

and

DAVID B. PEISNER, M.D.
15005 Shady Grove Road, Suite 120
Rockville, Maryland 20850

and

PEDIATRIX MEDICAL GROUP OF THE
MID-ATLANTIC, P.C. D/B/A MARYLAND
PERINATAL ASSOCIATES
7610 Carroll Avenue, Suite 470
Takoma Park, MD 20912

Serve On:
The Corporation Trust, Inc.
2405 York Road, Suite 201
Lutherville-Timonium, MD 21093

and

TERESA HOFFMAN, M.D.
6610 Tributary Street, Suite 206
Baltimore, Maryland 21224

and

TERESA HOFFMAN, M.D. &
ASSOCIATES, LLC
301 Saint Paul St.
Baltimore, Maryland 21202

Serve On:
Linda H. Jones, Esq.
218 N. Charles St., Suite 400
Baltimore, Maryland 21201

Defendants

* * * * *

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Julian Waller, a minor, by and through his mother and next friend, Charity Purdie, and Charity Purdie, Individually, by and through their undersigned counsel, Christopher

19 FEB 28 PM 2:02
CIVIL DIVISION
19 FEB 28 PM 2:00
CIVIL DIVISION

S. Norman, Keith D. Forman, Jermaine D. Haughton, and Wais, Vogelstein, Forman & Offutt, LLC, hereby sue Mercy Medical Center, Inc., acting by and/or through their agents, servants and/or employees, including, but not limited to, Teresa Hoffman, M.D.; Sandra Wittholz, CRNP; WomanKind OB/GYN Associates, P.A., acting by and/or through its agents, servants and/or employees including, but not necessarily limited to, Sandra Wittholz, CRNP; Michelle Kush, M.D.; David Peisner, M.D.; Pediatrix Medical Group of the Mid-Atlantic, P.C. D/B/A Maryland Perinatal Associates, acting by and/or through its agents, servants and/or employees including, but not necessarily limited to, Michelle Kush, M.D. and David Peisner, M.D.; Teresa Hoffman, M.D.; and Teresa Hoffman, M.D. & Associates, LLC, and for their causes of action state as follows:

1. This medical negligence claim is instituted pursuant to Md. Cts. & Jud. Proc. §§ 3-2A-01 – 3-2A-10, for the recovery of damages in excess of Thirty Thousand Dollars (\$30,000.00).
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, Certificates of Qualified Expert and Expert Reports, and a Waiver of Arbitration in the Health Care Alternative Dispute Resolution Office of Maryland. The Plaintiffs hereby attach and incorporate by reference the Certificates of Qualified Expert and Expert Reports of George Saade, M.D. and John P. Elliott, M.D.
4. Plaintiff, Julian Waller, born January 10, 2016, is a disabled minor residing with his mother, Charity Purdie, at 5351 Harper's Farm Road, Apt. 57225 Darby Downs, Columbia, Maryland 21044.
5. Defendant Mercy Medical Center, Inc. (Mercy) is, and at all times relevant hereto was, a Maryland corporation engaged in the business of providing health care services to individuals in need thereof. At all times relevant hereto, Mercy acted directly and/or by and/or

through its actual and/or apparent agents, servants, and/or employees, including, but not limited to, Teresa Hoffman, M.D. and Teresa Hoffman, M.D. & Associates, LLC.

6. Defendant Sandra Wittholz, CRPN is, and at all times relevant hereto was, a certified registered nurse practitioner licensed to provide care in the State of Maryland. At all times relevant hereto, Ms. Wittholz acted individually and/or as the actual and/or apparent agent, servant and/or employee of WomanKind OB/GYN Associates, P.A.

7. Defendant WomanKind OB/GYN Associates, P.A. ("WomanKind") is, and at all times relevant hereto was, a Maryland corporation engaged in the business of providing health care services to individuals in need thereof. At all times relevant hereto, WomanKind acted directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees, including, but not limited to, Sandra Wittholz, CRNP.

8. Defendant Michelle Kush, M.D. is, and at all times relevant hereto was, a physician licensed to practice medicine in the State of Maryland. At all times relevant hereto, Dr. Kush acted individually and/or as the actual and/or apparent agent, servant and/or employee of Pediatrix Medical Group of the Mid-Atlantic, P.C. D/B/A Maryland Perinatal Associates.

