

19-A-4181

DEC 04, 2019 01:01 PM

Angie T. Davis
Angie T. Davis, Clerk of State Court
Cobb County, Georgia

IN THE STATE COURT OF COBB COUNTY

STATE OF GEORGIA

JEFFREY A. WHITE,

Plaintiff,

v.

ALEXANDRA L. BERKESCH, D.C. and
VININGS CHIRO, INC. d/b/a THE JOINT
CHIROPRACTIC,

Defendants.

JURY TRIAL DEMANDED

CIVIL ACTION FILE

NO. _____

COMPLAINT FOR DAMAGES

COMES NOW JEFFREY A. WHITE, Plaintiff herein, and files this Complaint for Damages, respectfully showing as follows:

PARTIES, JURISDICTION AND VENUE

1.

Plaintiff Jeffrey A. White is a citizen of the State of Georgia and resides at 3704 Broughton Circle, SE, Atlanta, Georgia 30339.

2.

Defendant Alexandra L. Berkesch D.C. is subject to the jurisdiction of this Court and may be served by delivering to her a summons and a copy of this Complaint at 1814 Ashborough Cir. SE, Apt. E, Marietta, Georgia 30067. At all times relevant to this action, Dr. Berkesch acted as the agent of Defendant Vinings Chiro, Inc. d/b/a The Joint Chiropractic.

3.

Defendant Vinings Chiro, Inc. d/b/a The Joint Chiropractic ("The Joint") is a Georgia corporation with its principal office at 4500 West Village Place, Suite 1011, Smyrna, Georgia

30080. The Joint can be served a summons and copy of this Complaint through its registered agent, Kenneth Thomas Michaud, Jr., at 4500 West Village Place, Suite 1011, Smyrna, Georgia 30080. The Joint is subject to the jurisdiction of this Court.

4.

Venue in the above-styled civil action is proper in this County and Court.

STATEMENT OF FACTS

5.

Plaintiff realleges and incorporates herein by reference the allegations contained in Paragraphs 1-4 above as if each were fully set forth herein.

6.

On August 7, 2018, Plaintiff sought chiropractic treatment from Defendant Berkesch.

7.

According to Defendant Berkesch's records, at the August 7, 2018 appointment, Plaintiff had complaints of left side neck discomfort from "sleeping in hotels."

8.

Defendant Berkesch did not obtain a patient history from Plaintiff.

9.

Defendant Berkesch did not perform any clinical examination of Plaintiff.

10.

Defendant Berkesch did not conduct any neurological testing on Plaintiff.

11.

Defendant Berkesch did not perform any orthopedic tests on Plaintiff.

12.

Defendant Berkesch did not perform any vascular screening on Plaintiff.

13.

Defendant Berkesch did not obtain Plaintiff's informed consent prior to rendering treatment.

14.

Defendant Berkesch never informed Plaintiff of the risks associated with cervical manipulation.

15.

Vascular injury and stroke are recognized risks of cervical manipulation.

16.

Defendant Berkesch never informed Plaintiff of the availability of alternative treatments for his complaints.

17.

On August 7, 2018, Defendant Berkesch performed a cervical manipulation on Plaintiff in which she used excessive force.

18.

During the cervical manipulation on Plaintiff on August 7, 2018, Defendant Berkesch also improperly extended, laterally flexed and rotated Plaintiff's neck. Plaintiff heard a clicking noise and immediately felt a jolting pain.

19.

Immediately following the cervical manipulation by Defendant Berkesch, and over the next two to three days, Plaintiff reported severe headaches, abnormal balance and numbness and tingling in his right arm. He also experienced a feeling of swelling in his left eye and dysphonia.

20.

Defendant Berkesch did not advise Plaintiff to immediately seek medical attention.

21.

On August 9, 2018, Plaintiff presented to the emergency department at Emory St. Joseph's Hospital. Stroke alert was notified and a CTA ordered of his neck and brain along with an MRI of his brain.

22.

Plaintiff was admitted for further evaluation and treatment. The CTA of Plaintiff's neck revealed an irregularity at the proximal left PICA branch, representative of an arterial stretch injury, which is consistent with the chiropractic manipulation by Defendant Berkesch.

23.

The MRI of Plaintiff's brain revealed an acute infarct of the left medulla. Plaintiff was seen by Dr. James Kiely in Neurology. Dr. Kiely assessed Plaintiff with a Wallenberg stroke, consistent with a traumatic injury to the left posterior inferior cerebral artery, incurred as a result of the cervical manipulation by Defendant Berkesch.

24.

As a result of his injuries, Plaintiff required extensive rehabilitation and medical treatment.

COUNT ONE
(PROFESSIONAL NEGLIGENCE)

25.

Plaintiff realleges and incorporates herein by reference the allegations contained in Paragraphs 1-24 above as if each were fully set forth herein.

