

Ms. Kathleen Hedden, Individually  
506 Glenmere Avenue  
Shark River Hills, NJ 07753

\*  
\* MARYLAND

Claimant

\* HEALTHCARE

v.

\* ALTERNATIVE DISPUTE

Dror Paley, M.D.  
901 45th Street  
Kimmel Building  
West Palm Beach, FL 33407

\* RESOLUTION OFFICE

\* HCADR NO.

**2010-398**

and

Sinai Hospital of Baltimore, Inc.  
2401 West Belvedere Avenue  
Baltimore, MD 21215

Serve On:  
Joel I. Suldan  
2401 West Belvedere Ave.  
Baltimore, MD 21215

Health Care Providers

\* \* \* \* \*

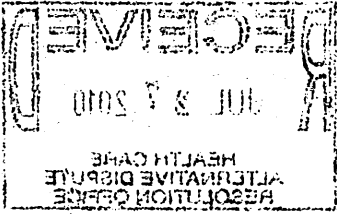
**STATEMENT OF CLAIM**

Kathleen Hedden, through her attorneys

hereby sues Dr. Dror Paley (hereinafter "Dr. Paley") and Sinai Hospital of Baltimore, Inc. (hereinafter "Sinai Hospital") for medical malpractice pursuant to § 3-2A *et seq.*, of the Maryland Courts and Judicial Proceedings Article, and for the reasons stated as follows:

**PARTIES**

1. Plaintiff Kathleen Hedden currently resides at 506 Glenmere Avenue, Shark River Hills, New Jersey.
2. Defendant Dr. Dror Paley is licensed to practice medicine in the State of Maryland and



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maintains offices located at 901 45<sup>th</sup> Street, Kimmel Building, West Palm Beach, FL 33407. At the time of the alleged malpractice, Dr. Paley maintained offices at 2411 West Belvedere Avenue, Baltimore, MD 21215 in Baltimore City, Maryland.

3. Defendant Sinai Hospital of Baltimore, Inc. is a corporation authorized to do business in the State of Maryland and which conducts business in Baltimore City, Maryland.

4. Venue for this claim is invoked in Baltimore City, Maryland, the location where Defendants carry on a regular business or habitually engage in a vocation pursuant to Maryland Code, Courts and Judicial Proceedings Ann. § 6-201(a) (2004).

5. The amount of this claim exceeds Thirty Thousand Dollars (\$30,000.00).

#### **FACTUAL ALLEGATIONS**

6. On December 11, 2006, Ms. Hedden suffered a fracture of her right fibula and a severe pilon fracture of the right tibia.

7. On December 12, 2006, Ms. Hedden underwent an open reduction internal fixation of the right fibula and had an external fixator for tibia stabilization applied to her right lower leg.

8. On January 12, 2007, Ms. Hedden underwent an open reduction internal fixation of the right tibia and had the external fixator removed from her right lower leg.

9. Both the December 12 and January 12 surgeries were performed in New Jersey under the care of Dr. David Polonet.

10. Between February 14, 2007 and approximately September 4, 2007, Ms. Hedden's rehabilitation included outpatient physical therapy and routine follow-up visits with Dr. Polonet. Ms. Hedden complained of pain in the right ankle.

11. On September 4, 2007, Ms. Hedden underwent surgery in New Jersey for the removal

of hardware in her right ankle. Dr. Stuart Levine, an ankle specialist located in New Jersey, performed the procedure.

12. On, or about, December 21, 2007, Dr. Levine informed Ms. Hedden that the next course of action would be ankle arthrodesis (hereinafter sometimes referred to as “fusion”). Ms. Hedden mentioned to Dr. Levine that a friend of hers had experienced relief with a procedure called “ankle distraction” that was performed by Dr. Paley in Baltimore. Dr. Levine had also heard of the procedure and Dr. Paley, and provided Ms. Hedden with Dr. Paley’s contact information.

13. On January 17, 2008, Ms. Hedden initially met with Dr. Lamm, and then met with Dr. Paley, for a consultation regarding whether Ms. Hedden would be a good candidate for ankle distraction. Dr. Paley determined that Ms. Hedden’s joint was salvageable and that distraction would be a feasible option for her.

