IN THE STATE OF MARYLAND

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| RAPHAEL J. OSHEROFF, M.D.<br>5249 Duke Street<br>Alexandria, Virginia 22304,<br><br>Plaintiff | : | |
| v. | : | In The Circuit Court<br>For Montgomery County |
| CHESTNUT LODGE, INC.<br>500 West Montgomery Avenue<br>Rockville, Maryland 20850<br><br>-and- | : | |
| MANUEL ROSS, M.D.<br>500 West Montgomery Avenue<br>Rockville, Maryland 20850<br><br>-and- | : | At Law No. 66024<br>(HCA No. 82-262) |
| C. WESLEY DINGMAN, M.D.<br>500 West Montgomery Avenue<br>Rockville, Maryland 20850,<br><br>Defendants | : | |

AMENDED DECLARATION

I. JURISDICTION AND VENUE

1. The amount of this action exceeds Five Thousand Dollars and venue is proper in Montgomery County.

II. PARTIES

2. Plaintiff Dr. Raphael J. Osheroff is a nephrologist residing in and practicing medicine in Northern Virginia.

3. Defendant Chestnut Lodge, Inc. (hereinafter "Chestnut Lodge") operates a private psychiatric hospital in Rockville, Maryland. Defendants Ross and Dingman, at all times relevant hereto, were psychiatrists at Chestnut Lodge and employees of Chestnut Lodge, Inc. These

defendants are hereinafter collectively referred to as "Chestnut Lodge" and "health care providers."

## III. SUMMARY OF ACTION

4. Dr. Osheroff voluntarily admitted himself to Chestnut Lodge on January 2, 1979 complaining of depression and agitation. The clinical symptoms included: (1) progressive incapacitation which worsened during the morning; (2) anhedonia (an incapacity to find enjoyment); (3) agitation which led the patient to engage in pacing activities, almost unable to keep still; and (4) difficulty in concentrating and working effectively.

5. There are two kinds of depressions known to psychiatry. One kind of depression is an individual's reaction to external situations and events. It is usually milder and may respond to psychotherapy alone. This type of depression usually appears following a precipitating event such as a result or "symbolic" loss. Depending on the duration and degree of symptomatology, somatic treatments (i.e., mechanical and/or electroshock therapy) may or may not be indicated. The other kind of depression results from internal physiological causes and is called "endogenous" and may appear "out of the blue;" sometimes it begins as a "reactive" depression but then develops an independent biologic life of its own and is transformed to a depression having the characteristics of an endogenous depression and is sometimes referred to as "endogenomorphic." The endogenous and endogenomorphic depressions have a physiological basis. They are of a more severe profound nature and present with clinical characteristics indicating a physiologic disturbance in the central nervous system, such as sleep disturbance, excessive agitation as manifested by pacing and handwringing, weight loss and disturbance of mood. "Endo-

genous" or "endogenomorphic" depressions should be treated by somatic means.

6. The appropriate treatment for depression depends upon which type of depression is involved. Endogenous or endogenomorphic depressions, which are strongly grounded in physiological disturbances within the central nervous system, are responsive to medicinal or drug therapy. For this reason, it is important that health care providers dealing with depression perform a complete and careful diagnosis to ascertain the type of the depression from either classic clinical signs and symptoms and/or physiological testing.

7. Dr. Osheroff was suffering an endogenous of endogenomorphic depression (hereinafter referred to as "biologic depression"). Nevertheless, Chestnut Lodge negligently failed to properly diagnose the kind of depression from which Dr. Osheroff was suffering. The failure to make this proper diagnosis was a result not only of negligence but as well appears to be grounded in a doctrinaire approach that Chestnut Lodge applies to all patients in which it apparently refuses to recognize that some mental incapacities are physiological in origin.

8. In addition to negligently failing to diagnose Dr. Osheroff's biologic depression, Chestnut Lodge wet out to attempt to treat Dr. Osheroff by methods that were wholly inappropriate for his condition and which in fact caused him greater damage. The type of intervention utilized by Chestnut Lodge was confrontative psychotherapy and milieu manipulation designed to regress Dr. Osheroff. The aim of the regression was to destroy Dr. Osheroff's self-esteem and internal assumptions about his own worth in order to disintegrate and then restructure his personality. This was done by confining Dr. Osheroff to a locked ward where

he was subjected on a 24 hour a day basis to an environment populated by patients with a severe chronic schizophrenia. When Dr. Osheroff bridled at this attempted form of treatment, he was threatened by the health care providers at Chestnut Lodge with restraints and cold sheet packs.

9. In addition to negligently failing to diagnose Dr. Osheroff's true condition and to negligently applying wholly inappropriate and destructive treatment, Chestnut Lodge acted without Dr. Osheroff's informed consent. The deliberate attempt to regress was made without informed consent, and over a seven month period Dr. Osheroff deteriorated so badly that he ultimately lost any ability to functionally provide consent to any of the treatment that was given to him.

