

CITATION: Wu v. Jugenburg, 2025 ONSC 3464
COURT FILE NO.: CV-17-00580377-0000
DATE: 20250610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
XUAN THO WU, STEVEN WU and) *James W. Srebrolow and Alexander Chekina,*
NHUNG PHUONG BACH) for the Plaintiffs
)
Plaintiffs)
)
– and –)
)
DR. MARTIN JUGENBURG and DR.) *Nina Bombier and Sahar Talebi, for the*
MARTIN JUGENBURG MEDICINE) Defendants
PROFESIONAL CORPORATION)
OPERATING AS TORONTO COSMETIC)
SURGERY INSTITUTE)
)
Defendants) **HEARD:** April 15-17 and 22-25, 2025

2025 ONSC 3464 (CanLII)

PARGHI J.

REASONS FOR JUDGMENT

[1] The Plaintiff, Xuan Wu, underwent what is commonly known as a “Brazilian Butt Lift” procedure at the Toronto Cosmetic Surgery Institute on December 20, 2016 (the “Surgery”). The Brazilian Butt Lift procedure (the “BBL”) involves using liposuction to remove fat from other body parts and grafting it into the buttock area. Very regrettably, Ms. Wu developed a significant infection after the Surgery and required further hospitalization and surgery. She now sues Dr. Martin Jugenburg, who performed the Surgery, together with his professional corporation, which operates as the Toronto Cosmetic Surgery Institute (the “Clinic”). Ms. Wu sues them on the basis that they did not obtain her informed consent prior to the Surgery, and as such she did not know that infection was a possible complication. Damages are resolved. The only issue before me is liability in relation to informed consent; no allegations are advanced in respect of the intra-operative or post-operative care provided to Ms. Wu.

- [2] For the reasons below, I dismiss Ms. Wu’s action. I find that her informed consent was obtained prior to the Surgery. It was obtained through the various consultations that took place between her and Clinic health care professionals, beginning with her initial consultation on October 27, 2016, and up to and including her discussion with Dr. Jugenburg prior to the Surgery on December 20, 2016.
- [3] The facts that some of these consultations involved health professionals other than Dr. Jugenburg, and that Ms. Wu did not meet with Dr. Jugenburg until the day of the Surgery, do not change my analysis. Obtaining informed consent is an act that may be appropriately delegated to a non-physician, and in this case it was so delegated in a manner that complies with the legal standard. Additionally, obtaining informed consent is a process, and the process of providing Ms. Wu with material information and obtaining her informed consent took place over a period of many months, concluding with (but not consisting solely of) her consultation with Dr. Jugenburg on the day of her surgery.

Factual Overview

- [4] On October 20, 2016, Ms. Wu contacted the Clinic to inquire about getting plastic surgery done there. She indicated, “Ideally I’d like to do a whole body modification type of thing. Not only the mid and thigh section, I’d like lipo in the upper arms and as well as cool sculpting for the double chin. From the lipo, I’d like removed fat to be put into the butt until it is like the ideal picture and into the breast” She sent photographs identifying the areas of her body she hoped to have liposuctioned.
- [5] She was then sent a screening medical history form, which she completed, and on October 27, 2016, she had a telephone consultation with Nurse Kim Crawford, a registered nurse and the Clinic’s managing director.
- [6] On October 30, 2016, Ms. Wu emailed Nurse Crawford asking about the date of her in-person consultation so that she could proceed to make travel arrangements. Nurse Crawford confirmed that it would take place on December 19, 2016.
- [7] On November 3, 2016, Ms. Wu contacted the Clinic to tell them that she had booked her round-trip travel from her home in Vancouver to Toronto for December 18 to December 25, 2016. She stated that she had booked business class tickets for the return so that she could avoid sitting down after the Surgery.
- [8] On November 7, 2016, the Clinic sent Ms. Wu a package of documents containing information about the Surgery and various informed consent documents.
- [9] On December 12, 2016, Ms. Wu signed the informed consent documents.
- [10] On December 13, 2016, Nurse Jessica Faraone, the Clinic’s pre-operative and post-operative nurse, contacted Ms. Wu to provide her with information regarding the Surgery.
- [11] On December 19, 2016, Ms. Wu attended the Clinic in person for a consultation.

- [12] On December 20, 2016, she attended a pre-operative assessment with Nurse Faraone and then an in-person consultation with Dr. Jugenburg. She then underwent the Surgery.
- [13] In the days that followed the Surgery, Ms. Wu developed an infection at the site of the fat injection. On December 24, 2016, she went to the emergency room at Toronto Western Hospital complaining of nausea and abdominal pain, but then refused treatment and left the hospital against medical advice when she began feeling better. On December 27, 2016, she returned to the Clinic for an assessment by Dr. Jugenburg as her pain and nausea had continued. Ms. Wu was subsequently admitted to Humber River Hospital after being referred there by Dr. Jugenburg. She required subsequent surgery and had a protracted hospital stay. By all accounts, she had a difficult time of things.
- [14] Because no issues are raised in respect of the intra-operative or post-operative care, and the only issue before me is liability in relation to the informed consent process, I do not address Ms. Wu's post-operative course in additional detail. However, I do discuss below the various pre-operative consultations she had with Dr. Jugenburg and Clinic staff, both via telephone and in person, because the issue of whether she provided informed consent to the Surgery turns in large part on the content, nature, and timing of those consultations.

