

ANDRIA WEST, Individually and as  
Power of Attorney for PRESTON WEST  
7707 Paddock Way  
Windsor Mill, Maryland 21244

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN  
OF THE MID-ATLANTIC STATES, INC.  
d/b/a SOUTH BALTIMORE COUNTY  
MEDICAL CENTER d/b/a  
KAISER CDU, et al.

2101 E. Jefferson Street  
Rockville, Maryland 20852

Serve on: The Prentice-Hall Corp. System, MA  
7 St. Paul Street, Suite 820  
Baltimore, Maryland 21202

and

MAX T. DUTKIN, M.D.  
Kaiser Permanente  
1701 Twin Springs Road  
Halethorpe, Maryland 21227

and

MINESH R. PATEL, M.D.  
1447 York Road  
Lutherville, Maryland 21093

Defendants.

\* IN THE  
\*  
\* CIRCUIT COURT  
\*  
\* FOR  
\*  
\* BALTIMORE COUNTY  
\*

Case No.:

Q3-C-19-480

E  
CIVIL DEPT.

JAN 16, 2019

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Andria West, individually and as Power of Attorney for Preston West, by and through her attorneys, H. Briggs Bedigian, Michael McCubbin, and Gilman & Bedigian, LLC, hereby sues Kaiser Permanente d/b/a South Baltimore County Medical Center d/b/a Urgent Care

Cdu USDU, Max T. Dutkin, M.D., and Minesh R. Patel, M.D., and for cause of action states as follows:

### **JURISDICTION AND VENUE**

1. This medical negligence claim is instituted pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-2A-01 - §3-2A-10, Plaintiffs have previously filed a Statement of Claim, Certificates of Qualified Expert and Reports, and a Notice of Waiver with the Health Care Alternative Dispute Resolution Office. Plaintiffs have also received an Order of Transfer from the Health Care alternative Dispute Resolution Office.

2. Plaintiffs, Preston West and Andria West, are residents of Baltimore County, Maryland. At all times relevant hereto, Plaintiffs were and are legally married.

3. Plaintiffs hereby attach and incorporate by reference the Certificates and Reports of their named qualified experts.

4. Defendant, Max T. Dutkin, M.D., (hereinafter "Dr. Dutkin") is a licensed Defendant, providing health care services in Baltimore County, Maryland.

5. Defendant, Minesh R. Patel, M.D., (hereinafter "Dr. Patel") is a licensed Defendant, providing health care services in Baltimore County, Maryland.

6. Defendant, Kaiser Permanente d/b/a South Baltimore County Medical Center (CDU) is and at all relevant times hereto was a corporation engaged in the administration, staffing, operation, and supervision of Defendants, providing medical care and other medical services throughout Maryland and specifically in Baltimore County, Maryland. At all times relevant hereto, this Defendant acted by and through its actual and/or apparent agents, servants and/or employees, including, but not limited to, Dr. Dutkin and the consulting radiologist, who at all relevant times acted within the scope of their agency St. Agnes.

7. The medical care that forms the basis of the Plaintiffs' Complaint occurred at CDU. Accordingly, Baltimore County is the appropriate venue.

### **STATEMENT OF FACTS**

8. Preston West, 72-years old, presented to CDU at approximately 9:57a.m., on 1/21/18. Upon arrival, his acuity level was deemed "emergent" by the emergency department staff. Mr. West presented in the midst of a hypertensive crisis, with multiple blood pressure readings showing significant hypertension. His blood pressures were reported as 200/109, 196/110, 174/102, 180/110, 178/103, and 167/96 over the course of five hours at CDU. He also presented with an elevated heart rate of 104 and tachypnea of 23 and 22 breaths per minute. He complained of chest pain in his left chest, which occurred "when he can't breathe." His presenting complaint was shortness of breath for the preceding week with chest tightness. He could only utter 3-4 word sentences.

9. Moreover, the Mr. West presented with a number of cardiac risk factors, which were recognized, but not acted upon, including an age greater than 64, a history of hypertension, and serum cholesterol greater than 240 mg/dl. He was also severely obese. Further, the Patient had a history of ventricular tachycardia, atherosclerosis, and a prior myocardial infarction. The Defendants negligently omitted the fact that Mr. West was once a smoker from his list of cardiac risk factors. Similarly, they failed to appreciate the Patient's family history of heart disease. While at CDU, Mr. West received an ECG, which showed a probable left atrial abnormality and abnormal T-waves, possibly secondary to ischemia.

