

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

JAMES L. CHAPPUIS, M.D., F.A.C.S.,

Plaintiff,

v.

DANIEL REFAI, M.D. and EMORY  
HEALTHCARE, INC.,

Defendants.

Civil Action No.:

**2020CV338820**

**COMPLAINT**

**The Parties**

1. Plaintiff James L. Chappuis, MD, FACS, is the founder, owner, senior orthopedic spine surgeon and Chairman of the Board at Orthopedic & Spine Surgery of Atlanta, a/k/a SpineCenterAtlanta, a comprehensive physician guided spine care program in Atlanta, Georgia. Dr. Chappuis is certified by the American Board of Orthopedic Surgeons. He is a clinical instructor with Georgia Regents University (formerly the Medical College of Georgia) in Augusta, Georgia, and adjunct faculty Parker H. Petit Institute for Bioengineering and Bioscience, Georgia Tech University. Dr. Chappuis has served numerous hospitals in the role of secretary of the medical staff, chief of surgery, chairman-elect department of surgery, editorial board Medical Association of Atlanta, chief of orthopedic surgery and head of orthopedic department. He is licensed to practice medicine in the states of Georgia, Florida and Tennessee. He is a member and officer in a number of professional organizations; he is extensively published; he has taught other physicians; he is an inventor of new and innovative surgical products; and as an accomplished man of medicine, he is a target for lesser practitioners.

2. Defendant Daniel Refai is medical doctor and spinal surgeon. Defendant Refai is also a resident of Fulton County, Georgia and may be served at his place of employment, Emory Orthopaedics & Spine Center located at 59 Executive Park South, NE, Atlanta, Georgia 30329.

3. Defendant Emory Healthcare, Inc. (“Emory Healthcare”) is a not for profit corporation organized and existing under the laws of the State of Georgia. Defendant Emory Healthcare’s registered agent is Amy Adelman, who can be served at 1380 S. Oxford Road, 401 Administration Building, Emory University, Atlanta, Georgia 30322.

### **Jurisdiction and Venue**

4. The Court has jurisdiction over the subject matter of this lawsuit.
5. The Court has jurisdiction over Defendants’ persons.
6. The venue of this action is proper in this Court.

### **Background Facts**

#### **The Patient’s Course of Treatment**

7. On March 1, 2019, Cindy Davis underwent an MRI scan of her cervical spine at Wellstar Douglas Hospital. The MRI was ordered by Dr. Chappuis.

8. The radiologist who read the MRI reported that the MRI revealed “evidence of degenerative disc disease and considerable ossification of the posterior longitudinal ligament which is responsible for multilevel impingent upon the thecal sac and chronic spinal cord impingement. There is also evidence of multilevel degenerative neural foraminal stenosis.”

9. Dr. Chappuis pursued a course of conservative treatment for Ms. Davis, but that course of treatment brought Ms. Davis no relief.

10. Ms. Davis underwent outpatient multilevel anterior cervical discectomy and fusion (“ACDF”) at Atlanta Orthopedic Surgery Center (the “Surgery Center”) on April 23, 2019.

11. Ms. Davis’s surgery was uncomplicated. Intraoperatively, electromyography (EMG), motor evoked potential (MEP), and somatosensory evoked potential (SSEP) were monitored and were all within normal limits. Postoperatively, she was noted with some right upper extremity weakness and a transient C5 palsy which responded positively to steroids overnight.

12. Roughly 17-hours following surgery, Ms. Davis started complaining of her “right leg giving out” on ambulation. An MRI scan was immediately performed at the Surgery Center. The MRI showed a fluid collection and impinging cord around C3 to C5 level.

13. Dr. Chappuis was concerned that Ms. Davis had developed an epidural hematoma, so he took her back to surgery thereafter on April 24, 2019.

14. While conducting the re-exploration, Dr. Chappuis removed the plates and screws and removed the interbody graft at C3-C4 and C4-C5 and noticed there was cerebrospinal fluid (CSF) at the C3-C4 level. No epidural hematoma noted.

15. Dr. Chappuis performed a partial corpectomy at C3-C4 to create a dura patch for the CSF leak. Plates were returned in place, and the procedure was completed without complication.

16. Intraoperative EMG, SSEP, and motor evoked potentials for both upper and lower extremities were again conducted throughout the case. There were no adverse changes in Ms. Davis's condition from preop to postop.

