

**IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND**

JACQUELINE JOHNSON-EATON  
2318 Jones Lane  
Silver Spring, Maryland 20902,

Plaintiff,

v.

KAISER FOUNDATION HEALTH-PLAN  
OF THE MID-ATLANTIC STATES, INC.  
2101 E. Jefferson Street  
Rockville, MD 20850  
SERVE: Prentice-Hall Corporation System, MA  
7 St. Paul Street, Suite 820  
Baltimore, MD 21202

and

MID-ATLANTIC PERMANENTE MEDICAL  
GROUP, P.C.  
2101 E. Jefferson Street  
Rockville, MD 20852  
SERVE: Prentice-Hall Corporation System, MA  
7 St. Paul Street, Suite 820  
Baltimore, MD 21202,

Defendants

Case No. YS28

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Jacqueline Johnson-Eaton, by and through her attorneys, Sandra H. Robinson and The Cochran Firm, hereby sues Defendants Kaiser Foundation Health Plan of the Mid-States, Inc., and Mid-Atlantic Permanente Medical Group, P.C., individually, and through their real, actual, ostensible and/or apparent agents, servants, and/or employees, and for cause states as follows:

### **JURISDICTION AND VENUE**

1. This medical negligence claim is brought pursuant to Md. Code Ann., Cts. And Jud. Proc §3-2A-01 - §3-2A-10 for recovery of damages in excess of the required jurisdictional amount. The amount of this claim exceeds Thirty Thousand Dollars (\$30,000.00).

2. Venue is proper in Montgomery County, Maryland.

3. Plaintiff avers that all conditions precedent have been performed or have occurred, as she has complied with and satisfied all requirements and statutory conditions precedent of the Maryland Health Care Malpractice Claims Act. Md. Cts. & Jud. Procs. Code Ann. §§ 3-2A-01 et seq., in that Plaintiff filed her claim in the Health Care Alternative Dispute Resolution Office of Maryland on or about December 21, 2017. See, Statement of Claim, attached hereto and incorporated herein as Exhibit 1; Plaintiff filed Certificates of Merit and Reports with the Health Care Dispute Resolution Office of Maryland on or about June 19, 2018; and an Election for Waiver of Arbitration was filed with that office on June 28, 2018. An Order of Transfer was issued by the Health Care Alternative Dispute Resolution Office of Maryland on or about June 29, 2018. The Certificates of Merit and Reports are attached and incorporated herein as Exhibit 2; the Election for Waiver of Arbitration is attached and incorporated as Exhibit 3; and the Order of Transfer is attached hereto as Exhibit 4.

4. Plaintiff relates back to, repeats, realleges, adopts and incorporates by reference the initial Statement of Claim filed in the Health Care Dispute Resolution Office of Maryland on December 21, 2007, as though fully set forth herein.

### **THE PARTIES**

5. Plaintiff Jacqueline Johnson-Eaton is of full age, a resident of the State of Maryland, residing in Montgomery County, and is a citizen of the United States.

6. At all times relevant hereto, Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., operated a medical business entity providing health care services in Montgomery County, Maryland, through its employees, servants, and real, actual, ostensible and/or apparent agents, that held itself out to provide medical services, including diagnostic, radiological services, to persons in need thereof, including Plaintiff Jacqueline Johnson-Eaton.

7. At all times relevant hereto the employees, servants, and real and/or apparent and/or ostensible agents of Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., were acting within the scope of their employment, service, and/or agency.

8. At all times relevant hereto, Defendant Mid-Atlantic Permanente Medical Group, P.C., operated a medical business entity providing health care services in Montgomery County, Maryland, through its employees, servants, and real, actual, ostensible and/or apparent agents, that held itself out to provide medical services, including diagnostic, radiological services, to persons in need thereof, including Plaintiff Jacqueline Johnson-Eaton.

9. At all times relevant hereto the employees, servants, and real and/or apparent and/or ostensible agents of Mid-Atlantic Permanente Medical Group, P.C., were acting within the scope of their employment, service, and/or agency.

