

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2012 SEP 20 AM 11:14

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DIANDRA-LEIGH K. GONSALVES,
Individually, and as Prochein Ami for
JAYZLYN-ALEIGHA K. GONSALVES

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DIANDRA-LEIGH K. GONSALVES,
Individually, and as Prochein Ami for
JAYZLYN-ALEIGHA K. GONSALVES,

Plaintiffs,

v.

KAISER FOUNDATION HOSPITALS;
HAWAII PERMANENTE MEDICAL
GROUP, INC.; KAISER FOUNDATION
HEALTH PLAN, INC.; and DOE Defendants
1-100,

Defendants.

Civil No. 12-1-2371-09 F W B
[Medical Malpractice]
COMPLAINT; SUMMONS

COMPLAINT

Plaintiffs DIANDRA-LEIGH K. GONSALVES, Individually, and as Prochein Ami for JAYZLYN-ALEIGHA K. GONSALVES, through their attorney, hereby complain as follows against Defendants Kaiser Foundation Hospitals, Hawai'i Permanente Medical Group, Inc., and Kaiser Foundation Health Plan, Inc.

V COPY

1. Plaintiffs DIANDRA-LEIGH K. GONSALVES, Individually, and as Prochein Ami for JAYZLYN-ALEIGHA K. GONSALVES (hereinafter referred to as "Plaintiffs") have been and were at all relevant times herein, residents of the City and County of Honolulu, State of Hawaii.

2. Defendant Kaiser Foundation Hospitals (hereinafter "Defendant" and/or "Kaiser") is and was a corporation organized and existing under the laws of the State of Hawaii for providing medical/hospital services for patients.

3. Defendant Hawai'i Permanente Medical Group, Inc. (hereinafter "Defendant" and/or "Kaiser") is and was a corporation organized and existing under the laws of the State of Hawaii for providing medical/hospital services for patients.

4. Defendant Kaiser Foundation Health Plan, Inc., (hereinafter "Defendant" and/or "Kaiser") is and was a corporation organized and existing under the laws of the State of Hawaii for providing medical/hospital services.

5. Defendant Kaiser Foundation Hospitals, Defendant Hawai'i Permanente Group, Inc. and Defendant Kaiser Foundation Health Plan, Inc. are collectively referred to as "Defendant Kaiser."

6. Defendant Kaiser has previously stipulated and agreed that all acts herein of Physician Torrey Goodman, MD were done within the course and scope of her employment and/or as an agent for the benefit of Defendant Kaiser.

7. Defendant Kaiser has previously stipulated and agreed that all acts herein of Mid-Wife Constance J. Conover, C.N.M. were done within the course and scope of her employment and/or as an agent for the benefit of Defendant Kaiser.

8. Defendant Kaiser has previously stipulated and agreed that all acts herein of Physician Jolene Bachman, M.D., were done within the course and scope of her employment and/or as an agent for the benefit of Defendant Kaiser.

9. Defendant Kaiser has previously stipulated and agreed that all acts herein of Physician Jonathan Sisler, MD were done within the course and scope of his employment and/or as an agent for the benefit of Defendant Kaiser.

10. Defendant Kaiser has previously stipulated and agreed that all acts herein of Physician Kimie Hirabayashi, MD were done within the course and scope of her employment and/or as an agent for the benefit of Defendant Kaiser.

11. All acts of medical negligence by individuals herein were by employees and/or agents and/or borrowed employees and/or agents on a mission for the benefit of Defendants. Defendants are vicariously liable for the acts of any of their employees and/or agents and/or borrowed employees or agents on a mission for the benefit of Defendants.

12. All incidents described herein took place within the jurisdiction of the Circuit Court of the First Circuit, State of Hawaii.

13. Doe Defendants 1-100 are sued herein under fictitious names for the reason that their true names and identities are presently unknown to the Plaintiffs, except that they are connected in some manner with the named Defendants and/or were the parents, guardians, agents, servants, employees, employers, representatives, co-venturers, associates, vendors, suppliers, manufacturers, subcontractors or contractors and/or owners, lessees, assignees, licensees, designees, and engineers of the named Defendants and/or in some manner presently unknown to the Plaintiffs engaged in activities alleged herein and/or were in some manner responsible for the injuries or damages to Plaintiffs and/or manufactured and/or designed, and/or

placed on the market a product which was defective which defect was a proximate cause of injuries or damages to Plaintiffs and/or inspected and/or maintained and/or controlled some object or product in a negligent manner which negligence was a proximate cause of injuries or damages to Plaintiffs and/or conducted some activity in a negligent or dangerous manner, which negligent or dangerous conduct was a proximate cause of injuries or damages to Plaintiffs and/or were in some manner related to the named Defendants and Plaintiffs pray for leave to insert herein their true names, identities, capacities, activities and/or responsibilities when the same are ascertained. Plaintiffs and their counsel have made a diligent and good faith effort to ascertain the full names and identifies of all potential Defendants herein by examining all documents available to them in this matter.

