

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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DENISE A. MENEFEE,

*Plaintiff,*

-against-

LEWIS WAI-HUNG LO, M.D., DANIEL KUSHNER, M.D.,  
and WHITE PLAINS HOSPITAL CENTER,

*Defendants.*  
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**SUMMONS**

Index No.:

Date Purchased:

Plaintiff designates WESTCHESTER County as the place of trial. The basis of venue is Plaintiff DENISE A. MENEFEE's residence located at 33 Fisher Avenue, Apartment 2H, White Plains, New York 10601.

**To the above named Defendants:**

**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 a notice of appearance, on the Plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. 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  
June 11, 2013

NOVO LAW FIRM, P.C.  
*Attorneys for Plaintiff*  
DENISE A. MENEFEE  
299 Broadway – 17th Floor  
New York, New York  
212-233-6686

BY: *Michael J. Rago*  
MICHAEL J. RAGO, ESQ.

TO:

LEWIS WAI-HUNG LO, M.D.  
222 Mamaroneck Avenue  
White Plains, New York 10605

or

c/o White Plains Hospital Center  
41 East Post Road  
White Plains, New York 10601

DANIEL KUSHNER, M.D.  
222 Mamaroneck Avenue  
White Plains, New York 10605

or

c/o White Plains Hospital Center  
41 East Post Road  
White Plains, New York 10601

WHITE PLAINS HOSPITAL CENTER  
41 East Post Road  
White Plains, New York 10601

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
DENISE A. MENEFEE,

*Plaintiff,*

**VERIFIED COMPLAINT**

-against-

Index No.:

LEWIS WAI-HUNG LO, M.D., DANIEL KUSHNER, M.D.,  
and WHITE PLAINS HOSPITAL CENTER,

*Defendants.*

-----X

Plaintiff DENISE A. MENEFEE, by her attorneys, NOVO LAW FIRM, P.C.,  
complaining of Defendants, respectfully alleges, upon information and belief, as follows:

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

1. At the time of the commencement of this action, Plaintiff DENISE A. MENEFEE (hereinafter referred to as "MENEFEE") was a resident of the COUNTY OF WESTCHESTER, State of New York.

2. At all times mentioned herein, defendant LEWIS WAI-HUNG LO, M.D. (hereinafter referred to as "LO") was a physician duly licensed to practice in the State of New York.

3. At all times mentioned herein, defendant DANIEL KUSHNER, M.D. (hereinafter referred to as "KUSHNER") was a physician duly licensed to practice in the State of New York.

4. At all times mentioned herein, defendant WHITE PLAINS HOSPITAL CENTER (hereinafter referred to as "WPHC") was a domestic not-for-profit corporation duly organized and existing under and by virtue of the laws of the State of New York.

5. At all times mentioned herein, defendant WPHC owed a hospital pursuant to the laws of the State of New York, located at 41 East Post Road, White Plains, New York 10601, which provided personnel, including doctors, nurses, attendants, and others for the care and treatment of its patients and which held itself out to the public as furnishing treatment facilities where patients, including Plaintiff MENEFEER, could be treated for various ailments.

6. At all times mentioned herein, defendant WPHC controlled a hospital pursuant to the laws of the State of New York, located at 41 East Post Road, White Plains, New York 10601, which provided personnel, including doctors, nurses, attendants, and others for the care and treatment of its patients and which held itself out to the public as furnishing treatment facilities where patients, including Plaintiff MENEFEER, could be treated for various ailments.

7. At all times mentioned herein, defendant WPHC managed a hospital pursuant to the laws of the State of New York, located at 41 East Post Road, White Plains, New York 10601 which provided personnel, including doctors, nurses, attendants, and others for the care and treatment of its patients and which held itself out to the public as furnishing treatment facilities where patients, including Plaintiff MENEFEER, could be treated for various ailments.

8. At all times mentioned herein, defendant LO held himself out to be a physician offering professional services to the public in general and Plaintiff MENEFEER in particular.

9. At all times mentioned herein, defendant LO represented that he was competent to perform and render all the medical care, treatment, services, and advice that Plaintiff MENEFEER required.

10. At all times mentioned herein, defendant LO was an employee of defendant WPHC.

11. At all times mentioned herein, defendant LO was an agent of defendant WPHC.

12. At all times mentioned herein, defendant LO was a licensee of defendant WPHC.

13. At all times mentioned herein, defendants LO and WPHC stood in such a relationship with each other in their care and treatment of Plaintiff MENEFEFEE as to make each liable for the acts and omissions of the other.

14. At all times mentioned herein, defendants LO and WPHC stood in such a relationship with each other in their care and treatment of Plaintiff MENEFEFEE as to make defendant WPHC liable for the acts and omissions of defendant LO.

15. At all times mentioned herein, defendant KUSHNER held himself out to be a physician offering professional services to the public in general and Plaintiff MENEFEFEE in particular.

16. At all times mentioned herein, defendant KUSHNER represented that he was competent to perform and render all the medical care, treatment, services, and advice that Plaintiff MENEFEFEE required.

