

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ITAI GRAVELY,

Plaintiff,

v.

RODNEY LEE STEPHENS, M.D., and  
WOMEN'S HEALTH CENTER OF  
WEST VIRGINIA, INC.,

Defendants.

Civil Action No.:  
Judge:

FILED  
2013 JUN -7 PM 3:54  
CATHY S. GATSON, CLERK  
KANAWHA CO. CIRCUIT COURT

COMPLAINT AND JURY DEMAND

COMES NOW the Plaintiff, by and through counsel, and, for her Complaint in this civil action, states and avers as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, at all times relevant to this Complaint, was and is a natural person and citizen and resident of Charleston, Kanawha County, West Virginia.
2. Defendant Rodney Lee Stephens, M.D. (hereafter, "Defendant Stephens") is a licensed physician who, at all times relevant to this complaint, was and is engaged in the practice of medicine, including the performance of abortions, at the Defendant Women's Health Center of West Virginia, Inc. located in Charleston, Kanawha County, West Virginia.
3. Defendant Women's Health Center of West Virginia, Inc. (hereafter, "Defendant Abortion Clinic") is a not-for-profit corporation organized under the laws of the State of West Virginia and operating at its principal location at 510 Washington St., West, Charleston, WV 25302, in Kanawha County, West Virginia and, at all times relevant to this complaint, was and is

responsible for the supervision, control and conduct of Defendant Stephens and the nurses and other personnel who provided medical services to the Plaintiff of which Plaintiff complains.

4. This Court has jurisdiction and venue over the parties to this civil action insomuch as the acts and conduct giving rise to this complaint occurred in this county and the defendants are residents of this county.

5. This is an action alleging that Defendant Stephens and Defendant Abortion Clinic committed medical negligence in his care and treatment of Plaintiff.

6. Plaintiff represents that she has complied with the requirements of West Virginia's Medical Professional Liability Act, W.Va. Code §55-7B-1, *et seq.*, prior to filing this action. Despite each Defendant having received a *Notice of Claim* and *Dr. Calhoun's Screening Certificate of Merit*, attached hereto, neither Defendant Stephens, nor Defendant Abortion Clinic have availed themselves of pre-suit mediation and forced Plaintiff to file this action.

#### **FACTS**

7. Plaintiff incorporates by reference paragraphs 1 through 6 of this Complaint as if fully set forth herein.

8. Defendants committed medical negligence in connection with medical services rendered to Plaintiff on or about Thursday, April 19, 2012, at Defendant Abortion Clinic's principal place of business, 510 Washington St., West, Charleston, Kanawha County, West Virginia, 25302.

9. When the Plaintiff learned that she was pregnant in early April 2012, Plaintiff contacted Defendant Abortion Clinic to explore her options.

10. As instructed by the Defendants, Plaintiff arrived at Defendant Abortion Clinic on Friday, April 19, 2012, accompanied by her father and cousin, was thereupon registered by

agents or employees of Defendant Abortion Clinic and was asked by agents or employees of Defendant Abortion Clinic to provide proof of her ability to pay for services to be rendered. Plaintiff provided agents or employees of Defendant Abortion Clinic a state medical card by which to satisfy payment for anticipated charges and was then directed to speak with a counselor employed by the Defendant Abortion Clinic.

11. Following performance of an ultrasound examination, agents or employees of Defendant Abortion Clinic informed Plaintiff that she was approximately eleven (11) weeks pregnant. Plaintiff was persuaded to proceed with an abortion and thereupon given an oral sedative and instructed to return to the waiting room to wait for it to take effect.

12. Once it appeared to agents or employees of Defendant Abortion Clinic that the sedative had begun to take effect, Plaintiff was instructed by agents or employees of Defendant Abortion Clinic to return to a procedure room where she was informed that a second ultrasound had been performed that confirmed the presence of a baby in Plaintiff's uterus.

13. Plaintiff was then advised by agents or employees of Defendant Abortion Clinic that Defendant Abortion Clinic's abortionist, Defendant Stephens, would perform a dilation and curettage surgical abortion by means of suction which would completely and entirely remove all parts of the unborn child from Plaintiff's uterus. As Plaintiff understood it, this dilation and curettage surgical abortion on Plaintiff consisted of the use of a sharp knife (or curette) to scrape her uterine wall so as to dislodge the unborn baby and then, by means of a vacuum system, remove by suction all parts of the unborn child, placenta, and other uterine contents necessary for continuing pregnancy.