The Law

- [15] To establish that Dr. Jugenburg did not satisfy his duty to obtain informed consent, Ms. Wu must establish the following:
- a. That there was an inadequate disclosure to her of the nature of the Surgery, its material risks, or the treatment options available to her, such that she did not provide informed consent; and
 - b. That she, or a reasonable person in her position, would not have proceeded with the Surgery but for Dr. Jugenburg's failure to disclose the information (*Stepita v. Dibble*, 2020 ONSC 3041, at paras. 83-86).
- [16] What must be disclosed to satisfy the first part of this test, including what risks are material, is a factual determination to be made based on all the circumstances of the case (*Brown v. Dr. Baum*, 2020 ONSC 1541, at para. 66). The courts have defined a "material risk" as one that a reasonable person in the patient's position would want to know about before they decide whether to proceed with a proposed treatment (*Watson v. Soon*, 2018 ONSC 3809, at para. 83). Probable risks, and rare and remote risks that would have serious consequences, must also be disclosed (*Markowa v. Adamson Cosmetic Facial Surgery Inc.*, 2012 ONSC 1012, at para. 195, citing *Videto et al. v. Kennedy* (1981), 33 O.R. (2d) 497 (C.A.), at pp. 502-503). The courts have rejected the suggestion that every conceivable risk associated with a procedure is to be disclosed (*Markowa*, at para. 194, citing *Hopp v. Lepp*, [1980] 2 S.C.R. 192, at pp. 204-205).
- [17] The second part of the test, which is concerned with causation, has both subjective and objective components (*Markowa*, at para. 198, citing *Arndt v. Smith*, [1997] 2 S.C.R. 539, at para. 6). The subjective component requires the plaintiff to demonstrate that, if properly

informed of the risk at issue, they would not have agreed to the procedure (*Watson*, at para. 84). The objective component considers what a reasonable person in the plaintiff's position, having regard to such considerations as age, income, and marital status, would have done (*Markowa*, at paras. 198-201). The objective branch is of particular importance because the subjective test is recognized as entailing hindsight reasoning that is inherently unreliable (*Stepita*, at para. 86). The court may rely on expert evidence on the objective branch of the analysis (*Piatkowski v. Drakos*, 2021 ONSC 4531, at para. 93).

Whether there was inadequate disclosure about the Surgery and its risks

- [18] Ms. Wu asserts that she did not understand the Surgery to entail any risks. As detailed below, she testified that her understanding of the risks of the Surgery was only that she may not like how her buttocks looked afterward, or that the injected fat may not be retained and the Surgery could therefore prove ineffective.
- [19] Viewing the record as a whole, I am, respectfully, unable to accept this submission. Based on the evidence discussed below, I find that Ms. Wu was provided with clear and comprehensive information about the material risks and possible complications of the Surgery, including some that could require subsequent surgery or result in death, and including the risk of infection. She was provided with this information on several occasions, both orally and verbally, across a lengthy time period beginning well in advance of the Surgery. She was given the opportunity to hear, review, and digest the information, and to ask questions about it. The nature of the Surgery, its material risks, and alternative treatments (including having liposuction only, or not having the surgery) were appropriately disclosed. She provided informed consent to the Surgery.

Ms. Wu's initial consultation with Nurse Crawford (October 27, 2016)

- [20] The clinical record indicates that Ms. Wu had a detailed consultation with Nurse Crawford on October 27, 2016, roughly two months before the Surgery. The consultation took place via telephone because Ms. Wu lived out of town. Nurse Crawford testified that she had no specific recollection of her consultation with Ms. Wu, although she confirmed that she documented the discussion contemporaneously and testified as to her usual practice in conducting initial consultations with BBL candidates.
- [21] The law is clear that I may rely on a health care provider's clinical notes as evidence of their personal observations and evidence that certain statements were made, where those clinical notes were made contemporaneously and in the usual course of their professional practice (*KK v. MM*, 2021 ONSC 3975, at paras. 34-35; *Ares v. Venner*, [1970] S.C.R. 608, at p. 626; *Barker v. Montfort Hospital*, 2007 ONCA 282, 278 D.L.R. (4th) 215, at para. 27).
- [22] Nurse Crawford's clinical documentation from that consultation indicates that she spoke with Ms. Wu about a range of matters, including:
- a. Ms. Wu's goal to have a "[n]icer, fuller rounder butt";

- b. the option of “fat transfer (butt/breasts/face),” including a BBL;
- c. the surgical details of the BBL, its risks, its benefits, its purpose, its goals, its limitations, and its potential post operative results; and
- d. general surgical risks including hematoma, seroma, infection, wound dehiscence, chronic pain, numbness or decreased sensation, asymmetry, injury to the surrounding structures, deep vein thrombosis and pulmonary embolism, and the signs and symptoms of each.

