

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

**ASHLEY REEVES, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF ADRIAN BERRIOS-SANCHEZ**
8424 Leaf Road
Alexandria, Virginia 22309

and

NESTOR BERRIOS-SANCHEZ
8424 Leaf Road
Alexandria, Virginia 22309

Plaintiffs,

v.

THE JOHNS HOPKINS HOSPITAL
600 North Wolfe Street
Baltimore, Maryland 21205

Serve on Resident Agent:
Joanne Pollak, Esquire
600 North Wolfe Street
Baltimore, Maryland 21205

and

MICHAEL TSIMIS, M.D.
1800 Orleans Street
Phipps 223
Baltimore, Maryland 21287

and

JENA MILLER, M.D.
600 North Wolfe Street
Nelson 228
Baltimore, Maryland 21287

and

RECORDED
BALTIMORE DISTRICT
CIRCUIT COURT
JULY DIVISION
JUL 12 2016 12:26

CASE NO: 24C16005418

ELIZABETH OLER, M.D.

600 North Wolfe Street
Baltimore, Maryland 21205

and

LAUREN OWENS, M.D.

600 North Wolfe Street
Baltimore, Maryland 21205

Defendants.

2016 OCT - 5 PM 12:26
CIVIL DIVISION

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Ashley Reeves, Individually and as Personal Representative of the Estate of Adrian Berrios-Sanchez, and Nestor Berrios-Sanchez, by and through their undersigned attorneys, hereby sue the Defendants, The Johns Hopkins Hospital, Michael Tsimis, M.D., Jena Miller, M.D., Elizabeth Oler, M.D., and Lauren Owens, M.D., and for grounds state:

JURISDICTION AND VENUE

1. This medical malpractice claim is instituted pursuant to MD. CTS. & JUD. PROC. ART. §§ 3-2A-01, *et seq.*, for the recovery of damages in excess of Thirty Thousand Dollars (\$30,000.00).

2. Plaintiffs aver that they have satisfied all conditions precedent to the filing of this lawsuit, including the filing of a Statement of Claim, Certificate of Qualified Expert and Report, and Waiver of Health Claims Arbitration in the Health Care Alternative Dispute Resolution Office of Maryland. Plaintiffs hereby attach and incorporate by reference the Certificate of Qualified Expert and Report of Bradley Dennis, M.D., and the September 20, 2016 Order of Transfer issued by the Health Care Alternative Dispute Resolution Office of Maryland.

3. Venue is proper in Baltimore City, Maryland as all alleged acts and/or omissions of negligence occurred in Baltimore City.

PARTIES

4. Plaintiff Ashley Reeves is of full age and residing at the above-stated address. Ms. Reeves is the natural mother of the deceased infant, Adrian Berrios-Sanchez, and is the duly-appointed Personal Representative of the Estate of Adrian Berrios-Sanchez.

5. Plaintiff Nestor Berrios-Sanchez is of full age and residing at the above-stated address. Mr. Berrios-Sanchez is the natural father of the deceased infant, Adrian Berrios-Sanchez.

6. Defendant, The Johns Hopkins Hospital, is and, at all times relevant hereto, was a Maryland corporation engaged in the provision of health care services, including the provision of obstetrical care and other medical services, advice and treatment to individuals in need thereof, including the Plaintiffs. At all times relevant hereto, The Johns Hopkins Hospital acted directly and/or by and/or through its actual and/or apparent agents, servants and/or employees, including, but not limited to, Michael Tsimis, M.D., Jena Miller, M.D., Elizabeth Oler, M.D. and Lauren Owens, M.D.

7. Defendant, Michael Tsimis, M.D., is and, at all times relevant hereto, was a physician licensed to practice medicine, including obstetrics and gynecology, in the State of Maryland. At all times relevant hereto, Dr. Tsimis acted individually and/or as the actual and/or apparent agent, servant and/or employee of the Defendant, The Johns Hopkins Hospital.

8. Defendant, Jena Miller, M.D., is and, at all times relevant hereto, was a physician licensed to practice medicine, including obstetrics and gynecology, in the State of Maryland. At all times relevant hereto, Dr. Miller acted individually and/or as the actual and/or apparent agent, servant and/or employee of the Defendant, The Johns Hopkins Hospital.

