ATTWOOD, M.D.,
CAROLYN DELK, D.O., AND
SOPHIA BACHILOVA, M.D.,
Defendants.

PLAINTIFFS' OFFER OF PROOF

In this medical malpractice action, the plaintiffs, Elvira Torres (formerly Oquendo), Juan Torres, Lisandra Vega, Juan Carlos Torres, Jr, and Alesandra Sosa seek to recover for the severe and permanent personal injuries suffered by Elvira Torres as a result of the negligent care and treatment rendered to her by the defendants, Adrienne Tran, MD, Ravneet Thind, MD, Keith Reisinger-Kindle, DO, Shiva Niakan, DO, Sarah Nathan, MD, Megan Miller, MD, Ian Goldsmith, MD, Eilean Attwood, M.D., Carolyn Delk, DO, and Sophia Bachilova, MD.

Specifically, the plaintiffs allege that the care and treatment rendered to Elvira Torres by Adrienne Tran, MD, Ravneet Thind, MD, Keith Reisinger-Kindle, DO, Shiva Niakan, DO, Sarah Nathan, MD, Megan Miller, MD, Ian Goldsmith, MD, Eilean Attwood, M.D., Carolyn Delk, DO, and Sophia Bachilova, MD in February and March 2019 fell below the accepted standard of care for the average qualified obstetrician and neurologist when they: failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; when they failed to obtain an emergent neurology consult, when they failed to obtain an MRI of the brain, and when they failed to plan for emergent cesarean section delivery.

Further, the plaintiffs allege that as a direct result of these deviations from the accepted standard of care, Elvira Torres was allowed to go into labor and then labor for hours prior to delivery which resulted in a brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

This written portion of the Plaintiffs' Offer of Proof consists of the following items which will be offered at the trial of this action:

A. Baystate Medical Center records dated 1/22/18 through 3/6/19;

B. Baystate Medical Center records dated 1/22/18 through 3/6/19;

C. Baystate Medical Center records dated 1/22/18 through 3/6/19;

D. Massachusetts General Hospital records dated 3/6/19 through 3/29/19;

E. University of Rochester Medical Center medical records dated 9/10/19 through 9/27/19;

F. Expert Letter and Curriculum Vitae of Joshua Holden, MD; and

G. Expert Letter and Curriculum Vitae of Kenneth Fischer, MD.

This written portion of the Plaintiffs' Offer of Proof also contains an argument that the plaintiffs have satisfied the requirements of M.G.L. c. 231 §60B in that this action presents a legitimate question of liability appropriate for further judicial review.

STATEMENT OF FACTS

Ms. Oquendo's past medical history included a known Arnold-Chiari malformation, Arteriovenous malformation (AVM) stereotactic radiosurgery for a left cerebellar AVM in November 2013, a second AVM surgery in July 2013, Syrinx of the spinal cord, migraines, MS, and two prior live births. **(E4)**. After her AVM surgery, Ms. Oquendo was instructed that should she have a subsequent pregnancy she must not labor, push, or receive an epidural. **(E10).** Ms. Oquendo moved from New York to Springfield in May 2016.

In January 2018, Ms. Oquendo began preconception counseling at Baystate Medical Center. **(A1-4)** Her prior medical history was reviewed including her history of a primary C-section with her last birth due to her AVM history and recommendations for no laboring or epidural. **(A1-4)**

Between March and April 2018, Ms. Oquendo was seen and evaluated by neurosurgery and underwent a diagnostic cerebral angiogram. **(B45-47)** Findings of the cerebral angiogram reported no residual and no recurrence of the previously repaired left AVM. **(B46-47)**

On 7/19/18, Ms. Oquendo had a positive urine pregnancy test. **(A5)**.

On 8/22/18, Ms. Oquendo began her prenatal care at Baystate Medical Center. **(B1)**. Ms. Oquendo's medical history of AVM, Arnold Chiari malformation, and MS were noted. **(B1-11).**

On 8/30/18, a fetal ultrasound was performed and Ms. Oquendo was estimated to be 11 weeks and 5 days gestation with an expected due date of 3/16/19. **(B12-13)**.

