

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

Docket No. 2023-P-0961

MIDDLESEX, ss.

Yu-Fen Liu, Plaintiff/Appellant

V.

Tufts Medical Center, Inc, Et Al., Defendant/Appellees

On Appeal From Middlesex Superior Court's Judgement of
Dismissal

Record Appendix
Volume I of III
(Docket Documents)

Date: 11/03/2023

Jie Tan
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TABLE OF CONTENTS

Docket Index..... R.A.I 3

Complaint..... R.A.I 14

Exhibits of the Complaint.....R.A.I 38

Services Returned.....R.A.I 83

Defendants' Consolidated Motion to
Dismiss.....R.A.I 98

Defendants' Memorandum of Law.....R.A.I 100

Plaintiff's Opposition
.....R.A.I 128

Judge's Order on Defendant's Motion to
Dismiss.....R.A.I 151

Judgment on Motion to DismissR.A.I 156

Plaintiff's Notice of Appeal.....R.A.I 158

Notice of Assembly of Record.....R.A.I 160

2281CV04021 Liu, Yu-Fen vs. Tufts Medical Center Inc et al

- Case Type:
- Torts
- Case Status:
- Open
- File Date
- 11/22/2022
- DCM Track:
- A - Average
- Initiating Action:
- Fraud, Business Torts, etc.
- Status Date:
- 11/22/2022
- Case Judge:
-
- Next Event:
-

[All Information](#)
[Party](#)
[Event](#)
[Tickler](#)
[Docket](#)
[Disposition](#)

Party Information

Liu, Yu-Fen
- Plaintiff

Alias

Party Attorney

- Attorney
- Tan, Esq., Jie
- Bar Code
- 666462
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[More Party Information](#)

Tufts Medical Center Inc
- Defendant

Alias

Party Attorney

- Attorney
- Terry, Esq., Alexander
- Bar Code
- 688693
- Address
- Adler, Cohen, Harvey, Wakeman and Guekguezian, LLP
- 2 Oliver St
- Suite 1005
- Boston, MA 02109
- Phone Number
- (617)423-6674

[More Party Information](#)

Jennifer Jane Doe, individually and as a Nurse at Tufts Medical Center, Emergency Dept.
- Defendant

Alias

Party Attorney

- Attorney
- Terry, Esq., Alexander
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- 688693
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[More Party Information](#)

R.A.13

Patrice Stewart, individually and as an RN at Tufts Medical Center, Emergency Dept.
- Defendant

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Party Attorney

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Michael Wiser, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Emergency Dept.
- Defendant

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James M Stephen, MD, individually and as a Medicine Physician at Tufts Medical Center, Emergency Dept.
- Defendant

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Party Attorney

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[More Party Information](#)

Peter Ostrow, MD, individually and as a Medicine Physician at Tufts Medical Center
- Defendant

Alias

Party Attorney

- Attorney
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Jonathan Weinstock, MD, individually and as a Medicine Physician at Tufts Medical Center, Cardiac Dept.
- Defendant

Alias

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RA 14

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Sara Zelman, MD, individually and as a Resident Physician at Tufts Medical Center
- Defendant

Alias

Party Attorney

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[More Party Information](#)

Jane Does (2), individually and as Radiologists at Tufts Medical Center
- Defendant

Alias

Party Attorney

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[More Party Information](#)

Neil Halin Do, individually and as Radiologists at Tufts Medical Center
- Defendant

Alias

Party Attorney

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[More Party Information](#)

Leah Kaplan, MD, individually and as an Internal Medicine Resident at Tufts Medical Center
- Defendant

Alias

Party Attorney

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[More Party Information](#)

R.A.I 5

Arhant Rao, MD, individually and as an Internal Medicine Resident at Tufts Medical Center

- Defendant

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[More Party Information](#)

Daniel Augustadt, MD, Individually and as a Psychiatry Resident at Tufts Medical Center

- Defendant

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Doe Anthony, John

- Defendant

Alias

Party Attorney

- Attorney
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[More Party Information](#)

John Does (1-4), individually and as security officers at Tufts Medical Center

- Defendant

Alias

Party Attorney

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- Terry, Esq., Alexander
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[More Party Information](#)

Linda A. Cotter, RN, individually and as a Registered Nurse at Tufts Medical Center

- Defendant

Alias

Party Attorney

- Attorney
- Terry, Esq., Alexander
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- 688693
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RA 6

[More Party Information](#)

Nora Bosteels, RN, individually and as a Registered Nurse at Tufts Medical Center
- Defendant

Alias

Party Attorney

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[More Party Information](#)

Events

Date	Session	Location	Type	Event Judge	Result
06/14/2023 02:30 PM	Civil C Rm 740	Courtroom 740	Rule 12 Hearing	Bloomer, Hon. William F	Held - Under advisement

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	11/22/2022	02/21/2023	91	
Answer	11/22/2022	03/22/2023	120	
Rule 12/19/20 Served By	11/22/2022	03/22/2023	120	07/14/2023
Rule 12/19/20 Filed By	11/22/2022	04/21/2023	150	07/14/2023
Rule 12/19/20 Heard By	11/22/2022	05/22/2023	181	07/14/2023
Rule 15 Served By	11/22/2022	01/16/2024	420	07/14/2023
Rule 15 Filed By	11/22/2022	02/15/2024	450	07/14/2023
Rule 15 Heard By	11/22/2022	02/15/2024	450	07/14/2023
Discovery	11/22/2022	11/11/2024	720	07/14/2023
Rule 56 Served By	11/22/2022	12/11/2024	750	07/14/2023
Rule 56 Filed By	11/22/2022	01/10/2025	780	07/14/2023
Final Pre-Trial Conference	11/22/2022	05/12/2025	902	07/14/2023
Judgment	11/22/2022	11/21/2025	1095	07/14/2023
Under Advisement	06/14/2023	07/14/2023	30	

Docket Information











Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/22/2022	Case assigned to: DCM Track A - Average was added on 11/22/2022		
11/22/2022	Complaint electronically filed.	1	
11/22/2022	Civil action cover sheet filed.	2	
11/22/2022	Exhibits/Appendix		
11/23/2022	Demand for jury trial entered.		
02/20/2023	Service Returned for Defendant Daniel Augustadt, MD, Individually and as a Psychiatry Resident at Tufts Medical Center: Service made in hand; R.A.I 7 on 1/31/23 at 37 Bennett St. Tufts Medical Center Boston, MA 02111.	3	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/20/2023	Service Returned for Defendant Peter Ostrow, MD, individually and as a Medicine Physician at Tufts Medical Center: Service made in hand; on 1/31/23 at 37 Bennett St. Tufts Medical Center Boston, MA 02111.	4	 Image
02/20/2023	Service Returned for Defendant Leah Kaplan, MD, individually and as an Internal Medicine Resident at Tufts Medical Center: Service made in hand; on 1/31/23 at 37 Bennett St. Tufts Medical Center Boston, MA 02111.	5	 Image
02/20/2023	Service Returned for Defendant James M Stephen, MD, individually and as a Medicine Physician at Tufts Medical Center, Emergency Dept.: Service made in hand; on 1/31/23 at 37 Bennett St. Tufts Medical Center Boston, MA 02111.	6	 Image
02/20/2023	Service Returned for Defendant Linda A. Cotter, RN, individually and as a Registered Nurse at Tufts Medical Center: Service made in hand; on 1/31/23 at 37 Bennett St. Tufts Medical Center Boston, MA 02111.	7	 Image
02/20/2023	Service Returned for Defendant Tufts Medical Center Inc: Service made in hand; on 1/31/23 at 37 Bennett St. Tufts Medical Center Boston, MA 02111.	8	 Image
02/21/2023	Defendants Tufts Medical Center Inc's Notice of Consolidated Motion to Dismiss Filed in Lieu of Answer Pursuant to Superior Court Rule 9E	9	 Image
03/02/2023	Service Returned for Defendant Tufts Medical Center Inc: Service made in hand; on 2/22/23 at 75 Federal St., Boston, MA.	10	 Image
03/06/2023	Defendant Tufts Medical Center Inc's Motion to (Consolidated) Dismiss the Plaintiff's Complaint with Prejudice	11	 Image
03/06/2023	Tufts Medical Center Inc's Memorandum of Law in Support of the Defendant's Consolidated Motion to Dismiss the Plaintiff's Complaint with Prejudice	11.1	 Image
03/06/2023	Opposition to to Defendant's Consolidated Motion to Dismiss and Memorandum of Law in Support Thereof filed by Yu-Fen Liu	11.2	 Image
03/06/2023	Affidavit of Compliance with Superior Court Rule 9A and 9C Applies To: Terry, Esq., Alexander (Attorney) on behalf of Tufts Medical Center Inc (Defendant); Browne, Esq., Gregory R (Attorney) on behalf of Tufts Medical Center Inc (Defendant)	11.3	 Image
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added as Private Counsel for Defendant Tufts Medical Center Inc		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Tufts Medical Center Inc		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Jennifer Jane Doe, individually and as a Nurse at Tufts Medical Center, Emergency Dept.		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Jennifer Jane Doe, individually and as a Nurse at Tufts Medical Center, Emergency Dept.		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Patrice Stewart, individually and as an RN at Tufts Medical Center, Emergency Dept.		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Patrice Stewart, individually and as an RN at Tufts Medical Center, Emergency Dept.		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Michael Wiser, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Emergency Dept.		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Michael Wiser, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Emergency Dept.		










RAI 8

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant James M Stephen, MD, individually and as a Medicine Physician at Tufts Medical Center, Emergency Dept.		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant James M Stephen, MD, individually and as a Medicine Physician at Tufts Medical Center, Emergency Dept.		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Peter Ostrow, MD, individually and as a Medicine Physician at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Peter Ostrow, MD, individually and as a Medicine Physician at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Jonathan Weinstock, MD, individually and as a Medicine Physician at Tufts Medical Center, Cardiac Dept.		
03/06/2023	Attorney appearance On this date Jonathan F Mosher, Esq. added for Defendant Jonathan Weinstock, MD, individually and as a Medicine Physician at Tufts Medical Center, Cardiac Dept.		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Sara Zelman, MD, individually and as a Resident Physician at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Sara Zelman, MD, individually and as a Resident Physician at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Jane Does (2), individually and as Radiologists at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Jane Does (2), individually and as Radiologists at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Neil Halin Do, individually and as Radiologists at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Neil Halin Do, individually and as Radiologists at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Leah Kaplan, MD, individually and as an Internal Medicine Resident at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Leah Kaplan, MD, individually and as an Internal Medicine Resident at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Arhant Rao, MD, individually and as an Internal Medicine Resident at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Arhant Rao, MD, individually and as an Internal Medicine Resident at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Daniel Augustadt, MD, Individually and as a Psychiatry Resident at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Daniel Augustadt, MD, Individually and as a Psychiatry Resident at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant John Doe Anthony		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant John Doe Anthony		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant John Does (1-4), individually and as security officers at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant John Does (1-4), individually and as security		

R.A.I 9

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	officers at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Linda A. Cotter, RN, individually and as a Registered Nurse at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Linda A. Cotter, RN, individually and as a Registered Nurse at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Alexander Terry, Esq. added for Defendant Nora Bosteels, RN, individually and as a Registered Nurse at Tufts Medical Center		
03/06/2023	Attorney appearance On this date Gregory R Browne, Esq. added for Defendant Nora Bosteels, RN, individually and as a Registered Nurse at Tufts Medical Center		
03/14/2023	The following form was generated: Notice to Appear Sent On: 03/14/2023 09:37:44		
03/14/2023	Party status: Defendant Neil Halin Do, individually and as Radiologists at Tufts Medical Center: No Service; ON 3/7/23 at Tufts Medical Center 860 Washington St, Boston, MA 02111; By virtue of this writ I have made diligent search for the within-named NEIL HALIN DO and for his/her/its last and usual place of abode, and for his tenant, agent, or attorney, but could not find him/her/it within this county; therefore this writ is returned without service.	12	 Image
03/14/2023	Party status: Defendant Arhant Rao, MD, individually and as an Internal Medicine Resident at Tufts Medical Center: No Service; ON 3/7/23 at Tufts Medical Center 860 Washington St, Boston, MA 02111; By virtue of this writ I have made diligent search for the within-named ARHANT RAO, M.D. and for his/her/its last and usual place of abode, and for his tenant, agent, or attorney, but could not find him/her/it within this county; therefore this writ is returned without service.	13	 Image
03/14/2023	Party status: Defendant Jonathan Weinstock, MD, individually and as a Medicine Physician at Tufts Medical Center, Cardiac Dept.: No Service; ON 3/7/23 at Tufts Medical Center 860 Washington St, Boston, MA 02111; By virtue of this writ I have made diligent search for the within-named JONATHAN WEINSTOCK, M.D. and for his/her/its last and usual place of abode, and for his tenant, agent, or attorney, but could not find him/her/it within this county; therefore this writ is returned without service.	14	 Image
03/14/2023	Party status: Defendant Michael Wiser, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Emergency Dept.: No Service; ON 3/7/23 at Tufts Medical Center 860 Washington St, Boston, MA 02111; By virtue of this writ I have made diligent search for the within-named MICHAEL WISER M.D. and for his/her/its last and usual place of abode, and for his tenant, agent, or attorney, but could not find him/her/it within this county; therefore this writ is returned without service.	15	 Image
03/14/2023	Party status: Defendant Patrice Stewart, individually and as an RN at Tufts Medical Center, Emergency Dept.: No Service; ON 3/7/23 at Tufts Medical Center 860 Washington St, Boston, MA 02111; By virtue of this writ I have made diligent search for the within-named PATRICE STEWART R.N. and for his/her/its last and usual place of abode, and for his tenant, agent, or attorney, but could not find him/her/it within this county; therefore this writ is returned without service.	16	 Image
03/14/2023	Party status: Defendant Sara Zelman, MD, individually and as a Resident Physician at Tufts Medical Center: No Service; ON 3/7/23 at Tufts Medical Center 860 Washington St, Boston, MA 02111; By virtue of this writ I have made diligent search for the within-named SARA ZELMAN M.D. and for his/her/its last and usual place of abode, and for his tenant, agent, or attorney, but could not find him/her/it within this county; therefore this writ is returned without service.	17	 Image
03/14/2023	Party status: Defendant Nora Bosteels, RN, individually and as a Registered Nurse at Tufts Medical Center: No Service; ON 3/7/23 at Tufts Medical Center 860 Washington St, Boston, MA 02111; By virtue of this writ I have made diligent search for the within-named NORA BOSTEELS R.N. and for his/her/its last and usual place of abode, and for his tenant, agent, or attorney, but could not find him/her/it within this county; therefore this writ is returned without service.	18	 Image
03/24/2023	Defendant Tufts Medical Center Inc's Motion to quash the Plaintiff's subpoena and stay discovery pending the court's ruling on the Defendants' consolidated motion to dismiss.	19	 Image
03/24/2023	Opposition to Tufts Medical Center's Motion to quash and Plaintiff's cross-motion for special process service process. filed by Yu-Fen Liu	19.1	 Image
03/24/2023	Tufts Medical Center Inc's Reply Memorandum to the Plaintiff's opposition to Tufts Medical Center's Motion to quash subpoena and stay discovery while the Defendants' consolidated motion to dismiss is pending.	19.2	 Image

R.A.I 10

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/24/2023	Affidavit of compliance with Superior Court Rule 9A Applies To: Browne, Esq., Gregory R (Attorney) on behalf of Tufts Medical Center Inc (Defendant)	19.3	 Image
03/24/2023	Affidavit of compliance with Superior Court Rule 9C Applies To: Browne, Esq., Gregory R (Attorney) on behalf of Tufts Medical Center Inc (Defendant)	19.4	 Image
03/24/2023	Attorney appearance electronically filed.		 Image
03/24/2023	Attorney appearance electronically filed.		 Image
04/06/2023	Endorsement on Motion to Quash (#19.0): ALLOWED After review, the motion to quash the subpoena, with a return date of 3/25/2024, is MOOT in light of the lateness of the filing and the passage of the return date. In any event, the motion to stay discovery pending the court's ruling on defendant's Motion to Dismiss is ALLOWED. The defendant have articulated reasonable grounds for an order staying discovery, particularly in light of the allowance of a Motion to Dismiss agreement two named defendants and the Plaintiff's failure to effectuate service of process against other named defendants. Dated: April 3, 2023 Judge: Bloomer, Hon. William F		 Image
04/07/2023	Plaintiff Yu-Fen Liu's Motion for Contempt and Enforcement	20	 Image
04/10/2023	Endorsement on Motion for Contempt and Enforcement (#20.0): No Action Taken Failure to comply with 9A. Dated: April 7, 2023 Judge: Bloomer, Hon. William F		 Image
06/14/2023	Matter taken under advisement: Rule 12 Hearing scheduled on: 06/14/2023 02:30 PM Has been: Held - Under advisement Hon. William F Bloomer, Presiding Appeared: Plaintiff Jie Tan, Esq., Defendant Gregory R Browne, Esq., Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
06/23/2023	Endorsement on Motion to Dismiss (#11.0): ALLOWED After hearing and review, ALLOWED. See the court's expended endorsement and Order. (Paper No. 21). Dated: June 22, 2023 Judge: Bloomer, Hon. William F		 Image
06/23/2023	Endorsement on Motion to Dismiss (#11.0): ALLOWED Expanded endorsement and Order on Defendants' Motion to Dismiss (Paper No. 11): After hearing and careful evaluation of the papers filed in connection with the above motion as well as the complaints filed in the instant case and in civil case number 2281CV01401, Defendants' Motion to Dismiss is ALLOWED. Which See (2) pages. Judge: Bloomer, Hon. William F		 Image
07/07/2023	Endorsement on Motion to Dismiss (#11.0): ALLOWED After hearing and review, ALLOWED. See the court's expanded endorsement and order. (Paper No. 21) Dated: June 22, 2023 Judge: Bloomer, Hon. William F		 Image
07/14/2023	JUDGMENT on Defendants, Tufts Medical Center Inc, Jennifer Jane Doe, individually and as a Nurse at Tufts Medical Center, Emergency Dept., Patrice Stewart, individually and as an RN at Tufts Medical Center, Emergency Dept., Michael Wiser, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Emergency Dept., James M Stephen, MD, individually and as a Medicine Physician at Tufts Medical Center, Emergency Dept., Peter Ostrow, MD, individually and as a Medicine Physician at Tufts Medical Center, Jonathan Weinstock, MD, individually and as a Medicine Physician at Tufts Medical Center, Cardiac Dept., Sara Zelman, MD, individually and as a Resident Physician at Tufts Medical Center, Jane Does (2), individually and as Radiologists at Tufts Medical Center, Neil Halin Do, individually and as Radiologists at Tufts Medical Center, Leah Kaplan, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Arhant Rao, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Daniel Augustadt, MD, Individually and as a Psychiatry Resident at Tufts Medical Center, John Doe Anthony, Linda A. Cotter, RN, individually and as a Registered Nurse at Tufts Medical Center, Nora Bosteels, RN, individually and as a Registered Nurse at Tufts Medical Center 12(b) motion to dismiss against Plaintiff(s) Yu-Fen Liu. It is ORDERED and ADJUDGED: That the plaintiff, Yu-Fen Liu's complaint be and hereby is dismissed. with prejudice. Judge: Bloomer, Hon. William F	21	 Image

R.A.I 11

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Tufts Medical Center Inc		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Jennifer Jane Doe, individually and as a Nurse at Tufts Medical Center, Emergency Dept.		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Patrice Stewart, individually and as an RN at Tufts Medical Center, Emergency Dept.		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Michael Wiser, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Emergency Dept.		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant James M Stephen, MD, individually and as a Medicine Physician at Tufts Medical Center, Emergency Dept.		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Peter Ostrow, MD, individually and as a Medicine Physician at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Sara Zelman, MD, individually and as a Resident Physician at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Jane Does (2), individually and as Radiologists at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Neil Halin Do, individually and as Radiologists at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Leah Kaplan, MD, individually and as an Internal Medicine Resident at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Arhant Rao, MD, individually and as an Internal Medicine Resident at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Daniel Augustadt, MD, Individually and as a Psychiatry Resident at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant John Doe Anthony		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant John Does (1-4), individually and as security officers at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Linda A. Cotter, RN, individually and as a Registered Nurse at Tufts Medical Center		
07/18/2023	Attorney appearance On this date Gregory R Browne, Esq. dismissed/withdrawn for Defendant Nora Bosteels, RN, individually and as a Registered Nurse at Tufts Medical Center		
07/18/2023	Attorney appearance electronically filed.		
07/24/2023	NOTICE OF APPEAL Plaintiff Yufen Liu gives notice of appeal from the Court's Allowance of Defendants' Motion to Dismiss. This Notice of Appeal is signed by Appellant pursuant to Rule 3(c) of the Massachusetts Rules of Appellate Procedure and has been timely filed within thirty (30) days of entry of the order appealed from pursuant to Rule 4(a) of the Massachusetts Rules of Appellate Procedure. Please also order all appropriate cassettes/recordings/transcript of the hearing in this matter. Applies To: Liu, Yu-Fen (Plaintiff)	22	 Image  Image
08/14/2023	Notice of assembly of record sent to Counsel	23	
08/14/2023	Notice to Clerk of the Appeals Court of Assembly of Record	24	 Image
08/14/2023	Appeal: Statement of the Case on Appeal (Cover Sheet)	25	 Image  Image

R.A.I 12

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
08/24/2023	Appeal entered in Appellate Division of the Superior Court on 08/23/2023 docket number A.C. No: 2023-P-0961	26	
08/28/2023	CD of Transcript of 06/14/2023 02:30 PM Rule 12 Hearing received from Lisa Marie Phipp. 1	27	Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Judgment after Finding on Motion	07/14/2023	

For Land Court only: Name search is currently unavailable. Case type and case number searches are available. For a Land Court name search, contact the Land Court Recorder's Office at 617-788-7470. We apologize for the inconvenience. ✖

MIDDLESEX, SS

COMMONWEALTH OF MASSACHUSETTS

SUPRIOR COURT
C.A. NO.

YU-FEN LIU

PLAINTIFF

v.

TUFTS MEDICAL CENTER INC,
JENNIFER JANE DOE, individually and as
a Nurse at Tufts Medical Center, Emergency Dept.
PATRICE STEWART, individually and as a RN at Tufts
Medical Center, Emergency Dept.
MICHAEL WISER, MD, individually and as an Internal
Medicine Resident at Tufts Medical Center, Emergency Dept.
JAMES M STEPHEN, MD, individually and as a
Medicine Physician at Tufts Medical Center, Emergency Dept,
SARA ZELMAN, MD, individually and as a
Resident Physician at Tufts Medical Center.
PETER OSTROW, MD, individually and as a
Medicine Physician at Tufts Medical Center
JONATHAN WEINSTOCK, MD, individually and as a
Medicine Physician at Tufts Medical Center, Cardiac Dept.
JANE DOES (2), individually and as Radiologists at
Tufts Medical Center,
NEIL HALIN, DO, individually and as Radiologists at
Tufts Medical Center,
LEAH I KAPLAN, MD, individually and as an
Internal Medicine Resident and at Tufts Medical Center,
ARHANT RAO, MD, individually and as an
Internal Medicine Resident at Tufts Medical Center,
LINDA A COTTER, RN, individually and as
a Registered Nurse at Tufts Medical Center,
NORA BOSTEELS, RN, individually and as
a Registered Nurse at Tufts Medical Center,
DANIEL AUGUSTADT, MD, individually and as a
Psychiatry Resident at Tufts Medical Center, and
JOHN DOE ANTHONY and JOHN DOES (1-4), individually
and as security officers at Tufts Medical Center

DEFENDANTS

RECEIVED

11/22/2022

HG

COMPLAINT AND DEMAND FOR TRIAL BY JURY

This is a civil action for patient rights violations and personal injury damages sustained by Plaintiff Yu-Fen Liu.

THE PARTIES

1. At all times mentioned herein, Plaintiff Yu-fen Liu was and is a Massachusetts resident with a residence at 200 Swanston St, Winchester, MA 01890.
2. At all times mentioned herein, upon information and belief, Plaintiff was a patient at TMC Emergency Department and at TMC Cardiac Inpatient Department from November 24, 2019 to November 25, 2019.
3. At all times mentioned herein, upon information and belief, Defendant TUFTS MEDICAL CENTER INC (“TMC”) was and is a Massachusetts corporation, a provider of health care, and at all relevant times with a principal business address at 800 Washington St, Boston, MA 02111.
4. At all times mentioned herein, upon information and belief, Defendant JENNIFER JANE DOE (being fictitious name whose true identity is presently unknown) was and is a Registered Nurse at Tufts Medical Center, Emergency Department.
5. At all times mentioned herein, upon information and belief, Defendant PATRICE STEWART was and is a Registered Nurse at Tufts Medical Center, Emergency Department.
6. At all times mentioned herein, upon information and belief, Defendant MICHAEL WISER, M.D. was and is an Internal Medicine Resident at Tufts Medical Center, Emergency Department.

7. At all times mentioned herein, upon information and belief, Defendant JAMES M STEPHEN, M.D. was and is a Medicine Physician at Tufts Medical Center, Emergency Department.

8. At all times mentioned herein, upon information and belief, Defendant PETER OSTROW, M.D. was and is a Medicine Physician at Tufts Medical Center.

9. At all times mentioned herein, upon information and belief, Defendant JONATHAN WEINSTOCK, M.D. was and is a Medicine Physician at Tufts Medical Center, Cardiac Dept.

10. At all times mentioned herein, upon information and belief, Defendant SARA ZELMAN, MD, was and is a Resident Physician at Tufts Medical Center.

11. At all times mentioned herein, upon information and belief, Defendants JANE DOES (2) (being fictitious name whose true identities are presently unknown) were and are radiologists at Tufts Medical Center.

12. At all times mentioned herein, upon information and belief, Defendants NEIL HALIN, DO individually and as Radiologists at Tufts Medical Center

13. At all times mentioned herein, upon information and belief, Defendant LEAH I KAPLAN, M.D. was and is an Internal Medicine Resident at TMC, Cardiac Department.

14. At all times mentioned herein, upon information and belief, Defendant ARHANT RAO, M.D. was and is an Internal Medicine Resident at TMC, Cardiac Department.

15. At all times mentioned herein, upon information and belief, Defendant LINDA A COTTER, RN was and is a Registered Nurse at TMC, Cardiac Department.

16. At all times mentioned herein, upon information and belief, Defendant NORA BOSLEELS, RN was and is a Registered Nurse at TMC, Cardiac Department.

17. At all times mentioned herein, upon information and belief, Defendant DAN AUGUSTADT, M.D. was and is a Psychiatry Resident at TMC.

18. At all times mentioned herein, upon information and belief, Defendant JOHN DOE Anthony, and JOHN DOES 1-4 (being fictitious names whose identities are presently unknown) were and are security officers at TMC.

JURISDICTION AND VENUE

19. Jurisdiction is properly conferred by G.L. c. 212, § 4 and c. 223A, §§ 2 and 3.

20. Venue is proper under G.L. c. 223, §§ 1 and 8.

STATEMENT OF FACTS

21. On Sunday November 24, 2019, at approximately 9-10 am, Plaintiff felt a sharp back pain below her right shoulder that radiated to her ear. She walked-in to Tufts Medical Center Emergency Department at 860 Washington St, Boston, MA 02111. The following statements describe the events in chronic order after Plaintiff checked herself into the Emergency Department of TMC.

22. On information and belief, Plaintiff was assigned a patient ID bracelet and assigned to waiting room 4. Defendant Jennifer Jane Doe, a white and affluent lady, entered the room and introduced herself as Jennifer and Plaintiff's nurse

23. On information and belief, Jennifer communicated with Plaintiff with the help of a Mandarin interpreter from time to time.

24. On information and belief, with the help of the Mandarin Interpreter, Jennifer inquired Plaintiff's symptoms and measured her body temperature and blood pressures and gave Plaintiff two pills of Aspirin. With the intake of the Aspirin, Plaintiff felt better and asked to leave.

25. On information and belief, Jennifer then told Plaintiff that she needed additional rest and some nutritional infusion and placed IV infusion gauge catheters on both the left arm and the right arm of Plaintiff and started to infuse a bag of liquid through the left arm gauge catheter, she told Plaintiff that the liquid was for relaxing, and it would only take one hour.

26. On information and belief, several minutes later, Jennifer injected a small bottle of unknown liquid into the infusion bag without telling Plaintiff what the liquid was. Several minutes after the injection, Plaintiff felt her heart suddenly contracted as if someone was squeezing her heart very hard, she could not breath. Plaintiff thought she was going to die, she screamed out loudly for “help me, help me” for several minutes and no one came.

27. About 10 minutes later, when plaintiff’s heart began to relax, Jennifer entered the room, Plaintiff asked for the help of the interpreter and inquired Jennifer why her heart suddenly felt like she was dying after her injection of the little bottle. Jennifer did not answer. She gave the Plaintiff one pill from a small brown bottle, Plaintiff felt better after intaking the pill.

28. Five minutes later, Jennifer gave the Plaintiff another such pill, Plaintiff was alert and inquired whether it would not be healthy to take another pill within such short time interval. Jennifer assured her that it was no problem.

29. On information and belief, about 30 minutes later, Plaintiff was totally relaxed and felt good and ready to leave again, and a male Indian-look doctor came in told her that he was going to measure her heart’s ECG. He measured the ECG and told her that ECG was good.

30. On information and belief, around 1 pm, a young doctor with a round head and bloodshot eyes came in and told Plaintiff that he was her doctor, he told Plaintiff that she

needed to be admitted into the hospital for further observation because of the heart problem, he asked Plaintiff to sign some hospital papers without any interpreter presence.

31. On information and belief, when Plaintiff's son visited Plaintiff around 3 pm, three medical students walked into Plaintiff's room and went through all of Plaintiff's belongings and had Plaintiff's son to take home with him all of Plaintiff's clothes, shoes, jewelry, and her purse. Plaintiff was only allowed to keep her phone with her.

32. On information and belief, when Plaintiff was placed onto a wheel to be transferred to inpatient department, Jennifer told Plaintiff that she was going to have some CT tests in the following 3 days. Plaintiff immediately protested with her broken English that she just had CT tests in Tufts medical center two weeks ago, she did not want to stay for CT tests, she had to take care of her son who was a minor and she knew that CT tests should not be taken too often. But Jennifer left her room without responding to her.

33. On information and belief, around 7 pm, November 24, 2019, Plaintiff was wheeled from the Emergency Center to room 6036-1, 6th floor of the Inpatient Department, North Building at 830 Washington St, Boston.

34. Upon arrival, Defendant Linda Cotter greeted Plaintiff and introduced herself to be the registered nurse in charge of Plaintiff, she told Plaintiff that she would check out at 6 am in the morning, which puzzled the Plaintiff that the hospital just had all her belongs taken away by her son, why then had her check out at 6 am in the morning when there would be nobody around to help her. She asked to change the check out time to be after 9 am, Linda was adamant that she be out at 6 am.

35. Plaintiff did not inquire further and was happy to be able to finally order some food to eat after the entire day without any food.

36. On information and belief, Linda then told Plaintiff that she was going to get a CT scan that evening.

37. Knowing that she just had a CT scan about two weeks ago and frequent CT scan would harm the body, Plaintiff protested with her broken English and told Linda that she said no to do another CT scan so soon. Linda would not yield, Plaintiff then asked for a translator, Linda told her that no translator was available.

38. On information and belief, around 8 to 8:20 pm, Linda pushed a cart into Plaintiff's room, and asked Plaintiff to raise her hospital pajama. Not knowing what this was for, Plaintiff followed the command and raised her hospital pajama, in flash seconds, Linda suddenly injected syringe with an around 1.5-inch needle unto Plaintiff's stomach and finished an injection of a thumb-size tube of unknown liquid in 1 or 2 seconds.

