

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHRISTY T. O'CONNELL,
3572 Bagley Drive
Mt. Pleasant, South Carolina 29466

Plaintiff

v.

ASSOCIATES IN OB/GYN CARE, LLC
d/b/a AMERICAN WOMEN'S SERVICES and
AMERICAN MEDICAL ASSOCIATES
9801 Georgia Avenue, Suite 338
Silver Spring, MD 20902

And

AMERICAN MEDICAL ASSOCIATES, P.C.
d/b/a AMERICAN WOMEN'S SERVICES and
ASSOCIATES IN OB/GYN CARE
2200 Hamilton Street
Allentown, Pennsylvania 18104

And

ROSE HEALTH SERVICES COMPANY
d/b/a AMERICAN WOMEN'S SERVICES
401 East Elm Street, Suite 200
Conshohocken, Pennsylvania 19428

And

IRIS DOMINY, M.D.
9801 Georgia Avenue, Suite 338
Silver Spring, MD 20902

Defendants

* * * * *

COMPLAINT AND ELECTION FOR JURY TRIAL

Plaintiff, Christy T. O'Connell, by and through her attorneys, Emily C. Malarkey and
Salsbury, Clements, Bekman, Marder & Adkins LLC, sues the Defendants, Associates in

Ob/Gyn Care, LLC d/b/a American Women's Services and American Medical Associates; American Medical Associates, P.C., d/b/a American Women's Services and Associates in Ob/Gyn Care; Rose Health Services Company, d/b/a American Women's Services; and Iris Dominy, M.D., and states as follows.

Parties, Jurisdiction and Venue

1. This claim was previously filed in the Health Claims Alternative Dispute Resolution Office as required under Maryland law, and arbitration of the claim was waived by the Plaintiff pursuant to § 3-2A-06B(b) of the Courts and Judicial Proceedings Article. The Statement of Claim, Plaintiff's Certificate of Qualified Expert and Report, Election to Waive Arbitration and Order of Transfer are attached as Exhibits 1 – 4 hereto.
2. The Plaintiff Christy T. O'Connell is a resident of South Carolina.
3. The Defendant Associates in Ob/Gyn Care, LLC d/b/a American Women's Services and American Medical Associates is a Maryland corporation that conducts business in Baltimore City, Prince George's County, Montgomery County, Frederick County, and elsewhere in the State of Maryland.
4. The Defendant American Medical Associates, P.C., d/b/a American Women's Services and Associates in Ob/Gyn Care is a Pennsylvania corporation that formerly was incorporated in the State of Maryland, and which conducts business in the State of Maryland.
5. The Defendant Rose Health Services Company, d/b/a American Women's Services, is a Pennsylvania corporation that conducts business in the State of Maryland.
6. The Defendant Iris Dominy, M.D., is a physician licensed by the State of

Maryland. She resides in Montgomery County, Maryland, and, upon information and belief, practices medicine in Montgomery County, Prince George's County, Frederick County, and Baltimore City, Maryland.

7. The amount of this claim exceeds seventy-five thousand dollars (\$75,000).
8. This Court has jurisdiction over this action under the diversity of citizenship provision found in 28 U.S.C. 1332.
9. Venue is proper pursuant to 28 U.S.C. 1391(a)

Facts Common To All Counts

10. At all relevant times, the Defendants Associates in Ob/Gyn Care, LLC; American Medical Associates, P.C.; and Rose Health Services Company, all of whom conducted business under the trade name "American Women's Services," (and hereinafter referred to collectively as "American Women's Services") were and are medical facilities offering medical and other related services to the general public, including but not limited to abortion services, and in such capacity, their agents, servants, employees and/or apparent agents held themselves out to the Plaintiff and to the general public as practicing within ordinary standards of medical care, particularly those related to obstetrics and gynecology. At all times relevant, these health care providers owed a duty to the Plaintiff, and the general public, to exercise reasonable skill and care in selecting competent personnel, and to provide diagnostic and medical services and treatment in accordance with ordinary standards of care, particularly those related to obstetrics and gynecology.

11. At all relevant times, the Defendant Iris Dominy, M.D. held herself out to the Plaintiff, and to the general public, as an experienced, competent and able physician and/or health care provider possessing or providing that degree of skill and knowledge

that is ordinarily possessed by those who devote special study and attention to the practice of medicine, particularly obstetrics and gynecology, and as such, owed a duty to the Plaintiff 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, particularly obstetrics and gynecology.

12. At all relevant times, Iris Dominy, M.D., was an agent, servant, employee and/or apparent agent of Associates in Ob/Gyn Care, LLC; American Medical Associates, P.C.; Rose Health Services Company; and/or American Women's Services, and was acting in the scope of her employment and/or agency.

13. In late June of 2012, Christy O'Connell learned that she was pregnant. She presented to her primary care provider on July 16, 2012, where a blood pregnancy test and transvaginal ultrasound confirmed that she was 8 weeks and 2 days pregnant, with an estimated date of delivery of February 23, 2013.

14. Christy O'Connell made the difficult decision to terminate her pregnancy. On July 26, 2012, she presented to the offices of a practice commonly called "American Women's Services" in Frederick, Maryland to obtain a consultation for an abortion. She reported at this visit that she was currently taking a variety of prescription medications, including anti-depressants, migraine medication, blood pressure medication, asthma medication, and antacids.

15. At the appointment, Ms. O'Connell underwent a trans-abdominal ultrasound, which estimated her fetus to be approximately 7 weeks and 4 days old. This estimate was inaccurate and underestimated the fetus's gestational age because it was made utilizing gestational sac size rather than the more accurate crown-to-rump length.

16. Ms. O'Connell then consulted with Dr. Iris Dominy, and a plan was made to conduct a "medical" or non-surgical abortion, in which the patient takes medications designed to induce a spontaneous abortion. According to consent documents signed by Ms. O'Connell, this option is only viable for women who are 8 weeks pregnant or less.

17. The medications that were administered to Ms. O'Connell to achieve her abortion- misoprostol and methotrexate - are not FDA approved for termination of pregnancy. Methotrexate is typically used in chemotherapy for cancer patients. It was used to induce abortions before the FDA approved RU-486 (mifepristone), and can take up to eight weeks in order to successfully terminate a pregnancy.

18. Misoprostol is a drug that is commonly used to induce labor in pregnant patients, and under certain circumstances, can be used to perform a medical abortion in combination with mifepristone/RU-486. Ms. O'Connell was not given any mifepristone, and in fact, the materials she was provided by American Women's Services falsely state that mifepristone "is still not available in the United States."

19. Methotrexate and misoprostol are dangerous and powerful drugs. Not only do they have serious physical consequences to the mother who ingests them, but also they can cause serious and permanent harm to the fetus if the abortion is unsuccessful. Indeed, the consent form signed by Ms. O'Connell prior to undergoing her medical abortion states that the medications "are very damaging to the fetus" and "can cause severe birth defects."

20. It is asserted that American Women's Services prescribed methotrexate and misoprostol as therapy for medical abortions instead of other, FDA-approved regimens in order to cut costs and maximize profits. In fact, one pill of mifepristone costs

approximately \$95, whereas one dose of methotrexate costs between \$5 and \$25. (Ms. O'Connell was charged a flat fee of \$310 for her medical abortion.)

21. Recognizing that the treatment regimen prescribed for Ms. O'Connell had the potential to be ineffective and to render severe harm to the fetus, American Women's Services required Ms. O'Connell to return to the clinic several weeks after taking the drugs in order to confirm that she was no longer pregnant. She was advised that if the abortion was not successful, a surgical procedure would have to be performed to complete it. The consent form she signed states:

About 8% of women using this method will not abort and MUST UNDERGO termination by the standard vacuum aspiration method. The drugs used in this termination are very damaging to the fetus, and if they fail to produce complete expulsion of the pregnancy, a minor surgical procedure will be performed. IT IS VERY IMPORTANT THAT YOU UNDERSTAND THAT ONCE METHOTREXATE HAS BEEN GIVEN, THE TERMINATION OF THE PREGNANCY MUST BE COMPLETED. THE METHOTREXATE CAN CAUSE SEVERE BIRTH DEFECTS.

22. On August 17, 2012, Ms. O'Connell returned to American Women's Services for her follow-up appointment. She indicated at that visit that she was still experiencing symptoms of pregnancy. A sonogram was performed, the report of which states: "Trans abdominal US no IUP," indicating that no intrauterine pregnancy was seen. The report is signed by an ultrasound technician and Dr. Dominy. Ms. O'Connell was advised that there would be no need to conduct any urine or blood pregnancy tests to confirm that she was no longer pregnant. She was only advised to follow up with her primary care provider in three months, and provided a prescription for oral contraceptives.

23. Following her abortion, which she believed to be successful, Ms. O'Connell

engaged in other behavior she would not have engaged in if she were pregnant, such as drinking alcoholic beverages and taking prescription medications.

24. On October 5, 2012, Ms. O'Connell followed up with her primary care provider for her annual "well woman" exam. During the physical exam, her doctor discovered that she was in fact still pregnant, a fact that was confirmed by urine pregnancy test.

25. A stat ultrasound confirmed that Ms. O'Connell was still carrying a viable fetus, now more than 18 weeks' of gestational age.

26. Ms. O'Connell's health care providers immediately took measures to adjust her prescription medication regimen, counsel her about ways to stay healthy while pregnant, and provide care for her as a high-risk obstetrical patient. She saw her obstetrician almost weekly, and obtained multiple sonograms to monitor her baby's growth.

27. Unfortunately, Ms. O'Connell developed severe preeclampsia, or high blood pressure, a condition that can be extremely harmful and even fatal to the mother and her fetus. The only way to reverse preeclampsia is by delivering the baby.

28. At approximately 28 weeks' gestation, Ms. O'Connell's preeclampsia was so bad that she was admitted to the hospital, where it was determined that her baby would need to be delivered. Joseph O'Connell was born on December 19, 2012. He was more than 10 weeks premature.

29. Joseph O'Connell remained in the Neonatal Intensive Care Unit for almost two months. Upon discharge, he continued to be, and to this day continues to be, monitored by many medical specialists for multiple medical issues, including hearing loss, developmental delays, heart defects, and other problems. Many of these medical issues relate to Joseph's severe prematurity.

30. It is yet unknown what effects the dangerous and harmful drugs prescribed to Christy O'Connell by American Women's Services had on Joseph O'Connell, and will continue to have for the rest of his life.

31. In the summer of 2013, the State of Maryland shut down three of the four American Women's Services clinics located in this State, citing reasons that included outdated equipment and poorly qualified or trained staff, including sonographers.

Count I

32. Plaintiff adopts and incorporates paragraphs 1 through 31 as if fully set forth herein.

33. The Defendant American Women's Services, by and through its agents, servants, employees and/or apparent agents, including but not limited to Iris Dominy, M.D. and ultrasound technicians, were negligent and careless in the following manners:

- a. By inaccurately estimating the fetal age on July 26, 2012;
- b. By failing to prescribe an appropriate and effective regimen of medications for the performance of a medical abortion;
- c. By failing to recognize the apparent and obvious presence of an ongoing uterine pregnancy of over 12 weeks' gestation on sonogram on August 17, 2012;
- d. By failing to implement appropriate follow-up care for Ms. O'Connell, including but not limited to urine and/or blood pregnancy testing and/or evaluations after August 17, 2012;
- e. By negligently depriving Christy O'Connell of the ability to make decisions about her body and her life,

f. And in other ways.

34. As a result of the negligence of the Defendants, Christy O'Connell has been caused to suffer physical injury, severe mental anguish, and other emotional pain and suffering, which is continuing in nature. She has also incurred, and will in the future continue to incur, substantial expenses related to the care of Joseph O'Connell, including medical and related expenses well above and beyond those incurred by a normal, healthy child.

WHEREFORE, Plaintiff, Christy O'Connell, claims damages against the Defendants in an amount exceeding \$75,000.00 to be determined by a jury, with all costs to be paid by the Defendants.

Count II

35. Plaintiff adopts and incorporates paragraphs 1 through 34 as if fully set forth herein.

36. The Defendant American Women's Services, by and through its agents, servants, employees and/or apparent agents, including but not limited to Iris Dominy, M.D., had a legal duty and obligation to obtain adequate informed consent, including to accurately inform Christy O'Connell regarding the legal options for abortion available to her, and the material risks, benefits, and alternatives of those options.


37. The Defendants were negligent and careless in that they failed to obtain adequate and valid informed consent from Christy O'Connell in the following ways:

- a. By falsely informing her that mifepristone "is still not available in the United States;"
- b. By failing to offer her medical abortion with mifepristone;

- c. By failing to refer her to a different clinic that could provide medical abortion using mifepristone;
- d. By failing to inform her that the combination of misoprostol and methotrexate is not as effective in inducing abortion as mifepristone, especially in a pregnancy greater than 9 weeks;
- e. By failing to inform her that the combination of misoprostol and methotrexate can take up to eight weeks to successfully terminate a pregnancy;
- a. And in other ways.

38. As a result of the negligence of the Defendants in failing to provide adequate and valid informed consent, Christy O'Connell has been caused to suffer physical injury, severe mental anguish, and other emotional pain and suffering, which is continuing in nature. She has also incurred, and will in the future continue to incur, substantial expenses related to the care of Joseph O'Connell, including medical and related expenses above and beyond those incurred by a normal, healthy child.

WHEREFORE, Plaintiff, Christy O'Connell, claims damages against the Defendants in an amount exceeding \$30,000.00 to be determined by a jury, with all costs to be paid by the Defendants.


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