

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Index No.  
Date Purchased:

=====X  
SHANNON DEAN,

Plaintiff

Plaintiff designates Westchester  
County as the place of trial. The  
basis is Plaintiff's residence

-against-

**SUMMONS WITH NOTICE**

DANIEL KUSHNER, M.D. D/B/A  
MID-WESTCHESTER OB/GYN and  
MID-WESTCHESTER OB/GYN,

Defendants.

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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 Plaintiffs' attorneys within twenty (20) days after the service of this 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 herein.

Dated: March 17, 2019

Law Offices of John A. Tangredi, Esq.  
Attorney for Plaintiff  
14 Mamaroneck Avenue, Suite 403.  
White Plains, NY 10601  
914-428-5981

The nature of this action is for personal injuries for Plaintiff SHANNON DEAN's personal injuries caused by the Defendants' negligence arising from an improper prescription of medicine arising on about September 22, 2016.

Upon your failure to appear, judgment will be taken against you by default in an amount to be determined by the Court together with the interest and costs and disbursements of this action from September 22, 2016.

To:  
Dr. Kushner / Mid-Westchester OB/GNY  
222 Manaroneck Ave  
White Plains, N Y 10605

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Index No.

=====X  
SHANNON DEAN,

**VERIFIED COMPLAINT**

Plaintiff,

- against-

DANIEL KUSHNER, M.D. D/B/A  
MID-WESTCHESTER OB/GYN and  
MID-WESTCHESTER OB/GYN

Defendants.

=====X

Plaintiff SHANNON DEAN, by her attorney John A. Tangredi, complaining of the Defendant, respectfully alleges the following upon information and belief as and for her Verified Complaint against said Defendants.

**AS AND FOR A CAUSE OF ACTION**

1. That all times herein mentioned, Plaintiff SHANNON DEAN was and still is a resident of Westchester County and State of New York.
2. That at all times herein mentioned, Defendant DANIEL KUSHNER M.D. (hereinafter referred to as "KUSHNER"), was and still is a physician duly licensed to practice medicine in the State of New York.
3. That at all times herein mentioned, Defendant KUSHNER did and still does maintain an office for the practice of medicine at 222 Mamaroneck Avenue, White Plains, New York.
4. That at all times herein mentioned including on or about September 22, 2016, as the Defendant KUSHNER was engaged for a valuable consideration, to provide competent, reasonable and adequate medical care to the Plaintiff.
5. That at all times herein mentioned Defendant KUSHNER engaged in the practice of medicine by doing business as MID-WESTCHESTER OB/GNY.

6. That at all times herein mentioned Defendant MID-WESTCHESTER OB/GNY (hereinafter referred to as "MID-WESTCHESTER") was and still is a domestic professional corporation duly organized and existing under and by virtue of the laws of the State of New York.
7. That at all times herein mentioned Defendant MID-WESTCHESTER OB/GNY (hereinafter referred to as "MID-WESTCHESTER") was and still is a partnership duly organized and existing under and by virtue of the laws of the State of New York
8. That at all times herein mentioned Defendant MID-WESTCHESTER had and still has an office for the practice of medicine at 222 Mamaroneck Avenue, White Plains, New York.
9. That all times herein mentioned the Defendant KUSHNER was and still is a member of member of Defendant MID-WESTCHESTER GROUP.
10. That all times herein mentioned the Defendant KUSHNER was and still is an employee of the Defendant MID-WESTCHESTER.
11. That all times herein mentioned the Defendant KUSHNER was and still is a partner of the Defendant MID-WESTCHESTER.
12. At all times hereinafter mentioned Defendant KUSHNER was acting within the scope of his membership with the Defendant MID-WESTCHESTER.
13. At all times herein mentioned Defendant KUSHNER was acting within the scope of his employment with the Defendant MID-WESTCHESTER.
14. At all times herein mentioned Defendant KUSHNER was acting within the scope of his partnership in the Defendant MID-WESTCHESTER
15. At all times herein mentioned Defendant KUSHNER, held himself out to the public, and more particularly to the Plaintiff herein, as a physician possessing

the proper degree of skill and learning necessary to render medical services in accordance with good and accepted medical practice and that he undertook to use reasonable care and diligence in the treatment of Plaintiff.

