

ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ANDREA BURTON,

Plaintiff,

-against-

ALEXANDER FLAXMAN, M.D., ALLAN KLAPPER, M.D.,  
ROBERT AIKEN, M.D., CONTINUUM HEALTH  
PARTNERS, INC., individually and d/b/a BETH ISRAEL  
MEDICAL CENTER, and MOHAMMAD MOMTAZ, M.D.,

Defendants.  
-----X

To the Above Named Defendant(s):

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve notice of appearance on the Plaintiff's attorneys within twenty [20] days after the service of the summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
January 24, 2006

**ROURA & MELAMED**

By: Matthew R. Kreinces  
Matthew R. Kreinces, Of Counsel

*Attorneys for Plaintiff*  
233 Broadway, Suite 2700  
New York, New York 10279  
(212) 227-6821  
File No.: 13313

**Defendants' Addresses:**

ALEXANDER FLAXMAN, M.D.: 1<sup>st</sup> Avenue & 16<sup>th</sup> Street, New York, New York 10003  
ALLAN KLAPPER, M.D.: 10 Union Square East, Suite 2B, New York, New York 10003  
ROBERT AIKEN, M.D.: 5 East 98<sup>th</sup> Street, 7<sup>th</sup> Floor, New York, New York 10029  
CONTINUUM HEALTH PARTNERS, INC.: 55 West 57<sup>th</sup> Street, 18<sup>th</sup> Floor, NY, NY 10019  
BETH ISRAEL MEDICAL CENTER: 1<sup>st</sup> Avenue & 16<sup>th</sup> Street, New York, New York 10003  
MOHAMMAD MOMTAZ, M.D.: 26 Bleeker Street, New York, New York 10012

Plaintiff designates  
NEW YORK County as  
Place of Trial

06161219

Index No.:  
Date Purchased:

SUMMONS

**FILED**

Basis of Venue is: **JAN 27 2006**  
Defendant's place of business  
1<sup>st</sup> Ave. & 16<sup>th</sup> Street **NEW YORK**  
New York, New York 10003 **CLERK'S OFFICE**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ANDREA BURTON,

Index No.:

Plaintiff,

**VERIFIED COMPLAINT**

-against-

ALEXANDER FLAXMAN, M.D., ALLAN KLAPPER, M.D.,  
ROBERT AIKEN, M.D., CONTINUUM HEALTH  
PARTNERS, INC., individually and d/b/a BETH ISRAEL  
MEDICAL CENTER, and MOHAMMAD MOMTAZ, M.D.,

06101219

Defendants.  
-----X

Plaintiff, by her attorneys, ROURA & MELAMED, as and for a Verified Complaint  
herein, respectfully sets forth and alleges:

**AS AND FOR A FIRST CAUSE OF ACTION:**

1. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., was or represented himself to be a physician duly licensed or authorized to practice his profession in the State of New York.
2. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., held himself out to be a Medical Doctor possessing the requisite skill and ability of members of the medical profession, and represented that he was capable of diagnosing, treating, advising, referring, recommending and caring for such medical and/or surgical conditions for which he would undertake to treat.
3. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., maintained offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

4. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., managed offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

5. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., controlled offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

6. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., operated offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

7. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., was an employee of the defendant, CONTINUUM HEALTH PARTNERS, INC.

8. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., was an employee of the Defendant, BETH ISRAEL MEDICAL CENTER.

9. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., was an agent, servant and/or employee of and/or affiliated with the Defendant, CONTINUUM HEALTH PARTNERS, INC.

10. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., was an agent, servant and/or employee of and/or affiliated with the Defendant, BETH ISRAEL MEDICAL CENTER.

11. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., was hired, authorized and/or employed by the Defendant, CONTINUUM HEALTH PARTNERS, INC., to perform the duties and functions of a certified physician.

12. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., was hired, authorized and/or employed by the Defendant, BETH ISRAEL MEDICAL CENTER, to perform the duties and functions of a certified physician.

13. That at all times herein mentioned, the Defendant, ALEXANDER FLAXMAN, M.D., was responsible for the negligent acts and omissions of his agents, servants, affiliated medical personnel and/or employees under the theory of respondeat superior.

14. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., was or represented himself to be a physician duly licensed or authorized to practice his profession in the State of New York.

15. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., held himself out to be a Medical Doctor possessing the requisite skill and ability of members of the medical profession, and represented that he was capable of diagnosing, treating, advising, referring, recommending and caring for such medical and/or surgical conditions for which he would undertake to treat.

16. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., maintained offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

17. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., managed offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

18. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., controlled offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

19. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., operated offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

20. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., was an employee of the Defendant, CONTINUUM HEALTH PARTNERS, INC.

21. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., was an employee of the Defendant, BETH ISRAEL MEDICAL CENTER.

22. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., was an agent, servant and/or employee of and/or affiliated with the Defendant, CONTINUUM HEALTH PARTNERS, INC.

23. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., was an agent, servant and/or employee of and/or affiliated with Defendant, BETH ISRAEL MEDICAL CENTER.

24. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., was hired, authorized and/or employed by the Defendant, CONTINUUM HEALTH PARTNERS, INC., to perform the duties and functions of a certified physician.

25. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., was hired, authorized and/or employed by the Defendant, BETH ISRAEL MEDICAL CENTER, to perform the duties and functions of a certified physician.

26. That at all times herein mentioned, the Defendant, ALLAN KLAPPER, M.D., was responsible for the negligent acts and omissions of his agents, servants, affiliated medical personnel and/or employees under the theory of respondeat superior.

27. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., was or represented himself to be a physician duly licensed or authorized to practice his profession in the State of New York.

28. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., held himself out to be a Medical Doctor possessing the requisite skill and ability of members of the medical profession, and represented that he was capable of diagnosing, treating, advising, referring, recommending and caring for such medical and/or surgical conditions for which he would undertake to treat.

29. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., maintained offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

30. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., managed offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

31. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., controlled offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

32. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., operated offices for the practice of his profession located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

33. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., was an employee of the Defendant, CONTINUUM HEALTH PARTNERS, INC.

34. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., was an employee of the Defendant, BETH ISRAEL MEDICAL CENTER.

35. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., was an agent, servant and/or employee of and/or affiliated with the Defendant, CONTINUUM HEALTH PARTNERS, INC.

36. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., was an agent, servant and/or employee of and/or affiliated with the Defendant, BETH ISRAEL MEDICAL CENTER.

37. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., was hired, authorized and/or employed by the Defendant, CONTINUUM HEALTH PARTNERS, INC., to perform the duties and functions of a certified physician.

38. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., was hired, authorized and/or employed by the Defendant, BETH ISRAEL MEDICAL CENTER, to perform the duties and functions of a certified physician.

39. That at all times herein mentioned, the Defendant, ROBERT AIKEN, M.D., was responsible for the negligent acts and omissions of his agents, servants, affiliated medical personnel and/or employees under the theory of respondeat superior.

40. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., was and still is a professional corporation duly organized and existing under and by virtue of the laws of the State of New York.

41. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., was doing business in the County, City and State of New York, as the Defendant, BETH ISRAEL MEDICAL CENTER.

42. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees, owned a medical facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

43. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees, operated a medical facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

44. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees, maintained said facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

45. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees, managed said facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.



46. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees controlled said facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

47. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, held itself out as a medical facility duly qualified and capable of rendering competent medical, nursing and/or surgical care, equipment, apparatus, treatment, advice, referral, recommendations, management and surgery to the general public, including this Plaintiff.

48. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees furnished and/or provided doctors, nurses and other hospital, medical personnel, equipment and apparatus at the said facility to afford medical, and surgical care, treatment, advice, referral, recommendations, management and treatment to the general public, including the Plaintiff herein.

49. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, did agree to and did hold itself out as maintaining at the said facility an adequate and competent staff, including doctors and other medical personnel and further warranted that the members of its said staff were qualified and trained for the purpose of providing such medical care, advice, referral, recommendation, management, diagnosis and attention as they would be required to provide in accordance with the accepted standards of medical practice to persons seeking and requiring

hospital and medical care and attention, including this Plaintiff, and said Defendant further held itself out as being equipped in sufficient manner to render such care and treatment at its facility.

50. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, did agree to and did hold itself out as maintaining at the said facility, safe, suitable, adequate and appropriate equipment, apparatus and facilities as were necessary and required for the purpose of providing such medical treatment and management.

51. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, furnished, provided, used and employed physicians, residents, nurses, aides, staff members, and others, who were authorized, retained, or permitted by Defendant to order, recommend, request, advise, perform, render, or provide medical, surgical and/or nursing examinations, evaluations, care, diagnoses, treatments, procedures, tests, studies, services, or advice of, for and to patients at Defendant, BETH ISRAEL MEDICAL CENTER.

52. That at all times herein mentioned, the Defendant, CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, was responsible for the negligent acts and omissions of its agents, servants and/or employees under the theory of respondeat superior.

53. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, was and still is a professional corporation duly organized and existing under and by virtue of the laws of the State of New York.

54. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees, owned a medical facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

55. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees, operated a medical facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

56. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees, maintained said facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

57. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees, managed said facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

58. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees controlled said facility located at First Avenue and 16<sup>th</sup> Street, County, City and State of New York.

59. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, held itself out as a medical facility duly qualified and capable of rendering competent medical, nursing and/or surgical care, equipment, apparatus, treatment, advice, referral, recommendations, management and surgery to the general public, including this Plaintiff.

60. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, its servants, agents and/or employees furnished and/or provided doctors, nurses and other hospital, medical personnel, equipment and apparatus at the said facility to afford medical,

and surgical care, treatment, advice, referral, recommendations, management and treatment to the general public, including the Plaintiff herein.

61. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, did agree to and did hold itself out as maintaining at the said facility an adequate and competent staff, including doctors and other medical personnel and further warranted that the members of its said staff were qualified and trained for the purpose of providing such medical care, advice, referral, recommendation, management, diagnosis and attention as they would be required to provide in accordance with the accepted standards of medical practice to persons seeking and requiring hospital and medical care and attention, including this Plaintiff, and said Defendant further held itself out as being equipped in sufficient manner to render such care and treatment at its facility.

62. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, did agree to and did hold itself out as maintaining at the said facility, safe, suitable, adequate and appropriate equipment, apparatus and facilities as were necessary and required for the purpose of providing such medical treatment and management.

63. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, furnished, provided, used and employed physicians, residents, nurses, aides, staff members, and others, who were authorized, retained, or permitted by Defendant to order, recommend, request, advise, perform, render, or provide medical, surgical and/or nursing examinations, evaluations, care, diagnoses, treatments, procedures, tests, studies, services, or advice of, for and to patients at Defendant, BETH ISRAEL MEDICAL CENTER.

64. That at all times herein mentioned, the Defendant, BETH ISRAEL MEDICAL CENTER, was responsible for the negligent acts and omissions of its agents, servants and/or employees under the theory of respondeat superior.

65. That at all times herein mentioned, the Defendant, MOHAMMAD MOMTAZ, M.D., was or represented himself to be a physician duly licensed or authorized to practice his profession in the State of New York.

66. That at all times hereinafter mentioned, the Defendant, MOHAMMAD MOMTAZ, M.D., held himself out to be a Medical Doctor possessing the requisite skill and ability of members of the medical profession, and represented that he was capable of diagnosing, treating, advising, referring, recommending and caring for such medical and/or surgical conditions for which he would undertake to treat.

67. That at all times herein mentioned, the Defendant, MOHAMMAD MOMTAZ, M.D., maintained offices for the practice of his profession located at 26 Bleeker Street, County, City and State of New York.

68. That at all times herein mentioned, the Defendant, MOHAMMAD MOMTAZ, M.D., managed offices for the practice of his profession located at 26 Bleeker Street, County, City and State of New York.

69. That at all times herein mentioned, the Defendant, MOHAMMAD MOMTAZ, M.D., controlled offices for the practice of his profession located at 26 Bleeker Street, County, City and State of New York.

70. That at all times herein mentioned, the Defendant, MOHAMMAD MOMTAZ, M.D., operated offices for the practice of his profession located at 26 Bleeker Street, County,

City and State of New York.

71. That at all times herein mentioned, the Defendant, MOHAMMAD MOMTAZ, M.D., was an employee of PLANNED PARENTHOOD OF NEW YORK CITY, INC.

