

ORIGINAL

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

**CEDRIC SMITH and
KENESHA SMITH,**

Plaintiffs,

vs.

**YASMINE HIJAZI, M.D.,
YASMEEN HAIDER, M.D.,
KENNETH SISCO, M.D.,
QUEST DIAGNOSTICS NICHOLS
INSTITUTE, INC.,
QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC.,
THE SOUTHEAST PERMANENTE
MEDICAL GROUP, INC., d/b/a
KAISER PERMANENTE,**

Defendants,

CIVIL ACTION

FILE NO. _____

15 C-04853

FILED IN OFFICE
CLERK STATE COURT
GWINNETT COUNTY, GA
2015 SEP 16 PM 12:42
RICHARD ALEXANDER, CLERK

COMPLAINT FOR DAMAGES

COMES NOW Plaintiffs, by and through their counsel, and files this Complaint for Malpractice Damages and respectfully shows this Honorable Court the following:

1.

Attached and incorporated by reference as Exhibit "A" is the affidavit of Martha Pitman, M.D., who is qualified as an expert witness on the issues raised in this Complaint. Said affidavit specifies at least one negligent act or omission on the part of the defendants and the factual basis that underlies the negligent acts or omissions that resulted in injuries to Cedric Smith.

2.

As required by O.C.G.A. § 9-11-9.2, Plaintiffs have contemporaneously filed a Medical Authorization form. This form contains all of the language required by said statute. In light of Northlake Medical Center, LLC v. Queen, A06A50 (07/13/06), which held that O.C.G.A. § 9-11-9.2 is preempted by HIPAA, Plaintiffs decline to waive any rights they may have under Federal HIPAA law. Should anyone elect to use the Medical Authorization form in any way that violates HIPAA, they do so at their own peril.

3.

Defendant Yasmine Hijazi, M.D., (hereinafter “Dr. Hijazi”) is a United States citizen, is a physician who is domiciled in Virginia, has a medical license and practices in Virginia, is a joint tortfeasor, and, pursuant to O.C.G.A. § 10-9-91, is subject to the jurisdiction and venue of this Court. On good faith and belief, Dr. Hijazi resides at 9796 Meadow Valley Drive, Vienna, Fairfax County, Virginia, 22181, where she may be served.

4.

On good faith and belief, at the time of the events outlined in this Complaint, Dr. Hijazi was a duly licensed and practicing physician in the State of Virginia, who, by virtue of reading pathology studies taken of Cedric Smith in September of 2013, undertook a physician/patient relationship with Cedric Smith.

5.

Defendant Yasmeen Haider, M.D., (hereinafter “Dr. Haider”) is a United States citizen, is a physician who is domiciled in Maryland, has a medical license and practices in Virginia, is a joint tortfeasor, and, pursuant to O.C.G.A. § 10-9-91, is subject to the jurisdiction and venue of this Court.

On good faith and belief, Dr. Haider resides at 11305 Skipwith Lane, Potomac, Montgomery County, Maryland, 20854, where she may be served.

6.

On good faith and belief, at the time of the events outlined in this Complaint, Dr. Haider was a duly licensed and practicing physician in the State of Virginia, who, by virtue of reading pathology studies taken of Cedric Smith in September of 2013, undertook a physician/patient relationship with Cedric Smith.

7.

Defendant Kenneth Sisco, M.D., (hereinafter "Dr. Sisco") is a United States citizen, is a physician who is domiciled in Virginia, has a medical license and practices in Virginia, is a joint tortfeasor, and, pursuant to O.C.G.A. § 10-9-91, is subject to the jurisdiction and venue of this Court. On good faith and belief, Dr. Sisco resides at 42445 Mandolin Street, Chantilly, Loudon County, Virginia, 20152, where he may be served.

8.

On good faith and belief, at the time of the events outlined in this Complaint, Dr. Sisco was a duly licensed and practicing physician in the State of Virginia, who, by virtue of reading or overreading pathology studies taken of Cedric Smith in September of 2013, undertook a physician/patient relationship with Cedric Smith.

9.