39. Immediately a hot melting excruciating pain attacked Plaintiff's lower abdominal region as if everything inside were melted into one piece, Plaintiff immediately cried out and fell to her bed and could not sit up. Linda then told her to get ready for CT scan and left the room without telling Plaintiff what that injection on the stomach was, even after Plaintiff demanded a translator to explain, the response was no translator available.

40. On information and belief, Plaintiff was then immediately wheelchaired downstairs into the CT room in the basement of the building. Plaintiff did CT test before she knew the CT room was located at the 4th floor, not in the basement.

41. The CT room did not have lights on, two middle-aged women in the CT room, one white woman and one black woman with unknown identity (Defendant with fictitious name Jane Does) were in the room.

42. Upon plaintiff's arrival, Defendant Jane Does immediately injected two syringes of unknown liquids into the IV-gauge catheters on Plaintiff left arm, pushed Plaintiff into a cylinder of the machine. Upon entering into the machine, Plaintiff instantly felt her hair stand up and her body heated up.

43. A couple of minutes later, the two women pulled Plaintiff out and quickly injected another two syringes of liquid into Plaintiff's right arm and quickly pushed her into the machine. Plaintiff felt a fire was burning her body this time and her body felt expanded like a balloon, and she began to scream.

44. Not responding to her screaming, the two women pulled her out, quickly injected another two syringes of liquid into her left arm and pushed her into the machine again. Once in the machine, Plaintiff felt her body was going to explode, she screamed for help. This felt unlike any of her previous CT scans.

45. The two women pulled her out, not responding to Plaintiff's screaming for help, they continued to prepare to inject Plaintiff's right arm. Plaintiff in agonizing pain, rolled herself down from the bed to the ground, threatening to sue them if they did not stop. The two women then stopped. Plaintiff felt the hospital was not safe to stay for the evening, the CT scans did not feel like the CT scan she took before.

46. On information and belief, around 9:15 pm, Plaintiff was wheelchaired upstairs. Back to the 6th floor, Defendant Nora Bosteels and Dr. Leah Kaplan came to visit Plaintiff, Nora asked Plaintiff how she felt, Dr. Kaplan introduced herself as Plaintiff's pharmacist.

47. Plaintiff asked for a translator so that she could explain how she felt, Nora told her no translator was available. Plaintiff offered to call her uber driver friend Charlie Chow to come to hospital to be the translator. Nora agreed.

48. On information and belief, Charlie Chow arrived at the hospital within 10-15 minutes, and he translated Plaintiff's feeling that she felt that it was not safe to do more CT testing and that she wanted to be discharged immediately, and she was willing to be responsible for any consequences of the discharge.

49. On information and belief, instantly Plaintiff's room was full of people, Linda said no, Dr. Kaplan was present telling Plaintiff that if she left the hospital she could die on the street, and Dr. Arhant Rao stood at the door, blocking the way out, and there were two other hospital helpers sitting at the door.

50. On information and belief, after Plaintiff insisted that she would rather die at home than stay in the hospital. Around 9:30 to 10 pm, psychiatrist Dr. Daniel Augustadt came.

51. On information and belief, Dr. Augustadt repeatedly asked Plaintiff two questions why she wanted to leave and whether she knew that if she left the hospital she would die anytime. A Mandarin interpreter phone service was engaged, and the interpreter translated what Dr. Augustadt said. The same statements were repeated many times for over 1.5 hours as Plaintiff demanded and explained and begged to be discharged because she had a minor child at home needing her care.

52. On information and belief, the Plaintiff was then told that the first interpreter was not good and cannot be trusted. The phone service of another Mandarin interpreter was engaged, the same questions of whether Plaintiff knew if she left the hospital she would die anytime and why she wanted to leave, for another 1.5 hours as Plaintiff argued her reasons to be discharged. Out of despair Plaintiff plainly told the people in the room that she felt that if she stayed in the hospital she would die.

53. On information and belief, around 12:40 am, Dr. Augustadt finally agreed that Plaintiff could leave if she signed the leave against medical advice paper. Plaintiff signed the paper, Dr. Augustadt let plaintiff and her uber driver walk out of the room.

54. On information and belief, Dr. Augustadt and Dr. Rao then chatted outside the Plaintiff's patient room, after Plaintiff hearing Dr. Augustadt screamed loudly "oh my God", three times, Dr. Augustadt immediately changed his mind and told Plaintiff that she could not leave. But Plaintiff and her uber driver Charlie already were outside her patient room.

55. Refusing to go back, Plaintiff and her uber driver raced to the elevator area. People from the entire 6th floor began to chase after them.

56. On information and belief, Plaintiff, seeing people coming closer her, desperately needing to distract them, Plaintiff grabbed the yellow caution sign and began to hit her own head, which startled the people coming after her.

57. At their instant of pause and hesitation, the elevator arrived, Plaintiff and her uber driver quickly ran into the elevator which took them to the first floor, and Plaintiff and her uber driver were able to run out the hospital's semicircle Atrium door unto Bennet St. It was around 1:10 am, November 25, 2019.

58. On information and belief, with only a hospital pajama and socks, Plaintiff was frozen outside the hospital. About 7-8 people were surrounding over. In the darkness, Plaintiff felt that she was a fugitive, and her life was in imminent danger, she froze and could not move.

59. Immediately 4-6 security guards surrounded Plaintiff, one came to her rear side and knocked the back of her knees, Plaintiff's legs bent, and she abruptly fell to the ground on

her bottom and could not get up. Four to six security guards immediately crowded up and held her on the ground.

60. On information and belief, someone pushed a wheelchair over, Plaintiff was placed on the wheelchair and she could not move, the security guards wheeled plaintiff back to the 6th floor into another room, Plaintiff was placed on a bed, guarded by 4 security guards with one sitting outside the room.

61. On information and belief, Defendant Nora Bosteels brought a restraining rope attempted to restrain Plaintiff to the bed, the security guards told her that it was unnecessary because 5ft 3” Plaintiff was communicating with them calmly and the security guards were 6 feet strong men.

62. On information and belief, a female security guard questioned Plaintiff in English while told Plaintiff that Mandarin Interpreter from China could not be trusted and they must wait for a Mandarin interpreter named Vincent from Vietnam to come to the hospital to translate in person.

63. On information and belief, around 3:15 am, the Vietnamese Mandarin interpreter arrived, plaintiff was placed into a conference room, with the presence of Defendant Nora, Defendant security guard Anthony, Defendant psychiatrist Daniel, Defendant Pharmacist Leah, Plaintiff was told that it was normal to add drug and to have uncomfortable physical reactions even death, and it was normal for defendants to catch running away patients.

64. At around 3:20 am, November 25, 2019, Plaintiff was asked to sign again the Against Medical Advice paper and was finally allowed to leave the hospital.

65. On information and belief, in the darkness of the morning of November 25, 2019, outside the Tufts hospital building, on the street, with a hospital pajama and socks, no shoes,

Plaintiff was so afraid that the hospital would change its mind again, she begged the Mandarin interpreter to accompany her until her uber driver's arrival.

66. The next day, November 26, 2019, Plaintiff entire back, face and mouth were swollen (**Exhibit 1**), but she did not dare to go back to Tufts Medical Center, she went to Boston Medica Center, and she did not dare to stay in the hospital for further observation.

67. On information and belief, the injection on her lower abdomen caused excruciating pain and no doctors have dared to prescribe any medicine not even pain killers for not knowing what was injected.

68. On information and belief, two years after the abdomen injection, lower abdomen was still bruised (**Exhibit 2**), Plaintiff has been in constant abdominal pain, mesenteric panniculitis may have been caused and developed.

69. Plaintiff used to trust Tufts doctors, her primary doctors and routine physical exams were all conducted in Tufts, she now has been in constant fear for her life by Tufts doctors, she could not dare to go to any hospital. She felt that Tufts may have hired people to stalk her and listened and recorded her phone conversations.

COUNT I

MEDICAL FRAUD

Against All Defendants

70. The plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

71. Plaintiff was assigned MRN 2256001, with account number 198115703. **Exhibit 3**, but the medical record of Plaintiff obtained from Defendant Dr. Weinstock on Oct. 8, 2021 was MRN 2870892, account number 198115703, Adm DTime was 11/24/2019, 10: 25.

Exhibit 4.

72. The medical report of Plaintiff obtained on December 10, 2021, from Sharecare Health Data Services, LLC indicates the Attention doctor was Ostrow, Peter, MRN 2870892 account number 210957430, Adm DTime was 03/17/2021. **Exhibit 5.**

73. The medical record of plaintiff obtained from Emergency Department shows massive time shifting, massive deletions and massive changes of the record. **Exhibit 6.**

74. The contents of Plaintiff's medical reports from TMC do not match Plaintiff's medical history.

75. 105 Mass. Reg. 140.302(B) requires that “**(B)**Each patient shall have a single integrated record, except mental health, dental, substance use disorder, and, upon approval of the Commissioner, other records, may be filed separately, provided there is an effective cross-referencing system.”

76. It is no coincidence that Plaintiff's medical records from both Emergency Department and the Inpatient Department show inconsistency in basic record keeping.

77. Defendants intended to defraud Plaintiff's health information and Plaintiff's medical records from Tufts cannot be trusted, and Plaintiff health have suffered and will continue to suffer for which Defendants are each liable to plaintiff.

WHEREFORE, the plaintiff prays that, after trial, a judgment be entered in her favor and against defendants, that damages be awarded to the plaintiff in an amount to be determined at trial, plus interest, and costs.

COUNT II

ASSAULT

Against Defendants TMC, LEAH I KAPLAN, MD, ARHANT RAO, MD, LINDA A COTTER, RN, NORA BOSTEELS, RN, DANIEL AUGUSTADT, MD, JOHN DOE ANTHONY and JOHN DOES (1-4)

78. The plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

79. Defendants repeatedly threatened Plaintiff that if she left the hospital, she could die for continuous 5.5 to 6 hours, from 10 pm November 24, 2019 to 3:20 am November 25, 2019.

80. Plaintiff is traumatized and has suffered and will continue to suffer for which Defendants are each liable to plaintiff.

WHEREFORE, the plaintiff prays that, after trial, a judgment be entered in her favor and against defendants, that damages be awarded to the plaintiff in an amount to be determined at trial, plus interest, and costs.

COUNT III

FALSE IMPRISONMENT

Against Defendants TMC, JENNIFER JANE DOE, LEAH I KAPLAN, MD, ARHANT RAO, MD, LINDA A COTTER, RN, NORA BOSTEELS, RN, DANIEL AUGUSTADT, MD, JOHN DOE ANTHONY and JOHN DOES (1-4)

81. The plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

82. Defendants falsely restricted and captured Plaintiff illegally in her room against her will from 6 pm, November 24, 2019 to 3:20 am November 25, 2019. **Exhibit 7.**

83. Patients not adjudicated incompetent have a constitutional right to refuse treatment. *Rogers v. Okin*, 478 F. Supp. 1342, 1380-1389 (D. Mass. 1979).

84. "No person shall be deemed to be incompetent to manage his affairs, to contract, to hold professional or occupational or vehicle operators licenses or to make a will solely by reason of his admission or commitment in any capacity to the treatment or care of the department or to any public or private facility." G.L.c. 123, § 25, inserted by St. 1970, c. 888, § 4. See 104 Code Mass. Regs. §3.10 (2) (6) (1978).

85. The right of an individual "to manage his own person" necessarily encompasses the right to make basic decisions with respect to "taking care of himself," *Fazio v. Fazio*, 375 Mass. 394, 403 (1978), including decisions relating to the maintenance of physical and mental health. The "right to make treatment decisions is an essential element of the patient's general right to manage his affairs. See *Rogers v. Commissioner of Department of Mental Health*, 390 Mass 489, 496 (Mass 1983).

86. The question of "competency" rests in court's authority, not in medical doctor. *Id.* 504.

87. Thus, Defendants falsely imprisoned Plaintiff by capturing her and forcing her to stay in the hospital room for 10 hours.

88. Plaintiff has been traumatized by this extreme torturous imprisonment against her will, particularly when she regarded the hospital as imminent life threatening, and Plaintiff has suffered great distress and body injury and will continue to suffer for which Defendants are each liable to plaintiff.

WHEREFORE, the plaintiff prays that, after trial, a judgment be entered in her favor and against defendants, that damages be awarded to the plaintiff in an amount to be determined at trial, plus interest, and costs.

COUNT IV

BATTERY

**Against Defendants TMC, JENNIFER JANE DOE, JANE DOES (2),
LINDA A COTTER, RN, JOHN DOE ANTHONY and JOHN DOES
(1-4)**

89. The plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

90. Without consent, JENNIFER JANE DOE in Emergency Department, infused unknown drug into Plaintiff's body that caused immediate heart dysfunction.

91. Under Plaintiff's protesting, Linda A Cotter subjected Plaintiff to CT scan, and injected a syringe into the plaintiff's abdomen.

92. Under Plaintiff's protesting, JANE DOES (2) in radiology subjected Plaintiff to unusually CT scan procedures, with multiple repeated injections and scanning.

93. Under Plaintiff's protesting and against Plaintiff's will, security guards JOHN DOE ANTHONY and JOHN DOES (1-4) knelt on top of Plaintiff and captured Plaintiff outside Tufts hospital and brought her back into the hospital room and violated her freedom to move and her body integrity, and fractured her bottom spine bone and caused permanent lumbago pain.

94. General Laws c. 111, § 70E, as amended by St. 1979, c. 720, enumerates certain patients' rights. Among them are the rights "to refuse to be examined, observed, or treated by students or any other facility staff without jeopardizing access to psychiatric, psychological, or other medical care" and "to informed consent to the extent provided by law."

95. Plaintiff has suffered great pain and health injury as a result of Defendants' numerous violations, will continue to suffer for which Defendants are each liable to plaintiff.

WHEREFORE, the plaintiff prays that, after trial, a judgment be entered in her favor and against defendants, that damages be awarded to the plaintiff in an amount to be determined at trial, plus interest, and costs.

COUNT V

NEGLIGENCE

Against all defendants

96. The plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

97. All defendants respectively provided health services in connection with each's employment and training in TMC.

98. All defendants respectively had a duty of care to the Plaintiff and her wellbeing.

99. The medical services Plaintiff received from November 24 to November 25, 2019 were solely performed from medical students without any supervision from any licensed physicians.

100. During the 10-hour torturous false imprisonment, there was no report to a supervising physician; there was a willful omission of supervision by licensed physicians.

101. Plaintiff's experience was foreseeable, there was a failure of its professional duty on every level in DMC.

102. Plaintiff has suffered great pain and health injury as a result of Defendants' gross negligence, Plaintiff will continue to suffer for which Defendants are each liable to plaintiff.

WHEREFORE, the plaintiff prays that, after trial, a judgment be entered in her favor and against defendants, that damages be awarded to the plaintiff in an amount to be determined at trial, plus interest, and costs.

COUNT VI
BIASED-RELATED CIVIL RIGHTS VIOLATION

Against all defendants

103. The plaintiff realleges the allegations contained in the foregoing paragraphs and incorporate those allegations by reference as if fully restated herein.

104. Defendants repeatedly refused to provide a Mandarin interpreter in order for the Plaintiff to have an informed consent or to understand Plaintiff's complaint during treatment.

105. Defendants repeatedly alleged that Mandaring interpreter from China cannot be trusted.

106. General Laws c. 111, § 70E, as amended by St. 1979, c. 720, enumerates certain patients' rights. Among them are the rights "to refuse to be examined, observed, or treated by students or any other facility staff without jeopardizing access to psychiatric,

psychological, or other medical care" and "to informed consent to the extent provided by law."

107. "Every competent adult has a right 'to forego treatment, or even cure, if it entails what for him are intolerable consequences or risks however unwise his sense of values may be in the eyes of the medical profession.'" *Harnish v. Children's Hosp. Medical Center*, 387 Mass. 152, 154 (1982).

108. This right has constitutional and common law origins, which protect each person's "strong interest in being free from nonconsensual invasion of his bodily integrity." *Rogers v. Commissioner of Department of Mental Health*, supra at 498.


109. At the result of Defendants' bias against providing an interpreter for Plaintiff to understand the treatment, and Defendants' bias against Mandarin interpreter from China, Plaintiff has suffered additional pain and health injury, and will continue to suffer for which Defendants are each liable to plaintiff.

WHEREFORE, the plaintiff prays that, after trial, a judgment be entered in her favor and against defendants, that damages be awarded to the plaintiff in an amount to be determined at trial, plus interest, and costs.

JURY DEMAND

Defendants demand a jury trial on all of the foregoing claims.

Attorneys for the Defendant
Yu-fen Chen



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CIVIL ACTION COVER SHEET		DOCKET NUMBER	Trial Court of Massachusetts The Superior Court	
			COUNTY	Middlesex Superior Court (Woburn)
Plaintiff	Yu-fen Liu	Defendant:	TUFTS MEDICAL CENTER INC	
ADDRESS:	200 Swanston St, Apt L1, Winchester, MA 01890	ADDRESS:	800 Washington St, Boston, MA 02111	
Plaintiff Attorney:	Jie Tan	Defendant:	JENNIFER JANE DOE, RN	
ADDRESS:	400 Tradecenter Dr. STE 5900 (RM 5880)	ADDRESS:	TUFTS MEDICAL CENTER INC, Emergency Department,	
	Woburn, MA 01801		860 Washington St, Boston, MA 02111	
BBO:	666462			
Plaintiff Attorney:		Defendant:	PATRICE STEWART, RN	
ADDRESS:		ADDRESS:	TUFTS MEDICAL CENTER INC, Emergency Department,	
			860 Washington St, Boston, MA 02111	
BBO:				
Plaintiff Attorney:		Defendant:	MICHAEL WISER, M.D.	
ADDRESS:		ADDRESS:	TUFTS MEDICAL CENTER INC, Emergency Department,	
			860 Washington St, Boston, MA 02111	
BBO:				
Plaintiff Attorney:		Defendant:	JAMES M STEPHEN, M.D.	
ADDRESS:		ADDRESS:	TUFTS MEDICAL CENTER INC, Emergency Department,	
			860 Washington St, Boston, MA 02111	
BBO:				
Plaintiff Attorney:		Defendant:	PETER OSTROW, M.D.	
ADDRESS:		ADDRESS:	TUFTS MEDICAL CENTER INC,	
			860 Washington St, Boston, MA 02111	
BBO:				
Plaintiff Attorney:		Defendant:	JONATHAN WEINSTOCK, M.D	
ADDRESS:		ADDRESS:	TUFTS MEDICAL CENTER INC, Cardiology	
			830 Washington St, Boston, MA 02111	
BBO:				
Plaintiff Attorney:		Defendant:	SARA ZELMAN, MD,	
ADDRESS:		ADDRESS:	TUFTS MEDICAL CENTER INC, Cardiology	
			830 Washington St, Boston, MA 02111	
BBO:				
Plaintiff Attorney:		Defendant:	JANE DOES (2), radiologist	
ADDRESS:		ADDRESS:	TUFTS MEDICAL CENTER INC, radiology	
			830 Washington St, Boston, MA 02111	
BBO:				
Plaintiff Attorney:		Defendant:	NEIL HALIN, DO	
ADDRESS:		ADDRESS:	TUFTS MEDICAL CENTER INC, radiology	
			830 Washington St, Boston, MA 02111	
BBO:				

R.A. 134

Plaintiff Attorney:	Defendant: LEAH I KAPLAN, M.D
ADDRESS:	ADDRESS: TUFTS MEDICAL CENTER INC, Cardiology
	830 Washington St, Boston, MA 02111
BBO:	
Plaintiff Attorney:	Defendant: ARHANT RAO, M.D.
ADDRESS:	ADDRESS: TUFTS MEDICAL CENTER INC, Cardiology
	830 Washington St, Boston, MA 02111
BBO:	
Plaintiff Attorney:	Defendant: LINDA A COTTER, RN
ADDRESS:	ADDRESS: TUFTS MEDICAL CENTER INC, Cardiology
	830 Washington St, Boston, MA 02111
BBO:	
Plaintiff Attorney:	Defendant: NORA BOSLEELS, RN
ADDRESS:	ADDRESS: TUFTS MEDICAL CENTER INC, Cardiology
	830 Washington St, Boston, MA 02111
BBO:	
Plaintiff Attorney:	Defendant: DANIEL AUGUSTADT, M.D.
ADDRESS:	ADDRESS: TUFTS MEDICAL CENTER INC,
	830 Washington St, Boston, MA 02111
BBO:	
Plaintiff Attorney:	Defendant: JOHN DOE Anthony, and JOHN DOES 1-4
ADDRESS:	ADDRESS: TUFTS MEDICAL CENTER INC, Security Department
	830 Washington St, Boston, MA 02111
BBO:	

TYPE OF ACTION AND TRACK DESIGNATION (see instructions section below)

CODE NO. BE1	TYPE OF ACTION (specify) Medical Fraud	TRACK A	HAS A JURY CLAIM BEEN MADE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
------------------------	--	-------------------	---

*If "Other" please describe: Assault, Battery, False Imprisonment, Negligence and Civil Rights Violation

Is there a claim under G.L. c. 93A? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Is there a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
--	---

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

A. Documented medical expenses to date			
1. Total hospital expenses	11/22/2022	HG	\$30,000.00
2. Total doctor expenses			\$3,000.00
3. Total chiropractic expenses			_____
4. Total physical therapy expenses			_____
5. Total other expenses (describe below)			\$10,000.00
<div style="border: 1px solid black; padding: 2px;">travel, lodging, air tickets, CVS medicine</div>			
	Subtotal (1-5):		\$43,000.00
B. Documented lost wages and compensation to date			\$162,000.00
C. Documented property damages to date			_____
D. Reasonably anticipated future medical and hospital expenses	R.A.I 35		\$200,000.00
E. Reasonably anticipated lost wages			\$340,000.00

Doc# _____ Documented items of damages (describe below) _____ \$300,000.00

possible future surgeries	
TOTAL (A-F):	
	\$1,045,000.00

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

mesenteric panniculitis, bottom spine fracture, mental trauma

CONTRACT CLAIMS

This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Item #	Detailed Description of Each Claim	Amount
1.		
Total		

Signature of Attorney/Unrepresented Plaintiff: X  Date: November 22, 2022

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney/Unrepresented Plaintiff: X _____ Date: _____

CIVIL ACTION COVER SHEET INSTRUCTIONS

SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

AC Actions Involving the State/Municipality *

- AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
- AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)

CN Contract/Business Cases

- A01 Services, Labor, and Materials (F)
- A02 Goods Sold and Delivered (F)
- A03 Commercial Paper (F)
- A04 Employment Contract (F)
- A05 Consumer Revolving Credit - M.R.C.P. 8.1 (F)
- A06 Insurance Contract (F)
- A08 Sale or Lease of Real Estate (F)
- A12 Construction Dispute (A)
- A14 Interpleader (F)
- BA1 Governance, Conduct, Internal Affairs of Entities (A)
- BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
- BB1 Shareholder Derivative (A)
- BB2 Securities Transactions (A)
- BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
- BD1 Intellectual Property (A)
- BD2 Proprietary Information or Trade Secrets (A)
- BG1 Financial Institutions/Funds (A)
- BH1 Violation of Antitrust or Trade Regulation Laws (A)
- A99 Other Contract/Business Action - Specify (F)

* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

ER Equitable Remedies

- D01 Specific Performance of a Contract (A)
- D02 Reach and Apply (F)
- D03 Injunction (F)
- D04 Reform/ Cancel Instrument (F)
- D05 Equitable Replevin (F)
- D06 Contribution or Indemnification (F)
- D07 Imposition of a Trust (A)
- D08 Minority Shareholder's Suit (A)
- D09 Interference in Contractual Relationship (F)
- D10 Accounting (A)
- D11 Enforcement of Restrictive Covenant (F)
- D12 Dissolution of a Partnership (F)
- D13 Declaratory Judgment, G.L. c. 231A (A)
- D14 Dissolution of a Corporation (F)
- D99 Other Equity Action (F)

PA Civil Actions Involving Incarcerated Party †

- PA1 Contract Action involving an Incarcerated Party (A)
- PB1 Tortious Action involving an Incarcerated Party (A)
- PC1 Real Property Action involving an Incarcerated Party (F)
- PD1 Equity Action involving an Incarcerated Party (F)
- PE1 Administrative Action involving an Incarcerated Party (F)

TR Torts

- B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
- B04 Other Negligence - Personal Injury/Property Damage (F)
- B05 Products Liability (A)
- B06 Malpractice - Medical (A)
- B07 Malpractice - Other (A)
- B08 Wrongful Death - Non-medical (A)
- B15 Defamation (A)
- B19 Asbestos (A)
- B20 Personal Injury - Slip & Fall (F)
- B21 Environmental (F)
- B22 Employment Discrimination (F)
- BE1 Fraud, Business Torts, etc. (A)
- B99 Other Tortious Action (F)

RP Summary Process (Real Property)

- S01 Summary Process - Residential (X)
- S02 Summary Process - Commercial/ Non-residential (F)

RP Real Property

- C01 Land Taking (F)
- C02 Zoning Appeal, G.L. c. 40A (F)
- C03 Dispute Concerning Title (F)
- C04 Foreclosure of a Mortgage (X)
- C05 Condominium Lien & Charges (X)
- C99 Other Real Property Action (F)

MC Miscellaneous Civil Actions

- E18 Foreign Discovery Proceeding (X)
- E97 Prisoner Habeas Corpus (X)
- E22 Lottery Assignment, G.L. c. 10, § 28 (X)

AB Abuse/Harassment Prevention

- E15 Abuse Prevention Petition, G.L. c. 209A (X)
- E21 Protection from Harassment, G.L. c. 258E(X)

AA Administrative Civil Actions

- E02 Appeal from Administrative Agency, G.L. c. 30A (X)
- E03 Certiorari Action, G.L. c. 249, § 4 (X)
- E05 Confirmation of Arbitration Awards (X)
- E06 Mass Antitrust Act, G.L. c. 93, § 9 (A)
- E07 Mass Antitrust Act, G.L. c. 93, § 8 (X)
- E08 Appointment of a Receiver (X)
- E09 Construction Surety Bond, G.L. c. 149, §§ 29, 29A (A)
- E10 Summary Process Appeal (X)
- E11 Worker's Compensation (X)
- E16 Auto Surcharge Appeal (X)
- E17 Civil Rights Act, G.L. c. 12, § 11H (A)
- E24 Appeal from District Court Commitment, G.L. c.123, § 9(b) (X)
- E25 Pleural Registry (Asbestos cases) (X)
- E94 Forfeiture, G.L. c. 265, § 56 (X)
- E95 Forfeiture, G.L. c. 94C, § 47 (F)
- E99 Other Administrative Action (X)
- Z01 Medical Malpractice - Tribunal only, G.L. c. 231, § 60B (F)
- Z02 Appeal Bond Denial (X)

SO Sex Offender Review

- E12 SDP Commitment, G.L. c. 123A, § 12 (X)
- E14 SDP Petition, G.L. c. 123A, § 9(b) (X)

RC Restricted Civil Actions

- E19 Sex Offender Registry, G.L. c. 6, § 178M (X)
- E27 Minor Seeking Consent, G.L. c.112, § 12S(X)

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
B03	Motor Vehicle Negligence-Personal Injury	<u>F</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or self-represented litigant.**

DUTY OF THE DEFENDANT - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.**

RECEIVED

11/22/2022

EXHIBIT 1

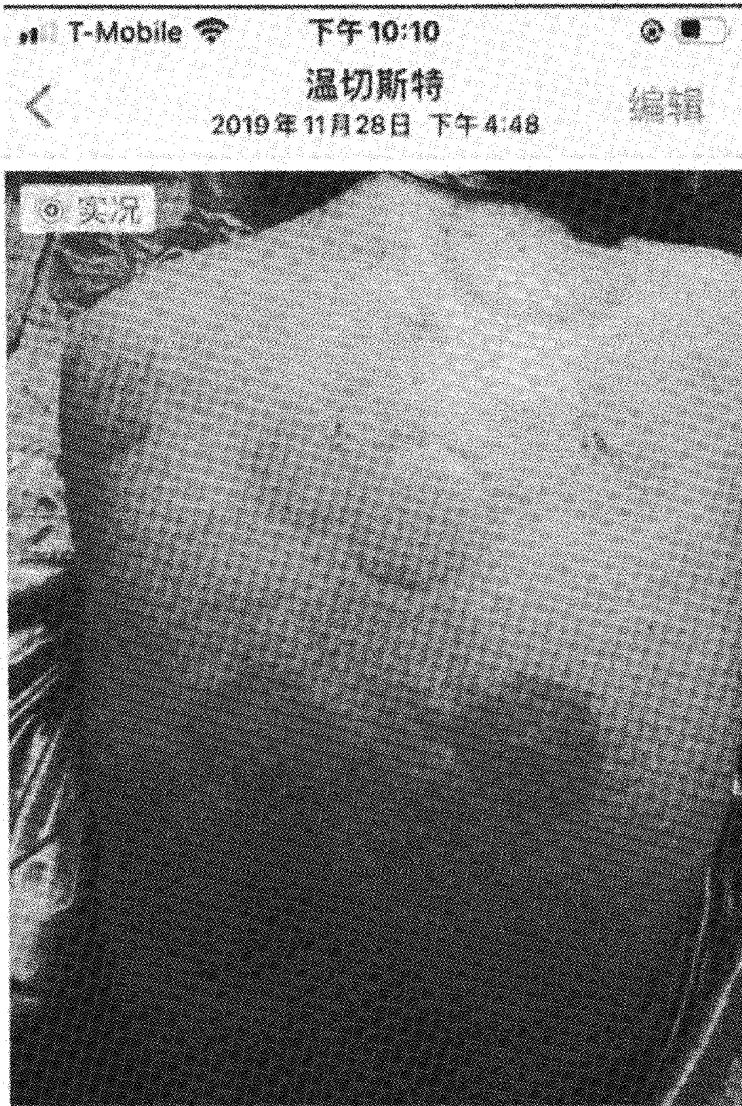
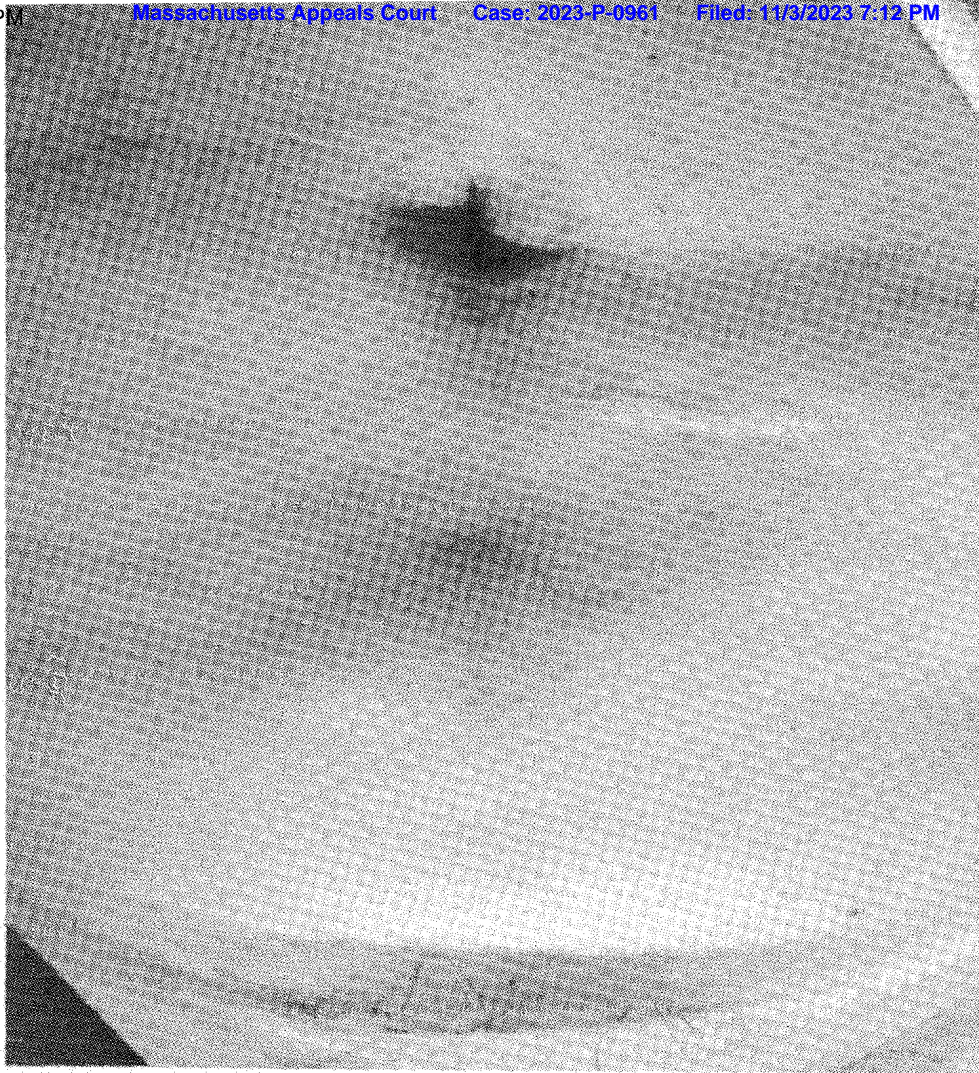
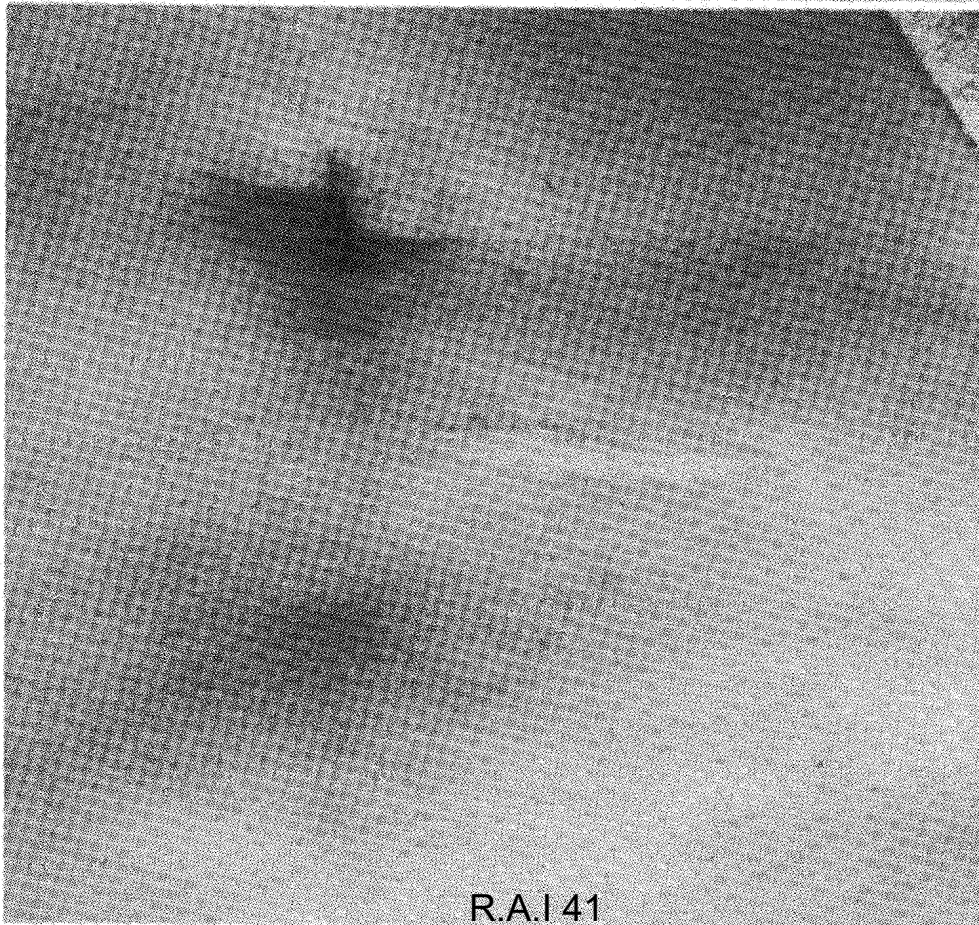