16. At all times herein mentioned Defendant MID-WESTCHESTER, through its member, partners, agents and/ or employees held itself out to the public and specifically to the Plaintiff as a medical group possessing the proper degree of skill and learning necessary to render medical services in accordance with good and accepted medical practice and that it undertook to use reasonable care and diligence in the medical treatment of the Plaintiff.
17. That prior to September 22, 2016 Plaintiff was a patient of the Defendant KUSHNER.
18. That prior to September 22, 2016 the Defendant KUSHNER knew from his treatment and care of the Plaintiff that the Plaintiff was allergic to a certain medication and that the Defendant KUSHNER recorded such allergy in the medical records he maintained for the treatment and care of the Plaintiff.
19. That on September 22, 2016, Plaintiff presented at the offices of Defendants KUSHNER with certain symptoms and complaints
20. That on September 22, 2016, the Defendant KUSHNER treated the Plaintiff for such certain symptoms and complaints
21. That on September 22, 2016, the Defendant KUSHNER in the course of his treatment and care of the Plaintiff the Defendant KUSHNER prescribed a certain medication for the Plaintiff.
22. That on September 22, 2016, the Defendant KUSHNER MID WESTCHESTER prescribed the certain medication to the Plaintiff, which was the same medication to which Plaintiff was allergic.

23. That prior to September 22, 2016 Plaintiff was a patient of the Defendant MID-WESTCHESTER.
24. That prior to September 22, 2016 the Defendant MID-WESTCHESTER knew from its treatment and care of the Plaintiff that the Plaintiff was allergic to a certain medication and that the Defendant MID-WESTCHESTER recorded such allergy in the medical records it maintained for the treatment and care of the Plaintiff.
25. That on September 22, 2016, Plaintiff presented at the offices of Defendants MID-WESTCHESTER with certain symptoms and complaints
26. That on September 22, 2016, the Defendant MID-WESTCHESTER treated the Plaintiff for such certain symptoms and complaints
27. That on September 22, 2016, the Defendant KUSHNER MID-WESTCHESTER in the course of its treatment and care of the Plaintiff the Defendant MID-WESTCHESTER prescribed a certain medication for the Plaintiff.
28. That on September 22, 2016, the Defendant KUSHNER MID WESTCHESTER prescribed the certain medication to the Plaintiff, which was the same medication to which Plaintiff was allergic.
29. That Plaintiff had the prescription for that certain medication prescribed by the Defendant KUSHNER filled at a pharmacy.
30. That the Plaintiff obtained the certain medication from the pharmacy.
31. That the Plaintiff ingested the certain medication as prescribed and directed by the Defendant KUSHNER.
32. That Plaintiff was allergic to the certain medication.
33. That as a result of ingesting the certain medication Plaintiff became ill and suffered injury and damage.
34. That as a result of ingesting the certain medication Plaintiff became ill and suffered

injury and damage and was caused to seek medical emergency medical treatment at a hospital.

35. The injuries/condition/problems suffered by Plaintiff were caused by Defendant KUSHNER's prescription of the certain medication.

36. The injuries/condition/problems suffered by Plaintiff were caused by Defendant MID-WESTCHESTER's prescription of the certain medication.