[23] I may also rely on evidence of a health care provider’s practice, habit, or custom, as circumstantial evidence of a fact in issue. Their usual practice is evidence of what occurred during a particular patient encounter, even if their actions were not documented (*Graham v. Bridgepoint Health*, 2025 ONSC 7210, at para. 134; *Penate v. St. Michael’s Hospital*, 2022 ONSC 4939, at para. 112). The courts have observed that such evidence as to usual practice carries great weight as to how the health care provider acted on the day in question, given what is typically a long time span between the time the treatment at issue was provided, and the trial (*Lee v. Lee*, 2015 ONSC 7509, at para. 58; *Di Tacchio v. London Health Sciences Centre*, 2013 ONSC 1274, at para. 16).

[24] Nurse Crawford testified in detail about what she would have discussed with Ms. Wu during the consultation, based on her usual practice. She testified that the consultation would have been scheduled for at least an hour. She would have discussed alternatives to the BBL, such as having just the liposuction without the fat transfer. She would show the patient what it would look like to just do liposuction alone, and many patients would go for that instead. She also would have discussed the nature of the surgery, the risk of infection, and the consequences of infection, including that it could jeopardize the intended aesthetic result, create scar tissue, and leave Ms. Wu with a worse-off appearance than she had before the surgery. She would have told Ms. Wu that when you remove fat and inject it into compromised skin, there is a risk of infection that is real. In her testimony, Nurse Crawford described the risk of infection as the next most feared complication after fat embolism. She said she also would have discussed general surgical risks, including deep vein thrombosis and pulmonary embolism. She would have discussed each of the risks enumerated in the record. She would never advise a patient that there were no risks involved in surgery. She would never tell them that the only risks involved are that they may not get the aesthetic results they seek. She wanted to make sure that a patient understands that their surgery has risks, including potentially fatal risks.

[25] Nurse Crawford testified that she would have told Ms. Wu that she was going to receive a detailed information package that she must read, understand, and sign, and that she should call her if she had any questions.

[26] The evidence of both Dr. Jugenburg and Nurse Crawford was that Dr. Jugenburg always reviewed Nurse Crawford’s consultations to confirm the recommendations and plan. He reviewed Ms. Wu’s clinical record shortly after her October 27, 2016 consultation. This was his first involvement in her care. He agreed with Nurse Crawford’s assessment.

- [27] For her part, Ms. Wu had no recollection of this discussion with Nurse Crawford. She testified that she did not speak with Nurse Crawford over the phone. Speaking about her interactions with Nurse Crawford generally, she testified that Nurse Crawford only ever discussed with her the aesthetics of the Surgery, and nothing more.
- [28] Ms. Wu's evidence that she never spoke with Nurse Crawford by phone is inconsistent with Nurse Crawford's clinical documentation, which she prepared contemporaneously and in furtherance of her professional obligations, and with Nurse Crawford's extensive and detailed evidence as to her usual practice during consultations with BBL candidates. I do not doubt the sincerity of Ms. Wu's belief that she had no telephone consultation with Nurse Crawford. However, I do not consider her evidence on this issue reliable in this respect. Based on the record before me, I find that she did have such a discussion, and that its contents are accurately captured in the clinical documentation and Nurse Crawford's trial testimony. I find that the risks and potential complications of the Surgery, including infection, and alternatives to the Surgery, are among the topics that were discussed with Ms. Wu during the consultation.

Subsequent correspondence between Ms. Wu and Nurse Crawford, and Ms. Wu's review of the Clinic's information package and signing of the consent forms (October 26, 2016 to December 12, 2016)

- [29] Beginning on October 26, 2016, Ms. Wu and Nurse Crawford corresponded via email about various logistics regarding the Surgery. They scheduled her pre-surgical consults. On November 2, 2016, Ms. Wu told Nurse Crawford that she had booked her trip to Toronto for the Surgery from December 18, 2016 (two days before the scheduled date for the Surgery) to December 25, 2016.
- [30] On November 7, 2016, the Clinic sent Ms. Wu an information package describing the BBL and containing different consent forms, including one for the Surgery. The information package was approximately 28 pages long. It provided detailed descriptions of the liposuction and fat reinjection components of the BBL, and discussed pre- and post-surgical instructions in some detail. Relevant to the issue of informed consent, the information package contained the following:
- a. A document entitled "BEFORE YOU SIGN YOUR CONSENT FORMS," which stated (emphasis in original): "It is imperative that you **fully understand** what has been explained to you. If you have further questions or do not understand anything in the following documents, we encourage you to contact us to discuss your questions." It went on to inform the patient that during their consultations they have had a chance to discuss the procedure with Dr. Jugenburg or Clinic staff and, including details of the procedure, alternative treatments, and "potential risks and complications, how to recognize them, and how they are treated". It stated (emphasis in original): "**If you feel any of the above points has NOT been explained to you to your satisfaction, please notify us.**";