EXHIBIT 2



這件衣服，
打針打針
的地方，
已經染色。



R.A.141

EXHIBIT 3

MR: 2256001

F 198115703



LIU, YU FEN

DOB: 04/28/1963

DOS: 11/24/2019



EXHIBIT 4

Health Records Report

Pt Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	198115703
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	11/24/2019 10:25	Atn Dr:	Weinstock, Jonathan MD
Nurs Sta:		Rm & Bed:	
Dx:	chest pain, unspecified		
Allrg:	No Known Food Allergies, Penicillins		

Lab Results

All Body Fluids

SubDisplay Group: BF-Urinalysis

Name	Reference Range	11/24/19 14:28
U Color		Straw
Status		Final
U Appearance		Clear
Status		Final
U Glucose	Negative mg/dL	Negative
Status		Final
U Bilirubin	Negative	Negative
Status		Final
Ketones	Negative mg/dL	Negative
Status		Final
Specific Gravity	1.001-1.035	1.010
Status		Final
U Blood	Negative	1+ *
Status		Final
U pH	5.0-8.0	7
Status		Final
U Protein	Negative mg/dL	Negative
Status		Final
U Urobilinig	0.2-1.0 EU	0.2
Status		Final
Nitrite Level	Negative	Negative
Status		Final
Leukocyte Es	Negative	1+ *
Status		Final
Red Blood Cells	0-5 /hpf	1
Status		Final
White Blood Cells	0-5 /hpf	4
Status		Final

Pt Name: LIU, YU FEN
 Rm/ Bed:

MRN: 2870892
 Page 11 of 30

Health Records Repo

Health Records Report

Pt Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	198115703
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	11/24/2019 10:25	Atn Dr:	Weinstock, Jonathan MD
Nurs Sta:		Rm & Bed:	
Dx:	chest pain, unspecified		
Alrg:	No Known Food Allergies, Penicillins		

All: Body Fluids

SubDisplay Group: BF-Urinalysis

Name	Reference Range	11/24/19 14:28
Squamous Epithelial Cells	/hpf	Few
Status		Final
Mucous		Present *
Status		Final

All: Chemistry

SubDisplay Group: Chem-Panels

Name	Reference Range	11/24/19 11:03
Glucose	70 - 139 mg/dL	106 (1)
Status		Final
(1) This test represents a non-fasting/random measurement of blood glucose levels. There is no established reference interval.		
Blood Urea Nitrogen	6 - 24 mg/dL	15
Status		Final
Creatinine (CR)	0.57 - 1.30 mg/dL	0.76
Status		Final
GFR, Non-African American	>60 mL/min/1.73m ²	87 (1)
Status		Final
(1) The CKD-EPI estimation of GFR assumes stable kidney function. It is not an accurate measure of GFR in acute renal failure. All estimates of GFR based on serum creatinine will be less accurate for patients at the extremes of muscle mass (such as the frail elderly, critically ill, or cancer patients or conversely body builders) or those with unusual diets. Confirmatory tests with measured creatinine clearance should be performed for people in whom the estimates may be inaccurate.		
GFR, African American	>60 mL/min/1.73m ²	101 (1)
Status		Final

Pt Name: LIU, YU FEN
 Rm/ Bed:

MRN: 2870892
 Page 12 of 30

Health Records Rep

ORE_0107.rpt v2.

Health Records Report

Pt Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	198115703
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	11/24/2019 10:25	Atn Dr:	Weinstock, Jonathan MD
Nurs Sta:		Rm & Bed:	
Dx:	chest pain, unspecified		
Allrg:	No Known Food Allergies, Penicillins		

All: Chemistry

SubDisplay Group: Chem-Panels

Name	Reference Range	11/24/19
------	-----------------	----------

11:03

(1) The CKD-EPI estimation of GFR assumes stable kidney function. It is not an accurate measure of GFR in acute renal failure. All estimates of GFR based on serum creatinine will be less accurate for patients at the extremes of muscle mass (such as the frail elderly, critically ill, or cancer patients or conversely body builders) or those with unusual diets. Confirmatory tests with measured creatinine clearance should be performed for people in whom the estimates may be inaccurate.

Sodium (NA)	135 - 145 mEq/L	140
Status		Final

Potassium (K)	3.6 - 5.1 mEq/L	3.7
Status		Final

Chloride (CL)	98 - 110 mEq/L	106
Status		Final

CO2	20 - 30 mEq/L	25
Status		Final

Anion Gap	3 - 14	9 (1)
Status		Final

(1) This calculation does not factor in potassium.

Aspartate Aminotransferase (AST/SGOT)	10 - 42 IU/L	18
Status		Final

Alkaline Phosphatase (ALK)	40 - 130 IU/L	71
Status		Final

Alanine Aminotransferase (ALT/SGPT)	0 - 54 IU/L	20
Status		Final

Bilirubin, Total	0.2 - 1.1 mg/dL	0.7
Status		Final

Bilirubin, Direct	0.0 - 0.5 mg/dL	0.3
Status		Final

Pt Name: LIU, YU FEN
 Rm/ Bed:

MRN: 2870892
 Page 13 of 30

Health Records Report

ORE_0107.rpt v2.0

Health Records Report

Pt Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	198115703
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	11/24/2019 10:25	Atn Dr:	Weinstock, Jonathan MD
Nurs Sta:		Rm & Bed:	
Dx:	chest pain, unspecified		
Allrg:	No Known Food Allergies, Penicillins		

All: Chemistry

SubDisplay Group: Chem-Other

Name	Reference Range	11/24/19 14:33	11/24/19 11:03
Protein, Total	6.0 - 8.3 g/dL		7.7
Status			Final
Albumin	3.4 - 4.8 g/dL		4.5
Status			Final
Lipase	8 - 60 IU/L		40
Status			Final
B-Hydroxybutyrate So	0.00 - 0.27 mmol/L	0.16 (1)	
Status		Final	

(1) This test for ketone bodies measures serum beta-hydroxybutyrate, not acetoacetate or acetone. Beta-hydroxybutyrate is the predominant ketone body in almost all clinical contexts. It is not appropriate for evaluation of suspected isopropanol ingestion.

All: Chemistry

SubDisplay Group: Chem-Enz-Frac

Name	Reference Range	11/24/19 20:24	11/24/19 14:29	11/24/19 11:03
Troponin I	0.00 - 0.03 ng/mL	<0.01	<0.01	<0.01
Status		Final	Final	Final

All: Coag

SubDisplay Group: Coagulation

Name	Reference Range	11/24/19 11:03
Prothrombin Time	9.7 - 14.0 sec	13.2
Status		Final
INR Pt	0.9 - 1.3	1.1
Status		Final
PTT	25.7 - 35.7 sec	26.7
Status		Final
D Dimer Sensitive	0 - 243 ng/mL(DDU)	942 H (1)
Status		Final

Pt Name: LIU, YU FEN
 Rm/ Bed:

MRN: 2870892
 Page 14 of 30

Health Records Rep
 ORE_0107.rpt v2.

Health Records Report

Pt Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	198115703
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	11/24/2019 10:25	Atn Dr:	Weinstock, Jonathan MD
Nurs Sta:		Rm & Bed:	
Dx:	chest pain, unspecified		
Alrg:	No Known Food Allergies, Penicillins		

All: Coag

SubDisplay Group: Coagulation

Name	Reference Range	11/24/19
		11:03

(1) Patients <=50 years old:
 Patients with low to moderate pre-test probability of venous thromboembolism (VTE) and D-Dimer values of <230 ng/mL (DDU) have a negative predictive value of 95% for exclusion of VTE.

Patients >50 years old:
 While Tufts Medical Center did not validate age adjusted cut offs for D-Dimer, literature suggests using the following formula for patients >50 years of age:
 Age in years x 5 = calculated age adjusted cutoff in DDU.
 (Example #1 : Patient's age =70; 70 x 5= 350DDU; Example #2: Patient's age 80; 80x5 = 400 DDU
 (Goodwin AJ Annals of Internal Medicine December 2016)

All: Coagulation

Name	Reference Range	11/24/19
		11:03
Prothrombin Time	9.7 - 14.0 sec	13.2
Status		Final
INR Pt	0.9 - 1.3	1.1
Status		Final
PTT	25.7 - 35.7 sec	26.7
Status		Final
D Dimer Sensitive	0 - 243 ng/mL(DDU)	942 H (1)
Status		Final

Pt Name: LIU, YU FEN
 Rm/ Bed:

MRN: 2870892
 Page 15 of 30

Health Records Rep
 ORE_0107.rpt v2.

Health Records Report

Pt Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	198115703
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	11/24/2019 10:25	Atn Dr:	Weinstock, Jonathan MD
Nurs Sta:		Rm & Bed:	
Dx:	chest pain, unspecified		
Allrg:	No Known Food Allergies, Penicillins		

All: Coagulation

Name	Reference Range	11/24/19
		11:03

(1) Patients <=50 years old:
 Patients with low to moderate pre-test probability of venous thromboembolism (VTE) and D-Dimer values of <230 ng/mL (DDU) have a negative predictive value of 95% for exclusion of VTE.

Patients >50 years old:
 While Tufts Medical Center did not validate age adjusted cut offs for D-Dimer, literature suggests using the following formula for patients >50 years of age:
 Age in years x 5 = calculated age adjusted cutoff in DDU.
 (Example #1: Patient's age =70; 70 x 5= 350DDU; Example #2: Patient's age 80; 80x5 = 400 DDU
 (Goodwin AJ Annals of Internal Medicine December 2016)

All: Hematology

SubDisplay Group: Hem-Routine

Name	Reference Range	11/24/19
		11:03
WBC	4.0 - 11.0 K/uL	8.5
Status		Final
RBC Blood Count	3.70 - 5.00 M/uL	4.95
Status		Final
HGB	11.0 - 15.0 g/dL	14.5
Status		Final
HCT	32.0 - 45.0 %	43.1
Status		Final
MCV	80.0 - 98.0 fL	87.1
Status		Final
MCH	26.0 - 34.0 pg	29.3
Status		Final
MCHC	32.0 - 36.0 g/dL	33.6
Status		Final
Plt	150 - 400 K/uL	212
Status		Final
RDW	11.5 - 14.5 %	12.9

Pt Name: LIU, YU FEN
 Rm/ Bed:

MRN: 2870892
 Page 16 of 30

Health Records Report

Pt Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	198115703
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	11/24/2019 10:25	Atn Dr:	Weinstock, Jonathan MD
Nurs Sta:		Rm & Bed:	
Dx:	chest pain, unspecified		
Alrg:	No Known Food Allergies, Penicillins		

All: Hematology

SubDisplay Group: Hem-Routine

Name	Reference Range	11/24/19 11:03
Status		Final
MPV	9.1 - 11.7 fL	10.5
Status		Final
Seg Neut	%	66
Status		Final
Lymph	%	26
Status		Final
Mono	%	7
Status		Final
Eosin	%	0
Status		Final
Baso	%	0
Status		Final
Immature Granulocyte	%	0
Status		Final
NRBC #	<0.0 K/uL	0.0
Status		Final
Neut #	1.5 - 7.5 K/uL	5.6
Status		Final
Lymph #	1.0 - 4.0 K/uL	2.2
Status		Final
Mono #	0.2 - 0.8 K/uL	0.6
Status		Final
Eosin #	0.0 - 0.5 K/uL	0.0
Status		Final
Baso #	0.0 - 0.2 K/uL	0.0
Status		Final
Immature Granulocyte#	0.0 - 0.1 K/uL	0.0
Status		Final

Pt Name: LIU, YU FEN
 Rm/ Bed:

MRN: 2870892
 Page 17 of 30

Health Records Rep

ORE_0107.rpt v2.

Health Records Report

Pt Name: LIU, YU FEN MRN: 2870892
Pt ID: 2018016649 Acct No: 198115703
DOB: 04/28/1963 Age/Sex: 58Y/F
Adm DTime: 11/24/2019 10:25 Atn Dr: Weinstock, Jonathan MD
Nurs Sta: Rm & Bed:
Dx: chest pain, unspecified
Alrg: No Known Food Allergies, Penicillins

All: Hematology

SubDisplay Group: Hem-Routine

Name	Reference Range	11/24/19 11:03
Nucleated RBC	%	0
Status		Final

Pt Name: LIU, YU FEN
Rm/ Bed:

MRN: 2870892
Page 18 of 30

Health Records Rep
ORE_0107.rpt v2.0

Health Records Report

Pt Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	198115703
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	11/24/2019 10:25	Atn Dr:	Weinstock, Jonathan MD
Nurs Sta:		Rm & Bed:	
Dx:	chest pain, unspecified		
Allrg:	No Known Food Allergies, Penicillins		

Text Results

ALL CT Scan :
CTA Chest W+WO Contrast (Angiogram)
Result Date: 11/24/2019 21:48

EXHIBIT 5

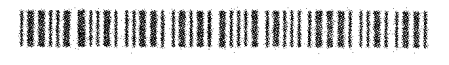


LAW OFFICES OF EDWARD HUNG
101 Arch St Fl 8
Boston MA 02110-7500

1

6185971
Dec 10 2021 1:06 PM
YU FEN LIU

MA1009
Dec 18 2021 1:40 PM



CONFIDENTIAL - MEDICAL RECORDS

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Invoice Number: 6185971
Date: 12/18/2021
Tax ID:

Bill To:
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Boston, MA 02110-7500

Send Medical Records To:
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Boston, MA 02110-7500

Due upon receipt

Patient Name	Reference	Record Type	Pages
YU FEN LIU		Medical	25

Provider:
Tufts Medical Center 800 Washington St #999 Boston, MA 02111-1552

Description	Quantity	Rate	Sub-Total
Pages 1-100	24.00	\$0.91	\$21.84
Processing	1.00	\$27.01	\$27.01
		Sub-Total:	\$48.85
		Delivery Fee:	\$1.84
		Tax:	\$0.00
		Payment/Credits:	\$0.00
		Balance Due:	\$50.69

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(858) 430-4962 Fax

Account Number: B-9F4-8A-811
Patient Name: YU FEN LIU
Invoice Number: 6185971
Payment Terms: Net 30
Balance Due: \$50.69





Law Offices of Edward Hung
101 Arch St 8th floor, Boston, MA
02110

AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION (PHI)

Mailing Address:
Health Information Management Department Phone: 617-636-6310
660 Washington Street, Box 999 Fax: 617-636-4822
Boston, MA 02111

Patient Name: Lin Yufen

Address: 200 Swanton St, # L1
City: Winchester State: MA Zip Code: 01890

Birth Date: 04/28/1963 Telephone #: 617-955-1188 MRF#: _____

ALTERNATE ADDRESS: (Please indicate if the information is to be sent to a different address, that is other than the address listed above).
Law Offices of Edward Hung, 101 Arch St, 8th Flr
City: Boston State: MA Zip Code: 02110

I hereby authorize Tufts Medical Center to release my protected health information to: Mail to: Hold for pickup by:
Name: Edward Hung
Address: Law Offices of Edward Hung, 101 Arch St, 8th Flr, Boston, MA 02110

PURPOSE OF DISCLOSURE (Please check one):
 Myself Inspection Changing physicians Consultation School Legal Other (specify): _____

INFORMATION TO BE RELEASED (Please be specific and enter dates of service and clinic names if known):
 Medical Record Abstract (e.g., ED, H&P, Operative Rpt, Discharge Summary Consults, Labs, X-rays, Pathology)
 Clinic Notes 11/24/19 and 11/25/19 Pathology Reports 11/24/19 and 11/25/19
 Consultation Reports 11/24/19 and 11/25/19 MRI Reports 11/24/19 and 11/25/19
 Medication Records 11/24/19 and 11/25/19 ED Record 11/24/19 and 11/25/19
 Other (specify content): _____

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HIV Test Results (PATIENT AUTHORIZATION REQUIRED FOR EACH RELEASE REQUEST).
 Sexually Transmitted Disease (STDs) Genetic Counseling
 Commonwealth of Massachusetts Sexual Assault Domestic Violence
 Evidence Collection Kit/Sexual Assault Counseling Social Work Counseling/Therapy
 Psychiatric Records or Information Professional services of a licensed psychologist
 Psychotherapy Notes (Notes recorded by a mental health professional documenting or analyzing the contents of a conversation, during a private counseling session or group, joint, family counseling, and that are separate from the medical record).
 Alcohol and Drug Abuse Records Protected by Federal Confidentiality Rules 42 CFR Part 2.

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I understand that I have the right to withdraw my authorization at any time except to the extent that action has been taken on reliance on this authorization. I understand that if I revoke this authorization, I must do so in writing and present my written revocation to the Director of Health Information Management. I understand that authorizing the disclosure of this health information is voluntary, I can refuse to sign, and Tufts Medical Center will not condition my treatment, payment, health plan enrollment, or eligibility for benefits on my providing authorization for the requested use or disclosure. I understand that health information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient, and no longer protected by Federal Confidentiality regulations; however the recipient may be prohibited from disclosing substance abuse information. I understand that I may inspect or copy the information to be disclosed, for a reasonable charge.

If I fail to specify an expiration date or event, and unless otherwise revoked, this authorization will expire six months from the date of the signature listed below. I have carefully read and understand the above, have had any questions explained to my satisfaction, and do herein expressly and voluntarily authorize disclosure of the above information about, or medical records of my condition to those persons or agencies listed above.

Signature of Patient (18 years or older) Yufen Lin Date 11/07/2021

Signature of Legal Representative [Signature] Relationship to Patient: Attorney Date 11/16/21



TuftsMedCtr
800 Washington St
02111
MA

6176365000

Pt. Name: LIU, YU FEN
Pt ID: 2018016649
DOB: 04/28/1963
Adm DTime: 03/17/2021
Nurs Sta:
Dx:
A1rg: No Known Food Allergies, Penicillins

MRN: 2670892
Acct No: 210957430
Age/Sex: 58Y/F
Atn Dr: Ostrow, Peter MD
Rm/Bed:

Chemistry

Chem-panels

Reference Interval 11/24/19
11.03

Glucose 70-139 mg/dL 106 (U)

(U) This test represents a non-fasting/random measurement of blood glucose levels. There is no established reference interval.

Blood Urea Nitrogen 6-24 mg/dL 15

Creatinine (CR) 0.67-1.30 mg/dL 0.78

GFR, Non-African American >60 mL/min/1.73m2 61 (U)

(U) The CKD-EPI estimation of GFR assesses stable kidney function. It is not an accurate measure of GFR in acute renal failure. All estimates of GFR based on serum creatinine will be less accurate for patients at the extremes of muscle mass (such as the frail elderly, critically ill, or cancer patients) or conversely body builders) or those with unusual diets. Confirmatory tests with measured creatinine clearance should be performed for people in whom the estimates may be inaccurate.

GFR, African American >60 mL/min/1.73m2 101 (U)

(U) The CKD-EPI estimation of GFR assesses stable kidney function. It is not an accurate measure of GFR in acute renal failure. All estimates of GFR based on serum creatinine will be less accurate for patients at the extremes of muscle mass (such as the frail elderly, critically ill, or cancer patients) or conversely body builders) or those with unusual diets. Confirmatory tests with measured creatinine clearance should be performed for people in whom the estimates may be inaccurate.

Sodium (NA) 135-145 mEq/L 140

Potassium (K) 3.8-5.1 mEq/L 3.7

Chloride (CL) 98-110 mEq/L 106

CO2 20-30 mEq/L 25

Pt Name: LIU, YU FEN

MRN: 2670892

Rm/Bed:

Page 1 of 8

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Laboratory Results Report

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5

TuftsMedCtr
800 Washington St
02111
MA

6176365000

Pt. Name: LIU, YU FEN
Pt ID: 2018016649
DOB: 04/28/1963
Adm DTime: 03/17/2021
Nurs Sta:
Dx:
Alerg: No Known Food Allergies, Penicillins

MRN: 2870892
Acct No: 210967430
Age/Sex: 59Y/F
Atn Dr: Ostrow, Peter MD
Rm/Bed:

Chemistry

Chem-Panels

Reference Interval 11/24/19
11-03

Anion Gap 3-14 9 (1)
(1) This calculation does not include inorganic phosphate.

Chemistry

Chem-LFT

Reference Interval 11/20/18
13-03

Aspartate Aminotransferase (AST/SGOT) 10-42 IU/L 16

Alkaline Phosphatase (ALK) 40-130 IU/L 71

Alanine Aminotransferase (ALT/SGPT) 0-54 IU/L 20

Bilirubin, Total 0.2-1.1 mg/dL 0.7

Bilirubin, Direct 0.0-0.5 mg/dL 0.0

Chemistry

Chem-Other

Reference Interval 11/24/19 11/24/19
14-03 11-03

Protein, Total 6.0-8.3 g/dL 7.7

Albumin 3.4-4.8 g/dL 4.0

Urease 8-60 IU/L 40

B-Hydroxybutyrate (B) 0.00-0.27 mmol/L 0.16 (1)

Pt Name: LIU, YU FEN MRN: 2870892

Rm/Bed: Page 2 of 6

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6

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 02111
 MA

6176365000

Pt. Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	210957430
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	03/17/2021	Atn Dr:	Ostrow, Peter MD
Nurs Sta:		Rm/Bed:	
Dx:			
Allrg:	No Known Food Allergies, Penicillins		

Chemistry **Chem-Other**

Reference Interval	11/24/19	11/24/19
	14.33	17.03

!!! This test for ketone bodies measures serum beta-hydroxybutyrate, not acetoacetate or acetone. Beta-hydroxybutyrate is the predominant ketone body in almost all clinical contexts. It is not appropriate for evaluation of suspected isopropanol ingestion.

Chemistry **Chem-Enz-Frac**

Reference Interval	11/24/19	11/24/19	11/24/19
	20.24	14.23	11.03

Troponin I	0.00 - 0.03 ng/mL	<0.01	<0.01	<0.01
------------	----------------------	-------	-------	-------

Hematology **Hem-Routine**

Reference Interval	11/24/19
	17.03

WBC	4.0 - 11.0 K/uL	8.5
RBC Blood Count	3.70 - 5.60 M/uL	4.95
HGB	11.0 - 15.0 g/dL	14.5
HCT	32.0 - 48.0 %	43.1
MCV	80.0 - 96.0 fL	87.1
MCH	28.0 - 34.0 pg	29.6
MCHC	32.0 - 36.0 g/dL	33.6
Pt	150 - 400 K/uL	212
RDW	11.5 - 14.5 %	12.9

Pt Name: LIU, YU FEN MRN: 2870892

Rm/Bed: Page 3 of 6

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TuftsMedCtr
 800 Washington St
 02111
 MA

7

6176365000

Pt. Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018018649	Acct No:	210057430
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	03/17/2021	Attn Dr:	Ostrow, Peter MD
Nurs Sta:		Rm/Bed:	
Dx:			
Alrg:	No Known Food Allergies, Penicillins		

Hematology		Hem-Routine	
	Reference Interval		
		11/26/19	11/03
MPV	9.1 - 11.7 fL		10.6
Seg Neut	%		66
Lymph	%		26
Mono	%		7
Eosin	%		0
Baso	%		0
Immature Granulocyte	%		0
NRBC #	<0.0 K/uL		0.0
Neut #	1.5 - 7.5 K/uL		4.8
Lymph #	1.0 - 4.0 K/uL		3.2
Mono #	0.2 - 0.8 K/uL		0.6
Eosin #	0.0 - 0.5 K/uL		0.0
Baso #	0.0 - 0.2 K/uL		0.0
Immature Granulocyte #	0.0 - 0.1 K/uL		0.0
Nucleated RBC	%		0

Coag		Coagulation	
------	--	-------------	--

Pt Name: LIU, YU FEN	MRN: 2870892
Rm/Bed:	Page 4 of 6
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8

TuftsMedCtr
800 Washington St
02111
MA

6176365000

Pt. Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	210957430
DOB:	04/28/1963	Age/Sex:	58Y/F
Adm DTime:	03/17/2021	Atn Dr:	Ostrow, Peter MD
Nurs Sta:		Rm/Bed:	
Ox:			
Alrg:	No Known Food Allergies, Penicillins		

Reference Interval	11/24/19
	11.00

Prothrombin Time	9.7 - 14.0 sec	13.2
------------------	----------------	------

INR PI	0.9 - 1.3	1.1
--------	-----------	-----

PTT	25.7 - 35.7 sec	26.7
-----	-----------------	------

D-Dimer Sensitive	0 - 243 ng/mL (DDU)	942 H (1)
-------------------	------------------------	-----------

1) Patients <7-50 years old:
Patients with low to moderate pre-test probability of venous thromboembolism (VTE) and D-Dimer values of <250 ng/mL (DDU) have a negative predictive value of 95% for exclusion of VTE.

