

Jury

J

EX

CAROLYN THOMAS, Surviving Mother *
of RYAN MICHAEL KIMMERLE, DEC'D *
8129 Park Haven Road *
Dundalk, MD 21222 *

IN THE

CIRCUIT COURT

and

JOSHUA KIMMERLE, Surviving Father *
of RYAN MICHAEL KIMMERLE, DEC'D *
c/o 8129 Park Haven Road *
Dundalk, MD 21222 *

FOR

BALTIMORE COUNTY

Plaintiffs

v.

NICOLA A. LONDON, M.D. *
104 Plumtree Road Suite 107 *
Bel Air, MD 21015 *

and

HAHN TRAN, M.D. *
104 Plumtree Road Suite 107 *
Bel Air, MD, 21015 *

Case No:

C-11-2606

FILED
CLERK OF COURT
BALTIMORE COUNTY
MAY 11 2011

and

WOMEN'S CARE OB/GYN *
104 Plumtree Road Suite 107 *
Bel Air, MD, 21015 *

and

FRANKLIN SQUARE HOSPITAL *
CENTER, INC. *
9000 Franklin Square Drive *
Baltimore, MD 21237 *
Serve On: The Corporation Trust, Inc. *
351 W. Camden St. *
Baltimore, MD 21201 *

Defendants

* * * * *

COMPLAINT AND ELECTION FOR JURY TRIAL

Plaintiffs, Carolyn Thomas and Joshua Kimmerle, as Surviving Parents of Ryan
Michael Kimmerle, deceased, by and through their attorneys, Stuart M. Salsbury, and

Salsbury, Clements, Bekman, Marder & Adkins, LLC, sues the Defendants, Nicola A. London, M.D., Hahn Tran, M.D., Women's Care OB/GYN, and Franklin Square Hospital Center, Inc., and states the following:

1. This case was originally filed in the Health Care Alternative Dispute Resolution Office. Plaintiff elected to waive arbitration. A copy of the Order of Transfer and Certificate of Qualified Expert and Report are attached as Exhibit A.
2. The amount of this claim exceeds Thirty Thousand Dollars (\$30,000.00).
3. Venue is proper in the Circuit Court for Baltimore County, Maryland.
4. At all times hereinafter set forth, the Defendants, Nicola A. London, M.D. and Hahn Tran, M.D., held themselves out to the Plaintiffs and to the general public as experienced, competent, and able physicians and health care providers, possessing or providing that degree of skill and knowledge which is ordinarily possessed by those who devote special study and attention to the practice of medicine, including, but not limited to, the practice of obstetrics, and as such owed a duty to the Plaintiffs to render that degree of care and treatment which is ordinarily rendered by those who devote special study and attention to the practice of medicine and obstetrics.
5. At all times hereinafter set forth, the Defendant, Women's Care OB/GYN, was, and is, a professional organization which held itself out to the general public as providing and employing obstetricians with experience and competence and in such capacity, possessed that degree of skill and knowledge which is ordinarily possessed by those who devote themselves to the practice of medicine including, but not limited to, obstetrics, and, as such, owed a duty to the Plaintiffs to render that degree of care and treatment which is ordinarily rendered by those who devote special study and attention to the practice of medicine and obstetrics.

6. At all times hereinafter set forth, the Defendant, Franklin Square Hospital Center, Inc., was and is a medical facility offering administrative, emergency medical, medical, nursing and other related services to the general public and in such capacity, such hospital, its agents, servants and/or employees, medical staff, administrators, physicians, nurses and consultants held themselves out as practicing ordinary standards of emergency medical, medical, hospital, nursing, and administrative care and, as such, owed a duty to the Plaintiffs to render and provide health care within the ordinary standards of administrative, medical, hospital and nursing care, and to exercise reasonable skill and care in the selection of its personnel to provide competent physicians, nurses, administrators, and other administrative and medical personnel, possessing that degree of skill and knowledge which is ordinarily possessed by those who devote special study and attention to the practice of medicine and nursing, and to supervise and provide its patients with diagnostic, medical, and administrative services and treatment commensurate with the condition from which the patient suffers and for which patient entered said hospital.

7. At all times hereinafter set forth, the Defendants, Nicola A. London, M.D., and Hahn Tran, M.D., were agents, apparent agents and/or employees of Defendant Women's Care OB/GYN. As such and for all relevant time periods, Women's Care OB/GYN is vicariously liable for all the negligent acts and omissions associated with providing health care to the Plaintiffs by Nicola A. London, M.D., and Hahn Tran, M.D.

