

FILED

CALVIN W. YORK
2031 Paulette Road, Apt. 102
Dundalk, MD 21222

Plaintiff,

v.

GREATER BALTIMORE MEDICAL
CENTER, INC.

Serve on: John B. Chessare
6701 N. Charles Street
Baltimore, MD 21204

and

KAISER FOUNDATION HEALTH PLAN OF
THE MID-ATLANTIC STATES, INC.

2101 E. Jefferson Street
Rockville, Maryland 20850

Serve on: The Prentice-Hall Corp.
System
7 St. Paul Street, Suite 1660
Baltimore, MD 21202

and

MID-ATLANTIC PERMANENTE
MEDICAL GROUP, P.C.

2101 E. Jefferson Street
Rockville, Maryland 20850

Serve on: The Prentice-Hall Corp.
System
7 St. Paul Street, Suite 1660
Baltimore, MD 21202

and

MICHAEL T. SCHEERER, M.D.

Serve: 4920 Campbell Blvd
Nottingham, MD 21236

Defendants.

IN THE CIRCUIT COURT JUL 2 2014

OF MARYLAND

FOR BALTIMORE CITY

CIVIL DIV.
CIRCUIT COURT FOR
BALTIMORE CITY

Case # _____

Case: 24-C-14-004038

CV File Now \$80.00

Appear Fee \$20.00

HLSC \$55.00

TOTAL \$155.00

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COMPLAINT

The Plaintiff, Calvin W. York, by his attorneys, David T. Lampton, Michael P. Smith, and Smith, Gildea & Schmidt, LLC, hereby files this Complaint against the Defendants, Greater Baltimore Medical Center, Inc., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Mid-Atlantic Permanente Medical Group, P.C., and Michael T. Scheerer, M.D. (hereinafter "Defendants"), and states as follows:

PARTIES, VENUE, AND JURISDICTION

1. At all times material to this case, the Plaintiff, Calvin W. York ("Mr. York"), has been a citizen and resident of the State of Maryland.

2. At all times material to this case, the Defendant, Greater Baltimore Medical Center, Inc. ("GBMC"), has been a Maryland corporation engaged in the administration, staffing, supervision, and operation of a medical center in Baltimore County, Maryland, acting through its actual and/or apparent agents, servants, and/or employees including, but not limited to, Michael T. Scheerer, M.D., providing, among other services, orthopedic surgical care to Mr. York.

3. At all times material to this case, the Health Care Provider, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. ("Kaiser Foundation"), has been a Maryland corporation engaged in the administration, staffing, supervision, and operation of a managed health care organization in Baltimore County, Maryland, acting through its actual and/or apparent agents, servants, and/or employees including, but not limited to, Michael T. Scheerer, M.D., providing, among other services, orthopedic diagnostic and surgical care to Mr. York.

4. At all times material to this case, the Defendant, Mid-Atlantic Permanente Medical Group, P.C. ("Mid-Atlantic Permanente," and together with Kaiser Foundation, "Kaiser"), has been a Maryland corporation engaged in the administration, staffing, supervision, and operation of a managed health care organization in Baltimore County, Maryland, acting through its actual and/or apparent agents, servants, and/or employees including, but not limited to, Michael T. Scheerer, M.D., providing, among other services, orthopedic diagnostic and surgical care to Mr. York.

5. At all times material to this case, the Defendant, Michael T. Scheerer, M.D. ("Dr. Scheerer"), has been a physician licensed to practice medicine in the State of Maryland specializing in the field of orthopedic surgery, and was either employed by, or acted as an agent or servant for the Defendants, GBMC and Kaiser, and provided, among other services, orthopedic diagnostic and surgical care to Mr. York.

6. Kaiser regularly carries on business in Baltimore City, Maryland.

7. Venue is proper in Baltimore City, Maryland.

8. This Complaint is instituted for the recovery of damages in excess of Thirty Thousand Dollars (\$30,000.00).

FACTS COMMON TO ALL COUNTS

9. In February 2007, Mr. York had Doris SMART stents placed in the femoral artery of each of his legs to treat superficial femoral artery occlusions.

10. Due to Mr. York's worsening osteoarthritis in his knees, he began preparation for receiving knee bilateral knee replacements.

