

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

ELIJAH BALTAZAR-POWELL, A MINOR, \*  
BY AND THROUGH HIS \*  
PARENTS AND NEXT FRIENDS, \*  
SHAMMAH POWELL AND \*  
EDWIN BALTAZAR \*  
90 Anna Court \*  
Gaithersburg, Maryland 20877 \*

*Plaintiff* \*

v. \*

ADVENTIST HEALTHCARE, INC. \*  
D/B/A SHADY GROVE ADVENTIST \*  
HOSPITAL \*  
820 W. Diamond Avenue \*  
Suite 600 \*  
Gaithersburg, Maryland 20878 \*

Case No.: \_\_\_\_\_

Serve On \*  
Kenneth B. Destefano, Esq. \*  
820 W. Diamond Ave, Suite 600 \*  
Gaithersburg, Maryland 20878 \*

and \*

MATERNAL-FETAL MEDICINE \*  
ASSOCIATES OF MARYLAND, LLC \*  
10110 Molecular Drive \*  
Suite 218 \*  
Rockville, Maryland 20850 \*

Serve On \*  
Reed P. Sexter \*  
9921 Silver Brook Drive \*  
Rockville, Maryland 20850 \*

and \*

SHERRI HAMERSLEY, M.D. \*  
10110 Molecular Drive \*  
Suite 218 \*  
Rockville, Maryland 20850 \*

and \*  
\*  
SIMMONDS, MARTIN &  
HELMBRECHT, LLC \*  
26005 Ridge Road \*  
Suite 200 \*  
Damascus, Maryland 20872 \*

Serve On \*  
The Corporation Trust, Incorporated \*  
2405 York Road, Suite 201 \*  
Lutherville-Timonium, Maryland 21093 \*

and \*  
\*  
THOMAS MARTIN, M.D. \*  
26005 Ridge Road \*  
Suite 200 \*  
Damascus, Maryland 20872 \*

and \*  
\*  
ROBERT B. WALTON, M.D. \*  
26005 Ridge Road \*  
Suite 200 \*  
Damascus, Maryland 20872 \*

and \*  
\*  
ALBERT SIMMONDS, M.D. \*  
26005 Ridge Road \*  
Suite 200 \*  
Damascus, Maryland 20872 \*

and \*  
\*  
O. LAWRENCE STITT, M.D. \*  
University of Maryland Capital Region \*  
251 National Harbor Boulevard, Suite 500 \*  
Oxon Hill, Maryland 20745 \*

and \*  
\*  
PEDIATRIX OF MARYLAND, P.A. \*  
11 East Chase Street

Baltimore, Maryland 21202 \*

Serve On \*

The Corporation Trust, Incorporated \*

2405 York Road, Suite 201 \*

Lutherville-Timonium, Maryland 21093 \*

and \*

PEDIATRIX MEDICAL GROUP OF \*

THE MID-ATLANTIC, P.C. \*

2810 North Parham Road, Suite 110 \*

Richmond, Virginia 23294 \*

Serve On \*

The Corporation Trust, Incorporated \*

2405 York Road, Suite 201 \*

Lutherville-Timonium, Maryland 21093 \*

and \*

EDINA VESZELOVSZKY, M.D. \*

Pediatric of Maryland \*

Shady Grove Adventist Hospital \*

9901 Medical Center Drive \*

Rockville, MD 20850 \*

and \*

MADHU NIGAM, M.D. \*

Pediatric of Maryland \*

Shady Grove Adventist Hospital \*

9901 Medical Center Drive \*

Rockville, MD 20850 \*

and \*

VANESSA PINEIRO, R.T. \*

Pediatric of Maryland \*

Shady Grove Adventist Hospital \*

9901 Medical Center Drive \*

Rockville, MD 20850 \*

*Defendants* \*

\* \* \* \* \*

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Elijah Baltazar-Powell, a minor by and through his Parents and Next Friends, Shammah Powell and Edwin Baltazar, by and through their undersigned attorneys, Christopher S. Norman, Brian M. Cathell, Gregory K. Kirby, and Wais, Vogelstein, Forman, Koch and Norman, LLC, hereby sues Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Maternal-Fetal Medicine Associates of Maryland, LLC, Simmonds, Martin & Helmbrecht, LLC, Pediatrix of Maryland, P.A., and Pediatrix Medical Group of the Mid-Atlantic, P.C., individually and acting by and/or through each of their agents, servants and/or employees including, but not necessarily limited to, Sherri Hamersley, M.D., Thomas Martin, M.D., Robert B. Walton, M.D., Albert Simmonds, M.D., O. Lawrence Stitt, M.D., Edina Veszalovsky, M.D., Madhu Nigam, M.D. and Vanessa Pineiro, R.T., as well as Sherri Hamersley, M.D., Thomas Martin, M.D., Robert B. Walton, M.D., Albert Simmonds, M.D., O. Lawrence Stitt, M.D., Edina Veszalovsky, M.D., Madhu Nigam, M.D. and Vanessa Pineiro, R.T., individually, and for his causes of action state as follows:

PARTIES, VENUE, AND JURISDICTION

1. This medical malpractice claim is instituted pursuant to Md. Cts. & Jud. Proc. Art. §§ 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 the Circuit Court of Montgomery County, Maryland.
3. The Plaintiff avers that they have 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. Attached hereto and incorporated herein by reference are the Certificates of Qualified Expert and Expert Reports of Edward Karotkin, M.D., and Sharon Patrick, M.D.

4. Defendant Health Care Provider Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital (a/k/a “Shady Grove”) is, and at all times relevant hereto was, a Maryland corporation engaged in the business of providing health care services to individuals in need thereof. At all times relevant hereto, Shady Grove acted directly and/or by and/or through its actual and/or apparent agents, servants and/or employees, including, but not limited to Maternal-Fetal Medicine Associates of Maryland, LLC, Simmonds, Martin & Helmbrecht, LLC, Pediatrix of Maryland, P.A., and Pediatrix Medical Group of the Mid-Atlantic, P.C., as well as Sherri Hamersley, M.D., Thomas Martin, M.D., Robert B. Walton, M.D., Albert Simmonds, M.D., O. Lawrence Stitt, M.D., Edina Veszalovsky, M.D., Madhu Nigam, M.D. and Vanessa Pineiro, R.T.

5. Defendant Health Care Provider O. Lawrence Stitt, M.D., is, and at all times relevant hereto was, a physician licensed to practice obstetrics in the State of Maryland. At all times relevant hereto, Dr. Stitt acted individually and/or as the actual and/or apparent agent, servant and/or employee of Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, and/or Simmonds, Martin & Helmbrecht, LLC.

6. Defendant Health Care Provider Maternal-Fetal Medicine Associates of Maryland, LLC, is, and at all times relevant hereto was, a Maryland corporation engaged in the business of providing health care services to individuals in need thereof. At all times relevant hereto, Maternal-Fetal Medicine Associates of Maryland, LLC, acted directly and/or by and/or through its actual and/or apparent agents, servants and/or employees, including, but not limited to, Sherri Hamersley, M.D.

7. Defendant Health Care Provider Sherri Hamersley, M.D., is, and at all times relevant hereto was, a physician licensed to practice obstetrics and maternal fetal medicine in the State of Maryland. At all times relevant hereto, Dr. Hammersley acted individually and/or as the actual and/or apparent agent, servant and/or employee of Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, and/or Maternal-Fetal Medicine Associates of Maryland, LLC.

8. Defendant Health Care Provider Simmonds, Martin & Helmbrecht, LLC, is, and at all times relevant hereto was, a Maryland corporation engaged in the business of providing health care services to individuals in need thereof. At all times relevant hereto, Simmonds, Martin & Helmbrecht, LLC, acted directly and/or by and/or through its actual and/or apparent agents, servants and/or employees, including, but not limited to, Thomas Martin, M.D., Robert B. Walton, M.D., Albert Simmonds, M.D., and O. Lawrence Stitt, M.D.

9. Defendant Health Care Provider Thomas Martin, M.D., is, and at all times relevant hereto was, a physician licensed to practice obstetrics in the State of Maryland. At all times relevant hereto, Dr. Martin acted individually and/or as the actual and/or apparent agent, servant and/or employee of Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, and/or Simmonds, Martin & Helmbrecht, LLC.

10. Defendant Health Care Provider Robert B. Walton, M.D., is, and at all times relevant hereto was, a physician licensed to practice obstetrics in the State of Maryland. At all times relevant hereto, Dr. Walton acted individually and/or as the actual and/or apparent agent, servant and/or employee of Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, and/or Simmonds, Martin & Helmbrecht, LLC.

11. Defendant Health Care Provider Albert Simmonds, M.D., is, and at all times relevant hereto was, a physician licensed to practice obstetrics in the State of Maryland. At all

times relevant hereto, Dr. Simmonds acted individually and/or as the actual and/or apparent agent, servant and/or employee of Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, and/or Simmonds, Martin & Helmbrecht, LLC.

12. Defendant Health Care Provider Pediatrix of Maryland, P.A., is, and at all times relevant hereto was, a Maryland corporation engaged in the business of providing health care services to individuals in need thereof, including in Montgomery County. At all times relevant hereto, Pediatrix of Maryland, P.A., acted directly and/or by and/or through its actual and/or apparent agents, servants and/or employees, including, but not limited to, Edina Veszelsky, M.D., Madhu Nigam, M.D. and Vanessa Pineiro, R.T.