10. During the seven months that Dr. Osheroff was in Chestnut Lodge, he continued to deteriorate and it was only after he was finally taken out of Chestnut Lodge by his mother and stepfather and put in another psychiatric facility where his condition was properly treated and he was given proper medication, that within a matter of weeks his condition rapidly improved so that he was free of the depressive symptomatology and able to make plans to return to the life that he had been absent from for almost one year. The response of Dr. Osheroff to proper medication at the new institution, Silver Hill Foundation in Connecticut, was a classic response of a biologic depression to antidepressant medication and treatment.

11. As a result of the mistreatment and maltreatment by the health care providers at Chestnut Lodge, Dr. Osheroff has had to face a chronic aftermath of not only the depression but the terrible loss of self-esteem which was engendered by his destructive psychotherapy and inappropriate placement in a confined ward with psychotic patients.

Dr. Osheroff at present bears no stigmata of depressive disease and yet has had a severe loss of self-esteem and chronic severe demoralization which was present after the depression had been lifted and which can be directly attributed to the care which he received at Chestnut Lodge.

12. Because Dr. Osheroff was not given appropriate treatment and was regressed, the initial depressive illness was coupled with a secondary iatrogenic (that is, induced by physician intervention) destruction of his self-esteem. Because he was not rendered prompt treatment and was "regressed" he was kept away from his medical practice and from his children for a year. As a result, he suffered loss of his professional standing and as well his absence enabled his associates to appropriate his practice. It enabled the mother of his two oldest sons to sequester the children in such a way that Dr. Osheroff has not been able to resume his prior intense and meaningful relationship with these children for almost three years. It enabled the mother of his youngest son to keep that child away from him for one year during his hospitalization and only to achieve normal visitation after legal confrontation.

13. It is the failure of the health care provides to utilize appropriate and standard treatment for a classical biologic depression through and including the time of discharge on August 1, 1979 that provides an essential basis for this action. Additionally, this action is based upon the negligent application of ill-advised inappropriate treatment to a disease that should have been very easily treatable but was not because of the negligent failure of the health care providers and because of their doctrinaire refusal to recognize and utilize state of the art somatic therapies. Additionally, Dr. Osheroff suffers severe embarrassment, stigmatization, and legal discomfiture by gross violations

of the patient privilege and breaches of confidentiality. The health care providers regularly apprised other persons of intimate details concerning Dr. Osheroff's background and treatment which were later utilized against him in legal actions and other fora. Finally, the actions of the health care providers constituted a violation of the doctrine of informed consent.

## IV. FACTS

14. Paragraphs 1 - 13 are incorporated herein by reference.

15. Dr. Osheroff was admitted to Chestnut Lodge voluntarily on January 2, 1979.

16. Chestnut Lodge's initial differential diagnosis was the following:

1. manic depressive-depressive type; or

2. depressive neurosis "severe" and personality disorder unspecified; or

3. psychotic depressive reaction.

17. In fact, Dr. osheroff was suffering from a classic biologic depression which Chestnut Lodge failed and/or refused to diagnose and treat.

18. Further, it is apparent that the Lodge did not wish to treat the depressive illness that the patient presented for. Rather, it chose to delve into his "character structure" and created a bizarre plan which called for the treatment of Dr. Osheroff as a person without special status. Dr. Osheroff's status as a physician was going to be downgraded and he was not to be treated as a "special person." Instead, Chestnut Lodge set out to strip him of his self-esteem and sense of adult worth. Chestnut Lodge failed to recognize that Dr. Osheroff was suffering

from a biologic depression marked by agitation and pacing. In fact, there was no treatment provided for his depressive illness although he presented this as his major complaint.

19. Chestnut Lodge attempted to gather data about Dr. Osheroff and on February 2, 1979 the social worker had finished the family history producing a report on Dr. Osheroff's immediate family and his then current wife. The social worker noted that Dr. Osheroff was "dumping his troubles onto others" and suggested that this behavior pattern be stopped by cutting off free telephone communication with the outside world. As will be discussed below, in the course of taking history and interacting with relatives and business associates, the social worker and other health care providers at Chestnut Lodge committed numerous serious breaches of patient privilege and confidentiality.

20. After Dr. Osheroff had been incarcerated at Chestnut Lodge for two months, the staff held its first case presentation. There was no discussion of the biologic nature of his depression. Instead, the presentation dwelled on discussion of Dr. Osheroff's relationship with the mother of his two oldest sons (who were taken to Europe), his perceived priorities (business first, family second) and the fact that the sale of Dr. Osheroff's business and the loss of his two eldest children to Europe were the initial causes of his difficulties. It was also noted that Dr. Osheroff was complaining about the treatment (or nontreatment) he was getting at Chestnut Lodge. Supervising physicians noted that there was no evidence of psychosis.