14. On March 31, 2008, Ms. Hedden arrived at Sinai Hospital in Baltimore. A physician’s assistant presented her with a consent form, which included “Arthrodesis.” At which time, Ms. Hedden informed the physician’s assistant that she did not want a fusion. The fusion was crossed off the consent form and Ms. Hedden signed it.

15. During the evening of March 31, 2008, Dr. Paley discussed with Ms. Hedden the pros and cons of the distraction procedure and explained to Ms. Hedden that there was a decreased chance of a successful distraction because of Ms. Hedden’s tibial anatomy.

16. Dr. Paley then offered total ankle fusion as another surgical option. Dr. Paley explained the pros and cons of ankle fusion, including that a patient may return to her normal extracurricular activities with minimal to no pain, so long as the fusion is well-aligned.

17. Ms. Hedden was resistant to the idea of having an ankle fusion at that time. Despite this, Dr. Paley requested that Ms. Hedden sign the consent form in the event that he went forward

with the fusion. The March 31, 2008 pre-operative meeting concluded with instructions that Ms. Hedden was to notify Dr. Paley the following morning as to whether Dr. Paley should proceed with ankle distraction or perform an ankle fusion instead. After Dr. Paley left, the physician's assistant approached Ms. Hedden and had her initial the consent form next to the handwritten statement "possible right ankle arthrodesis."

18. On April 1, 2008, Ms. Hedden presented to Sinai Hospital under the care of Dr. Paley to undergo surgery on her ankle. Ms. Hedden explained to Dr. Lamm, an assisting physician, and others that she did not want a fusion.

19. Ms. Hedden was placed under general anesthesia prior to the commencement of the surgery. Dr. Paley began the operation as a distraction procedure, but two hours into the procedure he concluded that the distraction would fail.

20. While Ms. Hedden was still under anesthesia, Dr. Paley explained to Ms. Hedden's boyfriend, Thomas Higgins, that Dr. Paley needed to fuse the ankle. Dr. Paley then returned to the operating room and proceeded to fuse Ms. Hedden's right ankle.

21. When Ms. Hedden awoke from anesthesia, she was shocked to learn that her ankle had been fused against her wishes, instead of distracted.

22. After her surgery, Ms. Hedden was placed on a self-administered morphine drip for pain but continued to experience excruciating pain and a burning sensation from her big toe on the right foot through her right hip throughout the night.

23. Later in the evening of April 1, 2008, Dr. Paley examined Ms. Hedden's foot in response to her complaint that she did not have feeling or movement in her foot. Dr. Paley suspected Ms. Hedden's cast was too tight so he cut it and scheduled a re-examination in the morning.

24. By the morning of April 2, 2008, Ms. Hedden's lack of sensation and movement had not improved. Ms. Hedden was sent to the operating room and underwent a second surgery at Sinai Hospital for the decompression of the tarsal tunnel area in, or about, the medial plantar, and lateral plantar nerves, along with the excision of exotosis. In addition, some of the posteromedial part of the tibia was removed due to its encroachment upon Ms. Hedden's nerve.

25. On April 4, 2008, Ms. Hedden was discharged from Sinai Hospital with a hard cast and pain medication.

26. On April 5, 2008, Ms. Hedden became concerned that she still did not have any feeling or movement in her foot.

27. On April 7, 2008, Ms. Hedden still did not have sensation or movement in her foot and went to the emergency room at Ocean County Medical Center in New Jersey to have her cast split. Within twenty-four (24) hours of having the cast split, Ms. Hedden began to have some tingling in her right foot but sensation and movement did not return.

28. During follow-up visits on April 21, 2008 and May 12, 2008 with Dr. Paley, Ms. Hedden continued to complain that she did not have sensation or movement in her right foot.

29. On August 19, 2008, Ms. Hedden visited Dr. Matthew M. Roberts, who reported that Ms. Hedden had a translated, malpositioned, attempted ankle fusion that was not completely healed. Dr. Roberts also noted that Ms. Hedden's tibial neuropathy may be due to the position of the talus anterior to the tibia.

