IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

2026 NLSC 45 (CanLII)

Citation: *Mansfield v. Dr. Shane Seal and Dr. Melanie Seal Professional Medical Corporation*, 2026 NLSC 45
Date: April 15, 2026
Docket: 202301G2544

BETWEEN:

RHONDA MANSFIELD

PLAINTIFF

AND:

DR. SHANE SEAL AND DR. MELANIE SEAL PROFESSIONAL MEDICAL CORPORATION

FIRST DEFENDANT

AND:

SHANE SEAL

SECOND DEFENDANT

AND:

MELANIE SEAL

THIRD DEFENDANT

AND:

DR. SHANE SEAL PLASTIC SURGERY INSTITUTE

FOURTH DEFENDANT

Before: Justice Peter A. O'Flaherty

Place of Hearing: St. John’s, Newfoundland and Labrador

Dates of Hearing: February 21, March 18 and 21, 2025

Appearances:

Rhonda Mansfield	Appearing on her own behalf
Robin F. Cook and Sonya Vey	Appearing on behalf of the Defendants

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Authorities Cited:

CASES CONSIDERED: *Marco Ltd. v. Newfoundland Processing Ltd.* (1995), 130 Nfld. & P.E.I.R. 317, 405 A.P.R. 317 (Nfld. S.C.(T.D.)); *Hryniak v. Mauldin,* [2014] 1 S.C.R. 87; *Young v. Noble*, 2016 NLCA 58; *Hutchings v. Power*, 2020 NLSC 7; *Hennessey v. Eastern Regional Integrated Health Authority*, 2022 NLCA 45; *Brook Construction (2007) Inc. v. North Atlantic Cement and Construction Ltd.*, 2020 NLCA 42; *Power v. Hutchings*, 2022 NLCA 46; *Kurdina v. Gratzer*, 2010 ONCA 288; *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35; *Crits and Crits v. Sylvester*, (1956) 1 D.L.R. (2d) 502, 1956 CanLII 34 (Ont. C.A.); *ter Neuzen v. Korn*, [1995] 3 S.C.R. 674; *Cardin v. City of Montreal*, [1961] S.C.R. 655; *Reibl v. Hughes*, [1980] 2 S.C.R. 880; *Hopp v. Lepp*, [1980] 2 S.C.R. 192; *Watson v. Dr. Shawn Soon*, 2018 ONSC 3809*; White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015] 2 SCR 182; *R. v. Mohan*, [1994] 2 S.C.R. 9; *Ares v. Venner*, [1970] S.C.R. 608; *R. v. D. (V.R.)*, 2000 NFCA 9; *Faryna v. Chorny* (1951), 2 D.L.R. 354, 4 W.W.R. 171 (B.C.C.A.)

STATUTES CONSIDERED:

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

TEXTS CONSIDERED: William C.J. Meredith, *Malpractice Liability of Doctors and Hospitals* (Toronto: Carswell, 1956)

REASONS FOR JUDGMENT

O'FLAHERTY, J.:

SUMMARY

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[1] The Plaintiff, Ms. Rhonda Mansfield ("Mansfield"), brings an action against a professional medical corporation, a plastic surgeon, Dr. Shane Seal ("Seal"), the directors of the corporation, and the private clinic through which Seal provides surgical and non-surgical aesthetic services (the "Defendants").

[2] In the action, Mansfield raises claims for damages caused by the Defendants' alleged negligence, breach of contract, breach of fiduciary duty, battery, and unjust enrichment relating to a facelift procedure performed by Seal on November 13, 2018, and a facelift revision procedure performed by Seal on January 13, 2020.

[3] Mansfield alleges that both procedures failed. She further alleges that the facelift revision procedure performed on January 13, 2020, took place without her informed consent and caused permanent nerve damage and trauma.

[4] Seal and the remaining Defendants deny all of Mansfield's claims. The Defendants now bring a summary trial application pursuant to Rule 17A of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D, to have Mansfield's claims of medical negligence and failure to obtain informed consent dismissed.

[5] The Defendants argue there is no genuine issue for trial on either claim or on the Plaintiff's action generally. Alternatively, they request that any genuine issues for trial be determined using the summary trial procedure under Rule 17A.03(2).

[6] I would grant the Defendants' application for summary trial.

[7] On the medical negligence claim, Mansfield has offered no expert opinion evidence that could support an inference that the care provided by Seal in the facelift procedure or the facelift revision procedure fell below the required standard of care.

[8] I find that in the circumstances of this case expert opinion evidence would be necessary for the Court to determine the standard of care and find whether Seal breached the required standard of care. In its absence, I find there is no genuine issue for trial on Mansfield's medical negligence claim, and it must therefore be dismissed under Rule 17A.03(1).

[9] At the hearing, Mansfield confined her claim for failure to obtain informed consent to the facelift revision procedure performed by Seal on January 13, 2020.

[10] On this claim, Mansfield offered no expert opinion evidence that Seal fell below the applicable standard of care by failing to disclose the nature and gravity of the facelift revision procedure, or the material risks posed by the procedure.

[11] Mansfield has however presented evidence that Seal did not inform her there would be a surgical procedure performed on January 13, 2020, and therefore failed to disclose the nature and gravity of the procedure or its material risks. I am satisfied that this constitutes evidence of specific facts that could support her claim against Seal for failure to obtain informed consent. I find there is a genuine issue for trial on this claim.

[12] I am satisfied that a summary trial is a proportionate, timely, and appropriate means to decide Mansfield's claim. I find that the record is sufficient to enable adjudication of this claim, and it is not otherwise unfair to proceed to do so.

[13] I find Mansfield provided informed consent to the facelift revision procedure performed on January 13, 2020, and I would dismiss Mansfield's claim for failure to obtain informed consent.

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[14] My reasons follow below.

BACKGROUND

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[15] The Plaintiff, Mansfield, is a resident of Mount Pearl, Newfoundland and Labrador (NL). In 2018, Mansfield contacted a private medical clinic to discuss having a rhytidectomy (facelift) procedure performed by Seal.

[16] The First Defendant is a professional medical corporation (PMC) through which Seal and his spouse, Dr. Melanie Seal, carry out their medical practices.

[17] The Second Defendant, Seal, is a physician licensed to practice medicine, in the specialty of plastic and cosmetic surgery, in the Province of Newfoundland and Labrador.

[18] Dr. Melanie Seal is named as the Third Defendant in her capacity as a director of the PMC. She has no other connection to this proceeding.

[19] The Fourth Defendant is Seal's private medical clinic in St. John's, NL. The private clinic offers plastic and cosmetic surgery and provides non-surgical aesthetic services that include CO_2 laser skin resurfacing.

[20] A facelift was performed on Mansfield by Seal at the clinic on November 13, 2018. A facelift revision was performed on Mansfield by Seal on January 13, 2020.

[21] Mansfield was Seal's patient from November 2018 to July 2020. Other non-surgical services were provided to Mansfield at the clinic during this period.

[22] Mansfield commenced a claim in the Provincial Court of Newfoundland and Labrador, Small Claims Division, on October 13, 2020, for recovery of the cost of the facelift. The claim was withdrawn on June 11, 2021.

[23] An action in this Court was commenced by Mansfield on May 30, 2023.

THE SUMMARY TRIAL APPLICATION

[24] The Defendants applied for summary trial on February 7, 2024.