On 9/25/18, Ms. Oquendo presented for a prenatal visit. **(B14-22)** During her visit Ms. Oquendo expressed concern and anxiety about her delivery. **(B14-22)** Ms. Oquendo noted that she had been instructed by her previous physicians that she must not labor or push. **(B14–22)** Delivery options were discussed with additional counseling planned. **(B14-22)** She also expressed concern about her headaches which she described as similar to when she was first diagnosed with an AVM prior to embolization. **(B14)**. Ms. Oquendo was followed by neurology and neurosurgery and considered stable. **(B21)**

On 12/11/18, at 26 weeks gestation, Ms. Oquendo presented to Baystate Medical Center for her prenatal visit. **(B26-32)** Again, Ms. Oquendo expressed her concern that she did not wish to have a vaginal delivery even if cleared by anesthesia. **(B26-32)** Ms. Oquendo provided a note at this appointment from her previous physicians regarding her pregnancy and delivery in 2013 that stated she must not have an epidural or push during delivery due to her history of Arnold Chiari malformation and syrinx of the spinal cord. **(B 29).** Ms. Oquendo's most recent delivery had been by c-section at 37 weeks under general anesthesia per her prior neurologist's recommendation. **(B16, B30)**

On 12/28/18, at 28 weeks gestation, Ms. Oquendo presented to Baystate Medical Center for her prenatal visit. **(B33-40)** Fetal movement was noted as normal. **(B33-40)** During the visit, Ms. Oquendo had many questions about her method of delivery and timing of delivery. **(B33)** She expressed a strong desire to have a repeat C-section due to her medical history and recommendations from her prior obstetrician. **(B35, B39)** Ms. Oquendo was noted as a high-risk pregnancy due to her medical history. **(B35, B39)** An evaluation by anesthesia and maternal fetal medicine (MFM) was planned. **(B35, B39)**

On 2/1/19, at 33 weeks and 5 days gestation, Ms. Oquendo presented to Christine Penso, M.D. for a Maternal Fetal Medicine consult. **(B45-52)** Ms. Oquendo's complete medical history was reviewed. **(B45-47)** Dr. Penso was aware of Ms. Oquendo's prior AVM repair and the possibility of hemorrhage with labor and delivery. **(B48-49)** Regarding her Chiari I malformation, Dr. Penso referred to Ms. Oquendo's neurosurgery consult and cerebral angiogram from March/April 2018 that showed no residual AVM. **(B49-50)** Dr. Penso's impression was that since there was no residual AVM there was no contraindication for a vaginal delivery or regional anesthesia. **(B49-50)** After her evaluation and examination, Dr. Penso's recommendation was that Ms. Oquendo was safe for a vaginal delivery with forceps assistance prior to 39 weeks or a repeat cesarean at 39 weeks with close blood pressure monitoring no matter the delivery method. **(B49, B51-52)**.

On 2/8/19, at 34 weeks and 5 days gestation, Ms. Oquendo present to Baystate Medical Center for an anesthesia obstetric consult. **(B55-57)** Her medical history was reviewed as well as her prior surgical/anesthesia history including a 2005 vaginal delivery with epidural and a 2013 c-section under general anesthesia secondary to AVM and Chiari malformation. **(B55)** Ms. Oquendo reported intermittent headaches. **(B57)** After evaluation and examination, Ms. Oquendo was informed that there was no absolute contraindication for neuraxial anesthesia (epidural) for patients with her condition; however, caution should be taken should she develop symptoms suggestive of increased intercranial pressure, around the time of delivery/surgery. **(B57)**

On 2/25/19, at 37 weeks and 1-day gestation, Ms. Oquendo was seen and evaluated at Baystate Medical Center by obstetrician Sophia Bachilova, M.D. **(B58-65)** During this visit Ms. Oquendo complained of worsening headaches with vertigo, dizziness, and pressure in her forehead. **(B59)** Ms. Oquendo and her partner also expressed concern that her C-section had not

yet been scheduled especially with her increasing neurological symptoms. **(B59-65)** Dr. Bachilova noted the obstetric anesthesia consult that found no absolute contraindications for epidural during labor. **(B59)** Dr. Bachilova also reviewed the Maternal Fetal Medicine recommendations including the plan for repeat c-section at 39 weeks gestation. **(B59)** Ms. Oquendo again expressed concern regarding delivery at 39 weeks, especially given her worsening headaches, vertigo, dizziness, and forehead pressure, and the fact that the recommendation had been made based on an MRI and cerebral angiogram done the year prior. **(B45-47, B59-65)** The possibility of a repeat MRI was discussed but never scheduled. **(B65)**. Dr. Bachilova discussed Ms. Oquendo's visit with Eilean Attwood, M.D. with no new orders and regular follow-up was planned. **(B65)**

