

2.

Defendant Garry Earl Siegel, M.D. (hereinafter "Defendant Siegel") is a physician duly licensed to practice medicine in the State of Georgia, who holds himself out to the public as specializing in obstetrics and gynecology. Defendant Siegel is a resident of Cobb County, Georgia, and may be served with process at his residence at 1558 Asheforde Drive, Marietta, Cobb County, Georgia 30068-1800 or at his office at Garry E. Siegel, M.D., P.C., 2500 Hospital Boulevard, Suite 410, Roswell, Fulton County, Georgia 30076. He is subject to the jurisdiction of this court. At all times relevant hereto he was an employee, servant, or agent of Defendant Garry E. Siegel, M.D., P.C., and an employee, servant, or agent of Defendant North Pointe OB/GYN Associates, L.L.C. and was acting within the course and scope of his employment and agency with such.

3.

Defendant Garry E. Siegel, M.D., P.C. (hereinafter "Defendant Siegel P.C.") is a Georgia Professional Corporation, which at all times relevant hereto employed or otherwise engaged as a servant or agent Defendant Siegel and which is liable for Defendant Siegel's medical malpractice and negligence as set forth herein pursuant to the doctrine and principles of *respondeat superior* and agency. It has its principal office at 2500 Hospital Boulevard, Suite 410, Roswell, Georgia 30076 , where it may be served with process by serving Garry E. Siegel, its registered agent. It may also be served by serving Garry E. Siegel, M.D., its registered agent at his home address at 1558 Asheforde Drive, Marietta, Cobb County, Georgia 30068-1800 It is subject to the jurisdiction of this court.

4.

Defendant North Pointe OB/GYN Associates, L.L.C. (hereinafter “Defendant North Pointe”) is a Georgia Limited Liability Company, which at all times relevant hereto employed or otherwise engaged as a servant or agent Defendant Siegel and which is liable for Defendant Siegel’s medical malpractice and negligence as set forth herein pursuant to the doctrine and principles of *respondeat superior* and agency. It has its principal office at 2500 Hospital Boulevard, Suite 290, Roswell, Fulton County, Georgia 30076, where it may be served with process by serving Sean Joseph Lambert M.D., its registered agent. It also may be served by serving its registered agent Sean Joseph Lambert, M.D. at its registered office at 1505 Northside Boulevard, Suite 3500, Cumming, Forsyth County, Georgia 30041. It is subject to the jurisdiction of this court.

5.

Defendant North Fulton Medical Center, Inc. (hereinafter “Defendant North Fulton”) is a Georgia for profit corporation that owns and operates a hospital known variously as North Fulton Regional Hospital, Tenet North Fulton Regional Hospital, North Fulton Hospital, and North Fulton Medical Center located at 3000 Hospital Boulevard, Roswell, Fulton County, Georgia. It may be served with process by serving CT Corporation System, its registered agent, at 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia 30361. It is subject to the jurisdiction of this court.

6.

Defendants XYZ Corporation/Entity Nos. 1 and 2 are unknown business corporations or professional corporations, limited liability companies, partnerships, limited partnerships, other business entities, or persons. At all times relevant hereto Defendant Siegel was an employee,

agent or ostensible agent of one or both of Defendants XYZ Corporations Nos. 1 and 2 and was acting within the course of such employment or agency relationship. Said Defendants are liable for the torts of Defendant Siegel committed at all times relevant hereto and as set forth herein under the principles of *respondeat superior* and agency. They are subject to the jurisdiction of this Court.

7.

Venue is properly laid herein.

8.

On August 13, 2006, Defendant Siegel, acting within the course and scope of his employment or other agency relationship with Defendant Siegel P.C. and Defendant North Pointe, circumcised Plaintiff Demarco Martenson, a newborn male infant, at North Fulton Regional Hospital, 3000 Hospital Boulevard, Roswell, Fulton County, Georgia 30076. For this circumcision Defendant Siegel used a "GOMCO clamp." In circumcising Plaintiff Defendant Siegel was negligent and his conduct fell below the standard of care and skill required of medical doctors and medical practitioners generally under the same conditions and like circumstances.

9.