Patients >50 years old:
While Tufts Medical Center did not validate age-adjusted cut-offs for D-Dimer, literature suggests using the following formula for patients >50 years of age:
Age in years x 5 = calculated age-adjusted cutoff in DDU.
(Example #1: Patient's age >70; 70 x 5 = 350 DDU; Example #2: Patient's age 55; 55 x 5 = 275 DDU)
(Source: AJ Annals of Internal Medicine December 2016)

Body Fluids

BF-Urinalysis

Reference Interval	11/24/19
	1.025

U Color		Straw
---------	--	-------

U Appearance		Clear
--------------	--	-------

U Glucose	Negative mg/dL	Negative
-----------	----------------	----------

U Bilirubin	Negative	Negative
-------------	----------	----------

Ketones	Negative mg/dL	Negative
---------	----------------	----------

Specific Gravity	1.001-1.035	1.010
------------------	-------------	-------

Pt Name: LIU, YU FEN	MRN: 2870892
----------------------	--------------

Rm/Bed: Page 5 of 6
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9

TuftsMedCtr
800 Washington St
02111
MA

6176365000

Pt. Name:	LIU, YU FEN	MRN:	2870892
Pt ID:	2018016649	Acct No:	210897430
DOB:	04/28/1963	Age/Sex:	58YF
Adm DTime:	03/17/2021	Atn Dr:	Ostrow, Peter MD
Nurs Sta:		Rm/Bed:	
Dx:			
Allrg:	No Known Food Allergies, Penicillins		

Body Fluids BF-Urinatysis

Reference Interval 11/24/19
14 28

U Blood	Negative	1+ *
U pH	5.0-8.0	7
U Protein	Negative mg/dL	Negative
U Urobilinog	0.2-1.0 EU	0.2
Nitrite Level	Negative	Negative
Leukocyte Est	Negative	1+ *
Red Blood Cells	0-5 /hpf	1
White Blood Cells	0-5 /hpf	4
Squamous Epithelial Cells	hpf	Few
Mucous		Present *

Pt Name: LIU, YU FEN MRN: 2870892

Rm/Bed: Page 5 of 6
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TuftsMedCtr
800 Washington St
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MA

6176365000

Pt. Name: LIU, YU FEN MRN: 2670892
Pt ID: 2018016649 Acct No: 210957430
DOB: 04/28/1963 Age/Sex: 58Y/F
Adm DTime: 03/17/2021 Atn Dr: Ostrow, Peter MD
Nurs Sta: Rm/Bed:
Dx:
Alrg: No Known Food Allergies, Penicillins

EKG

Reference Interval	11/24/19 12:22	11/23/19 11:58	11/24/18 10:35
--------------------	-------------------	-------------------	-------------------

EKG Results P
PRELIMINARY
Y EKG
INTERPRETA
TION IS
UNCONFIRM
ED
Fellow B (1)
Fellow B (3)

(1) .
Fellow B Test Date: 2019-11-24 10:20:36
Pat Name: YU LIU Department: EMERGENCY ROOM
Patient ID: 2018001 Room: 803F
Gender: F Technician: RA
DOB: 1963-04-28 Requested By:
Order Number: 163441218 Reading MD: David DeMott MD

Measurements
Intervals
Rate: 89 P: 83
PR: 144 QRS: 80
QRSB: 82 T: 20
QT: 384
QTc: 468

Interpretive Statements

SINUS RHYTHM
LATERAL INFARCT, AGE INDETERMINATE
Compared to EKG 11/24/2019 11:57:53
Myocardial infarct finding now present

Electronically signed On 11-24-2019 10:44:41 EST by Fellow Tarag Ali
Electronically signed On 11-24-2019 12:04:54 EST by David DeMott MD

(3) .
Fellow Y Test Date: 2019-11-24 10:26:24
Pat Name: YU LIU Department: EMERGENCY DEPT
Patient ID: 2018001 Room:
Gender: F Technician: RA
DOB: 1963-04-28 Requested By:
Order Number: 163441218 Reading MD: David DeMott MD

Measurements
Intervals
Rate: 83 P: 85
PR: 144 QRS: 82
QRSB: 80 T: 48

Pt Name: LIU, YU FEN MRN: 2670892



TuftsMedCtr
800 Washington St
02111
MA

6176365000

Pt Name: LIU, YU FEN MRN: 2870892
Pt ID: 2018016649 Acct No: 210957430
DOB: 04/28/1963 Age/Sex: 58Y/F
Adm DTime: 03/17/2021 Atn Dr: Ostrow, Peter MD
Nurs Sta: Rm/Bed:

Dx:
Allrg: No Known Food Allergies, Penicillins

EKG

Reference Interval	11/24/19	11/24/19	11/24/19
	12.22	11.58	10.36

QT: 385
QTc: 447

Interpretive Comments

SINUS BRITPM

No previous ECG available for comparison

Electronically Signed On 11-26-2019 13:25:52 EST by Fellow Name: Aljoudi
Electronically Signed On 11-27-2019 11:07:00 EST by Another Name

Echo

Reference Interval	11/24/19
	13.02

Trans thoracic
Echocardiogram
Result is
encoded and
must be
viewed on-line
(1)

(1) Result is encoded and must be viewed on-line. Result is encoded and must be viewed on-line

Pt Name: LIU, YU FEN MRN: 2870892

Rm/Bed: Page 2 of 2
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EXHIBIT 6

Tufts Medical Center Emergency Department

Physician
Documentation

Name: Liu, Yu
Age: 56 yrs Sex: Female DOB: 04/28/1963
Arrival Date: 11/24/2019 Arrival Time: 10:24
Working Diagnosis: Chest pain, unspecified

MRN: 2256001
Account#: 198115703
PCP: Lau, Sandra

HPI:
11:24 This 56 yrs old Asian Female presents to ED via Walk In with complaints of Chest Pain and rash. mw13
11:12
11:12 HPI and exam performed with interpreter The patient was reportedly in her usual state of health until last night when she developed a rash on her upper chest, neck and lower back. She did not report any new exposures to food, medication, detergents etc. This rash was itchy and raised and it improved overnight. She denies any throat swelling, dysphagia, shortness of breath or wheezing with this rash. She has not had anything like this before. This morning she developed chest pain that started about 15 minutes prior to presentation. The pain is worse with cough and with palpation. **The patient has a known cardiac history with a positive stress test in July and recommended stress test but the patient declined at that time.** She woke up today with her usual episode of chest pain which typically resolves with nitro. She did not have any of her nitro at home so she came in to the ED for evaluation. She denies any jaw pain, arm pain, radiation of chest pain, nausea or vomiting. . mw13

Historical:
• Allergies: Amoxicillin; mycin family; Penicillins;
• Home Meds: Unable to Obtain;
• PMHx: Anemia
• Social history: Smoking status: The patient is not a current smoker. Patient/guardian denies using alcohol, street drugs, The patient speaks a little English, Their native language is Chinese - Mandarin The patient lives with family..

ROS:
11:19 mw13
Constitutional: Negative for body aches, chills, fatigue, fever, malaise, poor PO intake.
Eyes: Negative for blurry vision, visual disturbance.
ENT: Negative for difficulty handling secretions, difficulty swallowing, hoarseness, rhinorrhea, sore throat.
Cardiovascular: Negative for edema, orthopnea, palpitations, paroxysmal nocturnal dyspnea.
Respiratory: Negative for cough, dyspnea on exertion, hemoptysis, orthopnea, Pleuritic pain shortness of breath, sputum production, wheezing.
Abdomen/GI: Negative for abdominal pain, nausea, vomiting, diarrhea.
Back: Negative for pain at rest, pain with movement.
MS/Extremity: Negative for pain.
Skin: Positive for rash.
Neuro: Negative for altered mental status, dizziness.

Vital Signs:

Time	B/P	Pulse	Resp	Temp	Pulse Ox	Weight	Pain	Staff
10:26	126 / 86 Left Arm ☺ (auto/reg)	89	18	36.6	99%			jr26
10:40	134 / 82	95	16					ps9
11:41	138 / 81	93	16		99% on R/A			ps9
11:50	133 / 86	92	15		99% on R/A			ps9
12:00	125 / 76	94	16					ps9
14:03	138 / 81	98	14				0/10	ps9

Glasgow Coma Score:

Time	Eye Response	Verbal Response	Motor Response	Modifying Factors	Total	Staff
10:54	spontaneous(4)	oriented(5)	obeys commands(6)		15	ps9



15

Tufts Medical Center Emergency Department

Physician Documentation

Tufts Medical Center

Physician Documentation Continued

10:54	spontaneous(4)	oriented(5)	obeys commands(6)	15	ps9
12:07	spontaneous(4)	oriented(5)	obeys commands(6)	15	ps9

Exam:
11:33

mw13

Constitutional: This is a well developed, well nourished patient who is awake, alert, and in no acute distress.

Head/Face: Normocephalic, atraumatic.

Neck: No cervical lymphadenopathy. Supple, full range of motion without nuchal rigidity. Noted urticarial rash on front of neck

Respiratory: Lungs have equal breath sounds bilaterally, clear to auscultation and percussion. No rales, rhonchi or wheezes noted. No increased work of breathing, no retractions or nasal flaring.

Chest/axilla: Normal chest wall appearance and motion. Nontender with no deformity. Urticarial rash on front of chest at sternum and healed keloid noted.

Cardiovascular: Regular rate and rhythm with a normal S1 and S2. No gallops, murmurs, or rubs.

Abdomen/GI: Soft, non-tender, with normal bowel sounds. No guarding or rebound.

Skin: Warm, dry with normal turgor. Noted urticarial rash on left upper extremity, chest and lower back with excoriations from scratching.

MS/ Extremity: Pulses equal, no cyanosis. Neurovascular intact. Full range of motion.

Neuro: Awake and alert, GCS 15, oriented to person, place, time, and situation.

MDM:

11:03 ECG: I interviewed the patient's EKG. It shows normal sinus rhythm, rate 83 beats per minute. The axis is normal. Intervals are normal. No ectopy or ischemic changes are noted. jms

11:37 ED course: Ms. Liu is a 56 year old female with a reported CAD history with stress testing who presents with chest pain and urticarial rash. Was in her usual state of health last night when developed a rash. This rash was on her chest and lower back and actually improved. She reports no new medications, foods, detergents or exposures. Was given Benadryl, famotidine and Solu-Medrol with improvement of itching and redness. She takes nitro at home but did not have any so came to the emergency department. Her chest pain remained 9-10/10 EKG largely within normal limits and troponin initially was negative. Her chest pain did not improve with nitro x3, GI cocktail and she was given morphine. Cardiology was consulted for further evaluation. mw13

12:52 The patient was given aspirin in the Emergency Department. mw13

13:41 Differential diagnosis: Chest pain, GERD, new-onset angina, acute MI. Counseling: I had a detailed discussion with the patient and/or guardian regarding: the historical points, exam findings, and any diagnostic results supporting the admission diagnosis. A consult was requested from: Cardiology and will see patient in ED. jms

14:05 ED course: Cardiology saw the patient and performed a bedside ECHO. They recommended admitting the patient to the inpatient cardiology service. they also recommended sending LFTs, D-Dimer and getting a CTA to rule out a dissection. Will admit to the general cardiology service for further work-up and management. mw13

20:07 Data reviewed: EKG, lab test result(s), nurses notes, vital signs. Resident chart complete and electronically signed: Michael Wismer, MD Internal Medicine PGY-3. mw13

Time	Order name	Complete Time	Staff

Name: Liu, Yu

MRN: 2256001
Account#: 198115703



16

Tufts Medical Center Emergency Department

Physician Documentation

Tufts Medical Center

Physician Documentation Continued

11/24 10:48	BUN (Blood Urea Nitrogen)	11:55	mw13
11/24 10:48	CBC/Diff (With Plt)	11:55	mw13
11/24 10:48	CR (Creatinine)	11:55	mw13
11/24 10:48	GLU (Glucose)	11:55	mw13
11/24 10:48	LYTES (Na, K, Cl, Co2)	11:55	mw13
11/24 10:48	PT (Prothrombin Time With INR)	11:55	mw13
11/24 10:48	PTT	11:55	mw13
11/24 10:48	Troponin I	11:55	mw13
11/24 11:33	GFR, NAA	11:55	dispat
11/24 11:33	GFR, AA	11:55	dispat
11/24 13:59	Ctangiogram Chest W+wo Contrast (Cta)		mw13
11/24 14:17	UA w/Refl Cult	15:04	ps9
11/24 14:17	Troponin I	15:04	ps9
11/24 10:48	Adult EKG (order using folder)	10:48	mw13
11/24 10:48	Cardiac Monitor	10:53	mw13
11/24 13:47	ADD D DIMER SENSITIVE	13:51	mw13
11/24 13:47	ADD ALKALINE PHOSPHATASE	13:51	mw13
11/24 13:47	ADD ALT/SGPT	13:51	mw13
11/24 13:47	ADD AST/SGOT	13:51	mw13
11/24 13:47	ADD BILI DIRECT	13:51	mw13
11/24 13:47	ADD BILI TOTAL	13:51	mw13
11/24 13:47	ADD LIPASE	13:51	mw13

Name: Liu, Yu

MRN: 2256001
Account#: 198115703



17

Tufts Medical Center
Emergency Department

Physician Documentation

Tufts Medical Center

Physician Documentation Continued

11/24 10:48	EKG (order using folder)	10:53	mw13
11/24 10:48	Pulse Oximetry Continuous	10:53	mw13
11/24 12:56	Consult Orders-Cardio-Adult (Cardiology)	14:43	mw13
11/24 13:49	Patient Belongings List	14:38	ac21

Dispensed Medications:

Time	Drug & Dose <i>Dispensable & Quantity</i>	Volume	Route	Rate	Infused Over	Site	Delivery	Staff
10:54	Benadryl 25 mg		IVP					ps9
10:54	Famotidine 20 mg		IVP					ps9
11:02	CANCELLED (N/A): Nitrostat 0.4 mg Sublingual every 5 minutes; do not exceed 3 tablets in 15 minutes; call md if still symptomatic after 3 rd dose x3							jms
11:23	Nitroglycerin Tablet 0.4mg 0.4 mg		Sublingual					ps9
11:23	Solu-MEDROL 125 mg		IVP					ps9
11:38	Nitroglycerin Tablet 0.4mg 0.4 mg		Sublingual					ps9
11:41	Nitroglycerin Tablet 0.4mg 0.4 mg ¹		Sublingual					ps9
12:02	Follow up: Response: Pain is unchanged, physician notified; Pain is unchanged, physician notified 10/10							ps9
12:03	Follow up: Response: Pain is unchanged, physician notified; Pain is unchanged, physician notified 10/10							ps9
12:04	GI cocktail - (Maalox Suspension 30 mL, Lidocaine Viscous 2 % 10 mL)		PO					ps9
12:35	Follow up: Response: Pain is decreased; Pain is decreased 9/10							ps9
12:35	ASA - Aspirin 325 mg		PO					ps9
12:35	Follow up: Response: No Adverse Reaction							ps9
12:45	morphine 4 mg		IVP					ps9
13:15	Follow up: Response: Pain is decreased; Pain is decreased 3/10							ps9

1 - Note: pain remains 10/10 .

Order name	Last Status	Reason	Time	By	For
Ctangiogram Chest W+wo Contrast (Cta)	Ordered		11/24/19 13:59	mw13	mw13
Order Method: Electronic					
Details:					
Notes: Bed Name: A5					
Interpretation:					

Attending Notes:

Name: Liu, Yu

MRN: 2256001
 Account#: 198115703



18

Tufts Medical Center

Emergency Department

Physician Documentation

Tufts Medical Center

Physician Documentation Continued

10:59 Attestation: Assessment and care plan reviewed with resident/midlevel provider. See their note for details. jms

Resident's history reviewed, patient interviewed and examined.

Attending HPI:

HPI: The patient reports a day or so of very pruritic rash on the chest and back. She can't identify any new medications or foods. She reports no past similar symptoms. She does note midsternal chest pain for the past 15-30 minutes. She reports no shortness of breath or palpitations. She reports she takes medicine from "a little bottle". But has run out of this. She reports no fever, chills, nausea, vomiting, palpitations.

11:00 Attending ROS As documented by Resident ROS and HPI. jms

Attending Exam:

My personal exam reveals The patient is a well-developed, well-nourished, Asian female. She is alert and conversant. Conjunctiva are clear, the pupils are equal and reactive. The pharynx is clear. No swelling the tongue is noted. No stridor is present. The patient has a rash that is erythematous and appears urticarial on the back. There is also some rash and upper chest. There are marks from the bra strap noted in red. The patient also has a keloid scar in the lower sternum. The chest is nontender. The chest is clear. No murmurs heard. Abdomen is soft and nontender. The patient's mentation is lucid, she follows commands. She moves all 4 extremities. The speech is fluent.

I have reviewed the

Nurses Notes.

13:39 ED Course: The patient developed worsening chest pain. This is treated with sublingual nitroglycerin without effect. A GI cocktail made a small amount of improvement. Her pain resolved after IV morphine. She was seen by cardiology and admitted to their service. She has a positive stress test from this summer, the patient had initially declined catheterization. The patient's initial troponins and EKGs were negative. jms

My Working Impression:

Acute chest pain.

Attending chart complete and electronically signed:

J.M. Stephen MD x4720.

Disposition Summary:

11/24/19 13:41

Hospitalization Ordered

- Hospitalization Status: Inpatient Admission jms
- Provider: Weinstock, Jonathan jms
- Clinical Setting: Telemetry jms
- Condition: Stable jms
- Problem: new jms
- Symptoms: have improved jms
- Bed/Room Type: Regular jms
- Room Assignment: North 6 (11/24/19 14:05) ac21
- Diagnosis:
 - Chest pain, unspecified jms
- Forms:
 - Handoff Communication Form jms

Critical Care Time:

13:39 Critical care time: Bedside Care: 20 minutes, Consultation: 15 minutes. Total time: 35 minutes jms

Name: Liu, Yu

MRN: 2256001
Account#: 198115703



198

Tufts Medical Center Emergency Department

Physician Documentation

Tufts Medical Center

Physician Documentation Continued

Signatures:

Stephen, James	MD	jms	Dispatcher, Medhost	dispat
Stewart, Patrice	RN	ps9	Callahan, Amy	RN ac21
Wismer, Michael	MD	mw13	Ibrahim, Hawolul	hi

Corrections:

- 11:02 11:02 Nitrostat 0.4 mg Sublingual every 5 minutes; do not exceed 3 tablets in 15 minutes; call md if still symptomatic after 3 rd dose x3 ordered. jms jms

- 11:29 11:42 HPI and exam performed with interpreter The patient was reportedly in her usual state of health until last night when she developed a rash on her upper chest, neck and lower back. She did not report any new exposures to food, medication, detergents etc. This rash was itchy and raised and it improved overnight. She denies any throat swelling, dysphagia, shortness of breath or wheezing with this rash. She has not had anything like this before. This morning she developed chest pain that started about 15 minutes prior to presentation. She has had chest pain in the past and reportedly takes a medicine from her primary care doctor with helps with the pain which could be nitro. Dr. first without any medications. The patient reports she sees GMA here at Tufts but not visit notes in Soarian. She notes she has a cardiac history but unsure which tests she has had in the past. mw13 mw13

- 11:39 11:39 Constitutional: This is a well developed, well nourished patient who is awake, alert, and in no acute distress. Head/Face: Normocephalic, atraumatic. Neck: No cervical lymphadenopathy. Gupple, full range of motion without nuchal rigidity. Noted urticarial rash on front of neck. Respiratory: Lungs have equal breath sounds bilaterally, clear to auscultation and percussion. No rales, rhonchi or wheezes noted. No increased work of breathing, no retractions or nasal flaring. Chestaxilla: Normal chest wall appearance and motion. Nontender with no deformity. Urticarial rash on front of chest at sternum and healed keloid noted. Cardiovascular: Regular rate and rhythm with a normal S1 and S2. No gallops, murmurs, or rubs. Abdomen/GI: Soft, non-tender, with normal bowel sounds. No guarding or rebound. Skin: Warm, dry with normal turgor. Normal color with no rashes, no lesions, and no evidence of cellulitis. MS/Extremity: Pulses equal, no cyanosis. Neurovascular intact. Full range of motion. Neuro: Awake and alert, GCS 15, oriented to person, place, time, and situation. mw13 mw13

- 11:44 11:37 ED course: Ms. Liu is a 56 year old female with a reported CAD history with stress testing who presents with chest pain and urticarial rash. Was in her usual state of health last night when developed a rash. This rash was on her chest and. mw13 mw13

- 11:46 11:42 HPI and exam performed with interpreter The patient was reportedly in her usual state of health until last night when she developed a rash on her upper chest, neck and lower back. She did not report any new exposures to food, medication, detergents etc. This rash was itchy and raised and it improved overnight. She denies any throat swelling, dysphagia, shortness of breath or wheezing with this rash. She has not had anything like this before. This morning she developed chest pain that started about 15 minutes prior to presentation. She has had chest pain in the past and reportedly takes a medicine from her primary care doctor with helps with the pain which could be nitro. Dr. first without any medications. The patient reports she sees GMA here at Tufts but not visit notes in Soarian. She notes she has a cardiac history but unsure which tests she has had in the past. It seems she has had an exercise stress test in the past as she recalls walking on the treadmill for a cardiac test but does not recall the outcome. mw13 mw13

- 11:47 11:37 ED course: Ms. Liu is a 56 year old female with a reported CAD history with stress testing who presents with chest pain and urticarial rash. Was in her usual state of health last night when

Name: Liu, Yu

MRN: 2256001
Account#: 198115703



20

Tufts Medical Center

Emergency Department

Physician Documentation

Tufts Medical Center

Physician Documentation Continued

developed a rash. This rash was on her chest and lower back and actually improved. She reports no new medications, foods, detergents or exposures. Was given Benadryl, famotidine and Solu-Medrol with improvement of itching and redness. For her chest pain she reports history of taking a medicine when she has chest pain though Dr. first without medications. She also reports having was sounds like an exercise stress test. Her chest pain is substernal, sharp/stabbing and started about 15 minutes ago at rest. Will give nitro and assess for response as well as laboratory panel including troponin.

mw13 mw13

12:33 44:42 HPI and exam performed with interpreter. The patient was reportedly in her usual state of health until last night when she developed a rash on her upper chest, neck and lower back. She did not report any new exposures to food, medication, detergents etc. This rash was itchy and raised and it improved overnight. She denies any throat swelling, dysphagia, shortness of breath or wheezing with this rash. She has not had anything like this before. This morning she developed chest pain that started about 15 minutes prior to presentation. The pain is worse with cough and with palpation. She has had chest pain in the past and reportedly takes a medicine from her primary care doctor with helps with the pain which could be nitro. Dr. first without any medications. The patient reports she sees GMA here at Tufts but not visit notes in Soarian. She notes she has a cardiac history but unsure which tests she has had in the past. It seems she has had an exercise stress test in the past as she recalls walking on the treadmill of a cardiac test but does not recall the outcome.

mw13 mw13

12:43 44:42 HPI and exam performed with interpreter. The patient was reportedly in her usual state of health until last night when she developed a rash on her upper chest, neck and lower back. She did not report any new exposures to food, medication, detergents etc. This rash was itchy and raised and it improved overnight. She denies any throat swelling, dysphagia, shortness of breath or wheezing with this rash. She has not had anything like this before. This morning she developed chest pain that started about 15 minutes prior to presentation. The pain is worse with cough and with palpation. The patient.

mw13 mw13

12:44 44:42 HPI and exam performed with interpreter. The patient was reportedly in her usual state of health until last night when she developed a rash on her upper chest, neck and lower back. She did not report any new exposures to food, medication, detergents etc. This rash was itchy and raised and it improved overnight. She denies any throat swelling, dysphagia, shortness of breath or wheezing with this rash. She has not had anything like this before. This morning she developed chest pain that started about 15 minutes prior to presentation. The pain is worse with cough and with palpation. The patient.

mw13 mw13

12:52 44:42 HPI and exam performed with interpreter. The patient was reportedly in her usual state of health until last night when she developed a rash on her upper chest, neck and lower back. She did not report any new exposures to food, medication, detergents etc. This rash was itchy and raised and it improved overnight. She denies any throat swelling, dysphagia, shortness of breath or wheezing with this rash. She has not had anything like this before. This morning she developed chest pain that started about 15 minutes prior to presentation. The pain is worse with cough and with palpation. The patient.

mw13 mw13

12:55 44:37 ED course: Ms. Liu is a 56-year-old female with a reported CAD history with stress testing who presents with chest pain and urticarial rash. Was in her usual state of health last night when developed a rash. This rash was on her chest and lower back and actually improved. She reports no new medications, foods, detergents or exposures. Was given Benedryl, famotidine and Solu-Medrol with improvement of itching and redness. For her chest pain she reports history of taking a medicine when she has chest pain though Dr. first without medications. She also reports having was sounds like an exercise stress test. Her chest pain is substernal,

Name: Liu, Yu

MRN: 2256001
Account#: 198115703



21

Tufts Medical Center

Emergency Department

Physician Documentation

Tufts Medical Center

Physician Documentation Continued

~~sharp/stabbing and started about 15 minutes ago at rest. Will give nitro and assess for response as well as laboratory panel including troponin.~~

mw13 mw13

13:49 ~~13:41~~

jms ac21

14:05 ~~13:49~~ *PENDING BED*

ac21 ac21

20:07 ~~14:05~~ ED course: Cardiology saw the patient and performed a bedside ECHO. They recommended admitting the patient to the inpatient cardiology service, they also recommended sending LFTs, B-Dimer and getting a CTA to rule out a dissection.

mw13 mw13

Document is preliminary until electronically or manually signed by the attending physician

Name: Liu, Yu

MRN: 2256001
Account#: 198115703

Print Time: 11/27/2019 20:47:43

R.A.I 74

Page 8 of 8



Tufts Medical Center

Emergency Department

Nurse
Documentation

Name: Liu, Yu
Age: 56 yrs Sex: Female DOB: 04/28/1963
Arrival Date: 11/24/2019 Arrival Time: 10:24
Bed Pending Adult
Chief Complaint: Chest Pain

MRN: 2256001

Account#: 198115703
PCP: Lau, Sandra

Presentation:

11/24 Presenting complaint: Patient states: Mostly Mandarin speaking, presents to ED with multicomplaint. reports ac21
10:34 midsternal chest pain that began 15 minutes ago. c/o pain to bilateral ears and back. reports this has
occurred in the past, states she takes "a little pill in a small vial that helps the pain but I ran out" Denies
SOB, dizziness, vomiting or diarrhea.
10:34 Acuity: Adult 2. ac21
10:34 Method Of Arrival: Walk in. ac21
16:17 Presenting complaint: Assumed care of this Patient at 1600. The bed was ready on North 6. Scans jg8
completed and the Patient is pain free. The Patient was transported to North 6 with CRN and Tech at 1620.
North 6 was notified.

Historical:

Allergies:
10:36 Amoxicillin; mycin family; Penicillins; ac21
Home Meds:
10:38 Unable to Obtain; ac21
PMHx:
10:38 Anemia; ac21

• Social history: Smoking status: The patient is not a current smoker. Patient/guardian denies using alcohol, street drugs, The patient speaks a little English, Their native language is Chinese - Mandarin The patient lives with family..

Vital Signs:

Time	B/P	Pulse	Resp	Temp	Pulse Ox	Weight	Pain	Staff
10:26	126 / 86 Left Arm (auto/reg)	89	18	36.6	99%			jr26
10:40	134 / 82	95	16					ps9
11:41	138 / 81	93	16		99% on R/A			ps9
11:50	133 / 86	92	15		99% on R/A			ps9
12:00	125 / 76	94	16					ps9
14:03	138 / 81	98	14				0/10	ps9

Glasgow Coma Score:

Time	Eye Response	Verbal Response	Motor Response	Modifying Factors	Total	Staff
10:54	spontaneous(4)	oriented(5)	obeys commands(6)		15	ps9
10:54	spontaneous(4)	oriented(5)	obeys commands(6)		15	ps9
12:07	spontaneous(4)	oriented(5)	obeys commands(6)		15	ps9

Assessment:

10:54 ps9

Reassessment: 56 yo Mandarin-speaking female who presents with chest pain, back pain and a pruritic urticarial rash.

General: Appears uncomfortable, Behavior is cooperative.



Tufts Medical Center

Pain: Complains of pain in mid-sternal area.
Neuro:
Eye opening: Spontaneously
Level on consciousness: Sustained Attention
Verbal Response:
Orientation: Oriented x 3
Speech: Clear.
Eye movements: No Gaze preference
Facial Droop: Appears Normal
Motor Response: Obeys Commands

10:54 ps9

EENT: Denies difficulty swallowing,
Cardiovascular: Capillary refill < 3 seconds
Respiratory: Airway is patent Trachea midline Respiratory effort is even, unlabored, Respiratory pattern is regular, symmetrical, Breath sounds are clear bilaterally.
Skin: Rash noted that is urticaria, on back and chest.
Skin: Rash noted that is urticaria, on back and chest.

12:04 ps9

General: Appears uncomfortable, Behavior is anxious, "I feel like I'm going to die. Can I have he cardiac surgery today"?.
Pain: Complains of pain in mid-sternal area Pain currently is 10/10.
Neuro: Eye opening: Spontaneously Level on consciousness: Sustained Attention Verbal Response:
Orientation: Oriented x 3 **Speech:** Clear. **Eye movements:** No Gaze preference **Facial Droop:** Appears Normal **Motor Response:** Obeys Commands **Motor Strength:**.
Cardiovascular: Capillary refill < 3 seconds.
Respiratory: Airway is patent Respiratory effort is even, unlabored, Respiratory pattern is regular, symmetrical, Breath sounds are clear bilaterally.
GI: Denies nausea, vomiting.
GU: No deficits noted.
Skin: urticaria is resolving.

Observations:

10:24 Patient arrived in ED. sb36
10:36 Triage Completed. ac21
10:47 Patient Visited By: Wismer, Michael. mw13
10:58 Patient Visited By: Stephen, James. jms
13:41 Patient Visited By: Stephen, James. jms
13:49 Patient assigned to A5. ac21
14:05 Patient assigned to A5. ac21

Procedure:

10:52 EKG done. (by ED staff). No Old EKG Reviewed By: James Stephen MD. rc11
11:24 Labs drawn. Sent per order to lab. Inserted peripheral IV: saline lock: 20 gauge in right antecubital area. ps9
12:01 EKG done. (by ED staff). Old EKG Obtained Reviewed By: James Stephen MD. rc11
12:26 EKG done. (by ED staff). Old EKG Obtained Reviewed By: James Stephen MD. ra11
14:17 Labs drawn. Sent per order to lab. Inserted peripheral IV: saline lock: 18 gauge in right antecubital area. ps9

Name: Liu, Yu

MRN: 2256001
Account#: 198115703

Print Time: 11/27/2019 20:47:40

Page 2 of 4



24

Nurses Documentation Continued

Tufts Medical Center

Dispensed Medications:

Time	Drug & Dose <i>Dispensable & Quantity</i>	Volume	Route	Rate	Infused Over	Site	Delivery	Staff
10:54	Benadryl 25 mg		IVP					ps9
10:54	Famotidine 20 mg		IVP					ps9
11:02	CANCELLED (N/A): Nitrostat 0.4 mg Sublingual every 5 minutes; do not exceed 3 tablets in 15 minutes; call md if still symptomatic after 3 rd dose x3							jms
11:23	Nitroglycerin Tablet 0.4mg 0.4 mg		Sublingual					ps9
11:23	Solu-MEDROL 125 mg		IVP					ps9
11:38	Nitroglycerin Tablet 0.4mg 0.4 mg		Sublingual					ps9
11:41	Nitroglycerin Tablet 0.4mg 0.4 mg ¹		Sublingual					ps9
12:02	Follow up: Response: Pain is unchanged, physician notified; Pain is unchanged, physician notified 10/10							ps9
12:03	Follow up: Response: Pain is unchanged, physician notified; Pain is unchanged, physician notified 10/10							ps9
12:04	GI cocktail - (Maalox Suspension 30 mL, Lidocaine Viscous 2 % 10 mL)		PO					ps9
12:35	Follow up: Response: Pain is decreased; Pain is decreased 9/10							ps9
12:35	ASA - Aspirin 325 mg		PO					ps9
12:35	Follow up: Response: No Adverse Reaction							ps9
12:45	morphine 4 mg		IVP					ps9
13:15	Follow up: Response: Pain is decreased; Pain is decreased 3/10							ps9

1 - Note: pain remains 10/10.

4 medications in span of 2-3 hours

Interventions:

- 10:25 Driver's License Scanned into Chart. sb36
- 11:05 Demo Sheet Scanned into Chart. ad27
- 11:08 ECG/EKG Scanned into Chart. hi
- 12:13 ECG/EKG Scanned into Chart. hi
- 14:30 Patient Belongings Scanned into Chart. ad27
- 16:09 ECG/EKG Scanned into Chart. vs6

Outcome:

- 13:41 Decision to Hospitalize by Provider. jms
- 16:47 Patient left the ED. ac21

Corrections:

- 12:08 ~~10:54~~ Neuro: Eye-opening: Spontaneously Level on consciousness: Sustained Attention Verbal Response: Orientation: Oriented x 3 Speech: Clear. Eye movements: No Gaze preference Facial Droop: Appears Normal Motor Response: Obeys Commands ps9 ps9
- 12:09 ~~10:54~~ Neuro: Eye-opening: Spontaneously Level on consciousness: Sustained Attention Verbal

Name: Liu, Yu

MRN: 2256001
 Account#: 198115703

Print Time: 11/27/2019 20:47:40

R.A.I 77



25

25

Nurses Documentation Continued

Tufts Medical Center

~~Response: Orientation: Oriented x 3 Speech: Clear Eye movements: No Gaze preference~~
~~Facial Droop: Appears Normal Motor Response: Obeys Commands~~ ps9 ps9
 12:11 12:04 GGS: 15; ps9 ps9
 12:11 12:07 Cardiovascular: Capillary refill < 3 seconds ps9 ps9
 12:11 12:07 Respiratory: Airway is patent Trachea midline Respiratory effort is even, unlabored, Respiratory pattern is regular, symmetrical, Breath sounds are clear bilaterally. ps9 ps9
 12:11 12:07 EENT: Denies difficulty swallowing; ps9 ps9
 12:11 12:07 GU: ps9 ps9
 12:11 12:07 Skin: Rash noted that is urticaria, on back and chest ps9 ps9
 12:11 12:08 Skin: Rash noted that is urticaria, on back and chest ps9 ps9
 12:11 12:08 GGS: 15; ps9 ps9

Signatures:

Stephen, James	MD	jms	Gilleran, Janet	RN	kg8
Stewart, Patrice	RN	ps9	Callahan, Amy	RN	ac21
Wisner, Michael	MD	mw13	Costa, Rachel		rc11
DelRosario, Alida	Sec	ad27	Ibrahim, Hawolul		hi
Santa, Vanessa		vs6	Rincon, Javier		jr26
Bland, Shamyiah		sb36	Aspinwall, Riley	CCT	ra11

Name: Liu, Yu

Print Time: 11/27/2019 20:47:40

MRN: 2256001
Account#: 198115703
Page 4 of 4

R.A.I 78



21

Tufts Medical Center 800 Washington Street Boston MA 02111

CTA Chest W+WO Contrast (Angiogram) Results Report

Pt Name: LIU, YU FEN
Pt ID: 2018016649
DOB: 04/28/1963

MRN: 2870892
Acct No: 210957430
Age/Sex: 58Y/F
Attn Dr: Ostrow, Peter MD
Rm/Bed:

Nurse Sta:
Dx:

Allrg: No Known Food Allergies, Penicillins

Order Name:
Result Name: CTA Chest W+WO Contrast (Angiogram)

Observation Dtime: 11/24/2019 21:48
Result Status: Final Result

Final

TUFTS MEDICAL CENTER NAME: LIU, YU FEN MR#: 2256001
800 Washington Street ORD PHYS: Wismer, Michael .MD
Boston, MA 02111

DOB: 04/28/1963 AGE: 56 year(s) SEX: F

EXAM DATE: 11/24/2019 EXAM ID: 10141056

CAT Scan CTED - CT ED ROOM LOCATION: DISCH - DISCHARGED (DISCH)

EXAM: CTA CHEST W+W/O CONTRAST

CLINICAL DATA:

REASON FOR EXAM: chest pain and concern dissection

ORDER COMMENTS: Bed Name: A5

EXAM: CTA Chest (Pulmonary Angiogram).