9. Defendant, Elizabeth Oler, M.D., is and, at all times relevant hereto, was a physician licensed to practice medicine, including obstetrics and gynecology, in the State of

Maryland. At all times relevant hereto, Dr. Oler acted individually and/or as the actual and/or apparent agent, servant and/or employee of the Defendant, The Johns Hopkins Hospital.

10. Defendant, Lauren Owens, M.D., is and, at all times relevant hereto, was a physician licensed to practice medicine, including obstetrics and gynecology, in the State of Maryland. At all times relevant hereto, Dr. Owens acted individually and/or as the actual and/or apparent agent, servant and/or employee of the Defendant, The Johns Hopkins Hospital.

11. At all times relevant hereto, the aforementioned Defendants held themselves out to the public as health care providers who would render reasonably competent health care services to those individuals who came under their professional care.

FACTS COMMON TO ALL COUNTS

12. Plaintiffs hereby incorporate the preceding paragraphs, by reference thereto, as if fully stated herein.

13. On the morning of November 15, 2015, Plaintiff Ashley Reeves, then 37 and 4/7 weeks gestation by dates, presented to the Defendant, The Johns Hopkins Hospital, in spontaneous active labor, with onset estimated at 09:00 that same morning; she was admitted to L&D for further monitoring. The admitting plan of care for Ms. Reeves included maintaining her on a strict labor curve given recent sonographic findings of a fetal abdominal circumference (AC) > 95th percentile.

14. The Defendant Michael Tsimis, M.D. was noted to be the attending physician of record throughout the patient's labor and delivery course.

15. A vaginal exam performed at 11:41 noted dilatation of 5 cm, 75% effacement, and -2 station, the pelvis was assessed as normal, and an EFW (Estimated Fetal Weight) of 3600 grams.

16. An external tocodynamometer (hereinafter "toco") placed around 13:03 recorded contractions every 1-2 minutes, 60-70 seconds in duration, with moderate variability (6-25 bpm

amplitude from peak to trough), accelerations present (15 x 15) and decelerations absent, confirming fetal wellbeing.

17. An epidural was placed at 13:55, with effective pain control noted at 14:00.

18. A vaginal exam performed at 15:38 noted dilatation of 5-6 cm, 90% effacement, and -1 station with membranes ruptured artificially at 15:43.

19. At 17:00, the external toco recorded contractions every 1-2 minutes, 60-90 seconds in duration, with moderate variability, accelerations present and variable intermittent decelerations.

20. A vaginal exam performed at 19:30 by the Defendant Elizabeth Oler, M.D. noted dilatation of 6 cm, 90% effacement, and -1 station; the external toco recorded contractions every 1-2 minutes, 60-90 seconds in duration, with moderate external contraction strength; an intrauterine pressure catheter (IUPC) was also placed at this time to measure the strength of uterine contractions.

21. At 19:55, the IUPC measured contractions every 1-2 minutes, 40-50 seconds in duration, with an internal contraction strength of 160 mm Hg (internal intrauterine pressure, mm, Hg, mercury).

22. At 20:30, contractions were noted every 1-2 minutes, 30-40 seconds in duration, with internal contraction strength of 150 mm Hg.

23. At 21:28, contractions were noted every 1-2 minutes, 40-50 seconds in duration, with internal contraction strength of 115mm Hg.

24. At 21:57, contractions were noted every 1-2 minutes, 40-50 seconds in duration, with internal contraction strength of 100 mm Hg.

25. At 22:28, contractions were noted every 1-2 minutes, 60-70 seconds in duration, with internal contraction strength of 160 mm Hg, moderate variability, accelerations present and one variable intermittent deceleration.

26. At 22:58, contractions were noted every 1-2 minutes, 60-90 seconds in duration, with internal contraction strength of 155 mm Hg, moderate variability, accelerations present and variable intermittent decelerations.

27. At 23:30, contractions were noted every 1-2 minutes, 40-50 seconds in duration, with internal contraction strength of 180 mm Hg, moderate variability, accelerations present and variable intermittent decelerations.

28. At 23:56, contractions were noted every 1-2 minutes, 40-50 seconds in duration, with internal contraction strength of 190 mm Hg, moderate variability, accelerations present and variable intermittent decelerations.

29. On November 16, 2015, at 00:06, the patient's temperature was noted to be 39.4 degrees Celsius and a vaginal exam performed at 00:09 by Dr. Oler, noted a cervical dilatation of 7 cm, 100% effacement, and 0 station with fetal heart rate of 165 beats per minute, moderate variability and positive accelerations, with a spontaneous vaginal delivery anticipated.