In performing the circumcision Defendant Siegel negligently cut into the dorsal side of Plaintiff Demarco Martenson's glans penis and created what he termed a 3 millimeter "Urethral injury," which defect he closed by applying two 3-0 chromic sutures. He noted that he assured urethral patency "by probe present during closure."

10.

The care and treatment rendered to Plaintiff Demarco Martenson on August 13, 2006 by Defendant Siegel was below the degree of care and skill acceptable to the medical profession

generally and for physicians performing a GOMCO clamp circumcision under the same and similar circumstances and like surrounding conditions for the following reasons:

- (a) In performing the circumcision Defendant Siegel negligently caused an injury to the dorsum of Demarco Martenson's glans penis by cutting into it, which he attempted to repair with two 3-0 chromic sutures, but which eventually healed with a cleft in the glans;
- (b) Defendant Siegel failed to check the GOMCO clamp for mismatched parts before he proceeded with the circumcision.

11.

Defendant Siegel failed to assure that the size of the bell of the GOMCO clamp matched the size of the hole in the base plate before closing the clamp by engaging the nut on the base plate and before excising the foreskin. As a consequence when he excised the foreskin the glans penis was not fully protected as it would have been if he had used matching parts and his scalpel cut into the glans penis and damaged it.

12.

If Defendant Siegel had properly assured that the size of the bell of the GOMCO clamp matched the size of the base plate before closing the clamp by engaging the nut on the base plate and before excising the foreskin, Plaintiff Demarco Martenson's glans penis would not have been injured and he would not have been required to undergo the later surgeries set forth below.

13.

It is always beneath the standard of care applicable to a physician performing a circumcision with a GOMCO clamp to cut the glans penis so as to cause a glanular cleft such as that suffered by Plaintiff Demarco Martenson.

14.

It is more probable than not that the bell of the GOMCO clamp used by Defendant Siegel in the circumcision was 1.1 cm in size and that the base plate had an opening that was 1.3 cm in size. Defendant Siegel had a duty to ascertain personally that the size of the bell matched the size of the hole in the base plate before performing a circumcision but he negligently failed to do so.

15.

On November 11, 2010 Plaintiff Demarco Martenson underwent a repair of the glanular cleft that had been caused by the negligence of Defendant Siegel as aforesaid. Said repair was performed by Wolfgang Cerwinka, M.D. at Children's Healthcare of Atlanta. Thereafter Plaintiff Demarco Martenson developed an epidermal inclusion cyst at the site of the glanular repair, which cyst was excised by Dr. Cerwinka on June 5, 2012 at Children's Healthcare of Atlanta. However, Plaintiff Demarco Martenson's glans penis still does not look like the glans penis of a correctly circumcised boy as it is significantly wrinkled distal to the location of the cleft caused by Defendant Siegel's negligence. Neither of these surgeries would have been required if Defendant Siegel had met the standard of care applicable to him in performing the circumcision. Plaintiff Demarco Martenson's glans penis would not be deformed permanently as it now is if Defendant Siegel had met the standard of care applicable to him in performing the circumcision.

16.

The standard of care applicable to hospital personnel, employees, and apparent employees who procure, sterilize, assemble, package, transfer, set up for use, and/or inspect GOMCO clamps that are provided in a hospital to doctors such as Defendant Siegel to use in

circumcising newborn infants such as Demarco Martenson, whether they are nurses, nurse practitioners, physicians' assistants, technicians, or otherwise, is that they must inspect the GOMCO clamp to assure that the size of the bell matches the base plate and that there are no mismatched or worn parts. All of the hospital personnel, employees, or apparent employees who procured, sterilized, assembled, packaged, transferred, set up for use, and/or inspected the GOMCO clamp and its constituent parts prior to use by Defendant Siegel should have inspected the clamp and should have assured that the size of the bell matched the size of the base plate and that there were no mismatched or worn parts. Any such person who failed to ensure a proper match between the bell and the base plate or who failed to ensure that there were no worn or mismatched parts was negligent and that person's conduct fell below the standard of care applicable to him or her in the circumstances. At least one such person, who was an employee, servant, or agent of Defendant North Fulton, was negligent in that regard because Defendant Siegel was provided with a GOMCO clamp that had mismatched parts as aforesaid.

17.

