



Hall & Sethi, ^{DLC}

ATTORNEYS AT LAW

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August 6, 2018

Fairfax County Circuit Court
Clerk of the Court- Civil Division
4110 Chain Bridge Road
Fairfax, VA 22030

2018 11634

Re: Victoria Wen-Platt v. Shahreyar Shar Hashemi, M.D. and
Nerve, Bone and Joint Institute, PLLC

FILED
CIVIL INTAKE
2018 AUG -6 PM 12:32
JOHN T. FREEMAN
CLERK, CIRCUIT COURT
FAIRFAX, VA

Dear Sir/Madam:

Enclosed are the following: one civil case coversheet, one original Complaint with exhibit, three copies of the Complaint with exhibits, and a check in the amount of \$346.00, representing the filing fee.

Please file stamp the Complaint and issue summonses in this matter. We will use a private process server in this case.

If you have any questions, please call the office.

Sincerely,

Robert T. Hall

RTH/mm
Enclosures as stated

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FILED
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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

VICTORIA WEN-PLATT,)
)
Plaintiff,)
)
 v.)
)
 SHAHREYAR SHAR HASHEMI, MD,)
 a/k/a S. SHAR HASHEMI, MD,)
 4612 Foxhall Cres, N.W.)
 Washington, D.C., 20007)
)
 and)
)
 NERVE BONE & JOINT INSTITUTE PLLC,)
 Serve: National Registered Agents Inc.)
 4701 Cox Road, Suite 285)
 Glen Allen, Virginia 23060)
)
Defendants.)

2018 11634

Case No.: _____

COMPLAINT

COMES NOW Plaintiff Victoria Wen-Platt, by counsel, and for her Complaint against Defendants Shahreyar Shar Hashemi, MD, a/k/a S. Shar Hashemi, MD, and Nerve, Bone & Joint Institute, PLLC and states as follows:

1. On or about January 19, 2017, Plaintiff Victoria Wen-Platt entered into a physician-patient relationship with Defendant Shahreyar Shar Hashemi, MD, hereinafter referred to as Dr. Hashemi.
2. The purpose of this physician-patient relationship was to permit Dr. Hashemi to evaluate and treat, if appropriate, certain complaints of pain, numbness and disability Plaintiff had experienced over a number of years in her hands, bilaterally.

3. At all times relevant to this action, Dr. Hashemi was an officer, director, agent and/or employee of Defendant Nerve, Bone & Joint Institute, PLLC, a professional limited liability corporation organized and existing under the laws of the District of Columbia, and he performed medical services in that capacity including the medical care and services rendered to Plaintiff.

4. At all times relevant to these proceedings, the medical care and services Dr. Hashemi and Nerve, Bone & Joint Institute, PLLC rendered to Plaintiff were rendered in the Commonwealth of Virginia.

5. This Honorable court has jurisdiction over these defendants by reason of Virginia Code Section 8.01-328.1(A)(3) in that the Defendant Hashemi caused a tortious injury by acts or omissions within the Commonwealth of Virginia, for which the Defendant Nerve, Bone & Joint Institute, PLLC vicariously liable, *respondeat superior*.

6. Counsel for the Plaintiff has in his possession the Certificate of Merit required by Virginia Code Section 8.01-20.1 before requesting service or process on these Defendants.

7. On or about January 23, 2017, Dr. Hashemi obtained the results of nerve conduction studies he had ordered on Plaintiff's upper extremities, which were reported as follows: "This is an abnormal study. There is electrophysiologic evidence of bilateral median mononeuropathies at the wrist consistent with carpal tunnel syndrome. The findings are moderate bilaterally and relatively symmetric. There is no superimposed cervical radiculopathy or generalized peripheral neuropathy."

8. On January 26, 2017, Dr. Hashemi performed surgery on Plaintiff's right hand and wrist, which he described as a "right open carpal tunnel release, median motor branch

neurolysis right hand, application [of] Epigraft right hand, palmar cutaneous branch nerve block right wrist.”

9. During the planning and performance of the surgery in question, Dr. Hashemi deviated from the accepted standard of medical care in the following ways:

- A. Dr. Hashemi recorded that he placed “Epigraft” in the surgical wound “to minimize scar tissue formation.”
- B. Dr. Hashemi did not place a product known as “Epigraft” in the wound as recorded, but a product from a different manufacturer, a product named “EpiFix” which, as its manufacturer stated on December 31, 2016, “is configured for external use,” not for placement in the wound in sheet form.
- C. At the time Dr. Hashemi placed the EpiFix allograft sheets in the wound, there were no clinical studies demonstrating the safety or efficacy of the use of EpiFix for that purpose or when used in that manner.
- D. Dr. Hashemi’s use of that product was willful, deliberate and in reckless disregard of his duties to this patient and of his patient’s rights to medical care which was performed within the generally accepted standard of medical care.
- E. Dr. Hashemi’s use of that product in that manner was experimental and, as far as Plaintiff has been able to determine, no other hand surgeon has been identified who has used EpiFix for that purpose or in that manner.
- F. Upon information and belief, the manufacturer of EpiFix, MiMedx Group, Inc., is aware of no hand surgeon, except for this Defendant, who has undertaken to use EpiFix in that manner or to that end, and only became aware of this Defendant’s

use of its product in that manner and towards that end because of the patient outcome in this case.