11. On December 9, 2008, as part of a vascular consultation in advance of the knee replacement surgeries, Peter J. Golueke, M.D. found that “regarding his peripheral vascular status, he is cleared for total knee replacement from that standpoint. The patient should have one total knee replacement done at a time and it is recommended that no tourniquet be used on either the right or the left.”

12. In February of 2009, in preparation for his first knee replacement, Michael F. Jaworski, MD, from the Kaiser Woodlawn center, examined Mr. York and noted that “[patient] can not have tourniquets [sic]”.

13. On April 27, 2009, Dr. Jaworski performed a total knee replacement on Mr. York’s right knee, and noted in his surgical notes that “no tourniquet was used” during the procedure.

14. Upon information and belief, Dr. Jaworski retired some time in 2010 and therefore was unavailable to perform the second knee replacement in Mr. York’s left knee.

15. Mr. York consulted with Dr. Scheerer in August 2010, explained his medical history and discussed his degenerative osteoarthritis, and began preparations for the second knee replacement on his left knee.

16. Dr. Scheerer performed a total knee replacement of Dr. York’s left knee on October 26, 2010.

17. Despite the warnings of Mr. York, the vascular consult notes, and the notations of Dr. Jaworski, Dr. Scheerer’s surgical notes indicate that the “left knee was prepped and draped [sic] ...the leg was exsanguinated with an Ace wrap. The tourniquet was inflated to 325 mmHG.”

18. Following the surgery performed by Dr. Scheerer, Mr. York had severe vascular issues with his left leg that ultimately resulted in an unnecessary additional vascular bypass graft surgery to bypass the stent and blocked femoral artery, permanent injury, and consequential damages to Mr. York's livelihood.

19. Plaintiff timely filed a Statement of Claim with the Health Care Alternative Dispute Resolution Office alleging medical malpractice against the Defendants and a lack of informed consent.

20. Plaintiff also filed its certificates of qualified experts and accompanying reports, and filed its Waiver of Arbitration on May 6, 2014, which is attached to the Complaint as **Exhibit A**.

21. The Health Care Alternative Dispute Resolution Office issued an Order of Transfer as signed by Harry L. Chase, Director of Health Care Alternative Dispute Resolution Office, dated May 12, 2014, which is attached to the Complaint as **Exhibit B**.

22. The Plaintiff has exhausted its administrative remedies and satisfied all conditions precedent to filing the instant lawsuit.

COUNT I - NEGLIGENCE (Medical Malpractice)

23. Mr. York hereby incorporates by reference and re-alleges here all of the allegations contained in the above paragraphs as if those allegations are set forth in this Count.

24. The Defendants, individually and/or through their actual and/or apparent agents, servants, and/or employees, owed Mr. York a duty to exercise reasonable care in the care and treatment of Mr. York.

25. The Defendants, individually and/or through their actual and/or apparent agents, servants, and/or employees, breached the above-described duty of care, thereby deviating from the applicable standards of care, and were otherwise negligent, careless, and/or reckless in that they, among other things:

- A. failed to properly assess and/or erroneously assessed Mr. York's condition;
- B. failed to properly evaluate and/or erroneously evaluated Mr. York's condition;
- C. failed to take a thorough medical history;
- D. failed to conduct appropriate and timely examinations;
- E. failed to timely and adequately recognize the underlying risk factors of his left knee total joint replacement surgery;
- F. failed to properly identify and or assess the relationship between the previous stent placements and the need to conduct a surgery that would be sensitive to Mr. York's vascular history;
- G. failed to conduct appropriate and/or timely pre-operative and/or intraoperative planning with regards to the preservation of Mr. York's stent and vascular health;
- H. failed to properly and/or timely evaluate the nature of Mr. York's condition prior to surgery;
- I. failed to properly develop a surgical plan of attack that preserved his vascular health and the condition of his femoral artery and/or stent;

- J. breached the standard of care in performing the total joint replacement on Mr. York's left knee without consulting with a vascular surgeon;
- K. breached the standard of care in performing the total joint replacement on Mr. York's left knee and using a tourniquet despite being advised not to; and/or
- L. otherwise failed to properly perform the October 26, 2010 surgical procedure.