17. Dr. Chappuis and his team noted some post-operative mild weakness in the right upper extremity consistent with C5 palsy. Extubated, Ms. Davis was sent to the recovery room and observed by the anesthesiologist, Dr. Pham, over the next few hours.

18. In the Post-Anesthesia Care Unit (PACU), Ms. Davis was hemodynamically stable with unexplained shallow breathing with saturation to 100 percent with oxygen supplementation. However, with her history of anxiety and claustrophobia, she refused to wear the mask. Given her refusal of oxygen supplementation and unexplained shallow breathing, Dr. Chappuis and the team discussed with Ms. Davis and her husband who agreed to transfer Ms. Davis to Emory University Hospital for further evaluation and management.

19. Upon arriving at Emory University Hospital, a CT scan was performed. With her continue shallow breathing and retaining CO<sub>2</sub>, she was intubated and subsequently admitted to ICU.

20. Ms. Davis was seen by Dr. Chappuis and his partner, Dr. Julio Petilon, that morning. When they examined her, Ms. Davis exhibited some weakness of her upper extremities but had normal lower extremity function. That same day, an MRI scan was performed, revealing some fluid collection at the C3-C4. Given the previously noted spinal fluid, that finding was consistent with CSF. Additionally, a dural leak is a known potential adverse outcome with the type of procedure performed on Ms. Davis.

21. On admission, Dr. Chappuis called and consulted Defendant Refai, the neurosurgeon on-call. Despite having virtually no knowledge of the patient's history, Dr. Refai declared loudly, publicly, and incorrectly that Dr. Chappuis had engaged in "malpractice." Dr. Chappuis asked Defendant Refai to see and consult on Ms. Davis and Defendant Refai refused to do so which constitutes a violation of Emergency Medical Treatment and Labor Act (EMTALA) requirements.

22. Following Defendant Refai's outburst, Drs. Chappuis and Petilon observed the patient in the ICU for the next 24 hours. During that time, Ms. Davis's motor function continued to improve in both her upper extremities, suggesting that no further surgery was necessary.

23. Ms. Davis was extubated and breathed on her own for almost a day, at which point her breathing again became labored and she began again to retain CO<sub>2</sub>. As a consequence, Ms. Davis was again intubated.

24. Based upon the series of events, Drs. Chappuis and Petilon suspected that there could be a C4-C5 stretch injury and some weakness of the diaphragm consistent with weakness of the proximal musculature. There was also a possibility Ms. Davis's issues could have been caused by a mild central cord syndrome because there was mild edema in the cord at the upper cervical level. Based upon those possibilities and the patient's improving neurologic picture, Drs. Chappuis and Petilon felt the most prudent course was to continue to observe.

25. Ms. Davis's lower extremity function was normal throughout the entire period described above. Additionally, during this time, Dr. Chappuis saw Ms. Davis on a daily basis.

26. Dr. Chappuis spoke to Ms. Davis's family on a daily basis and a good rapport was developed between the doctors and the family.

27. When Ms. Davis was last seen by Dr. Chappuis on May 6, 2019, her neurologic function in the upper extremity continued to improve. Dr. Chappuis intended to transfer Ms. Davis to Shepard Spine Center ("Shepard") on May 7, 2019. Before the transfer could be effectuated, Dr. Chappuis was replaced by Defendant Refai as Ms. Davis's surgeon and Ms. Davis remained at Emory University Hospital.

28. As of May 7, 2019, Ms. Davis's neurological condition was improving.

29. On the morning of May 8, 2019, Dr. Chappuis was called by the chief medical officer, Dr. James Steinberg. Dr. Steinberg told Dr. Chappuis that Ms. Davis no longer wished for him to be her treating physician.

30. The following day, May 9, 2019, Dr. Chappuis received a text message from Defendant Refai asking for information regarding Ms. Davis's CSF leak. Dr. Chappuis called Defendant Refai to learn why Dr. Refai was interested in Ms. Davis's history, and Defendant Refai explained that he was taking on Ms. Davis as a patient.

31. Defendant Refai also told Dr. Chappuis that he was planning to perform an additional surgery on Ms. Davis. Dr. Chappuis strongly urged Defendant Refai not to perform an additional surgery, but Defendant Refai was insistent.

32. Despite clear improvements in Ms. Davis’s neurological condition and despite Dr. Chappuis urging that no additional surgery be performed, Defendant Refai performed another surgery on Ms. Davis on May 9, 2019, and subsequently on May 13, 2019, although those surgeries were unnecessary.