30. Ampicillin (2 gm IV) was administered at 00:14 for a suspicion of chorioamnionitis and other measures for an intrapartum temperature elevation were implemented.

31. At 00:30, contractions were noted every 1-2 minutes, 40-50 seconds in duration, with an internal contraction strength of 150 mm Hg.

32. At 00:57, contractions were noted every 1-2 minutes, 40-50 seconds in duration, with an internal contraction strength of 160 mm Hg, minimum variability (undetectable and less than or equal to 5 bpm amplitude from peak to trough), accelerations and decelerations absent.

33. At 01:30, contractions were noted every 1-2 minutes, 50-60 seconds in duration, with an internal contraction strength of 190 mm Hg, moderate variability, accelerations present (10 x 10) and decelerations absent; Ms. Reeves was also noted to be feeling constant pressure.

34. A vaginal exam performed at 01:32 by the Defendant Lauren Owens, M.D. noted dilatation of 8 cm, 100% effacement, and 0 station. The patient's afebrile status (37.5 degrees Celsius) was recorded at 01:56.

35. At 02:00, contractions were noted every 1-2 minutes, 50-60 seconds in duration, with internal contraction strength of 180 mm Hg.

36. At 02:30, contractions were noted every 1-2 minutes, 50-60 seconds in duration, with internal contraction strength of 170 mm Hg.

37. At 03:00, contractions were noted every 1-2 minutes, 60-70 seconds in duration, with internal contraction strength of 165 mm Hg, moderate variability, accelerations present and variable intermittent decelerations.

38. A vaginal examination performed at 03:31 by Dr. Owens noted dilatation of 9 cm, 100% effacement, and +1 station.

39. At 03:37, the decision was made to perform a primary caesarean section delivery. The indications for caesarean section included arrest of dilatation at 9 cm, a non-reassuring fetal heart tracing (category 2 tracing), cephalopelvic disproportion, asynclitic fetal presentation, a contracted pelvic outlet, and suspicion for chorioamnionitis. Ashley Reeves arrived in the operating room at 03:53, the first skin incision was made at 04:18, the uterine incision was made at 04:27, and the infant was delivered at 04:40 by reverse breech extraction, weighing 3520 grams (7lbs, 12 oz).

40. The following Defendants were involved with the cesarean section delivery: Michael Tsimis, M.D., Jena Miller, M.D., Elizabeth Oler, M.D., and Lauren Owens, M.D.

41. Upon delivery, the infant, Adrian Berrios-Sanchez, was noted to be limp, apneic, asystolic, and without respiratory effort. Heart sounds were first heard at approximately 23-minutes of life. His Apgar scores were 0, 0, 0, 0, 2 at 1, 5, 10, 15 and 20 minutes of life. The infant

was diagnosed with severe hypoxic ischemic encephalopathy and transferred to the NICU for further treatment and care.

42. In the NICU, the infant developed status epilepticus. Continuous EEG testing was markedly abnormal with diffuse suppression and paucity of normal neonatal physiologic rhythms. Serial head ultrasounds showed evolving cerebral edema, increased intracranial pressure, diffusely increased echogenicity, subdural hemorrhage, subgaleal hemorrhage, and intraparenchymal hematomas. Head CT confirmed similar findings with significant mass effect from right to left, brainstem compression, and loss of gray-white matter differentiation.

43. The family was counseled on the infant's devastating prognosis and withdrawal of life-sustaining therapies was recommended. The infant child passed away on November 20, 2015.

COUNT I
(Medical Negligence – Survival Action)

44. Plaintiffs hereby incorporate the preceding paragraphs, by reference thereto, as if fully stated herein.

45. At all times relevant hereto, the Defendants, The Johns Hopkins Hospital, Michael Tsimis, M.D., Jena Miller, M.D., Elizabeth Oler, M.D., and Lauren Owens, M.D., acting individually and/or by and/or through their actual and/or apparent agents, servants and/or employees, real and/or ostensible, owed to the Plaintiffs and the Plaintiffs' Decedent a duty of care to exercise that degree of care, skill, and judgment ordinarily possessed by reasonably competent health care providers, with similar education, training and experience, and under like or similar circumstances.

