

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
NO. 89-482

FILED
JAN 23 1989
[Signature]

* * * * *
CAROL DOHERTY,
Plaintiff

vs.

ARNOLD SPERLING, M.D.,
Defendant

* * * * *

COMPLAINT

1. The plaintiff, Carol Doherty, is a natural person, residing in Medford, Middlesex County, Massachusetts.

2. The defendant, Arnold Sperling, M.D., is a physician licensed to practice medicine in the Commonwealth of Massachusetts with professional offices located in Somerville, Middlesex County, Massachusetts.

3. At all pertinent times as stated, herein, plaintiff Carol Doherty was a patient of and was owed a duty of professional care by defendant Arnold Sperling, M.D.

COUNT I

4. The plaintiff realleges and incorporates the allegations contained in paragraphs one through three, above.

5. On or about May 6, 1987, and on diverse occasions, thereafter, defendant Arnold Sperling, M.D., his agents, servants and/or employees did examine, evaluate, treat, manage, care for, advise and/or consult with plaintiff Carol Doherty concerning her medical care, health and well-being.

6. The medical services aforestated in paragraphs five, above, were negligently and carelessly rendered by defendant Arnold Sperling, M.D., his agents, servants and/or employees, in the examination, evaluation, treatment, management, care of, advice given, and/or consultation with plaintiff Carol Doherty and as a proximate result, thereof, the said plaintiff, Carol Doherty was seriously injured consciously experienced great pain of body

and mind, was caused to undergo medical, nursing and surgical treatment, inclusive of a hysterectomy and subsequent laceration of the ureter, was interrupted in her normal activities and business, suffered loss of earning capacity and earnings, as well as other injuries and damages.

7. Plaintiff Carol Doherty is entitled to recover from defendant Arnold Sperling, M.D., a monetary award representing all damages proximately caused to the plaintiff by the professional negligence of said defendant, his agents, servants and/or employees, as alleged, herein.

RELIEF REQUESTED

Plaintiff prays:

(1) that she be granted Judgment against defendant Arnold Sperling, M.D., for all damages proximately caused by the negligence of said defendant as alleged, herein;

(2) for such other relief as this Honorable Court may deem equitable and just;

(3) that she be granted a trial by a jury of twelve.

By her Attorneys,



NISSEN & LUMSDEN
One Court Street, #44
Boston, MA 02108
(617) 723-3517

PROOF OF SERVICE OF PROCESS



Middlesex Deputy Sheriffs, Metropolitan District, P.O. Box 180, 99 First Street, East Cambridge, MA 02414

L. Middlesex ss.,

I hereby certify and return that on September 13, A.D. 19 89

I served a copy of the within summons, together with a copy of the complaint* in this action, upon the within-named defendant, in the following manner:

- by giving to the said defendant in hand.
by leaving at the said defendants last and usual place of abode,
by leaving at the said defendants last and usual place of abode, in said county.

I also forthwith mailed first class a copy of the within summons to the within named defendant at the said defendants last and usual place of abode on

Arnold Sperling, M.D. by giving in hand to Sharon Weinberg, Manager and person in charge, who accepted service on behalf of the *together with interrogatories, request for production of documents, civil action cover sheet, amended tracking order, statement of damages.

Fees: service 15.00 m.v. 2.10
copy 3.00 mailing
travel 2.10 post/hand .65
Total: \$22.85

*said defendant.

Signature of Edward M. Giffan, Deputy Sheriff

()

03439

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT CIVIL ACTION No. 89-0482-C

MIDDLESEX, ss.

Carol Doherty, Piff.

v.

Arnold Sperling, M.D., Def.

SUMMONS (Mass. R. Civ. P. 4)

Nissen & Lumsden One Court Street Suite 44 Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, SS. SUPERIOR COURT
NO: 89-0482-C

CAROL DOHERTY, *
Plaintiff *
v. *
ARNOLD SPERLING, M.D., *
Defendant. *

13

ANSWERS OF THE PLAINTIFF CAROL DOHERTY TO THE
INTERROGATORIES PROPOUNDED BY THE DEFENDANT
ARNOLD SPERLING, M.D.

