

IN THE STATE COURT OF GWINNETT COUNTY

STATE OF GEORGIA AUG 29 AM 9:44

ARKEEM SWANSON and CARLA RENEE)
SWANSON,)

Plaintiffs,)

v.)

KAISER PERMANENTE INSURANCE)
CO., THE SOUTHEAST PERMANENTE)
MEDICAL GROUP, INC., KAISER)
FOUNDATION HEALTH PLAN OF)
GEORGIA, INC., KAISER FOUNDATION)
HEALTH PLAN, INC., KAISER)
FOUNDATION HOSPITALS, INC.,)
JAMES K. BAILEY, M.D., and IRIS)
KOLLA PITTS, M.D., MPH f/k/a IRIS)
KOLLA, M.D., MPH)

Defendants.)

RICHARD ALEXANDER, CLERK

CIVIL ACTION FILE
NO. _____

JURY TRIAL DEMANDED

14 C-04391-1

COMPLAINT

Plaintiffs Arkeem Swanson and Carla Renee Swanson hereby file the above-styled
Complaint and shows this Court the following:

PARTIES, JURISDICTION, AND VENUE

1.

Plaintiff Arkeem Swanson is a citizen and resident of Henry County, Georgia.

2.

Plaintiff Carla Renee Swanson is a citizen and resident of Henry County, Georgia.

3.

At all times material hereto, Plaintiff Arkeem Swanson and Carla Swanson were
married.

4.

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. Service may be made upon Kaiser Permanente's registered agent for service: Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092.

Defendant Kaiser Permanente is subject to the jurisdiction and venue of this Court.

5.

Defendant The Southeast Permanente Medical Group, Inc. (hereinafter referred to as "TSPMG") is a Georgia professional corporation and an entity capable of being sued in Georgia. Upon information and belief, said defendant has an office and transacts business at Southwood Medical Center located at 2400 Mount Zion Parkway, Jonesboro, Georgia 30236 in Clayton County, Georgia and at Kaiser Permanente Henry Towne Centre Medical Center located at 1125 Towne Centre Village Drive, McDonough, Georgia 30253 in Henry County. Said defendant may be served with Process through its registered agent, Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, GA 30092, in Gwinnett County, Georgia. Defendant TSPMG is subject to the jurisdiction and venue of this Court.

6.

Defendant Kaiser Foundation Health Plan of Georgia, Inc., (hereinafter referred to as "Kaiser Plan") is a Georgia for-profit corporation. Service may be made upon Kaiser Plan's registered agent for service: Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092. Defendant Kaiser Plan is subject to the jurisdiction and venue of this Court.

7.

Defendant Kaiser Foundation Health Plan, Inc., (hereinafter referred to as "Kaiser Foundation") is a foreign non-profit corporation. Service may be made upon Kaiser Foundation's registered agent for service: Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092. Defendant Kaiser Foundation is subject to the jurisdiction and venue of this Court.

8.

Defendant Kaiser Foundation Hospitals, Inc., (hereinafter referred to as "Kaiser Hospitals") is a foreign non-profit corporation. Service may be made upon Kaiser Foundation's registered agent for service to wit: Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092. Defendant Kaiser Hospitals is subject to the jurisdiction and venue of this Court.

9.

Kaiser Hospitals, Kaiser Foundation, Kaiser Plan, TSPMG, and Kaiser Permanente will be collectively referred to as the "Kaiser Defendants" unless otherwise indicated.

10.

Defendant James K. Bailey, MD ("Defendant Bailey") is a physician licensed to practice medicine in Georgia and is subject to the jurisdiction of this court. Defendant Bailey may be served personally with process at that address in accordance with O.C.G.A. § 9-11-4 at his residence located at 130 Raymond Court, Fayetteville, Georgia 30214.

11.

At all times material hereto, Defendant Bailey was an employee and/or agent of one or more of the Kaiser Defendants and was working within the course and scope of his

employment there. Upon information and belief, Defendant Bailey no longer is employed by the Kaiser Defendants.

12.

Defendant Iris Kolla Pitts, MD, MPH f/k/a Iris Kolla, MD, MPH ("Defendant Kolla") is a physician licensed to practice medicine in Georgia and is subject to the jurisdiction of this court. Defendant Kolla may be served personally with process at that address in accordance with O.C.G.A. § 9-11-4 at her residence located at 150 Garden Lane, Decatur, Georgia 30030.

