

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

SAADATU DASON and HABIB FUSEINI)
Individually and as natural guardians for)
NAIMA JONES, a minor,)

Plaintiffs,)

v.)

THE SOUTHEAST PERMANENTE)
MEDICAL GROUP, INC.,)
KAISER PERMANENTE INS. CO.,)
GWINNETT HOSPITAL SYSTEM d/b/a.,)
GWINNETT MEDICAL CENTER,)
KAISER FOUNDATION HEALTH PLAN)
OF GEORGIA, INC., FONDA)
MITCHELL, MD and PAMELA M.)
RICHARD-TORKE, CNM)

Defendants,)

CIVIL ACTION

FILE NO.

13A486087

COMPLAINT FOR MEDICAL MALPRACTICE

COME NOW the Plaintiffs in the above-styled action and hereby file this,
their Complaint, and in support thereof show this Court as follows:

Parties and Jurisdiction

1.

The Defendant Southeast Permanente Medical Group, Inc. (hereinafter referred to as "Southeast Permanente") is a Georgia for-profit corporation. This Defendant is subject to the jurisdiction and venue of this Court, in accordance with Art. 6, Sec. 2, Par. IV of the Georgia Constitution and OCGA 51-12-30. Service may be made upon Southeast Permanente's registered agent for service to wit: Corporation

Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092.

2.

Defendant Kaiser Permanente Ins. Co., (hereinafter referred to as "Kaiser Permanente") is a foreign for-profit corporation, licensed to do business in the State of Georgia. This Defendant is subject to the jurisdiction and venue of this Court, in accordance with Art. 6, Sec. 2, Par. IV of the Georgia Constitution and OCGA 51-12-30. Service may be made upon Southeast Permanente's registered agent for service to wit: Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092.

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Defendant Gwinnett Hospital System, Inc. d/b/a/ Gwinnett Medical Center is a Georgia corporation. This Defendant, which shall be referred to in this complaint as "Gwinnett Medical Center", is subject to the jurisdiction and venue of this Court, in accordance with Art. 6, Sec. 2, Par. IV of the Georgia Constitution and OCGA 51-12-30. Service may be made upon Gwinnett Medical Center's registered agent for service to wit: Peter B. Wheeler, 1000 Medical Ctr. Blvd., Admin, Lawrenceville, Gwinnett County, Georgia, 30046.

4.

Defendant Kaiser Foundation Health Plan of Georgia, Inc., (hereinafter referred to as "Kaiser Foundation") is a Georgia corporation. This Defendant is subject to the jurisdiction and venue of this Court, in accordance with Art. 6, Sec. 2, Par. IV of the Georgia Constitution and OCGA 51-12-30. Service may be made upon

Southeast Permanente's registered agent for service to wit: Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092.

5.

Defendant Fonda A. Mitchell, MD is a resident of DeKalb County, Georgia and subject to the jurisdiction and venue of this Court. Service may be made upon Defendant Mitchell at her residence located at 4280 Kingston Gate Cove, Atlanta, DeKalb County, Georgia 30341.

6.

Defendant Pamela M. Richard-Torke, CNM is a resident of Gwinnett County, Georgia and subject to the jurisdiction and venue of this Court in accordance with Art. 6, Sec. 2, Par. IV of the Georgia Constitution and OCGA 51-12-30. Service may be made upon Defendant Richard-Torke at her residence located at 2490 Woodbrook Court, Lawrenceville, Ga. 30043.

7.

At all times relevant, various practitioners including but not limited to Defendants Mitchell, Richard-Torke and the nurses and staff responsible for and involved in the care of Saadatu Dason and Naima Jones were acting as employees/agents of Defendants Southeast Permanente, Kaiser Permanente, Kaiser Foundation and Gwinnett Medical Center and in the course and scope of their employment/agencies.

8.

The Plaintiffs are residents of the State of Georgia.

Facts

9.

Defendants Mitchell and Richard-Torke were and are a physician and midwife respectively, licensed under the laws of the State of Georgia.

10.

At all times relevant hereto, Defendants Mitchell and Richard-Torke, held themselves out to the general public as practitioners skilled in the care and treatment of females needing gynecological and obstetrical care.

11.

At all times relevant, Saadatu Dason employed Defendants Mitchell, Richard-Torke, Southeast Permanente, Kaiser Permanente, Kaiser Foundation and Gwinnett Medical Center for the purpose of administering and overseeing her gynecological and obstetrical care, with specific reference to the management of her spontaneous rupture of membranes and the delivery of her baby, now known as Naima Jones.

12.

On or about September 11, 2011, Saadatu Dason, age 37, presented to the Gwinnett Medical Center, where she was admitted as a patient of Defendant Dr. Mitchell. At the time of admission, Saadatu Dason was 38 + weeks with spontaneous rupture of membranes, meconium stained fluid, positive fetal movement and irregular contractions.

13.

Beginning 9:11 a.m. and continuing throughout the morning, variable decelerations were noted on external monitoring. A vaginal exam performed by

nurse Njeri Young shortly thereafter showed fingertip dilation, with minimal effacement and a high station. At 10:26 a.m., Nurse Young called midwife Richard-Torke and requested she personally assess the monitor strip. At around 10:59 a.m. midwife Richard-Torke arrived, evaluated the strip and performed a cervical exam. She again noted the presence of meconium. At that point, the patient was 1 centimeter dilated with minimal effacement and a -3 station. Following the exam and performance of a limited ultrasound, midwife Richard-Torke notified Dr. Mitchell of the patient's course and status and of her intention to attempt to initiate an amnioinfusion. At 12:07 p.m., midwife Richard-Torke ordered an amnioinfusion which was started at 12:14 p.m. Around 12:21 p.m., the patient was evaluated by Dr. Mitchell, who confirmed variable decelerations in the presence of meconium and her approval of the amnioinfusion. The amnioinfusion bolus was completed at 12:49 p.m., at which time a maintenance infusion of fluid was started.

14.

Fetal monitoring continued to reflect ongoing variable decelerations until 1:12 p.m., when late decelerations began to appear. The late decelerations continued and at 1:44 p.m. the monitor strip was evaluated by midwife Richard-Torke. At 2:14 p.m. the patient received an epidural and when the procedure was completed at 2:27 p.m., monitoring resumed with more variable decelerations noted at 2:42 p.m.

15.

At 2:40 p.m. midwife Richard-Torke, ordered the administration of Pitocin, which was started at 2:55 p.m. Within ten minutes, fetal monitoring reflected ongoing, reoccurring late decelerations. At 3:30 p.m., Nurse Sarah Chandler

requested that midwife Richard-Torke again evaluate the patient and at 3:48 p.m., Pitocin was discontinued.

16.

At 3:55, Dr. Mitchell reviewed the monitoring strip and performed an examination. Around 4:00 p.m., Dr. Mitchell decided to perform an emergency Cesarean section delivery based upon demonstrated fetal intolerance to labor. Naima Jones was delivered at 4:30 p.m. in a highly depressed state with a large amount of meconium in the amniotic fluid.

17.

At the time of her release from Gwinnett Medical Center, Naima Jones suffered and continues to suffer from severe medical and developmental problems including but not limited to seizures.

18.

As the admitting and attending physician, Defendant Dr. Mitchell was responsible for the management of Plaintiff Saadatu Dason's medical conditions and overseeing the care and treatment of other practitioners, including but not limited to Defendant Richard-Torke and the staff and nurses of Defendant Gwinnett Medical Center.

19.

At all times relevant, the duties and responsibilities for management of Plaintiff Saadatu Dason's medical condition and the practitioners, including but not limited to staff and nurses providing care to Saddatu Dason were delegated to and shared by Defendant Richard-Torke.

20.

From the time of Saddatu Dason's admission into the Gwinnett Medical Center on September 11, 2011 until the delivery of her daughter, Plaintiff Naima Jones, the care of Ms. Dason was at various times undertaken by employees/agents of Defendants Gwinnett Medical Center, Southeast Permanente, Kaiser Permanente and Kaiser Foundation.

21.

At the time of her presentation to Defendant Gwinnett Medical Center on September 11, 2011, Saadatu Dason was a high risk pregnancy with little to no chance of vaginal delivery in a reasonable and safe time duration. The applicable standard of care for patients such as Saadatu Dason and Naima Jones required that they not be unnecessarily subjected to the rigors of labor and its associated risk of fetal compromise, unless monitoring and testing was unequivocally normal and reassuring. With a backdrop of meconium being present and an initial abnormal fetal heart monitoring tracing, the standard of care required Cesarean Section delivery without delay when it became evident that delivery was remote and monitoring and testing ceased being reassuring.

22.

On September 11, 2011, the Defendants, and each of them acted negligently and in derogation of the applicable standard of care, inter alia, by failing to be timely responsive when testing and monitoring ceased being reassuring, in the context of its patient's individualized circumstance.

23.

Defendant Mitchell's deviations from the applicable standard of care include but are not limited to failing to deliver Naima Jones in a timely manner, failing to assess and follow her patient with adequate frequency and on a timely basis commensurate with her treatment and presentation, and failing to instruct Defendant Richard-Torke and the other providers, nurses and staff to immediately inform her or another physician of information material to patient care and delivery decision making.

24.