On 3/2/19, at 38 weeks gestation, Ms. Oquendo presented to Baystate Medical Center ED with complaints of a severe right sided sharp headache (9/10), associated with nausea, and vomiting triggered by noise and light which had been persistent for days. **(C1-2)** She reported that although she had suffered from headaches since her coiling in 2018, her headaches had recently become much worse and she had not been sleeping due to the pain. **(C1)** Ms. Oquendo was seen and evaluated by Carolyn Delk, DO, Shiva Niakan, DO, and Sarah Nathan, M.D. **(C1-5)** On examination, Ms. Oquendo was found to have no neurological deficits. **(C1-2)** While in the ED fetal monitoring was obtained including ultrasound that showed good fetal movement with no concern for labor. **(C2-5)** Ms. Oquendo was administered Reglan, Benadryl, and Tylenol. **(C1-2)** After approximately 2 hours Ms. Oquendo reported a decrease in her headache and was diagnosed with a migraine. **(C2)** She was deemed stable for discharge by DO Niakan who consulted with DO Delk and Dr. Nathan who agreed with the plan. **(C1-5)** Ms. Oquendo was released with instructions to come back should she experience any change. **(C5)**

On 3/5/19 at 5:00 A.M., at 38 weeks and 2 days gestation, Ms. Oquendo again presented to Baystate Medical Center with complaints of a worsening headache similar to her AVM headache accompanied by vomiting and dizziness. **(C6)** Her symptoms included light sensitivity, tense/tight neck, blurry and double vision, nausea, vomiting, dizziness, and cognitive issues. **(C6).** While in the emergency department Ms. Oquendo was followed by obstetricians Ravneet K. Thind, M.D., Megan Miller, M.D., and Keith Reisinger- Kindle, M.D. **(C6-13)**

By 6:45 A.M., Ms. Oquendo's symptoms had not improved and she was now experiencing contractions. **(C12)** At this time, she was admitted to labor and delivery for monitoring and neurology consult. **(C6-12)**

At 10:56 a.m. Ms. Oquendo was noted as having 1 contraction every 10 minutes, lasting 40 seconds. **(C48)**

At 11:50 A.M., Ms. Oquendo was seen and evaluated by neurologists Ian Goldsmith, M.D. and Adrienne Tran, M.D. **(C18-21)** Dr. Goldsmith and Dr. Tran noted that Ms. Oquendo's headaches had been ongoing for the prior 2 weeks and raised concern for a possible recurrent AVM. **(C18-21)** An MRI of the brain was recommended. **(C18-21)** Nurse Neomi Seidell checked on Ms. Oquendo at 12:20 p.m. for her continuing 10/10 headache. **(C43)**

Throughout the afternoon Ms. Oquendo complained of a persistent and painful headache (10/10). **(C48-49)** Attempts were made to obtain the brain MRI during the afternoon; however, nursing was informed by the MRI department that an MRI would not be done until later in the evening. **(C49)**

At 9:35 p.m., an MRI was obtained. **(C30-31)** The MRI reported critical findings of acute hemorrhage in the left cerebellar hemisphere adjacent to the prior AVM and additional findings of mild hydrocephalus and cerebellar tonsillar herniation. **(C30-31)**

Throughout the night, Ms. Oquendo continued to complain of a headache (10/10) unrelieved by pain medication. **(C27-28)** Dr. Reisinger-Kindle planned for NSTs in the morning. **(C27)**

On 3/6/19, at 4:15 a.m., the critical findings on MRI of acute hemorrhage in the left cerebellar hemisphere adjacent to the prior AVM were discussed with Dr. Reisinger-Kindle. **(C31)**

At 4:28 a.m., Kimberly Marakovits, M.D. performed a non-stress test that was reported as reactive and continued monitoring was recommended. **(C36)**

At 6:30 a.m., Ms. Oquendo continued to complain of a constant headache. **(C43- 45)**

At around 9:00 a.m., the findings of Ms. Oquendo's MRI from the previous night were discussed with neurosurgery and the obstetrical service. **(C31)** After neurosurgical evaluation a recommendation was made for transfer to another facility that would be able to deliver Ms. Oquendo via c-section with vascular neurosurgery available since Baystate Medical Center did not have a vascular neurosurgeon on service. **(C35)** Ms. Oquendo was accepted for admission to Massachusetts General Hospital (MGH) and arrangements for transfer were made. **(C34-35, C38, C40)**

At 12:45 p.m., Ms. Oquendo was transferred by ambulance to MGH, nearly 32 hours after admission. **(C53-56, D15)** Ms. Oquendo was admitted and delivered a healthy baby boy via C-section. **(D1-3)**

On 3/7/19, Ms. Oquendo underwent a cerebral angiogram that reported findings of pooling blood consistent with a cerebellar hemorrhage with no obvious early venous drainage. **(D16-19)** Ms. Oquendo's headaches persisted. **(D16-19)**

On 3/9/19, Ms. Oquendo complained of a thunderclap headache and a head CT was completed that showed findings of a mild increase in ventricular size. **(D18)** As a result, a right frontal EVD was placed. **(D18)** Ms. Oquendo required continued EVD drainage and was monitored for continued signs of hydrocephalus. **(D18)**

On 3/21/19, Ms. Oquendo required a right ventriculostomy. **(D4, D17)**

On 3/26/19, the EVD drain was removed. **(D18)**

On 3/29/19, Ms. Oquendo was discharged from MGH to her home with home care services. **(D12-32)** She has since returned to New York and is cared for by family. **(TAB E)** Since her hemorrhage she has had difficulty walking and vision loss. **(TAB E)** She is unable to independently care for her children due to her neurological deficits as a result of her brain hemorrhage. **(Tab E)**

LIABILITY

Medical experts, Joshua Holden, MD and Kenneth Fischer, MD, were consulted regarding the care and treatment rendered to the plaintiff by the defendants.

Their curriculum vitae are attached hereto at **Tabs F and G**.

It is Dr. Holden's opinion that a pregnant woman with a prior history of AVM repair who presents to her OB or hospital ED at or over 37 weeks gestation with complaints of worsening/severe, sharp, headaches, vertigo, dizziness, nausea, vomiting, and pressure in her forehead must be referred to the ED and/or promptly admitted to the hospital for emergent neurological evaluation, MRI of the brain, and cesarean section. A woman at 37 weeks gestation with these complaints must not be allowed to labor once she becomes symptomatic since she is at an increased risk of brain hemorrhage due to her AVM repair and the increased circulatory volume and blood pressure that accompanies pregnancy, labor and delivery.

For these reasons the standard of care in Massachusetts from 2019 to the present required the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who is at or beyond 37 weeks gestation with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, pressure in the forehead, double vision, and cognitive changes to: 1) recognize and appreciate signs and symptoms that require emergent neurological evaluation and head imaging; 2) order and facilitate prompt transfer of the patient to the ED for neurological evaluation, head imaging, and cesarean section; and 3) when the patient with a history of AVM repair presents to the ED with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, and vomiting emergently obtain a neurology consult, MRI of the brain, and plan for emergent cesarean section delivery.

It is Dr. Fischer's opinion that an arteriovenous malformation (AVM) is a tangle of abnormal blood vessels connecting the arteries and veins in the brain. A neurologist consulting regarding the care and treatment of a pregnant mother at or beyond 37 weeks who has undergone surgical repair of an AVM and presents with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, and pressure in the forehead must recognize and appreciate the increased potential for brain hemorrhage in this patient and order an emergent MRI and recommend emergent cesarean section delivery to prevent hemorrhage. The neurologist must recognize and appreciate the fact that this woman must not be allowed to labor with these symptoms since she is at an increased risk of brain hemorrhage. Should hemorrhage be seen on MRI the neurologist must initiate through the obstetrician emergent cesarean section delivery to prevent worsening hemorrhage, hydrocephalus, and cerebellar tonsillar herniation. If the medical facility does not have the capabilities of treating a brain hemorrhage should this occur then the patient must be emergently transferred to a tertiary facility capable of providing vascular

neurosurgical intervention as needed. Failure to appropriately manage this patient with timely cesarean section when first presenting with symptoms of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, and pressure in her forehead will result, in brain hemorrhage, and if allowed to labor for hours will result in hydrocephalus, tonsillar herniation, and permanent and severe neurological injury, as in the case of Elvira Oquendo.

For these reasons the standard of care in Massachusetts from 2019 to the present required the average qualified neurologist consulting on an obstetrical patient at or beyond 37 weeks who has previously undergone surgical repair of an AVM and presents with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, vision changes, and cognitive issues to: 1) recognize and appreciate a patient at increased risk of brain hemorrhage; 2) order and obtain an emergent MRI; 3) recommend emergent cesarean section and not allow the patient to labor; and/or 4) order emergent transfer of the patient to a tertiary care facility where vascular neurosurgical intervention is available, if necessary.

LIABILITY OF THE DEFENDANT, SOPHIA BACHILOVA, MD

After review of the relevant medical records, it is Dr. Holden's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 2/25/19 by obstetrician Sophia Bachilova, M.D. fell below the accepted standard of care for the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who is at or beyond 37 weeks gestation with complaints of worsening headaches, vertigo, dizziness, and pressure in her forehead when Dr. Bachilova failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; and when Dr. Bachilova failed to order and facilitate prompt transfer of Ms. Oquendo

to the ED for in person neurological evaluation, MRI of the brain, and emergent cesarean section, a discussion with neurology was not sufficient under these circumstances.