13. Defendant Health Care Provider Pediatrix Medical Group of the Mid-Atlantic, P.C., is, and at all times relevant hereto was, a corporation registered in Maryland and engaged in the business of providing health care services to individuals in need thereof in Maryland, including but not limited to Montgomery County. At all times relevant hereto, Pediatrix Medical Group of the Mid-Atlantic, P.C., acted directly and/or by and/or through its actual and/or apparent agents, servants and/or employees, including, but not limited to, Pediatrix of Maryland, P.A., Edina Veszelsky, M.D., Madhu Nigam, M.D. and Vanessa Pineiro, R.T.

14. Defendant Health Care Provider Edina Veszelsky, M.D. is, and at all times relevant hereto was, a physician licensed to practice neonatology in the State of Maryland. At all times relevant hereto, Dr. Veszelsky acted individually and/or as the actual and/or apparent agent, servant and/or employee of Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Pediatrix of Maryland, P.A., and/or Pediatrix Medical Group of the Mid-Atlantic, P.C.

15. Defendant Health Care Provider Madhu Nigam, M.D., is, and at all times relevant hereto was, a physician licensed to practice neonatology in the State of Maryland. At all times

relevant hereto, Dr. Nigam acted individually and/or as the actual and/or apparent agent, servant and/or employee of Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Pediatrix of Maryland, P.A., and/or Pediatrix Medical Group of the Mid-Atlantic, P.C.

16. Defendant Health Care Provider Vanessa Pineiro, R.T., is, and at all times relevant hereto was, a respiratory therapist licensed and/or registered to practice respiratory therapy in the State of Maryland. At all times relevant hereto, Ms. Pineiro acted individually and/or as the actual and/or apparent agent, servant and/or employee of Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Pediatrix of Maryland, P.A., and/or Pediatrix Medical Group of the Mid-Atlantic, P.C.

#### STATEMENT OF FACTS

17. Shammah Powell (hereinafter “Ms. Powell” or “Powell”) underwent a cesarean section at Shady Grove Adventist Hospital on June 26, 2019, at 10:54 a.m. – giving birth to a baby boy named Elijah. Elijah was born with congenital diaphragmatic hernia (“CDH”), a condition that was diagnosed prenatally and for which Ms. Powell received intensive prenatal care and monitoring.

18. During her pregnancy, Ms. Powell was followed by her obstetricians at Simmonds, Martin & Helmbrecht, and also consulted with providers at Maternal-Fetal Medicine Associates of Maryland and the Fetal Medicine Institute at Children’s National Medical Center (“CNMC”).

19. Ms. Powell began her prenatal care at 10 weeks gestation. When CDH was suspected, she was referred to Maternal-Fetal Medicine Associates of Maryland (“MFMAM”) and was seen by maternal fetal medicine specialist Sheri Hamersley, M.D., and her colleagues.

20. On or about February 8, 2019, Dr. Hamersley confirmed a fetal diagnosis of left-sided CDH.



21. On March 15, 2019, Dr. Hamersley and/or her colleagues referred Ms. Powell to the Fetal Medicine Institute at Children’s National for a further fetal MRI, other advanced testing, and consultation with a neonatologist (Dr. An Massaro) and a pediatric surgeon (Dr. Badillo) to discuss the diagnosis further and prepare a plan of care for Elijah during and after birth. They advised Ms. Powell that babies with severe CDH require the highest level of support immediately after birth, including potential extracorporeal membrane oxygenation (“ECMO”). Drs. Massaro and Badillo discussed with Ms. Powell that there were specialized protocols for induction with resources in the delivery room. In terms of Elijah’s delivery, there would be planned stabilization resuscitation in the delivery room, which would include a placement of an endotracheal (“ET”) tube and initiation of mechanical ventilation.

22. Importantly, they also discussed that “rapid transfer” of Elijah from Shady Grove to Children’s National Medical Center’s Neonatal Intensive Care Unit would occur to provide him the high level of care necessary to stabilize him for the purpose of ensuring that his CDH did not cause a cycle of pulmonary hypertension. Drs. Padillo and Massaro advised Ms. Powell that the purpose of such care by CNMH would be to continue the process of supporting optimal gas exchange after Elijah was born, while allowing the infant to transition and to prevent or mitigate any pulmonary hypertension.