10. At all times relevant hereto each of the Defendants was acting as the real and/or apparent and/or ostensible agent, servant and/or employee of each other.

11. At all times relevant hereto Plaintiff Jacqueline Johnson-Eaton exercised due care.

#### **STATEMENT OF FACTS**

12. On or about April 27, 2012, Plaintiff Jacqueline Johnson-Eaton, had her first breast studies performed by the Defendants, which were bilateral screening mammograms. These mammograms were done at the Defendants' medical center in Kensington, Maryland

(hereinafter referred to as the "Kensington Center"). The results reported included no suspicious findings on the right breast; and diffuse scattered micro-calcifications within the left outer upper quadrant. Due to the density of the breast, further evaluation of the left breast was recommended, and Plaintiff was scheduled to return for a left diagnostic mammogram.

13. On or about June 21, 2012, Plaintiff Jacqueline Johnson-Eaton had a left diagnostic mammogram performed by the Defendants at their Kensington Center. The results reported found the micro-calcifications noted above, and determined them to be "probably benign", with a follow-up study recommended in six months.

14. On or about January 3, 2013, Plaintiff Jacqueline Johnson-Eaton had a left diagnostic mammogram performed by the Defendants at their Kensington Center. The results reported found the scattered micro-calcifications and no findings suspicious of malignancy. It was recommended that Plaintiff Ms. Johnson-Eaton return in May 2013 for her annual screening mammogram.

15. On or about May 31, 2013, Plaintiff Jacqueline Johnson-Eaton had bilateral diagnostic mammograms performed by the Defendants at their Kensington Center. The results reported that the calcifications found were "probably benign," and a twelve month follow-up routine mammogram was recommended.

16. On or about June 20, 2014, Plaintiff Jacqueline Johnson-Eaton had her annual bilateral screening mammograms performed by the Defendants at their Kensington Center. The results reported that the findings dense breasts and calcifications were stable in appearance, and a routine screening was recommended.

17. On or about December 31, 2014, Plaintiff Jacqueline Johnson-Eaton had a sonogram of the left axilla due to her feeling a lump in that area approximately one week prior to the sonogram. The sonogram was performed by the Defendants at their Kensington Center. The results reported on this study found adenopathy in the region of the left axilla with enlarged lymph nodes, consistent with the palpable abnormality. Follow-up was recommended consistent with the clinical findings.

18. On or about January 23, 2015, Plaintiff Ms. Johnson-Eaton had a CT scan of her chest performed by the Defendants at their Kensington Center, for further evaluation of the left axillary lump. The results reported a finding of the enlarged left axillary lymph nodes. The largest node measured 2 cm, and a second lymph node measured 1.4 cm. It was recommended that a repeat left breast mammogram and ultrasound be performed to rule out any abnormality.

19. On or about January 30, 2015, Plaintiff Jacqueline Johnson-Eaton had a left mammogram including craniocaudal, mediolateral oblique and exaggerated craniocaudal studies, performed by the Defendants at their Kensington Center. The results reported finding the axillary adenopathy, but found there was no breast malignancy suggested. Further surgical consultation was recommended to further evaluate the axillary adenopathy.

20. On or about March 10, 2015, Plaintiff Jacqueline Johnson-Eaton had a left axillary lymph node biopsy performed by Defendants. The results reported a finding of metastatic adenocarcinoma, probably breast primary.

21. On or about March 25, 2015, Plaintiff Jacqueline Johnson-Eaton had a positron emission tomography (PET) scan performed by the Defendants. The results reported findings highly suspicious of primary left breast cancer, with metastatic left axillary lymphadenopathy: and metastatic bond cancer.

22. On or about March 26, 2015, Plaintiff Jacqueline Johnson-Eaton has a bilateral breast MRI performed by the Defendants. The results reported findings of large clumped segmental enhancement involving the upper central and outer aspect of the left breast, approximately at the 2-3 o'clock axis, determined to be a suspicious abnormality and a biopsy was recommended. The findings on the right breast were not abnormal, except there was a mildly prominent right axillary node measuring 1.2 cm.