14. Plaintiff was thereupon given “twilight sedation” intravenously and was prepped for the abortion surgery. At no time while under treatment by Defendant Stephens and Defendant Abortion Clinic, however, did Plaintiff ever lose consciousness.

15. Once the intravenous sedation had been administered to Plaintiff, Defendant Stephens spent a few moments examining Plaintiff. Following his brief examination, Defendant Stephens informed Plaintiff that she was, in his opinion, merely nine (9) weeks pregnant.

16. Thereupon, Defendant Stephens, aided by agents or employees of the Defendant Abortion Clinic who at all times relevant herein also acted as agents of Defendant Stephens, began to surgically remove the unborn baby from Plaintiff’s uterus by the use of the suction dilation and curettage method.

17. Contrary to preferred medical standards for a midterm pregnancy, however, Defendant Stephens did not use ultrasound technology to guide him in the surgical dilation and curettage by suction removal of the unborn baby from Plaintiff’s uterus.

18. As the procedure began but before any action had been taken by Defendant Stephens to abort the unborn baby from her uterus, Plaintiff unequivocally informed Defendant Stephens and the agents or employees of Defendant Abortion Clinic who were, as his agents, assisting him with the abortion, that she was experiencing severe pain, apparently related to the insertion of the curette in her uterus as well as the insufficient provision by the Defendants and their agents of fully anesthetizing the Plaintiff, who, as was known to Defendants and their agents, had a history of pain medication dependency. Plaintiff immediately and unequivocally instructed Defendant Stephens and the agents or employees of the Defendant Abortion Clinic who were assisting him with the abortion to stop the abortion procedure at that moment.

19. Upon information and belief, neither Defendant Stephens, nor the agents or employees of Defendant Abortion Clinic made inquiry into Plaintiff's medical history so as to sufficiently identify her use and/or abuse of pain medication. As a result, Defendant Stephens and Defendant Abortion Clinic exposed Plaintiff to a surgical abortion without anesthesia sufficient to protect Plaintiff's health and well-being.

20. Moreover, rather than provide the promised and agreed upon, though uncomfortable, procedure, Defendant Stephens and Defendant Abortion Clinic subjected Plaintiff to an invasive surgery without adequate pain management or control which resulted in near tortuous pain to Plaintiff that no reasonable person should be expected to bear, let alone lend her consent.

21. Notwithstanding Plaintiff's repeated demands to stop the abortion procedure, Defendant Stephens and the agents or employees of the Defendant Abortion Clinic who were assisting him with the abortion refused to abide by Plaintiff's demands to stop the surgical abortion procedure. Rather, Defendant Stephens directed the agents or employees of Defendant Abortion Clinic who were assisting him to physically restrain Plaintiff so that the abortion procedure would be completed.

22. Thereupon, notwithstanding the protestations and instructions of the Plaintiff, Defendant Stephens and the agents or employees of Defendant Abortion Clinic who were assisting him with the abortion continued with the abortion procedure. When Defendant Stephens and the agents or employees of Defendant Abortion Clinic who were assisting him with the abortion procedure announced that they had completed the abortion procedure, Plaintiff was taken by agents or employees of Defendant Abortion Clinic to a recovery room.

23. Once in the recovery room, Plaintiff continued to complain to agents or employees of Defendant Abortion Clinic of severe pain in her lower abdomen area; but the agents or employees of Defendant Abortion Clinic disregarded her complaints and assured Plaintiff that, “everything was fine” when, in fact, it was not.

24. Rather than administer pain medication to Plaintiff, Defendant Abortion Clinic, acting through its agents or employees, provided Plaintiff crackers and a drink of water.

25. Meanwhile, upon information and belief, Defendant Stephens examined the remains, fluid, and tissue that had been suctioned from Plaintiff’s uterus and wrongly concluded that all parts of the unborn child had been removed from Plaintiff’s uterus, including “a medium amount of tissue,” villi, fetal parts, and the fetal sac, when, in fact, all parts of the unborn child had not been removed from Plaintiff’s uterus.

26. Upon information and belief, Defendant Stephens made no proper attempt to reassemble the now crushed fetal remains or to use ultrasound technology to view Plaintiff’s post-surgical uterus so as to determine that all parts of the unborn child had, in fact, been removed from Plaintiff’s uterus, or to provide the removed parts of Plaintiff’s unborn baby and uterine contents to a qualified pathologist for evaluation and/or analysis, or to otherwise use medically-necessary and medically-appropriate methods and means to verify that, in fact, all parts of the unborn child had been entirely removed from the Plaintiff’s uterus.