HISTORY: 56-year-old female presenting with acute onset chest pain not resolving after SLN, concern for pulmonary embolus

TECHNIQUE: A test bolus of Isovue 370 was injected at 5 cc/sec for timing purposes. Helical CT was then performed from the lung apices through the lung bases following the administration of 70 cc Ultravist 370 injected at 5 cc/sec. Axial, coronal and sagittal MIP images and volume rendered 3D vascular models were created at the CT console. **Of note, patient refused imaging of the legs.**

COMPARISONS: Chest radiograph 3/18/2016

FINDINGS:

Vascular Findings:

There is adequate opacification of the pulmonary arteries to the sub-segmental level.

There is no filling defect in the pulmonary arteries to suggest acute or chronic pulmonary embolus.

There is a rounded 5 mm focal opacification emanating from the distal pulmonary artery branch in the left upper lobe (8-116).

This is suspected to be a pulmonary AVM.

Non-vascular Findings:

There is a 4 mm solid nodule in the left upper lobe (8-186). There are bilateral trace pleural effusions dependent atelectasis.

There is mild multilevel anterior endplate osteophyte formation.

IMPRESSION:

1. No evidence of acute or chronic pulmonary embolus.
2. 5 mm rounded area enhancing focus emanating from the distal pulmonary arterial branch, suspected to be a pulmonary arteriovenous malformation.
3. 4 mm solid nodule in the left upper lobe. Please refer to the Fleischner society guidelines as below:

Per the 2017 Fleischner Society Guidelines:

Solid pulmonary nodules <= 6 mm in size, immunocompetent patients over age 35, no history of malignancy, not undergoing lung cancer screening:

- No known/unknown risk factors for lung cancer: No additional follow-up imaging needed.

- Risk factors for lung cancer: Optional follow-up chest CT at 12 months.

The Tufts Medical Center PACS record indicates that during the 12 months prior to the current exam the patient has had (including outside scans in the Tufts PACS record):

0 CT scans of any kind, including those done for attenuation correction PET scanning; and

0 myocardial perfusion radiotracer examinations.

DICTATED: Jidi Gao .MD SUPERVISED BY Neil Halin .DO

Pt Name: LIU, YU FEN

MRN: 2870892

Rm/Bed:

Page 1 of 2

CTA Chest W+WO Contrast (Angiogram) Results Report



Tufts Medical Center 800 Washington Street Boston MA 02111

CTA Chest W+WO Contrast (Angiogram) Results Report

Pt Name: LIU, YU FEN
Pt ID: 2018016649
DOB: 04/28/1963

MRN: 2870892
Acct No: 210957430
Age/Sex: 58Y/F
Atn Dr: Ostrow, Peter MD
Rm/Bed:

Nurse Sta:

Dx:

Allrg: No Known Food Allergies, Penicillins

Order Name:

Observation Dtime: 11/24/2019 21:48

Result Name: CTA Chest W+WO Contrast (Angiogram)

Result Status: Final Result

IN ACCORDANCE WITH DEPARTMENT POLICY, TEACHING PHYSICIANS REVIEW ALL IMAGES, AND EDIT REPORTS AS REQUIRED. A REPORT IS NOT FINAL UNTIL APPROVED BY A STAFF RADIOLOGIST.

APPROVED BY STAFF RADIOLOGIST: Neil Halin, DO Nov 26, 2019 04:53 PM

TRANSCRIBED BY: TNUANCE

Comments

Result Comments:

Requisition Comments:

Ordering Dr: Wismer Michael

Order Date/Time:

Ord#/Occurrence#: /

Pt Name: LIU, YU FEN

MRN: 2870892

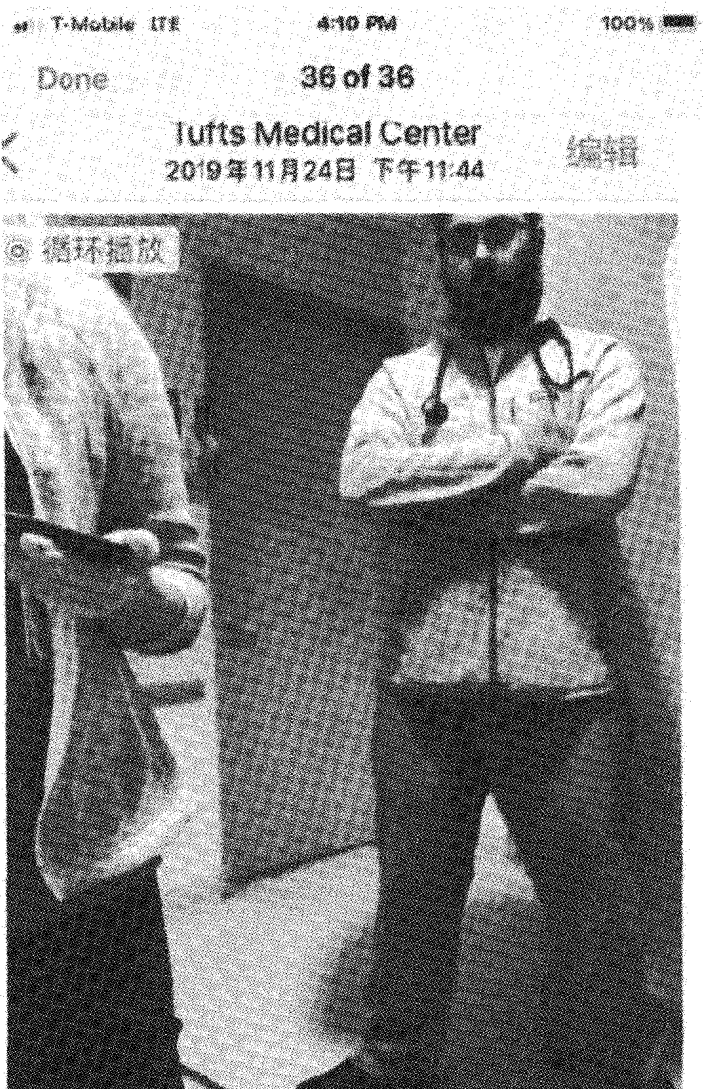
Rm/Bed:

Page 2 of 2

CTA Chest W+WO Contrast (Angiogram) Results Report



EXHIBIT 7



Commonwealth of Massachusetts

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO. 2281 CV 04021

Yu-Fen Liu, PLAINTIFF(S),

v.
Tufts Medical Center Inc et al. DEFENDANT(S)



RECEIVED
2/20/23

SUMMONS

THIS SUMMONS IS DIRECTED TO Tufts Medical Center Inc . (Defendant's name)

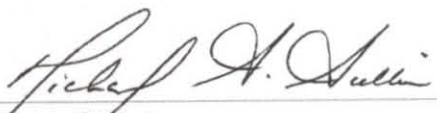
You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Middlesex County Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**

1. **You must respond to this lawsuit in writing within 20 days.** If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**
2. **How to Respond.** To respond to this lawsuit, you must file a written response with the court **and** mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
 - a. Filing your **signed original** response with the Clerk's Office for Civil Business, Middlesex County Superior Court, _____ (address), by mail or in person, **AND**
 - b. Delivering or mailing a **copy** of your response to the Plaintiff's Attorney/Plaintiff at the following address: JT Law office, 400 Tradecenter Dr, STE 5900, Woburn, MA 01801
3. **What to include in your response.** An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as **counterclaims**) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a "**Motion to Dismiss**," if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under **Mass. R. Civ. P. 12**. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov/courts/case-legal-res/rules-of-court.

23000184

- 4. **Legal Assistance.** You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
- 5. **Required information on all filings:** The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Heidi Brieger, Chief Justice on Nov. 23, 2022.



 Michael A. Sullivan
 Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

PROOF OF SERVICE OF PROCESS

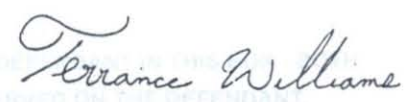


Suffolk County Sheriff's Department • 132 Portland Street, Boston, MA 02114 • (617) 704-6999
Suffolk, ss.

February 1, 2023

I hereby certify and return that on 1/31/2023 at 2:00 PM I served a true and attested copy of the Summons, Complaint, Cover Sheet and Tracking Order in this action in the following manner: To wit, by delivering in hand to Beth Jackson, Legal, agent and person in charge at the time of service for Tufts Medical Center Inc., at 37 Bennett Street Boston, MA 02111 . Attest/Copies (\$5.00) Basic Service Fee (IH) (\$30.00) Postage and Handling (\$1.00) Total: \$36.00

Deputy Sheriff Terrance Williams



Deputy Sheriff

_____, 20____

Commonwealth of Massachusetts

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO. 2281 CV 04021

Yu-Fen Liu, PLAINTIFF(S),

v.
Tufts Medical Center Inc DEFENDANT(S)
et.al



RECEIVED
2/20/23

SUMMONS

THIS SUMMONS IS DIRECTED TO Peter Ostrow, MD (Defendant's name)

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Middlesex County Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**

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23000186

- 4. **Legal Assistance.** You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
- 5. **Required information on all filings:** The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Heidi Brieger, Chief Justice on Nov. 23, 2022.



 Michael A. Sullivan
 Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

PROOF OF SERVICE OF PROCESS



Suffolk County Sheriff's Department • 132 Portland Street, Boston, MA 02114 • (617) 704-6999
Suffolk, ss.

February 1, 2023

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Deputy Sheriff Terrance Williams



Deputy Sheriff

, 20__

Commonwealth of Massachusetts

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO. 2281 CV 04021

Yu-Fen Liu, PLAINTIFF(S),

v.
Tufts Medical Center Inc, DEFENDANT(S)
et. al



RECEIVED
2/20/23

SUMMONS

THIS SUMMONS IS DIRECTED TO Leah I Kaplan, MD (Defendant's name)

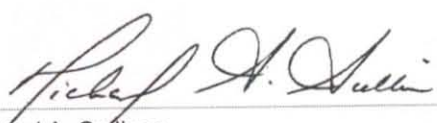
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23000189

- 4. **Legal Assistance.** You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
- 5. **Required information on all filings:** The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Heidi Brieger, Chief Justice on Nov. 23, 20 22.



 Michael A. Sullivan
 Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

PROOF OF SERVICE OF PROCESS



Suffolk County Sheriff's Department • 132 Portland Street, Boston, MA 02114 • (617) 704-6999
Suffolk, ss.

February 1, 2023

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Deputy Sheriff Terrance Williams



Deputy Sheriff

_____, 20____

Commonwealth of Massachusetts

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO. 2281CV04021

Yu-Fen Liu, PLAINTIFF(S),

v.
Tufts Medical Center, DEFENDANT(S)
et.al



RECEIVED
2/20/23

SUMMONS

THIS SUMMONS IS DIRECTED TO James M Stephen, MD . (Defendant's name)

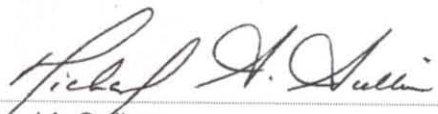
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23000197

- 4. **Legal Assistance.** You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
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Witness Hon. Heidi Brieger, Chief Justice on Nov. 23, 20 22.



 Michael A. Sullivan
 Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

PROOF OF SERVICE OF PROCESS




Suffolk County Sheriff's Department • 132 Portland Street, Boston, MA 02114 • (617) 704-6999
 Suffolk, ss.

February 1, 2023

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Deputy Sheriff Terrance Williams



 Deputy Sheriff

, 20__

Commonwealth of Massachusetts

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO. 2281 CV 04021

Yu-Fen Liu, PLAINTIFF(S),

v.
Tufts Medical Center Inc, DEFENDANT(S)
et al



RECEIVED
2/20/23

SUMMONS

THIS SUMMONS IS DIRECTED TO Linda A Cotter, RN . (Defendant's name)

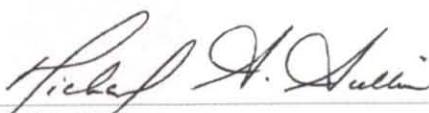
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23000182

- 4. **Legal Assistance.** You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
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Witness Hon. Heidi Brieger, Chief Justice on Nov. 23, 20 22.



Michael A. Sullivan
Clerk-Magistrate

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PROOF OF SERVICE OF PROCESS



Suffolk County Sheriff's Department • 132 Portland Street, Boston, MA 02114 • (617) 704-6999
Suffolk, ss.

February 1, 2023

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Deputy Sheriff Terrance Williams


Deputy Sheriff

, 20__

Commonwealth of Massachusetts

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO. 2281 CV 04021

Yu-Fen Liu, PLAINTIFF(S),

v.
Tufts Medical Center Inc
et al., DEFENDANT(S)



RECEIVED
2/20/23

SUMMONS

THIS SUMMONS IS DIRECTED TO Daniel Augustadt, MD (Defendant's name)

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Middlesex Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**
County

1. **You must respond to this lawsuit in writing within 20 days.** If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**
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Witness Hon. Heidi Brieger, Chief Justice on Nov. 23, 2022.

Michael A. Sullivan
Clerk-Magistrate

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PROOF OF SERVICE OF PROCESS



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Suffolk, ss.

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Deputy Sheriff Terrance Williams

Deputy Sheriff

[Redacted signature area]
[Redacted date area], 20__

2281CV04021

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2281CV04021

YU-FEN LIU,

PLAINTIFF,

v.

TUFTS MEDICAL CENTER, INC.

JENNIFER JANE DOE, Individually and as
a Nurse at Tufts Medical Center, Emergency Dept.

PATRICE STEWART, Individually and as a RN at Tufts
Medical Center, Emergency Dept.

MICHAEL WISER, MD, Individually and as an Internal
Medicine Resident at Tufts Medical Center, Emergency
Dept.

JAMES M. STEPHEN, MD, Individually and as a
Medicine Physician at Tufts Medical Center, Emergency
Dept.)

SARA ZELMAN, MD, Individually and as a
Resident Physician at Tufts Medical Center

PETER OSTROW, MD, Individually and as a
Medicine Physician at Tufts Medical Center

JONATHAN WEINSTOCK, MD, Individually and as a
Medicine Physician at Tufts Medical Center, Cardiac Dept.

JANE DOES (2), Individually and as Radiologists at
Tufts Medical Center,

NEIL HALIN, DO, Individually and as Radiologist at
Tufts Medical Center,

LEAH I KAPLAN, MD, Individually and as an
Internal Medicine Resident and at Tufts Medical Center,

ARHANT RAO, MD, Individually and as an
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LINDA A COTTER, RN, Individually and as
a Registered Nurse at Tufts Medical Center,

NORA BOSTEELS, RN, Individually and as a
Registered Nurse at Tufts Medical Center,

DANIEL AUGUSTADT, MD, Individually and as a
Psychiatry Resident at Tufts Medical Center, and

JOHN DOE ANTHONY and JONE DOES (1-4),
Individually and as security officers at Tufts Medical Center,

DEFENDANTS.

**THE DEFENDANTS' NOTICE OF CONSOLIDATED
MOTION TO DISMISS FILED IN LIEU OF ANSWER
PURSUANT TO SUPERIOR COURT RULE 9E**

Pursuant to Superior Court Rule 9E, all Defendants, including Tufts Medical Center, Inc., Leah I Kaplan, M.D., Jennifer Jane Doe, Patrice Stewart, R.N., Michael Wisner, M.D., James M. Stephen, M.D., Sara Zelman, M.D., Peter Ostrow, M.D., Jonathan Weinstock, M.D., Jane Does (2), Neil Halin, D.O., Arhant Rao, M.D., Linda A. Cotter, R.N., Nora Bosteels, R.N., Daniel Augustadt, M.D., John Doe Anthony, and John Does (1-4), hereby gives notice that it will be serving a Consolidated Motion to Dismiss the Plaintiff's Complaint upon the Plaintiff. Said motion will be served upon the Plaintiff, along with this notice, as described in the attached Certificate of Service.

The Defendants,
By Their Attorneys,



Alexander E. Terry, BBO #688693
Gregory R. Browne, BBO # 708988
Adler | Cohen | Harvey | Wakeman | Guekguezian, LLP
75 Federal Street, 10th Floor
Boston, MA 02110
(617) 423-6674
aterry@adlercohen.com
gbrowne@adlercohen.com

CERTIFICATE OF SERVICE

I, Gregory R. Browne, attorney for the Defendants, hereby certify that, on this 21ST day of February 2023, I served the following documents:

1. The Defendants' Notice of Consolidated Motion to Dismiss Filed in Lieu of Answer Pursuant to Superior Court Rule 9E;
2. The Defendants' *Consolidated* Motion to Dismiss The Plaintiff's Complaint With Prejudice; and
3. Memorandum of Law in Support of Motion of the Defendants' Consolidated Motion to Dismiss the Plaintiff's Complaint With Prejudice.

via email to:

jie.tan@jtlawservices.com
Jie Tan, Esquire
JT Law Services, PC
400 Tradecenter Drive
Suite 5900, RM 5880
Woburn, MA 01801



Gregory R. Browne, BBO # 708988

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2281CV04021

YU-FEN LIU,

PLAINTIFF,

v.

TUFTS MEDICAL CENTER, INC.

JENNIFER JANE DOE, Individually and as
a Nurse at Tufts Medical Center, Emergency Dept.

PATRICE STEWART, Individually and as a RN at Tufts
Medical Center, Emergency Dept.

MICHAEL WISER, MD, Individually and as an Internal
Medicine Resident at Tufts Medical Center, Emergency
Dept.

JAMES M. STEPHEN, MD, Individually and as a
Medicine Physician at Tufts Medical Center, Emergency
Dept.)

SARA ZELMAN, MD, Individually and as a
Resident Physician at Tufts Medical Center

PETER OSTROW, MD, Individually and as a
Medicine Physician at Tufts Medical Center

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DANIEL AUGUSTADT, MD, Individually and as a
Psychiatry Resident at Tufts Medical Center, and

JOHN DOE ANTHONY and JONE DOES (1-4),
Individually and as security officers at Tufts Medical Center,

DEFENDANTS.

3/6/2023

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RECEIVED

**THE DEFENDANTS' CONSOLIDATED MOTION TO DISMISS
THE PLAINTIFF'S COMPLAINT WITH PREJUDICE**

The Defendants, who have been served, including TMC, Dr. Kaplan, James M. Stephen, M.D., Linda A. Cotter, R.N., Peter Ostrow, M.D., and Daniel Augustadt, M.D., now move to dismiss the Plaintiff's Complaint with prejudice under Mass. R. Civ. P. 12(b)(6) and the doctrine of claim preclusion. On separate grounds, the Defendants, who have not yet been served, including Jennifer Jane Doe, Patrice Stewart, R.N., Michael Wisner, M.D., Sara Zelman, M.D., Jonathan Weinstock, M.D., Jane Does (2), Neil Halin, D.O., Arhant Rao, M.D., Nora Bosteels, R.N., John Doe Anthony, and John Does (1-4), now move to dismiss the Plaintiff's Complaint under Mass. R. Civ. P. 12(b)(5) for insufficient and untimely service of process. The Defendants, moving on a consolidated basis, hereby incorporate their Memorandum of Law, filed herewith, including exhibits, in support of the instant Motion to Dismiss.

WHEREFORE, for the reasons stated in the accompanying Memorandum of Law, the Defendants respectfully request that this Court dismiss the instant Complaint.

All Defendants,
By Their Attorneys,



Alexander E. Terry, BBO #688693
Gregory R. Browne, BBO # 708988
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11.1

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2281CV04021

YU-FEN LIU,

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Individually and as security officers at Tufts Medical Center,

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3/6/2023
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**MEMORANDUM OF LAW IN SUPPORT OF THE
DEFENDANTS' CONSOLIDATED MOTION TO DISMISS
THE PLAINTIFF'S COMPLAINT WITH PREJUDICE**

For a second time, the Plaintiff seeks money damages for injuries she allegedly sustained at Tufts Medical Center, Inc. ("TMC")¹ on November 24, 2019 and November 25, 2019. The Plaintiff's first action, brought only against TMC and Leah I. Kaplan, M.D., was dismissed with prejudice² after the Court allowed the Defendants' Motion to Dismiss the Plaintiff's Complaint for Failure to Post the Bond Required Under M.G.L. c. 231, § 60B and for Entry of Separate and Final Judgment. In the present case, the Plaintiff seeks redress for the same exact injuries, and all her claims arise out of the same nucleus of operative facts, *i.e.*, her care, treatment, and interactions with medical staff at TMC on the above referenced dates. As such, the Defendants, who have been served, now submit this Motion to Dismiss under the doctrine of claim preclusion.

On separate grounds, the Defendants, who have not yet been served, submit this Motion to Dismiss, under Mass. R. Civ. P. 12(b)(5), as there is no good cause for the Plaintiff's failure to provide service within the time frame set forth in Mass. R. Civ. P. 4. Indeed, the Complaint was filed on November 22, 2022, and the Plaintiff has failed to timely serve seven Defendants within the required ninety-day period.

¹ Tufts Medical Center, Inc. was misnamed in the First Case as "Tufts Medical Center Emergency in Boston."

² A dismissal for failure to post the bond required by the M.G.L. c. 231, § 60B "must be with prejudice." *Farese v. Connolly*, 422 Mass. 1010, 1010 (1996) (finding "[t]he purpose of the medical malpractice tribunal statute would be undercut if a plaintiff were to be allowed to start all over again.")

PROCEDURAL AND FACTUAL BACKGROUND

On March 4, 2022, the Plaintiff³ filed an action, originally on a pro se basis, against TMC and Dr. Kaplan, entitled *Yufen Liu v. Tufts Medical Center Emergency in Boston and Leah I. Kaplan, M.D.*, Middlesex County Civil Action No. 2281CV01401 (“First Case.”) The Plaintiff sought damages, totaling \$9,319,352.00, for injuries allegedly sustained at TMC on November 24, 2019 and November 25, 2019. See First Case Docket, File Ref. Nbr. 1.

On April 26, 2022, TMC and Dr. Kaplan requested a hearing before a medical malpractice tribunal under M.G.L. c. 231, § 60B on the basis that the Plaintiff’s Offer of Proof, which had been served on the Defendants but not filed, failed to provide support from an expert witness and relied exclusively on conclusory allegations not supported by the medical records. See First Case Docket, File Ref. Nbrs. 5, 6. The Plaintiff subsequently filed her Offer of Proof on May 31, 2022, but the Court had already ordered her to post the \$6,000.00 bond required by M.G.L. c. 231, § 60B. See First Case Docket, File Ref. Nbrs. 10, 11.

On July 7, 2022, the Plaintiff, then represented by counsel, moved to “Substantially Reduce the Bond Required Under M.G.L. c. 231, § 60B and to Grant the Plaintiff More Time to Seek Medical Diagnosis of her Illness and Treatment Before Resuming the Proceeding.” See First Case Docket, File Ref. Nbr. 13. The Court denied the Plaintiff’s Motion without prejudice, allowing her to re-file if she complied with the requirements of Superior Court Rule 9A.

³ The Plaintiff brought the First Case under the name, Yufen Liu, and she brings the Second Case under the slightly different name of Yu-Fen Liu.

On July 22, 2022, TMC and Dr. Kaplan filed a Motion to Dismiss the Plaintiff's Complaint for Failure to Post the Bond Required Under M.G.L. c. 231, § 60B and for Entry of Separate and Final Judgment, along with a Memorandum of Law in Support. See First Case Docket, File Ref. Nbr. 16-16.1. The Plaintiff filed an Opposition, which requested, among other things, "time and opportunity...to seek diagnosis of her medical issues caused by alleged incidents with the Defendants' members and staffs before moving the current case forward." See First Case Docket, File Ref. Nbr. 16.2. During the Superior Court Rule 9A serving process, the Plaintiff submitted the \$6,000.00 bond; however, the thirty-day deadline to do so had passed. The \$6,000.00 was eventually returned to the Plaintiff's attorney, as per the docket.

On July 29, 2022, the Court allowed TMC and Dr. Kaplan's Motion to Dismiss the Plaintiff's Complaint for Failure to Post the Bond Required Under M.G.L. c. 231, § 60B and for Entry of Separate and Final Judgment. See a true and accurate copy of the endorsement, attached hereto as **Exhibit A** ("Endorsement.") The Endorsement reads in its entirety:

After careful consideration of the parties' positions, the motion to dismiss for failing to post a bond, pursuant to G.L. c. 231, Section 60B, is Allowed and this civil action is dismissed as to both defendants. Plaintiff asks for more time to obtain a diagnosis for the harm allegedly, caused by defendants, however, that request is denied because a) this incident occurred nearly three years ago; and b) medical malpractice plaintiffs are obligated to have support for their claim at the point of a medical malpractice tribunal, or face the consequences under the statute, namely, the bond requirement. Further, based on the complaint, it does not appear that additional time would aid the plaintiff in supporting her claim for negligence. Case shall be dismissed.

The following day, the Honorable Christopher K. Barry-Smith entered a Judgment for Failure to File Bond and dismissed the First Case. See First Case Docket, File Ref. Nbr. 17.

On November 22, 2022, the Plaintiff filed this case ("Second Case") where she again brought claims against TMC and Dr. Kaplan. She also added several Defendants, including Jennifer Jane Doe, Patrice Stewart, R.N., Michael Wiser, M.D., James M. Stephen, M.D., Sara Zelman, M.D., Peter Ostrow, M.D., Jonathan Weinstock, M.D., Jane Does (2), Neil Halin, D.O., Arhant Rao, M.D., Linda A. Cotter, R.N., Nora Bosteels, R.N., Daniel Augustadt, M.D., John Doe Anthony, and John Does (1-4) ("New Defendants").

Notably, the Plaintiff did not move to vacate the Court's judgment in the First Case, electing to file the Second Case instead.

On or around January 9, 2023, a process server apparently retained by the Plaintiff contacted TMC and indicated he had a Summons for twelve Defendants, who were each allegedly involved in the treatment of the Plaintiff at TMC on November 24, 2019 and November 25, 2019. TMC has been diligently trying to locate all of the Defendants, many of which are no longer employed by TMC and have moved to work at out-of-state, and obtain authority to accept service. To date, TMC has only been able to reach five of the twelve individual Defendants, who have each authorized TMC to receive the Summons on their behalf. As the Complaint was filed on November 22, 2022, the deadline to effectuate service is February 21, 2023.

The Defendants, who have been served to date, namely TMC, Dr. Kaplan, James M. Stephen, M.D., Linda A. Cotter, R.N., Peter Ostrow, M.D., and Daniel Augustadt, M.D., now move to dismiss the Second Case, as the judgment in the First Case has a binding

effect on the Second Case under clear and well-established *res judicata* principles. The Defendants, who have not yet been sufficiently served, including Jennifer Jane Doe, Patrice Stewart, R.N., Michael Wiser, M.D., Sara Zelman, M.D., Jonathan Weinstock, M.D., Jane Does (2), Neil Halin, D.O., Arhant Rao, M.D., Nora Bosteels, R.N., John Doe Anthony, and John Does (1-4) (“Unserved New Defendants”) move to dismiss, pursuant to Mass. R. Civ. P. 12(b)(5) for insufficient and untimely service of process.

ARGUMENT

I. THE PLAINTIFF’S CLAIMS AGAINST ARE BARRED BY THE DOCTRINE OF CLAIM PRECLUSION.

The dismissal of the First Case with prejudice bars the Plaintiff’s pursuit of the Second Case; as such, the Complaint fails to state a claim upon which relief can be granted. The purpose of Mass. R. Civ. P. 12(b)(6) is to “permit prompt resolution of a case where the allegations in the complaint clearly demonstrate that the plaintiff’s claim is legally insufficient. *Harvard Crimson Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 748 (2006). To survive a motion to dismiss, the facts alleged must “plausibly suggest (not merely be consistent with) an entitlement of relief.” *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (internal quotations omitted).

“Res judicata” is the generic term for various doctrines by which a judgment in one action has a binding effect in another, and it comprises both “claim preclusion” and “issue preclusion.” *Heacock v. Heacock*, 402 Mass. 21, 23, n.2 (1988). *Res judicata* defenses are frequently resolved at the pleading stage, particularly when the facts of the prior proceeding are available to the Court, as they are here. See *Saisi v. Board of Trustees of State College*, 6 Mass. App. Ct. 949, 949 (1978). Here, as detailed below, the Plaintiff’s claims are barred by claim preclusion, and the Second Case must be dismissed.

To that end, claim preclusion prohibits the continuation of an action based on the same claim that was the subject of an earlier action “between the same parties or their privies.” See *Heacock*, 402 Mass. at 23 n.2. To establish claim preclusion, a defendant must show: (1) the identity or privity of the parties to the present and prior actions, (2) identity of the cause of action, and (3) prior final judgment on the merits. *Baby Furniture Warehouse Store, Inc. v. Meubles D&F Ltée*, 75 Mass. App. Ct. 27, 33 (2009). “The doctrine of claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and bars further litigation of all matters that were or should have been adjudicated in the [prior] action,” **even if “the claimant is prepared in a second action to present different evidence or legal theories to support his claim**, or seeks different remedies.” *Heacock*, 402 Mass. at 23 (emphasis added).

Claim preclusion “applies only where both actions [are] based on the same claim.” *Franklin v. North Weymouth Coop. Bank*, 283 Mass. 275, 279-280 (1933). To that end, “[a] claim is the same for [claim preclusion] purposes if it is derived from the same transaction or series of connected transactions.” *Saint Louis v. Baystate Med. Center, Inc.*, 30 Mass. App. Ct. 393, 399 (1991). Further, a “statement of a different form of liability is not a different cause of action, provided it grows out of the same transaction, act, or agreement, and seeks redress for the same wrong.” *Mackintosh v. Chambers*, 285 Mass. 594, 596 (1934).

Lastly, and most relevant to the New Defendants, non-mutual claim preclusion allows for a “person who was not a party in an earlier action [to] raise preclusion in a subsequent action if the claimants in that action have a close and significant relationship with the original claimants or when “the party against whom [claim preclusion] is asserted

had a full and fair opportunity for judicial resolution of the same issue' in the earlier action.” *Mancuso v. Kinchla*, 60 Mass. App. Ct. 558, 568 (2004); see also *Capizzi v. Verrier*, 1996 WL 414034 at *4 (Mass. Super. July 23, 1996) (non-mutual claim preclusion “does not require identity of the parties concerned; instead, the parties need only be in privity or in a relationship, such as that between agent and principal and employer and employee, in which one party is vicariously liable for the acts of another.”)⁴

A. Leah I. Kaplan, M.D.

All three elements required to establish claim preclusion are met in the present case against Dr. Kaplan. The first element is easily met as the Plaintiff is the same in both cases, despite varying the spelling of her name slightly, and Dr. Kaplan is a named defendant in both cases. See First Case Docket File Ref. Nbr. 1; see Second Case Docket File Ref. Nbr. 1. Regarding the second element, Massachusetts courts examine whether the two complaints are “based on the same set of operative facts.” See *TLT Construction v. A. Anthony Tappe and Associates, Inc.*, 48 Mass. App. Ct. 1, 8 (1999). As to Dr. Kaplan, this second element is satisfied because both actions arise out of the allegedly negligent medical treatment the Plaintiff received at TMC, on November 24, 2019 and November 25, 2019, and the Plaintiff seeks redress for the same injuries, *i.e.*, an abdominal injury secondary to an “injection” received in the Cardiac Unit and emotional-related injuries secondary to being evaluated before leaving against medical advice. See First Case Docket File Ref. Nbr. 1; see Second Case Docket File Ref. Nbr.