All those hospital personnel, employees, or apparent employees who procured, sterilized, assembled, packaged, transferred, set up for use, and/or inspected the GOMCO clamp and its constituent parts prior to use by Dr. Siegel were negligent in that each failed to assure that the size of the bell of the GOMCO clamp matched the size of the hole in the base plate. As a consequence when Defendant Siegel excised the foreskin Plaintiff Demarco Martenson's glans penis was not fully protected as it would have been if Defendant Siegel had used matching parts and his scalpel cut into the glans penis and damaged it.

18.

If those hospital personnel, employees, or apparent employees who procured, sterilized, assembled, packaged, transferred, set up for use, and/or inspected the GOMCO clamp and its constituent parts prior to use by Defendant Siegel had properly assured that the size of the bell of the GOMCO clamp matched the size of the base plate and that there were no mismatched or worn parts before providing the same to Defendant Siegel (whose own negligence is not excused by the negligence of those hospital personnel because as the operating doctor he had an independent duty to inspect the clamp and its constituent parts before proceeding to use it), Plaintiff Demarco Martenson's glans penis would not have been injured during the circumcision, he would not have been required to undergo the later surgeries set forth above, and his glans penis would not be deformed as it now .

19.

But for the failures of Defendant Siegel to exercise that degree of care and skill ordinarily required of medical doctors and medical practitioners generally under like conditions and similar circumstances in her care and treatment of him, Plaintiff Demarco Martenson would not have suffered an injury to his glans penis and would not have been left with a permanently damaged penis. Further, Plaintiff Demarco Martenson's injuries and damages were entirely preventable had Defendant Siegel exercised that degree of care and skill ordinarily required of medical doctors and medical practitioners generally under like conditions and similar circumstances.

20.

But for the failures of the employees, servants, and agents of Defendant North Fulton, whether they are nurses, nurse practitioners, physicians' assistants, technicians, or otherwise, to exercise that degree of care and skill ordinarily required of them, generally under like conditions

and similar circumstances in the procuring, sterilizing, assembling, packaging, transferring, setting up for use, and/or inspecting the GOMCO clamp provided to Defendant Siegel for use in circumcision Plaintiff Demarco Martenson, Plaintiff Demarco Martenson would not have suffered an injury to his glans penis and would not have been left with a permanently damaged penis. Further, Plaintiff Demarco Martenson's injuries and damages were entirely preventable had those employees, servants, and agents exercised that degree of care and skill ordinarily required of them generally under like conditions and similar circumstances.

21.

As a direct and proximate result of the combined negligence of Defendants Siegel and the employees, servants, and agents of Defendant North Fulton as aforesaid Plaintiff Demarco Martenson was severely injured and sustained permanent damage to his glans penis.

22.

As a direct and proximate result of the combined negligence of Defendants Siegel and the employees, servants, and agents of Defendant North Fulton as aforesaid Plaintiff Demarco Martenson was required to undergo two corrective surgeries, and may be required to undergo other surgeries in the future, and he and his family will be required to undergo psychiatric counseling in the future to maintain his mental health. Plaintiff Demarco Martenson will incur medical, hospital, psychiatric, psychological and other such expense as a direct and proximate result of the combined negligence of Defendants Siegel and the employees, servants, and agents of Defendant North Fulton as aforesaid.

23.

Contemporaneously with the filing of this First Amended Complaint for Medical Malpractice and Negligence and in response to a Motion to Dismiss filed and served by

Defendant North Fulton Medical Center, Inc. on September 6, 2013, Plaintiff has caused to be filed a First Revised Affidavit of Joseph F. Brzezinski, M.D. in accordance with the provisions of O.C.G.A. §§ 9-11-9.1 (a) and (e), which is incorporated herein and attached hereto as Plaintiff's Exhibit "A". This First Amended Complaint for Medical Malpractice and Negligence is also filed pursuant to the provisions of O.C.G.A. § 9-11-9.1 (e) and O.C.G.A. § 9-11-15.

24.

Plaintiff acknowledges the existence of O.C.G.A. § 9-11-9.2, in regard to attaching a medical authorization in a particular form to a Complaint for Medical Malpractice, but shows that the Supreme Court of Georgia has held in Allen v. Wright, 282 Ga. 9 (2007) that that statute has been pre-empted by the Federal HIPAA (Health Insurance Portability and Accountability Act of 1996) and is unenforceable. Since no other provision of Georgia law requires the attaching of a medical authorization hereto, Plaintiff has not done so.