13.

At all times material hereto, Defendant Kolla was an employee and/or agent of one or more of the Kaiser Defendants and was working within the course and scope of her employment there.

14.

The Kaiser Defendants are vicariously liable for the negligence of its employees/agents, including but not necessarily limited to Defendant Kolla and Defendant Bailey under the doctrine of *respondeat superior*.

15.

At all times material and hereto, the staff members responsible for mailing, transmitting, or in some fashion ensuring the delivery of typewritten radiology reports to the ordering physicians and/or patients were employees and/or agents of one or more of the Kaiser Defendants and were acting within the course and scope of their employment/agency with the Kaiser Defendants.

16.

The Kaiser Defendants are vicariously liable for the negligent acts of its employees/agents, including but not necessarily limited to those staff members charged with the responsibility of mailing, transmitting, or in some fashion ensuring the delivery of typewritten radiology reports to the ordering physicians and/or patients, under the doctrine of *respondeat superior*.

17.

Venue is proper in Gwinnett County.

FACTS

18.

On September 3, 2009, Plaintiff Arkeem Swanson presented to Defendant Bailey at the Kaiser Defendants' campus located at Kaiser Permanente Henry Towne Centre Medical Center for a physical. At this appointment Arkeem, as he had done on multiple occasions previously, complained of back pain.

19.

Defendant Bailey ordered an abdominal CT scan "STAT" meaning "*statim*" or as soon as possible. Based on this order Plaintiff Arkeem Swanson traveled to the Kaiser Defendants' campus located at Southwood Medical Center located at 2400 Mount Zion Parkway, Jonesboro, Georgia 30236 to undertake the CT scan.

20.

On the same day, Plaintiff Arkeem Swanson underwent an abdominal CT scan, with contrast, which revealed an "incidental finding" of an exophytic cyst located in the midportion of the left kidney.

21.

The radiologist, Defendant Kolla noted: "The findings were called to [Defendant] Dr. Bailey upon completion of the study."

22.

Defendant Kolla did, in fact, upon completion of the study call her findings to Defendant Bailey.

23.

Subsequently, Plaintiff Arkeem Swanson followed up with regular physicals and acute care appointments every year at the Kaiser Defendants' Kaiser Permanente Henry Towne Centre Medical Center campus.

24.

The results of the September 3, 2009 radiology study, as communicated to Dr. Bailey by radiologist Defendant Kolla were not communicated to Plaintiff Arkeem Swanson.

25.

In the alternative, Defendant Kolla did not communicate the findings from the September 3, 2009 CT scan to Dr. Bailey or to Plaintiff Arkeem Swanson.

26.

On May 27, 2014, Plaintiff Arkeem Swanson presented to Piedmont Henry Hospital Emergency Room with complaints of severe pain.

27.

A CT without contrast was conducted on June 4, 2014, which revealed the presence of two kidney stones.

28.

On June 15, 2014, an MRI was conducted with and without contrast on Plaintiff Arkeem Swanson. The MRI revealed "A 2.2 x 2.3 cm round, well marginated mass in the left inferior renal pole is T1 isointense to the kidney, T2 hypointense to kidney, and demonstrates hypoenhancement compatible with a solid lesion. A 4 mm oval cortical mass in the left posterior interpolar kidney . . . is not well evaluated due to slice selection, but most likely represents a cyst." In the impressions section, Plaintiff Arkeem Swanson was noted to have a "Left 2.3cm solid, well marginated, renal mass."

29.

This June 15, 2014 MRI also revealed "A 5 mm oval cortical mass in the right inferior pole . . . is not well evaluated due to slice selection, but most likely represents a cyst."

30.

In May 2014, for the first time, Plaintiff Arkeem Swanson learned of the results of the September 3, 2009 CT scan.

31.

The renal mass had spread to his right kidney and other portions of his left kidney.

32.

On August 13, 2014, Plaintiff Arkeem Swanson underwent a procedure on his left kidney to remove the mass.

33.

Though he survived the surgery, Plaintiff Arkeem Swanson will require further surgeries to remedy the spread of the renal masses.

34.