72. That at all times herein mentioned, the Defendant, MOHAMMAD MOMTAZ, M.D., was responsible for the negligent acts and omissions of his agents, servants, affiliated medical personnel and/or employees under the theory of respondeat superior.

73. That at all times herein mentioned, the Defendants, represented themselves to be capable, competent and qualified to properly and adequately order, recommend, request, advise, perform, render, or provide all of the necessary and required professional examinations, evaluations, consultations, care, treatments, procedures, tests, studies, services and advice ordered, recommended, requested, required and advised for, performed upon, rendered and/or provided to the Plaintiff, ANDREA BURTON.

74. That commencing on or about the 21<sup>st</sup> day of September, 2004, and continuing, the Plaintiff came under the care of the Defendants, in connection with certain medical treatment, and management and attention, to be rendered to the Plaintiff, ANDREA BURTON.

75. That commencing on or about the 21<sup>st</sup> day of September, 2004, and continuing, the Defendants, did undertake the treatment of the plaintiff, ANDREA BURTON.

76. That on or about the 21<sup>st</sup> day of September, 2004, the Defendants, performed surgery, upon the Plaintiff, ANDREA BURTON, at the premises of the Defendants as indicated previously.

77. That on or about the 21<sup>st</sup> day of September, 2004, the Defendants, ALEXANDER FLAXMAN, M.D., ALLAN KLAPPER, M.D., ROBERT AIKEN, M.D., CONTINUUM HEALTH PARTNERS, INC., individually and d/b/a BETH ISRAEL MEDICAL CENTER, improperly handled the emergency room treatment, surgical management and neurological evaluation of Plaintiff resulting in injuries, including but not limited to, a hematoma and a permanent left leg neuropathy.

78. That on or about the 21<sup>st</sup> day of September, 2004, the Defendant, MOHAMMAD MOMTAZ, M.D., improperly handled the post-operative care of Plaintiff at PLANNED PARENTHOOD, resulting in injuries, including but not limited to, a uterine perforation, need for surgical intervention, hematoma and a permanent left leg neuropathy.

79. That during all of the procedures and treatment rendered to the Plaintiff, the Defendants departed from acceptable standards of medical care to the Plaintiff.

80. That the Defendants caused Plaintiff to sustain serious injuries, including but not limited to, a uterine perforation, exploratory laparotomy, repair of a uterine perforation, infection, and a lumbosacral plexus neuropathy.

81. That the foregoing treatment and management of the Plaintiff, ANDREA BURTON, by the Defendants, their servants, agents, affiliated physicians, residents, interns, nurses, aides, employees and/or medical personnel was performed in such a careless, negligent, and, heedless, manner as to manifest and evidence a reckless disregard for the safety and well-being of others, including the Plaintiff, and not in accordance with the good and accepted standards of medical care and practice, thereby causing the Plaintiff to sustain severe injuries and damages.

82. That the foregoing injuries and damages to the Plaintiff were caused solely by virtue of the carelessness, negligence, and malpractice, on the part of the Defendants, their servants, agents, affiliated physicians, employees, medical, and/or nursing personnel.

83. The medical and/or nursing examinations, evaluations, care, treatments, procedures, equipment, apparatus, tests, studies, services, or advice ordered, requested, recommended, advised, performed, rendered, or provided to the Plaintiff, ANDREA BURTON, by the Defendants herein, were ordered, requested, recommended, advised, performed, rendered, or provided by persons who were incompetent or unqualified to order, recommend, request, advise, perform, render or provide examinations, evaluations, care, equipment, apparatus, treatments, procedures, tests, studies, services or advice to and/or for the Plaintiff, ANDREA BURTON.

84. That by reason of the foregoing, this Plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and the Plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries; the Plaintiff incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and the Plaintiff has suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and the Plaintiff will be unable to pursue the usual duties with the same degree of efficiency as prior to the negligence and malpractice of the Defendants, all to the Plaintiff's great damage.

85. That this action falls within one or more of the exceptions set forth in CPLR §1602.



86. That by reason of the foregoing, the Plaintiff, ANDREA BURTON, has sustained serious injuries and damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

AS AND FOR A SECOND CAUSE OF ACTION:

87. That Plaintiff repeats, reiterates and re-alleges each and every allegation as contained in the First Cause of Action of the within Complaint, with the same force and effect as though each were more fully set forth at length herein.

