

|  |  |
|--|--|
| DISTRICT COURT, EL PASO COUNTY, COLORADO<br>270 South Tejon Street<br>Colorado Springs, Colorado 80901   | EFILED Document<br>CO El Paso County District Court 4th JD<br>Filing Date: Feb 06 2013 04:01PM MST<br>Filing ID: 49329520<br>Review Clerk: Rachael Maestas |
| <b>AYANNA BYER.</b><br><br><b>Plaintiff,</b><br><br><b>v.</b><br><br><b>JOHN DOE, M.D., DOCTOR FOR PLANNED PARENTHOOD OF THE ROCKY MOUNTAINS, INC., and</b><br><br><b>PLANNED PARENTHOOD OF THE ROCKY MOUNTAINS, INC., JOINTLY AND SEVERALLY,</b><br><br><b>Defendants.</b>                              | <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>   |
| Attorney for Plaintiff:<br>Douglas L. Romero, Esq. #35464<br>200 South. Sheridan Blvd., Ste. 150<br>Denver, CO 80226<br>Phone Number: (303) 934-7500<br>Fax Number: (303) 934-0300<br><a href="mailto:dougromero@coloradochristiandefensecounsel.com">dougromero@coloradochristiandefensecounsel.com</a> | Case Number: <i>13 CV 1045</i><br><br>Division: <i>4</i><br><br>Courtroom: <i>5405</i>   |
| <b>COMPLAINT AND JURY DEMAND</b>   |  |

COMES NOW Plaintiff Ayanna Byer, by and through her undersigned counsel, alleges and states as follows:

**JURISDICTION AND VENUE**

1. Pursuant to C.R.C.P. 98(c) venue is proper in El Paso County because Plaintiff and Defendants are located in Colorado Springs, El Paso County, Colorado and Defendant conducts business in El Paso County, Colorado.
2. This Court has jurisdiction over these Defendants pursuant to Colorado Constitution Article 6, Section 9, and C.R.S. Section 13-1-124(a) and (b) because the Defendant John Doe, resides within the State of Colorado, and the Defendant Planned Parenthood of the

Rocky Mountains, Inc., a corporation, has its principle place of business in Colorado and practices within the state of Colorado.

3. Pursuant to C.R.S.A.Const. Art. 6 Section 9, and C.R.S. Section 13-6-104, this Court has jurisdiction over this action because it involves a civil matter and the amount in controversy exceeds \$15,000.

#### **THE PARTIES**

4. Plaintiff incorporates herein by this reference paragraphs 1 through 3 of this Complaint, as if fully set forth herein.
5. Plaintiff Ayanna Byer (hereafter "Plaintiff") is a natural person and resident and citizen of the State of Colorado, residing at 725 Fable Glen Court, Colorado Springs, 80906, County of El Paso.
6. Upon information and belief, the Planned Parenthood doctor who performed the abortion whose real name is not currently known (hereinafter the "Planned Parenthood Doctor"), is a resident of Colorado and Planned Parenthood of the Rocky Mountains, Inc. (hereinafter "Defendants") is a Colorado corporation with its principle place of business at 3480 Centennial Boulevard, Colorado Springs, CO 80907.

#### **RELEVANT FACTS**

7. Plaintiff incorporates herein by reference paragraphs 1 through 6 of this Complaint, as if fully set forth herein.
8. The incident that gave rise to this Complaint occurred in late October, 2012 at the Planned Parenthood located at 3480 Centennial Boulevard, Colorado Springs, CO 80907.
9. The Plaintiff learned she was pregnant in October of 2012 and contacted Planned Parenthood located at 3480 Centennial Boulevard, Colorado Springs, CO 80907. The Planned Parenthood Defendants and/or agents or employees of the Planned Parenthood Defendants determined Plaintiff was approximately eight (8) weeks pregnant. The Planned Parenthood Defendants and/or agents or employees of the Planned Parenthood Defendants then scheduled Plaintiff to take Mifepristone (the abortion pill) to abort the pregnancy.
10. Plaintiff arrived at Planned Parenthood for her scheduled appointment whereby the Planned Parenthood Defendants and/or agents or employees of the Planned Parenthood Defendants determined Plaintiff was farther along in her pregnancy than previously thought; the agents or employees of Planned Parenthood Defendants informed the Plaintiff that Mifepristone was no longer an option for abortion.

11. At this time, the agents or employees of Planned Parenthood Defendants proceeded to pressure Plaintiff into making an immediate decision on whether to proceed with a surgical abortion.
12. Upon Plaintiff's condition that she would receive anesthesia for pain through an I.V. for which Plaintiff would pay an additional fee, Plaintiff agreed to the surgical abortion.
13. Upon Plaintiff being admitted into the surgical procedure room, an agent or employee of Planned Parenthood Defendants could not get the I.V. in Plaintiff's veins. This agent or employee of Planned Parenthood Defendants had to find another agent or employee of Planned Parenthood Defendants to help get the I.V. in Plaintiff's vein.
14. However, before the I.V. was inserted and before the Plaintiff received any anesthesia, the Planned Parenthood Doctor began the procedure to abort the pregnancy.
15. At this time, Plaintiff immediately told the Planned Parenthood Doctor to stop and that she did not want to go through with the abortion procedure because she had not received any anesthetic. Plaintiff also informed Planned Parenthood Doctor and agents or employees of Planned Parenthood Defendants that she believed this to be a sign she should not go through with the abortion. The Planned Parenthood Doctor did not stop, despite Plaintiff's request, and assured Plaintiff the I.V. would be administered and the procedure would only take a few minutes.
16. At this time, the Planned Parenthood Doctor turned on the vacuum machines and told Plaintiff it was too late to stop.
17. The Planned Parenthood Doctor then proceeded to use the vacuum machines while Plaintiff was fully awake and had not received any anesthetic despite their agreement. Plaintiff was forced to feel the full pain of the procedure against her will.
18. When Plaintiff began crying from the pain the Planned Parenthood Doctor stopped the procedure, which had only been performed for approximately seven (7) minutes.
19. Plaintiff proceeded to inform the Planned Parenthood Doctor and agents or employees of Planned Parenthood Defendants that the procedure had not gone as they had agreed. The Planned Parenthood Doctor and the agents or employees of Planned Parenthood Defendants apologized to Plaintiff and said that it was now over.
20. Plaintiff did not agree to a surgical abortion without anesthetic and relied upon the Planned Parenthood Doctor and agents or employees of Planned Parenthood Defendants representation that they would not proceed with the abortion until she had received anesthetic. Upon not receiving anesthetic, Plaintiff informed the Planned Parenthood Doctor and agents or employees of Planned Parenthood Defendants of her intentions to wait on the procedure and possibly come back another date.

21. Plaintiff would not have had an abortion and would have proceeded with her pregnancy to term had the Planned Parenthood Doctor and agents or employees of Planned Parenthood Defendants followed her request and not performed the abortion procedure.
22. The Planned Parenthood Doctor and agents or employees of Planned Parenthood Defendants directed Plaintiff to a waiting room where was never seen by a doctor or nurse thereafter. Furthermore, agents or employees of Planned Parenthood Defendants informed Plaintiff there were no follow up procedures or appointments after a surgical abortion.
23. The Planned Parenthood Doctor or agents or employees of Planned Parenthood Defendants did provide Plaintiff with a prescription for ten (10) Vicodin and antibiotics for fourteen (14) days.
24. Upon Plaintiff's return home, it was evident the pain medication did not work. Plaintiff began to suffer more pain and more bleeding, as well as hot and cold flashes. After approximately two (2) days Plaintiff just barely had enough strength to make it to the Emergency Room at Penrose Hospital, located at 2222 N. Nevada Ave., Colorado Springs, CO 80907.
25. The medical staff at Penrose informed Plaintiff she needed an emergency D&C because the Planned Parenthood doctor failed to finish the abortion procedure and had left particles of the fetus inside Plaintiff's body that had caused an infection.
26. Plaintiff was then forced to wait in pain at Penrose for approximately four (4) hours until a gynecologist could be found for emergency surgery. Dr. Steven A. Foley of Comprehensive Women's Care of Colorado Springs was able to perform the emergency surgery for Plaintiff.
27. Plaintiff remained in the hospital for approximately two (2) to four (4) days due to her weakness from fever and loss of blood. Most D&C patients leave same day, which is evidence of Plaintiff's severe injury from Planned Parenthood's negligent procedure.
28. Dr. Foley followed up with Plaintiff at Penrose before allowing her to be released and prescribed her antibiotics, pain medication, and advised Plaintiff to go home and rest.
29. Dr. Foley also scheduled a follow-up for Plaintiff to see him at his office whereby blood work was performed, showing Plaintiff's hormone levels would not go down. Plaintiff was also still suffering from pain and still bleeding.
30. Plaintiff contacted Planned Parenthood Defendants to file a complaint in which she was informed they would get back to her upon speaking to all parties involved. To this date, Planned Parenthood Defendants have never followed up with Plaintiff regarding her procedure nor her complaint.

**FIRST CLAIM FOR RELIEF**  
(Negligence)

31. Plaintiff incorporates herein by reference paragraphs 1 through 31 of this Complaint, as if fully set forth herein.
32. Planned Parenthood Defendants and the Planned Parenthood Doctor are liable to Plaintiff under the theory of negligence.
33. The Planned Parenthood Defendants and Doctor were negligent. The Planned Parenthood Doctor negligently performed an abortion on the Plaintiff before she was administered any anesthetic, prematurely ended the procedure within approximately seven (7) minutes, and failed to schedule any proper follow-up or appointments with the Plaintiff, against industry standards.
34. Plaintiff suffered from injuries. Plaintiff suffered from pain and bleeding for two (2) days after the procedure, and finally had to go to the Emergency Room at Penrose Hospital, where she remained for two (2) to four (4) days due to her weakness from fever and loss of blood. Plaintiff also suffered and continues to suffer severe emotional distress due to the Planned Parenthood Doctor and Defendant's negligence.
35. The Planned Parenthood Doctor and Defendant's negligence was a cause of the plaintiff's injuries. The medical staff at Penrose informed Plaintiff she needed an emergency D&C because the Planned Parenthood doctor failed to finish the abortion procedure and had left particles of the fetus inside Plaintiff's body that had caused an infection.
36. As a direct, immediate and proximate result of the Planned Parenthood Doctor and Defendants' negligence as stated above, the Plaintiff has sustained severe injuries which has caused the Plaintiff great pain, suffering, discomfort and emotional distress and which will continue to cause the Plaintiff great pain, suffering, discomfort and emotional distress.
37. As a direct, immediate and proximate result of the Planned Parenthood Doctor and Defendants' negligence, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital and physician expenses.
38. All damages to the Plaintiff are in the past, present and future whether so specifically delineated in each paragraph or not.

**SECOND CLAIM FOR RELIEF**  
(Battery)

39. Plaintiff incorporates herein all allegations contained in paragraphs 1 through 39 in the Introductory Allegations.

40. The Planned Parenthood Doctor and Defendants are liable to Plaintiff under the theory of battery.
41. Unless the patient consents, any operation or procedure involving contact with a patient's body is a battery, even when appropriate skill was used in the operation procedure. Plaintiff had rescinded her consent to the procedure prior to the Defendant starting the procedure by telling the Planned Parenthood Doctor to stop.
42. If a patient consents to a certain operation or procedure, and the physician performs a different operation or procedure without the patient's consent, the physician commits a battery and is responsible to the patient for the damages caused by the physician. Plaintiff did not agree to a surgical abortion without anesthetic and relied upon the Planned Parenthood Doctor and agents or employees of Planned Parenthood's representation that they would not proceed with the abortion until she had received anesthetic.
43. The Plaintiff incurred injuries including, but not limited to, medical injuries, has lost the ability to enjoy life as they did before the accident, has lost time, has suffered impaired earning capacity, economic losses, and has lost time from work and has lost pay and salary.
44. As a direct, immediate and proximate result of the Planned Parenthood Doctor's and Defendant's battery, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital and physician expenses.
45. All damages to the Plaintiff are in the past, present and future whether so specifically delineated in each paragraph or not.

**THIRD CLAIM FOR RELIEF**  
(Uninformed Consent)

46. Plaintiff incorporates herein by reference paragraphs 1 through 45 of this Complaint, as if fully set forth herein.
47. The Planned Parenthood Doctor and Defendants are liable to Plaintiff under the theory of uninformed consent.
48. The Planned Parenthood Doctor and Defendants performed a surgical abortion on the Plaintiff without the Plaintiff having received any anesthetic.
49. The Planned Parenthood Doctor's and Defendants' negligently failed to obtain the Plaintiff's informed consent before he performed the abortion procedure without the Plaintiff having received any anesthetic.
50. A reasonable person in the same or similar circumstances as the Plaintiff would not have consented to a surgical procedure without any anesthetic had they been given the information required for informed consent

51. The Planned Parenthood Doctor's and Defendants' negligent failure caused the Plaintiff's injuries.
52. As a direct, immediate and proximate result of the Planned Parenthood Doctor's and Defendants' uninformed consent as stated above, the Plaintiff has sustained severe injuries which have caused the Plaintiff great pain, suffering, discomfort and emotional distress and which will continue to cause the Plaintiff great pain, suffering, discomfort and emotional distress.
53. As a direct, immediate and proximate result of the Planned Parenthood Doctor's and Defendants' uninformed consent, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital and physician expenses.
54. All damages to the Plaintiff are in the past, present and future whether so specifically delineated in each paragraph or not.

#### **FOURTH CLAIM FOR RELIEF**

(False Imprisonment)

55. Plaintiff incorporates herein by reference paragraphs 1 through 54 of this Complaint, as if fully set forth herein.
56. The Planned Parenthood Doctor and Defendants are liable to Plaintiff under the theory of false imprisonment.
57. The Planned Parenthood Doctor and Defendants intended to restrict the Plaintiff's freedom of movement. Before the Planned Parenthood Doctor started the abortion procedure, Plaintiff asked the Planned Parenthood Doctor and agents or employees of Planned Parenthood to stop and explained that she did not want to go through with the procedure because she had not received any anesthetic and felt this to be a sign she should keep the baby and carry to full term.
58. The Planned Parenthood Doctor and agents or employees of Planned Parenthood directly or indirectly, restricted the Plaintiff's freedom of movement for a period of time, no matter how short. Defendant told Plaintiff it was too late to stop, at which point he turned on the vacuum machines and began the abortion process against her will for approximately seven (7) minutes.
59. Plaintiff was aware that her freedom of movement was restricted. Plaintiff was aware that the Planned Parenthood Doctor had begun the abortion process, against her will, and refrained from leaving during the surgical procedure due to fear for her safety.

60. As a direct, immediate and proximate result of the Planned Parenthood Doctor's and agents or employees of Planned Parenthoods' false imprisonment as stated above, the Plaintiff sustained severe injuries which have caused the Plaintiff great pain, suffering, discomfort and emotional distress and which will continue to cause the Plaintiff great pain, suffering, discomfort and emotional distress.
61. As a direct, immediate and proximate result of the Planned Parenthood Doctor and agents or employees of Planned Parenthoods' negligence, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital and physician expenses.
62. All damages to the Plaintiff are in the past, present and future whether so specifically delineated in each paragraph or not.

**FIFTH CLAIM FOR RELIEF**

(Extreme and Outrageous Conduct – Emotional Distress)

63. Plaintiff incorporates herein by reference paragraphs 1 through 62 of this Complaint, as if fully set forth herein.
64. The Planned Parenthood Doctor and Defendants are liable to Plaintiff under the theory of extreme and outrageous conduct – emotional distress.
65. The Planned Parenthood Doctor and agents or employees of Planned Parenthood engaged in extreme and outrageous conduct. The Planned Parenthood Doctor and agents or employees of Planned Parenthood continued to proceed with a surgical abortion on the Plaintiff after the Plaintiff had told the Planned Parenthood Doctor to stop. The Planned Parenthood Doctor and agents or employees of Planned Parenthood continued to proceed with a surgical abortion with the Plaintiff not having received any anesthetic. The Planned Parenthood Doctor and agents or employees of Planned Parenthood stopped the abortion process after approximately seven (7) minutes
66. The Planned Parenthood Doctor and agents or employees of Planned Parenthood did so recklessly. As a physician that performs abortions and works at an abortion clinic, The Planned Parenthood Doctor and agents or employees of Planned Parenthood should have known that there was a substantial probability that their negligent performance on the Plaintiff would cause her severe emotional distress.
67. The Planned Parenthood Doctor's and agents or employees of Planned Parenthoods' conduct caused the Plaintiff severe emotional distress. Plaintiff has suffered and continues to suffer sever emotional distress due to the Planned Parenthood Doctor's and agents or employees of Planned Parenthoods' extreme and outrageous conduct.
68. As a direct, immediate and proximate result of the Planned Parenthood Doctor's and agents or employees of Planned Parenthoods' extreme and outrageous conduct as stated above, the Plaintiff has sustained severe injuries which have caused the Plaintiff great



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

69. As a direct, immediate and proximate result of the Planned Parenthood Doctor's and agents or employees of Planned Parenthoods' extreme and outrageous conduct, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital and physician expenses.
70. All damages to the Plaintiff are in the past, present and future whether so specifically delineated in each paragraph or not.