23. On or about March 30, 2015, Plaintiff Jacqueline Johnson-Eaton was informed by the Defendants that she would not be offered the option of surgery if her breast cancer was metastatic.

24. On or about April 8, 2015, Plaintiff Jacqueline Johnson-Eaton had an MRI lumbar spine study performed by the Defendants. The results reported findings consistent with bony metastatic disease within the L2, L3 and S1 vertebral bodies, with low T1 signal and abnormal enhancement. The S2 vertebral body appeared slightly suspicious of metastatic disease.

25. On or about April 21, 2015, Plaintiff Jacqueline Johnson-Eaton had a CT guided biopsy of the lesion in the L1 vertebral body was performed by the Defendants. The results reported findings of metastatic moderately differentiated ductal adenocarcinoma, consistent with breast primary.

26. Plaintiff Jacqueline Johnson-Eaton's treatment plan for her Stage IV metastatic breast cancer has included hormone therapy, including tamoxifen and Zometa (zoledronic acid).

27. On or about November 5, 2015, Plaintiff Jacqueline Johnson-Eaton underwent a total hysterectomy and oophorectomy.

28. On or about August 2017, Plaintiff Jacqueline Johnson-Eaton had a PET scan performed which revealed recurrent cancer in her left axilla, left breast and further bond

metastasis. Plaintiff Jacqueline Johnson-Eaton was placed on a new medication, Letrozole and aromatase inhibitor.

29. Had the Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Defendant Mid-Atlantic Permanente Medical Group, P.C., adhered to the applicable standards of care, Plaintiff Jacqueline Johnson-Eaton's condition would have been appreciated, appropriate measures would have been taken, her breast cancer would have been diagnosed earlier, the hormonal treatments and extensive, painful surgery and post-surgery treatments would have been avoided, and her probability of survival would have been improved.

**COUNT I**  
**(Medical Negligence)**

30. Plaintiff Jacqueline Johnson-Eaton incorporates herein by reference paragraphs 1 through 29 of this Complaint, as though fully restated herein.

31. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., owed Plaintiff Jacqueline Johnson-Eaton the duty to exercise that degree of care and skill which like health care providers with similar training and experience situated in the same or similar communities at the time of the acts giving rise to this cause of action would have exercised in meeting the standard of care applicable to them.

32. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., individually, and through their actual, real, ostensible and/or apparent agents, servants, and/or employees, failed to act as reasonably competent health care providers with similar training and experience situated in the same or similar communities at the time of the acts giving rise to this cause of action should have acted, breached their duty, violated the applicable standards of care, and were negligent in the

following ways:

- a. failure to properly interpret, report, and follow-up on, abnormal findings in the left breast evident on the January 3, 2013, mammogram;
- b. failure to properly interpret, report and follow-up on, abnormal findings in the left breast evident on the May 31, 2013, mammogram;
- c. failure to properly interpret, report and follow-up on, abnormal findings evident on the June 20, 2014, sonogram;
- d. failure to properly interpret, report and follow-up on, abnormal findings evident on the December 31, 2014, sonogram;
- e. failure to properly interpret, report, and follow-up on, abnormal findings evidence on the January 23, 2014, CT scan of the chest;
- f. failure to properly interpret, report, and follow-up on, abnormal findings in the left breast evident on January 30, 2015, mammogram.
- g. failure to timely recommend or order appropriate follow-up and diagnostic studies;
- h. failure to timely perform biopsies;
- i. failure to properly and timely diagnose and treat Plaintiff Jacqueline Johnson-Eaton's breast cancer, and to refer her to appropriate sources of medical, surgical and other consultation;
- j. failure to timely and accurately diagnose and treat early signs and symptoms of breast cancer;
- k. negligently ordering screening mammograms;
- l. failure to adequately hire, train, credential, and/or supervise competent



medical and/or administrative personnel so as to protect patients such as Plaintiff Jacqueline Johnson-Eaton;

m. failure to operate their facility in a manner consistent with patient safety;

n. failure to have in place and/or follow appropriate policies, procedures and/or protocols, so as to provide appropriate care to patients such as Plaintiff Jacqueline Johnson-Eaton;

o. performance of other negligent acts and/or omissions in their care of Plaintiff Jacqueline Johnson-Eaton;

p. Plaintiff Jacqueline Johnson-Eaton relies on *res ipsa loquitur* and lack of informed consent; and

q. the Defendants were otherwise negligent.

