SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

SARAH RAMEY, Plaintiff, v. EDWARD F. DUNNE, JR., M.D. and FOXHALL UROLOGY, CHTD., LLC, Defendants.	Case Number: 2019 CA 005730 M Hon. Shana Frost Matini Next Event: Status Conference April 2, 2021 at 11:00 am Courtroom 517

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Sarah Ramey files this opposition to Defendants' motion for summary judgment on the statute of limitations.

INTRODUCTION

Dr. Dunne botched Ramey's urethral dilation and then concealed his negligence from Ramey, her parents, and her doctors. Over the next decade and a half, Ramey experienced a variety of severe symptoms that confused and confounded dozens of specialists, who could not offer Ramey a proper diagnosis and in many cases blamed other factors entirely. Not until July 2017—fourteen years after the botched procedure—did advanced medical imaging offer Ramey a plausible diagnosis. With this long-awaited information, Ramey filed suit in August 2019, beating the three-year deadline by eleven months.

Yet Dr. Dunne seeks summary judgment on the statute of limitations, arguing that sixteen years is too long and choosing a handful of out-of-context quotations from 30,000 pages of medical records—while obscuring the overall mix of information that Ramey did—and did not—receive as she struggled to understand what was happening to her. While at various points Ramey and her parents suspected that her symptoms resulted from Dr. Dunne's negligence, those hunches were not confirmed—and, in fact, were refuted—by Ramey's many medical specialists. Experiencing a "larger, amorphous cloud of problems and symptoms that developed over the years," Ramey's "physicians bec[a]me confused," and she wound up "being sent from specialist to specialist, none of whom [could] tie the whole thing together." Def. Ex. 29, V&A (Digestive Ctr for Women-Chutkan) 106.

It is this overall experience—the "highly fact-bound" reflecting "all of the plaintiff's circumstances"—that governs the statute of limitations. *Brin v. S.E.W. Inv'rs*, 902 A.2d 784, 795 (D.C. 2006). In *Brin*, which Dr. Dunne fails to cite, the Court of Appeals recognized that in

unusual cases like this one, even the most diligent and persistent plaintiffs may need years to link their illness to a particular doctor's wrongful acts.

Although Dr. Dunne predicts that floodgates will open to decades-old malpractice claims, few cases are this complex. Even if this were a concern, the D.C. Council remains free to enact a statute of repose with a fixed time limit—as the Council has done for other types of claims. If anything, it is Dr. Dunne's rigid approach to the discovery rule that would burden doctors: If plaintiffs are forced to sue first and ask follow-up questions later, more doctors will wind up as defendants in premature malpractice cases.

In any event, well-settled doctrine guides this analysis. A reasonable jury could conclude that Ramey was not reasonably on notice until July 2017, and that her lawsuit is hence well within the three-year statute of limitations. Ramey is entitled to redress her injuries, even though it took her doctors a long time to realize what had caused them.

STATEMENT OF FACTS

Sarah Ramey seeks redress from Dr. Dunne and his medical practice because his malpractice caused her to suffer a horde of debilitating symptoms—including terrible pain, constipation, menstrual problems, brain fog, aching in the muscles and joints, multiple allergies, frequent infections, and extreme fatigue. In 2017, advanced medical imaging exposed the cause—massive scarring in Ramey's vagina and on her pudendal nerve—which could have been caused only by the surgery performed in 2003 by Dr. Dunne.

But the firm diagnosis offered by medical imaging in 2017 had evaded Ramey over the previous fourteen years. During that time, Ramey visited dozens of specialists in an ongoing effort to learn what was happening to her, who or what caused it, and whether Dr. Dunne's surgery had anything to do with it. But the specialists offered no clear picture. Some told Ramey

that Dr. Dunne's fault was a mere "possibility" not worth pursuing. Others told her that no amount of medical exploration would ever establish causation with enough probability to bring a case. Still others identified other culprits: Lyme disease, fibromyalgia, a psychological disorder, an unknown neurological disease, multiple fungal infections, Strongyloides, or an autoimmune disorder "of unclear etiology." Ramey Decl. ¶ 3; Def. Ex. 19, V&A (Brown & Toland) 67, 72.

With her specialists baffled, skeptical, or focused on other explanations, Ramey could not have been confident that the Dr. Dunne had caused her injuries—let alone confident enough to haul him into court. Not until 2017 did advanced medical imaging invert the ratio of signal to noise and make it sufficiently clear that her injuries were caused by Dr. Dunne.

A. Dr. Dunne attempts to treat Ramey's urinary tract infections by performing a urethral dilation.

In June 2002, Ramey had just finished her junior year at Bowdoin college and was attending summer classes at Harvard. One day, she went swimming in Walden Pond. Ramey Decl. ¶ 4. The next day, she was hospitalized with a painful urinary tract infection (UTI), which made her feel like she was "peeing broken glass." *Id.* ¶ 5. Doctors prescribed antibiotics, but the UTI persisted; a few days later, Ramey was back in the emergency room. *Id.* ¶ 6; Def. Ex. 3, Ramey 1107. Ramey continued to suffer UTIs (and the associated symptoms) over the next six months, and she felt constant pain in her urethra. Ramey Decl. ¶ 7.

While in Washington DC during her winter break in January 2003, Ramey visited Dr. Dunne, a prominent urologist and friend of her parents. *Id*. ¶ 8. Dunne told her that she if she wanted to resume living the normal life of a college senior, she had only one option: urethral dilation. *Id.* ¶ 9. Dunne claimed that the procedure was simple and could be performed

immediately. *Id.* ¶ 10. And when Ramey balked, Dunne assured her that he had recently dilated the urethra of a 90-year-old woman; he added, "if she can do it, you can do it." *Id.* ¶ 11.

