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FIRST JUDICIAL
DISTRICT COURT

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FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF LOS ALAMOS

THOMAS EDWARD (TED) VIVES, for himself,
as the next friend of **Alex Vives** and as
personal representative of **GWYNETH CLAIRE
VIVES**, and **ALEX VIVES** a minor,

Plaintiffs,

vs.

No. D-0132-CV-200200933

**PAMELA JOHNSON, M.D., JEANNIE
MALCHOW, LOS ALAMOS WOMEN'S
HEALTH SERVICES, P.C.**, a New Mexico
Professional Corporation, **THE LOS ALAMOS
MEDICAL CENTER, INC.**, a New Mexico
corporation, and **BANNER HEALTH SYSTEM**,
an Arizona corporation, d/b/a Los Alamos
Medical Center,

Defendants.

**FIRST AMENDED
COMPLAINT FOR WRONGFUL DEATH BY MEDICAL NEGLIGENCE AND
MALPRACTICE; FOR FRAUD AND CONSTRUCTIVE FRAUD,
FOR NEGLIGENT HIRING, TRAINING, RETENTION, SUPERVISION AND
CREDENTIALING; AND FOR WILFUL INFLICTION OF EMOTIONAL DISTRESS**

The plaintiffs, Thomas Edward ("Ted") Vives, individually, as next friend of Alex Vives and as personal representative of Gwyneth Vives, and Alex Vives complain as follows against the defendants:

SUMMARY OF CENTRAL ALLEGATIONS

1. Ted Vives and Alex Vives, the husband and the infant son of Gwyneth Vives, seek damages for her wrongful death. The death was caused by:

A. the negligence of the Los Alamos Women's Health Services, P.C., in negligently hiring Dr. Pamela Johnson when her background plainly displayed a history of incompetence, carelessness and recklessness and by continuing to support this doctor's malpractice even when they knew she was an unsafe practitioner;

B. the negligence of Los Alamos Medical Center and Banner Health System in granting and continuing hospital privileges for Dr. Pamela Johnson;

C. the actual and constructive fraud of Dr. Pamela Johnson when she falsely represented critical information on her application for a license to the New Mexico Board of Medical Examiners; and

D. the negligence and recklessness of Dr. Johnson, who, after partially repairing Ms. Vives' fourth degree vaginal tear, ignored Ms. Vives' bleeding, tachycardia, cervical lacerations, repeated alarms and signs of shock, abandoning her patient; and

E. the negligence of Jeannie Malchow, a midwife employee of Los Alamos Women's Health Services, P.C., who, after causing a fourth degree vaginal tear in delivery, ignored Ms. Vives' persistent bleeding, tachycardia, cervical lacerations, signs of shock and repeated alarms by labor and delivery nurses until her patient's life was doomed.

PARTIES

2. Plaintiffs Ted Vives and his son, Alex Vives, reside in Los Alamos, New Mexico.

3. Ted Vives is the personal representative of the estate of Gwyneth Vives and next friend of Alex Vives.

4. Defendant Los Alamos Medical Center ("Hospital") is a full service medical provider that offers complete maternal services for pregnancy, labor and delivery in Los Alamos, New Mexico.

5. Banner Health System ("Banner"), is a foreign corporation that, at the pertinent time, owned, operated and conducted business as Los Alamos Medical Center in Los Alamos, New Mexico. At the time Dr. Johnson received hospital privileges, the Banner owned facility doing business as North Colorado Medical Center in Greeley, Colorado handled credentialing matters for LAMC.

6. Defendant Los Alamos Women's Health Services, P.C., ("Women's Health") performs maternal health services in concert with and on behalf of the Hospital and Banner in Los Alamos, New Mexico, for mutual profit.

7. Defendant Jeannie Malchow is an employee of Los Alamos Women's Health Services, P.C., is privileged to practice her craft on behalf of Banner in Los Alamos, and resides in Los Alamos, New Mexico.

8. Defendant Dr. Pamela Johnson, at the pertinent times, practiced obstetrics and gynecology on behalf of the Los Alamos Medical Center and as an employee of Women's Health.

GENERAL ALLEGATIONS

9. Defendants Women's Health, Hospital and Banner (collectively, "institutional defendants") hired Dr. Johnson as an obstetrical and gynecological

specialist, granting her full hospital privileges and independent decision making authority, when they knew, or should have known, from her long-established record at Duke University Hospital, that she was a grossly incompetent, reckless and unsafe practitioner in any surgical or high-risk situation.

10. In her application for a New Mexico license to practice medicine, Dr. Johnson swore under oath to the New Mexico Board of Medical Examiners that, among other things:

A. she had never "resigned or withdrawn her application from a hospital staff or professional medical group,"

B. her "hospital privileges had [never] been revoked or withdrawn for any reason," and

C. she had never "surrendered hospital privileges after disciplinary cases or investigations were started."

Each of these statements, among others, was false.

11. Despite continually mounting evidence of her incompetence, carelessness, recklessness, and fraud, the institutional defendants continued to allow Johnson free and unsupervised privileges in her obstetrical practice.

12. On December 20, 2002, Gwyneth Vives, pregnant with Alex Vives, was admitted by Dr. Johnson, Ms. Vives's doctor, to Los Alamos Medical Center ("Medical Center") for induction of labor.

13. After an initial failure to induce the birth on December 20, Johnson planned the resumption of labor inducing drugs on the morning of December 21, leading to Alex Vives's birth at 11:55 a.m. by spontaneous vaginal delivery.

14. Although she was present in the hospital at the time, Dr. Johnson was absent during the delivery and did not appear at Ms. Vives' bedside until called to repair a severe vaginal laceration.

15. Defendant Jeannie Malchow attended the delivery of the baby. During the delivery Ms. Vives suffered an unusual fourth degree vaginal tear that ripped her vagina, sphincter muscles and rectum; she also suffered a three inch and a one inch cervical laceration, together with other more normal lacerations and contusions.

16. By about 12:25 p.m., Ms. Vives had bled seriously from her wounds and midwife Malchow called Dr. Johnson to repair the vaginal-rectal tear, a repair outside Malchow's ordinary experience.

17. In the presence of Dr. Johnson, and during the intermittent presence of midwife Malchow, Ms. Vives' pulse rose from 146 to 174, her uterus repeatedly became boggy, she persistently bled, and she required an oxygen mask.

18. Despite Ms. Vives's obviously unstable condition, including abnormal bleeding, tachycardia, abnormal blood pressure, the failure of three different drugs (pitocin, methergine and hemobate) and fundal massage to stop bleeding, and the need for oxygen, Dr. Johnson left her patient at approximately 1:00 p.m. to assist another doctor in non-emergency surgery and left the repair of torn sphincter muscles and two other layers of vaginal laceration, and the treatment of tachycardia and hemorrhage to

Defendant Malchow and the Hospital staff. Dr. Johnson was then absent from Ms. Vives' delivery room for 30 to 40 minutes.

19. When Dr. Johnson left the delivery room at about 1:00 p.m., she had not even looked for, and therefore failed to discover, the large additional cervical lacerations from which Ms. Vives continued to bleed persistently.

20. In Dr. Johnson's absence, Ms. Vives continued to bleed persistently from the vaginal tear and the undiscovered cervical lacerations, causing Defendant Malchow to order the administration of an additional drug to stop bleeding.

21. At about this time, Defendant Malchow received and reported by telephone to Dr. Johnson the results of a blood test from blood drawn at 12:42 p.m. The blood test showed abnormally low hematocrit and low hemoglobin, both signs of bleeding.

22. Despite Ms. Vives' persistent bleeding, critically high pulse rate, dangerous blood pressure indications, low hematocrit and low hemoglobin, Defendant Malchow herself left Ms. Vives repeatedly to attend another patient, without checking for cervical lacerations.

23. Despite clear indications of postpartum hemorrhage, including persistent bleeding, tachycardia, unusual blood pressures, low hematocrit and low hemoglobin, neither Dr. Johnson nor Defendant Malchow notified an anesthesiologist or made any preparations whatsoever for the additional blood lines that would be necessary for rapid blood transfusion if the hemorrhage persisted.

24. At about 1:30 p.m., the labor and delivery nurses, alarmed by Ms. Vives' condition, sent for the absent Defendant Malchow because persistent bleeding and tachycardia continued.

25. When Defendant Malchow then returned to the delivery room, she at last discovered, upon examination, one of the two large cervical lacerations that Ms. Vives suffered during childbirth.

26. Either before or after she discovered the surgical laceration, Defendant Malchow again called Dr. Johnson to report persistent and uncontrolled bleeding and tachycardia.

27. At about 1:45 p.m., Dr. Johnson returned to the delivery room and, still without notifying an anesthesiologist or the operating room staff, and still without arranging for additional blood lines necessary for rapid transfusion, attempted to repair the cervical lacerations. When she could not perform the repair, Dr. Johnson packed Ms. Vives' vagina to stem the bleeding and ordered her removal to the operating room, directing all concerned in the emergency that Ms. Vives was hemorrhaging from cervical lacerations.

28. Although Ms. Vives was conscious and alert at the time, Dr. Johnson stepped out of the delivery room in order to achieve "informed consent" from Ted Vives for surgery and blood transfusion.

29. In the "pre-op" room, Dr. Johnson was incapable of establishing access for blood transfusion because Ms. Vives' blood vessels had collapsed from hypovolemia.

30. In the "pre-op" room, Ms. Vives was cold to the touch, complained of hyperventilation, was tachycardic, had low blood pressure and generally displayed the signs of hypovolemic shock.

31. Necessary IV access for a rapid blood transfusion was obtained only in the operating room, about two hours and fifteen minutes after Ms. Vives delivered her baby and began to bleed persistently from vaginal and cervical lacerations and the boggy uterus.

32. The operating room procedure began at 2:12 p.m., at which time one doctor estimated that, since the time Dr. Johnson packed Ms. Vives' vagina, Ms. Vives had bled an additional 300 cc. Although a foley catheter had been inserted at about 1:40 p.m., only 300 cc of urine was measured from the bag, confirming hypovolemia.

33. After Dr. Johnson sutured the two cervical lacerations, she performed a hazardous sharp curettage, the only purpose for which would have been to control hemorrhage. Ms. Vives' heart failed from the absence of blood at about 2:30 p.m.

34. Open heart resuscitation attempts failed, Ms. Vives' heart proved to be completely empty, and Ms. Vives was pronounced dead at 3:06 p.m.

**COUNT I
NEGLIGENCE BY DR. JOHNSON**

35. Plaintiffs here incorporate paragraphs 1 to 34.

36. As an obstetric specialist, Dr. Johnson owed Gwyneth Vives and her family the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonable well-qualified obstetricians practicing in the circumstances.

37. Dr. Johnson breached her duty of care by, among other things:

A. Failing to complete an appropriate examination for sources of blood on a post-delivery patient who was hemorrhaging and had suffered a fourth degree vaginal laceration.

B. Abandoning Ms. Vives when, her vital signs plainly unstable, she was bleeding, tachycardic, and had a repeatedly hypotonic uterus;

C. Failing to look for or to locate and identify large and dangerous cervical lacerations;

D. Failing to notify an anesthesiologist or make any preparations for rapid blood transfusion even when her patient's hemorrhage progressed;

E. Failing timely to arrange for surgical intervention to stop Ms. Vives' hemorrhage.

38. Dr. Johnson involved herself in high risk situations like Ms. Vives' even when she knew, or should have known, from massive and persuasive amounts of expert advice, that she was an unsafe practitioner in such circumstances and had previously been terminated from all surgical practice at Duke University.

39. Dr. Johnson caused and encouraged Ms. Vives and her husband to falsely believe that Dr. Johnson was properly licensed and competent to practice obstetric and gynecological surgery when the defendant knew or should have known that she was licensed only upon false information.

40. Dr. Johnson's absence of even slight care for the well-being of her patient, and her subsequent dishonest attempts to cover up her recklessness, increased the pain, damages and loss suffered by the Vives family in this case.

41. Dr. Johnson's breach of duty proximately caused Ms. Vives' death or, alternatively, vastly decreased the chance of her survival.

42. Dr. Johnson's breach of duty proximately caused, among other damages:

A. The loss to Alex Vives of his mother's love, guidance and counseling;

B. the loss to Ted Vives of his wife's society, guidance, companionship and intimate relations;

C. the loss to her entire estate of Ms. Vives' earning capacity, household services, value and enjoyment of life; and

D. the pain and suffering Ms. Vives endured prior to her unconsciousness and death.

Wherefore, the plaintiffs seek the court's judgment requiring defendant Johnson to pay compensatory and punitive damages for wrongful death to Gwyneth Vives's estate, the plaintiffs' litigation costs, and awarding such further relief as the court deems just.

COUNT II RECKLESS INDIFFERENCE

43. The plaintiffs here incorporate paragraphs 1 to 42.

44. At the time she abandoned the delivery room, Dr. Johnson recognized and willfully ignored the signs that Ms. Vives was unstable, hemorrhaging, and had a

substantial likelihood of suffering death or other serious injury without the constant and attentive care of a trained obstetrical physician and surgeon.

45. Dr. Johnson also knew that she was practicing medicine in a high risk situation when her license was based upon falsehoods and she was, after years of practice in North Carolina, notorious as an unsafe and incompetent practitioner.

46. Knowing that this situation posed a substantial risk of death, Dr. Johnson deliberately ignored the risk and abandoned her patient.

47. As the proximate result of Dr. Johnson's reckless indifference, Ms. Vives died, or alternatively, suffered a decreased chance of survival.

Wherefore, the plaintiffs seek the court's judgment requiring defendant Johnson to pay compensatory and punitive damages for wrongful death to Gwyneth Vives's estate, the plaintiff's litigation costs, and awarding such further relief as the court deems just.

**COUNT III
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

48. The plaintiffs here incorporate paragraphs 1 to 47.

49. Shortly after the death of Gwyn Vives, Dr. Johnson immediately began telling malicious falsehoods about the cause of Ms. Vives's death.

50. Referring in a cold and cavalier manner to "the Gwyn thing," she began to state that Gwyn had died, not from persistent bleeding for well over two hours under Dr. Johnson's care, but from an extremely rare condition called Amniotic Fluid Embolism resulting in disseminated intravascular coagulation.

51. Moreover, Dr. Johnson publicly stated to hospital staff that the Medical Review Commission had "cleared her" of wrong doing.

52. Dr. Johnson knew or should have known, but recklessly disregarded, the risk that referring to Ms. Vives's death as "the Gwyn thing" and telling clear and obvious falsehoods about the cause of Ms. Vives's death would be certain to severely distress the Vives family.

53. In particular, Dr. Johnson maliciously denied what Ted Vives saw with his own eyes, the huge pool of blood on the floor of the delivery room that signified extreme emergency to all medical personnel but Dr. Johnson.

54. Dr. Johnson's cavalier references to the death of her patient and her lies about the cause of death and the results of the Medical Review Commission constitute actions far outside the norms of acceptable behavior in our society.

55. Her actions also caused extreme, severe and foreseeable emotional distress to Ted Vives.

Wherefore, plaintiff Ted Vives seeks the court's judgment requiring defendant Johnson to pay to Mr. Vives compensatory and punitive damages, his litigations costs, and awarding such further relief as the court deems just.

**COUNT IV
ACTUAL OR CONSTRUCTIVE FRAUD**

56. The plaintiffs here incorporate paragraphs 1 to 55.

57. In August of 2001, Dr. Johnson knowingly made the untrue or misleading statements listed in ¶10 of this complaint to the New Mexico Board of Medical Examiners.

58. It is the public policy of the State of New Mexico, for the express purpose of protecting patients like Ms. Vives, that physicians applying for a license to practice medicine in New Mexico must tell the truth on their applications.

59. A physician has a fiduciary obligation to tell the truth to her patients and to correct misapprehensions that her actions have created.

60. Dr. Johnson knew, recklessly ignored, or should have known, that crucial and material statements she made to the Medical Examiners were false or misleading.

61. The defendant made the false statements intending that the Board of Medical Examiners would, in reliance thereon, certify her to practice medicine in New Mexico and thereby deceive or mislead her patients with her license.

62. The defendant intended or had reason to expect that the false information she conveyed both by affirmative statements and omissions to the Board of Medical Examiners would deceive pregnant mothers, like Ms. Vives, and the families of pregnant mothers, like Ted and Alex Vives.

63. In order to profit from her practice of obstetrics and gynecology, Dr. Johnson intended Ms. Vives and her family to rely upon the false representation that she was a properly certified, licensed and competent physician under New Mexico law.

64. Ms. Vives and her family in fact relied upon the false information that Dr. Johnson was properly authorized and minimally competent to practice obstetrics and gynecological medicine in New Mexico.

65. But for Dr. Johnson's misrepresentations to the Board of Medical Examiners, Dr. Johnson would not have received a license, the Viveses would not have

believed Dr. Johnson authorized to practice medicine, and Ms. Vives would not have died on December 21, 2001.

66. Dr. Johnson's misrepresentations were a proximate cause of Ms. Vives' death and the damages that surround and now flow from this death.

Wherefore, the plaintiffs seek the judgment of this court ordering defendant Johnson to pay compensatory and punitive damages for wrongful death to Gwyneth Vives' estate, the plaintiff's litigation costs, and otherwise awarding such relief as the court deems just.

**COUNT V
NEGLIGENCE BY JEANNIE MALCHOW**

67. The plaintiffs here incorporate paragraphs 1 to 66.

68. As a midwife, Ms. Malchow owed Gwyneth Vives and her family the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonable well-qualified midwives practicing in the circumstances.

69. Ms. Malchow breached her duty of care in the ways described above and, in addition, by her complete failure to seek competent aid and treatment for Ms. Vives when Ms. Malchow knew or should have known she was dealing with a dire emergency she was incompetent and untrained to handle.

70. But for Ms. Malchow's negligence, Ms. Vives would be alive.

71. Ms. Malchow's breach of duty proximately caused Ms. Vives' death or greatly reduced her chance of survival.

Wherefore, the plaintiffs seek the court's judgment requiring defendant Malchow to pay compensatory damages for wrongful death to Gwyneth Vives's estate, the plaintiff's litigation costs, and awarding such further relief as the court deems just.

**COUNT VI
NEGLIGENT HIRING, RETENTION, TRAINING, CREDENTIALING AND
SUPERVISION OF DEFENDANT JOHNSON BY INSTITUTIONAL DEFENDANTS**

72. The plaintiffs here incorporate paragraphs 1 to 71.

73. Defendants Women's Health, the Hospital and Banner owed Gwyneth Vives and her family the duty to hire, train and supervise physicians who could discharge their duties with reasonable care and competence and whose presence would not create an unreasonable risk of harm to their patients.

74. At the time they hired Dr. Johnson and granted her hospital privileges to practice obstetric and gynecological medicine, defendants Women's Health, the Hospital and Banner knew, or should have known, that Dr. Johnson had been forced to resign from Duke University Hospital and to surrender her hospital privileges there because:

A. She had an extremely high complication rate by comparison to her peers in obstetric and gynecological surgical procedures;

B. All reasonable efforts had been made by her supervisors at Duke University to remediate and mentor Dr. Johnson's surgical incompetence, but the efforts failed and Dr. Johnson remained an "unsafe practitioner;"

C. Nurses and anesthesiologists at Duke were unwilling to work with her because of their fear for the safety of the Dr. Johnson's patients;

D. Dr. Johnson should not be permitted unsupervised practice of obstetrics unless she underwent at least two years of "closely supervised extensive surgical re-training"; and

E. Dr. Johnson tried, but failed, to obtain hospital privileges in North Carolina because she was a notoriously unsafe practitioner.

75. The institutional defendants knew or should have known that, in her practice at the Hospital and for Women's Health, Dr. Johnson displayed incompetence, carelessness, reckless indifference, and even sadism and cruelty, toward her patients.

76. The institutional defendants should have foreseen that Dr. Johnson's unsupervised and unfettered decision-making in the practice of obstetrics and gynecology would create an unreasonable risk of harm to Gwyneth Vives and her family.

77. By granting special privileges to and retaining Dr. Johnson when they knew or should have known that Dr. Johnson was unfit to practice high-risk medicine, the institutional defendants breached their duty of care to the Vives family.

78. The institutional defendants breach of their duty to the plaintiffs proximately caused Gwyneth Vives's death or greatly reduced her chances of survival.

Wherefore, the plaintiffs seek the court's judgment requiring defendants Women's Health, Hospital and Banner to pay compensatory damages for wrongful death to Gwyneth Vives's estate, the plaintiff's litigation costs, and awarding such relief as the court deems just.

COUNT VII
PUNITIVE DAMAGES FOR GROSS NEGLIGENCE AND RATIFICATION

79. The plaintiff here incorporates paragraphs 1 to 78.

80. Even after they learned of Dr. Johnson's grossly negligent, reckless, and fraudulent conduct, the institutional defendants ratified her behavior, continued to extend hospital privileges to her, and stood behind Dr. Johnson against her patients, endangering, not only Ms. Vives, but many other women under their care.

81. The actions of the institutional defendants, taken both individually and as a whole, displayed a pattern of deliberate and reckless indifference toward the basic safety of Ms. Vives and the other women under Dr. Johnson's care.

82. The defendants will continue to support, hide and ratify the actions of Dr. Johnson and other dangerous physicians if they are not punished.

Wherefore, the plaintiff seeks the court's award of punitive damages against Women's Health, the Hospital and Banner, the plaintiff's litigation costs, and awarding such further relief as the courts deem just.

COUNT VIII
VICARIOUS LIABILITY OF INSTITUTIONAL DEFENDANTS

83. The plaintiffs here incorporate paragraphs 1 to 82.

84. Defendants Johnson and Malchow committed or omitted the acts complained herein during the course and in the scope of their employment with Los Alamos Women's Health Services.

85. Defendants Johnson and Malchow committed or omitted the acts complained under the actual and apparent authority of the Hospital and Banner.

86. The Hospital and Banner hold themselves out as "offering a complete line of personalized maternal and child health services in a warm, caring family environment" by which it intends to include, and was in fact understood to include, the services of Women's Health and Dr. Johnson.

87. The Hospital and Banner tell women:

"We're here to care for you throughout your pregnancy, labor and delivery. Tours of our maternal and child health unit are available, as are prenatal classes taught by experienced LAMC nurses. . . Our LDRPs (labor, delivery, recovery, post-partum rooms) offer a warm, home-like environment for this family-centered event, with state of the art medical care just a heartbeat away."

By this language the Hospital and Banner intend to include, and were understood to include, the services of Women's Health and Dr. Johnson.

88. Nurses employed by the Hospital and Banner provide medical care throughout labor and delivery on the Hospital and Banner's behalf under the direction of Women's Health partners and employees.

89. The Women's Health portion of the hospital is a part of, physically within, thoroughly integrated with, and offered as a function of the Hospital and Banner.

90. Defendant Women's Health coordinates on the Hospital's behalf and under the actual and apparent authority of the Hospital and Banner the "personalized maternal health services" offered directly by the Hospital and Banner.

Wherefore, the plaintiffs seek the court's judgment requiring Women's Health, the Hospital and Banner to pay all damages caused by Dr. Johnson, the plaintiffs' litigation costs, and such further assessments as the court deems just.

COUNT IX
UNFAIR TRADE PRACTICES BY ALL DEFENDANTS

91. The plaintiffs here incorporate paragraphs 1 to 90.

92. In advertising their services, the defendants made false or misleading oral and written statements in connection with their services that tended to and did in fact deceive the Viveses.

93. Even when the defendants learned that their advertising statements were false and misleading, the defendants continued to make them and failed to correct them.

94. In particular, the defendants statements regarding the qualifications of Dr. Johnson:

A. caused confusion or misunderstanding as to the certification of her services;

B. represented Dr. Johnson's services as having approvals, sponsorships and affiliations that they did not have; and

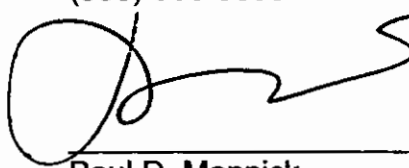
C. represented their services as caring and careful when they patently were not.

95. In their professional status, the defendants took unconscionable advantage of the Vives' lack of knowledge regarding the quality of care Dr. Johnson was capable of providing.

Wherefore, the plaintiffs seek the court's judgment awarding treble compensatory damages, their costs and attorney's fees for the need to pursue this litigation and such further relief as the court deems just.

Respectfully submitted,

COPPLER & MANNICK, P.C.
Attorneys for the Vives family
645 Don Gaspar Avenue
Santa Fe, New Mexico 87505
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Paul D. Mannick

CERTIFICATE OF SERVICE

I caused a true copy of the foregoing FIRST AMENDED COMPLAINT to be mailed to:

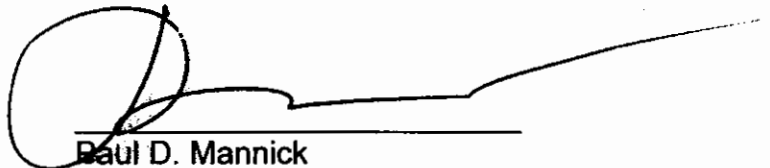
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on this 13th day of August, 2002.



Paul D. Mannick

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FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF LOS ALAMOS

FILED
FIRST JUDICIAL
DISTRICT COURT JH
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THOMAS EDWARD (TED) VIVES, for
himself, as the next friend of Alex Vives and
as personal representative of GWYNETH
CLAIRE VIVES, and ALEX VIVES a minor,

Plaintiffs,

vs.

No. D-0132-CV-200200933

PAMELA JOHNSON, M.D., JEANNIE
MALCHOW, LOS ALAMOS WOMEN'S
HEALTH SERVICES, P.C., a New Mexico
Professional Corporation, THE LOS ALAMOS
MEDICAL CENTER, INC., a New Mexico
corporation and BANNER HEALTH SYSTEM,
an Arizona corporation, d/b/a Los Alamos
Medical Center,

Defendants.

**ANSWER TO FIRST AMENDED COMPLAINT FOR
WRONGFUL DEATH BY MEDICAL NEGLIGENCE AND MALPRACTICE;
FOR FRAUD AND CONSTRUCTIVE FRAUD, FOR NEGLIGENT
HIRING, TRAINING, RETENTION, SUPERVISION AND CREDENTIALING
AND FOR WILFUL INFLICTION OF EMOTIONAL DISTRESS**

Defendant Los Alamos Women's Health Services, P.C. (LAWHS) through counsel Miller,
Stratvert & Torgerson, P.A. answers Plaintiff's First Amended Complaint for Wrongful Death by
Medical Negligence and Malpractice; for Fraud and Constructive Fraud, for Negligent Hiring,
Training, Retention, Supervision and Credentialing and for Wilful Infliction of Emotional Distress
(hereafter First Amended Complaint) as follows:

ANSWER TO SUMMARY OF CENTRAL ALLEGATIONS

1. LAWHS denies Plaintiff is entitled to damages arising out of Gwyneth Vives' death.

A. LAWHS denies the allegations contained in Paragraph A of Plaintiff's First Amended Complaint.

B. The allegations contained in Paragraph B of Plaintiff's First Amended Complaint appear to pertain to Defendants Los Alamos Medical Center and Banner Health System and therefore do not require an answer from LAWHS. To the extent the allegations contained in Paragraph B can be construed as requiring an answer from LAWHS, all such allegations are denied.

C. The allegations contained in Paragraph C appear to pertain to Defendant Dr. Johnson and therefore do not require an answer from LAWHS. To the extent the allegations contained in Paragraph C are construed as requiring an answer from LAWHS, those allegations are denied.

D. The allegations contained in Paragraph D appear to pertain to Defendant Dr. Johnson and therefore do not require an answer from LAWHS. To the extent the allegations contained in Paragraph D are construed as requiring an answer from LAWHS, those allegations are denied.

E. LAWHS denies the allegations contained in Paragraph E.

RESPONSE TO PARTIES

2. On information and belief, LAWHS admits the allegations contained in Paragraph 2.

3. LAWHS is without sufficient information to admit or deny the allegations contained in Paragraph 3 and therefore those allegations are denied.

4. The allegations contained in Paragraph 4 appear to pertain to Defendant Los Alamos Medical Center and therefore do not require an answer from LAWHS. To the extent the allegations contained in Paragraph 4 are construed as requiring an answer from LAWHS, those allegations are denied.

5. The allegations contained in Paragraph 5 appear to pertain to Defendant Banner Health System and therefore do not require an answer from LAWHS. To the extent the allegations contained in Paragraph 5 are construed as requiring an answer from LAWHS, those allegations are denied.

6. LAWHS admits that it performs maternal health services. The remaining allegations contained in Paragraph 6 are denied.

7. ~~Defendant Banner Health System~~ and upon information and belief that she resides in Los Alamos. The remaining allegations contained in Paragraph 7 are denied.

8. ~~LAWHS admits Dr. Johnson practiced obstetrics and gynecology as an employee of LAWHS at the pertinent times at issue in Plaintiff's lawsuit.~~ The remaining allegations contained in Paragraph 8 are denied.

RESPONSES TO GENERAL ALLEGATIONS

9. Answering Paragraph 9, LAWHS admits it hired Dr. Johnson as an employee obstetrician/gynecologist. To the extent that the remaining allegations of Paragraph 9 contain any factual allegations directed towards LAWHS, all such allegations are denied.

10. (A), (B) and (C) The allegations contained in Paragraph 10 and sub-paragraphs (A), (B) and (C) appear to pertain to Defendant Dr. Johnson and therefore do not require an answer from LAWHS. To the extent the allegations contained in those paragraphs are construed as requiring an answer from LAWHS, those allegations are denied.

11. To the extent Paragraph 11 contains any factual allegations directed towards LAWHS, all such allegations are denied.

12. LAWHS admits the allegations contained in Paragraph 12.

13. With regard to Paragraph 13, LAWHS admits Dr. Johnson attempted to induce Ms. Vives' labor on December 20 and December 21, 2001 and that Alex Vives was born by vaginal delivery on December 21, 2001, at 11:55 a.m. The remaining allegations of Paragraph 13 are denied.

14. The allegations contained in Paragraph 14 appear to pertain to Defendant Dr. Johnson and therefore do not require an answer from LAWHS. To the extent the allegations contained in Paragraph 14 are construed as requiring an answer from LAWHS, those allegations are denied.

15. Answering Paragraph 14, LAWHS admits that during the birth of her healthy son, Ms. Vives sustained a fourth degree vaginal tear that extended from her vagina to her rectum and cervical lacerations. The remaining allegations of Paragraph 15 are denied. To the extent the allegations of Paragraph 15 refer to select portions of the medical records out of context, these inaccurate and incomplete reference to the records are denied.

16. ~~Answering Paragraph 16, LAWHS admits that about 12:25 pm on December 21, 2001, midwife Matchow called Dr. Johnson to repair a vaginal-rectal tear.~~ The remaining allegations of Paragraph 16 are denied. To the extent the allegations of Paragraph 16 refer to select portions of the medical records out of context, these inaccurate and incomplete references are denied.

17. Answering Paragraph 17, LAWHS admits Ms. Vives' pulse rose from 146 to 174 and that the record states her uterus became boggy and there was some bleeding. The remaining allegations of Paragraph 17 are denied. To the extent that the allegations of Paragraph 17 refer to select portions of the medical records out of context, these inaccurate and incomplete references are denied.

18. Answering Paragraph 18, LAWHS admits Dr. Johnson left the delivery room at approximately 1:00 p.m. to assist in an unrelated surgery. LAWHS further admits Jeanne Malchow remained to finish the fourth degree tear. The remaining allegations of Paragraph 18 are denied. To the extent the allegations of Paragraph 18 refer to select portions of the medical records out of context, these inaccurate and incomplete references are denied.

19. The allegations of Paragraph 19 are denied. To the extent the allegations of Paragraph 19 refer to select portions of the medical records out of context, these allegations are denied.

20. The allegations contained in Paragraph 20 are denied.

21. The allegations contained in Paragraph 21 are denied. To the extent the allegations of Paragraph 21 refer to select portions of the medical records out of context, these inaccurate and incomplete references are denied.

22. The allegations contained in Paragraph 22 are denied. To the extent the allegations of Paragraph 22 refer to select portions of the medical record out of context, these inaccurate and incomplete references are denied.

23. The allegations contained in Paragraph 23 are denied. To the extent Paragraph 23 refers to select portions of the medical record out of context, these inaccurate and incomplete references are denied.

24. The allegations contained in Paragraph 24 are denied. To the extent Paragraph 24 refers to select portions of the medical record out of context, these inaccurate and incomplete references are denied.

25. Answering Paragraph 25, LAWHS admits Nurse Malchow discovered a cervical laceration. The remaining allegations contained in Paragraph 25 are denied.

26. LAWHS admits Nurse Malchow called Dr. Johnson to report bleeding. The remaining allegations contained in Paragraph 26 are denied.

27. With regard to the allegations contained in Paragraph 27, ~~LAWHS admits Dr. Johnson attempted repair of the cervical lacerations when Ms. Vives was in the delivery room and that she packed Ms. Vives' vagina and that Ms. Vives was transported to the operating room.~~ The remaining allegations of Paragraph 27 are denied. To the extent the allegations of Paragraph 27 refer to select portions of the medical records out of context, these inaccurate and incomplete references are denied.

28. ~~LAWHS admits Ms. Vives was conscious and alert and that Dr. Johnson stepped out of the delivery room to discuss her decision to take Ms. Vives to the operating room for surgery.~~ The remaining allegations contained in Paragraph 28 are denied.

29. The allegations contained in Paragraph 29 are denied.

30. With regard to the allegations contained in Paragraph 20, LAWHS admits Ms. Vives was cold, complained of hyperventilation and was tachycardic. The remaining allegations contained in Paragraph 30 are denied. To the extent the allegations of Paragraph 30 refer to select portions of the medical records out of context, these inaccurate and incomplete references are denied.

31. With regard to the allegations contained in Paragraph 31, LAWHS admits IV access was obtained in the operating room. The remaining allegations contained in Paragraph 31 are denied.

32. With regard to the allegations contained in Paragraph 32, LAWHS admits the operating room procedure began at approximately 2:12 p.m. and that the doctor removing the vaginal pack estimated an additional 300 ccs of blood. LAWHS also admits the catheter bag

measured 300 ccs of urine. The remaining allegations contained in Paragraph 32 are denied. To the extent the allegations of Paragraph 32 refer to select portions of the medical records out of context, these inaccurate and incomplete references are denied.

33. With regard to the allegations contained in Paragraph 33, LAWHS admits Dr. Johnson performed a curettage and that Ms. Vives' heart experienced failure at approximately 2:30 p.m. The remaining allegations of Paragraph 33 are denied. To the extent the allegations of Paragraph 33 refer to select portions of the medical records out of context, these inaccurate and incomplete references are denied.

34. LAWHS admits the allegations contained in Paragraph 34.

**ANSWER TO COUNT I
ALLEGED NEGLIGENCE BY DR. JOHNSON**

35. LAWHS incorporates by reference its answers to Paragraphs 1 through 34 of Plaintiff's Amended Complaint as though fully set forth herein.

36. LAWHS admits Dr. Johnson owed Ms. Vives a duty to possess and apply the knowledge and use the skill and care ordinarily used by reasonably well-qualified obstetricians practicing similar circumstances. The remaining allegations contained in Paragraph 36 are denied.

37. Paragraph 37 including subparts (A) through (E) appear to contain no factual allegations directed towards LAWHS. To the extent Paragraph 28 contains any factual allegations directed towards LAWHS, all such allegations are denied.

38. - 40. Paragraphs 38 through 40 appear to contain no factual allegations directed towards LAWHS. To the extent Paragraphs 38 - 40 contain any factual allegations directed towards LAWHS, all such allegations are denied.

41. LAWHS denies the allegations contained in Paragraph 41.

42. Paragraph 42 including subparts (A) through (D) appear to contain no factual allegations directed towards LAWHS. To the extent Paragraph 42 including subparts contain any factual allegations directed towards LAWHS, all such allegations are denied.

**ANSWER TO COUNT II
ALLEGED RECKLESS INDIFFERENCE**

43. LAWHS incorporates by reference its answers to Paragraphs 1 through 42 of Plaintiff's First Amended Complaint as though fully set forth herein.

44.- 47. Paragraphs 44 through 47 appear to contain no factual allegations directed towards LAWHS. To the extent Paragraphs 44 through 47 contain any factual allegations directed toward LAWHS, all such allegations are denied.

**ANSWER TO COUNT III
ALLEGED INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

48. LAWHS incorporates by reference its answers to Paragraphs 1 through 47 of Plaintiff's First Amended Complaint as though fully set forth herein.

49. - 55. Paragraphs 49 through 55 appear to contain no factual allegations directed towards LAWHS. To the extent Paragraphs 49 through 55 contain any factual allegations directed towards LAWHS, all such allegations are denied.

**ANSWER TO COUNT IV
ALLEGED ACTUAL OR CONSTRUCTIVE FRAUD**

56. LAWHS incorporates by reference its answer to Paragraphs 1 through 55 of Plaintiff's First Amended Complaint.

57. - 66. Paragraphs 57 through 66 appear to contain no factual allegations directed towards LAWHS. To the extent Paragraphs 57 through 66 contain any factual allegations directed towards LAWHS, all such allegations are denied.

**ANSWER TO COUNT V
ALLEGED NEGLIGENCE BY JEANNIE MALCHOW**

67. LAWHS incorporates by reference its answers to Paragraphs 1 through 66 of Plaintiff's First Amended Complaint as though fully set forth herein.

68. LAWHS admits Nurse Malchow owed Ms. Vives a duty to possess and apply the knowledge and use the skill and care ordinarily used by reasonably well-qualified midwives practicing under similar circumstances. The remaining allegations contained in Paragraph 68 are denied.

69. – 71. The allegations contained in Paragraphs 69 through 71 are denied.

**ANSWER TO COUNT VI
ALLEGED NEGLIGENT HIRING, RETENTION AND TRAINING
OF DEFENDANT JOHNSON BY INSTITUTIONAL DEFENDANTS**

72. LAWHS incorporates by reference its answers to Paragraphs 1 through 71 of Plaintiffs' First Amended Complaint as though fully set forth herein.

73. LAWHS admits it owed Ms. Vives a duty to hire reasonably well-qualified physicians and train and supervise them as necessary. The remaining allegations contained in Paragraph 73 are denied.

74. – 78. The allegations contained in Paragraph 74 including subparts (A) through (E) through 78 are denied.

**ANSWER TO COUNT VII
ALLEGED PUNITIVE DAMAGES FOR GROSS NEGLIGENCE
AND RATIFICATION**

79. LAWHS incorporates by reference its answers to Paragraphs 1 through 78 of Plaintiff's First Amended Complaint as though fully set forth herein.

80. – 82. The allegations contained in Paragraph 80 through 82 are denied.

**ANSWER TO COUNT VIII
ALLEGED VICARIOUS LIABILITY OF INSTITUTIONAL DEFENDANTS**

83. LAWHS incorporates by reference its answer to Paragraphs 1 through 82 of Plaintiff's First Amended Complaint as though fully set forth herein.

84. LAWHS admits that in providing medical and nursing care for Ms. Vives Dr. Johnson and Nurse Malchow acted within the course and scope of their employment with LAWHS. The remaining allegations contained in Paragraph 84 are denied.

85. – 90. To the extent the allegations contained in Paragraphs 85 through 90 contain factual allegations directed towards LAWHS, those allegations are denied.

**ANSWER TO COUNT IX
ALLEGED UNFAIR TRADE PRACTICES BY ALL DEFENDANTS**

91. LAWHS incorporates by reference its answers to Paragraphs 1 through 90 of Plaintiff's First Amended Complaint as fully set forth herein.

92. – 95. LAWHS denies the allegations contained in Paragraph 92, 93, 94 including sub-parts (A) through (C), and 95.

FIRST DEFENSE

LAWHS denies all allegations contained in Plaintiff's First Amended Complaint not specifically admitted herein.

SECOND DEFENSE

Plaintiff's First Amended Complaint, in whole or in part, fails to state a claim upon which relief can be granted against LAWHS.

THIRD DEFENSE

LAWHS, at all times material to this action, was a qualified healthcare provider within the meaning of the New Mexico Medical Malpractice Act, N.M.Stat. Ann. §§41-5-1 to 28 (1978 and Cum. Supp. 1992), and Plaintiffs' claims against LAWHS are governed by provisions of that Act.

FOURTH DEFENSE

Plaintiffs' claims are barred to the extent that the injury and damages complained of were caused or contributed to by the fault of others for which LAWHS is neither liable nor responsible.

FIFTH DEFENSE

The damages of which Plaintiffs complain resulted from an unavoidable medical complication.

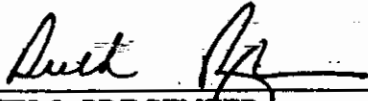
SIXTH DEFENSE

Plaintiffs' claim for punitive damages is barred by the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America as well as Article II, §10; Article II, §13 and Article II, §19 of the Constitution of the State of New Mexico, insofar as under the facts of this case any award of punitive damages is not justified and an award of punitive damages would constitute a denial of equal protection, a denial of due process and the imposition of an excessive fine.

WHEREFORE Defendant Los Alamos Women's Health Services, P.C. having fully answered prays the Plaintiff's First Amended Complaint be dismissed with prejudice or, in the alternative, that judgment be entered in its favor, for costs incurred in connection with this action and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By 
RUTH O. PREGENZER
JENNIFER DAVIS HALL
Attorneys for Defendant Los Alamos Women's
Health Services, P.C.
Post Office Box 25687
Albuquerque, New Mexico 87125
Telephone: (505) 842-1950
Facsimile: (505) 243-4408

I certify that a copy of the
foregoing was mailed to:

Paul D. Mannick
Coppler & Mannick, P.C.
645 Don Gaspar Avenue
Santa Fe, New Mexico 87505
Attorneys for Plaintiffs

Ben Allen
Hatch, Allen & Shepherd, P.A.
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Albuquerque, New Mexico 87190-0488
Attorneys for Defendant Pamela Johnson, M.D.

W. Robert Lasater, Jr.
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Attorneys for Defendant The Los Alamos
Medical Center, Inc., and Banner Health
System

Norman Gagne
Butt, Thornton & Baehr, P.C.
P.O. Box 3170
Albuquerque, New Mexico 87190-3170
Attorneys for Defendant Jeannie Malchow

on this 19 day of August, 2002



RUTH O. PREGENZER

FIRST JUDICIAL DISTRICT COURT

02 AUG 23 AM 10:05

C-1113

STATE OF NEW MEXICO
COUNTY OF LOS ALAMOS
FIRST JUDICIAL DISTRICT COURT

THOMAS EDWARD (TED) VIVES, for
himself, as the next friend of Alex Vives and
as personal representative of GWYNETH
CLAIRE VIVES, and ALEX VIVES, a minor,

Plaintiffs,

v.

No. D-0132-CV-2002-00933

PAMELA JOHNSON, M.D., JEANNIE
MALCHOW, LOS ALAMOS WOMEN'S
HEALTH SERVICES, P.C., a New Mexico
Professional Corporation, THE LOS ALAMOS
MEDICAL CENTER, INC., a New Mexico
corporation, and BANNER HEALTH SYSTEM,
an Arizona corporation, d/b/a Los Alamos
Medical Center,

Defendants.

ANSWER TO FIRST AMENDED COMPLAINT
OF DEFENDANT PAMELA JOHNSON, M.D.

The Defendant Pamela Johnson, M.D., by and through her attorneys, Hatch, Allen & Shepherd, P.A., answers Plaintiffs' First Amended Complaint as follows:

FIRST DEFENSE

1. Paragraph 1 is denied.
2. Paragraphs 2 and 3 are admitted.
3. Answering paragraph 4, Defendant admits that Los Alamos Medical Center is a medical provider. The remaining allegations of paragraph 4 are denied.

4. Defendant is without sufficient information to admit or deny the allegations of paragraph 5 and therefore denies the same.

5. Answering paragraph 6, Defendant admits that Los Alamos Women's Health Services, P.C. performs maternal health services. The remaining allegations of paragraph 6 are denied.

6. Answering paragraph 7, Defendant admits that Jeannie Malchow is an employee of Los Alamos Women's Health Services, P.C. The remaining allegations of paragraph 7 are denied. Defendant is without sufficient information to admit or deny the residency of Jeannie Malchow and therefore denies the same.

7. Answering paragraph 8, Defendant admits that at the pertinent times, Dr. Johnson practiced obstetrics and gynecology as an employee of Women's Health. The remaining allegations of paragraph 8 are denied.

8. Answering paragraph 9, Defendant admits that Women's Health hired Dr. Johnson as an obstetrician/gynecologist. The remaining allegations of paragraph 9 are denied.

9. Paragraphs 10 and 11 are denied.

10. Paragraph 12 is admitted.

11. Answering paragraph 13, Defendant admits that Dr. Johnson ordered the resumption of labor inducing drugs on the morning of December 21, and that Alex Vives was born at 11:55 a.m. by spontaneous vaginal delivery. The remaining allegations of paragraph 13 are denied.

12. Answering paragraph 14, Defendant admits that Dr. Johnson was absent during the delivery, and that she was called to repair a vaginal laceration. The remaining allegations of paragraph 14 are denied.

13. Answering paragraph 15, Defendant admits that Jeannie Malchow attended the delivery of the baby, and that during the delivery Ms. Vives suffered a fourth degree vaginal tear and cervical lacerations. The remaining allegations of paragraph 15 are denied.

14. Answering paragraph 16, Defendant admits that Malchow called Dr. Johnson to repair the vaginal rectal tear. The remaining allegations of paragraph 16 are denied.

15. Answering paragraph 17, Defendant admits that Ms. Vives' pulse rose from 146 to 174. The remaining allegations of paragraph 17 are denied.

16. Answering paragraph 18, Defendant admits that Dr. Johnson left to assist another doctor in non-emergency surgery. The remaining allegations of paragraph 18 are denied.

17. Paragraphs 19, 20, 21, 22, 23 and 24 are denied.

18. Answering paragraph 25, Defendant admits that Malchow discovered a cervical laceration that Ms. Vives suffered during childbirth. The remaining allegations of paragraph 25 are denied.

19. Answering paragraph 26, Defendant admits that Malchow called Dr. Johnson to report bleeding and tachycardia. The remaining allegations of paragraph 26 are denied.

20. Answering paragraph 27, Defendant admits that Dr. Johnson returned to the delivery room and attempted to repair cervical lacerations; that Dr. Johnson packed Ms. Vives'

vagina and ordered her removal to the operating room. The remaining allegations of paragraph 27 are denied.

21. Answering paragraph 28, Defendant admits that Ms. Vives was conscious and alert, and that Dr. Johnson stepped out of the delivery room to talk with her. The remaining allegations of paragraph 28 are denied.

22. Paragraph 29 is denied.

23. Answering paragraph 30, Defendant admits that in the pre-op room, Ms. Vives complained of hyperventilation. The remaining allegations of paragraph 30 are denied.

24. Answering paragraph 31, Defendant admits that necessary IV access for a rapid blood transfusion was obtained in the operating room. The remaining allegations of paragraph 31 are denied.

25. Answering paragraph 32, Defendant admits that the operating room procedure began at 2:12 p.m., that one doctor estimated that Ms. Vives had bled an additional 300 cc, and that 300 cc of urine was measured from the bag. The remaining allegations of paragraph 32 are denied.

26. Answering paragraph 33, Defendant admits that after Dr. Johnson sutured the two cervical lacerations, she performed a curettage, and that Ms. Vives' heart failed at about 2:30 p.m. The remaining allegations of paragraph 33 are denied.

27. Paragraph 34 is admitted.

28. Answering paragraph 35, Defendant incorporates the answers set forth above.

29. Answering paragraph 36, Defendant admits that Dr. Johnson owed Gwyneth Vives the duty prescribed by New Mexico law. The remaining allegations of paragraph 36 are denied.

30. Paragraphs 37, 38, 39, 40, 41 and 42 are denied.

31. Answering paragraph 43, Defendant incorporates the answers set forth above.

32. Paragraphs 44, 45, 46 and 47 are denied.

33. Answering paragraph 48, Defendant incorporates the answers set forth above.

34. Paragraph 49 is denied.

35. Answering paragraph 50, Defendant admits that she said that Gwyn Vives died from an extremely rare condition called Amniotic Fluid Embolism resulting in disseminated intravascular coagulation. The remaining allegations of paragraph 50 are denied.

36. Paragraphs 51, 52, 53, 54 and 55 are denied.

37. Answering paragraph 56, Defendant incorporates the answers set forth above.

38. Paragraph 57 is denied.

39. Answering paragraph 58, Defendant admits that physicians for a license to practice medicine in New Mexico must tell the truth on their applications. The remaining allegations of paragraph 58 are denied.

40. Paragraphs 59, 60, 61, 62, 63, 64, 65 and 66 are denied.

41. Answering paragraph 67, Defendant incorporates the answers set forth above.

42. Answering paragraph 68, Defendant states that there are no allegations therein pertaining to this Defendant. To the extent that any allegations in paragraph 68 pertain to this Defendant, they are denied.

43. Paragraphs 69, 70 and 71 are denied.

44. Answering paragraph 72, Defendant incorporates the answers set forth above.

45. Answering paragraph 73, Defendant states that there are no allegations therein pertaining to this Defendant. To the extent that there are any allegations in paragraph 73 pertaining to this Defendant, they are denied.

46. Paragraphs 74, 75, 76, 77 and 78 are denied.

47. Answering paragraph 79, Defendant incorporates the answers set forth above.

48. Paragraphs 80, 81 and 82 are denied.

49. Answering paragraph 83, Defendant incorporates the answers set forth above.

50. Answering paragraph 84, Defendant admits that Dr. Johnson acted herein during the course and in the scope of her employment with Los Alamos Women's Health Services. The remaining allegations of paragraph 84 are denied.

51. Paragraph 85 is denied.

52. Defendant is without sufficient information to admit or deny the allegations of paragraphs 86 and 87 and therefore denies the same.

53. Paragraphs 88, 89 and 90 are denied.

54. Answering paragraph 91, Defendant incorporates the answers set forth above.

55. Paragraphs 92, 93, 94 and 95 are denied.

SECOND DEFENSE

Plaintiffs' First Amended Complaint fails to state a claim in whole, or in part, upon which relief can be granted against this Defendant.

THIRD DEFENSE

Counts II, III, V, V, VI, VII, VIII and IX fail to state claims upon which relief can be granted against this Defendant.

FOURTH DEFENSE

At all times material, Defendant was a qualified health care provider under the New Mexico Medical Malpractice Act. Plaintiffs' recovery, if any, is therefore limited to the remedies provided under the Act.

FIFTH DEFENSE

If Defendant was negligent or at fault, which is specifically denied, then Plaintiffs' damages were proximately caused by the negligence of others, which negligence was a proximate cause of Plaintiffs' damages and reduces Plaintiffs' recovery herein on a comparative basis.

SIXTH DEFENSE

Plaintiffs' claim for punitive damages is barred by the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, as well as Article 2 of the Constitution of the State of New Mexico, insofar as under the facts of this case any award of punitive damages is not justified and an award of punitive damages would constitute a denial of equal protection, a denial of due process and the imposition of an excessive fine.

WHEREFORE, Defendant Pamela Johnson, M.D., prays that Plaintiffs' First Amended Complaint be dismissed, for her costs, and for such other and further relief as the Court deems just and proper.

HATCH, ALLEN & SHEPHERD, P.A.

By: 

Ben M. Allen
Attorneys for Defendant, Pamela Johnson, MD
P.O. Box 30488
Albuquerque, NM 87190-0488
(505) 341-0110

I hereby certify that a copy of the foregoing pleading was mailed to opposing counsel of record on this 22 day of August, 2002 as follows:

Paul D. Mannick, Esq.
Coppler & Mannick, P.C.
645 Don Gaspar Avenue
Santa Fe, New Mexico 87505

Ruth O. Pregonzer, Esq.
Miller, Stratvert & Torgerson, P.A.
P.O. Box 25687
Albuquerque, New Mexico 87125-0687

W. Robert Lasater, Jr., Esq.
Rodey Law Firm
P.O. Box 1888
Albuquerque, New Mexico 87103

Norman Gagne, Esq.
Butt, Thornton & Baehr, P.C.
P.O. Box 3170
Albuquerque, New Mexico 87190-3170

By: 
Ben M. Allen

**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEW MEXICO**

IN THE MATTER OF)
)
Pamela L. Johnson, M.D.)
License # 2001-224)
_____)

2002-022

ORDER

WHEREAS, the New Mexico Board of Medical Examiners ("Board") has filed a Notice of Contemplated Act ("NCA") against Respondent Pamela L. Johnson, M.D. ("Respondent"); and

WHEREAS, Respondent has been represented by S. Barry Paisner during these proceedings;
and

WHEREAS, Respondent enters a plea of no contest and further states that she did not intend to misrepresent her past employment history when she applied for a medical license. However, Respondent acknowledges that her response to question number six could be construed as a misrepresentation; and

WHEREAS, in mitigation, the Board accepts Dr. Johnson's statement that she answered Question # 6 based on the advice her attorney gave her at the time she answered the question; and

WHEREAS, based on Respondent's plea as set forth above, the Board finds that Respondent did misrepresent her answer to Question #6 on her application for a license to practice medicine in New Mexico; and

WHEREAS, Respondent agrees to the entry of this Order; and

WHEREAS, Respondent understands that this Order will be reported to the National Practitioners Data Bank and the Health Care Integrity Bank; and

WHEREAS, Respondent knows and understands that this Order is made pursuant to the Medical Practice Act and Board Rules, and that she is giving up and waives rights under the Uniform Licensing Act, Medical Practice Act, and she waives her rights to a hearing, and appeal and any claim she may have regarding these matters.

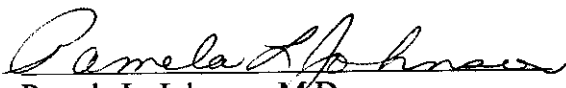
AND GOOD CAUSE APPEARING:

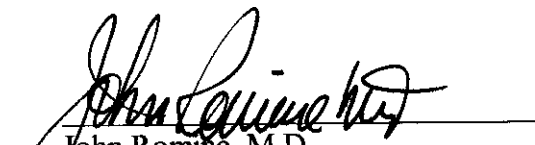
IT IS HEREBY ORDERED that the allegation in the NCA regarding Question #5 on Respondent's application is hereby dismissed with prejudice;


IT IS FURTHER ORDERED, that with respect to Respondent's misrepresentation to her answer to Question #6 on her application for a license to practice medicine in New Mexico, her New Mexico license to practice medicine is suspended for five months beginning January 1, 2003;

IT IS FURTHER ORDERED that whenever Respondent applies for hospital privileges in New Mexico, she must disclose to the hospital the restriction on her privileges at Duke University and the facts surrounding her resignation from Duke University.

Date: December 20, 2002


Pamela L. Johnson, M.D.
Respondent


John Romine, M.D.
President
New Mexico Board of Medical Examiners


S. Barry Paisner
P. O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4554
Attorney for Respondent

**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEW MEXICO**

IN THE MATTER OF)

Pamela L Johnson, M.D.)

License # 2001-224)

2002-022

NOTICE OF CONTEMPLATED ACTION

To: Pamela L Johnson, MD
986 Capulin Rd
Los Alamos NM 87544

YOU ARE HEREBY NOTIFIED that pursuant to the provisions of 61-1-4 NMSA the Board of Medical Examiners of the State of New Mexico ("The Board") has before it sufficient evidence, which if not rebutted or satisfactorily explained, will justify the Board of Medical Examiners restricting, revoking or suspending your license to practice medicine in the State of New Mexico.

1. Respondent is subject to action by the Board pursuant to 61-1-1 et seq. NMSA 1978 and 61-6-1 NMSA 1978 et seq.

2. This action is based upon the following allegations:

A. When you applied for a license to practice medicine in New Mexico, you answered "No" to Question #5 that asked "Have you ever resigned or withdrawn your application from a hospital staff or professional medical group?"

When you answered the Question, you knew that you had resigned from Duke University and had withdrawn your employment applications from Wake Medical Center, Western Wake and Rex Hospital.

B. When you applied for a license to practice medicine in New Mexico,

you answered "No" to Question #6 that asked "Have your hospital privileges ever been revoked or withdrawn for any reason?"

When you answered the Question, you knew that your hospital privileges at Duke University had been withdrawn from on or about February 18, 2000 until your privileges were terminated on June 30, 2000.

3. The allegations in Paragraph 2(A) would be a violation of 61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for or procuring a license to practice medicine.

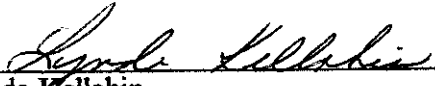
4. The allegations in Paragraph 2(B) would be a violation of 61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for or procuring a license to practice medicine.

5. Please take notice that unless within twenty (20) days after service of the notice you deposit in the mail by certified mail, return receipt requested, a letter addressed to the Board containing a request for hearing, the Board will take the contemplated action, i.e., the revocation or suspension of your license to practice medicine in the State of New Mexico, and there will be no judicial review of their decision.

6. Also, pursuant to 61-1-8 NMSA 1978, you have the right to be represented by counsel or by a licensed member of your profession or both, and to present all relevant evidence by means of witnesses, books, papers, documents and other evidence; to examine all opposing witnesses who may appear on any matter relevant to the issues and have subpoenas duces tecum issued as of right prior to the commencement of the hearing, to compel the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making a written request therefore to the Board. The issuance of such subpoenas after commencement of the hearing rests with the discretion of the Board or Hearing Officer.

Dated this 25th day of September, 2002.

NEW MEXICO BOARD OF MEDICAL EXAMINERS

By: 
Lynda Kellahin
Public Board Member
NM Board of Medical Examiners
491 Old Santa Fe Trail
Santa Fe, New Mexico 87501
(505) 827-5022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing
was mailed by certified mail # 7001 1940 0004 9836 1526 to:

Pamela L Johnson, MD
986 Capulin Rd
Los Alamos NM 875444

on this 25th day of September, 2002.


(signed)