37. Defendants were careless and negligent in their care and treatment of Plaintiff, in that they caused or permitted incompetent, unskillful and improper treatment of Plaintiff; they failed and neglected to provide skillful, diligent and careful treatment for Plaintiff in accordance with accepted standards of medical and surgical practices, procedures and techniques prevailing at the aforesaid time and place; Defendants failed to exercise the knowledge, skill and diligence which they should have exercised on Plaintiffs behalf, thereby inflicting illness and injury to Plaintiff; in more specifically that the Defendants prescribed to the Plaintiff a certain medication, which prior thereto the Defendants knew that the Plaintiff was allergic to such medication and that Plaintiff obtained and ingested said medication causing, inter alia, Plaintiff to suffer various symptoms and ill effects including requiring her to seek emergency room treatment.

38. That the injuries and damages sustained by Plaintiff were caused solely and wholly by reason of the negligence and malpractice of Defendants, one, some or all of them, through their members, partners, agents, servants, representatives and employees with no negligence on the part of Plaintiff contributing thereto.

39. That the injuries and damages sustained by Plaintiff, were caused solely and wholly by reason of the negligence and malpractice of Defendants, one, some or all of them, through their members, partners, agents, servants, representatives and

employees with no negligence on the part of Plaintiff contributing

40. That as a result of the foregoing, the Plaintiff was rendered sick, sore, disabled and caused to suffer and still suffers great pain, physical incapacity, mental anguish and loss of enjoyment of life and other damages.
41. That as a result of the foregoing, the Plaintiff was compelled to seek medical attention and will, upon information and belief, continue to undergo medical care and attention in the future, all to her detriment and loss.
42. That solely as a result of the negligence of Defendant Plaintiff sustained personal injuries, including and was incapacitated from her normal pursuits, and has and will incur various expenses and costs for various and sundry damages and Plaintiff is informed and believes that the same will continue in the future, all to her detriment and loss in the sum of monetary damages which exceed the jurisdictional limits of all lower courts that otherwise would have jurisdiction of this action.
43. That although not required element of the pleading *Res ipsa loquitur* is applicable to this action and in its application is sufficient to present a *prima facie* case of medical malpractice against Defendants.
44. That the limitations of CPLR Section 1602 do not apply to this action.

WHEREFORE, the Plaintiff as to her Cause of Action demands judgment against Defendants for damages in a sum which exceeds the jurisdictional limits of all lower courts, together with the costs and disbursements of this action.

Dated: White Plains, New York  
March 17, 2019



JOHN A. TANGREDI, ESQ.  
Attorney for Plaintiff Shannon Dean  
Attorney Certification  
14 Mamaroneck Avenue, Suite 403  
White Plains, NY 10601  
Tel: 914-428-5981

Case: Dean v. Kushner et al. Supreme Court/ Westchester County Index #

PLAINTIFF'S VERIFICATION

STATE OF NEW YORK )
COUNTY OF WESTCHESTER )
ss:

, being duly sworn, deposes and says:

I, Shannon Dean, am the Plaintiff in the within action. I have read the foregoing 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.

Shannon Dean
Shannon Dean

Sworn to before me this

17th day of March . 2019

Notary Public

JOHN A. TANGREDI
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01TA4640697
QUALIFIED IN WESTCHESTER COUNTY
COMMISSION EXPIRES 11/30/23

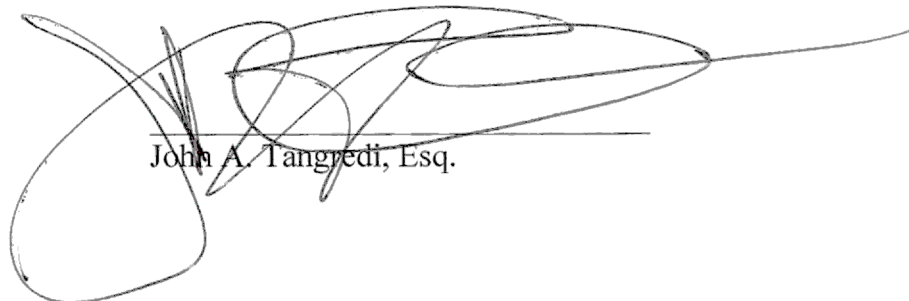


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Attorney Certification

Pursuant to 22NYCRR 130-1.1 a, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading. (i) the matter was not obtained through illegal conduct or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if that matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: White Plains, N Y  
March 17, 2019



John A. Tangredi, Esq.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Index No.