When Dunne began the procedure, however, Ramey found it blindingly painful. In response, Dr. Dunne asked her whether she wanted to stop or, instead, whether she wanted to "suck it up and get it done." *Id.* ¶ 12. Relying on Dunne's assurances that the pain was normal, Ramey told him to continue. *Id.* ¶ 13. As she was preparing to leave the office after the procedure, Ramey told Dr. Dunne that she was bleeding. An irritated Dr. Dunne responded, "What, you want a pad or something? You want me to get a nurse?" *Id.* ¶ 14. After receiving a pad from a nurse, Ramey left Dunne's office believing that she was overreacting to ordinary bleeding and pain that accompanied what Dr. Dunne had described as a routine procedure. *Id.* ¶ 15.

B. When Ramey is hospitalized the next day, Dr. Dunne deceives her other doctors about her urethral dilation.

The next day, Ramey was hospitalized with sepsis—including high fever (103°), chills, and generalized malaise, and an "intense feeling of severe, painful aching throughout [her] body and searing pain in . . . the urethral area"; Dunne was called in as the attending physician. Ex. 1, Ramey 4120–21; Def. Ex. 15, Ramey 318. During Ramey's four-day hospital stay, Dr. Dunne downplayed the possibility that his procedure was to blame.

For example, Dr. Dunne mentioned that he had performed a flexible cystoscopy but omitted that he had performed a urethral dilation, which uses a rigid instrument designed to stretch and rip the urethra. *See id.* at 4121 ("I scoped her in the office"); *id.* at 4123 ("malaise chills post-cystoscopy yesterday"); *id.* at 4126 ("Chief Complaint/Narrative: cystoscopy yesterday c/o pain + chills now. Pain is generalized."); *id.* at 4129 ("Impression: (1) urosepsis following urinary instrumentation with history of very persistent urinary tract infections").

Dunne's notes neither disclosed nor suggested that the urethral dilation was painful or bloody. *See id.*

Dr. Dunne also thwarted other doctors' efforts to diagnose the cause of Ramey's sepsis. In particular, a gynecologist had announced that she would conduct a pelvic exam—which might have detected signs of trauma from the urethral dilation. But Dr. Dunne dissuaded her from doing so, warning that the pelvic exam "might make things worse." Ex. 2.

As a result, Ramey's doctors dwelled on other possible explanations. By the time Ramey was discharged, her doctors had singled out "recurrent urosepsis with frequent urinary tract infections," "urethral diverticulum," "severe constipation," "muscle spasms of unknown etiology," and "persistent dysuria." Ex. 1 at 4179. On the list of possible causes, a botched urethral dilation did not appear. *See id.*

C. Ramey visits several other doctors, who did not blame her symptoms on the urethral dilation performed by Dr. Dunne.

Ramey's condition did not improve: "[T]he UTI symptoms persisted, [her] bowels were stopped completely and the episodes of that full[-]body aching would come every day, if not all day." Def. Ex. 15, Ramey 318. Over the next few years, Ramey visited one doctor after another in the hopes of receiving a reasonably concrete diagnosis. She did not receive one.

1. February 2003: "no idea what was causing her problems."

In February 2003, Ramey visited a urologist in Maine. That doctor examined her urethra, and that night she was "hospitalized again with high fever, rigors and intense full[-]bodied pain." *Id.* Although this urologist knew that Ramey's "recent episode was urethral manipulation" (Def. Ex. 1), the doctor "had no idea what was causing her problems" (Def. Ex. 2).

2. March 2003: "no idea what could cause those symptoms"

Then, in March 2003, Ramey was examined by Dr. Croft of the Arthritis Center in Chevy Chase, Maryland. Although "a number of diagnostic thoughts ha[d] crossed [his] mind," he wrote, ultimately "there is little evidence to support any of them at the present time." Def. Ex. 3, Ramey 1105. Indeed, Dr. Croft told Ramey that "he had no idea what could cause those symptoms," and he suggested that the cause might be psychological. Ramey Decl. ¶ 16.

3. September 2006: "it seems most likely that an element of the irritable bowel syndrome with constipation exists"

Dr. Minnie Taw examined Ramey in September 2006. Although "slow-transit constipation and pelvic floor dysfunction are possible," she opined, "it seems most likely that an element of the irritable bowel syndrome with constipation exists" Def. Ex. 7, Ramey 15252–53. There were other possibilities, too: "Inflammatory bowel disease and gynecologic pathology are less likely diagnoses. A partial small bowel obstruction due to adhesions, an internal hernia, or a tumor is unlikely. Inflammatory bowel disease certainly is worth consideration . . . , but this also seems unlikely." *Id.*

4. December 2007: "the severe UTI" itself.

Other specialists blamed Ramey's problems on the underlying UTI, rather than the resulting urethral dilation. For instance, in December 2007, Dr. Jeffrey Lin examined Ramey and suggested that perhaps her symptoms were "initiated by the severe UTI in 2003," not by the urethral dilation procedure itself. Def. Ex. 8, V&A (GW Medical Faculty Assoc) 2.

5. January 2008: "neurogenic in character."

The list of possible explanations continued to expand. In January 2008, Dr. Thomas Loughney conceded that "Sarah's chronic pelvic pain has certainly defied a ready diagnosis."

Def. Ex. 9, Ramey 1590. That said, he "believe[d] that an element of her symptoms is neurogenic in character." *Id.* There was more: Dr. Loughney "wonder[ed] about either vascular congestion or pelvic congestion as a potential contributor to her symptoms"; and he also pondered "whether there [wa]s an element of an allergic reaction or mastocytosis." *Id.*

6. *March and April 2008: "I am at a loss to explain her symptoms."*

In March 2008, urologist Dr. Michael Phillips opined that the "etiology"—or cause—of Ramey's pelvic pain was "unknown," and he had "a very low index of suspicion" that Ramey had a fistula. Def. Ex. 12, V&A (Michael Phillips, MD) 6. The next month, Dr. Phillips and another doctor examined Ramey using several procedures at Sibley Memorial Hospital, including a transvaginal ultrasound, noting that Ramey "has been worked up numerous times without significant findings." Def. Ex. 11, Ramey 2175.

This time was no different; everything "looked normal." *Id.* at Ramey 2176. Dr. Phillips did not pretend otherwise: "At the present time, I am at a loss to explain her symptoms." Def. Ex. 12, V&A (Michael Phillips, MD) 8.