- G. Dr. Hashemi did not advise his patient that he was going to conduct an experiment on her for which there were no clinical studies demonstrating the safety and efficacy of the product for that use.
- H. Dr. Hashemi did not obtain his patient's informed consent for the use of EpiFix and did not advise her of the risks associated with the experimental use of EpiFix.
- I. While Dr. Hashemi persuaded the hospital where this surgery took place to order EpiFix and have it in inventory for his use on this patient, he either did not reveal the experimental nature of his use of the product to the hospital or obtain an Institutional Review Board review or approval of his human experiment he planned to conduct.
- J. Dr. Hashemi performed, or asked others to perform, unnecessary parts of an otherwise straightforward carpal tunnel release procedure.
- K. Dr. Hashemi added \$3,267.02 to the cost of this procedure for the use of EpiFix through the hospital billing system without any demonstration of the medical reasonableness or necessity of this form of treatment or these charges.

COUNT I
(Negligence of Defendant Dr. Hashemi)

10. Plaintiff incorporates paragraphs 1-9 and all subparts thereof herein as though set forth in full text.

11. As a healthcare provider rendering services to his patient, Dr. Hashemi had a duty to use the same degree of skill and diligence in the care of his patient as that of a reasonably prudent physician practicing in the field of hand surgery in the Commonwealth of Virginia.

12. Dr. Hashemi's aforesaid deviations from the accepted standard of care proximately caused injury and damages to Plaintiff as follows:

- A. The introduction of the EpiFix into the surgical wound caused an inflammatory reaction which is depicted in the photograph attached hereto as *Exhibit 1*.
- B. The inflammatory reaction in turn caused neurological and muscular injuries which persist to this day and are reflected in pain upon use of the hand and impaired function in the use of the hand, including inflammation, swelling and disfigurement.
- C. Additionally, the inflammatory reaction caused a dermatological injury which persists to this day in the form of discoloration and disfigurement which is permanent.
- D. The introduction of the EpiFix into the surgical wound has exacerbated the management of the patient's Lyme Disease, which in turn has restricted the palliative treatments she can receive in treatment of the injuries caused by the introduction of the EpiFix.

13. As a direct and proximate consequence of the injuries she has received due to Dr. Hashemi's negligence, Plaintiff has:

- A. sustained temporary total disability in the performance of her customary and usual activities of life, and permanent partial disability;
- B. incurred medical expenses in the past and into the indefinite future;
- C. experienced physical pain and emotional distress in the past and will continue to experience them into the indefinite future;

- D. sustained disfigurement and deformity in her right upper extremity, which is probably permanent; and
- E. sustained impaired earning capacity.

COUNT II
(Willful and Wanton Conduct of Defendant Dr. Hashemi)

14. Plaintiff incorporates paragraphs 1-13 and all subparts thereof herein as though set forth in full text.

15. As a healthcare provider rendering services to his patient, Dr. Hashemi had a duty to use the same degree of skill and diligence in the care of his patient as that of a reasonably prudent physician practicing in the field of hand surgery in the Commonwealth of Virginia.

16. Dr. Hashemi acted in conscious disregard of Plaintiff's rights and/or with reckless indifference to the consequences to Plaintiff when he utilized the EpiFix in an experimental manner without regard to or awareness of how it would affect Plaintiff.

17. Dr. Hashemi was aware of his conduct and aware, from his knowledge of existing circumstances and conditions, including the fact that the manufacturer of EpiFix advised that it was only to be used externally, that his conduct would probably result in injury to Plaintiff.

18. Dr. Hashemi's awareness of the risk of dangerous consequences of his actions is further evidenced by his decision not to notify Plaintiff or the hospital of his experimental use of EpiFix, or to even identify EpiFix as the material used in his surgical notes.

19. As a direct and proximate consequence of Dr. Hashemi's willful and wanton conduct, Plaintiff suffered the aforesaid injuries and damages.

COUNT III
(Vicarious Liability of Defendant Nerve, Bone & Joint Institute, PLLC)

20. Plaintiff incorporates paragraphs 1-19 and all subparts thereof herein as though set forth in full text.

21. At all times relevant, Dr. Hashemi provided medical care and treatment to Plaintiff within the scope and course of his employment as an officer, director, employee and/or agent of Nerve, Bone & Joint Institute, PLLC.

22. As the corporate employer of Dr. Hashemi, Nerve, Bone & Joint Institute, PLLC is liable under the doctrine of *respondeat superior* for the negligence and/or willful and wanton conduct of its employee.

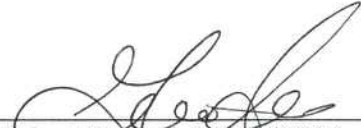
23. As a direct and proximate consequence of the negligence and/or willful and wanton conduct of Dr. Hashemi, Plaintiff suffered the aforesaid injuries and damages.

Plaintiff hereby certifies that she has complied with the provisions of Virginia Code Section 8.01-20.1 in that she possessed the necessary certifying expert opinion at the time service of process on the defendants was requested.

WHEREFORE, Plaintiff Victoria Wen-Platt demands judgment against Defendants Shahreyar Shar Hashemi, MD, a/k/a S. Shar Hashemi, MD, and Nerve, Bone & Joint Institute, PLLC, jointly and severally, in the form of compensatory damages in the amount of TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$2,250,000.00); punitive damages in the amount of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00); pre-judgment interest from the date of the incident forward; post-judgment interest; costs incurred by Plaintiff in this matter as provided by law; and any other relief that this Court deems just and proper under the circumstances of this case.

A JURY TRIAL IS DEMANDED.

VICTORIA WEN-PLATT,
By Counsel,



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