[25] In support of the summary trial application, Seal filed an Affidavit dated March 25, 2024 deposing to his treatment and care of Mansfield. The Affidavit attaches the medical clinic records, the consent forms signed by Mansfield, and email correspondence exchanged between Mansfield and the clinic. Seal later filed a copy of the medical clinic records for all treatment and care provided to Mansfield.

[26] The Defendants also relied upon the Affidavit dated March 21, 2024, of Dr. Brent Howley, a qualified practitioner in plastic and cosmetic surgery, attaching an expert report dated March 4, 2021. In the expert report, Dr. Howley opined that Seal had not fallen below the standard of care in any aspect of his treatment and care of Mansfield.

[27] In summarizing his opinions, Dr. Howley stated:

> I surmise that Dr. Seal's care, from the initial consultation through to termination of care, was certainly at or above the recognized professional standard of care. The documentation provided supports adequate initial assessment, preoperative counselling and verified procedure consent. Care and follow-up were thoughtful and reasonable.

[28] There was no cross-examination of either Seal or Dr. Howley requested by Mansfield.

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[29] Mansfield is unrepresented. Initially, Mansfield filed a written Reply to the Defendants' Application for Summary Trial on February 22, 2024 ("Reply").

[30] Mansfield then filed an Affidavit dated March 27, 2024, deposing to the allegedly negligent treatment and care she received from Seal and the injuries, damage, and the loss and damage she allegedly suffered ("First Affidavit").

[31] The First Affidavit attached a letter from a plastic surgeon, Dr. Joy Cluett, to Mansfield's family doctor, Dr. Darryl Hogan, dated October 12, 2021, regarding a referral made by Dr. Hogan.

[32] The First Affidavit also attached three emails between Mansfield and the clinic relating to the facelift revision procedure, the Consent Form signed by Mansfield on January 13, 2020, and two chronological charts prepared by Mansfield.

[33] In addition to the Reply and First Affidavit, on October 21, 2024, Mansfield filed and served a volume of documents with 10 tabs titled "Expert Evidence & Materials related to summary trial" ("Volume of Materials").

[34] In the Volume of Materials, Mansfield attached a further unsworn Affidavit dated October 21, 2024, ("Second Affidavit") denying she was anywhere near Seal's clinic on January 2, 2020, and claiming she had an eyewitness to verify this fact.

[35] In the Second Affidavit, Mansfield claimed that because she did not attend any meeting on January 2, 2020, it seemed obvious that Seal knowingly filed false evidence. She further claimed Seal's creation of a medical record entry showing what he purported was a meeting between them on January 2, 2020, appeared as if it constituted a fabrication of evidence because Seal knew no such meeting occurred.

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[36] In the Volume of Materials, Mansfield attached an unsworn Affidavit of her friend, Mr. Peter Austin ("Austin"), also dated October 21, 2024, verifying that he spent many hours with Mansfield on January 1, 2 and 3, 2020, and more specifically he spent the hours between 6:00 a.m. and 9:00 p.m. in her apartment on January 2.

[37] In Austin's Affidavit he deposed that Mansfield did not attend any meetings on January 2, 2020, and neither of them left the apartment on January 2, 2020. According to Austin's Affidavit, Mansfield was in dire pain and she had a doctor's appointment the next morning, which resulted in a hospital visit later that day.

[38] Austin was in attendance every time this application was called. He initially requested to sit with Mansfield as her advisor, which I did not allow as he is not a member of the Law Society, but it was clear he was a de facto advocate for her claim.

[39] When this application was called on February 21, 2025, I permitted the Affidavits of Mansfield and Austin dated October 21, 2024, to be sworn and filed. Mansfield was cross-examined and there was no cross-examination of Austin.

[40] Mansfield confirmed in her cross-examination evidence that she had given informed consent to the "failed" facelift procedure on November 13, 2018, and she agreed she was claiming her alleged nerve damage was caused by the facelift revision procedure on January 13, 2020, to which she had not given any consent.

[41] I am satisfied that in her evidence and argument Mansfield confined her claim for failure to obtain informed consent and her allegation of nerve damage to the facelift revision procedure performed by Seal on January 13, 2020.

[42] Tab 1 of Mansfield's "Expert Evidence & Materials related to summary trial" contained an unsigned document titled Medical Expert Report of Dr. Norman Ahmad, October 20, 2024. The document appears to be intended to opine on the alleged failure by Seal to obtain informed consent for the facelift revision procedure.

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[43] I excluded the unsigned Medical Expert Report attributed to Dr. Norman Ahmad from the evidence. My reasons are provided in the analysis below.

[44] In the main proceeding, Mansfield had served Interrogatories on Seal and in the Volume of Materials filed she included Seal's Answers to Interrogatories. The Answers were properly filed by Mansfield under Rule 17A.02(2).

[45] Both Mansfield and Seal have filed extensive written briefs.

[46] The hearing of the application for summary trial began on February 21, 2025. The hearing continued on March 18, and it concluded on March 21, 2025. I reserved my decision until now.

ADDITIONAL BACKGROUND

[47] In providing the summary of additional background facts that follow, I have considered all of the evidence of the witnesses and all of the admissible filings. I have organized the background facts in chronological topics and will outline some of the key evidence of the witnesses in relation to each of the topics.

[48] Some of the relevant evidence incorporated in the additional background facts section is taken from records produced by the medical clinic. This is usual in medical negligence and failure to obtain informed consent claims because medical professionals have a mandatory duty to document their patient's treatment and care.

[49] The law provides that medical clinic records such as patient charts and operative reports are admissible as evidence of the truth of the factual statements recorded within the documents, subject to Mansfield's right to challenge the accuracy of the records and entries: *Ares v. Venner*, [1970] S.C.R. 608, at para. 16, *R. v. D. (V.R.)*, 2000 NFCA 9, at paras. 53-54.

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The Facelift Procedure

[50] On October 9, 2018, Mansfield saw Seal for a consultation about a facelift. On the next day, Mansfield was emailed a cost quotation to perform a facelift, and she contacted the clinic to schedule the procedure.

[51] On November 8, 2018, Mansfield saw Seal for a pre-operative meeting. The facelift was performed on November 13, 2018, after Mansfield signed a consent form titled "Consent for Face/Neck Lift (Rhytidectomy) Surgery[1]."

[52] The signed consent form contained these provisions:

> I authorize Dr. Shane K.F. Seal to perform face/neck lift surgery in his private facility, located at 120 Stavanger Drive, Suite 104, St. John's, NL.
>
> I understand that common risks associated with this particular type of procedure are but not limited to: infection, bleeding, scarring, hematoma, skin flap necrosis, facial nerve injury and unsatisfactory results. You may experience other unknown side effects that have not been reported before.
>
> …
>
> Before and after treatment instructions have been discussed with me. The procedure as well as alternative treatment, potential benefits and risks have been explained to my satisfaction. I have had all of my questions answered, I freely consent to the proposed treatment(s).

[53] The specific facelift procedure performed by Seal on November 13, 2018, was called a SMAS plication face/neck lift[2]. I will refer to this procedure as the "Facelift." Mansfield paid the sum of $10,623.12 to the clinic for the Facelift.

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[1] Exhibit "D" to Affidavit of Dr. Shane Seal, March 25, 2024.
[2] Plaintiff's Materials, October 21, 2024, Tab 9, Answers to Interrogatories, September 21, 2023, paragraph 5.

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[54] Mansfield returned to the clinic on November 14, 2018, for follow-up and on November 15, 2018, Seal re-administered one suture to a small open area to the base of the left neck incision. Mansfield returned again on November 19, 23, 26, and 29, and December 13, 2018, and on January 28, 2019, for follow-up.