=====X  
SHANNON DEAN,

Plaintiff,

Notice of Compliance  
Regarding Certificate  
of Merit

- against-

DANIEL KUSHNER, M.D. D/B/A  
MID-WESTCHESTER OB/GYN and  
MID-WESTCHESTER OB/GYN

Defendants.

=====X

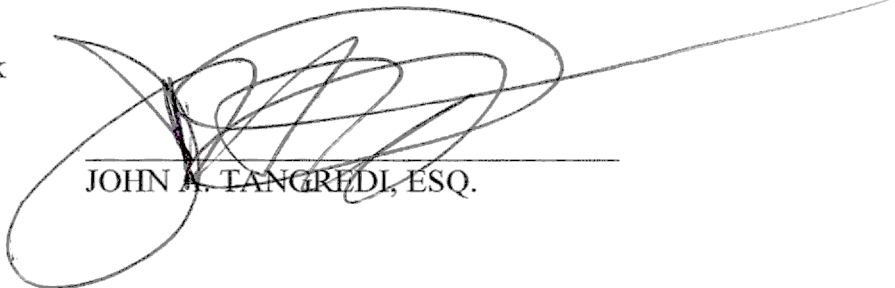
John Tangredi, an attorney duly admitted to practice law before the Courts of the State of New York, does hereby certify, pursuant to C.P.L.R. sec. 2105 and CPLR sec.3012-a.

I am the attorney for Plaintiff in the above-entitled action and hereby certify that I have reviewed the facts of this case and have not yet consulted with a physician licensed to practice in this State. As further stated herein below, I have concluded on the basis of such review of the limited records available and that there is a reasonable basis for commencement of this action based upon the allegations that the Plaintiff was a patient of the Defendants, the Defendants prior to September 22, 2016, were aware and recorded in their records Plaintiff's allergy to a certain medication, which thereafter the Defendants improperly prescribed to the Plaintiff on September 22, 2016, that

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Plaintiff obtained and ingested the medication which resulted in ill effects and injury upon her, which necessitated her to seek emergency medical treatment which constitutes the alleged negligence and malpractice of the Defendants. In addition Plaintiff pursuant CPLR sec. 3012-a has not yet submitted information concerning a consultation with a physician, more particularly has not contemporaneously furnished a certificate with the complaint regarding consultation with a physician and that Plaintiff has not done so pursuant to CPLR sec. 3012-a (3) (b) and (d) in that the statute of limitation shall soon expire and that a consultation for such certificate could not be reasonably obtained prior to that soon expected expiration due to the failure of the Defendants to provide certain medical records, in particular prescription records which were specifically requested several times by the undersigned and that the pharmacy where the improper prescription was filled was very recently received by the undersigned, despite diligent and numerous prior requests to said pharmacy, which finally provided the pharmacy's record of the prescription from the Defendant Kushner. In addition Plaintiff may rely upon the evidentiary rule *Res ipsa loquitur* as alleged in paragraph 43 of the complaint,

Dated: White Plains, New York  
March 18, 2019



JOHN A. TANGREDI, ESQ.

Index No

SUPREME COURT OF THE STATE OF NEW YORK  
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Plaintiff,

- against-

DANIEL KUSHNER, M.D. D/B/A  
MID-WESTCHESTER OB/GYN and  
MID-WESTCHESTER OB/GYN

Defendants.

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**SUMMONS WITH NOTICE AND VERIFIED COMPLAINT**

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JOHN A. TANGREDI, ESQ.  
Attorney for Plaintiff Shannon Dean  
14 Mamaroneck Avenue, Suite 403  
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Tel: 914-428-5981