[MS-0494, 010.005.008]

FIELDER & FIELDER & CURTIS
Attorneys at Law
P.O. Box 617
North Hollywood, Cal. 91603
Tel: (213) 763-9831

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN ~~CENTRAL~~ DISTRICT OF CALIFORNIA

RONALD WARREN BRILEY

PLAINTIFF(S)

VS

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, RONALD ABERNATHY, CHARLES M. SNELL, Jr., EARL B. GILLIAM, CLAUDE B. BROWN, T. BRUCE IREDALE, ROBERT J. STAHL, Jr., GERALD F. BANKS, M.D., HARRY W. DEPEW, M.D. ~~DEFENDANTS~~ DEFENDANT(S) DOCTORS HOSPITAL, a Corporation and DOE I through DOE XX, DEFENDANTS

CASE NUMBER
74-534-T

SUMMONS

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned and required to serve upon

Fielder & Fielder & Curtis
Attorneys at Law

plaintiff's attorney, whose address is

11952 Hartsook Street
P.O. Box 617
North Hollywood, California 91603

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

EDWARD M. KRITZMAN, CLERK

DATE:

BY SEAL G. McDONALD
DEPUTY CLERK

(Seal of Court)

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure. Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Pursuant to Local Rule 4(g) of this court, the original of all documents, including exhibits to documents, shall be filed with one clear, legible copy for use by the Judge.

FIELDER & FIELDER & CURTIS
Attorneys at Law
P.O. Box 617
North Hollywood, Cal. 91603

Tel: (213) 763-9831

Attorneys for Plaintiff

FILED

NOV 19 1974

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY
DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RONALD WARREN BRILEY, Plaintiff, vs. STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, RONALD ABERNATHY, CHARLES M. SNELL, Jr., EARL B. GILLIAM, CLAUDE B. BROWN, T. BRUCE IREDALE, ROBERT J. STAHL, Jr., GERALD F. BANKS, M.D., HARRY W. DEPEW, M.D., DOCTORS HOSPITAL, A Corporation and DOE I through DOE XX, inclusive, Defendants	NO. 74-534-T COMPLAINT FOR DEPRIVATIO OF CIVIL RIGHTS, INFLICTIO OF CRUEL AND UNUSUAL PUNISHMENT AND DAMAGES FOR PERSONAL INJURY

Now comes Plaintiff and states as follows:

FIRST CAUSE OF ACTION

I

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, Section 1343(3), this being a suit in equity which is authorized by law, Title 42, United States Code, Section 1983 and Section 1985, to be brought to redress the deprivation under color of State law, statute, ordinance, regulation, custom or usage of rights, privileges, and immunities secured by the Constitution and laws of the United States or by any Act of Congress providing for equal rights of citizens. The rights here sought to be redressed are rights guaranteed by the Eighth Amendment by Due Proces

and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and Title 42, United States Code, Section 198 as hereinafter more fully appears.

II

Plaintiff is now a resident of the County of Santa Cruz, State of California, in the Central District of California of the United States District Court and is a citizen of the United States of America.

III

Defendant, State of California, is one of the States in the United States of America; Defendant, County of San Diego is a political subdivision of the State of California; and Plaintiff is informed and believes and thereon alleges that Defendants Ronald Abernathy, Charles M. Snell, Jr., Earl B. Gilliam, Claude B. Brown, T. Bruce Iredale, Robert J. Stahl, Jr., Gerald F. Banks, M.D. and Harry W. Depew, M.D. are residents of the County of San Diego, State of California, in the Southern District of the United States District Court and are citizens of the United States of America, and that Doctors Hospital is a private hospital located in the County of San Diego, State of California in the Southern District of the United States District Court.

IV

Prior to March 16, 1961, Plaintiff was a fully developed, healthy, adult male American citizen with no physical deformities or abnormalities, all of which facts were known to Defendants and each of them herein.

