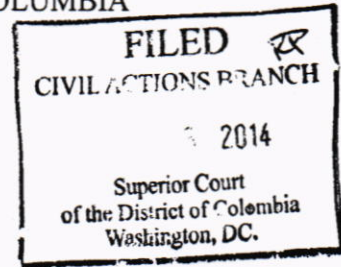


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IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division



TIMOTHY JAWARISH  
19534 White Saddle Drive  
Germantown, Maryland 20874

Plaintiff,

vs.

CASE NO. 14-0004144

WILLIAM L. BURNER, M.D.  
700 2<sup>nd</sup> Street, NE  
Washington, DC 20002

and

KAISER PERMANENTE CAPITOL HILL  
MEDICAL CENTER  
700 2<sup>nd</sup> 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



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

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### **COMPLAINT**

Comes now the Plaintiff, Timothy Jawarish 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, Timothy Jawarish is a resident of Montgomery County, Maryland with an address located at 19534 White Saddle Drive, Germantown, Maryland 20874.

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 2<sup>nd</sup> 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, Timothy Jawarish.

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 2<sup>nd</sup> 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 authorized to conduct business in the state of Maryland and upon information authorized to conduct business in the District of Columbia with an address listed at 2101 East Jefferson Street, Rockville, Maryland 20852.

#### **FACTS & ALLEGATIONS COMMON TO ALL COUNTS**

11. On May 31, 2012, the Plaintiff underwent carpal tunnel release surgery on his right hand that was performed by the Defendant, William L. Burner, M.D. at Kaiser Permanente Capitol Hill Medical Center.



12. According to the operative report dated May 31, 2012, the Defendant, William L. Burner, M.D. performed a curvilinear incision that was made just to the ulnar to the flexor crease at the base of the thenar eminence. This incision carried down the transverse carpal ligament by sharp dissection. The transverse carpal ligament was [described] as being carefully incised from anterior to posterior until a small opening had been made. The scissors were then introduced and the rest of the release was accomplished under the direction with scissors. An epineurolysis of the median nerve was done until the fascicles could be seen. The tourniquet was deflated and the wound was copiously irrigated with normal saline. Hemostasis was confirmed by an electrocautery and the skin only closed with a running vertical mattress suture. A dry, bulky dressing was applied and the patient was taken to the recovery room having tolerated the procedure well.

13. On June 5, 2012, the Plaintiff was seen once again by the Defendant, William L. Burner, M.D. The dressing from the surgery was removed, the wound cleaned, and no sign of draining or infection was seen. The surgical site was also cleaned and a light dressing was applied. The instructions given to the Plaintiff as per Defendant William L. Burner, M.D. were to apply light dressing when outside of the home, remove the dressing indoors, and return to the clinic in one week for suture removal.

14. From June 5, 2012 until May 24, 2013, nearly a year, the Defendants, William L. Burner, M.D. and Kaiser Permanente Capitol Hill Medical Center failed to consistently follow and examine the Plaintiff, Timothy Jawarish and failed to evaluate the extent of his nerve damage to his right hand.

15. The Defendants, William L. Burner, M.D. and Kaiser Permanente Capitol Hill Medical Center also failed to timely perform an EMG to evaluate the nerve damage and failed to

timely perform surgery to repair the extensive nerve damage sustained as a result of the first carpal tunnel release that was performed by the Defendant, William L. Burner, M.D.

### **COUNT I – MEDICAL NEGLIGENCE**

16. 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 carpal tunnel syndrome. The Defendants, William L. Burner, M.D. and Kaiser Permanente owed a duty to comply with the national standard of care regarding the medical and orthopedic treatment of the Plaintiff.

17. 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.

18. The Defendant, William L. 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. negligently and improperly taking down the epineurium, the outermost layer of dense irregular connective tissue surrounding the peripheral nerve, causing serious and significant injury to the nerve in the right hand.

b. negligently and carelessly puncturing a hole in the transverse carpal ligament and negligently using scissors to open the hole wider and sliding it blindly, causing more damage to the nerve itself.



c. failure to consistently follow-up and examine the Plaintiff on a consistent basis from May 31, 2012 to May 24, 2013.

d. failure to timely order an EMG.

e. failure to timely perform a second surgery to repair the nerve damage to the right hand.

19. As a direct and proximate result of the negligence aforesaid, the Plaintiff, Timothy Jawarish has suffered severe and permanent damages.

### **COUNT II – INFORMED CONSENT**

20. The allegations contained in paragraphs 1-19 of the Complaint are adopted and incorporated by reference with the same force and effect as if herein fully set forth.

21. The Defendant, William L. Burner, M.D. had a duty to inform and warn the Plaintiff, Timothy Jawarish of the risks associated with carpal tunnel syndrome release surgery.

22. The Defendant, William L. Burner, M.D. was negligent in failing to adequately inform the Plaintiff, Timothy Jawarish and provide him with full and adequate Informed Consent associated with a carpal tunnel syndrome release surgery.

23. By failing to inform the Plaintiff, Timothy Jawarish of the risks associated with carpal tunnel syndrome release surgery, it deprived the Plaintiff of the opportunity to exercise his medical option of canceling a completely elective procedure.

24. As a proximate cause and result of the defendant William Burner, M.D. to provide full and adequate Informed Consent the Plaintiff, Timothy Jawarish sustained severe and permanent injuries.

### **COUNT III – VICARIOUS LIABILITY/RESPONDEAT SUPERIOR**

25. The factual allegations set forth in paragraphs 1-24 are incorporated herein by

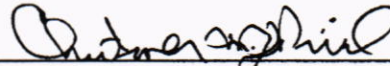
reference.

26. 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.

27. 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, Timothy Jawarish 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,



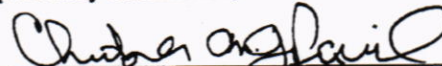
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DATE: 7/3/14

**JURY DEMAND**

Plaintiff demands a trial by jury of six.

Respectfully submitted,



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Christopher M. FitzPatrick, Esquire  
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