At all times material hereto, Defendant Drs. Hijazi, Haider and Sisco were acting within the course and scope of their employment, agency, apparent employment and/or apparent agency with Defendants Quest Diagnostics Nichols Institute, Inc., Quest Diagnostics Clinical Laboratories, Inc.,

and/or The Southeast Permanente Medical Group, Inc., d/b/a Kaiser Permanente, and thus Defendants Quest Diagnostics Nichols Institute, Inc., Quest Diagnostics Clinical Laboratories, Inc., and/or The Southeast Permanente Medical Group, Inc., d/b/a Kaiser Permanente is or are responsible for their negligent acts or omissions and any injuries and damages arising therefrom.

10.

Defendant Quest Diagnostics Nichols Institute, Inc., (hereinafter "QDNI") is a corporation incorporated in a state other than Georgia, with its principle place of business at 14225 Newbrook Drive, Chantilly, Virginia, 20153. Defendant QDNI regularly does or solicits business in the State of Georgia, derives profits from doing business in Georgia, is a joint tortfeasor, and is subject to the jurisdiction of this Court pursuant to O.C.G.A. § 10-9-91. Defendant QDNI may be served through its registered agent for service of process, Corporation Service Company, Bank of America Center, 16th Floor, 1111 East Main Street, Richmond, Richmond City County, Virginia, 23219.

11.

Defendant QDNI is and was a medical practice duly licensed in the State of Virginia which undertook through its employees, agents, apparent employees and/or apparent employees on approximately September 18, 2013, to read or overread pathology studies or slides taken of Cedric Smith, and all times material hereto a medical practice / patient relationship existed between Cedric Smith and this Defendant.

12.

Defendant Quest Diagnostics Clinical Laboratories, Inc., (hereinafter "QDCL") is a corporation incorporated in a state other than Georgia, with its principle place of business at 3 Giralda Farms, Madison, New Jersey, 07940. Defendant QDCL maintains a registered agent in

Georgia and is registered to conduct business in the State of Georgia, is a joint tortfeasor, and is subject to the jurisdiction of this Court. Defendant QDCL may be served through its registered agent for service of process, Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia, 30092.

14.

Defendant QDCL is and was a medical practice duly licensed in the State of Virginia which undertook through its employees, agents, apparent employees and/or apparent employees on approximately September 18, 2013, to read or overread pathology studies or slides taken of Cedric Smith, and all times material hereto a medical practice / patient relationship existed between Cedric Smith and this Defendant.

15.

Defendant The Southeast Permanente Medical Group, Inc., d/b/a Kaiser Permanente, (hereinafter "KP") is a corporation incorporated in the state of Georgia, with its principle place of business at 3495 Piedmont Road, 9 Piedmont Center, Atlanta, Georgia 30305. Defendant KP is registered to conduct business in the State of Georgia, is a joint tortfeasor, and is subject to the jurisdiction and venue of this Court. Defendant KP may be served through its registered agent for service of process, Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia, 30092.

16.

Defendant KP is and was a medical practice duly licensed in the State of Georgia which undertook through its employees, agents, apparent employees and/or apparent employees on approximately September 18, 2013, to read or overread pathology studies or slides taken of Cedric

Smith, and all times material hereto a medical practice / patient relationship existed between Cedric Smith and this Defendant.

17.

Plaintiffs Cedric Smith and Sheneka Smith were married on October 11, 2014. From that point through all times relevant hereto, they enjoyed the fruits of a marital relationship.

FACTUAL BACKGROUND

18.

Cedric Smith was approximately 41 years old at the time of the events described herein.

19.

Mr. Smith presented to Kaiser with complaints of ongoing cough and congestion.

20.

A chest CT scan of Mr. Smith on September 4, 2013, showed suspicious masses in each of Mr. Smith's lung lobes.

21.

Mr. Smith was evaluated by pulmonologist Matthew E. Prout, M.D., at Kaiser on September 13, 2013. Dr. Prout noted that Mr. Smith had a cough, worsening over time, for one year, yellow sputum, and lost 25 lbs within the last 9 months. Dr. Prout noted Mr. Smith most likely had lymphoma or sarcoma in his lungs.

22.

Dr. Prout referred Mr. Smith for pathological studies of the masses in his lungs.

23.

