

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
C. A. No.

JOHN DOE No. 8 - 12,      )  
Plaintiffs                  )  
                              )  
v.                            )  
                              )  
MELVIN D. LEVINE,        )  
CHILDREN'S HOSPITAL      )  
MEDICAL CENTER, and      )  
MICHAEL MOE No. 1-10,    )  
Defendants                )

**COMPLAINT**

**JURY TRIAL DEMANDED**

**INTRODUCTORY STATEMENT**

1. This is an action in which former child patients, now adults, bring this action individually, and on behalf of all others similarly situated, against MELVIN D. LEVINE, for medical malpractice and/or sexual abuse, and against CHILDREN'S HOSPITAL MEDICAL CENTER for negligence in failing properly to supervise LEVINE, over a period of twenty (20) years, during which time LEVINE improperly treated and/or sexually abused in excess of forty (40) minor patients in Massachusetts. Pursuant to Mass. R. Civ. P. 23, plaintiffs seek to maintain this suit as a class action.

**PARTIES**

2. Plaintiffs are individuals who bring this action in the names JOHN DOE No. 8 through 12. They are identified in separate Affidavits which will be served upon the defendants.
3. Defendant MELVIN D. LEVINE ("LEVINE"), formerly also known as Dr. Mel Levine, is an individual residing at Sanctuary Farm, 8218 McKee Road, Rougemont, North Carolina.
4. Defendant CHILDREN'S HOSPITAL MEDICAL CENTER, also known as Children's Hospital ("CHILDREN'S"), is a corporation duly organized under the laws of the

Commonwealth of Massachusetts with an usual place of business at 300 Longwood Avenue, Boston, Suffolk County, Massachusetts.

5. Defendants MICHAEL MOE No. 1-10 are individuals who took part in the conspiracy to hide the instances of abuse alleged, whose names are presently unknown to the plaintiff.

#### **JURISDICTION**

6. The Court has jurisdiction over defendant LEVINE under Massachusetts General Laws, Chapter 223A, §3, in that defendant, at all relevant times, (a) transacted business, (b) contracted to supply services, and (c) caused tortious injury by acts and omissions, all in the Commonwealth of Massachusetts.

#### **FACTS COMMON TO ALL COUNTS**

7. At all times relevant to this action, defendant LEVINE was a physician duly licensed under the laws of the Commonwealth of Massachusetts. Since 2009, he is no longer licensed to practice medicine.
8. At all times relevant to this action, defendant CHILDREN'S was a hospital duly licensed under the laws of the Commonwealth of Massachusetts.
9. At all times relevant to this action, from 1966 to 1985, defendant LEVINE was a physician, specializing in pediatrics, employed by defendant CHILDREN'S. A copy of his Curriculum Vitae is annexed, marked "A."
10. In 1985, defendant LEVINE left defendant CHILDREN'S, and joined the UNC Chapel Hill School of Medicine, and maintained a pediatric medical practice there.
11. On March 19, 2009, LEVINE signed a Consent Order, agreeing to surrender permanently his medical license, after the North Carolina Medical Board received complaints from five (5) pediatric patients, alleging that between 1987 and 2006 LEVINE had performed genital examinations on them which were not medically indicated. The Medical Board imposed two conditions: LEVINE could not ever

apply for reinstatement, and he could never practice medicine in any other jurisdiction. A copy of the Consent Order is annexed, marked "B."

12. Seven former patients of defendant LEVINE have made allegations of record that he performed genital examinations upon them which were not medically indicated, during which he stroked, massaged and manipulated the genitals of his patients in a manner which was not medically necessary.
13. JOHN DOE No. 6 filed suit in U.S. District Court (MA), C. A. No. 88-0739, in 1988. A copy of the Complaint is annexed, marked "C."
14. JOHN DOE No. 7 complained to the Massachusetts Board of Registration in Medicine in 1993. A copy of his complaint form is annexed, marked "D."
15. JOHN DOE No. 1 filed suit in Suffolk Superior Court, Civil Action No. 05-2828 (G), in 2005.
16. JOHN DOE No. 2 filed suit in Suffolk Superior Court, Civil Action No. 06-0385 (A), in 2006.
17. JOHN DOE No. 3 and JOHN DOE No. 4 filed suit in Suffolk Superior Court, Civil Action No. 06-3170 (D), in 2006.
18. JOHN DOE No. 5 filed suit in Suffolk Superior Court, Civil Action No. 08 - 1443 (H), IN 2008.
19. JOHN DOE No. 8 through 12 were all patients of defendant LEVINE at CHILDREN'S, were treated by him, between the years 1971 through 1984, when they were between the ages of 4 and 13 years of age, and are representative of the entire group of his male minor patients at CHILDREN'S during his entire career there.
20. During the course of his treatment of JOHN DOE No. 8 through 12, defendant LEVINE deviated from accepted medical standards, in that he performed genital examinations of his patients which were not medically indicated, during which he

stroked, massaged and manipulated the genitals of his patients in a manner which was not medically necessary.