33. As a direct and proximate result of the aforementioned negligence of Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., individually, and through their real, actual, ostensible and/or apparent agents, servants and/or employees, jointly and severally, Plaintiff Jacqueline Johnson-Eaton suffered severe, permanent and disabling injuries and damages, including but not limited to, Stage IV breast cancer, a total hysterectomy and oophorectomy, hormone therapy, shortness of breath, fatigue, anemia, body temperature irregularities and other related disabilities, all of which in the past necessitated, and will in the future necessitate, expenses for medical care, surgeries, treatments and evaluations, therapies, and other related medical care and treatment, equipment, devices, and attendant care. As a further direct and proximate result of the negligence of Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., Plaintiff Jacqueline Johnson-Eaton

has in the past and will in the future suffer loss of earnings and impairment of earning capacity. As a further direct and proximate result of the negligence of said Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., Plaintiff Jacqueline Johnson-Eaton has in the past and will in the future endure pain, suffering, disability, mental anguish, depression, distress, anxiety, embarrassment, scarring, inconvenience, loss of enjoyment of life, discomfort and humiliation, all of which are permanent. All of the aforesaid injuries and damages were directly and proximately caused by the negligence of the said Health Care Providers, without any negligence or want of due care on the part of the Plaintiff Jacqueline Johnson-Eaton contributing to thereto.

WHEREFORE, Plaintiff Jacqueline Johnson-Eaton brings this action against Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, and requests judgment to be entered in her favor against the named Defendants for all sums permissible for compensatory damages in an amount greater than the jurisdictional limit of Thirty Thousand Dollars (\$30,000.00), together with interest and costs, and such other relief as may be deemed appropriate.

**COUNT II**  
**(Informed Consent)**

34. Plaintiff Jacqueline Johnson-Eaton incorporates herein by reference paragraphs 1 through 33 of this Complaint, as though fully restated herein.

35. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, acting individually, and/or by and through their respective actual, real, apparent and/or ostensible agents, servants, and/or employees, owed the Plaintiff the duty to appropriately notify her of the

various alternatives and material risks involved in the various modalities of treatment available during the course of the care and treatment at issue in this Complaint.

36. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, acting individually, and/or by and through their respective actual, real, apparent and/or ostensible agents, servants, and/or employees, were negligent in failing to adequately and appropriately obtain informed consent from the Plaintiff, and were otherwise negligent.

37. Had Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, fully informed Plaintiff Jacqueline Johnson-Eaton of the risks and appropriate treatment options, she, like any reasonable person would have chosen to receive the appropriate treatment in a timely fashion.

38. Plaintiff Jacqueline Johnson-Eaton alleges that as a result of the above named Defendants failure to provide proper informed consent, she suffered the aforementioned injuries and damages.

39. All of these aforementioned injuries and damages were directly and proximately caused by the negligence of Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, without any negligence or want of due care on the part of the Plaintiff contributing thereto.

WHEREFORE, Plaintiff Jacqueline Johnson-Eaton brings this action against Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Defendant Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, and requests judgment to be entered in her favor against the named Defendants for all sums permissible for compensatory

damages in an amount greater than the jurisdictional limit of Thirty Thousand Dollars (\$30,000.00), together with interest and costs, and such other relief as may be deemed appropriate.

Respectfully submitted,

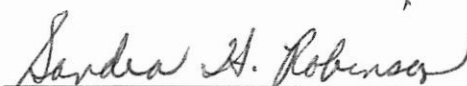
THE COCHRAN FIRM

  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury as to all issues to triable.

Respectfully submitted,

  
Sandra H. Robinson

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FILED  
CLERK OF COURT  
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U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA