

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

MATTHEW ABNEY, a minor, by and
through his Parents and Next Friends,
MICHELLE ABNEY and
EDDIE ABNEY III
1113 Bernadette Dr.
Forest Hill, MD 21050

Plaintiff

v.

C-12-CV-20-000076

UPPER CHESAPEAKE MEDICAL
CENTER, INC.
500 Upper Chesapeake Drive
Bel Air, MD 21014

Case No.: _____

Serve On:

Megan M. Arthur, Esq.
250 West Pratt St. 24th Flr.
Baltimore Maryland 21201

and

CHANAN LEVY, M.D.
510 Upper Chesapeake Dr.,
Suite 518
Bel Air, MD 21014

Defendants

* * * * *

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Matthew Abney, a minor, by and through his Parents and Next Friends, Michelle Abney and Eddie Abney III, by and through his undersigned attorneys, hereby sues Defendants, Upper Chesapeake Medical Center, Inc. and Chanan Levy, M.D., and for his causes of action states as follows:

1. This medical malpractice claim is instituted pursuant to Md. Cts. & Jud. Proc. Article §§ 3-2A-01 – 3-2A-10, for the recovery of damages in excess of Thirty Thousand Dollars (\$30,000.00).

2. Venue is proper in Harford County, Maryland.

3. Plaintiff, Matthew Abney, born April 12, 2010, is a minor residing with his parents, Michelle Abney and Eddie Abney III, at 1113 Bernadette Drive in Forest Hill, Maryland.

4. Plaintiff avers that he has satisfied all conditions precedent to the filing of this lawsuit, including the filing of a Statement of Claim, Certificate of Qualified Expert and Expert Report and Waiver of Arbitration in the Health Care Alternative Dispute Resolution Office of Maryland. Plaintiff hereby attaches and incorporates by reference the Certificate of Qualified Expert and Expert Report of Richard L. Luciani, M.D.

5. Defendant, Upper Chesapeake Medical Center, Inc. is, and at all times relevant hereto was, a corporation engaged in the business of operating a hospital, which provides health care services, including obstetrical services, to persons in need thereof. At all times relevant hereto, Upper Chesapeake Medical Center, Inc. acted directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees, including, but not limited to, Chanan Levy, M.D.

6. Defendant, Chanan Levy, M.D., is a physician licensed to practice obstetrics and gynecology in the State of Maryland. At all times relevant hereto, Dr. Levy was acting individually, and/or as the actual and/or apparent agent, servant, and/or employee of Upper Chesapeake Medical Center, Inc.

7. At all times relevant hereto, Defendants held themselves out to Plaintiff as Health Care Providers who provided reasonable and competent care to persons in need thereof.

8. Michelle Abney was 29 years old when she became pregnant with Matthew in summer 2009. This was Mrs. Abney's first pregnancy.

9. Mrs. Abney received her prenatal care at Upper Chesapeake Women's Care.

10. At her initial prenatal visit, on August 27, 2009, Mrs. Abney was noted to have a clean bill of health, and no concerns were documented by her treating obstetrician.

11. Mrs. Abney subsequently presented for several prenatal visits at Upper Chesapeake Women's Care. At each visit, the pregnancy was noted to be progressing without issue. Fetal movement was always noted to be positive, the fetal heart rate was always normal, and Mrs. Abney's urine was always negative for protein.

12. There were no complications in the prenatal period, except for a transient diagnosis of gastroenteritis at 32 and 6/7 weeks, which resolved with timely diagnosis and administration of IV fluids and Tylenol.

13. At 40 and 4/7 weeks gestation, Mrs. Abney was admitted to Upper Chesapeake's labor & delivery unit at 11:28 p.m. on April 11, 2010, where she was noted as having contractions every three to four minutes. The attending physician was Chanan Levy, M.D. The fetal status was reassuring. Mrs. Abney's membranes were intact, and she had positive "bloody show" (an early sign of labor). Mrs. Abney's baby was noted to be in the vertex position "via Leopold," which is a hand maneuver used to judge the positioning of the fetus by manipulating the mother's abdomen.

14. When Dr. Levy first saw Mrs. Abney, at 12:15 a.m., her status was noted as "SVE 3-4/90/-1", meaning that her cervix was already three to four centimeters dilated and 90% effaced, but that her fetus was in the -1 station—meaning that the baby's head was close to the pelvis, but had not yet engaged the pelvis at that time.

15. At 1:05 a.m., Mrs. Abney complained of "lightheadedness" and reported that she was "just not feeling right." No updates were provided on the baby at that time.