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[55] Mansfield deposed that the Facelift was "botched" and that it failed to achieve anything remotely close to the promised outcome and made her facial appearance worse. While I have found that Mansfield was not satisfied with the outcome, she provided no evidence about the specific outcome she was promised, how the Facelift was botched by Seal, or how her facial appearance was disfigured by the Facelift.

[56] Mansfield was cross-examined on the statement in her Affidavit dated March 27, 2024, that her action rests on the fact that she "did not give consent to the surgery that ultimately caused my nerve damage." Mansfield confirmed in cross-examination that she had given her informed consent to the Facelift.

[57] It is clear from the evidence, and I find as a fact that Mansfield was not satisfied with the outcome of the Facelift procedure.

The Smartskin CO_2 Laser Procedure

[58] Seal continued to see Mansfield throughout 2019. On September 3, 2019, Seal performed a face/neck skin resurfacing CO_2 laser procedure, after Mansfield was provided with a consent form titled "Consent – Smartskin CO_2[3]," which she signed.

[59] The signed consent form contained these provisions:

[3] Applicant's Summary Trial Book of Documents, Tab 1, page 102.

> I request and authorize Dr. Seal to perform a procedure on me known as: face/neck skin resurfacing using the Smartskin CO_2 laser.
>
> The nature and effects of the procedure, the risks, ramifications, complications involved, as well as alternative methods of treatment have been fully explained to me by the physician or designated person and I understand them.
>
> I have been thoroughly and completely advised regarding the objectives of the procedure. I understand that the practice of medicine and surgery is not an exact science and no results have been guaranteed. I acknowledge that imperfections might result and that the operative result may not reach my expectations. I certify that no guarantees have been made by anyone regarding the procedure(s) that I have requested and authorized. I understand that in the unlikely case where an imperfection results, the patient and doctor may determine the necessity of a secondary procedure and such revisions are not included in the initial surgical facility or anesthesia fee, but they will be billed at a lesser rate.
>
> …
>
> I certify that I have read the above authorization, that explanations referred to therein were made to my satisfaction, and that I fully understand such explanations and the above authorization.

[60] On October 3, 2019, Mansfield sent the clinic an email stating she felt "there was no change what so ever" between her eyes near her eyebrows as a result of the CO2 treatment.

[61] On October 28, 2019, Mansfield contacted the clinic requesting Seal to "go over this area" because he "[m]ust have not done this area[4]."

[62] It is clear from the evidence, and I find as a fact that Mansfield was not fully satisfied with the outcome of the CO_2 laser procedure.

[4] Applicant's Summary Trial Book of Documents, Tab 1, page 22.

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The Facelift Revision and CO_2 Glabella Procedures

[63] On December 2, 2019, Mansfield emailed the clinic asking if Seal would perform the CO_2 treatment again and if liposuction rather than injections would help to address the fat returning under her chin where the Facelift was performed.

[64] On December 2, 2019, the clinic's cosmetic nurse, Julia Macdonald, emailed Mansfield stating Seal was "ok with doing a co2 and neck lipo revision in the new year." She stated the clinic would be in touch to arrange a date and possible time.

[65] On December 3, 2019, Mansfield emailed Ms. Macdonald stating she hoped it would be free of charge because fat should not have returned a month after the Facelift.

[66] On December 5, 2019, the clinic emailed Mansfield to confirm the scheduling of a "Submental Lipo Revision (Manual) and CO_2 Glabella" for January 13, 2020.

[67] The medical clinic record contains a handwritten entry in Mansfield's chart "For neck / CO_2 Revision" which is date-stamped January 2, 2020, and initialed by Seal. The patient chart entry dated January 2, 2020 is located on the same page, and between, two entries dated September 05, 2019, and January 13, 2020.

[68] There is a factual dispute about whether a meeting between Seal and Mansfield occurred on January 2, 2020, to discuss the upcoming procedures scheduled for January 13, 2020. I will address this issue in the analysis below.

[69] On January 13, 2020, a minor neck revision procedure, with liposuction, and a CO_2 Glabella procedure were performed at the clinic after Mansfield was provided with a consent form titled "Consent for a Minor Procedure," which she signed. I will refer to the minor neck revision procedure as the "Facelift Revision."

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[70] The signed consent form contained these provisions:

> I authorize Dr. Shane K.F. Seal to perform minor neck revision + CO_2 glabella in his private facility, located at 8 Rowan St, Suite 300, St. John's, NL.
>
> I understand that common risks associated with this particular type of procedure are infection, bleeding, scarring and need for a second procedure. You may experience other unknown side effects that have not been reported before.
>
> …
>
> Before and after treatment instructions have been discussed with me. The procedure as well as alternative treatment, potential benefits and risks have been explained to my satisfaction. I have had all of my questions answered. I freely consent to the proposed treatment(s).

[71] Seal deposed that Mansfield was afforded the opportunity to review the consent form, which expressly confirmed that both the Facelift Revision and CO_2 Glabella procedures had been explained to her, and to ask questions regarding same.

[72] Mansfield deposed that she did not meet in person with Seal prior to the Facelift Revision, and if she signed anything it was given to her with no explanation, and she was not informed of the nature of the Facelift Revision.

[73] Mansfield's patient chart contains Seal's handwritten entry of January 13, 2020, as follows: "Revision neck today (with) lipo & CO_2 glabella revision."

[74] In the Minor Operative Report Seal completed on January 13, 2020, he describes performing a "bilateral lower jowl liposuction and facelift revision." In the same report, the CO_2 Glabella procedure performed is described in detail including the specifications of the laser procedure, the time, and the number of passes.

[75] In terms of the nature of the Facelift Revision on January 13, 2020, I find that a minor surgical procedure to revise the previous Facelift was performed by Seal. I find that the surgical procedure involved Seal making an incision, most likely

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through the existing incision, the removal of skin tissue and the suturing of the skin. Along with the Facelift Revision I find Seal also performed a liposuction procedure.

[76] The Minor Operative Report of Seal, the report of Dr. Howley, and the Answers to Interrogatories all support this finding.

[77] Mansfield does not contest that the Facelift Revision as it is described in the Minor Operative Report was performed, but she maintained in her Second Affidavit and on cross-examination that she had no idea there was to be any surgical revision on January 13, 2020, and she was not told anything about it prior to the operation.

[78] In cross-examination, Mansfield testified that she understood she was scheduled to have only two procedures on January 13, 2020, the "neck lipo revision" and the "CO_2 Glabella" which were referred to in the emails from the clinic dated December 2 and December 5, 2019. Mansfield testified that she understood the "neck lipo revision" was a liposuction procedure conducted with a needle going in and removing the excess fat from her neck.

[79] Mansfield claimed that without her knowledge or consent Seal performed a third procedure, which I have called the Facelift Revision.

[80] Mansfield was billed $1,371.00 for the CO_2 Glabella, which she paid. She was not billed for the Facelift Revision, as she had earlier requested.

[81] Mansfield claimed in her cross-examination that Seal led her to believe that the CO_2 Glabella was "done" on January 13, 2020, but it was not done which is why the clinic later returned the $1,371.00 she had paid for the procedure.

[82] Mansfield returned to the clinic on January 24, 2020, for a follow up at which time no concerns were noted and she was healing well with minimal swelling and

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no bruising seen on the visit. Care instructions were reviewed and Mansfield was instructed to use the scar gel in 2-3 days and return for follow up in two months.

[83] The COVID-19 pandemic led to the closure of the clinic in March 2020.

