

**ZEUS ANTONIO ASCENCIO
VELASQUEZ, a minor, by and
through his parents and next friends
SAUL ASCENCIO and CRISTINA
VELASQUEZ
9809 Narragansett Parkway
College Park, MD 20740**

**IN THE
CIRCUIT COURT FOR
MONTGOMERY COUNTY
MARYLAND**

and

**SAUL ASCENCIO and CRISTINA
VELASQUEZ, individually
9809 Narragansett Parkway
College Park, MD 20740**

Plaintiffs

v.

**PRATHAP R. NAINI, M.D.
Anne Arundel Medical Center
2001 Medical Pkwy
Annapolis, MD 21401**

and

**SIMMONDS, MARTIN AND
HELMBRECHT, LLC
Suite 200
26005 Ridge Road
Damascus, MD 20872**

Defendants

* * * * *

COMPLAINT AND ELECTION FOR JURY TRIAL

Plaintiffs, Zeus Ascencio Velasquez, a minor, by and through his parents and next friends Saul Ascencio and Cristina Velasquez, and Saul Ascencio and Cristina Velasquez, individually, by their attorneys, Zev T. Gershon, M.D., J.D., John A. MacLellan and Gershon, Willoughby, & Getz, LLC, hereby bring this action against

Defendant Health Care Providers Prathap R. Naini, M.D. and Simmonds, Martin and Helmbrecht, LLC, and in support thereof state:

JURISDICTION AND VENUE

1. Damages are in excess of the required jurisdictional amount under Md. Code, Cts. & Jud. Pro. Art § 3-2A-02.

2. Venue is appropriate in Montgomery County pursuant to Md. Code, Cts. & Jud. Pro. Art § 6-201, *et. seq.* as the Defendant Health Care Providers carry on a regular business, are employed, or habitually engage in a vocation in Montgomery County and the alleged malpractice occurred in Montgomery County.

3. On September 29, 2022, Plaintiffs filed a Statement of Claim against Defendants in the Health Care Alternative Dispute Resolution Office (HCADRO) captioned as *Zeus Antonio Ascencio Velasquez, et al v. Prathap R. Naini, M.D., et al*, HACDRO No. 2022-378.

4. Plaintiffs then filed with the HCADRO an Election to Waive Arbitration and the Certificate of Qualified Expert and Report of Marc Engelbert, M.D., copies of which are attached hereto as Exhibits A and B respectively. On October 4, 2022, the HCADRO issued an Order of Transfer to the Circuit Court for Montgomery County, attached hereto as Exhibit C.

THE PARTIES

5. Plaintiff Zeus Ascencio Velasquez is the minor child of his biological parents, Plaintiffs Saul Ascencio and Cristina Velasquez.

6. Zeus Ascencio Velasquez (hereinafter, “baby Zeus”) was born on May 27, 2021 at White Oak Medical Center in Silver Spring, MD.

7. At all times pertinent hereto, Defendant Health Care Provider Prathap R. Naini, M.D. was an obstetrician/gynecologist engaged in the practice of obstetrics and gynecology, who held himself out to the public as a specialist in obstetrics and gynecology competent to provide care to patients such as Plaintiff Cristina Velasquez and her then yet-to-be-delivered baby, Zeus Ascencio Velasquez.

8. At all times pertinent hereto, Defendant Health Care Provider Simmonds, Martin and Helmbrecht, LLC held itself out to the public as a competent provider of medical care to patients such as Plaintiff Cristina Velasquez and her then yet-to-be-delivered baby, Zeus Ascencio Velasquez.

9. At all times pertinent hereto, Defendant Health Care Provider Simmonds, Martin and Helmbrecht, LLC provided medical care to Cristina Velasquez and baby Zeus through its servants, employees, and agents (actual and/or apparent), each of whom acted within the scope of his or her authority.

10. At all times pertinent, Defendant Health Care Provider Prathap R. Naini, M.D. acted as a servant, employee, and/or agent (actual and/or apparent) of Defendant Health Care Provider Simmonds, Martin and Helmbrecht, LLC, and did so within the scope of his agency or employment.

FACTS RELEVANT TO ALL COUNTS

11. Ms. Velasquez became pregnant with baby Zeus in approximately November of 2021. On March 5, 2021, she presented to CCI Health Center for pre-natal care.

12. Ms. Velasquez had several risk factors indicating that she would be a difficult vaginal delivery, including: gestational diabetes, maternal obesity, advanced

maternal age, and fetal macrosomia. Her most recent ultrasound prior to delivery estimated her baby's weight to be greater than the 99th percentile. At only 35 weeks+1 day gestation, baby Zeus' estimated fetal weight was already 7 lbs 13 oz.

13. On the night of May 26, 2021 Ms. Velasquez presented to Adventist Healthcare White Oak Medical Center with contractions and decreased fetal movement. She was admitted to the care of Dr. Naini. She continued to labor into the following day.