26. As a direct and proximate result of the above-mentioned deviations from the applicable standards of care and negligence by the Defendants, Mr. York has suffered and/or will suffer the following significant injuries and/or damages, among others:

- A. damage to the stent and/or femoral artery in his left leg;
- B. the inability to use his left leg for ambulation for an unnecessary length of time;
- C. was forced to subject himself to an unnecessary medical and/or surgical procedures as a result of the injuries he sustained;
- D. pain and suffering;
- E. medical, hospital, and/or other care and treatment resulting in economic damages;
- F. was precluded from engaging in his normal and usual pursuits and activities;
- G. was unable to work and lost his business as a result of his injuries;

- H. was no longer able to perform his normal and usual household services for an extended length of time;
- I. was dependent upon others for numerous activities of daily living for an extended length of time;
- J. numerous medical and/or surgical procedures;
- K. medical expenses; and
- L. medication expenses.

27. As a further direct and proximate result of the above-mentioned deviations from the applicable standards of care by the Defendants, Mr. York has experienced and will experience severe emotional distress, and has and will be legally and otherwise responsible for additional medical care and expenses in the future.

28. Had the Defendants followed the appropriate and applicable standards of care, Mr. York would not have suffered the above-identified injuries and/or damages.

29. The injuries and/or damages herein complained of are directly and proximately caused by the negligence of the Defendants and/or their actual and/or apparent agents, servants, and/or employees, with no negligence on the part of Mr. York contributing thereto.

WHEREFORE, the Plaintiff, Calvin W. York, requests that a judgment be entered against Greater Baltimore Medical Center, Inc., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Mid-Atlantic Permanente Medical Group, P.C.,

and Michael T. Scheerer, M.D. for compensatory damages in excess of Seventy-Five Thousand Dollars (\$75,000.00).

COUNT II - LACK OF INFORMED CONSENT

The Plaintiff, Mr. York, hereby sues the Defendants and for his cause of action states:

30. The Plaintiff incorporates all of the allegations contained in the above paragraphs as if those allegations are set forth in this Count.

31. Prior to the total joint replacement surgical procedure that took place on October 26, 2010, the Defendants were required to obtain the informed consent of Mr. York; however, they failed to do so in that Dr. Scheerer did not inform Mr. that he intended to use a tourniquet during the procedure, which Mr. York understood to be a significant risk given his medical history and the placement of the stent in his left femoral artery.

32. Moreover, the exact surgical procedure and its significantly increased risks, (including the risk of injury to the stent and/or left femoral artery), were not properly explained to Mr. York, nor was the probability of success, and/or the appropriate alternatives to the surgical procedure.

33. Dr. Scheerer did not explain any and/or all of the material risks that a reasonable person would want to consider prior to consenting to such a surgery that included the use of a tourniquet.

34. Armed only with the information given to him regarding information as it related to the surgical procedure as explained by Dr. Scheerer, Mr. York agreed to have the surgery.

35. Had Mr. York been fully informed of the surgery that he would undergo, as well as all material risks attending said surgery, specifically, including, but not limited to, the exact surgical procedure that would be performed on him which including the use of a tourniquet, the risks of the specific surgical procedure, and the available alternatives to the surgical procedure (which included the surgery without the use of a tourniquet), Mr. York would not have consented to have the surgery.

36. Such risks and alternatives would have been disclosed by reasonably competent Defendants, especially in light of the potential injuries that could occur through the use of a tourniquet.

37. Mr. York and any reasonable person in his position, would have withheld consent to the procedure had all appropriate and material information been disclosed to him.

38. As a direct and proximate result of the negligent failure of the Defendants to obtain the informed consent of Mr. York, Mr. York has suffered the aforementioned injuries and damages.

39. The injuries and damages herein complained of were directly and proximately caused by the negligence of the Defendants, with no negligence on the part of Mr. York contributing thereto.

WHEREFORE, the Plaintiff, Calvin W. York, requests that a judgment be entered against Greater Baltimore Medical Center, Inc., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Mid-Atlantic Permanente Medical Group, P.C., and Michael T. Scheerer, M.D. for compensatory damages in excess of Seventy-Five Thousand Dollars (\$75,000.00).

DEMAND FOR JURY TRIAL

Plaintiff hereby makes demand for a trial by Jury.



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