COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: SUCV2009-01808-A

KIMBERLY NORTON AND EDWARD NORTON,

Plaintiffs,

v.

STEVEN J. RALSTON, M.D. AND JANE DOE, R.N.

Defendants.

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO INCREASE BOND UNDER G.L. c. 231, SECTION 60B

The Plaintiffs, Kimberly Norton and Edward Norton, hereby oppose the motion of the Defendants, Steven J. Ralston, M.D. and Jane Doe, R.N., to increase the bond necessary for them to pursue their claims from $6,000 to $40,000.

AS GROUNDS IN SUPPORT OF THIS OPPOSITION, the Plaintiffs state as follows:

1. In paragraphs 4-10 of their Complaint, the Plaintiffs have alleged that:

> 4. On or around February 14, 2006, the Plaintiff, Kimberly Norton, presented to her OB/GYN where it was determined by ultrasound that she was approximately eight (8) weeks pregnant.
>
> 5. On or around April 11, 2006, testing conducted by the Plaintiff's OB/GYN raised concerns about a molar pregnancy.
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> 6. On or around May 18, 2006, the Plaintiff, Kimberly Norton, submitted herself to the care and treatment of the Defendants.
>
> 7. While in the care and treatment of Defendants, Mrs. Norton began experiencing elevated blood pressure levels. The Plaintiff, Mrs. Norton, was eventually discharged home by the Defendants with no medication, instruction, or acknowledgment of her elevated blood pressure levels.

8. On or around May 22, 2006, the Plaintiff, Kimberly Norton, began complaining of severe headaches and eventually had a seizure. Mrs. Norton was taken via ambulance to the hospital where it was determined she had suffered a stroke.

9. In their care of the Plaintiff, Mrs. Norton, the Defendants failed, among other things, to administer proper medical care to Mrs. Norton and prematurely discharged her even though it was noted on numerous occasions that she had elevated blood pressure levels.

10. As a result of the Defendants' failure to properly care for and treat the Plaintiff, she was discharged home where she eventually suffered a stroke and subsequent injury.

2. A Medical Malpractice Tribunal was convened on November 23, 2009 at which the Plaintiff did not submit an Offer of Proof and the Defendants prevailed. The Defendants argue that the Court should increase the bond requirement nearly seven fold -- an increase which would effectively close the courthouse door to the Nortons (as it would to all but the wealthiest citizens) -- because 1) the case was filed close to the statute of limitations, 2) "the Court may infer the claim is frivolous," 3) the Court's resources were wasted, and 4) the Defendants lost an opportunity for discovery. None of these arguments can withstand scrutiny and, in any event, do not warrant such a dramatic penalty.

3. The fact that this case was filed near the statute of limitations is irrelevant. All claims filed within the statute of limitations are valid and no preferential treatment is given to those filed earlier nor worse treatment to those filed later.

4. Nor is there any logic to the suggestion that plaintiffs who fail to file offers of proof should be treated worse than plaintiffs who file deficient offers of proof: both have failed to provide the evidence necessary to proceed without a bond and it is no more a valid inference that a claim is "frivolous" when no offer of proof is

filed than when a deficient offer of proof is filed. In either case such an inference is dangerous and likely mistaken -- as the potential reasons for not prevailing at the tribunal which have nothing to do with the merits of the claim are numerous -- and clearly not an inference made by the legislature. In drafting G.L. c. 231, Section 60B, the legislature chose not to dismiss claims where the plaintiffs failed to produce sufficient evidence, as it could have, but instead chose to require a $6,000 bond. In so doing, the legislature fixed the balance between the rights of malpractice claimants and defendants as it deemed best. While discretion was left to judges to increase the bond, the legislature clearly did not intend the death knell for plaintiffs who fail to provide the required evidence at the tribunal.

5. Moreover, treating plaintiffs who file deficient offers of proof better than plaintiffs who do not file offers of proof will encourage and reward those who waste judicial resources by submitting offers of proof which are known to be deficient. Indeed, in this case the Plaintiffs' counsel notified the Court and Defendants' counsel in advance that no offer of proof was to be filed precisely to save judicial resources. Plaintiffs' counsel could have filed an offer of proof with a lengthy memorandum, and voluminous medical records attached, arguing that the offer was sufficient when it would not have been, but doing so would have benefited no one.

6. Finally, because the Plaintiffs' complaint was pled with specificity, the Defendants' argument that the lack of an offer of proof will somehow result in increased discovery costs is spurious. The Defendants have been on notice of the

exact claims against them since the suit was filed and the scope of their discovery will not in any way be affected by the lack of an offer of proof.

7. In sum, because raising the required bond from $6,000 to $40,000 would effectively dismiss the case and because the Defendants are in no different position due to the Plaintiffs' failure to file an offer of proof than they would have been had the Plaintiff filed a deficient offer of proof, there is no just reason to increase the bond as requested. Accordingly, the Defendants' motion ought to be denied.

PLAINTIFFS,
Kimberly and Edward Norton,
By their Attorney,

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Dated: December 16, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail / ~~by hand~~. and fax.

Date: 12/16/09