- b. Information about “signs and symptoms of complications” of the BBL “that require urgent treatments”, including deep venous thrombosis, fat embolism, pneumothorax, and abdominal perforation;
- c. Information about alternative treatments to the BBL, including “not having any surgery at all, butt implants, or diet and exercise”;
- d. A consent form for the BBL, which provided, “Although complications following Brazilian Butt Lift are infrequent; the following may occur,” and then listed and described seven potential complications: bleeding, skin irregularities, infection, numbness or increased skin sensitivity, scarring, dizziness, and deep venous thrombosis. In respect of infection, the consent form stated, “Infection is rare but may occur and, treatment with antibiotics and/or drainage may be required. In rare instances surgery may be required for severe infection (necrotizing fasciitis.)”;
- e. A document asking Ms. Wu to confirm that she had received, read, and “**fully**” understood various documents in the package about the BBL, including ones entitled “General Surgical Risks,” “Brazilian Butt Lift Information and Consent,” and “General Surgical Consent,” and to certify that she had reviewed “**the above listed documents thoroughly,**” understood the “**goals, limitations, and possible complications of Brazilian Butt Lift surgery,**” and accepted them and wished to proceed with the operation (emphasis in original);
- f. Information about “signs and symptoms of complications” of liposuction “that require urgent treatments”, including deep venous thrombosis, fat embolism, pneumothorax, and abdominal perforation;
- g. Information about alternative treatments to liposuction, including not treating the areas of fatty deposits, diet and exercise;
- h. A consent form for liposuction which likewise enumerated possible risks and complications, including infection, which it described in similar language;
- i. A document asking Ms. Wu to confirm that she had received, read, and “fully” understood the documents in the package about the liposuction surgery, and to certify, “I have read this entire document and understand it fully,” which again was in bold type;
- j. Information about general surgical risks, including bleeding, infection, change in sensation, skin discolouration or swelling, skin sensitivity, internal sutures, scarring, asymmetry, delayed healing, allergic reactions, seroma, and pain. In respect of infection, the document stated, “Infection is unusual after surgery. Should an infection occur, additional treatment including antibiotics, hospitalization, or additional surgery may be necessary”; and
- k. A general surgical consent form in which Ms. Wu confirmed that Dr. Jugenburg or his staff had explained to her surgical operation, and advised her of its associated

material risk, advised her of alternative treatments, and confirmed that she understood and accepted various enumerated risks of surgery (including infection).

- [31] Ms. Wu was required to initial each page of the information package, and to sign and fill out information in various places throughout the package. She did so.
- [32] It is uncontested that the information package was detailed and appropriate in its content and language. The defence's plastic surgery expert, Dr. Selig Krajden, is the former Chief of Surgery at Brampton Civic Hospital, former Division Head of Plastic Surgery at William Osler Health System, and former President of the Ontario Society of Plastic Surgeons. He held all three of these titles at the time of the Surgery. Dr. Krajden testified that the information package was "very comprehensive" and was "written in clear language" that most lay persons could "easily comprehend". Ms. Wu's plastic surgery expert, Dr. Stephen Brown, has been in private practice for over 25 years and is the Medical Director of Briarwood Cosmetic Surgical Centre in Oakville. He has trained medical residents at McMaster University in aesthetic surgery and has active staff privileges at various hospitals. Dr. Brown agreed that the information package was "fulsome and more than adequately disclosed the material risks".
- [33] Both experts also testified that informed consent is a "process," and that disclosing risks and complications earlier on in the process is preferable; it gives a patient time to reasonably reflect on the risks and complications and decide whether they wish to proceed. It avoids creating any circumstance of duress. It is uncontested that the package was provided to Ms. Wu on November 7, 2016, and in her possession throughout until she signed its various documents on December 12, 2016, over a month later. In my assessment, she received the information early enough in the informed consent process to be able to reasonably reflect on the risks and complications and decide whether to proceed, all without experiencing duress.
- [34] Both experts also agreed that in the informed consent context, a patient has the responsibility of reviewing the written information provided to them and identifying any lack of understanding they may have about the documentation. There is an onus on the patient to ask questions. If the patient does not ask questions or highlight concerns, a physician may reasonably assume the patient has reviewed and understood the information provided to them. If the patient signs the consent documentation and indicates they have no questions, a surgeon may rely on the signed documentation.
- [35] In her testimony, Ms. Wu confirmed that she received the information package, read the documents, initialled and signed them, and signed the certification that she had reviewed the documents "thoroughly". The documents did not tell her "much beyond" what she "already" knew. She agreed that she had the documents in her possession for one month, which was "lots of time" for her to read them. She agreed that the information package instructed her to read all of the documents carefully, to keep the package for reference, and to write her name on the top of every page and to initial the bottom of every page to certify that she had read each page. She understood that any bolded sections of the documents were particularly important.