D. After getting more information, Ramey and her parents unsuccessfully seek medical opinions causally linking the urethral dilation to her mysterious illness.

While Ramey was at Sibley for testing by Dr. Phillips, Dr. Dunne approached her mother Dr. Ylene Larsen in the parking lot to ask why Sarah was on the operating room schedule for gynecological testing. Ex. 3. After Dr. Larsen explained that they were hoping to rule out a "trapdoor injury," Dr. Dunne "insisted that that could not have happened because he had used male dilators," rather appropriately short and straight female dilators; Dunne quickly explained that they had not had any female dilators available for Ramey as they had been used earlier in the day. *Id.*

For the next eight years, Ramey and her parents continued to visit specialists around the country for treatment. At those visits, they often identified the "trauma" of the urethral dilation as a potential cause of her symptoms, hoping that a qualified medical specialist would validate this possibility. *See* Def. Ex. 14, V&A (Brown & Toland) 3 ("patient describes a urethral dilation procedure performed 2003 and concerns regarding chronic infection from trauma") (Oct. 22, 2009); Ramey Decl. ¶ 17. But none of these specialists approached a reasonably firm conclusion; most determined that the cause was either unknowable or something else entirely.

1. October 2009: "symptoms are quite complex" and urethral dilation is not the cause.

During Ramey's visit in October 2009, gynecologist Pearl Yee observed that Ramey's "symptoms are quite complex" and warned against trying to uncover their cause using "exploration or excision." Def. Ex. 14, V&A (Brown & Toland) 3. And according to Dr. Yee, Ramey's illness was not caused by the urethral dilation. Ramey Decl. ¶ 18.

2. July 2010: "infection and systemic candidiasis."

The following year, Ramey visited Dr. Elliot Krames. After speaking with Ramey and her mother, Dr. Krames echoed her "mother's belief that this woman's pain complaints are absolutely due to [parasitic] infection and systemic candidiasis." Def. Ex. 18, V&A (Ricki Pollycove, MD) 11–13, 15.

3. May 2014: "impossible to know" the cause.

In May 2014, Dr. Cheryl Iglesia appeared to seriously consider the possibility that Ramey's symptoms had been caused by Dr. Dunne's urethral dilation. Ramey Decl. ¶ 19. Yet even then, Dr. Iglesia's written notes listed the urethral dilation as only one of eight possibilities. *See* Ex. 4, Ramey 13945–46. And when she spoke to Ramey, Dr. Iglesia's opinions were even more uncertain: Dr. Iglesia mentioned the urethral dilation "in passing" and as a mere

possibility. Ramey Decl. ¶ 19. Ultimately, Dr. Iglesia told Ramey, it was "impossible to know" whether her symptoms were caused by the urethral dilation or something else—like an idiopathic pain syndrome or an unrelated infection. *Id*.

4. *May 2014: Slim likelihood of pudendal nerve damage would not justify further diagnostic evaluation.*

Later that month, Ramey again visited yet another doctor, Robynne Chutkan. Back in September 2013, Dr. Chutkan had told another doctor that Ramey presents "a complicated situation—both medically and psychologically"—and that Ramey "has severe colonic inertia plus/minus possible pudendal nerve damage after a cystoscopy many years ago." Def. Ex. 25, V&A (Digestive Ctr for Women-Chutkan) 100.

At the May 2014 visit to Dr. Chutkan, Ramey and her parents overstated the certainty of Dr. Iglesia's observations, hoping that Dr. Chutkan would offer a more concrete diagnosis. *See* Def. Ex. 24, V&A (Digestive Ctr for Women-Chutkan) 99 (describing it as "[o]ne working theory" among several) (Sept 2013); Def. Ex. 28, V&A (Digestive Ctr for Women-Chutkan) 104 ("she may have [a condition], which can rarely occur after trauma to the pelvic area") (Feb 2014); Def. Ex. 32, V&A (Digestive Ctr for Women-Chutkan) 118 (May 2014) ("thinks that the 10 years ago injury from the urethral dilation damaged the pudendal plexus and cause[d] much scarring and lymphatic obstruction as well as maybe a colon perforation."). Even then, however, Dr. Chutkan did not oblige.

Instead, when Ramey raised the possibility that the urethral dilation caused pudendal nerve damage that might explain her mysterious illness, Dr. Chutkan merely smiled and nodded. Ramey Decl. ¶ 20. In her notes, Dr. Chutkan wrote that the pelvic pain could arise from "[p]ossible recto-vaginal fistula, resulting from the original urethral dilation that tore through the

urethra, and through the vagina into the rectum." Def. Ex. 31, V&A (Digestive Ctr for Women-Chutkan) 111. But when actually speaking with Ramey, Dr. Chutkan said only that (1) urethral dilation could in theory be one possibility among many, but (2) in any event, the slim likelihood of pudendal nerve damage would not justify further evaluation. Ramey Decl. ¶ 20.

5. *August 2014: Caused by "straddle injury at age 5"; "I DO NOT think she has a [nerve] injury."*

After an August 2014 visit, pelvic-pain specialist Dr. Richard Marvel was adamant that Ramey's problems did not stem from a nerve injury sustained during the urethral dilation. His notes say the "Severe Pelvic pain syndrome . . . [l]ikely started with PN emanating from straddle injury at age 5 [that] worsened over time . . . all prior to urethral dilation," concluding: "I DO NOT think she has a [nerve] plexus injury." Ex. 5, Ramey 13456 (CAPS in original). This was a direct repudiation of what Ramey wrote in her intake form: that she was the victim of an "attempted urethral dilation, slipped + punctured left vaginal wall + left pelvic plexus." Def. Ex. 21, Ramey 13396.

E. In July 2017, advanced medical imaging reveals "severe scarring" where Dr. Dunne performed the urethral dilation, compressing several nerves, blood vessels, and the lymph supply.

On July 6, 2017, Dr. Mario Castellanos at St. Joseph's Division of Surgery and Pelvic Pain, one of the country's preeminent centers for the treatment of pelvic pain, became the first doctor who agreed to perform a transvaginal ultrasound under "twilight sedation"; all other doctors said they only would do the procedure without anesthesia (which is normal for most people, but far too painful for Ramey to tolerate), because "there probably was not any damage there anyways," and the slim chance of finding anything was outweighed by the slim risks of the sedation itself. Ramey Decl. ¶ 21. Dr. Castellanos later explained that the sonographic machine

he used is more sophisticated than what most physicians have, and can detect scarring in this nerve-rich area that other imaging systems cannot. *Id.* ¶ 22.

Dr. Castellano's imaging found a 1x2 cm mass exactly where she had been describing all of her pain. Ex. 6. Afterwards, Castellano explained that he believed the mass was the cause of her severe pain and complex regional pain syndrome, and that it most likely was caused by Dr. Dunne's urethral dilation. Ramey Decl. ¶ 23.

Dr. Castellano suggested that the area be examined surgically to confirm what kind of mass it was (e.g., neuroma, scar tissue, or tumor). Ramey Decl. ¶ 24. Dr. A. Lee Dellon performed the surgery in October 2017, clearly identifying that the multiple branches of the left pudendal nerve were covered in a dense mass of scar tissue that was entrapping those nerves, the nearby blood vessels, and the lymph supply. Ramey Decl. ¶ 25. *See* Ex. 7 (noting, *e.g.*, "severe scarring"). He later explained it could only have been caused by Dr. Dunne's urethral dilation. *Id.*

ARGUMENT

Dr. Dunne's summary-judgment motion may be granted only if a reasonable juror could not find for Ramey, "taking all reasonable inferences in the light most favorable to" her. *Galloway v. Safeway Stores, Inc.*, 632 A.2d 736, 738 (D.C. 1993). And if the outcome depends on "controverted facts and the credibility of the witnesses, the case is properly for the jury." *Warren v. Medlantic Health Grp., Inc.*, 936 A.2d 733, 737 (D.C. 2007) (quotation marks omitted). In the District of Columbia, a plaintiff must bring an action for negligence within three years after the cause of action accrues. D.C. Code § 12-301(8). Ramey filed this medical negligence case on August 30, 2019. Because a reasonable juror could conclude that Ramey's claim accrued no sooner than August 31, 2016, Dr. Dunne is not entitled to summary judgment.

Although often a claim accrues at the time of the injury, ultimately accrual turns on the "discovery rule." *Bussineau v. President & Dirs. of Coll.*, 518 A.2d 423, 425 (D.C. 1986) (citations omitted). Under the discovery rule, a cause of action does not accrue until the plaintiff knows or should know "(1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing." *Id.* at 435. This "highly fact-bound" analysis considers "all of the plaintiff's circumstances." *Brin v. S.E.W. Inv'rs*, 902 A.2d 784, 795 (D.C. 2006) (quotation marks omitted). As a result, the Court of Appeals "tend[s] to look askance at trial court rulings that purport to decide such an issue on motions for summary judgment." *Colbert v. Georgetown Univ.*, 641 A.2d 469, 476 (D.C. 1994).[1]

I. The uncertain, contradictory, or alternative explanations from Ramey's many specialists did not trigger the discovery rule.

In presenting the statements and opinions of Ramey's myriad specialists, Dr. Dunne reduces the full story to a game of magic words. Out of tens of thousands of pages of medical records, Dr. Dunne cites fewer than a dozen statements from eight of Ramey's physicians. But whether Ramey did or should know that Dr. Dunne was at fault depends on the overall set of facts and circumstances.

This holistic approach is required by the law, which recognizes that "[w]hat is reasonable under the circumstances is a highly factual analysis" and "the standard is far from a precise

---

[1] To complicate matters further, if the plaintiff suffers multiple diseases, the accrual of a cause of action for a particular disease does not necessarily "'trigger[] the running of all separate, distinct, and later-manifested diseases . . . engendered by the same'" underlying cause. *Colbert*, 641 A.2d at 475 (quoting *Wilson v. Johns–Manville Sales Corp.*, 684 F.2d 111, 115 (D.C. Cir. 1982)). Each "new, different, and more serious disease constitute[s] a separate injury" and accrues separately, *id.*, even though sharing a common cause. *Wilson*, 684 F.2d at 115 (a single exposure to asbestos can cause the separately accruing actionable injuries of asbestosis and mesothelioma).

one." *Brin*, 902 A.2d at 794, 800–01 (quotation marks omitted). More fundamentally, this approach is dictated by common sense. If Jane Patient visits only one specialist, who blames her sickness on Dr. Jones, then Jane Patient reasonably should know that Dr. Jones is at fault. But if Jane Patient visits 100 specialists, and the other 99 blame Dr. No or Dr. Greene or Dr. Quinn—or simply throw up their hands, unable to decide who is to blame—then Jane Patient would not reasonably be expected to hold Dr. Jones responsible. In other words, the discovery rule considers the overall mix of information—not a single sentence or page from an isolated medical record.

As explained in more detail in our Statement of Facts, until July 6, 2017, the overall mix of information left Ramey reasonably baffled—just like the specialists that she visited over fourteen years. The isolated snippets quoted by Dr. Dunne would not require a reasonable jury to disagree.

First, Dr. Dunne relies on an ambiguous statement in a February 2003 report authored by consulting gastroenterologist Dr. Louis Korman, who wrote that the urethral dilation procedure was a "[t]rigger event." Def. Ex. 1, RAMEY 934. This is not a statement of causation, let alone one sufficient to trigger the discovery rule as a matter of law. A "trigger event" is a statement of correlation, not causation. *See Degussa Corp. v. Mullens*, 744 N.E.2d 407, 409 (Ind. 2001) ("possible that work-related chemical exposure only was triggering an injury caused by something else"). Dr. Dunne ignores that on the same day, Dr. Korman wrote that "etiology is unknown." Ex. 11, RAMEY 937.

