

FELICIA L. WATTY-CLARK, as Mother
and Next Friend of KIERA B. CLARK, an
Infant, and FELICIA L. WATTY-CLARK
and BRYANT CLARK, Individually,

Plaintiffs,

vs.

CHUKA B. JENKINS, M.D. and MEDSTAR
HARBOR HOSPITAL PHYSICIANS, LLC,

Defendants.

IN THE
CIRCUIT COURT OF
MARYLAND FOR BALTIMORE
CITY

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CIRCUIT COURT FOR
BALTIMORE CITY
2014 OCT 14 AM 11:05
CIVIL DIVISION

24-cv-5832
Case No.: 24-cv-5832

* *

COMPLAINT

Plaintiffs, Felicia L. Watty-Clark, as Mother and Next Friend of Kiera B. Clark, an

Infant, and Felicia L. Watty-Clark and Bryant Clark, Individually, by their attorneys, Jay D. Miller and the Law Offices of Peter G. Angelos, P.C., sue Defendants Chuka B. Jenkins and

Medstar Harbor Hospital Physicians, LLC, and for reasons say:

FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS

1. This action originated as a Health Claims Arbitration Proceeding pursuant to Courts & Judicial Proceedings Article 3-2A-01, et seq.
2. Pursuant to Article 3-2A-06A, the Plaintiff filed a written Waiver of Arbitration, and an Order of Transfer was issued by the Health Claims Alternative Dispute Resolution Office. A copy of this Order of Transfer is annexed hereto.
3. The venue in this action is Baltimore City, Maryland, based upon the Defendants' place of business.
4. Plaintiffs are residents of Howard County, Maryland.

5. At all times mentioned herein, Defendant, Chuka B. Jenkins, M.D. (“Dr. Jenkins”) was licensed as a physician in the State of Maryland who represented to the public and to the Plaintiffs that she possessed the degree of skill, knowledge and ability ordinarily possessed by reasonably prudent and competent physicians practicing under the same or similar circumstances as those involving the Plaintiff.

6. At all times mentioned herein, Dr. Jenkins was acting individually as the actual and/or apparent agent, servant and/or employee of Defendant Medstar Harbor Hospital Physicians, LLC (“Harbor Hospital”) and was acting in the course and scope of her employment and/or agency by/with Harbor Hospital. Defendant Harbor Hospital held Dr. Jenkins out as its agent, servant and/or employee.

7. At all times mentioned herein, Defendant Harbor Hospital was a corporation organized under the laws of the State of Maryland to provide medical services to the members of the public, operating as a healthcare facility, specializing in various areas of medicine, and specifically, in this case, in the field of fetal medicine and gynecology and obstetrics, and located in Baltimore City, Maryland (including by way of example and not by way of limitation: administration, staffing and/or supervision of its employees), which held itself out to the public and to the Plaintiffs that it, and its agents, servants and/or employees, possessed the degree of skill, knowledge and ability ordinarily possessed by reasonably prudent and competent Health Care Providers practicing under the same or similar circumstances as those involving the Plaintiffs.

8. On or about March 7, 2011, Plaintiffs sought care from Defendants for pre-natal care, including the performance of an ultrasound at the Fetal Assessment Clinic located at Harbor Hospital. The purpose of this ultrasound was to measure the Nuchal Translucency (area

of fluid behind the neck) of the fetus as part of a screening test for Down syndrome. At this time, the Infant Plaintiff was eleven (11) weeks gestational age.

9. Pre-natal care was given and ultrasounds were again performed at the Fetal Assessment Clinic located at Harbor Hospital on or about April 27, 2011 and again on May 6, 2011.

10. On or about March 7, 2011, Defendants interpreted the results of the Nuchal Translucency (NT) test as measuring 1.1 mm and supplied this measurement to the NTD Lab. This measurement fails to meet the criteria for an adequate measurement.

