

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

BARBARA HESS

45 Powder View Court
Nottingham, Maryland 21236

and

DONALD HESS

45 Powder View Court
Nottingham, Maryland 21236

Plaintiffs,

v.

CASE NO.: C-15-441
JURY TRIAL REQUESTED

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

1701 Twin Springs Road
Halethorpe, Maryland 21227
SERVE ON: The Prentice-Hall Corp.

System
7 St. Paul Street
Suite 820
Baltimore, Maryland 21202

and

**MID-ATLANTIC PERMANENTE
MEDICAL GROUP, P.C.**

1701 Twin Springs Road
Halethorpe, Maryland 21227
SERVE ON: The Prentice-Hall Corp.

System
7 St. Paul Street
Suite 820
Baltimore, Maryland 21202

and

NANCY HUYNH, M.D.

3650 Steve Reynolds Boulevard
Duluth, Georgia 30096

Defendants.

* * * * *

CARDARO & PEEK, LLC
ATTORNEYS AT LAW
201 NORTH CHARLES STREET
SUITE 2100
BALTIMORE, MARYLAND 21201

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JJ cc: State Board of Physicians
Documents issued PPS

COMPLAINT

Plaintiffs, Barbara Hess and Donald Hess, sue the above-named Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Mid-Atlantic Permanente Medical Group, P.C. and Nancy Huynh, M.D. (hereinafter "Defendants"), stating as follows:

COUNT I (Negligence)

1. Jurisdiction of this Court is invoked pursuant to MD. CODE ANN., CTS. & JUD. PROCS. §§ 6-102 and 6-103.

2. This matter was originally filed in the Health Care Alternative Dispute Resolution Office of Maryland. After filing a Certificate of Merit (Exhibit 1) and Report of Expert Witness (Exhibit 2) in accordance with the Maryland Patients' Access to Quality Health Care Act, MD. CODE ANN., CTS. & JUD. PROCS. § 3-2A-01 et seq., the Plaintiffs waived arbitration (Exhibit 3). Therefore, the Plaintiffs have complied with the mandatory conditions precedent for filing this Claim in this Court.

3. The medical treatment at issue in this case occurred in Baltimore County, Maryland. The Defendants regularly conduct regular business in Baltimore County, Maryland. Thus, the appropriate venue is Baltimore County, Maryland.

4. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., is a business entity doing business in Baltimore County, Maryland and organized under the laws of the State of Maryland, providing medical and health care services to the public, and in conjunction with the other Defendants, owed to the Plaintiffs a duty to conform its conduct to prevailing standards of care, by itself, and through its agents, servants and/or employees.

5. Defendant Mid-Atlantic Permanente Medical Group, Inc., is a business entity doing business in Baltimore County, Maryland and organized under the laws of the State of Maryland, providing medical and health care services to the public, and in conjunction with the other Defendants, owed to the Plaintiffs a duty to conform its conduct to the prevailing standards of care, by itself, and through its agents, servants and/or employees.

6. Defendant Nancy Huynh, M.D. is a physician currently licensed to practice medicine in the State of Georgia and provides health care to individuals in need thereof. At all times relevant to this claim, Defendant Huynh was licensed to practice medicine in the State of Maryland. As such, Defendant Huynh, in conjunction with the other Defendants, owed to the Plaintiffs a duty to conform her conduct to prevailing standards of care, by herself, and through her agents, servants, and/or employees.

7. At all times of which Plaintiffs complain, the Defendants represented to the Plaintiffs and the general public that they possessed the degree of knowledge, ability, and skill possessed by reasonably competent medical practitioners, practicing under the same or similar circumstances as those involving the Plaintiff, Barbara Hess.

8. The Plaintiffs allege that the Defendants, by themselves, and through their agents, servants, and employees, owed a duty to exercise that degree of skill, judgment, and care expected of reasonably competent medical practitioners, practicing under the same or similar circumstances, which duty included the performance, interpretation and reporting of appropriate diagnostic tests and procedures to determine the Plaintiff's condition, appropriate diagnosis of such condition, the employment of appropriate treatment, procedures, and/or testing to correct such condition without injury upon the Plaintiff, continuous evaluation of the Plaintiff's condition and the

effects of such treatment, and adjustment of the course of treatment in response to such ongoing surveillance and evaluation, all of which the Defendants failed to do.

9. The Defendants, by themselves and through their agents, servants and employees, were negligent in that they failed to utilize appropriate surgical technique in the performance of cataract surgery, and were otherwise negligent.

10. At all times relevant herein, Defendants Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C. by themselves and through their agents (actual and/or apparent), servants, and employees, provided the medical care and treatment at issue in the case to the Plaintiff, Barbara Hess. Additionally, at all times relevant herein, all health care providers at Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., including Nancy Huynh, M.D. and other individuals at Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., acted as actual and/or apparent agents, servants, and employees of Defendants Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C. At all times pertinent herein, said individuals acted within the scope of said employment and/or agency relationships.

11. On September 3, 2013, Defendant Nancy Huynh, M.D. performed cataract surgery on Barbara Hess' left eye at the South Baltimore Kaiser Surgery Center. During the procedure, Defendant Huynh improperly placed an intraocular lens at the sulcus. The surgery was performed and the lens was placed in such a manner as to allow it to ultimately contact the cornea.