Further Communications and Consultations

[84] Between April 14 and June 2, 2020, Mansfield emailed the clinic requesting an appointment and she made statements indicating her dissatisfaction with the procedures on January 13, 2020 such as, “it’s like I had nothing done. ”

[85] On June 8, 2020, Mansfield saw Seal. Mansfield was not satisfied with the results of the Facelift Revision and CO_2 procedures and raised the possibility of skin booster injections for her cheeks. Seal advised Mansfield that he did not believe further surgery or further CO_2 would be of any benefit.

[86] On June 23, 2020, Mansfield emailed the clinic stating she felt Seal should do something about the “failed surgery.”

[87] On June 24, 2020, the clinic emailed Mansfield to inform her that the clinic was unable to refund the cost of the Facelift, but Seal did offer her a full refund of the CO_2 Glabella on January 13, 2020. Mansfield accepted the CO_2 refund.

[88] On June 28, 2020, Mansfield sent an email requesting a refund of the cost of the Facelift stating “Why doesn’t Dr. Seal have insurance for exactly a failure like this? I don’t have money like this to not get the result like I never went in.”

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[89] On June 29, 2020, the clinic wrote Mansfield back regarding her request for a refund for the Facelift and pointed out that the cost quotation expressly stated there was a no refund policy after the Facelift is performed.

[90] The June 29, 2020 email to Mansfield from the clinic also stated:

> We removed a nice bit of excess skin during your revision – this is considered a lift. (Excess skin removed, skin left over is lifted up and sutured).

[91] Mansfield then sent three emails to the clinic. In the first email, she stated that "patients should have protection when surgery does not work" and referenced going to the "board" and seeing a lawyer if she did not get a refund for a "failed surgery. "

[92] In her second email, Mansfield stated that the refund of the CO_2 was provided because that procedure had not been successful in taking out a deep wrinkle and it had not addressed an area of her face she wanted to be done. She then stated, "I would like a refund (for the Facelift) or I will have to take action."

[93] In her final email of June 29, 2020, Mansfield claimed she was unaware before receiving the email that the Facelift Revision involved excess skin removal:

> Excess skin removed? First I heard of this. Why wasn't I told excess skin was removed it just gets worst [*sic*] Why didn't you tell me before the revision that this was going to be done And if removed why is still fat there like it was never touched? I was told I was getting Libo suckion [*sic*]

[94] On July 6, 2020, Mansfield sent a further request to the clinic for a refund of the Facelift or she would get a lawyer. The clinic informed her that she would need to come in to discuss this matter with Seal and a meeting was set for July 8, 2020.

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[95] On July 8, 2020, Mansfield saw Seal to discuss the recent emails. Mansfield advised Seal that she was feeling depressed and was hoping for a better result from the Facelift. She again requested a refund for the cost of the Facelift.

[96] Seal informed Mansfield that the Facelift was a non-refundable procedure. Seal informed Mansfield that even though her expectations were not met by the Facelift he did not feel that further procedures would help. Seal offered to refer Mansfield to a counsellor for her depression.

[97] Following the meeting, Mansfield emailed the clinic as follows:

> Wednesday, July 8 seen Dr. Seal today he said I couldn't get a refund
>
> So I'm willing to get the third Surgery eleven (sic) when he said it might not make a difference. I will take the chance even though Dr. Seal said it may not make a difference

[98] Following this email, Mansfield sent two further emails to the clinic requesting that a third surgery be booked with Seal.

[99] Manfield saw Seal for the final time on July 17, 2020. Seal again advised her that the degree she wanted her cheeks tightened was not possible with any additional procedures and nor would further procedures provide her with the desired improvement. No further care or treatment of Mansfield was provided by Seal.

[100] It was clear from the evidence from the timeframe after the Facelift Revision and the CO_2 Glabella were completed, and I find as a fact, that Mansfield was not satisfied with the outcome of the Facelift Revision or CO_2 Glabella procedures, and claimed that the CO_2 Glabella procedure was not performed on January 13, 2020.

[101] In 2021, Mansfield's family doctor had referred her to Dr. Joy Cluett, a plastic surgeon. Mansfield deposed in her Affidavit dated March 27, 2024, that when she

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saw Dr. Cluett on October 12, 2021 she learned for the first time she had suffered a permanent injury from the surgery and not just disappointment with the outcome.

[102] In her letter to Dr. Hogan dated October 12, 2021, Dr. Cluett reported that Mansfield complained of exquisite discomfort in the left postauricular region (the area behind the left ear), radiating across her face and she complained of periodic discomfort and pain in the glabella region (the area between her eyebrows).

[103] In her letter, Dr. Cluett reported that Mansfield may simply have pain related to the scar in the left postauricular region, however she may have some sensory nerve involvement. Dr. Cluett stated that she arranged to have Mansfield assessed by her clinic's pain therapist.

[104] Dr. Cluett did not feel she was a candidate for a third surgical intervention.

[105] On cross-examination, Mansfield did not agree that Dr. Cluett had offered no diagnosis of nerve damage and claimed that Dr. Cluett had told her that "it sounds like you have nerve damage" and then had referred Mansfield to a specialist for whom she understood she would be required to wait five years to see.

[106] Mansfield initially testified the specialist referral made by Dr. Cluett was to a neurologist, and then suggested it was a referral to a pain management specialist. Mansfield could not recall the name of the specialist she believed Dr. Cluett had referred her to and claimed that she was told the specialist had left the province.

[107] When asked to clarify her evidence on this point, Mansfield agreed that Dr. Cluett had referred her to the clinic's pain therapist. I find on the evidence before me that the only "referral" that was made by Dr. Cluett was to her clinic's pain therapist.

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ISSUES

[108] The first issue I must decide is whether to grant the Defendants' application for summary trial.

[109] Flowing from my decision on the summary trial application, I am asked to decide two issues using the summary trial procedure:

1. Was Seal negligent in performing either the Facelift or Facelift Revision?
2. Did Seal fail to obtain Mansfield's informed consent for the Facelift Revision?

ANALYSIS

[110] Use of the summary trial procedure to determine a claim or defence is available in this Court on an application under Rule 17A of the *Rules*.

[111] Green, J., as he then was, held that the object of Rule 17A is to promote the overall objective of the *Rules*, which is to provide for the expeditious and inexpensive determination of proceedings on their merits, by screening out claims that cannot survive a "good hard look": *Marco Ltd. v. Newfoundland Processing Ltd.* (1995), 130 Nfld. & P.E.I.R. 317, 405 A.P.R. 317 (Nfld. S.C.(T.D.)), at para. 76.1 ("*Marco No. 2"*).

[112] The Supreme Court of Canada has directed trial courts to use the summary trial procedure similar to the one found in Rule 17A in appropriate cases to provide litigants with proportionate, timely, and affordable access to justice: *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87, at paras. 28 and 32.

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[113] In this jurisdiction, the summary trial procedure permits the judge to find the necessary facts in the affidavits of witnesses, with cross-examination where leave is given, or in the answers to interrogatories or the evidence given at discovery, which are filed as part of the record: Rule 17A.02(1).

[114] The case law indicates that as part of the summary trial process, the application judge is required to consider in the first instance whether entry into the summary trial process should be allowed.

[115] This is called the threshold question or enquiry: see: *Young v. Noble*, 2016 NLCA 58; *Hutchings v. Power*, 2020 NLSC 7, at para. 14.

[116] The threshold inquiry exercise is carried out under the Court's inherent authority to control its own process. The exercise involves a broad, high-level look to address whether to invoke the summary trial process at all: *Hennessey v. Eastern Regional Integrated Health Authority*, 2022 NLCA 45, at para. 34.

[117] Given the endorsement in *Hryniak* of the use of a summary trial, the Court of Appeal has held the burden of persuasion rests on the opposing party to show that a summary trial is an inappropriate process: *Brook Construction (2007) Inc. v. North Atlantic Cement and Construction Ltd.*, 2020 NLCA 42, at para. 41.

[118] If the threshold is passed, and the summary trial process is entered, the judge has jurisdiction to give judgment on or dismissal of all or part of a claim in the statement of claim: Rule 17A.01(1).

[119] Under Rule 17A, there are two circumstances in which the Court may give judgment on all or part of a claim or dismiss all or part of a claim.

[120] The first circumstance arises where the judge is satisfied that there is no "genuine issue for trial" on a claim or defence: Rule 17A.03(1). If a judge finds there

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is no genuine issue for trial, then the Court must give judgment on the claim or dismiss the claim, as the case may be.

[121] In *Brook Construction*, the Court of Appeal confirmed that a "genuine issue for trial" in Rule 17A.03 is an issue that is not spurious and that relates to a material fact or point of law that is necessary to be decided to resolve the ultimate controversy between the parties: *Brook Construction*, at para. 29.

[122] The second circumstance arises where a judge finds there is a genuine issue for trial on a claim or defence, but the judge is able to find the facts necessary to decide the questions of fact or law and concludes it would not be unjust to decide the issue on the application: Rule 17A.03(2)(a) and (b).

[123] In the second circumstance, the judge will consider whether, on the evidence as presented, it is possible and appropriate to decide a genuine issue on the basis of the existing record, bearing in mind that an apparent factual conflict in the evidence does not end the inquiry and the judge is entitled, on a common-sense basis, to draw inferences from the evidence: *Marco No. 2.*, at para. 76.13.

[124] It may be possible that conflicts in the evidence can be resolved by the usual techniques of judging one witness's evidence in terms of its consistency with other evidence and other known circumstances: *Marco No. 2.*, at para. 76.14.

[125] The Court of Appeal has upheld the use of the summary trial procedure in appropriate cases in which the decision turned largely on credibility findings: see *Power v. Hutchings*, 2022 NLCA 46, at paras. 22-29 and 39-43.

[126] The decision as to whether the evidentiary record is "sufficient for adjudication" of an issue is ultimately a matter of discretion for the chambers judge based on the judge's comfort level that the record allows the judge to make the necessary findings of fact to adjudicate the genuine issue on the merits: *Marco No. 2.*, at para. 76.14.

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[127] Finally, the judge must consider whether it would be "unjust" to use the procedure. This turns on a series of factors. These factors may include whether there is other relevant evidence available that might materially affect the result, and a variety of other case-specific considerations: *Marco No.2*, at para. 76.15.

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The Positions of the Parties

[128] The Defendants submit that both claims are appropriate for determination by summary trial.

[129] They argue that medical negligence claims and failure to obtain informed consent claims are routinely determined by summary trial where no expert opinion evidence is filed by the plaintiff in support of her claims: see for example *Kurdina v. Gratzer*, 2010 ONCA 288.

[130] The Defendants further argue there are no genuine issues for trial on the medical negligence and failure to obtain informed consent claims, but if there are, they request the genuine issues be determined because the record establishes all the relevant and material background facts, and the summary trial procedure allows the judge to apply the law to those facts to achieve a just result.

[131] Mansfield agreed that the failure to obtain informed consent claim is an appropriate claim for determination by a summary trial, and she argued that this claim should be decided in her favor using the summary trial procedure.

[132] Mansfield argued that her failure to obtain informed consent claim should succeed because the record shows that when she gave her written consent to a "minor neck revision" on January 13, 2020 she was only consenting to the liposuction procedure described as a "neck lipo revision" in the clinic's email of December 2, 2019.

Discussion

[133] On the threshold inquiry under Rule 17A, I advised the parties that I was satisfied that the preliminary threshold has been crossed by the Defendants.

[134] To borrow from the words of Orsborn, J., as he then was, in *Hutchings v. Power*, the material presented in the Affidavits of Seal and Dr. Howley, neither of whom were cross-examined, could potentially support a fair determination of the claims of medical negligence and failure to obtain informed consent by way of summary adjudication.

[135] I found these Affidavits contain an evidentiary basis that, if unanswered, establish a defence to both claims as defined in the pleadings or tend to show Mansfield's claims have no substance. This satisfied the first threshold requirement.

[136] The second requirement is that the Court be satisfied that Rule 17A is not being invoked in an inappropriate circumstance to determine these claims. There was no reason evident to me at the threshold stage why, in the circumstances, it may be procedurally inappropriate to deal with the issues by summary trial.

[137] As noted, the authorities filed show there have been numerous cases across Canada where medical negligence claims and failure to obtain informed consent claims have been determined by summary trial where no expert opinion evidence is filed by the plaintiff in support of her claims.

[138] Having crossed the preliminary threshold, the first question on the summary trial application is whether there are genuine issues for trial on the two claims.

[139] As will be explained below, I find that there is no genuine issue for trial on the medical negligence claim, and I conclude that the claim must be dismissed.

[140] I find that Mansfield has presented evidence of specific facts showing that there is a genuine issue for trial on her claim for failure to obtain informed consent.

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[141] Mansfield has offered no expert opinion evidence that Seal fell below the applicable standard of care in failing to disclose the nature of the Facelift Revision or its material risks. But she has provided evidence to show that Seal failed to inform Mansfield that the Facelift Revision involved a surgical procedure, and she therefore could not have been aware of the material risks posed by the procedure.

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[142] I acknowledge that some of Mansfield's evidence raises an apparent factual conflict with aspects of the Defendants' evidence. I am satisfied that any conflicts in their evidence can be resolved, and the record is sufficient to enable the claim to be adjudicated fairly to both sides and it is not otherwise unfair to proceed to do so.

[143] I say this because the evidence of all material witnesses is before the Court and I can resolve any factual dispute that arises by drawing common-sense inferences and by relying on the usual techniques of judging the evidence of the witnesses.

[144] In considering the circumstances in this case, I acknowledge that Mansfield is unrepresented, and I have considered whether her inability to obtain an expert to support her claims would render it inappropriate to proceed by summary trial. I conclude it would not.

[145] As explained below, Mansfield was informed of Dr. Howley's expert opinion; she was made aware that she ran the risk of dismissal of her claims if she failed to provide some expert opinion evidence in support of her claims; she informed the Court she was attempting to obtain expert opinion evidence; and she failed to do so despite being provided with ample opportunity to obtain the expert opinion evidence.

[146] I conclude that a summary trial is a proportionate, timely, and appropriate means to decide the genuine issue on the failure to obtain informed consent claim.

[147] I would therefore grant the Defendants' application for summary trial.

1. Was Seal negligent in performing either the Facelift or Facelift Revision?

[148] A successful claim for negligence requires that the plaintiff prove four things: (i) that the defendant owed the plaintiff a duty of care; (ii) that the defendant's conduct breached the standard of care; (iii) that the plaintiff suffered damage; and (iv) that the damage was caused, in fact and in law, by the defendant's breach (see *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, at para. 18).

[149] In the medical negligence context these four requirements have been restated. The four things to be proved are: (i) that the doctor owed the patient a legal duty to exercise care when the doctor takes on the case; (ii) that the doctor's conduct breached his legal duty to conform to the standard of care required by law; (iii) that the plaintiff suffered damage; and (iv) that the damage was caused, in fact and in law, by the doctor's breach of his legal duty (see *Anderson v. Queen Elizabeth II Health Sciences Centre*, 2012 NSSC 360, at para. 41, citing William C.J. Meredith, *Malpractice Liability of Doctors and Hospitals* (Toronto: Carswell, 1956) at p. 156.

[150] With respect to the standard of care, the Defendants rely upon the oft-cited statement of Schroeder, J.A., in *Crits and Crits v. Sylvester*, (1956) 1 D.L.R. (2d) 502, 1956 CanLII 34 (Ont. C.A.) at para. 13:

> … Every medical practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. He is bound to exercise that degree of care and skill which could reasonably be expected of a normal, prudent practitioner of the same experience and standing, and if he holds himself out as a specialist, a higher degree of skill is required of him than of one who does not profess to be so qualified by special training and ability.

[151] The authorities show that in order to establish the standard of care to be exercised by Seal in relation to the medical component of his treatment of Mansfield, and to then determine whether Seal breached the requisite standard of care, there must be expert evidence from a physician trained in the same specialty by which the Court can measure Seal's conduct: *ter Neuzen v. Korn*, [1995] 3 S.C.R. 674.

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[152] In *ter Neuzen*, Sopinka, J. acknowledged that medical expert evidence is required because courts do not ordinarily have the expertise to tell medical professionals that they are not behaving appropriately in their field. The rule applied in medical negligence claims is that where the medical expert evidence established conformity with standard practice this will generally exonerate a physician of any claim of negligence: *ter Neuzen*, at para. 41.

[153] In her Statement of Claim, Mansfield claims that Seal negligently performed two botched surgeries. She claims that neither achieved any degree of visual enhancement to her facial appearance; the surgeries did not provide what was agreed; and that the surgeries have resulted in damage by inoperable disfigurement of Mansfield's appearance, nerve damage in the face area, and mental trauma.

[154] I found as a fact that Mansfield was not satisfied with the results of the Facelift or the Facelift Revision. That is unfortunate, however an unsatisfactory result was a known and accepted risk of both medical procedures, and an unsuccessful outcome from a surgical procedure does not constitute proof of negligence by the surgeon.

[155] As to Mansfield's claims that the Facelift performed by Seal failed to provide what she alleges was agreed at the outset, while my decision does not turn on this point, there was absolutely no evidence that Seal promised or agreed to provide any specific outcome, or that Seal promised that an outcome satisfactory to Mansfield would result from either the Facelift or the Facelift Revision.

[156] The absence of evidence that Seal had made such a promise or agreement in performing the Facelift is unsurprising. It would not only contradict the express terms of the consent signed by Mansfield it would also leave Seal without the protection of the long-settled legal principle that a doctor is not the guarantor of the success of the operation that he performs: *Cardin v. City of Montreal*, [1961] S.C.R. 655, at 494.

[157] As referenced above, I find that there is no genuine issue for trial with respect to the Plaintiff's claim against Seal in medical negligence. I will explain why.

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[158] A "genuine issue for trial" is one that is not spurious and relates to a material fact or point of law that is necessary to be decided to resolve the ultimate controversy between the parties. Obviously, there will not be a genuine issue for trial if the responding party can put forward no evidence that could constitute a claim in law: *Marco No. 2*, at para. 76.9.

[159] There may be cases where expert opinion evidence on the required standard of care is not necessary, and where the acts or omissions of a physician lie so clearly outside what the standards of the profession require that a judge may decide the issue based on common sense or ordinary experience. But this is not such a case.

[160] I find that expert opinion evidence is required for this Court to determine the standard of care and whether the treatment and care provided by Seal in performing the Facelift and Facelift Revision procedures fell below the required standard of care of a plastic surgeon. The Plaintiff has failed to provide any such evidence.

[161] The Defendants did provide expert opinion evidence in the form of a report from Dr. Howley, a qualified practitioner in the same field as Seal. Dr. Howley deposed that the care provided by Seal, from the initial consultation through to termination of care, was at or above the recognized professional standard of care[5].

[162] To be clear, the Defendants were not required to file a report from an expert. The law is also clear however that where, as is the case with Dr. Howley's evidence, there is medical expert evidence of conformity with the standard of care this will generally exonerate a physician of any claim of negligence: *ter Neuzen*, at para. 41.

[163] To avoid summary judgment under Rule 17A.03(1), Mansfield was therefore required to adduce some expert opinion evidence from a qualified plastic surgeon which, if proven, could support an inference that the treatment and care she received

[5] Affidavit of Brent Howley, MD, FRCSC, March 21, 2024, Exhibit "A"

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fell below the applicable standard of care in order to convince the Court that it could not be said there was "no claim": *Kurdina*, at para. 2; *Brook*, at para. 20.

[164] Mansfield refers in her pleadings and Affidavits to the Facelift and Facelift Revision procedures as "failed/botched" and leaving her "disfigured," and she refers to Seal's conduct in performing the procedures as reckless, negligent, and harmful.

[165] But Mansfield cannot rest on her pleadings or upon her subjective evidence about the unsuccessful outcome of the surgical procedures to satisfy the Court that it could not be said there was no claim for medical negligence.

[166] Mansfield is required to set out, in evidence, specific facts showing there was a genuine issue for trial. For the purposes of her medical negligence claim she was required to set out expert opinion evidence that could support an inference that Seal failed to meet the required standard of care: Rule 17A.02(2).

[167] I am satisfied that Mansfield knew this would be a requirement shortly after the filing of the application for summary trial. In the application, the grounds raised for the dismissal of her claims were her failure to provide expert evidence establishing the standard of care, a breach of the standard of care, and a causative relationship between the allegations against the Defendants and the Plaintiff's loss[6].

[168] On April 2, 2024, the application for summary trial was set down for hearing on February 21, 2025, with a filing date of September 21, 2024, for the Plaintiff's materials in response and the issue of expert opinion evidence was raised.

[169] At appearances on May 16, 2024, on June 18, 2024, and on August 27, 2024, Mansfield was asked by the Court for an update on her expert opinion evidence. She

[6] Interlocutory Application (Inter Partes) under Rule 17A filed February 7, 2024, paragraph 2.

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was reminded that the absence of expert opinion evidence on the requisite standard of care would be a critical issue raised at the hearing of the Rule 17A application.

[170] On September 27, 2024, Mansfield's date to file any expert opinion evidence for the hearing of the summary trial application was extended to October 21, 2024.

[171] Mansfield did not provide any expert opinion evidence at the hearing stage that could support an inference that Seal failed to meet the required standard of care in performing either the Facelift or the Facelift Revision. That is fatal to her claim.

[172] I find there is no genuine issue for trial on the claim for medical negligence, and the claim must be dismissed under Rule 17A.03(1).

2. Did Seal fail to obtain Mansfield's informed consent for the Facelift Revision?

[173] As explained above, Mansfield has provided some evidence of specific facts showing that there is a genuine issue for trial on her claim for failure to obtain informed consent. I will proceed to determine her claim by summary trial.

[174] Although the Plaintiff did not address her claim for failure to obtain informed consent strictly in accordance with the law set out below, I am satisfied she has pleaded both battery and negligence, and I will address both potential routes to legal liability against Seal under her claim for failure to obtain informed consent.

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The Applicable Law in Actions for Battery and Negligence

[175] The legal framework for assessing a claim against a medical practitioner for failure to obtain informed consent is well established.

[176] In *Reibl v. Hughes*, [1980] 2 S.C.R. 880, at para. 10, the Supreme Court of Canada described the action in battery as an intentional tort, consisting of an unprivileged and unconsented invasion of a person's bodily security.

[177] The Supreme Court confined actions for battery in respect of surgical or other medical treatment to cases where surgery or treatment has been performed or given to which there has been no consent at all, or where surgery or treatment has been performed or given beyond that to which there was consent: *Reibl*, at para. 11.

[178] The Court held that this standard would comprehend cases where there was misrepresentation of the surgery or treatment for which consent was elicited and a different surgical procedure or treatment was carried out: *Reibl*, at para. 12.

[179] I conclude from the foregoing that for Mansfield's claim for failure to obtain informed consent to succeed in battery, I would need to find that:

1. There was no consent given to the Facelift Revision; or,

2. The Facelift Revision that was performed went beyond the surgical procedure or treatment for which there was consent given and a different surgical procedure or treatment was carried out.

[180] In situations where it is alleged that attendant risks that should have been disclosed were not communicated to the patient, the Supreme Court further confirmed that, unless there has been misrepresentation or fraud to secure consent to the treatment, a failure to disclose the attendant risks, however serious, should go to negligence rather than to battery: *Reibl* at para. 13.

[181] Where a claim for failure to obtain informed consent should be considered in negligence, the Supreme Court in *Reibl*, at para. 4, described the duty of care

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imposed as a duty of disclosure to the patient of all material risks attending a surgery, and it generally outlined the scope of the surgeon's duty of disclosure, citing from *Hopp v. Lepp*, [1980] 2 S.C.R. 192 at para. 34:

> In summary, the decided cases appear to indicate that, in obtaining the consent of a patient for the performance upon him of a surgical operation, a surgeon generally should answer any specific questions posed by the patient as to the risks involved and should, without being questioned, disclose to him the nature of the proposed operation, its gravity, any material risks and any special or unusual risks attendant upon the performance of the operation. However, having said that, it should be added that the scope of the duty of disclosure and whether or not it has been breached are matters which must be decided in relation to the circumstances of each particular case.

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[182] I conclude that for her claim for failure to obtain informed consent to succeed in negligence, Mansfield would be required to prove three things (see *Watson v. Dr. Shawn Soo*n, 2018 ONSC 3809, at para. 82):

1. Seal failed to disclose the nature of the Facelift Revision or its material risks such that Mansfield was uninformed when undergoing the procedure on January 13, 2020;

2. Mansfield herself would not have undergone the procedure on January 13, 2020 had she been properly informed of the material risks; and,

3. A reasonable person in her position, properly informed, would not have proceeded with the procedure on January 13, 2020.

[183] This is the law I will apply to determine this issue.

The Positions of the Parties

[184] Mansfield submitted that Seal knowingly performed neck revision surgery on January 13, 2020, without her knowledge or informed consent.

[185] The Defendants submit that the evidence shows that the Plaintiff provided her informed consent to the Facelift Revision and the claim must be dismissed.

Discussion

[186] I will first address a ruling I made on the admissibility of an unsigned document titled Medical Expert Report of Dr. Norman Ahmad, October 20, 2024.

[187] The law regarding the admissibility of expert opinion evidence is well-established. The inquiry for determining the admissibility of expert opinion evidence is divided into two gatekeeping steps: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015] 2 SCR 182.

[188] At the first step, the proponent of the evidence must establish the threshold requirements of admissibility. These are the four factors set out in *R. v. Mohan*, [1994] 2 S.C.R. 9 (relevance, necessity, absence of an exclusionary rule and a properly qualified expert). Evidence that does not meet these four threshold requirements should be excluded.

[189] At the second step, the trial judge must decide whether expert evidence that meets the preconditions to admissibility is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process from delay and complexity. The unmistakable overall trend of the jurisprudence has been to tighten the admissibility requirements and to enhance the judge's gatekeeping role.

[190] When the Court exercises its discretion to grant a summary trial application, it must apply the same standards of adjudication and burden of proof on the merits as would apply on a full trial, including on admissibility of expert opinion evidence: *Marco No. 2*, at para. 76.16.

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[191] The Medical Expert Report attributed to Dr. Norman Ahmad was unsigned and there was no request to establish that Dr. Ahmad has the necessary qualifications to give opinion evidence on the matters covered by the report. I cannot conclude that Dr. Ahmad is a properly qualified expert or that he holds the opinions in the report.

[192] I therefore excluded the unsigned Medical Expert Report attributed to Dr. Norman Ahmad from the evidence.

[193] Turning first to consider Mansfield's claim for failure to obtain informed consent in battery, the evidence is clear that Mansfield did sign a written Consent to the Facelift Revision on January 13, 2020.

[194] The Consent signed on January 13, 2020, described the procedures she was consenting to as a "minor neck revision" and a "CO_2 glabella." I have referred to the "minor neck revision" procedure as the Facelift Revision.

[195] In terms of the nature and extent of the Facelift Revision that occurred on January 13, 2020, as discussed below I found based on the evidence that the "minor neck revision" involved a minor surgical procedure to revise the previous Facelift.

[196] Mansfield does not dispute that a surgical procedure was carried out by Seal on January 13, 2020, she argues that what was performed went beyond the liposuction procedure for which her consent was given and a materially different procedure was carried out.

[197] On cross-examination, Mansfield testified that she understood the "neck lipo revision" referred to in the email from the clinic dated December 2, 2019, referred only to a liposuction procedure conducted with a needle going in and removing the excess fat from her neck.

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[198] Mansfield testified that facelift revision surgery is worse than facelift surgery because there are more chances of things going wrong in a revision surgery.

[199] Mansfield claimed that she was not aware of the actual nature and extent of the Facelift Revision until 5.5 months after the procedure was performed.

[200] When shown the medical chart entry of January 2, 2020, and the evidence that the clinic had called to remind her of the appointment, Mansfield agreed there was a pre-surgical meeting before the Facelift but she maintained that there was no pre-surgical meeting held with Seal on January 2, 2020, to discuss the neck revision scheduled for January 13, 2020.

[201] Initially, Mansfield testified that on January 2, 2020 she was at the hospital, then she stated she was at Dr. Hogan's office or at the hospital getting back x-rays and could not have met with Seal or spoken with him on the phone. She then claimed that she was with Mr. Austin all day on January 2, 2020 and went to the doctor's office and hospital the next day, January 3, 2020.

[202] Mansfield's explanation of the existence of a patient chart entry dated January 2, 2020, and signed by Seal, was that after the Facelift Revision was performed Seal realized that he had performed a surgery he did not have consent for and he fabricated the January 2, 2020 chart entry to show there was a meeting on January 2, 2020 knowing that no such meeting had occurred.

[203] There is a conflict between Mansfield's evidence that she did not give her informed consent on January 13, 2020, and the other evidence in the record showing she was aware of the nature of the Facelift Revision and gave her informed consent on January 13, 2020.

[204] I find that this conflict in the evidence can be resolved by drawing common-sense inferences from the known facts, and by using the usual techniques of judging one witness's evidence in terms of its consistency with other evidence and other known circumstances.

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[205] I reject Mansfield's claim that Seal knowingly performed neck revision surgery on January 13, 2020, without her knowledge or informed consent for the following reasons.

