

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

GARY BORTLE, a minor, by and  
through his Parents and Next Friends,  
JEFFREY BORTLE and AMANDA HYER  
275 Southeastern Terrace  
Baltimore, Maryland 21221

Plaintiffs,

v.

JOHNS HOPKINS BAYVIEW  
MEDICAL CENTER, INC.  
4940 Eastern Avenue  
Baltimore, Maryland 21224

Serve on Resident Agent:

Joanne Pollak, Esquire  
Johns Hopkins Health System Corporation  
733 N. Broadway  
BRB 102  
Baltimore, Maryland 21205

and

CYNTHIA ARGANI, M.D.  
600 North Wolfe Street  
Phipps 218  
Baltimore, Maryland 21287

and

MAUREEN GRUNDY, M.D.  
600 North Wolfe Street  
Phipps 228  
Baltimore, Maryland 21287

Defendants.

Case: 24-C-16-003741  
CV File New \$80.00  
RIF-New Case \$30.00  
Case No. 24C16003741 Fee \$20.00  
MLSC \$35.00  
TOTAL \$185.00

Receipt #201600013112  
Cashier: REJ CCBCXB2  
05/24/16 9:55am

## COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Gary Bortle, a minor, by and through his Parents and Next Friends, Jeffrey Bortle and Amanda Hyer, and by and through his undersigned counsel, Keith D. Forman, Christopher T. Casciano, and Wais, Vogelstein, Forman & Offutt, LLC, hereby sues the Defendants, Johns Hopkins Bayview Medical Center, Inc., Cynthia Argani, M.D. and Maureen Grundy, M.D., and for his causes of action states as follows:

### JURISDICTION AND VENUE

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

2. Venue is proper in the Circuit Court for Baltimore City, Maryland.

3. Plaintiffs aver that they have satisfied all conditions precedent to the filing of this lawsuit, including the filing of a Statement of Claim, a Certificate of Qualified Expert and Report, and a Waiver of Arbitration in the Health Care Alternative Dispute Resolution Office of Maryland. The Plaintiffs hereby attach and incorporate herein by reference the Certificate of Qualified Expert and Report of Jeffrey L. Soffer, M.D.

### PARTIES

4. Plaintiff Gary Bortle is a minor residing with his parents, Jeffrey Bortle and Amanda Hyer, at 275 Southeastern Terrace, Baltimore, Maryland 21221.

5. Defendant Johns Hopkins Bayview Medical Center, Inc. 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. At all times relevant hereto, Johns Hopkins Bayview Medical Center, Inc. acted

directly and/or by and/or through its actual and/or apparent agents, servants and/or employees, including, but not limited to, Cynthia Argani, M.D. and/or Maureen Grundy, M.D.

6. Defendant Cynthia Argani, 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. Argani acted individually and/or as the actual and/or apparent agent, servant and/or employee of Defendant Johns Hopkins Bayview Medical Center, Inc.

7. Defendant Maureen Grundy, 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. Grundy acted individually and/or as the actual and/or apparent agent, servant and/or employee of Defendant Johns Hopkins Bayview Medical Center, Inc.

8. 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**

9. Plaintiff hereby incorporates the preceding paragraphs, by reference thereto, as if fully stated herein.

10. On the evening of January 10, 2009, Amanda Hyer, then 27 5/7 weeks pregnant, presented to the Defendant Johns Hopkins Bayview Medical Center's Emergency Department with complaints of persistent and progressive vaginal bleeding for approximately 3 days, as well as abdominal pain (rated 5/10) and abdominal pressure.

11. Shortly after her presentation, Ms. Hyer was transferred to the Defendant Johns Hopkins Bayview Medical Center's Labor and Delivery Department where she underwent

evaluation and monitoring by several health care providers, including the Defendants, Cynthia Argani, M.D. and Maureen Grundy, M.D.

12. At approximately 12:15 a.m. on January 11, 2009, Amanda Hyer was discharge home with instructions to follow up with her obstetrician.