21. JOHN DOE No. 8 through 12 each did not know, understand or remember that they had been harmed by defendant LEVINE's conduct until after March 31, 2008.
22. Defendant LEVINE failed to divulge in a reasonable manner to the plaintiffs, or their respective parents, sufficient information to enable them to give or withhold their consent to the course of treatment followed by defendant LEVINE, and he failed to disclose the manner of his treatment, or to obtain their consent.
23. The treatment defendant LEVINE provided to the plaintiffs violated the applicable professional and ethical principles and standards of his profession.
24. During each year of the period of time from 1966 through 1985, while he was a pediatrician at defendant CHILDREN'S, defendant LEVINE deviated from accepted medical standards, in that he performed genital examinations of numerous other minor patients which were not medically indicated, in that he stroked, massaged and manipulated the genitals of his patients in a manner which was not medically necessary, including the following individuals, who are listed in chronological order:  
John Doe No. 13, born 1956, treated approximately 1966-7, at about ages 9-11.  
John Doe No. 4, born 1957, treated approximately 1967-68, at about ages 10-12.  
John Doe No. 14, born 1954, treated approximately 1968-72, at about ages 12-17.  
John Doe No. 15, born 1963, treated approximately 1971, at about age 8.  
John Doe No. 16, born 1958, treated approximately 1971-73, at about ages 13-15.  
John Doe No. 8, born 1960, treated approximately 1971-74, at about ages 10-13.  
John Doe No. 17, born 1960, treated approximately 1972, at about age 12.  
John Doe No. 18, born 1963, treated approximately 1973-74, at about ages 10-11.  
John Doe No. 9, born 1962, treated approximately 1973-74, at about ages 10-11.  
John Doe No. 19, born 1966, treated approximately 1973-76, at about ages 7-10.

John Doe No. 20, born 1966, treated approximately 1973-76, at about ages 7-10.

John Doe No. 21, born 1967, treated approximately 1973-78, at about ages 8-11.

John Doe No. 1, born 1962, treated approximately 1974-75, at about ages 12-13.

John Doe No. 10, born 1964, treated approximately 1974-75, at about ages 10-11.

John Doe No. 22, born 1966, treated approximately 1975-76, at about age 9.

John Doe No. 23, born 1968, treated approximately 1975-77, at about ages 7-9.

John Doe No. 24, born 1966, treated approximately 1975-80, at about ages 9-14.

John Doe No. 11, born 1971, treated approximately 1975-84, at about ages 4-12.

John Doe No. 12, born 1965, treated approximately 1976-77, at about ages 11-12.

John Doe No. 2, born 1966, treated approximately 1977-80, at about ages 10-13.

John Doe No. 25, born 1969, treated approximately 1977-83, at about ages 8-14.

John Doe No. 26, born 1970, treated approximately 1977-84, at about ages 7-14.

John Doe No. 27, born 1972, treated approximately 1978, at about age 6.

John Doe No. 28, born 1967, treated approximately 1978-85, at about ages 11-18.

John Doe No. 6, born 1970, treated approximately 1978-79, at about ages 12-13.

John Doe No. 7, born 1970, treated approximately 1978-84, at about ages 7-13.

John Doe No. 29, born 1967, treated approximately 1979-83, at about ages 11-15.

John Doe No. 30, born 1967, treated approximately 1979-80, at about ages 11-12.

John Doe No. 31, born 1969, treated approximately 1980, at about age 10.

John Doe No. 5, born 1972, treated approximately 1980-85, at about ages 8-13.

John Doe No. 32, born 1971, treated approximately 1981-82, at about ages 10-11.

John Doe No. 33, born 1968, treated approximately 1982, at about ages 13-14.

John Doe No. 3, born 1977, treated approximately 1982-84, at about ages 5-7.

John Doe No. 34, born 1968, treated approximately 1983, at about age 15.

John Doe No. 35, born 1973, treated approximately 1983, at about age 9.