V

On or about August 21, 1960, Plaintiff was arrested for child molestation and on December 1, 1960 was indicted by the Grand Jury of the County of San Diego on said charges. On December 5, 1960, Plaintiff pleaded not guilty to said charges. Thereafter, Defendants and each of them, acted in concert and conspired together to deprive Plaintiff of his civil rights and to cause him to suffer cruel and unusual punishment for the crimes he was charged with, to wit:

Plaintiff was advised that Defendants Ronald Abernathy, Judge of the

Superior Court of San Diego County, and district attorneys of the County of San Diego, Earl B. Gilliam, Claude B. Brown, T. Bruce Iredale and Robert J. Stahl, Jr., acted in concert and conspired against Plaintiff by telling him they intended to seek the maximum possible sentence of ten years unless Plaintiff, who had no prior arrests, agreed to a surgical procedure known as a bilateral orchidectomy. They further advised him that said surgical procedure was a common procedure and that it would cause no adverse physical, mental or psychological effects other than to cause permanent sterility.

Plaintiff was further advised by Defendant Gerald F. Banks, M.D., who was the appointed jail physician, that he should submit to the surgical procedure and that it was a common procedure and would cause no adverse physical, mental or psychological effects other than to cause permanent sterility. Said party acted in concert with other parties and conspired against Plaintiff.

Plaintiff's attorney, Charles B. Snell, Jr., acted in concert with the above named parties and furthered the conspiracy by harassing and coercing the Plaintiff with threats of the unusual punishment and threatened that if Plaintiff did not submit to the surgical procedure and advised Plaintiff that the surgical procedure was a common one and would have no adverse physical, mental or psychological effects other than to cause permanent sterility and failed to advise him of legal alternatives available to him at that time and further failed to adequately represent Plaintiff against said charge of child molestation.

On March 16, 1961, Plaintiff submitted to the surgical procedure, which was performed by Defendants, Gerald F. Banks, M.D., and Harry W. Depew, M.D. at Defendant Doctors Hospital, with the aid and assistance of unknown employees and agents of said hospital, all of whom further acted in concert and conspired against Plaintiff.

As a result of the conspiracy of Defendants and each of them, who acted in concert at all times to deprive Plaintiff of his civil rights and caused him to suffer cruel and unusual punishment for the crime charged, Plaintiff

was never informed that the surgical procedure would have a severe adverse effect upon his physical and psychological well being and that said surgical procedure was not a common procedure.

On March 29, 1961, Plaintiff's not guilty plea was withdrawn and he pleaded guilty to a lesser offense and was released on probation at said time.

VI

On or about February 11, 1974, Plaintiff consulted a physician regarding his health and after laboratory tests were performed, was advised that as a direct result of the surgical procedure performed on March 16, 1961, that Plaintiff would be required to maintain a medical program of therapy for the remainder of his life and that certain irreversible changes had occurred and would continue to occur despite medical therapy. This was Plaintiff's first knowledge that the surgical procedure would have far reaching adverse physical and psychological effects upon him and would continue to do so for the rest of his life.

VII

In accordance with Section 910 of Government Code of the State of California, Plaintiff gave notice to the County of San Diego of his claim on March 20, 1974 and on May 22, 1974, said Defendant rejected said claim. A copy of rejection is attached hereto, marked Exhibit "A" and incorporated herein by this reference as though fully set forth herein.

VIII

In accordance with Section 910 of Government Code of the State of California, Plaintiff gave notice to the State of California of his claim on May 17, 1974 and on July 2, 1974, said Defendant rejected said claim. A copy of rejection is attached hereto, marked Exhibit "B" and incorporated herein by this reference as though fully set forth herein.

IX

The acts of Defendants, under color of their authority as agents of the State of California and County of San Diego, as hereinabove set out, deprived Plaintiff of the privileges and immunities guaranteed to Plaintiff as a citizen of the United States by Amendments IV, V, VII and VIII of Section I of

Amendment XIV of the Constitution of the United States to Plaintiff's damage the sum of Five Million Dollars ($5,000,000.00).