### **SIXTH CLAIM FOR RELIEF**

(Breach of Fiduciary Duty)

71. Plaintiff incorporates herein by reference paragraphs 1 through 70 of this Complaint, as if fully set forth herein.
72. The Planned Parenthood Doctor and Defendants are liable to Plaintiff under the theory of breach of fiduciary duty.
73. The Planned Parenthood Doctor and Defendants acted as fiduciaries of the Plaintiff with respect to the surgical abortion performed on the Plaintiff.
74. The Planned Parenthood Doctor and Defendants breached their fiduciary duty to the plaintiff. The Planned Parenthood Doctor and agents or employees of Planned Parenthood negligently performed the abortion without the Plaintiff having received any anesthetic, negligently stopped the abortion process after seven (7) minutes, and failed to do any follow-up with the Plaintiff.
75. Plaintiff had injuries. Plaintiff suffered from pain and bleeding for two (2) days after the procedure, and finally had to go to the Emergency Room at Penrose Hospital, where she remained for two (2) to four (4) days due to her weakness from fever and loss of blood. Plaintiff also suffered and continues to suffer severe emotional distress due to the Defendant's negligence.
76. The Planned Parenthood Doctor's and agents or employees of Planned Parenthoods' breach of fiduciary duty was the cause of Plaintiff's injuries.
77. As a direct, immediate and proximate result of the Planned Parenthood Doctor and Defendants' breach of a fiduciary duty as stated above, the Plaintiff has sustained severe injuries which have caused the Plaintiff great pain, suffering, discomfort and emotional distress and which will continue to cause the Plaintiff great pain, suffering, discomfort and emotional distress.
78. As a direct, immediate and proximate result of the Planned Parenthood Doctor and Defendants' breach of a fiduciary duty, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital and physician expenses.

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

**SEVENTH CLAIM FOR RELIEF**  
(Breach of Contract)

80. Plaintiff incorporates herein by reference paragraphs 1 through 79 of this Complaint, as if fully set forth herein.
81. The Planned Parenthood Doctor and Defendants are liable to Plaintiff under the theory of breach of contract.
82. The Planned Parenthood Doctor and Defendants entered into a contract with the plaintiff to go ahead with a surgical abortion on the condition that Plaintiff would be administered anesthetic via an I.V.
83. The Planned Parenthood Doctor and agents or employees of Planned Parenthood failed to comply with the contract. The Planned Parenthood Doctor moved forward with the surgical abortion despite the Plaintiff not having received anesthetic and after the Plaintiff had asked The Planned Parenthood Doctor to stop with the procedure.
84. Plaintiff performed her part of the contract. Plaintiff had paid the Planned Parenthood Defendants for the abortion procedure as agreed in her contract with the Planned Parenthood Defendants.
85. As a direct, immediate and proximate result of the Planned Parenthood Doctor's and Defendants' breach of contract as stated above, the Plaintiff has sustained severe injuries which have caused the Plaintiff great pain, suffering, discomfort and emotional distress and which will continue to cause the Plaintiff great pain, suffering, discomfort and emotional distress.
86. As a direct, immediate and proximate result of the Planned Parenthood Doctor's and Defendants' breach of contract, the Plaintiff has incurred and will continue to incur medical, therapeutic, hospital and physician expenses.
87. All damages to the Plaintiff are in the past, present and future whether so specifically delineated in each paragraph or not.

**JURY DEMAND**

88. Plaintiff incorporates herein by reference paragraphs 1 through 87 of this Complaint, as if fully set forth herein.

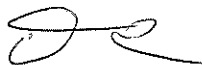
89. Pursuant to C.R.C.P. 38(b) Plaintiff demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief all is as more particularly hereinafter set forth.

WHEREFORE, on account of the matters set forth in the Seven Claims For Relief, Plaintiff, Ayanna Byer, prays for a judgment in favor of the Plaintiff and against the Planned Parenthood Doctor and Planned Parenthood of the Rocky Mountains, Inc., jointly and severally, in an amount which will fully compensate Plaintiff for her injuries and damages in the past, present and future including for past, present and future medical expenses, for past, present and future pain and suffering, for personal injuries, for emotional distress, for loss of the ability to enjoy life as she did before the event, for permanent physical injuries and for other non-economic damages, for interest on such sums as is provided by law, for attorneys fees, expert witness fees, costs and for such other and further relief as to this Court appears proper in the premises.

Respectfully submitted this 6<sup>th</sup> day of February, 2013.



---

Douglas L. Romero #35464  
Attorney for Plaintiff  
200 South Sheridan Blvd., Ste. 150  
Denver, Colorado 80226  
Phone Number: (303) 934-7500  
Fax Number: (303) 934-0300