8. At all times hereinafter set forth, the Defendants, Nicola A. London, M.D., and Hahn Tran, M.D., were agents, apparent agents and/or employees of Defendant, Franklin Square Hospital, Inc. As such and for all relevant time periods, Franklin Square Hospital, Inc. is vicariously liable for all the negligent acts and omissions

associated with providing health care to the Plaintiffs by Nicola A. London, M.D., and Hahn Tran, M.D.

COUNT I
Wrongful Death Claim - Carolyn Thomas
Surviving Mother of Ryan Michael Kimmerle, Deceased

9. On June 27, 2008, Carolyn Thomas was 31 weeks and 3 days pregnant. She presented to Defendant, Franklin Square Hospital Center complaining of decreased fetal movement (for an unspecified time) and a three day history of leaking of fluid from the vagina.

10. At Franklin Square Hospital Center, Ms. Thomas was seen by Defendant, Nicola London, M.D. of Defendant, Women's Care OB/GYN. Dr. London's initial examination of Ms. Thomas revealed a long, closed cervix without evidence of ruptured membranes. Dr. London also noted Ms. Thomas's blood pressure was abnormally elevated on numerous occasions and she had protein in her urine. Dr. London ordered an ultrasound study, which revealed an amniotic fluid index of 9.5 - a borderline AFI for 31 weeks of gestation.

11. At 20:18 and 22:08 fetal heart monitoring strips showed moderate variability and recurrent variable decelerations.

12. Despite all of these findings, Ms. Thomas was discharged without further testing or evaluation. She was told to go on bed rest and to return to Dr. London on June 30, 2008.

13. Ms. Thomas returned to the offices of Woman's Care OB/GYN on June 30, 2008, as directed. Ms. Thomas was seen by Defendant, Hahn Tran, M.D. Dr. Tran ordered an ultrasound study to evaluate fetal weight since "size was less than dates." This study was not ordered on a STAT or ASAP basis. Dr. Tran discharged Ms. Thomas

without performing or having the ultrasound performed.

14. On July 7, 2008 Ms. Thomas presented to the office of Woman's Care OB/GYN because she noticed decreased fetal movement. There, healthcare providers discovered that the fetus had died in utero. The ultrasound performed that morning revealed a severely growth restricted fetus of approximately 27 weeks 3 days size at 32 weeks and 6 days of gestation.

15. That prior to the time of death, the fetus was viable.

16. Plaintiffs allege that Defendants, Nicola A. London, M.D., Hahn Tran, M.D., Women's Care OB/GYN, and Franklin Square Hospital Center, Inc., were negligent and careless in that each:

a. failed to recognize severe growth restriction at 32 weeks gestation and perform adequate workup and ultrasound accordingly;

b. failed to recognize a borderline amniotic fluid index (AFI) and determine an estimated fetal weight and biophysical profile before discharge on both June 27, 2008, and June 30, 2008;

c. failed to recognize non-reassuring recurrent variable deceleration on the external fetal monitor and arrange for frequent follow up non-stress testing;

d. failed to assess and recognize pregnancy induced hypertension and perform appropriate follow up.

e. failed to diagnose and treat a growth restricted fetus;

f. failed to properly monitor Ms. Thomas's fetus;

g. failed to conduct and deliver obstetrical care within accepted and reasonable standards of care;

h. and were otherwise negligent and careless.

17. That as a direct result of the negligence of the Defendants, Nicola A. London, M.D., Hahn Tran, M.D., Women's Care OB/GYN, and Franklin Square Hospital Center, Inc., in the death of Ryan Michael Kimmerle, the Plaintiff, Carolyn Thomas, as surviving mother, has suffered mental anguish and emotional pain, pecuniary loss and has lost and been deprived of the society, companionship, comfort, care, attention, advice, counsel, services and support which Ryan Michael Kimmerle could have and would have afforded and rendered to her had he lived.

18. That by reason of the negligence of the Defendants, Nicola A. London, M.D., Hahn Tran, M.D., Women's Care OB/GYN, and Franklin Square Hospital Center, Inc., which culminated in the death of Ryan Michael Kimmerle, a cause of action has accrued in accordance with the Annotated Code of Maryland, Courts and Judicial Proceedings, §3-901, et. seq to Plaintiff, Carolyn Thomas, the surviving mother of Ryan Michael Kimmerle for compensation to them for all the damages, injuries and losses past, present and future which she has sustained, is sustaining and will in the future sustain, all of which were proximately caused by the negligence of the Defendants, without any negligence on the part of the Plaintiff thereunto contributing.