27. Instead, Defendant Stephens, contrary to accepted medical standards, visually examined the fetal remains, euphemistically termed by Defendants “products of conception” and declared that the products of conception he observed were “too small to determine” whether the fetus had been entirely and completely removed from Plaintiff’s uterus.

28. Indeed, Defendant Stephens did not even physically examine, or even take a moment to greet, Plaintiff following surgery. Less than thirty (30) minutes after Defendant Stephens began the procedure at 2:42 P.M, he and Defendant Abortion Clinic discharged Plaintiff from their care at 3:07 P.M. to fend for herself.

29. Approximately four and one-half (4.5) hours after entering Defendant Abortion Clinic, Plaintiff was discharged from Defendant Abortion Clinic and instructed to exit by the back door of the facility rather than returning through the facility's waiting area as she had entered so that others would not be able to see her and witness the great pain she was obviously experiencing.

30. In fact, Plaintiff's pain was so severe that she had to be supported by her cousin and father in order to walk to her car. Defendant Abortion Clinic made no offer to escort her to her car or allow the use of a wheel chair – or even whether one was available for use – to transport her thereto.

31. For the next approximately twenty-four (24) hours, the pain in Plaintiff's lower abdomen increased. She tried to rest, but her sleep was interrupted by pain, nausea, and chills.

32. On the morning of Friday, April 20, 2012, Plaintiff called Defendant Abortion Clinic and told agents or employees of Defendant Abortion Clinic that, as a result of the abortion, she was still experiencing severe pain and was also experiencing abnormally heavy bleeding.

33. Agents or employees of Defendant Abortion Clinic suggested that Plaintiff could return to Defendant Abortion Clinic if she wished.

34. When Plaintiff responded that she could not afford the gasoline to transport herself and, further, that her pain was too severe to be able to utilize public transportation, agents

or employees of Defendant Abortion Clinic made no offer to assist her with transportation to Defendant Abortion Clinic or to otherwise care for her in her distress.

35. Because Plaintiff continued to experience, as a result of the abortion, severe pain and some bleeding, at about 11:00 a.m. on Friday, April 20, 2012, Plaintiff called for an ambulance and was transported to Charleston Area Medical Center – Women’s and Children’s Hospital (hereafter, “CAMC”). Soon thereafter, she was physically examined by at least two medical doctors to determine the source of the severe abdominal pains of which she complained.

36. Physicians at CAMC ordered an ultrasound. By 2:29 p.m., the ultrasound was read and it was determined that the source of Plaintiff’s pain was that the “products of conception”, *i.e.*, parts of the unborn child, resulting from the abortion performed by Defendant Stephens and agents or employees of Defendant Abortion Clinic had not been completely removed by Defendant Stephens and agents or employees of Defendant Abortion Clinic from Plaintiff’s uterus.

37. Indeed, the ultrasound performed by medical personnel at CAMC confirmed that a baby’s skull had been left by the Defendants in Plaintiff’s uterus which, when measured, indicated that the gestational age of the unborn baby was more than thirteen (13) weeks, not the nine (9) weeks Defendant Stephens had incorrectly estimated, or the eleven (11) weeks the agents or employees of Defendant Abortion Clinic had also incorrectly estimated.

38. Nearly four hours after being admitted to CAMC and more than twenty-seven (27) hours since the incomplete abortion procedure which had been performed by Defendant Stephens and the agents or employees of Defendant Abortion Clinic, Plaintiff was administered an emergency dilation and curettage surgery at CAMC, this time under general anesthesia and



guided by ultrasound technology, as was medically appropriate, and the remaining, degenerating, “products of conception” were “evacuated” from Plaintiff’s uterus.

39. To this date, neither Defendant Stephens, nor Defendant Abortion Clinic has made any effort to proactively follow-up with Plaintiff regarding her abortion procedure, to inquire about her condition, or to apologize for the result.

**COUNT I – MEDICAL PROFESSIONAL NEGLIGENCE**

40. Plaintiff incorporates herein by reference paragraphs 1 through 39 of this Complaint, as if fully set forth herein.

41. Defendant Stephens and Defendant Abortion Clinic are liable to Plaintiff under the theory of medical professional negligence.