23. Dr. Padillo noted that once the baby was sufficiently weaned from support, they would surgically repair the defect in the diaphragm. That surgery was expected to be anywhere from 1 day to 3 weeks after birth. Ms. Powell was advised that the majority of the potential complications arising from CDH must be managed with “early intervention” strategies. Moreover, her healthcare providers counseled Ms. Powell that infants with CDH at birth can catch up to their peers and have relatively normal lives and that overall survival for CDH is **85 percent.**

24. Ms. Powell's prenatal care continued. On June 4, 2019, she was again evaluated by Maternal Fetal Medicine Associates of Maryland. Her biophysical profile ("BPP") resulted in an 8 out of 8 score. It was noted that she was previously seen by a geneticist and underwent an amniocentesis, resulting in normal FISH and microarray tests. Ms. Powell's baby was seen as having a left-sided congenital diaphragmatic hernia. Dr. Hamersley noted in her plan that she would consult with Kathy Schaff at Shady Grove and also coordinate delivery with Shady Grove and CNMC. Dr. Hamersley also noted that Ms. Powell would undergo twice weekly biophysical profiles.

25. On June 7, 2019, Ms. Powell was again seen by providers at Maternal Fetal Medicine Associates of Maryland as planned. Her biophysical profile was again an 8 out of 8. It was again noted that Dr. Hamersley and her colleagues would coordinate delivery between Shady Grove and CNMC consistent with the CDH diagnosis and plan of care.

26. On June 13, 2019, Ms. Powell reported to Dr. Hamersley and/or her colleagues for an assessment as scheduled. Her biophysical profile was an 8 out of 8 and it was noted that the fetal heart rate was 148 bpm, the presentation was cephalic, and the blood flow was normal. Fetal movements were visualized, and the amount of amniotic fluid was listed as normal. Yet again, the diaphragmatic hernia was noted. Like with her past evaluations by Maternal Fetal Medicine Associates of Maryland, it was noted that the patient's records were faxed to Ms. Powell's obstetricians at Simmonds, Martin & Helmbrecht, including Dr. Simmonds..

27. On June 17, 2019, Ms. Powell met with Shady Grove neonatologist, Dr. Minakshi Sukumar, as well as Kathy Schaff, a "birth advisor" at Shady Grove. During that meeting, they recommended "rapid transfer" of Elijah to CNMC after delivery. Ms. Powell agreed with and consented to rapid transfer of Elijah to CNMC based upon the discussion she had with her health

care providers. As memorialized in the June 17 note, all Shady Grove providers and consultants were aware that Elijah would be emergently transferred to CNMC.

28. Dr. Hamersley and her colleagues at Maternal-Fetal Medicine Associates of Maryland were aware of that plan and were aware that Ms. Powell had consented to it.

29. On June 18, 2019, Ms. Powell again presented to Maternal-Fetal Medicine Associates of Maryland for continued assessment and monitoring. She again had an 8 out of 8 biophysical profile. She reported that she had established care with an obstetrician team at Shady Grove. Delivery was recommended at 37 weeks. They discussed locking down a date for delivery, as her provider at Maternal-Fetal Medicine Associates of Maryland indicated that they would coordinate that date with CNMC also, given Elijah's CDH and the agreed upon plan of having CNMC rapidly transfer Elijah after birth to their facility. The plan again indicated that they were in the process of coordinating delivery with Shady Grove and CNMC as previously discussed.

30. On June 20, 2019, Ms. Powell presented to Maternal-Fetal Medicine Associates of Maryland for another biophysical profile. The report from that visit again demonstrated a BPP of 8 out of 8 with normal breathing, movement and tone visualized, as well as normal amniotic fluid volume ("AFV"). It was again noted that she established care with an obstetrician at Shady Grove named Dr. Thomas Martin, who practices at Shady Grove and Simmonds, Martin & Helmbrecht. All of Ms. Powell's reports were already being sent to Dr. Martin's practice through obstetrician Dr. Helmbrecht. Dr. Martin and Ms. Powell's health care providers at MFMAM established a C-section delivery date of June 27, 2019, to be performed by Dr. Martin. As they had indicated all along that they would coordinate with CNMC, MFMAM noted that they coordinated with the CNMC NICU and also "informed the multidisciplinary team at Children's National regarding the

date of delivery” so that CNMC could be present to care for Elijah after birth and rapidly transfer him to CNMC for continued care.

31. On June 24, 2019, a final biophysical profile and assessment was performed by Dr. Hamersley and MFMAM. Ms. Powell’s BPP was again an 8 out of 8 with normal breathing, movement and tone visualized with the fetal heart rate at 150 bpm and Ms. Powell’s report of good fetal movement. As Ms. Powell reported some continued wetness in her underwear, MFMAM advised her to be evaluated for premature rupture of membranes at Shady Grove. As this was going to be a C-section delivery, MFMAM noted that delivery “tomorrow” (June 25) would be ideal so Ms. Powell could be NPO for the surgery depending on the outcome of the evaluation. MFMAM noted that because Ms. Powell was already 37 weeks, they did not have to wait until June 27 as previously planned. MFMAM discussed the plan for earlier delivery with Dr. Martin, who was tasked with coordinating delivery with Shady Grove. MFMAM further noted that they would be in communication regarding the timing of delivery “to facilitate communication with Children’s National Hospital given [Elijah’s] diaphragmatic hernia” to accomplish the plan of rapid transfer to CNMC.