9. Defendant David Peisner, M.D. is, and at all times relevant hereto was, a physician licensed to practice medicine in the State of Maryland. At all times relevant hereto, Dr. Peisner acted individually and/or as the actual and/or apparent agent, servant and/or employee of Pediatrix Medical Group of the Mid-Atlantic, P.C. D/B/A Maryland Perinatal Associates.

10. Defendant Pediatrix Medical Group of the Mid-Atlantic, P.C. D/B/A Maryland Perinatal Associates (MPA) is, and at all times relevant hereto was, a Maryland corporation engaged in the business of providing health care services to individuals in need thereof. At all times relevant hereto, MPA acted directly and/or by and/or through its actual and/or apparent

agents, servants, and/or employees, including, but not limited to, Michelle Kush, M.D. and David Peisner, M.D.

11. Defendant Teresa Hoffman, M.D. is, and at all times relevant hereto was, a physician licensed to practice medicine in the State of Maryland. At all times relevant hereto, Dr. Hoffman acted individually and/or as the actual and/or apparent agent, servant and/or employee of Teresa Hoffman, M.D. & Associates, LLC and Mercy Medical Center, Inc.

12. Defendant Teresa Hoffman, M.D. & Associates, LLC (Hoffman LLC) is, and at all times relevant hereto was, a Maryland corporation engaged in the business of providing health care services to individuals in need thereof. At all times relevant hereto, Hoffman LLC acted directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees, including, but not limited to, Teresa Hoffman, M.D.

13. At all times relevant hereto, the Defendants held themselves out to Plaintiff as health care providers who provided reasonable and competent care to individuals coming under their professional care and treatment.

14. Ms. Purdie was diagnosed with a low-grade intraepithelial lesion (LSIL – potential cervical cell cancer), which was treated with a colposcopy (cervical biopsy) in December of 1998.

15. In March of 1999, Ms. Purdie experienced preterm labor at approximately 35 weeks gestation. She was admitted to Maryland General Hospital with complaints of contractions, and her cervix was found to be 30% effaced. She was observed, treated, and discharged home. In April of 1999, she went into labor and gave birth to a 2440 gram infant at 37 weeks and 5 days gestation. Ms. Purdie was 15 years old at the time.

16. In February of 2001, Ms. Purdie had a second trimester (18 weeks 1 day) therapeutic abortion by Lamitel (a synthetic osmotic cervical dilator used as a method of cervical

dilation in first- and second-trimester pregnancy termination). It is noted during this admission that Ms. Purdie requested a Depo-Provera shot for birth control, as her father had found her oral contraceptives and took them away.

17. In February of 2002, it appears as though Ms. Purdie experienced a spontaneous second trimester pregnancy loss (it is unclear whether this loss was at 16 weeks and 1 day, or at 14 weeks).

18. In June of 2002, Ms. Purdie presented to Franklin Square Hospital with complaints of contractions. She was 15 weeks 3 days pregnant at the time. She was noted to have cramps and spotting, with back pain. Her cervix was found to be closed and long, but "friable". Her cervix measured 28 mm on sonogram. She was treated, and discharged.

19. Ms. Purdie then presented to the Franklin Square Women's Health Center on July 3, 2002 for a prenatal visit. It is noted that she lost her job and place to stay, and that she was living in a shelter at that time with her 3 year old daughter. The notes make clear that she planned to get another job, and stay with her aunt on the weekends. Ms. Purdie was 18 years old. During this prenatal visit, the providers elicited a history of preterm labor a few months prior to delivery with her first pregnancy in 1999 at Maryland General. It is documented that Ms. Purdie reported that she had early effacement and fingertip dilation with that pregnancy, and that she received betamethasone shots. The providers also elicited the history of Ms. Purdie's previous therapeutic abortion at Maryland General by Lamicel "at 4 months", and note that the "placenta had to be removed with tongs". The providers also elicited a history of physical abuse by Ms. Purdie's father. The providers plan was to obtain an ultrasound to evaluate for cervical length and funneling, and they faxed a records release to Maryland General to obtain Ms. Purdie's records related to her first delivery, and her termination.