- [36] Ms. Wu signed the consent documents, including the consent for the Surgery, on December 12, 2016, after having had them in her possession for over a month. The only question she appears to have posed after receiving the information package was whether thigh liposuction was included in the Surgery. She did not pose any questions about the consent documents, either during that one-month period or afterward.
- [37] Although Ms. Wu confirmed in her testimony that she read the documents, she claimed she had not understood them. She testified that she signed them to confirm that she had read them, but not to confirm that she had understood them. She did not suggest that there were particular terms or concepts in the documents, or particular pages in the information package, that she struggled to understand. She simply professed to not have understood it at all. She appears to have construed the documents as something she had to sign before being able to have a consultation with Dr. Jugenburg. She testified that even after she read the information package and consent documents, her understanding of the risks of the Surgery was only that her buttocks may be too large after surgery, she may not like the appearance of her buttocks after surgery, or that the surgery would be ineffective in the sense that her body may not retain the injected fat, and the surgery fee would be wasted.
- [38] Respectfully, this claim stretches credulity. The information package was, according to both parties' experts, "comprehensive"; it "more than adequately disclosed the material risks" of the Surgery in clear language understandable by a lay person. Ms. Wu's claim that she simply did not understand them is difficult to accept on its face.
- [39] Moreover, despite this professed lack of understanding, Ms. Wu signed the documents to confirm that she understood them, returned them, and proceeded with the remaining pre-operative steps, without signalling any questions or concerns to the Clinic. In my view, a reasonable reader who failed to understand the documents would not have done this. They would have posed a follow-up question, or several follow-up questions, to Nurse Crawford or other Clinic staff, or told them that they did not understand the information in the package at all, or otherwise communicated that there was some issue. In so doing, they would meet the obligation on them to identify their questions or concerns, an obligation about which both experts testified. Yet Ms. Wu did none of those things. Indeed, she confirmed in cross-examination that Nurse Crawford answered every question she asked, but that she never asked Nurse Crawford about risks.

Ms. Wu's pre-operative discussion and email exchange with Nurse Faraone (December 13, 2016)

- [40] On December 13, 2016, Nurse Faraone contacted Ms. Wu to provide her with information regarding the Surgery. Nurse Faraone did not have an independent recollection of Ms. Wu. However, she documented the discussion contemporaneously in Ms. Wu's clinical record, and testified as to her usual practice for such discussions.
- [41] Ms. Wu's clinical record indicates that Nurse Faraone filled out a pre-operative checklist in respect of Ms. Wu, which entailed speaking with Ms. Wu about various matters including medication and reminders about preparing for the Surgery. Nurse Faraone testified that,

during this discussion, she would have reminded Ms. Wu of the pre-operative care instructions and asked her to complete any outstanding requirements prior to Surgery, including submitting any signed consent documents. Nurse Faraone would have advised Ms. Wu that Ms. Wu should email her if she had any questions regarding the Surgery.

[42] Nurse Faraone also sent Ms. Wu an email reminding her to review the pre-operative and post-operative care instructions in the information package and reiterating that if she had questions she, should email Nurse Faraone. She testified that, if Ms. Wu had had questions, she would have answered them.

[43] Ms. Wu testified that she has no recollection of receiving an email from Nurse Faraone on December 13, 2016, or a telephone conversation around that time. She did not deny having had these interactions with Nurse Faraone. I find that she did speak with Nurse Faraone and receive an email from her around this time. I make this finding based on the clinical documentation created by Nurse Faraone during the assessment and her granular evidence as to her usual practice in respect of such assessments and related email communications with patients. I accept that Nurse Faraone asked Ms. Wu to email her if she had any questions both while filling out the pre-operative checklist and separately via email.

Ms. Wu’s in-person consultation with Nurse Crawford (December 19, 2016)

[44] Ms. Wu went to the Clinic for an “in-house consult” on December 19, 2016, the day before the Surgery. The clinical notes from this consult state the reason for the Surgery and indicate that pre- and post-operative care were discussed and an examination of Ms. Wu was conducted in which she was measured and photographed in anticipation of the Surgery.

[45] Nurse Crawford testified that the purpose of the in-person consultation was to ensure that the patient’s medical information had not changed since the date of the telephone consultation. The consultation would have been scheduled for 45 minutes. She testified about her usual practice for such consultations, stating that she would have taken Ms. Wu’s measurements to confirm that she remained eligible for the Surgery. She would have discussed or re-discussed with Ms. Wu such topics as pre-operative and post-operative care requirements, including not eating or drinking and having a caregiver to monitor her after the Surgery, the consent forms, and Ms. Wu’s goals for the Surgery. She would have reminded Ms. Wu to be on the lookout for complications such as excessive bleeding, pain, or asymmetry. She would have asked Ms. Wu if she had any questions.

[46] Ms. Wu testified that she understood that an in-person consultation would be conducted by Dr. Jugenburg, to obtain his assessment of whether she should proceed with the Surgery. However, she acknowledged that nobody at the Clinic had given her the impression that it would be Dr. Jugenburg doing the in-person meeting. She acknowledged that she never expressly asked to meet with Dr. Jugenburg in her email correspondence with Clinic staff or in her in-person consultation with Nurse Crawford on December 19, 2016.

[47] Both Dr. Jugenburg and Nurse Crawford testified that if Ms. Wu had asked to see Dr. Jugenburg, or if Nurse Crawford herself felt that Ms. Wu should be seen by Dr. Jugenburg,

Nurse Crawford would have facilitated such a meeting and Dr. Jugenburg would have made himself available for it. It was their usual practice to arrange for in-person meetings with Dr. Jugenburg in such circumstances. Their evidence on this point was uncontroverted.

- [48] Ms. Wu testified that she did not recall discussing pre-operative or post-operative Surgery care during the in-house consultation with Nurse Crawford. She described the consultation as just a “meet-and-greet”. She testified that she was not examined during the consultation. When shown the photographs and measurements contained in the clinical documentation for this consultation, she first maintained her answer that she had not been examined because she did not recall any examination. She then said she was not sure and that she just had the impression that she was not examined.
- [49] As with the other consultations about which Ms. Wu testified she has no recollection, I find her evidence less reliable than that of the Defendants. I am satisfied, based on the clinical record and the trial testimony of Nurse Crawford regarding her usual practice, that such a consultation did take place the day before the surgery, and that it was substantive in nature, addressing the topics to which Nurse Crawford testified, including risks and complications of the Surgery and whether Ms. Wu had any questions about the Surgery.

Ms. Wu’s pre-operative nursing assessment with Nurse Faraone (December 20, 2016)

- [50] On December 20, 2016, Ms. Wu arrived at the Clinic for her Surgery at or around 6 a.m. She testified that she arrived before any of the staff because she “was excited”. She spoke with the receptionist at the front and was then taken in. Things were “kind of a blur”.
- [51] Although Ms. Wu does not recall ever meeting Nurse Faraone, the clinical record indicates that she underwent a pre-operative nursing assessment with Nurse Faraone on the day of the surgery, December 20, 2016. I find that she did have such an assessment, based on the record and Nurse Faraone’s evidence.
- [52] The clinical record indicates that Ms. Wu signed documentation to confirm that she was advised about post operative care and to confirm the operation details of the Surgery. The clinical documents describe the Surgery as “Brazilian Butt lift (liposuction to abdomen, flanks, bra lines, arms)”. They contain a pre-operative checklist, completed by Nurse Faraone, that documents Ms. Wu’s pre-operative state, including her vital signs, preoperative medications, and the time at which she had last eaten, and confirmed that her consent documents were present.
- [53] Nurse Faraone testified that, to complete the checklist, she would have spoken with Ms. Wu to ensure that she had fulfilled the necessary requirements prior to undergoing the Surgery. She would have asked Ms. Wu to verbally confirm, in her own words, which procedure she was about to undergo. She would have reviewed the consent documents with Ms. Wu to ensure that Ms. Wu had signed each required page. She would have asked Ms. Wu if she had any questions, and if Ms. Wu had any questions she would have answered them or had Dr. Jugenburg do so. I accept Nurse Faraone’s evidence on her discussion with

Ms. Wu, including that she would have asked Ms. Wu if she had any questions. Nurse Faraone's evidence was detailed and credible.

Ms. Wu's pre-operative consultation with Dr. Jugenburg (December 20, 2016)

- [54] Dr. Jugenburg had a pre-operative consultation with Ms. Wu on the morning of December 20, 2016, prior to the Surgery.
- [55] The clinical record indicates that he saw her in the pre-operative room, reviewed the surgical plan with her, and made markings on her body in anticipation of the surgery. She reviewed the markings in the mirror with Dr. Jugenburg. She agreed with the markings. He discussed the limitations of the Surgery with her. She was then taken to the operating room.
- [56] Dr. Jugenburg testified that he had no recollection of Ms. Wu from before her complications developed. He testified as to his usual practice during pre-operative consults with patients. He said he would have reviewed the pre-operative checklist that Nurse Faraone had just completed; asked Ms. Wu to describe the procedure she was about to undergo, in her own words; drawn markings on her body; taken photographs of the markings, and explained to her his surgical approach. He would have discussed potential complications she should be aware of after the Surgery, and the signs and symptoms to watch for in respect of those complications. For a BBL, he would have discussed bruising, swelling, fat loss, blood clots, and infection. He would have confirmed that she had reviewed and signed the consent forms. He would have asked if she had any questions. If he sensed she had questions, he would have questioned her.
- [57] He testified that he would never tell a patient that the only risk of a BBL is that the results may not be what the patient was hoping for aesthetically. He also testified that no patient would ever be required to pay a surgical fee in full and sign the consent forms for the surgery simply in order to meet with Dr. Jugenburg.
- [58] Ms. Wu's evidence of her pre-operative consultation with Dr. Jugenburg was that, while he did draw markings on her body and take photographs of the markings, he did not discuss the details of the Surgery or its potential risks. She agreed that he invited her to ask questions. She testified that the only question she asked him was about whether he could, in addition to performing the Surgery as planned, also perform liposuction in her pubic area. He responded to that question. She did not ask him any other questions.
- [59] Both Dr. Jugenburg and Ms. Wu agreed that he asked her if she had questions. They disagreed as to whether he discussed the details and limitations of the Surgery with her. Based on the clinical record before me, I find that he did. I do not doubt the sincerity of Ms. Wu's evidence to the contrary, but I am of the view that her memory on this point is not reliable, in light of the clinical record and her own testimony that everything was "kind of a blur" for her that morning.

The disclosure of material risks over the course of the consultations

- [60] I find that, through these various consultations and the provision of the information package to her, Ms. Wu was provided with adequate disclosure of the material risks of the Surgery and with the opportunity to ask questions and have them answered.