SECOND CAUSE OF ACTION

I

Plaintiff repeats and realleges and incorporates herein by this reference the allegations of Paragraph III of the First Cause of Action as though fully set forth herein.

II

The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants herein named as a Doe are unknown to Plaintiff, who therefore sues said Defendants, and each of them, by such fictitious names and will ask leave to amend this complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as Doe is negligently responsible in some manner for the events and happenings herein referred to and negligently caused injury and damages proximately resulting therefrom to the Plaintiff as herein alleged.

III

At all times herein mentioned, Defendant Charles M. Snell, Jr., was an attorney, duly licensed to practice law in all Courts of the State of Californi and held himself out to possess that degree of skill, ability and learning common to the legal profession in said community.

IV

On or about August 21, 1960, Plaintiff was arrested for child molestation and on December 1, 1960 was indicted by the Grand Jury of the County of San Diego for said charges. On December 5, 1960, Plaintiff pleaded not guilty to said charges.

V

Plaintiff engaged Defendant Charles M. Snell, Jr., to represent him in court on this matter prior to December 5, 1960 and said Defendant undertook said representation until the matter was disposed of, purporting to represent him at all times. Plaintiff was informed that Defendants Ronald Abernathy,

Judge of the Superior Court of San Diego County and district attorneys of the County of San Diego, Earl B. Gilliam, Claude B. Brown, T. Bruce Iredale and Robert J. Stahl, Jr., intended to seek the maximum possible sentence of ten years unless Plaintiff, who had no prior arrests, agreed to a surgical procedure known as a bilateral orchidectomy. He was further advised that said surgical procedure was a common procedure and that it would cause no adverse physical, mental or psychological effects other than to cause permanent sterility.

Plaintiff was further advised by Defendant Gerald F. Banks, M.D., w was the appointed jail physician that he should submit to the surgical procedu and that it was common and would cause no adverse physical, mental or psychological effects other than to cause permanent sterility.

VI

Plaintiff's attorney, Charles M. Snell, Jr., also advised Plaintiff that said surgical procedure was a common one and would cause no adverse physical, mental or psychological effects other than to cause permanent sterility.

In truth and in fact, Charles M. Snell, Jr., negligently failed to use due care in representing him in that he failed and neglected to advise Plaintiff of reasonable alternatives to the surgical procedure and further, negligently failed to advise him that said surgical procedure was not common and would have adverse physical, mental and psychological effects.

Plaintiff was unaware of the negligence of Defendant Charles M. Snell, Jr., until February 11, 1974, when he consulted a physician regarding his health and after laboratory tests were performed was advised that as a result of the negligence of Defendant, Charles M. Snell, Jr., that he would be required to maintain a medical program of therapy for the remainder of his life and that certain irreversible changes had occurred and would continue to occur despite medical therapy. This was Plaintiff's first knowledge that the surgical procedure would have far reaching adverse physical and psychological effects upon him and would continue for the rest of his life.

/// /// ///

VII

As a direct and proximate result of said carelessness and negligence of the Defendant, Charles M. Snell, Jr., Plaintiff was injured in body and mind, causing him to suffer great physical and mental pain, all to his general damages in the sum of Five Million Dollars ($5,000,000.00).

VIII

As a further direct and proximate result of the carelessness and negligence of the Defendant, Charles M. Snell, Jr., Plaintiff has incurred medical expenses and will continue to incur medical and related expenses, the full amount of which are not known to Plaintiff at this time and Plaintiff will amend this complaint to state such amount when the same becomes known to him or on proof thereof.

IX

That as a further direct and proximate result of the negligence of the Defendant Charles M. Snell, Jr., the Plaintiff will sustain loss of earnings in an amount at the present time unascertained and therefore asks leave to prove, and if required by the Court, to amend this complaint to show the exact loss of earnings up to the time of trial.