On or about September 18, 2013, a core biopsy of Mr. Smith's right upper lung lobe was taken by Mariya Fishman, M.D., and sent to QDNI and/or QDCL (collectively "Quest") for interpretation.

24.

Upon information and belief, all of Mr. Smith's pathology specimens were sent by Kaiser to Quest due to a contractual relationship between Kaiser and Quest.

25.

The slides were interpreted by Dr. Haider to be consistent with non-small cell carcinoma with foci of adenocarcinoma.

26.

Also on or about September 18, 2013, a fine needle aspiration of Mr. Smith's right upper lung lobe was drawn by Dr. Fishman and likewise sent to Quest. The slides were interpreted by Dr. Hijazi to be consistent with non-small cell carcinoma with foci of adenocarcinoma.

27.

Cells aspirated from the lung mass were analyzed at Quest by flow cytometry and found to be suspicious for lymphoma.

28.

Dr. Sisco, as the Laboratory Director at Quest, reviewed and/or overread Drs. Haider's and Hijazi's reports and agreed with their interpretations of the slides.

29.

The pathology slides (both from the core biopsy and the fine needle aspiration) from approximately September 18, 2013, actually showed a malignancy more consistent with lymphoma than adenocarcinoma, especially given the flow cytometry results. The immunohistochemical work-up was insufficient and the TTF-1 stain misinterpreted. Therefore, the slides from Mr. Smith's lung tissue should not have been read as consistent with non-small cell carcinoma with foci of adenocarcinoma (NSCLC).

30.

Additional ancillary studies should have been performed on the biopsies which would have led to the correct diagnosis of lymphoma.

31.

Following the mis-read of Mr. Smith's pathology slides by the named Defendants, Mr. Smith underwent therapy, including chemotherapy, at Kaiser for non-small cell carcinoma with foci of adenocarcinoma.

32.

Mr. Smith was referred to Emory in October 2014 for a second opinion. He was diagnosed with large B cell lymphoma on or about January 28, 2015.

33.

All defendants have acted negligently. As the direct and proximate cause and result of these negligent acts and omissions Mr. Smith suffered injury, including a substantial delay in his diagnosis of lymphoma, and he underwent unnecessary therapy for non-small cell carcinoma.

COUNT I.

MEDICAL NEGLIGENCE OF DR. HIJAZI

34.

Plaintiffs adopt and reallege paragraphs 1 - 33 of this Complaint as if fully set forth herein.

35.

During Dr. Hijazi's reading of Mr. Smith's pathology slides, Dr. Hijazi was required to exercise that degree of care and skill ordinarily employed by physicians generally when reading pathology slides such as Mr. Smith's under the same or similar circumstances as those that existed in September of 2013.

36.

Dr. Hijazi deviated from the standard of care outlined in the immediately preceding paragraph in that she failed to exercise that degree of care and skill required by the medical profession, *inter alia*, by incorrectly reading the fine needle aspiration taken of Mr. Smith on or about September 18, 2013, as diagnostic of NSCLC instead of lymphoma.

37.

As a direct and proximate result of Dr. Hijazi's failure to exercise appropriate care during her reading of Mr. Smith's fine needle aspiration from September 18, 2013, Mr. Smith suffered serious and permanent injury.

WHEREFORE, Plaintiffs respectfully demand judgment against this defendant in money damages in excess of \$15,000 and costs of Court. Plaintiffs demand a trial by jury. Plaintiffs request that this Court grant such other and further relief as is just and appropriate.

COUNT II.

MEDICAL NEGLIGENCE OF DR. HAIDER

38.

Plaintiffs adopt and reallege paragraphs 1 - 37 of this Complaint as if fully set forth herein.

39.

During Dr. Haider's reading of Mr. Smith's pathology slides, Dr. Haider was required to exercise that degree of care and skill ordinarily employed by physicians generally when reading pathology slides such as Mr. Smith's under the same or similar circumstances as those that existed in September of 2013.

40.

Dr. Haider deviated from the standard of care outlined in the immediately preceding paragraph in that she failed to exercise that degree of care and skill required by the medical profession, *inter alia*, by incorrectly reading the core biopsy taken of Mr. Smith on or about September 18, 2013, as diagnostic of NSCLC instead of lymphoma.

41.