21. Again at the time of his case presentation, the same differential diagnosis was repeated. Again there was no mention of the biologic nature of his depression. Although the clinical symptoms were

classical for biologic depression, i.e., a depression based on physiologic abnormalities, this diagnosis was not entertained nor were biological diagnostic tests (which can confirm clinical symptoms of biologic depression). There was no discussion of the utilization of biologic or somatic treatments, even though these treatments are appropriate anyway for two of the differential diagnoses noted by Chestnut Lodge. (Had treatment been initiated at the time of Dr. Osheroff's admission, by the time the first case presentation occurred, he would have been well and ready to return to work and/or outside psychotherapy if that was indicated at the time.) At the time of the first presentation, the prognosis was noted as "fair" and Chestnut Lodge found it questionable as to whether Dr. Osheroff had the psychological constitution to remain in treatment for the needed period of time, which they assumed at this point would be some years. Again there was no mention of physiological therapies or appropriate diagnostic tests.

22. Further on during this hospitalization, there is no real improvement noted. The patient of course was not given physiological therapies. His psychotherapist, Dr. Ross, noted that at the end of April, Dr. Osheroff brightened a little bit and let him know something of his past history other than his depressive complaints. In April, there was no change in the systematic picture noted. As of April, there was no appropriate treatment for the depression. In May, with Dr. Osheroff becoming preoccupied with legal action, i.e., attempts to block visitation with his eldest two children and to take joint custody away from him by their mother, he is observed to be in "melancholy." Ironically, "melancholy" is noted by the psychiatric community to be a typically severe form of depression that is particularly responsive to somatic therapy.

Chestnut Lodge still continued to ignore this. By June (after six months of no treatment of his biologic depression), the only clinical notations were that "Dr. Osheroff was not psychotic and he was no longer acutely suicidal."

23. In early July, Dr. Osheroff's mother and stepfather began discussing with Chestnut Lodge their dissatisfaction with his progress and considering the transfer of Dr. Osheroff to the Silver Hill Foundation in New Canaan, Connecticut. In response to this, a clinical evaluation and utilization was held in early July at which it was noted that Dr. Osheroff had a diagnosis of agitated depression and a "narcissistic" character disorder. Chestnut Lodge still wilfully refused to recognize that Dr. Osheroff was suffering from a biologic depression which could not respond to anything else by physiological therapies.

24. The health care providers continued to consider Dr. Osheroff's case only in light of its psychological aspects. It is apparent that they chose not to treat the depression, but to focus on what they perceived to be a character disorder, i.e., "narcissistic personality." Even assuming that Dr. Osheroff has this characteristic, that trait is not dangerous to himself or others so as to require long-term hospitalization. Chestnut Lodge's assessment was that Dr. Osheroff's narcissism stemmed from the special treatment and special regard he has always received from his mother and therefore, the treatment plan was designed to make Dr. Osheroff "realize" that he is in no way different than anybody else, including the psychotic schizophrenics on whose ward he was locked up for a period of almost eight months. Chestnut Lodge seemed to continuously observe that Dr. Osheroff was "unresponsive to treatment." This is not the case in that Dr. Osheroff did response to the "treatment,"

that is, he was regressed and almost destroyed as a functioning human being. In fact, whatever transacted as Chestnut Lodge was "anti-therapeutic."

25. In his interviews with his "therapists," Dr. Osheroff was made to feel that he was the sole source of any of the disasters that had befallen him in his life. This brutally destructive type of treatment coupled with the degradation of living for eight months on a ward with schizophrenics violates contemporary standard of "psychological" care afforded to patients who are suffering from depression. Indeed, his therapist repeatedly told him he was symbolically dead. The agitated component was not treated and therefore Dr. Osheroff was not afforded pharmacologic relief from this continuous need to pace. Dr. Osheroff continued to pace 12 to 15 hours a day.

26. Chestnut Lodge completely disregarded and derided the numerous requests by both patient and by his family for a trial of anti-depression medications, telling his family that they would wait another year and if the patient was still depressed, then they would consider the cost of anti-depression medication. Chestnut Lodge failed -- or refused -- to consider what a prolonged absence from his children and his career would mean to Dr. Osheroff.

27. During his period at Chestnut Lodge, Dr. Osheroff underwent a severe regression and disorganization. He lost 45 pounds, and underwent significant and continuous trauma to his feet because of his repetitive and continuous pacing. The only medical treatment offered to Dr. Osheroff was many visits to the podiatrist for treatment to his feet, the injuries of which resulted from his continuous pacing which resulted from failure to treat the agitated depression that he was suffering from. Subsequent-

ly, Dr. Osheroff consulted an orthopaedic surgeon for chronic hip pain (upon transfer from Chestnut Lodge). It was the opinion of the consultant that Dr. Osheroff had developed bursitis of the his secondary to the continuous pacing that he underwent in Chestnut Lodge.