14. This medical negligence claim alleges generally that Defendants, and each of them, by and through their employees/agents/borrowed employees violated/breached the applicable standards of care expected of healthcare professionals and healthcare delivery systems through their failure to appropriately evaluate, follow-up, diagnose and treat Plaintiff Diandra-Leigh K. Gonsalves' acute listeria infection, which was thereafter transmitted in-utero to Jayzlyn-Aleigha K. Gonsalves. These violations/breaches, collectively and individually, were a substantial factor in causing Plaintiff Jayzlyn-Aleigha K. Gonsalves to suffer severe brain damage, neurologic damage, cardiac damage, respiratory damage, and other serious and permanent damage, such that she will require round-the-clock care for the remainder of her life.

15. The factual allegations herein are primarily based upon Kaiser's medical record which may or may not be accurate or complete.

October 21, 2010, 8:19 PM - - Onset of headache and lower pelvic pain.

16. On October 21, 2010, Diandra Gonsalves called Kaiser AHC MOA and reported to Kaiser Nurse Sandra Eichelberger that she had *headache and lower pelvic pain* and that *I walked too much today*. Nurse Eichelberger's nursing assessment was *headache* and Ms. Gonsalves was instructed to *call back if symptoms worsen or persist*.

October 22, 2010, 3:21 PM: Kaiser AHC MOA Telephone Consultation

17. **Ms. Gonsalves new onset of chest pain, shortness of breath, and nausea.**

On October 22, 2010, at approximately 3:21 PM, Diandra again called Kaiser reporting pain and headaches. The Kaiser medical record indicates *Diandra K. Gonsalves c/o chest pain, SOB, and nausea since 11 AM. Severity 5/10. Patient speaking in clear and complete sentences. No cold sweats. No pain radiation. Also c/o headaches since this a.m. – took Tylenol was some relief. No other symptoms.*

18. **Kaiser advice guideline.** *Per Kaiser Physician Caroline Mee, M.D.,* Diandra was told to *have someone drive her to the MOA ER.*

October 23, 2010, 9:13 PM: Kaiser Moanalua Emergency Department

19. On October 23, 2010, at 9:13 PM, Ms. Gonsalves presented to the Kaiser Moanalua Emergency Department with the new onset of fever reporting that she had a fever of *100.8 yesterday* and a fever of *102 today, along with body aches, mild runny nose and cough, nausea but no vomiting*. The Kaiser medical record notes that Diandra reported that she had no dysuria (painful urination), her baby was moving and she had no vaginal discharge.

20. **Presenting Information.** The Kaiser flow sheet data documents that Diandra reported *no relief with Tylenol today*. Kaiser ER staff documented *~25 weeks gestation. c/o lower abd pain, fever, headache, nausea, ongoing x three days. tired looking, skin hot/dry.*

21. **Initial Vital Signs.** At 9:20 PM, Ms. Gonsalves vital signs were recorded as BP 101/62, Pulse 132, temperature 39.3°C (102.8°F), respiration 20, SpO2 98%.
22. **Fetal Heart Rate.** At 9:59 PM the fetal heart rate baseline was recorded at 185.
23. **11:26 PM Vital Signs.** At 11:26 PM, Diandra's vital signs were recorded as follows: ***BP! 98/31 mmHg, Pulse 119; Respiration 20; temperature 39.3°C (102.8°F).***
24. At 11:59 PM Dr. Goodman recorded ***still with fever, but nontoxic appearing and texting on phone. Taking po well. Will give second liter NS and reeval. FHT (fetal heart tone) now 145.***
25. **Kaiser laboratory results.** At 12:46 AM on October 24, 2010, laboratory testing revealed that Ms. Gonsalves was ***negative*** for ***flu*** and her ***UA (urinalysis) was negative.***
26. **Kaiser's "Discharge Diagnosis."** Kaiser ER physician Torrey Goodman, M.D. discharged Diandra with a final diagnosis of: ***Fever Unspecified; Unspecified Viral Infection in CCE & UNS site.***
27. The Kaiser medical record does not reveal any blood work, laboratory analysis nor any testing that supported the determination that Diandra's fever and signs and symptoms were caused by an ***unspecified viral infection.*** Ms. Gonsalves was discharged and instructed to take Tylenol.
28. **Kaiser's Aftercare Instructions.** Diandra was instructed to return to the emergency room if:

You have a fever with a stiff neck or severe headache;

You have a fever of 104°F or higher;

You have a fever that does not get better after you take medicine;

You have a fever and feel confused or often dizzy;

You have trouble breathing.