11. On August 20, 2011, Infant Plaintiff Kiera B. Clark was born with Down syndrome.

12. As a result of Defendants' failure to supply the correct measurement to the NTD Lab, the Plaintiffs were deprived of adequate information necessary in order to make a fully informed decision as to whether or not to continue a pregnancy carrying a fetus with Down syndrome. Had Plaintiffs been provided with adequate and relevant information, the option of terminating Ms. Watty-Clark's pregnancy would have been exercised.

13. The Defendants, by and through their actual and/or apparent agents, servants and/or employees, owed to Plaintiffs a duty to exercise the degree of care, skill and judgment expected of competent health care providers acting in the same or similar circumstances, which duties included, among other things: to properly and timely measure the Nuchal Translucency of a fetus as part of a test for Down syndrome; to provide the correct measurements to the appropriate laboratory in a timely manner; to utilize proper and indicated techniques for determining the correct measurement of the Nuchal Translucency; to follow proper protocol in determining the correct measurement of the Nuchal Translucency; to properly and timely

perform ultrasound testing; to properly and timely review the results of ultrasound imaging; to offer additional testing so correct measurement can be obtained in a timely manner; to repeat tests which reveal inadequate results; to ensure, in all ways necessary, that correct ultrasound results are obtained and provided to the proper laboratories; to provide patients with all information necessary to make informed and reasoned decisions concerning the condition and/or health of a fetus; to allow patients to exercise the option as to whether or not to terminate a pregnancy carrying a fetus with Down syndrome; in properly communicating with the associated laboratories; to properly and timely interpret any and all tests; to properly employ due, reasonable, and appropriate skills and care in the examination, treatment and management of the patient; to perform a proper and timely examination of the patient; to take proper heed of the patient's present condition, signs, symptoms, and complaints,; in properly diagnosing and/or identifying the patient's condition; in keeping apprised of current medical literature and standards; in complying with internal hospital rules and regulations; in properly performing an extensive and accurate physical examination of the patient; in properly taking precautions so as to avoid unnecessary complications; in employing reasonable, proper and appropriate skill and care in the treatment and management of the patient; in timely calling competent specialists for consultation, care and treatment; to properly communicate with appropriate specialists; to properly supervise the agents, servants and/or employees of the Defendants, and to exercise the degree of care, skill and diligence to which these Plaintiffs were entitled - all of which the Defendant failed to do.

14. As a direct and proximate result of the negligence of the Defendants, their actual and/or apparent agents, servants and/or employees, the Infant Plaintiff has suffered, and will continue to suffer, serious and permanent injuries, including, among other things, Downs

syndrome; lifelong physical and mental disabilities; a significantly decreased life expectancy; a poor immune function; multiple lifelong developmental delays; risk of congenital heart disease; risk of leukemia; risk of thyroid disorders; risk of mental illness; high risk of infection; risk of epileptic seizures; risk of early-onset dementia; infantile spasms; permanent speech deficits; hearing deficiencies and loss; risk of organ failure; abnormal physical characteristics; major intellectual disabilities; poor social skills and functioning; emotional imbalance; depression and anxiety; the need for regular screening and frequent physical examinations; significant risk for future complications and medical problems; tremendous difficulty in performing activities of daily living; permanent physical and cosmetic deformities; an exhaustive course of additional treatments and medications; will in the future incur significant sums for medical expenses for lifelong medical care; and will be caused to be confined, in the future, to the hospital, home and bed for length periods of time.

Plaintiffs Felicia L. Watty-Clark and Bryant Clark have suffered, and will continue to suffer, serious and permanent injuries, including, among other things, a child with all of the abovementioned permanent injuries and disabilities; the significant cost of providing their child with frequent medical care and attention, special education, various therapies, and other special needs not limited to the foregoing; were caused to suffer mental anguish, emotional distress and anxiety; will be caused to spend countless hours at medical institutions for their child's care; significant lost earnings; were caused to be incapacitated from attending their usual duties and will so be caused in the future; was caused to incur past and future medical and hospital expenses, and the loss of enjoyment of life.

15. The negligence as described herein was the sole and proximate cause of all injuries and damages sustained by Plaintiffs without any negligence or want of care on the part of Plaintiffs contributing thereto.

16. If the Defendants had complied with the applicable standards of care, the losses and damages described herein would have been avoided. Use of indicated and proper techniques, safety measures, and precautions would have allowed Plaintiffs Felicia L. Watty-Clark and Bryant Clark to have the information necessary in order to make a fully informed decision as to whether or not to terminate a pregnancy carrying a fetus with Down syndrome. This option would have been exercised had Plaintiffs not been improperly deprived of relevant information. Plaintiffs' severe and permanent, disabling injuries and damages would have been avoided completely with appropriate and timely techniques, procedure, and diagnosis.

COUNT I

(Negligence - Plaintiffs v. Chuka B. Jenkins, M.D.)

17. Paragraphs 1 through 16 are adopted by reference in this Count I.

18. Defendant Chuka B. Jenkins, M.D. negligently deviated from the appropriate standard of medical care by:

a) Failing to properly and timely measure the Nuchal Translucency of a fetus as part of a test for Down syndrome;

b) Failing to provide the correct measurements to the appropriate laboratory in a timely manner;

c) Failing to properly utilize proper and indicated techniques for determining the correct measurement of the Nuchal Translucency;

d) Failing to follow proper protocol in determining the correct measurement of the Nuchal Translucency;

e) Failing to properly and timely perform ultrasound testing;

f) Failing to properly and timely review the results of ultrasound imaging;

g) Failing to offer additional testing so correct measurement can be obtained in a timely manner;

h) Failing to repeat tests which reveal inadequate results;

i) Failing to ensure, in all ways necessary, that correct ultrasound results are obtained and provided to the proper laboratories;

j) Failing to provide patients with all information necessary to make informed and reasoned decisions concerning the condition and/or health of a fetus;

k) Failing to allow patients to exercise the option as to whether or not to terminate a pregnancy carrying a fetus with Down syndrome;

l) Failing to properly communicate with the associated laboratories;

m) Failing to properly and timely interpret any and all tests;

n) Failing to properly employ due, reasonable, and appropriate skills and care in the examination, treatment and management of the patient;

o) Failing to perform a proper and timely examination of the patient;

p) Failing to take proper heed of the patient's present condition, signs, symptoms, and complaints;

q) Failing to properly diagnose and/or identify the patient's condition;

r) Failing to keep apprised of current medical literature and standards;

s) Failing to comply with internal hospital rules and regulations;

- t) Failing to properly perform an extensive and accurate physical examination of the patient;
- u) Failing to properly take precautions so as to avoid unnecessary complications;
- v) Failing to employ reasonable, proper and appropriate skill and care in the treatment and management of the patient;
- w) Failing to timely call competent specialists for consultation, care and treatment;
- x) Failing to properly communicate with appropriate specialists;
- y) Failing to properly supervise the agents, servants and/or employees of the Defendants; and among other things,
- z) Failing to exercise the degree of care, skill and diligence to which this Plaintiff was entitled.

19. As a direct and proximate result of the aforesaid negligence of Defendant Chuka B. Jenkins, M.D., the Infant Plaintiff has suffered, and will continue to suffer, serious and permanent injuries, including, among other things, Downs syndrome; lifelong physical and mental disabilities; a significantly decreased life expectancy; a poor immune function; multiple lifelong developmental delays; risk of congenital heart disease; risk of leukemia; risk of thyroid disorders; risk of mental illness; high risk of infection; risk of epileptic seizures; risk of early-onset dementia; infantile spasms; permanent speech deficits; hearing deficiencies and loss; risk of organ failure; abnormal physical characteristics; major intellectual disabilities; poor social skills and functioning; emotional imbalance; depression and anxiety; the need for regular screening and frequent physical examinations; significant risk for future complications and medical problems; tremendous difficulty in performing activities of daily living; permanent

physical and cosmetic deformities; an exhaustive course of additional treatments and medications; will in the future incur significant sums for medical expenses for lifelong medical care; and will be caused to be confined, in the future, to the hospital, home and bed for length periods of time.

