

VIRGINIA:

IN THE CIRCUIT COURT FOR LOUDOUN COUNTY, VIRGINIA

NANCY BETZ,
21014 Timber Ridge Terrace #304
Ashburn, Virginia 20147

Plaintiff

v.

GARY GORDON, M.D.
201 North Washington Street
Falls Church, Virginia 22046

and

KAISER FOUNDATION HEALTH PLAN
OF THE MID-ATLANTIC STATES, INC.
SERVE: Corporation Service Company
Registered Agent
Bank of America Center, 16th Floor
1111 East Main Street
Richmond, VA 23219

and

JOILYN MARTIN, M.D.
43480 Yukon Drive, Suite 100
Ashburn, Virginia 20147

and

MID-ATLANTIC PERMANENTE
MEDICAL GROUP, P.C.
SERVE: Beverly L. Crump
Registered Agent
Bank of America Center, 16th Floor
1111 East Main Street
Richmond, VA 23219

Case No.: 82659

**PLAINTIFF DEMANDS A
TRIAL BY JURY**

2013 AUG -5 PM 1:42

FILED

CIRCUIT COURT
CLERK'S OFFICE
LOUDOUN COUNTY, VA
TESTE: [Signature]

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8/6/13

COMPLAINT AND JURY DEMAND

Plaintiff, Nancy Betz, by and through her counsel, Shulman, Rogers, Gandal, Pordy & Ecker, P.A., hereby files this Complaint against Defendants Gary Gordon, M.D., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Joilyn Martin, M.D., and Mid-Atlantic Permanente Medical Group, P.C., and in support thereof states:

PARTIES

1. At all times relevant hereto, Plaintiff, Nancy Betz, was an adult resident of Ashburn, Virginia, residing at 21014 Timber Ridge Terrace, #304, Ashburn, Virginia 20147.
2. Upon information and belief, and at all times relevant hereto, Defendant Gary Gordon, M.D. (hereinafter, "Dr. Gordon") was a health care provider providing health related services to the general public in Virginia. Upon information and belief, and at all times relevant hereto, Dr. Gordon was an employee, agent, and/or servant of Kaiser Foundation and/or Mid-Atlantic acting within the scope of his employment with Kaiser Foundation and/or Mid-Atlantic while he rendered care and treatment to Ms. Betz.
3. Upon information and belief, and at all times relevant hereto, Defendant Mid-Atlantic Permanente Medical Group, P.C., (hereinafter "Mid-Atlantic") was a professional corporation engaged in the business of providing medical care and treatment to the general public in the Commonwealth of Virginia and elsewhere.
4. Upon information and belief, and at all times relevant hereto, Defendant Joilyn Martin, M.D. (hereinafter "Dr. Martin") was a health care provider providing health related services to the general public in Virginia. Upon information and belief, and at all times relative hereto, Dr. Martin was an employee, agent, and/or servant of Kaiser Foundation

and/or Mid-Atlantic acting within the scope of her employment with Kaiser Foundation and/or Mid-Atlantic while she rendered care and treatment to Ms. Betz.

5. Upon information and belief, and at all times relevant hereto, Defendant Kaiser Foundation of the Mid-Atlantic States, Inc. (hereinafter "Kaiser Foundation") was a professional corporation engaged in the business of providing medical care and treatment to the general public in the Commonwealth of Virginia and elsewhere.
6. In material respects, all of the claims and events alleged herein occurred in Loudoun County, Virginia.
7. Upon information and belief, and at all times relevant hereto, the nurses and physicians and all other employees who rendered care to Ms. Betz were employees, agents, and/or servants, of Kaiser Foundation and/or Mid-Atlantic and as such, Kaiser Foundation and/or Mid-Atlantic are liable for their negligent acts and all resulting damages stemming therefrom to include Drs. Gordon and Martin.

VENUE AND JURISDICTION

8. Venue is proper herein pursuant to Code of Virginia 8.01 – 262. Jurisdiction is proper herein pursuant to Code of Virginia 8.01 – 328.1.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. Ms. Nancy Betz was a 34 year old woman when she presented to her gynecologist, Dr. Martin on February 11, 2009, complaining that she had discovered a new onset left breast thickness located just lateral to her breast implant.
10. Dr. Martin performed a physical examination of Plaintiff's breasts on February 11, 2009, noting in the medical record "some thickening around capsule slightly more on left with decreased density of tail making palpation easier on left than right." Otherwise, Dr.

Martin noted that breasts appeared normal, with no suspicious masses, no skin or nipple changes or axillary nodes, or palpable abnormalities.

11. As a result of Plaintiff's presentation on February 11, 2009, Dr. Martin ordered both a mammogram, as well as an ultrasound of the relevant anatomy.
12. On March 9, 2009, Plaintiff presented to a Kaiser Permanente medical facility for the above-described diagnostic tests to be carried out. Mammogram of both breasts, by order #68971917, was carried out at approximately 3:24 p.m. on March 9, 2009. Shortly thereafter, at approximately 4:10 p.m., ultrasound of the left breast by order #68407289 was performed.
13. Both the mammogram study as well as the ultrasound study carried out on March 9, 2009, were interpreted by Dr. Gordon. Dr. Gordon's impression with respect to the mammogram study was "bilateral mammography is negative for malignancy. Bilateral breast implants are in place. Left breast ultrasound will follow." Dr. Gordon's impression with respect to the ultrasound of the left breast was "left breast ultrasounds shows no evidence of a breast mass." No recommendation was made by Dr. Gordon in his reports, as applicable to either study.
14. At the conclusion of the ultrasound study performed on March 9, 2009, Dr. Gordon met personally with Plaintiff and informed her that both of her studies were normal. Dr. Gordon did not then, or at any time thereafter, offer any recommendations to Plaintiff for further management.
15. Plaintiff was relieved and reassured by Dr. Gordon's impressions of her studies, and thereafter believed that any cause for concern had been effectively ruled out.

16. Following the performance of the above-indicated studies on March 9, 2009, Nancy Betz presented to the office of Dr. Martin on (3) subsequent occasions (twice in 2009, and once in 2010) in association with gynecologic care. At no time during any of these occasions did Dr. Martin discuss with Plaintiff or offer any recommendations for the left breast thickness which had been discovered by Ms. Betz in early 2009.
17. After having first recognized the area of left breast thickness in early 2009, this area of thick tissue remained present thereafter; however, Plaintiff believed that the appropriate work-up had been undertaken to exclude malignancy and, therefore, did not complain further about it.
18. In August 2012, Plaintiff noticed that the area of left breast thickness she had first discovered in early 2009 was enlarging and becoming painful. Correspondingly, Plaintiff further noted that she had developed enlargement of left axillary lymph nodes.
19. As a consequence to the change in her physical status as noted in paragraph #17 above, Plaintiff presented to gynecologist, Haritha Yallamanchilli, M.D. in Sterling, Virginia.
20. As a consequence of Plaintiff's presentation to Dr. Yallamanchili, Bilateral Diagnostic Digital Mammogram with Tomosynthesis and ultrasound was ordered.
21. The study, as referenced in paragraph #19 above, was carried out at RIA in Sterling, Virginia on August 24, 2012. The study was interpreted by Kara Waters, M.D., as highly suggestive of malignancy. Dr. Water's report included a recommendation for ultrasound guided breast biopsy and surgical consultation. Dr. Waters, in addition to setting forth the above-indicated recommendation in her report, spoke personally with Plaintiff, informing her of the results of her study, and recommendations for follow-up.

22. Following performance of the above-indicated test on August 24, 2012, Plaintiff submitted to further diagnostic evaluation which yielded a diagnosis of metastatic breast carcinoma, with liver involvement.
23. Plaintiff began therapy for her disease in the fall of 2012, and remains under treatment at this time.
24. Currently, Plaintiff has Stage IV metastatic carcinoma.

COUNT I
NEGLIGENCE

Gary Gordon, M.D.

25. Plaintiff incorporates the substance of the foregoing factual allegations into this Count and incorporated herein by reference, and further,
26. At all times relevant hereto, Dr. Gordon had a duty to provide that degree of care and skill exercised by a reasonable and prudent health care provider in the same or similar circumstances.
27. Dr. Gordon breached that duty by failing to render appropriate medical care to Ms. Betz, including, but not limited to:
- a. Failing to note recommendations in the mammogram and ultrasound reports of March 9, 2009 that Plaintiff's perceived area of left breast thickening should be followed clinically, and, if persistent, should be studied further;
 - b. Failing to advise Plaintiff that despite the interpretation that her studies were normal, she should continue follow-up for the perceived area of breast thickening, as the results of her studies, while reassuring, did not definitively exclude the possibility of breast cancer;

- c. Failing to recognize the obligation of a radiologist under the circumstances present in this factual scenario to include a recommendation in his report for continued management, as well as to inform the patient of this recommendation;
 - d. Failing to recognize that a "normal" mammogram and ultrasound under the factual scenario present did not definitively exclude breast cancer; and
 - e. Failing to recognize that he provided Plaintiff with a false sense of reassurance by telling her only that her studies were "normal," such that she reasonably believed there was no cause for concern, and did not appreciate any need for continued monitoring of the left breast thickness that had initially alarmed her and prompted imaging to be ordered.
28. As a direct and proximate result of Dr. Gordon's negligence, Ms. Betz was permanently and seriously injured by the delay in diagnosis of breast carcinoma, adversely affecting treatment options, worsening her prognosis, and diminishing her life expectancy.
29. As a further consequence of Dr. Gordon's negligence, Ms. Betz will incur increased medical expense in treating metastatic cancer, will suffer a diminution and loss in her earning capacity, and faces a probability of premature death, despite aggressive therapies now being undertaken and anticipated to be undertaken in the future.
30. As a further consequence of Dr. Gordon's negligence, Ms. Betz has experienced and will continue to experience profound pain and suffering, disfigurement, emotional unrest, and loss of enjoyment of life's pleasures.

WHEREFORE, Plaintiff, Nancy Betz, prays for judgment against Defendants, Gary Gordon, M.D., Joilyn Martin, M.D., Kaiser Foundation Health Plan of the Mid-Atlantic

States, Inc., and Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, in the amount of \$2.1 million, plus all costs and prejudgment and postjudgment interest.

COUNT II
Respondent Superior – Kaiser Foundation Health Plan
of the Mid-Atlantic States, Inc.

31. Plaintiff incorporates the substance of the foregoing factual allegations into this Count and incorporated by reference, and further,
32. At all times relevant hereto, Dr. Gordon and Dr. Martin, who rendered care to Ms. Betz, was an agent, employee and/or servant of Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., acting within the scope of their employment with this entity.
33. By operation of law, under the doctrine of respondent superior, as the master, employer, and/or principal responsible for the act of its agents, servants, and/or employees, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. is liable for the negligence of the employees, including Dr. Gordon and Dr. Martin, who rendered care to Ms. Betz.
34. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., acting through its employees, servants and/or agents including Dr. Gordon and Dr. Martin, had a duty to use that degree of care and skill in its treatment of Ms. Betz, which reasonably competent health care providers, engaged in a similar practice and acting similar circumstances would use.
35. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. breached that duty by failing to render appropriate medical care to Ms. Betz, including, but not limited to, the allegations of breach of appropriate medical care as set out in paragraph #26 above.
36. As a direct and proximate result of the negligence of the employees, servants, and/or agents of Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., including Dr.

Gordon and Dr. Martin, for whom Kaiser is liable, Ms. Betz suffered and continues to suffer extreme pain and suffering, mental anguish, pecuniary loss, and serious injury which has diminished her life-expectancy.

WHEREFORE, Plaintiff, Nancy Betz, prays for judgment against Defendants, Gary Gordon, M.D., Joilyn Martin, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, in the amount of \$2.1 million, plus costs and prejudgment and postjudgment interest.

COUNT III
NEGLIGENCE

Joilyn Martin, M.D.

37. Plaintiff incorporates the substance of the foregoing factual allegations into this Count and incorporated by reference, and further,
38. At all times relevant hereto, Dr. Martin had a duty to provide that degree of care and skill exercised by a reasonable and prudent health care provider in the same or similar circumstances.
39. Dr. Gordon breached that duty by failing to render appropriate medical care to Ms. Betz, including, but not limited to:
 - a. Failing to appreciate that "normal" results applicable to the mammogram and ultrasound ordered for Ms. Betz and performed on March 9, 2009, did not exclude breast cancer;
 - b. Failing to advise Ms. Betz that while the results of her mammogram and ultrasound studies were reassuring, the area of left breast thickening required continued monitoring by the patient and her physician;

- c. Failing to schedule follow-up evaluation pertinent to the area of left breast thickening through two or more menstrual cycles to monitor for persistence of thickening, or any pertinent changes (resolution or enlargement);
- d. Failing to appreciate that the area of left breast thickness persisted, and that Ms. Betz should have been offered the options of fine needle aspiration biopsy (FNAB) and/or open biopsy;
- e. Failing to discuss Plaintiff's perception of whether or not the left breast thickness had persisted or changed when Ms. Betz presented to her office for gynecologic care on two subsequent occasions in 2009, and one subsequent occasion in 2010; and
- f. Failing to timely diagnose Ms. Betz's condition of breast carcinoma

40. As a direct and proximate result of Dr. Martin's negligence, Ms. Betz was permanently and seriously injured by the delay in diagnosis of breast carcinoma, adversely affecting treatment options, worsening her prognosis, and diminishing her life expectancy.

41. As a further consequence of Dr. Martin's negligence, Ms. Betz will incur increased medical expense in treating metastatic cancer, will suffer a diminution and loss in her earning capacity, and faces a probability of premature death, despite aggressive therapies now being undertaken and anticipated to be undertaken in the future.

42. As a further consequence of Dr. Martin's negligence, Ms. Betz has experienced and will continue to experience profound pain and suffering, disfigurement, emotional unrest, and loss of enjoyment of life's pleasures.

WHEREFORE, Plaintiff, Nancy Betz, prays for judgment against Defendants, Joilyn Martin, M.D., Gary Gordon, M.D., Kaiser Foundation Health Plan of the Mid-Atlantic

States, Inc., and Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, in the amount of \$2.1 million, plus all costs and prejudgment and postjudgment interest.

COUNT IV

Respondent Superior – Mid-Atlantic Permanente Medical Group, P.C.


43. Plaintiff incorporates the substance of the foregoing factual allegations into this Count and incorporated by reference, and further,
44. At all times relevant hereto, Dr. Martin and Dr. Gordon, who rendered care to Ms. Betz, was an agent, employee and/or servant of Mid-Atlantic Permanente Medical Group, P.C., acting within the scope of their employment with this entity.
45. By operation of law, under the doctrine of respondent superior, as the master, employer, and/or principal responsible for the act of its agents, servants, and/or employees, Mid-Atlantic Permanente Medical Group, P.C. is liable for the negligence of the employees, including Dr. Martin and Dr. Gordon, who rendered care to Ms. Betz.
46. Mid-Atlantic Permanente Medical Group, P.C., acting through its employees, servants and/or agents including Dr. Martin and Dr. Gordon, had a duty to use that degree of care and skill in its treatment of Ms. Betz, which reasonably competent health care providers, engaged in a similar practice and acting similar circumstances would use.
47. Mid-Atlantic Permanente Medical Group, P.C. breached that duty by failing to render appropriate medical care to Ms. Betz, including, but not limited to, the allegations of breach of appropriate medical care as set out in paragraph #38 above.
48. As a direct and proximate result of the negligence of the employees, servants, and/or agents of Mid-Atlantic Permanente Medical Group, P.C., including Dr. Martin and Dr. Gordon, for whom Mid-Atlantic Permanente Medical Group is liable, Ms. Betz suffered

and continues to suffer extreme pain and suffering, mental anguish, pecuniary loss, and serious injury which has diminished her life-expectancy.

WHEREFORE, Plaintiff, Nancy Betz, prays for judgment against Defendants, Joilyn Martin, M.D., Gary Gordon, M.D., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, in the amount of \$2.1 million, plus all costs and prejudgment and postjudgment interest.

Nancy Betz
By Counsel

SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.



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Counsel for Plaintiff, Nancy Betz

JURY DEMAND

Plaintiff hereby elects to have all issues raised herein tried before a jury.



Karl J. Prottil, Jr.