October 24, 2010 12:05 PM – Diandra Returns to Kaiser After Condition Worsens.

29. The Kaiser medical records document the note of Nurse Erlinda Garma at 1:31

PM:

Patient claimed fever, body ache started 3 days ago, and progressively getting worse. Presented to ED last night with the same complaints. Today, still not feeling better and had a fever of 102 with generalized body ache. Was told in ED that she has a viral infection. On triage temperature was 39.5 (103.1°F). CNM Connie Conover notified and ordered Tylenol PO 975 mg. Here for further evaluation and observations. Cold compress applied to patient's neck and armpits.

30. **Initial Vital Signs.** On October 24, 2012 at 1:00 PM, Ms. Gonsalves' vital signs were reported as follows: *Temp 39.53 Celsius (103.1°F), Pulse 133, Resp 20, BP! 100/39 mmHg.*

31. **Kaiser's ER medication administration, interventions and blood work.** According to the Kaiser records at 1:00 PM, Diandra was given Tylenol 975 mg and was packed in ice packs to her neck and her armpits. At 2:25 PM, John Sisler, M.D., ordered a *CBC (complete blood count) with differential.*

32. **Subsequent Vital Signs.** At 2:20 PM, Ms. Gonsalves' vital signs were recorded to be: *BP! 95/39 mmHg, temperature 38.7°C (101.7°F), Pulse 122, Resp 20.*

33. **Kaiser's Midwife Conover's assessment and instructions.** Nurse midwife Conover's assessment was as follows:

*20 y/o G4 P2002 at 25w 3D
Febrile – decreased with 975 mg of Tylenol
Viral infection causing fever – unknown origin.*

34. **CBC with differential results.** On October 24, 2010 at 2:44 PM the CBC with differential laboratory results flagged the following as low:

red blood cell count (3.36)

hemoglobin (11.)

hematocrit (31.1)

The CBC revealed that Diandra's bands were 38%, which was flagged as high. A band level of 38% is extremely high and is a red flag that the patient may be responding to a severe bacterial infection.

35. **Electrolytes, serum.** At 3:59 PM, on October 24, the electrolytes, serum laboratory results flagged the following as low:

sodium (129)

potassium (3.2)

CO2 (20)

36. **Discharge.** Despite the fact that Ms. Gonsalves was 25 weeks pregnant, had an alarmingly high 38% bands, along with presenting fever of 103.1°F, a presenting heart rate of 133, and blood pressure of 100/39 mmHg, Diandra and her 25-week-old fetus were again sent home without determination of the cause of these "red flag" signs and symptoms. No one at Kaiser determined the cause of Diandra's emergency medical condition and no one gave Diandra any treatment for her condition despite Diandra's two emergency visits seeking help.

37. The medical record reflects that the discharge orders and instructions to Diandra were:

*Keep taking Tylenol up to 1000 mg PO every six hours for fever more than 100.4°F. Lots and lots of fluids. **Keep your regular prenatal appointment.***

38. Diandra's "regular" prenatal appointment was scheduled for November 12, 2010.

November 9, 2010, 10:45 PM: Diandra admitted to Kaiser Moanalua Hospital Labor and Delivery.

39. Diandra reported to the Kaiser Moanalua Hospital's Labor and Delivery that she had a fever of 38.6°C 101°F, WBC was 20.7, vaginal bleeding (noticed a half-dollar sized clot in the toilet with voiding) and mild uterine cramping. The fetal heart rate was tachycardic in the 180s with decelerations versus episodes of heart block. The medical record indicates:

Current Assessment: 27w5d, febrile, oligohydramnious (a deficiency of amniotic fluid) fetal heart tracing abnormality.

Ultrasound: Chorioamnionitis.

40. Kaiser physician Keith Ogasawara, MD, performed an ultrasound and diagnosed: *acute chorioamnionitis* (inflammation of the fetal membranes due to bacterial infection).

Jayzlyn is delivered by cesarean section.

