

CAUSE NO. 153-337851-22

MARVIN BALVIN § IN THE DISTRICT COURT
PLAINTIFF, §
V. § JUDICIAL DISTRICT
EPIPHANY DERMATOLOGY, P.A., §
CHRISTOPHER FULLER, M.D., AND §
LINDSEY NICOLE WILEY §
DEFENDANTS. § TARRANT COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

COMES NOW Plaintiff Marvin Balvin ("Plaintiff" and/or "Mr. Balvin"), and file this Original Petition complaining of Defendants Epiphany Dermatology, P.A., Christopher Fuller, M.D., and Lindsey Nicole Wiley, (collectively, "Defendants") and would respectfully show the Court the following:

I.
DISCOVERY PLAN AND CONTROL

1. Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure.

II.
PARTIES AND SERVICE

2. Plaintiff Marvin Balvin is an individual residing in Tarrant County, Texas.
3. Defendant Epiphany Dermatology, P.A. ("Epiphany") is a Texas professional association organized under the laws of the State of Texas with a principal place of business in Travis County, Texas, but owns/operates an office at 12469 Timberland Blvd., Suite 501, Fort Worth, Tarrant County, Texas. It may be served with process by serving its registered agent,

Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever he may be found. **Issuance of citation is requested at this time.**

4. Defendant Christopher Fuller, M.D., is an individual and a physician duly licensed to practice medicine in the State of Texas and is a resident of Texas. Dr. Fuller may be served with process at his office located at 12469 Timberland Blvd., Suite 501, Fort Worth, Texas 76244, or wherever he may be found. **Issuance of citation is requested at this time.**

5. Defendant Lindsey Nicole Wiley, is an individual and a former TDLR licensed esthetician in the State of Texas and is a resident of Texas. Ms. Wiley may be served with process at her residence located at 601 N. Oak Street, Apt. 316, Roanoke, Texas 76262, or wherever she may be found. **Issuance of citation is requested at this time.**

III. **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this suit because the damages sought are within the jurisdictional limits of this Court. Plaintiff seeks monetary relief over \$250,000 but not more than \$1,000,000.

7. Venue is proper in Tarrant County, Texas pursuant to Tex. Civ. Prac. & Rem. Code § 15.002 because it is the county in which all or a substantial part of the events or omissions giving rise to the claims occurred. Specifically, Dr. Fuller's main office and Epiphany's Keller office is located at 12469 Timberland Blvd., Suite 501, Fort Worth, Texas 76244 in Tarrant County, Texas. Plaintiff received treatment from all Defendants at this location.

IV. **FACTS**

8. On February 1, 2021, Plaintiff visited Epiphany Dermatology for a soft tissue chin augmentation, commonly known as a chin filler, which was performed by Defendant Wiley, an

esthetician with Defendant Epiphany Dermatology. It is important to note that the listed physician for the procedure was Defendant Christopher Fuller, M.D. However, Plaintiff never met Dr. Fuller until after the procedure. Dr. Fuller did not conduct any examination of Plaintiff prior to the procedure nor did any licensed physician conduct such an exam. Rather, the entire process of patient examination, consultation and injection was delegated to an esthetician, Ms. Lindsey Nicole Wiley, who holds no medical degree, nor is a physician's assistant or nurse practitioner. Ms. Wiley's only licensure is in cosmetology from the Texas Department of Licensing and Regulation.

9. Despite this, Ms. Wiley is the only person at Epiphany that discussed the procedure at all with Plaintiff before the injection. Moreover, "discussion" is a poor descriptor for the conversation. There was no discussion about options for chin fillers. Radiesse was the product that was selected for the procedure without any discussion of other products and their benefits and risks. Radiesse is a calcium hydroxylapatite type of dermal filler that is extremely difficult (if not outright impossible) to dissolve if improperly injected into a blood vessel, which is what happened to Plaintiff. In addition, there was no discussion about alternative products such as hyaluronic acid based dermal fillers that can be more effectively dissolved in the event of such a complication. Simply put, Mr. Balvin was not given the choice for a product that could have prevented his injuries.

10. Plaintiff was not provided with any examination, nor consultation by a physician prior to the procedure. There was no discussion of risks, benefits and known adverse consequences. In addition, there was not written consent obtained as required by law. Despite these many legal violations and breaches of the standards of care, Ms. Wiley proceeded to inject Mr. Balvin with Radiesse in his chin. Almost immediately, Mr. Balvin told her that his tongue was going numb.

Ms. Wiley briefly stopped the injection and told him that was “normal.” Without conducting an inspection of Mr. Balvin or seeking consultation from Dr. Fuller or any other supervising practitioner, Ms. Wiley then proceeded to continue the injection at the location – a location where she was injecting more Radiesse directly into one of Mr. Balvin’s lingual arteries. Ms. Wiley apparently did not employ the use of a cannula while injecting Mr. Balvin.

11. After she was done with the injection, and only after Mr. Balvin was in clear distress, did she check his mouth and noticed that his tongue was turning white. She finally called Dr. Fuller into the treatment room (the first time Dr. Fuller had ever met Mr. Balvin) and rather than immediately arrange for emergency transport to the nearest hospital, Dr. Fuller found an article in a journal and followed those instructions. Dr. Fuller injected hyaluronidase in an effort to dissolve the Radiesse that was blocking blood flow and performing some massage. This was in vain. Calcium hydroxylapatite type of dermal fillers are unlikely to dissolve with the use of hyaluronidase (there are fillers that will, those were not offered to Mr. Balvin). After this method failed, Dr. Fuller prescribed Viagra to Mr. Balvin and Ms. Wiley actually had to go to a pharmacy to get. This caused another hour of delay. None of these treatments improved the condition and after an entire two hours and thirty minutes of no improvement, the decision was finally made to take Mr. Balvin to Baylor Grapevine Hospital.

