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IN THE CIRCUIT COURT FOR THE COUNTY OF LOUIS COUNTY  
STATE OF MISSOURI

2005 JUN 16 10 2: 33

DELORES DRURY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PATRICK KENNEDY, D.C., )  
 )  
 Serve: Dr. Patrick Bryan Kennedy )  
 1019 Crouch Avenue )  
 Kirkwood, Missouri 63122 )  
 )  
 and )  
 )  
 FORSYTH CHIROPRACTIC CENTRE, P.C. )  
 )  
 Serve: Dr. Patrick Bryan Kennedy )  
 1019 Crouch Avenue )  
 Kirkwood, Missouri 63122 )  
 )  
 Defendants. )

JUDGE OF THE CIRCUIT COURT

Cause No. 0781-000221

Division No. 8

**PETITION**

NOW COMES the Plaintiff, Delores Drury, by and through her attorneys, Onder, Shelton, O'Leary & Peterson, LLC, and for her Petition against the Defendants Patrick Kennedy, D.C. and Forsyth Chiropractic Centre, P.C., states as follows:

**THE PARTIES**

1. From 2003 to the present, Plaintiff Delores Drury has been a resident of St. Louis County, Missouri. Plaintiff is currently 61 years of age.
2. Beginning in 2003, Plaintiff sought treatment from Defendant Patrick Kennedy, D.C. (hereinafter, "KENNEDY").

3. In treating Plaintiff, Defendant KENNEDY prescribed and sold Chinese herbs to Plaintiff.

4. At all times pertinent hereto, including from 2003 to the present, KENNEDY was and is a licensed Doctor of Chiropractic Medicine practicing in St. Louis County in the State of Missouri at and through Defendant Forsyth Chiropractic Center, P.C. (hereinafter "FORSYTH"), a Missouri corporation maintaining its principal place of business in Clayton and Kirkwood, Missouri. Defendant KENNEDY held himself out to members of the consuming public, including Plaintiff, as a chiropractor with expertise in chiropractic medicine, acupuncture, and Traditional Chinese Medicine, including Chinese herbal therapy.

5. At all times pertinent hereto, including 2003 to the present, Defendant FORSYTH was and is a duly organized and existing corporation, organized and in good standing according to the laws of Missouri, maintaining and operating chiropractic facilities in St. Louis County, Missouri, and; at all times pertinent hereto, Defendant FORSYTH engaged in and held itself out to members of the consuming public, including Plaintiff, as an entity with particular expertise in providing healthcare, chiropractic medicine, acupuncture, and Traditional Chinese Medicine, including Chinese herbal therapy.

6. At all times pertinent hereto, including 2003 to the present, with Defendant KENNEDY'S knowledge, Zhengang Guo, Life Rising Corporation, Ton Shen Health, Inc. and/or Nature's Health Corp. advertised that Defendant KENNEDY is and was an affiliated practitioner of Traditional Chinese Medicine, conducting such business at Defendant FORSYTH.

7. KENNEDY and FORSYTH, prescribed, provided, and sold the aforementioned Chinese herbs to the Plaintiff in a defective and unreasonably dangerous state and without warnings and/or instructions regarding the risks associated with such Chinese herbs. Said herbs

were distributed by Defendant KENNEDY and Defendant FORSYTH in St. Louis County, Missouri, and to Plaintiff.

8. Plaintiff took such Chinese herbs from November 2003 continuing through February 2007, and suffered kidney disease, a subsequent kidney transplant, and other related injuries and illnesses as a result of her use of such Chinese herbs.

### **FACTUAL ALLEGATIONS**

9. In approximately November of 2003, Plaintiff Delores Drury began treating with Defendant KENNEDY, at Defendant KENNEDY'S offices, Defendant FORSYTH, in St. Louis County, Missouri. Plaintiff continued to treat with Defendant KENNEDY until approximately February of 2007. Over the course of the three and a half (3 ½) years Plaintiff treated with Defendant KENNEDY, Plaintiff sought treatment for various ailments and illnesses, including headaches, fatigue, joint aches and pains, dizziness, and stomach, bowel irritation.

10. During the time frame in which Defendant KENNEDY was treating Plaintiff, he was engaged in a business and professional relationship with Life Rising, Ton Shen, Nature's Health and Master Herbalist Zhengang Guo. In this relationship, Defendant KENNEDY consulted with Zhengang Guo and other members of Zhengang Guo's companies, Life Rising, Ton Shen, and Nature's Health, regarding Defendant KENNEDY'S provision of Traditional Chinese Medicine products and treatments, including Chinese herbs, to Defendant KENNEDY'S patients, including Plaintiff.

11. Throughout the time frame in which Defendant KENNEDY was treating Plaintiff and as part of Defendant KENNEDY'S treatment of Plaintiff, Defendant KENNEDY prescribed and sold to Plaintiff various Chinese herbal formulas ("Chinese herbs"). Defendant KENNEDY

and Defendant FORSYTH would purchase said Chinese herbs, and then sell said Chinese Herbs to Plaintiff at a profit.

12. From time to time, over the course of KENNEDY'S treatment of Plaintiff, Defendant KENNEDY would change, vary, or alter the types of Chinese herbs he prescribed and sold to Plaintiff based upon his perception of Plaintiff's condition.

13. During the time frame in which Defendant KENNEDY was treating Plaintiff, Defendant KENNEDY was held out by himself and others as a Traditional Chinese Medicine practitioner, Defendant KENNEDY was further held out as a wholesaler and distributor of Chinese herbs.

14. In May and August of 2005, Plaintiff was seen and treated by Zhengang Guo as Guo's offices in Chicago, Illinois. In these visits, Zhengang Guo examined Plaintiff and prescribed and sold certain Chinese herbs to Plaintiff; Defendant KENNEDY had knowledge of said visits and prescriptions.