Defendant Richard-Torke's deviations from the applicable standard of care include but are not limited to the ordering and/or continuation of Pitocin in the context of this patient's individualized circumstance and not immediately acting upon or informing Dr. Mitchell or another physician of information material to the medical management of their patients. Defendant Richard-Torke was also negligent and not in compliance with the applicable standard of care by failing to instruct other practitioners, nurses and staff to immediately notify her, Dr. Mitchell or another physician of the occurrence of abnormal monitoring findings and the status of labor.

25.

The agents and employees of Defendant Gwinnett Medical Center, Southeast Permanente, Kaiser Permanente and Kaiser Foundation also failed to meet the applicable standard of care, substandard acts and omissions including but not being limited to failing to timely and accurately communicate material aspects of patient

status to decision makers and failing to request or initiate assessment, evaluation and/or interventions by a physician in a timely manner.

26.

As a direct and proximate result of the negligent acts and omissions of the Defendants and each of them, Naima Jones sustained injuries causing permanent brain damage and other complications. The failure to properly manage Saadatu Dason's care and timely perform interventions, including but not limited to a Cesarean Section were the direct cause of Naima Jones' injuries.

Count I

27.

Plaintiffs restate and re-allege those allegations contained in paragraphs 1 through 26 of this Complaint as if fully set forth herein in their entirety.

28.

The injuries and permanent and irreversible brain damage sustained by Plaintiff Naima Jones were proximately caused by the negligence of Defendant Dr. Mitchell, Defendant Richard-Torke and other agents/employees of the Defendants including but not limited to the nurses, staff, physicians, midwives and other practitioners.

29.

Plaintiffs Saadatu Dason and Habib Fuseini, as the mother and father of Plaintiff Naima Jones, are entitled to recover damages from the Defendants for all related necessities, including but not limited to therapies, medical attention, supervised care and special schooling for Naima Jones, up to age eighteen (18).

30.

Plaintiff Naima Jones is entitled to recover damages from the Defendants for all necessities, including but not limited to therapies, medical attention, supervised care and special schooling required after age eighteen (18) and for the injuries she sustained as a result of their negligence, including but not limited to pain and suffering, lost earnings, the cost of supervised care and all other damages allowed by Georgia law.

Count II

31.

Plaintiffs restate and re-allege those allegations contained in paragraphs 1 through 26 and paragraphs 27 through 30 of Count I of this Complaint as if fully set forth herein in their entirety.

32.

Defendant Mitchell failed to be properly and timely responsive to the presentation of her patients, Plaintiffs Saadatu Dason and Naima Jones. Additionally, this Defendant was negligent in her monitoring and supervision of other practitioners, to whom she had delegated aspects of her patients' care.

33.

Defendant Richard-Torke failed to be properly and timely responsive to the presentation of her patients, Plaintiffs Saadatu Dason and Naima Jones. Additionally, this Defendant was negligent in her monitoring and supervision of other practitioners, to whom she had delegated aspects of their patients' care.

34.

The agents and employees of Defendants Southeast Permanente, Kaiser Permanente, Kaiser Foundation, and Gwinnett Medical Center, including but not limited to Defendant Mitchell, Defendant Richard-Torke, other physicians, nurse-midwives, nurses, practitioners and staff, failed to be properly and timely responsive to the presentation of their patients, Plaintiffs Saadatu Dason and Naima Jones. Additionally, these Defendants were negligent in their monitoring and supervision of other practitioners, to whom they had delegated aspects of their patients' care.

35.

The injuries and permanent and irreversible brain damage sustained by Plaintiff Naima Jones was proximately caused by both the active and passive negligence of Defendants Mitchell, Richard-Torke and the employees and agents of Defendants Southeast Permanente, Kaiser Permanente, Kaiser Foundation, and Gwinnett Medical Center. Such negligent acts include but are not limited to their failure to have and implement adequate policies and procedures to ensure that the decision makers were provided information that would be appropriate to consider in deciding when to perform a Cesarean Section delivery.

36.

Defendants Southeast Permanente, Kaiser Permanente, Kaiser Foundation, and Gwinnett Medical Center. are liable for their independent negligent acts in addition to the negligence of their agents and employees under the doctrine of respondeat superior.

Count III

37.

Plaintiffs restate and re-allege those allegations contained in paragraphs 1 through 26, paragraphs 27 through 30 of Count I and paragraphs 31 through 36 of Count II as if fully set forth herein in their entirety.

38.

At all times relevant hereto, Defendant Gwinnett Medical Center held itself out to the general public as an institution skilled in the care and treatment of patients and with having adequate facilities and personnel to care for admitted patients. At all times relevant, Defendant Gwinnett Medical Center charged the Plaintiffs for its services.

39.

Defendant Gwinnett Medical Center accepted Plaintiff Saadatu Dason as a patient on or about September 11, 2011, for the purpose of attending and being responsive to her condition and that of her undelivered infant and to care for them in a reasonable and careful manner.

