

19 CIV
CO-

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DEREK A. POSEY
5315 Posey Gray Place
Indian Head, Maryland 20640

Plaintiff,

vs.

WILLIAM L. BURNER, M.D.
700 2nd Street, NE
Washington, DC 20002

and

KAISER PERMANENTE CAPITOL HILL
MEDICAL CENTER
700 2nd Street NE
Washington, DC 20002

SERVE:

Prentice Hall Corporation System
1090 Vermont Avenue, N.W.
Washington D.C. 20005

and

KAISER FOUNDATION HEALTH PLAN OF
MID-ATLANTIC STATES, INC.
2101 East Jefferson Street
Rockville, Maryland 20852

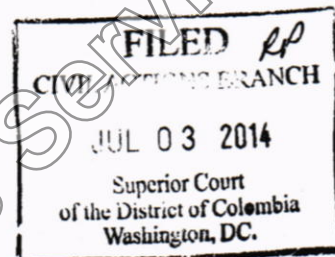
SERVE:

The Corporation Trust Incorporated
32 South Street
Baltimore, Maryland 21202

and

MID-ATLANTIC PERMANENTE
MEDICAL GROUP, P.C.
2101 East Jefferson Street
Rockville, Maryland 20852

14-0004143
CASE NO.:



SERVE:)
The Prentice Hall Corporation System)
Suite 1660)
7. St. Paul Street)
Baltimore, Maryland 21202)
Defendants.)

COMPLAINT

Comes now the Plaintiff, Derek A. Posey through counsel, Andrew E. Greenwald, Esquire and Christopher M. FitzPatrick, Esquire, and the law offices of Joseph, Greenwald & Laake, P.A., and submit this claim for personal injury and medical malpractice against the Defendants, William L. Burner, M.D., Kaiser Permanente Capitol Hill Medical Center, Kaiser Foundation Health Plan of Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, P.C., and represent to this Honorable Court as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction of the within cause of action pursuant to DC Code Section 11-921, Section 13-422, and Section 13-423 (1981.ed) in that the Defendants, William L. Burner, M.D. and Kaiser Permanente Capitol Hill Medical Center were doing business in the District of Columbia and the negligent acts took place in the District of Columbia.

2. That notice was appropriately given to each Defendant 90 days prior to the filing of this Complaint pursuant to DC Code Section 16-2802.

3. The Plaintiff, Derek Posey is a resident of Charles County, Maryland with an address located at 5315 Posey Gray Place, Indian Head, Maryland 20640.

4. That the Defendant, William L. Burner, M.D. is upon information licensed to practice medicine in the District of Columbia and an orthopedic surgeon who practices medicine

at the Capitol Hill Medical Center located at 700 2nd Street, NE Washington D.C. 20002.

5. The Defendant, William L. Burner, M.D. at all times was an agent, servant, and/or employee of the Defendant, Kaiser Permanente Capitol Hill Medical Center with respect to the medical care and medical treatment of the Plaintiff, Derek A. Posey.

6. The Defendant, William L. Burner, M.D. at all times was an agent, servant, and or employee of Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.

7. The Defendant, Kaiser Permanente Capitol Hill Medical Center is a medical health care provider who at all times provided medical services to the Plaintiff, Derek A. Posey with an address located at 700 2nd Street, NE Washington D.C. 20002.

8. The Defendant, Kaiser Permanente Capitol Hill Medical Center is a subsidiary of Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.

9. The Defendant, Kaiser Foundation Health Plan of Mid-Atlantic States is a corporation authorized to do business in the state of Maryland with an address located at 2101 East Jefferson Street, Rockville, Maryland 20852.

10. The Defendant, Mid-Atlantic Permanente Medical Group, P.C. is a subsidiary of Kaiser Foundation Health Plan of Mid-Atlantic States and a Professional Corporation with an address listed at 2101 East Jefferson Street, Rockville, Maryland 20852.

ALLEGATIONS COMMON TO ALL COUNTS

11. On September 11, 2011, the Plaintiff, Derek Posey was injured in a motor cycle/dirt bike accident in Indian Head, Maryland.

12. On September 11, 2011, the Plaintiff, Derek Posey was seen on an emergency basis in the Emergency Room at Civista Medical Center in Waldorf, Maryland. An x-ray that was conducted at Civista Medical Center revealed that the Plaintiff had sustained a fractured left

elbow. The radiology report dated September 11, 2011 from Civista Medical Center revealed that there was an effusion at the left elbow joint and a fracture of the radial head anterior corner of the left elbow. The overall impression that was made at Civista Medical Center was the following: Fracture Radial Head and to evaluate for fracture or dislocation.

13. On September 11, 2011, the Plaintiff's left arm/elbow was placed in a sugar tong splint and the Plaintiff was treated and released from Civista Medical Center. The Plaintiff, Derek Posey was a patient of Defendants William L. Burner, M.D. and Kaiser Permanente Capitol Hill Medical Center, both of whom owed a duty to comply with the national standard of care regarding the medical and orthopedic treatment and care of the Plaintiff.

14. On September 13, 2011, the Plaintiff came under the care of the Defendants, William L. Burner, M.D. and Kaiser Permanente Capitol Hill Medical Center. The Plaintiff was physically examined by the Defendant, William L. Burner, M.D. and was diagnosed with a closed fracture of head of the radius of the left elbow.

15. The Defendant, William L. Burner, M.D. was acting individually and as an agent, servant and employee of the Defendant, Kaiser Permanente Capitol Hill Medical Center.

16. On September 19, 2011, the Plaintiff was examined and treated by the Defendants, William L. Burner, M.D. and Kaiser Permanente Capitol Hill Medical Center. On this date, the Defendant, William L. Burner, M.D. stated in his office notes the following: "26 year left handed dominant male, auto mechanic, dirt bike accident 2 days ago. Treated and released from the Emergency Room. In sugar tong splint, told he had a "chip fx" of elbow that might require surgery. No neuro sx's. Returns now 8 days post injury for ROM (Range of Motion) Check. O: NV intact, skin intact, min diffuse swell of elbow, tender laterally. AROM; Pro 80; to 80 Sup Flouro today min displaced marginal fx of radial head."

17. On October 10, 2011, the Plaintiff was once again seen by Defendants, William L. Burner, M.D. and Kaiser Permanente Capitol Hill Medical Center. Defendant William L. Burner stated in his notes dated 10-10-11 the following: "returns 1 mo post injury, concerned because he does not have full Flex/ext. O: V intact, skin intact, min diffuse swell of elbow, min tender laterally. AROM: Pro 80, Sup 80, Flex/Ext 100-. CD film from E.R. and Flouro today shown min displaced marginal fx of radial head. A: Radial head (fx) fracture. P: Continue AROM, Ok to return to work 6 wks post fx, but gradual increase activity as tolerated (tol)."

18. On October 10, 2011, the Plaintiff was advised by the Defendant, William L. Burner, M.D. that he was clear to return to work, including all of his daily work activities and responsibilities as an auto mechanic without any limitations or written work restrictions limiting Plaintiff's employment-related activities as an auto mechanic.

19. On October 25, 2011, the Plaintiff returned to work as an auto mechanic and assumed his normal employment duties as a mechanic at Good Year Auto as instructed to do so by the Defendant, William L. Burner, M.D.

20. The Defendant, William L. Burner, M.D. failed to follow up and closely monitor the Plaintiff from October 10, 2011 through December 5, 2011 and failed to order any follow-up x-rays until December 5, 2011.

21. The Defendant, William L. Burner, M.D. failed to refer the Plaintiff to physical therapy at any time during his care and treatment of the Plaintiff.

22. On December 5, 2011, an x-ray was conducted of Plaintiff's left elbow. After reviewing the x-ray film, the Defendant, William L. Burner, M.D. advised the Plaintiff that the deformity and bent curve shape of Plaintiff's left arm would not improve in any manner and the range of motion deficits would most likely be permanent in nature.

COUNT I – MEDICAL NEGLIGENCE

23. The Defendant, William L. Burner, M.D. presented himself to the Plaintiff and held himself out as an orthopedic surgeon duly licensed and trained in orthopedic surgery and possessed the training, skill, knowledge and experience to care for and treat patients such as the Plaintiff who presented with fractured or dislocated elbows.

