

COMMONWEALTH OF KENTUCKY
27th JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT
DIVISION II

CIVIL ACTION NO. 11CJ00972

EDWARD MARSHALL

PLAINTIFF

v.

COMPLAINT

CATHOLIC HEALTH INITIATIVES, INC.
Mitch H. Melfi
198 Inverness Drive West
Englewood, CO 80112

Serve: CT Corporation System
306 W. Main Street, Suite 512
Frankfort, Kentucky 40601

FILED, NOTED OF RECORD
THIS 15 DAY OF Sept 11

CLERK LAUREL CIRCUIT/DISTRICT COURT
BY [Signature] D.C.

- and -

SAINT JOSEPH HEALTH SYSTEM, INC.
424 Lewis Hargett Circle, Suite 160
Lexington, Kentucky 40503

Serve: Bruce A. Klockars
424 Lewis Hargett Circle, Suite 160
Lexington, Kentucky 40503

- and -

SAINT JOSEPH-LONDON
424 Lewis Hargett Circle, Suite 160
Lexington, Kentucky 40503

Serve: Bruce A. Klockars
424 Lewis Hargett Circle, Suite 160
Lexington, Kentucky 40503

- and -

PREMIER HEART AND VASCULAR CENTER
assumed name corporation of
SAINT JOSEPH HEALTH SYSTEM, INC.
424 Lewis Hargett Circle, Suite 160
Lexington, Kentucky 40503

Serve: Bruce A. Klockars
424 Lewis Hargett Circle, Suite 160
Lexington, Kentucky 40503

- and -

CARDIOVASCULAR SPECIALISTS OF
THE CUMBERLANDS, PLLC
a/k/a CARDIOVASCULAR SPECIALISTS, P.S.C.
181 Old Whitley Road
London, Kentucky 40744

Serve: Anis Chalhoub
181 Old Whitley Road
London, Kentucky 40744

- and -

THE MEDICAL SPECIALISTS OF KENTUCKY, P.S.C
1210 West Fifth Street
London, Kentucky 40741

Serve: Craig Morgan
1210 West Fifth Street
London, Kentucky 40741

- and -

MANAGEMENT SERVICE ORGANIZATION
OF KENTUCKY, INC.
1210 West Fifth Street, Suite 201
London, Kentucky 40741

Serve: Sumita Chatterjee
1210 West Fifth Street, Suite 201
London, Kentucky 40741

- and -

M.S.O. OF KENTUCKY, INC.
assumed name corporation of MANAGEMENT
SERVICE ORGANIZATION OF KENTUCKY, INC.
1210 West Fifth Street, Suite 201
London, Kentucky 40741

Serve: Sumita Chatterjee
1210 West Fifth Street, Suite 201
London, Kentucky 40741

- and -

SATYABRATA CHATTERJEE, M.D.
1210 West Fifth Street
London, Kentucky 40741

- and -

SANDESH PATIL M.D.
1210 West Fifth Street
London, Kentucky 40741

- and -

ANIS CHALHOUB M.D.
181 Old Whitley Road
London, Kentucky 40744

DEFENDANTS

Comes the Plaintiff, Edward Marshall, by and through counsel, and hereby sues and brings claims for negligence, lack of informed consent, negligent misrepresentation, fraudulent concealment, and unjust enrichment against Defendants, Catholic Health Initiatives, Inc., Saint Joseph Health System, Inc., Saint Joseph Health System, Inc. d/b/a Saint Joseph-London, Premier Heart and Vascular Center assumed name corporation of Saint Joseph Health System, Inc., Cardiovascular Specialists of the Cumberlands, PLLC, a/k/a Cardiovascular Specialists, P.S.C., Anis Chalhoub M.D., The Medical Specialists of Kentucky, P.S.C., Management Service Organization of Kentucky, Inc., M.S.O. of Kentucky, Inc., assumed name corporation of

Management Service Organization of Kentucky, Inc., and Sandesh Patil M.D., (collectively, “Defendants”), and in support thereof, states as follows:

INTRODUCTION

1. This case arises out of the pattern and practice by Defendants of performing, allowing to perform and billing for hundreds of medically unnecessary and harmful cardiac procedures, such as percutaneous transluminal coronary angioplasty (“PTCA”) with stenting.

2. PTCA with stenting is a procedure in which a cardiologist runs a catheter into the arteries of the heart in order to dilate a narrowed segment of the artery. This narrowing is known as stenosis. PTCA with stenting is only medically appropriate when the artery has stenosis of at least 70%, and the patient has certain other signs or symptoms of obstructed blood flow.

3. Defendants in this case routinely overstated the extent of the disease in the coronary arteries of patients in order to justify PTCA with placement of a stent—a small mesh-wire cylinder—into the arteries of the patient’s heart.

4. Unnecessary stenting has recently become a pervasive problem with cases arising in Texas, Tennessee, Maryland, and Pennsylvania. Catholic Health Initiatives, Inc. and Saint Joseph Health System has assisted and participated in this problem. [Exhibit 1]

5. The overstating of the extent of disease allows Defendant healthcare providers to bill health insurance companies, federal and state governments, and the patients themselves, for hundreds of unnecessary procedures.

6. In 2008, there were 2,500 heart catheter procedures performed at Defendant Saint Joseph-London. By 2010, the number of cardiac catheterizations rose to 4,000. In addition, 160

major heart surgeries and 200 various vascular and thoracic procedures were performed at Defendant Saint Joseph-London in 2010.

7. In fact, the Office of the Inspector General of the United States Department of Health and Human Services recently required a Saint Joseph facility in Maryland to enter into a Corporate Integrity Agreement, in order to ensure future compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs,. [Exhibit 2]

8. The Corporate Integrity Agreement requires Saint Joseph Hospital in Towson, Maryland to create a compliance officer, a compliance committee, and appoint a medical director for its cardiac catheterization laboratory who will report to the OIG and ensure unnecessary stenting is no longer being performed at the facility.

9. Ultimately, Saint Joseph agreed to pay the United States \$22 million to settle allegations under the False Claims Act that it paid unlawful remuneration under the Anti-Kickback Act and violated the Stark Law when it entered into a series of professional services contracts with the Pikesville, Md., based cardiology group, MidAtlantic Cardiovascular Associates (MACVA), the Justice Department announced. The physician involved lost his license to practice. [Exhibit 2] If Saint Joseph-London has similar professional contracts with Defendants Chalhoub, Patil and Chatterjee, they are in violation of state and federal laws.

10. Defendants Chalhoub, Patil, and Chatterjee market and bill their services through Premier Heart and Vascular Center, Cardiovascular Specialists of the Cumberland, Management Service Organization of Kentucky, and M.S.O of Kentucky Inc.

11. Sumita Chatterjee, Defendant Satyabrata Chatterjee's wife, is the sole officer and principal agent of the Management Service Organization of Kentucky, and M.S.O of Kentucky, Inc.

12. Defendants' profit-driven misconduct placed Plaintiff, Edward Marshall, at significant risk, because procedures involving PTCA and stenting of coronary arteries place patients at risk of heart attack, stroke, damage to blood vessels, required use of medications known to cause bleeding, and other complications.

13. Beginning in June of 2009 and continuing through August of 2010, Defendants represented to Plaintiff, Edward Marshall, that he required PTCA with stenting, heart catheterizations, and pacemaker implantation. Defendants informed Plaintiff Marshall it was necessary that they perform PTCA with stenting, but concealed from him that his coronary arteries did not have the requisite degree of stenosis to make the procedure medically necessary. Even though they knew doing the procedure was unnecessary, Defendants performed PTCA with stent placement in Edward Marshall, subjecting him to significant injury and multiple medical risks and hazards. Defendants misrepresented to Mr. Marshall, and stated in his medical records, that the nature of his disease process required the procedure (when in fact it did not). Edward Marshall did not have significant coronary disease in the artery where Defendants placed the stent, rendering the PTCA with stent placement medically unnecessary. Further, the Defendants knowingly represented that Plaintiff Edward Marshall required pacemaker implantation even though he had no symptomatic arrhythmias or documented arrhythmias. This improper and unlawful conduct by Defendants gives rise to causes of action for medical negligence, lack of informed consent, deceit, negligent misrepresentations, negligent hiring and/or supervision, civil conspiracy, and violations of the Kentucky Consumer Protection Act.

JURISDICTION AND VENUE

14. The amount in controversy in this action exceeds the minimum jurisdictional limit of the Circuit Court of Laurel County, Kentucky, and jurisdiction and venue are proper in the Circuit Court of Laurel County, Kentucky.

THE PARTIES

15. Plaintiff, Edward Marshall, was and is a resident of Laurel County, Kentucky.

16. Catholic Health Initiatives, Inc., is registered with the Kentucky Secretary of State as a foreign corporation with a principal office located at 198 Inverness Drive West, Englewood, Colorado 80112, and upon Plaintiff's knowledge and/or information and belief is the owner, operator, manager, or administrator of Saint Joseph Health System, Inc.

17. Catholic Health Initiatives, Inc., operates 73 hospitals in 19 states.

18. Defendant Saint Joseph Health System, Inc., is a Kentucky corporation organized and operated by Catholic Health Initiatives, Inc., with a principle office at 424 Lewis Hargett Circle, Suite 160, Lexington, Kentucky 40503. Saint Joseph Health System, Inc., owns and operates Saint Joseph-London.

19. Defendant Saint Joseph-London, upon Plaintiff's knowledge and/or information and belief, was and is owned, operated and/or managed by and is the assumed name of Saint Joseph Health System, Inc., with a principle office at 424 Lewis Hargett Circle, Suite 160, Lexington, Kentucky 40503 (hereafter Saint Joseph-London).

20. Saint Joseph-London holds itself out as a 340,000-square-foot regional facility featuring the latest technology, including award-winning cardiovascular services.

21. Defendant Premier Heart and Vascular Center is an assumed name corporation of Saint Joseph Health System, Inc., with a principle office at 424 Lewis Hargett Circle, Suite 160, Lexington, Kentucky 40503 (hereafter PHVC).

22. Defendant Cardiovascular Specialists of the Cumberlands, PLLC, is a Kentucky limited liability company with a principle office at 181 Old Whitley Road, London, Kentucky 40744 (hereafter CSC). Cardiovascular Specialists of the Cumberlands, PLLC and Cardiovascular Specialists, P.S.C. (not registered with the Kentucky Secretary of State) were interchangeable names when their former address was 1406 West Fifth Street, Suite 3, London, Kentucky 40741, and they were under the direction and control of Defendant Anis Chalhoub, M.D., who practiced medicine and provided care and treatment to patients, including Plaintiff Edward Marshall, at the same address until November 2010.

23. Defendant Anis Chalhoub, M.D., was and is a physician licensed to practice medicine in the state of Kentucky, with a principle office at 181 Old Whitley Road, London, Kentucky 40744, was a staff cardiologist at Saint Joseph-London, and was an agent, ostensible agent, servant or employee of Defendants Premier Heart and Vascular Center, The Medical Specialists of Kentucky, P.S.C., Saint Joseph Health System, Inc., and Catholic Health Initiatives, Inc.

24. Defendant The Medical Specialists of Kentucky, P.S.C., is a Kentucky Professional Services Corporation with a principle office at 1210 West Fifth Street, London, Kentucky 40741.

25. Defendant Management Service Organization of Kentucky, Inc., is a Kentucky corporation with a principle office at 1210 West Fifth Street, Suite 201, London, Kentucky 40741.

26. Defendant M.S.O. of Kentucky, Inc. is an assumed name corporation of Management Service Organization of Kentucky, Inc., with a principle office at 1210 West Fifth Street, Suite 201, London, Kentucky 40741.

27. Defendant Satyabrata Chatterjee, M.D., was and is a physician licensed to practice medicine in the state of Kentucky, is an employee and was the head of cardiology at Defendant Saint Joseph-London, and was an agent, ostensible agent, servant or employee of all Defendants, and was and is the Incorporator, President and a Director of The Medical Specialists of Kentucky, P.S.C. As a result, he had an obligation to ensure all procedures performed by The Medical Specialists of Kentucky at Saint Joseph-London were medically necessary.

28. Defendant Sandesh Patil, M.D., was and is a physician licensed to practice medicine in the state of Kentucky, was a staff cardiologist and agent, ostensible agent, servant, or employee of Defendant Saint Joseph-London, was an agent, ostensible agent, servant or employee of all Defendants, and Partner and Director of The Medical Specialists of Kentucky, P.S.C.

FACTS COMMON TO ALL COUNTS

29. At all relevant times, Catholic Health Initiatives owned and/or operated Defendant Saint Joseph Health Systems, Inc., which owned and/or operated a cardiac catheterization lab at Saint Joseph-London, which owns and operates Premier Heart and Vascular Center and The Medical Specialists of Kentucky, P.S.C.

30. Defendants agreed with Defendants Chalhoub, Patil, and Chatterjee to permit them to perform, and bill for, diagnostic testing, cardiac catheterizations, PTCA with stenting, and other cardiac procedures in the hospital, and provided them with staff and resources.

31. PTCA is a procedure whereby a narrowing or stenosis in a patient's coronary artery is expanded or opened up. PTCA with stenting involves the additional use of a stent to stabilize previously narrowed arterial segment.

32. At all relevant times, PTCA with stenting generated significant revenue for Defendants.

33. According to well-established evidence-based guidelines promulgated by medical authorities including the American College of Cardiology and the American Heart Association, PTCA with stenting is not medically appropriate unless, among other things, the patient has a significant coronary artery stenosis of at least than 70%, along with other signs of impaired coronary blood flow.

34. PTCA with stenting entails significant risk to patients and does not confer any benefit on patients with stenosis of less than 70%. The risks include heart attack, stroke, damage to vessels and other structures, hematoma formation, bleeding, and required use of anticoagulant and anti-platelet medications that further increase the risk of bleeding.

35. As part of their businesses, Defendants held themselves and their actual and/or apparent employees out to Plaintiff and the general public as able, competent, and qualified medical professionals who rendered and provided health care, treatment, and other services within the ordinary standards of care in their respective fields, including the fields of cardiology and interventional cardiology. In so doing, the Defendants owed a duty to Plaintiff to exercise reasonable skill and care in performing interventional cardiology procedures and in monitoring, supervising, training, and evaluating the conduct, skills and competencies of their employees to ensure that they possessed and complied with that degree of skill and knowledge ordinarily possessed by those who devote special study and attention to the practice of their selected fields

of health care. Saint Joseph Health Systems, Saint Joseph-London, Premier Heart and Vascular Centers, Medical Specialists of Kentucky, and Cardiovascular Specialists of the Cumberland, a/k/a Cardiovascular Specialists P.S.C., had a duty to periodically review Defendants Drs. Chatterjee, Chalhoub, and Patil's conduct procedures to ensure they were performing medically necessary procedures.

36. Defendants also owed all of their patients, including Plaintiff Edward Marshall, a duty to accurately and completely disclose all important medical information, including information regarding the degree of stenosis in a patient's coronary arteries.

37. During the last five or more years, Defendants performed an unnecessary coronary PTCA with stent placement on Plaintiff Marshall and, on information and belief, on hundreds of other patients.

38. In Edward Marshall's case, and on information and belief, hundreds of others, Defendants dramatically misrepresented the extent of coronary artery stenosis in order to justify performance of PTCA with stenting.

39. Defendants knowingly subjected such patients, including Edward Marshall, to significant medical risks with no countervailing benefit and procured consent to the procedure based on false representations that the procedure was necessary and based on fraudulent concealment of medical facts. No reasonable patient would consent to such a procedure if adequately informed about the risks, benefits and alternatives.

40. The nurses, technicians, and staff in the cardiac catheterization lab at Saint Joseph-London worked directly with Defendant Drs. Patil, Chalhoub, and Chatterjee and knew or should have known what they were doing, participated in the unnecessary and non-indicated procedures, and failed to prevent or report their actions.

41. At all relevant times, including during the procedure Defendants performed on Edward Marshall, the actual and apparent employees or agents of Saint Joseph Health Systems d/b/a Saint Joseph-London, Cardiovascular Specialists of the Cumberland a/k/a Cardiac Specialists, Medical Specialists of Kentucky, and Premier Heart and Vascular Centers (including Defendants Chatterjee, Chalhoub and Patil, cardiac catheterization technicians, radiology technicians, and nurses) were physically present during each of the cardiac catheterizations and other cardiac procedures ordered and performed by Defendant Drs. Chalhoub and Patil in the catheterization lab. These employees had access to and reviewed the medical records, images, and charts of each of the patients who underwent cardiac catheterizations and other cardiac procedures by Defendant Drs. Chatterjee, Chalhoub and Patil in the catheterization lab, conducted and/or should have conducted pre-procedure workups of each of the patients who underwent cardiac catheterizations and other cardiac procedures ordered and performed by Defendant Drs. Chatterjee, Chalhoub and Patil, viewed and monitored the images of the hearts and vascular system of each of the patients who underwent cardiac catheterizations and other cardiac procedures, assisted Defendants in the placement of catheters and other instruments, and provided post-procedure care and treatment to each of the patients.

42. Despite the fact that they knew or should have known that Defendants Chatterjee, Chalhoub and Patil were regularly ordering and performing unnecessary and non-indicated procedures, the Defendants allowed Drs. Chatterjee, Chalhoub and Patil to order, perform, and bill for the procedures. Defendants thus agreed to allow Chatterjee, Chalhoub and Patil to continue ordering and performing unnecessary cardiac procedures.

43. On or about October 20, 2009, Defendant Chalhoub, Edward Marshall's cardiologist at Cardiovascular Specialists of the Cumberland, PLLC., a/k/a Cardiovascular

44. On or about October 21, 2009, Edward Marshall underwent unnecessary pacemaker implantation surgery at Saint Joseph-London performed by Dr. Chalhoub.

45. Had Defendants informed Edward Marshall of the true condition of his heart, or had they informed him that the risks, benefits, and alternatives to the procedure weighed strongly in favor of not performing pacemaker implantation surgery, Edward Marshall—like any reasonable patient—would not have consented to the procedure.

46. On or about June 25, 2010, Defendant Chalhoub, Edward Marshall's cardiologist at Cardiovascular Specialists of the Cumberland, PLLC., a/k/a Cardiovascular Specialists, P.S.C., and subsequently Premier Heart and Vascular Centers, performs an unnecessary cardiac catheterization on Edward Marshall at Saint Joseph-London and concealed from him that the risks associated with this unnecessary surgery outweighed the benefits, and used false statements to convince Edward Marshall of the need for the surgery.

47. On or about August 2, 2010, Dr. Patil, who was practicing at The Medical Specialists of Kentucky, which is operated by Defendant Chatterjee, states that Edward Marshall required PTCA with stenting, and performed unnecessary and non-indicated PTCA with stenting surgery at Saint Joseph-London.

48. Had Defendants Patil and Chatterjee informed Edward Marshall of the true condition of his coronary arteries or had they informed him that the risks, benefits, and alternatives to the procedure weighed strongly in favor of not performing PTCA with stenting, Edward Marshall—like any reasonable patient—would not have consented to the procedure.

49. Defendants Patil and Chalhoub, Premier Heart and Vascular Center, The Medical Specialists of Kentucky, and Cardiovascular Specialists of the Cumberlands billed for their services through Management Service Organization of Kentucky, Inc., and M.S.O. of Kentucky, Inc., which knew or should have known the procedures were unnecessary. Sumita Chatterjee is the wife of Defendant Satyabrata Chatterjee.

50. On or about September 9, 2010 Edward Marshall began consulting with a new cardiology group.

51. After obtaining his medical records and videos of his pacemaker implantation and PTCA with stenting, on or about September 16, 2010, his new cardiologists discovered that the implantation of the pacemaker and the PTCA with stenting ordered by Drs. Chalhoub and Patil and performed by Drs. Chalhoub and Patil at Saint Joseph-London were unnecessary.

52. As a direct, proximate and foreseeable result of Defendants' misconduct, Plaintiff Edward Marshall suffered harm, including by not limited to: unnecessary, painful and dangerous cardiac procedures, serious, painful and permanent injuries to mind and body, and great physical and mental pain and suffering. As a further result of Defendants' misconduct, Plaintiff is now indefinitely required to take medication that carries life-threatening risks, is now and will always be at risk for future stent thrombosis as well as stent re-stenosis, has suffered a significant impairment in his ability to trust medical providers, continues to live a life of greatly diminished quality, has incurred unnecessary medical expenses and will continue to incur substantial medical costs, and sustained other pecuniary and non-pecuniary losses past, present and future.

COUNT I
(NEGLIGENCE/GROSS NEGLIGENCE)

53. Plaintiff Edward Marshall hereby reasserts and incorporates by reference the allegations contained in this Complaint as if set forth herein.

54. Defendants had a duty to exercise the degree of care and skill which a reasonably competent healthcare provider, medical group or hospital or billing service, engaged in similar practice and similar circumstances, would use.

55. Defendants breached that duty and were negligent or grossly negligent in their care and treatment of Plaintiff and deviated from the appropriate standard of medical care in one or more of the following particulars:

a. failed to properly and appropriately interpret and assess angiographic films before performing a stent placement procedure;

b. failed to recommend alternative medical therapy or another non-surgical course of action instead of performing the cardiac stent placement procedures;

c. performed unnecessary cardiac procedures;

d. failed to comply with the applicable standards of care in the circumstances presented and was otherwise negligent and careless;

e. failed to accurately document the clinical indications upon the decision to perform a cardiac stent procedure was based;

f. failed to confirm or properly quantify the significance of using well-accepted intra-procedural techniques, such as fractional flow reserve or intravascular ultrasound;

- i. implanted a medical device that was not medically indicated or necessary;
- j. performed PTCA with stenting that was not medically indicated or necessary; and
- k. failed to properly monitor the conduct or billing of Defendants Patil, Chalhoub and Chatterjee.

56. As a direct, proximate and foreseeable result of Defendants' misconduct, Plaintiff Edward Marshall suffered harm, including by not limited to: an unnecessary, painful and dangerous cardiac procedure, serious, painful and permanent injuries to mind and body, and great physical and mental pain and suffering. As a further result of Defendants' misconduct, Plaintiff Edward Marshall is now indefinitely required to take medication that carries life-threatening risks, is now and will always be at risk for future stent thrombosis as well as stent re-stenosis, has suffered a significant impairment in his ability to trust medical providers, continues to live a life of greatly diminished quality, has incurred unnecessary medical expenses and will continue to incur substantial medical costs, and sustained other pecuniary and non-pecuniary losses past, present and future.

COUNT II
(LACK OF INFORMED CONSENT)

57. Plaintiff Edward Marshall hereby reasserts and incorporates by reference the allegations contained in this Complaint as if set forth herein.

58. Defendants were under a duty to provide Edward Marshall with informed consent before subjecting him to pacemaker implantation surgery and PTCA with stenting, including but not limited to disclosure of material information regarding the risks, benefits, and alternatives to

the proposed treatment, and disclosure that the risks of such treatment in his particular circumstances exceeded any possible benefit.

59. Defendants failed to provide such informed consent, but rather concealed material facts about the condition of Edward Marshall's heart and coronary arteries and about the necessity (or lack thereof) of the pacemaker implantation and PTCA with stenting procedures.

60. As a direct, proximate and foreseeable result of Defendants' misconduct, Plaintiff Edward Marshall suffered harm, including by not limited to unnecessary, painful and dangerous cardiac procedures, serious, painful and permanent injuries to mind and body, and great physical and mental pain and suffering. As a further result of Defendants' misconduct, he is now indefinitely required to take medication that carries life-threatening risks, is now and will always be at risk for future stent thrombosis as well as stent re-stenosis, has suffered a significant impairment in his ability to trust medical providers, continues to live a life of greatly diminished quality, has incurred unnecessary medical expenses and will continue to incur substantial medical costs, and sustained other pecuniary and non-pecuniary losses past, present and future.

COUNT III
(NEGLIGENT MISREPRESENTATION)

61. Plaintiff Edward Marshall hereby reasserts and incorporates by reference the allegations contained in this Complaint as if set forth herein.

62. Defendants, owing a duty of care to Edward Marshall, negligently misrepresented and concealed the condition of Edward Marshall's heart and coronary arteries and negligently misrepresented that he would benefit from implantation of a pacemaker and PTCA with stenting.

63. Defendants intended that Edward Marshall would rely upon and act upon their misrepresentations and concealment by consenting to undergo pacemaker implantation and PTCA with stenting.

64. Defendants knew that Edward Marshall would probably rely upon their negligent medical advice, as they knew that Plaintiff Edward Marshall would have opted to not undergo the stent procedure if Plaintiff had been provided accurate medical information regarding his condition and the proposed procedures.

65. Edward Marshall's reliance on Defendants' misrepresentations and concealment was reasonable and justified, as they are healthcare providers with far greater knowledge of the relevant subject and far superior access of the information underlying the misrepresentations and concealment.

66. As a result of Defendants' misrepresentations, Edward Marshall suffered harm as set forth above.

COUNT IV
(FRAUD AND FRAUDULENT CONCEALMENT)

67. Plaintiff Edward Marshall hereby reasserts and incorporates by reference the allegations contained in this Complaint as if set forth herein.

68. Defendants performed unnecessary and contraindicated pacemaker implantation, catheterizations and PTCA with stent placement on Plaintiff Edward Marshall's heart.

69. Likewise, Defendants fraudulently concealed from the patient that his limited degree of coronary artery stenosis rendered the catheterizations and PTCA with stenting improper and unnecessary.

70. Defendants also concealed their pattern and practice of subjecting patients to such unnecessary and medically inappropriate procedures. Defendants concealed these facts despite being under a duty to disclose them.

71. Defendants' false concealment of material information was made knowingly and/or with reckless disregard for their truth.

72. The fraudulent concealing of material information was intended to induce Edward Marshall to consent to the performance of the pacemaker implantation surgery, catheterizations and PTCA with stenting and/or to refrain from objecting to those procedures.

73. Defendants' misrepresentations and concealment were material to Plaintiff Edward Marshall's consent to the pacemaker surgery and PTCA and stent placement.

74. Plaintiff Edward Marshall justifiably and reasonably relied on Defendants' misstatements and concealment—all done in the context of the healthcare provider-patient relationship of trust and confidence—in agreeing to undergo the unnecessary procedure. But for Defendants' misrepresentations and concealment, Plaintiff Edward Marshall would not have consented to the pacemaker surgery, nor the PTCA with stent placement.

75. Defendant M.S.O. of Kentucky, Inc., knew or should have known of the other Defendants' pattern and practice of performing and billing for unnecessary medical procedures.

76. As a direct, proximate and foreseeable result of Defendants' false and fraudulent representations, Plaintiff Edward Marshall suffered harm as set forth above.

COUNT V
(NEGLIGENT HIRING, SUPERVISION, CREDENTIALING, AND PRIVILEGING AGAINST DEFENDANTS, CATHOLIC HEALTH INITIATIVES, INC., SAINT JOSEPH HEALTH SYSTEMS, INC., SAINT JOSEPH-LONDON, PREMIER HEART AND VASCULAR CENTER, THE MEDICAL SPECIALISTS OF KENTUCKY, P.S.C., AND CARDIOVASCULAR SPECIALISTS OF THE CUMBERLANDS, a/k/a CARDIOVASCULAR SPECIALISTS)

77. Plaintiff hereby reasserts and incorporates by reference the allegations contained in this Complaint as if set forth herein.

78. Defendants were the actual agents, ostensible agents, servants or apparent employers of Defendants Chalhoub, Patil, and Chatterjee.

79. Defendants granted hospital privileges to Defendants Drs. Chatterjee, Chalhoub and Patil, authorizing them to perform medical procedures including the services, treatment and surgery rendered to Plaintiff Edward Marshall.

80. Defendants owed a duty to Plaintiff Edward Marshall to train, supervise, credential, and privilege employees who were competent for the position and to supervise those employees in a reasonable manner.

81. Defendants had actual and/or constructive knowledge of Defendants Drs. Chatterjee, Chalhoub and Patil's pattern and practice of ordering and performing unnecessary and medically inappropriate procedures, and failure to disclose such information to a patient.

82. Defendants failed to use reasonable care in hiring, supervising, credentialing, privileging, and retaining Defendants Drs. Chatterjee, Chalhoub and Patil.

83. Defendants deliberately failed to inquire, probe or examine the competency and conduct of Defendants Drs. Chatterjee, Chalhoub and Patil, because Defendants profited and were enriched by their misconduct.

84. Defendants had an obligation to properly administer a program of quality control. Proper quality control would have resulted in stricter supervision of Defendants Drs. Chatterjee, Chalhoub and Patil and would have prevented Plaintiff—and hundreds of others—from being subjected to medically unnecessary procedures.

85. As a direct, proximate and foreseeable result of the negligence of Defendants in hiring, credentialing, privileging and retaining Defendants Drs. Chatterjee, Chalhoub and Patil, M.D., Edward Marshall suffered harm as set forth above.

COUNT VI
(CIVIL CONSPIRACY)

86. Plaintiff hereby reasserts and incorporates by reference the allegations contained in this Complaint as if set forth herein.

87. Defendants, by agreement among themselves, knowingly and unlawfully provided medical facilities and assistance, including billing services, needed to perform and did in fact perform the unnecessary, non-indicated and unlawful procedures on hundreds of patients, including Edward Marshall.

88. This agreement or understanding allowed all Defendants to benefit financially from unnecessary and non-indicated procedures, and was likely in violation of state and federal laws regarding kickbacks and referrals.

89. As a direct and proximate result of the agreement or understanding among Defendants, Plaintiff Edward Marshall suffered harm as described above.

**COUNT VII
(UNJUST ENRICHMENT)**

90. Plaintiff hereby reasserts and incorporates by reference the allegations contained in this Complaint as if set forth herein.

91. At all times material hereto, the Defendants, Catholic Health Initiatives, Inc., Saint Joseph Health System, Inc., Saint Joseph Health System, Inc. d/b/a Saint Joseph-London, Premier Heart and Vascular Center assumed name corporation of Saint Joseph Health System, Inc., Cardiovascular Specialists of the Cumberlands, PLLC, a/k/a Cardiovascular Specialists, P.S.C., Anis Chalhoub M.D., The Medical Specialists of Kentucky, P.S.C., Management Service Organization of Kentucky, Inc., M.S.O. of Kentucky, Inc., assumed name corporation of Management Service Organization of Kentucky, Inc., Sandesh Patil M.D., and Satyabrata Chatterjee, M.D., received financial benefits for the performance of hundreds of medically unnecessary and harmful cardiac procedures.

92. At all times material hereto, the Defendants represented to Plaintiff that the cardiac procedures were necessary, when in fact the Defendants knew that their representations were medically unnecessary and harmful to Plaintiff.

93. At all times material hereto, the Defendants knew that if they advised Plaintiff of the risks involved with performing these medically unnecessary cardiac procedures, Plaintiff would not have consented to the procedures. Therefore, Plaintiff relied on the false representations of the necessity of these cardiac procedures without knowledge of the risk to his health.

94. At all times material hereto, the Defendants failed to disclose to Plaintiff material facts concerning the harmful effects of the cardiac procedures to Plaintiff.

95. At all times material hereto, the Defendants knew that if they advised Edward Marshall of the risks to his health by consenting to and undergoing the unnecessary procedures, he would refuse to consent to the Defendant's performance of these procedures. As a result, the Defendants have been unjustly enriched, through profits, bonuses and incentive payments earned by not properly advising Edward Marshall of the risks associated with undergoing unnecessary stenting and pacemaker insertion procedures.

**COUNT VIII
(CONSUMER PROTECTION ACT)**

96. Plaintiff adopts, reiterates and incorporates herein by reference all allegations contained in the other paragraphs of this Complaint.

97. Edward Marshall obtained services from the Defendants primarily for his personal purposes.

98. The Defendants engaged in unfair, false, misleading and/or deceptive acts or practices in holding themselves out as safe and competent providers of cardiac medical care, all in violation of KRS 367.170.

99. Edward Marshall suffered ascertainable losses as a result of the Defendants unfair, false, misleading and/or deceptive acts or practices.

100. Edward Marshall is within the class of persons intended to be protected by the Kentucky Consumer Protection Act, KRS 367 *et seq.*

101. Edward Marshall has suffered actual damages as alleged in this Complaint as a result of the Defendants violation of KRS 367.170, which he is entitled to recover pursuant to KRS 367.220.

102. Plaintiff is entitled to recover reasonable attorney' s fees and costs of litigation pursuant to KRS 367.220(3).

**COUNT IX
(BATTERY)**

103. Plaintiff adopts, reiterates and incorporates herein by reference all allegations contained in the other paragraphs of this Complaint.

104. At all times material hereto, the Defendants represented to Plaintiff that the cardiac procedures were necessary, when in fact the Defendants knew that their representations were medically unnecessary and harmful to Plaintiff.

105. Defendants performed unnecessary and unlawful cardiac medical procedures on the Plaintiff.

106. These unnecessary and unlawful procedures necessarily required the Defendants' to physically touch and operate on the Plaintiff.

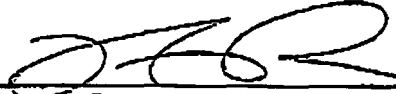
107. Had the Defendants represented to the Plaintiff that the cardiac procedures were in fact not necessary, he would not have given consent for the touching necessary for the performance of the procedures.

108. As a result of Defendants' unlawful touching, Edward Marshall suffered harm as set forth above.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory and punitive damages; interest; trial by jury; for costs herein expended; including but not limited to attorney's fees and emotional distress, loss of power to labor and earn; and for any and all further relief to which the Plaintiff may appear entitled.

As to Complaint Marshall v. CHI, et al.

Respectfully submitted,



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