Second, Dr. Dunne cites notations by Dr. Joseph Croft in March 2003; in those notes, Dr. Croft observes that several of Ramey's symptoms arose shortly after the urethral dilation but

generally are silent as to causation. Def. Ex. 3, RAMEY 1108. Dr. Dunne ignores that on the same day, Dr. Croft wrote to Ramey's mother that while "a number of diagnostic thoughts have crossed [his] mind," "there is little evidence to support any of them at the present time." Def. Ex. 3, RAMEY 1111. Far from identifying the urethral dilation as the precipitating cause, Dr. Croft identified her "recurrent urosepsis"—the condition that the urethral dilation was intended to address—as her "principal problem," and as a possible explanation for "her musculoskeletal symptoms." *Id.*

In any event, Dr. Croft did not share this information with Ramey; instead, he told her that "he had no idea what could cause those symptoms, and suggested that it might be psychological." Ramey Decl. ¶ 16. Ramey, then, reasonably relied on representations to the contrary . . . of a possible causal relationship." *Brin*, 902 A.2d at 799 (quotation marks omitted).

Third, Dunne cites records from Ramey's December 2007 visit to gynecologic surgeon Jeffrey Lin. But these records merely describe the chronology of Ramey's symptoms, beginning a few years before the urethral dilation. Def. Ex. 8, V&A (GW Medical Faculty Assoc) 1. Far from blaming the urethral dilation, Dr. Lin thought that her symptoms were "most likely . . . initiated by the severe UTI in 2003"—the condition precipitating the urethral dilation, not the dilation itself. And while Dr. Lin suggested treating Ramey's pain with a "nerve block or presacral neurectomy," *id.*, nerve-related treatments do not imply nerve-related causes. That is why epidural nerve blocks are used to treat pain experienced by pregnant women in labor: The source of the pain is childbirth, not nerve damage, let alone nerve damage from a urethral dilation.

Fourth, Dr. Dunne points to the medical history taken by Dr. Thomas Loughney in early 2008. In that history, Dr. Loughney notes that Ramey had "frequent urinary tract infections"

before the urethral dilation, but he does not identify urethral dilation as a cause of her symptoms. Def. Ex. 9, RAMEY 1588. Elsewhere, Dr. Loughney blames her pelvic pain on constipation; he adds that Ramey's "chronic pelvic pain has certainly defied a ready diagnosis," suggests that "an element of her symptoms is neurogenic in character," and "question[s] whether there is an element of an allergic reaction of mastocytosis." *Id.* at RAMEY 1589–90.

Like Dr. Lin, Dr. Loughney suggests that she consult with "an experienced anesthesia pain service" to see whether she "would benefit from neuromodulators to diminish her pain." *Id.* But again, nerve-related treatments do not imply nerve-related causes, let alone a nerve-related cause arising from the urethral dilation.

Fifth, Dr. Dunne quotes an April 2008 notation by Dr. Michael Phillips, who notes Ramey's "history of urinary tract infection" and "pelvic pain follow[ed] a cystoscopy and urethral dilation," Def. Ex. 11, RAMEY 2175, and then describes how the tests they performed (e.g., transvaginal ultrasound and MRIs) were normal, *id.* at RAMEY 2176. Dr. Dunne ignores Dr. Phillips's actual opinion that the cause of Ramey's symptoms was "unknown." Def. Ex. 12, V&A (Michael Phillips, MD) 6.

Sixth, Dr. Dunne cites the notes of consulting gynecologist Dr. Pearl Yee, who wrote that Ramey's self-reported history correlated the timing of her symptoms with the urethral dilation procedure. Def. Ex. 14, V&A (Brown & Toland) 3. Dr. Dunne ignores that Dr. Yee cautioned Ramey "that her symptoms are quite complex," and warned against "exploration or excision" to determine what caused them. *Id.* at 5. More to the point, Dr. Yee told Ramey that her symptoms were not caused by the urethral dilation. Ramey Aff. ¶ 18.

Seventh, Dr. Dunne relies on a July 2010 appointment with Dr. Elliot Krames, whose notes describe Ramey's "long and complex [medical] history" and add that "[h]er various pain complaints started in 2002 after swimming in Walden Pond in Massachusetts[, and that s]he developed multiple urinary tract infections." Def. Ex. 18, V&A (Ricki Pollycove, MD) 11–12. Nowhere in these notes does that Dr. Krames identify urethral dilation as even a possible culprit. Rather, he adopted "Sarah's mother's belief that this woman's pain complaints are absolutely due to Strongyloides . . . infection and systemic candidiasis." *Id.* at 11–12, 15.

Finally, Dunne relies on two statements from Dr. Robynne Chutkan, one in 2013 and another in 2014. These statements, too, either do not support an opinion of plausible causation, or they simply are too equivocal or ambiguous to rule in Dunne's favor as a matter of law. In a September 16, 2013 email to Dr. David Fleischer, Dr. Chutkan wrote that this is "a complicated situation—both medically and psychologically"—and that Ramey "has severe colonic inertia plus/minus possible pudendal nerve damage after a cystoscopy many years ago." Def. Ex. 25, V&A (Digestive Ctr for Women-Chutkan) 100. Statements of "possible" causality do not trigger the discovery rule. *Degussa Corp.*, 744 N.E.2d at 411 (cited favorably at *Brin*, 902 A.2d at 798); *Helinski v. Appleton Papers*, 952 F. Supp. 266, 271 (D. Md. 1997) (cited favorably at *Brin*, 902 A.2d at 798–99).

Dr. Dunne also ignores the broader context. When, days earlier, Ramey raised the possibility of pudendal nerve damage, Dr. Chutkan merely smiled and nodded. Ramey Decl. ¶ 20. This mode of response suggested that Dr. Chutkan did not take the theory seriously. *See Degussa Corp.*, 744 N.E.2d at 411 (identifying "factually and legally relevant questions about how the physician conveyed the information to the patient and what emphasis the physician placed on

the potentially tortious cause over other causes") (quoted in *Brin*, 902 A.2d at 798). Dr. Chutkan even added that the slim likelihood of pudendal nerve damage would not justify further diagnostic evaluation. Def. Ex. 25, V&A (Digestive Ctr for Women-Chutkan) 100.

Dr. Chutkan's notes from May 2014 are similarly ambiguous. To be sure, Dr. Chutkan wrote that the pelvic pain could arise from "[p]ossible recto-vaginal fistula, resulting from the original urethral dilation that tore through the urethra, and through the vagina into the rectum." *Id.* at 111. But she also noted that Ramey's first symptoms predated the urethral dilation: "Severe burning, shooting pain between shoulder blades that radiates down the arms . . . after a major bronchial infection and a series of UTIs[, which] began four months <u>before</u> the urethral dilation." Def. Ex. 31, V&A (Digestive Ctr for Women-Chutkan) 110 (emphasis in original). In the end, Dr. Chutkan told Ramey only that urethral dilation could be one possibility among many. Ramey Decl. ¶ 20.

The scattered and contradictory opinions of Ramey's specialists resemble those at issue in *Brin*, which the Court of Appeals reversed a grand of summary judgment and held that the statute-of-limitations was for the jury. Like Ramey, the plaintiff in *Brin* had a bundle of symptoms—including muscle pain, cramping, fatigue, photosensitivity, poor balance, blurry vision, short-term memory problems, and difficulty reading. *See* 902 A.2d at 787–88. Like Ramey's doctors, the doctors in *Brin* opined over the years that the plaintiff's symptoms might indicate Lyme disease, fibromyalgia, a psychological condition, or an unknown neurologic disease. *See id.* at 788–91. And like Ramey, the plaintiff in *Brin* was often met with "a high degree of skepticism," with doctors testifying that the plaintiff's diagnosis was "extraordinarily difficult." *Id.* at 790. So as in *Brin*, Ramey lacked (until July 2017) the necessary "medical advice

to support a linkage between a known injury and wrongdoing of which the person has some evidence." *Id.* at 793.

II. Lay opinions from Ramey and her parents did not trigger the discovery rule.

Unable to establish that Ramey received clear medical guidance until July 2017, Dr. Dunne argues that lay opinions of Ramey and her parents necessarily trigger the statute of limitations, no matter what the other circumstances and no matter what Ramey learned from her doctors. *See* Mot. 5–6. Citing both the Bible and ancient Greek mythology, Dunne insists that requiring medical opinion on causation would lead to "the fundamental destruction or dilution of the statute of limitations" and "the total destruction of the legal foundation and relative certainty of the statute of limitations in D.C." Mot. 5–6.

But these Hellenic and biblical sources do not overrule the decisions of the D.C. Court of Appeals, which has already rejected the arguments that Dr. Dunne makes here. In *Brin*—which Dr. Dunne fails to cite—the Court of Appeals held that "a person cannot reasonably be expected or required to act until that person has some medical advice to support a linkage between a known injury and wrongdoing of which the person has some evidence." 902 A.2d at 793. A plaintiff's own opinions about the cause of her condition do not trigger the statute of limitations; at a minimum, a "plausible" medical opinion of causation must accompany those lay opinions. *Brin*, 902 A.2d at 794.

As detailed above in Section I and the Statement of Facts, Ramey's doctors collectively did not opine that Dr. Dunne had caused her injuries; on the contrary, her doctors suggested that the cause was undetermined, unknowable, or unrelated.

A. Ramey's pre-2016 equivocal statements did not trigger the discovery rule.

The plaintiff in *Brin* alleged that she suffered a complex array of symptoms—muscle pain, cramping, tightness, fatigue, difficulty sleeping, eczema, frequent hives, photosensitivity, clumsiness, poor balance, blurry vision, headaches, confusion, short-term memory loss, and trouble reading—due to fumes and particles at her workplace. *See id.* at 787–88. Like Dr. Dunne, the defendant in *Brin* pointed to a veritable "mountain of statements and writings from the Plaintiff's mouth and pen." Mot. 5. Indeed, over the course of five years, the plaintiff had:

- Written a letter to her boss asking to work in a different building because "she had been informed that there are problems with this building";
- Taken a part-time detail elsewhere "because she suspected that her ailments might have something to do with the conditions at" work;
- Told a doctor that "she may have been exposed to toxins while at work";
- Noted in her medical history that she "had been [e]xposed to solvents at the [employer's] office building";
- Told a neuropsychologist that she "believes that her employers exposed her to gasses and solvents in a sick building";
- Told a neurologist "her employer exposed her to gasses and solvents in a sick building";
- Told another doctor that she "was in a sick building and that environmental toxins were identified" and "the area that she works in has the highest concentration of these materials in the air"; and
- Told yet another doctor that she "worked in a [s]ick building where there have been environmental toxins identified and she works in the area with the highest concentration of these materials."

Id. at 787–90 (quotation marks omitted). Relying on these statements, the trial court had granted summary judgment to the defendant on the statute of limitations.

But the Court of Appeals reversed and reinstated the claims, *id.* at 802, and the Court's analysis in *Brin* dooms Dr. Dunne's arguments here. "Patients who seek medical care are not responsible for diagnosing their own condition," the Court observed, and instead "must rely on the physician's expertise to determine the cause of the problem and provide treatment." *Id.* at 793 (quotation marks omitted). And because "patients must rely on their doctors, a person cannot reasonably be expected or required to act until that person has some medical advice to support a linkage between a known injury and wrongdoing of which the person has some evidence." *Id.*

So too here. If anything, Ramey's statements to her doctors were even less focused and more qualified than the statements made by the plaintiff in *Brin*.

For example, Dr. Dunne relies mostly on statements made by Ramey when describing her medical history to her doctors, but he omits that most of that history predated the urethral dilation. *See*, *e.g.*, Ex. 5 (describing "a straddle injury on a diving board, age 7"); Def. Ex. 8 at V&A (GW Medical Faculty Assoc) 1 (describing "vaginal yeast infections and acne" before 2002, her "first UTI" in 2002, and "more episodes of urethral symptoms" prior to the urethral dilation). She also described other events and procedures that took place after the urethral dilation. *See*, *e.g.*, *id.* (noting a second cystoscopy a month later and "fever and probable sepsis again" immediately after that procedure). Ramey would not have supplied this information if she believed that the urethral dilation was the starting and ending point. Even when Ramey identified certain symptoms that started soon after the procedure, their temporal relationship does not establish a causal relationship: "[A] mere temporal coincidence between two events does not necessarily entail a substantial causal relation between them." *Lasley*, 688 A.2d at 1387.

Take, for instance, the medical history that Ramey provided to Dr. Li in 2010. She described events and effects implying nearly a dozen possible causes of her various conditions—including "multiple fungal infections, an autoimmune disorder of unclear etiology," and "a history of Strongyloides"—and seven different "working diagnoses," most of which could not have related to the urethral dilation and none of which are identified as anything more than mere possibilities. *See* Def. Ex. 19, V&A (Brown & Toland) 67, 72. As in *Helinski*—which the Court of Appeals quoted in *Brin*, 902 A.2d at 799—the discovery rule is not triggered by causation opinions that are "neutral, ambiguous, hypothetical, or phrased in terms of mere possibility." 952 F. Supp. at 271 (citation omitted).

Even when Ramey expressed more certainty, her doctors disagreed. In 2010, Ramey found an online presentation about "Pudendal Nerve Entrapment," Ex. 8, RAMEY 255–79, and then started trying to convince her doctors to consider that possibility, Ramey Decl. ¶ 26. But in response, each doctor answered that this theory was too implausible to warrant more testing, focused only on her symptoms, or identified other possible causes. *Id*. The discovery rule is not triggered in these circumstances, in which the plaintiff "suspected . . . that [defendant] was the culprit, [but] his attempts to determine the actual cause were rebuffed by his doctors." *Evenson v. Osmose Wood Preserving Co. of Am.,* 899 F.2d 701, 705 (7th Cir. 1990).

Ramey's May 2014 email to Dr. June Stevens reinforces this dynamic. Although Ramey wrote that the facts "seem to indicate" that Dr. Dunne caused her problems, she also emphasized her doctors' "confusion" about possible causes. Def. Ex. 29, V&A (Digestive Ctr for Women-Chutkan) 106. Ramey was frustrated because her doctors could not or would not opine on a plausible cause: Because of the "amorphous cloud of problems and symptoms that

developed over the years," her "physicians [would] become confused," and Ramey "end[s] up being sent from specialist to specialist, none of whom can tie the whole thing together." *Id.* "[T]here may be a mechanical problem at the root—but we have not been able to identify what it is." *Id.*

In July 2014, Ramey wrote in an intake form for pelvic-pain specialist Dr. Richard Marvel that she was the victim of an "attempted urethral dilation, slipped + punctured left vaginal wall + left pelvic plexus." Def. Ex. 21, Ramey 13396. But after that visit in August 2014, Dr. Marvel's repudiation of the theory could not have been stronger: "Severe Pelvic pain syndrome . . . [l]ikely started with PN emanating from straddle injury at age 5 [that] worsened over time . . . all prior to urethral dilation . . . . I DO NOT think she has a [nerve] plexus injury." Ex. 5, Ramey 13456.

The plaintiff's more categorical assertions in *Brin* did not trigger the discovery rule. And Ramey's equivocal statements fall even shorter.

B. The pre-2016 equivocal statements of Ramey's non-urologist parents did not trigger the discovery rule.

Dr. Dunne's argument relies on a second class of lay opinion: Observations made by Ramey's parents, who are doctors but not urologists. Citing no legal authority, Dr. Dunne asserts that statements from Ramey's parents "carry **considerable** weight in the instant analysis—reflecting the insights not just of proactive and concerned parents but of qualified medical professionals holding specialized knowledge about the issue presented." Def. Mot. 10 n.3 (emphasis in original). This is wrong both factually and legally.

First, neither of Ramey's parents is a "qualified medical professional[] holding specialized knowledge about the issue presented." *Id.* Her father is an endocrinologist, and her mother specializes in pulmonary care; Ramey's symptoms involved neither her glands nor her lungs.

Ramey's parents acted primarily as their daughter's advocate when consulting other specialists, not as her actual physician. Ramey Decl. ¶¶ 27–29. Even if their unrelated medical training carried more weight than that of someone who never attended medical school, they would not override the opinions of the qualified specialists on whose opinions Ramey relied.

Given their lack of expertise in the relevant fields, the opinions of Ramey's parents often conflict with one another and with those of Ramey's treating physicians—and Ramey did not rely on them. As Ramey wrote to a friend in August 2013, "My mom, while doing so much for me, is too involved medically and it is a problem. She can't be Mom and Doctor in this case any more, which we have been trying to solve forever, but every time I am sent away from another bewildered doctor, it falls back to her." Ex. 9, RAMEY 19481. Ramey was blunt: Her mom "has very definite views about what to do, and many of them are a little batty—and they completely differ from my other doctor-parent's views on what to do." *Id.* As Ramey's mom acknowledged, Ramey did not want to hear "clinical hypotheticals": "She wants me to be her Mom." Ex. 10, RAMEY 392.

Second, even if Ramey's parents were qualified medical specialists, their statements would still not have triggered the discovery rule. Their statements were not sufficiently concrete, and Ramey reasonably did not rely on them.

For one, Dr. Dunne cites six statements by Ramey's mother, but none opined that Dr. Dunne caused Ramey's symptoms. *See* Def. Ex. 4, RAMEY 1511 (providing medical chronology beginning before the urethral dilation, and hypothesizing "parasitic infestation" arising from international travel or swimming in Walden Pond); Def. Ex. 10, RAMEY 1594 (similar, asking the doctors to "[h]ang in there with me as I know that I am fishing"); Def. Ex. 16, V&A (Brown

& Toland) 54 (similar, but stating her belief that "the diagnosis of chronic and severe strongyloidiasis" could be the cause); Def. Ex. 20, V&A (Tuscon Family Medicine) 2–4 (describing a "vague history" of illness that began before the urethral dilation, and "express[ing] suspicion of unidentified parasite" as the cause); Def. Ex. 23, V&A (Digestive Ctr for Women-Chutkan) 96 (describing the reason Dr. Larsen concluded that Ramey "has been having recurrent episodes of sigmoid volvulus," but not identifying causation); Def. Ex. 34, RAMEY 1095 (noting that certain symptoms arose chronologically after the urethral dilation). At most, these documents show Dr. Larsen's awareness of correlation, not causation. *See Lasley*, 688 A.2d at 1387 (correlation does not imply causation).

