

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

RAPHAEL J. OSHEROFF, M.D.,
5249 Duke Street,
Alexandria, Virginia 22304,

and

RAPHAEL J. OSHEROFF, M.D., INC.,
5249 Duke Street,
Alexandria, Virginia 22304,

Plaintiffs,

v.

ROBERT GREENSPAN, M.D.,
7922 Washington Avenue,
Alexandria, Virginia 22308,

STEVEN TOLKAN, M.D.,
6209 Waterway Drive,
Falls Church, Virginia 22044,

PRINCE WILLIAM DIALYSIS FACILITY, INC.,
14904 Jefferson Davis Hwy., Suite 106,
Woodbridge, Virginia 22191,

and

MARGARET HESS,
1627 Drexel,
Takoma Park, Maryland,

Defendants.

IN CHANCERY NO.

11345

THIRD AMENDED BILL OF COMPLAINT

I. Jurisdiction

1. Due to the continuing harassment and interference with plaintiffs' business and professional interests as set forth below, available legal remedies will not afford plaintiffs the full and complete relief to which they are entitled.

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II. Parties

2. Raphael J. Osheroff, M.D., is a practicing physician who lives in Alexandria, Virginia and practices principally in Alexandria, Virginia.

3. Raphael J. Osheroff, M.D., Inc. (hereinafter "Osheroff, Inc.") is a professional corporation practicing nephrology in the Commonwealth of Virginia and in the City of Alexandria.

4. Defendants Tolkan and Greenspan are physicians licensed by the Commonwealth of Virginia, practicing in the City of Alexandria.

5. Defendant Prince William Dialysis Facility, Inc. is a Virginia corporation operating a dialysis facility in Woodbridge, Virginia, of which defendant Greenspan is president and sole shareholder.

6. Defendants Hess, Collins and Synan are former staff members of the Northern Virginia Dialysis Center.

III. Nature of Action

7. Plaintiffs bring this Complaint to seek redress against the shocking conduct of the defendants Greenspan and Tolkan who, by successive degrees, tried to take over, acquire and then steal the practice of Dr. Osheroff. Having failed in these efforts, and having left the employ of Dr. Osheroff, these defendants then sought by a frivolous lawsuit to obtain legally what they could not do illegally. While defendants Greenspan and Tolkan publicly represented themselves as physicians interested in providing optimal care and in breaking up a so-called "monopoly," in fact these defendants were embarked upon

a deceitful campaign to steal the practice of Dr. Osheroff, which had been built after many years of hard work, by taking advantage of Dr. Osheroff during the period in which he was undergoing personal illness. While these efforts were made, Drs. Greenspan and Tolkan were at the same time seeking to establish their own dialysis center in the Woodbridge area, secretly and purposely for their own personal use, while representing to plaintiffs that it was being done on plaintiffs' behalf and as trustees. For reasons stated below, the physician defendants engaged in conduct which has been described by a federal judge as shocking and motivated by greed and avarice, and included the concoction of stories and documents, one of which a federal court described as "almost fraudulent." These defendants, working in concert with defendants Hess, Collins and Synan, have sought to ruin the reputation of plaintiff Osheroff; have sought unsuccessfully to deprive him of the right to practice at a major hospital; have attempted to coerce patients (while these patients were actively undergoing dialysis) to leave Dr. Osheroff and have themselves replaced as these patients' physicians; have sought to utilize the help of an executive officer of National Medical Care (the corporation owning the NVDC) to pressure Dr. Osheroff to leave the practice of nephrology and to "open up a music store"; have embarked upon a fraudulent use of press conferences and press contacts to destroy the reputation of plaintiffs by representations of facts which were either untrue or which contained material omissions; and have engaged in other outrageous conduct as described below which is simply shocking to

the conscience. For these deceitful, malicious and wrongful activities, plaintiffs seek injunctive relief and damages as set forth below.

IV. Facts

8. Plaintiff Raphael J. Osheroff, M.D. is a duly licensed physician with his principal office in Alexandria, Virginia. His specialty is nephrology, which deals primarily with treatment of diseases of the kidneys.