14. The records indicate that at 1:53 p.m., she was fully dilated. She began pushing at 2:02 p.m. Per Dr. Naini's operative note, at 2:24 p.m. the head was delivered. There was a turtle sign, and McRobert's maneuver was performed. Dr. Naini applied suprapubic pressure from the left side with Roberta Ackom, CNM attempting gentle traction. Alarm was called, and Dr. Naini took over delivery. He then performed Woods Screw, followed by Rubin's maneuver and rotating baby Zeus ROA. An RN then provided suprapubic pressure. Dr. Naini then delivered the anterior arm, followed by the posterior shoulder and body.

15. Baby Zeus weighed 4470 grams, approximately 9 lbs 14 oz at birth (the weight was greater than the 97th percentile of newborns). He was noted to be floppy at delivery. He was unable to move his right hand.

16. The child's Apgar scores (a 0 to 10 scale used to measure the wellbeing of a newborn) were found to be 3 at one minute and 9 at five minutes.

17. On February 23, 2022 an MRI revealed that baby Zeus had a right brachial plexus injury with probable small right C7-T1 pseudomeningocele associated with avulsion or other injury of the right C8 nerve root, and chronic sequela of prior right brachial plexus injury.

18. On May 18, 2022, baby Zeus underwent exploratory and nerve grafting surgery at Children's National Hospital. Surgery confirmed that Zeus suffered obstetric right brachial plexus palsy with absence of deltoid, biceps, and triceps function. In an attempt to restore some function to baby Zeus' brachial plexus, interposition nerve grafting using superior cervical sensory root, sensory branch coapted end-to-end C5 and spinal accessory transfer to posterior division of the upper trunk was performed.

19. It is believed, therefore averred, that the injuries baby Zeus suffered only come from excessive traction (pulling) on the head and not from the natural forces of labor.

20. It is believed, therefore averred, that Dr. Naini applied inappropriate and excessive traction to baby Zeus' head during delivery, causing his Erb's palsy and other neurological injuries.

21. Had Dr. Naini adhered to the applicable standard of care, baby Zeus would have avoided all of his injuries.

COUNT I
MEDICAL MALPRACTICE
(Birth Injury)

22. Plaintiffs incorporate by reference herein all of the facts and allegations contained in paragraphs one through twenty-one (21) as if fully set forth herein, and further allege as follows:

23. Defendant Health Care Providers, and each of them, directly and through their actual and/or apparent agents, servants, and employees, owed Plaintiff the duty to exercise that degree of care and skill that like health care providers would have exercised

in meeting the standard of care applicable to each under the same or similar circumstances.

24. Defendant Health Care Providers Dr. Naini and Simmonds, Martin and Helmbrecht, LLC, through their actual and/or apparent agents, servants, and employees, were negligent and deviated from the generally accepted standard of medical care in one or more of the following ways:

- A. Failing to properly and adequately care for Cristina Velasquez;
- B. Failing to properly and adequately care for baby Zeus;
- C. Using excessive traction to the head of baby Zeus during delivery;
- D. Failing to use appropriate technique(s) and procedures in the delivery of baby Zeus;
- E. Otherwise failing to meet the applicable standards of care.

25. As a direct and proximate result of Defendant Health Care Provider's negligence, baby Zeus suffered past, present, and future injuries and damages, including but not limited to: brachial palsy (Erb's palsy), and other neurological injuries; impaired motor skills; pain and suffering; diminished quality of life; diminished earnings capacity; disfigurement; the need for extraordinary services, equipment, and care, including medical, surgical, hospital, pharmaceutical, therapeutic, and rehabilitative care, and the extraordinary expenses associated therewith.

26. As a further direct and proximate result of Defendant Health Care Provider's negligence, Saul Ascencio and Cristina Velasquez, as the natural parents of baby Zeus, have suffered past, present, and future damages, including the cost of

providing for their son's extraordinary healthcare and rehabilitative needs, and the loss of their child's services.

27. Health Care Provider Simmonds, Martin and Helmbrecht, LLC is vicariously liable for the acts and omissions of its actual and/or apparent agents, servants, and employees including Prathap R. Naini, M.D. who provided care to Cristina Velasquez and baby Zeus.

WHEREFORE, Plaintiff, Zeus Ascencio Velasquez, a minor, by and through his parents and next friends Saul Ascencio and Cristina Velasquez, requests that he be compensated with a fair, adequate, and just award of compensatory damages against Defendant Health Care Providers, plus costs.

WHEREFORE, Plaintiffs, Saul Ascencio and Cristina Velasquez, individually, request that they be compensated with a fair, adequate, and just award of compensatory damages against Defendant Health Care Provider, plus costs.

DEMAND FOR JURY TRIAL

Plaintiffs, through their undersigned counsel, hereby demand trial by jury.

Respectfully submitted,

/s/ John A. MacLellan

Zev T. Gershon, M.D., J.D.
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