⁴ Attached as **Exhibit B**, please find *Levesque v. McEnaney, M.D.*, No. 1681CV02430, 2017 WL 4552189, at *3 (Mass. Super. Mar. 06, 2017), in which the Middlesex County Superior Court allowed motions to dismiss in a nearly identical situation.

1. As such, both actions arise out of “the same transaction or series of connected transactions.” See *Saint Louis*, 30 Mass. App. Ct. at 399.

Further, as noted above, a “statement of a different form of liability is not a different cause of action, provided it grows out of the same transaction, act, or agreement, and seeks redress for the same wrong.” See *Mackintosh*, 285 Mass. at 596. Here, the new counts against Dr. Kaplan, *i.e.*, medical fraud, assault, false imprisonment, and bias-related civil rights violation, each could have been brought in the First Case, and they derive out of the same circumstances. See *Heacock*, 402 Mass. at 23 (finding claim preclusion applies to “all matters that were or should have been adjudicated in the [prior] action,” even if “the claimant is prepared in a second action to present different evidence or legal theories to support his claim, or seeks different remedies.”) Many of the additional facts included in the Second Complaint, are duplicative of the Plaintiff’s Offer of Proof in the First Case. See First Case Docket File Ref. Nbr. 11. Further, the new counts are essentially veiled medical malpractice claims, involving Dr. Kaplan’s recordkeeping, medical treatment, and clinical judgment in determining whether the Plaintiff exhibited the competence to safely leave TMC.⁵ As such, even though the Plaintiff has brought new counts against Dr. Kaplan, both cases are “based on the same set of operative facts,”

⁵ The Plaintiff’s allegations, which involve Dr. Kaplan’s recordkeeping and medical treatment and decision-making, are viewed as medical malpractice, under the law, and clearly distinguishable from actions not considered medical malpractice, such as *Koltin v. Beth Israel Deaconess Med. Ctr.*, 62 Mass. App. Ct. 920, 920-921, 817 N.E.2d 809 (2004) (claims of assault and battery, false imprisonment, and intentional infliction of emotional distress by hospital security guards did not allege medical malpractice) (emphasis added); see also *Lane v. Winchester Hospital*, 101 Mass. App. Ct. 74, 77-78 (2022) (finding “our case law highlights several factors relevant to whether the complained-of acts are properly viewed as medical malpractice or otherwise,” including: (1) whether medical or professional judgment or competence was exercised; (2) whether the claim is “treatment-related,” even if not a traditional malpractice claim; and (3) whether “the same set of facts supports both” the medical malpractice and allegedly nonmedical claims.) Here, these factors are easily met, as even the counts of assault and false imprisonment are supported by the same set of facts surrounding the Plaintiff’s treatment.

and the second element of identity of the cause of action is met. *See TLT Construction*, 48 Mass. App. Ct. at 8.

The third element is met because there was a valid, final judgment dismissing the First Case with prejudice, which “may, therefore, preclude subsequent litigation based on the same claim.” *Saint Louis*, 30 Mass. App. Ct. at 399. Importantly, a dismissal for failure to post the bond required by the M.G.L. c. 231, § 60B “must be with prejudice.” *Farese v. Connolly*, 422 Mass. 1010, 1010 (1996) (finding “[t]he purpose of the medical malpractice tribunal statute would be undercut if a plaintiff were to be allowed to start all over again.”) It is immaterial that a medical malpractice tribunal did not make a determination as to TMC and Dr. Kaplan’s negligence in the First Case, as the First Case was dismissed with prejudice due to the Plaintiff’s failure to timely file the statutory bond. *See Levesque*, No. 1681CV02430, 2017 WL 4552189, at *n.12 (finding “...the First Case was dismissed as against all defendants with prejudice. ***I cannot look behind that judgment***”) (emphasis added); *see also* First Case Docket File Ref. Nbr. 17. Further, if the Plaintiff believed the dismissal of her claim was invalid, the proper course of action would have been to move to vacate the judgment, not file a second action, deriving from the same set of facts.

Ultimately, all three elements required to establish claim preclusion are met with respect to Dr. Kaplan, and the Plaintiff’s present claims against her must be dismissed.

B. TMC

The claims against TMC must also be dismissed on claim preclusion grounds. As with Dr. Kaplan, there is clearly a common identity of the parties between the First and Second Cases. Regarding the second element, the claims against TMC are rooted in

direct negligence and vicarious liability in both actions, which each involve the Plaintiff's care and interactions with health professionals on November 24, 2019 and November 25, 2019. See First Case Docket File Ref. Nbr. 1; see Second Case Docket File Ref. Nbr. 1. Though the Plaintiff named "Tufts Medical Center Emergency in Boston" in the First Case, her allegations were not limited to care received in the Emergency Department, as she alleged sustained injuries secondary to an "injection," which did not occur until after she had been admitted to the Cardiac Unit. See First Case Docket File Ref. Nbr. 11, at pg. 2. As such, the two complaints are "based on the same set of operative facts." See *TLT Construction*, 48 Mass. App. Ct. at 8.

Further, though the Plaintiff included a single count of "Malpractice" in the First Case, the substance of her allegations included, among other things, allegations that she was "violently detained," "kicked [in] the back of her knee," "drag[ged] onto a stretcher," and denied a translator. See First Case Docket File Ref. Nbr. 1; see First Case Docket File Ref. Nbr. 11, at pg. 3. She also alleged that TMC failed to maintain her medical records; for example, she stated, "[t]here are no records between 21:48 (9pm 11/24/2019 --> 3am 11/25/2019)." See First Case Docket File Ref. Nbr. 1. As such, her new counts of medical fraud, assault, false imprisonment, and bias-related civil rights violation were already raised in the First Case, which was dismissed with prejudice. See First Case Docket File Ref. Nbr. 17. As discussed in the above section, these additional counts are essentially veiled medical malpractice claims. See *Lane*, 101 Mass. App. Ct. at 77-78 (finding courts consider, among other factors, "whether 'the same set of facts supports both' the medical malpractice and allegedly nonmedical claims.") Either way, these counts certainly could have been brought in the First Case, and they involve the same

set of operative facts, warranting a finding that the second element of claim preclusion is satisfied. *See Heacock*, 402 Mass. at 23; *see also Boyd v. Jamaica Plan Co-op Bank*, 7 Mass. App. Ct. 153, 163 (1979) (finding claim preclusion is applied to extinguish a claim “even though the plaintiff is prepared in the second action to present evidence, grounds, or theories of the case not present in the first action.”)

Finally, the third element is met, as there was a final adjudication of the First Case with prejudice against the Plaintiff. *See Farese v. Connolly*, 422 Mass. 1010; *see* First Case Docket File Ref. Nbr. 17. As such, all three elements required to establish claim preclusion are satisfied with respect to Tufts Medical Center, and the Plaintiff’s present claims against her must be dismissed.

C. All New Defendants

The dismissal of the First Case with prejudice bars the Plaintiff’s assertions against the New Defendants because each New Defendant is in privity and/or in sufficient relation to TMC, and the Plaintiff had a full and fair opportunity for judicial resolution on the same issues in the First Case. *See Capizzi*, 1996 WL 414034 at *4; *see Mancuso*, 60 Mass. App. Ct. at 568.

The Supreme Judicial Court has determined that the definition of privity in the context of *res judicata* is not a fixed concept, but “is best understood simply as a legal conclusion that follows from an analysis of the relationship between the parties.” *See Degiacomo v. City of Quincy*, 476 Mass. 38, 42-43 (2016). Further, as noted above, for non-mutual claim preclusion to apply, “the parties need only be in privity or in a relationship, such as that between agent and principal and employer and employee, in which one party is vicariously liable for the acts of another.” *See Capizzi*, 1996 WL

414034 at *4. Non-mutual claim preclusion also allows for a person who was not a party in an earlier action to raise preclusion in a subsequent action if “the party against whom [claim preclusion] is asserted had a full and fair opportunity for judicial resolution of the same issue’ in the earlier action.” *Mancuso*, 60 Mass. App. Ct. at 568

Here, each New Defendant is identified in the caption of the Complaint by their alleged employment relationship with TMC. See Second Case Docket File Ref. Nbr. 1 (e.g., “Patrice Stewart, individually and as a RN at Tufts Medical Center, Emergency Dept.”) Further, the alleged actions of the Unserved New Defendants, giving rise to the Plaintiff’s claims, were allegedly “committed within the scope of employment,” triggering vicarious liability on the part of TMC. See *Lev. v. Beverly Enterprises-Massachusetts, Inc.*, 457 Mass. 234, 238 (2010). As such, the requirement that each New Defendant have “a sufficient relation” to TMC, “such as that between agent and principal and employer and employee, in which one party is vicariously liable for the acts of another” is easily satisfied. See *Capizzi*, 1996 WL 414034 at *4.

The Plaintiff also had a full and fair opportunity for judicial resolution of the same issues present in the earlier action. See *Mancuso*, 60 Mass. App. Ct. at 568. Specifically, in the First Case, the Plaintiff named only TMC and Dr. Kaplan, but her allegations involved the actions of many other employees of TMC. See First Case Docket File Ref. Nbr. 1. Dr. Kaplan is not even mentioned in the body of the first Complaint, which references a “Medical Doctor [who] refused to release his name” and an “officer” (emphasis added). See *id.* Her Offer of Proof then references additional employees, including “many doctors [who] came in and formed a perimeter,” “a tall thickset man with glasses and a beard,” “a man who specialized in psychiatry, named Dan,” a “register

nurse, Linda,” and “a male doctor [who] proceeded to have [her] transferred to where [she] was staying at night;” this names only a few. See First Case Docket File Ref. Nbr. 12, at pgs. 2, 3. As such, to prevail in the First Case against TMC, the Plaintiff needed to show the unnamed employees of TMC breached the applicable standard of care, meaning she already “had a full and fair opportunity for judicial resolution of the same issue in the earlier action.” See *Mancuso*, 60 Mass. App. Ct. at 568; see *Levesque*, No. 1681CV02430, 2017 WL 4552189, at *5 (applying the same logic and noting, “[i]n the First Case, the hospital’s liability, whether asserted directly or vicariously, would have turned on proof of a breach of the standard of care by its employees.”)

Based on the foregoing, the dismissal of the First Case with prejudice bars the Plaintiff’s claims against the New Defendants in the Second Case. As such, each Defendant, who has been sufficiently served in this matter, should be dismissed on claim preclusion grounds.

II. THE PLAINTIFF’S COMPLAINT AGAINST THE UNSERVED NEW DEFENDANTS MUST BE DISMISSED, AS THE COMPLAINT WAS NOT TIMELY SERVED.

Mass. R. Civ. P. 4(j) indicates that a Complaint “shall” be dismissed if not served on a defendant within ninety days, although a Plaintiff can request additional time from the Court. See Mass. R. Civ. P. 6(b)(2). Service may be effectuated by leaving copies of the summons and complaint at a defendant’s last and usual place of abode. Mass. R. Civ. P. 4(d)(1). The last and usual place of abode must be the place where the defendant lives at the time of service. *Farley v. Sprague*, 374 Mass. 419 (1977). In this action, the Complaint was not served on the Unserved New Defendants, at their last and usual place

of abode, within ninety days, and the Plaintiff failed to request additional time to make service of the Complaint.

A request for dismissal to comply with Mass. R. Civ. P. 4 is properly comply with Mass. R. Civ. P. 12(b)(5) for insufficiency of service of process. *DeAndrade v. Schottenstein Berstein Capital Group, Inc.*, 2006 Mass. App. Div. 5, 7 (2006). Further, dismissal for failure to timely serve the Complaint is “mandatory.” *Heacock*, 30 Mass. App. Ct. at 305. A motion to dismiss on these grounds should be granted where, as here, the Plaintiff has failed to show justification or good cause for late service. *Comm’r of Revenue v. Carrigan*, 45 Mass. App. Ct. 309, 311 (1998). “Good cause” is defined as “diligent, albeit unsuccessful effort to complete service,” and is characterized as a “stringent standard.” *Shuman v. Stanley Works*, 30 Mass. App. Ct. 951, 953 (1991). Failure to move for an extension of time for service is evidence of a lack of diligence. *DeAndrade*, 2006 Mass. App. Div. at 8. Dismissal for insufficiency of service of process on these grounds is a matter of substance, and not merely a form or technicality. See *Krasnow v. Allen*, 29 Mass. App. Ct. 562, 566 (1991).

Additionally, to the extent there has been prejudice to a defendant due to a plaintiff’s failure to timely serve the complaint, or a plaintiff has obtained an unfair tactical advantage, the Court can utilize its discretion in dismissing the action. *Sch. Comm. of Holyoke v. Duprey*, 8 Mass. App. Ct. 58, 60-61 (1979).

Here, the Complaint should be dismissed as to the Unserved New Defendants. The Plaintiff contacted TMC and indicated he had a Summons for twelve Defendants, which falls woefully short of “leaving copies of the summons and complaint at a defendant’s last and usual place of abode.” Mass. R. Civ. P. 4(d)(1). Next, although the

Plaintiff failed to timely serve several Defendants, she has failed to move for additional time to effectuate service. See *Comm'r of Revenue*, 45 Mass. App. Ct. at 311.

Additionally, the Unserved New Defendants are prejudiced by the Plaintiff's lack of service, as they are unable to join in the Motion to Dismiss based on claim preclusion. The Plaintiff has, for a second time, brought suit concerning her care and treatment on November 24, 2019 and November 25, 2019; this time around, she named several Defendants, who she failed to identify prior to filing the First Case. See Second Case Docket File Ref. Nbr. 1. Allowing the Unserved New Defendants to remain in this case, simply because the Plaintiff failed to fulfill her responsibility of effectuating service, would constitute extreme prejudice. See *Sch. Comm. of Holyoke*, 8 Mass. App. Ct. at 60-61. Further, should the Complaint survive the Motion to Dismiss on claim preclusion grounds, the New Defendants would demand a Medical Malpractice Tribunal. See M.G.L. c. 231, § 60B. As such, the Unserved New Defendants would be severely prejudiced by their inability to participate in a Medical Malpractice Tribunal, and the Plaintiff would surely gain a tactical advantage from same. See *id.*

For the above reasons, dismissal under Mass. R. Civ. P. 12(b)(5) as to the Unserved New Defendants is an appropriate use of judicial discretion.

CONCLUSION

WHEREFORE, the Defendants respectfully request, on a consolidated basis, that the Plaintiff's claims in the present case be dismissed under Mass. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted and Mass. R. Civ. P. 12(b)(5) for insufficient service of process. The facts and circumstances surrounding the Second Case warrant dismissal of all claims with prejudice.

The Defendants,
By Their Attorneys,



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EXHIBIT A

with GA + AC

H

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPT.
C.A. NO. 2281CV01401

YU FEN LIU,

PLAINTIFF,

v.

TUFTS MEDICAL CENTER EMERGENCY
IN BOSTON¹,
LEAH I. KAPLAN, M.D.,

DEFENDANTS.

RECEIVED

7/22/2022
7/27/2022. After careful consideration of
the parties' positions, the motion to
dismiss for failure to post a bond
pursuant to G.L. c 231, §60B,
is Allowed and this civil
action is dismissed as to both
defendants.

**MOTION OF THE DEFENDANTS, LEAH I. KAPLAN, M.D. AND TUFTS MEDICAL
CENTER, INC. TO DISMISS THE PLAINTIFF'S COMPLAINT FOR FAILURE TO
POST THE BOND REQUIRED UNDER M.G.L. Ch. 231, § 60B AND FOR
ENTRY OF SEPARATE AND FINAL JUDGMENT**

Plaintiff asks
for more time
to obtain
a diagnosis
for the harm
allegedly
caused by
the
defendants,
however,
that requests

NOW COME the Defendants, Leah I. Kaplan, M.D., and Tufts Medical Center, Inc.
who hereby submit this Motion to Dismiss the Plaintiff's Complaint, with prejudice,
because the Plaintiff has failed to post the \$6,000.00 bond required under M.G.L. Ch.
231, § 60B. The Defendants further request that the Court enter separate and final
judgment in the Defendant's favor pursuant to Rule 54(b) of the Massachusetts Rules of
Civil Procedure.

In support of this Motion, the Defendants submit the accompanying Memorandum
of Law with exhibits.

→ is denied because a) this incident occurred nearly
three years ago; and b) medical malpractice plaintiffs are
obligated to have support for their claim at the point of a
medical malpractice tribunal, or face the consequences
under the statute, namely, the bond
requirement. Further, based on the

¹ The Defendant Tufts Medical Center, Inc., is misnamed in the Plaintiff's Complaint as Tufts Medical
Center Emergency in Boston.

complaint, it does not appear that additional time would
aid the plaintiff in supporting her claim for negligence. Case
shall be dismissed.
Sent 7/28/22

KO

EXHIBIT B

2017 WL 4552189 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts
Middlesex County

Lida LEVESQUE, Plaintiffs,*

v.

Patrick MCENANEY, MD, & others, Defendants.*

No. 1681CV02430.

March 6, 2017.

*1 * Individually and as “PPA” for Amber Haley and Kelsey Haley, both minors.

* Lida Levesque is the only named plaintiff, albeit in different capacities. While it is a little confusing, it is not necessarily incorrect in this context to use the plural, “plaintiffs,” as Ms. Levesque does. PPA is the abbreviation for the old French phrase “per prochein ami,” translated as “by next friend.” See *Gargano v. Stop & Shop Supermarket Co.*, 2006 WL 3691677 at * 1 (Mass. App. Div. Dec. 11, 2006); *Black's Law Dictionary* at 1206 (6th ed. 1990); Milne, C, “The Child's Tort Case: Ethics, Education and Social Responsibility,” 30 *Suffolk Univ. L. Rev.* 1097, 1102-1105 (1997). Usually a minor's claim is brought in the child's name by the child's next friend, and the caption reads “[child's name], PPA [next friend's name].” See, e.g., *McAvoy v. Boston Elevated Ry., Co.*, 275 Mass. 9 (1931); *Blake v. Corcoran*, 211 Mass. 406 (1912); *Martin v. Roy Bros. Oil Co., Inc.*, 10 Mass. L. Rptr. 482, 1999 WL 791687 (Mass. Super. Aug. 24, 1999) (Donohue, J.). In this case, it would have been more precise to list Ms. Levesque individually as a plaintiff and then each of the two minors as plaintiffs by their next friend (e.g. “Amber Haley, PPA Lida Levesque”).

* Ann Marie Maserati, PA, James Carroll, MD, Robert Canning, MD, Marlborough Hospital/UMass Memorial Healthcare, Inc., John Doe, and John Doe Corporation.

Memorandum and Order on Motions to Dismiss

Peter B. Krupp, Judge.

For a second time, Lida Levesque seeks money damages for injuries she alleges she suffered due to deficient care at the Marlborough Hospital during and/or following gallbladder surgery. Ms. Levesque's first case was dismissed after a medical malpractice tribunal found insufficient evidence to raise a legitimate question of liability and Ms. Levesque did not post the bond required to proceed. Before me now are three motions to dismiss this second case; specifically, separate motions filed by Patrick McEnaney, MD (“Dr. McEnaney”) and Marlborough Hospital/UMass Memorial Healthcare, Inc. (“Marlborough Hospital”), both named in the first case (Docket #s 8, 9); and a consolidated motion by Ann Marie Maserati, PA (“PA Maserati”), James Carroll, MD (“Dr. Carroll”) and Robert Canning, MD (“Dr. Canning”), who were not named in the first case (Docket #7). For the reasons that follow, the motions are *ALLOWED*.

BACKGROUND

A. Procedural History

R.A.I 120

On January 12, 2015, plaintiff, individually and as PPA for her daughters, filed a case against Dr. McEnaney, Marlborough Hospital, and John Doe and John Doe Corporation in Middlesex Superior Court entitled *Levesque v. McEnaney, et al.*, Case No. 1581CV00109 (“the First Case”). As described below, the First Case alleged medical negligence and related claims.

In March 2015, Dr. McEnaney and Marlborough Hospital requested a hearing before a medical malpractice tribunal under G.L. c. 231, § 60B. In mid-October 2015, the Court issued an order scheduling the medical malpractice tribunal. Plaintiff did not move to continue the tribunal. On December 1, 2015, plaintiff’s counsel filed an Offer of Proof. The Offer of Proof did not contain an expert opinion letter or affidavit, and did not otherwise offer a qualified opinion that defendants’ conduct deviated from the applicable standard of care or caused plaintiff harm.⁴

*2 The malpractice tribunal was held on December 3, 2015. The tribunal found “there is not sufficient evidence to raise a legitimate question as to liability appropriate for judicial inquiry.” As a result, under G.L. c. 231, § 60B, para. 6, plaintiff was required to file a bond within thirty (30) days.⁵

On January 19, 2016, more than 30 days after the bond was due, plaintiff filed an emergency motion to enlarge the time to file a bond. In turn, defendants moved to dismiss the First Case because plaintiff had failed to post a bond. After hearing, on August 15, 2016, the Court (Kirpalani, J.) denied the motion to enlarge the time to file a bond, and the Court (Kazanjan, J.) allowed the motion to dismiss with prejudice. Judgment entered dismissing plaintiff’s complaint with prejudice. Plaintiff did not appeal and has not sought to vacate the judgment.⁶

Nine days later, on August 24, 2016, plaintiff filed this case (“the Second Case”). Before service of a responsive pleading, plaintiff filed an Amended Complaint as a matter of right. See Mass. R. Civ. P. 15(a). All defendants now move to dismiss the Amended Complaint based on res judicata principles. To analyze the pending motions, a comparison of the allegations in the two cases is required.

B. The First Case

In her Complaint in the First Case, plaintiff alleged that on September 26, 2013, she sought treatment at Marlborough Hospital for right upper abdominal pain. The next day, Dr. McEnaney, a surgeon and employee at Marlborough Hospital, laparoscopically removed her gallbladder. Plaintiff’s postoperative abdominal pain worsened, but Dr. McEnaney failed to diagnose its cause. In mid-October 2013, plaintiff learned that her bile ducts had been damaged and that bile was draining into her abdomen. The Complaint alleged claims against Dr. McEnaney for negligence, lack of informed consent, and *res ipsa loquitur*.

Plaintiff also asserted claims against Marlborough Hospital, and John Doe and John Doe Corporation. With respect to Marlborough Hospital, plaintiff alleged that the hospital “through its agents, servants, employees and partners undertook for valuable consideration to treat and care for” plaintiff and “is legally responsible for negligent acts or omissions of its physicians, agents, servants, and others employed by or under the control of defendant.” With respect to the John Doe claims, plaintiff alleged that the John Doe alias “are ... citizens and residents of the Commonwealth,” whose true names “are unknown to Plaintiffs,” but who “were engaged in the practice of medicine/healthcare in the Commonwealth ... and held himself/herself out to be a physician and/or medical healthcare staff.” Plaintiff alleged that Doe negligently performed the laparoscopic removal of her gallbladder and failed to diagnose the cause of her worsening postoperative abdominal pain. Against Marlborough Hospital, plaintiff asserted claims for negligence, lack of informed consent, and “corporate liability.” Against the John Doe defendants she asserted claims for negligence and lack of informed consent. On behalf of her minor daughters, plaintiff asserted claims for loss of consortium against each defendant.

C. The Second Case

*3 The Amended Complaint in the Second Case names the same defendants as in the First Case, including John Doe and John Doe Corporation, but also names PA Maserati, Dr. Carroll and Dr. Canning, who, it alleges, “were employees, agents and/or servants of Marlborough Hospital.” In addition to the factual allegations contained in the Complaint in the First Case, the Amended Complaint also alleges that PA Maserati “assisted Defendant McEnaney during the laparoscopic gall bladder surgery,” accord, *supra*, at 2 n.4; following her surgery, plaintiff “developed signs and symptoms of bile duct leakage,” but was discharged home from the hospital on October 2, 2013, and was readmitted the next day “after testing confirmed bile leakage into her abdominal cavity”; and the “[d]efendant physicians” named in the Amended Complaint “were assigned to provide medical care for” plaintiff at Marlborough Hospital following the surgical procedure,⁷ as was PA Maserati, and were aware of plaintiff’s worsening symptoms and abnormal post-operative test results, but failed to order proper testing that would have resulted in diagnosis and treatment. Plaintiff also alleges that she was aware by October 18, 2013, more than a year before filing the First Case, that PA Maserati, Dr. Carroll and Dr. Canning “failed to properly diagnose and treat [plaintiff’s] damaged bile ducts.”

Against PA Maserati, Dr. Carroll and Dr. Canning, plaintiff asserts claims of negligence and lack of informed consent (Counts I-VI), which were counts asserted against Marlborough Hospital in the First Case. She also asserts that Dr. McEnaney, Dr. Carroll and Dr. Canning are vicariously liable for the negligence of PA Maserati (Count VII) and negligently trained and supervised “their agents, servants, and employees, including [PA] Maserati” (Count VIII). Against Marlborough Hospital, plaintiff asserts the same claims for “corporate liability,”⁸ negligence and lack of informed consent (Counts IX, XII, XIII) that appeared in the First Case. Against the John Doe defendants, the Amended Complaint asserts the same claims set out in the First Case (Counts XVII-XXII).⁹ On behalf of her minor daughters, plaintiff’s Amended Complaint asserts claims for loss of consortium against all defendants.¹⁰

DISCUSSION

Each of the defendants moves to dismiss under Mass. R. Civ. P. 12(b)(6), arguing that the dismissal with prejudice of the First Case bars pursuit of this case and therefore the Amended Complaint fails to state a claim upon which relief may be granted. To survive a motion to dismiss, a complaint must allege facts “plausibly suggesting (not merely consistent with) . . . entitlement to relief.” *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (internal quotations omitted). For purposes of the motion, I must accept as true all well-pleaded factual allegations and draw all reasonable inferences from those facts in plaintiff’s favor. *Galiastro v. Mortgage Elec. Registration Sys., Inc.*, 467 Mass. 160, 164 (2014). Res judicata defenses are frequently resolved at the pleading stage, particularly when the facts of the prior proceeding are available to the court. *Saisi v. Board of Trustees of State Colleges*, 6 Mass. App. Ct. 949, 949 (1978) (rescript).

I. Res Judicata

“Res judicata’ is the generic term for various doctrines by which a judgment in one action has a binding effect in another. It comprises both ‘claim preclusion’ and ‘issue preclusion.’” *Heacock v. Heacock*, 402 Mass. 21, 23 n.2 (1988). See generally *DeGiacomo v. Quincy*, 476 Mass. 38, 41-42 (2016). I focus on “claim preclusion,” which controls this case.¹¹

*4 “‘Claim preclusion’ is the modern term for the doctrines traditionally known as ‘merger’ and ‘bar,’ and prohibits the maintenance of an action based on the same claim that was the subject of an earlier action between the same parties or their privies.” *Heacock*, 402 Mass. at 23 n.2. For claim preclusion, Massachusetts recognizes “three required elements”: “(1) the identity or privity of the parties to the present and prior actions, (2) identity of the cause of action, and (3) prior final judgment on the merits.” *Baby Furniture Warehouse Store, Inc. v. Meubles D&F Liée*, 75 Mass. App. Ct. 27, 33 (2009), quoting *Kobrin v. Board of Registration in Med.*, 444 Mass. 837, 843 (2005). “The doctrine of claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and bars further litigation of all matters that were or should have been adjudicated

in the [prior] action,” *Heacock*, 402 Mass. at 23, even if “the claimant is prepared in a second action to present different evidence or legal theories to support his claim, or seeks different remedies.” *Id.*

Claim preclusion “applies only where both actions were based on the same claim.” *Id.* at 24, citing *Franklin v. North Weymouth Coop. Bank*, 283 Mass. 275, 279-280 (1933). “A claim is the same for [claim preclusion] purposes if it is derived from the same transaction or series of connected transactions.” *Saint Louis v. Baystate Med. Center, Inc.*, 30 Mass. App. Ct. 393, 399 (1991), citing *Boyd v. Jamaica Plain Co-op. Bank*, 7 Mass. App. Ct. 153, 163-164 (1979); Restatement Second of Judgments § 24(1). A “statement of a different form of liability is not a different cause of action, provided it grows out of the same transaction, act, or agreement, and seeks redress for the same wrong.” *Mackintosh v. Chambers*, 285 Mass. 594, 596 (1934). See *Tuite & Sons, Inc. v. Shawmut Bank, N.A.*, 43 Mass. App. Ct. 751, 753-754 (1997). The moving party bears the burden of proving that claim preclusion applies. *Longal v. Commissioner of Correction*, 448 Mass. 412, 416-417 (2007).

Non-mutual claim preclusion allows for a “person who was not a party in an earlier action [to] raise preclusion in a subsequent action if the claimants in that action have a close and significant relationship with the original claimants or when ‘the party against whom [claim preclusion] is asserted had a full and fair opportunity for judicial resolution of the same issue’ in the earlier action.” *Mancuso v. Kinchla*, 60 Mass. App. Ct. 558, 568 (2004), quoting *In re El San Juan Hotel Corp.*, 841 F.2d 6, 10 n.8 (1st Cir. 1988). See also, e.g., *Airframe Systems, Inc. v. Raytheon Co.*, 601 F.3d 9, 14-18 (1st Cir. 2010); *Capizzi v. Verrier*, 1996 WL 414034 at * 4 (Mass. Super. July 23, 1996) (Hinkle, J) (non-mutual claim preclusion “does not require identity of the parties concerned; instead, the parties need only be in privity or in a relationship, such as that between agent and principal and employer and employee, in which one party is vicariously liable for the acts of another”).

II. Analysis for Each Defendant

A. Dr. McEnaney

Each of the elements required for claim preclusion are present with respect to the present case against Dr. McEnaney. The plaintiffs and defendant are the same in both cases. There was a final judgment dismissing the First Case with prejudice. Such a dismissal is valid and final, and “may, therefore, preclude subsequent litigation based on the same claim.” *Saint Louis*, 30 Mass. App. Ct. at 399. See also *Faresse v. Connolly*, 422 Mass. 1010, 1010 (1996) (rescript) (dismissal for failure to post medical malpractice bond “must be with prejudice”; “The purpose of the medical malpractice tribunal statute would be undercut if a plaintiff were to be allowed to start all over again.”).

The new claims against Dr. McEnaney -- vicarious liability and negligent supervision -- could have been brought in the First Case. A plaintiff may not split her claims into a negligence case and a separate action for vicarious liability. As the Appeals Court wrote more than 35 years ago:

*5 [T]he principle prohibiting claim splitting [] states that the entry of a “valid and final judgment extinguishes ... all rights of a plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.” ... This principle will be applied to extinguish a claim even though the plaintiff is prepared in the second action to present evidence, grounds, or theories of the case not presented in the first action.

Boyd v. Jamaica Plain Co-op Bank, 7 Mass. App. Ct. 153, 163 (1979), quoting Restatement (Second) of Judgments § 61(1) (Tent. Draft No. 5, 1978). Here, all claims seek redress for the same injury. All claims arise out of the same nucleus of operative

facts: the care and treatment of plaintiff while she was at Marlborough Hospital, particularly the conduct of the laparoscopic surgery and the failure to diagnose the cause of her worsening abdominal pain.