Had Dr. Bachilova provided care within the accepted standard of care as outlined above, more likely than not, Ms. Oquendo would have been admitted to the hospital and undergone emergent cesarean section on 2/25/19.

In Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, as a direct result of Dr. Bachilova's deviations from the accepted standard of care on 2/25/19, as set forth in Dr. Holden's expert opinion letter, Ms. Oquendo was not evaluated at the ED or by neurology; and, instead, Ms. Oquendo was allowed to go into labor and then labor for hours prior to delivery which resulted in a brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

LIABILITY OF THE DEFENDANT, EILEAN ATTWOOD, MD

After review of the relevant medical records, it is Dr. Holden's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 2/25/19 by obstetrician Eilean Attwood, M.D. fell below the accepted standard of care for the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who was at or beyond 37 weeks gestation with complaints of worsening headaches, vertigo, dizziness, and pressure in her forehead when Dr. Attwood failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; and when Dr. Attwood failed to order and facilitate prompt transfer of Ms. Oquendo to the ED for in person neurological evaluation, MRI of the brain, and emergent cesarean section, a discussion with neurology was not sufficient under these circumstances.

Had Dr. Attwood provided care within the accepted standard of care as outlined above, more likely than not, Ms. Oquendo would have been admitted to the hospital and undergone emergent cesarean section on 2/25/19.

In Dr Fischer's professional opinion, to a reasonable degree of medical certainty, as a direct result of Dr. Attwood's deviations from the accepted standard of care on 2/25/19, as set forth in Dr. Holden's expert opinion letter, Ms. Oquendo was not evaluated at the ED or by neurology; and, instead, Ms. Oquendo was allowed to go into labor and then labor for hours prior to delivery which resulted in a brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

LIABILITY OF THE DEFENDANT, CAROLYN DELK, DO

After review of the relevant medical records, it is Dr. Holden's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 3/2/19 by Carolyn Delk, DO fell below the accepted standard of care for the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who was at or beyond 37 weeks gestation presenting to the ED with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, and vomiting when Dr. Delk failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; when Dr. Delk failed to obtain an emergent neurology consult, when Dr. Delk failed to obtain an MRI of the brain, and when Dr. Delk failed to plan for emergent cesarean section delivery, and instead, discharged Ms. Oquendo from the ED.

Had Dr. Delk provided care within the accepted standard of care as outlined above, more likely than not, Ms. Oquendo would have been admitted to the hospital and undergone emergent cesarean section on 3/2/19.

In Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, as a direct result of Dr. Delk's deviations from the accepted standard of care on 3/2/19, as set forth in Dr. Holden's expert opinion letter, Ms. Oquendo was discharged from the ED without proper evaluation and treatment; and, instead, Ms. Oquendo was allowed to go into labor and then labor for hours prior to delivery which resulted in a brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

LIABILITY OF THE DEFENDANT, SHIVA NIAKAN, DO

After review of the relevant medical records, it is Dr. Holden's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 3/2/19 by Shiva Niakan, DO fell below the accepted standard of care for the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who is at or beyond 37 weeks gestation presenting to the ED with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, and vomiting when Dr. Niakan failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; when Dr. Niakan failed to obtain an emergent neurology consult, when Dr. Niakan failed to obtain an MRI of the brain, and when Dr. Niakan failed to plan for emergent cesarean section delivery, and instead, discharged Ms. Oquendo from the ED.

Had Dr. Niakan provided care within the accepted standard of care as outlined above, more likely than not, Ms. Oquendo would have been admitted to the hospital and undergone emergent cesarean section on 3/2/19.

In Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, as a direct result of Dr. Niakan's deviations from the accepted standard of care on 3/2/19, as set forth in Dr. Holden's expert opinion letter, Ms. Oquendo was discharged from the ED without proper

evaluation and treatment; and, instead, Ms. Oquendo was allowed to go into labor and then labor for hours prior to delivery which resulted in a brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

LIABILITY OF THE DEFENDANT, SARAH NATHAN, M.D.

After review of the relevant medical records, it is Dr. Holden's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 3/2/19 by Sarah Nathan, M.D. fell below the accepted standard of care for the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who was at or beyond 37 weeks gestation presenting to the ED with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, and vomiting when Dr. Nathan failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; when Dr. Nathan failed to obtain an emergent neurology consult, when Dr. Nathan failed to obtain an MRI of the brain, and when Dr. Nathan failed to plan for emergent cesarean section delivery, and instead, discharged Ms. Oquendo from the ED.

