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HEALTH CARE
ALTERNATIVE DISPUTE
RESOLUTION OFFICE

MARY KAY FRAIN 26 Pellinore Court Pikesville, Maryland 21208	*	IN THE HEALTH CARE
Claimant	*	ALTERNATIVE DISPUTE
v.	*	RESOLUTION OFFICE
UNITED STATES OF AMERICA Serve on: Rod J. Rosenstein United States Attorney, District of Maryland 36 South Charles St. 6th Floor Baltimore, Maryland 21201	*	Claim No.: 2009·034
Health Care Provider	*	

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STATEMENT OF CLAIM

The Claimant, Mary Kay Frain, by and through her attorneys,

hereby sues the Defendant Health Care Provider, the United States of America, and states as follows:

PARTIES, VENUE AND JURISDICTION

1. At all times material to this case, Mary Kay Frain ("Ms. Frain") has been a resident of the State of Maryland.

2. At all times material to this case, the Defendant Health Care Provider, the United States of America (the "Defendant Health Care Provider"), has been engaged in the practice of medicine in Baltimore City, Maryland at the Baltimore Veterans Affairs Medical Center ("VAMC") located at 10 North Greene Street, Baltimore, Maryland 21201, acting individually and through actual and/or apparent agents, servants and/or employees, including but not limited to Sarah B. Murthi, M.D. ("Dr. Murthi"), within the scope of their agency and/or employment.

3. This claim is instituted for the recovery of damages in excess of Thirty Thousand Dollars ($30,000.00).

4. This case arises under the Federal Tort Claims Act. A proper Standard Form 95 Claim Form was submitted to Department of Veterans Affairs on or about April 3, 2008 and more than six months passed without any action by the government on the claim, permitting this case to be instituted without final action on the claim. Accordingly, Claimant has complied with all jurisdictional prerequisites and conditions precedent to commencement and prosecution of this litigation.

5. The United States District Court will have jurisdiction of this case pursuant to 28 U.S.C. § 1346(b), 2671-2680 et seq., commonly known as the "Federal Tort Claims Act."

6. Venue is proper in the United States District Court for the Northern District of Maryland pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to this claim occurred in the Northern District of Maryland.

FACTS

7. In or about 2006, Ms. Frain had a Pilonidal Cyst (a cyst on the tailbone, at the top of the buttocks). Beginning in or about mid-2006, the Pilonidal Cyst became infected and inflamed, causing Ms. Frain significant pain and discomfort.

8. Ms. Frain presented to the Baltimore Veterans Affairs Medical Center for treatment of her Pilonidal Cyst, and initially was treated conservatively and then with incision and drainage procedures. The infection and inflammation recurred, however, and the health care providers at the VAMC eventually recommended surgical excision of the Pilonidal Cyst.

9. The medical records document that the Pilonidal Cyst was causing Ms. Frain significant pain and that she was eager to have it removed. For example, on July 30, 2007, the

records document that Ms. Frain's chief complaint was "hope we can get this abscess over and done with."

10. The VAMC scheduled Ms. Frain for surgery on September 7, 2007. Prior to the surgery, the only surgery Ms. Frain consented to below the abdomen was for removal of the Pilonidal Cyst.

11. On September 7, 2007, Ms. Frain presented to the VAMC for the scheduled surgery. Ms. Frain was placed under general anesthesia and the VAMC health care providers, including Dr. Murthi, proceeded with the surgery.

12. During the surgery, unbeknownst to Ms. Frain, the VAMC health care provider, Dr. Murthi, negligently performed the wrong surgery upon Ms. Frain by performing an anal fissureotomy on Ms. Frain (surgery in the anus), negligently failed to perform surgery on the Pilonidal Cyst, and negligently failed to remove the Pilonidal Cyst.

13. When she awoke from anesthesia after the surgery, Ms. Frain realized that her Pilonidal Cyst remained but that her anus was packed with gauze. Ms. Frain questioned the VAMC health care providers as to whether the wrong surgery had been performed on her, but the VAMC health care providers would not give her an answer.