12. In the past year, Mr. Balvin has suffered excruciating pain. He has been under constant medical supervision from doctors at UT Southwestern. A section of his tongue actually rotted off. He has been forced to learn how to speak again as he continues to have impaired feeling and sensation in half of his tongue. Plaintiff’s physicians also believe that the high-pressure hyperbaric treatments following the injection greatly accelerated the development of cataracts, causing significant vision impairment and ultimately requiring surgery to remove cataracts that

might not have developed into an impairment for a decade or even during the course of Mr. Balvin's life.

13. In addition, since the Procedure, Mr. Balvin's tongue has also developed painful and debilitating cysts and ulcers that have required surgical removal causing a great deal of additional discomfort and pain.

14. Mr. Balvin was a successful Texas real estate agent. However, his inability to properly speak and his physical deformity caused Mr. Balvin to be forced into retirement years before he was ready, depriving him of valuable income and professional satisfaction. Plaintiff also lived an active lifestyle and was in great shape. However, after the incident his physical condition deteriorated significantly.

15. In the aftermath of the treatment by the Providers at Epiphany, Mr. Balvin has suffered tremendous pain, lost his lifelong career, has to deal with permanent physical deformities, suffered from significant vision loss, has had to endure hundreds of hours of rehabilitation just to be able to speak with clear and audible impairments.

**V.
NEGLIGENCE**

16. Plaintiff incorporates the above paragraphs herein for all purposes.

17. Plaintiff would show that Defendants were negligent in their duty owed to the Plaintiff to exercise ordinary care and diligence as exercised by other physicians, health care providers and offices in the same or similar circumstances. Plaintiff would show that the Defendants were negligent and/or breached the standard of care in one or more of the following particulars:

- (a) In failing to advise Plaintiff of the risks of the procedure;
- (b) In failing to obtain Plaintiff's written consent;

- (c) In failing to advise Plaintiff of different injection options;
 - (d) In failing to immediately take Plaintiff to the hospital;
 - (e) In failing to provide adequate supervision for the procedure;
 - (f) In failing to provide Plaintiff a consultation or physical examination;
18. Defendants' negligence was the proximate cause of Plaintiff's damages, as set

forth more fully herein.

VI.

GROSS NEGLIGENCE

19. Plaintiff incorporates the above paragraphs for all purposes.

20. Defendants' acts and/or omissions, when viewed objectively from the Defendants' standpoint, involved an extreme degree of risk. Defendants had actual, subjective awareness of the risks but proceeded anyway in their conduct with a conscious indifference to the rights, safety and welfare of Plaintiff.

21. Further, Defendants' acts and/or omissions involved an extreme degree of risk that Defendants knew or should have known was likely to cause injury to Plaintiff.

22. Defendants are liable to Plaintiff for exemplary damages because:

- (a) The Defendants' acts and/or omissions, when viewed objectively from the Defendants' standpoint, involved an extreme degree of risk;
- (b) Defendants had actual, subjective awareness of the risks but proceeded anyway in their conduct with a conscious indifference to the rights, safety, or welfare of Plaintiff; and
- (c) Further, Defendants' acts and/or omissions involved an extreme degree of risk that Defendants knew or should have known was likely to cause serious injuries or Plaintiff.

VII.
RESPONDEAT SUPERIOR AND/OR AGENCY

23. Plaintiffs would show that Ms. Wiley was under the supervision of Dr. Fuller and was at the time of the occurrence made the basis of this lawsuit an agent, servant, representative, or employee of Defendant Epiphany Dermatology. At all times, Ms. Wiley and Dr. Fuller were in the course and scope of their employment and/or agency. Accordingly, Plaintiff has sued Defendant Epiphany Dermatology for all damages caused by the negligence of its employees or agents under the doctrine of *respondeat superior*. Epiphany Dermatology is liable for the negligent acts under Texas law, specifically laws that specify that a professional association is liable jointly and severally for the negligent acts of its professional employees or partners.

VIII.
DAMAGES

24. Plaintiff brings this suit to be compensated for damages he has sustained and monetary and other losses he has incurred and will incur. From the date of the medical treatment and its results until the time of trial of this cause, the elements of damage to be considered separately, for the purpose of ascertaining the loss of Plaintiff in determining the sum of money that will fairly and reasonably compensate him for such losses, are as follows:

- a) The physical pain and impairment in the past and future;
- b) The mental anguish that Plaintiff suffered in the past and future;
- c) Pecuniary loss, including care, maintenance, support, and services in the past and future;
- d) Past and future medical damages;
- e) Loss of enjoyment of life;
- f) Lost wages and loss of earning capacity in the past and future;
- g) Exemplary damages;

h) Any other and further relief, either in law or in equity, to which he many be entitled.

IX.
NOTICE

25. Plaintiff will comply or has complied with Sections 74.051 and 74.052 of the Texas Civil Practice and Remedies Code by sending written notice of his claims.

X.

JURY TRIAL

26. Plaintiff respectfully request a jury trial in accordance with the applicable provisions of the Texas Rules of Civil Procedure. Plaintiff has tendered the appropriate jury fee at the time of the filing of this Original Petition.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff Marvin Balvin prays that upon final hearing, Plaintiff be awarded a judgment of and against the Defendants jointly and severally for all past and future damages listed above, including medical expenses, mental anguish, loss of enjoyment of life, lost wages in the past and future, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

JOHNSON REIST PLLC

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Automated Certificate of eService

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Stacy Spell on behalf of Wesley Johnson

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Status as of 10/17/2022 2:59 PM CST

Associated Case Party: Marvin Balvin

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