20. The prenatal flow sheet from this pregnancy states that Ms. Purdie experienced cramping at 18 and 21 weeks, and preterm labor at 30, 32, and 33 weeks. They also state that her cervix was 2cm dilated and 50% effaced by 32 weeks, that her contractions were stopped with terbutaline, and that she was placed on bedrest. Indeed, records from Franklin Square Hospital show that she was admitted at 32 weeks with preterm labor, at which time her obstetrical history is noted as G2P0101 (indicating a prior preterm birth). She also appears to have been admitted to Franklin Square at 32 weeks and 4 days with preterm labor, at which time fetal fibronectin testing was negative. She experienced intermittent contractions again at 35 weeks, at which time she was noted to be 1.5 cm dilated.

21. On October 26, 2002, Ms. Purdie was admitted to Maryland General in active labor. Her history of domestic physical abuse is again noted. She was noted to be 35 weeks and 2 days pregnant, and a cervical exam revealed that she was 7 cm dilated and 100% effaced with a bulging bag of water. She precipitously delivered a 2298 gram male infant with APGARS of 9 and 9.

22. In September of 2014, Ms. Purdie was seen at Maryland General for complaints of lower abdominal cramping. She was noted to be late for her expected period. Pregnancy testing was positive (urine). In early October, Ms. Purdie experienced a miscarriage (1st trimester loss).

23. In January of 2015, Ms. Purdie experienced another pregnancy loss (at approximately 7 weeks gestation).

24. Ms. Purdie presented to WomanKind OB/GYN Associates on September 8, 2015 with a chief complaint of amenorrhea, where she was seen by Sandra Wittholz, CRNP. She was 31 years old at the time, and her LMP was noted to be 6/13/2015. Ms. Wittholz documented her obstetrical history as "P2072". Ms. Wittholz documents that Ms. Purdie had 6 therapeutic abortions (D&C), 1 miscarriage, and 2 living children. Ms. Wittholz documented the Ms. Purdie

delivered a female child in 1999 via vaginal delivery, with the “outcome” listed as “full term birth”, and the source as “historical”. Ms. Wittholz did not complete the sections on the form for the following categories: gestational age, labor length, birthweight, anesthesia, delivery place, preterm labor, or notes. Ms. Wittholz also documented that Ms. Purdie delivered a male child in 2002 via vaginal delivery, with the “outcome” listed as “full term birth”, and the source as “historical”. Ms. Wittholz did not complete the sections on the form for the following categories: gestational age, labor length, birthweight, anesthesia, delivery place, preterm labor, or notes. Urine pregnancy test was positive. A cervical exam was performed, and it is documented that Ms. Purdie’s cervix was without lesion, motion tenderness, discharge or inflammation. Her uterus was noted to be midline, smooth, and non-tender. The discussion notes from this visit say that Ms. Purdie was being referred for a maternal fetal medicine consult “for serial cervical lengths D/T H/O D&C x6.” Nothing in the discussion notes, or otherwise, suggests that Ms. Wittholz had any sufficiently detailed discussions with Ms. Purdie regarding her obstetrical history.

25. On September 10, 2015, Ms. Purdie was seen at Maryland Perinatal Associates by Dr. Michelle Kush for a first trimester screening exam. A pregnancy history form, which appears to have been completed by the patient, notes that she had 8 prior pregnancies. The 1999 pregnancy was noted, with a birth weight of “5lb6oz”, “Full term? Yes”, “F”, “vaginal” [delivery], complications “N/A”. The 2002 pregnancy was noted, with a birth weight of “6lb2oz”, “Full term? Yes”, “M”, “vaginal” [delivery], complications “N/A”. Underneath, the patient documents 1 miscarriage in 2004, and two terminations in 2014 and 2015, both at 7 weeks. Ms. Purdie also said “yes” to the question of “infertility/multiple miscarriages (more than 2)”. There is a section on this form where the physician is to sign indicating that they reviewed the forms, and that section is blank/not signed. Dr. Kush’s consult report notes that the indication for the visit was “first trimester