1. Please identify yourself fully, giving your full name, date of birth, residence, business address, occupation and if married, the name of your spouse.

A. Carol Doherty; d/o/b: 12/11/43; 274 Governors Avenue, Medford, MA 02155; Central Square Insurance Agency, 573 Massachusetts Avenue Cambridge, MA 02139; Office Assistant; Unmarried.

2. Please describe all injuries, ailments or pains which you claim to have suffered as a result of the occurrences set forth in your Complaint, stating the parts of your body so affected, the severity of said injuries, ailments or pains and how long each lasted.

A. Said injuries include, but may not be limited to, the following: a total abdominal hysterectomy and a cystourethroscopy, surgical scarring, frequent urination and incontinence, interruption of my daily life some loss of earnings, as well as other injuries that follow.

After the surgery, I continually felt a pulling and/or throbbing sensation on the left side of my abdomen. The pain was exacerbated upon activity. The pain was also intensified upon bending or stretching. This pain lasted until approximately May of 1988. From May, 1987 until May of 1988, the pain was generally severe and greatly limited my household and gardening activities.

1790, August 14
Filed in court
Attest: Arthur D. Hughes
Essex County
(Yeshengong)

From May, 1988, until the present, the pain is not as severe but intensifies upon physical exertion.

Following the surgery I urinated approximately 12 to 15 times per day. The need to frequently urinate caused me to forego activities where I knew a bathroom would not be convenient. I found myself limiting my activities and trips away from my home.

Approximatley 10 months after the surgery, I began to have more control over my need to urinate. Currently, I still urinate more frequently than I did before the surgery.

I feel I was mistreated. I believe I was deceived and not adequately apprised of my physical condition following the surgery. I have suffered psychological injuries as a result of this mistreatment and as a result of the physical problems I've described.

3. If as a result of the occurrences alleged in your Complaint you are claiming any present or permanent ailments, injuries or pains, please describe the same fully, stating their nature, extent and location.

A. Said injuries or pains include, but may not be limited to, the following: I continue to experience physical discomfort, including twinges, on the left side of my abdomen. I frequently feel the urge to urinate and have to urinate many times throughout the day and night.

I continue to experience a pulling and/or throbbing sensation on the left side of my abdomen. As to the extent of the pain, it is not as severe as the year directly after surgery; however, it is still an uncomfortable sensation. I urinate more frequently than I did before the surgery and feel the need to urinate often.

I personally do not know the permanence of my injuries, but since I still have problems to this day, I believe that they are permanent.

4. As a result of the occurrences set forth in your Complaint, please state how long and between what dates

you were:

- a) Wholly confined to a hospital, naming the hospital.
 - b) Wholly confined to bed.
 - c) Wholly confined to your house.
 - d) Wholly incapacitated from work or other normal activities, giving the particulars in which you were so incapacitated.
- A. (a) May 6, 1987 - May 19, 1987; Waltham Weston Hospital and Medical Center.
- (b) I was confined to bed during my surgical stay.
- (c) I remained in my home following the surgery until June 2, 1987.
- (d) I was wholly incapacitated from work from May 6, 1987 until June 26, 1987. The following work week I worked part-time. For approximately six months my physical movement was greatly restricted. Bending and stretching was painful.

Concerning other activities, I was the primary caretaker of my elderly mother. After the surgery, it was difficult and painful for me to provide the same degree of care that she had become accustomed to. Grocery shopping was impossible because I could not lift the bags. Due to the pain, I was unable to garden and care for the curtilage of my home during the spring and summer months following the surgery.

5. Please give an account, itemized as fully and carefully as possible, of all losses and expenses which you claim were incurred by you as a result of the occurrences set forth in your Complaint, stating those losses or expenses which are attributable to hospitals, doctors, medicines and loss of earnings.

A. Said losses and/or expenses include, but may not be limited to, the following:

Waltham Weston Hospital & Medical Center;
 5/06/87 - 5/19/87.....
 No bill was submitted to me for the services
 performed at this hospital.