42. Defendant Stephens failed to exercise that degree of care, skill, and learning required or expected of a reasonable, prudent healthcare provider in the profession or class to which Dr. Stephens belongs acting in the same or similar circumstances.

43. Among other things, Defendant Stephens negligently failed to physically re-assemble the extracted baby parts, examine Plaintiff’s uterus by ultrasound technology post-surgery, or to otherwise verify that all “products of conception” in Plaintiff’s uterus had, in fact, been removed which, in fact, they had not, thereby breaching his duty of care to Plaintiff.

44. In addition, Defendant Stephens and Defendant Abortion Clinic negligently failed to obtain fully informed consent from Plaintiff by misrepresenting the actual gestational age of Plaintiff’s unborn baby. With significantly conflicting – and ultimately very wrong – gestational age estimates, Plaintiff did not have sufficient information upon which to make a fully informed decision as to whether or not to proceed with an abortion.

45. In addition, Defendant Stephens and Defendant Abortion Clinic breached the applicable standard of care by negligently disregarding the clear and unequivocal instructions of Plaintiff to cease the abortion procedure and thus withdrawal of her consent, if any had been given.

46. Rather than abiding by the first principle of medicine to “do no harm” to their patient, Defendant Stephens and Defendant Abortion Clinic ignored Plaintiff’s pleas and express instructions to cease the abortion procedure before it had really started and, in fact, physically restrained Plaintiff so that they could proceed with the abortion, notwithstanding the express instructions of Plaintiff or in consideration of her health, safety, and well-being.

47. Moreover, neither Defendant Stephens, nor the agents or employees of Defendant Abortion Clinic conducted an adequate and thorough medical history of Plaintiff. Had they taken the time to do so, they would have discovered Plaintiff’s past pain medication dependency. As a result, Defendants failed to account for how the use of such pain medication drugs had changed Plaintiff’s tolerance to the effects of medical anesthesia and resulted in the insufficient – and negligent – under-anesthetization of Plaintiff.

48. Finally, by failing to utilize ultrasound technology – the preferred method of dilation and curettage for a midterm pregnancy such as Plaintiff’s – Defendant Stephens breached his duty of reasonable care to Plaintiff, putting her at increased risk – and, ultimately, placing her in the reality – of severe pain, infection, etc., when she was forced to retain portions of her unborn child.

49. The failure of the Defendants to exercise due care was a proximate cause of injuries and damages to Plaintiff, including, without limitation, severe pain, excessive bleeding, additional surgery, and severe emotional distress.

50. As a direct, immediate, and proximate result of the negligence of Defendants Stephens and Abortion Clinic, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital, physician expenses, and other damages.

51. All damages to the Plaintiff are in the past, present, and future whether so specifically delineated in each paragraph or not.

### **COUNT II – BATTERY**

52. Plaintiff incorporates herein by reference paragraphs 1 through 51 of this Complaint, as if fully set forth herein.

53. Defendant Stephens and Defendant Abortion Clinic are both liable to Plaintiff under the theory of battery.

54. Unless the patient consents, any operation or procedure involving contact with a patient's body is a battery, even when appropriate skill has been used in the operation procedure.

55. While Plaintiff did not give informed consent, any consent Plaintiff gave was rescinded when she unequivocally instructed Defendant Stephens and the agents or employees of Defendant Abortion Clinic, who were also acting as agents of Defendant Stephens, that she was in severe pain and the abortion procedure should be stopped.

56. At no time did Plaintiff agree to a surgical abortion that caused such excruciating pain – even under oral and intravenous sedation – and, as a result, the only way in which the surgical procedure could have been concluded was through severe pain and under the physical, involuntary restraint of agents or employees of Defendant Abortion Clinic and Defendant Stephens.

57. Plaintiff incurred injuries and damages, including, but not limited to, medical injuries, has lost the ability to enjoy life as she did prior to the injury, has lost time, has suffered

impaired earning capacity, economic losses, and has lost time from work and has lost pay and salary.

58. As a direct, immediate, and proximate result of the negligence of Defendants Stephens and Abortion Clinic, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital, physician expenses, and other damages.

59. All damages to the Plaintiff are in the past, present, and future whether so specifically delineated in each paragraph or not.