Plaintiffs Felicia L. Watty-Clark and Bryant Clark have suffered, and will continue to suffer, serious and permanent injuries, including, among other things, a child with all of the abovementioned permanent injuries and disabilities; the significant cost of providing their child with frequent medical care and attention, special education, various therapies, and other special needs not limited to the foregoing; were caused to suffer mental anguish, emotional distress and anxiety; will be caused to spend countless hours at medical institutions for their child's care; significant lost earnings; were caused to be incapacitated from attending their usual duties and will so be caused in the future; was caused to incur past and future medical and hospital expenses, and the loss of enjoyment of life.

WHEREFORE, Plaintiffs Felicia L. Watty-Clark as Mother and Next Friend of Kiera B. Clark, an Infant and Felicia L. Watty-Clark and Bryant Clark, Individually, claim more than Thirty Thousand (\$30,000.00) Dollars in compensatory damages plus interest and costs against Defendant Chuka B. Jenkins, M.D.

COUNT II

(Negligence – Agency – Plaintiffs v. Medstar Harbor Hospital Physicians, LLC)

20. Paragraphs 1 through 19 are adopted by reference in this Count II.

21. Defendant Medstar Harbor Hospital Physicians, LLC, its agents, servants and/or employees, negligently deviated from the appropriate standard of medical care by:

- a) Failing to properly and timely measure the Nuchal Translucency of a fetus as part of a test for Down syndrome;
- b) Failing to provide the correct measurements to the appropriate laboratory in a timely manner;
- c) Failing to properly utilize proper and indicated techniques for determining the correct measurement of the Nuchal Translucency;
- d) Failing to follow proper protocol in determining the correct measurement of the Nuchal Translucency;
- e) Failing to properly and timely perform ultrasound testing;
- f) Failing to properly and timely review the results of ultrasound imaging;
- g) Failing to offer additional testing so correct measurement can be obtained in a timely manner;
- h) Failing to repeat tests which reveal inadequate results;
- i) Failing to ensure, in all ways necessary, that correct ultrasound results are obtained and provided to the proper laboratories;
- j) Failing to provide patients with all information necessary to make informed and reasoned decisions concerning the condition and/or health of a fetus;
- k) Failing to allow patients to exercise the option as to whether or not to terminate a pregnancy carrying a fetus with Down syndrome;
- l) Failing to properly communicate with the associated laboratories;
- m) Failing to properly and timely interpret any and all tests;
- n) Failing to properly employ due, reasonable, and appropriate skills and care in the examination, treatment and management of the patient;

- o) Failing to perform a proper and timely examination of the patient;
- p) Failing to take proper heed of the patient's present condition, signs, symptoms, and complaints;
- q) Failing to properly diagnose and/or identify the patient's condition;
- r) Failing to keep apprised of current medical literature and standards;
- s) Failing to comply with internal hospital rules and regulations;
- t) Failing to properly perform an extensive and accurate physical examination of the patient;
- u) Failing to properly take precautions so as to avoid unnecessary complications;
- v) Failing to employ reasonable, proper and appropriate skill and care in the treatment and management of the patient;
- w) Failing to timely call competent specialists for consultation, care and treatment;
- x) Failing to properly communicate with appropriate specialists;
- y) Failing to properly supervise the agents, servants and/or employees of the Defendants; and among other things,
- z) Failing to exercise the degree of care, skill and diligence to which this Plaintiff was entitled.