88. That at all times herein mentioned, the Defendants failed to inform the Plaintiff, ANDREA BURTON, as to the exact nature and extent of the Plaintiff's condition and failed to inform the Plaintiff, ANDREA BURTON, as to the risks, complications, consequences and dangers of the care, treatment and procedures the defendants undertook to perform and/or failed to perform upon the Plaintiff, ANDREA BURTON, and further failed to inform the Plaintiff, ANDREA BURTON, as to the possible alternate methods of treatment applicable to and/or apparatus and/or equipment required for the Plaintiff's condition.

89. That had the Plaintiff, ANDREA BURTON, known of the foregoing nature and extent of the conditions and the risks, complications, consequences and dangers of the care, treatment and procedures the Defendants undertook to perform and/or failed to perform, and had the Plaintiff, ANDREA BURTON, known the possible alternate methods of treatment applicable to the Plaintiff, ANDREA BURTON's condition, the Plaintiff, ANDREA BURTON, would have chosen other necessary, required and alternate methods of treatment so as to have avoided serious injury and severe worsening and deterioration of the condition of the Plaintiff, ANDREA

BURTON.

90. That by reason of the failure to properly inform the Plaintiff, and in failing to obtain the informed consent of the Plaintiff, ANDREA BURTON, the Plaintiff, ANDREA BURTON, was caused to sustain serious damages and injuries.

91. That by reason of the foregoing, the Plaintiff, ANDREA BURTON, has been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

**WHEREFORE**, Plaintiff demands judgment against the Defendants, the amount sought on each Cause of Action exceeding the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in amounts to be determined upon the trial of this action, together with the costs and disbursements of this action.

Dated: New York, New York  
January 24, 2006

**ROURA & MELAMED**

By: Matthew R. Kreinces

Matthew R. Kreinces, Of Counsel

*Attorneys for Plaintiff*

233 Broadway, Suite 2700

New York, New York 10279

(212) 227-6821

File No.: 13313

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ANDREA BURTON,

Index No.:

Plaintiff,

**CERTIFICATE OF MERIT**

-against-

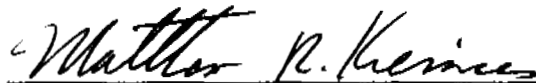
ALEXANDER FLAXMAN, M.D., ALLAN KLAPPER, M.D.,  
ROBERT AIKEN, M.D., CONTINUUM HEALTH  
PARTNERS, INC., individually and d/b/a BETH ISRAEL  
MEDICAL CENTER, and MOHAMMAD MOMTAZ, M.D.,

Defendants.  
-----X

MATTHEW R. KREINCES, an attorney admitted to practice before the Courts of this  
State affirms the following to be true under the penalties of perjury:

1. I am Of Counsel to the firm of ROURA & MELAMED, attorneys for Plaintiff herein, and as such am fully familiar with the facts and circumstances of the within action.
2. I have reviewed the facts of this case and have consulted with at least one physician who is licensed to practice in this state and who I reasonably believe is knowledgeable as to the relevant issues involved herein. I have concluded on the basis of this review and consultation that there is a reasonable basis for the commencement of this action.

Dated: New York, New York  
January 24, 2006

  
\_\_\_\_\_  
MATTHEW R. KREINCES

VERIFICATION

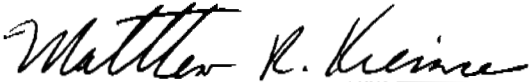
STATE OF NEW YORK    )  
                                  )  
COUNTY OF NEW YORK )    ss:

I, MATTHEW R. KREINCES, an attorney admitted to practice in the courts of the State of New York, state that I am Of Counsel to the attorneys of record for the Plaintiff, in the within action; I have read the foregoing *Summons and Complaint* and know the contents thereof; that same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe them to be true. The reason this verification is made by me and not by my client is that my client is not within the County where I maintain my office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: the file maintained in my office and information provided by my client.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York  
January 24, 2006

  
\_\_\_\_\_  
MATTHEW R. KREINCES