### **COUNT III – UNINFORMED CONSENT**

60. Plaintiff incorporates herein by reference paragraphs 1 through 59 of this Complaint, as if fully set forth herein.

61. Defendant Stephens and Defendant Abortion Clinic are liable to Plaintiff under the theory of uninformed consent.

62. Defendant Stephens and Defendant Abortion Clinic performed a surgical abortion on Plaintiff after Plaintiff had unequivocally revoked her consent, if any had been given, and without adequate anesthetic.

63. Defendant Stephens and Defendant Abortion Clinic negligently failed to obtain Plaintiff's informed consent before continuing with the abortion procedure after Plaintiff unequivocally revoked her consent and without the proper anesthetic.

64. A reasonable person in the same or similar circumstances as Plaintiff would not have consented to a surgical procedure in which severe, excruciating pain was present had such person been given the proper information required for informed consent.

65. Moreover, Defendant Stephens and Defendant Abortion Clinic failed to provide adequate information to Plaintiff in order to secure informed consent. Defendant Stephens

estimated her pregnancy to be approximately nine (9) weeks gestation. Defendant Abortion Clinic estimated her pregnancy to be eleven (11) weeks gestation. In fact, Plaintiff was in excess of thirteen (13) weeks pregnant. No reasonable person in the same or similar circumstances as Plaintiff would have consented to a surgical procedure with such disparate and conflicting estimates.

66. The negligence of Defendant Stephens and Defendant Abortion Clinic was a proximate cause of Plaintiff's injuries and damages.

67. As a direct, immediate, and proximate result of Defendant Stephens' and Defendant Abortion Clinic's failure to obtain Plaintiff's informed consent, as stated above, Plaintiff has sustained severe injuries and damages which have caused Plaintiff great pain, suffering, discomfort, and emotional distress and which will continue to cause Plaintiff great pain, suffering, discomfort, and emotional distress.

68. As a direct, immediate, and proximate result of the negligence of Defendant Stephens and Defendant Abortion Clinic, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital, physician expenses, and other damages.

69. All damages to the Plaintiff are in the past, present, and future whether so specifically delineated in each paragraph or not.

#### **Count IV – FALSE IMPRISONMENT**

70. Plaintiff incorporates herein by reference paragraphs 1 through 69 of this Complaint, as if fully set forth herein.

71. Defendant Stephens and Defendant Abortion Clinic are liable to Plaintiff under the theory of false imprisonment.

72. Defendant Stephens and Defendant Abortion Clinic knowingly and intentionally restricted Plaintiff's freedom of movement. As Plaintiff informed Defendants of her severe pain and revoked her consent to continue with the surgical abortion, Defendant Stephens directed agents or employees of Defendant Abortion Clinic, who were also acting as agents of Defendant Stephens, to directly and/or indirectly restrain Plaintiff's freedom of movement for a period of time, no matter how short, so he (Defendant Stephens) could begin and then complete the abortion procedure against Plaintiff's will and instructions. Thereupon, agents or employees of Defendant Abortion Clinic, who were also acting as agents of Defendant Stephens, restrained Plaintiff so that Defendant Stephens was enabled to complete the surgical abortion.

73. Directly, the employees or agents of Defendant Abortion Clinic, at the instruction of Defendant Stephens, physically restrained Plaintiff, holding her to the surgical table by force, however slight. Indirectly, Defendants administered sufficient anesthesia to restrain Plaintiff's freedom of movement, but insufficient to prevent Plaintiff from feeling the severe physical and emotional pain inflicted by Defendant Stephens as she felt him removing portions of her unborn child from her uterus.

74. Plaintiff was fully aware that her freedom of movement was restricted. She was aware that Defendant Stephens had, against her will and instructions, begun the abortion procedure and, against her will and instructions, continued the abortion procedure. Moreover, Plaintiff was restrained from leaving Defendant Abortion Clinic's facility during the procedure for fear of her safety and well-being.

75. As a direct, immediate, and proximate result of Defendant Stephens' and Defendant Abortion Clinic's false imprisonment, as stated above, Plaintiff has sustained severe injuries and damages which have caused Plaintiff great pain, suffering, discomfort and emotional

distress and which will continue to cause Plaintiff great pain, suffering, discomfort, and emotional distress.

76. As a direct, immediate, and proximate result of the negligence of Defendant Stephens and Defendant Abortion Clinic, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital, physician expenses, and other damages.

77. All damages to the Plaintiff are in the past, present, and future whether so specifically delineated in each paragraph or not.

