

COMPLAINT

Comes now Plaintiff, and for her allegations against Defendants common to each Count, states as follows:

PARTIES

1. At all times mentioned herein, Defendant V. Leroy Young, M.D. (hereinafter “Dr. Young”) is and was a resident of St. Louis County, Missouri and a physician and surgeon engaged in the practice of his profession in St. Louis County, Missouri and was providing medical services to Plaintiff individually and by and through his agents, servants and employees acting within the course and scope of their employment and/or agency. Dr. Young is a citizen of the State of Missouri.

2. At all times mentioned herein, Defendant Robert Centeno, M.D. (hereinafter “Dr. Centeno”) is and was a resident of St. Louis County, Missouri and a physician and surgeon engaged in the practice of his profession in St. Louis County, Missouri and was providing medical services to Plaintiff individually and by and through his agents, servants and employees acting within the course and scope of their employment and/or agency. Dr. Centeno is a citizen of the State of Missouri.

3. At all times mentioned herein, Defendant C.B. Boswell, M.D. (hereinafter “Dr. Boswell”) is and was a resident of St. Louis County, Missouri and a physician and surgeon engaged in the practice of his profession in St. Louis County, Missouri and was providing medical services to Plaintiff individually and by and through his agents, servants and employees acting within the course and scope of their employment and/or agency. Dr. Boswell is a citizen of the State of Missouri.

4. At all times mentioned herein Defendant Aesthetic Surgery Associates, Inc., d/b/a Body Aesthetic Plastic Surgery & Skin Care Center, Inc. (hereinafter “Body Aesthetic”) is and was a Missouri corporation existing and operating through its agents, servants and employees acting within the course and scope of their employment and/or agency, which provides medical services to individuals in the St. Louis metropolitan area, including Plaintiff. Body Aesthetic maintains an office at 969 N. Mason Rd., Suite 170, St. Louis County, Missouri. Body Aesthetics is incorporated in and maintains its principal place of business in the State of Missouri.

5. At all times mentioned herein, Dr. Young, Dr. Centeno and Dr. Boswell were employees, officers and/or members of Body Aesthetic.

6. Plaintiff is a citizen of the State of Georgia.

JURISDICTION AND VENUE

7. Jurisdiction is proper pursuant to 28 U.S.C. §1332 as Plaintiff is a citizen of the State of Georgia, all Defendants are citizens of the State of Missouri, and the amount in controversy exceeds \$75,000.

8. Venue is proper pursuant to 28 U.S.C. §1391 as all Defendants reside or are located in the Eastern District of Missouri, and that the conduct complained of occurred in the Eastern District of Missouri.

ALLEGATIONS COMMON TO ALL COUNTS

9. In October 2004, Plaintiff underwent surgery to remove excessive skin which developed as a result of her substantial weight loss. This surgery was performed by Defendants Dr. Young, Dr. Centeno, Dr. Boswell and Body Aesthetics.

10. Prior to her surgery in October 2004, Defendants Dr. Young and Body Aesthetic took “before” pictures of Plaintiff. Following her surgery, “after” pictures were taken of Plaintiff. Many of the photographs depict Plaintiff in full frontal and posterior naked poses (hereinafter “Photos”).

11. At all times the Photos of Plaintiff were part of the medical records of Plaintiff and were obtained by Defendants for the limited and sole purpose of rendering medical treatments and administrations to Plaintiff.

12. At all times herein pertinent the medical records of Plaintiff, including the Photos, were subject to confidentiality requirements imposed by law, including, but not limited to the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

13. Plaintiff specifically advised Defendants that she did not want her medical records and Photos disseminated in any form or medium, for any reason, other than for reasons related to her medical treatment.

14. At all times herein pertinent the Riverfront Times was a weekly newspaper published and distributed throughout the Greater St. Louis Metropolitan area.

15. On various occasions, the dates of which are unknown to Plaintiff, Defendants disseminated and distributed the medical records and information concerning Plaintiff, including the Photos, to persons whose identities are unknown to Plaintiff, including but not limited to a reporter for the Riverfront Times in conjunction with an article the reporter and the newspaper planned to run about Defendants Dr. Young, Dr. Centeno, Dr. Boswell and Body Aesthetic. Plaintiff did not consent to the release of the Photos to the reporter or persons preparing the article.

16. The dissemination and discussions of Plaintiff's medical records and Photos was without the permission or consent of Plaintiff and was in complete disregard of the instructions Plaintiff had given to Defendants.

17. On or about April 20, 2006, an article ran in the Riverfront Times (the "Article"). The article promoted Defendants and their practice, and chronicled the types of plastic surgery Defendants performed, including penile implants, vaginal rejuvenation and sex change operations. Each individual Defendant participated in the Article and was interviewed, quoted and pictured in the Article.

18. Plaintiff's Photos were included in the Article which depicted frontal nudity of Plaintiff. Plaintiff did not consent to the use of her Photos in the Article.

19. Contemporaneously with the publication and distribution of the Article in the Riverfront Times, the Article was displayed on the internet including the Photos depicting frontal nudity of Plaintiff. Plaintiff did not consent to the dissemination of her Photos on the Internet.

20. In the course of sworn testimony, Defendant Dr. Young admitted that Defendants did not have the authorization or right to disseminate Plaintiff's Photos or to use the Photos in conjunction with the Article, and that Plaintiff had specifically instructed Defendants that no such use was to be made.

21. Defendant Dr. Young admitted that he and the other Defendants did not advise Plaintiff, either before or after the Photos were disseminated or published, that the Photos had been used in the Article.

22. Defendant Dr. Young admitted that sometime before the Article was published, Plaintiff refused to authorize Defendants to use her Photos in medical literature.

23. Defendants Dr. Young, Dr. Centeno and Dr. Boswell, and Defendant Body Aesthetic acting by and through its servants and employees, knew, or should have known, that Plaintiff's Photos had been improperly disseminated and used, and knew or should have known that they did not have the authorization to disseminate and use Plaintiff's Photos.

24. Defendants Dr. Young, Dr. Centeno and Dr. Boswell, and Defendant Body Aesthetic acting by and through its servants and employees, knew or should have known, that Plaintiff's Photos had been obtained by virtue of a relationship of trust and confidence and their representations to Plaintiff that the information and Photos were necessary for, and to be used solely as part of Plaintiff's medical treatments.

24. Defendants Dr. Young, Dr. Centeno, Dr. Boswell and Body Aesthetics' actions were without justification or excuse.

COUNT I- Invasion of Privacy and Intrusion upon Seclusion

Comes now Plaintiff and for her first cause against Defendants, states as follows:

25. Plaintiff realleges and restates herein her allegations contained in paragraphs 1 through 25 inclusive.

26. At all times here pertinent Plaintiff was entitled to her seclusion and solitude, and to protection in her private affairs.

27. The actions of Defendants, all as aforesaid, constituted an unlawful, non permitted and unauthorized intrusion into the seclusion, solitude and private affairs of Plaintiff.

28. As a direct and proximate result of the actions of Defendants, all as aforesaid, Plaintiff suffered shame, humiliation, embarrassment, anxiety, nervousness, loss of sleep and interference with her enjoyment of life, all of which will continue into the future.

29. As a direct and proximate cause of the actions of Defendants, Plaintiff has suffered actual damages, and in the future will suffer additional actual damages, in an amount in excess of \$75,000.00 exclusive of costs.

30. All of the actions of Defendants, acting individually and jointly with each other, were careless and reckless and performed in complete disregard of law and the rights of Plaintiff, for which conduct and actions punitive damages are properly imposed in such amounts as will punish Defendants for their wrongful conduct and deter them and others from like conduct in the future.

WHEREFORE, Plaintiff prays for Judgment against Defendants, individually and jointly, in an amount that is fair and reasonable, in excess of \$75,000; for an award of punitive damages against each Defendant that will punish the Defendant and deter the Defendant and others from like conduct; for an award of her reasonable attorney's fees expended; for costs and expenses incurred herein; and for such other and further relief as this Court deems just and proper.