12. After the procedure, Mrs. Hess was ultimately referred to other physicians and the lens was found to be out of place, with a haptic of the lens contacting

the cornea. Surgery was required to remove the intraocular lens and a synechialysis and sphincterotomy was done followed by a pars plana lensectomy and vitrectomy. Unfortunately, Mrs. Hess had already sustained permanent injury to her eye.

13. The Defendants, by themselves and through their agents, servants and employees, including Nancy Huynh, M.D., breached the standard of care by, inter alia, negligently and carelessly:

- (a) failing to properly perform cataract surgery;
- (b) improperly inserting and positioning an intraocular lens;
- (c) failing to use proper surgical technique;
- (d) failing to properly secure an intraocular lens;
- (e) improperly deploying the haptics on the intraocular lens;
- (f) failing to protect the cornea from trauma;
- (g) failing to otherwise properly treat Mrs. Hess;
- (h) failing to obtain appropriate consultations;
- (i) failing to obtain Mrs. Hess' informed consent;
- (j) failing to inform Mrs. Hess that more experienced and qualified ophthalmologists were available to perform cataract surgery;
- (k) failing to inform Mrs. Hess of past injuries and/or bad outcomes regarding prior patients who had cataract surgery performed by the Defendants; and
- (l) failing to otherwise comply with accepted standards of care.

14. Absent the above-described negligence, Mrs. Hess would not have been injured. Instead, as a result of the Defendants' negligence, Mrs. Hess suffered severe and permanent injury.

15. The negligence of each of the Defendants is a proximate cause of Plaintiff's serious and irreversible injuries, including but not limited to mental anguish,

permanent damages, disability, and economic damages. Accordingly, the negligence of each of the Defendants is a proximate cause of the Plaintiff's harm.

16. As a direct and proximate result of the Defendants' negligence, the Plaintiff has in the past and will in the future sustain severe and irreversible injury, including, but not limited to, mental anguish, emotional pain and suffering and other non-economic damages for which claim is made. In addition, the Plaintiff has in the past and will in the future suffer economic harm as a result of the Defendants' negligence including, but not limited to, medical expenses, lost wages, future lost earnings, diminished earning capacity, lost services and other economic damages recoverable by law.

17. The Plaintiff was not contributorily negligent, nor did she voluntarily assume any known risk.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally, in an amount in excess of \$30,000.00.

COUNT II
(Failure to Obtain Informed Consent)

18. The Plaintiffs hereby incorporates paragraphs 1-17 as stated above.

19. The Defendants, by themselves and through their agents, servants and employees, owed to Plaintiff Barbara Hess a duty to adequately and properly inform, advise, and explain the cataract surgery and the risks thereof, including the risk of intraocular lens misplacement. The Defendants failed to obtain Mrs. Hess' informed consent by negligently failing to adequately and properly inform, advise, explain, and offer to her all appropriate treatment options.

20. Defendants negligently failed to adequately and properly inform, advise, and explain to Mrs. Hess the nature of the condition to be treated; the nature of the surgery being proposed; the probability of success/accuracy of that surgery; the alternatives to the proposed surgery; and every material risk of negative consequences of the surgery. Defendants negligently failed to adequately and properly inform, advise, and explain, inter alia, the material risks and potential negative consequences of a cataract surgery.

21. As a result of the Defendants' negligent failure to adequately and properly inform, advise, and explain the recommended procedure, Mrs. Hess was denied the right to make an informed decision about whether or not to agree to the proposed surgery. Consequently, Defendants failed to obtain Mrs. Hess' informed consent. Had Defendants adequately and properly informed, advised, and explained the recommended treatment, a reasonable person in the position of Mrs. Hess would not have consented to undergo the proposed surgery.

22. As a direct and proximate result of the Defendants' failure to obtain informed consent, Mrs. Hess was injured.

23. The Plaintiff was not contributorily negligent, nor did she voluntarily assume any known risk.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, in an amount in excess of \$30,000.00.

COUNT III
Loss of Consortium

24. The Plaintiffs hereby incorporate the allegations contained in Paragraphs 1 – 23 as stated above.

25. At all times relevant to this claim, Plaintiffs Barbara Hess and Donald Hess were and still are husband and wife.

26. As a direct and proximate result of the Defendants' negligence, the Plaintiffs have suffered severe and irreparable harm to their marital unit, including but not limited to, severe emotional distress and loss of service, assistance, affection and consortium. Accordingly, the Plaintiffs seek all damages recoverable under Maryland law for loss of consortium.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, jointly and severally, in an amount in excess of \$30,000.00.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas C. Cardaro", written over a horizontal line.

Thomas C. Cardaro

Jeffrey L. Peek

C. Drew Fritch

Cardaro & Peek, L.L.C.

201 North Charles Street

Suite 2100

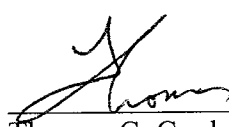
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Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs request that their case be tried before a jury.


Thomas C. Cardaro

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