26.

On August 7, 2018, and at all times relevant hereto, Defendant Berkesch held herself out as a chiropractor competent and qualified to render professional care and treatment to Plaintiff.

27.

At all times material and pertinent to this action, Defendant Berkesch owed Plaintiff a duty to exercise that degree of skill and care employed by such persons generally in the same or similar conditions and like surrounding circumstances.

28.

Defendant Berkesch breached her duty to Plaintiff in one or more ways, including but not limited to: 1) improperly extending, laterally flexing and rotating Plaintiff's neck while performing the cervical manipulation on Plaintiff; 2) using excessive force while performing the cervical manipulation on Plaintiff; and 3) failing to inform Plaintiff of the risks associated with, and the alternatives to, cervical manipulation.

29.

More specifically, the care given to Plaintiff fell below the standard of minimum care and treatment required of chiropractors generally under like circumstances as reflected in the Affidavit of Christopher J. Connelly, D.C., attached hereto as Exhibit "A" and incorporated herein by reference.

30.

As a direct and proximate result of the professional negligence of Defendant Berkesch, Plaintiff suffered serious injuries and damages, including physical injuries, medical expenses, lost wages and capacity to work, and mental and physical pain and suffering. These injuries are permanent, and, in the future, Plaintiff will suffer physical injuries, medical and other necessary expenses, lost wages and capacity to work, and mental and physical pain and suffering.

31.

As a direct and proximate result of Defendant Berkesch's professional negligence, Plaintiff is entitled to an award of special damages, including medical expenses, in an amount

to be shown at trial, and general damages, all in an amount in excess of Ten Thousand Dollars (\$10,000.00).

32.

This claim is for professional malpractice under O.C.G.A. §§ 51-1-27 and 9-11-9.1. Pursuant to Section 9-11-9.1, Plaintiff attaches hereto the Affidavit of Christopher J. Connelly, D.C., an expert chiropractic witness competent to testify in this matter, which sets forth specifically at least one of the negligent acts and omissions by Defendant Berkesch which forms the basis of this Complaint against Defendant and sets forth the factual basis for such claims as set forth in this Complaint.

COUNT TWO
(VICARIOUS LIABILITY)

33.

Plaintiff realleges and incorporates herein by reference the allegations contained in Paragraphs 1-32 above as if each were fully set forth herein.

34.

At all times relevant and material hereto, Defendant Berkesch was an agent and/or employee of Defendant The Joint Chiropractic.

35.

At all times relevant and material hereto, Defendant Berkesch was acting within the scope and course of her employment and/or agency with Defendant The Joint Chiropractic such that the negligence of Defendant Berkesch may be imputed to Defendant The Joint Chiropractic pursuant to the doctrine of *respondeat superior*.

WHEREFORE, Plaintiff prays that he has a jury trial on all issues and judgment against Defendants as follows:

- (a) That Plaintiff be awarded judgment against Defendants in an amount in excess of \$10,000.00 as determined by the enlightened conscience of a fair and impartial jury;
- (b) That Plaintiff be awarded general and compensatory damages for his past, present and future pain and suffering and mental anguish and for his past, present and future lost wages;
- (c) For all such other economic and non-economic losses as may be shown at the hearing of this matter to the full extent allowed under law;
- (d) That Plaintiff recovers reasonable attorney's fees and costs of litigation;
- (e) That Plaintiff recovers such other and further relief as is just and proper; and
- (f) That all issues be tried before a jury.

Respectfully submitted, this 4th day of December, 2019.

SCHWEBER GREEN LAW GROUP

By: /s/ Shuli Green
Shuli L. Green
Georgia Bar No. 297460

2002 Summit Blvd., Suite 300
Atlanta, Georgia 30319
Telephone: (404) 460-5120
Facsimile: (404) 745-0740
Email: sgreen@atl-lawyers.com

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AFFIDAVIT OF CHRISTOPHER J. CONNELLY, D.C.

Christopher J. Connelly, after being duly sworn by the undersigned officer, duly authorized by law to administer oaths, deposes and states as follows:

1.

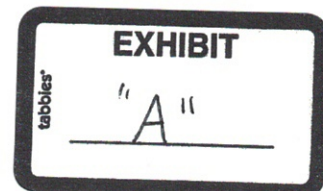
My name is Christopher J. Connelly, D.C. I am over 18 years of age and suffer from no legal disabilities. I am a licensed Doctor of Chiropractic, and have been licensed to practice chiropractic in the state of Georgia since 1998.

2.

I am currently owner of Village Chiropractic Center, located at 2045 Rockbridge Road, Suite 101, Stone Mountain, Georgia 30087, where I have been actively engaged in the practice of chiropractic for at least three (3) of the past five (5) years. A copy of my CV is attached hereto.