16. An epidural was placed at 1:48 a.m.

17. At 2:32 a.m., Dr. Levy noted that Mrs. Abney's cervix was six to seven centimeters dilated. Artificial rupture of membranes revealed clear amniotic fluid. Dr. Levy's delivery note stated: "Following the rupture of membranes, the patient became hyperstimulated and started having recurrent late decelerations [of the fetal heart rate]."

18. A late deceleration is defined as a visually apparent, gradual decrease in the fetal heart rate typically following a contraction. These decelerations signify a decrease in the level of oxygen in the fetal blood. Late decelerations can be an ominous sign during labor and can be indicative of a baby who is not tolerating the labor process. The first stage of Mrs. Abney's labor progressed rapidly, and by 2:40 a.m. Mrs. Abney was dilated to eight to nine centimeters. She was having contractions every one to two minutes. However, during this time, Matthew failed to descend and continued to show apparent distress from the labor process, with prolonged fetal heart rate decelerations as low as 60 beats per minute. Dr. Levy was called to the room to evaluate these events. Mrs. Abney was given 10 liters of oxygen, which is typically done in an attempt to improve the baby's own oxygen levels and heart rate. Mrs. Abney was also given terbutaline to slow down her contractions so that her baby could recover.

19. Notably, Matthew was having trouble with the labor process even though Mrs. Abney had not yet began pushing.

20. At or around 2:36 a.m., Mrs. Abney became completely dilated and began pushing per Dr. Levy's order. The fetal heart rate tracing showed significant decelerations as Mrs. Abney pushed.

21. In fact, after only seven to fifteen minutes of pushing, and clear signs of fetal intolerance, Dr. Levy ordered that Mrs. Abney stop pushing and “labor down.” “*Laboring down*” is the process of allowing the uterus to continue to contract without maternal pushing effort even though full dilation has been attained. During this “labor down” period, which lasted approximately one hour, there is no indication that Mrs. Abney felt a natural inclination to push.

22. However, Mrs. Abney continued to contract as evidenced by the tocodynamometer. In this time period, it was apparent that Matthew was not descending down the birth canal.

23. At approximately 4:00 a.m., Dr. Levy ordered Mrs. Abney to begin pushing again. The fetal heart rate again showed continuous decelerations, and Matthew remained in the -1 station (unchanged from nearly three hours earlier), which, in conjunction with Matthew’s direct occiput posterior position, signified cephalopelvic disproportion (“CPD”). CPD is defined as the failure of the fetal head to descend through the pelvis despite strong uterine contractions. CPD can be caused by many factors, including, but not limited to, the size and/or shape of the baby’s head, the size and/or shape of the mother’s pelvis, and/or abnormal fetal positions.

24. Occiput posterior position is the most common fetal mal-position. It is associated with labor abnormalities that may lead to adverse maternal and neonatal outcomes, including head trauma resulting from CPD.

25. Despite the lack of progress towards a vaginal delivery, and clear signs of both cephalopelvic disproportion and fetal intolerance, Dr. Levy ordered Mrs. Abney to continue pushing without progress.

26. From 4:00 a.m. through 6:00 a.m., the medical records indicate that Mrs. Abney was pushing with “not much difference in station.” By this time, Mrs. Abney had been fully dilated

and contracting/pushing for over three hours with no progress. As such, the second stage of labor was becoming prolonged and protracted.

27. By 6:25 a.m., Mrs. Abney was suffering from vaginal swelling as a result of having to push for extended periods of time without any descent of the presenting part of the fetus. Furthermore, Mrs. Abney became weaker as the second stage of labor continued.

28. At some point during the second stage of labor, Matthew's head appeared to be in the 0 or +1 station, and his head began to mold through the birth canal. The precise timing of these events cannot be deciphered from the medical record because they are only documented by Dr. Levy *ex post facto*.

29. Newborn head molding is an abnormal head shape that results from pressure on the baby's head during childbirth.

30. Despite knowledge of the lengthy second stage of labor, signs of fetal distress, and obvious signs of cephalopelvic disproportion, Dr. Levy attempted to execute a vacuum delivery from the 0 or +1 station—before Matthew's head was engaged in the pelvis. This is a clear violation in the standard of care. The vacuum "popped off" from Matthew's head, resulting in additional head trauma (i.e., a laceration).

31. At 6:45 a.m., Dr. Levy authored a progress note stating: "Patient complete since 2:40am - - allowed to labor down for 1 hour - - followed by 3 hours of pushing. No significant descent of infant. +1 station in OP presentation. Vacuum applied +1 with no descent. FHT showed recurrent variable decels with slow return and occasional late decels. Discusses situation with patient - - will proceed with primary LTCS secondary to COPD. Consent obtained and anesthesia notified."

