

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

BRYN BECKER, a Minor, by and)
through her Mother, **LINDSAY PAYNE**, and)
father, **BRETT BECKER**, as Next Friends and)
Natural Guardians, and **LINDSAY PAYNE**,)
Individually and **BRETT BECKER**, Individually,)
Plaintiffs,)

CASE NO. _____

COMPLAINT
(Medical Negligence)

vs.)

PHYSICIANS CLINIC, INC.;)
JENDA STAUFFER, C.N.M.; and)
NEBRASKA METHODIST HEALTH)
SYSTEM, INC., d/b/a Methodist Health System,)
and **THE NEBRASKA METHODIST**)
HOSPITAL,)
Defendants.)

Plaintiffs for their common allegations of fact against the above-named Defendants, state as follows:

COMMON ALLEGATIONS OF FACT

PRELIMINARY STATEMENT

1. This is a civil action in which Plaintiffs seek to recover damages for separate and distinct injuries to each of them, including personal injuries, loss of consortium and loss of services and medical expenses, as a result of events which occurred prior to, during and immediately after the birth of Bryn Becker, on November 22, 2012.

JURISDICTION

2. This Court has jurisdiction pursuant to Neb. Rev. St. §24-517, because this is a civil action in which the amount in controversy exceeds \$52,000.

PARTIES

3. Plaintiff Bryn Becker (“Bryn”) is a minor born on November 22, 2012, and therefore brings this action by and through her parents, natural guardians, and next friends, Lindsay Payne and Brett Becker.

4. Plaintiff Lindsay Payne (“Ms. Payne”) is the natural mother of Bryn Becker, and resides in Omaha, Nebraska. Ms. Payne brings suit in her individual capacity.

5. Plaintiff Brett Becker (“Mr. Becker”) is the natural father of Bryn Becker and resides in Omaha, Nebraska. Mr. Becker brings suit in his individual capacity.

6. Defendant Physicians Clinic, Inc. (“PCI”) is a Nebraska corporation, and at all times relevant herein was engaged, in whole or in part, in the business of providing obstetrical and gynecological healthcare goods and services to members of the general public, including but not limited to Ms. Payne and Bryn, and held itself out to be a skilled and competent healthcare services provider.

7. At all times relevant herein, PCI owned the fictitious name of “Methodist Physicians Clinic,” which is both a service mark and a trade name registered by PCI with the Office of the Nebraska Secretary of State.

8. At all times relevant herein PCI did business as and operated under the name “Methodist Physicians Clinic.”

9. At all times relevant herein, Defendant Jenda Stauffer, C.N.M. (Midwife Stauffer), was a certified nurse midwife practicing her profession in Omaha, Douglas County, Nebraska, and held herself out to be a skilled and competent midwife.

10. At all times relevant herein, Defendant Jenda Stauffer, C.N.M. was an employee, agent, servant and/or ostensible or apparent agent of PCI, acting in the course and scope of her employment or other business relationship with PCI. The negligent acts and/or omissions of Defendant Jenda Stauffer, C.N.M. are imputed to PCI as a matter of law, and PCI is therefore vicariously liable for all such negligent acts and/or omissions.

11. At all times relevant herein, Defendant Nebraska Methodist Health System, Inc., was a Nebraska corporation, doing business as, or under the trade name of, Methodist Health System, and was engaged in the business of owning and operating a hospital under the business or trade name “Methodist Hospital.” The hospital provided obstetrical and gynecological, and labor and delivery services to members of the general public, including but not limited to Bryn and Ms. Payne, and held itself out to be a skilled and competent healthcare services provider.

12. At all times relevant herein, Defendant The Nebraska Methodist Hospital has been a Nebraska corporation, engaged in the business of operating a hospital in Douglas County, Nebraska, using the trade name “Methodist Hospital.” The hospital provided obstetrical and gynecological,

and labor and delivery services to members of the general public, including but not limited to Bryn and Ms. Payne, and held itself out to be a skilled and competent healthcare services provider. Hereinafter, Defendants Nebraska Methodist Health System, Inc., d/b/a Methodist Health System, and The Nebraska Methodist Hospital will be collectively referred to as “Methodist Hospital.”

13. At all times relevant herein, Methodist Hospital employed various physicians, nurses, technicians and other healthcare professionals (“the Methodist Hospital staff”) to provide healthcare services to members of the general public, including but not limited to Bryn and Ms. Payne. The negligent acts and/or omissions of the members of the Methodist Hospital staff, acting in the course and scope of their employment or other business relationship with Methodist Hospital are imputed to Methodist Hospital as a matter of law, and Methodist Hospital is therefore vicariously liable for all such negligent acts and/or omissions.

**WAIVER OF PANEL REVIEW AND
UNCONSTITUTIONALITY OF THE
NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT**

14. At the time of the events described in the complaint, Defendant Midwife Stauffer was not qualified for coverage under the Nebraska Hospital-Medical Liability Act, §44-2801 et. seq. R.R.S. 1943, as amended (“NHMLA”) and the remaining defendants may have been qualified but did not comply with the requirements of the Act. Plaintiffs therefore demand strict proof of any claim by any Defendant of coverage under or compliance with the NHMLA.

15. Notwithstanding any filing by the Defendants for the special benefits, privileges and protection of such act, Plaintiffs allege that the NHMLA is unconstitutional in whole or in part because it violates the Seventh and Fourteenth Amendments to the 14th Amendment of the Constitution of the United States, as well as the following provisions of the Constitution of the State of Nebraska: Article 1, §§ 1, 3, 6, 13, 16, 21, 25, 26; Article II, § 1; Article III, §18; Article V, § 2; Article VI, § 1 and Article XII, § 10(c).

16. Plaintiffs hereby affirmatively waive their right for a medical review panel to review their claims herein against the Defendants as provided by the NHMLA and elect to file this action directly in the District Court of Douglas County, Nebraska.

17. A copy of this Complaint is hereby served upon the director of the Nebraska Department of Insurance, together with a copy upon the Attorney General of the State of Nebraska.

ALLEGATIONS OF FACT

18. On or before November 22, 2012, PCI provided healthcare services to Ms. Payne relating to her pregnancy, labor and delivery, thereby establishing a healthcare provider-relationship between PCI and Ms. Payne, and between PCI and Bryn.

19. On or before November 22, 2012, Midwife Stauffer provided healthcare services to Ms. Payne relating to her pregnancy, labor and delivery, thereby establishing a midwife-patient relationship between Midwife Stauffer and Ms. Payne, and between Midwife Stauffer and Bryn.

20. On or about November 22, 2012, the Methodist Hospital staff provided healthcare services to Ms. Payne relating to her pregnancy, labor and delivery, thereby establishing a healthcare provider-patient relationship between Methodist Hospital and Ms. Payne and between Methodist Hospital and Bryn.

21. On November 22, 2012, Midwife Stauffer documented an estimated fetal weight for Ms. Payne's unborn child at 8lb 81/2 oz.

22. Midwife Stauffer and the Methodist Hospital staff augmented the labor and delivery of Bryn with the use of Pitocin.

23. Midwife Stauffer and the Methodist Hospital staff performed fetal monitoring during the labor and delivery.

24. Midwife Stauffer was present during the pushing stage of labor suspected a possible shoulder dystocia.

25. Midwife Stauffer diagnosed a shoulder dystocia and attempted to delivery Ms. Payne's child.

Count I: Negligence

For their Count I claim against Defendants Physicians Clinic, Inc., and Jenda Stauffer, C.N.M., Nebraska Methodist Health System, Inc., d/b/a Methodist Health System, and The Nebraska Methodist Hospital, Ms. Payne and Bryn allege:

1. Ms. Payne and Bryn incorporate by reference the Common Allegations of Fact in Paragraphs 1 through 25 above.

2. As a result of the midwife-patient relationship between Midwife Stauffer and Ms. Payne and between Midwife Stauffer and Bryn, Midwife Stauffer owed a duty to both Ms. Payne

and Bryn to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other members of her profession engaged in a similar practice.

3. Midwife Stauffer breached her duty to Ms. Payne and to Bryn to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other members of her profession engaged in a similar practice, because she negligently:

- a. Failed to adequately monitor and manage the situation of Ms. Payne and Bryn;
- b. Failed to comply with the education she had received during training;
- c. Failed to be properly educated on pertinent issues in obstetrics relevant to this case, which may include, but may not be limited to, fetal monitoring, shoulder dystocia, the policies, procedures, and guidelines within the subject hospital can clinic;
- b. Failed to comply with appropriate protocols, policies, procedures and guidelines for situations such as that involving Ms. Payne and Bryn, and

was otherwise negligent in a manner not presently known to Plaintiffs.

4. As a result of the healthcare provider-patient relationship between Methodist Hospital and its staff and Ms. Payne and between Methodist Hospital and its staff and Bryn, the hospital and its staff owed a duty to both Ms. Payne and Bryn to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other members of their respective professions engaged in a similar practice.

5. Methodist Hospital and its staff breached their respective duties to Ms. Payne and to Bryn to possess and use the care, skill, and knowledge ordinarily possessed and used under like circumstances by other members of their respective professions engaged in a similar practice, because they negligently:

- a. Failed to adequately monitor and manage the situation of Ms. Payne and Bryn;
- b. Failed to follow or use the chain of command;
- c. Failed to follow the in-house education;
- d. Failed to receive proper in-house education relevant to the issues within this case;
- c. Failed to comply with appropriate protocols, policies, procedures and guidelines for situations such as that involving Ms. Payne and Bryn, and

were otherwise negligent in a manner not presently known to Plaintiffs.

6. As a result of the above-described negligence of Midwife Stauffer, for which PCI is vicariously liable, and Methodist Hospital and its staff, Bryn suffered the following damages:

- a. A traumatic delivery;
- b. Brain damage;
- c. Neurological damage;
- d. Physical pain and suffering;
- e. Past emotional distress and mental anguish;
- f. Impaired earning capacity;
- g. Expenses for healthcare goods and services, the nature and extent of which are presently unknown, and

other damages, the nature and extent of which are presently unknown.

7. As a result of the above-described negligence of Midwife Stauffer, for which PCI is vicariously liable, and Methodist Hospital and its staff, Ms. Payne suffered the following damages:

- a. Trauma and physical injury
- b. Physical and emotional pain and suffering;
- c. Expenses for past and future healthcare goods and services she would not otherwise have had to incur, and

other damages, the nature and extent of which are presently unknown.

WHEREFORE, Plaintiff Bryn Becker, by and through her parents, natural guardians and Next Friends, Lindsay Payne and Brett Becker, and Plaintiff Lindsay Payne, each pray for judgment against Defendants Physicians Clinic, Inc.; Jenda Stauffer, C.N.M.; Nebraska Methodist Health System, Inc., d/b/a Methodist Health System, and The Nebraska Methodist Hospital, and each of them, for special and general damages in an amount to be determined by the jury that will be fair and adequate, but not excessive, plus interest, costs, attorneys fees and expenses, and for such further relief as the Court may deem just and proper under the circumstances.

Count II: Informed Consent

For their Count II claim against Defendants Physicians Clinic, Inc., and Jenda Stauffer, C.N.M.; Ms. Payne and Bryn allege:

1. Ms. Payne and Bryn incorporate by reference the Common Allegations of Fact in Paragraphs 1 through 25 above.

2. The circumstances of Ms. Payne and Bryn were such that a reasonably prudent health care provider in the Douglas County community or similar communities, in the same or similar circumstances, would have obtained informed consent for all operations, treatments or procedures performed on or provided to Ms. Payne and/or Bryn.

3. As a result of the healthcare provider-patient relationship between Ms. Payne and Midwife Stauffer, Midwife Stauffer owed a duty to Ms. Payne to obtain her informed consent for all operations, treatments, delay in treatments, or procedures, by providing her with information which would ordinarily be provided to a patient under like circumstances by health care providers engaged in a similar practice.

4. As a result of the healthcare provider-patient relationship between Bryn and Midwife Stauffer, Midwife Stauffer owed a duty to Bryn to obtain his informed consent, through Ms. Payne, for all operations, treatments, delay in treatments, or procedures, by providing Ms. Payne with information which would ordinarily be provided to a patient under like circumstances by health care providers engaged in a similar practice.

5. Midwife Stauffer breached her duties to Ms. Payne and Bryn to obtain their informed consent by failing to provide them with information which would ordinarily be provided to a patient under like circumstances by health care providers engaged in a similar practice, in part because they negligently failed to advise Ms. Payne and Bryn of the inherent risks, benefits, indications for particular procedures, and alternative procedures in caring for and delivering Bryn, and were otherwise negligent in a manner not presently known to Ms. Payne and Bryn.

6. As a direct and proximate result of the failure of Midwife Stauffer to obtain the informed consent of Bryn, Bryn suffered the injuries described in Paragraph 6 of Count I above.

7. As a direct and proximate result of the failure of Midwife Stauffer to obtain the informed consent of Ms. Payne, Ms. Payne suffered the injuries described in Paragraph 7 of Count I above.

WHEREFORE, Plaintiff Bryn Becker, by and through her parents, natural guardians and Next Friends, Lindsay Payne and Brett Becker, and Plaintiff Lindsay Payne, each pray for judgment against Defendants Physicians Clinic, Inc., and Jenda Stauffer, C.N.M, and each of them, for special and general damages in an amount to be determined by the jury that will be fair and adequate, but not excessive, plus interest, costs, attorneys fees and expenses, and for such further relief as the Court may deem just and proper under the circumstances.

Count III: Parents' Claim

For their Count III claim against Defendants Physicians Clinic, Inc.; Jenda Stauffer, C.N.M.; Nebraska Methodist Health System, Inc., d/b/a Methodist Health System, and The Nebraska Methodist Hospital, Ms. Payne and Mr. Becker allege:

1. Ms. Payne and Mr. Becker incorporate by reference Counts I and II above.
2. As a direct and proximate result of the joint and several negligence of all Defendants, as described in Counts I and II above, resulting in the injuries to Bryn described in Paragraph 6 of Count I, Ms. Payne and Mr. Becker have sustained the following damages:
 - a. Loss of Bryn's services;
 - b. Loss of parental consortium, *i.e.*, the care, comfort, companionship, etc., of their daughter, and
 - c. Past and future expenses for healthcare goods and services for Bryn through the age of majority, the nature and extent of which are not presently known.
 - d. Lost wages.

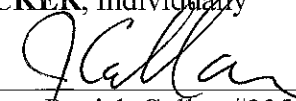
WHEREFORE, Plaintiffs Lindsay Payne and Brett Becker pray for judgment against Defendants Physicians Clinic, Inc.; Jenda Stauffer, C.N.M.; Nebraska Methodist Health System, Inc., d/b/a Methodist Health System, and The Nebraska Methodist Hospital, and each of them, for special and general damages in an amount to be determined by the jury that will be fair and adequate, but not excessive, plus interest, costs, attorneys fees and expenses, and for such further relief as the Court may deem just and proper under the circumstances.

REQUEST FOR JURY TRIAL

Plaintiffs hereby request that trial by jury of the foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

BRYN BECKER, a Minor, by and through her Mother, **LINDSAY PAYNE**, and father, **BRETT BECKER**, as Next Friends and Natural Guardians, and **LINDSAY PAYNE**, Individually and **BRETT BECKER**, Individually

By



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