13. Later that same day, at approximately 5:45 p.m., and less than 18 hours following her discharge from Johns Hopkins Bayview Medical Center, Amanda Hyer presented emergently to the St. Joseph Medical Center emergency room with complaints of active and worsening vaginal bleeding.

14. Thereafter, Ms. Hyer was transferred to labor and delivery where she was admitted for close observation and further management of her pregnancy.

15. Shortly after her arrival, Ms. Hyer underwent a vaginal examination which identified complete dilation of the cervix, with bulging membranes into the vagina; she was also experiencing contractions which she was able to feel more regularly.

16. Ms. Hyer was tocolyzed with magnesium sulfate and given one intramuscular injection of betamethasone.

17. At approximately 9:50 p.m., and due to the progression of her preterm labor and advanced cervical dilation, the decision was made to perform a primary low segment transverse cesarean section delivery.

18. At approximately 10:11 p.m., the minor Plaintiff, Gary Bortle, was born. At birth, Gary Bortle weighed approximately 1013 grams, with poor tone, and intermittent respiratory effort requiring intubation. His Apgar scores were 3 and 8 at one and five minutes, respectively, and he was transferred to the NICU.

19. In the newborn period, Gary Bortle was diagnosed with and treated for, among other things, respiratory distress, chronic lung disease, severe episodes of apnea and bradycardia,

temperature instability, gastroesophageal reflux, intermittent feeding intolerance, anemia requiring multiple blood transfusions, and retinopathy of prematurity.

20. Gary Bortle remained in the St. Joseph Medical Center NICU until March 27, 2009. Thereafter, Gary was transferred to the University of Maryland Medical Center NICU, where he remained until his discharge on July 2, 2009.

21. Today, Gary Bortle suffers from spastic diplegic cerebral palsy, developmental delay, chronic lung disease, and other negative sequelae.

**COUNT I**  
**(Medical Negligence)**

22. Plaintiffs repeat, re-allege, adopt, and incorporate by reference the above paragraphs of this Complaint as if fully set forth herein.

23. In their care and treatment of the minor Plaintiff and/or the minor Plaintiff's mother, the Defendants, acting individually and/or by and/or through their actual and/or apparent agents, servants, and/or employees, owed to the minor Plaintiff and/or the minor Plaintiff's mother the duty to exercise that degree of care and skill which a reasonably competent hospital, obstetrician, physician, and/or similar health care provider would have exercised under the same or similar circumstances.

24. The Defendants, acting directly and/or by and/or through their actual and/or apparent agents, servants, and/or employees, breached the aforesaid duty of care to Gary Bortle and/or Amanda Hyer, and were negligent in the following ways, among others:

- a. Failing to take appropriate precautions in monitoring and treating Amanda Hyer's condition;
- b. Failing to take appropriate precautions in monitoring and treating Gary Bortle's condition;

- c. Failing to obtain appropriate consultations and/or appropriately utilize the information available to them;
- d. Failing to timely, adequately and appropriately react to the positive history, signs, symptoms, physical findings, and other data which were illustrative of Amanda Hyer's condition;
- e. Failing to timely, adequately and appropriately react to the positive history, signs, symptoms, physical findings, and other data which were illustrative of Gary Bortle's condition;
- f. Failing to timely, adequately and appropriately treat Amanda Hyer;
- g. Failing to timely, adequately and appropriately treat Gary Bortle;
- h. Failing to timely, adequately and appropriately interpret fetal heart rate tracings;
- i. Failing to timely, adequately and appropriately manage Amanda Hyer's pregnancy;
- j. Failing to admit Amanda Hyer on the evening of January 10, 2009;
- k. Failing to perform timely, adequate and appropriate surveillance, monitoring and testing to evaluate the true nature and extent of Amanda Hyer's medical condition
- l. Failing to perform timely, adequate and appropriate surveillance, monitoring and testing to evaluate the true nature and extent of Gary Bortle's medical condition;
- m. Failing to timely, adequately and appropriately provide necessary treatment and care in management of Amanda Hyer's pregnancy; and
- n. The Defendants were in other ways negligent.