46. At all times relevant hereto, the Defendants, The Johns Hopkins Hospital, Michael Tsimis, M.D., Jena Miller, M.D., Elizabeth Oler, M.D., and Lauren Owens, M.D., acting individually and/or by and/or through their actual and/or apparent agents, servants and/or

employees, real and/or ostensible, were negligent in their care and treatment of the Plaintiff Ashley Reeves, and her deceased child, Adrian Berrios-Sanchez, and breached the applicable standards of care in the following ways, among others:

- a. Failure to timely and adequately recognize and appreciate the significance of Ashley Reeves' and Adrian Berrios-Sanchez's clinical presentation;
- b. Failure to appropriately react to symptoms, signs, and findings that were illustrative of Ashley Reeves' and Adrian Berrios-Sanchez's true condition;
- c. Failure to take timely and appropriate precautions in monitoring and treating Ashley Reeves and Adrian Berrios-Sanchez;
- d. Failure to obtain timely and appropriate consultations and/or appropriately utilize the information available to them throughout the course of Ashley Reeves' labor and delivery;
- e. Failure to react to the positive history, symptoms, signs, physical findings, and other data which were illustrative of Ashley Reeves' and Adrian Berrios-Sanchez's true condition;
- f. Failure to conduct appropriate and timely examinations throughout the course of Ashley Reeves' labor and delivery;
- g. Failure to timely and appropriately recognize and appreciate the significance of Ashley Reeves' protracted/arrested labor disorder;
- h. Failure to order a timely and appropriate cesarean section;
- i. Failure to timely, safely and appropriately deliver the minor child without causing fetal injury; and
- j. The Defendants were in other ways negligent.

47. As a direct and proximate result of the above-mentioned deviations from the accepted and applicable standards of care by the Defendants, the Plaintiffs suffered the following injuries, among others:

- a. Conscious physical pain and suffering;
- b. Mental and emotional distress and anguish;
- c. Severe bodily injuries and discomfort;
- d. Birth asphyxia;
- e. Metabolic acidosis;
- f. Hypoxic-ischemic encephalopathy;
- g. Severe brain damage;
- h. Seizures;
- i. Multi-organ failure;
- j. Medical expenses for treatment of injuries;
- k. Loss of past, present and future wages and income;
- l. Funeral and burial expenses;
- m. Loss of life; and
- n. Other injuries and damages.

48. Had the Defendants complied with the standards of care, the Plaintiffs' Decedent would have avoided all of his injuries and damages, including his tragic and untimely death.

49. All of the injuries and damages complained of herein were directly and proximately caused by the joint and several negligence and lack of due care by the Defendants, with no negligence on the part of the Plaintiffs and/or the Plaintiffs' Decedent contributing thereto.

WHEREFORE, Plaintiffs bring this action against the Defendants, jointly and severally, for all injuries and damages suffered and sustained by the Plaintiffs and the Plaintiffs' Decedent

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Adrian Berrios-Sanchez, and for any other damages to which he would have been entitled had he survived his injuries, in an amount in excess of the required jurisdictional amount specified in MD. CTS. & JUD. PROC. ART. §§ 3-2A-02(a) and (b), exclusive of interest and costs, and for any other legal or equitable relief as justice may require.

COUNT II
(Medical Negligence – Wrongful Death)

50. Plaintiffs hereby incorporate the preceding paragraphs, by reference thereto, as if fully stated herein.

51. As a direct and proximate result of the joint and several negligence of the Defendants, the Plaintiffs Ashley Reeves and Nestor Berrios-Sanchez have suffered and will continue to suffer mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, guidance, attention, care, advice, and counsel, as well as pecuniary damages, amongst other things, in connection with the sudden, tragic and untimely death of their infant son, Adrian Berrios-Sanchez.

52. All of the injuries and damages complained of herein were directly and proximately caused by the joint and several negligence and lack of due care by the Defendants, with no negligence on the part of the Plaintiffs and/or the Plaintiffs' Decedent contributing thereto.

WHEREFORE, the Plaintiffs Ashley Reeves and Nestor Berrios-Sanchez bring this action against the Defendants, jointly and severally, for all injuries and damages suffered and sustained by the Plaintiffs, and for any other damages to which the Plaintiffs are entitled, in an amount in excess of the required jurisdictional amount specified in MD. CTS. & JUD. PROC. ART. §§ 3-2A-02(a) and (b), exclusive of interest and costs, and for any other legal or equitable relief as justice may require.

