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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1984CV00119

AMANDA DAVIS,
Plaintiff

v.

ALICE MARK, MD,
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.,
JOSHUA M. MULARELLA, MD,
CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE HEALTH
ALLIANCE and CAMBRIDGE HEALTH
ALLIANCE PHYSICIANS ORGANIZATION
Defendants

notice sent

08.30.21

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MICHAEL JOSEPH JOHNSON
CLERK / MAGISTRATE

2021 AUG 24

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SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

**DEFENDANTS' PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, INC.,
AND ALICE MARK, M.D. MOTION TO COMPEL PRODUCTION OF DOCUMENTS
PURSUANT TO 42 C.F.R. § 2.64**

NOW COME Defendants Planned Parenthood League of Massachusetts, Inc., and Alice Mark, M.D., and move this Honorable Court pursuant to 42 C.F.R., Subpart E §§ 2.61, 2.63, and 2.64, to issue an Order in the form attached hereto, allowing Defendants' Counsel to obtain complete copies of the Plaintiff's medical and mental health records from New Horizons Medical, 214 Howard Street, Framingham MA 01702.

I. BACKGROUND

1. This is a medical malpractice action filed by the Plaintiff on January 1, 2019. (See, Exhibit A – Plaintiff's Complaint). The Complaint alleges that the Defendants were negligent in care provided to the Plaintiff following a procedure to terminate her pregnancy performed on February 4, 2016. Plaintiff has placed her "mental anguish and disability" in issue in this

I remain without prejudice for failure to comply with superior court Rule 9C. Further, it is the court's expectation that the parties will engage in meaningful discussions and make a good faith attempt to narrow the issues in dispute. 8/26/21

litigation. Therefore, her medical and mental health records are clearly relevant to her claims. One of the facilities at which the Plaintiff received treatment for her addiction recovery, which is crucial part of her pre-existing health condition, is New Horizons Medical.

2. The Defendants caused to be served a document subpoena upon the Keeper of Records of the New Horizons Medical. The deposition subpoena required the Keeper of Records to produce the plaintiff's medical records. (See, Exhibit B- A copy of the KOR Subpoena together with Schedule A.) In response to the subpoena, the above-named Keeper of Records telephonically responded by refusing to produce plaintiff's records without a court order consistent with that regulation or a release signed by the plaintiff pursuant to 42 CFR Part 2, subpart E.

3. Defendants attempted to obtain a signed release from the Plaintiff in compliance with 42 CFR Part 2, subpart E. After receiving no response from Plaintiff, now the Defendants move this Honorable Court to issue the Order to enforce the subpoena and state that there is a good faith basis for seeking to discover the Plaintiff's medical and mental health records from New Horizons Medical in this matter.

II. ARGUMENTS

4. The subject medical records are relevant to this personal injury action and therefore within the scope of Rules 26 and 34 of the Massachusetts Rules of Civil Procedure.

5. Further, Federal confidentiality law allows for the disclosure of the type of medical records requested in the present case. Federal confidentiality law does not prohibit the disclosure of the requested medical records when authorized by an order of a court of competent jurisdiction for good cause. *See* 42 C.F.R. Part 2, Subpart E. Under Federal law, good cause for the court order exists when "(1) Other ways of obtaining the information are not available or

would not be effective; and (2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.” *Id.*

6. Defendants assert that appropriate circumstances and good cause exist in the present case, which permit disclosure of the records. *See* 42 C.F.R. § 2.2. Determination as to whether good cause exists for disclosure of drug treatment records under federal law must be made with regard to the facts of the specific case. 42 C.F.R. § 2.64(d). *In re Maximo M.*, 2000, 710 N.Y.S.2d 864, 186 Misc.2d 266.

7. The following reasons constitute good faith basis in the present case to allow disclosure of the requested records:

a. Relevancy: First, the Plaintiff’s medical records are relevant because the Plaintiff claims to have suffered personal and emotional injuries in the instant case and, therefore, she has placed her physical, mental and emotional condition(s) at issue.

b. Disclosure by Plaintiff: Pursuant to 42 C.F.R. § 2.63, Plaintiff made disclosure in connection with this litigation in which she offered testimony or other evidence pertaining to the content(s) of the confidential communications.

c. No other means: There are no other means of obtaining the information.

Each of such basis is explained in detail, below.

8. *Relevancy*: The courts have concluded that disclosing confidential communications between a medical malpractice plaintiff and a drug and alcohol treatment facility is justified when plaintiff’s pleadings raise questions relating to her emotional and mental health.

McKinney’s Mental Hygiene Law § 33.13; Public Health Service Act, § 543, as amended, 42 U.S.C.A. § 290dd-2; *Napoleoni v. Union Hosp. of the Bronx* (1 Dept. 1994) A.D.3d , 207 A.D.2d 660, 616 N.Y.S.2d 38. Plaintiff’s complaint alleges that as a direct and proximate result

of the Defendants negligence on February 4, 2016, she has suffered great pain, morbidity and severe permanent injuries. She also alleges that the resultant injuries caused her to suffer "mental anguish and disability." See ¶¶ 33, 37, 42 and 46, Exhibit A. She also alleges that the Defendants' conduct exacerbated her pre-existing mental health conditions, thereby introducing her pre-existing mental health and emotional distress (from before February 2016) as part of her claims.

9. Since the Plaintiff alleges medical malpractice during the same time that Plaintiff was undergoing treatment for addiction recovery at New Horizons Medical, treatment records pertaining to Plaintiff's substance abuse contemporaneous with her pregnancy are discoverable. Therefore, the subject subpoena should be enforced, and the above-named Keeper of Records should be compelled to produce Plaintiff's entire medical records.

10. *Disclosure by Plaintiff:* Plaintiff, in her deposition testimony, testified that she continues to receive treatment from New Horizons Medical for her addiction problems. See, Exhibit C – Amanda Davis Deposition Testimony, Page 20, Lines 13-24 and Page 21, Lines 1-12. Plaintiff has therefore, waived her privilege under 'exception from privilege for disclosure in connection with litigation' by offering testimony regarding content(s) of confidential communications. See Public Health Service Act, §527, as amended, 42 U.S.C.(1982 Ed.Supp.IV), § 290ee-3. Local 738, *Intern. Broth. of Teamsters v. Certified Grocers Midwest, Inc.*, N.D. Ill.1990, 737 F.Supp. 1030. See also Amanda Davis Deposition Testimony. As such, disclosure of her records from New Horizon Medical where she received addiction recovery related treatment is essential to enable the Defendants to have access to information which will be useful in developing their defense. *Spangler v. Olchowski*, 2007, 654 S.E.2d 507, 187 N.C.App. 684.

11. *No other means*: There are no other means of obtaining the information. The Defendants have requested the Plaintiff's counsel to provide a release signed by the Plaintiff which would have averted the need for this motion, but no response has been provided by the Plaintiff's counsel. On May 26, 2021, Defendants sent a letter enclosing the release, both by certified mail and email, to Plaintiff's counsel. (See, Exhibit D – Copy of the Letter and Email dated May 26, 2021). The said letter was delivered to Plaintiff's counsel on May 28, 2021. (See Exhibit E – Tracking and Delivery Report). Thereafter, follow up emails were sent on June 16, 2021, and July 12, 2021, but Defendants received no response from the Plaintiff's counsel. (See, Exhibit F – Emails dated June 16, 2021, and July 12, 2021). Finally, on July 15, 2021, Defendants' counsel issued a final notice letter by email to Plaintiff's counsel requesting response within seven (07) days of the letter. (See, Exhibit G – Letter and Email dated July 15, 2021). Seven days ended on July 22, 2021, but Defendants' counsel has received no response from the Plaintiff's counsel as of date of filing this motion. Plaintiff and her counsel's failure to provide the requested release and failure to respond to the follow up emails and letters, which could have averted the need of this additional motion, constitutes good cause under 42 U.S.C.S. §290dd-2(b) (2).

III. CONCLUSION

For the foregoing reasons, the Defendants respectfully request that this Honorable Court issue an Order enforcing the keeper of records subpoena served on the New Horizons Medical. (Exhibit H - A proposed Order is attached hereto.).

By Defendants' attorneys,

Date: August 6, 2021

//sd// Eric P Finamore

Eric P. Finamore, BBO #541872

Weston Patrick, PA
One Liberty Square, Suite 1210
Boston, MA 02109
(617) 742-9310
epf@westonpatrick.com

CERTIFICATE OF SERVICE

I hereby certify under the penalties of perjury that I have served a copy of the foregoing document upon all parties, by mailing/**emailing** a copy of same to their counsel of record on August 6, 2021

//sd// Eric P Finamore

Eric P. Finamore, BBO #541872
Weston Patrick, PA
One Liberty Square, Suite 1210
Boston, MA 02109
(617) 742-9310
epf@westonpatrick.com

Exhibit A – Plaintiff's Complaint

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUFFOLK SUPERIOR COURT
CIVIL ACTION NO. _____

AMANDA DAVIS,
Plaintiff

vs.