Somerville Hospital;
 6/05/87.....\$128.00

Bioran Medical Laboratory;
 4/15/87; 4/21/87; 6/02/87; 7/14/87.....\$70.75

Radiologists of Waltham Hospital;
 5/06/87; 5/18/87..... \$224.00

Waltham Anesthesia Associates
 5/06/87..... \$2146.00

Waltham Weston Pathology Associates;
 5/06/87..... \$210.00

Suburban Radiological Associates
 6/05/87..... \$39.00

Ultrasound Diagnostics;
 4/21/87..... \$75.00

Dr. Arnold L. Sperling
 4/21/87; 5/06/87 - 5/19/87\$1,340.00

Loss of earnings;
 38 days @ \$51.00 per day.....\$1,938.00

6. Please describe the nature and extent of the medical or hospital treatment which you claim to have received as a result of the occurrences set forth in your Complaint, stating in each case the date thereof and the names and addresses of physicians and hospital involved.

A. 4/21/87; Dr. Arnold L. Sperling; 58 Day Street Somerville, Massachusetts 02144; Physical Examination including a breast examination and Pap smear, discussed methods of termination of my pregnancy.

4/21/87; Dr. Kenneth Scheer; Ultrasound Diagnostics;

1180 Beacon Street, Brookline, Massachusetts;
Ultrasound.

5/6/87; Dr. Arnold L. Sperling and Ellen M. Penso;
Waltham-Weston Hospital & Medical Center; Hope
Avenue, Waltham, Massachusetts 02254-9116; Total
Abdominal Hysterectomy, unilateral salpingo-
oophorectomy.

5/6/87; Dr. Steven Karian; Waltham-Weston Hospital &
Medical Center, Hope Avenue, Waltham, Massachusetts
02254-9116; Cystourethroscopy, left retrograde
pyelography, left ureteral exploration with left
ureteroneocystostomy with a Boari flap.

6/5/87; Dr. James A. Peterson, Somerville Hospital,
230 Highland Avenue Somerville Massachusetts 02143;
Intravenous pyelogram.

7/14/87; Dr. Steven Karian; Metropolitan Urological
Associates, 236 Highland Avenue, Somerville,
Massachusetts 02143, Office Visit.

7/14/87; Bioran Medical Laboratories, 415
Massachusetts Avenue, Cambridge, Massachusetts
02139; Urine Culture.

7. If as a result of the occurrences alleged in your
Complaint you lost any time from your occupation,
employment or schooling, please state:

- a) What duties you were required to perform in your
occupation prior to said occurrences.
- b) The full name and address of your employer or
school which you attended before the alleged
occurrences.
- c) Your average weekly income from your work before
the alleged occurrences.
- d) The dates that you lost from your occupation,
employment or schooling.

A. (a) Prior to the incident, I worked for the Central
Square Insurance Company, and automobile insurance

agency. I waited on customers, sold insurance policies, handled claims, assisted in problems concerning automobile accidents, and handled billing.

I also worked part-time for attorney James Hill. I prepared documents pertaining to mortgages.

(b) Central Square Insurance Agency, 573 Massachusetts Avenue, Cambridge, MA 02139.

James D. Hill, Esq., 573 Massachusetts Avenue, Cambridge, MA 02139.

(c) Central Square Insurance Agency: \$195.00
Attorney James D. Hill: \$100.00

(d) I was unable to work from May 6, 1987 thru June 26, 1987.

8. Please describe fully and in complete detail all illnesses, injuries, diseases or operations which you had or suffered from:

- a) Within five years prior to the date of the occurrences set forth in your Complaint.
- b) At any time since the date of the occurrences set forth in your Complaint not caused by or arising from those occurrences, setting forth the dates upon which each of the above was experienced.

A. (a) I have not suffered from any illnesses, injuries, or diseases and have not undergone any operations prior to the date set forth in my Complaint.

(b) I have not suffered from any illnesses, injuries, or diseases and have not undergone any operations since the date set forth in my Complaint.

9. Please state everything that was done by this Defendant relative to examining you, giving the respective dates and places of each examination, the parts of your body so examined and the methods or instruments used.