33. When Ms. Davis emerged from the surgery on May 9, 2019, she was a quadriplegic.

34. Dr. Chappuis telephoned and texted Defendant Refai following Ms. Davis’s surgery to inquire as to her condition. Defendant Refai returned a text stating that the surgery had gone fine and that Ms. Davis was doing well. He also stated that the family did not want Dr. Chappuis to communicate with Mr. Davis or the family. That was untrue on both counts.

#### **Defendant Refai’s Defamation**

35. Dr. Chappuis alleges on information and belief that Ms. Davis and her family made the decision to change spinal surgeons because Defendant Refai, directly or indirectly, provided them with false and defamatory information regarding the quality of care that Ms. Davis was receiving with Dr. Chappuis.

36. Dr. Chappuis further alleges on information and belief that Defendant Refai has published false and malicious allegations regarding the quality of care received by Ms. Davis to other physicians and members of the hospital staff at Emory University Hospital.

37. Defendant Refai blamed Dr. Chappuis for Ms. Davis’s post-operative issues to divert attention away from Defendant Refai’s own malpractice that directly led to Ms.

Davis's quadriplegia. Defendant Refai intentionally and maliciously defamed Dr. Chappuis to cover his tracks and to dodge responsibility for injuries he visited upon Ms. Davis.

38. Additionally, Defendant Refai submitted information concerning Dr. Chappuis's care of Ms. Davis to the National Practitioner Data Bank (NPDB), a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. That information was defamatory and submitted for the sole purpose of injuring Dr. Chappuis's reputation, business, and career.

39. In particular, Defendant Refai reported to the NPDB that the procedure performed by Dr. Chappuis on Ms. Davis (an anterior rather than posterior approach) was an incorrect procedure and was malpractice.

40. In fact, an anterior approach is well-recognized in the authoritative literature as being within the standard of care for a cervical discectomy and fusion.

41. Defendant Refai also reported to the NPDB that, because of the extent of the surgery and certain of Ms. Davis's comorbidities (obesity and sleep apnea requiring a nocturnal CPAP), the procedure should not have been performed in an inpatient setting.

42. In fact, the location of the surgery had no impact at all on the patient's outcome.

43. As a general proposition, there are no significant differences in outcomes for ACDF procedures performed inpatient versus outpatient. A study by Dr. Sheeraz Qureshi reported in *Global Spine Journal* concluded that the criteria for inpatient surgery



at a multilevel ACDF was the following. First, whether the patient is ASA class III (a patient with severe systemic disease). Ms. Davis was ASA class II (a patient with mild systemic disease). The second consideration is whether the body mass index of the patient is greater than 40 kg per mass squared. Ms. Davis's body mass index was 28. The third consideration is age—whether the patient is age 80 or greater. Ms. Davis was 47 years of age at the time of surgery. Finally, the length of surgery is a consideration. Surgeries that take more than two-and-a-half (2.5) hours are better performed in inpatient facilities. Ms. Davis's surgery was roughly two (2) hours.

44. The Surgery Center is American Association for Accreditation of Ambulatory Surgery Facilities (AAAA) certified. The Surgery Center has interoperative spinal cord monitoring, which was used during Ms. Davis's surgery. Ms. Davis was attended by a board-certified anesthesiologist. The Surgery Center has an MRI on site and a recovery room staffed by former Emory University Hospital nurses and post-anesthesia care unit (PACU) nurses.

45. Defendant Refai also reported to the NPDB that during a subsequent surgery he performed (which was unnecessary), he found a suture needle lodged in the soft tissue of Ms. Davis. Defendant Refai indicated that the needle was “presumably from one of the two previous operations” performed by Dr. Chappuis.

46. A sponge and needle count were performed following both surgeries performed by Dr. Chappuis, and all needles were accounted for.

47. An MRI and CT scan were performed on Ms. Davis following the surgeries by Dr. Chappuis. Had a needle been left inside of Ms. Davis during one of those surgeries,

it would have been detected by one of those procedures. Neither the MRI nor the CAT scan detected the presence of a needle inside of Ms. Davis.

48. Additionally, Dr. Chappuis did not use any dural suture when performing the second surgery on Ms. Davis, and if he had used one, it would not have been of the type purportedly found by Defendant Refai.