John Doe No. 36, born 1970, treated approximately 1983-84, at about age 13.

25. Defendant LEVINE has stated that he has treated over 15,000 patients during his career.
26. Plaintiffs are informed and believe that defendant LEVINE has treated approximately five thousand (5,000) male, minor patients at defendant CHILDREN'S, between the years 1966 through 1985.
27. Defendant LEVINE's practices and procedures indicate the likelihood that he deviated from accepted medical standards, in that he performed genital examinations which were not medically indicated, and/or were improperly conducted, on many, if not all, of his minor male patients at defendant CHILDREN'S.
28. Defendant CHILDREN'S was informed, by the parent of a minor male pediatric patient, in 1967, that defendant LEVINE had sexually assaulted her son.
29. Plaintiffs are informed and believe that other parents made complaints to defendant CHILDREN'S regarding LEVINE's performance of genital examinations which were not medically indicated, and/or were improperly conducted.
30. Defendant CHILDREN'S, knew, or in the exercise of reasonable care should have known, of defendant LEVINE's performance of genital examinations which were not medically indicated, and/or were improperly conducted.
31. Defendant CHILDREN'S knew, or in the exercise of reasonable care should have known, that defendant LEVINE was not a fit person to be placed in charge of the treatment of minor male pediatric patients, or to be allowed to provide unsupervised care.
32. Defendant CHILDREN'S knew, or in the exercise of reasonable care should have known, that defendant LEVINE was not a fit person to be retained in a position in which he would have access to minor male pediatric patients.
33. Defendant CHILDREN'S knew, or in the exercise of reasonable care should have

discovered, that defendant LEVINE was engaged in illegal and inappropriate conduct with minor male pediatric patients under his treatment.

34. Defendant CHILDREN'S failed to train defendant LEVINE properly to perform his duties in the treatment of minor male pediatric patients.
35. Defendant CHILDREN'S failed to supervise defendant LEVINE properly in the performance of his duties in the treatment of minor male pediatric patients.

#### **CLASS ALLEGATIONS**

36. Plaintiffs bring this action as a class action pursuant to Mass. R. Civ. P. 23 on behalf of all minor male patients of defendant LEVINE, treated by him at defendant CHILDREN'S, during the years 1966 through 1985.
37. The class representatives adequately and fairly represent the other patients and will protect the interests of the class.
38. The named plaintiffs bring this action individually and on behalf of the other similarly situated patients.
39. The class is so numerous that their joinder is impracticable. While the precise number of the members of the class is not yet known, the named plaintiffs believe that the class consists of approximately 5,000 members. The basis for this belief is that LEVINE states that he has had 15,000 patients from 1966 to 2008. If those patients are divided between Massachusetts and North Carolina, that means that there were 7,000 - 8,000 in Massachusetts. According to published articles, the diagnoses for ADD/ADHD, which was LEVINE's specialty, are made for males between 3 to 9 times more often for males than females. Articles in the field of psychology indicate that serial occurrences, such as those described by the plaintiffs, and the other identified patients, are reported by only about 10% of those affected.
40. The named plaintiffs' claims are typical of the claims of the other members of the

class, in that all members make the same claims: that defendant LEVINE, during the course of a medical treatment, performed genital examinations which were not medically indicated, and/or were improperly conducted, and that defendant CHILDREN'S knew that his treatment was improper in 1966.

41. Questions of law and fact are common to the class. The common questions of law and fact that exist as to all members of the class predominate over any question affecting only individual members,
42. A class action is superior to any other available means for the fair and efficient adjudication of this controversy. There will be no difficulty in the management of this action as a class action.
43. The named plaintiffs have retained counsel who are competent and experienced in class action and/or large group litigation. Plaintiffs have no interests which are contrary to, or in conflict with, those of the class members whom they seek to represent.

#### **COUNT I**

44. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
45. Defendant LEVINE owed a duty of care to the plaintiffs.
46. Defendant LEVINE breached his duty in that the treatment LEVINE provided was inappropriate and sub-standard, and violated the standards of therapeutic practice and the duty of care owed the plaintiffs.
47. As a direct and proximate result of defendant LEVINE's negligence, carelessness and lack of skill the plaintiffs have suffered and continue to suffer severe pain of body and anguish of mind and are entitled to recover damages for the injuries sustained.