41. On November 10, 2010 at 12:14 AM, Jayzlyn was delivered by cesarean section.

42. **Operative Report.** The operative report documents Diandra's lower uterine segment was insufficiently developed for fetal delivery; therefore a vertical uterine incision was made. Jayzlyn weighed 0.76 kg (1.675 pounds) and emerged with poor respiratory effort and inadequate heart rate. Further, the intra-operative findings document Diandra's amniotic fluid was green.

Pathology Report.

43. The final pathology diagnosis of the placenta was acute chorioamnionitis with chorionic plate vasculitis.

Blood cultures: Listeria.

44. On November 10, 2010 at 1:12 AM, Nurse Practitioner Diana Hieb requested blood culture for baby Jayzlyn. On November 12, 2010, at 2:15 PM, Jayzlyn's blood cultures registered *Listeria Monocytogenes*.

45. On November 9, 2010 at 10:47 PM, Dr. Jocelyn Chapman requested blood culture for Diandra. On November 13, 2010 at 6:26 AM, Diandra's blood cultures also registered *Listeria Monocytogenes*.

Medical Negligence-All Defendants

46. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set forth herein.

47. Timely and standard of care evaluation of and investigation into, and treatment of, Diandra's medical condition, including hospitalization and determination of the source of Diandra's acute infection, would have resulted in Diandra's *listeria* infection being discovered, treated and resolved prior to the infection of her fetus, Jayzlyn.

48. The foregoing actions and/or inactions of Defendants, and each of them, individually and by and through their employees and/or agents and/or servants and/or borrowed servants, violated/breached the standard of care, and each of those violations/breaches of the standard of care, individually and collectively were substantial factor in Plaintiffs sustaining damages as alleged herein.

Emergency Medical Condition – Violation of EMATLA

49. Plaintiffs restate and incorporate the preceding paragraphs as though fully set forth herein.

50. Ms. Gonsalves had an ***"emergency medical condition"*** on October 23, 2010 and October 24, 2010.

51. The tests that Kaiser finally ordered provided overwhelming evidence that Ms. Gonsalves was acutely ill and suffering from an "emergency medical condition" that required

expeditious diagnosis and appropriate emergency stabilization and ongoing treatment when she was a patient under the care of Kaiser on October 24, 2010.

52. Based upon Ms. Gonsalves presenting signs and symptoms – and the grossly abnormal results of the diagnostic testing, and her continued fever and condition– it was patently obvious that Ms. Gonsalves was suffering from an "emergency medical condition" when she presented to Kaiser at 25 weeks pregnant, with an elevated temperature, abnormal blood pressure, tachypnic respiration rate, and 38% bands.

53. Kaiser failed to provide an appropriate emergency medical evaluation, treatment and stabilization and instead, transferred Diandra to a mid-wife who was unqualified to appreciate, diagnose or treat Diandra's emergency medical condition.

54. The actions and/or inactions of Defendants, and each of them, was a violation of the Emergency Medical Treatment and Active Labor Act of 1986 (EMTALA) and was a substantial factor in causing Plaintiffs' damages as alleged herein.

Failure To Properly Staff, Train and Supervise.

55. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set forth herein.

56. Defendants, and each of them, had a duty to ensure that any staff and/or employees and/or agents and/or servants and/or borrowed servants, including but not limited to, physicians, mid-wives and nurses practicing within Defendant Kaiser's hospital, were properly trained and supervised.

57. Defendants, and each of them, had a duty to properly staff its hospitals and clinics, including, but not limited to, their duty to have appropriately trained physicians and staff on-site in order to stabilize and appropriately treat Diandra Gonsalves' illness.

58. Defendants, and each of them, breached said duties.

Vicarious Liability.

59. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set forth herein.

60. Defendants are vicariously liable under the doctrines of *respondet superior* and/or joint enterprise and/or apparent authority for the action/inactions of the employees and/or agents and/or servants and/or borrowed servants, including, but not limited to: the physicians, technicians, radiologists, nurses, midwives, staff doctors, residents and any others involved in the care and treatment of Plaintiffs Diandra Gonsalves and her fetus, Jayzlyn.

Damages - Jayzlyn Gonsalves

61. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set forth herein.

62. Each of the acts and/or failures to act and/or negligence and/or violations/breaches of duty of Defendants, and each of them, and their employees and/or agents and/or servants and/or borrowed servants, and each of them, as set forth herein, was/were a substantial factor in Jayzlyn Gonsalves suffering permanent injury such that Jayzlyn Gonsalves suffered severe brain damage, neurological damage, cardiac damage, respiratory damage, and other serious and permanent damage, such that she will require round-the-clock medical and/or attendant care for the remainder of her life.