9. Within the practice of nephrology, one of the subspecialties commonly practiced by nephrologists and by Dr. Osheroff is the administration of renal dialysis. Renal dialysis in essence is the use of a machine to artificially cleanse the blood by use of filters of the types of toxic substances which normally functioning kidneys remove. In instances of partial or total kidney failure, the use of renal dialysis to cleanse the blood is necessary to keep patients with this sort of kidney disease alive.

10. Kidney failure requiring dialysis is generally divided medically into two types: acute kidney, or renal disease, which involves a short term use of dialysis to replace malfunctioning kidneys; and chronic, or long term, renal disease, which involves and contemplates a continual uninterrupted treatment of the patient over a long period of time by use of dialysis. Those patients who have chronic kidney failure such as to require the use of kidney dialysis to keep them alive are known to have "end stage renal disease" or "ESRD."

11. Typically, patients with ESRD require dialysis on

a three times a week basis. Because of the expense of the equipment involved, such long term dialysis for end stage renal disease is extremely expensive, costing approximately twenty-three thousand dollars per week.

12. In the early 1970's, Congress amended the Medicare Program so as to provide for federal payment of the cost of all patients certified as having end stage renal disease and in need of continued renal dialysis. Much as with hospitals, the federal government has, in order to contain costs and to avoid duplication, required that an appropriate certificate of need be issued by the Department of Health, Education and Welfare and state authorities prior to the establishment of new renal dialysis units. While the Congress and the Department of Health, Education and Welfare have specifically not involved themselves in the manner in which renal dialysis centers are operated, they have ensured that, to avoid duplication, such centers cannot be established unless necessary.

13. In 1973, Dr. Osheroff, as part of his practice of nephrology, founded the Northern Virginia Dialysis Center (hereafter "NVDC") to provide renal dialysis for patients with end stage renal disease. In October of 1977, Dr. Osheroff sold the Northern Virginia Dialysis Center to National Medical Care, a national corporation which specializes in the ownership and management of renal dialysis centers. As part of the sale, Dr. Osheroff was given a service contract by which he retained the right to operate the center as its Medical Director, to obtain a certain percentage of the profits of the center and, as well, to restrict the medical staff using that center to physicians of his own choosing.

14. Such an arrangement is common practice in the industry and offers specific economic benefits to Dr. Osheroff as well as certain medical benefits, including quality care control.

15. Following numerous discussions, Dr. Greenspan joined Dr. Osheroff's private practice in June of 1978. His initial job was to provide medical services in Dr. Osheroff's practice and in the NVDC. It was orally agreed between Drs. Greenspan and Osheroff that Dr. Greenspan would engage in a two year employment relationship which would then result in the development of a partnership, with Dr. Greenspan ultimately sharing on a fifty percent basis in Dr. Osheroff's practice, Osheroff, Inc., which was devoted to the treatment of diseases of the kidneys, including, as well, the attending of patients on dialysis at the NVDC.

16. Defendant Dr. Tolkan, during the winter of 1977, made contact with Dr. Osheroff and upon discussion with Dr. Greenspan, it was agreed between Drs. Osheroff and Greenspan that Dr. Tolkan would join them in practice in July of 1978, but that Dr. Tolkan would not in the long range become a partner but would remain a salaried employee of the practice. Dr. Tolkan did, indeed, become employed by the practice in July of 1978.

17. In the summer of 1978, Drs. Tolkan and Greenspan attended patients in the hospitals and patients at the NVDC.

18. At the time that Drs. Greenspan and Tolkan joined the practice, Dr. Osheroff was already suffering from severe depression. From the period of June 1978 until January of

1979, Dr. Osheroff withdrew more and more from the practice because of his personal illness. Dr. Greenspan was initially quite supportive but then told Dr. Osheroff in late 1978 that unless Dr. Osheroff became more involved with the practice, he would leave. Pressure was put on Dr. Osheroff by Dr. Greenspan that if he went away and had his depression treated and cleared that he would maintain his practice for him and his role in the dialysis center. Dr. Greenspan repeatedly reassured Dr. Osheroff and others that he would act as caretaker and trustee in Dr. Osheroff's stead until Dr. Osheroff became well. Dr. Osheroff consulted another psychiatrist concerning hospitalization, and said psychiatrist suggested that Dr. Osheroff allow the psychiatrist to work with him on an outpatient basis for a period of four months to see whether he could treat this depression rather than subject him to the indignities of psychiatric hospitalization. Dr. Greenspan, upon hearing this, became indignant and threatened to leave the practice should Dr. Osheroff decide not to have himself hospitalized. Upon further assurances from Dr. Greenspan, Dr. Osheroff voluntarily had himself hospitalized at Chestnut Lodge Hospital in Rockville, Maryland for treatment of his depression in January of 1979.

19. During the first quarter of 1979, Dr. Greenspan quickly established his authority over Dr. Osheroff's practice and affairs at the dialysis center. When Dr. Greenspan was approached by other nephrologists in the Washington area to join them in March of 1979, he demanded official authority from Dr. Osheroff in order to continue directing Dr. Osheroff's practice.

Accordingly, with the permission of National Medical care, in March of 1979, Dr. Greenspan was appointed Acting Director of the NVDC.

20. Following his appointment, Dr. Greenspan embarked upon an active campaign to take over Dr. Osheroff's practice. Among the actions engaged in by Dr. Greenspan were the following:

(a) He wrote secret bylaws for the NVDC, without the permission or authority of National Medical Care or Dr. Osheroff, ostensibly giving himself certain employment rights. As will be discussed below, Greenspan did not tell anyone about these bylaws. Greenspan's secret purpose in constructing these bylaws was to render the Center fully accessible to him should there be a future dispute with Dr. Osheroff. Dr. Greenspan did not publicize these bylaws to the medical community at the time they were drafted, however, as said bylaws--by potentially opening up the NVDC to any physician--could have economic and Osheroff's ability to practice medicine. In the meantime, on November 30, 1979, he directed Martha Hall, a nurse/receptionist, to get a notebook and write down all the new patients, their addresses and phone numbers, dating back to the time that he was initially hired.

(e) Dr. Osheroff was then discharged from Silver Hill and began preparations to re-enter his practice.

(f) Dr. Greenspan was disturbed by Dr. Osheroff's impending return and falsely told Dr. Osheroff that Dr. Hampers, the Director of National Medical Care, stated that he did not want Dr. Osheroff to return.

(g) Dr. Greenspan then sought to enlist the help of Dr. Hampers to prohibit Dr. Osheroff from returning to the practice, telling Dr. Hampers that if that position was taken by National Medical Care, it would greatly help Dr. Greenspan's effort to buy the practice. Dr. Hampers and National Medical Care refused to be any part of such a scheme.

(h) When Dr. Osheroff tried to return to practice, Dr. Greenspan tried to have him barred from the unit, but was thwarted in these efforts by National Medical Care.

(i) During this time, Dr. Greenspan was bad-mouthing and defaming Dr. Osheroff in comments to hospitals and the medical community, making comments to the effect that Dr. Osheroff should open a music store, stop practicing medicine and that he was incompetent.

(j) On November 29, 1979, Dr. Greenspan and others at his request wrote letters to National Medical Care seeking to keep Dr. Osheroff out of the Center.

(k) About the same time, Dr. Greenspan sought by a well-coordinated campaign, to have Dr. Osheroff's privileges at the Alexandria Hospital revoked. He was successful to the extent that the Hospital did temporarily suspend Dr. Osheroff's privileges pending psychiatric examination. Said examination cleared Dr. Osheroff for further practice and the Alexandria Hospital reinstated his privileges. In his efforts, Dr. Greenspan actively told numerous untruths and lobbied to keep Dr. Osheroff from being able to practice.

(l) On December 12, 1979, Dr. Osheroff terminated Dr. Greenspan from his activities. Dr. Tolkan, who planned to open up the Woodbridge unit and acted in concert with Dr. Greenspan in attempting to take over the practice, resigned.

(m) Dr. Greenspan responded that he would "get Ray [Osheroff]," that he "wouldn't have to pay a thing," that "the practice was his," that patients in the clinic were his private patients and that "Ray wouldn't be able to practice in Virginia when he [Greenspan] was through." Greenspan also threatened that "we could not keep him out of the unit."

(n) Dr. Greenspan then stole stationery of the Northern Virginia Dialysis Center and, while numerous patients were undergoing renal dialysis, asked them to sign a statement to the effect that they did not trust Dr. Osheroff and preferred Dr. Greenspan as their doctor. Such conduct, as will be noted below, was described as "shocking" by a federal judge.