screening” with a “history” of “5 EAB’s”. A history section completed by the providers reads: “Age: 31 years. Gravida: 9. Para: 2. Previous pregnancies: children born at term: 2. Abortions: 6”. The assessed gestational age at the time of the scan was 12w5d. The scan was normal, with the exception of the inability of the provider to identify the nasal bone (which was ultimately identified on a subsequent scan). Ms. Purdie’s cervix measured an appropriate 38 mm. The “consultation” section of Dr. Kush’s note includes another obstetrical history section, which simply says: “2 full term SVD without complications. 1 first trimester SAB and 5 first trimester TAB’s.” Nothing in the chart suggests that Dr. Kush had a sufficiently detailed discussion with Ms. Purdie regarding her obstetrical history. First trimester biochemistry was offered and obtained. Dr. Kush’s recommendation was to return for evaluation of fetal anatomy at 20 weeks of gestation.

26. Ms. Purdie was seen again by Ms. Wittholz at WomanKind on September 29, 2015. At the time, she was noted to be 15w3d in gestation. Fetal heart rate was normal at 155. No cervical exam was done. Ms. Wittholz’s “assessment and plan” simply states: “normal pregnancy.” The “discussion note” section of the visit summary says “none recorded”.

27. On October 27, 2015, Ms. Purdie was seen again by Ms. Wittholz. She was 19w3d gestation at that time. Again, the fetal heart rate was normal at 155. This note says that Ms. Purdie had been seen at St. Joseph’s Hospital two weeks prior with “upper abdominal pain”, and that Ms. Purdie was told she had a possible hernia, and that the pain had resolved. Despite Ms. Purdie’s recent bout of upper abdominal pain, a cervical exam was not done. Ms. Wittholz’s “assessment and plan” simply states: “normal pregnancy.” The “discussion note” section of the visit summary says “none recorded”.

28. Ms. Purdie returned to Maryland Perinatal Associates on October 29, 2015 for another anatomy survey. This time, she was seen by Dr. David Peisner, a maternal fetal medicine

physician. Dr. Peisner documents a previous pregnancy history of “EAB x5, SAB x1”. An additional history section, apparently carried forward from the previous visit, reads: “Age: 31 years. Gravida: 9. Para: 2. Previous pregnancies: children born at term: 2. Abortions: 6”. The assessed gestational age at the time of the scan was 19w5d. The fetal assessment scan was normal, and the nasal bone was identified. Ms. Purdie’s cervix measured 30 mm. The “consultation” section of Dr. Peisner’s note includes a section titled “risk factors and comorbidities”, which includes the following information: “Multiple terminations – She has had 5 terminations but these were scattered in time before and after her deliveries were at term. Therefore, there is a low risk for cervical change.” Nothing in the chart suggests that Dr. Peisner had a sufficiently detailed discussion with Ms. Purdie regarding her obstetrical history. The WomanKind records make clear that Ms. Wittholz reviewed the information from Dr. Peisner’s consult the next day, on September 30th.

29. Ms. Purdie was seen at WomanKind by Alyssa Larimore on November 16, 2015 for a problem visit (hemorrhoids). This was Ms. Purdie’s last visit at WomanKind.

30. It appears as though Ms. Purdie was seen for the first time by Dr. Teresa Hoffman on November 24, 2015. She was noted to be 23 weeks and 4 days gestation at the time. There is no indication that Dr. Hoffman performed a physical exam on this visit, her first interaction with Ms. Purdie. Likewise, the “family history” section of her note was not completed. Dr. Hoffman documents that Ms. Purdie delivered her first child via spontaneous vaginal delivery in 1999 at “37-38” [weeks]. Dr. Hoffman does not document the exact gestational age of delivery, or the labor time. In the “complications” section of Dr. Hoffman’s notes regarding this pregnancy, she writes “BR ??” – BR being a common abbreviation for bedrest. It appears as though Dr. Hoffman then documents that Ms. Purdie had a Laminaria assisted termination in 2000 at 16 weeks. Dr.

32. Ms. Purdie was seen at Dr. Hoffman's office again on December 21, 2015. At that time, she was noted to be 27 weeks and 3 days gestation. The [preterm labor] section of Dr. Hoffman's note is not decipherable. No cervical exam was done at this visit, and there are no comments noted.

33. Ms. Purdie was seen at Mercy's Center for Advanced Fetal Care for a follow up growth ultrasound on December 28, 2015. Ms. Purdie was noted to be 28 weeks and 2 days gestation at the time. During the exam, funneling of the proximal cervix was noted, with a closed cervical length of only 1.3 cm. The cervical findings were apparently discussed with Dr. Hoffman's office, and Ms. Purdie was transferred to Mercy's labor and delivery unit.

34. Upon arrival at Mercy, the following obstetrical history was documented by the providers: "1999 FTSVD; 2002 PTSVD @ 36 weeks; SAB x1; TAB x2 (including in 2000 20w TAB requiring lams, all others in early first trimester)". Her history was abbreviated by the providers as "G9P1162" – accurately documenting, for the first time during this pregnancy, that Ms. Purdie has a history of prior preterm birth. Contractions and uterine irritability were noted, and an initial cervical exam revealed that Ms. Purdie was 3 cm dilated, 50% effaced, and that the fetus was in the -3 station (3/50/-3). She progressed to 4 cm dilated, and was started on tocolytics and betamethasone. Ms. Purdie was monitored until January 7, 2016, at which time she was discharged. The discharge summary, which was dictated by Patricia Seal, M.D. and electronically signed by Dr. Hoffman, includes the following information (abbreviated):

Discharge Diagnoses: IUP at 28w5d; preterm labor with stable physical exam
HPI: 32 year old G9P1162 at 28w2d who presented from radiology with a concern for short cervix...Pregnancy was also complicated by history of preterm delivery at 36 weeks in prior pregnancy, _____ cervix.
Past Obstetrics History: One term spontaneous vaginal delivery, one preterm spontaneous vaginal delivery at 36 weeks, one spontaneous abortion, five therapeutic abortions.

Hospital Course: Started on mag for tocolysis and neuro protection through a betamethasone course. Fetus remained category I...The patient was noted to have no contractions and made no cervical change after discontinuation of tocolysis. The fetus remained category I. Started on Nifedipine for symptomatic relief on day 4. Her cervix remained unchanged and she was transferred to the mother/baby unit.

35. Although Ms. Purdie was discharged on January 7, 2016, the discharge summary was not dictated and signed until January 13th and 16th, respectively (after Julian Waller had already been born prematurely).

36. Three days later, on January 10, 2016, Ms. Purdie returned to Mercy with complaints of regular contractions. She was noted to be 30 weeks and 1 day gestation. She was evaluated, and found to have regular contractions which palpated moderate. An initial cervical exam revealed that her cervix had progressed to 5 cm dilated and was greater than 80% effaced. The provider again elicited an obstetrical history which included one full term spontaneous vaginal delivery, a preterm spontaneous vaginal delivery at 36 weeks, one spontaneous abortion, and five therapeutic abortions. The fetal monitoring strip remained reassuring. Despite having been started on tocolytics, Ms. Purdie's labor continued. She progressed to 10 cm dilated and 100% effaced (with a bulging bag of water). At that time, membranes were ruptured artificially and the fluid was clear and without odor. Julian was delivered vaginally at 19:12 on the 10th at 30 weeks and 1 day. Placental pathology was read as showing signs of acute chorioamnionitis, but without evidence of funisitis. Postpartum, Ms. Purdie was diagnosed with endometritis.

37. Julian was born prematurely. His 1 and 5 minute APGARS were 7 and 7. Cord gases were reported to be normal. His birthweight was 1480 grams (VLBW). He stayed in the NICU at Mercy for over a month, where he was intubated for surfactant administration. He experienced periods of apnea and bradycardia, for which he received caffeine. Blood cultures were

negative for infection. He received phototherapy for bilirubin elevation. Head imaging has been reported as normal to date.