30. Dr. Roberts referred Ms. Hedden to Dr. Robert Rozbruch, who met with Ms. Hedden on or about September 4, 2008. Dr. Rozbruch recommended that Ms. Hedden undergo another surgery to correct the malpositioned non-union in Ms. Hedden's right ankle, among other things.

31. On November 10, 2008, Ms. Hedden underwent surgery at the Hospital for Special

Surgery in New York to repair her right ankle non-union and to remove painful hardware in her right ankle. Dr. Rozbruch discovered that a protruding screw had been rubbing on the tibial nerve. The corrective ankle surgery was successful, however, the nerve damage and the decreased range of motion remained. Ms. Hedden remained in an external fixator for a full six (6) months after the surgery and endured an extensive rehabilitation regimen.

**COUNT I – NEGLIGENCE AGAINST DR. DROR PALEY**

Plaintiff Kathleen Hedden, Individually, by and through her attorneys

, does hereby sue Dr. Dror Paley and states the

following:

32. Plaintiff does hereby incorporate the aforementioned facts as set forth in paragraphs (1) through (31) above as fully set forth herein.

33. Dr. Dror Paley owed a duty of care to Ms. Hedden to render treatment and care commensurate with the degree of skill, care and learning ordinarily exercised and possessed by the average qualified health care provider acting in the same or similar circumstances, taking into account the existing state of knowledge and practice of medicine at the time of the treatment complained of herein.

34. Dr. Paley breached the duty to exercise and possess that degree of skill, care and learning ordinarily exercised by the average qualified health care provider acting in the same or similar circumstances during the surgical procedure conducted on April 1, 2008 by taking the following actions, including, but not limited to: (1) Failing to take the appropriate precautions to accurately assess the feasibility of a distraction, and the feasibility of attempting a fusion after attempting a distraction, (2) Improperly proceeding to fuse Ms. Hedden's ankle from an incision angle intended for ankle distraction after he had already commenced the distraction procedure, (3)

Failing to create a proper alignment and union during the surgery, (4) Failing to prevent the impingement of nerves resulting from the procedure.

35. As a direct and proximate result Dr. Paley's negligence, Ms. Hedden sustained serious and permanent injuries in and about her head, body and limbs, some of which required additional surgical procedures including, but not limited to, a procedure to release a nerve that was encroached upon during the distraction-turned-fusion procedure, to repair her non-unioned ankle joint and redo the fusion in an appropriate fashion, and to remove painful hardware that was inserted into Ms. Hedden's ankle during the surgery with Dr. Paley. She also endured months of physical therapy, daily pin care, bone stimulator treatments, weekly visits from nurses, and antibiotic therapy for pin infections. Ms. Hedden incurred great medical expenses as a result of the injuries sustained and will incur additional medical expenses in the future.

36. In addition to the painful physical nature of her injuries, Dr. Paley's negligence directly and proximately caused Ms. Hedden experience mental anguish regarding the complications that arose from Dr. Paley's operations, her limited mobility, and her uncertain prognosis. Ms. Hedden was also disabled from work during the corrective procedures and subsequent rehabilitation.

WHEREFORE, Plaintiff Kathleen Hedden demands judgment against Dr. Paley in excess of the amount of Thirty Thousand Dollars (\$30,000.00).

**COUNT II – NEGLIGENCE AND RESPONDEAT SUPERIOR AGAINST SINAI  
HOSPITAL OF BALTIMORE, INC.**

Plaintiff Kathleen Hedden, Individually, by and through her attorneys ]

, does hereby sue Sinai Hospital of Baltimore,

Inc. and states the following:

37. Plaintiff does hereby incorporate the aforementioned facts and allegations as set



forth in paragraphs (1) through (36) above as fully set forth herein.

38. At all times relevant hereto, Dr. Paley was an apparent agent and/or actual agent, servant, and/or employee of the corporation.

39. Dr. Paley was acting within the scope and course of his employment as said agent, servant, and/or employee, and with Sinai Hospital of Baltimore, Inc.'s permission and consent when Ms. Hedden was treated.

40. As Dr. Paley's employer, Sinai Hospital of Baltimore, Inc. is liable for Dr. Paley's negligent actions in the treatment of Ms. Hedden.

