

CIVIL ACTION COVER SHEET

DOCKET NO.(S)

CT-606

Trial Court of Massachusetts Superior Court Department County: Barnstable

PLAINTIFF(S)

Eileen Smith

DEFENDANT(S)

The Chief Medical Examiner's Office, Cape Cod Hospital, Cape & Island Center for Women's

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE (617) 742-1900

Edward Swartz, Esq., BBO:489450 David Angueira, Esq., BBO:019610

ATTORNEY (if known) Health and Rapin Osathanondh, MD

Street, Boston, MA 02108

FILED 03.07.2007

Origin code and track designation

Place an x in one box only:

- 1. F01 Original Complaint
2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)
3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- 4. F04 District Court Appeal c.231, s. 97 &104 (After trial) (X)
5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?

D99 Complaint for Discovery (F) () Yes (XX) No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

- A. Documented medical expenses to date: 1. Total hospital expenses \$ 2. Total Doctor expenses \$ 3. Total chiropractic expenses \$ 4. Total physical therapy expenses \$ 5. Total other expenses (describe) \$ Subtotal \$
B. Documented lost wages and compensation to date \$
C. Documented property damages to date \$
D. Reasonably anticipated future medical and hospital expenses \$
E. Reasonably anticipated lost wages \$
F. Other documented items of damages (describe) \$
G. Brief description of plaintiff's injury, including nature and extent of injury (describe) \$
TOTAL \$

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

David Angueira

DATE: 10/1/06

SUPERIOR COURT
BARNSTABLE SS
FILED OCT 04 2007
Scott W. Miller Clerk

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT
DEPARTMENT OF
THE TRIAL COURT

EILEEN SMITH

Plaintiff,

v.

MARK A. FLOMENBAUM, M.D.
CAPE & ISLAND CENTER FOR WOMEN'S
HEALTH, CAPE COD HOSPITAL, RAPIN
OSATHANONDH, M.D.

1141F0000010/04/07CIVIL ENTR 240.00
1141F0000010/04/07SURCHARGE 15.00
1141F0000010/04/07SECC 20.00

NO.07-606

COMPLAINT FOR DISCOVERY

PARTIES

1. The Plaintiff, Eileen Smith, was at all times relevant hereto, an adult residing at [REDACTED]. The Plaintiff, Eileen Smith, is the mother of the decedent Laura Smith, who died on or about 09/13/07.
2. The Defendant, Mark A. Flomenbaum, M.D. is the head of the Chief Medical Examiner's Office ("CMEO"), located at 720 Albany St. in Boston, Massachusetts, 02118, Suffolk County.
3. The Defendant, Cape & Island Center for Women's Health ("CICWH"), is a private medical center located at 68 Camp Street, Hyannis, Massachusetts 02601, Barnstable County.

4. Defendant Cape Cod Hospital was, at all times relevant hereto, a hospital organized under law with a principle place of business at 27 Park Street Hyannis, Massachusetts 02601, Barnstable County.
5. The Defendant, Rapin Osathanondh, M.D. (“Osathanondh”), was, at all times relevant hereto, a physician licensed to practice medicine in the Commonwealth of Massachusetts, maintaining an office at 33 Pond Avenue, #607, Brookline, MA 02445, Norfolk County and 68 Camp Street, Hyannis, Massachusetts 02601, Barnstable County.

FACTS

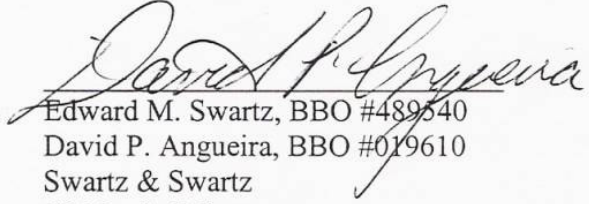
6. On or about 09/13/07, the Plaintiff’s decedent, Laura Smith, was a patient of the Defendant Osathanondh and Cape Cod Hospital. On or about 09/13/07, the Plaintiff’s decedent underwent a medical procedure by the Defendant Osathanondh. During the course of that procedure something occurred resulting in the unexplained death of Laura Smith. Laura Smith was 22 years old at the time of her death.
7. Upon information and belief the Medical Examiner’s office and/or Dr. Flomenbaum have conducted an autopsy, however, they have refused to provide the Plaintiff with a copy of the autopsy findings or the report. The Defendant Osathanondh has refused to provide the Plaintiff with a copy of his medical records which the Plaintiff’s counsel needs in order to conduct their investigation.
8. Finally, Cape Cod Hospital, where the Plaintiff’s decedent was transferred, has also refused to provide its treatment records to the Plaintiff or her counsel.

9. The decedent's body remains at the John-Lawrence Funeral Home and the family cannot bury their daughter until they receive these records and know whether an independent autopsy is necessary. In light of the current news reports about the inadequacies of the Medical Examiner's Office, the Plaintiff is very concerned about the accuracy of the its autopsy procedure and may need to have an independent autopsy performed.
10. Under these circumstances the Plaintiff is filing the complaint for discovery only for the purpose of obtaining the medical records from the Defendants Osathanondh, Cape Cod Hospital and the Medical Examiner's Office.

DEMAND FOR RELIEF

11. The Plaintiff requests that this Court permit the Plaintiff to conduct discovery by inspecting documents relating to the cause of Laura Smith's death, obtaining information through interrogatories, and conducting depositions of witnesses pursuant to the Massachusetts Rules of Civil Procedure.
12. The Plaintiff further requests that this Court order that the Defendants and/or their experts, agents, servants, or employees, not destroy, alter, change, or modify any documents or evidence, including autopsy specimens and substances, relating to the Decedent's cause of death, until issuance of an Order by the Court and/or written agreement between the parties.
13. The Plaintiff further requests that this Court order the Defendant CICWH, Osathanondh and Cape Cod Hospital to provide the Plaintiff with a complete certified copy of the medical records including the autopsy report and completed death certificate regarding Laura Smith.

The Plaintiff,
By Her Attorneys,



Edward M. Swartz, BBO #489540

David P. Angueira, BBO #019610

Swartz & Swartz

10 Marshall Street

Boston, MA 02108

617-742-1900

Date: *Oct. 1, 2007*