ALICE MARK, MD,
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.,
JOSHUA M. MULARELLA, MD,
CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE HEALTH
ALLIANCE and CAMBRIDGE HEALTH
ALLIANCE PHYSICIANS ORGANIZATION,
Defendants

COMPLAINT &
JURY DEMAND

RECEIVED

JAN 14 2019

SUPERIOR COURT CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

PARTIES

1. The plaintiff, AMANDA DAVIS, is an individual residing in Chelsea, Suffolk County, Massachusetts.
2. The defendant, Alice Mark, MD, is a licensed practicing physician who at all times material hereto had a usual place of business at 1055 Commonwealth Avenue, Boston, Suffolk County, Massachusetts.
3. The defendant, Planned Parenthood League of Massachusetts, Inc. (hereinafter "Planned Parenthood"), is a Massachusetts corporation with a principal and/or usual place of

business at 1055 Commonwealth Avenue, Boston, Suffolk County, Massachusetts, that at all times material hereto provided pregnancy termination services.

4. The defendant, Joshua M. Mularella, MD, is a licensed practicing physician who at all times material hereto had a usual place of business at 1493 Cambridge Street, Cambridge, MA 02139.
5. The defendant, Cambridge Public Health Commission d/b/a Cambridge Health Alliance (hereinafter "CHA"), is an entity created by statute with a principal place of business at 1493 Cambridge Street in Cambridge, Middlesex County, Massachusetts, and a public employer within the meaning of G.L. c. 258, *et. seq.*, that at all times material hereto provided health care, through its employees, contractors and agents, to patients at its various campuses and affiliated locations, including CHA Cambridge Hospital.
6. The defendant, Cambridge Health Alliance Physicians Organization, Inc. (hereinafter "CHAPO"), is a Massachusetts corporation with a principal place of business at 1493 Cambridge Street in Cambridge, Middlesex County, Massachusetts, that at all times material hereto was wholly owned by, and/or affiliated with, CHA, and which employed, and/or contracted with, physicians who provided health care services at CHA campuses, including CHA Cambridge Hospital.

FACTS COMMON TO ALL COUNTS

7. At all times material hereto, Alice Mark, MD, represented and held herself out to be an Obstetrician/Gynecologist ("hereinafter "OB/GYN"), physician and surgeon, skilled in the treatment of various illnesses and conditions, and, in particular, represented to the plaintiff that she was knowledgeable, competent and qualified to perform an abortion procedure on her in February of 2016.
 8. At all times material hereto, Joshua Mularella, MD, represented and held himself out to be a physician, skilled in the treatment of various illnesses and conditions, and, in particular, represented to the plaintiff that he was knowledgeable, competent and qualified to care and treat her in March of 2016.
 9. On or about February 4, 2016, the plaintiff, then twenty-one (21) years old and of limited financial means, presented to Dr. Mark at Planned Parenthood in Boston, Massachusetts, for a first-term surgical abortion.
 10. On or about that date, Dr. Mark confirmed the ten (10) week gestational age of the pregnancy, performed the surgical abortion procedure with the assistance of ultrasound guidance (due to difficulty with dilation), then purportedly conducted a gross tissue exam of the removed products, declared the pregnancy "terminated" and discharged the plaintiff.
-
11. The standard(s) of medical care applicable to the average qualified OB/GYN at that time provided that an OB/GYN conducting an abortion procedure in a clinic setting confirm that the abortion was in fact completed and that all products of conception removed *via*

examination employing the flotation of tissue and backlighting, pathological examination, ultrasound (hereinafter "US") and/or other diagnostic procedure(s).

12. The standard(s) of medical care applicable to the average qualified OB/GYN at that time further provided that an OB/GYN conducting an abortion procedure in a case such as the plaintiff's, where US guidance is required due to difficulty with dilation, confirm that the abortion was in fact completed and that all products of conception removed *via* US, pathological examination and/or other heightened diagnostic testing.
13. Moreover, the standard(s) of medical care applicable to the average qualified OB/GYN also provided that an OB/GYN conducting a gross tissue exam of the evacuated contents following an abortion procedure properly perform the exam and actually visualize a gestational sac and other items in the contents.
14. The standard(s) of medical care applicable to the average qualified OB/GYN further provided that an OB/GYN conduct a follow up consultation or examination with a patient within one (1) to two (2) weeks of an abortion procedure, to confirm that the patient is not suffering signs and symptoms suggestive of retained products of conception (hereinafter "RPOC"), and/or to return the patient's calls.
15. On or before her discharge from Planned Parenthood on February 4, 2016, Dr. Mark, and/or other providers at Planned Parenthood, obtained and recorded the plaintiff's correct phone number, and advised her that Dr. Mark and/or Planned Parenthood would call her to obtain her status, and/or to schedule a follow-up appointment, within two (2) weeks or sooner.

16. Neither Dr. Mark or anyone else at Planned Parenthood ever advised the plaintiff that prolonged bleeding and severe abdominal pain/cramping could be a sign that she had RPOC.
17. During the days following the February 4, 2016 procedure, the plaintiff suffered significant and continuous bleeding, abdominal pain and cramping.
18. Notwithstanding that Planned Parenthood had correctly recorded the plaintiff's phone number on or before February 4, 2016, neither Dr. Mark or anyone else from Planned Parenthood ever called her to obtain her post-abortion status, or to schedule a follow-up appointment.
19. Moreover, the plaintiff's repeated phone call messages to Dr. Mark and/or Planned Parenthood during the two (2) week period following her procedure were never returned.
20. Her debilitating symptoms having not resolved, and having received no reply from Dr. Mark and/or others at Planned Parenthood in response to her repeated phone calls and/or messages, the plaintiff presented at the CHA Cambridge Hospital Emergency Department on/or about March 15, 2016, where she was examined and treated by Joshua Mularella, MD.
21. Upon her presentation, Dr. Mularella noted that the plaintiff was "status post abortion at Planned Parenthood last month", and that she suffered from, *inter alia*, "heavy vaginal bleeding" and "lower abdominal cramping"; he further confirmed her vaginal bleeding and blood clots *via* a pelvic exam.

22. At the time of the plaintiff's presentation at CHA Cambridge Hospital, the standard of medical care applicable to the average qualified emergency physician, and/or general physician, required that an OB/GYN consultation and/or an ultrasound, or other diagnostic testing, be ordered when a patient presented with the symptoms and signs exhibited by the plaintiff, in order to determine RPOC.

23. Notwithstanding her confirmed symptoms and recent medical history, which plainly raised a strong suspicion of RPOC, Dr. Mularella discharged the plaintiff from the hospital with an incomplete diagnosis and without ruling out RPOC *via* US or other diagnostic testing, and/or seeking an OB/GYN consultation, all of which were available on-campus at Cambridge Hospital and/or at others CHA campuses or affiliated institutions.

24. As a result of Dr. Mularella's failure to properly diagnose and treat the plaintiff's condition, the RPOC were left inside the plaintiff's uterus, causing her great pain and morbidity.

25. Her symptoms having not abated, the plaintiff ultimately presented at the MGH Emergency Department on April 4, 2016, where a gynecological consultation summarily advised the need for an US, which in turn revealed to the plaintiff, for the first time, that the abortion procedure at Planned Parenthood had resulted in substantial RPOC; the plaintiff received appropriate medical treatment at MGH and was discharged.

26. On or about January 16, 2018, the plaintiff, in accordance with Massachusetts General Laws Chapter 258 § 4 and Chapter 231 § 60L, provided timely notice and presentment of the instant claims to the defendants. More than six (6) months thereafter no settlement has

been agreed to and no offer of settlement has been received. A copy of this notice and presentment is attached hereto as EXHIBIT A, sans attachments, and is incorporated herein pursuant to Mass. R. Civ. P. 10(c).

COUNT 1 - NEGLIGENCE vs. ALICE MARK, MD

27. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

28. At the time(s) of her care and treatment of the plaintiff, a physician-patient relationship existed between Alice Mark, MD, and the plaintiff.

29. At all times material hereto, Alice Mark, MD, owed to the plaintiff a duty to exercise the reasonable care and skill of the average, qualified OB/GYN in treating and caring for her, which included confirming that the abortion was in fact complete and that there were no RPOC.

30. The defendant, Alice Mark, MD, negligently breached this duty of care in failing to properly perform a first-term abortion upon the plaintiff, in failing to confirm that the procedure was complete, in failing to confirm the absence of RPOC, in failing to properly perform a sufficient gross tissue examination to determine that the abortion was complete and that there was no RPOC, and in failing to confirm that the abortion was complete and that there was no RPOC via US (which was available and had been used in the procedure), flotation of tissue, backlighting, pathology and/or other diagnostic procedures.

31. The defendant, Alice Mark, MD, also negligently performed the gross tissue examination that was purportedly made, as RPOC would not ordinary occur in the absence of such negligence, and there is no other explanation for the RPOC in this case (Edwards v. Boland, 41 Mass. App. Ct. 375 (1996) rev. denied 423 Mass. 1113).

32. The defendant, Alice Mark, MD, further negligently breached this duty of care in failing to properly follow up with the plaintiff after the abortion procedure, in failing to schedule a follow-up appointment with her, in failing to return the plaintiff's phone calls, and/or causing someone else at Planned Parenthood to return her calls, and in failing to advise the plaintiff of the symptoms and signs of RPOC.

33. As a direct and proximate result of said acts and omissions of the Alice Mark, MD, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant, Alice Mark, MD, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

COUNT 2 - NEGLIGENCE vs. PLANNED PARENTHOOD

34. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

35. At all times material hereto, Planned Parenthood, and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, owed a duty to the plaintiff to provide appropriate medical care to her at Planned Parenthood in Boston.

36. At all times material hereto, Planned Parenthood, and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, negligently breached this duty of care by failing to provide proper care and treatment to the plaintiff, and in failing to implement procedures and protocols that would prevent RPOC, and/or ensure that a follow up consultation with the plaintiff was performed and her calls returned.

37. As a direct and proximate result of said acts and omissions of Planned Parenthood, by and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant Planned Parenthood, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

COUNT 3 – NEGLIGENCE vs. JOSHUA MULARELLA, MD

38. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

39. At the time(s) of his care and treatment of the plaintiff, a physician-patient relationship existed between Joshua Mularella, MD, and the plaintiff.
40. At all times material hereto, Joshua Mularella, MD, owed to the plaintiff a duty to exercise the reasonable care and skill of the average, qualified emergency and/or general physician in treating and caring for her, which included ordering an OB/GYN consultation and confirmation of RPOC *via* US or other diagnostic procedure(s) upon her presentation to Cambridge Hospital in March of 2016.
41. The defendant, Joshua Mularella, MD, negligently breached this duty of care in failing to properly diagnose the plaintiff's condition, in failing to order an OB/GYN consultation, in failing to order a US or other diagnostic testing for RPOC, and in discharging the plaintiff from the hospital.
42. As a direct and proximate result of said acts and omissions of Joshua Mularella, MD, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant, Joshua Mularella, MD, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

COUNT 4 - NEGLIGENCE vs. CHA & CHAPO

43. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

44. At all times material hereto, CHA and CHAPO, and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, owed a duty to the plaintiff to provide appropriate medical care to her at CHA Cambridge Hospital.

45. At all times material hereto, CHA and CHAPO, and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, negligently breached this duty of care by failing to provide proper oversight, supervision, care and treatment to the plaintiff, and in failing to provide a proper and correct diagnosis of her condition.

46. As a direct and proximate result of said acts and omissions of the defendants, by and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendants, CHA and/or CHAPO, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

REQUESTS FOR RELIEF

Wherefore, the plaintiff requests that this court:

1. Enter judgment for the plaintiff on all counts of her complaint;
2. Award the plaintiff damages as determined at trial, including punitive damages and attorney's fees, plus interest and costs as provided by law; and
3. Grant the plaintiff such other relief as the court deems necessary, appropriate, equitable or just.

JURY DEMAND

The plaintiff demands a jury trial on all issues so triable.

The Plaintiff,
AMANDA DAVIS,
By her attorney,

Dated: January 14th, 2019

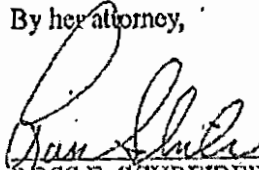

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Exhibit B- A copy of the KOR Subpoena together with
Schedule A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK SS

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1984CV00119

AMANDA DAVIS,
Plaintiff

v.

ALICE MARK, MD,
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.
JOSHUA M. MUELLER, MD
CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE HEALTH
ALLIANCE and CAMBRIDGE HEALTH
ALLIANCE PHYSICIANS ORGANIZATION
Defendants

SUBPOENA FOR RECORDS ONLY

To:

New Horizons Medical
214 Howard Street,
Frammingham MA 01702

GRIFFINCS

YOU ARE HEREBY COMMANDED in accordance with Massachusetts Rules of Civil Procedure (M.R.C.P.) Rule 45, in the name of the Commonwealth of Massachusetts, to produce **certified copies** of all the records listed on the Attached Schedule "A" to Eric P. Finamore, Esquire, Attorney for Defendants Alice Mark, MD, and Planned Parenthood League of Massachusetts, Inc. at the Law Offices of Weston Patrick, P.A., One Liberty Sq., Ste. 1710, Boston, Massachusetts by Monday, June 14, 2021.

THIRTI OF MAY NOT as you will answer your default under the pains and penalties of the

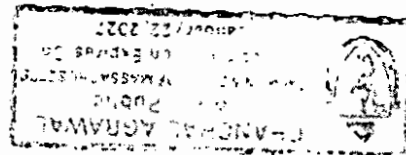
in that behalf made and provided

Defendants, Alice Mark, MD and Parent
Parenthood League of Massachusetts, Inc.
by their attorneys,

sd. *Eric P. Finnmore*

Eric P. Finnmore, BB0541872
Weston Patrick, PA
One Liberty Square Suite 1210
Boston, MA 02110-2209
(617) 712-9110

Date May 11, 2021



SCHEDEL 1-A

Patient's name Amanda Davis

Date of Birth 06/28/1994

You are requested to produce the following documents in response to this subpoena:

1. A certified copy of any and all medical records, documents, and tangible items regarding and including, but not limited to doctor's notes, doctor's reports, nurse's notes, charts, laboratory tests and results, x-ray films and reports, CT scan films and reports, MRI films and reports, any and all imaging studies or any other neurological images, summary sheets, progress notes and reports, consultation records and reports, hospital records and reports, photographs, all correspondence, memoranda, and any and all other documentation relative to the testing, treatment, and care of Amanda Davis (DOB: 06/28/1994) from June 28, 1994 to present.
2. A certified copy of any and all bills, receipts, invoices, account cards or other document referring to all charges for any such medical services.
3. Please note, if medical bills or x-ray films/radiology films or reports are stored in different locations from patient's records, please forward this subpoena to the appropriate department after the medical records are retrieved.

ATTACHED PERMANENT TO MGT. CHAPTER 23, SECTION 290

This is to certify that the enclosed (number of pages, films, slides, or other materials) are a true, exact and complete set of all records on file at New Horizons Medical for:

Patient's name Amanda Davis

Date of Birth 06-28-1994

DESCRIBED AND SWORN TO UNDER THE PAINS OF PERJURY THIS DAY OF 2021

SIGNATURE

FILE

DATE

NOTE: PLEASE RETURN THE ORIGINAL AFFIDAVIT TO RICH P. TENANTORI
WESTON PARKER, P.A. WITH THE REQUESTED RECORDS

Exhibit C – Amanda Davis Deposition Testimony, Page
20, Lines 13-24 and Page 21, Lines 1-12

Volume: I

Pages: 1-140

Exhibits: 1-3

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

Civil Action No. 1984CV119

- - - - - x

AMANDA DAVIS,

Plaintiff,

v.

ALICE MARK, MD, PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC., JOSHUA M. MULARELLA, MD,
CAMBRIDGE PUBLIC HEALTH COMMISSION, d/b/a CAMBRIDGE
HEALTH ALLIANCE and CAMBRIDGE HEALTH ALLIANCE
PHYSICIANS ORGANIZATION,

Defendants.

- - - - - x

DEPOSITION OF AMANDA DAVIS

Witness appeared remotely via videoconference from

Bellingham, Massachusetts

Tuesday, February 2, 2021

10:04 a.m. to 2:33 p.m.

Reporter: Marianne R. Wharram, CSR RPR CRR

1 At what facilities were they born?

2 A. I couldn't hear your question.

3 Q. My question was -- my question was -- well,
4 let's start with Liam. Where was Liam born?

5 A. At MGH, Massachusetts General Hospital,
6 in Boston.

7 Q. At the downtown main hospital campus?

8 A. Yes.

9 Q. Okay. And how about Riley? Where was she
10 born?

11 A. She was born at Milford Regional Hospital
12 in Franklin, Mass.

13 Q. Okay. And aside from Dr. El Sharkawy and
14 the OB/GYN doctor in that same practice, are you
15 currently treating with any other doctors?

16 A. Yes. I have a Dr. Nemkov, and I have been
17 seeing him for a few years for recovery.
18 My recovery doctor.

19 Q. Okay. And you mean addiction recovery?

20 A. Yes.

21 Q. All right. Where is Dr. Nemkov located?

22 A. On Harv-- he is based out of New Horizons
23 in Framingham, Massachusetts.

24 Q. How often do you see Dr. Nemkov currently?

1 A. Biweekly. Every two weeks.

2 Q. And I'm sorry. You started seeing
3 Dr. Nemkov when?

4 A. So before I had -- after I had my son in
5 2017, I had seen him briefly for a few months. And
6 then I started going to Duffy Health Center out in
7 Hyannis. And then when I moved back out here is
8 when I -- in 2018, I started seeing him again. So
9 for the last two to three years.

10 Q. For the last two to three years, you've
11 been seeing Dr. Nemkov? Is that what you said?

12 A. Yes.

13 Q. All right. How long did you live -- you
14 lived on the Cape?

15 A. Yes, sir.

16 Q. And when -- what was that period of time?
17 For what period of time did you live on the Cape?

18 A. From March 13th, 2017, to February of 2018.

19 Q. Okay. Where did you live at the Cape?

20 A. I was a part of a women's group, a mother
21 and children program called the Angel House.

22 Q. Where is that located?

23 A. On South -- 309 South Street in Hyannis.

24 Q. Okay. Before Dr. Nemkov, you said you were

Exhibit D – Copy of the Letter and Email dated May 26,
2021

*A Professional Association
Since 1897*

One Liberty Square, Suite 1210
Boston, Massachusetts 2109

Telephone 617-742-9310
Direct 617-880-6380
Facsimile 617 742 5734

Eric P. Finamore
epf@westonpatrick.com

WESTON | PATRICK

May 26, 2021

Certified Mail (7015 1730 0002 2510 4226)

and Email both

Ross E. Schreiber, Esq.
The Schreiber Law Firm LLC
101 Federal Street
19th Floor
Boston Ma 02110

Re: Amanda Davis v. Alice Mark, MD, Planned Parenthood League of Massachusetts, Inc., Joshua M. Mularella, MD, Cambridge Public Health Commission d/b/a Cambridge Health Alliance and Cambridge Health Alliance Physicians Organizations
Suffolk Superior Court Department, Civil Action No. 1984CV00119

Dear Attorney Schreiber:

Please find enclosed the filled in authorization for release of Plaintiff's medical records from New Horizons Medical. We request that Plaintiff sign this as indicated:

- Section F "Privileged or Specifically Protected Information": Where it says, "Initial here", please have Ms. Amanda Davis put her initials.
- Section I: Please have Ms. Davis sign above "Signature of Patient or Authorized Person" and date.

Please return the original signed authorization to our office at your earliest.

Thank you for your assistance with this matter.

EPF/ca

Enclosure

Cc: Donna M Marcin, Esq. (email only)


Sincerely,

//sd// Eric P. Finamore

Eric P. Finamore, Esq.

Amada Davis v. PPLM et al - New Horizons Medical Release**Chanchal Agrawal <Chanchal@westonpatrick.com>**

Wed 5/26/2021 12:27

To: Ross Schreiber <res@schreiberlawboston.com>**Cc:** dmarcin@hmdslaw.com <dmarcin@hmdslaw.com>; Eric P. Finamore <epf@westonpatrick.com> 1 attachment (4 MB)

Ltr to Pl's Counsel enc New Horizon Medical Release 5.26.21.pdf;

Dear Attorney Schreiber,

Attached please find the Release for New Horizons Medical to be signed by Plaintiff. This also went out by certified mail, today.

Thank you.

Chanchal Agrawal

Paralegal

Eric P. Finamore, Esquire

Weston|Patrick, P.A.

T. 617-880-6380

NOTE: Due to the current crisis, we have limited access to the offices we have been working remotely, and are processing and sending documents electronically. Should you require to send documents by mail, please call us or email us to add any before sending us it. We might indicate a different protocol depending on the situation. We appreciate your understanding and cooperation.

*This e-mail and any attached file is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination of this e-mail herein by anyone other than the intended recipient, or an employee or agent is prohibited.

Exhibit E – Tracking and Delivery Report

USPS Tracking®[FAQs >](#)**Track Another Package +****Tracking Number:** 70151730000225104226[Remove X](#)

Your item was delivered to the front desk, reception area, or mail room at 11:32 am on May 28, 2021 in BOSTON, MA 02110.

✓ Delivered, Front Desk/Reception/Mail Room

May 28, 2021 at 11:32 am
BOSTON, MA 02110

Get Updates ✓**Text & Email Updates****Tracking History****Product Information****See Less** ^**Can't find what you're looking for?**

Go to our [FAQs](#) section to find answers to your tracking questions.

Exhibit F – Emails dated June 17, 2021, and July 12, 2021

Fw: Amada Davis v. PPLM et al - New Horizons Medical Release

Chanchal Agrawal <Chanchal@westonpatrick.com>

Mon 7/12/2021 15:37

To: Ross Schreiber <res@schreiberlawboston.com>

Cc: Eric P. Finamore <epf@westonpatrick.com>

Dear Attorney Schreiber,

Our record indicates that in order to request for release of records from New Horizons, our office had sent a release for Ms. Amada Davis' signature which was delivered to your office on May 28, 2021. Could you please let us know when we can expect it?

Thank you for your attention to this matter.

Chanchal Agrawal

Paralegal

Eric P. Finamore, Esquire

Weston|Patrick, P.A.

T. 617-880-6380

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From: Chanchal Agrawal <Chanchal@westonpatrick.com>

Sent: Thursday, June 17, 2021 13:09

To: Ross Schreiber <res@schreiberlawboston.com>

Cc: dmarcin@hmdrslaw.com <dmarcin@hmdrslaw.com>; Eric P. Finamore <epf@westonpatrick.com>

Subject: Re: Amada Davis v. PPLM et al - New Horizons Medical Release

Dear Attorney Schreiber,

I am following up on the New Horizons release for Amada Davis' signature that was delivered to your office on May 28, 2021. Could you please let us know when we can expect it?

Thank you for your attention to this matter.

Chanchal Agrawal

Paralegal

Eric P. Finamore, Esquire

Weston|Patrick, P.A.

T. 617-880-6380

NOTE: Due to the nature of this email, we have included a link to the original document. We have included a watermark on the document to ensure its authenticity. Should you receive this email document by mail, please do not sign or add any other markings. If you are not the intended recipient, please do not print, copy, or otherwise use the information contained in this email.

81672021

Mail - Chanchal Agrawal - Outlook

We are using a format that is continuing to be refined. As you begin to use it, please let us know how you like it. We will be glad to make any changes you suggest. We will also be glad to provide you with any information you need to help you understand and use the format.

*This e-mail and any attached file is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination of this e-mail herein by anyone other than the intended recipient, or an employee or agent is prohibited.

From: Chanchal Agrawal <Chanchal@westonpatrick.com>
Sent: Wednesday, May 26, 2021 12:27
To: Ross Schreiber <res@schreiberlawboston.com>
Cc: dmarcin@hmdrslaw.com <dmarcin@hmdrslaw.com>; Eric P. Finamore <epf@westonpatrick.com>
Subject: Amada Davis v. PPLM et al - New Horizons Medical Release

Dear Attorney Schreiber,

Attached please find the Release for New Horizons Medical to be signed by Plaintiff. This also went out by certified mail, today.

Thank you.

Chanchal Agrawal
Paralegal
Eric P Finamore, Esquire
Weston|Patrick, P.A.
T. 617-880-6380

[illegible]

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Exhibit G – Letter and Email dated July 15, 2021

08.26
NOTIFY

8/27

25

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1984CV00119

AMANDA DAVIS,
Plaintiff

v.

ALICE MARK, MD,
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.,
JOSHUA M. MULARELLA, MD,
CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE HEALTH
ALLIANCE and CAMBRIDGE HEALTH
ALLIANCE PHYSICIANS ORGANIZATION
Defendants

notice sent

08.30.21

RPF

WP.PA

DMM

Hmpc

RES

TSLfu

m

MICHAEL JOSEPH JOHNSON
CLERK / MAGISTRATE

2021 AUG 24

05

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

**DEFENDANTS' PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, INC.,
AND ALICE MARK, M.D. MOTION TO COMPEL PRODUCTION OF DOCUMENTS
PURSUANT TO 42 C.F.R. § 2.64**

NOW COME Defendants Planned Parenthood League of Massachusetts, Inc., and Alice Mark, M.D., and move this Honorable Court pursuant to 42 C.F.R., Subpart E §§ 2.61, 2.63, and 2.64, to issue an Order in the form attached hereto, allowing Defendants' Counsel to obtain complete copies of the Plaintiff's medical and mental health records from New Horizons Medical, 214 Howard Street, Framingham MA 01702.

I. BACKGROUND

1. This is a medical malpractice action filed by the Plaintiff on January 1, 2019. (See, Exhibit A – Plaintiff's Complaint). The Complaint alleges that the Defendants were negligent in care provided to the Plaintiff following a procedure to terminate her pregnancy performed on February 4, 2016. Plaintiff has placed her "mental anguish and disability" in issue in this

I remain without prejudice for failure to comply with superior court Rule 9C. Further, it is the court's expectation that the parties will engage in meaningful discussions and make a good faith attempt to narrow the issues in dispute. 8/26/21

litigation. Therefore, her medical and mental health records are clearly relevant to her claims. One of the facilities at which the Plaintiff received treatment for her addiction recovery, which is crucial part of her pre-existing health condition, is New Horizons Medical.

2. The Defendants caused to be served a document subpoena upon the Keeper of Records of the New Horizons Medical. The deposition subpoena required the Keeper of Records to produce the plaintiff's medical records. (See, Exhibit B- A copy of the KOR Subpoena together with Schedule A.) In response to the subpoena, the above-named Keeper of Records telephonically responded by refusing to produce plaintiff's records without a court order consistent with that regulation or a release signed by the plaintiff pursuant to 42 CFR Part 2, subpart E.

3. Defendants attempted to obtain a signed release from the Plaintiff in compliance with 42 CFR Part 2, subpart E. After receiving no response from Plaintiff, now the Defendants move this Honorable Court to issue the Order to enforce the subpoena and state that there is a good faith basis for seeking to discover the Plaintiff's medical and mental health records from New Horizons Medical in this matter.

II. ARGUMENTS

4. The subject medical records are relevant to this personal injury action and therefore within the scope of Rules 26 and 34 of the Massachusetts Rules of Civil Procedure.

5. Further, Federal confidentiality law allows for the disclosure of the type of medical records requested in the present case. Federal confidentiality law does not prohibit the disclosure of the requested medical records when authorized by an order of a court of competent jurisdiction for good cause. *See* 42 C.F.R. Part 2, Subpart E. Under Federal law, good cause for the court order exists when "(1) Other ways of obtaining the information are not available or

would not be effective; and (2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.” *Id.*

6. Defendants assert that appropriate circumstances and good cause exist in the present case, which permit disclosure of the records. *See* 42 C.F.R. § 2.2. Determination as to whether good cause exists for disclosure of drug treatment records under federal law must be made with regard to the facts of the specific case. 42 C.F.R. § 2.64(d). *In re Maximo M.*, 2000, 710 N.Y.S.2d 864, 186 Misc.2d 266.

7. The following reasons constitute good faith basis in the present case to allow disclosure of the requested records:

a. Relevancy: First, the Plaintiff’s medical records are relevant because the Plaintiff claims to have suffered personal and emotional injuries in the instant case and, therefore, she has placed her physical, mental and emotional condition(s) at issue.

b. Disclosure by Plaintiff: Pursuant to 42 C.F.R. § 2.63, Plaintiff made disclosure in connection with this litigation in which she offered testimony or other evidence pertaining to the content(s) of the confidential communications.

c. No other means: There are no other means of obtaining the information.

Each of such basis is explained in detail, below.

8. *Relevancy*: The courts have concluded that disclosing confidential communications between a medical malpractice plaintiff and a drug and alcohol treatment facility is justified when plaintiff’s pleadings raise questions relating to her emotional and mental health.

McKinney’s Mental Hygiene Law § 33.13; Public Health Service Act, § 543, as amended, 42 U.S.C.A. § 290dd-2; *Napoleoni v. Union Hosp. of the Bronx* (1 Dept. 1994) A.D.3d , 207 A.D.2d 660, 616 N.Y.S.2d 38. Plaintiff’s complaint alleges that as a direct and proximate result

of the Defendants negligence on February 4, 2016, she has suffered great pain, morbidity and severe permanent injuries. She also alleges that the resultant injuries caused her to suffer "mental anguish and disability." See ¶¶ 33, 37, 42 and 46, Exhibit A. She also alleges that the Defendants' conduct exacerbated her pre-existing mental health conditions, thereby introducing her pre-existing mental health and emotional distress (from before February 2016) as part of her claims.

9. Since the Plaintiff alleges medical malpractice during the same time that Plaintiff was undergoing treatment for addiction recovery at New Horizons Medical, treatment records pertaining to Plaintiff's substance abuse contemporaneous with her pregnancy are discoverable. Therefore, the subject subpoena should be enforced, and the above-named Keeper of Records should be compelled to produce Plaintiff's entire medical records.

10. *Disclosure by Plaintiff:* Plaintiff, in her deposition testimony, testified that she continues to receive treatment from New Horizons Medical for her addiction problems. See, Exhibit C – Amanda Davis Deposition Testimony, Page 20, Lines 13-24 and Page 21, Lines 1-12. Plaintiff has therefore, waived her privilege under 'exception from privilege for disclosure in connection with litigation' by offering testimony regarding content(s) of confidential communications. See Public Health Service Act, §527, as amended, 42 U.S.C.(1982 Ed.Supp.IV), § 290ee-3. Local 738, *Intern. Broth. of Teamsters v. Certified Grocers Midwest, Inc.*, N.D. Ill.1990, 737 F.Supp. 1030. See also Amanda Davis Deposition Testimony. As such, disclosure of her records from New Horizon Medical where she received addiction recovery related treatment is essential to enable the Defendants to have access to information which will be useful in developing their defense. *Spangler v. Olchowski*, 2007, 654 S.E.2d 507, 187 N.C.App. 684.

11. *No other means*: There are no other means of obtaining the information. The Defendants have requested the Plaintiff's counsel to provide a release signed by the Plaintiff which would have averted the need for this motion, but no response has been provided by the Plaintiff's counsel. On May 26, 2021, Defendants sent a letter enclosing the release, both by certified mail and email, to Plaintiff's counsel. (See, Exhibit D – Copy of the Letter and Email dated May 26, 2021). The said letter was delivered to Plaintiff's counsel on May 28, 2021. (See Exhibit E – Tracking and Delivery Report). Thereafter, follow up emails were sent on June 16, 2021, and July 12, 2021, but Defendants received no response from the Plaintiff's counsel. (See, Exhibit F – Emails dated June 16, 2021, and July 12, 2021). Finally, on July 15, 2021, Defendants' counsel issued a final notice letter by email to Plaintiff's counsel requesting response within seven (07) days of the letter. (See, Exhibit G – Letter and Email dated July 15, 2021). Seven days ended on July 22, 2021, but Defendants' counsel has received no response from the Plaintiff's counsel as of date of filing this motion. Plaintiff and her counsel's failure to provide the requested release and failure to respond to the follow up emails and letters, which could have averted the need of this additional motion, constitutes good cause under 42 U.S.C.S. §290dd-2(b) (2).

III. CONCLUSION

For the foregoing reasons, the Defendants respectfully request that this Honorable Court issue an Order enforcing the keeper of records subpoena served on the New Horizons Medical. (Exhibit H - A proposed Order is attached hereto.).

By Defendants' attorneys,

Date: August 6, 2021

//sd// Eric P Finamore

Eric P. Finamore, BBO #541872

Weston Patrick, PA
One Liberty Square, Suite 1210
Boston, MA 02109
(617) 742-9310
epf@westonpatrick.com

CERTIFICATE OF SERVICE

I hereby certify under the penalties of perjury that I have served a copy of the foregoing document upon all parties, by mailing/**emailing** a copy of same to their counsel of record on August 6, 2021

//sd// Eric P Finamore

Eric P. Finamore, BBO #541872
Weston Patrick, PA
One Liberty Square, Suite 1210
Boston, MA 02109
(617) 742-9310
epf@westonpatrick.com

Exhibit A – Plaintiff's Complaint

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUFFOLK SUPERIOR COURT
CIVIL ACTION NO. _____

AMANDA DAVIS,
Plaintiff

vs.

ALICE MARK, MD,
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.,
JOSHUA M. MULARELLA, MD,
CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE HEALTH
ALLIANCE and CAMBRIDGE HEALTH
ALLIANCE PHYSICIANS ORGANIZATION,
Defendants

COMPLAINT &
JURY DEMAND

RECEIVED

JAN 14 2019

SUPERIOR COURT CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

PARTIES

1. The plaintiff, AMANDA DAVIS, is an individual residing in Chelsea, Suffolk County, Massachusetts.
2. The defendant, Alice Mark, MD, is a licensed practicing physician who at all times material hereto had a usual place of business at 1055 Commonwealth Avenue, Boston, Suffolk County, Massachusetts.
3. The defendant, Planned Parenthood League of Massachusetts, Inc. (hereinafter "Planned Parenthood"), is a Massachusetts corporation with a principal and/or usual place of

business at 1055 Commonwealth Avenue, Boston, Suffolk County, Massachusetts, that at all times material hereto provided pregnancy termination services.

4. The defendant, Joshua M. Mularella, MD, is a licensed practicing physician who at all times material hereto had a usual place of business at 1493 Cambridge Street, Cambridge, MA 02139.
5. The defendant, Cambridge Public Health Commission d/b/a Cambridge Health Alliance (hereinafter "CHA"), is an entity created by statute with a principal place of business at 1493 Cambridge Street in Cambridge, Middlesex County, Massachusetts, and a public employer within the meaning of G.L. c. 258, *et. seq.*, that at all times material hereto provided health care, through its employees, contractors and agents, to patients at its various campuses and affiliated locations, including CHA Cambridge Hospital.
6. The defendant, Cambridge Health Alliance Physicians Organization, Inc. (hereinafter "CHAPO"), is a Massachusetts corporation with a principal place of business at 1493 Cambridge Street in Cambridge, Middlesex County, Massachusetts, that at all times material hereto was wholly owned by, and/or affiliated with, CHA, and which employed, and/or contracted with, physicians who provided health care services at CHA campuses, including CHA Cambridge Hospital.

FACTS COMMON TO ALL COUNTS

7. At all times material hereto, Alice Mark, MD, represented and held herself out to be an Obstetrician/Gynecologist ("hereinafter "OB/GYN"), physician and surgeon, skilled in the treatment of various illnesses and conditions, and, in particular, represented to the plaintiff that she was knowledgeable, competent and qualified to perform an abortion procedure on her in February of 2016.
 8. At all times material hereto, Joshua Mularella, MD, represented and held himself out to be a physician, skilled in the treatment of various illnesses and conditions, and, in particular, represented to the plaintiff that he was knowledgeable, competent and qualified to care and treat her in March of 2016.
 9. On or about February 4, 2016, the plaintiff, then twenty-one (21) years old and of limited financial means, presented to Dr. Mark at Planned Parenthood in Boston, Massachusetts, for a first-term surgical abortion.
 10. On or about that date, Dr. Mark confirmed the ten (10) week gestational age of the pregnancy, performed the surgical abortion procedure with the assistance of ultrasound guidance (due to difficulty with dilation), then purportedly conducted a gross tissue exam of the removed products, declared the pregnancy "terminated" and discharged the plaintiff.
-
11. The standard(s) of medical care applicable to the average qualified OB/GYN at that time provided that an OB/GYN conducting an abortion procedure in a clinic setting confirm that the abortion was in fact completed and that all products of conception removed *via*

examination employing the flotation of tissue and backlighting, pathological examination, ultrasound (hereinafter "US") and/or other diagnostic procedure(s).

12. The standard(s) of medical care applicable to the average qualified OB/GYN at that time further provided that an OB/GYN conducting an abortion procedure in a case such as the plaintiff's, where US guidance is required due to difficulty with dilation, confirm that the abortion was in fact completed and that all products of conception removed *via* US, pathological examination and/or other heightened diagnostic testing.
13. Moreover, the standard(s) of medical care applicable to the average qualified OB/GYN also provided that an OB/GYN conducting a gross tissue exam of the evacuated contents following an abortion procedure properly perform the exam and actually visualize a gestational sac and other items in the contents.
14. The standard(s) of medical care applicable to the average qualified OB/GYN further provided that an OB/GYN conduct a follow up consultation or examination with a patient within one (1) to two (2) weeks of an abortion procedure, to confirm that the patient is not suffering signs and symptoms suggestive of retained products of conception (hereinafter "RPOC"), and/or to return the patient's calls.
15. On or before her discharge from Planned Parenthood on February 4, 2016, Dr. Mark, and/or other providers at Planned Parenthood, obtained and recorded the plaintiff's correct phone number, and advised her that Dr. Mark and/or Planned Parenthood would call her to obtain her status, and/or to schedule a follow-up appointment, within two (2) weeks or sooner.

16. Neither Dr. Mark or anyone else at Planned Parenthood ever advised the plaintiff that prolonged bleeding and severe abdominal pain/cramping could be a sign that she had RPOC.
17. During the days following the February 4, 2016 procedure, the plaintiff suffered significant and continuous bleeding, abdominal pain and cramping.
18. Notwithstanding that Planned Parenthood had correctly recorded the plaintiff's phone number on or before February 4, 2016, neither Dr. Mark or anyone else from Planned Parenthood ever called her to obtain her post-abortion status, or to schedule a follow-up appointment.
19. Moreover, the plaintiff's repeated phone call messages to Dr. Mark and/or Planned Parenthood during the two (2) week period following her procedure were never returned.
20. Her debilitating symptoms having not resolved, and having received no reply from Dr. Mark and/or others at Planned Parenthood in response to her repeated phone calls and/or messages, the plaintiff presented at the CHA Cambridge Hospital Emergency Department on/or about March 15, 2016, where she was examined and treated by Joshua Mularella, MD.
21. Upon her presentation, Dr. Mularella noted that the plaintiff was "status post abortion at Planned Parenthood last month", and that she suffered from, *inter alia*, "heavy vaginal bleeding" and "lower abdominal cramping"; he further confirmed her vaginal bleeding and blood clots *via* a pelvic exam.

22. At the time of the plaintiff's presentation at CHA Cambridge Hospital, the standard of medical care applicable to the average qualified emergency physician, and/or general physician, required that an OB/GYN consultation and/or an ultrasound, or other diagnostic testing, be ordered when a patient presented with the symptoms and signs exhibited by the plaintiff, in order to determine RPOC.

23. Notwithstanding her confirmed symptoms and recent medical history, which plainly raised a strong suspicion of RPOC, Dr. Mularella discharged the plaintiff from the hospital with an incomplete diagnosis and without ruling out RPOC *via* US or other diagnostic testing, and/or seeking an OB/GYN consultation, all of which were available on-campus at Cambridge Hospital and/or at others CHA campuses or affiliated institutions.

24. As a result of Dr. Mularella's failure to properly diagnose and treat the plaintiff's condition, the RPOC were left inside the plaintiff's uterus, causing her great pain and morbidity.

25. Her symptoms having not abated, the plaintiff ultimately presented at the MGH Emergency Department on April 4, 2016, where a gynecological consultation summarily advised the need for an US, which in turn revealed to the plaintiff, for the first time, that the abortion procedure at Planned Parenthood had resulted in substantial RPOC; the plaintiff received appropriate medical treatment at MGH and was discharged.

26. On or about January 16, 2018, the plaintiff, in accordance with Massachusetts General Laws Chapter 258 § 4 and Chapter 231 § 60L, provided timely notice and presentment of the instant claims to the defendants. More than six (6) months thereafter no settlement has

been agreed to and no offer of settlement has been received. A copy of this notice and presentment is attached hereto as EXHIBIT A, sans attachments, and is incorporated herein pursuant to Mass. R. Civ. P. 10(c).

COUNT 1 - NEGLIGENCE vs. ALICE MARK, MD

27. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

28. At the time(s) of her care and treatment of the plaintiff, a physician-patient relationship existed between Alice Mark, MD, and the plaintiff.

29. At all times material hereto, Alice Mark, MD, owed to the plaintiff a duty to exercise the reasonable care and skill of the average, qualified OB/GYN in treating and caring for her, which included confirming that the abortion was in fact complete and that there were no RPOC.

30. The defendant, Alice Mark, MD, negligently breached this duty of care in failing to properly perform a first-term abortion upon the plaintiff, in failing to confirm that the procedure was complete, in failing to confirm the absence of RPOC, in failing to properly perform a sufficient gross tissue examination to determine that the abortion was complete and that there was no RPOC, and in failing to confirm that the abortion was complete and that there was no RPOC via US (which was available and had been used in the procedure), flotation of tissue, backlighting, pathology and/or other diagnostic procedures.

31. The defendant, Alice Mark, MD, also negligently performed the gross tissue examination that was purportedly made, as RPOC would not ordinary occur in the absence of such negligence, and there is no other explanation for the RPOC in this case (Edwards v. Boland, 41 Mass. App. Ct. 375 (1996) rev. denied 423 Mass. 1113).

32. The defendant, Alice Mark, MD, further negligently breached this duty of care in failing to properly follow up with the plaintiff after the abortion procedure, in failing to schedule a follow-up appointment with her, in failing to return the plaintiff's phone calls, and/or causing someone else at Planned Parenthood to return her calls, and in failing to advise the plaintiff of the symptoms and signs of RPOC.

33. As a direct and proximate result of said acts and omissions of the Alice Mark, MD, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant, Alice Mark, MD, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

COUNT 2 - NEGLIGENCE vs. PLANNED PARENTHOOD

34. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

35. At all times material hereto, Planned Parenthood, and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, owed a duty to the plaintiff to provide appropriate medical care to her at Planned Parenthood in Boston.

36. At all times material hereto, Planned Parenthood, and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, negligently breached this duty of care by failing to provide proper care and treatment to the plaintiff, and in failing to implement procedures and protocols that would prevent RPOC, and/or ensure that a follow up consultation with the plaintiff was performed and her calls returned.

37. As a direct and proximate result of said acts and omissions of Planned Parenthood, by and through its contractors, employees, agents and/or persons for whom Planned Parenthood was legally responsible, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant Planned Parenthood, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

COUNT 3 – NEGLIGENCE vs. JOSHUA MULARELLA, MD

38. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

39. At the time(s) of his care and treatment of the plaintiff, a physician-patient relationship existed between Joshua Mularella, MD, and the plaintiff.
40. At all times material hereto, Joshua Mularella, MD, owed to the plaintiff a duty to exercise the reasonable care and skill of the average, qualified emergency and/or general physician in treating and caring for her, which included ordering an OB/GYN consultation and confirmation of RPOC *via* US or other diagnostic procedure(s) upon her presentation to Cambridge Hospital in March of 2016.
41. The defendant, Joshua Mularella, MD, negligently breached this duty of care in failing to properly diagnose the plaintiff's condition, in failing to order an OB/GYN consultation, in failing to order a US or other diagnostic testing for RPOC, and in discharging the plaintiff from the hospital.
42. As a direct and proximate result of said acts and omissions of Joshua Mularella, MD, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendant, Joshua Mularella, MD, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

COUNT 4 - NEGLIGENCE vs. CHA & CHAPO

43. The plaintiff repeats the allegations contained in all of the preceding paragraphs, and, by this reference, incorporates the same herein.

44. At all times material hereto, CHA and CHAPO, and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, owed a duty to the plaintiff to provide appropriate medical care to her at CHA Cambridge Hospital.

45. At all times material hereto, CHA and CHAPO, and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, negligently breached this duty of care by failing to provide proper oversight, supervision, care and treatment to the plaintiff, and in failing to provide a proper and correct diagnosis of her condition.

46. As a direct and proximate result of said acts and omissions of the defendants, by and through their contractors, employees, agents and/or persons for whom CHA and/or CHAPO were legally responsible, the plaintiff suffered significant pain, mental anguish and disability, was deprived of a more favorable medical outcome, and suffered unnecessary hospitalization and medical expense.

WHEREFORE, the plaintiff prays judgment against the defendants, CHA and/or CHAPO, for the above described harms, with awards of damages, attorneys' fees, interest and costs.

REQUESTS FOR RELIEF

Wherefore, the plaintiff requests that this court:

1. Enter judgment for the plaintiff on all counts of her complaint;
2. Award the plaintiff damages as determined at trial, including punitive damages and attorney's fees, plus interest and costs as provided by law; and
3. Grant the plaintiff such other relief as the court deems necessary, appropriate, equitable or just.

JURY DEMAND

The plaintiff demands a jury trial on all issues so triable.

The Plaintiff,
AMANDA DAVIS,
By her attorney,

Dated: January 14th, 2019

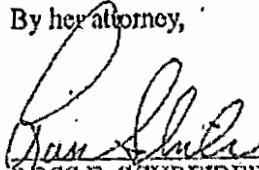

ROSS B. SCHREIBER
BRO#: 639643
8 FANEUIL HALL MARKETPLACE
THIRD FLOOR
Boston, MA 02109
(617) 742-1981
res@schreiberlawboston.com

Exhibit B- A copy of the KOR Subpoena together with
Schedule A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK SS

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1984CV00119

AMANDA DAVIS,
Plaintiff

v.

ALICE MARK, MD,
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.
JOSHUA M. MUELLER, MD
CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE HEALTH
ALLIANCE and CAMBRIDGE HEALTH
ALLIANCE PHYSICIANS ORGANIZATION
Defendants

SUBPOENA FOR RECORDS ONLY

To:

New Horizons Medical
214 Howard Street,
Frammingham MA 01702

GRIFFINCS

YOU ARE HEREBY COMMANDED in accordance with Massachusetts Rules of Civil Procedure (M.R.C.P.) Rule 45, in the name of the Commonwealth of Massachusetts, to produce **certified copies** of all the records listed on the Attached Schedule "A" to Eric P. Finamore, Esquire, Attorney for Defendants Alice Mark, MD, and Planned Parenthood League of Massachusetts, Inc. at the Law Offices of Weston Patrick, P.A., One Liberty Sq., Ste. 1710, Boston, Massachusetts by Monday, June 14, 2021.

THAT OF THE NOT as you will answer your default under the pains and penalties of the

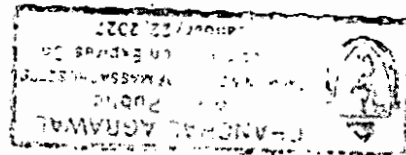
in that behalf made and provided

Defendants, Alice Mark, MD and Parent
Parenthood League of Massachusetts, Inc.
by their attorneys,

sd. *Eric P. Finnmore*

Eric P. Finnmore, BB051872
Weston Patrick, PA
One Liberty Square Suite 1210
Boston, MA 02110-2209
(617) 712-9110

Date May 11, 2021



SCHEDEL 1A

Patient's name Amanda Davis

Date of Birth 06/28/1994

You are requested to produce the following documents in response to this subpoena

1. A certified copy of any and all medical records, documents, and tangible items regarding and including, but not limited to doctor's notes, doctor's reports, nurse's notes, charts, laboratory tests and results, x-ray films and reports, CT scan films and reports, MRI films and reports, any and all imaging studies or any other neurological images, summary sheets, progress notes and reports, consultation records and reports, hospital records and reports, photographs, all correspondence, memoranda and any and all other documentation relative to the testing, treatment, and care of Amanda Davis (DOB: 06/28/1994) from June 28, 1994 to present
2. A certified copy of any and all bills, receipts, invoices, account cards or other document referring to all charges for any such medical services
3. Please note, if medical bills or x-ray films/radiology films or reports are stored in different locations from patient's records, please forward this subpoena to the appropriate department after the medical records are retrieved

This is to certify that the enclosed (number of pages, films, slides or other materials) are a true, exact and complete set of all records on file at New Horizons Medical for:

Patient's name Amanda Davis

Date of Birth 06-28-1994

DESCRIBED AND SWORN TO UNDER THE PAINS OF PERJURY THIS DAY OF 2021

SIGNATURE

FILE

DATE

NOTE: PLEASE RETURN THE ORIGINAL AFFIDAVIT TO RICHARD P. TENANIORE
WESTON PARKER, P.A. WITH THE REQUESTED RECORDS

Exhibit C – Amanda Davis Deposition Testimony, Page
20, Lines 13-24 and Page 21, Lines 1-12

Volume: I

Pages: 1-140

Exhibits: 1-3

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

Civil Action No. 1984CV119

- - - - - x

AMANDA DAVIS,

Plaintiff,

v.

ALICE MARK, MD, PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC., JOSHUA M. MULARELLA, MD,
CAMBRIDGE PUBLIC HEALTH COMMISSION, d/b/a CAMBRIDGE
HEALTH ALLIANCE and CAMBRIDGE HEALTH ALLIANCE
PHYSICIANS ORGANIZATION,

Defendants.

- - - - - x

DEPOSITION OF AMANDA DAVIS

Witness appeared remotely via videoconference from

Bellingham, Massachusetts

Tuesday, February 2, 2021

10:04 a.m. to 2:33 p.m.

Reporter: Marianne R. Wharram, CSR RPR CRR

1 At what facilities were they born?

2 A. I couldn't hear your question.

3 Q. My question was -- my question was -- well,
4 let's start with Liam. Where was Liam born?

5 A. At MGH, Massachusetts General Hospital,
6 in Boston.

7 Q. At the downtown main hospital campus?

8 A. Yes.

9 Q. Okay. And how about Riley? Where was she
10 born?

11 A. She was born at Milford Regional Hospital
12 in Franklin, Mass.

13 Q. Okay. And aside from Dr. El Sharkawy and
14 the OB/GYN doctor in that same practice, are you
15 currently treating with any other doctors?

16 A. Yes. I have a Dr. Nemkov, and I have been
17 seeing him for a few years for recovery.
18 My recovery doctor.

19 Q. Okay. And you mean addiction recovery?

20 A. Yes.

21 Q. All right. Where is Dr. Nemkov located?

22 A. On Harv-- he is based out of New Horizons
23 in Framingham, Massachusetts.

24 Q. How often do you see Dr. Nemkov currently?

1 A. Biweekly. Every two weeks.

2 Q. And I'm sorry. You started seeing
3 Dr. Nemkov when?

4 A. So before I had -- after I had my son in
5 2017, I had seen him briefly for a few months. And
6 then I started going to Duffy Health Center out in
7 Hyannis. And then when I moved back out here is
8 when I -- in 2018, I started seeing him again. So
9 for the last two to three years.

10 Q. For the last two to three years, you've
11 been seeing Dr. Nemkov? Is that what you said?

12 A. Yes.

13 Q. All right. How long did you live -- you
14 lived on the Cape?

15 A. Yes, sir.

16 Q. And when -- what was that period of time?
17 For what period of time did you live on the Cape?

18 A. From March 13th, 2017, to February of 2018.

19 Q. Okay. Where did you live at the Cape?

20 A. I was a part of a women's group, a mother
21 and children program called the Angel House.

22 Q. Where is that located?

23 A. On South -- 309 South Street in Hyannis.

24 Q. Okay. Before Dr. Nemkov, you said you were

Exhibit D – Copy of the Letter and Email dated May 26,
2021

*A Professional Association
Since 1897*

One Liberty Square, Suite 1210
Boston, Massachusetts 2109

Telephone 617-742-9310
Direct 617-880-6380
Facsimile 617 742 5734

Eric P. Finamore
epf@westonpatrick.com

WESTON | PATRICK

May 26, 2021

Certified Mail (7015 1730 0002 2510 4226)

and Email both

Ross E. Schreiber, Esq.
The Schreiber Law Firm LLC
101 Federal Street
19th Floor
Boston Ma 02110

Re: Amanda Davis v. Alice Mark, MD, Planned Parenthood League of Massachusetts, Inc., Joshua M. Mularella, MD, Cambridge Public Health Commission d/b/a Cambridge Health Alliance and Cambridge Health Alliance Physicians Organizations
Suffolk Superior Court Department, Civil Action No. 1984CV00119

Dear Attorney Schreiber:

Please find enclosed the filled in authorization for release of Plaintiff's medical records from New Horizons Medical. We request that Plaintiff sign this as indicated:

- Section F "Privileged or Specifically Protected Information": Where it says, "Initial here", please have Ms. Amanda Davis put her initials.
- Section I: Please have Ms. Davis sign above "Signature of Patient or Authorized Person" and date.

Please return the original signed authorization to our office at your earliest.

Thank you for your assistance with this matter.

EPF/ca

Enclosure

Cc: Donna M Marcin, Esq. (email only)


Sincerely,

//sd// Eric P. Finamore

Eric P. Finamore, Esq.

Amada Davis v. PPLM et al - New Horizons Medical Release**Chanchal Agrawal <Chanchal@westonpatrick.com>**

Wed 5/26/2021 12:27

To: Ross Schreiber <res@schreiberlawboston.com>**Cc:** dmarcin@hmdslaw.com <dmarcin@hmdslaw.com>; Eric P. Finamore <epf@westonpatrick.com> 1 attachments (4 MB)

Ltr to Pl's Counsel enc New Horizon Medical Release 5.26.21.pdf;

Dear Attorney Schreiber,

Attached please find the Release for New Horizons Medical to be signed by Plaintiff. This also went out by certified mail, today.

Thank you.

Chanchal Agrawal

Paralegal

Eric P. Finamore, Esquire

Weston|Patrick, P.A.

T. 617-880-6380

NOTE: Due to the current crisis, we have limited access to the offices we have been working remotely, and are processing and sending documents electronically. Should you require to send documents by mail, please call us or email us to add any before sending us it. We might indicate a different protocol depending on the situation. We appreciate your understanding and cooperation.

*This e-mail and any attached file is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination of this e-mail herein by anyone other than the intended recipient, or an employee or agent is prohibited.

Exhibit E – Tracking and Delivery Report

USPS Tracking®[FAQs >](#)**Track Another Package +****Tracking Number:** 70151730000225104226[Remove X](#)

Your item was delivered to the front desk, reception area, or mail room at 11:32 am on May 28, 2021 in BOSTON, MA 02110.

✓ Delivered, Front Desk/Reception/Mail Room

May 28, 2021 at 11:32 am
BOSTON, MA 02110

Get Updates ✓**Text & Email Updates****Tracking History****Product Information****See Less** ^**Can't find what you're looking for?**

Go to our [FAQs](#) section to find answers to your tracking questions.

Exhibit F – Emails dated June 17, 2021, and July 12, 2021

Fw: Amada Davis v. PPLM et al - New Horizons Medical Release

Chanchal Agrawal <Chanchal@westonpatrick.com>

Mon 7/12/2021 15:37

To: Ross Schreiber <res@schreiberlawboston.com>

Cc: Eric P. Finamore <epf@westonpatrick.com>

Dear Attorney Schreiber,

Our record indicates that in order to request for release of records from New Horizons, our office had sent a release for Ms. Amada Davis' signature which was delivered to your office on May 28, 2021. Could you please let us know when we can expect it?

Thank you for your attention to this matter.

Chanchal Agrawal

Paralegal

Eric P. Finamore, Esquire

Weston|Patrick, P.A.

T. 617-880-6380

NOTE: Due to the nature of this email, we have included a "Print Friendly" version of this email. If possible, kindly read documents electronically. Should you need to print documents by mail, please use a separate address for the envelope, indicating that you might receive a different address. We printed this email for you for printing, and understanding and cooperation.

*This e-mail and any attached file is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination of this e-mail herein by anyone other than the intended recipient, or an employee or agent is prohibited.

From: Chanchal Agrawal <Chanchal@westonpatrick.com>

Sent: Thursday, June 17, 2021 13:09

To: Ross Schreiber <res@schreiberlawboston.com>

Cc: dmarcin@hmdrslaw.com <dmarcin@hmdrslaw.com>; Eric P. Finamore <epf@westonpatrick.com>

Subject: Re: Amada Davis v. PPLM et al - New Horizons Medical Release

Dear Attorney Schreiber,

I am following up on the New Horizons release for Amada Davis' signature that was delivered to your office on May 28, 2021. Could you please let us know when we can expect it?

Thank you for your attention to this matter.

Chanchal Agrawal

Paralegal

Eric P. Finamore, Esquire

Weston|Patrick, P.A.

T. 617-880-6380

NOTE: Due to the nature of this email, we have included a "Print Friendly" version of this email. If possible, kindly read documents electronically. Should you need to print documents by mail, please use a separate address for the envelope, indicating that you might receive a different address. We printed this email for you for printing, and understanding and cooperation.

you are using a forest or an untrusted domain. An agent must be used to provide address information, and the agent must provide your understanding and confirmation.

*This e-mail and any attached file is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination of this e-mail herein by anyone other than the intended recipient, or an employee or agent is prohibited.

From: Chanchal Agrawal <Chanchal@westonpatrick.com>

Sent: Wednesday, May 26, 2021 12:27

To: Ross Schreiber <res@schreiberlawboston.com>

Cc: dmarcin@hmdrslaw.com <dmarcin@hmdrslaw.com>; Eric P. Finamore <epf@westonpatrick.com>

Subject: Amada Davis v. PPLM et al - New Horizons Medical Release

Dear Attorney Schreiber,

Attached please find the Release for New Horizons Medical to be signed by Plaintiff. This also went out by certified mail, today.

Thank you.

Chanchal Agrawal

Paralegal

Eric P. Finamore, Esquire

Weston|Patrick, P.A.

T. 617-880-6380

NOTE: Due to the nature of this case, we have included addresses to the office as we have been working very hard to possibly resolve this case electronically. Should you require any and/or have any questions, please contact us with the address before sending them. We might need different addresses depending on what we need to provide your understanding and confirmation.

*This e-mail and any attached file is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination of this e-mail herein by anyone other than the intended recipient, or an employee or agent is prohibited.

Exhibit G – Letter and Email dated July 15, 2021

✓ Council without prejudice for further to comply with Superior Court Rule 9C.
Further, it is the court's expectation that the parties will engage in meaningful discussions
and make a good faith attempt to narrow the issues in dispute.

Greg Backus, Jr. 8/26/21

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SUFFOLK, SS.

AMANDA DAVIS,

E-FILED 8/27/2021

RB

Defendants.

Page 1 of 3

WHEREFORE, the parties respectfully request that this Motion to Extend the Motion for Summary Judgment **Filing** Deadline be allowed.

The Plaintiff,

AMANDA DAVIS,

By her attorney,

/s/ Ross E. Schreiber

Ross E. Schreiber, BBO: #639643
101 Federal Street
19th Floor
Boston, MA 02110
(617) 742-1981
res@schreiberlawboston.com

The Defendants,

**CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE
HEALTH ALLIANCE AND CAMBRIDGE
HEALTH ALLIANCE PHYSICIANS
ORGANIZATION,**

By their attorneys,

/s/ Brian E. Sopp

Donna M. Marcin, BBO: #561731
Brian E. Sopp, BBO: #690940
Hamel Marcin Dunn Reardon & Shea, P.C.
350 Lincoln Street
Hingham, MA 02043
(617) 482-0007
dmarcin@hmdrslaw.com
bsopp@hmdrslaw.com

The Defendants,

**ALICE MARK, MD, AND PLANNED
PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.,**

By their attorneys,

/s/ Eric P. Finamore

Eric P. Finamore, BBO: #541872
Weston Patrick, PA
84 State Street, Ste. 1100
Boston, MA 02109
(617) 742-9310
epf@westonpatrick.com

Dated: 8/27/2021

CERTIFICATE OF SERVICE

I, Brian E. Sopp, attorney of record for the defendants, Joshua Mularella, M.D., Cambridge Public Health Commission d/b/a Cambridge Health Alliance and Cambridge Health Alliance Physicians Organization, do hereby certify that the following document:

1. JOINT MOTION TO EXTEND MOTION FOR SUMMARY JUDGMENT FILING
DEADLINE BY 30 DAYS;

was this day forwarded via electronic mail to:

Ross E. Schreiber, Esq.
The Schreiber Law Firm, LLC
101 Federal Street
19th Floor
Boston, MA 02110
res@schreiberlawboston.com

Eric Finamore, Esq.
Weston Patrick, PA
84 State Street, Suite 1100
Boston, MA 02109
epf@westonpatrick.com

/s/ Brian E. Sopp
Brian E. Sopp, Esq.

Dated: 8/27/2021

NOTIFY

08/31

✓ 08/31 ✓ 24

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUFFOLK SUPERIOR COURT
DOCKET NO. 1984CV00119H

AMANDA DAVIS,

Plaintiff,

V.

ALICE MARK, MD,
PLANNED PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.,
JOSHUA M. MULARELLA, MD,
CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE
HEALTH ALLIANCE and CAMBRIDGE
HEALTH ALLIANCE PHYSICIANS
ORGANIZATION,

Defendants.

E-FILED 8/27/2021

RB

8/30/2021 Allowed.

Leighton, SS

Notice
sent

09.02.21

RES

TSLF UC

Epf

WP. PA

DMM

Hmcc

no

JOINT MOTION TO EXTEND MOTION FOR SUMMARY JUDGMENT FILING DEADLINE BY 30 DAYS

NOW come the plaintiff and the defendants in the above-captioned matter and respectfully request that this Honorable Court extend the motion for summary judgment *filing* deadline from September 6, 2021, to October 6, 2021.

This motion is brought on the grounds that Dr. Mularella timely served a motion for summary judgment on plaintiff's counsel on August 2, 2021, and has tentatively agreed to allow the plaintiff an extension of time to September 10, 2021, to serve her opposition, if the Court can accommodate this request for a brief extension. This motion is brought on the further grounds that it will not prejudice any party and will serve judicial economy to have one 9A package filed with the court.

WHEREFORE, the parties respectfully request that this Motion to Extend the Motion for Summary Judgment *Filing* Deadline be allowed.

The Plaintiff,

AMANDA DAVIS,

By her attorney,

/s/ Ross E. Schreiber

Ross E. Schreiber, BBO: #639643
101 Federal Street
19th Floor
Boston, MA 02110
(617) 742-1981
res@schreiberlawboston.com

The Defendants,

**CAMBRIDGE PUBLIC HEALTH
COMMISSION d/b/a CAMBRIDGE
HEALTH ALLIANCE AND CAMBRIDGE
HEALTH ALLIANCE PHYSICIANS
ORGANIZATION,**

By their attorneys,

/s/ Brian E. Sopp

Donna M. Marcin, BBO: #561731
Brian E. Sopp, BBO: #690940
Hamel Marcin Dunn Reardon & Shea, P.C.
350 Lincoln Street
Hingham, MA 02043
(617) 482-0007
dmarcin@hmdrslaw.com
bsopp@hmdrslaw.com

The Defendants,

**ALICE MARK, MD, AND PLANNED
PARENTHOOD LEAGUE OF
MASSACHUSETTS, INC.,**

By their attorneys,

/s/ Eric P. Finamore

Eric P. Finamore, BBO: #541872
Weston Patrick, PA
84 State Street, Ste. 1100
Boston, MA 02109
(617) 742-9310
epf@westonpatrick.com

Dated: 8/27/2021

CERTIFICATE OF SERVICE

I, Brian E. Sopp, attorney of record for the defendants, Joshua Mularella, M.D., Cambridge Public Health Commission d/b/a Cambridge Health Alliance and Cambridge Health Alliance Physicians Organization, do hereby certify that the following document:

1. JOINT MOTION TO EXTEND MOTION FOR SUMMARY JUDGMENT FILING
DEADLINE BY 30 DAYS;

was this day forwarded via electronic mail to:

Ross E. Schreiber, Esq.
The Schreiber Law Firm, LLC
101 Federal Street
19th Floor
Boston, MA 02110
res@schreiberlawboston.com

Eric Finamore, Esq.
Weston Patrick, PA
84 State Street, Suite 1100
Boston, MA 02109
epf@westonpatrick.com

/s/ Brian E. Sopp
Brian E. Sopp, Esq.

Dated: 8/27/2021