17. At all times mentioned herein, defendant KUSHNER was an employee of defendant WPHC.

18. At all times mentioned herein, defendant KUSHNER was an agent of defendant WPHC.

19. At all times mentioned herein, defendant KUSHNER was a licensee of defendant WPHC.

20. At all times mentioned herein, defendants KUSHNER and WPHC stood in such a relationship with each other in their care and treatment of Plaintiff MENEFEFEE as to make each liable for the acts and omissions of the other.

21. At all times mentioned herein, defendants KUSHNER and WPHC stood in such a relationship with each other in their care and treatment of Plaintiff MENEFEER as to make defendant WPHC liable for the acts and omissions of defendant KUSHNER.

22. On or about November 5, 2012, and prior and subsequent thereto, and thereafter, Plaintiff MENEFEER sought the professional care of defendant WPHC for certain medical complaints, including, but not limited to, exploratory laparotomy and supracervical hysterectomy, from which Plaintiff was suffering, and this Defendant, its agents, servants, and employees rendered medical care, diagnosis, treatment and services to Plaintiff.

23. On or about November 5, 2012, and prior and subsequent thereto, and thereafter Plaintiff MENEFEER sought the professional care of defendant LO for certain medical complaints, including, but not limited to, exploratory laparotomy and supracervical hysterectomy, from which Plaintiff was suffering and this Defendant, his agents, servants, and employees rendered medical care, diagnosis, treatment, and services to Plaintiff.

24. On or about November 5, 2012, and prior and subsequent thereto, and thereafter Plaintiff MENEFEER sought the professional care of defendant KUSHNER for certain medical complaints, including, but not limited to, exploratory laparotomy and supracervical hysterectomy, from which Plaintiff was suffering and this Defendant, his agents, servants, and employees rendered medical care, diagnosis, treatment and services to Plaintiff.

25. From on or about November 5, 2012, until on or about November 9, 2012, Defendants continuously treated Plaintiff MENEFEER for certain medical complaints from which Plaintiff was suffering, and these Defendants, their agents, servants, and employees rendered medical care, diagnosis, treatment, and services to Plaintiff.

26. On or about November 14, 2012, and prior and subsequent thereto, and thereafter Plaintiff MENEFEЕ sought the professional care of defendant LO for certain medical complaints, including, but not limited to, fever, leukocytosis, and pelvic abscess, from which Plaintiff was suffering and this Defendant, his agents, servants, and employees rendered medical care, diagnosis, treatment, and services to Plaintiff.

27. On or about November 14, 2012, and prior and subsequent thereto, and thereafter Plaintiff MENEFEЕ sought the professional care of defendant KUSHNER for certain medical complaints, including, but not limited to, fever, leukocytosis, and pelvic abscess, from which Plaintiff was suffering and this Defendant, his agents, servants, and employees rendered medical care, diagnosis, treatment and services to Plaintiff.

28. From on or about November 14, 2012, until on or about November 27, 2012, Defendants continuously treated Plaintiff MENEFEЕ for certain medical complaints from which Plaintiff was suffering, and these Defendants, their agents, servants, and employees rendered medical care, diagnosis, treatment, and services to Plaintiff.

29. The above medical care, diagnosis, treatment, and services rendered to Plaintiff MENEFEЕ were rendered carelessly, unskillfully, negligently, and not in accordance with accepted standards of medical care, diagnosis, treatment, and services in the community.

30. By reason of the above, Plaintiff MENEFEЕ has sustained great pain, agony, injury, suffering, and hospitalizations, as well as mental anguish and emotional distress.

31. This action falls within one or more of the exceptions set forth in CPLR 1602, and as such the defendants are jointly and severally liable pursuant to the exceptions set forth in Article 16 of the CPLR.

32. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to, plaintiff's non-economic loss, irrespective of the provisions of CPLR Section 1601, by reason of the fact that defendants owed Plaintiff a non-delegable duty of care.

33. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to, plaintiff's non-economic loss, irrespective of the provisions of CPLR Section 1601, by reason of the fact that said defendants are vicariously liable for the negligent acts and omission of its servants, agents, affiliated physicians, surgeons, and/or employees.

34. Pursuant to CPLR Section 1602(7), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of CPLR Section 1601, by reason of the fact that said defendants acted with reckless disregard for the safety of others.

35. By reason of the above, Plaintiff MENEFEER has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

#### **AS AND FOR A SECOND CAUSE OF ACTION**

36. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as though set forth herein at length.

37. Defendants were negligent in hiring, retaining, and supervising medical personnel, who were careless, unskillful, and negligent, and who did not possess the requisite knowledge and skill of medical professionals in the community.



38. By reason of the above, Plaintiff MENEFEЕ has sustained great pain, agony, injury, suffering, and hospitalizations, as well as mental anguish and emotional distress.

39. This action falls within one or more of the exceptions set forth in CPLR 1602, and as such the defendants are jointly and severally liable pursuant to the exceptions set forth in Article 16 of the CPLR.

40. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to, plaintiff's non-economic loss, irrespective of the provisions of CPLR Section 1601, by reason of the fact that defendants owed Plaintiff a non-delegable duty of care.

41. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to, plaintiff's non-economic loss, irrespective of the provisions of CPLR Section 1601, by reason of the fact that said defendants are vicariously liable for the negligent acts and omission of its servants, agents, affiliated physicians, surgeons, and/or employees.

42. Pursuant to CPLR Section 1602(7), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of CPLR Section 1601, by reason of the fact that said defendants acted with reckless disregard for the safety of others.

43. By reason of the above, Plaintiff MENEFEЕ has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

### AS AND FOR A THIRD CAUSE OF ACTION

44. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as though set forth herein at length.

45. Defendants, their agents, servants, and employees failed to inform Plaintiff or Plaintiff's representative of the reasonably foreseeable risks and benefits of and alternatives to the treatment proposed and rendered, which a reasonable medical practitioner in similar circumstances would have disclosed, in consequence of which Defendants failed to obtain an informed consent thereto.

46. A reasonably prudent person in the position of Plaintiff MENEFEER would not have undergone the procedure if he or she had been fully informed.

47. The lack of informed consent alleged herein is a proximate cause of the injuries, conditions, and disabilities for which recovery is sought.

48. By reason of the above, Plaintiff MENEFEER has sustained great pain, agony, injury, suffering, and hospitalizations, as well as mental anguish and emotional distress.

49. This action falls within one or more of the exceptions set forth in CPLR 1602, and as such the defendants are jointly and severally liable pursuant to the exceptions set forth in Article 16 of the CPLR.

50. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to, plaintiff's non-economic loss, irrespective of the provisions of CPLR Section 1601, by reason of the fact that defendants owed Plaintiff a non-delegable duty of care.

51. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to, plaintiff's non-economic loss,

irrespective of the provisions of CPLR Section 1601, by reason of the fact that said defendants are vicariously liable for the negligent acts and omission of its servants, agents, affiliated physicians, surgeons, and/or employees.

52. Pursuant to CPLR Section 1602(7), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of CPLR Section 1601, by reason of the fact that said defendants acted with reckless disregard for the safety of others.

53. By reason of the above, Plaintiff MENEFEЕ has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**WHEREFORE**, Plaintiff demands judgment against defendants in an amount, on each cause of action, that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action, including attorneys fees and punitive damages, and interest from on or about March 30, 2011, and as allowed by law.

DATED: New York, New York  
June 11, 2013

NOVO LAW FIRM, P.C.  
*Attorneys for Plaintiff*  
DENISE A. MENEFEЕ  
299 Broadway – 17th Floor  
New York, New York  
212-233-6686

BY:   
MICHAEL J. RAGO, ESQ.

**ATTORNEY'S VERIFICATION BY AFFIRMATION**

MICHAEL J. RAGO, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am associated with the NOVO LAW FIRM, P.C., attorneys of record for plaintiff. I have read the annexed

**SUMMONS & VERIFIED COMPLAINT**

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason I make the foregoing affirmation instead of the plaintiff is because plaintiff resides outside of the county wherein your affirmant maintains offices.

DATED:       New York, New York  
                  June 11, 2013

  
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MICHAEL J. RAGO, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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DENISE A. MENELEE,

*Plaintiffs,*

-against-

LEWIS WAI-HUNG LO, M.D., DANIEL KUSHNER, M.D.,  
and WHITE PLAINS HOSPITAL CENTER,

*Defendants.*

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**CERTIFICATE OF MERIT**

Index No.:

MICHAEL J. RAGO, the undersigned, an attorney admitted to practice in the Courts of New York State, states that he is an associate with NOVO LAW FIRM, P.C., attorneys for the plaintiff in the within action.

I have reviewed the facts of this case and have consulted with at least one physician who is licensed to practice in this State or any other state and who I reasonably believe is knowledgeable in the relevant issues involved in this action, and I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of this action.

DATED:       New York, New York  
              June 11, 2013

  
\_\_\_\_\_  
MICHAEL J. RAGO, ESQ.

Index No.:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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DENISE A. MENELEE,

*Plaintiff,*

-against-

LEWIS WAI-HUNG LO, M.D., DANIEL KUSHNER, M.D., and WHITE PLAINS HOSPITAL  
CENTER,

*Defendants.*

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**SUMMONS, VERIFIED COMPLAINT & CERTIFICATE OF MERIT**

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**NOVO LAW FIRM, PC**  
*Attorneys for Plaintiff*  
299 Broadway, 17th Floor  
New York, New York 10007  
212-233-6686

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ATTORNEY'S CERTIFICATION. Upon reasonable inquiry under the circumstances, I certify that the presentation of these papers or contentions therein is made in good faith and is not frivolous.

Dated: June 11, 2013

Signature:



MICHAEL J. RAGO, ESQ.

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