B. Marlborough Hospital

The counts against Marlborough Hospital must also be dismissed on claim preclusion grounds. Like the case against Dr. McEnaney, there is an identity of parties and an identity of claims against Marlborough Hospital in the two cases (claims of negligence, lack of informed consent, and “corporate liability”). The count that asserted “corporate liability” in the First Case, for example, alleged that Marlborough Hospital had “the duty ... to provide quality medical care to Plaintiff Lida Levesque to protect her safety, to protect her from incompetent and/or negligent treatment, and to otherwise exercise reasonable care for her protection and well-being,” and that it “negligently disregarded its duty ... in that it negligently failed to promulgate and/or enforce policies and procedures to ensure the delivery of ordinary care and otherwise failed to discharge its responsibilities as medical facility to the Plaintiff Lida Levesque.” Nothing more is alleged in the Second Case. See Amended Complaint ¶¶ 161-162. The third required element for claim preclusion is satisfied because there was a final adjudication of the First Case with prejudice against plaintiff.¹²

C. PA Maserati, Dr. Carroll and Dr. Channing

PA Maserati, Dr. Carroll and Dr. Channing claim that they were in privity or in sufficient relation to the Marlborough Hospital so that the dismissal with prejudice of the First Case bars plaintiff's assertion of claims against them here. In a recent case decided on principles of “issue preclusion,” the Supreme Judicial Court recognized that the definition of privity in the context of res judicata analysis is not a fixed concept, but “is best understood simply as a legal conclusion that follows from an analysis of the relationship between the parties.” *DeGiacomo*, 476 Mass. at 43.

Plaintiff alleges an employer/employee relationship between the hospital and the newly named defendants and that the hospital is liable for the wrongdoing of its employees. In the First Case, plaintiff broadly alleged liability against Marlborough Hospital “for negligent acts or omissions of its physicians, agents, servants, and others employed by or under the control of the hospital. Acknowledging that it had not specifically named all of the alleged wrongdoers, plaintiff also asserted claims in the First Case against various John Doe individuals and entities. Plaintiff alleged that “Doe undertook ... to treat and care for” plaintiff, laparoscopically removed plaintiff's gallbladder, “failed to diagnose the cause of [plaintiff's] worsening postoperative abdominal pain,” and disregarded Doe's duty “and failed to exercise said level of care in that it negligently failed to render adequate, proper and necessary treatment to” plaintiff. In the Second Case, plaintiff alleges that each of the newly named defendants - PA Maserati, Dr. Carroll and Dr. Canning — was an “employee, agent or servant” of Marlborough Hospital and negligently failed to diagnose the cause of plaintiff's worsening postoperative abdominal pain. In all but name, the identical claims plaintiff now seeks to assert against the newly added defendants, including assertions of their wrongdoing, were presented in the First Case in plaintiff's claims against their employer, Marlborough Hospital. In the First Case, the hospital's liability, whether asserted directly or vicariously, would have turned on proof of a breach of the standard of care by its employees.

*6 Given that plaintiff had the burden to demonstrate that hospital employees breached the applicable duty of care in order to prove (or at the tribunal stage to proceed without bond on) the claims she brought in the First Case, plaintiff's failure to do so, and the dismissal with prejudice of the claims against the hospital, constitute an adjudication on the merits of the claims against the hospital, and necessarily on the claims against its employees, referred to, but not actually named, in the First Case. In the First Case, plaintiff had every interest in litigating the claims of negligence of the hospital's employees against the hospital. On plaintiff's facts, PA Maserati, Dr. Carroll and Dr. Canning are in sufficient relation to the Marlborough Hospital to be able to assert the dismissal with prejudice of the First Case as a defense to the case against them here.

III. Request for Fees and Costs

In addition to moving to dismiss, Dr. McEnaney and Marlborough Hospital each ask the Court to award against plaintiff their reasonable attorneys' fees and costs for having to defend against a frivolous claim under Mass. R. Civ. P. 11 and G.L. c. 231, § 6F. They each present this request without any written argument explaining the legal or factual basis for the request.

Rule 11 establishes that “[t]he signature of an attorney to a pleading constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is a good ground to support it; and that it is not interposed for delay.” Mass. R. Civ. P. 11(a). While “a willful violation” of Rule 11 may subject an attorney “to appropriate disciplinary action,” *id.*, Rule 11 does not itself authorize an award of fees or costs.

G.L. c. 231, § 6F states, in relevant part:

Upon motion of any party in any civil action in which a finding ... or judgment has been made by a judge or justice or ... other finder of fact, the court may determine, after a hearing, as a separate and distinct finding, that *all or substantially all of the claims*, ... whether of a factual, legal or mixed nature, *made by any party* who was represented by counsel during most or all of the proceeding, *were wholly insubstantial, frivolous and not advanced in good faith*... If such a finding is made with respect to a party's claims, the court shall award to each party against whom such claims were asserted an amount representing the reasonable counsel fees and other costs and expenses incurred in defending against such claims. (Emphasis added).

See generally *Fronek v. Fowler*, 456 Mass. 317, 324-325 (2010). Winning a case, or persuading a judge to dismiss a case, is not sufficient to support an award of fees under G.L. c. 231, § 6F. The party bringing a motion under § 6F must demonstrate that “all or substantially all of the claims” were “insubstantial” and “frivolous,” and that they were “not advanced in good faith.” Other than arguing that they should prevail on the merits of their motions to dismiss, the defendants make no effort to make the showing necessary to prevail on a motion under § 6F. On the facts of this case, I cannot find that plaintiff filed the Amended Complaint other than in good faith.

ORDER

The Motion of the Defendants, Ann Marie Maserati, P.A., James Carroll, M.D. and Robert Canning, M.D. to Dismiss Plaintiffs' Complaint (Docket #7), the Motion of the Defendant, Marlborough Hospital/UMass Memorial Healthcare, Inc., to Dismiss Plaintiffs' Complaint (Docket #8), and Defendant, Patrick McEnaney, M.D.'s, Motion to Dismiss Plaintiffs' Complaint (Docket #9) are each **ALLOWED**. The case shall be dismissed. The requests by Dr. McEnaney and Marlborough Hospital for fees and costs for plaintiff's prosecution of frivolous claims under Mass. R. Civ. P. 11 and G.L. c. 231, § 6F are **DENIED**.

Dated: March 6, 2017

<<signature>>

Peter B. Krupp

Justice of the Superior Court

Entered: 3/16/17

Footnotes

- 4 As is relevant to the issues before me, the Offer of Proof asserts that “Dr. McEnaney, assisted by Ann Marie Masserati, Phys. Asst. performed the laparoscopic cholecystectomy.” See Plaintiff’s Offer of Proof at 3. In addition, the medical records attached to the Offer of Proof reference post-operative involvement in plaintiff’s care by, among others, PA Maserati, Dr. Carroll and Dr. Canning.
- 5 Given the directed verdict standard a plaintiff must meet to succeed before a tribunal, see *Bayless v. TTS Trio Corp.*, 474 Mass. 215, 224 (2016), citing *Little v. Rosenthal*, 376 Mass. 573, 578 (1978), the plaintiff certainly could have predicted the outcome of the tribunal given the absence of a qualified expert opinion, and had ample time to prepare for the likely need to post a bond. See G.L. c. 231, § 60B, para. 6 (“If a finding is made for the defendant or defendants in the case the plaintiff may pursue the claim through the usual judicial process *only* upon filing bond in the amount of six thousand dollars *If said bond is not posted within thirty days of the tribunal’s finding the action shall be dismissed.*” (Emphasis added)).
- 6 To the extent any of the facts I describe about the First Case are not contained in the motions to dismiss, they are taken from the docket of the First Case. See *Jarosz v. Palmer*, 436 Mass. 526, 530 (2002) (“[A] judge may take judicial notice of the court’s records in a related action.”); *Sullivan v. Smith*, 90 Mass. App. Ct. 743, 744 (2016).
- 7 Paragraph 87 of the Amended Complaint, which is part of the negligence count against Dr. Canning, states: “Defendant *Carroll* provided medical care to Ms. Levesque postoperatively.” (Emphasis added). From the context, I assume that the reference here to “Defendant Carroll” is a typographical error and should have appeared as “Defendant Canning.” See also Amended Complaint ¶ 23.
- 8 This claim for “corporate liability” appears twice in the Amended Complaint as Count IX and Count XIV.
- 9 The Amended Complaint does not contain a Count XX.
- 10 The Amended Complaint asserts a loss of consortium claim for each minor plaintiff against all defendants in Counts X and XI, and then redundantly asserts the same claims against Marlborough Hospital in Counts XV and XVI and against the John Doe entities in Counts XXIII and XXIV.
- 11 “‘Issue preclusion’ is the modern term for the doctrine traditionally known as ‘collateral estoppel,’ and prevents relitigation of an issue determined in an earlier action where the same issue arises in a later action, based on a different claim, between the same parties or their privies.” *Heacock*, 402 Mass. at 23 n.2. Issue preclusion requires the presence of four factors: “(1) there was a final judgment on the merits in [a] prior adjudication; (2) the party against whom estoppel is asserted was a party (or in privity with a party) to the prior adjudication; (3) the issue in the prior adjudication is identical to the issue in the current litigation; and (4) the issue decided in the prior adjudication was essential to the earlier judgment.” *Okoli v. Okoli*, 81 Mass. App. Ct. 381, 385 (2012), quoting *Porio v. Department of Rev.*, 80 Mass. App. Ct. 57, 61 to (2011). “Issue preclusion can be used only to prevent relitigation of issues actually litigated in the prior action.” *TLT Constr. Corp. v. A. Anthony Tappe & Assocs., Inc.*, 48 Mass. App. Ct. 1, 5 (1999). The party invoking the doctrine of issue preclusion has the burden to demonstrate that the doctrine applies; specifically showing that the essential issues of fact were litigated and determined in the party’s favor in the prior proceeding. *Commonwealth v. Bunting*, 401 Mass. 687, 691 (1988).

While issue preclusion traditionally requires “identity of parties or privies,” it also allows that “one not a party to the first action may use a judgment in that action defensively against a party who was a plaintiff in the first action on the issues which the judgment decided.” *Home Owners Fed. Sav. & Loan Assn. v. Northwestern Fire & Marine Ins. Co.*, 354 Mass. 448, 455 (1968). “The core inquiry is whether the issue on which preclusion is sought has been ‘the product of full litigation and careful decision.’” *Bailey v. Metropolitan Prop. & Liab. Ins. Co.*, 24 Mass. App. Ct. 34, 36 (1987), quoting *Home Owners*, 354 Mass. at 455. Offensive issue preclusion may also occur where “a plaintiff seeks to prevent a defendant from litigating issues which the defendant has previously litigated unsuccessfully in an action against another party.” *Bar Counsel v. Board of Bar Overseers*, 420 Mass. 6, 9 (1995). “Fairness is the decisive consideration in determining whether to apply offensive issue preclusion.” *Pierce v. Morrison Mahoney LLP*, 452 Mass. 718, 730 (2008) (quotations and citations omitted).

- 12 Plaintiff argues the medical malpractice tribunal did not make a determination as to the hospital's negligence and therefore the dismissal of the First Case should not be considered a judgment on the merits as against the hospital. I disagree. The record in the First Case reflects that the hospital requested a tribunal. More importantly, the First Case was dismissed as against all defendants with prejudice. I cannot look behind that judgment. If one were available, the proper forum for such an argument would have been to seek to vacate the judgment or otherwise reopen the First Case.

End of Document

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11.2

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, SS **SUPRIOR COURT**
C.A. NO. 2281CV04021

YU-FEN LIU

PLAINTIFF

v.

TUFTS MEDICAL CENTER INC,
JENNIFER JANE DOE, individually and as
a Nurse at Tufts Medical Center, Emergency Dept.
PATRICE STEWART, individually and as a RN at Tufts
Medical Center, Emergency Dept.
MICHAEL WISER, MD, individually and as an Internal
Medicine Resident at Tufts Medical Center, Emergency Dept.
JAMES M STEPHEN, MD, individually and as a
Medicine Physician at Tufts Medical Center, Emergency Dept,
SARA ZELMAN, MD, individually and as a
Resident Physician at Tufts Medical Center.
PETER OSTROW, MD, individually and as a
Medicine Physician at Tufts Medical Center
JONATHAN WEINSTOCK, MD, individually and as a
Medicine Physician at Tufts Medical Center, Cardiac Dept.
JANE DOES (2), individually and as Radiologists at
Tufts Medical Center,
NEIL HALIN, DO, individually and as Radiologists at
Tufts Medical Center,
LEAH I KAPLAN, MD, individually and as an
Internal Medicine Resident and at Tufts Medical Center,
ARHANT RAO, MD, individually and as an
Internal Medicine Resident at Tufts Medical Center,
LINDA A COTTER, RN, individually and as
a Registered Nurse at Tufts Medical Center,
NORA BOSTEELS, RN, individually and as
a Registered Nurse at Tufts Medical Center,
DANIEL AUGUSTADT, MD, individually and as a
Psychiatry Resident at Tufts Medical Center, and
JOHN DOE ANTHONY and JOHN DOES (1-4), individually
and as security officers at Tufts Medical Center

DEFENDANTS

3/6/2023

AM

RECEIVED

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' CONSOLIDATED MOTION TO
DISMISS
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Now COMES plaintiff Yufen Liu to move this honorable court to deny defendants' consolidated motion to dismiss.

Statement of Reasons

A. Defendants' motion to dismiss should be denied because defendants failed to serve all parties of interest under Rule 9B(i).

Defendants have not served all parties of interest in violation of compliance with Rule 9B, plaintiff is prejudiced by Defendants' failure to serve their consolidated motion to dismiss on all parties.

B. Defendants' argument of claim exclusion should fail because there is no finding nor final judgment of merits.

"Res judicata" is the generic term for various doctrines by which a judgment in one action has a binding effect in another. It comprises "claim preclusion" and "issue preclusion." "Claim preclusion" is the modern term for the doctrines traditionally known as "merger" and "bar," and prohibits the maintenance of an action based on the **same claim** that was the subject of an earlier action between the same parties or their privies. "Issue preclusion" is the modern term for the doctrine traditionally known as "collateral estoppel," and prevents relitigation of an issue **determined** in an earlier action where the same issue arises in a later action, based on a different claim, between the same parties or their privies. *Heacock v Heacock*, 402 Mass 21, 23 n 2 [Mass 1988].

It is well established that "the doctrine of claim preclusion makes a valid, **final judgment** conclusive on the parties and their privies, and bars further litigation of all matters that were or

should have been adjudicated in the action. See *Franklin v. North Weymouth Coop. Bank*, 283 Mass. 275, 279-280 (1933),” *Heacock v Heacock*, 402 Mass 21, 23 [Mass 1988].

Plaintiff’s previous complaint and claims (Docket No. 2281CV01401) have never been determined by a medical tribunal. There was no medical tribunal finding or decision on the merits. Contrary to defendants’ argument that the fact of “no medical tribunal decision on the merit” is immaterial, this fact is very material.

The current case is distinguishable from *Farese v. Connolly*, 664 N.E.2d 450 (Mass. 1996) in which there was a tribunal finding. “Section 60B of G.L.c. 231 provides that, after a **panel’s finding** for a defendant physician, “the plaintiff may pursue the claim through the usual judicial process only upon filing bond” and “[i]f said bond is not posted within thirty days of the **tribunal’s finding** the action shall be dismissed.”” *Id.* (emphasis added). It is clear from plain language that, for *Farese* holding and the Section 60B of G.L.c. 231 to apply, there must be a tribunal’s finding. There is none.

Plaintiff’s previous docket records (**Exhibit 1**) indicate that plaintiff’s submitted documents were stricken and there was no other offer of proof (**Exhibit 2**). Therefore, there was no tribunal finding on any of the previously claimed issues or claims. No prejudice should be attached to any of plaintiff’s claims. What the doctrine of claim preclusion tries to prevent has not occurred yet.

Defendants’ arguments that plaintiff could have brought the counts of current complaint in the First Case should fail (1) not all of the acts and evidence and medical records were available to plaintiff, she did not make sufficient facts to support her claims as the judge observed (**Exhibit 3**); (2) that is not what the policy of claim exclusion is about. “The doctrine is a ramification of the policy considerations that underlie the rule against splitting a cause of

action, and is "based on the idea that the party to be precluded has had the incentive and opportunity to litigate the matter fully in the first lawsuit." *Heacock v. Heacock*, 402 Mass. 21, 24 (Mass. 1988). "As such, it applies **only where both actions** were based on the same claim." *Id.* (emphasis added).

In *Heacock*, the court distinguished the "purpose of a tort action is to redress a legal wrong in damages; that of a divorce action is to sever the marital relationship between the parties, and, where appropriate, to fix the parties' respective rights and obligations with regard to alimony and support, and to divide the marital estate." *Heacock v. Heacock*, 402 Mass. 21, 24 (Mass. 1988). "Although a judge in awarding alimony and dividing marital property must consider, among other things, the conduct of the parties during the marriage, G.L.c. 208, § 34 (1986 ed.), the **purposes** for which these awards are made do not include compensating a party in damages for injuries suffered." *Id.*

"To defend successfully on the ground of issue preclusion, the defendant must establish that the issue of fact sought to be foreclosed **actually** was litigated and **determined** in a prior action between the parties or their privies, and that the determination was essential to the decision in the prior action. See, e.g., *Cousineau v. Laramée*, 388 Mass. 859, 863 n. 4 (1983), and authorities cited. Because a judge in awarding alimony and dividing marital property must consider a number of factors, G.L.c. 208, § 34, and the judge who presided over the Heacocks' divorce action did not make any findings of fact to support his judgment, we cannot say that the judge necessarily resolved any issue relating to the defendant's assault of the plaintiff. See *Davidson v. Davidson*, 19 Mass. App. Ct. 364, 367 (1985) ("G.L.c. 208, § 34, issues are not 'necessarily involved' in a judgment of divorce"). Accordingly, the doctrine of issue preclusion does not apply." *Heacock, supra at 25.*

In summary, a **finding** or **final judgment** must be first made, then the court may decide whether the claims or the issues are the same. For plaintiff in this case, there are many different injuries arising from many different acts of TMC and its employees from November 24 to November 25, 2019, as well as in the year 2021 (such as fraudulent medical records). None of the plaintiff's claims was adjudicated with any findings.

C. Defendants' argument of claim exclusion should fail because there are different claims from previous complaint, Plaintiff Yufen Liu was injured not only by defendants' unprofessional medical treatment but also by defendants' unethical and fraudulent medical record keeping and medical record production that was discovered after her first complaint; the acts of total disregard of her free will and inhuman psychological torture, assault and battery in non-medical context, and acts of violation of her basic civil rights are not in previous complaint.

Plaintiff Yufen Liu has been horrifically injured by Tufts Medical Center Emergency Center as a result her admitting herself into the emergency center on November 24, 2019, not only by the unprofessional medical treatment that she received, but also by the unethical fraudulent medical record keeping signed by numerous registered nurses and medical doctors that she did not see (Compl. Exhibit 3, 4, 5 and 6) and the reckless disregard patient's free will in forcing unknown medical treatment (Compl. Statements 26, 38, 41-45), prolonged inhuman psychological torture (Compl. Statements 46-55) and false imprisonment (Compl. Statements 56-66) by the medical staff and 7 to 8 security guards.

Further, as a result of the defendants' fraudulent medical records Yufen Liu has been unable to obtain and receive medical treatment from other medical doctors and facilities after the defendants issued warning into its network about plaintiff's previous complaint, other medical doctors were afraid to prescribe even pain killer, had refused to accept her as a new patient,

causing Yufen Liu's physical injuries exacerbated from **November 2019 to present time** (Compl. Statements 67-69).

The plaintiff's complaint is not the same medical malpractice claim, as previously filed complaint was not sufficient for stating the claim, but it is more an intentional fraud based on new evidence of defendants' modification of medical records, defendants' use of multiple and inconsistent medical record numbers (MRNs, compare the medical records in Compl. Exhibit 5 and Exhibit 6) in violation of 105 Mass. Reg. 140.302(B) requires that "(B)Each patient shall have a single integrated record." and inconsistent medical records. Defendants' admission of false imprisonment against plaintiff's free will for at least 4.5 hours (**Exhibit 4** of this motion, the actual time was longer), depriving sleep and act of intentional cause of emotional distress. These facts and causes of injury were not the same facts and cause of action in the previous complaint.

Against the background of plaintiff seeking medical attention on Nov. 24, 2019, many different injuries and acts occurred which are not addressed in plaintiff's first complaint. Count I, medical fraud, occurred on December 10, 2021, with plaintiff's medical records dated March 17, 2021, apparently totally falsified records. Count II, assault from 10 pm November 24, 2019, to 3:20 am November 25, 2019, plaintiff was repeatedly told that she would die if she walked out of the hospital. This fact was not in the plaintiff's first complaint, this is not medical anymore, ordinary lay persons know and should have known that nobody has the right to use death to threaten or scare another person into subservience, not to mention using such tactics repeatedly for continuous 5 hours. This is beyond medical consent related practice. The same reason for Count III, Defendants literally imprisoned plaintiff in a small room and interrogated her why she ran away. Count IV, battery, Plaintiff was subjected to repeated brutal needle injections (8 times

in short 15 to 20 minutes) against her repeated protesting (defendant's medical records recorded plaintiff's such unequivocal withdrawal of consent, see **Exhibit 4** and **Exhibit 5**), this is not medical anymore, does not matter whether the CT scan was the correct medical procedure or not. Count V, negligence for lack of medical supervision when plaintiff entrusted her life to Tufts medical center, Tufts medical center used medical students who did not have medical license to practice medicine on their own, this is beyond following medical procedures. Ordinary lay persons know that this is a violation of duty of care. Count VI, civil rights violation, defendants told plaintiff that mandarin translators were not trustworthy, causing plaintiff to suffer additional 2 hours of psychological interrogations. The court have been continuously making decisions and findings in other similar situations, and have no problem in determining liability without consulting medical expert opinions.

Like *Zaleskas v. Brigham & Women's Hosp.*, the court should be able to “conclude that consent to have one's body touched or positioned for an X-ray is not a matter beyond the common knowledge or experience of a layperson and does not require expert medical testimony.” *Zaleskas v. Brigham & Women's Hosp.*, 97 Mass. App. Ct. 55, 64 (Mass. App. Ct. 2020).

D. Subpoena for records for contact information of the unserved defendants have been served on TMC record keeper and the records have not been provided. The complaint and summons of the rest of the defendants were served on TMC but TMC has refused to provide a definite response whether those defendants would accept services through TMC. Those defendants are indispensable to plaintiff's claim according to rule 19. Plaintiff moves this court to compel production of the information of the rest of the named defendants and pay for

plaintiff's attorney cost and having to compel for such information. Affidavit of actual cost may be submitted at the time of hearing.

In conclusion, defendants' consolidated motion to dismiss should be denied. Defendants must bear the burden and pay for Plaintiff's undue cost for the compellation of defendants' contact information.

Attorneys for the Defendant
Yu-fen Chen



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Certificate of Service

I, Jie Tan, counsel for Yufen Liu certify that on this 1st day of March, 2023, I served a true copy of this document on the defendants' counsel Adler Cohen Harvey Wakeman Guekguezian LLP at its electronic addresses on record with defendants' counsel Gregory R. Browne" gbrowne@adlercohen.com and Alexander E. Terry" <aterry@adlercohen.com>

/s/jietan/

Jie Tan

Exhibit 1

2281CV01401 Yufen, Liu vs. Tufts Medical Emergency Boston et al

- Case Type:
 - Torts
- Case Status:
 - Open
- File Date:
 - 03/04/2022
- DCM Track:
 - A - Average
- Initiating Action:
 - Malpractice - Medical
- Status Date:
 - 03/04/2022
- Case Judge:
 -
 -
- Next Event:
 -

All Information Party Tickler Docket Disposition

Party Information

Yufen, Liu
- Plaintiff

Alias

Party Attorney

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- Shu, Esq., Huntern
- Bar Code
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- Phone Number
- (617)689-0070

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- Defendant

Alias

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Kaplan, M.D., Leah I
- Defendant

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More Party Information

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	03/04/2022	06/02/2022	90	06/06/2022
Answer	03/04/2022	07/05/2022	123	06/06/2022
Rule 12/19/20 Served By	03/04/2022	07/02/2022	120	07/29/2022
Rule 12/19/20 Filed By	03/04/2022	08/01/2022	150	07/29/2022
Rule 12/19/20 Heard By	03/04/2022	08/31/2022	180	07/29/2022
Rule 15 Served By	03/04/2022	04/28/2023	420	07/29/2022
Rule 15 Filed By	03/04/2022	05/30/2023	452	07/29/2022
Rule 15 Heard By	03/04/2022	05/30/2023	452	07/29/2022
Discovery	03/04/2022	02/22/2024	720	07/29/2022
Rule 56 Served By	03/04/2022	03/25/2024	752	07/29/2022
Rule 56 Filed By	03/04/2022	04/22/2024	780	07/29/2022
Final Pre-Trial Conference	03/04/2022	08/20/2024	900	07/29/2022
Judgment	03/04/2022	03/03/2025	1095	07/29/2022

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/04/2022	Attorney appearance On this date Pro Se added for Plaintiff Liu Yufen		
03/04/2022	Trial Assignment Tickler per Rule 73.		
03/04/2022	Case assigned to: DCM Track A - Average was added on 03/04/2022		
03/04/2022	Original civil complaint filed.	1	Image
03/04/2022	Civil action cover sheet filed.	2	Image
03/04/2022	Docket Note: Notice of Parties' Obligations Concerning Medical Malpractice Tribunal, under Superior Court Rule 73 and G. L. c. 231, § 60B Mailed to Plaintiff 3/4/2022		
03/29/2022	Attorney appearance electronically filed.		Image
03/29/2022	Answer with a claim for jury trial	3	Image

Applies To: Tufts Medical Emergency Boston (Defendant) **R.A. 138**

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/29/2022	Answer with a claim for jury trial Applies To: Kaplan, M.D., Leah I (Defendant)	4	Image
03/29/2022	Attorney appearance On this date Alexander Terry, Esq. added as Private Counsel for Defendant Tufts Medical Emergency Boston		
03/29/2022	Attorney appearance On this date Gregory R Browne, Esq. added as Private Counsel for Defendant Tufts Medical Emergency Boston		
03/29/2022	Attorney appearance On this date Gregory R Browne, Esq. added as Private Counsel for Defendant Leah I Kaplan, M.D.		
03/29/2022	Attorney appearance On this date Alexander Terry, Esq. added as Private Counsel for Defendant Leah I Kaplan, M.D.		
04/26/2022	Defendant Tufts Medical Emergency Boston's Request for Medical Malpractice Tribunal	5	Image
04/26/2022	Defendant Leah I Kaplan, M.D.'s Request for Medical Malpractice Tribunal	6	Image
05/03/2022	Pleading titled, Plaintiff's Opposition to Defendant's Motion to Strike cannot be put on the docket as Motion to Strike has not be filed by the Defendant, filed with the court on 03/28/2022, returned to Liu Yufen		
05/03/2022	Defendants Tufts Medical Emergency Boston, Leah I Kaplan, M.D.'s Motion to Strike and/or Impound a Portion of the Plaintiff's Complaint	7	Image
05/03/2022	Tufts Medical Emergency Boston, Leah I Kaplan, M.D.'s Memorandum in support of The Defendants' Motion to Strike and/or Impound a Portion of the Plaintiff's Complaint	7.1	Image
05/03/2022	Opposition to Defendant's Motion to Strike and/or Impound a Portion of the Plaintiff's Complaint filed by Liu Yufen	7.2	Image
05/03/2022	Affidavit of Compliance with Superior Court Rule 9A Applies To: Browne, Esq., Gregory R (Attorney) on behalf of Kaplan, M.D., Leah I, Tufts Medical Emergency Boston (Defendant)	7.3	Image
05/03/2022	Affidavit of compliance with Superior Court Rule 9C Applies To: Browne, Esq., Gregory R (Attorney) on behalf of Kaplan, M.D., Leah I, Tufts Medical Emergency Boston (Defendant)	7.4	Image
05/09/2022	Endorsement on Motion to strike and/or Impound a Portion of the Plaintiff's Complaint (#7.0): ALLOWED: Defendants Motion to Impound any and all complaints & material in the record of the Board of Registration of Medicine relative to the cause of action during the pendency of the Board of Registration's investigation is ALLOWED. Plaintiff & Defendants BOTH must comply with the confidential nature of those proceedings & the applicable General Laws & Code of Massachusetts Regulations - Pro Se Parties are held to the same standard as legal counsel. See Maza v. Commonwealth, 423 Mass 1006 (1996). (Dated: 5/6/22) notice sent 5/9/22 Judge: Campbell, Hon. Cathleen E.		Image
05/11/2022	ORDER: PURSUANT TO UNIFORM RULES ON IMPOUNDMENT PROCEDURE, RULE 8 (which see 2 pages scanned) This ORDER shall expire on 1/1/2025 So ORDERED By the Court, Cathleen E. Campbell, Judge Entered and copies sent 5/11/22 Judge: Campbell, Hon. Cathleen E.	8	Image
05/11/2022	General correspondence regarding letter from plaintiff	9	
05/19/2022	Plaintiff fails to file offer of proof - must post a bond. Applies To: Yufen, Liu (Plaintiff)	10	Image
05/25/2022	Attorney appearance electronically filed. Applies To: Yufen, Liu (Plaintiff)		Image

R.A.I 139

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/25/2022	Attorney appearance On this date Huntern Shu, Esq. added as Private Counsel for Plaintiff Liu Yufen		
05/25/2022	Attorney appearance On this date Pro Se dismissed/withdrawn for Plaintiff Liu Yufen		
05/25/2022	Medical Malpractice Tribunal list filed. Applies To: Kapian, M.D., Leah I (Defendant)	10.1	Image
05/31/2022	Plaintiff Liu Yufen's Submission of offer of proof	11	Image
05/31/2022	Plaintiff Liu Yufen's Submission of offer of proof (2nd part)		Image
07/05/2022	General correspondence regarding Offer of Proof from the Plaintiff Applies To: Yufen, Liu (Plaintiff)	12	Image
07/07/2022	Plaintiff Liu Yufen's Motion to Ask the Court Substantially Reduce the Bond Required Under MGL Ch231, §60B and to Grant the Plaintiff More Time to Seek Medical Diagnosis of her Illness and Treatment Before Resuming the Proceeding	13	Image
07/08/2022	Defendants Tufts Medical Emergency Boston, Leah I Kapian, M.D.'s EMERGENCY Motion to Strike the Plaintiff's Motion or Obtain an Order Granting the Defendants Adequate Time to Substantively Respond to Same, Under Superior Court Rule 9A(d)(1)	14	Image
07/08/2022	Tufts Medical Emergency Boston, Leah I Kaplan, M.D.'s Memorandum of Law in Support of the Defendants' Emergency Motion Under Superior Court Rule 9A(d)(1) to Strike the Plaintiff's Motion or Obtain an Order Granting the Defendants Adequate Time to Substantively Respond to Same	14.1	Image
07/11/2022	Plaintiff Liu Yufen's Response to defendants' Emergency Motion to Strike the plaintiff's motion to reduce the bond and to grant the plaintiff more time to seek medical diagnosis of her illness and treatment before resuming the proceeding	15	Image
07/11/2022	Liu Yufen's Memorandum in support of Plaintiff Liu Yufen's Response to defendants' Emergency Motion to Strike the plaintiff's motion to reduce the bond and to grant the plaintiff more time to seek medical diagnosis of her illness and treatment before resuming the proceeding	15.1	Image
07/11/2022	Affidavit of Huntern Shu, Esq	15.2	Image
07/12/2022	Endorsement on Motion of reduce the bond required under MGL Ch 231, section 60B (#13.0): DENIED This motion must be served on opposition before filing per Super.Ct. Rule 9A it is therefore without prejudice to re-filing in conformance with Rule 9A. Dated July 8th, 2022		Image
07/22/2022	Defendants Leah I Kaplan, M.D., Tufts Medical Emergency Boston's Motion to dismiss the Plaintiff's complaint for failure to post the bond required under M.G.L. Ch. 231, § 60B and for entry of sperate and final judgment	16	Image
07/22/2022	Tufts Medical Emergency Boston, Leah I Kaplan, M.D.'s Memorandum in support of Motion to dismiss the Plaintiff's complaint for failure to post the bond required under M.G.L. Ch. 231, § 60B and for entry of sperate and final judgment	16.1	Image
07/22/2022	Response, Opposition to Motion to dismiss the Plaintiff's complaint and for entry of sperate and final judgment filed by Liu Yufen	16.2	Image
07/22/2022	Affidavit of Complaiacne with Superior Court Rule 9A Applies To: Browne, Esq., Gregory R (Attorney) on behalf of Tufts Medical Emergency Boston (Defendant)	16.3	Image
07/22/2022	Affidavit of compliance with Superior Court Rule 9C Applies To: Browne, Esq., Gregory R (Attorney) on behalf of Tufts Medical Emergency Boston (Defendant)	16.4	Image
07/28/2022	Endorsement on Motion to dismiss the Plaintiff's Complaint For Failure to Post the Bond Required Under M.G.L. Ch. 231, Section 60B and For Entry of Separate and Final Judgment (#16.0): ALLOWED After careful consideration of the parties' positions, the motion to dismiss for failing to post a bond, pursuant to G.L. c. 231, Section 60B, is Allowed and this civil action is dismissed as to both defendants. Plaintiff asks for more time to obtain a diagnosis for the harm allegedly, caused by defendants, however, that request is denied because a) this incident occurred nearly three years ago; and b) medical malpractice plaintiffs are obligated to have support for their claim at the point of a medical malpractice tribunal, or face the consequences under the statute, namely, the bond requirement. Further, based on the complaint, it does not appear that additional time would aid the plaintiff in supporting her claim for negligence. Case shall be dismissed. (Dated: 7/27/2022) notice sent 7/28/22 Judge: Barry-Smith, Hon. Christopher K		Image