COUNT II- Invasion of Privacy and Unreasonable Publicity

Comes now Plaintiff and for her further cause against Defendants, states as follows:

31. Plaintiff realleges and restates herein her allegations contained in paragraphs 1 through 25 inclusive.

32. At all times here pertinent the medical records and Photos of Plaintiff depicting her conditions for which she sought medical treatments from Defendants were private matters in which the public has no legitimate concern.

33. The publication and display of full frontal nude photographs of a patient and public discussion of the patient's medical conditions and records are actions which would cause shame or humiliation to a person of ordinary sensibilities.

34. The actions of Defendants, all as aforesaid, constituted an unlawful, non permitted and unauthorized publication and display of Plaintiff's medical conditions and records and caused unreasonable publicity to the private life and affairs of Plaintiff.

35. As a direct and proximate result of the actions of Defendants, all as aforesaid, Plaintiff suffered shame, humiliation, embarrassment, anxiety, nervousness, loss of sleep and interference with her enjoyment of life, all of which will continue into the future.

36. As a direct and proximate cause of the actions of Defendants, Plaintiff has suffered actual damages, and in the future will suffer additional actual damages, in an amount in excess of \$75,000.00 exclusive of costs.

37. All of the actions of Defendants, acting individually and jointly with each other, were careless and reckless and performed in complete disregard of law and the

rights of Plaintiff, for which conduct and actions punitive damages are properly imposed in such amounts as will punish Defendants for their wrongful conduct and deter them and others from like conduct in the future.

WHEREFORE, Plaintiff prays for Judgment against Defendants, individually and jointly, in an amount that is fair and reasonable, in excess of \$75,000; for an award of punitive damages against each Defendant that will punish the Defendant and deter the Defendant and others from like conduct; for an award of her reasonable attorney's fees expended; for costs and expenses incurred herein; and for such other and further relief as this Court deems just and proper.

COUNT III- Breach of Fiduciary Duty

Comes now Plaintiff and for her further cause against Defendants, states as follows:

38. Plaintiff realleges and restates herein her allegations contained in paragraphs 1 through 25 inclusive.

39. At all times here pertinent the relationship between Plaintiff and Defendants was that of physician and patient in which Defendants caused and encouraged Plaintiff to place in them her trust and confidence.

40. At all times here pertinent Defendants caused and encouraged Plaintiff to believe that Plaintiff's confidential medical information and Photos provided to them was necessary for the proper treatment of Plaintiff and would only be used for Plaintiff's benefit.

41. At all times here pertinent, the relationship between and among Plaintiff and Defendants was a fiduciary relationship in which Defendants had a duty to act in the best interests of Plaintiff.

42. The actions of Defendants, all as aforesaid, constituted an unlawful, non permitted and unauthorized publication and display of Plaintiff's medical conditions and records and photographs which breached the fiduciary duties of Defendants to Plaintiff.

43. As a direct and proximate result of the actions of Defendants, all as aforesaid, Plaintiff suffered shame, humiliation, embarrassment, anxiety, nervousness, loss of sleep and interference with her enjoyment of life, all of which will continue into the future.

44. As a direct and proximate cause of the actions of Defendants, Plaintiff has suffered actual damages, and in the future will suffer additional actual damages, in an amount in excess of \$75,000.00 exclusive of costs.

45. All of the actions of Defendants, acting individually and jointly with each other, were careless and reckless and performed in complete disregard of law and the rights of Plaintiff, for which conduct and actions punitive damages are properly imposed in such amounts as will punish Defendants for their wrongful conduct and deter them and others from like conduct in the future.

WHEREFORE, Plaintiff prays for Judgment against Defendants, individually and jointly, for an amount that is fair and reasonable, in excess of \$75,000; for an award of punitive damages against each Defendant that will punish the Defendant and deter the Defendant and others from like conduct; for an award of her reasonable attorney's fees

expended; for costs and expenses incurred herein; and for such other and further relief as this Court deems just and proper.