14. After the anesthesia from the surgery wore off, Ms. Frain suffered extreme pain, suffering and emotional distress from the unnecessary surgery in and on her anus, and because her painful Pilonidal Cyst remained.

15. On September 15, 2007, during a follow-up visit at the VAMC, medical records document that Ms. Frain "reports that the pain that she is experiencing is the same pain/symptoms that she had before the surgery and that she is concerned that the surgery was not

successful or was not the correct surgery." Nevertheless, the VAMC health care providers again would not give her an answer as to whether the surgery she had consented to was performed.

16. Several days later, on September 18, 2007, Ms. Frain again returned to the VAMC. That day, medical records document that "pt. was under the impression this recent surgery was to excise this abscess. Pt is very concerned because the abscess is still present and has become inflamed and is painful and spontaneously draining...." An addendum to that note, by Laurie J. Punch, M.D., dated September 19, 2007, state "the L buttock recurrent abscess site is still present."

17. While Ms. Frain was recovering from the surgery, she received a voicemail message from Dr. Punch who stated: "Ms. Frain, this is Dr. Punch. I talked to Dr. Murthi and the long story short of it is she did not operate on that area on your bottom. And we just need you back, to bring you back to the OR to do it, and that is the long story short of it. I am going to talk to (inaudible) and we're going to get everything set up. We can actually do this on Wednesday afternoon. We have a long case but we can put it in for the afternoon. So, I guess I'll try and call you again tomorrow and we can discuss the details...."

18. Despite Dr. Punch's plan to quickly bring Ms. Frain back to surgery to remove the Pilonidal Cyst, Ms. Frain subsequently was unnecessarily subjected to multiple hospital visits and medical tests, including but not limited to CT scans and a colonoscopy, in an effort to prove that she actually had an anal fissure that needed excision on September 7, 2007. None of those unnecessary visits or tests found evidence of a problem with her anus.

19. Finally, on March 11, 2008, over six months after the surgery that was supposed to remove the Pilonidal Cyst, Ms. Frain was returned to surgery and the Pilonidal Cyst was properly removed.

20. During the time between the September 7, 2007 and March 11, 2008 surgeries, Ms. Frain continued to suffer extreme pain, suffering and emotional distress due to the Pilonidal Cyst that was supposed to be removed but wasn't.

COUNT I
(Medical Malpractice)

Ms. Frain hereby sues the Defendant Health Care Provider and for the cause of action states:

21. Ms. Frain incorporates all of the allegations contained in the above paragraphs as if those allegations are set forth in this Count.

22. The Defendant Health Care Provider, individually and through its actual and/or apparent agents, servants and/or employees, owed Ms. Frain a duty to exercise reasonable care in the care and treatment of her.

23. The Defendant Health Care Provider, individually and through its actual and/or apparent agents, servants and/or employees, breached the above-described duty of care, thereby deviating from the applicable standards of care, and was otherwise negligent, careless, and reckless, in that it, among other things:

a. Failed to perform the proper surgery on Ms. Frain;

b. Performed the wrong surgery on Ms. Frain; and

c. Subjected Ms. Frain to unnecessary delay, hospital visits, and tests in an effort to prove that she had a problem with her anus when she didn't.

24. As a direct result of the above-described deviations from the standards of care and breaches of duty by the Defendant Health Care Provider, Ms. Frain sustained severe pain,

suffering and emotional distress, unnecessary surgery and a delay in treatment of her Pilonidal Cyst.

25. Had the Defendant Health Care Provider followed the appropriate and applicable standards of care, Ms. Frain would not have suffered the above-identified injuries and damages.

26. The injuries and damages herein complained of were directly and proximately caused by the negligence of the Defendant Health Care Provider with no negligence on the part of Ms. Frain contributing thereto.

WHEREFORE, Ms. Frain requests that a judgment be entered against the Defendant Health Care Provider for compensatory damages in excess of Thirty Thousand Dollars ($30,000.00).