10. Most importantly, the patient's laboratory studies showed a troponin leak on two separate occasions, which is strongly indicative of acute damage to the heart. Mr. West's first troponin reading was .12 and a repeat troponin test several hours later was .13. Further, the

troponin tests were not even administered correctly where, according to CDU's own laboratory standards, the second troponin test was to be completed 4-6 hours after the first test. The first test was done at 11:11 a.m., while the second test was completed at 2:03 p.m. A difference of only three hours between the tests was suboptimal according to CDU's own protocol.

11. During the visit, providers administered nebulizer therapy, which caused the Patient to complain that his chest felt "tight." This should have raised a concern for acute coronary syndrome. However, the providers, including Dr. Dutkin and Dr. Patel, negligently believed that the Patient's presentation was secondary to bronchitis, despite the fact that he did not have a cough or other classic signs and symptoms of bronchitis. Moreover, the fact that his shortness of breath was exertional and was exacerbated by the nebulizer treatment is more consistent with a cardiac etiology rather than bronchitis. Given his clinical picture, Mr. West clearly had an elevated HEART Score and admission for further monitoring and work-up was required.

12. Notwithstanding the very worrisome constellation of signs and symptoms described above, Dr. Dutkin and Dr. Patel both concluded that Mr. West could be discharged if there was a transient resolution of his hypertension. This assessment and plan was clearly negligent considering the Patient's need for continued monitoring and workup.

13. Based on his elevated lab values, vital signs, history, and overall presentation, the Defendants, including Dr. Patel and Dr. Dutkin should have considered a cardiac etiology, including NSTEMI and acute coronary syndrome. However, they did not, and the Patient was discharged. Shockingly, Dr. Dutkin's differential diagnosis at the time of discharge even included acute myocardial infarction, and still, the Patient was discharged. The differential diagnosis also erroneously included pneumonia, despite the patient's normal chest x-ray.

14. On 1/22/18, the day after Mr. West was discharged from CDU, he presented to the emergency department at Saint Agnes with continued complaints of shortness of breath and worsening chest pain, which reportedly radiated to his left arm. Mr. West reported being unable to walk without suffering shortness of breath. Moreover he described the chest pain he experienced at CDU as 8 out of 10. This, however, was not documented in the CDU chart. At the time of his presentation to St. Agnes, he remained hypertensive, with blood pressures of 177/98, 163/85, and 163/94. An EKG showed new T-wave inversions, and Mr. West was given nitroglycerin for chest pain and Aspirin as myocardial infarction prophylaxis. He was appropriately admitted for unstable angina/a non-ST elevation myocardial infarction (NSTEMI).

15. After admission, Mr. West was again evaluated by Dr. Patel, who noted that the Patient had a recent (i.e. on 1/21 and 1/22) hypertensive emergency and that his stuttering chest pain over the preceding 24-48 hours was noteworthy. As such, Dr. Patel recommended a cardiac catheterization procedure. The cardiac catheterization was attempted on 1/22. However, at the time of the procedure, Mr. West became extremely hypertensive, with blood pressures of 235/158, 239/173, 286/139, and 268/139, with MAPs of 202, 216, 193, and 195, respectively, and he was acutely short of breath. Therefore, oxygen was provided via mask and the Patient was taken to the ICU for stabilization. The following day, 1/23/18, Mr. West underwent a cardiac catheterization with placement of a drug-eluting stent, secondary to a near total occlusion (90% stenosis) of his right coronary artery.

16. In the post-operative period, however, Mr. West suffered a sudden decompensation, resulting in acute hypoxic hypercarbia secondary to probable flash pulmonary edema in the setting of a hypertensive emergency. In this setting, Mr. West also developed a significant stroke along the internal watershed distribution. He had to be emergently intubated.

17. Because of the stroke, Mr. West was kept in the ICU for over a month, until his discharge on 2/27/18 to a long-term care facility. While in the hospital, Mr. West developed pneumonia and a urinary tract infection. He also underwent a tracheostomy. As a result of these complications, Mr. West now has and will continue to have extensive debilitating deficits.

### **COUNT I (NEGLIGENCE)**

Plaintiffs sue the named Defendants, and state as follows:

18. Plaintiffs hereby incorporate by reference each and every allegation contained in the above paragraphs and in all subsequent counts as if fully stated herein.

19. The named Defendants, acting by and through their actual and/or apparent agents, including, but not limited to, Dr. Dutkin and Dr. Patel, had a duty to render medical care to Mr. West in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to this cause of action.

20. The standards of care required the named Defendants, acting by and through their actual and/or apparent agents, to conduct appropriate and careful examinations of Mr. West, to properly appreciate his condition, to closely monitor Mr. West's condition, and to admit Mr. West for close observation and further workup.