WHEREFORE, Plaintiff prays that this Court issue an Order providing the following relief:

- A) That Plaintiff have judgment against Defendants in an amount in excess of \$10,000;
- B) That trial by jury these issues be had;
- C) That Plaintiff be awarded the costs of this action;
- D) That Plaintiff be awarded appropriate compensation for all past and future general and special damages as may be proven at trial;
- E) For such other relief as this Court deems just and proper.

This 2nd day of October, 2013.

/S/ David J. Llewellyn
David J. Llewellyn
Ga. Bar No. 455150

Johnson & Ward
2100 The Equitable Building
100 Peachtree Street, N.W.
Atlanta, GA 30303-1912
Tel: 404-524-5626
Fax: 404-524-1769
e-mail: davidllewellyn@johnsonward.com

/S/ James F. Webb, Jr.
James F. Webb, Jr.
Ga. Bar No. 744274

/S/ Jordan M. Jewkes
Jordan M. Jewkes
Ga. Bar No. 940491

Webb, Wade & Taylor, LLC
400 Westpark Court
Suite 220
Peachtree City, GA 30269
Tel: 770-631-1811
Fax: 770-631-1711
email: jwebb@webb-firm.com
email: jjewkes@webb-firm.com

Attorneys for Plaintiffs

STATE OF MICHIGAN
COUNTY OF MARQUETTE

FIRST REVISED AFFIDAVIT OF JOSEPH F. BRZEZINSKI, M.D.

Personally Appeared Before the Undersigned Officer, duly authorized by law to administer oaths, Joseph F. Brzezinski, M.D., who after being duly sworn deposes and states as follows:

1.

My name is Joseph F. Brzezinski. I am over 18 years of age and I am not suffering from any legal disability which would render me incompetent to give this affidavit. I swear, under oath, that the facts set forth in this affidavit are true.

2.

I am a medical doctor, duly licensed by the State of Michigan, and was so licensed on August 13, 2006 and for all of the five years preceding that date. I am Board Certified by the American Board of Pediatrics. I was first certified by that Board in 1995 and was re-certified in 2003. I am a fellow of the American Academy of Pediatrics. Attached hereto as Exhibit "A" is my Curriculum Vitae, which sets forth in more detail my training, education, and experience. The facts set forth therein are true.

3.

I am familiar with the standards of care for physicians generally under like and similar circumstances to those presented by the GOMCO clamp circumcision of Demarco Martenson by Garry Earl Siegel, M.D. on August 13, 2006. Specifically, I have actively practiced in the field of neonatal circumcision from at least 1991 to the present. During that time, including all of the five years preceding August 13, 2006, I have regularly circumcised newborn infant males using

PLAINTIFF'S EXHIBIT A

the GOMCO clamp method of circumcision. During the five years preceding August 13, 2006 I estimate that I performed on average 50 to 75 GOMCO circumcisions of newborn infant males each year. Pediatricians and obstetricians/gynecologists (which I understand Garry Earl Siegel, M.D. to be) both commonly perform neonatal circumcision with a GOMCO clamp and the standard of care is the same for each of them as it is for any other physician performing a GOMCO clamp circumcision on a newborn infant male. In other words, the standard of care for the performance of a GOMCO clamp circumcision on a newborn infant male is the same for all physicians performing the same regardless of individual medical board specialty.

4.

To the best of my knowledge and belief, no expert opinion of mine has ever been disqualified by any court of law. Furthermore, I have not been found guilty of fraud or perjury in any jurisdiction.

5.

I have personally reviewed and evaluated the following medical records and other materials pertinent to Demarco Martenson:

- (a) North Fulton Regional Hospital records, date of admission: 08/12/2006 (birth records);
- (b) Pediatric records from Jerry M. Roberts, M.D., et al., who, I am informed, practice at Piedmont Physicians Group, 4000 Shakerag Hill, Peachtree City, Georgia from 08/15/2006 to 02/09/2011;
- (c) Records from Wolfgang Cerwinka, M.D. of Georgia Urology from 09/29/11 and 05/02/2012;

- (d) Records from Children's Healthcare of Atlanta from 11/11/2010 including Operative Note of Wolfgang Cerwinka, M.D.;
- (e) Records from Children's Healthcare of Atlanta from 09/03/2009 to 06/05/2012 including OR Notes of Wolfgang Cerwinka, M.D. for admission of 06/05/2012;
- (f) Photographs identified as those of the penis of Demarco Martenson taken at various times including 10/27/2010, 11/11/2010, 04/28/2011, 09/18/2012, and 05/15/2013; and
- (g) Photographs identified as those of Demarco Martenson taken on 11/11/2010.

