

VIRGINIA:

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IN THE CIRCUIT COURT FOR ARLINGTON COUNTY 2014 DEC 11 PM 12:06

ANDEHAIMANOT G. ASIHEL

PAUL FERGUSON, CLERK
ARLINGTON CIRCUIT COURT

Plaintiff,

v.

Case No.: 14-2778

BRADLEY J. WINSTON, M.D.

and

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

Serve:

CORPORATION SERVICE COMPANY

Registered Agent

1111 E. Main Street

16th Floor

Richmond, VA 23219

and

KAISER FOUNDATION HEALTH PLAN, INC.

and

MID-ATLANTIC PERMANENTE
MEDICAL GROUP, P.C.

COMPLAINT

COMES NOW the Plaintiff, Andehaimanot G. Asihel, by his counsel, and for his
Complaint states as follows:

1. At all relevant times the Plaintiff was a resident of Springfield (Fairfax
County), Virginia.

2. At all relevant times, Defendant Bradley Winston M.D. (Winston) held
himself out to the public as a physician and surgeon licensed to perform colonoscopies in
the Commonwealth of Virginia.

3. At all relevant times the Kaiser Defendants were corporations permitted under the laws of Virginia to provide medical and surgical services in Virginia and were healthcare providers pursuant to Virginia Code Section 8.01-581.1.

4. At all relevant times, the Plaintiff was a patient under the care of the Defendants and as such relied on their judgment, experience and expertise as physicians, health care providers, surgeons, and/or medical professionals.

5. The Plaintiff followed the judgment of the Defendants when the Defendants advised him to undergo a colonoscopy with videocolonscope.

6. The Plaintiff relied upon the experience and expertise of the Defendants when agreeing to allow the Defendants to perform the procedure.

COUNT I

MEDICAL MALPRACTICE

NEGLIGENCE

7. On December 13, 2012, on the advice of the Defendants, the Plaintiff underwent a colonoscopy with videocolonscope. During the procedure Defendant Winston removed a submucosal lesion with a snare.

8. On December 14, 2012 the Plaintiff had to undergo an emergency exploratory laparotomy, lysis of adhesions, and right hemicolectomy with primary anastomosis to repair the colon perforation that resulted from using the snare during the colonoscopy performed by Defendant Winston under the authority and control of Kaiser and at its facility.

9. The Defendants had a duty to use the degree of skill and diligence in the care and treatment of the Plaintiff that a reasonably prudent physician, health care provider, surgeon and/or professional in the same field of practice in Virginia would have used under the circumstances of this case.

10. The Defendants breached this duty and were negligent by failing to provide medical care, and/or professional care in a manner consistent with the prevailing standards of care in the Commonwealth of Virginia. The Defendants also failed to act as reasonably prudent physicians, health care providers, surgeons and/or professionals would have acted under the circumstances.

11. The Defendants also breached their duty when Defendant Winston perforated the Plaintiff's bowel during the colonoscopy; when he failed to notice the quarter sized perforation he caused; when he used a snare to remove a submucosal lesion; and when he decided to remove the lesion instead of performing a biopsy.

12. The Defendants and their employees also breached their duties to the Plaintiff by not monitoring him appropriately following the colonoscopy and discharging him without noticing and/or responding to the signs and symptoms of the large colon perforation.

13. As a direct and proximate result of the negligence of the Defendants, the Plaintiff sustained bodily injury, emotional distress, pain, suffering, scarring, inconvenience, and medical expenses in an attempt to cure him of the foregoing. It is also expected that the Plaintiff will need future medical care and that his injuries are permanent.

COUNT II

FAILURE TO INFORM/BATTERY

Plaintiff incorporates by reference the facts and allegations of all of the preceding paragraphs and further states:

14. The Defendants had a duty to disclose to the Plaintiff all known risks of the procedure he was to undergo so that he could make an informed decision whether or not to undergo the procedure.

15. The Defendants were generally negligent in their failure to provide the Plaintiff with sufficient information about the added danger of using a snare to remove a submucosal lesion; to inform him of safer alternatives; and committed a battery by using a snare to remove the submucosal lesion and causing a colon perforation without the Plaintiff's permission and without informing him of safer alternatives.

16. As a direct and proximate result of the Defendants' failure to inform and subsequent battery by the Defendants, the Plaintiff sustained bodily injury, emotional distress, pain, suffering, inconvenience and medical expenses in an attempt to cure himself of the foregoing. It is also expected that the Plaintiff will need future medical care and that his injuries are permanent.

COUNT III

RESPONDEAT SUPERIOR

Plaintiff incorporates by reference the facts and allegations of all of the preceding paragraphs and further states:

17. In his care and treatment of the Plaintiff, Defendant Winston acted within the scope of his employment as the agent, servant, and/or employee of the Kaiser

Defendants.

18. The Kaiser Defendants are legally responsible for the negligent acts and/or omissions of Defendant Winston pursuant to the doctrine of respondeat superior.

19. As a direct and proximate result of the negligence of its agents, servants, and/or employees, the Kaiser Defendants caused the Plaintiff to sustain bodily injury, scarring, emotional distress, pain, suffering, inconvenience, and medical expenses in an attempt to cure himself of the foregoing. It is also expected that the Plaintiff will need future medical care and that his injuries are permanent.

WHEREFORE, the Plaintiff, Andehaimanot G. Asihel, demands judgment against Defendants Bradley Winston M.D., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Kaiser Foundation Health Plan, Inc. and Mid-Atlantic Permanente Medical Group, P.C., jointly and severally, in the amount of **THREE MILLION DOLLARS (\$3,000,000.00)** plus interest from the date of injury.

ANDEHAIMANOT G. ASIHEL

By Counsel


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