#### **COUNT V – EXTREME AND OUTRAGEOUS CONDUCT, EMOTIONAL DISTRESS**

78. Plaintiff incorporates herein by reference paragraphs 1 through 77 of this Complaint, as if fully set forth herein.

79. Defendant Stephens and Defendant Abortion Clinic are liable to Plaintiff under the theory of extreme and outrageous conduct – emotional distress.

80. Defendant Stephens and Defendant Abortion Clinic engaged in extreme and outrageous conduct by negligently failing to provide adequate anesthesia to Plaintiff before engaging the surgical abortion, continuing the surgical abortion after Plaintiff had unequivocally directed Defendants to stop the abortion procedure, physically restraining Plaintiff against her wishes and instructions so as to complete the abortion procedure, and failing to use ultrasound technology to guide the performance of the surgical abortion and, thereafter, verify that the unborn child had been completely removed from her uterus.

81. Moreover, because of the negligence of Defendant Stephens and Defendant Abortion Clinic, Plaintiff was forced to carry the crushed, decomposing skull of her half-aborted baby in her uterus for over twenty-seven (27) hours after the abortion procedure – further exposing her to even greater physical, mental, and emotional distress and anguish.

82. As a physician that has performed surgical abortions, Defendant Stephens knew or should have known that there was a substantial probability that his negligent performance of the abortion surgery on the Plaintiff would cause her severe emotional distress.

83. Moreover, Defendant Stephens knew or should have known that the negligent failure to use ultrasound technology to guide him in the performance of the abortion procedure for a midterm pregnancy would probably result in an incomplete surgical abortion and, thus, cause Plaintiff increased emotional distress.

84. Finally, Defendant Stephens knew or should have known that the negligent failure to verify that the unborn child in Plaintiff's uterus had, in fact, been completely removed would result in an incomplete surgical abortion and, thus, cause Plaintiff further injuries and damages, including severe emotional distress.

85. Defendant Abortion Clinic, through its agents and employees, who were, at all times relevant herein, also acting as the agents of Defendant Stephens, should have known that the negligent performance of the surgical abortion on Plaintiff would cause her injuries and damages, including severe emotional distress.

86. Moreover, Defendant Abortion Clinic, through its agents and employees, should have known that the physical restraint applied to the Plaintiff against her consent would have caused her severe emotional distress.

87. In addition, by its failure to properly supervise Defendant Stephens and its other agents or employees, Defendant Abortion Clinic, through its agents and employees, knew or should have known that inadequate anesthesia would have resulted in the extreme pain of Plaintiff during the surgical abortion and, thus, cause her severe emotional distress.



88. The conduct of Defendant Stephens and Defendant Abortion Clinic caused Plaintiff injuries and damages, including severe emotional distress.

89. Plaintiff has suffered and continues to suffer injuries and damages, including severe emotional distress due to the extreme and outrageous conduct of Defendant Stephens and Defendant Abortion Clinic as described above.

90. As a direct, immediate, and proximate result of Defendant Stephens and Defendant Abortion Clinic extreme and outrageous conduct as stated above, Plaintiff has sustained severe injuries which have caused Plaintiff great pain, suffering, discomfort, and emotional distress and which have continued, and will, to cause Plaintiff great pain, suffering, discomfort, and emotional distress.

91. As a direct, immediate, and proximate result of Defendants Stephens and Abortion Clinic extreme and outrageous conduct as stated above, Plaintiff has incurred medical, therapeutic, hospital, physician expenses, and other damages.

92. All damages to Plaintiff are in the past, present, and future whether so specifically delineated in each paragraph or not.

#### **COUNT VI – BREACH OF CONTRACT**

93. Plaintiff incorporates herein by reference paragraphs 1 through 92 of this Complaint, as if fully set forth herein.

94. Defendant Stephens and Defendant Abortion Clinic are liable to Plaintiff under the theory of breach of contract.

95. Plaintiff contracted with Defendant Stephens and Defendant Abortion Clinic to perform a surgical abortion with adequate anesthesia to prevent the occurrence of pain during the course of the procedure.

96. In exchange, Defendant Stephens and Defendant Abortion Clinic agreed to exercise care in protecting Plaintiff's health in performing a surgical abortion.

97. Plaintiff secured her agreement to the contract by the provision of funds to Defendant Abortion Clinic, in this instance, by use of a state-issued medical assistance card.