49. Within ten (10) days of Ms. Davis being admitted to Emory University Hospital, Dr. Chappuis was notified by Dr. Steinberg that the Peer Review Committee (“PRC”) was going to review this case.

50. A review of the handling of Ms. Davis’s case did not constitute proper peer review in that it was not an evaluation of the quality and efficiency of services ordered or performed by other professional health care providers, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review, underwriting assistance, and the compliance of a hospital, nursing home, convalescent home, or other health care facility operated by a professional health care provider with the standards set by an association of health care providers and with applicable laws, rules, and regulations. Instead, the purpose of the purported peer review was for a hospital to purportedly review the suitability of a fully licensed and certified outpatient surgical center to perform certain procedures. In short, this peer review constituted a review by a hospital of a competitor to judge whether the surgical center was an appropriate venue for procedures the hospital would prefer be performed at the hospital.

51. It is unusual for the Hospital's PRC to review cases that involve outpatient treatment.

52. Dr. Chappuis had been on staff at Emory University Hospital Midtown for over thirteen (13) years and has had his own surgery center for six (6) years where he has performed over 1300 outpatient spine procedures with only one (1) patient transfer—Ms. Davis.

53. Dr. Chappuis alleges on information and belief that the PRC's review of Ms. Davis's case was instigated by Defendant Refai out of professional jealousy and was embraced by Emory University Hospital out of its zeal to quash competition.

54. The PRC of Ms. Davis's case appears to have focused on Dr. Chappuis's decision to perform the surgeries on an outpatient basis.

55. Emory University Hospital and its PRC has a conflict of interest in judging whether it is appropriate for patients to receive outpatient treatment at surgical centers or other outpatient facilities and treating Emory surgeons differently than community surgeons.

56. As a general proposition, every dollar paid to an outpatient facility operated by a physician with privileges is a dollar that Emory University Hospital regards as lost to a competitor.

57. Because it had a vested interest in punishing physicians who performed spinal surgeries on an outpatient basis, Dr. Chappuis was suspended on a "precautionary" basis during the PRC's investigation, although there were no facts that would support any suspension.

58. Because he understood that Emory University Hospital had a conflict of interest in evaluating his use of the Surgery Center, and because Defendant Refai had demonstrated palpable animus and conspicuous hostility toward Dr. Chappuis, on May 19, 2019, Dr. Chappuis resigned his privileges at Emory University Hospital rather than submit to a hostile, prejudice, and conflicted tribunal.

59. Additionally, had he known that Defendant Refai was lying when Defendant Refai said Ms. Davis's surgery on May 9, 2019, had been a success and that Ms. Davis was fine and had he known that Dr. Refai's surgery had rendered Ms. Davis a quadriplegic, Dr. Chappuis would have invited the inquiry of the PRC to expose how Defendant Refai's malpractice had grievously injured the patient.

#### **Count I: Defamation**

60. The allegations in Paragraphs 1 through 59 of this Complaint are incorporated by reference here in as if fully set forth.

61. Defendant Refai made false and defamatory statements about Dr. Chappuis. Defendant Refai did so in connection with his status as an agent of Emory Healthcare.

62. Defendant Refai published false and defamatory statements about Dr. Chappuis to third parties.

63. The false and defamatory statements at issue constitute defamation per se pursuant to O.C.G.A. § 51-5-4(a)(1) and/or (2). As such, no proof of special damages is required.

64. Dr. Chappuis alleges upon information and belief that he has lost patients, business, income, and opportunities as a direct and proximate result of the false and

defamatory statements alleged herein. As such, Dr. Chappuis seeks, and is entitled to recover, special damages pursuant to O.C.G.A. § 51-5-4(4) in an amount to be proven at trial.

65. As alleged herein, Defendants acted in a manner showing willful misconduct, malice, wantonness, oppression and/or that entire want of care that raises the presumption of conscious indifference to consequences.

66. Dr. Chappuis alleges that Defendants acted with malice and without privilege. Defendants acted with the specific intent to cause harm within the meaning of O.C.G.A. § 51-12-5.1(f).

**Count II: Violation of Deceptive Trade Practices Act (O.C.G.A. §10-1-370 et seq.)**

67. The allegations in Paragraphs 1 through 66 of this Complaint are incorporated by reference here in as if fully set forth.

68. Defendant Refai's false and malicious accusations regarding the care received by Ms. Davis were made by Defendant Refai in the course of his business, vocation, and occupation and falsely disparaged the quality of care received by Ms. Davis. In so doing, Defendant Refai was acting within the scope of his agency as an agent of Defendant Emory Healthcare.