21. Defendants, acting individually and/or by and through their respective actual and/or apparent agents, servants, and/or employees, breached the applicable standards of care in their treatment of Mr. West by *inter alia*:

- a. Failing to appreciate Mr. West's condition, including the presence of a hypertensive crisis and a cardiac etiology for his presenting signs and symptoms;

- b. Failing to continue monitoring Mr. West;
- c. Failing to admit Mr. West;
- d. Failing to provide Mr. West with necessary and timely cardiac interventions and work up in the hospital setting; and
- e. These Defendants were otherwise negligent.

22. As a direct and proximate result of the alleged negligence, Mr. West was allowed to linger with an uncontrolled hypertensive crisis without proper monitoring and medical intervention, which caused him to decompensate and suffer a stroke and other related complications. As direct and proximate result of the alleged negligence, Mr. West suffered and will continue to suffer injuries, including physical injuries, cognitive/neurologic and physical limitations, physical pain, additional medical care and therapy, and other medical interventions and expenses. As a further direct and proximate result of the alleged negligence, Mr. West suffered and will continue to suffer mental and emotional pain and suffering, fear, anxiety, embarrassment, anguish and loss of quality of life. Otherwise, the deviations from the applicable standards of care as alleged in this Complaint were a substantial contributing cause of the aforementioned injuries.

WHEREFORE, Plaintiff, Andria West, Individually and on behalf of Preston West, brings this action against the named Defendants and seeks damages that will adequately and fairly compensate him, plus costs, interest, and such other and further relief as may be deemed appropriate. The damages sought are in excess of the required jurisdictional amount.

#### **COUNT II (LACK OF INFORMED CONSENT)**

Plaintiffs sue the named Defendants and states as follows:

29. The Plaintiff incorporates herein by this reference and re-alleges the above paragraphs of this Complaint.

30. The Defendants, acting individually and/or by and/or through their respective actual and/or apparent agents, servants, and/or employees, owed Mr. West the duty to appropriately inform him about the nature of his medical condition, the proposed treatments/monitoring for the condition, the indications for the proposed treatment/monitoring, the risks and benefits of the proposed treatment/monitoring, and the alternatives to the proposed treatment and monitoring.

31. The Defendants, acting by and through their actual and/or apparent agents, servants, and/or employees, failed to adequately and appropriately obtain Mr. Pratt's informed consent.

32. Had the Defendants fully informed Mr. West about the nature of his condition, including the fact that he has a hypertensive crisis, that his presenting symptoms likely have a cardiac etiology, that his condition could and should be observed in the hospital, and that he requires further cardiac workup, including cardiac catheterization, Mr. West, like any reasonable person, would have elected to remain in the hospital for monitoring and further workup. Consequently, Mr. West would have received medical interventions while monitored without developing the complications, injuries and damages more fully set forth in Count I above.

33. As a direct and proximate result of these Defendants' failure to obtain Mr. West's informed consent, Mr. West sustained injuries and damages as alleged in Count I.

34. Mr. West in no way contributed to his injuries and in no way assumed the risk of his injuries.



WHEREFORE, Plaintiffs bring this action against the Defendants and seeks damages that will adequately and fairly compensate them, plus costs and such other further relief as may be deemed appropriate. The damages sought are in excess of the required jurisdictional amount.

### **COUNT III (LOSS OF CONSORTIUM)**

Plaintiffs, Preston West and Andria West, by and through their undersigned attorneys, hereby sue the named Defendants, and for their cause of action state as follows:

35. The Plaintiffs incorporate by reference and re-allege the above paragraphs of this Complaint as if fully stated herein.

36. At the time of the occurrences referred to in this Complaint, Plaintiffs were married and were living together as husband and wife. They continue to be married and live as husband and wife.

37. As a direct and proximate result of the negligence and other actions/inactions of the named Defendants, which are more specifically described in Counts I and II above, Plaintiffs sustained injury to their marital relationship, including loss of society, companionship, affection, assistance, and household services without any negligence on their part contributing thereto.

WHEREFORE, Plaintiffs bring this action against the Defendants and seek damages that will adequately and fairly compensate them, plus costs, interest, and such other and further relief as may be deemed appropriate. The damages sought are in excess of the required jurisdictional amount.

Respectfully submitted,

GILMAN & BEDIGIAN, LLC

  

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H. Briggs Bedigian

Michael V. McCubbin

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Timonium, Maryland 21093

410-560-4999

*Attorneys for Plaintiff*

**JURY TRIAL DEMAND**

The Plaintiffs hereby demand a trial by jury on all of the issues raised in Plaintiffs'

Complaint.

  

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H. Briggs Bedigian