32. Mrs. Abney continued to labor without progress of the presenting part.

33. Matthew Abney was born by cesarean section at 7:49 a.m., more than five hours after Mrs. Abney became completely dilated and the second stage of labor began with pushing. The preoperative diagnoses were listed as "1. Intrauterine pregnancy at 40 and 4/7 weeks; 2. Cephalopelvic disproportion."

34. At birth, Matthew was noted to be without respiratory effort and color. He did not immediately respond to stimulation, and needed positive pressure ventilation ("PPV") before he gained respiratory effort. He had a base excess of -4.5 and an oxygen saturation of 4.9. He had PCO2 of 57.2, and PO2 of less than 20.5.

35. As depicted below, Matthew's head was obviously misshaped at birth as a direct and proximate result of his head being unnecessarily wedged in Mrs. Abney's pelvis for an unreasonable period of time during the second stage of labor:



36. Furthermore, the discharge note from Mrs. Abney's hospitalization stated:

The details of her labor and the operation can be found within the operative report. Following the surgery, the patient had Duramorph and Toradol which controlled her pain well. On postop day 1, the Foley catheter was removed. The patient converted to p.o. Percocet and Motrin, and it is discovered that when the patient attempted to get out of bed to void she really cannot support weight on either leg and has essentially no mobility in the left leg. The patient was first evaluated by anesthesia. She was then seen by Neurosurgery and then by Neurology, and following all of these consults, CAT scan, MRI and x-rays, the diagnosis was made of a femoral neuropathy due to labor and pushing and fluid edema. With this, the patient was seen by Occupational Therapy and Physical Therapy in order to assist with moving and ambulating with a walker, and each day there is increased strength in the right leg. The left leg is improving slowly. The patient is able to ambulate and mobilize with a walker.

37. In the days after his birth, Matthew had difficulty breast feeding and was noted to be very sleepy. Lethargy and poor feeding in newborns are potentially early signs of brain injury. In spite of these findings, no head ultrasound or MRI was taken to assess the impact of the prolonged and difficult labor process on Matthew's brain.

38. At approximately eight months of life, Matthew's parents reported delays in his development—particularly that he was “not really using his right arm.” He was referred to pediatric neurology for assessment, as well as the Infants & Toddlers Program.

39. At nine months old, on January 10, 2011, Matthew was evaluated by pediatric neurologist, Edward Gratz, M.D., who noted increased tone in Matthew's right arm, as well as “subtle atrophy distally, most apparent comparing the size of the thumbs.” Dr. Gratz concluded that Matthew's clinical history was most consistent with a remote infarction of the left middle cerebral artery territory. Dr. Gratz also discussed cerebral palsy (right upper extremity hemiparesis) with Mr. and Mrs. Abney, and plans were made for an MRI of Matthew's brain and continuing physical therapy.

40. The first MRI of Matthew's brain was done on January 19, 2011 and showed evidence of long-standing brain damage. The interpreting physician described the following: “An

encephalomalacia in the left frontal, temporal and parietal lobe and lateral aspect of the basal ganglia presumably secondary to old left MCA infarct." There was hemiatrophy of the left cerebral hemisphere. There was "no evidence of acute infarct or hematomas identified."

41. Matthew was evaluated by the Infants & Toddler's program, and deemed "qualified for early intervention services based on atypical gross and fine motor development." A note by Melody M. Stanhope PT stated:

Based on today's assessment, using E-LAP, parent report and clinical observation, Matthew presented with gross motor skills at the 6 month skill level. Fine motor skills were assessed at a 9 month level for the left hand. Fine motor skills could not be assessed on the right hand due to insufficient strength or function at this time. The right hand remains predominantly fisted, with thumb abducted. It was observed to be 50% open at times during our session, but there was no intentional reach, grasp or weight bearing.

42. A physical therapy evaluation at nine months old showed that Matthew's problems were: delayed development; decreased strength; and abnormal postures. Notably, these are issues consistent with a brain injury suffered at or around the time of birth.

43. As Matthew has grown older, additional developmental delays have become more apparent to his parents and treating physicians. At 14 months old, Dr. Gratz noted that Matthew was walking "with a hemiparetic gait and will occasionally fall on uneven terrain." He also has "persistent mild weakness in the upper motor neuron distribution, more prominent in the right upper extremity." Dr. Gratz counseled Matthew's parents with regard to "[t]he risk of developing associated learning disabilities and recurrent seizures, which may become evident over time."

44. At 18 month sold, Matthew was noted to have delays in expressive language, pragmatics, and language expression, with his skills in these areas falling mostly in the 9-12 months range. He required speech and language therapy and continued medical evaluations.

45. At six years old, Matthew's problem list included: Antenatal CVA (cerebrovascular accident); speech problem; speech and occupational therapy; and he had an IEP (Individualized Education Program).