WHEREFORE, the Plaintiff, Carolyn May Thomas, as surviving mother, claims damages against the Defendants jointly and severally in an amount to be determined by a jury.

COUNT II
Wrongful Death Claim - Joshua Kimmerle
Surviving Father of Ryan Michael Kimmerle, Deceased

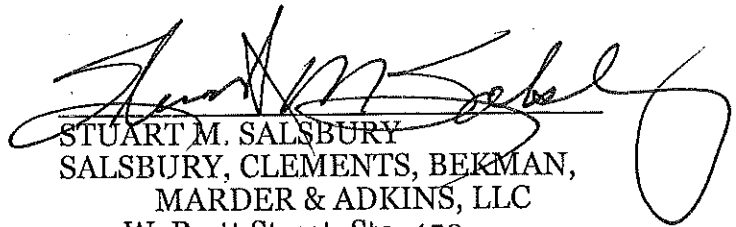
19. Plaintiff, Joshua Kimmerle, adopts and incorporates by reference all of the allegations of fact, duty, breach, negligence, causation, injury and damage as set

forth more fully in paragraphs 1 through 18.

20. That as a direct result of the negligence of the Defendants, Nicola A. London, M.D., Hahn Tran, M.D., Women's Care OB/GYN, and Franklin Square Hospital Center, Inc., in the death of Ryan Michael Kimmerle, the Plaintiff, Joshua Kimmerle, as surviving father, has suffered mental anguish and emotional pain, pecuniary loss and has lost and been deprived of the society, companionship, comfort, care, attention, advice, counsel, services and support which Ryan Michael Kimmerle could have and would have afforded and rendered to him had he lived.

21. That by reason of the negligence of the Defendants, Nicola A. London, M.D., Hahn Tran, M.D., Women's Care OB/GYN, and Franklin Square Hospital Center, Inc., which culminated in the death of Ryan Michael Kimmerle, a cause of action has accrued in accordance with the Annotated Code of Maryland, Courts and Judicial Proceedings, §3-901, et. seq to Plaintiff, Joshua Kimmerle, the surviving father of Ryan Michael Kimmerle for compensation to them for all the damages, injuries and losses past, present and future which he has sustained, is sustaining and will in the future sustain, all of which were proximately caused by the negligence of the Defendants, without any negligence on the part of the Plaintiff thereunto contributing.

WHEREFORE, the Plaintiff, Joshua Kimmerle, as surviving father, claims damages against the Defendants jointly and severally in an amount to be determined by a jury.


STUART M. SALSBUURY
SALSBUURY, CLEMENTS, BEKMAN,
MARDER & ADKINS, LLC
300 W. Pratt Street, Ste. 450
Baltimore, MD 21201
410-539-6633

Attorneys for Plaintiffs

CAROLYN THOMAS, Surviving Mother *
of RYAN MICHAEL KIMMERLE, DEC'D *
8129 Park Haven Road *
Dundalk, MD 21222 *

IN THE

CIRCUIT COURT

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FOR

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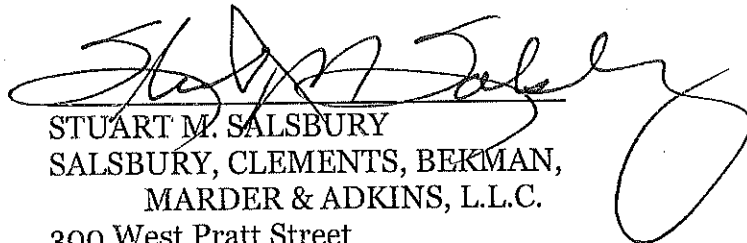
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FILED
2021 APR 18 PM 1:40
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

ELECTION FOR JURY TRIAL

Plaintiffs, by their attorneys, Stuart M. Salsbury, and Salsbury, Clements,

Bekman, Marder & Adkins, L.L.C., elect to have their case tried before a jury.

A handwritten signature in black ink, appearing to read "Stuart M. Salsbury", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

STUART M. SALSBUARY
SALSBUARY, CLEMENTS, BEKMAN,
MARDER & ADKINS, L.L.C.

