

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

HOPE MEDICAL GROUP FOR WOMEN, K.P., M.D.)
AND D.B., M.D.)
Plaintiffs,)
v.)
LORRAINE LEBLANC, in her official capacity as)
Executive Director of the Louisiana Patients')
Compensation Fund Oversight Board, CLARK)
COSSE, in his official capacity as a member of the)
Louisiana Patients' Compensation Fund Oversight)
Board, MELANIE FIRMAN, M.D., in her official)
capacity as a member of the Louisiana Patients')
Compensation Fund Oversight Board, VINCENT)
CULOTTA, M.D., in his official capacity as a)
member of the Louisiana Patients' Compensation)
Fund Oversight Board, WILLIAM SCHUMACHER,)
M.D., in his official capacity as a member of the)
Louisiana Patients' Compensation Fund Oversight)
Board, JOSEPH DONCHESS, in his official capacity)
as a member of the Louisiana Patients')
Compensation Fund Oversight Board, DIONNE)
VIATOR, in her official capacity as a member of)
the Louisiana Patients' Compensation Fund)
Oversight Board, DANIEL LENNIE, R.N., in his)
official capacity as a member of the Louisiana)
Patients' Compensation Fund Oversight Board,)
and MANUEL DEPASCUEL, in his official capacity)
as a member of the Louisiana Patients')
Compensation Fund Oversight Board)
Case No. 07-CV-879-RET-SCR

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs, by and through their undersigned attorneys, bring this complaint against the above-named defendants, their employees, agents, and successors in office, and in support thereof allege the following:

I. PRELIMINARY STATEMENT

1. This is a civil rights action brought under the Constitution of the United States and 42 U.S.C. § 1983, challenging La. Rev. Stat. § 9:2800.12 (“strict liability statute”) (a) on its face; (b) as applied by defendants to physicians enrolled in the Louisiana Patients’ Compensation Fund (“PCF”) who currently face or will face medical malpractice claims related to abortion; and (c) as applied by defendants to plaintiffs in determining that Dr. K.P. and Dr. D.B. are ineligible for the protections of the Louisiana Medical Malpractice Act, La. Rev. Stat. §§ 40:1299.41–40:1299.49 (“LMMA”), with respect to an abortion-related malpractice claim initiated against Dr. K.P. in 2006.

2. The strict liability statute deprives plaintiffs and their patients of their rights under the Fourteenth Amendment to the United States Constitution by (a) subjecting abortion providers to vague standards and thereby denying plaintiffs due process; (b) subjecting abortion providers, but no other physicians, to strict civil liability for their performance of legal medical procedures and excluding abortion providers, but no other physicians, from the protections of the LMMA without any legitimate or rational basis for this differential treatment and thereby denying plaintiffs equal protection of the laws; and (c) subjecting abortion providers to strict civil liability for their performance of abortions and excluding abortion providers from the protections of the LMMA and thereby creating substantial obstacles to the provision of professional abortion services, which impose an undue burden on women seeking abortion care in Louisiana.

3. Plaintiffs seek declaratory and injunctive relief from these constitutional deprivations.

II. JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1333(a)(3).

5. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202; by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

6. Venue is appropriate under 28 U.S.C. § 1331(b) because defendant LeBlanc resides in this district, and all defendants reside in this state.

III. PARTIES

7. Plaintiff Hope Medical Group for Women ("Hope") is a health care facility located in Shreveport, Louisiana, that is licensed to provide abortion care by the Louisiana State Department of Health and Hospitals ("DHH"). Plaintiff Hope sues on its own behalf and on behalf of its patients seeking professional abortion services.

8. Plaintiff K.P., M.D., is a physician licensed to practice medicine in the state of Louisiana who performed first-trimester abortions at Hope during the years 2004 through 2006. She sues using only her initials to prevent public disclosure of her identity, which would expose her to a significant risk of anti-abortion harassment or violence. Plaintiff K.P. sues on her own behalf and on behalf of her patients seeking professional abortion services.

9. Plaintiff D.B., M.D., is a physician licensed to practice medicine in the state of Louisiana who provides abortion care at Hope. He sues using only his initials to prevent public disclosure of his identity, which would expose him to a significant risk of anti-abortion harassment or violence. Plaintiff D.B. sues on his own behalf and on behalf of his patients seeking professional abortion services.

10. Defendant Lorraine LeBlanc is sued in her official capacity as Executive Director of the Louisiana Patients' Compensation Fund Oversight Board ("PCFOB").

11. Defendants Clark Cosse, Melanie Firman, M.D., Vincent Culotta, M.D., William Schumacher, M.D., Joseph Donchess, Dionne Viator, Daniel Lennie, R.N., and Manuel DePascuel are each sued in his or her official capacity as a member of the PCFOB.

IV. STATUTORY BACKGROUND

A. The Strict Liability Statute

12. The strict liability statute makes an abortion provider liable to an abortion patient for any harm to the patient or the fetus resulting from an abortion, regardless of whether the physician complied with the applicable standard of care. La. Rev. Stat. § 9:2800.12(A).

13. The statute explicitly states that civil actions brought under it are not subject to the State's medical malpractice laws. La. Rev. Stat. § 9:2800.12(C)(2).

14. The constitutionality of the strict liability statute was previously challenged in an action brought in the Eastern District of Louisiana. The district court struck down the statute as unconstitutional. *Okpalobi v. Foster*, 981 F. Supp. 977 (E.D. La. 1998). That ruling was affirmed by a panel of the United States Court of Appeals for the Fifth Circuit, *Okpalobi v. Foster*, 190 F.3d 337 (5th Cir. 1999), but subsequently reversed by the Fifth Circuit in an *en banc* decision on the ground that plaintiffs in that action lacked standing, *Okpalobi v. Foster*, 244 F.3d 405 (5th Cir. 2001) (*en banc*). The strict liability statute was then challenged in a state court action. The Louisiana Court of Appeals similarly ruled that the plaintiffs in that action lacked standing. *Women's Health Clinic v. State of Louisiana*, 02-0016 (La. App. 1 Cir. 5/10/02); 825 So.2d 1208 (La. 2002).

B. The LMMA and the PCF

15. The LMMA is a broad statutory scheme of medical malpractice reform. La. Rev. Stat. §§ 40:1299.41–40:1299.49. The Act defines medical malpractice as, *inter alia*, “any

unintentional tort . . . based on health care or professional services rendered . . . by a health care provider, to a patient[.]” La. Rev. Stat. § 40:1299.41(A)(8).

16. The LMMA provides a number of protections to participating Louisiana physicians including the imposition of a \$500,000 cap on total damages (apart from future medical expenses), a statutory limit of \$100,000 on the financial responsibility of individual providers, for which the providers can self-insure, and the creation of the PCF, which pays for medical malpractice damages awards beyond the physician’s liability limit. La. Rev. Stat. §§ 40:1299.41–40:1299.49.

17. One of the key protections of the LMMA is the requirement that any medical malpractice claim against a qualified provider be presented to a medical review panel (“review panel”), to obtain the panel’s expert opinion on whether the provider violated the standard of care, before a plaintiff may file a civil suit. La. Rev. Stat. § 40:1299.47(A)(1)(a).

18. A physician who files with the PCF the requisite proof of financial responsibility and pays the surcharge assessed by the PCF is deemed to be “qualified” for purposes of the Act. La. Rev. Stat. § 40:1299.42(A).

V. FACTUAL ALLEGATIONS

19. Dr. K.P. has, since 2005, provided proof of her financial responsibility to the PCF, paid her annual surcharges, and been certified by the board as an enrollee in the PCF. The enrollment certificates issued to K.P. by the PCF are incorporated herein by reference and annexed hereto as Exhibit A.

20. Dr. D.B. has, since 1985, provided proof of his financial responsibility to the PCF, paid his annual surcharges, and been certified by the board as an enrollee in the PCF.

21. On June 26, 2006, a woman on whom Dr. K.P. allegedly performed an abortion (“complainant”) initiated a medical malpractice action against Dr. K.P., Dr. D.B, and Hope.

22. The malpractice action was initiated by complainant’s filing of a request to the PCF for the convening of a review panel to consider the complainant’s claim that defendants failed to meet the applicable standard of care. The request filed by complainant is incorporated herein by reference and annexed hereto as Exhibit B.

23. By letter dated July 25, 2007, the PCF subsequently informed complainant that her claims were not “medical malpractice” for purposes of the LMMA. The PCF’s letter dated July 25, 2007 is incorporated herein by reference and annexed hereto as Exhibit C.

24. In correspondence and phone calls, the PCF explained to Dr. K.P. its position that abortion-related claims are not considered malpractice, but are instead governed by the strict civil liability statute.

25. Dr. K.P. urged the PCF to reconsider its determination, asserting that complainant’s claim was clearly based on malpractice, not on the strict liability statute. Dr. K.P. provided the PCF with a letter from complainant’s counsel stating that complainant only asserted a malpractice claim. The letter from complainant’s counsel is incorporated herein by reference and annexed hereto as Exhibit D.

26. By letter dated November 7, 2007, the PCF refused Dr. K.P.’s request to reconsider its determination, standing by its position that abortion-related claims are excluded from the malpractice scheme by the civil liability statute. The PCF’s letter dated November 7, 2007 is incorporated herein by reference and annexed hereto as Exhibit E.

27. Following the PCF’s determination not to initiate the convening of a review panel, complainant filed a civil action against Dr. K.P. and Hope in state court. Hope was served with

the complaint in that action on approximately July 24, 2007. Dr. K.P. was served with the complaint in that action on approximately October 15, 2007. The complaint is incorporated herein by reference and annexed hereto as Exhibit F.

28. If the PCF is not enjoined from enforcing or relying upon the strict liability statute, or applying it to plaintiffs, plaintiffs and their patients will be deprived of their constitutional rights; Dr. K.P. and Dr. D.B. will be forced to pay all legal fees and costs necessary to defend themselves on the merits of the state malpractice action initiated by complainant (and any other medical malpractice action filed against them in connection with the performance of an abortion) without having the benefit of a medical review panel's expert opinion (and any incentives that such review and opinion might create for a complainant to settle or dismiss); plaintiffs will be exposed to strict civil liability - without malpractice coverage or protections - for performing any legal abortion procedure; and plaintiffs' patients will be deprived of access to abortion by the daunting, if not insurmountable, financial obstacles placed by the strict liability statute on the provision of abortion services.

FIRST CLAIM FOR RELIEF
(Vagueness)

29. The allegations of paragraphs 1 through 28 are incorporated as though fully set forth herein.

30. The strict liability statute fails to give plaintiffs notice of the conduct that will subject abortion providers to civil liability, and of the conduct that will subject abortion providers to civil liability that is not governed by the limits and protections of the LMMA. This imposition of vague standards on abortion providers deprives plaintiffs of their right to due process guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF
(Equal Protection)

31. The allegations of paragraphs 1 through 30 are incorporated as though fully set forth herein.

32. The strict liability statute subjects abortion providers, but no other physicians, to strict civil liability for their performance of legal medical procedures and it excludes abortion providers, but no other physicians, from the protections of the LMMA. This differential treatment of abortion providers and of all other providers of legal medical procedures has no legitimate or rational basis, and it therefore deprives plaintiffs of the right to equal protection guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

THIRD CLAIM FOR RELIEF
(Privacy)

33. The allegations of paragraphs 1 through 32 are incorporated as though fully set forth herein.

34. The strict liability statute exposes abortion providers to strict liability for performing legal abortion procedures, and it denies abortion providers the protections of the LMMA with respect to any medical malpractice action filed against them in connection with an abortion procedure. The imposition of these staggering financial obstacles on the provision of abortion care will deter, if not prevent, physicians from providing abortion care, thus reducing or eliminating the availability of professional abortion services in Louisiana , thereby imposing an undue burden on plaintiffs' patients in contravention of those patients' right to privacy guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

ATTORNEY'S FEES

35. Plaintiff is entitled to an award of reasonable attorney's fees and expenses pursuant to 42 U.S.C. § 1988.

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court:

36. Issue a declaratory judgment that

(a) the strict liability statute violates the rights of abortion providers and their patients under the Fourteenth Amendment to the United States Constitution and is void and of no effect; and/or

(b) the strict liability statute, as applied by defendants to Dr. K.P., Dr. D.B. and other physicians enrolled in the PCF who currently face or will face medical malpractice claims related to abortion violates the rights of plaintiffs and their patients under the Fourteenth Amendment to the United States Constitution, and is void and of no effect; and/or

(c) the strict liability statute, as applied by defendants to plaintiffs in determining that Dr. K.P. and Dr. D.B. are ineligible for the protections of the LMMA with respect to an abortion-related malpractice claim brought against plaintiffs violates plaintiffs' rights under the Fourteenth Amendment to the United States Constitution, and is void and of no effect; and

37. Issue permanent injunctive relief, without bond,

(a) restraining defendants from enforcing, relying upon, or applying the strict liability statute; and/or

(b) restraining defendants from enforcing, applying, or relying upon the strict liability statute in making any determination about whether a claim presented to the PCFOB is governed by the LMMA; and/or

(c) restraining defendants from enforcing, applying, or relying upon the strict liability statute in making any determination about whether any claim that is brought against Dr. K.P., Dr. D.B., or any other doctor who provides medical services at Hope, and that is presented to the PCFOB is governed by the LMMA; and

38. Grant plaintiffs attorney's fees, costs and expenses pursuant to 42 U.S.C. § 1988; and

39. Grant such other and further relief as the Court may deem just and proper.

Dated: January 4, 2007

Respectfully submitted,

/S/ William E. Rittenberg
William E. Rittenberg, Bar #11287
Rittenberg, Samuel & Phillips, L.L.C.
715 Girod Street
New Orleans, LA 70130
(504) 524-5555

Bonnie Scott Jones*
Stephanie Toti*
The Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, NY 10005
(917) 637-3600
*Admitted *Pro Hac Vice*

Counsel for Plaintiffs



LOUISIANA

PATIENTS' COMPENSATION FUND

CERTIFICATE OF ENROLLMENT

K P.
6030 LINE AVENUE, STE. 210
SHREVEPORT, LA 71106

The above named Health Care Provider is hereby certified as an Enrollee under La. R.S. 40:1299.41 et seq., with effective dates as follows:

ENROLLMENT PERIOD	COMPANY	TYPE COVERAGE	CLASS TYPE	SPECIALTY
05/09/2005 - 05/09/2006	SELF INSURED	OCCURRENCE	CLASS 3	SURGERY-OPHTHALMOLOGY

It is further certified that securities of ONE HUNDRED TWENTY FIVE THOUSAND (\$125,000.00) Dollars in custody of the Louisiana State Treasurer, acknowledges financial responsibility for the indicated period(s).

It is further acknowledged that surcharges for excess coverages are paid for the indicated period(s).

This certificate verifies the type of coverage and payment to the Patients' Compensation Fund; however, qualification for a medical review panel can only be determined at the time the request is filed.

Date: 5/11/2005

Dorraine Gleason
LOUISIANA PATIENTS' COMPENSATION FUND

PLAINTIFF

EXHIBIT NO. A

ADMITTED

(CASE NUMBER)



LOUISIANA
PATIENTS' COMPENSATION FUND

www.lapcf.louisiana.gov

CERTIFICATE OF ENROLLMENT

K. PL
6030 LINE AVENUE, STE. 210
SHREVEPORT, LA 71106

The above named Health Care Provider is hereby certified as an Enrollee under La. R.S. 40:1299.41 et seq., with effective dates as follows:

ENROLLMENT PERIOD	COMPANY	TYPE COVERAGE	CLASS TYPE	SPECIALTY
05/09/2006 - 05/09/2007	SELF INSURED	OCCURRENCE	CLASS 3	SURGERY-OPTHALMOLOGY

It is further certified that securities of ONE HUNDRED TWENTY FIVE THOUSAND (\$125,000.00) Dollars in custody of the Louisiana State Treasurer, acknowledges financial responsibility for the indicated period(s).

It is further acknowledged that surcharges for excess coverages are paid for the indicated period(s).

This certificate verifies the type of coverage and payment to the Patients' Compensation Fund; however, qualification for a medical review panel can only be determined at the time the request is filed.

Date: 5/11/2006

Korraine L. Seanc
LOUISIANA PATIENTS' COMPENSATION FUND



LOUISIANA
PATIENTS' COMPENSATION FUND
(866) 469-9555 www.lapcf.louisiana.gov

CERTIFICATE OF ENROLLMENT

K P
6030 LINE AVENUE, STE. 210
SHREVEPORT, LA 71106

The above named Health Care Provider is hereby certified as an Enrollee under La. R.S. 40:1299.41 et seq., with effective dates as follows:

ENROLLMENT PERIOD	COMPANY	TYPE COVERAGE	CLASS TYPE	SPECIALTY
05/09/2007 - 05/09/2008	SELF INSURED	OCCURRENCE	CLASS 2	SURGERY-OPHTHALMOLOGY

It is further certified that securities of ONE HUNDRED TWENTY FIVE THOUSAND (\$125,000.00) Dollars in custody of the Louisiana State Treasurer, acknowledges financial responsibility for the indicated period(s).

It is further acknowledged that surcharges for excess coverages are paid for the indicated period(s).

This certificate verifies the type of coverage and payment to the Patients' Compensation Fund; however, qualification for a medical review panel can only be determined at the time the request is filed.

Date: 5/10/2007

Jeanne LeBlanc
LOUISIANA PATIENTS' COMPENSATION FUND

WILLIAMS & WILLIAMS
ATTORNEYS AT LAW
(A PROFESSIONAL LAW CORPORATION)
173 VILLA DIESTE TERRACE, SUITE 113
LAKE MARY, FLORIDA 32746
SANDRA M. WILLIAMS

2007 JUN 29 PM 2:37

TELEPHONE: (407) 416-8900
SHREVEPORT: (318) 222-0920
FACSIMILE: (904) 322-7740

June 26, 2007

Mr. Jerry Luke LeBlanc
Commissioner of Administration
State of Louisiana
P.O. Box 94095
Baton Rouge, LA 70804

Re: Claimant: Brittany Prudhomme
Defendants: June Medical Services, L.L.C. d/b/a Hope Medical Group for Women
210 Kings Highway
Shreveport, Louisiana 71104

Dr. K P
210 Kings Highway
Shreveport, Louisiana 71104

Dr. D B:
210 Kings Highway
Shreveport, Louisiana 71104

Dear Mr. LeBlanc,

I am representing Brittany Prudhomme regarding a medical negligence claim against the above named health care providers arising from care and treatment provided to her on or about July 18, 2006. Based upon the medical information provided to date, claimant alleges that defendants failed to meet the appropriate standard of medical care, as follows: On or about July 18, 2006, Ms. Prudhomme underwent an abortion procedure at Hope Medical Group for Women. Dr. K P performed the procedure. It is believed that Dr. D B is Dr. P's supervising physician at Hope Medical Center. Subsequently, Ms. Prudhomme became very ill and was admitted to Christus St. Michael Health System in Texarkana, Texas on July 29, 2006. On that date, she underwent diagnostic laparoscopy, suction and sharp dilation and curettage. Ms. Prudhomme's diagnoses included incomplete abortion and uterine perforations. Ms. Prudhomme continues to experience health problems related to the procedure performed at Hope Medical Group for Women.

RECEIVED
JUL 02 2007
REG'D

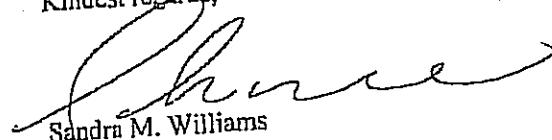
PLAINTIFF
EXHIBIT NO. B
ADMITTED

(CASE NUMBER)

Claimant therefore requests the formation of a Medical Review Panel pursuant to the provision of the Louisiana Medical Malpractice Act, LSA-R.S. 40:1299.39/1 et seq. and LSA-R.S. 40:1299.41 for the evaluation and assessment of this claim. Claimant specifically reserves the right to challenge the constitutionality of the Louisiana Medical Malpractice Act and any portion of the Act.

Please note that my address, phone and facsimile numbers have changed to those listed above.

Kindest regards,



Sandra M. Williams

2001 JUL 29 PM 2:37
LPCF

RECEIVED

JUL 02 2007

LPCF

OFFICE OF THE GOVERNOR
Kathleen Babineaux Blanco
GOVERNOR

CERTIFIED MAIL RETURN
RECEIPT REQUESTED



State of Louisiana
PATIENT'S COMPENSATION FUND

July 25, 2007

P. O. BOX 3718
BATON ROUGE, LA 70821
(225) 342-8787
pcf@lapcf.louisiana.gov
(225) 342-5324

Ms. Sandra M. Williams
Williams & Williams
173 Villa Dieste Terrace, Suite 113
Lake Mary, FL 32746

RE: Brittany Prudhomme
PCF File No.: 2007-00745

Dear Ms. Williams:

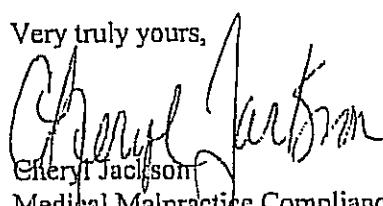
This is to advise that our letter dated July 5, 2007, pertaining to the above complaint was incorrect.

Upon further review, it is our belief that the allegations contained in the complaint are not within the scope of medical malpractice as defined in the Medical Malpractice Act.

The above PCF file number is for reference purposes only.

Please do not hesitate to call our office if you have any questions.

Very truly yours,


Cheryl Jackson
Medical Malpractice Compliance Director

CJ/jb

Cc: Dr. D B
Dr. K P
June Medical Services, LLC d/b/a Hope Medical Group for Women

PLAINTIFF
EXHIBIT NO. <u>C</u>
ADMITTED <input type="checkbox"/>
(CASE NUMBER)

WILLIAMS & WILLIAMS

ATTORNEYS AT LAW
(A PROFESSIONAL LAW CORPORATION)

SANDRA M. WILLIAMS

POST OFFICE BOX 547363
ORLANDO, FLORIDA 32854

TELEPHONE: (407) 216-8900
SHREVEPORT: (318) 222-0920
FACSIMILE: (904) 322-7740

October 24, 2007

Mr. William E. Ruttenberg
715 Girod Street
New Orleans, Louisiana 70130

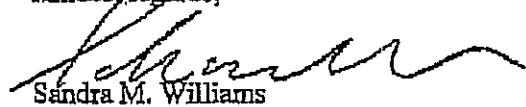
RE: Brittany Prudhomme v. June Medical Services, L.L.C. D/B/A Hope Medical Group
for Women and Dr. K P Suit No.: 513,752-B, 1st JDC, Caddo Parish,
Louisiana

Dear Mr. Ruttenberg:

In response to the first issue stated in your letter dated October 17, 2007, the plaintiff will consent to a 30 day extension. In response to the second issue, the plaintiff's complaint is based on medical malpractice. The formation of a medical review panel was requested on June 26, 2007. However, Ms. Cheryl Jackson with the PCF responded by letter, dated July 5, 2006, that Dr. F "is non-qualified as it pertains to this complaint." Copies of the letter requesting formation of a medical review panel and Ms. Jackson's letter in response are enclosed.

Please note that my address has changed. Please call if you need any additional information at this time.

Kindest regards,



Sandra M. Williams

Enclosures

PLAINTIFF
EXHIBIT NO. <u>D</u>
ADMITTED <input type="checkbox"/>
(CASE NUMBER)

**ROEDEL PARSONS KOCH
BLACHE BALHOFF & MCCOLLISTER
A L A W C O R P O R A T I O N**

DALE N. ATKINS
JUDITH R. ATKINSON
THOMAS E. BALHOFF
CECIL J. BLACHE
CORINNE M. BLACHE
ANDRÉ G. BOURGEOIS
BRENT J. BOURGEOIS
MELVIN J. BURNMASTER

W. JOSEPH CLEVELAND¹
KEVIN E. CUNNINGHAM
TERRY T. DUNLEVY²
C. JAMES GELPI
DAVID H. HARDY
C. KEVIN HAYES
CARLTON JONES, III

GAYLE T. KELLNER³
JOHN D. KOCH
MICHAEL R. MANGHAM¹
STEPHEN G. MCCOLLISTER
DAVID S. MCFADDEN
SHERI M. MORRIS
J. KENTON PARSONS

CHRISTINA B. PECK
LUKE E. PIONTEK
CLARK RICHARD
LARRY M. ROEDEL
DON R. SCHNEIDER⁴
DAVID A. WOOLRIDGE, JR.
JOSHUA B. ZELDEN

Writer's E-mail DWoolridge@roedelparsons.com

November 7, 2007

VIA ELECTRONIC MAIL

Ms. Stephanie Toti
Staff Attorney, Domestic Legal Program
Center For Reproductive Rights
120 Wall Street
New York, NY 10005

Re: PCF File No.: 2007-00745 (Brittany Prudhomme)

Dear Ms. Toti:

This is to respond to your letter dated October 24, 2007 requesting reconsideration of the decision by the Patient's Compensation Fund Oversight Board ("Oversight Board") relating to the panel request naming Dr. P as a defendant health care provider. We have reviewed the file material furnished to us by the Oversight Board relating to the panel request and Dr. P PCF Enrollment Application and surcharge payment. For the following reasons, we believe that the Oversight Board was correct in refusing to recognize this as a panel request that is subject to the Medical Malpractice Act.

Contrary to the assertion in your October 24, 2007 letter, the allegations in the June 26, 2007 panel request center around Dr. P performance of an abortion. Under La. R.S. 9:2800.12C.(2), the Medical Malpractice Act, La. R.S. 40:1299.41 et seq ("MMA"), is not applicable to allegations involving an abortion. As such, there is no PCF coverage for the allegations being made by Ms. Prudhomme against Dr. P

A review of Dr. P's PCF Enrollment Application and the amount of the surcharge paid by Dr. P raises additional questions regarding PCF coverage for this claim. In her application, Dr. P indicates that she performs minor surgery as it relates to gynecology. It is our understanding that the treatment of a fetus, even if there is intent to harm the fetus as in an abortion, is within the scope of obstetrics, and not gynecology. In addition, Dr.

PLAINTIFF

EXHIBIT NO. E

ADMITTED

Ms. Stephanie Toti
November 6, 2007
Page 2

P failed to indicate that she was engaging in performing D&Cs. As such, Dr. P paid the applicable surcharge for a Class 3 Physician. Had she indicated that she was performing D&Cs and obstetrics, she would have been required to pay the applicable PCF surcharge for a Class 7 Physician, which is substantially higher. As such, Dr. P performed actions outside of the "scope of PCF coverage" for which she paid. Accordingly, the Oversight Board has taken the position that this provides another basis for its position that there is no PCF coverage for this panel request.

If you have any questions concerning the above, please call. Thank you for your cooperation.

Sincerely,



David A. Woolridge

DAW:jr
cc: Lorraine LeBlanc

BRITTANY PRUDHOME

NUMBER 513 752-6
FIRST JUDICIAL DISTRICT COURT

VERSUS

JUNE MEDICAL SERVICES, L.L.C.
D/B/A HOPE MEDICAL GROUP FOR
WOMEN. AND
DR. K (PI)

CADDY PARISH, LOUISIANA

5	FILED
MINUTES	JUL 23 2007
PAGES	JIM SCOTT DEPUTY CLERK OF COURT

PETITION FOR DAMAGES

The petition of Brittany Prudhome, a resident of Texas (hereinafter sometimes referred to as "petitioner") respectfully represents:

1.

That named defendants are:

- (1) June Medical Services, L.L.C. D/B/A Hope Medical Group for Women, a Louisiana limited-liability company, which may be served through its agent for service of process, Robin Rothrock, 210 Kings Highway, Shreveport, Louisiana 71104;
- (2) Dr. K P., a domiciliary of Caddo Parish, whose address for service of process is 2611 Greenwood Road, Shreveport, Louisiana, 71104.

2.

Defendants are justly and truly indebted to petitioner for such damages as are reasonable in the premises, together with legal interest from the date of judicial demand until paid and for all costs of these proceedings for the reasons set forth below.

3.

This cause of action arises from medical care and treatment provided by defendants to Brittany Prudhome on July 18, 2006.

4.

On June 26, 2007, the formation of a Medical Review Panel was requested to review this claim.

5.

Plaintiff was notified, by certified letter to undersigned counsel received on July 17, 2007, that defendants are not qualified pursuant to LSA R.S. 40:1299.41 et seq.

6.

At all times relevant, defendant June Medical Services, L.L.C. owned and operated a

PLAINTIFF
EXHIBIT NO. <u>F</u>
ADMITTED <input type="checkbox"/>
(CASE NUMBER)

medical clinic known as Hope Medical Group for Women located at 210 Kings Highway, Shreveport, Louisiana, 71104.

7.

On July 18, 2007, Brittany Prudhome underwent a surgical procedure performed by Dr.

K: P. Hope Medical Group for Women.

8.

At all times relevant, Dr. K P. was an employee and/or agent of June Medical Services, L.L.C.

9.

Subsequently, petitioner developed a severe infection and was admitted to Christus St. Michael's hospital in Texarkana, Texas on July 29, 2006, where she underwent surgery to determine the cause of the infection.

10.

As a result of the diagnostic surgery performed at Christus St. Michael's, it was determined that the procedure at Hope Medical Group for Women had been incompletely performed and that petitioner had sustained perforations to her uterus.

11.