A. I can not recall everything that was done by the Defendant relative to his examination of me, however I do recall the following:

I first saw the Defendant in his office on April 21, 1987 regarding termination of my pregnancy. He gave me a breast exam, PAP smear and examined my abdomen by placing his hands upon me. He examined my genitals using some instruments, the names of which I cannot recall. That same day, he sent me to Ultrasound Diagnostics in Brookline, Massachusetts. I returned to his office directly after the examination.

On May 6, 1987 I underwent a surgical procedure at including a hysterectomy performed by the Defendant and a cystourethroscopy performed on the same day by another surgeon.

The Defendant saw me briefly during my recovery at the hospital. I can not recall the exact date.

10. Please describe as well as you can your physical condition when this defendant first saw you, setting forth the dates.

A. I first saw the Defendant on April 21, 1987 regarding termination of my pregnancy. I was not aware of any "conditions" associated with my health other than my pregnancy.

11. With reference to the "condition", illness, ailment or injury from which you suffered when you first saw this defendant, please state:

- a) Approximately how long you had suffered from it.
- b) The nature of all treatments received for it prior to this first interview with this defendant and the approximate date of such treatments.
- c) The names of the hospitals or other places where you were treated for it prior to this first interview.
- d) The names and addresses of any persons who treated you for this condition prior to this

defendant.

- A. (a) Pursuant to the results of a home pregnancy test, I consulted the Defendant concerning termination of my pregnancy. I did not know the duration of my pregnancy when I first consulted the Defendant. I was unaware of any "conditions" associated with my general health or pregnancy.
- (b) I did not treat with anyone other than the Defendant.
- (c) I did not treat with anyone other than the Defendant.
- (d) I did not treat with anyone prior to this Defendant.

12. Please set forth as well as you can the substance of all statements, communications, or conversations by you or between you and this defendant relative to your condition on each respective date that he saw you, setting forth those dates and the number of other persons present on each occasion.

A. I cannot recall all of the details of my conversations with the defendant. However, I do recall speaking with the Defendant in his office on April 21, 1987 concerning my pregnancy. No one else was present. I was also informed that I had fibroids. The defendant suggested three possibilities for treatment. He suggested that I could undergo a Dilation and Evacuation at his office, at the hospital, or have a hysterectomy. I asked him "If I were your sister, what would you recommend?" The Defendant suggested I undergo a hysterectomy at the hospital.

Approximately one week after the operation, I recall asking the Defendant "what happened" after I was informed that my ureter was cut during surgery. The Defendant responded that he would send me a copy of the operative notes.

On June 2, 1987 I visited the Defendant at his office where we discussed my frequent urination problems and the orange color of my urine. He suggested that I

consult with Dr. Karian.

I have had no other conversations with the Defendant.

13. Please give in substance all advice or instructions given by this defendant relative to your care and treatment, setting forth the dates of such advice and instructions.

A. I do not recall the substance of all statements and communications or conversations. I cannot recall being given any advice or instructions given by the Defendant relative to my care and treatment.

14. Please state as fully and completely as you can everything that this defendant prescribed for you on each respective date when he saw or treated you.

A. I cannot recall everything that the Defendant may have prescribed for me relative to treatment. I do recall that on April 23, 1987 the Defendant prescribed Atarax, 50 mg to combat my sleeping and eating problems.

I cannot recall any other prescriptions made by the Defendant relative to my treatment.

15. With respect to the allegations of negligence in your Complaint, please set forth all facts known to you, your agents, servants or attorneys, on the basis of which you have made these allegations.

A. After the surgery, I learned that my ureter was cut. I had several conversations with various people at the hospital and at Doctor Sperling's office. Although I cannot remember the exact details of these conversations, or the names of the persons involved, I do recall several people telling me that something went wrong and that somebody had made a mistake.

16. Please state the full name and address of each person whom you expect to call upon as an expert witness at trial, together with the details of each such person's education, training, qualifications and background in his or her field of expertise.

A. I have been advised by my attorneys that no decision

has yet been made as to the identity of any such expert witness(es) to be called at trial. This answer will be supplemented when such a decision is made, accordingly.

17. With respect to each expert witness you expect to call at trial, as referred to in the previous interrogatory, please:

- a) State the substance of facts and opinion to which each expert witness is expected to testify.
- b) State a summary of the grounds of each such opinion of each such expert witness.

A. I have been advised by my attorneys that no decision has yet been made as to the identity of any such expert witness(es) to be called at trial. This answer will be supplemented when such decision is made, accordingly.

18. If, as a result of the occurrences alleged in your Complaint you have incurred or are seeking to recover for any economic loss including but not necessarily limited to medical expenses, custodial or rehabilitative expenses or lost earnings, please set forth in detail:

- a) Each such loss that has been recovered by you or any other person or entity, returned, compensated, indemnified or otherwise paid for by any third party whether by an insurance company, government agency, employer or otherwise.
- b) With regard to each such loss, reimbursement or payment identified in answer to 18a as well as any benefits being received by you or any family member or other individual, please state the amount recovered, the name and address and, if appropriate, coverage period and policy number of the company, agency, entity or individual that has made such payment(s) the dates of such payments and whether future payments are expected.
- c) With regard to any sickness, health care, medical accident, disability or life insurance policy referred to above, please state whether you are

maintaining said coverage; and whether you will continue and renew such coverage during the pendency of this lawsuit; are you currently obtaining payments; are such payments expected to continue?

d) With respect to any such payments referred to in answer to Number 18a-c, please state verbatim, the content of or attach to your answers copies of all policies, documents, papers, receipts, notes or memoranda reflecting or having anything whatsoever to do with each such payment.

A. (a) Upon learning of my cut ureter, I wrote a letter to Hanover Insurance Company asking them not to pay any of the bills submitted relative to my treatments with the Defendant. As such, no bills have been paid by the Hanover Insurance Company. On April 21, 1987 I paid Ultrasound Diagnostics \$75.00 representing payment in full for services performed. I also paid for the Atarax prescribed by the Defendant. I no longer carry medical insurance.

The Waltham Weston Hospital and Medical Center has returned the \$1,500.00 representing the amount I was required to pre-pay before surgery.

The Defendant submitted a bill to Hanover Insurance Company, my previous health care coverage provider. Upon receipt, the Defendant endorsed and transferred the check to me.

(b) The Hanover Insurance Company did not pay any of the bills associated with the incident described in my Complaint. I no longer carry medical insurance.

(c) I no longer carry medical insurance. I am not receiving any payments.

(d) I do not have a medical insurance policy.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY, THIS

25th DAY OF July, 1990.



Carol Doherty

OBJECTIONS



NISSEN & LUMSDEN
One Court Street Suite 44
Boston, MA 02108
(617) 723-3517
BBO #372380

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX , SS

Superior Court Department

Statement of Damages Pursuant to
Superior Court Rule 29
To Prevent Transfer to District or Municipal Court Departments
(Applicable to Civil Actions)

1. This action is not subject to Rule 29 Remand for the following reason(s): (concise statement as to why this action is not remandable, e.g., party seeking equitable relief, declaratory judgment, action against commonwealth or municipality, etc.)

2. This action is subject to Superior Court Rule 29 and the following detailed statement pursuant to Rule 29 sets forth the facts in full and itemized detail upon which the plaintiff relies as constituting the damages in this action:

(if tort action, for example, specify doctors' bills, hospital bills, out of pocket expenses, etc. that would warrant a reasonable likelihood that recovery will exceed \$25,000)

(if contract action, state with particularity damages which would warrant a reasonable likelihood that recovery will exceed \$25,000)

Plaintiff Carol Doherty, as a result of the negligence of Defendant Arnold Sperling, M.D., was caused to undergo medical, nursing and surgical treatment, inclusive of a hysterectomy and subsequent laceration of the ureter, was interrupted in her normal activities and business, suffered loss of earning capacity and earnings, as well as other injuries and damages. For the above reasons, the plaintiff respectfully submits that there is a reasonable likelihood that recovery, herein, will exceed \$25,000.00.

1/13/89

(date)



(signature of attorney of record or pro se)