

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
COUNTY OF PENNINGTON)	SEVENTH JUDICIAL CIRCUIT
Steve Abraham and Mary Stein,)	
)	
Plaintiffs,)	No. Civ 17-____
)	
v.)	
)	
Brian R. Baxter, M.D.,)	
)	
Defendant.)	
_____)	

Complaint and Demand for Jury Trial

Facts

1. Steve Abraham and Mary Stein are married.
2. On January 14, 2016, Abraham was treated for benign prostatic hyperplasia (BPH) by Brian R. Baxter, M.D., an interventional radiologist, at Rapid City Regional Hospital, using a procedure known as prostatic arterial embolization.
3. In this procedure, the physician injects emboli through an artery into the arteries going to the prostate but going to no other organ, for the purpose of shrinking the prostate and improving the patient's BPH symptoms.
4. An "embolus" is defined in Dorland's Illustrated Medical Dictionary (29th ed. 2000) as "a mass, which may be a blood clot or some other material, that

is brought into the bloodstream through the vasculature, lodging in a vessel or bifurcation too small to allow it to pass, obstructing the circulation"; "emboli" are defined as the plural of embolus.

5. Because of a failure to adhere to the applicable patient safety rule standards of care, Dr. Baxter became lost during the procedure and botched it by injecting the emboli into the arteries leading to Abraham's *penis*.

6. The predictable consequences for Abraham of Dr. Baxter's failure were extensive bleeding the same day through his penis, and extreme pain; within three days, the end of his penis was engorged, painful, and dark purple; and eventually the end of his penis became black and necrotic, and half his penis had to be amputated.

7. Before injecting the emboli, Dr. Baxter performed an arteriogram.

8. The purpose of the arteriogram was to inject dye into the arteries into which the emboli were later to be injected.

9. The purpose of doing so was to make sure that the device used to perform the injection (needle or cannula) was placed into the arteries that went only to the prostate, and not to any other organ, because injecting the emboli into any other organ would significantly harm it.

10. During the arteriogram, Dr. Baxter never competently isolated the prostatic artery or arteries, and never competently injected emboli solely to the arteries leading to the prostate, instead injecting emboli into the arteries leading to the penis.

Count 1—Negligence

11. Dr. Baxter committed gross negligence violating basic patient standard of care safety rules and injecting the emboli not into the arteries leading to Abraham's prostate, but into the arteries leading to his penis.

Count 2—Lack of Informed Consent for Procedure

12. Dr. Baxter failed to obtain Abraham's informed consent to the possibility that this procedure might cause him to need to have half his penis amputated.

13. Had Dr. Baxter warned Abraham, as a reasonable patient of this risk, Abraham, as a reasonable patient would not have undergone the procedure with Dr. Baxter, considering the other alternatives available that did not carry the risk of loss of half of his penis.

**Count 3—Lack of Informed Consent to Dr. Baxter's Lack of
Reasonable Qualifications and Training**

14. Dr. Baxter failed to inform Abraham of his lack of reasonable qualifications, training, experience, and proctoring to perform this procedure.

15. Dr. Baxter's failure to inform Abraham of his lack of reasonable qualifications, training, experience, and proctoring to perform this procedure was a proximate cause of the botched surgery.

16. If Dr. Baxter had informed Abraham, as a reasonable patient, of his lack of reasonable qualifications, training, experience, and proctoring to perform this procedure, and the consequences to which this could lead, Abraham, as a reasonable patient, would not have undergone the surgery with him, thereby avoiding the grievous harm he sustained.

Count 4—Abandonment

17. Once Dr. Baxter learned of Abraham's post-surgical problems, he abandoned him, never seeing him again, and causing him further suffering and injury.

Count 5—Res ipsa loquitur

18. The surgical instrument and emboli that caused Abraham's injuries

were under the full management and exclusive control of the defendant or his agents at the time of Abraham's injury; and according to common knowledge and experience Abraham's injury does not happen if those having management and control of the surgical instrument and emboli had not acted below a reasonable standard of care; and the surgical instrument and emboli were a legal cause of Abraham's injury; all per South Dakota Pattern Jury Instruction (Civil) 1-60-50.

Count 6—"Never Event"

19. Defendant's injection of emboli into Abraham's penis during a PAE was an "invasive procedure performed on the wrong body part," and thus was a "Never Event" according to the National Quality Forum's Health Care "Never Events" (2011 Revision), available at <https://psnet.ahrq.gov/primers/primer/3/never-events>, and thus was negligence.

Count 7—Loss of consortium

20. As a result of the injury to and amputation of half of Abraham's penis, his wife Mary Stein sustained loss of consortium, names the loss of his services, aid, comfort, society, companionship, and conjugal affections, past, present, and reasonable certain in the future.

Harms and losses

21. Abraham's harms and losses legally caused by the foregoing include, but are not limited to, repeated substantial medical treatment, permanent physical injury, loss of sexual function, medical expenses, pain, suffering, emotional distress, humiliation, shame, and loss of enjoyment of life, all past, present, and future.

22. Stein's harms and losses legally caused by the foregoing include, but are not limited to, the losses set forth in paragraph 20 above.

WHEREFORE Steve Abraham and Mary Stein demand judgment against Dr. Baxter:

1. For damages according to proof, including prejudgment interest as provided by law;
2. For the costs of this action; and
3. For such other and further relief as the court may deem just.

Dated: March 28, 2017

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Trial by Jury Is Hereby Demanded

/s/ James D. Leach
James D. Leach