(o) About this time, while Dr. Osheroff's privileges were temporarily suspended, Dr. Greenspan began to tell patients that Dr. Osheroff's privileges were suspended from Alexandria Hospital and that should they get sick, Dr. Osheroff would not be able to take care of them. Defendants Hess, Collins and Synan, who were employed at the NVDC, actively sought to disparage plaintiff's reputation and to disrupt his medical practice.

(p) Greenspan began a period of active solicitation, including calling Dr. Osheroff's patients at their homes, offering free treatment to Dr. Osheroff's patients in an office that Dr. Greenspan and Dr. Tolkan established in the

same building as Dr. Osheroff's practice. At the same time, he, in connection with Hess, Collins and Synan, actively lobbied with Dr. Osheroff's staff, telling them that Dr. Osheroff's best interests would be served by him retiring and going into the music business. To this date, Drs. Greenspan and Tolkan and defendants Hess, Collins and Synan continue to disparage Dr. Osheroff in comments to patients, the medical community and the press.

(q) Greenspan solicited Dr. Osheroff's technicians to leave Dr. Osheroff's practice and join Dr. Greenspan in the treatment of Dr. Osheroff's acute kidney patients who were treated in hospitals. On December 17, 1979, Dr. Greenspan received two brand new machines at Alexandria Hospital.

(r) When Dr. Greenspan could not purchase Dr. Osheroff's practice and was having trouble stealing it, he instituted a frivolous federal lawsuit seeking an injunction to be allowed to treat Dr. Osheroff's patients, whom Greenspan and Tolkan had actively solicited at the Northern Virginia Dialysis Center. The federal district judge hearing the case described Drs. Greenspan and Tolkan's efforts at solicitation as "shocking," characterized their efforts as motivated purely for money, called the use of phony bylaws, upon which Dr. Greenspan was now seeking to rely, as "almost fraudulent" and denied relief.

(s) The next day, as arguments were being heard in federal district court, an inspection team from the Department of Health, Education and Welfare, pursuant to a "complaint," showed up at the Northern Virginia Dialysis Center to examine the Center's policies with regard to employees. Upon information and

belief, this complaint was instigated by or on behalf of Greenspan and Tolkan and defendants Hess, Collins and Synan for purposes of harassment.

(t) In addition to frivolous litigation and active solicitation of Dr. Osheroff's patients and staff, Drs. Greenspan and Tolkan engaged upon a public campaign in which they represented themselves as public interested physicians seeking to break a so-called "monopoly." In fact, the sole purpose was to destroy Dr. Osheroff's practice after the inability of Drs. Greenspan and Tolkan to steal it, to "take patients with them" to their new Woodbridge facility, which they had intended all along to be solely their own and not that in "trusteeship" for Dr. Osheroff, and to cover up their own mercenary and grossly unethical conduct.

21. As part and parcel of the foregoing conspiracy, defendants Hess, Collins and Synan have disrupted plaintiff's medical practice, sought to "keep book on him" and made defamatory statements to the press.

22. The conduct of Drs. Greenspan and Tolkan was motivated by avarice and greed and by an attempt to take advantage of Dr. Osheroff's illness to acquire at a cheap price or by theft what Dr. Osheroff, by many years of hard work, had himself developed. By shocking unethical solicitation, which continues to this day, by gross misrepresentations, lies and deceit, the conspirator/defendants have caused:

(a) Dr. Osheroff personally to suffer further humiliation and emotional distress at the attempted theft of his practice and ruining of his reputation;

(b) Osheroff, Inc. to lose a great deal of its business as a result of the disparagement of Dr. Osheroff by Dr. Greenspan;

(c) Dr. Osheroff and Osheroff, Inc. to lose business opportunities by means of contrived deceit in the Woodbridge, Virginia area; and

(d) Dr. Osheroff and Osheroff, Inc. to incur enormous legal fees in defending against patently frivolous and viciously motivated litigation.

23. The conduct of Drs. Greenspan and Tolkan and defendants Hess, Collins and Synan are wanton, malicious and shocking to the conscience and continues to this date.