46. Today, Matthew continues to suffer from significant and permanent neurodevelopmental and physical issues, including but not limited to tonal abnormalities, cerebral palsy, developmental delays, delays in fine and gross motor skills, speech and language deficits, among other injuries/conditions.

47. Had Defendants timely delivered Matthew Abney by cesarean section on April 12, 2010, Matthew would have avoided significant head and brain trauma in the birth process, and would be a normal, healthy child today.

COUNT I
(Medical Negligence – Minor's Claim)

48. Plaintiff repeats, re-alleges, adopts, and incorporates by reference the preceding paragraphs of this Complaint as if fully stated herein.

49. In their care and treatment of Michelle Abney and Matthew Abney, the above-referenced Defendants, acting directly, individually and/or by and/or through their actual and/or apparent agents, servants and/or employees, owed to Plaintiff the duty to exercise that degree of care, skill, and judgment which a reasonably competent hospital, obstetrician, and/or similar Health Care Provider would have exercised under the same or similar circumstances.

50. Defendants, acting directly, individually and/or by and/or through their actual and/or apparent agents, servants and/or employees, breached the aforesaid duty of care owed to Michelle Abney and Matthew Abney, and were negligent by:

- a. Failing to take appropriate precautions in monitoring and treating Michelle Abney's and Matthew Abney's condition during labor;

- b. Failing to make a timely diagnosis of cephalopelvic disproportion;
- c. Failing to timely ascertain Matthew's presenting position during labor & delivery;
- d. Failing to obtain appropriate consultations and/or appropriately utilize the information available to them in treatment of Michelle Abney and Matthew Abney;
- e. Failing to react to the positive history, symptoms, signs, physical findings, and other data which were illustrative of Michelle Abney's and Matthew Abney's condition during labor;
- f. Failing to timely diagnose and treat arrest of descent;
- g. Negligently allowing Mrs. Abney's second stage of labor to prolong to the point of maternal and fetal injury;
- h. Negligently attempting a vacuum delivery at 0 or +1 station, particularly in the setting of a fetal mal-presentation with cephalopelvic disproportion and/or arrest of descent;
- i. Failing to order a timely cesarean section;
- j. Failing to perform a timely cesarean section; and by
- k. Failing to timely and appropriately deliver Matthew Abney by cesarean section.

51. As a direct and proximate result of the aforementioned deviations from the standard of care by Defendants, Matthew Abney suffered and/or will suffer the following injuries, among others:

- a. Brain damage;
- b. Developmental delay;
- c. Cerebral palsy;
- d. Cognitive and mental impairment;

- e. Tone abnormalities;
- f. Neurological disabilities;
- g. Physical impairment;
- h. Significant conscious pain and suffering;
- i. Emotional distress;
- j. Inconvenience and discomfort;
- k. He is and will be permanently dependent upon others for his care;
- l. He has and will continue to incur significant medical and other care expenses for which he and his parents are unable to pay;
- m. His earning capacity has been severely diminished; and
- n. Other injuries and damages.

WHEREFORE, Plaintiff, Matthew Abney, a minor, by and through his parents and Next Friends, Michelle Abney and Eddie Abney III, brings this action against Defendants and seeks damages that will adequately and fairly compensate him, costs, and such other and further relief as may be deemed appropriate.

Respectfully submitted,

WAIS, VOGELSTEIN, FORMAN & OFFUTT, LLC

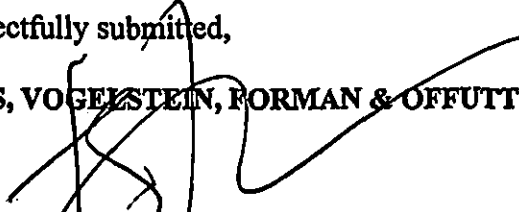
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DEMAND FOR JURY TRIAL

Plaintiff, by and through his undersigned attorneys, hereby demands a trial by jury on all issues raised herein.

Respectfully submitted,

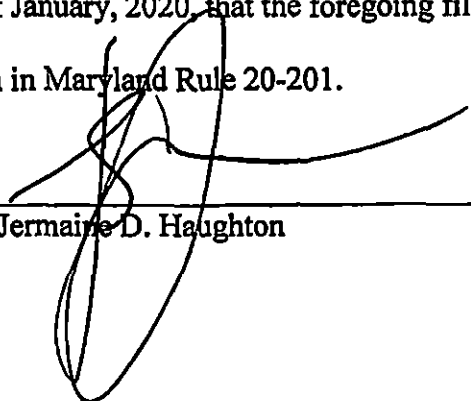
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RULE 20-201 CERTIFICATION

I HEREBY CERTIFY this 21st day of January, 2020, that the foregoing filing does not contain any restricted information as set forth in Maryland Rule 20-201.



Jermaine D. Haughton