**COUNT IV- Wrongful Commercial Appropriation and
Exploitation of Plaintiff's Image and Medical Information**

Comes now Plaintiff and for her further cause against Defendants, states as follows:

46. Plaintiff realleges and restates herein her allegations contained in paragraphs 1 through 25 inclusive.

47. In the course of providing medical treatments to Plaintiff, Defendants represented to Plaintiff that disclosures by Plaintiff to Defendants of confidential information and the taking of Photos of Plaintiff were necessary for Plaintiff's treatments and that such information and Photos would remain confidential and only be utilized by Defendants in providing treatment and care to Plaintiff.

48. In reliance upon Defendants' representations to her that her medical records, medical information and photographs would be kept confidential and used only for her medical treatments, Plaintiff provided information to Defendants and allowed Defendants to photograph her.

49. As part and parcel of Defendants' attempts to publicize and financially benefit from a variety of surgical procedures offered by them, Defendants met with, consulted with, and supplied information to persons, including persons preparing a newspaper feature article concerning surgical procedures offered by them.

50. As part and parcel of Defendants' attempts to publicize and financially benefit from performing the advertised surgeries, Defendants provided to persons, including the newspaper personnel, frontal nude photographs of Plaintiff, which

photographs were discussed by Defendants with persons other than as part of Plaintiff's medical treatments, and Plaintiff's Photos were subsequently published in the newspaper, displayed on the internet, and otherwise displayed.

51. As a direct and proximate result of the actions of Defendants, all as aforesaid, Plaintiff suffered shame, humiliation, embarrassment, anxiety, nervousness, loss of sleep and interference with her enjoyment of life, all of which will continue into the future.

52. As a direct and proximate cause of the actions of Defendants, Plaintiff has suffered actual damages, and in the future will suffer additional actual damages, in an amount in excess of \$75,000.00 exclusive of costs.

53. All of the actions of Defendants, acting individually and jointly with each other, were careless and reckless and performed in complete disregard of law and the rights of Plaintiff, for which conduct and actions punitive damages are properly imposed in such amounts as will punish Defendants for their wrongful conduct and deter them and others from like conduct in the future.

WHEREFORE, Plaintiff prays for Judgment against Defendants, individually and jointly, for an amount that is fair and reasonable, in excess of \$75,000; for an award of punitive damages against each Defendant that will punish the Defendant and deter the Defendant and others from like conduct; for an award of her reasonable attorney's fees expended; for costs and expenses incurred herein; and for such other and further relief as this Court deems just and proper.

COUNT V- Negligent, Careless and Reckless Conduct

Comes now Plaintiff and for her further cause against Defendants, states as follows:

54. Plaintiff realleges and restates herein her allegations contained in paragraphs 1 through 25.

55. The conduct of Defendants in releasing, discussing and distributing Plaintiff's medical records, medical information and Photos failed to meet the standard of care required of medical practitioners under the same or similar circumstances and was negligent, careless and reckless.

56. As a direct and proximate result of the actions of Defendants, all as aforesaid, Plaintiff suffered shame, humiliation, embarrassment, anxiety, nervousness, loss of sleep and interference with her enjoyment of life, all of which will continue into the future.

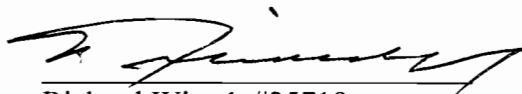
57. As a direct and proximate cause of the actions of Defendants, Plaintiff has suffered actual damages, and in the future will suffer additional actual damages, in an amount in excess of \$75,000.00 exclusive of costs.

58. All of the actions of Defendants, acting individually and jointly with each other, were careless and reckless and performed in complete disregard of law and the rights of Plaintiff, for which conduct and actions punitive damages are properly imposed in such amounts as will punish Defendants for their wrongful conduct and deter them and others from like conduct in the future.

WHEREFORE, Plaintiff prays for Judgment against Defendants, individually and jointly, for an amount that is fair and reasonable, in excess of \$75,000; for an award

of punitive damages against each Defendant that will punish the Defendant and deter the Defendant and others from like conduct; for an award of her reasonable attorney's fees expended; for costs and expenses incurred herein; and for such other and further relief as this Court deems just and proper.

WITZEL & KANZLER, LLC

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