WHEREFORE, Plaintiff Kathleen Hedden demands judgment against Sinai Hospital of Baltimore, Inc. in excess of the amount of Thirty Thousand Dollars (\$30,000.00).

**COUNT III – NEGLIGENCE IN THE FAILURE TO OBTAIN INFORMED**

**CONSENT AGAINST DR. DROR PALELY**

Plaintiff Kathleen Hedden, Individually, by and through her attorneys

, does hereby sue Dr. Dror Paley and states the

following:

41. Plaintiff does hereby incorporate the aforementioned facts and allegations as set forth in paragraphs (1) through (40) above as fully set forth herein.

42. Dr. Paley had a duty to Ms. Hedden to obtain informed consent prior to her treatment, including a continuing duty to disclose to Ms. Hedden the nature of the ailment, the nature of the proposed treatment, the probability of success of the proposed treatment and any alternatives, and the material risks of unfortunate outcomes associated with such treatment, along with a continuing duty to update Ms. Hedden on any material changes so as to allow Ms. Hedden to make an intelligent and informed choice about whether or not to undergo such treatment.

43. On April 1, 2008, Dr. Paley breached this duty by failing to fully explain the procedure undertaken of a “modified” fusion, completed after attempting the distraction and advise Ms. Hedden of any material information, including, but not limited to, risks or dangers inherent or collateral to the procedure, so as to enable Ms. Hedden to make an intelligent and informed choice about whether or not to undergo such treatment.

44. In addition, Dr. Paley breached this duty by failing to abide by Ms. Hedden’s decision on the morning of April 1, 2008 not to have a fusion completed at that time.

45. A reasonable person in Ms. Hedden’s position would have withheld consent to the surgery if all material risks had been disclosed.

46. As a direct and proximate result Dr. Paley’s negligence, Ms. Hedden sustained serious and permanent injuries in and about her head, body and limbs, some of which required additional surgical procedures including, but not limited to, a procedure to release a nerve that was encroached upon during the distraction-turned-fusion procedure, to repair her non-unioned ankle joint and redo the fusion in an appropriate fashion, and to remove painful hardware that was inserted into Ms. Hedden’s ankle during the surgery with Dr. Paley. She also endured months of physical therapy, daily pin care, bone stimulator treatments, weekly visits from nurses, and antibiotic therapy for pin infections. Ms. Hedden incurred great medical expenses as a result of the injuries sustained and will incur additional medical expenses in the future.

47. In addition to the painful physical nature of her injuries, Dr. Paley’s negligence directly and proximately caused Ms. Hedden experience mental anguish regarding the complications that arose from Dr. Paley’s operations, her limited mobility, and her uncertain prognosis. Ms. Hedden was also disabled from work during the corrective procedures and subsequent rehabilitation.

WHEREFORE, Plaintiff Kathleen Hedden demands judgment against Sinai Hospital of Baltimore, Inc. in excess of the amount of Thirty Thousand Dollars (\$30,000.00).

**COUNT IV -- NEGLIGENCE**

**IN THE FAILURE TO OBTAIN INFORMED CONSENT AND RESPONDEAT  
SUPERIOR AGAINST SINAI HOSPITAL OF BALTIMORE, INC.**

Plaintiff Kathleen Hedden, Individually, by and through her attorneys

does hereby sue Sinai Hospital of Baltimore,

Inc. and states the following:

48. Plaintiff does hereby incorporate the aforementioned facts and allegations as set forth in paragraphs (1) through (47) above as fully set forth herein.

49. At all times relevant hereto, Dr. Paley was an apparent agent and/or actual agent, servant, and/or employee of the corporation.

50. Dr. Paley was acting within the scope and course of his employment as said agent, servant, and/or employee, and with Sinai Hospital of Baltimore, Inc.'s permission and consent when Ms. Hedden was treated on April 1, 2008.

51. As Dr. Paley's employer, Sinai Hospital of Baltimore, Inc. is liable for Dr. Paley's negligent actions in the treatment of Ms. Hedden.

WHEREFORE, Plaintiff Kathleen Hedden demands judgment against Sinai Hospital of Baltimore, Inc. in excess of the amount of Thirty Thousand Dollars (\$30,000.00).

Attorneys for Claimant