3.

This affidavit is based upon my personal knowledge obtained through my education, training and experience in the field of chiropractic as well as upon my review of the copies of



the following chiropractic and medical records in connection with the care and treatment of Jeffrey A. White:

- (A) The Joint Chiropractic and Alexandra Berkesch, D.C.;
- (B) Emory St. Joseph's Hospital;
- (C) Emory Rehabilitation Hospital;
- (D) Emory Neurology Rehab Clinic; and
- (E) ENT of Georgia South.

4.

My review of the complaint in this matter and the chiropractic and medical records concerning Jeffrey A. White reveal the following:

- (A) Jeffrey White presented to The Joint Chiropractic and Alexandra Berkesch, D.C. in Vinings, Georgia on August 7, 2018, with complaints of left side neck discomfort from "sleeping in hotels."
- (B) There is nothing in Jeffrey White's chart from The Joint Chiropractic to indicate that Dr. Berkesch obtained any patient history from Mr. White.
- (C) There is nothing in Jeffrey White's chart from The Joint Chiropractic to indicate that Dr. Berkesch ever performed any clinical examination of Mr. White.
- (D) There is nothing in Jeffrey White's chart from The Joint Chiropractic to indicate that Dr. Berkesch conducted any orthopedic or neurological tests on Mr. White.
- (E) There is nothing in Jeffrey White's chart from The Joint Chiropractic to indicate that Dr. Berkesch performed any vascular screening on Mr. White.
- (F) There is nothing in Jeffrey White's chart from The Joint Chiropractic to indicate that Dr. Berkesch ever obtained Mr. White's informed consent prior to

rendering treatment. Specifically, there is no indication in the chart that Dr. Berkesch, or anyone else associated with The Joint Chiropractic, ever informed Mr. White of the material risks of cervical manipulation adjustment, which include the danger of vascular injury and stroke, or the availability of alternative treatments.

- (G) On August 7, 2018, Dr. Berkesch performed a cervical manipulation on Mr. White. It is my understanding that, during the procedure, Dr. Berkesch used excessive force and improperly extended, laterally flexed and rotated Mr. White's neck. Mr. White heard a clicking noise and immediately felt a jolting pain.
- (H) Immediately following the procedure, and over the next two to three days, Mr. White reported severe headaches, abnormal balance and numbness and tingling in his right arm. He also experienced a feeling of swelling in his left eye and dysphonia.
- (I) There is no indication in the chart that Dr. Berkesch advised Mr. White to immediately seek medical attention.
- (J) According to the medical records, on August 9, 2018, Mr. White presented to the emergency department at Emory St. Joseph's Hospital. Stroke alert was notified and a CTA ordered of his neck and brain along with an MRI of his brain.
- (K) Plaintiff was admitted to the hospital at Emory for further evaluation and treatment. The CTA of Plaintiff's neck revealed an irregularity at the proximal left PICA branch, representative of an arterial stretch injury, which is consistent with the chiropractic manipulation by Dr. Berkesch.
- (L) An MRI of Mr. White's brain revealed an acute infarct of the left medulla.

Mr. White was seen by Dr. James Kiely in Neurology at Emory. Dr. Kiely assessed Mr. White with a Wallenberg stroke, consistent with a traumatic injury to the left posterior inferior cerebral artery, incurred as a result of the cervical manipulation by Dr. Berkesch.

- (M) Mr. White required extensive rehabilitation and medical treatment as a result of his injuries.

5.

Based upon my training and experience, I have knowledge of, and am familiar with, the standard of care exercised by the chiropractic profession *generally* under the same or similar circumstances with respect to the management and treatment of chiropractic patients.

6.


Based upon my review of the medical records identified above, it is my opinion that Alexandra Berkesch, D.C. deviated from the appropriate standard of care exercised by the chiropractic profession generally under the same or similar circumstances with respect to her care and treatment of Jeffrey White in the following respects:

- (A) Failing to conduct a thorough clinical examination of Mr. White excluding neurological and vascular screening altogether;
- (B) Improperly extending, laterally flexing and rotating Mr. White's neck while performing the forceful cervical manipulation;
- (C) Using excessive force while performing the cervical manipulation; and
- (D) Failing to inform Mr. White of the risks associated with cervical manipulation and alternatives to cervical manipulation.

7.


My opinions are based on the facts about which I am competent to testify and it is my understanding that this affidavit will be used in connection with a Complaint to be filed against Alexandra Berkesch, D.C. and Vinings Chiro, Inc. d/b/a The Joint Chiropractic.

FURTHER AFFIANT SAYETH NOT.



Dr. Christopher J. Connelly, D.C.

Sworn to and subscribed before me
this 27 day of November, 2019.



Notary Public

My commission expires:

