This is a three-hour examination consisting of two questions. No materials of any type are to be used in this examination. Your answers are to be recorded in a blue book. At the end of the examination, you will turn in both the exam and blue book. Make sure your student identification number, **NOT YOUR NAME**, is on both the examination and blue book.

Questions will be weighed as follows:

- **QUESTION 1** 66 2/3 %
- **QUESTION 2** 33 13 %
THE FOLLOWING FACT PATTERN IS APPLICABLE TO ALL QUESTIONS

In 2008, Anna Phylaxis, a 28 year old mother of two healthy children was awaiting the birth of her third child. She received pre-natal care from Dr. Sal Pingo and Dr. I.M. Pergonol, who practiced together in a group known as OB Associates, P.C. Anna’s first visit to the group was in May, 2008. According to the records, her last menstrual period had been on March 14, 2008, and her estimated due date was December 26, 2008. In her 19th week of pregnancy, on July 24, 2008, Anna reported to Dr. Pingo that she was leaking vaginal fluid. Dr. Pingo instructed Anna to stay on bed rest for two days, informing Anna that she could continue working after that. Dr. Pergonol requested an ultrasound (diagnostic test) on July 25, 2008, and the report of the ultrasound confirmed a condition known as oligohydramnios, or decreased amniotic fluid. The records of Anna’s visit on this day note to “watch” and repeat the ultrasound in three weeks. Neither Dr. Pergonol nor Dr. Pingo recommended treatment, and neither of these physicians gave Anna instructions for continuing bed rest.

Dr. Pingo ordered a second ultrasound, which was performed on August 5, 2008, and revealed that the amniotic fluid was still moderately decreased. Again, Dr. Pingo failed to recommend continued bed rest for Ms. Phylaxis, as did Dr. Pergonol. A third ultrasound was performed at Dr. Pingo’s request on September 5, 2008, which showed that the amniotic fluid was near normal. However, a doctor’s note written on September 19, 2008, documented that Ms. Phylaxis was still leaking fluid. Again, no further treatment was recommended by either physician and no instructions for bed rest were documented.

On September 29, 2008, Anna went into premature labor and was admitted to St. Timothy the Benevolent Hospital in Boston at approximately 4:30 AM. Dr. Pergonol was the admitting physician. Delivery occurred via cesarean section at 5:06 AM. While performing the cesarean section, Dr. Pergonol also performed a tubal ligation (surgical sterilization procedure). Anna had signed a consent form for the cesarean section and the tubal ligation was not mentioned in the consent form.

After the birth, the baby, Albert Phylaxis, required immediate medical attention and was transferred to Pediatric Hospital in Boston. Despite the efforts to treat him by the staff at Pediatric Hospital, Albert died several hours later.

You are consulted by Anna Phylaxis on December 9, 2010, coincidentally at 1:00 PM. Anna informs you she has been a lifelong resident of Massachusetts, and that you were recommended to her by Attorney Timothy Cagle, before he was found floating face down in the Charles River. Foul play was immediately suspected because a grotesquely-tied, softball-sized knotted tie was found wrapped around his neck. The District Attorney has launched an investigation of all Evidence students and the American Medical Association has scheduled a lavish dinner in celebration.
Re: Anna Phylaxis

Dear Sir/Madam:

I am a physician licensed to practice medicine in the States of New York, Maryland and New Jersey. I am certified by the American Board of Obstetrics and Gynecology in obstetrics, gynecology, and maternal-fetal medicine. I am a fellow of the American College of OB-GYN. I am familiar with the standard of care as it pertained to obstetricians in Massachusetts in 2001.

At your request, I have reviewed the pertinent medical records of Anna Phylaxis, including the following: OB Associates office records from 2001, St. Timothy's Hospital from 9/29/00 to 10/4/00, St. Timothy's Hospital Newborn records from 9/29/00, Pediatric Hospital from 9/29/00, the autopsy report of Albert Phylaxis and the affidavit from Anna Phylaxis.


According to the OB Associates, Inc's office records, Anna's last menstrual period was 3/14/00 and estimated due date was 12/26/01. In her 19th week of pregnancy, on 7/24/01 Anna visited the office of OB Associates, Inc., and reported that she was leaking vaginal fluid. According to Anna's affidavit, Dr. Pingo was aware of this complaint, and instructed Anna to stay on bed rest for only two days, informing her that she could continue working after that. Dr. Pingo requested an ultrasound on July 25, 2001, and the ultrasound was performed on this day. The report of July 26, 2001, confirmed oligohydramnios (decreased amniotic fluid). The office records from this day merely note to "watch", and repeat the ultrasound in three weeks. Neither Dr. Pingo, nor Dr. Pergonol, the other physician responsible for Anna's prenatal care, recommended treatment, and neither of the physicians gave Anna instructions for continuing bed rest.

Dr. Pingo ordered a second ultrasound, which was performed on 8/15/01, and which noted that the amniotic fluid was still moderately decreased. Again, Dr. Pingo failed to recommend continued bed rest for Anna as did Dr. Pergonol. A third ultrasound was performed at Dr. Pingo's request on 9/5/01 which noted that the amniotic fluid was near normal. However, the 9/19/01 doctor's note (it is not clear which doctor wrote this note) documented that Anna was still leaking fluid. Once again no further treatment was recommended by Dr. Pingo or Pergonol, and no instructions for bed rest were documented.
According to the medical records, Anna went into premature labor on 9/29/08, and was admitted under Dr. Pergonol to St. Timothy's Hospital at approximately 4:30 AM. Delivery occurred via cesarean section at 5:06 a.m. While performing the cesarean section, Dr. Pergonol also performed a tubal ligation. However, the signed consent form is for a cesarean section only. There is no signed consent form for a tubal ligation.

Albert Phylaxis' Apgars were noted at 2-5-6. He required immediate intubation and was transferred to Pediatric Hospital. Despite the rigorous efforts, he died 15 hours later. The autopsy report noted sepsis, oligohydramnios, hyaline membrane disease and an intraventricular hemorrhage.

Discussion:

It is well recognized today, as it was in 2005, that preterm rupture of membranes and/or preterm leaking of amniotic fluid are associated with increased perinatal morbidity and mortality. The standard of care in 2005 and to the present requires obstetricians caring for patients with leaking amniotic fluid or preterm rupture of membranes to treat the patient as a high-risk pregnancy including transfer to a high-risk center and referral to a perinatologist to monitor fetal well-being. The standard of care also requires obstetricians to instruct such patients to remain on strict bed rest at home from the first episode of leaking amniotic fluid until the 23rd-24th week gestation. After this time, the standard of care requires the obstetrician to admit the patient to the hospital, where she would be maintained on strict bed rest with close maternal-fetal monitoring by trained medical personnel and may be treated with steroids to hasten the baby's lung maturity. These measures offer the best opportunity to sustain a healthy gestation and minimize injury to the fetus.

A tubal ligation is a permanent sterilization procedure that involves removing a piece of each fallopian tube and permanently closing the ends. The standard of care from 2005 to the present requires obstetricians to fully explain the permanent nature of this procedure to the patient and obtain a signed consent from the patient before performing any surgical procedure, including a tubal ligation. In addition, when the circumstances of the delivery change, such as in the case of Albert, where there was a probability that he would not survive, the standard of care requires the obstetrician to re-evaluate the situation and again fully explain the permanent nature of the tubal ligation, and obtain a signed consent from the patient.

In my professional opinion, to a reasonable degree of medical certainty, the care and treatment rendered to Anna Phylaxis in 2005, by Sal Pingo, M.D., and I. M. Pergonol, two physicians responsible for her prenatal care, fell below the accepted standard of care at the time for the average qualified obstetrician in the following ways:

1. by failing to treat Anna as a high-risk pregnancy, including transfer to a high-risk center and referral to a perinatologist;
2. by failing to instruct Anna to remain on bed rest at home from the first instance of leaking amniotic fluid, on 7/24/08 until her 23rd-24th week gestation.
3. by failing to admit Anna to the hospital from her 23rd-24th week, until the time of delivery, with bed rest with close maternal-fetal monitoring.

As a direct result of Dr. Pingo and Dr. Pergonol's failure to provide care within the above-described accepted standard, Anna was not afforded the measures which would have monitored fetal well-being and prolonged her pregnancy and which would have improved Albert's lung maturation. As a direct result, Albert was born very prematurely, at 27 weeks, and died from complications of infection and prematurity. In my professional opinion, to a reasonable degree of medical certainty, had Dr. Pingo or Dr. Pergonol provided care in accordance with the accepted standards as described above, pregnancy would have been prolonged, the fetal well-being could have been evaluated and Albert would not have died.

In addition, in my professional opinion, to a reasonable degree of medical certainty, the care and treatment rendered to Anna Phylaxis by I. M. Pergonol, M.D. on 9/29/02 fell below the accepted standard of care at the time for the average qualified obstetrician when Dr. Pergonol performed a tubal ligation during an emergency cesarean section when there was a high likelihood that the infant would not survive, and when she failed to obtain a signed consent for the tubal ligation. As a direct result, a tubal ligation was performed without Anna being afforded the opportunity to make an informed decision, and as a direct result, she will probably not be able to conceive another child. To a reasonable degree of medical certainty, had Dr. Pergonol provided care in accordance with the accepted standard as described above, a tubal ligation would not have been performed on 9/29/02 and Anna would have been able to conceive another child.

In conclusion, the care and treatment rendered to by Anna Phylaxis by Sal Pingo, M.D., and I. M. Pergonol, M.D., fell below the accepted standard of care at the time of the average qualified obstetrician resulting in Albert Phylaxis' death. In addition, the care and treatment rendered to Anna Phylaxis by I. M. Pergonol, M.D. also fell below the accepted standard of care at the time for the average qualified obstetrician resulting in permanent sterilization of Anna Phylaxis.

Sincerely,

Phil Lopian, M.D.
NAME: Phil Lopian  M.D.

HOME ADDRESS:
20 East 68th Street
New York, NY 10023

OFFICE ADDRESS
One Madison Avenue
New York, NY 10023

DATE AND PLACE OF BIRTH: July 31, 1940 - New York City

EDUCATION:
Cornell University (Pre-Medical)
July 1958 - June 1962

McGill University Medical College
June 1967 - M.D.

POSTDOCTORAL TRAINING
Internship
Michael Reese Hospital (Rotating)
1967 - 1968

New York Hospital-Cornell (Surgery)
1968 - 1971

Residency
Assistant Resident (Urology)
New York Hospital-Cornell

Woman's Hospital
(Obstetrics and Gynecology)
1971 - 1973

Woman's Hospital
(Obstetrics and Gynecology)
1973 - 1974

Military
Chief of Obstetrics and Gynecology
Northeast Air Command
1974 - 1976

LICENSED TO PRACTICE
New York, Maryland, New Jersey
ACADEMIC APPOINTMENTS

Assistant Professor
Clinical Obstetrics and Gynecology
NY University Medical College
1977 - present

CERTIFICATION AND DATE:

Diplomate
American Board of Obstetrics and
Gynecology
April 1976

SOCIETIES

American Medical Association
Fellow, American College of
Obstetricians and Gynecologists
Fellow, American College of Surgeon:
New York State and County Medical
Society
Fellow, New York Academy of Medicine:
New York Gynecologic Society
Member, The New York Academy of
Sciences
Member, American Assoc. of Gyn.
Laparoscopists

CURRENT EXTRAMURAL
ASSIGNMENTS:

Associate Attending
Obstetrics and Gynecology
NY Hospital
1979

Director of Gynecology
Hospital for Joint Diseases,
1980 - 1984

Chief, Obstetrical Service
Women's Hospital
Center,
January 1, 1985 - January 1, 1987
CURRENT EXTRAMURAL
ASSIGNMENTS: cont'd

Senior Attending
Obstetrics and Gynecology

Senior Attending
Obstetrics and Gynecology

Nassau County Medical Society
Grievance Subcommittee
1981 - 1989
Public Relations Committee
1989 - 1990
Committee of Public Health
Subcommittee on Infant Mortality
1991 -
Insurance Review Subcommittee
of Peer Review
1991 - 92

Visiting Scholar, The Eastings Center
Institute of Society, Ethics and the
Life Sciences
1992
DO NOT OPEN THIS BOOKLET UNTIL TOLD TO DO SO.

WRITE YOUR SOCIAL SECURITY NUMBER: ________________________

This is three hour examination consisting of two questions. No materials of any type are to be used in this examination. Your answers are to be recorded only in a blue book. At the end of the examination, you will turn in both the exam and blue book. Make sure your social security number, NOT YOUR NAME, is on both the examination and the blue book.

Questions will be weighed as follows:

- QUESTION 1 66 2/3 %
- QUESTION 2 33 1/3 %
THE FOLLOWING FACT PATTERN IS APPLICABLE TO ALL QUESTIONS

On April 30, 2006, Anna Phylaxis was a 52 year old woman who was vacationing in the Florida Keys when she suffered a fracture of her right leg involving two major bones called the tibia and fibula. She had emergency treatment at Doctor's Hospital, Key Lime, Florida, her leg was placed in a cast and she was sent back to her home in Massachusetts on the next available flight.

After returning home, Ms. Phylaxis was seen by Dr. Sy Napses, an orthopedic surgeon, on May 4, 2006. Dr. Napses examined Ms. Phylaxis and prescribed surgical treatment for her fractured leg. She was sent for tests at St. Timothy the Benevolent Hospital after her meeting with Dr. Napses. Preoperative tests included an electrocardiogram and tests for blood clotting time.

The surgery was performed by Dr. Napses at St. Timothy's Hospital the following day, May 5, 2006. Ms. Phylaxis was given preoperative sedation prior to going to surgery. At that time, Dr. O.K. Bendova, a surgical resident who was assisting Dr. Napses, approached Ms. Phylaxis and told her she would have to sign a consent form or the surgery would not proceed. Although she was groggy and did not fully understand Dr. Bendova's instructions, Ms. Phylaxis signed the form.

Anna Phylaxis was given spinal anesthesia prior to surgery. During the procedure, she went into cardiac arrest on the operating table. Dr. Napses and the surgical team began to try to resuscitate Anna Phylaxis. She went in and out of consciousness three or four times before she finally lost total consciousness. Further attempts at resuscitation continued for approximately two hours before Ms. Phylaxis was pronounced dead.

An autopsy was conducted after the surgery. The autopsy report indicated that the cause of death was an acute pulmonary embolism. An acute pulmonary embolism is a blood clot that was suspected to have formed in her broken leg, and broke off and caused her death. It may have formed as a deep vein thrombus (DVT) which broke loose and became the pulmonary embolus (PE) that caused Ms. Phylaxis' death.
You are consulted by Sally Phylaxis, Anna Phylaxis' daughter, on December 18, 2008, seeking your advice regarding a possible cause(s) of action as a result of her mother's death. Sally informs you that you were recommended by Attorney Timothy Cagle, who is currently confined to a psychiatric ward, restrained to his bed while mumbling over and over, "You're in good hands with Allstate, Nationwide is on your side, and like a good neighbor, State Farm is there!" Medication has failed to relieve his symptoms although the staff felt they detected a faint smile when he was shown a copy of the Federal Rules of Evidence.

Sally presents you with a copy of a medical report that Attorney Cagle obtained prior to his retirement. Sally further informs you that Anna was a life-long Massachusetts resident and asks your advice regarding the following issues:

**QUESTION ONE**

A. **LIST THE STEPS THAT YOU WOULD TAKE TO EVALUATE THE CASE IN ORDER TO DETERMINE WHETHER OR NOT MEDICAL MALPRACTICE IS PRESENT AND THE FACTORS YOU WOULD CONSIDER IN DECIDING WHETHER OR NOT TO TAKE THE CASE.**

B. **GIVE THE THEORY(IES) OF LIABILITY UNDER WHICH YOU WOULD PROCEED, LISTING THE PROBABLE PLAINTIFF(S), DEFENDANT(S) AND DEFENSE(S).**

C. **DISCUSS THE RIGHTS AND LIABILITIES OF ALL THE PARTIES.**

D. **DESCRIBE THE STEPS THAT MUST BE FOLLOWED IN MASSACHUSETTS FOR LITIGATION OF A MEDICAL MALPRACTICE CASE.**

E. **ADVISE SALLY OF THE MASSACHUSETTS STATUTE OF LIMITATIONS.**

F. **ADVISE SALLY WHETHER THERE ARE ANY LIMITATIONS ON DAMAGES IN MASSACHUSETTS.**

G. **ADVISE SALLY WHETHER THERE ARE ANY LIMITATIONS ON ATTORNEYS' FEES IN MASSACHUSETTS.**
QUESTION TWO

Sally gives you the attached letter from Dr. Perry Tonitis, along with Dr. Tonitis' curriculum vitae. Dr. Tonitis is an orthopedic surgeon who reviewed this case for Attorney Cagle.

PRESUME THAT A MEETING WITH DR. TONITIS IS SCHEDULED FOR THE FOLLOWING WEEK. LIST THE QUESTIONS THAT YOU WOULD ANTICIPATE THE DEFENSE WILL ASK ON CROSS-EXAMINATION IN ORDER THAT YOU MAY INTERROGATE DR. TONITIS AT THE MEETING.

(FOR QUESTION 2, YOU ARE LIMITED TO TWENTY (20) QUESTIONS. IF YOU WRITE MORE THAN TWENTY, ONLY THE FIRST TWENTY WILL BE CONSIDERED FOR CREDIT.)
December 9, 2007

Timothy R. Cagle, Esquire
23 Main Street
Suite 240
Andover, MA 01810

RE: Anna Phylaxis

Dear Attorney Cagle:

I am a physician licensed to practice medicine in the Commonwealth of Massachusetts and have a medical specialty of orthopedics and orthopedic surgery. I am familiar with the standard of care as it pertained to orthopedic surgeons in 2006. I have attached my curriculum vitae.

I have reviewed pertinent medical records for Anna Phylaxis including the following:

1. Medical records of Doctor's Hospital;
2. Medical records of St. Timothy the Benevolent;
3. Report of the Medical Examiner

RECORD REVIEW:

Ms. Anna Phylaxis sustained a fracture of the right leg (Mid-shaft tibia and fibula) on April 30, 2006, while on a boat in Florida. She had some emergency treatment done there at the Doctor's Hospital, which included a physical examination and x-rays, and her leg was placed in a cast/splint before she was sent to her home in Massachusetts.

After returning home, she apparently was referred to Dr. Sy Napses, an orthopedic surgeon. She saw Dr. Napses on May 4, 2006, who examined her and told her she would need surgery. She underwent surgery on the following day, May 5, 2006.
The surgery was performed under spinal anesthesia. During the procedure, she went into hypotension and had to be intubated and ventilated. Ms. Phylaxis went into cardiac arrest on the operating table. Attempts at resuscitation failed and she died on the operating table. An autopsy indicated that the cause of death was acute pulmonary embolism. The autopsy also showed a bruise over the right leg where the incision was made, and there was also a bruise over the left leg.

COMMENT ON TREATMENT SUMMARY

In my opinion, to a reasonable degree of medical certainty, Dr. Sy Napses deviated from accepted medical practice as follows:

1. The patient was seen by Dr. Napses only the day before the surgery, even though she had returned from Florida three days earlier. Accepted medical practice would have required Dr. Napses to have seen the patient earlier.

2. The examination by Dr. Napses on May 4, 2006, was inadequate because:

   a. Though the patient was 230 pounds (as noted in the autopsy report), no precaution for DVT (deep vein thrombosis) was made or explained to the patient.

   b. No record of any risk of clots (DVT or PE (pulmonary embolus) was explained to the patient.

   c. No precautions were taken to note the presence of clots, either by examination or by tests.

   d. The original emergency room report from Doctor's Hospital in Key Lime, Florida, indicated an abrasion over the right shin where the surgical incision was due to be made. The autopsy report indicated a bruise at this site.

   There is no indication that Dr. Napses examined the skin where the incision was due to be made. A cut in the skin at the incision site would be a contra-indication for surgery at that same site.

   e. The records do not indicate that Dr. Napses considered the risk of clots forming in Ms. Phylaxis and leading to her death. The records do not indicate that precautions were taken by Dr. Napses to prevent clots (DVT or PE) from causing Ms. Phylaxis' death.

   f. A mildly abnormal EKG was noted for Ms. Phylaxis, but an abnormal PPT (reduced clotting time) was not noted. This (PPT) would indicate a higher risk for clots was present in Ms. Phylaxis, and the standard of care would have been to take precautions to prevent the clots from causing Ms. Phylaxis' death. The abnormal EKG
was noted by the anesthesiologist and addressed by the anesthesiologist, but the abnormal PPT was neither noticed nor addressed.

3. During surgery, precautions were apparently taken on the opposite leg, but were not taken on the leg which required surgery. Application of a tourniquet failed and it was not used. Other precautions for the presence of clots, including anti-platelet drugs were not used. This was a deviation from good medical practice.

4. Due to Ms. Phylaxis’ size, listed as 230 pounds, and the fact that she had been immobilized in a cast and not walking for five to six days prior to the surgery, clot prevention treatment should have been utilized by Dr. Napses. Ms. Phylaxis’ weight and immobility and the fact that she was going for surgery on her lower extremity, made her a high risk to get clots during surgery.

5. In cases of trauma, such as that sustained by Anna Phylaxis, the highest risk of clot formation is between day 2 and day 7 post-trauma. The standard of care would be to either do the surgery before the expiration of 48 hours post-trauma, or to wait and stabilize the patient to make sure that all risks of clot formation are addressed, and then perform the surgery after the end of the 7 day post-traumatic period.

   a. In my opinion, to a reasonable degree of medical certainty, Dr. Napses deviated from the standard of care when he failed to stabilize Ms. Phylaxis and perform her surgery after the 7 day period, thereby minimizing the risk to Ms. Phylaxis of clot interference.

   b. It is also my opinion, to a reasonable degree of medical certainty, that Dr. Napses deviated from the standard of care when he failed to place Ms. Phylaxis on some form of anti-platelet treatment before the surgery, and when he failed to take other reasonable precautions to prevent clots from causing Ms. Phylaxis’ death.

In summary, based on my education, training and experience, it is my opinion, to a reasonable degree of medical certainty, that the care provided by Dr. Sy Napses, when he treated Anna Phylaxis in May, 2006, fell below the accepted standards of medical care, as previously outlined. It is further my opinion, to a reasonable degree of medical certainty, that the care provided to Anna Phylaxis by Dr. Sy Napses, which fell below the accepted standards of medical care, was the cause of the death of Anna Phylaxis.

Please contact me if you require any additional information.

Sincerely,

Perry Toniitis, M.D.
PERRY TOWITIS, M.D.

Education:

High School: Graduated the School, Massachusetts June , magna cum laude

College: Graduated Harvard College, Cambridge, Massachusetts June 19, with degree Bachelor of Arts, magna cum laude in chemistry and physics

Medical School: May of 19 with the degree of Doctor of Medicine

Residency Training:

Internship: General surgery, New England Deaconess Harvard Surgical Service July 1, thru June 30,

Residency: General surgery, New England Deaconess Harvard Surgical Service July 1, thru December 31,

Orthopedic Surgery: Tufts New England Medical Center January 1, thru June 30,

Private Practice:

July 19 to the present and ongoing. Have engaged in the private practice of Orthopedic Surgery in the Massachusetts areas and also in New Hampshire

Hospital Affiliations: Current staff appointments at the Hospital, Massachusetts, Senior Staff

Hospital, Massachusetts, Active Staff

Hospital, New Hampshire, Consulting Privileges
Medical Licensure:

Current Licenses to practice medicine held in the State of Massachusetts and the State of New Hampshire

Board of Certification:

American Board of Orthopedic Surgery
July 4, 19

Professional Societies and Fellowships:

Member of the American Medical Association
Fellow of the American Academy of Orthopedic Surgeons
MEDMAL GRID 09

1
RECORDS
INVESTIGATE
EVALUATE
EXPERT WITNESS
EXPERT OPINION
INTERVIEW CLIENT
WRITTEN SUMMARY
OH MY GOD RESULT

SOL
3-7 YEARS, MINOR

DAMAGES

FEES

2
NEGL
INFORMED CONSENT
RESP SUPERIOR
CHARITABLE
FLORIDA TREATMENT
WRONGFUL DEATH
CONSCIOUS PAIN AND SUFFERING
BATTERY
FETUS BORN ALIVE

5
COMPLAINT
INTS
DOCS
TRIBUNAL
COMP
OFFER OF PROOF
MOTIONS
BOND
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| QUESTION 2 | 33 1/3 % |
THE FOLLOWING FACT PATTERN IS APPLICABLE TO ALL QUESTIONS

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An autopsy was conducted after the surgery. The autopsy report indicated that the cause of death was an acute pulmonary embolism. An acute pulmonary embolism is a blood clot that was suspected to have formed in her broken leg, and broke off and caused her death. It may have formed as a deep vein thrombosus (DVT) which broke loose and became the pulmonary emobolus (PE) that caused Ms. Phylaxis' death.
You are consulted by Sally Phylaxis, Anna Phylaxis' daughter, on December 20, 2006, seeking your advice regarding a possible cause(s) of action as a result of her mother’s death. Sally informs you that you were recommended by Attorney Timothy Cagle, who is currently confined to a psychiatric ward, restrained to his bed while mumbling over and over, "You're in good hands with Allstate, Nationwide is on your side, and like a good neighbor, State Farm is there!” Medication has failed to relieve his symptoms although the staff felt they detected a faint smile when he was shown a copy of the Federal Rules of Evidence.

Sally presents you with a copy of a medical report that Attorney Cagle obtained prior to his retirement. Sally further informs you that Anna was a life-long Massachusetts resident and asks your advice regarding the following issues:

QUESTION ONE

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C. DISCUSS THE RIGHTS AND LIABILITIES OF ALL THE PARTIES.

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F. ADVISE SALLY WHETHER THERE ARE ANY LIMITATIONS ON DAMAGES IN MASSACHUSETTS.

G. ADVISE SALLY WHETHER THERE ARE ANY LIMITATIONS ON ATTORNEYS’ FEES IN MASSACHUSETTS.
QUESTION TWO

Sally gives you the attached letter from Dr. Perry Tonitis, along with Dr. Tonitis' curriculum vitae. Dr. Tonitis is an orthopedic surgeon who reviewed this case for Attorney Cagle.

PRESUME THAT A MEETING WITH DR. TONITIS IS SCHEDULED FOR THE FOLLOWING WEEK. LIST THE QUESTIONS THAT YOU WOULD ANTICIPATE THE DEFENSE WILL ASK ON CROSS-EXAMINATION IN ORDER THAT YOU MAY INTERROGATE DR. TONITIS AT THE MEETING.

(FOR QUESTION 2, YOU ARE LIMITED TO TWENTY (20) QUESTIONS. IF YOU WRITE MORE THAN TWENTY, ONLY THE FIRST TWENTY WILL BE CONSIDERED FOR CREDIT.)
December 9, 2005

Timothy R. Cagle, Esquire
23 Main Street
Suite 240
Andover, MA 01810

RE: Anna Phylaxis

Dear Attorney Cagle:

I am a physician licensed to practice medicine in the Commonwealth of Massachusetts and have a medical specialty of orthopedics and orthopedic surgery. I am familiar with the standard of care as it pertained to orthopedic surgeons in 2004. I have attached my curriculum vitae.

I have reviewed pertinent medical records for Anna Phylaxis including the following:

1. Medical records of Doctor's Hospital;
2. Medical records of St. Timothy the Benevolent;
3. Report of the Medical Examiner

RECORD REVIEW:

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After returning home, she apparently was referred to Dr. Sy Napses, an orthopedic surgeon. She saw Dr. Napses on May 4, 2004, who examined her and told her she would need surgery. She underwent surgery on the following day, May 5, 2004.
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COMMENT ON TREATMENT SUMMARY

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2. The examination by Dr. Napses on May 4, 2004, was inadequate because:

   a. Though the patient was 230 pounds (as noted in the autopsy report), no precaution for DVT (deep vein thrombosis) was made or explained to the patient.

   b. No record of any risk of clots (DVT or PE (pulmonary embolus) was explained to the patient.

   c. No precautions were taken to note the presence of clots, either by examination or by tests.

   d. The original emergency room report from Doctor's Hospital in Key Lime, Florida, indicated an abrasion over the right shin where the surgical incision was due to be made. The autopsy report indicated a bruise at this site.

   There is no indication that Dr. Napses examined the skin where the incision was due to be made. A cut in the skin at the incision site would be a contra-indication for surgery at that same site.

   e. The records do not indicate that Dr. Napses considered the risk of clots forming in Ms. Phylaxis and leading to her death. The records do not indicate that precautions were taken by Dr. Napses to prevent clots (DVT or PE) from causing Ms. Phylaxis' death.

   f. A mildly abnormal EKG was noted for Ms. Phylaxis, but an abnormal PPT (reduced clotting time) was not noted. This (PPT) would indicate a higher risk for clots was present in Ms. Phylaxis, and the standard of care would have been to take precautions to prevent the clots from causing Ms. Phylaxis' death. The abnormal EKG
was noted by the anesthesiologist and addressed by the anesthesiologist, but the abnormal PPT was neither noticed nor addressed.

3. During surgery, precautions were apparently taken on the opposite leg, but were not taken on the leg which required surgery. Application of a tourniquet failed and it was not used. Other precautions for the presence of clots, including anti-platelet drugs were not used. This was a deviation from good medical practice.

4. Due to Ms. Phylaxis' size, listed as 230 pounds, and the fact that she had been immobilized in a cast and not walking for five to six days prior to the surgery, clot prevention treatment should have been utilized by Dr. Napses. Ms. Phylaxis' weight and immobility and the fact that she was going for surgery on her lower extremity, made her a high risk to get clots during surgery.

5. In cases of trauma, such as that sustained by Anna Phylaxis, the highest risk of clot formation is between day 2 and day 7 post-trauma. The standard of care would be to either do the surgery before the expiration of 48 hours post-trauma, or to wait and stabilize the patient to make sure that all risks of clot formation are addressed, and then perform the surgery after the end of the 7 day post-traumatic period.

a. In my opinion, to a reasonable degree of medical certainty, Dr. Napses deviated from the standard of care when he failed to stabilize Ms. Phylaxis and perform her surgery after the 7 day period, thereby minimizing the risk to Ms. Phylaxis of clot interference.

b. It is also my opinion, to a reasonable degree of medical certainty, that Dr. Napses deviated from the standard of care when he failed to place Ms. Phylaxis on some form of anti-platelet treatment before the surgery, and when he failed to take other reasonable precautions to prevent clots from causing Ms. Phylaxis' death.

In summary, based on my education, training and experience, it is my opinion, to a reasonable degree of medical certainty, that the care provided by Dr. Sy Napses, when he treated Anna Phylaxis in May, 2004, fell below the accepted standards of medical care, as previously outlined. It is further my opinion, to a reasonable degree of medical certainty, that the care provided to Anna Phylaxis by Dr. Sy Napses, which fell below the accepted standards of medical care, was the cause of the death of Anna Phylaxis.

Please contact me if you require any additional information.

Sincerely,

Perry Tonitis, M.D.
MASSACHUSETTS SCHOOL OF LAW
MEDICAL MALPRACTICE
CLOSED BOOK FINAL EXAMINATION
DECEMBER 18, 2002
PROFESSOR TIMOTHY CAGLE

DO NOT OPEN THIS BOOKLET UNTIL TOLD TO DO SO.

WRITE YOUR SOCIAL SECURITY NUMBER:

_________________________________________________________

This is a three-hour examination consisting of two questions. No materials of any type are to be used in this examination. Your answers are to be recorded only in a blue book. At the end of the examination, you will turn in both the exam and blue book. Make sure your social security number, NOT YOUR NAME, is on both the examination and blue book.

Question will be weighed as follows:

| QUESTION 1 | 66 2/3 % |
| QUESTION 2 | 33 1/3 % |
THE FOLLOWING FACT PATTERN IS APPLICABLE TO ALL QUESTIONS

On November 15, 1999, Anna Phylaxis, a child celebrating her first birthday, was taken by her mother, Sally, to consult Dr. P. D. Atrics, for a persistent coughing condition. Dr. Atrics diagnosed Anna’s condition as pertussis (whopping cough) and prescribed a drug called Tussionex, a narcotic. The dosage was one-quarter teaspoon to be given every twelve hours. Dr. Atrics did not consult the Physicians Desk Reference for information prior to prescribing the drug. The entry for dosage and administration of Tussionex, which was contained in the Physicians Desk Reference, is attached to this fact pattern.

Sally obtained the drug and followed Dr. Atrics instructions. The following day, November 16, 1999, Anna did not appear to be improving. Sally grew concerned over her daughter’s lack of improvement and at 5:00 PM, took her back to see Dr. Atrics. When they arrived, Dr. Atrics was gone and Anna was seen by his associate, Dr. Sy Anotic. Dr. Anotic examined Anna and confirmed the diagnosis of Dr. Atrics. He advised Sally to continue the medication and not to return for one week.

Later that evening, Sally became more concerned over Anna’s condition. Finally, at 4:00 AM on November 17, 1999, she called Dr. Atrics answering service. After fifteen rings, there was no answer so she hung up and called the answering service of Dr. Perry Tonitis, a pediatrician who had treated Anna eight months prior. Dr. Tonitis called her back immediately and after listening to her describe Anna’s condition on the telephone, advised her to take Anna to the emergency room at once.

Sally immediately took Anna to the emergency room at St. Timothy the Benevolent Hospital where she was admitted at once. When asked by the admitting nurse who Anna’s family physician was, Sally replied: "Dr. Tonitis." The nurse then called Dr. Tonitis who advised her that he was not Anna’s doctor, had not physically examined Anna, and had only spoken with her mother on the telephone. He then refused to come to the hospital to treat Anna.

Sally was advised of Dr. Tonitis’s conversation and asked that Dr. Atrics be consulted to treat Anna. When the admitting nurse spoke with Dr. Atrics, he refused to come to the hospital and treat Anna because he had not sent her for admission. As a result, Anna was treated by Dr. Dee Mentia, a first year resident.

Dr. Mentia confirmed the diagnosis of whopping cough and continued treatment with Tussionex. Because Anna’s lungs were becoming congested and she was having problems with respiration, Dr. Mentia ordered that the congestive fluid be suctioned from her lungs every four hours. Dr. Mentia did not consult the hospital policy manual which required that the patient be given oxygen before and after suctioning. As a result, Anna’s lungs were suctioned without oxygenation every four hours and she was continued on Tussionex, which continued to depress her respiratory function.
Two days after Anna's admission, Sally happened to see Dr. Atrics in the parking lot of the hospital and asked him to take over Anna's care. Dr. Atrics agreed on the condition that Sally obtain written confirmation from Dr. Tonitis that he was relinquishing Anna's care and that he authorized Dr. Atrics to take over as her physician. Sally relayed the conversation to Dr. Tonitis and he gave her the note two days later. At that time, the only physician who had treated Anna was Dr. Mentia.

Dr. Atrics went to see Anna at the end of the fourth day of her admission. Anna's lungs had just been suctioned and she was cyanotic (blue in color). Dr. Atrics ordered oxygen to be given immediately. While waiting for the oxygen to arrive, Anna suffered a seizure due to lack of oxygen and sustained permanent brain damage.

Sally was not informed of the seizure. For the past several years, based on a conversation she had with Dr. Atrics, she has presumed that Anna was slow in developing. On November 10, 2001, she took Anna to Dr. Sy Napses, a neurologist. Dr. Napses conducted a series of tests which confirmed Anna's neurological deficit. On November 18, 2001, he informed Sally of his findings and expressed an opinion that the treatment Anna received in 1999 had been negligent.

You are consulted by Sally on December 18, 2002. Sally informs you that she has been a life-long Massachusetts resident and asks your advice regarding the following issues:

**QUESTION ONE**

A. **LIST THE STEPS THAT YOU WOULD TAKE TO EVALUATE THE CASE IN ORDER TO DETERMINE WHETHER OR NOT MEDICAL MALPRACTICE IS PRESENT AND THE FACTORS YOU WOULD CONSIDER IN DECIDING WHETHER OR NOT TO TAKE THE CASE.**

B. **GIVE THE THEORY(IES) OF LIABILITY UNDER WHICH YOU WOULD PROCEED, LISTING THE PROBABLE PLAINTIFF(S), DEFENDANT(S) AND DEFENSE(S)**

C. **DISCUSS THE RIGHTS AND LIABILITIES OF ALL THE PARTIES.**

D. **DESCRIBE THE STEPS THAT MUST BE FOLLOWED IN MASSACHUSETTS FOR LITIGATION OF A MEDICAL MALPRACTICE CASE.**

E. **ADVISE SALLY OF THE MASSACHUSETTS STATUTE OF LIMITATIONS**
F. ADVISE SALLY WHETHER THERE ARE ANY LIMITATIONS ON DAMAGES IN MASSACHUSETTS

G. ADVISE SALLY WHETHER THERE ARE ANY LIMITATIONS ON ATTORNEYS FEES IN MASSACHUSETTS

QUESTION TWO

Sally decided to have Anna’s medical records reviewed prior to proceeding in this case. She gives you the attached letter from Dr. Sy Napses, along with Dr. Napses’ curriculum vitae.

PRESUME THAT A MEETING WITH DR. SY NAPSES IS SCHEDULED FOR THE FOLLOWING WEEK. LIST THE QUESTIONS THAT YOU WOULD ANTICIPATE THE DEFENSE WILL ASK ON CROSS-EXAMINATION IN ORDER THAT YOU MAY INTERROGATE DR. NAPSES AT THE MEETING.

(FOR QUESTION 2, YOU ARE LIMITED TO TWENTY (20) QUESTIONS. IF YOU WRITE MORE THAN TWENTY, ONLY THE FIRST TWENTY WILL BE CONSIDERED FOR CREDIT)
Re: Anna Phylaxis

Dear Sir/Madam:

I am a physician licensed to practice medicine in the States of New York and Texas. I am board certified in Pediatrics and Neurology. I am a fellow of the American College of Neurology and Neuro-Science. I am familiar with the standard of care as it pertained to pediatricians in Massachusetts in 1999. I have attached my curriculum vitae.

I have finished my review of the medical records of Anna Phylaxis. This includes the records of Dr. Atrics, Dr. Anotic, Dr. Tonitis and St. Timothy the Benevolent Hospital. To briefly summarize the pertinent information, the child was born following an uneventful pregnancy and delivery. Apgar scores were 9 at one minute and 9 at five minutes. The neonatal course was marked by the need to suction mucus secretions on the first day of life and one dusky spell.

Early development appeared to progress normally. The child received her second DTP and OPV vaccines in October 1999. Two days following this she began to cough and was seen by Dr. Atrics on October 15 and October 24. A diagnosis of bronchitis and an expectorant, Tussi-Organdin was prescribed.

The parents sought consultation from Dr. Atrics on November 15, 1999, and Tussionex 3cc orally was prescribed for what was called a pertussoid cough. The child was seen by Dr. Anotic the next day because of concern about mild duskiness occurring with severe episodes of coughing. That evening, after consulting with Dr. Tonitis on the telephone, her parents took the child to St. Timothy the Benevolent Hospital where she was admitted. Apparently neither Dr. Atrics nor Dr. Tonitis came to the hospital to see the child at the time of admission.

Furthermore, it appears that neither of these treating physicians came in to see the child in the hospital until the child's care was taken over by Dr. Atrics on November 21, 1999. While hospitalized, Anna's initial care was provided by Dr. Mentia, a first year resident. There is no record of Dr. Mentia consulting with either Dr. Atrics or Dr. Tonitis about Anna's care.
During this hospitalization, Anna had episodes of severe deep paroxysmal coughing lasting 45 to 60 seconds and associated with deep cyanosis of the face. Treatment was supportive with occasional suctioning. Oxygen was not used and there was no evidence that blood gases were drawn. Cultures did not grow Bordetella pertussis.

Following discharge, the child continued to cough and developed seizure-like activity. Subsequent events indicate that the child has myoclonic seizures associated with hypsarrhythmia. She also has mild spastic diparasis and a moderate developmental delay.

Based on my review of this information, it is my opinion that Dr. Atrics, Dr. Anotic, Dr. Tonitis, Dr. Mentia and the other physicians at St. Timothy’s Hospital, who rendered the “care” to this child in the hospital, failed to use the care and skill required of the average qualified physicians and pediatricians for the following reasons:

1. The child was prescribed a potent cough suppressant in an excessive dose.

2. The child apparently was not examined by her physicians at the time of hospital admission and institution of treatment.

3. During the hospitalization, there was failure to monitor the child’s blood gas status and failure to provide supplemental oxygen during the times the child was coughing and especially during the time the child was being suctioned.

4. There was no indication to use cough suppressants during the hospitalization.

In my opinion, based on my education, training, experience and review of the literature and medical records, these failures to meet the standard of care were a substantial factor in producing the child’s neurological disability. My opinions are expressed to a reasonable degree of medical certainty.

Very truly yours,

Sy Napses, M.D.
Professor of Pediatrics
Professor of Neurology
CURRICULUM VITAE

NAME: Cuy NAPOLI, M.D.

BIRTHDATE: 8-8-35

BIRTHPLACE: DETROIT, MICH

S.S. No.: 

MARITAL STATUS: Married

CHILDREN: 2 children

EDUCATION:

1957  B.A., Princeton University, Princeton, N.J.
1961  M.D., Columbia University College of Physicians and Surgeons, New York City.
1961  Internship, Pediatrics, University of Minnesota Hospitals, Minneapolis, MN.
1962-64 Residency, Pediatrics, University of Minnesota Hospitals, Minneapolis, MN.
1964-67 Fellowship, Pediatric Neurology, Albert Einstein College of Medicine, Bronx Municipal Hospital Center, Bronx, NY.

PROFESSIONAL AND TEACHING EXPERIENCE:

1966-67 Assistant Instructor in Neurology, Albert Einstein College of Medicine, Bronx, NY.
1967 Assistant Professor of Clinical Neurology and Pediatrics, Albert Einstein College of Medicine.
1967-73 Assistant Professor of Neurology and Pediatrics Albert Einstein College of Medicine.
1973-77 Associate Professor of Neurology and Pediatrics Albert Einstein College of Medicine.
1974-77 Director, Children's Evaluation and Rehabilitation Clinic, Albert Einstein College of Medicine.
1974-77 Director, Pediatric Neurology, Albert Einstein College of Medicine.
1976-77 Assistant Director for Clinical Research, Rose F. Kennedy Center.
1977 Professor of Neurology and Pediatrics, Albert Einstein College of Medicine.
1977-84 Professor of Pediatrics and Neurology, University of Texas Medical Branch, Galveston, TX.
1977-84 Director, Child Development Division, University of Texas Medical Branch, Galveston, TX.
1980-84 Director, Pediatric Neurology, University of Texas Medical Branch, Galveston, TX.
1984-Present Associate Professor of Pediatrics and Professor of Neurology, University of Texas, Galveston, TX.
1984-Present Director, Child Development Center, University of Texas, Galveston, TX.
1965-Present Acting Chairman, Department of Neurology, University of Texas.
1986-Present  Director, Pediatric Neurology, Department of Pediatrics, UNIV  TEXAS

RESEARCH ACTIVITIES

A. Research Interests

1. Genetic aspects of Tourette Syndrome. Includes the use of drugs as pharmacogenetic markers

2. Computer assisted analysis of subgroups in Tourette Syndrome

B. Current Grant Support

1. University Affiliated Program Core Support, Administration on Developmental Disabilities, DHHS, $200,000/year 1989


COMMITTEE RESPONSIBILITIES:

UNIV  TEXAS  , Administrative Council

Neurology Search Committee

MEMBERSHIP IN SCIENTIFIC SOCIETIES:

American Academy of Cerebral Palsy and Developmental Medicine

*American Academy of Mental Retardation

*American Academy of Neurology, Fellow

American Academy of Pediatrics, Fellow

*American Association on Mental Retardation, Fellow (Vice President for Medicine, 1984-86)

*American Pediatric Society

Child Neurology Society (Councillor from the South, 1978-80)

Association of University Professors of Neurology

International Child Neurology Association

Professors of Child Neurology (Councillor, 1983-84)

Southern Child Neurology Society

Southern Society for Pediatric Research

Pediatric Society

Texas One Star County Pediatric Society

*Indicates elected membership

HONORS:

Graduate Princeton University with Honors in Biology, 1957

Sigma Xi - Associate Member (Princeton, 1957); Full Member, 1975

Medical Student Fellowship in Rehabilitation, National Foundation, 1959
Alpha Omega Alpha (Columbia University, 1961)
Special Fellow, NINDB, 1964-67
Patricia T. and Charles S. Raizen Distinguished Scholar in Pediatrics,
Albert Einstein College of Medicine, 1974-77

BOARD CERTIFICATION:
Diplomate, American Board of Pediatrics, 1966
Diplomate in Neurology, American Board of Psychiatry and Neurology,
1966
Diplomate in Neurology with Special Competence in Child Neurology,
American Board of Psychiatry and Neurology, 1967

MEDICAL LICENSE:
National Board of Medical Examiners
New York

RELATED PROFESSIONAL ACTIVITIES:
American Board of Pediatrics, Official Examiner, Chairman Recent
Advances Test Committee for Recertification Program, Chairman
Technical Advisory Committee for Computerized Learning about
Candidates
National Board of Medical Examiners, Comprehensive Part II Examination
Committee, Chairman
American Academy of Pediatrics, Head, Section on Neurology, (1981-83)
Pediatric Neurology (Editorial Board)
Journal of Developmental and Behavioral Pediatrics (Associate Editor)
American Journal of Mental Deficiency (Associate Editor, 1982-87)
Pediatrics in Review (Editorial Board, 1987)
Annals of Neurology (Editorial Board, 1977-83)
Science Books (Reviewer)

State Developmental Disabilities Council
County Association for Retarded Citizens, Board Member
(1985-1988)
Oral School for the Deaf, Board Member
Training Center, Board Member
Special Education Department Advisory Committee, Texas
University, Chairman
Recent advances in the management of hypertension have led to increased interest in the use of antihypertensive drugs. This interest has been fueled by the recognition that long-term control of blood pressure is essential for the prevention of cardiovascular events. Antihypertensive therapy is now considered an essential part of the treatment plan for patients with hypertension, and the goal of therapy is to lower blood pressure to a level that is safe and effective for the individual patient.

The choice of antihypertensive drug depends on several factors, including the patient's age, gender, comorbidities, and drug interactions. In general, monotherapy is preferred, but combination therapy may be necessary in some cases. The most commonly used classes of antihypertensive drugs include angiotensin-converting enzyme (ACE) inhibitors, angiotensin receptor blockers (ARBs), diuretics, beta blockers, and calcium channel blockers. These drugs work through different mechanisms to lower blood pressure, and they may have additional benefits, such as improving insulin sensitivity or reducing the risk of heart failure.

In conclusion, the effective management of hypertension requires a personalized approach that takes into account the patient's individual characteristics and medical history. By selecting the appropriate antihypertensive drug and adjusting the dosage as needed, healthcare providers can help patients achieve the blood pressure goal that is most appropriate for them.
DO NOT OPEN THIS BOOKLET UNTIL TOLD TO DO SO.

WRITE YOUR SOCIAL SECURITY NUMBER:

This is a three-hour examination consisting of two questions. No materials of any type are to be used in this examination. Your answers are to be recorded only in a blue book. At the end of the examination, you will turn in both the exam and blue book. Make sure your social security number, NOT YOUR NAME, is on both the examination and blue book.

Question will be weighed as follows:

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THE FOLLOWING FACT PATTERN IS APPLICABLE TO ALL QUESTIONS

In 1997, Anna Phylaxis, a 28 year old mother of two healthy children was awaiting the birth of her third child. She received pre-natal care from Dr. Sal Pingo and Dr. I. M. Pergonol, who practiced together in a group known as OB Associates, P.C. Anna's first visit to the group was in May, 1997. According to the records, her last menstrual period had been on March 14, 1997, and her estimated due date was December 26, 1997. In her 19th week of pregnancy, on July 24, 1997, Anna reported to Dr. Pingo that she was leaking vaginal fluid. Dr. Pingo instructed her to stay on bed rest for two days, informing Anna that she could continue working after that. Dr. Pergonol requested an ultrasound (diagnostic test) on July 25, 1997, and the report of the ultrasound confirmed a condition known as oligohydramnios, or decreased amniotic fluid. The records of Anna's visit on this day note to "watch" and repeat the ultrasound in three weeks. Neither Dr. Pergonol nor Dr. Pingo recommended treatment, and neither of these physicians gave Anna instructions for continuing bed rest.

Dr. Pingo ordered a second ultrasound, which was performed on August 15, 1997, and revealed that the amniotic fluid was still moderately decreased. Again, Dr. Pingo failed to recommend continued bed rest for Mrs. Phylaxis, as did Dr. Pergonol. A third ultrasound was performed at Dr. Pingo's request on September 5, 1997, which showed that the amniotic fluid was near normal. However, a doctor's note written on September 19, 1997, documented that Mrs. Phylaxis was still leaking fluid. Again, no further treatment was recommended by either physician and no instructions for bed rest were documented.

On September 29, 1997, Anna went into premature labor and was admitted to St. Timothy the Benevolent Hospital in Boston at approximately 4:30 AM. Dr. Pergonol was the admitting physician. Delivery occurred via cesarean section at 5:06 AM. While performing the cesarean section, Dr. Pergonol also performed a tubal ligation (surgical sterilization procedure). Anna had signed a consent form for the cesarean section and the tubal ligation was not mentioned in the consent form.

After the birth, the baby, Albert Phylaxis, required immediate medical attention and was transferred to Pediatric Hospital in Boston. Despite the efforts to treat him by the staff at Pediatric Hospital, Albert died several hours later.
You are consulted by Anna Phylaxis on December 22, 1999, coincidentally at 4:30 PM. Anna informs you that you were recommended to her by Timothy Cagle, before he was recently found floating face down in the Charles River. It appears that Mr. Cagle was executed, gangland-style, and his body was discovered bound and gagged, with several copies of the Federal Rules of Evidence stuffed very creatively into multiple body orifices. The district attorney has called for a full investigation of all recent Evidence students, although several defense firms and insurance executives have stepped forward to gleefully claim responsibility. Upon hearing of Mr. Cagle’s demise, the American Medical Association issued a jubilant three word response, "God love America!"

Anna informs you that she has been a life-long Massachusetts resident and asks your advice regarding the following issues:

QUESTION ONE

A. LIST THE STEPS THAT YOU WOULD TAKE TO EVALUATE THE CASE IN ORDER TO DETERMINE WHETHER OR NOT MEDICAL MALPRACTICE IS PRESENT AND THE FACTORS YOU WOULD CONSIDER IN DECIDING WHETHER OR NOT TO TAKE THE CASE.

B. GIVE THE THEORY(IES) OF LIABILITY UNDER WHICH YOU WOULD PROCEED, LISTING THE PROBABLE PLAINTIFF(S), DEFENDANT(S) AND DEFENSE(S)

C. DISCUSS THE RIGHTS AND LIABILITIES OF ALL THE PARTIES.

D. DESCRIBE THE STEPS THAT MUST BE FOLLOWED IN MASSACHUSETTS FOR LITIGATION OF A MEDICAL MALPRACTICE CASE.

E. ADVISE ANNA OF THE MASSACHUSETTS STATUTE OF LIMITATIONS

F. ADVISE ANNA WHETHER THERE ARE ANY LIMITATIONS ON DAMAGES IN MASSACHUSETTS

G. ADVISE ANNA WHETHER THERE ARE ANY LIMITATIONS ON ATTORNEYS FEES IN MASSACHUSETTS
QUESTION TWO

Anna decided to have her medical records reviewed prior to proceeding in this case. She presents you with the enclosed letter from Dr. Phil Lopian, along with Dr. Lopian's curriculum vitae.

9. PRESUME THAT A MEETING WITH DR. PHIL LOPIAN IS SCHEDULED FOR THE FOLLOWING WEEK. LIST THE QUESTIONS THAT YOU WOULD ANTICIPATE THE DEFENSE WILL ASK ON CROSS-EXAMINATION IN ORDER THAT YOU MAY INTERROGATE DR. LOPIAN AT THE MEETING.

(FOR QUESTION 9, YOU ARE LIMITED TO TWENTY (20) QUESTIONS. IF YOU WRITE MORE THAN TWENTY, ONLY THE FIRST TWENTY WILL BE CONSIDERED FOR CREDIT)
Dear Sir/Madam:

I am a physician licensed to practice medicine in the States of New York, Maryland and New Jersey. I am certified by the American Board of Obstetrics and Gynecology in obstetrics, gynecology, and maternal-fetal medicine. I am a fellow of the American College of OB-GYN. I am familiar with the standard of care as it pertained to obstetricians in Massachusetts in 1997. I have attached my curriculum vitae.

At your request, I have reviewed the pertinent medical records of Anna Phylaxis, including the following: OB Associates office records from 1997, St. Timothy's Hospital from 9/29/97 to 10/4/97, St. Timothy's Hospital Newborn records from 9/29/97, Pediatric Hospital from 9/29/97, the autopsy report of Albert Phylaxis and the affidavit from Anna Phylaxis.

In 1997, Anna Phylaxis was a 28 year old mother of two healthy children, expecting her third child. According to Mrs. Phylaxis' affidavit, Mrs. Phylaxis received her prenatal care from Sal Pingo M.D., and I. M. Pergonol, M.D., at the OB Health Associates, Inc. from May of 1997 through September of 1997.

According to the OB Associates, Inc.'s office records, Anna's last menstrual period was 3/14/97, and estimated due date was 12/26/97. In her 19th week of pregnancy, on 7/24/97, Anna visited the office of OB Associates, Inc., and reported that she was leaking vaginal fluid. According to Anna's affidavit, Dr. Pingo was aware of this complaint, and instructed Anna to stay on bed rest for only two days, informing her that she could continue working after that. Dr. Pingo requested an ultrasound on July 25, 1997, and the ultrasound was performed on this day. The report of July 26, 1997, confirmed oligohydramnios (decreased amniotic fluid). The office records from this day merely note to "watch", and repeat the ultrasound in three weeks. Neither Dr. Pingo, nor Dr. Pergonol, the other physician responsible for Anna's prenatal care, recommended treatment, and neither of the physicians gave Anna instructions for continuing bed rest.

Dr. Pingo ordered a second ultrasound, which was performed on 8/15/97, and which noted that the amniotic fluid was still moderately decreased. Again, Dr. Pingo failed to recommend continued bed rest for Anna as did Dr. Pergonol. A third ultrasound was performed at Dr. Pingo's request on 9/5/97 which noted that the amniotic fluid was near normal. However, the 9/19/97 doctor's note (it is not clear which doctor wrote this note) documented that Anna was still leaking fluid. Once again no further treatment was recommended by Dr. Pingo or Pergonol, and no instructions for bed rest were documented.
According to the medical records, Anna went into premature labor on 9/29/97, and was admitted under Dr. Pergonol to St. Timothy's Hospital at approximately 4:30 AM. Delivery occurred via cesarean section at 5:06 a.m. While performing the cesarean section, Dr. Pergonol also performed a tubal ligation. However, the signed consent form is for a cesarean section only. There is no signed consent form for a tubal ligation.

Albert Phylaxis' Apgars were noted at 2-5-6. He required immediate intubation and was transferred to Pediatric Hospital. Despite the rigorous efforts, he died 15 hours later. The autopsy report noted sepsis, oligohydramnios, hyaline membrane disease and an intraventricular hemorrhage.

Discussion:

It is well recognized today, as it was in 1997, that preterm rupture of membranes and/or preterm leaking of amniotic fluid are associated with increased perinatal morbidity and mortality. The standard of care in 1997 and to the present requires obstetricians caring for patients with leaking amniotic fluid or preterm rupture of membranes to treat the patient as a high-risk pregnancy including transfer to a high-risk center and referral to a perinatologist to monitor fetal well-being. The standard of care also requires obstetricians to instruct such patients to remain on strict bed rest at home from the first instance of leaking amniotic fluid until the 23rd-24th week gestation. After this time, the standard of care requires the obstetrician to admit the patient to the hospital, where she would be maintained on strict bed rest with close maternal-fetal monitoring by trained medical personnel and may be treated with steroids to hasten the baby's lung maturity. These measures offer the best opportunity to sustain a healthy gestation and minimize injury to the fetus.

A tubal ligation is a permanent sterilization procedure that involves removing a piece of each fallopian tube and permanently closing the ends. The standard of care from 1997 to the present requires obstetricians to fully explain the permanent nature of this procedure to the patient and obtain a signed consent from the patient before performing any surgical procedure, including a tubal ligation. In addition, when the circumstances of the delivery change, such as in the case of Albert, where there was a probability that he would not survive, the standard of care requires the obstetrician to re-evaluate the situation and again fully explain the permanent nature of the tubal ligation, and obtain a signed consent from the patient.

In my professional opinion, to a reasonable degree of medical certainty, the care and treatment rendered to Anna Phylaxis in 1997, by Sal Pingo, M.D., and I. M. Pergonol, two physicians responsible for her prenatal care, fell below the accepted standard of care at the time for the average qualified obstetrician in the following ways:

1. by failing to treat Anna as a high-risk pregnancy, including transfer to a high-risk center and referral to a perinatologist;
2. by failing to instruct Anna to remain on bed rest at home from the first instance of leaking amniotic fluid, on 7/24/97, until her 23rd-24th week gestation.
3. by failing to admit Anna to the hospital from her 23rd-24th week, until the time of delivery, with bed rest with close maternal-fetal monitoring.

As a direct result of Dr. Pingo and Dr. Pergonol’s failure to provide care within the above-described accepted standard, Anna was not afforded the measures which would have monitored fetal well-being and prolonged her pregnancy and which would have improved Albert’s lung maturation. As a direct result, Albert was born very prematurely, at 27 weeks, and died from complications of infection and prematurity. In my professional opinion, to a reasonable degree of medical certainty, had Dr. Pingo or Dr. Pergonol provided care in accordance with the accepted standards as described above, pregnancy would have been prolonged, the fetal well-being could have been evaluated and Albert would not have died.

In addition, in my professional opinion, to a reasonable degree of medical certainty, the care and treatment rendered to Anna Phylaxis by I. M. Pergonol, M.D. on 9/29/97 fell below the accepted standard of care at the time for the average qualified obstetrician when Dr. Pergonol performed a tubal ligation during an emergency cesarean section when there was a high likelihood that the infant would not survive, and when she failed to obtain a signed consent for the tubal ligation. As a direct result, a tubal ligation was performed without Anna being afforded the opportunity to make an informed decision, and as a direct result, she will probably not be able to conceive another child. To a reasonable degree of medical certainty, had Dr. Pergonol provided care in accordance with the accepted standard as described above, a tubal ligation would not have been performed on 9/29/97 and Anna would have been able to conceive another child.

In conclusion, the care and treatment rendered to Anna Phylaxis by Sal Pingo, M.D., and I. M. Pergonol, M.D., fell below the accepted standard of care at the time of the average qualified obstetrician resulting in Albert Phylaxis’ death. In addition, the care and treatment rendered to Anna Phylaxis by I. M. Pergonol, M.D. also fell below the accepted standard of care at the time for the average qualified obstetrician resulting in permanent sterilization of Anna Phylaxis.

Sincerely,

Phil Lopian, M.D.
CURRICULUM VITAE

NAME: Phil Lopian  M.D.

HOME ADDRESS:
20 East 68th Street
New York, NY 10023

OFFICE ADDRESS
One Madison Avenue
New York, NY 10023

DATE AND PLACE OF BIRTH
July 31, 1940 - New York City

EDUCATION:
Cornell University (Pre-Medical)
July 1958 - June 1962

McGill University Medical College
June 1962 - M.D.

POSTDOCTORAL TRAINING
Internship
Michael Reese Hospital (Rotating)
1967 - 1968

New York Hospital-Cornell (Surgery)
1968 - 1971

Residency
Assistant Resident (Urology)
New York Hospital-Cornell

Woman's Hospital
(Obstetrics and Gynecology)
1971 - 1973

Woman's Hospital
(Obstetrics and Gynecology)
1973 - 1974

MILITARY
Chief of Obstetrics and Gynecology
Northeast Air Command
1974 - 1976

LICENSED TO PRACTICE
New York, Maryland, New Jersey
M.D.  

ACADEMIC APPOINTMENTS

Assistant Professor  
Clinical Obstetrics and Gynecology  
NY University Medical College  
1977 - present

CERTIFICATION AND DATE:

Diplomate  
American Board of Obstetrics and Gynecology  
April 1976

SOCIETIES

American Medical Association

Fellow, American College of Obstetricians and Gynecologists

Fellow, American College of Surgeons

New York State and County Medical Society

Fellow, New York Academy of Medicine

New York Gynecologic Society

Member, The New York Academy of Sciences

Member, American Assoc. of Cyn. Laparoscopists

CURRENT EXTRAMURAL ASSIGNMENTS:

Associate Attending Obstetrics and Gynecology  
NY Hospital  
1979

Director of Gynecology  
Hospital for Joint Diseases,  
1980 - 1984

Chief, Obstetrical Service  
Women's Hospital - Center,  
January 1, 1985 - January 1, 1987
CURRENT EXTRAMURAL ASSIGNMENTS: cont'd

Senior Attending
Obstetrics and Gynecology

Senior Attending
Obstetrics and Gynecology

Nassau County Medical Society
Grievance Subcommittee
1981 - 1989
Public Relations Committee
1989 - 1990
Committee of Public Health
Subcommittee on Infant Mortality
1991 -
Insurance Review Subcommittee
of Peer Review
1991 -92

Visiting Scholar, The Hastings Center
Institute of Society, Ethics and the Life Sciences
1992