24. The Defendant, William L. Burner, M.D. owed a duty to the Plaintiff according to the standards of accepted medical practice that are required for physicians in the medical community of orthopedic surgery with similar training, skill, and education.

25. The Defendant, William Burner, M.D., acting individually and as an agent, servant and employee of Kaiser Permanente Capitol Hill Medical Center, Kaiser Foundation Health Plan of Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., breached his duty to the Plaintiff and departed from accepted standards of medical practice and was negligent in the following manner:

- a. failure to consistently monitor and follow the Plaintiff's condition and fracture/dislocation of the left elbow between October 10, 2011 and December 5, 2011.
- b. failure to properly ensure that the Plaintiff was timely scheduled to be seen and followed every two weeks between October 10, 2011 and December 5, 2011. The Defendant, William L. Burner, M.D. knew or should have known from his education, training and skill as an orthopedic surgeon that the Plaintiff needed to be seen by himself every two (2) weeks to evaluate the extent of the fracture/dislocation of the left elbow, the deformity of Plaintiff's left arm, the range of motion limitations that existed with respect to Plaintiff's left arm, the pain and lack of strength that the Plaintiff was experiencing in his left elbow, arm and hand. However the Defendant, William L. Burner, M.D. failed to ensure that the Plaintiff was

consistently seen and his condition regularly evaluated.

c. failure to properly and timely order follow up x-rays and diagnostic tests, including an MRI to evaluate potential reasons to assess the unexplained functional limitations that the Plaintiff was experiencing.

d. failure to timely refer the Plaintiff to physical therapy.

26. As a direct and proximate result of the negligence aforesaid, the Plaintiff, Derek Posey has suffered severe and permanent damages.

COUNT II - VICARIOUS LIABILITY/RESPONDEAT SUPERIOR

27. The factual allegations set forth in paragraphs 1-26 are incorporated herein by reference.

28. William L. Burner, M.D. was an employee and/or agent of Kaiser Permanente Capitol Hill Medical Center, Kaiser Foundation Health Plan of Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, P.C. and was acting within the scope of his employment and/or acting with express and or apparent authority when he provided medical care and treated the Plaintiff.

29. Based on the fact that the Defendant, William L. Burner, M.D. was acting within the scope of his employment as an employee of the Defendants, Kaiser Permanente Capitol Hill Medical Center, Kaiser Foundation Health Plan of Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical group, P.C. and/or was acting with express or apparent authority from his principal, the Defendants, Kaiser Permanente Capitol Hill Medical Center, Kaiser Foundation Health Plan of Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C. are vicariously liable for the acts and/or omissions committed by the Defendant, William L. Burner, M.D.

WHEREFORE, the Plaintiff, Derek A. Posey demands judgment in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) plus interest and costs against the Defendants, William L. Burner, M.D., Kaiser Permanente Capitol Hill Medical Center, Kaiser Foundation Health Plan of Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, P.C. jointly and severally, as well as such other further and additional relief as the nature of the case may require and which to this Honorable Court shall appear just and proper.

Respectfully submitted,



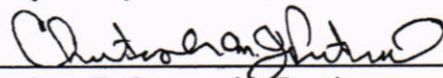
Andrew E. Greenwald, Esquire
Christopher M. FitzPatrick, Esquire
JOSEPH, GREENWALD & LAAKE, P.A.
D.C. Bar No. 034918
D.C. Bar No. 479917
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770
301-220-2200
agreenwald@jgllaw.com
cfitzpatrick@jgllaw.com

DATE: 7/3/14

JURY DEMAND

Plaintiff demands a trial by jury of six.

Respectfully submitted,



Andrew E. Greenwald, Esquire
Christopher M. FitzPatrick, Esquire
JOSEPH, GREENWALD & LAAKE, P.A.
D.C. Bar No. 034918
D.C. Bar No. 479917
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770
301-220-2200
agreenwald@jgllaw.com
cfitzpatrick@jgllaw.com