69. Defendant Refai's instigation of the PRC investigation which ultimately led to Dr. Chappuis's resignation of his privileges at Emory University Hospital, constituted conduct which caused misunderstanding regarding the cause of Mr. Davis's post-operative complications. In so doing, Defendant Refai was acting within the scope of his agency as an agent of Defendant Emory Healthcare.

70. Dr. Chappuis has been damaged as a consequence of said violations of the Deceptive Practices Act in an amount to be shown at the trial of this case.

**Count III: Intentional Infliction of Emotional Distress**

71. The allegations in Paragraphs 1 through 70 of this Complaint are incorporated by reference here in as if fully set forth.

72. Defendant Refai intentionally inflicted emotion distress upon Dr. Chappuis and did so in his capacity as an agent of Emory Healthcare.

73. In so doing, Defendant Refai engaged in intentional, or at least, reckless conduct.

74. Defendants' conduct was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and should be regarded as atrocious and utterly intolerable in a civilized community.

75. As a direct and proximate result of this conduct, Dr. Chappuis has suffered severe emotional distress.

76. As a result, Dr. Chappuis seeks, and is entitled to recover, damages in an amount to be determined at trial.

77. Defendant Refai specifically, acted in a manner showing willful misconduct, malice, wantonness, oppression and/or that entire want of care that raises the presumption of conscious indifference to consequences.

78. Pursuant to O.C.G.A. § 51-12-5.1, Dr. Chappuis seeks, and is entitled to recover, punitive damages in an amount sufficient to penalize, punish and/or deter Defendants from engaging in similar conduct in the future.

79. Dr. Chappuis alleges upon information and belief that Defendants specifically, acted with the specific intent to cause harm within the meaning of O.C.G.A. § 51-12-5.1(f).

**Count IV: Tortious Interference with Business Relations**

80. The allegations in Paragraphs 1 through 79 of this Complaint are incorporated by reference here in as if fully set forth.

81. Defendants tortiously interfered with Dr. Chappuis's business relations and, in particular, his relationship with Cindy Davis and her family.

82. As alleged herein, Defendants acted improperly and without privilege.

83. As alleged herein, Defendants acted purposely and with malice with the intent to injure.

84. Dr. Chappuis alleges upon information and belief that third parties have not entered into and/or continued business relationships with Dr. Chappuis as a direct and proximate result of Defendants' conduct as alleged herein, causing Dr. Chappuis financial injury.

85. Defendants acted in a manner showing willful misconduct, malice, wantonness, oppression and/or that entire want of care that raises the presumption of conscious indifference to consequences.

86. Pursuant to O.C.G.A. § 51-12-5.1, Dr. Chappuis seeks, and is entitled to recover, punitive damages in an amount sufficient to penalize, punish and/or deter Defendants from engaging in similar conduct in the future.

87. Defendants specifically, acted with the specific intent to cause harm within the meaning of O.C.G.A. § 51-12-5.1(f).

**Count V: Punitive Damages**

88. The allegations in Paragraphs 1 through 88 of this Complaint are incorporated by reference as if fully set forth herein.

89. Defendants willfully and maliciously engaged in tortious conduct with the specific intent to harm such that Plaintiff seeks, and, pursuant to O.C.G.A. §§ 10-1-764(b), 16-14-6(c), 51-12-5.1, and all other applicable authority, should be awarded, uncapped punitive damages to deter Defendants from similar wrongdoing in the future.

**Count VI: Attorneys' Fees**

90. The allegations in Paragraphs 1 through 89 of this Complaint are incorporated by reference as if fully set forth herein.

91. Defendants have acted in bad faith and caused Plaintiff unnecessary trouble and expense. Pursuant to O.C.G.A. § 13-6-11, Plaintiff is entitled to his expenses of litigation, including attorneys' fees.

**Relief Requested**

**WHEREFORE**, Plaintiff prays for the following relief:

- A. That this matter be tried before a jury;
- B. That the Court enter judgment against Defendants on each count of this Complaint;
- C. That the Court award Plaintiff all damages available to him under the law, including, but not limited to, special damages, compensatory damages,



general damages, punitive damages, and the costs of litigation, including, but not limited to, reasonable attorneys' fees; and

D. That the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 29th day of July, 2020.

/s/ Cary Ichter  
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