

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SHERRY DEW and
STEPHEN DEW,

Plaintiffs,

v.

CIVIL ACTION NO. 07-C-240

R. DAVID ALLARA, M.D.,

Defendant.

SECOND AMENDED COMPLAINT

Plaintiffs, as and for their Second Amended Complaint, by their attorneys, Law Office of Todd J. Krouner and Preston & Salango, P.L.L.C., respectfully allege as follows:

COUNT I: MEDICAL PROFESSIONAL LIABILITY

1. At all times hereinafter mentioned, defendant R. David Allara, M.D., (hereinafter "Dr. Allara") was a physician, duly licensed to practice medicine in the State of West Virginia, and represented himself to the public as a skilled and trained physician duly qualified to render medical services.
2. At all times hereinafter mentioned, Dr. Allara was or represented himself to be a physician specializing in the field of ophthalmology, and cataract and refractive surgery in particular.
3. At all times hereinafter mentioned, Dr. Allara held himself out to the public, and more particularly to the plaintiff herein, as possessing the proper degree of learning and skill, and he undertook to use reasonable care and diligence in the treatment of the plaintiff.
4. At all times hereinafter mentioned, Dr. Allara maintained an office for the

practice of medicine in Kanawha County, with offices at 310 35th Street, SE, Suite 11, Charleston, West Virginia 25304.

5. At all times hereinafter mentioned, plaintiff Sherry Dew was a patient of, and under the care and treatment of, defendant Dr. Allara on a continuous basis commencing in or around December 2003 through and including May 2006.

6. At all times hereinafter mentioned, plaintiff Sherry Dew was a patient of, and under the care and treatment of, defendant Dr. Allara in or about December, 2003, for the purpose of undergoing refractive surgery on her eyes known as LASIK surgery.

7. In or about September 2004, defendant Dr. Allara recommended and performed a second corrective LASIK surgery, called an "enhancement" on the plaintiff Sherry Dew's eyes.

8. At all times hereinafter mentioned, defendant, his agents, servants and/or employees, in rendering medical care and treatment to plaintiff, owed her the duty to use a reasonable degree of learning and skill, the duty to use reasonable care and diligence in the exercising of that learning and skill, the duty to employ approved methods of treatment in the care of the plaintiff.

9. The defendant, his agents, servants and/or employees, were negligent in the services rendered for and on behalf of plaintiff: in failing to use reasonable care; in failing to heed plaintiff's condition; in departing from accepted standards in the procedures and treatment performed; in failing to follow appropriate practice; in failing to properly examine plaintiff; in failing to properly treat plaintiff's eyes; in failing to determine that plaintiff was not a suitable

candidate for LASIK eye surgery; in performing LASIK eye surgery on plaintiff when said procedure was contraindicated; and were otherwise negligent in his treatment of plaintiff.

10. The said occurrence resulted in injuries and disabilities to the plaintiff and were caused wholly and solely by reason of the carelessness, negligence and malpractice of the defendant, his agents, servants and/or employees as set forth above with no fault or lack of care on the part of the plaintiff herein contributing thereto.

11. That, upon information and belief, Dr. Allara examined and/or treated Sherry Dew while he was impaired and under the influence of cocaine and/or other illicit drugs.

12. By reason of the foregoing, plaintiff sustained serious and permanent personal injuries.

13. Plaintiff neither knew nor with the exercise of reasonable diligence should have known that her injuries were caused by defendant's negligent and reckless conduct until March 2005.

COUNT II: LACK OF INFORMED CONSENT

14. Plaintiffs Sherry Dew and Stephen Dew re-allege and incorporate paragraphs 1 – 13 above.

15. The defendant, his agents, servants and/or employees failed to disclose all of the information that reasonably prudent medical practitioners, under similar circumstances, would explain or disclose to a patient including a failure to disclose the risks and benefits of the procedures performed, the alternatives thereto and the risks and benefits relating to the alternatives and he otherwise failed to properly, adequately, thoroughly and fully inform the

plaintiff herein.

16. A reasonably prudent person in the plaintiff's position would not have undergone the procedures performed if she had been fully informed and that the lack of informed consent is a proximate cause of the injuries suffered herein for which recovery is sought.

17. The treatment rendered by the defendant herein was not emergent treatment, an emergency procedure or emergency surgery.

18. By reason of the foregoing breach of duty of informed consent, plaintiff sustained damages.

COUNT III: LOSS OF CONSORTIUM AND SERVICES

19. Plaintiffs Sherry Dew and Stephen Dew re-allege and incorporate paragraphs 1 – 18 above.

20. At all times herein mentioned, plaintiff Stephen Dew was, and still is, the husband of plaintiff Sherry Dew, and as such, they duly reside and live together as husband and wife.

21. As a result of the foregoing occurrence and resulting injuries to his wife as afore stated, plaintiff Stephen Dew has been deprived of the services, society, support, companionship and consortium of his wife Sherry Dew, and such loss in continuing into the future, all to his damage.

COUNT IV: DAMAGES

22. Plaintiffs Sherry Dew and Stephen Dew re-allege and incorporate paragraphs 1 – 21 above.

23. All of these damages are compensable and permitted by virtue of The West Virginia Medical Professional Liability Act, W. Va. Code § 55-7B-1, et seq., and/or common law.

24. As a direct and proximate consequence of the tortious conduct of Dr. Allara, plaintiffs are entitled to damages for the following:

- a. physical pain and suffering, past and future;
- b. mental anguish and suffering, past and future;
- c. permanent physical impairment;
- d. lost wages and benefits;
- e. loss of earning capacity and benefits;
- f. loss of capacity to enjoy life, past and future;
- g. medical expenses, past and future;
- h. annoyance and inconvenience, past and future; and,
- i. loss of services and consortium, past and future.

COUNT V: PUNITIVE DAMAGES

25. Plaintiffs Sherry Dew and Stephen Dew re-allege and incorporate paragraphs 1 - 24 above.

26. Upon information and belief, Dr. Allara examined and/or treated Sherry Dew and other patients while he was impaired and under the influence of cocaine and/or other illicit drugs.

27. Dr. Allara's actions and inactions were willful, wanton, reckless, and intentional and demonstrate gross indifference to the safety and welfare of Sherry Dew and his patients.

28. Dr. Allara's conduct is so reprehensible that punitive damages should be assessed by a jury to punish Dr. Allara and to deter and prevent similar atrocious conduct in the future.

WHEREFORE, plaintiffs respectfully demand judgment for compensatory and punitive damages against Dr. Allara, in an amount to be determined by a jury according to the laws of the State of West Virginia, with additional amounts for costs associated with the prosecution of this cause, pre-judgment and post-judgment interest to the full extent permitted under law, and for any other relief the Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY.

**SHERRY DEW and
STEPHEN DEW**
By counsel



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CERTIFICATE OF SERVICE

I, C. Benjamin Salango, counsel for plaintiffs, do hereby certify that the foregoing **Second Amended Complaint** was served upon the following on Wednesday, November 14, 2007, by first class mail as follows:

Karen Tracy McElhinny, Esq.
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