R.A.I 140

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/29/2022	JUDGMENT for failure to file bond G.L. c231 s. 60B, complaint is dismissed as to Tufts Medical Emergency Boston, Leah I Kaplan, M.D.. Judge: Barry-Smith, Hon. Christopher K	17	Image
08/03/2022	General correspondence regarding Plaintiff's copies of receipt paid to the attorney for retainer's fees and Bond Amount in the amount of \$6,000.00 Applies To: Yufen, Liu (Plaintiff)	18	Image
08/04/2022	Plaintiff Liu Yufen's Motion to Request Return of Medical Malpractice Bond of \$6000	19	Image
08/08/2022	Endorsement on Motion to Request Return of Medical Malpractice Bond of \$6000 (#19.0): ALLOWED It appearing that plaintiff filed a \$6000 bond close in time to my decision to dismiss for failure to file a bond. In light of the dismissal plaintiff now seeks return of the bond. Motion is allowed. In light of dismissal of case, bond may be returned. So ordered. (Dated: 8/8/22) notice sent 8/8/22 Judge: Barry-Smith, Hon. Christopher K		Image
Case Disposition			
<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>	
Disposed by Court Finding	07/29/2022		

R.A.I 141

Exhibit 2

10/


Notice of Tribunal Waived under Superior Court Rule 73 & G. L. c. 231, § 60B	DOCKET NUMBER 2281CV01401	Trial Court of Massachusetts The Superior Court 
CASE NAME: Liu Yufen vs. Tufts Medical Emergency Boston et al		Michael A. Sullivan, Clerk of Court Middlesex County
TO: File Copy		COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801
<p><input checked="" type="checkbox"/> Waiver of tribunal by plaintiff</p> <p>The plaintiff(s) not having timely filed an offer of proof, the court finds that the plaintiff(s) failed to present sufficient evidence to raise a legitimate question of liability appropriate for judicial inquiry as to:</p> <p><input checked="" type="checkbox"/> all defendants <input type="checkbox"/> the following defendants only</p> <p>In order to pursue the claim in court, the plaintiff(s) must post a bond of \$6,000, unless the court otherwise orders, secured by cash or its equivalent with the clerk, payable to the above defendant(s) for the costs assessed, including witness and expert fees and attorneys' fees, if the plaintiff(s) does/do not prevail in the final judgment. If the bond is not posted within 30 days of this notice, the action will be dismissed. If, on motion of the plaintiff(s), the court finds the plaintiff(s) indigent, the court may reduce the amount of the bond but may not eliminate it.</p> <p><input type="checkbox"/> Waiver of tribunal by defendant</p> <p>The defendant(s) have not filed a demand for a tribunal and has/have thereby waived the tribunal. This waiver applies to:</p> <p><input type="checkbox"/> all defendants <input type="checkbox"/> the following defendants only</p>		
DATE ISSUED 05/19/2022	ORDERED BY: Hon. Cathleen E. Campbell R.A.I 143	

Exhibit 3

with GA + AC
H

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPT.
C.A. NO. 2281CV01401

YU FEN LIU,

PLAINTIFF,

v.

TUFTS MEDICAL CENTER EMERGENCY
IN BOSTON¹,
LEAH I. KAPLAN, M.D.,

DEFENDANTS.

RECEIVED

7/22/2022

7/27/2022. After careful consideration of the parties' positions, the motion to dismiss for failure to post a bond pursuant to G.L. c 231, §60B, is Allowed and this civil action is dismissed as to both defendants.

MOTION OF THE DEFENDANTS, LEAH I. KAPLAN, M.D. AND TUFTS MEDICAL CENTER, INC. TO DISMISS THE PLAINTIFF'S COMPLAINT FOR FAILURE TO POST THE BOND REQUIRED UNDER M.G.L. Ch. 231, § 60B AND FOR ENTRY OF SEPARATE AND FINAL JUDGMENT

Plaintiff asks for more time to obtain a diagnosis for the harm allegedly caused by the defendants, however, that request

NOW COME the Defendants, Leah I. Kaplan, M.D., and Tufts Medical Center, Inc. who hereby submit this Motion to Dismiss the Plaintiff's Complaint, with prejudice, because the Plaintiff has failed to post the \$6,000.00 bond required under M.G.L. Ch. 231, § 60B. The Defendants further request that the Court enter separate and final judgment in the Defendant's favor pursuant to Rule 54(b) of the Massachusetts Rules of Civil Procedure.

In support of this Motion, the Defendants submit the accompanying Memorandum of Law with exhibits.

→ is denied because a) this incident occurred nearly three years ago; and b) medical malpractice plaintiffs are obligated to have support for their claim at the point of a medical malpractice tribunal, or face the consequences under the statute, namely, the bond requirement. Further, based on the

¹ The Defendant Tufts Medical Center, Inc., is misnamed in the Plaintiff's Complaint as Tufts Medical Center Emergency in Boston.

complaint, it does not appear that additional time would aid the plaintiff in supporting her claim for negligence. Case shall be dismissed.
Sent 7/28/22

KO

Exhibit 4

Addendum to Consultation Note

Cardiology (Free Text Consult) - Provider Free Text

Collected On: 11/24/2019 23:04

The echocardiogram was performed under the patient's other MRN: 2870892.

Electronically signed by Alec Kherlopian, MD on 11/24/2019 23:05

Free Text Note (Provider) - Provider Free Text

Collected On: 11/25/2019 01:41

Overnight Event Note

I was paged by Ms. Liu's RN at 23:02 that the patient wanted to leave AMA and did not want to stay the night in the hospital.

I quickly went to speak with the patient at which time I tried to gain a better perspective on why she felt obligated to leave. She explained to me that she had a child to care for who was tearful about her absence and that she needed to go home immediately so that he could get a good night's sleep and go to school the following morning. She also stated that she had undergone numerous CT scans recently and that she had a repeat CT scan earlier in the evening which was accompanied by multiple "injections" which she felt were harmful and she did not understand the utility of. I validated the patient's concerns and reassured her that I understood her rationale for wanting to leave.

I then tried to clarify the medical perspective behind the medical work up she had received thus far. This was difficult to do as she was very anxious/frustrated while I was speaking, frequently talking over me. We were conversing with her limited English and her friend who was present was also intermittently translating to her primary language of Mandarin. With her immense frustration/anxiety and the language barrier, it was difficult to have a two way conversation. I explained that while from a medical perspective we recommended she stay in the hospital, she has the freedom to leave as long as she understood the risks of her doing so. I cited that these risks primarily included a heart attack or worst case scenario death. As I was speaking, she was attempting to remove her own IV and remained insistent on leaving. She repeatedly said that she thought America was a free country and that she should be able to leave the hospital if that was her wish. I again emphasized that I was concerned for her safety and needed to confirm that she understood the medical risks of leaving against medical advice. She was not able to reiterate these risks. At that point, I called my senior resident (Arhant Rao) to speak with the patient as I was unsure about the extent to which the patient had capacity to leave AMA and requested that he evaluate it further. Simultaneously, I spoke to the patient's nurse who came to safely remove the patient's IV as I was concerned about the patient harming herself with her attempts to remove it on her own or that she would run out of the hospital with the IV in place. The IV was successfully removed.

Dr. Rao arrived at the patient's room and called the phone interpreter to facilitate communication. In his conversation with the patient, she was unable to articulate why she was in the hospital and could not explain the risks of leaving AMA clearly, and made unrelated comments, such as "I don't like your [Dr. Rao's] face." She appeared fixated on the IV contrast injection and the subsequent warm flush. When asked to repeat back the possible risks of leaving AMA, such as possible death, she stated that the doctors were threatening her. She

Free Text Note (Provider) - Provider Free Text

continued from previous page

Collected On: 11/25/2019 01:41

believed that she had suffered a potentially fatal reaction to the contrast that was administered and that she was being asked to remain in the hospital to "cover your asses." She was never able to articulate the concern for a cardiopulmonary etiology of her chest pain and was not able to articulate clearly her reason for presentation. As she did not appear to have capacity on Dr. Rao's evaluation, psychiatry was consulted for further guidance.

Psychiatry also utilized a phone interpreter to have an extensive conversation with the patient (please see their note for further details). Ultimately, the psychiatry resident stated that the patient did not have the capacity in that moment to leave against medical advice. The patient stated that, if she were to stay, she would not comply with any medications or testing. She was told that she did have the right to refuse those at this juncture, but could not leave AMA. She and her friend then called 911, and had a lengthy conversation with the operator. The patient then sat down in her bed. After the medical team left the room to talk with the nursing staff, the patient exited her room despite verbal discouragement from the medical staff. She ran out of her room down the hallway towards the nursing station, where she was again told that she could not leave the hospital. At no point did a member of the medical staff make physical contact with the patient. The patient then lifted a yellow wet floor sign off the floor and began striking it against her head numerous times while screaming. She then ran out of the unit and took the elevator down to the main floor before leaving the hospital.

As the patient appeared to pose an imminent threat to herself (given her self-harm minutes prior) and possible threat to others (given her acute change in behavior), security was called. Security located the patient outside of the hospital at which time they attempted to de-escalate and asked the patient to return to the hospital given her lack of capacity. When she did not comply, she was placed in a wheelchair and brought back to the floor. During this process, she was witnessed to kick one of the security guards in the face by Dr. Rao. She remained in a hospital room while we waited for an in-person Mandarin interpreter to arrive.

Once the interpreter arrived, a meeting was held with the patient, psychiatry resident (Dan Augustadt), her RN, one of the security guards, and myself. The patient described several details of her hospitalization from when she first decided to present to the ED to a portion of her time admitted to the cardiology floor. She cited several instances which precipitated her mistrust of the medical system starting with what she thought was an inappropriate frequency of nitrate dosing in the ED. She then referenced the CT scan she underwent which was previously not been discussed, the side effect of the contrast injection, that she had to wait four hours in the ED for a floor bed, and that she requested several times for food and no one would supply it. During this description she was able to describe the concern for cardiovascular event when she first presented and the work up which was being conducted to better stratify her cardiovascular risk status. Ultimately, the psychiatry resident declared that she had capacity to leave against medical advice. She signed the AMA form at approximately 03:20. The oncoming attending physician (Dr. Weintraub) was notified of the patient's departure against medical advice.

Leah Kaplan, MD
Internal Medicine Resident
PGY1

Electronically signed by Leah Kaplan, MD on 11/25/2019 05:07

Pt Name: LIU, YU FEN

MRN: 2870892

Scanan® Chart Report - Provider Not

Rm/ Bed:

Page 9 of 10

ORE_0213.rpt.v1

Exhibit 5

Tufts Medical Center 800 Washington Street Boston MA 02111

CTA Chest W+WO Contrast (Angiogram) Results Report

Pt Name: LIU, YU FEN
Pt ID: 2018016649
DOB: 04/28/1963

MRN: 2870892
Acct No: 210957430
Age/Sex: 58Y/F
Attn Dr: Ostrow, Peter MD
Rm/Bed:

Nurse Sta:

Dx:

Allrg: No Known Food Allergies, Penicillins

Order Name:
Result Name: CTA Chest W+WO Contrast (Angiogram)

Observation Dtime: 11/24/2019 21:48
Result Status: Final Result

Final

TUFTS MEDICAL CENTER NAME: LIU, YU FEN MR#: 2256001
800 Washington Street ORD PHYS: Wismer, Michael .MD
Boston, MA 02111

DOB: 04/28/1963 AGE: 58 year(s) SEX: F
EXAM DATE: 11/24/2019 EXAM ID: 10141056

CAT Scan CTED - CT ED ROOM LOCATION: DISCH - DISCHARGED (DISCH)

EXAM: CTA CHEST W+WO CONTRAST

CLINICAL DATA:

REASON FOR EXAM: chest pain and concern dissection

ORDER COMMENTS: Bed Name: A5

EXAM: CTA Chest (Pulmonary Angiogram).

HISTORY: 58-year-old female presenting with acute onset chest pain not resolving after SLN, concern for pulmonary embolus

TECHNIQUE: A test bolus of Isovue 370 was injected at 5 cc/sec for timing purposes. Helical CT was then performed from the lung apices through the lung bases following the administration of 70 cc Ultravist 370 injected at 5 cc/sec. Axial, coronal and sagittal MIP images and volume rendered 3D vascular models were created at the CT console. Of note, patient refused imaging of the legs.

COMPARISONS: Chest radiograph 3/18/2016

FINDINGS:

Vascular Findings:

There is adequate opacification of the pulmonary arteries to the sub-segmental level.

There is no filling defect in the pulmonary arteries to suggest acute or chronic pulmonary embolus.

There is a rounded 5 mm focal opacification emanating from the distal pulmonary artery branch in the left upper lobe (8-116).

This is suspected to be a pulmonary AVM.

Non-vascular Findings:

There is a 4 mm solid nodule in the left upper lobe (8-186). There are bilateral trace pleural effusions dependent atelectasis.

There is mild multilevel anterior endplate osteophyte formation.

IMPRESSION:

1. No evidence of acute or chronic pulmonary embolus.
2. 5 mm rounded area enhancing focus emanating from the distal pulmonary arterial branch, suspected to be a pulmonary arteriovenous malformation.
3. 4 mm solid nodule in the left upper lobe. Please refer to the Fleischner society guidelines as below:

Per the 2017 Fleischner Society Guidelines:

Solid pulmonary nodules <8 mm in size, immunocompetent patients over age 35, no history of malignancy, not undergoing lung cancer screening:

- No known/unknown risk factors for lung cancer: No additional follow-up imaging needed.

- Risk factors for lung cancer: Optional follow-up chest CT at 12 months.

The Tufts Medical Center PACS record indicates that during the 12 months prior to the current exam the patient has had (including outside scans in the Tufts PACS record):

0 CT scans of any kind, including those done for attenuation correction PET scanning; and

0 myocardial perfusion radiotracer examinations.

DICTATED: Jidi Gao ,MD SUPERVISED BY Neil Halin ,DO

Pt Name: LIU, YU FEN

MRN: 2870892

Rm/Bed:

Page 1 of 2

CTA Chest W+WO Contrast (Angiogram) Results Report

C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2281CV04021

YU-FEN LIU,

PLAINTIFF,

v.

TUFTS MEDICAL CENTER, INC.
 JENNIFER JANE DOE, Individually and as
 a Nurse at Tufts Medical Center, Emergency Dept.
 PATRICE STEWART, Individually and as a RN at Tufts
 Medical Center, Emergency Dept.
 MICHAEL WISER, MD, Individually and as an Internal
 Medicine Resident at Tufts Medical Center, Emergency
 Dept.
 JAMES M. STEPHEN, MD, Individually and as a
 Medicine Physician at Tufts Medical Center, Emergency
 Dept.)
 SARA ZELMAN, MD, Individually and as a
 Resident Physician at Tufts Medical Center
 PETER OSTROW, MD, Individually and as a
 Medicine Physician at Tufts Medical Center
 JONATHAN WEINSTOCK, MD, Individually and as a
 Medicine Physician at Tufts Medical Center, Cardiac Dept.
 JANE DOES (2), Individually and as Radiologists at
 Tufts Medical Center,
 NEIL HALIN, DO, Individually and as Radiologist at
 Tufts Medical Center,
 LEAH I KAPLAN, MD, Individually and as an
 Internal Medicine Resident and at Tufts Medical Center,
 ARHANT RAO, MD, Individually and as an
 Internal Medicine Resident at Tufts Medical Center,
 LINDA A COTTER, RN, Individually and as
 a Registered Nurse at Tufts Medical Center,
 NORA BOSTEELS, RN, Individually and as a
 Registered Nurse at Tufts Medical Center,
 DANIEL AUGUSTADT, MD, Individually and as a
 Psychiatry Resident at Tufts Medical Center, and
 JOHN DOE ANTHONY and JONE DOES (1-4),
 Individually and as security officers at Tufts Medical Center,

DEFENDANTS.

3/6/2023

AM

RECEIVED

Middlesex, ss. Superior Court
 The within matter is set down for hearing on
June 14, 2023 in Courtroom
1740 at 2:30
Catharine Angello
 Assistant Clerk

Bloomer

After hearing and review, Allowed. See the court's expanded endorsement and order. (Paper No. 21) Bloomer, D. 06.28.23

C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2281CV04021

YU-FEN LIU,

PLAINTIFF,

v.

TUFTS MEDICAL CENTER, INC.
 JENNIFER JANE DOE, Individually and as
 a Nurse at Tufts Medical Center, Emergency Dept.
 PATRICE STEWART, Individually and as a RN at Tufts
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 NORA BOSTEELS, RN, Individually and as a
 Registered Nurse at Tufts Medical Center,
 DANIEL AUGUSTADT, MD, Individually and as a
 Psychiatry Resident at Tufts Medical Center, and
 JOHN DOE ANTHONY and JONE DOES (1-4),
 Individually and as security officers at Tufts Medical Center,

DEFENDANTS.

3/6/2023

AM

RECEIVED

Middlesex, SS. Superior Court
 The within matter is set down for hearing on
June 14, 2023 in Courtroom
1740 at 2:30

Catharine Mughelba
 Assistant Clerk

Bloomer

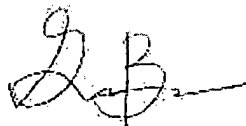
*After hearing and review, Allowed. See the court's expanded
 endorsement and order. (Paper No. 21) Bloomer, D. 06.28.23*

**THE DEFENDANTS' CONSOLIDATED MOTION TO DISMISS
THE PLAINTIFF'S COMPLAINT WITH PREJUDICE**

The Defendants, who have been served, including TMC, Dr. Kaplan, James M. Stephen, M.D., Linda A. Cotter, R.N., Peter Ostrow, M.D., and Daniel Augustadt, M.D., now move to dismiss the Plaintiff's Complaint with prejudice under Mass. R. Civ. P. 12(b)(6) and the doctrine of claim preclusion. On separate grounds, the Defendants, who have not yet been served, including Jennifer Jane Doe, Patrice Stewart, R.N., Michael Wiser, M.D., Sara Zelman, M.D., Jonathan Weinstock, M.D., Jane Does (2), Neil Halin, D.O., Arhant Rao, M.D., Nora Bosteels, R.N., John Doe Anthony, and John Does (1-4), now move to dismiss the Plaintiff's Complaint under Mass. R. Civ. P. 12(b)(5) for insufficient and untimely service of process. The Defendants, moving on a consolidated basis, hereby incorporate their Memorandum of Law, filed herewith, including exhibits, in support of the instant Motion to Dismiss.

WHEREFORE, for the reasons stated in the accompanying Memorandum of Law, the Defendants respectfully request that this Court dismiss the instant Complaint.

All Defendants,
By Their Attorneys,



Alexander E. Terry, BBO #688693
Gregory R. Browne, BBO # 708988
Adler | Cohen | Harvey | Wakeman | Guekguezian, LLP
75 Federal Street, 10th Floor
Boston, MA 02110
(617) 423-6674
aterry@adlercohen.com
gbrowne@adlercohen.com

21

2281CV04021

Yu-Fen Liu v. Tufts Medical Center, et.al

Expanded Endorsement and Order on Defendants' Motion to Dismiss (Paper No. 11):

After hearing and careful evaluation of the papers filed in connection with the above motion as well as the complaints filed in the instant case and in civil case number 2281CV01401, Defendants' Motion to Dismiss is **ALLOWED**.

Plaintiff, Yu-Fen Liu, has sued Tufts Medical Center, Inc. ("TMC") and Leah I. Kaplan, M.D. ("Dr. Kaplan"), a second time for claims arising from the same operative facts. The first lawsuit (case number 2281CV01401), based on a complaint filed *pro se* and seeking \$9,319,352 in damages, was dismissed for failing to file a bond pursuant to G.L. c. 231, § 60B. Undeterred, the plaintiff sued TMC and Dr. Kaplan again, along with seven other medical doctors and numerous other hospital personnel, including radiologists, nurses, resident physicians, a resident psychiatrist, and security officers.

This court concludes the plaintiff's claims against Dr. Kaplan, TMC, and the remaining defendants are barred by the doctrine of claim preclusion. "The doctrine of claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and bars further litigation of all matters that were or should have been adjudicated in the [prior] action" even if "the claimant is prepared in a second action to present different evidence or legal theories to support [her] claim, or different remedies." *Heacock v. Heacock*, 402 Mass. 21, 23 (1988).

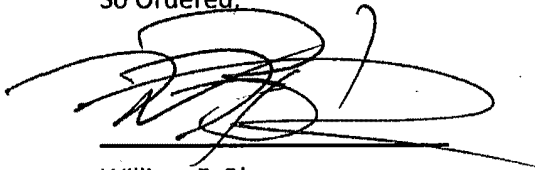
To prove claim preclusion applies, the moving party must satisfy three required elements: "(1) the identity or privity of the parties to the present and prior actions, (2) identity of the cause of action, and (3) prior final judgment on the merits." *Baby Furniture Warehouse Store, Inc. v. Muebles D&F Ltee*, 75 Mass. App. Ct. 27, 33 (2009). With respect to the third requirement, on 07.29.2022, a final judgment entered in case number 2281CV01401 for failure to file a \$6,000 bond pursuant to G.L. c. 231, § 60B, and the case was dismissed.¹ Such a dismissal "must be with prejudice." *Farese v. Connolly*, 422 Mass. 1010, 1010 (1996). With respect to the second requirement, the plaintiff has essentially expanded her first complaint and rebranded it with claims that, at their core, derive from the same acts and seek redress for the same wrongs, that is, medical negligence and actions taken in connection with her care and treatment. See *Saint Louis v. Baystate Med. Center, Inc.*, 30 Mass. App. Ct. 393, 399 (1991) (citations omitted), ("[a] claim is the same for purposes [of claim preclusion] if it is derived from the same transaction, act, or agreement, and seeks redress for the same wrong."). A "statement of a different form of liability is not a different cause of action, provided it grows out of the same transaction, act, or agreement, and seeks redress for the same wrong." *Mackintosh v. Chambers*, 285 Mass. 594, 596 (1934). Finally, with respect to the first requirement, Dr. Kaplan and TMC are named parties in both the present and prior actions. The remaining defendants are employees and agents of TMC, including the security guards who took direction from medical personnel, and therefore "non-mutual claim preclusion" applies. See *Capizzi v. Verrier*, 1996 WL 414034 at *4 (Mass. Super. 1996) (non-mutual claim preclusion "does not require identity of the parties concerned; instead, the parties need

¹ In dismissing the plaintiff's first lawsuit, the court further concluded, "based on the complaint, it does not appear that additional time would aid the plaintiff in supporting her claim for negligence."

only be in privity or in a relationship, such as that between agent and principal and employer and employee, in which one party is vicariously liable for the acts of another”).

For the above reasons, Defendants’ Motion to Dismiss is ALLOWED. The case is DISMISSED with prejudice.²



So Ordered,



William F. Bloomer
Justice of the Superior Court
06.21.2023

² Because application of the doctrine of claim preclusion resolves this motion, the court does not address defendants’ motion to dismiss pursuant to Rule 12(b)(5) for failure to perfect service of process under Rule 4 for approximately sixteen defendants (including Jane Does and John Does).

21

JUDGMENT ON MOTION TO DISMISS		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER	2281CV04021	Michael A. Sullivan, Clerk of Court Middlesex County	
CASE NAME	Yu-Fen Liu vs. Tufts Medical Center Inc et al	COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801	
JUDGMENT FOR THE FOLLOWING DEFENDANT(S) (See page two for additional Defendants) Tufts Medical Center Inc Jennifer Jane Doe, individually and as a Nurse at Tufts Medical Center, Emergency Dept. Patrice Stewart, individually and as an RN at Tufts Medical Center, Emergency Dept. Michael Wiser, MD, individually and as an Internal Medicine Resident at Tufts Medical Center, Emergency Dept. James M Stephen, MD, individually and as a Medicine Physician at Tufts Medical Center, Emergency Dept. Peter Ostrow, MD, individually and as a Medicine Physician at Tufts Medical Center			
JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S) Liu, Yu-Fen			
This action came on before the Court, Hon. William F Bloomer, presiding, and upon review of the motion to dismiss pursuant to Mass. R.Civ.P. 12(b), It is ORDERED AND ADJUDGED: That the plaintiff, Yu-Fen Liu's complaint be and hereby is dismissed. with prejudice.			
DATE JUDGMENT ENTERED	07/14/2023	CLERK OF COURTS/ASST. CLERK	X 

<p>JUDGMENT ON MOTION TO DISMISS</p> <p><i>ADDITIONAL PARTIES TO THE JUDGMENT</i></p>	<p>DOCKET NUMBER</p> <p>2281CV04021</p>	<p>Trial Court of Massachusetts The Superior Court</p>
--	--	---

ADDITIONAL DEFENDANT(S) TO THE JUDGMENT:

Jonathan Weinstock, MD, individually and as a Medicine Physician at Tufts Medical Center, Cardiac Dept.
 Sara Zelman, MD, individually and as a Resident Physician at Tufts Medical Center
 Jane Does (2), individually and as Radiologists at Tufts Medical Center
 Neil Halin Do, individually and as Radiologists at Tufts Medical Center
 Leah Kaplan, MD, individually and as an Internal Medicine Resident at Tufts Medical Center
 Leah Kaplan, MD, individually and as an Internal Medicine Resident at Tufts Medical Center
 Arhant Rao, MD, individually and as an Internal Medicine Resident at Tufts Medical Center
 Daniel Augustadt, MD, Individually and as a Psychiatry Resident at Tufts Medical Center
 Doe Anthony, John
 Linda A. Cotter, RN, individually and as a Registered Nurse at Tufts Medical Center
 Linda A. Cotter, RN, individually and as a Registered Nurse at Tufts Medical Center
 Nora Bosteels, RN, individually and as a Registered Nurse at Tufts Medical Center

ADDITIONAL PLAINTIFF(S) TO THE JUDGMENT:

<p>DATE JUDGMENT ENTERED</p> <p>07/14/2023</p>	<p>CLERK OF COURTS/ ASS'Y CLERK</p> <p>X </p>
---	---

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, SS **SUPERIOR COURT**
C.A. NO. 2281CV04021

YU-FEN LIU

PLAINTIFF

v.

TUFTS MEDICAL CENTER INC,
JENNIFER JANE DOE, individually and as
a Nurse at Tufts Medical Center, Emergency Dept.
PATRICE STEWART, individually and as a RN at Tufts
Medical Center, Emergency Dept.
MICHAEL WISER, MD, individually and as an Internal
Medicine Resident at Tufts Medical Center, Emergency Dept.
JAMES M STEPHEN, MD, individually and as a
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NEIL HALIN, DO, individually and as Radiologists at
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LEAH I KAPLAN, MD, individually and as an
Internal Medicine Resident and at Tufts Medical Center,
ARHANT RAO, MD, individually and as an
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LINDA A COTTER, RN, individually and as
a Registered Nurse at Tufts Medical Center,
NORA BOSTEELS, RN, individually and as
a Registered Nurse at Tufts Medical Center,
DANIEL AUGUSTADT, MD, individually and as a
Psychiatry Resident at Tufts Medical Center, and
JOHN DOE ANTHONY and JOHN DOES (1-4), individually
and as security officers at Tufts Medical Center

DEFENDANTS

RECEIVED
7/24/2023

PLAINTIFF'S NOTICE OF APPEAL

Plaintiff Yufen Liu gives notice of appeal from the Court's Allowance of Defendants' Motion to Dismiss. This Notice of Appeal is signed by Appellant pursuant to Rule 3(c) of the Massachusetts Rules of Appellate Procedure and has been timely filed within thirty (30) days of entry of the order appealed from pursuant to Rule 4(a) of the Massachusetts Rules of Appellate Procedure.

Please also order all appropriate cassettes/recordings/transcript of the hearing in this matter.

Attorneys for the Defendant
Yu-fen Chen



Jie Tan., Esq. (BBO# 666462)
JT Law Office
400 Tradecenter Dr., STE 5900
Woburn, MA 01801
Tel: 9783358335
Email: jie.tan@jtlawservices.com
Fax: 914-615-9542

24

<p>NOTICE OF ASSEMBLY OF RECORD</p>	<p>DOCKET NUMBER 2281CV04021</p>	<p>Trial Court of Massachusetts The Superior Court</p>
<p>CASE NAME: Yu-Fen Liu vs. Tufts Medical Center Inc et al</p>		<p>Michael A. Sullivan, Clerk of Court Middlesex County</p>
<p>TO: Joseph Stanton, Clerk Appeals Court John Adams Courthouse, Suite 1200 One Pemberton Square Boston, Massachusetts 02108</p>		<p>COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801</p>
<p>The record of the above-entitled case has been assembled, under Mass. R. A. P. 9(a). Accompanying this notice are the following, as required by Mass. R. A. P. 9(e)(2):</p> <ul style="list-style-type: none"> *A completed appellate court entry statement *A copy of the notice of assembly issued to the parties *A copy of the notice(s) of appeal *One copy of the docket entries (uncertified) *A list of all exhibits *If any material was impounded in the lower court, written notification specifying the material that was impounded below and either a copy of the impoundment order (if one issued) or reference to the authority for the impoundment *If this is a direct appeal concerning a criminal case, any electronically-formatted transcript, if necessary to the appeal <p><input type="checkbox"/> This is an appeal concerning a criminal case where:</p> <ul style="list-style-type: none"> *The crime(s) involved were something other than murder in the first degree, and *The direct appeal has already been decided, and *This appeal is from the denial of a motion for post-conviction relief. <p>Accordingly, the following accompanies this notice, under Mass. R. A. P. 9(d)(3):</p> <p><input type="checkbox"/> Transcripts of the lower-court proceedings, or</p> <p><input type="checkbox"/> A copy of the certification that the appellant filed in the lower court attesting that copies of the transcripts are already available in the appellate court.</p>		
<p>DATE 08/14/2023</p>	<p>CLERK /ASSISTANT CLERK Arthur T DeGuglielmo</p>	<p>CLERK /ASSISTANT CLERK R.A.I 160</p> <p style="text-align: center;">X</p>