COUNT III
(Informed Consent)

53. Plaintiffs hereby incorporate the preceding paragraphs, by reference thereto, as if fully stated herein.

54. The Defendants, acting individually and/or by and/or through their actual and/or apparent agents, servants, and/or employees, owed the Plaintiffs and the Plaintiffs' Decedent the duty to appropriately notify Ashley Reeves of the various alternatives and material risks involved in the various modalities of treatment for her labor, as well as the delivery of her son, Adrian Berrios-Sanchez.

55. The Defendants, acting individually and/or by and/or through their actual and/or apparent agents, servants, and/or employees, were negligent in the failure to adequately and appropriately obtain the informed consent from the Plaintiff Ashley Reeves, and were otherwise negligent.

56. Had the Defendants timely, adequately and appropriately informed Ashley Reeves of all the material risks and benefits associated with, among other things, proceeding with the labor and delivery in the setting of a protracted/arrested labor dystocia, then Ashley Reeves, like any reasonable person in the same or similar circumstance, would have elected not to proceed any further with her labor and, instead, would have elected to undergo a cesarean section delivery at an earlier point in time.

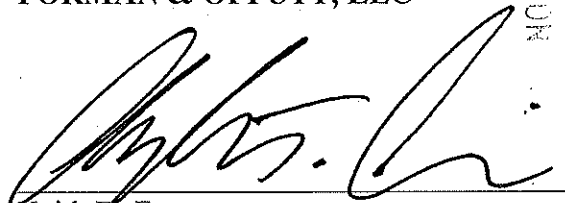
57. Plaintiffs further allege that as a direct and proximate result of the aforementioned negligent and careless acts and omissions of the Defendants, including their actual and/or apparent agents, servants, and/or employees, the Plaintiffs have suffered the injuries and damages described in Counts I and II above.

58. All of the injuries and damages complained of herein were directly and proximately caused by the joint and several negligence and lack of due care by the Defendants, with no negligence on the part of the Plaintiffs and/or the Plaintiffs' Decedent contributing thereto.

WHEREFORE, the Plaintiffs Ashley Reeves and Nestor Berrios-Sanchez bring this action against the Defendants, jointly and severally, for all injuries and damages suffered and sustained by the Plaintiffs, and for any other damages to which the Plaintiffs are entitled, in an amount in excess of the required jurisdictional amount specified in MD. CTS. & JUD. PROC. ART. §§ 3-2A-02(a) and (b), exclusive of interest and costs, and for any other legal or equitable relief as justice may require.

Respectfully submitted,

**WAIS, VOGELSTEIN,
FORMAN & OFFUTT, LLC**

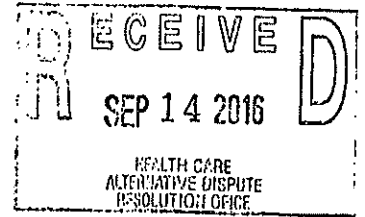


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CIVIL DIVISION

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CLERK OF COURT
BALTIMORE



IN THE HEALTH CARE ALTERNATIVE DISPUTE
RESOLUTION OFFICE OF MARYLAND

ASHLEY REEVES, et al.

Claimants,

v.

THE JOHNS HOPKINS HOSPITAL, et al.

Defendant Health Care Providers.

*

*

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*

*

HCA No. _____

* * * * *

CERTIFICATE OF QUALIFIED EXPERT

I, Bradley A. Dennis, M.D., hereby certify that:

1. I am board-certified in Obstetrics and Gynecology.
2. I am actively licensed to practice medicine in the State of Pennsylvania.
3. I have had clinical experience, provided consultation relating to clinical practice, and/or taught medicine in the fields of Obstetrics and Gynecology within five (5) years of the date of the alleged negligent acts and/or omissions giving rise to the underlying cause of action.
4. Additionally, I have had clinical experience, provided consultation relating to clinical practice, and/or taught medicine in the Defendant Health Care Providers' respective specialties and/or sub-specialties of medicine, or the specialties and/or sub-specialties of medicine practiced by the Defendant Health Care Providers' agents, servants and/or employees, or a related field of health care, within five (5) years of the date of the alleged negligent acts and/or omissions giving rise to the underlying cause of action.
5. I do not devote annually more than twenty percent (20%) of my professional time to activities that directly involve testimony in personal injury matters.
6. Based upon my education, training and experience, and my review of the pertinent

HEALTH CARE ALTERNATIVE DISPUTE RESOLUTION OFFICE
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