98. Defendant Stephens and Defendant Abortion Clinic breached this contract in at least three (3) ways.

99. First, Defendant Stephens and Defendant Abortion Clinic failed to protect Plaintiff's health by failing to remove the entire contents of Plaintiff's uterus. In other words, at best, Defendants only partially performed their obligations under the contract. Such partial performance constitutes a total breach of contract as any reasonable person in the same or similar circumstances as Plaintiff would expect that the entire contents of Plaintiff's uterus would be removed in such a surgical abortion.

100. Indeed, the preferred method for a dilation and curettage with suction is to utilize ultrasound technology to guide the performance of the surgical abortion for a midterm pregnancy and, thereafter, utilize ultrasound technology to ensure the entirety of the uterine contents have been removed.

101. Second, Defendant Stephens and Defendant Abortion Clinic failed to exercise care in protecting Plaintiff's health in performing the surgical abortion by placing Plaintiff in extreme pain *during* the course of the procedure.

102. Plaintiff agreed to a pain-free, if uncomfortable, surgical abortion; Defendant Stephens and Defendant Abortion Clinic expressly agreed to provide the same. What Plaintiff received was a surgical abortion that inflicted such severe pain that Plaintiff had to be physically restrained during the procedure. By failing to adequately protect the health of Plaintiff during

the procedure – as stipulated to in the contract – by placing her in such extreme pain, Defendant Stephens and Defendant Abortion Clinic have violated their contractual duties to Plaintiff.

103. Third, Defendant Stephens and Defendant Abortion Clinic breached their contract with Plaintiff by failing to protect the health of Plaintiff and by failing to complete the surgical abortion, placing Plaintiff in more than twenty-seven (27) consecutive hours of severe and continuous pain and excessive bleeding, and forcing her to undergo a second surgical abortion to correct the negligence of the Defendants.

104. Plaintiff did not agree to more than twenty-seven (27) hours of severe pain and bleeding, incomplete abortion, or a secondary surgery. Plaintiff paid Defendant Stephens and Defendant Abortion Clinic to remove the entire contents of her uterus by means of a surgical abortion in as painless a manner as one would reasonably expect of those holding themselves out as medical professionals and health care providers.

105. Defendant Stephens and Defendant Abortion Clinic took Plaintiff's money in agreement to these terms, failed to complete the agreed-to task, placed Plaintiff in severe and excessive pain, and forced her to undergo a secondary surgery to correct their own negligence and breach of contractual duty.

106. As a direct, immediate, and proximate result of Defendant Stephens and Defendant Abortion Clinic extreme and outrageous conduct as stated above, Plaintiff has sustained severe injuries which have caused Plaintiff great pain, suffering, discomfort, and emotional distress and which have continued, and will, to cause Plaintiff great pain, suffering, discomfort, and emotional distress.

107. As a direct, immediate, and proximate result of Defendant Stephens and Defendant Abortion Clinic extreme and outrageous conduct as stated above, Plaintiff has incurred medical, therapeutic, hospital, and physician expenses.

108. All damages to Plaintiff are in the past, present, and future whether so specifically delineated in each paragraph or not.

### **DAMAGES**

109. Plaintiff incorporates herein by reference paragraphs 1 through 108 of this Complaint, as if fully set forth herein.

110. As a direct and proximate result of the breaches of the standards of care and duties by Defendant Stephens and Defendant Abortion Clinic as alleged herein, Plaintiff has suffered the following injuries and damages and seeks compensation for the same by and through this action:

- a. Physical impairment which may be permanent;
- b. Lost wages;
- c. Emotional distress;
- d. Medical bills and expenses;
- e. Pain, suffering, mental anguish and grief; and
- f. Other actual, compensatory, special and general damages.

111. Further, Plaintiff is entitled to specific, special, punitive damages for each count of this Complaint over and above the underlying claims for negligence.

112. Moreover, for breach of contract, Plaintiff is entitled to restitution and other damages.

**WHEREFORE**, Plaintiff asks this Court to enter judgment against Defendant Stephens and Defendant Abortion Clinic for the causes of action outlined herein and to award Plaintiff the damages sought herein as well as any other damages permitted by controlling law, including attorney's fees and expenses. Plaintiff contends the damages sought meet the minimum requirements necessary to confer the jurisdiction of this Court.

**Plaintiff demands a trial by jury.**

**Itai Gravely,**

**By Counsel,**



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