The delegation of obtaining informed consent

- [61] Ms. Wu asserts that one of the ways in which Dr. Jugenburg failed to obtain her informed consent to the Surgery was by improperly relying on non-physician Clinic staff – Nurse Crawford and Nurse Faraone – to have many of the consent-related discussions with her. She states that by not discussing all the risks and complications directly with her, and only meeting with her just before the Surgery, Dr. Jugenburg breached the standard of care for obtaining informed consent. Dr. Brown is also critical of Dr. Jugenburg on this point.
- [62] I am unable to agree. The College of Physicians and Surgeons of Ontario, Dr. Jugenburg’s licensing body, has issued a *Consent to Treatment* policy that expressly permits the act of obtaining consent to be delegated by a physician to another health care provider, if the physician has confidence that the health care provider has the knowledge, skill, and judgment required to obtain consent. The policy reiterates that it is ultimately the physician’s responsibility to obtain informed consent, but squarely contemplates that the physician need not be the only one having consent-related discussions with the patient.
- [63] Dr. Jugenburg had confidence in the ability of Nurse Crawford to play the role she did in explaining the Surgery and its material risks and complications to Ms. Wu. This is clear from his evidence. He testified that initially after Nurse Crawford started working with him in 2012, he would do all the initial consultations with patients, and Nurse Crawford would attend them and “shadow” him. They would discuss each patient at the end of each consultation. Over time, he stepped back somewhat and patients who had already had their initial consultations with him would see Nurse Crawford when they returned to the Clinic. Eventually, she began doing initial consultations and he would come in and check what she had done. By 2016, she was doing the consultations on her own and would involve him if the issues or the consultation were complicated. She had “extensive” experience with BBL patients based on her time working with him. Dr. Jugenburg described Nurse Crawford as a “very caring person” who “really cares for” the patients, “takes pride in how she does” the consultations, and “wants” patients to be informed about potential risks or complications. He was “confident” she could provide patients with pertinent information about the BBL and its material risks and possible complications: she understood the risks and what was involved in the procedure and recovery. Engaging in dialogue with patients was “one of her strengths”: she would “always take her time” to talk to patients, invite them to ask questions, and make sure they did not feel rushed.
- [64] I am also of the view that Dr. Jugenburg’s confidence in Nurse Crawford was reasonable. Nurse Crawford’s documentation and evidence as to her usual practice when obtaining informed consent was clear and compelling. She displayed a very strong understanding of the clinical details she said she would discuss with patients, including in respect of the material risks and potential complications associated with the two components of the BBL and with surgery in general. She explained cogently what she would tell patients about

those various risks and complications. She explained how she would gauge a patient's understanding of what she was telling them. She explained how she would, throughout the process, prompt the question to pose any questions they may have, and ensure that they received proper answers to those questions either from her or from Dr. Jugenburg. Not a single aspect of Nurse Crawford's knowledge, skill, or judgment was effectively called into question during cross-examination. I am satisfied, based on the evidence, that Nurse Crawford had the knowledge, skill, and judgment required to obtain consent from Ms. Wu, and that Dr. Jugenburg's confidence in her ability to do so was well-placed.

- [65] The evidence of Ms. Wu's expert, Dr. Brown, does not change my view. He testified that a surgeon should discuss and disclose risks directly to the patient and that it is his own practice to do so. However, he also testified that different physicians may have different practices, all of which can be reasonable; that it is within the standard of care for a physician to delegate the act of obtaining consent to a non-physician health care provider, as long as the physician is assured the other provider has the knowledge, skill, and judgment required to obtain consent; and that a physician may rely on the informed consent that has been obtained by the other provider in these circumstances. Dr. Jugenburg's expert, Dr. Krajden, echoed this view, and testified that for Dr. Jugenburg to delegate to someone like Nurse Crawford, whom he trusts and who is approachable, is empathetic, and works as his "eyes and ears," would be an "ideal situation" as long as she had the requisite training. There is no evidence before me to suggest that Nurse Crawford lacked any such training.
- [66] I therefore find that Dr. Jugenburg's delegation of obtaining informed consent to Nurse Crawford was appropriate and permitted under the College of Physicians and Surgeons of Ontario's policy. I also note that in any event, Nurse Crawford was not the only source of information to Ms. Wu in the informed consent process: Ms. Wu also received detailed written information from the Clinic, which she reviewed between her various consultations with Nurse Crawford, and she also discussed the Surgery, including risks and complications, with Dr. Jugenburg himself.

The timing of the informed consent discussions

- [67] Ms. Wu also claims that Dr. Jugenburg's discussion with her, on the day of the Surgery itself, was so late as to not have provided for informed consent. Dr. Brown testified that he was concerned that the timing of the discussion "almost" gave rise to "a form of duress" because it did not allow for thoughtful questioning or contemplation of outcome or risk prior to proceeding".
- [68] I do not give effect to this submission. There may certainly be instances in which the late timing of an informed consent discussion or process undermines the voluntariness of the consent. However, this is not such an instance.
- [69] Dr. Brown acknowledged that the earlier a patient has the information that would enable her to engage in thoughtful questioning or contemplation, the less concerned he would be about duress. He testified that ideally a patient will receive information about a procedure and its material risks and complications long before the procedure date. The most prudent

practice is to start the process for informed consent early on. He agreed that the timeline for the informed consent process that Ms. Wu underwent, including the initial consultation, the detailed information package sent to her over a month before the surgery, and the two subsequent nursing consultations, gave Ms. Wu adequate time to consider the risks before the surgery and sufficient opportunity to pose questions.