[206] First, the Consent signed by Mansfield on January 13, 2020, specifically refers to a "minor neck revision" and identifies the material risks of the procedure as "infection, bleeding, scarring and need for a second procedure." This wording is consistent with a patient consenting to a minor surgery, not a patient consenting to a liposuction procedure with a needle going in and removing excess fat.

[207] The ordinary dictionary definition of a "revision" in the context of medicine, is a surgical operation to make good any deterioration following a previous operation: Shorter Oxford English Dictionary, 6th Ed., 2007, at page 2566.

[208] Second, on January 24, 2020, Mansfield was seen at the clinic and was noted to be "healing well" and she was instructed on the use of the scar gel. The references to "healing well" and scar gel are consistent with a patient undergoing minor surgery not a liposuction procedure and she raised no complaints or concerns on that date.

[209] Third, no questions, complaints, or concerns were ever raised by Mansfield about the nature and extent of the Facelift Revision until after the Plaintiff became dissatisfied with the outcome of the Facelift Revision and demanded a refund of the Facelift, which the clinic advised on June 29, 2020, it could not provide.

[210] Fourth, and after allegedly learning for the first time on June 29, 2020, that Seal knowingly performed neck revision surgery on January 13, 2020, without her knowledge or informed consent, Mansfield repeatedly requested that the same surgeon perform a third surgery. This is inconsistent with Mansfield having a *bona fide* belief that Seal performed surgery without her knowledge or informed consent.

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[211] Fifth, I find on the balance of probabilities that there was a pre-operative meeting between Seal and Mansfield on January 2, 2020, at which the nature and extent of the upcoming neck revision procedure on January 13, 2020, was disclosed.

[212] I make this finding based primarily on the handwritten entry in Mansfield's patient chart in the medical clinic record, date stamped January 2, 2020, and initialed by Seal: "For neck / CO_2 Revision."

[213] The law is that, subject to Mansfield's right to challenge the accuracy of the records and entries, the medical clinic records are admissible as evidence of the truth of the factual statements recorded within the documents: *Ares,* at para. 16, *D. (V.R.),* at paras. 53-54.

[214] Mansfield did not request to cross-examine Seal regarding the medical clinic records but, given his evidence that he did not recall the specific meeting on January 2, 2020, and relied instead upon his clinical notes and his normal practice, there would be nothing gained from any cross-examination on this specific point.

[215] In his Answers to Interrogatories dated June 20, 2024, Seal deposed he had no present recollection of the appointment with Mansfield on January 2, 2020[7]. It is clear that Seal was relying upon his normal practice in conducting revision procedures which included conducting a pre-operative meeting to address the nature of the procedure with the patient and answer any questions.

[216] There was undisputed evidence that Seal's normal practice was to conduct such a pre-operative meeting in that Seal had met with Mansfield on November 8, 2018, prior to the Facelift on November 13, 2018, to discuss the upcoming surgical procedure.

[7] Dr. Shane Seal, Answer to Interrogatories, paragraph 7(i), June 20, 2024.

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[217] And the undisputed evidence shows that an appointment was scheduled for January 2, 2020. On December 31, 2019, Mansfield emailed the clinic to state:

> Hi when I arrived home there was a message on my machine of a reminder of my appointment on Thursday[8]
> Today is the 31st
> So 2th and 9th is a Thursday
> I thought it was on the 13th
> Can you confirm what date, please

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[218] In reality, the factual conflict that exists about whether the pre-operative meeting occurred is between the evidence in the medical chart records made at the time of the relevant events and the evidence of Mansfield, supported by Austin, that she could not have been at Seal's clinic because she was in dire pain at home.

[219] The known circumstances assist me here. The disputed entry of January 2, 2020 is located on a page of Mansfield's chart that begins with an entry dated April 04, 2019, and ends with an entry dated January 13, 2020. A review of the entries on this page shows the January 2, 2020 entry is in chronological order between entries dated September 05, 2019, and January 13, 2020. I find that the January 2, 2020 entry is entered below the prior entry of September 5, 2019, in a manner that is completely consistent with the spacing between the other entries in the patient chart.

[220] To accept the premise of Mansfield's allegation that Seal fabricated the entry on her patient chart, someone, presumably Seal on the Plaintiff's theory, would have had to leave an additional space after the September 5, 2019 entry and before the January 13, 2020 entry for the fabricated January 2, 2020 entry.

[221] I would also need to accept that Seal would jeopardize his licensure by falsifying the chart to avoid a claim for which he would otherwise be indemnified.

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[8] The Thursday which followed December 31, 2019 was Thursday, January 2, 2020.

[222] The evidence of Mansfield that she could not have met with Seal on January 2, 2020, emerges 4.5 years after the date of the appointment, and is supported only by Austin who as I have found was her de facto advocate in this claim.

[223] Both Mansfield and Austin are therefore interested witnesses and the test I must subject their evidence to is whether the story accords with what a practical and informed person would conclude was reasonable in the circumstances, and how the story stood up under cross-examination. (*Faryna v. Chorny* (1951), 2 D.L.R. 354, 4 W.W.R. 171 (B.C.C.A.)).

[224] I found that Mansfield's evidence on cross-examination about the events of January 2, 2020 was confusing, argumentative and neither credible nor reliable. Even with Austin's Affidavit in support, which I can give no particular weight to given his role in the case, Mansfield's evidence is insufficient to challenge the accuracy of the medical records and patient chart entries made contemporaneously.

[225] I am therefore satisfied based on the evidence which I accept, including the medical chart entry of January 2, 2020 and Seal's evidence regarding his normal practice, that there was a pre-operative meeting and that Seal did disclose the nature and extent of the Facelift Revision prior to the procedure on January 13, 2020.

[226] I find that when Mansfield signed the Consent to a "minor neck revision" on January 13, 2020, she provided informed consent to the Facelift Revision and not solely to a liposuction procedure as she claimed.

[227] It follows from my findings that Mansfield's claim considered in battery must fail because the Facelift Revision procedure that was performed did not go beyond the surgical procedure or treatment for which there was consent given by Mansfield.

[228] Turning next to Mansfield's claim for failure to obtain informed consent in negligence, I find that it must fail at the first step in the three-part test because Mansfield has not established that Seal failed to disclose the nature of the Facelift

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Revision or its material risks such that Mansfield was uninformed when undergoing the procedure on January 13, 2020: *Watson*, at para. 82.

[229] Even if I had accepted that Mansfield had proven that she was uninformed of the material risks when undergoing the procedure on January 13, 2020, and only became aware of the nature of the Facelift Revision on June 29, 2020, Mansfield's claim would also run aground at the second step of the test.

[230] The evidence clearly shows that commencing on July 8, 2020, Mansfield requested on three occasions that a third operation be conducted by Seal:

> So I'm willing to get the third Surgery eleven (sic) when he said it might not make a difference. I will take the chance even though Dr. Seal said it may not make a difference

[231] This evidence satisfies me that Mansfield would have proceeded with the minor surgical procedure performed by Seal on January 13, 2020 had she been properly informed of the material risks of the Facelift Revision.

[232] Mansfield's claim for failure to obtain informed consent when considered in negligence must be dismissed.

COSTS

[233] On the issue of costs, the Defendants have been successful on the Rule 17A application and are entitled to their costs and disbursements of the application, to be taxed on Column 3.

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DISPOSITION

[234] The Defendants' application for summary trial is allowed.

[235] The Plaintiff's claims for medical negligence and failure to obtain informed consent are both dismissed, with costs.

[236] Order accordingly.

PETER A. O'FLAHERTY
Justice

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