Meanwhile, Ramey's father offered mostly equivocal opinions, hoping to persuade her specialists to take them more seriously. *See* Def. Ex. 24, V&A (Digestive Ctr for Women-Chutkan) 99 (describing "[o]ne working theory" among several); Def. Ex. 28, V&A (Digestive Ctr for Women-Chutkan) 104 ("she may have [a condition], which can rarely occur after trauma to the pelvic area"). In one email, Ramey's did speak more categorically, exaggerating the opinions of Dr. Iglesia so that Dr. Chutkan would believe his theory. Def. Ex. 32, V&A (Digestive Ctr for Women-Chutkan) 118 (Ramey's dad told Dr. Chutkan that Dr. Iglesia "thinks that the 10 years ago injury from the urethral dilation damaged the pudendal plexus and cause[d] much scarring and lymphatic obstruction as well as maybe a colon perforation"). But Ramey's dad was not reporting Dr. Iglesia's opinions accurately: Dr. Iglesia had presented this theory only "in passing" and as a mere possibility, telling Ramey that it was "impossible to know" whether her symptoms were caused by the urethral dilation or something else—like an idiopathic pain syndrome or an unrelated infection. Ramey Decl. ¶ 19.

And in any event, Dr. Ramey's persuasive efforts failed. When Ramey raised the theory in person, Dr. Chutkan merely smiled and nodded, saying only that (1) urethral dilation could in theory be one possibility among many, but (2) in any event, the slim likelihood of pudendal nerve damage would not justify further evaluation. Ramey Decl. ¶ 20.

Whatever the value of this three-tiered game of telephone, Ramey reasonably did not rely on it when trying to figure out what had happened to her.

III. If accepted, Dr. Dunne's arguments would override the policy judgments of the D.C. Council, encourage premature lawsuits, and reward physicians for hiding their negligence.

In the end, Dr. Dunne's motion focuses less on the facts and law and more on concerns that sixteen years is too long to wait to file a lawsuit, no matter what the circumstances. But that is a question left to the D.C. Council, which is free to expand the statute of repose to cover more types of claims. In this case, moreover, the delay is the fault of Dr. Dunne, who misled Ramey and her other doctors early on—not only making it harder for Ramey to get appropriate treatment but causing years of confusion about what in fact was causing her symptoms. If, moreover, the discovery rule were triggered without sufficient grounding in medical opinion, plaintiffs would be encouraged to sue doctors prematurely to avoid statute of limitations issues—a result that would harm doctors.

First, although Ramey's case was brought sixteen years after the relevant procedure, the law does not consider the total length of time. In most cases, of course, causation will be apparent and the statute of limitations will expire in far less time. But this is no ordinary case—given the cluster of symptoms, the multiple possible causes, and the ongoing confusion of Ramey's many specialists. It is difficult to imagine Ramey or her family being more diligent or visiting yet more

doctors, and she acted reasonably in not rushing to file suit before her specialists had identified a plausible cause on which she could reasonably rely.

In any event, "[i]f there is a perceived need in this jurisdiction to set a determined outer time limit to the discovery rule, the proper way to do so is by a statute of repose." *Bussineau v. President & Dirs. of Coll.*, 518 A.2d 423, 436 (D.C. 1986). Indeed, for example, the Council has adopted a ten-year statute of repose for certain types of claims arising out of defective or unsafe improvements to real property. D.C. Code § 12-310. If the Council believed that sixteen years was always too long to wait in medical negligence claims, then the Council would have extended the statute of repose to those claims as well.

Second, a reasonable jury could conclude that much of the delay is the fault of Dr. Dunne, who interfered with a proper diagnosis of Ramey by misleading her (*see* Statement of Facts § A) and her doctors (*see* Statement of Facts § B) about the circumstances of the urethral dilation. Had he been candid, then Ramey and her doctors would have been more likely to understand what was causing her symptoms and Ramey would have been more likely to receive appropriate care. And the frustrating, multiyear saga—which finally produced a plausible diagnosis in July 2017—could have been avoided.

By misleading Ramey and her doctors, moreover, Dr. Dunne triggered the doctrine of equitable estoppel, which "comes into play if the defendant takes active steps to prevent the plaintiff from suing in time, as by promising not to plead the statute of limitations." *East v. Graphic Arts Indus. Joint Pension Tr.*, 718 A.2d 153, 160 n.21 (D.C. 1998). The law does not allow Dr. Dunne to benefit, in the form of a procedural bar, from his own efforts to conceal his negligence.

Finally, a rule that triggered the statute of limitations based on ambiguous, contradictory, or unrelated diagnoses from doctors would not only be unfair to patients, but would also disserve doctors. If medical speculation is deemed to start the clock, then plaintiffs will have no choice but to sue earlier and possibly prematurely. Even worse, a plaintiff who was treated by multiple physicians might have the incentive to sue them all—even before understanding which one was responsible—to lower the risk that their lawsuit will be deemed barred by the statute of limitations. This, in turn, would subject more doctors to more lawsuits—premature ones, at that.

In sum, while Dr. Dunne understandably wishes to avoid application of the flexible, fact-specific statute of limitations rules, those rules protect patients and doctors alike. And in this case, they allow Ramey to present her case to a jury of her peers.

CONCLUSION

The Court should deny Defendants' Motion for Summary Judgment.

Respectfully submitted,

/s/ Timothy R. Clinton
Timothy R. Clinton (DC Bar No. 497901)
Elizabeth L. Van Pelt (DC Bar No. 1615865)
CLINTON & PEED
777 6th Street NW, 11th Floor
Washington, DC 20001
(202) 919-9491
(202) 919-9454 (fax)
tim@clintonpeed.com
libbey@clintonpeed.com
Counsel for Plaintiff

February 19, 2021

CERTIFICATE OF SERVICE

On February 19, 2021, I served this opposition to summary judgment on Defendants' counsel through the court's electronic-filing system.

/s/ Timothy R. Clinton
Timothy R. Clinton