[70] In this regard, Dr. Brown appeared to take the same view as Dr. Krajden, who testified that Dr. Jugenburg met the standard of care for obtaining informed consent notwithstanding that he only met Ms. Wu for the first time on the morning of the Surgery.

[71] As discussed above, obtaining informed consent is a process. In Ms. Wu's case, that process was comprehensive and took place over a period of many weeks. It enabled her to receive, review, reflect on, and ask questions about the Surgery and its potential risks and complications. That she only spoke with Dr. Jugenburg at the last stage of that process does not mean that the process was ineffective. That Dr. Jugenburg was not the only one she spoke with during the process likewise does not mean that the process was ineffective.

Other considerations

[72] Ms. Wu suggests that because she was young (19 years old), additional or different steps were required to obtain her informed consent. I do not agree. The law does not require younger adult patients to be provided with different or additional information for the purpose of providing informed consent. Indeed, both expert witnesses agreed that Ms. Wu was an excellent candidate for the surgery, that her age was not a barrier to informed consent, and that her age would not change the expected informed consent process.

[73] Ms. Wu also states that she was required by the Clinic to pay for the Surgery before being able to meet Dr. Jugenburg in person. It is not clear what led Ms. Wu to have this perception. However, in my respectful view, this perception was not accurate. There is no evidence to suggest that she was told she had to pay to have an in-person consult with Dr. Jugenburg. Nurse Crawford's evidence was that she was not aware of anyone else at the Clinic saying that to Ms. Wu and that if someone said such a thing "they would be fired." Both Dr. Jugenburg and Nurse Crawford testified that a patient could have met with Dr. Jugenburg before paying for their procedure. The evidence is that Ms. Wu did not ask, at any point, if she could speak directly with Dr. Jugenburg, even after sending payment.

Conclusion on inadequate disclosure

[74] For the reasons above, I find that Ms. Wu has not persuaded me that there was an inadequate disclosure to her of the nature of the Surgery, its material risks, or the treatment options available to her, such that she did not provide informed consent to it.

Whether Ms. Wu would have had the Surgery but for any inadequate disclosure

[75] In light of my finding that the material risks were adequately disclosed Ms. Wu has not made out her claim that Dr. Jugenburg did not satisfy his duty to obtain informed consent. I therefore need not consider the causation branch of the analysis, namely whether Ms. Wu

has shown me that she, or a reasonable person in her position, would not have proceeded with the Surgery but for Dr. Jugenburg's failure to disclose the information.

[76] I note, however, that even if Ms. Wu had persuaded me on the inadequate disclosure branch of the test, she has not persuaded me on causation. That is, I am not satisfied that she would not have gone ahead with the Surgery had there been different or additional disclosure of the medical risks and complications. It is uncontested that the information about the risks of the Surgery provided to Ms. Wu was fulsome and accurate. As such, the only hypothetical alternative to consider would be if Dr. Jugenburg himself had conducted the earlier consults. The record makes clear that even if Dr. Jugenburg had met directly with Ms. Wu earlier on in the timeline, he would have provided her with the very same information and advice about the Surgery. He had reviewed the proposed surgical plan after Ms. Wu's initial consultation with Nurse Crawford via telephone. The risks and complications regarding the Surgery that were to be discussed by Nurse Crawford, and which were discussed by Nurse Crawford, would not have changed even if he had met Ms. Wu earlier on. The information package delivered to Ms. Wu would not have changed. When he assessed her, his view was that she remained a good candidate and nothing changed. In the face of this evidence, I am of the view that nothing would have changed if Dr. Jugenburg had interacted directly with Ms. Wu earlier than he did.

[77] Nor am I persuaded that Ms. Wu was of two minds about the surgery or that she would have viewed things any differently had she spoken with Dr. Jugenburg any earlier. She had booked her flights well in advance. She had booked her hotel. She had never posed any questions about the risks of the Surgery; the only questions she posed were about whether she could have additional liposuction performed on other areas of her body.

[78] In these circumstances, I am not satisfied that causation has been established.

Conclusion

[79] For the reasons above, I dismiss Ms. Wu's claim. While I do not understate in any way the difficulties she experienced, I am unable to find that they arose because of a failure on the part of the Defendants to obtain informed consent.

[80] The parties are to work together to try to resolve the issue of costs. If they are unable to do so, they are to advise me within 30 days of these Reasons.

Parghi J.

CITATION: Wu v. Jugenburg, 2025 ONSC 3464
COURT FILE NO.: CV-17-00580377-0000
DATE: 20250610

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

XUAN THO WU, STEVEN WU and NHUNG
PHUONG BACH

Plaintiffs

– and –

DR. MARTIN JUGENBURG and TORONTO
COSMETIC SURGERY INSTITUTE

Defendants

REASONS FOR JUDGMENT

Released: June 10, 2025