28. On August 1, 1979 Dr. Osheroff was transferred to Silver Hill and within several weeks with the proper regimen of medication he was relieved of his acute depression and within three months resumed his life.

29. There were unusual complications awaiting him on his return to the world. Because he had been absent for a year and in a psychiatric facility, he returned to find his medical practice gone and ran into severe complications because of its appropriation by two ex-associates. In addition, the fact that Dr. Osheroff was hospitalized for a year led to his loss of contact with his two eldest children for a three year period. At this point in time, Dr. Osheroff still has not regained his original visitation rights with these children. Dr. Osheroff has been embroiled in legal difficulties all generated by his enforced absence from his world and spheres of activities. The legal difficulties included the immediate facing of a federal court suit with much attendant publicity on his resuming practice, which Dr. Osheroff won. Dr. Osheroff also underwent a suspension of his privileges at Alexandria Hospital which was instigated by a malevolent former associate who spoke to Dr. Osheroff's peers at this hearing about details of his hospitalization at Chestnut Lodge. Review of the testimony of that hearing reveals that there was violation of privilege by Chestnut Lodge and individuals in that many private confidences were used against him. He was also sued for divorce by his latest wife, the mother of his youngest son, and denied

an ability to see the son on appropriate terms. During this litigation, numerous breaches of confidentiality surfaced in discovery proceedings.

30. Dr. Osheroff, although he was properly treated at Silver Hill, was able to withstand the stresses of resuming and trying to restructure his practice after an almost year long separation. Had Chestnut Lodge correctly diagnosed and treated Dr. Osheroff's illness, he would have been present to supervise his practice and would not have lost tremendous amounts of income, prestige, reputation and standing. It is also apparent that had he not been away for such a prolonged period of time, he would not have lost contact with his children.

## V. CAUSES OF ACTION

COUNT I - MEDICAL MALPRACTICE

31. Paragraphs 1 - 30 are incorporated herein by reference.

32. The activities of the health care providers failed to comport with the standard of care in the following ways:

a. The negligent failure to diagnose by appropriate means a biologic depression.

b. The negligent, reckless and wanton failure to treat by appropriate biological means a biologic depression.

c. The failure to abide by a contract of treatment by purposely, wantonly and recklessly not treating Dr. Osheroff's depression as opposed to other perceived diagnoses, which could have been treated psychotherapeutically in an office as an out-patient if these diagnoses were correct, rather than forcing the patient to regress.

d. Failure to obtain informed consent by failing to disclose and discuss with the patient the alternative therapeutic modalities and the cost/benefits of each of the treatment modalities that could

be provided for.

e. The negligent, wanton and assaultive brutal use of confrontational "therapy" designed to regress the patient and also in this regard, improve attempted therapy through nightmarish milieu manipulation. This was not only inappropriate "treatment," but as well contra-indicated for depression and highly destructive.

f. Wanton violation of patient-doctor, client-social worker privilege and breach of confidentiality. Numerous confidential and privileged facts were regularly divulged to Dr. Osheroff's ex-associates, to his wife (who was vowing to divorce him) and to others. Indeed, the release of this information caused not only a deterioration in his relationship with others, but material divulged by the health care providers indeed surfaced and was used against Dr. Osheroff in various areas of litigation.

COUNT II - FALSE IMPRISONMENT

33. Paragraphs 1 - 32 are incorporated herein by reference.

34. The actions of the health care provides constituted false imprisonment both in the manner in which he was knowingly confined against his will with no justifiable excuse, and the length for which he was confined for monetary gains.

COUNT III - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

35. Paragraphs 1 - 34 are incorporated herein by reference.

36. The wanton and intentional use of confrontational therapy in a brutal fashion constitutes intentional infliction of emotional distress, i.e., a force regression.

37. The above-described actions of the health care providers caused and continues to cause Dr. Osheroff severe and permanent emotional

and psychological damages. In addition, from a pragmatic standpoint, Dr. Osheroff has suffered a loss of reputation in the community, monetary damages caused by his loss of reputation and professional standing, and the needless expenditure of many thousands of dollars of wasted funds to the health care providers.

WHEREFORE, plaintiff requests the following:

1. An award of compensatory damages in an amount sufficient to compensate him for his injuries.

2. An award of punitive damages for the wanton and reckless conduct of the health care providers set forth above.

3. Such other relief as this Court may deem just and proper.

Respectfully submitted,

RAPHAEL J. OSHEROFF, M.D.,
By Counsel

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