At the time of the September 3, 2009 CT scan, Plaintiff Arkeem Swanson's renal mass was curable by radiofrequency ablation, partial nephrectomy, or total nephrectomy.

SIMPLE NEGLIGENCE AGAINST THE KAISER DEFENDANTS

35.

The allegations of Paragraphs 1 through 34 are hereby reincorporated by reference as if set forth fully herein.

36.

The Kaiser Defendants had a duty toward Plaintiff Arkeem Swanson to exercise ordinary and reasonable care.

37.

This duty of ordinary care required the Kaiser Defendants, through its staff, employees and/or agents, to mail, transmit, or in some fashion ensure the delivery of typewritten radiology reports to the ordering physicians or in the alternative to Plaintiff Arkeem Swanson.

38.

Specifically, this duty of ordinary care required the Kaiser Defendants, through its staff, employees and/or agents, to mail, transmit, or in some other fashion ensure the delivery of the typewritten radiology report for Arkeem Swanson's September 3, 2009 CT scan report to Defendant Bailey and/or to Plaintiff Arkeem Swanson.

39.

The Kaiser Defendants, by and through its employees/agents, breached its duty of ordinary care in that it failed to mail, transmit, or in some other fashion ensure the delivery of

the typewritten radiology report for Arkeem Swanson's September 3, 2009 CT scan report to Defendants Bailey and/or to Plaintiff Arkeem Swanson.

40.

As a direct and proximate result of the Kaiser Defendants' negligence, Plaintiff Arkeem Swanson suffered injuries and damages, including but not necessarily limited to medical expenses, and pain and suffering.

PROFESSIONAL NEGLIGENCE AGAINST THE KAISER DEFENDANTS

41.

The allegations of Paragraphs 1 through 32 are hereby reincorporated by reference as if set forth fully herein.

42.

Additionally, the standard of care required an employee and/or agent of the Kaiser Defendants to communicate the results of Arkeem Swanson's September 3, 2009 CT scan to Defendant Bailey and/or to Plaintiff Arkeem Swanson.

43.

The Kaiser Defendants breached the standard of care, by and through its employee who failed to communicate the results of the September 3, 2009 CT scan study to Defendant Bailey and/or to Plaintiff Arkeem Swanson.

44.

As a direct and proximate result of the Kaiser Defendants' professional negligence, by and through its employees and/or agents, Plaintiff Arkeem Swanson suffered injuries and damages, including but not necessarily limited to medical expenses, and pain and suffering.

SIMPLE NEGLIGENCE AGAINST DEFENDANT BAILEY

45.

The allegations of Paragraphs 1 through 44 are hereby reincorporated by reference as if set forth fully herein.

46.

In the alternative, Iris Kolla, M.D., MPH told Defendant Bailey the findings from Plaintiff Arkeem Swanson's September 3, 2009 CT scan, but Defendant Bailey failed to notify Plaintiff Arkeem Swanson of the results.

47.

Defendant Bailey had a duty toward Plaintiff Arkeem Swanson to exercise ordinary and reasonable care.

48.

This duty of ordinary care required Defendant Bailey to communicate to Arkeem Swanson the results of his September 3, 2009 CT scan.

49.

Defendant Bailey violated his duty of ordinary care toward Plaintiff Arkeem Swanson by failing to communicate to Mr. Swanson the results of the September 3, 2009 CT scan.

50.

As a direct and proximate result of Defendant Bailey's negligence, Plaintiff Arkeem Swanson suffered injuries and damages, including but not necessarily limited to medical expenses, and pain and suffering.

PROFESSIONAL NEGLIGENCE AGAINST DEFENDANT BAILEY

51.

The allegations of Paragraphs 1 through 50 are hereby reincorporated by reference as if set forth fully herein.

52.

In the alternative, an employee and/or agent of Defendant Kaiser told Defendant Bailey the findings from Plaintiff Arkeem Swanson's September 3, 2009 CT scan, but Defendant Bailey failed to notify Plaintiff Arkeem Swanson of the results.

53.

Assuming that employee and/or agent of Defendant Kaiser told Defendant Bailey the findings from Arkeem Swanson's September 3, 2009 CT scan, the standard of care required that Defendant Bailey communicate those findings to Plaintiff Arkeem Swanson, so that he could undergo necessary treatment for his left renal mass.

54.