300 West Pratt Street
Suite 450
Baltimore, Maryland 21201
410-536-6633

Attorneys for Plaintiffs

IN THE HEALTH CARE ALTERNATIVE DISPUTE RESOLUTION OFFICE

*

CAROLYN THOMAS, et al.

*

Claimants

HCA No.: 2011-92

Vs.

*

NICOLA A. LONDON, M.D., et al.

*

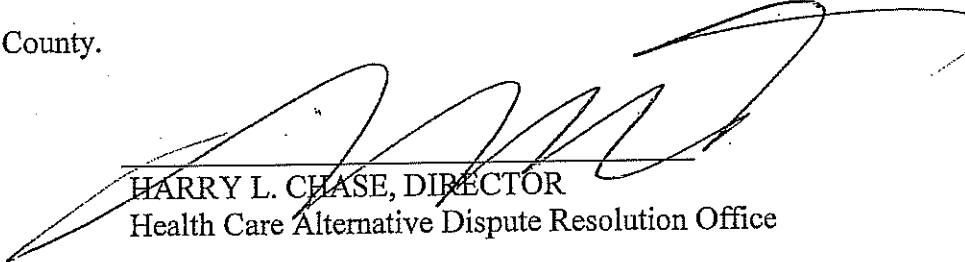
Health Care Providers

* * * * *

ORDER OF TRANSFER

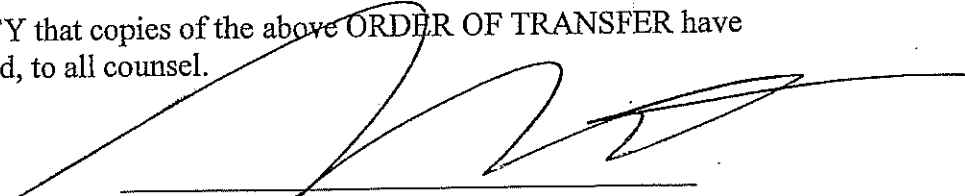
The Claimants, having elected a Waiver of Arbitration under the provisions of the Annotated Code of Maryland, Courts and Judicial Proceedings Article, Section 3-2A-06B it is this 28th Day of February, 2011, by the Health Care Alternative Dispute Resolution Office,

ORDERED that this case shall be and is hereby, transferred to the Circuit Court for Baltimore County.


HARRY L. CHASE, DIRECTOR
Health Care Alternative Dispute Resolution Office

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the above ORDER OF TRANSFER have been mailed, postage prepaid, to all counsel.


HARRY L. CHASE, DIRECTOR



CAROLYN THOMAS, as Surviving
Mother of RYAN MICHAEL
KIMMERLE, Deceased, et al.

Claimants

v.

NICOLA A. LONDON, M.D., et al.

Health Care Providers

* * * * *

* BEFORE THE
* HEALTH CLAIMS
* ALTERNATIVE DISPUTE
* RESOLUTION OFFICE
*
* HCA No.
*

CERTIFICATE OF QUALIFIED EXPERT

I, Lawrence Borow, M.D., HEREBY CERTIFY that I am board certified in the field of obstetrics and gynecology.

I HEREBY CERTIFY that less than ten percent of my professional activities are devoted to activities that directly involve testimony in personal injury claims.

I HEREBY CERTIFY that I have reviewed the medical records of Carolyn Thomas while she was under the care of Nicola London, M.D., Hahn Tran, M.D., Women's Care OB/GYN, and Franklin Square Hospital in June of 2008.

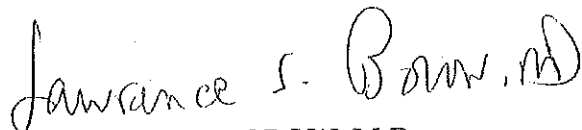
I HEREBY CERTIFY that based on my training, expertise and review, the care and treatment rendered to Carolyn Thomas by the Health Care Providers, Nicola London, M.D., Hahn Tran, M.D., Women's Care OB/GYN, and Franklin Square Hospital, failed to comply with the standard of care in that they failed to assess properly Carolyn Thomas's condition, failed to perform proper work-up and testing of Carolyn Thomas, failed to make a proper diagnosis of severe intra-uterine growth retardation ("IUGR"), failed to treat IUGR, failed to get a maternal fetal medicine consult, failed to timely perform an ultrasound, and failed to diagnose and treat pre-eclampsia in this

case. It is also my opinion that Teresa O'Sullivan, RN and Anne Woods, CNM breached the standard of care in failing to detect and record variable decelerations on the electronic fetal monitor on June 27, 2008, and report the findings to Dr. London.