Had Dr. Nathan provided care within the accepted standard of care as outlined above, more likely than not, Ms. Oquendo would have been admitted to the hospital and undergone emergent cesarean section on 3/2/19.

In Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, as a direct result of Dr. Nathan's deviations from the accepted standard of care on 3/2/19, as set forth in Dr. Holden's expert opinion letter, Ms. Oquendo was discharged from the ED without proper evaluation and treatment; and, instead, Ms. Oquendo was allowed to go into labor and then labor for hours prior to delivery which resulted in a brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

LIABILITY OF THE DEFENDANT, RAVNEET THIND, M.D.

After review of the relevant medical records, it is Dr. Holden's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 3/5/19 by obstetrician Ravneet K. Thind, M.D. fell below the accepted standard of care for the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who was at or beyond 37 weeks gestation presenting to the ED with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, double vision, and cognitive issues when Dr. Thind failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; when Dr. Thind failed to obtain an emergent neurology consult, when Dr. Thind failed to obtain an emergent MRI of the brain, and when Dr. Thind failed to plan for emergent cesarean section delivery, and instead, allowed Ms. Oquendo to labor for more than 30 hours.

Had Dr. Thind provided care within the accepted standard of care as outlined above, more likely than not, Ms. Oquendo would have been admitted to the hospital and undergone emergent cesarean section in the early morning of 3/5/19, instead she was allowed to labor for over 30 hours before being delivered by cesarean section on 3/6/19.

In Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, as a direct result of Dr. Thind's deviations from the accepted standard of care on 3/5/19, as set forth in Dr. Holden's expert opinion letter, Ms. Oquendo was allowed to go into labor and then labor for over 30 hours prior to delivery which resulted in a worsening brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

LIABILITY OF THE DEFENDANT, MEGAN MILLER, M.D.

After review of the relevant medical records, it is Dr. Holden's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 3/5/19 by obstetrician Megan Miller, M.D. fell below the accepted standard of care for the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who was at or beyond 37 weeks gestation presenting to the ED with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, double vision, and cognitive issues when Dr. Miller failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; when Dr. Miller failed to obtain an emergent neurology consult, when Dr. Miller failed to obtain an emergent MRI of the brain, and when Dr. Miller failed to plan for emergent cesarean section delivery, and instead, allowed Ms. Oquendo to labor for more than 30 hours.

Had Dr. Miller provided care within the accepted standard of care as outlined above, more likely than not, Ms. Oquendo would have been admitted to the hospital and undergone emergent cesarean section in the early morning of 3/5/19, instead she was allowed to labor for over 30 hours before being delivered by cesarean section on 3/6/19.

In Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, as a direct result of Dr. Miller's deviations from the accepted standard of care on 3/5/19, as set forth in Dr. Holden's expert opinion letter, Ms. Oquendo was allowed to go into labor and then labor for over 30 hours prior to delivery which resulted in a worsening brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

LIABILITY OF THE DEFENDANT, KEITH REISINGER-KINDLE, DO

After review of the relevant medical records, it is Dr. Holden's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 3/5/19 by obstetrician Keith Reisinger-Kindle, M.D. fell below the accepted standard of care for the average qualified obstetrician providing care and treatment to a patient with a history of AVM repair who was at or beyond 37 weeks gestation presenting to the ED with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, double vision, and cognitive issues when Dr. Reisinger-Kindle failed to recognize and appreciate signs and symptoms that required emergent neurological evaluation and head imaging; when Dr. Reisinger-Kindle failed to obtain an emergent neurology consult, when Dr. Reisinger-Kindle failed to obtain an emergent MRI of the brain, and when Dr. Reisinger-Kindle failed to plan for emergent cesarean section delivery, and instead, allowed Ms. Oquendo to labor for more than 30 hours.

Had Dr. Reisinger-Kindle provided care within the accepted standard of care as outlined above, more likely than not, Ms. Oquendo would have been admitted to the hospital and undergone emergent cesarean section in the early morning of 3/5/19, instead she was allowed to labor for over 30 hours before being delivered by cesarean section on 3/6/19.

In Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, as a direct result of Dr. Reisinger-Kindle's deviations from the accepted standard of care on 3/5/19, as set forth in Dr. Holden's expert opinion letter, Ms. Oquendo was allowed to go into labor and then labor for over 30 hours prior to delivery which resulted in a worsening brain hemorrhage, edema, tonsillar herniation, and the severe and permanent neurological injury she continues to live with today.