As a direct and proximate result of Dr. Haider's failure to exercise appropriate care during her reading of Mr. Smith's core biopsy from September 18, 2013, Mr. Smith suffered serious and permanent injury.

WHEREFORE, Plaintiffs respectfully demand judgment against this defendant in money damages in excess of \$15,000 and costs of Court. Plaintiffs demand a trial by jury. Plaintiffs request that this Court grant such other and further relief as is just and appropriate.

COUNT III.

MEDICAL NEGLIGENCE OF DR. SISCO

42.

Plaintiffs adopt and reallege paragraphs 1 - 41 of this Complaint as if fully set forth herein.

43.

During Dr. Sisco's reading or overreading of Mr. Smith's pathology slides, Dr. Sisco was required to exercise that degree of care and skill ordinarily employed by physicians generally when reading or overreading pathology slides such as Mr. Smith's under the same or similar circumstances as those that existed in September of 2013.

44.

Dr. Sisco deviated from the standard of care outlined in the immediately preceding paragraph in that he failed to exercise that degree of care and skill required by the medical profession, *inter alia*, by incorrectly reading or overreading the core biopsy and fine needle aspiration taken of Mr. Smith on or about September 18, 2013, as diagnostic of NSCLC instead of lymphoma.

45.

As a direct and proximate result of Dr. Sisco's failure to exercise appropriate care during his reading or overreading of Mr. Smith's core biopsy and fine needle aspiration from September 18, 2013, Mr. Smith suffered serious and permanent injury.

WHEREFORE, Plaintiffs respectfully demand judgment against this defendant in money damages in excess of \$15,000 and costs of Court. Plaintiffs demand a trial by jury. Plaintiffs request that this Court grant such other and further relief as is just and appropriate.

COUNT IV.

RESPONDEAT SUPERIOR OF QUEST DEFENDANTS

46.

Plaintiffs adopt and reallege paragraphs 1 - 45 of this Complaint as if fully set forth herein

47.

At all times material hereunto, Defendant Drs. Hijazi, Haider and Sisco were acting within the course and scope of their employment, agency, apparent employment or apparent agency with Defendants Quest Diagnostics Nichols Institute, Inc., and/or Quest Diagnostics Clinical Laboratories, Inc., and as their actual or apparent employer/principal, one or both of these corporate Defendants are liable for the professional or simple negligent acts or omissions of Drs. Hijazi, Haider and Sisco, as well as any other pathologists, nurses, technicians, or other medical professionals who read or overread pathology studies taken of Mr. Smith on or about September 18, 2013, any injuries and damages arising therefrom.

WHEREFORE, Plaintiffs respectfully demand judgment against these Defendants in money damages in excess of \$15,000 and costs of court. Plaintiffs demand trial by jury. Plaintiffs request that the Court grant such other and further relief as is just and appropriate.

COUNT V.

RESPONDEAT SUPERIOR OF KAISER

48.

Plaintiffs adopt and reallege paragraphs 1 - 47 of this Complaint as if fully set forth herein

At all times material hereunto, Defendant Drs. Hijazi, Haider and Sisco were acting within the course and scope of their employment, agency, apparent employment or apparent agency with Defendants The Southeast Permanente Medical Group, Inc., d/b/a Kaiser Permanente, and as their actual or apparent employer/principal, by contract or otherwise, this corporate Defendant is liable for the professional or simple negligent acts or omissions of Drs. Hijazi, Haider and Sisco, as well as any other pathologists, nurses, technicians, or other medical professionals who read or overread pathology studies taken of Mr. Smith on or about September 18, 2013, any injuries and damages arising therefrom.

WHEREFORE, Plaintiffs respectfully demand judgment against this Defendant in money damages in excess of \$15,000 and costs of court. Plaintiffs demand trial by jury. Plaintiffs request that the Court grant such other and further relief as is just and appropriate.

This 16th day of September 2015.

Respectfully submitted,

WEBB & TAYLOR, LLC



Brandon R. Taylor
Bar No. 108752
Jordan M. Jewkes
Bar No. 940491

400 Westpark Ct. - Ste. 220
Peachtree City, Georgia 30269
Telephone: (770) 631-1811
Fax: (770) 631-1771