Defendant Bailey breached the standard of care by failing to communicate the results of the September 3, 2009 CT scan to Plaintiff Arkeem Swanson and to recommend further treatment.

55.

As a direct and proximate result of Defendant Bailey's professional negligence, Plaintiff Arkeem Swanson suffered injuries and damages, including but not necessarily limited to medical expenses and pain and suffering.

SIMPLE NEGLIGENCE AGAINST DEFENDANT KOLLA

56.

The allegations of Paragraphs 1 through 55 are hereby reincorporated by reference as if set forth fully herein.

57.

In the alternative, Iris Kolla, M.D., MPH failed to inform Defendant Bailey and/or Plaintiff Arkeem Swanson of the findings from Plaintiff Arkeem Swanson's September 3, 2009 CT scan.

58.

Defendant Kolla had a duty toward Plaintiff Arkeem Swanson to exercise ordinary and reasonable care.

59.

This duty of ordinary care required Defendant Kolla to communicate to Defendant Bailey and/or Plaintiff Arkeem Swanson the results of his September 3, 2009 CT scan.

60.

Defendant Kolla violated her duty of ordinary care toward Plaintiff Arkeem Swanson by failing to communicate the results of the September 3, 2009 CT scan to Plaintiff Arkeem Swanson and/or Defendant Bailey.

61.

As a direct and proximate result of Defendant Kolla's negligence, Plaintiff Arkeem Swanson suffered injuries and damages, including but not necessarily limited to medical expenses, and pain and suffering.

PROFESSIONAL NEGLIGENCE AGAINST DEFENDANT KOLLA

62.

The allegations of Paragraphs 1 through 61 are hereby reincorporated by reference as if set forth fully herein.

63.

In the alternative, Defendant Kolla failed to inform Defendant Bailey and/or Plaintiff Arkeem Swanson the findings from Plaintiff Arkeem Swanson's September 3, 2009 CT scan.

64.

Assuming that Defendant Kolla failed to inform Defendant Bailey and/or Plaintiff Arkeem Swanson the findings from Arkeem Swanson's September 3, 2009 CT scan, the standard of care required that Defendant Kolla communicate those findings to Plaintiff Arkeem Swanson and/or Defendant Bailey, so that he could undergo necessary treatment for his left renal mass.

65.

Defendant Kolla breached the standard of care by failing to communicate the results of the September 3, 2009 CT scan to Plaintiff Arkeem Swanson and/or Defendant Bailey and to recommend further treatment.

66.

As a direct and proximate result of Defendant Bailey's professional negligence, Plaintiff Arkeem Swanson suffered injuries and damages, including but not necessarily limited to medical expenses and pain and suffering.

LOSS OF CONSORTIUM AGAINST ALL DEFENDANTS

67.

The allegations of paragraphs 1 through 66 are hereby reincorporated by reference as if set forth fully herein.

68.

As a direct and proximate result of all Defendants' negligence, Plaintiff Carla Swanson, Arkeem's wife, has suffered and will continue to suffer the loss of society, affection, and comfort of her spouse, Arkeem Swanson.

69.

Plaintiff Carla Swanson brings this count of this Complaint to recover damages for past, present, and future loss of consortium.

COMPLIANCE WITH O.C.G.A. § 9-11-9.1(b)

70.

The statute of limitations and/or the statute of repose will expire within ten (10) days of the date of filing of this lawsuit, and because of such time constraints an affidavit or affidavits in compliance with O.C.G.A. § 9-11-9.1 could not be prepared.

71.

Pursuant to and in compliance with O.C.G.A. § 9-11-9.1(b) Plaintiffs attach a true and correct copy of the affidavit by Counsel for Plaintiff William Q. Bird. (The original affidavit was filed contemporaneously with the original Complaint.)

WHEREFORE, Plaintiffs demand judgment against the Defendants in an amount in excess of Ten Thousand Dollars (\$10,000.00) which a jury determines from the evidence will fully and adequately compensate Plaintiff for the injuries and damages, including but not

necessarily limited to medical expenses and pain and suffering. Plaintiffs further request damages in an amount that will fully and adequately compensate Carla Swanson for the loss of consortium of her husband, Arkeem Swanson. Plaintiffs further request any other damages which are authorized and available to them under Georgia law and request that all costs be cast against the Defendants.

Respectfully submitted,



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