25. As a direct and proximate result of the aforementioned breaches of the standards of care by the Defendants, the minor Plaintiff, Gary Bortle, has in the past, is currently, and/or will in the future, suffer from the following permanent injuries and damages, among others:

- a. Serious and painful medical and surgical procedures including significant hospitalizations;
- b. Permanent dependence upon others for all aspects of daily living;
- c. He has in the past and will in the future continue to incur large medical and other necessary life care expenses for which he and/or his parents are incapable and unable to afford;
- d. Inability to engage in personal, household, and family activities;
- e. His earning capacity has been severely diminished;
- f. Conscious physical pain and suffering;
- g. Developmental disabilities and delays;
- h. Periventricular leukomalacia and its negative sequelae;
- i. Feeding intolerance;
- j. G-tube dependence;
- k. Cognitive and mental impairment;
- l. Brain damage;
- m. Neurological disabilities;
- n. Tone abnormalities;
- o. Spasticity;
- p. Physical impairment;
- q. Abnormal gait and mobility;
- r. Lack of coordination;

- s. Gross motor delays;
- t. Cerebral palsy;
- u. Chronic lung disease;
- v. Respiratory distress;
- w. Hearing loss;
- x. Visual impairment;
- y. Gastroesophageal reflux disease; and
- z. Other injuries and damages.

WHEREFORE, the minor Plaintiff, Gary Bortle, by and through his Parents and Next Friends, Jeffrey Bortle and Amanda Hyer, brings this action against the Defendants, jointly and severally, for all injuries and damages suffered and sustained by the minor Plaintiff, and for any other damages to which the minor Plaintiff is 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 II**  
**(Informed Consent)**

26. Plaintiff repeats, re-alleges, adopts, and incorporates by reference the above paragraphs of this Complaint as if fully set forth herein.

27. The Defendants, acting directly and/or by and/or through their actual and/or apparent agents, servants and/or employees, owed the minor Plaintiff and/or the minor Plaintiff's mother the duty to timely, adequately and appropriately notify, counsel and inform Amanda Hyer of the various alternatives and material risks involved with her pregnancy given her history, signs, symptoms, physical findings, and other data available to her treating health care providers as of January 10, 2009.



28. The Defendants, acting directly and/or by and/or through their actual and/or apparent agents, servants and/or employees, were negligent in failing to timely, adequately and appropriately obtain the informed consent of the minor Plaintiff's mother, Amanda Hyer, prior to ordering her discharge home, and the Defendants were otherwise negligent.

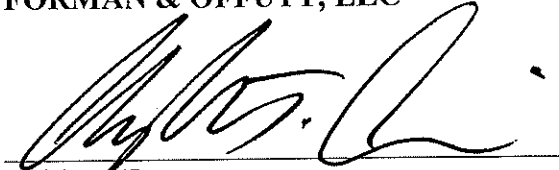
29. Had the Defendants, acting directly and/or by and/or through their actual and/or apparent agents, servants and/or employees, timely, adequately and appropriately notified, counseled and informed the minor Plaintiff's mother, Amanda Hyer, of the materials risks, benefits and alternatives available in management of her pregnancy as of January 10, 2009, Amanda Hyer, like any reasonable person in her position, would have elected to remain in the hospital, under the close supervision of her treating health care providers, so that she could receive timely, adequate and appropriate surveillance, monitoring and testing to evaluate the true nature and extent of her medical condition, as well as the medical condition of her unborn child, and so that she could otherwise receive timely and necessary treatment and care in management of her pregnancy.

30. As a direct and proximate result of the Defendants failure to properly obtain informed consent, acting directly and/or by and/or through their actual and/or apparent agents, servants and/or employees, the minor Plaintiff has suffered the injuries and damages described in Count I above.

WHEREFORE, the minor Plaintiff, Gary Bortle, by and through his Parents and Next Friends, Jeffrey Bortle and Amanda Hyer, brings this action against the Defendants, jointly and severally, for all injuries and damages suffered and sustained by the minor Plaintiff, and for any other damages to which the minor Plaintiff is 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**



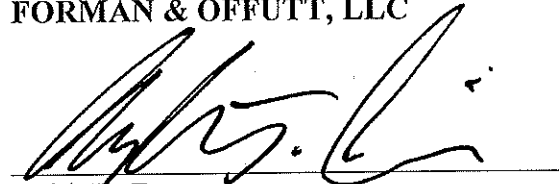
Keith D. Forman  
Christopher T. Casciano  
1829 Reisterstown Road  
Suite 425  
Baltimore, Maryland 21208  
T: (410) 998-3600  
F: (410) 998-3680  
*Attorneys for Plaintiff*

**DEMAND FOR JURY TRIAL**

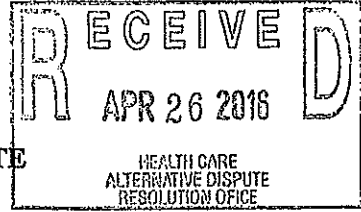
The Plaintiffs, by and through their undersigned counsel, hereby demand a trial by jury on all issues raised herein.

Respectfully submitted,

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



Keith D. Forman  
Christopher T. Casciano  
1829 Reisterstown Road  
Suite 425  
Baltimore, Maryland 21208  
T: (410) 998-3600  
F: (410) 998-3680  
*Attorneys for Plaintiff*



IN THE HEALTH CARE ALTERNATIVE DISPUTE  
RESOLUTION OFFICE OF MARYLAND

GARY BORTLE, a minor, et al.

\*

*Claimants,*

\*

v.

\*

HCA No. \_\_\_\_\_

JOHNS HOPKINS BAYVIEW  
MEDICAL CENTER, INC., et al.

\*

\*

*Defendant Health Care Providers.*

\*

\* \* \* \* \*

CERTIFICATE OF QUALIFIED EXPERT

I, Jeffrey L. Soffer, M.D., hereby certify that:

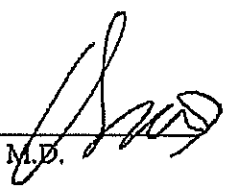
1. I am board-certified in Obstetrics and Gynecology.
2. I am actively licensed to practice medicine in the State of New Jersey.
3. I have had clinical experience, provided consultation relating to clinical practice, and/or taught medicine in the fields of Obstetrics and Gynecology within five (5) years 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 medical records, it is my opinion to a reasonable degree of medical certainty that the care rendered by the Defendant Health Care Providers, Cynthia Argani, M.D., Maureen Grundy, M.D., and Johns Hopkins Bayview Medical Center, Inc., by and/or through their actual and/or apparent agents, servants and/or employees, deviated from the standards of care applicable to like health care professionals with the same or similar training and experience, situated in the same or similar communities, at the time of the treatment and care at issue in this case.

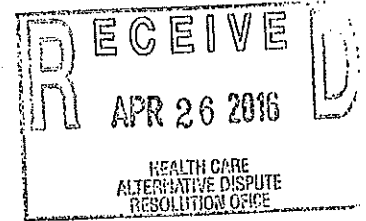
7. It is also my opinion to a reasonable degree of medical certainty that these deviations from the standards of care were the direct and proximate cause of the Claimants' alleged injuries and damages.

8. Attached is a brief statement of my opinions in this matter.

\_\_\_\_\_  
Jeffrey L. Soffer, M.D.



Jeffrey L. Soffer, M.D.  
522 East Broad Street  
Westfield, NJ 07090



Christopher T. Casciano, Esquire  
Wais, Vogelstein, Forman & Offutt, LLC  
1829 Reisterstown Road, Suite 425  
Baltimore, Maryland 21208

**Re: Amanda Hyer and Gary Bortle**

Dear Mr. Casciano:

I had the opportunity to review the medical records of Amanda Hyer and Gary Bortle, including medical records from Johns Hopkins Bayview Medical Center, St. Joseph Medical Center, and the University of Maryland Medical Center. Based upon my review of these records, as well as my education, training and experience, it is my opinion to a reasonable degree of medical certainty that the defendant health care providers deviated from the accepted and applicable standards of care in their care and treatment of Amanda Hyer, and her unborn child, Gary Bortle. It is also my opinion to a reasonable degree of medical certainty that these deviations were the direct and proximate cause of Gary Bortle's alleged injuries and damages.

On the evening of Saturday, January 10, 2009, at approximately 8:20 p.m., Amanda Hyer, then 27 5/7 weeks pregnant, presented to the Johns Hopkins Bayview Medical Center Emergency Department with complaints of persistent and progressive vaginal bleeding for approximately 3 days, as well as abdominal pain (rated 5/10) and abdominal pressure. Ms. Hyer was transferred to Labor and Delivery where she underwent evaluation and monitoring by several health care providers, including Cynthia Argani, M.D. and Maureen Grundy, M.D. At approximately 12:15 a.m. on Sunday, January 11, 2009, Ms. Hyer was discharge home with instructions to follow up with her obstetrician.

Later that same day, at approximately 5:45 p.m., and less than 18 hours following her discharge from Johns Hopkins Bayview Medical Center, Amanda Hyer presented to the St. Joseph Medical Center Emergency Department with complaints of active and worsening vaginal bleeding. Ms. Hyer was transferred to Labor and Delivery where she was admitted for observation and management of her pregnancy. Shortly after her arrival, Ms. Hyer underwent a vaginal examination which identified complete dilation of the cervix, with bulging membranes into the vagina; she was also experiencing contractions which she was able to feel more regularly. Ms. Hyer was tocolyzed with magnesium sulfate and given one intramuscular injection of betamethasone. At approximately 9:50 p.m., and due to the progression of her preterm labor and advanced cervical dilation, the decision was made to perform a primary low segment transverse cesarean section delivery. At approximately 10:11 p.m., Gary Bortle was born. At birth, Gary Bortle weighed approximately 1013 grams, with poor tone, and intermittent respiratory effort requiring intubation. His Apgar scores were 3 and 8 at one and five minutes, respectively, and he was admitted to the Neonatal ICU.

In the newborn period, Gary Bortle suffered from, among other things, respiratory distress, chronic lung disease, severe episodes of apnea and bradycardia, temperature instability, gastroesophageal reflux, intermittent feeding intolerance, anemia requiring multiple blood transfusions, and retinopathy of prematurity. Gary remained in the St. Joseph Medical Center NICU until March 27, 2009 when he was transferred to the University of Maryland Medical Center NICU, where he remained until July 2, 2009. Gary Bortle's current diagnoses include spastic diplegic cerebral palsy, developmental delay and chronic lung disease.

It is my opinion to a reasonable degree of medical certainty that the defendant health care providers were required, in accordance with the accepted and applicable standards of care, to admit Amanda Hyer on the evening of January 10, 2009; to perform additional surveillance, monitoring and testing to evaluate the true nature and extent of Ms. Hyer's medical condition, as well as the medical condition of her unborn child; and to provide necessary treatment and care in management of Ms. Hyer's pregnancy. In violation of the accepted and applicable standards of care, the defendant health care providers negligently discharged Amanda Hyer home without the necessary surveillance, monitoring, testing, treatment and care that she required in management of her pregnancy.

It is my opinion to a reasonable degree of medical certainty that, had the defendant health care providers complied with the accepted and applicable standards of care, as outlined above, Gary Bortle would have not suffered and sustained permanent injuries and damages. Otherwise stated, the defendant health care providers' deviations from the standards of care directly and proximately caused Gary Bortle's alleged injuries and damages.

This report is not, nor is it intended to be, an exhaustive description of all my opinions, conclusions, and/or the bases. My opinions, as stated above, are given to a reasonable degree of medical certainty, and may be modified and/or supplemented upon receipt and review of additional information and/or documentation.

Sincerely,



Jeffrey L. Soffer, M.D.