UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GLENFORD TURNER and	*	**CIVIL ACTION NO.**
	*	**3:18-cv-00061-VAB**
COLLEEN JACKS-TURNER	*	
	*	
Plaintiff,	*	
	*	
VS.	*	
	*	
UNITED STATES OF AMERICA,	*	
	*	
Defendant.	*	**January 12, 2018**

AMENDED COMPLAINT

JURISDICTION AND VENUE

Subject matter jurisdiction is based on the Federal Tort Claims Act, 28 U.S.C. § 2671. Venue is appropriate in this district pursuant to 28 U.S.C. § 1402(b).

COUNT ONE: (Negligence against USA)

1. On August 30, 2013, plaintiff, Glenford Turner, underwent a robotic-assisted laparoscopic prostatectomy at VA Connecticut Healthcare System, West Haven Campus ("West Haven VA").

2. On March 29, 2017, plaintiff underwent an MRI of the head to evaluate an episode of dizziness. The study was stopped midway through because he experienced

severe abdominal pain. Imaging performed that date, copy attached as Exhibit A, revealed an abandoned surgical instrument in plaintiff's body. On April 26, 2017, the abandoned surgical instrument was removed from plaintiff's body.

3. Following the removal of the abandoned surgical instrument, on April 26, 2017, VA Connecticut Healthcare System, by and through its agents, apparent agents, contractors and/or employees advised the plaintiff that VA Connecticut Healthcare was at fault for leaving a foreign object in plaintiff's body during the August 30, 2013, radical prostatectomy.

4. Plaintiff did not discover, and in the exercise of reasonable care could not have discovered, that the abandoned surgical instrument had been left in his body by the defendant's agents, apparent agents, contractors and/or employees, until March 29, 2017, at the earliest.

5. As a direct and proximate result of the foregoing, the plaintiff suffered severe injuries, harms and losses as described more fully below.

6. The plaintiff's injuries, harms and losses were directly and proximately caused by the negligence of the defendant, acting by and through its agents, apparent agents, contractors and/or employees, in one or more of the following ways:

a) Abandoning a surgical instrument in plaintiff's body;

b) Failing to account for all surgical instruments at the close of the August 30, 2013, radical prostatectomy;

c) Failing to have in place practices and/or policies to account for the surgical instruments used during surgical procedures.

7. As a result of the defendant's negligence, the plaintiff suffered the following personal injuries, some or all of which are permanent:

a. multiple traumatic bodily injuries;

b. prolonged rehabilitation;

c. severe pain and disability;

d. surgical intervention;

e. need for future and additional surgical intervention;

f. medical expenses;

g. hospitalization;

h. loss of time from work;

i. loss of earning capacity; and,

j. damage to his ability to carry on and enjoy life's activities.

8. On June 6, 2017, the plaintiff filed a Form 95 pursuant to 28 U.S.C. § 2675 in order to administratively initiate a claim under the Federal Tort Claims Act.

9. The Department of Veterans' affairs regional counsel has not responded to the claim beyond acknowledging receipt of the claim.

10. Six months has passed since initiation of the claim. This filing is permitted by 28 U.S.C. § 2675(a).

11. Pursuant to Connecticut General Statute § 52-190(a), the Certificate of Good Faith and written opinion letter is attached hereto as Exhibit B.

COUNT TWO: (Loss of Consortium)

1.- 11. The allegations of paragraphs 1. – 11. of Count One are hereby incorporated and realleged as paragraphs 1. - 11. of this Count Two.

12. As a consequence of her husband, Glenford Turner, suffering the severe injuries set forth above, plaintiff Colleen Jacks-Turner has been caused to lose his company, society, services and affections.

WHEREFORE, the plaintiffs claim compensatory damages.

THE PLAINTIFFS,

BY: ______________________

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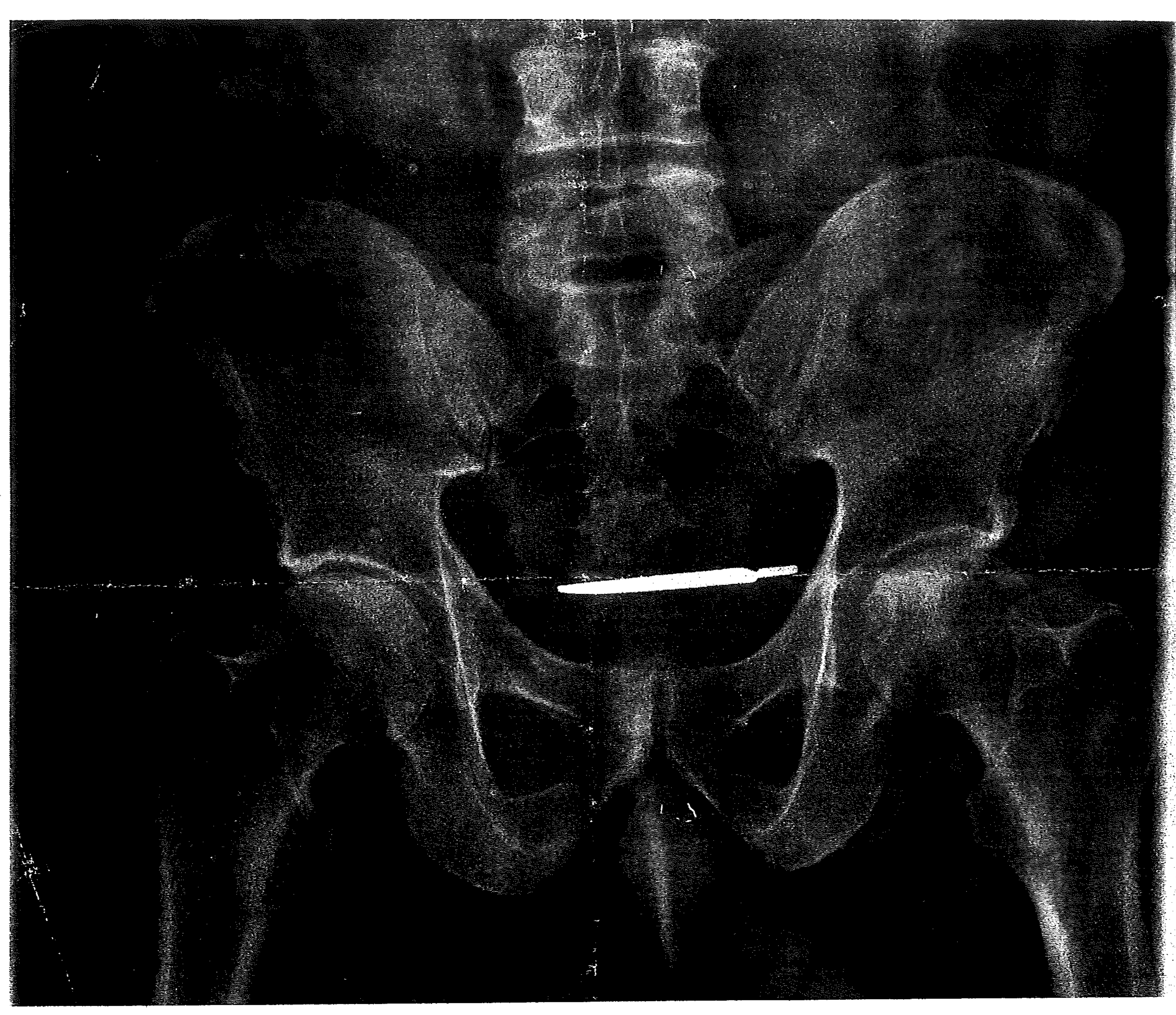

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CERTIFICATE

Pursuant to General Statutes §§ 52-190(a) and 52-184(c), I hereby certify that I have made reasonable inquiry, as permitted by the circumstances, to determine whether there are grounds for a good faith belief that there has been negligence in the care and treatment of plaintiff Glenford Turner. This inquiry has given rise to a good faith belief on my part that grounds exist for an action against the defendant.

A written and signed opinion (name expunged) of a health care provider similar to the defendant's agents, servants, apparent agents, and/or employees, is attached. The written and signed opinion indicates that there is evidence of medical negligence, and includes a detailed basis of that opinion.

THE PLAINTIFFS,

BY: ______________________

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January 8, 2018

To whom it may concern:

I have been asked to review the medical records of Mr. Glenford Stanley Turner and give an opinion regarding his claim against the Veterans Affairs Connecticut Healthcare System. By way of introduction, I am a cum laude graduate of Harvard College in Cambridge, Massachusetts. I received my MD from Harvard Medical School. I received my six-year post-graduate training in general surgery and urology at the Harvard Medical School Program in Boston, Massachusetts, which was based at Brigham and Women's Hospital, and also included rotations at Beth Israel Hospital, Children's Hospital and the Brocton-West Roxbury VA Medical Center. I am certified by the American Board of Urology, with the current recertification valid through February 2027. I am presently a practicing urologist and I hold a teaching appointment on the faculty of Harvard Medical School.

Mr. Turner was a healthy 57 year old man on August 30, 2013, when he underwent a robotic-assisted laparoscopic prostatectomy for prostate cancer. The operation took more than five hours. The operation was performed by Dr. Jaimin Shah, a 5th year urology trainee, and was supervised by Dr. Preston Sprenkle, the attending surgeon. The operation note states that Mr. Turner understands the risks of the operation, and enumerates those risks, but does not enumerate that a risk of the operation is to leave large instruments inside the body. Mr. Turner underwent a number of radiological studies prior to the operation, in May 2013, and at that time there were no surgical instruments inside his body.

Nearly four years later, Mr. Turner underwent an MRI of the head on March 29, 2017, to evaluate an episode of dizziness. The study needed to be stopped midway through because he experienced severe abdominal pain. He was then imaged with an plano film of the abdomen which shows a 5 inch scalpel handle in his body. He then was imaged by CT which by report confirms that a long metal object lay between the bladder and the rectum. On April 26, 2017 he underwent a second laparoscopic operation, and the scalpel handle was removed. Dr. Sprenkle's note in the medical record on May 4, 2017 states that Mr. Turner "does notice the pelvic pain that has been present since his prostatectomy is now gone."

The medical record states that Mr. Turner had no other operations between August 2013 and April 2017 that enter the abdomen or the pelvis, and during which a 5 inch scalpel

handle could have been left inside his body. The medical record reports that he had an operation in Florida in the summer of 2016 which is described as a "sling" operation for post-prostatectomy incontinence. The medical record states that the sling operation is assumed to have been done through the perineum, which is the space between the scrotum and the anus, and a knife handle could not be left inside the abdomen or pelvis during such an operation.

On April 27, 2017, which is the day after the second laparoscopic operation, during which the knife handle was removed, Dr. Sprenkle documents a discussion involving the "Patient, Patient's wife, Ronnie Rosenthal Chief of Surgery, Preston Sprenkle Chief of Urology" entitled "Institutional Disclosure of Adverse Event." Dr. Sprenkle's documentation of this discussion states that he will investigate the matter further and will stay in communication. Mr. Turner's Affidavit of December 21, 2017 then states "after my hospitalization ... Dr. Preston Sprenkle called me on the telephone and confirmed and acknowledged that VA Connecticut Healthcare was at fault for leaving a foreign object, a scalpel knife, in my body, during a radical prostatectomy ... Dr. Sprenkle explained that he believed the scalpel knife was used to hold open an incision and was mistakenly left inside me."

Based on my review of the VA medical records, which includes operation notes, and notes of the surgeons, nurses and radiologists who were involved in the care of Mr. Turner; my review of the plane xray demonstrating the knife handle inside of Mr. Turner, and my review of the Affidavit according to which the attending surgeon, Dr. Sprenkle, confirmed that the scalpel handle was mistakenly left inside Mr. Turner's body during the radical prostatectomy, it is clear that malpractice was committed on Mr. Glenford Stanley Turner on August 30, 2013, but was not discovered until imaging revealed the scalpel handle on March 29, 2017.

Sincerely yours,

[illegible], MD, FACS