15. Plaintiff ingested, with very limited exception, all of the Chinese herbs prescribed and sold to her by Defendant KENNEDY, Defendant FORSYTH, and Zhengang Guo. The only Chinese herbs Plaintiff has ever ingested were prescribed and sold to her by Defendant KENNEDY, Defendant FORSYTH, or Zhengang Guo.

16. In 2007, sometime after Plaintiff ceased treatment with Defendant KENNEDY, she was diagnosed with "Chinese herb nephropathy," kidney disease, and renal failure. As a result of the Chinese herb nephropathy, kidney disease, and renal failure, Plaintiff has been and will be required to undergo various medical procedures and treatments, including a kidney transplant, and Plaintiff has been and will be required to take various medications. According to

Plaintiff's treating physicians and nephrologists, Plaintiff's kidney disease and renal failure was caused by her ingestion of Chinese herbs.

17. Plaintiff's Chinese herb nephropathy, kidney disease, and renal failure occurred as a result of her ingestion of the Chinese herbs prescribed, sold, and distributed by Defendant KENNEDY and Defendant FORSYTH. These Chinese herbs prescribed, sold, and distributed by Defendant KENNEDY and Defendant FORSYTH, contained aristolochic acid and other ingredients toxic or harmful to the human kidneys.

18. The condition of said Chinese herbs ingested by Plaintiff which caused her injuries was an unreasonably dangerous condition and said condition existed at the time said Chinese herbs left the control of Defendant KENNEDY and Defendant FORSYTH.

19. Said Chinese herbs, including their packaging, were not altered in any way after leaving the control of Defendant KENNEDY and Defendant FORSYTH.

20. Plaintiff used said Chinese herbs as intended and reasonably foreseen by Defendant KENNEDY and Defendant FORSYTH.

21. In approximately 2001, the United States Food and Drug Administration banned aristolochic acid for use in the United States.

22. On or about November 17, 2003 and continuing through February, 2007, Plaintiff purchased and ingested Chinese herbs at the direction and under the supervision of Defendant KENNEDY.

**NEGLIGENCE**

23. At all times pertinent hereto, Defendant KENNEDY was a licensed Doctor of Chiropractic and specialized in the practice of chiropractic medicine and represented that he had expertise in the area of chiropractic medicine, acupuncture, and Traditional Chinese Medicine, including Chinese herbal therapy, in St. Louis County, Missouri.

24. On or about October 29, 2003, Defendant KENNEDY began treating Plaintiff Delores Drury for various ailments and illnesses, including headaches, fatigue, joint aches and pains, dizziness, and stomach and bowel irritation. Such treatment continued until approximately February 2007.

25. At all times pertinent hereto, Defendant KENNEDY was involved in a chiropractic-patient relationship with Plaintiff.

26. At all times pertinent hereto, Defendant KENNEDY was an agent, employee, servant, and/or owner/operator of Defendant FORSYTH.

27. On or about November 17, 2003, Defendant KENNEDY began selling and prescribing Chinese herbs to Plaintiff. At all times pertinent hereto, Plaintiff Drury took such Chinese herbs at the direction and under the supervision of Defendant KENNEDY.

28. There was a duty on part of Defendant KENNEDY to exercise that degree of care and caution commonly exercised by other doctors of chiropractic in the community. There was also a duty on the part of Defendant FORSYTH to exercise that degree of care or competence ordinarily exhibited by similar institutions.

29. Despite the duty owed by Defendants KENNEDY and FORSYTH, Defendants KENNEDY and FORSYTH were guilty of one more of the following negligent acts:

- (a) Defendants prescribed and sold to the Plaintiff Chinese herbs containing aristolochic acid and/or other substances toxic or harmful to the kidney even though they knew or should have known of the herbs' defective and unreasonably dangerous condition;
- (b) Defendants sold said Chinese herbs without accompanying instructions and/or warnings regarding the risks associated with kidney disease even though they knew or should have known of the herbs' defective and unreasonably dangerous condition;
- (c) Defendants failed to research or learn about the potential dangers and side effects associated with said Chinese herbs, their manufacture, and their potential contaminants;
- (d) Defendants failed to properly monitor Plaintiff's condition and detect that her kidneys were at risk;
- (e) Defendants failed to perform proper and adequate diagnostic testing, blood/lab work, and other examinations to detect whether Plaintiff's kidneys were at risk;
- (f) Defendants failed to direct that others properly monitor Plaintiff's condition and detect that her kidneys were at risk or perform proper and adequate diagnostic testing, blood/lab work, and other examinations to detect whether Plaintiff's kidneys were at risk; and
- (g) Defendant FORSYTH failed to adequately and properly supervise and monitor its employees, agents, and/or servants, including Defendant KENNEDY and/or failed to properly perform adequate training for their

employees, agents, and/or servants, including Defendant KENNEDY, to ensure Plaintiff would receive proper diagnosis and treatment.


30. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff was caused to suffer conscious pain and suffering, kidney disease, a kidney transplant, dependence on immunosuppressants, related injuries and illnesses, directly and proximately resulting in both economic and non-economic loss to Plaintiff. Further, Plaintiff has been caused to expend sums of money as and for reasonable and necessary medical care and treatment in a sum in excess of Two Hundred Thousand Dollars (\$200,000) and will in the future be forced to incur additional such sums for medical care and treatment.

WHEREFORE, Plaintiff prays for judgment against Defendants in a just and reasonable sum in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) so as to fully and fairly compensate Plaintiff for the injuries and suffering she has sustained, together with costs herein expended, and for such further relief as the Court deems just and proper.

Respectfully submitted,

**ONDER, SHELTON, O'LEARY &  
PETERSON, LLC**

By:



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