LIABILITY OF THE DEFENDANT, IAN GOLDSMITH, MD

After review of the relevant medical records, it is Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 3/5/19 by neurologist Ian Goldsmith, M.D. fell below the accepted standard of care for the average qualified neurologist consulting on an obstetrical patient at or beyond 37 weeks who has previously undergone surgical repair of an AVM and presents with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, vision changes, and cognitive issues when Dr. Goldsmith failed to recognize and appreciate a patient at increased risk of brain hemorrhage; when Dr. Goldsmith failed to order and obtain an emergent MRI; when Dr. Goldsmith failed to recommend emergent cesarean section and not allow Ms. Oquendo to labor; and/or when Dr. Goldsmith failed to order emergent transfer of Ms. Oquendo to a tertiary care facility where vascular neurosurgical intervention was available, if necessary.

As a direct result of Dr. Goldsmith's deviations from the accepted standard of care Ms. Oquendo suffered severe and permanent neurological injury. Had Dr. Goldsmith provided care within the accepted standard of care, as outlined above, more likely than not, Ms. Oquendo would have delivered her son via cesarean section on 3/5/19, prior to developing brain edema and tonsillar herniation; instead, Ms. Oquendo was allowed to labor for over 30 hours prior to transfer and eventual delivery on 3/6/19, by which time she had worsening hemorrhage, brain edema, and tonsillar herniation that resulted in the severe and permanent neurological injury she continues to live with today.

<u>LIABILITY OF THE DEFENDANT, ADRIEENE TRAN, MD</u>

After review of the relevant medical records, it is Dr. Fischer's professional opinion, to a reasonable degree of medical certainty, that the care and treatment rendered to Elvira Oquendo on 3/5/19 by neurologist Adrienne Tran, M.D. fell below the accepted standard of care for the

average qualified neurologist consulting on an obstetrical patient at or beyond 37 weeks who has previously undergone surgical repair of an AVM and presents with complaints of worsening/severe, sharp headaches, vertigo, dizziness, nausea, vomiting, vision changes, and cognitive issues when Dr. Tran failed to recognize and appreciate a patient at increased risk of brain hemorrhage; when Dr. Tran failed to order and obtain an emergent MRI; when Dr. Tran failed to recommend emergent cesarean section and not allow Ms. Oquendo to labor; and/or when Tran failed to order emergent transfer of Ms. Oquendo to a tertiary care facility where vascular neurosurgical intervention was available, if necessary.

As a direct result of Dr. Tran's deviations from the accepted standard of care Ms. Oquendo suffered severe and permanent neurological injury. Had Dr. Tran provided care within the accepted standard of care, as outlined above, more likely than not, Ms. Oquendo would have delivered her son via cesarean section on 3/5/19, prior to developing brain edema and tonsillar herniation; instead, Ms. Oquendo was allowed to labor for over 30 hours prior to transfer and eventual delivery on 3/6/19, by which time she had worsening hemorrhage, brain edema, and tonsillar herniation that resulted in the severe and permanent neurological injury she continues to live with today.

ARGUMENT

Massachusetts General Laws, Chapter 231, §60B and the subsequent case law set forth both the scope and limits of this Tribunal's function in reviewing a claim of medical malpractice. The task of the Medical Malpractice Tribunal is a "narrow" one, in which "the tribunal should simply examine the evidence proposed to be offered on behalf of the patient to determine whether that evidence, 'if properly substantiated, is sufficient to raise a legitimate question of liability appropriate for judicial inquiry or whether the plaintiff's case is merely an unfortunate

medical result." Feliciano v. Attanucci, 95 Mass.App.Ct.. 34, 37-38, (2019), quoting MGL c231, §60B. If the plaintiff's Offer of Proof is sufficient to raise a legitimate question of liability, the plaintiffs can proceed further without a bond; if not, the plaintiffs may pursue their claim only by posting a bond of Six Thousand ($6,000.00) Dollars.

The Supreme Judicial Court held in Little v. Rosenthal, 382 N.E.2d 1017, 1039 (1978), that in evaluating evidence submitted by the plaintiffs in a medical malpractice claim, "the tribunal's task should be compared to a trial judge function in ruling on a Defendants' motion for a directed verdict," although these standards are not "one and the same." Kopycinski v. Aserkoff, 410 Mass. 410, 415, (1991). Because the Tribunal's assessment occurs before completion of discovery and full vetting of the plaintiff's theories through *Lanigan* motions, §60B "explicitly contemplates that a plaintiff's offer of proof to the tribunal need not meet the full evidentiary burden of proof at trial; instead, the offer of proof, taken in the light most favorable to the plaintiff, need only be sufficient to raise a legitimate question of liability, with proper evidentiary substantiation to follow." Feliciano, 95 Mass.App.Ct., at 38 (emphasis supplied).

Under this standard, a finding for a defendant in a medical malpractice case should be entered, "only when (in) considering the evidence most favorable to the plaintiffs, it is still insufficient to support a verdict in his favor." Demarzo v. S & P Realty Corp., 306 N.E.2d 432 (1974). All evidence favorable to the plaintiffs – including any expert opinion letter – must be accepted as being true. Extrinsic evidence is not required to substantiate the factual statements in an expert's' opinion, and "a factually based statement by a qualified expert, without more, is sufficient to meet the tribunal standard." Booth v. Silva, 36 Mass.App.Ct. 16, 21 (1994). The Tribunal is not to engage in weighing the evidence or determining credibility, Keppler v. Tufts,

38 Mass.App.Ct. 587, 589 (1995), and "[a]ny factual dispute as to the meaning of the record is for the jury." Rahilly v. North Adams Regional Hosp., 36 Mass.App.Ct. 714, 723 (1994).

As it pertains to the Tribunal's assessment of causation, "not a great deal is required to fend off a directed verdict on the issue of causation. It is enough to adduce evidence that there is a greater likelihood or probability that the harm to the plaintiff flowed from conduct for which the defendant was responsible." Joudrey v. Nashoba Community Hosp., Inc., 32 Mass. App. Ct. 974, 976 (1992).

The Plaintiffs; evidence before this Tribunal clearly would not entitle the defendant to a directed verdict. The Plaintiffs' Offer of Proof consists of the following documents:

A. Baystate Medical Center records dated 1/22/18 through 3/6/19;

B. Baystate Medical Center records dated 1/22/18 through 3/6/19;

C. Baystate Medical Center records dated 1/22/18 through 3/6/19;

D. Massachusetts General Hospital records dated 3/6/19 through 3/29/19;

E. University of Rochester Medical Center medical records dated 9/10/19 through 9/27/19;

F. Expert Letter and Curriculum Vitae of Joshua Holden, MD; and

G. Expert Letter and Curriculum Vitae of Kenneth Fischer, MD.

Certainly, if a jury were to accept the testimony of the Plaintiffs' experts as true – as the Tribunal must for the purpose of this hearing – it would be warranted in returning a verdict for the Plaintiffs.

In order to establish liability in a medical malpractice case, the Plaintiffs must present evidence to establish: (1) the breach of duty owed by the defendant; and (2) a causal relationship between that breach and the damages allegedly suffered. Civitarese v. Gorney, 358 Mass. 652

(1971); Bernard v. Menicks, 340 Mass. 296 (1960). The Plaintiff's Offer of Proof, including the expert reports of Dr. Holden and Dr. Fischer clearly satisfies both of these requirements:

First, in treating the Plaintiff, the Plaintiff's expert report states that the standard of care due to Elvira Torres was not met by the defendants. Based on their review of the relevant medical records, Dr. Holden and Dr. Fischer conclude that, in their professional opinion, to a reasonable degree of medical certainty, the care and treatment rendered to Elvira Torres by Adrienne Tran, MD, Ravneet Thind, MD, Keith Reisinger-Kindle, DO, Shiva Niakan, DO, Sarah Nathan, MD, Megan Miller, MD, Ian Goldsmith, MD, Eilean Attwood, M.D., Carolyn Delk, DO, and Sophia Bachilova, MD fell below the accepted standard of care for the average qualified obstetrician and neurologist.

Second, a causal link between the Defendants' negligence and the injury suffered is also discussed by Dr. Fischer. He states that as a direct result of the Defendants' negligence, Elvira Torres suffered a permanent neurological injury.

CONCLUSION

The standard, which this Tribunal is bound to follow, requires that all rational inferences be resolved in the Plaintiffs' favor and that this Tribunal accept as true all evidence favorable to the Plaintiffs. Under this standard, "the defendant, in fact, is taken to have conceded the truth" of the Plaintiff's evidence. See, *Smith & Zobel, Rules Practice, 8 Mass. Prac., Series, p. 203.* Based upon the Offer of Proof submitted by the Plaintiffs, and in light of the foregoing standards, the Plaintiffs respectfully submit that there is a legitimate question of liability presented and that the Plaintiffs should be allowed to proceed further without the imposition of a statutory bond.

The plaintiffs,
By their attorneys,

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