6.

According to the North Fulton Regional Hospital records, on August 13, 2006 Garry Earl Siegel, M.D., who, I am informed, was practicing with the medical practice of North Pointe OB/GYN Associates, L.L.C. or Garry Earl Siegel, M.D., P.C., or both, circumcised Demarco Martenson, born August 12, 2006, at North Fulton Regional Hospital, 3000 Hospital Boulevard, Roswell, Georgia 30076, using a 1.1 GOMCO clamp. Dr. Siegel's notes indicate that after the circumcision he noted what he termed a 3 millimeter "Urethral injury" on the dorsum of the penis. He noted that he closed the injury with two 3-0 chromic sutures and assured urethral patency "by probe present during closure."

7.

I am familiar with the standards of care for physicians performing a GOMCO clamp circumcision on a newborn infant under like and similar circumstances to those presented by the case of Demarco Martenson; and it is my professional opinion that the care and treatment rendered to Demarco Martenson on August 13, 2006 by Garry Earl Siegel, M.D. was below the degree of care and skill acceptable to the medical profession generally and for physicians

performing such a procedure under the same and similar circumstances and like surrounding conditions for the following reasons (these opinions may be amended after additional information is provided in the subject litigation):

- (a) In performing the circumcision Dr. Siegel negligently caused an injury to the dorsum of Demarco Martenson's glans penis by cutting into it, which he attempted to repair with two 3-0 chromic sutures, but which eventually healed with a cleft in the glans;
- (b) Dr. Siegel failed to check the GOMCO clamp for mismatched parts before he proceeded with the circumcision.

8.

In my professional opinion it is more probable than not that Garry Earl Siegel, M.D. failed to assure that the size of the bell of the GOMCO clamp matched the size of the hole in the base plate before closing the clamp by engaging the nut on the base plate and before excising the foreskin. As a consequence when he excised the foreskin the glans penis was not fully protected as it would have been if he had used matching parts and his scalpel cut into the glans penis and damaged it.

9.

In my professional opinion if Garry Earl Siegel, M.D. had properly assured that the size of the bell of the GOMCO clamp matched the size of the base plate before closing the clamp by engaging the nut on the base plate and before excising the foreskin, Demarco Martenson's glans penis would not have been injured and he would not have been required to undergo the later surgeries set forth below.

10.

In my professional opinion it is always beneath the standard of care applicable to a physician performing a circumcision with a GOMCO clamp to cut the glans penis so as to cause a glanular cleft such as that suffered by Demarco Martenson.

11.

In my professional opinion it is more probable than not that the bell of the GOMCO clamp used by Dr. Siegel in the circumcision was 1.1 cm in size and that the base plate had an opening that was 1.3 cm in size. In my professional opinion it is the duty of the operator, in this case Dr. Siegel, to ascertain personally that the size of the bell matches the size of the hole in the base plate before performing a circumcision.

12.

From the records and photographs provided to me it appears that on November 11, 2010 Demarco Martenson underwent a repair of the glanular cleft that had been caused by the negligence of Dr. Siegel as aforesaid. Said repair was performed by Wolfgang Cerwinka, M.D. at Children's Healthcare of Atlanta. Thereafter Demarco developed an epidermal inclusion cyst at the site of the glanular repair, which cyst was excised by Dr. Cerwinka on June 5, 2012 at Children's Healthcare of Atlanta. However, as shown by the photographs of Demarco Martenson's penis taken on May 15, 2013 his glans penis still does not look like the glans penis of a correctly circumcised boy as it is significantly wrinkled distal to the location of the cleft caused by Dr. Siegel's negligence. In my professional opinion neither of these surgeries would have been required if Dr. Siegel had met the standard of care applicable to him in performing the circumcision. In my professional opinion Demarco Martenson's glans penis would not be