#### **COUNT II**

48. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
49. Defendant LEVINE held himself out to be a person skilled in and capable of providing pediatric medical services to the plaintiffs, and for the consideration plaintiffs provided to him, LEVINE agreed to provide said services in a manner consistent with accepted medical practices.
50. Defendant LEVINE breached said agreement, and plaintiffs has been injured as a direct and proximate result of that breach.

#### **COUNT III**

51. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
52. Defendant LEVINE, as a physician, had a fiduciary relationship with the plaintiffs and owed plaintiffs a duty of trust and loyalty.
53. Plaintiffs reasonably reposed trust and confidence in LEVINE as their physician.
54. Defendant LEVINE violated said trust and confidence, breached his fiduciary duty and thereby proximately caused injury to the plaintiffs.

#### **COUNT IV**

55. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
56. Defendant LEVINE negligently inflicted emotional distress upon the plaintiffs.

#### **COUNT V**

57. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
58. Defendant LEVINE sexually assaulted, battered and abused the plaintiffs during their treatment at CHILDREN'S.
59. From 1966 through 1985, defendant LEVINE, during his treatment sessions, under

the guise of performing repeated, but unnecessary, physical examinations, sexually assaulted the plaintiffs, including numerous acts of genital fondling, masturbation, and other attempted and threatened acts of assault.

60. As a result of the acts of defendant LEVINE, the plaintiffs have been severely injured, have been required to undergo psychological treatment and therapy, and will continue to require this treatment and therapy in the future.

#### **COUNT VI**

61. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
62. Defendant LEVINE, by his several acts, intentionally inflicted severe emotional distress upon the plaintiffs.

#### **COUNT VII**

63. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
64. Defendant LEVINE interfered with plaintiff's rights under the constitution and laws of the United States and of the Commonwealth of Massachusetts, and is liable to plaintiffs in accordance with G.L. c. 12, §11H & I.

#### **COUNT VIII**

65. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
66. Defendant CHILDREN'S, along with persons whose names are presently unknown, knew, as early as 1967, that defendant LEVINE had sexually assaulted a minor male patient of the hospital.
67. Defendant CHILDREN'S received complaints, at various times, that defendant LEVINE was engaging in medical treatment which was unwarranted, improper and/or not in accordance with accepted medical practice.

68. Defendant CHILDREN'S had a duty to protect its minor patients from sexual assaults, and from medical treatment which was unwarranted, improper and/or not in accordance with accepted medical practice.
69. Defendant CHILDREN'S breached said duty by failing to take any action to prevent defendant LEVINE from committing assaults and/or rendering medical treatment which was unwarranted, improper and/or not in accordance with accepted medical practice.
70. Plaintiffs did not know, and could not have learned of defendant CHILDREN'S' breach of its duty before March 31, 2008.
71. As a result of defendant CHILDREN'S breach of its duty, the plaintiffs have been seriously and permanently injured.

#### **COUNT IX**

72. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
73. Defendant CHILDREN'S engaged in a conspiracy, along with persons whose names are presently unknown, to suppress, conceal, and prevent the disclosure of defendant LEVINE's sexual abuse of his patients.
74. Plaintiffs did not know, and could not have learned of defendant CHILDREN'S' acts to suppress, conceal, and prevent the disclosure of defendant LEVINE's sexual abuse of his patients before March 31, 2008.
75. As a result of defendant CHILDREN'S intentional acts, the plaintiffs have been seriously and permanently injured.

#### **COUNT X**

76. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.
77. Defendant CHILDREN'S, along with persons whose names are presently unknown,

fraudulently suppressed, concealed, and intentionally prevented the disclosure of defendant LEVINE's sexual abuse of his patients.

78. Plaintiffs did not know, and could not have learned of defendant CHILDREN'S' acts to fraudulently suppress, conceal, and intentionally prevent the disclosure of defendant LEVINE's sexual abuse of his patients before March 31, 2008.
79. As a result of defendant CHILDREN'S intentional acts, the plaintiffs have been seriously and permanently injured.

#### **RELIEF REQUESTED**

Plaintiffs demand:

- A. That the Court declare and certify this action as a class action pursuant to Mass. R. Civ. P. 23;
- B. Judgment enter against all of the defendants, jointly and severally, on each of the Counts stated, including multiple damages where authorized by law, in an amount which is fair, just and adequate for the injuries and damages sustained, and the pain and suffering endured, plus attorneys' fees, interest and the costs of suit; and
- C. Such other and further relief as the Court deems necessary and proper.

#### **PLAINTIFFS DEMANDS A TRIAL BY JURY ON ALL CLAIMS**

By their Attorneys,

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