40.

Defendant Gwinnett Medical Center, by and through its agents/employees, was negligent in its care and treatment of Plaintiffs Saadati Dason and Naima Jones. Additionally, the Defendant Gwinnett Medical Center was negligent in its credentialing of the physicians, practitioners, agents and employees who provided care to the Plaintiffs and in its continued retention and failure to supervise such physicians, practitioners, agents and employees.

41.

As a direct and proximate result of the negligence of Defendant Gwinnett Medical Center, Plaintiff Naima Jones sustained injuries and permanent and irreversible brain damage.

Count IV

42.

Plaintiffs restate and re-allege those allegations contained in paragraphs 1 through 26, paragraphs 27 through 30 of Count I, paragraphs 31 through 36 of Count II and paragraphs 37 through 41 of Count III as if fully set forth herein in their entirety.

43.

At all times relevant hereto, Defendants Southeast Permanente, Kaiser Permanente and Kaiser Foundation held themselves out to the general public as a combination health plan and medical practice providing practitioners skilled in the care and treatment of patients and with having adequate facilities and personnel to care for admitted patients. At all times relevant, Defendants Southeast Permanente, Kaiser Permanente and Kaiser Foundation charging their patients for services.

44.

Defendant Southeast Permanente, Kaiser Permanente, and Kaiser Foundation directed, owned, managed and/or operated the medical practice of which Plaintiff Saadatu Dason was a member/patient. These Defendants were contractually obligated to provide Saadatu Dason standard of care medical treatment and attention responsive to her condition and that of her undelivered infant and to care for them in a

reasonable and careful manner. They were also obligated to provide such care on the basis of Saadatu Dason's physician/patient relationship with their practitioners.

45.

Defendant Southeast Permanente is a subsidiary, alter-ego and or joint/venture of Kaiser Permanente and/or Kaiser Foundation.

46.

Defendant Southeast Permanente is controlled and operated by its parent(s) Kaiser Permanente and Kaiser Foundation and these Defendants are liable for the negligent acts and omissions of the physicians and practitioners employed by or associated with them.

47.

Defendants Southeast Permanente, Kaiser Permanente and Kaiser Foundation, by and through their agents/employees, were negligent in their care and treatment of Plaintiffs Saadati Dason and Naima Jones. Additionally, these Defendants were negligent in their credentialing of the physicians, practitioners, agents and employees who provided care to the Plaintiffs and in their continued retention and failure to supervise such physicians, practitioners, agents and employees.

48.

As a direct and proximate result of the negligence of each of the Defendants, Plaintiff Naima Jones sustained injuries and permanent and irreversible brain damage, for which the Plaintiffs are entitled to recover all damages allowed by law.

Count IV

49.

Plaintiffs restate and re-allege those allegations contained in paragraphs 1 through 26, paragraphs 27 through 30 of Count I, paragraphs 31 through 36 of Count II and paragraphs 37 through 41 of Count III and paragraphs 42 through 48 of Count IV as if fully set forth herein in their entirety.

50.

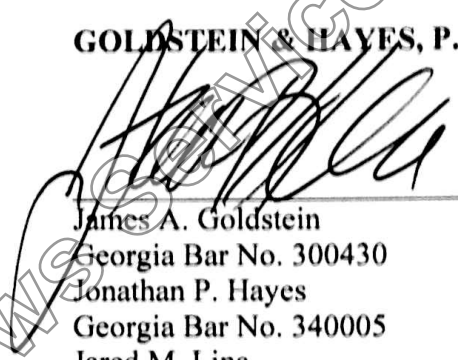
The actions of the Defendants, in their care and treatment, their credentialing and in the entrustment of the care of their patients to individuals who they knew, or should have known, lacked requisite expertise and training and in their failure to provide proper supervision and oversight of Saadatu Dason and Naima Jones care providers demonstrate a gross and wanton disregard for the safety of others, including but not limited to Plaintiffs Saadatu Dason and Naima Jones, and a conscious indifference to consequences to others, authorizing the imposition of exemplary damages pursuant to O.C.G.A. § 51-12-5.1.

WHEREFORE, Plaintiffs respectfully pray that:

- (a) Judgment against each of the Defendants in such amounts in excess of \$10,000 as a jury determines will fully compensate them for all necessities, including but not limited to the medical care, treatment and therapies, supervised care and schooling required or needed by Naima Jones, both before and after age eighteen (18), pain and suffering, lost earnings and all damages allowed by law;

- (b) Plaintiffs have and recover from each of the Defendants punitive damages in an amount in accordance with the enlightened conscience of an impartial jury;
- (c) They have trial by jury;
- (d) They have such other and further relief as this Court deems just and proper.

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