THIRD CAUSE OF ACTION

I

Plaintiff repeats and realleges and incorporates herein by the reference the allegations of Paragraphs VII and VIII of the First Cause of Action, and Paragraphs I, II, IV, V, VII and VIII and IX as though set forth fully herein.

II

At all times herein mentioned, Defendants Gerald F. Banks, M.D. and Harry W. Depew, M.D. were physicians duly licensed to practice medicine in the State of California, with offices located in the County of San Diego, State of California and held themselves out to possess that degree of skill, ability and learning common to medical practitioners in said community.

III

At all times herein mentioned, Defendant Doctors Hospital was and is

a corporation existing under and by virtue of the laws of the State of California and authorized to do business and doing business as a hospital with its principal place of business located within the County of San Diego, State of California.

IV

Plaintiff is informed and believes and therefore alleges that Defendants Gerald F. Banks, M.D., Harry W. Depew, M.D. and Doctors Hospital and Doe I through Doe XX, inclusive, and each of them were and now are employees and agents of the Defendants State of California and County of San Diego and in doing the things hereinafter mentioned were acting within the scope of their authority as agents and employees and with the consent of their co-Defendants, and are negligently responsible in some manner for the occurrences herein alleged and the Plaintiff's damages as herein alleged were proximately caused by said negligence.

V

Prior to March 16, 1961, the Superior Court of the County of San Diego appointed Defendants Gerald F. Banks, M.D. and Harry W. Depew, M.D. to treat Plaintiff professionally for a surgical procedure known as a bilateral orchidectomy, which surgical procedure was to be done at Doctors Hospital.

VI

At said time Defendants, and each of them, undertook as physicians and hospital to consult, diagnose and treat Plaintiff by said surgical procedure.

VII

Defendants Gerald F. Banks, M.D., Harry W. Depew, M.D. and Doctors Hospital and Does I through Doe XX, inclusive, and each of them, negligently failed to use due or reasonable care to explain the true nature of the surgical procedure to Plaintiff and negligently informed Plaintiff that said procedure was a common procedure and would not have adverse physical or psychological effects upon him, when in truth and in fact, said surgical procedure was not common and caused Plaintiff to suffer adverse physical,

mental and psychological effects.

WHEREFORE Plaintiff prays that Defendants be summoned to appear and answer herein and that Plaintiff have judgment for his damages, cost of suit and such other and further relief as he may show himself justly entitled to receive.

Respectfully submitted

FIELDER, FIELDER & CURTIS

By: _____

Hugh B. Fielder
Attorney for Plaintiff
P.O. Box 617
North Hollywood, Cal. 91603

VERIFICATION

STATE OF CALIFORNIA)
)SS.
COUNTY OF LOS ANGELES)

I, the undersigned, say: I am the Plaintiff in the above entitled action; I have read the foregoing Complaint and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matte that I believe it to be true.

I declare under penalty of perjury, that the foregoing is true and correct.

EXECUTED on September 13 , 1974 at North Hollywood, California

Ronald W. Briley
Ronald Warren Briley

SUBSCRIBED and Sworn to before me the 13 day of September, 1974

Hugh B. Fielder
Notary Public in and for said County and State.
My commission expires April 3, 1978.

OFFICIAL SEAL
HUGH B. FIELDER
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires April 3, 1978

COUNTY OF SAN DIEGO
CLERK OF THE BOARD OF SUPERVISORS • 1600 PACIFIC HWY. • ROOM 306
SAN DIEGO, CALIFORNIA 92101 • (714) 236-2321

MRS. PORTER D. CREMANS
CLERK OF THE
BOARD OF SUPERVISORS

BOARD OF SUPE
JACK WALSH
FIRST DISTRICT
DICK BROWN
SECOND DISTRICT
LOU CONDE
THIRD DISTRICT
JIM BEAR
FOURTH DISTRICT
LEE TAYLOR
FIFTH DISTRICT

COUNTY ADMINIS
FRANK D. ALISHI

May 22, 1974

Ronald Warren Briley
3704 Old San Jose Road
Santa Cruz, California 95065

Dear Sir:

On advice of County Counsel, the claim which you filed on behalf of Ronald W. Briley is being returned to you as it was not timely presented.