38. Julian has since been diagnosed with global developmental delay and autism, which various providers have attributed to his premature birth. Julian has received extensive genetic testing (fragile x, chromosomal microarray, etc.), which has been reported as normal. Julian has also experienced seizure like activity, for which he has been medicated. It is reported that he is in the 1st percentile or below (very low range) in the areas of visual reception, receptive language, and expressive language, in the 18th percentile for gross motor skills, and in the 5th percentile for fine motor skills (below average).

Count I
(Medical Malpractice – Minor’s Claim against All Defendants)

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

40. In their care and treatment of Charity Purdie and Julian Waller, the Defendants, acting directly and/or by and/or through their actual and/or apparent agents, servants, and/or employees, owed to Plaintiffs the duty to exercise that degree of care and skill which a reasonably competent hospital, nurse, obstetrician, maternal-fetal medicine physician, CRNP, and/or similar health care provider would have exercised under the same or similar circumstances.

41. 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 Charity Purdie and Julian Waller, and were negligent by:

- a. Failing to obtain a thorough and accurate obstetrical and health history regarding Ms. Purdie, including, but not limited to, obtaining the exact gestational ages of Ms. Purdie’s prior deliveries;

- b. Failing to start Ms. Purdie on progesterone supplementation;
- c. Failing to recommend and ensure that Ms. Purdie underwent serial cervical length ultrasounds, including at 23-24 weeks;
- d. Failing to otherwise appropriately treat Charity Purdie and her unborn child;
- e. Failing to maintain adequate and/or appropriate written policies, procedures and/or protocols;
- f. Failing to appropriately follow written policies, procedures and/or protocols;
- g. And were in other ways negligent.

40. As a direct and proximate result of the above-mentioned deviations from the applicable standards of care by the Defendants, Julian Waller suffered and/or will suffer the following injuries, among others:

- a. Premature birth;
- b. Very low birth weight;
- c. Apnea and bradycardia;
- d. Elevated bilirubin;
- e. Global developmental delay;
- f. Autism;
- g. Seizures or seizure like activity;
- h. Cognitive and mental impairment;
- i. Neurological disabilities;
- j. Physical impairment;
- k. Significant conscious pain and suffering;
- l. Emotional distress;

- m. He is and will be permanently dependent upon others for his care;
- n. He has and will continue to undergo serious and painful medical procedures;
- o. He has and will continue to incur significant medical and other care expenses;
- p. His earning capacity has been severely diminished; and
- q. Other injuries and damages.

WHEREFORE, Plaintiff, Julian Waller, a minor, by and through his mother and next friend, brings this action against the Defendants and seeks damages that will adequately and fairly compensate him, costs, and such other and further relief as may be deemed appropriate.

Count II
(Medical Malpractice – Parental Claim against All Defendants)

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

42. As a further direct and proximate result of the above-mentioned deviations from the applicable standard of care by the Defendants, Charity Purdie suffered and/or will suffer the following injuries, among others:

- a. She has incurred and will continue to incur substantial expenses for medical treatment and other care of Julian Waller;
- b. She has suffered and will continue to suffer the loss of services, companionship, labor, assistance, etc. from her child, Julian Waller; and
- c. She has suffered and will continue to suffer great emotional anguish and pain and suffering as a consequence of the Defendant's negligence as described above.

WHEREFORE, Plaintiff, Charity Purdie, brings this action against the Defendants and seek damages that will adequately and fairly compensate her, costs, and such other and further relief as may be deemed appropriate.

Respectfully submitted,

WAIS, VOGELSTEIN, FORMAN & OFFUTT, LLC

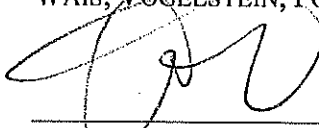


Christopher S. Norman, Esq.
Keith D. Forman, Esq.
Jermaine D. Haughton, Esq.
1829 Reisterstown Road
Suite 425
Baltimore, MD 21208
(410) 998-3600
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

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

WAIS, VOGELSTEIN, FORMAN & OFFUTT, LLC



Christopher S. Norman, Esq.
Keith D. Forman, Esq.
Jermaine D. Haughton, Esq.
1829 Reisterstown Road, Suite 425
Baltimore, Maryland 21208
T: (410) 998-3600
F: (410) 998-3680
Attorneys for Plaintiffs