V. Causes of Action

24. COUNT ONE: As stated in the foregoing, all the defendants have combined, associated, agreed, mutually undertaken and concerted together for the purpose of wilfully and maliciously injuring Dr. Rapahel J. Osheroff in his reputation, trade, business and profession. Said conduct is a violation of §§18.2-499 and 18-2-500 of the Code of Virginia.

25. COUNT TWO: For the reasons stated in the foregoing, all the defendants have combined, associated, agreed, mutually undertaken and concerted together for the purpose of wilfully and maliciously injuring plaintiff Osheroff, Inc. in its reputation, trade, business and profession. Said conduct is a violation of §§18.2-499 and 18.2-500 of the Code of Virginia.

26. COUNT THREE: For the foregoing reasons, the defendants Tolkan, Greenspan, Collins, Synan and Hess have defamed plaintiff Osheroff and injured his reputation.

27. COUNT FOUR: For the reasons stated above, defendants Tolkan, Greenspan, Collins, Synan and Hess have intentionally, maliciously and wantonly sought to interfere with the contractual relationship between plaintiffs Osheroff and Osheroff, Inc. and National Medical Care, attempting to cause a breach or disruption thereof.

28. COUNT FIVE: As employees and agents of Raphael Osheroff, M.D. and Raphael Osheroff, M.D., Inc., and on the basis of representations to third parties, defendants Greenspan and Tolkan stood in a fiduciary relationship with plaintiffs, and were bound to exercise utmost good faith and loyalty in the exercise of their duties as plaintiffs' representatives. Further, defendant Greenspan stated on several occasions that he was holding Dr. Osheroff's practice and starting the Prince William Dialysis Facility "in trust" for Dr. Osheroff. The conduct of the defendants Greenspan and Tolkan was directly adverse to plaintiffs' interests and thus breached the fiduciary obligation owed to Dr. Raphael Osheroff, M.D. and Dr. Raphael Osheroff, M.D., Inc. As a result of this breach of fiduciary duty, defendants Greenspan, Tolkan, and Prince William Dialysis Facility, Inc. stand to profit at plaintiffs' expense.

29. COUNT SIX: As set forth in the foregoing, defendant Greenspan has deliberately and intentionally interfered with the business, reputation and profession of

Raphael J. Osheroff, M.D. and Raphael J. Osheroff, M.D., Inc. and has deliberately and intentionally interfered with both the existing and prospective physician-patient relationships of Raphael J. Osheroff, M.D. and Raphael J. Osheroff, M.D., Inc., thereby causing plaintiffs severe financial loss, emotional distress, and loss of business and reputation.

WHEREFORE, plaintiffs demand the following relief:

1. Compensatory damages to Raphael J. Osheroff, M.D., in connection with Counts One and Six in the amount of ONE MILLION DOLLARS (\$1,000,000.00) which, pursuant to Virginia Code §18.2-500, shall be trebled at THREE MILLION DOLLARS (\$3,000,000.00).

2. Compensatory damages to Osheroff, Inc. on account of the cause of action stated in Counts Two and Six in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) which, pursuant to Virginia Code §18.2-500, shall be trebled at ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00).

3. Compensatory damages in connection with Counts Three and Six in favor of plaintiff Osheroff in the amount of TWO MILLION DOLLARS (\$2,000,000.00).

4. Compensatory damages in connection with Counts Four and Six, including the expenditure of plaintiffs' legal fees in connection with the frivolous lawsuit filed in federal court, and other damages caused by disruption caused by defendants in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00).

5. Punitive damages to the plaintiffs in connection with Counts Three, Four and Six on account of the malicious and shocking conduct of the defendants in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

6. An award of attorney's fees and costs.

7. Injunctive relief prohibiting the defendants from further interfering with the lawful business activities of plaintiffs.


8. That a constructive and/or resulting trust be imposed upon the profits of the Prince William Dialysis Facility in favor of plaintiffs.

9. Such other relief as the Court may deem proper.

Respectfully submitted,

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

COUNSEL FOR PLAINTIFFS:



JOHN D. GRAD
DAVID J. FUDELLA
HIRSCHKOP & GRAD, P.C.
108 North Columbus Street
Post Office Box 1226
Alexandria, Virginia 22313
(703) 836-6595