32. At that point, Ms. Powell’s obstetricians and maternal fetal medicine specialists were aware that delivery was imminent.

33. As recommended, Ms. Powell presented to Shady Grove Labor and Delivery on June 25, 2019, at 37w5d. Assessment for premature rupture of membranes was negative, and Ms. Powell was admitted for continued fetal monitoring in preparation for C-section delivery. The decision was made to deliver Elijah by a C-section on June 26, 2019. Based on the records, it is unclear who specifically made the decision to deliver Elijah. Prior to this date, CNMC had been informed that delivery was scheduled to occur on June 27. At no point prior to birth was CNMC

updated about delivery on June 26 and asked to be present. Said differently, CNMC was not notified that the date of delivery had been advanced – thus, they were prevented from being present for delivery and/or providing guidance about the immediate neonatal care as the plan of care required.

34. On June 26, 2019, on or about 10:54 a.m. (37w6d), Ms. Powell underwent a C-section and Elijah was delivered by O. Lawrence Stitt, M.D. The Shady Grove NICU team was present, including neonatologists Edina Veszelszky, M.D., and Madhu Nigam, M.D., and respiratory therapist, Vanessa Pineiro, R.T. Obviously, the Shady Grove neonatology team had been advised and were aware of Elijah’s C-section delivery.

35. Although the Shady Grove NICU team was aware of and present at Elijah’s delivery, CNMC’s NICU/neonatology/transport team and any and all other health care providers, who were competent to provide the stabilization and specialty care that Elijah required immediately after birth, were absent. **Again, CNMC providers were not present at delivery because they had not been notified by any of the Defendant Health Care Providers that Ms. Powell’s delivery had been changed.**

36. At birth, Elijah weighed 2370 grams, the amniotic fluid was clear, and his APGAR scores were 3 and 7 at 1 and 5 minutes, respectively. His initial arterial blood gases at 11:12 a.m. revealed normal findings of a pH of 7.26 and a base excess of (-2); venous blood gases at 11:17 revealed a pH of 7.32 and a base excess of (-4).

37. Elijah was handed to Dr. Veszelszky after birth, who applied positive pressure ventilation. Elijah was transferred to the NICU and neonatologist, Dr. Madhu Nigam, intubated Elijah with a 3.5 mm French catheter. The NICU team, including Ms. Pineiro, established the

following ventilator settings: Mode (SIMV), Rate (55), FiO<sub>2</sub> (28%), Total Pressure (35 cmH<sub>2</sub>O), PEEP (4), Inspiratory time (Ti) of 0.35, and a fixed tidal volume (Vt) of 9.

38. Ms. Powell's health care providers were well aware of the condition of Elijah in utero and Ms. Powell was advised of the treatment plan to care for Elijah upon his birth, which she accepted and offered her consent. The medical records indicate that Ms. Powell, excepting the offered abortion, was compliant with the advice and recommendations of her health care providers.

39. Despite being born at 10:54 a.m. with an established plan for specialized care and rapid transport to CNMC immediately following delivery, CNMC Transport was not contacted until 11:19 a.m. (twenty-four minutes after birth). The transport record indicates that Dr. Nigam was the requesting ("sending") physician. CNMC Transport elected to transport Elijah from Shady Grove via helicopter, indicating the severity of Elijah's condition. The helicopter arrived at Shady Grove at 11:52 a.m. and CNMC Transport providers were at bedside at 12:05 p.m., which was about seventy-one (71) minutes after Elijah's birth due to the failure to communicate by the Defendant health care providers.

40. Upon assuming care of Elijah, CNMC Transport found Elijah's blood gases to demonstrate a significant and profound deterioration in his condition compared to immediately following birth. CNMC personnel found his pH at 6.97, pCO<sub>2</sub> at 112.8 mmHg, and his base excess at (-9). CNMC's initial bedside vitals for Elijah (at 12:05) were listed as "unstable": BP 80/47 mmHg, pulse 170 BPM, respirations 57, SpO<sub>2</sub> 86% (Preductal) / 59% (post ductal), and capillary refill of four seconds. Clearly, the interventions by the Defendant Shady Grove providers, who were not equipped or experienced in handling patients such as Elijah, allowed him to become acidotic and to develop a severe pattern of pulmonary hypertension that never should have been allowed to occur.

41. Had CNMC been timely notified, CNMC providers would have been present at Elijah's birth and Elijah would have avoided permanent neurological injury.

42. In fact, the CNMC transport record indicates that Shady Grove's neonatal/NICU team was underequipped to provide the care Elijah needed after birth. The reason given for transport was that the "level of care required is not available at patient's location." The transport nurse, Hannah Bourne, R.N., noted that "[Shady Grove] called for transport [because they were] initially able to stabilize infant **but [now the care required is] unable to be provided by [Shady Grove].**" Based on the records, those were the reasons early on that Ms. Powell's MFM specialists wanted CNMC personnel to be present and to rapidly transport Elijah to CNMC for care upon his birth and not wait until he deteriorated.

43. Upon arrival at Shady Grove, the Transport Team immediately began efforts to stabilize Elijah. They adjusted his endotracheal tube, provided what appears to be his first dose of paralytics, started nitric oxide, and adjusted Elijah's ventilator settings to PCPS 28/6, respirations at 55, and FiO<sub>2</sub> at 100%. Elijah's condition began to improve immediately. Indeed, within 30 minutes his oxygen saturation improved, his pH increased to 7.0, pCO<sub>2</sub> 100 mmHg, and base excess improved to 3.9. He was then noted to be "stable" after the changes to the ventilator settings made by CNMC personnel. As necessary, CNMC personnel further adjusted the settings to ventilation mode "IMV" and a ventilation rate of 60.

44. Elijah did not arrive at CNMC until approximately 13:50 p.m., or one hundred and seventy-six (176) minutes after birth. His vitals, however, improved throughout transport and, upon arrival at CNMC, Elijah's vitals were "stable." His BP was 52/35 mmHg, pulse 131 bpm, respirations 52, SpO<sub>2</sub> 99% / 93% post ductal, and capillary refill had improved to three seconds at handover.

45. At 13:58 (one-hundred and eighty-four (184) minutes after birth), Elijah was in the CNMC NICU. He was described as a “37 6/7 male with left congenital diaphragmatic hernia and hypoxic respiratory failure.” Furthermore, CNMC’s Impression and Plan for Elijah was “severe hypoxia after birth . . . currently requiring HFOV and nitric oxide to maintain oxygenation.”

46. The subsequent weeks and months for Elijah at CNMC’s NICU were complicated by the initial failure to stabilize him as the standard of care required. Elijah’s CDH was repaired successfully on July 7, 2019. Medical records indicate that between his admission on June 26, 2019, and final discharge on January 16, 2020, Elijah required multiple episodes of intubation and extubation before the decision to place a tracheostomy was made on November 15, 2019.

47. Brain imaging of Elijah taken at CNMC in December 2019 was significant for cerebral atrophy. At the time of discharge from CNMC on January 16, 2020, Elijah’s diagnoses included congenital diaphragmatic hernia, which had been repaired, chronic respiratory failure with hypoxia and hypercapnia, and abnormal brain MRI. Elijah remains severely disabled with severe brain damage, signs of cerebral palsy, a permanent tracheostomy, G-Tube dependence, seizures, and extensive physical and cognitive developmental delays, among other disabilities and problems.

### **COUNT I**

#### **(Medical Malpractice Against Defendants**

**Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Maternal-Fetal Medicine Associates of Maryland, Sherri Hamersley, M.D., LLC, Simmonds, Martin & Helmbrecht, LLC, Thomas Martin, M.D., Robert B. Walton, M.D., Albert Simmonds, M.D., and O. Lawrence Stitt, M.D.)**

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

49. In their care and treatment of Elijah Baltazar-Powell, the Defendant Health Care Providers, Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Maternal-Fetal



Medicine Associates of Maryland, Sherri Hamersley, M.D., LLC, Simmonds, Martin & Helmbrecht, LLC, Thomas Martin, M.D., Robert B. Walton, M.D., Albert Simmonds, M.D., and O. Lawrence Stitt, M.D., acting directly and individually and/or by and/or through their actual and/or apparent agents, servants, and/or employees, owed to the Plaintiff a duty to exercise that degree of care and skill which a reasonably competent hospital, medical practice, nurse, physician, nurse practitioner, and/or similar health care provider would have exercised under similar circumstances.

50. The Defendant Health Care Providers, Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Maternal-Fetal Medicine Associates of Maryland, Sherri Hamersley, M.D., LLC, Simmonds, Martin & Helmbrecht, LLC, Thomas Martin, M.D., Robert B. Walton, M.D., Albert Simmonds, M.D., and O. Lawrence Stitt, M.D., acting directly and individually and/or by and/or through their actual and/or apparent agents, servants, and/or employees, breached the aforesaid duty of care to Elijah Baltazar-Powell and were negligent by:

- a. Failing to properly ensure that they engaged health care providers who were capable of properly treating Elijah at and following birth;
- b. Failing to ensure that health care providers with the requisite knowledge, training, and experience in stabilizing infants such as Elijah were present at delivery, including but not limited to health care providers from Children's National Medical Center;
- c. Failing to ensure that the modified delivery plan was timely communicated to health care providers at Children's National Medical Center or other competent providers;

- d. Failing to ensure that Elijah was rapidly transported from Shady Grove to Children's National Medical Center pursuant to the agreed-upon plan; and
- e. Negligent in other ways.

51. As a direct and proximate result of the above-mentioned deviations from the applicable standards of care by the aforementioned Defendant Health Care Providers, Elijah Baltazar-Powell suffered and/or will suffer the following injuries, amongst others:

- a. Brain damage;
- b. Hypoxic-ischemic brain injury;
- c. Cognitive and mental impairment;
- d. Neurological disabilities;
- e. Seizures;
- f. Permanent tracheostomy;
- g. G-Tube dependence;
- h. Physical impairment;
- i. Significant conscious pain and suffering;
- j. Emotional distress;
- k. Permanently dependent upon others for his care;
- l. Significant medical and other care expenses, including expenses that he and his parents are unable or unwilling to pay;
- m. Severely diminished earning capacity; and
- n. Other injuries and damages.

WHEREFORE, Plaintiff, Elijah Baltazar-Powell, a minor, by and through his parents and next friends, Shammah Powell and Edwin Baltazar, brings this action against the aforementioned

Defendant Health Care Providers and seeks damages that will adequately and fairly compensate him, plus costs, and such other and further relief as may be deemed appropriate.

**COUNT II**

**(Medical Malpractice Against Health Care Providers  
Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Pediatrix of Maryland,  
P.A., Pediatrix Medical Group of the Mid-Atlantic, P.C., Edina Veszelsky, M.D., Madhu  
Nigam, M.D. and Vanessa Pineiro, R.T.)**

52. Plaintiff repeats, re-alleges, adopts, and incorporates by reference the above paragraphs of this Complaint as if fully set forth herein.

53. In their care and treatment of Elijah Baltazar-Powell, the Defendant Health Care Providers, Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Pediatrix of Maryland, P.A., Pediatrix Medical Group of the Mid-Atlantic, P.C., Edina Veszelsky, M.D., Madhu Nigam, M.D. and Vanessa Pineiro, R.T., acting directly and individually and/or by and/or through their actual and/or apparent agents, servants, and/or employees, owed to the Plaintiff a duty to exercise that degree of care and skill which a reasonably competent hospital, medical practice, nurse, physician, nurse practitioner, respiratory therapist, and/or similar health care provider would have exercised under similar circumstances.

54. The Defendant Health Care Providers, Adventist Healthcare, Inc. d/b/a Shady Grove Adventist Hospital, Pediatrix of Maryland, P.A., Pediatrix Medical Group of the Mid-Atlantic, P.C., Edina Veszelsky, M.D., Madhu Nigam, M.D. and Vanessa Pineiro, R.T., acting directly and individually and/or by and/or through their actual and/or apparent agents, servants, and/or employees, breached the aforesaid duty of care to Elijah Baltazar-Powell and were negligent by:

- a. Failing to properly treat and stabilize Elijah immediately after he was delivered;

- b. Failing to properly monitor Elijah after delivery and to adjust his treatment as necessary based on Elijah's condition;
- c. Failing to ensure that they engaged health care providers who were capable of properly treating Elijah immediately after he was delivered;
- d. Failing to ensure that health care providers with knowledge, training, and experience in stabilizing infants such as Elijah were present at delivery, including but not limited to, health care providers from Children's National Medical Center;
- e. Failing to ensure that the modified delivery plan was timely communicated to Children's National Medical Center;
- f. Failing to ensure that Elijah was rapidly transported from Shady Grove to Children's National Medical Center pursuant to the agreed-upon plan; and
- g. Negligent in other ways.

55. As a direct and proximate result of the above-mentioned deviations from the applicable standards of care by the aforementioned Defendant Health Care Providers, Elijah Baltazar-Powell suffered and/or will suffer the following injuries, amongst others:

- a. Brain damage;
- b. Hypoxic-ischemic brain injury;
- c. Cognitive and mental impairment;
- d. Neurological disabilities;
- e. Seizures;
- f. Permanent tracheostomy;
- g. G-Tube dependence;
- h. Physical impairment;

- i. Significant conscious pain and suffering;
- j. Emotional distress;
- k. Permanently dependent upon others for his care;
- l. Significant medical and other care expenses, including expenses that he and his parents are unable or unwilling to pay;
- m. Severely diminished earning capacity; and
- n. Other injuries and damages.

WHEREFORE, Plaintiff, Elijah Baltazar-Powell, a minor, by and through his parents and next friends, Shammah Powell and Edwin Baltazar, brings this action against the aforementioned Defendant Health Care Providers and seeks damages that will adequately and fairly compensate him, plus costs, and such other and further relief as may be deemed appropriate.

**COUNT III**  
**(Informed Consent Against All Defendants)**

56. Plaintiff repeats, re-alleges, adopts and incorporates by reference the above paragraphs of this Complaint as if fully set forth herein.

57. The Defendant Health Care Providers acting individually and directly and/or by and/or through their respective actual and/or apparent agents, servants and/or employees owed Plaintiff the duty to adequately and appropriately notify Plaintiff of the material risks involved in changing the treatment plan for Elijah from what had already been discussed to the Defendant Health Care Providers' alternative plan, given the documented history of the significant risks of delay and/or insufficiently addressing Elijah's condition immediately after birth.

58. The Defendant Health Care Providers acting individually and directly and/or by and/or through their respective actual and/or apparent agents, servants and/or employees further owed Plaintiff the duty to adequately and appropriately notify Plaintiff's guardians of the material

risks and benefits of failing to properly and immediately address his condition after birth on June 26, 2019.

59. The Defendant Health Care Providers acting individually and directly and/or by and/or through their respective actual and/or apparent agents, servants and/or employees, were negligent in their failure to adequately and appropriately treat and stabilize Elijah immediately after he was delivered, monitor Elijah after delivery and to adjust his treatment as necessary based on Elijah's condition, ensure that they engaged health care providers who were capable of properly treating Elijah immediately after he was delivered, ensure that health care providers with knowledge, training, and experience in stabilizing infants such as Elijah were present at delivery, including but not limited to, health care providers from Children's National Medical Center, ensure that the modified delivery plan was timely communicated to Children's National Medical Center, and ensure that Elijah was rapidly transported from Shady Grove to Children's National Medical Center pursuant to the agreed-upon plan. These failures induced Elijah's mother, Shammah Powell, to make decisions for the plan of care for Plaintiff based on faulty, incomplete, and/or incorrect information.

60. The Defendant Health Care Providers acting individually and directly and/or by and/or through their respective actual and/or apparent agents, servants and/or employees, owed Plaintiff the duty to timely, adequately, and appropriately notify Shammah Powell of any changes to Elijah's treatment plan.

61. Otherwise stated, the Defendant Health Care Providers acting individually and directly and/or by and/or through their respective actual and/or apparent agents, servants and/or employees were required to obtain Shammah Powell's informed consent with respect to the decision to change the treatment plan for Elijah and to not have health care providers present who

were competent and qualified to treat Plaintiff immediately after birth, given his CDH, to monitor and adjust care based on Plaintiff's condition, and to rapidly transport Plaintiff to Children's National Medical Center or to any qualified facility that could properly care for Plaintiff's condition, and were negligent in their failure to adequately and appropriately obtain informed consent from Shammah Powell related to Plaintiff's care related thereto.

62. Plaintiff was in no way contributorily negligent and relied upon the expertise of the Defendant Health Care Providers to adequately inform Shammah Powell of any change in the treatment plan for Plaintiff, the nature of those changes, and the material risks and benefits related thereto.

63. Had the Defendant Health Care Providers acting individually and directly and/or by and/or through their respective actual and/or apparent agents, servants and/or employees, adequately, completely, and appropriately informed Plaintiff's guardians of the material risks and benefits related thereto, like any reasonable individual in that situation, Plaintiff, through his parents/guardians would have chosen to follow the plan previously discussed and consented to by Plaintiff's representatives rather than the risks of inadequate and untimely treatment and permanent injury related thereto.

64. As a direct and proximate result of the Defendant Health Care Providers' failure to properly obtain informed consent directly, and by and through their respective actual and/or apparent agents, servants, and/or employees, the Plaintiff has suffered the injuries described in Counts I and II above.

WHEREFORE, Plaintiff, Elijah Baltazar-Powell, a minor, by and through his parents and next friends, Shammah Powell and Edwin Baltazar, brings this action against the aforementioned

Defendant Health Care Providers and seeks damages that will adequately and fairly compensate him, plus costs, and such other and further relief as may be deemed appropriate.

Respectfully submitted,

WAIS, VOGELSTEIN, FORMAN, KOCH & NORMAN, LLC

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RULE 20-2-1 CERTIFICATION

I HEREBY CERTIFY this 14<sup>th</sup> day of October, 2022, that the foregoing filing does not contain any restricted information as set forth in Maryland Rule 20-201.

/s/ Gregory K. Kirby  
Gregory K. Kirby (CPF No. 0512140146)



DEMAND FOR JURY TRIAL

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

Respectfully submitted,

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NORMAN, LLC

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