63. Each of the acts and/or failures to act and/or negligence and/or violation/breaches of duty of Defendants, and each of them, and their employees and/or agent and/or servants and/or borrowed servants, and each of them, as set forth herein, was a substantial factor in Plaintiffs incurring substantial medical and therapeutic expenses in the past and Plaintiffs

incurring substantial medical, rehabilitative and care expenses in the future, including hospitalization and/or attendant care for the remainder of Jayzlyn's life. Plaintiffs seek leave to amend this Complaint at the time of trial to include such additional damages as may be appropriate.

64. Each of the following acts and/or failures to act and/or negligence and/or violations/breaches of duty of Defendants, and their employees and/or agents and/or servants and/or borrowed servants and each of them, as set forth herein, was a substantial factor in Plaintiffs suffering in the past, and in Plaintiffs suffering in the future, extreme pain, severe emotional distress and mental anguish, loss of enjoyment of life, lost wages and a diminished earning capacity.

65. Plaintiffs seek from Defendants all damages available by law.

Damages - Diandra Gonsalves

66. Plaintiffs restate and incorporate the preceding paragraphs as though fully set forth herein.

67. Due to the serious injuries suffered by Plaintiff Jayzlyn Gonsalves, her mother, Plaintiff Diandra Gonsalves, has suffered in the past and will continue to suffer in the future, a loss of love, affection, society, comfort, support, consortium and the care and companionship, of her daughter, Jayzlyn.

68. Defendants failed to use reasonable care to avoid causing extreme emotional distress to Plaintiffs.

69. Plaintiff Diandra Gonsalves has and will suffer extreme emotional distress as a result of Defendants' actions and failures to act.

70. Plaintiff Diandra Gonsalves seeks from Defendants all damages available by law.

Punitive Damages – Financial Scheme Which Deprived Plaintiffs of Standard of Care Medical Evaluation and Treatment

71. Plaintiffs reallege and incorporate the preceding paragraphs as though fully set forth herein.

72. Pursuant to a corporate financial scheme, Defendant Kaiser has enacted policies, procedures and protocols which sacrifice patient safety and standard of care medical treatment in favor of cost-cutting.

73. Despite its substantial advertising touting the benefits of Kaiser for patients, Defendant Kaiser has failed to inform patients of its cost-cutting policies, procedures and protocols and the effect upon patient care and safety.

74. Upon information and belief, pursuant to corporate policies, procedures and protocols, Kaiser utilizes mid-wives to provide medical evaluation, care and decision-making that, in order to protect patient safety, should be handled by trained and qualified physicians.

75. Defendants Kaiser, by and through and their financial incentives to physicians and staff, and other health care providers, and/or by and through their cost-cutting policies, procedures and protocols encourage mid-wives to perform patient evaluation, care and treatment, instead of trained and qualified physicians, thereby depriving patients, including Diandra and Jayzlyn of evaluation, care and treatment by trained and qualified physicians.

76. Defendants Kaiser, by and through financial incentives and cost-cutting policies and procedures, discourage physicians and staff from using diagnostic testing which would have allowed discovery and timely treatment of Plaintiffs' conditions.

77. Defendants Kaiser ignored the risk of harm to Plaintiffs in favor of adherence to their financially-motivated policies and procedures designed to reduce utilization of physicians

and medical procedures and medical resources at the expense of the health and safety and standard of medical care treatment of patients, including Plaintiffs. This conduct evidences a willful and/or wanton and/or conscious disregard for the safety and welfare of patients, including Plaintiffs.

78. For years, Defendants have been engaged in these financially-motivated maneuvers at the expenses of standard of care medical treatment for Kaiser patients. This conduct evidences a willful and/or wanton and/or conscious disregard for the safety and welfare of patients, including Plaintiffs.

79. Such justifies an award of punitive and exemplary damages.

80. Defendants Kaiser's actions and inactions, evidence willful, wanton, and callous disregard for their obligations and the safety of Kaiser patients, including Plaintiffs, and therefore warrant the imposition of punitive and exemplary damages.

WHEREFORE, Plaintiffs demand judgment against Defendants above-named, jointly and severally as follows:

A. Special damages in an amount to be shown at the time of trial;

B. General damages in an amount to be shown at the time of trial and in excess of the minimal jurisdictional amount of this Court;

C. Punitive damages;

D. Costs of suit, attorneys' fees, prejudgment interest, and such other relief, both legal and equitable that the Court deems just and proper.

DATED: Honolulu, Hawaii:

Sept 20, 2012

WOODRUFF K. SOLDNER
Attorney for Plaintiffs