I HEREBY CERTIFY that the failures of the above-mentioned Healthcare Providers to comply with the standards of care was the proximate cause of Carolyn Thomas's child's premature death.

I HEREBY CERTIFY that all of my opinions are stated to a reasonable degree of medical probability.

I HEREBY CERTIFY that I have read the above and that it is true and correct to the best of my knowledge, information and belief.


LAWRENCE S. BOROW, M.D.

LAWRENCE S. BOROW, M.D., P.C.

OBSTETRICS, GYNECOLOGY, COLPOSCOPY

146 MONTGOMERY AVENUE
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LAWRENCE9BOROW@COMCAST.NET

November 30, 2010

Benjamin S. Salisbury, Esquire
Salisbury Clements Bekman
Marder & Adkins, L.L.C.
300 West Pratt Street, Suite 450
Baltimore, Maryland 21201

Re: Carolyn Thomas

Dear Mr. Salisbury:

I have received medical records concerning the pregnancy of Carolyn Thomas in 2008. These materials included the following:

1. Woman's Care OB/GYN records from 2008
2. Franklin Square Hospital - July 17, 2008- including electronic fetal monitor strips
3. Franklin Square Hospital – July 7, 2008 through July 10, 2008 – Labor and Delivery

After completing my review I have come to the conclusion, to a reasonable degree of medical certainty, that the caregivers of Women's Care OB/GYN and the caregivers of the Franklin Square Hospital breached the standard of care which led to the intrauterine demise of Carolyn Thomas's fetus.

In July 2008, Carolyn Thomas was 19 year old single Caucasian female employed as a bank teller. She began her prenatal care in January 2008 with Woman's Care OB/GYN. Her past medical history was unremarkable. An early ultrasound study confirmed her EDC as August 26, 2008. She had 9 prenatal care office visits prior to the discovery of an intrauterine fetal demise on July 7, 2008. During her prenatal care Ms. Thomas had routine ultrasound studies on January 28, 2008 and April 2, 2008 ordered by Dr. Leigh Matlaga.

Review of the medical records from Franklin Square Hospital of June 27, 2008 revealed Ms. Thomas arrived at the hospital about 19:50. Dr. Nicola London

Benjamin S. Salisbury, Esquire
Page 2

Re: Carolyn Thomas

treated Ms. Thomas and completed the discharge summary from Obstetrical triage. Ms. Thomas complained of decreased fetal movement (for an unspecified time) and leakage of fluid from the vagina since 09:60 on June 24, 2008).

The gestational age was 31 weeks and 3 days. Dr. London's examination revealed a long, closed cervix without evidence of ruptured membranes. Ms. Thomas's blood pressure measurements were abnormally elevated many times from admission to discharge with the recorded value at 21:14 of 144/101. The CBC and Chemsan drawn to rule out "pregnancy induced hypertension" were normal but Ms. Thomas still was spilling a small amount of urine protein.

An ultrasound study was performed (but not included in the hospital records reviewed) which revealed an amniotic fluid index of 9.5 - a borderline AFI for 31 weeks of gestation. No fetal biometry was performed to evaluate estimated fetal weight or was a biophysical profile done to evaluate fetal health. No measurement of fundal height was performed which was noted to be nearly 4 weeks behind for dates on the office visit 3 days later.

Electronic fetal monitoring was performed between 20:18 and 22:08 which was performed by RN Teresea O'Sullivan. CNM Anne Woods also participated in the care and evaluation of Ms. Thomas. Dr. London's discharge note suggested that the EFM showed moderate variability and no decelerations but there were, in my opinion, recurrent variable decelerations to 110-120 BPM from the baseline of 150 BPM which went unreported by Dr. London.

Ms. Thomas was discharged to bed rest at home and to see Dr. London on June 30, 2008 with no further testing, consults or evaluation. She was given a "fetal activity count sheet" which she performed through July 5, 2008.