Claims must be filed with the Clerk of the Board of Supervisors within 100 days after the accident or incident occurred.

Yours very truly,

PORTER D. CREMANS
Clerk of the Board of Supervisors

By Stella Wardlick
Deputy

sw
Enclosure

EXHIBIT A

STATE OF CALIFORNIA

STATE BOARD OF CONTROL
STATE OFFICE BUILDING No. 1, ROOM 102
SACRAMENTO, CALIFORNIA 95814

RONALD REAGAN, Go

LAWRENCE R. ROBINSON, JR., Chairman
HOUSTON I. FLOURNOY
VERN W. CARTWRIGHT

July 11, 1974

Mr. Ronald W. Briley
3704 Old San Jose Road
Santa Cruz, California 95065

Re: The Claim of RONALD W. BRILEY
v. State of California - No. 42757

Dear Mr. Briley:

The State Board of Control, at its meeting of July 2, 1974 denied the above entitled claim.

Very truly yours,

E. F. VEGLIA
EXECUTIVE SECRETARY

Norman E. Miller
Assistant Executive Secretary

NEM: et

cc: Attorney General's office

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on the rejected claim, or the portion of the claim rejected. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

EXHIBIT B

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY(S)
FIELDER & FIELDER & CURTIS
P.O. Box 617
North Hollywood, Cal. 91603
Tel: (213) 763-9831

ATTORNEY(S) FOR Plaintiff

FILED

NOV 26 1974

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN ~~XXXXXX~~ CENTRAL DISTRICT OF CALIFORNIA

RONALD WARREN BRILEY

PLAINTIFF

VS

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, RONALD ABERNATHY, CHARLES M. SNELL, Jr., EARL B. GILLIAM, CLAUDE B. BROWN, T. BRUCE IREDALE, ROBERT J. STAHL, Jr., GERALD F. ~~XXXXXXXX~~ BANKS, M.D. HARRY W. DEPEW, M.D., DOCTORS HOSPITAL, a Corporation and DOE I through DOE XX,

DEFENDANTS

CASE NUMBER

74-534-T

REQUEST AND ORDER FOR SERVICE OF PROCESS BY OTHER THAN THE UNITED STATES MARSHAL

Pursuant to the provisions of Rule 4(c) of the Federal Rules of Civil Procedure and Local Rules 5(a) and 7(c), it is requested that SCOTT L. FIELDER who is at least 18 years of age, of suitable discretion, and not a party to the within action, be authorized and appointed to serve process in this action.

Dated: November 13, 1974

Hugh B. Fielder
Attorney of Record
Hugh B. Fielder

ORDER

IT IS ORDERED that the above-named individual is hereby appointed to serve process in this action.

Dated: NOV 26 1974

EDWARD M. KRITZMAN, CLERK

BY SEAL McDONALD
DEPUTY CLERK

FIELDER & FIELDER & CURTIS
Attorneys at Law
P.O. Box 617
North Hollywood, Cal. 91603

Tel: (213) 763-9831

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RONALD WARREN BRILEY, Plaintiff, vs STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, et. al., Defendant.	Civil No. 74-834-T DISMISSAL OF PARTIES DESIGNATED BY A FICTITIOUS NAME

The Plaintiff in the above-entitled action hereby dismisses the complaint as to every party designated in the Complaint by a fictitious name, to wit:

DOE I through DOE XX, inclusive, Defendants.

DATED: November 22, 1974

Hugh B. Fielder
Attorney for Plaintiff
HUGH B. FIELDER