Petitioner's injuries and damages were caused solely by the failure of Dr. K P. to meet the appropriate standard of care in the treatment provided to her.

12.

Dr. K P. failed to meet the appropriate standard of care as follows:

- (1) failing to properly and completely perform the surgical procedure;
- (2) performing the surgical procedure in such a manner as to cause perforations to petitioner's uterus.

13.

As a result of the failure of Dr. K P. to comply with the standard of care, petitioner has suffered damages including:

- (A) Severe physical pain and suffering;
- (B) Severe mental distress, anxiety, and fear;
- (C) Medical expenses;

- (D) Possible permanent disability;
- (E) Future medical expense;
- (F) Loss of enjoyment of life; and
- (G) Inconvenience.

14.

The use of expert witnesses will be necessary at the trial of this case, and the fees for such witnesses and any expenses incurred in the taking of their depositions should be taxed as costs.

WHEREFORE, PETITIONER PRAYS that there be service and citation on defendants in the form and manner provided by law, that after all legal delays and due proceedings had, there be judgment in favor of petitioner and against defendants, in solid, for such damages as are reasonable in the premises, with legal interest thereon from the date of judicial demand, until paid, and for all costs of these proceedings.

FURTHER PRAYS for all such additional general and equitable relief as may be necessary and proper in the premises.

WILLIAMS & WILLIAMS, P.L.C.

By *Sandra M. Williams*

SANDRA M. WILLIAMS

Bar Roll Number 22688

173 Villa Di Este, Number 113

Lake Mary, Florida 32746

Telephone (407) 416-8900

Faxsimile: (904) 322-7740

ATTORNEY FOR PETITIONER

PLEASE SERVE:

JUNE MEDICAL SERVICES, L.L.C. D/B/A HOPE MEDICAL GROUP FOR WOMEN
through its agent for service of process,

Robin Rothrock

210 Kings Highway

Shreveport, Louisiana 71104

No Service is requested on Dr. K P at this time.

ENDORSED FILED
JIM SCOTT, Deputy Clerk

JUL 2 8 2007

A TRUE COPY - ATTEST
CADDY PARISH DEPUTY CLERK

A TRUE COPY - ATTEST

Erin
DEPUTY CLERK, FIRST JUDICIAL
DISTRICT COURT, CADDY PARISH, LA.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

HOPE MEDICAL GROUP FOR WOMEN AND K.P.,)
M.D.)
)
Plaintiffs,)
)
v.)
) Case No. 07-CV-879-RET-SCR
LORRAINE LEBLANC, in her official capacity as)
Executive Director of the Louisiana Patient's)
Compensation Fund Oversight Board, CLARK)
COSSE, in his official capacity as a member of the)
Louisiana Patient's Compensation Fund Oversight)
Board, MELANIE FIRMAN, M.D., in her official)
capacity as a member of the Louisiana Patient's)
Compensation Fund Oversight Board, VINCENT)
CULOTTA, M.D., in his official capacity as a)
member of the Louisiana Patient's Compensation)
Fund Oversight Board, WILLIAM SCHUMACHER,)
M.D., in his official capacity as a member of the)
Louisiana Patient's Compensation Fund Oversight)
Board, JOSEPH DONCHESS, in his official capacity)
as a member of the Louisiana Patient's)
Compensation Fund Oversight Board, DIONNE)
VIATOR, in her official capacity as a member of)
the Louisiana Patient's Compensation Fund)
Oversight Board, DANIEL LENNIE, R.N., in his)
official capacity as a member of the Louisiana)
Patient's Compensation Fund Oversight Board,)
and MANUEL DEPASCUEL, in his official capacity)
as a member of the Louisiana Patient's)
Compensation Fund Oversight Board)

Defendants.

**PLAINTIFF'S STATEMENT PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 7.1**

The corporate name of plaintiff Hope Medical Group for Women is June Medical Services LLC. June Medical Services has no parent corporation, and no publicly held corporation holds 10% or more of its shares.

Respectfully submitted,

/S/ William E. Rittenberg

William E. Rittenberg, Bar #11287
Rittenberg, Samuel & Phillips, L.L.C.
715 Girod Street
New Orleans, LA 70130
(504) 524-5555

Bonnie Scott Jones*
Stephanie Toti*
The Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, NY 10005
(917) 637-3600
*Admitted *Pro Hac Vice*

Counsel for Plaintiffs