Ms. Thomas returned to the offices of Woman's Care as directed. The prenatal care flow records revealed on June 30, 2008 a nearly 4 week lag in fundal height behind the number of weeks of gestation which prompted Dr. Hahn Tran to order an ultrasound study to evaluate fetal weight since "size was less than dates". No mention was made of her persistent trace of protein in her urine over the prior 6 visits nor did Dr. Tran note the Labor and Delivery visit of Ms. Thomas to the Franklin Square Hospital on June 27, 2008. Dr. Tran did not order the ultrasound on an ASAP or STAT basis to measure the Amniotic Fluid Index, and did not order twice weekly NST evaluations in light of the recurrent variable decelerations seen on June 27, 2009.

On July 7, 2008 Ms. Thomas presented to the office of Woman's Care OB/GYN where a fetal demise was discovered by Dr. London. Ms. Thomas had not yet had the ultrasound ordered by Dr. Tran a week earlier. The study performed that morning revealed a fetus of approximately 27 weeks 3 days size at 32 weeks and 6 days of gestation. This was consistent with a severely growth restricted fetus and would have certainly been diagnosed had the estimated fetal weight and fetal biometry been properly evaluated first on June 27, 2008 and again after the June 30, 2008 office visit. The placenta was quite small but showed no significant gross or microscopic abnormalities.

Ms. Thomas admission records did not document the last time she had felt fetal movement. A blood pressure shortly after admission was 156/96 and remained elevated so that Magnesium Sulfate was started. Induction of labor was ordered because of severe pre-eclampsia and an unfavorable cervix with the now documented fetal demise in-utero.

The male fetus delivered vaginally on July 8, 2008 and weighed 1135 grams. There were no gross anomalies noted. The total labor was nearly twenty-four hours in length. The placenta was quite small for the weeks of gestation and the fetus was at the 3rd %ile or less for weight at 33 weeks.

The standard of care for a reasonable OB/GYN required the following for the treatment of Carolyn Thomas and her unborn child:

1. To recognize severe growth restriction at 32 weeks gestation and perform adequate workup and ultrasound accordingly.
2. To recognize a borderline AFI and determine an estimated fetal weight and biophysical profile before discharge.
3. Recognize non-reassuring recurrent variable deceleration on the EFM and arrange for frequent follow up non-stress testing.
4. To assess and recognize pregnancy induced hypertension and perform appropriate follow up.
5. To diagnose and treat a growth restricted fetus.

It is my opinion that Carolyn Thomas's 33 week intrauterine fetal demise was likely a preventable loss in light of the numerous opportunities the caregivers of Women's Care OB/GYN and staff of the Franklin Square Hospital had to adequately evaluate and care for her. The failure of Dr. London to recognize a severely growth restricted fetus by physical examination and by ultrasound put this fetus at great risk for an adverse outcome. Dr. London failed to recognize a borderline AFI for 31 weeks of gestation and to do an estimated fetal weight

Benjamin S. Salsbury, Esquire
Page 4

Re: Carolyn Thomas

and biophysical profile before discharge home. Dr. London failed to recognize non-reassuring recurrent variable decelerations on the EFM strip and arrange for frequent follow-up non stress testing. Dr. London failed to assess the patient's pregnancy induced hypertension and do appropriate follow-up. All of these failures led to a delay in diagnosing a severely growth restricted fetus and to develop a proper plan of management to avoid the increase risk of an adverse outcome.

Dr. Than failed to order an ultrasound evaluation for fetal weight and AFI on a STAT or ASAP basis on June 30, 2008 when it was noted that the fundal height had fallen several weeks behind the weeks of gestation. Had this been done, it was likely that the severely growth restricted fetus would have been identified, a Maternal-Fetal-Medicine consult obtained, and a careful and appropriate management plan devised. Instead, seven days elapsed and an in-uterio fetal demise occurred.

By July 7, 2008 Ms. Thomas showed elevated blood pressures and required Magnesium Sulfate therapy during a nearly 24 hour induction of labor. Both the fetus and the placenta were very small for weight as is frequently found in women with untreated pregnancy induced hypertension.

It is also my opinion that the Labor and Delivery staff of Franklin Square Hospital, particularly RN Teresa O'Sullivan and CNM Anne Woods, should have seen and documented the recurrent variable decelerations on the EFM on June 27, 2008. These findings should have been reported to Dr. London and proper further testing initiated before her discharge, especially in light of her elevated blood pressure readings and borderline AFI value.

Had all the above noted caregivers complied with the standard of care, it is my opinion that his 33 week intra-uterine fetal demise would have likely been prevented.

I reserved the right to amend this report if additional materials become available for my review and my opinions are altered.

Very truly yours,



Lawrence Borow, M.D.