22. As a direct and proximate result of the aforesaid negligence of Defendant Medstar Harbor Hospital Physicians, LLC, by and through its agents, servants and/or employees, including, but not limited to Defendant Chuka B. Jenkins, M.D., acting within the scope of their employment, the Infant Plaintiff has suffered, and will continue to suffer, serious and permanent injuries, including, among other things, Downs syndrome; lifelong physical and mental

disabilities; a significantly decreased life expectancy; a poor immune function; multiple lifelong developmental delays; risk of congenital heart disease; risk of leukemia; risk of thyroid disorders; risk of mental illness; high risk of infection; risk of epileptic seizures; risk of early-onset dementia; infantile spasms; permanent speech deficits; hearing deficiencies and loss; risk of organ failure; abnormal physical characteristics; major intellectual disabilities; poor social skills and functioning; emotional imbalance; depression and anxiety; the need for regular screening and frequent physical examinations; significant risk for future complications and medical problems; tremendous difficulty in performing activities of daily living; permanent physical and cosmetic deformities; an exhaustive course of additional treatments and medications; will in the future incur significant sums for medical expenses for lifelong medical care; and will be caused to be confined, in the future, to the hospital, home and bed for length periods of time.

Plaintiffs Felicia L. Watty-Clark and Bryant Clark have suffered, and will continue to suffer, serious and permanent injuries, including, among other things, a child with all of the abovementioned permanent injuries and disabilities; the significant cost of providing their child with frequent medical care and attention, special education, various therapies, and other special needs not limited to the foregoing; were caused to suffer mental anguish, emotional distress and anxiety; will be caused to spend countless hours at medical institutions for their child's care; significant lost earnings; were caused to be incapacitated from attending their usual duties and will so be caused in the future; was caused to incur past and future medical and hospital expenses, and the loss of enjoyment of life.

Defendant Medstar Harbor Hospital Physicians, LLC is vicariously liable for the negligence of its agents, servants and employees, including but not limited to Chuka B. Jenkins, M.D.

WHEREFORE, Plaintiffs Felicia L. Watty-Clark as Mother and Next Friend of Kiera B. Clark, an Infant and Felicia L. Watty-Clark and Bryant Clark, Individually, claim more than Thirty Thousand (\$30,000.00) Dollars in compensatory damages plus interest and costs against Defendant Medstar Harbor Hospital Physicians, LLC.

COUNT III

(Negligence – Apparent Agency – Plaintiffs v. Medstar Harbor Hospital Physicians, LLC)

23. Paragraphs 1 through 22 are adopted by reference in this Count III.

24. At all times herein relevant, Defendant Chuka B. Jenkins, M.D., was acting as the apparent agent of Defendant Medstar Harbor Hospital Physicians, LLC, with regard to the care and treatment of Plaintiffs. At those times, Plaintiffs were under the reasonable belief that Dr. Jenkins was acting under the control, supervision and/or authority of Defendant Medstar Harbor Hospital Physicians, LLC, and that it held itself out to the public and to the Plaintiffs in particular as a full service hospital capable of providing competent medical care to patients admitted to its facility. Additionally, Defendant Medstar Harbor Hospital Physicians, LLC did not take any affirmative measures to advise Plaintiffs that Dr. Jenkins was not acting as its employee, agent and/or representative in connection with the care and treatment of Plaintiffs. Defendant Medstar Harbor Hospital Physicians, LLC is vicariously liable for the negligence of its apparent agents, servants and employees.

WHEREFORE, Plaintiffs Felicia L. Watty-Clark as Mother and Next Friend of Kiera B. Clark, an Infant and Felicia L. Watty-Clark and Bryant Clark, Individually, claim more than

Thirty Thousand (\$30,000.00) Dollars in compensatory damages plus interest and costs against
Defendant Medstar Harbor Hospital Physicians, LLC.

LAW OFFICES OF PETER G. ANGELOS, P.C.

By: _____


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