

COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiff, Erik Newell, by and through undersigned counsel, hereby sues the Defendants, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Mid-Atlantic Permanente Medical Group, P.C., Debra Javins, P.A.-C. and Nathanael Dayes, M.D., and for grounds says:

JURISDICTION AND VENUE

1. This medical malpractice claim is instituted pursuant to MD. Cts. & Jud. Proc. Code Ann § 3-2A-01, *et. seq.*, for the recovery of damages in excess of Thirty Thousand Dollars (\$30,000.00), exclusive of interests and costs.

2. The proper venue for this action is Baltimore City, Maryland as all of the alleged acts and/or omissions of negligence occurred in Baltimore City.

3. Plaintiff avers that all conditions precedent to the filing of this lawsuit have been met, including the filing of a Statement of Claim, Certificate of Qualified Expert and Report, and Waiver of Arbitration in the Health Care Alternative Dispute Resolution Office of Maryland.

4. Plaintiff hereby attaches and incorporates by reference the Certificates of Qualified Experts and Reports of David Plotkin, D.P.M. and Richard Berg, M.D.

PARTIES

5. Plaintiff Erik Newell is of full age and a Maryland resident residing at the above-stated address.

6. At all times relevant hereto, Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. ("Kaiser Mid-Atlantic") was, and is, a medical facility in the business of providing health care services, through its employees and/or real and/or ostensible agents,

including but not limited to Debra Javins, P.A.-C. and Nathanael Dayes, M.D., to persons in need thereof within the state of Maryland, including the Plaintiff.

7. At all times relevant hereto, Defendant Mid-Atlantic Permanente Medical Group, P.C. (“MAPMG”) was, and is, a medical facility in the business of providing health care services, through its employees and/or real and/or ostensible agents, including but not limited to Debra Javins, P.A.-C. and Nathanael Dayes, M.D., to persons in need thereof within the state of Maryland, including the Plaintiff.

8. At all relevant times, Defendant Debra Javins, P.A.-C. was, and is, a physician’s assistant licensed to practice in the State of Maryland who provided medical services to persons in need thereof, including the Plaintiff. At the time she was treating the Plaintiff, Ms. Javins was acting individually and/or as the employee and/or real and/or ostensible agent of Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C.

9. At all relevant times, Defendant Nathanael Dayes, M.D. was, and is, a physician licensed to practice in the State of Maryland who provided medical services to persons in need thereof, including the Plaintiff. At the time he was treating the Plaintiff, Dr. Dayes was acting individually and/or as the employee and/or real and/or ostensible agent of Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C.

FACTS COMMON TO ALL COUNTS

10. Plaintiff hereby incorporates the previous paragraphs of this pleading as if fully stated herein.

11. In July 2015, Plaintiff was a patient of Kaiser Mid-Atlantic and MAPMG. He had a history of hypertension, microalbuminuria, dyslipidemia and diabetes mellitus, which was noted to be uncontrolled.

12. On July 16, 2105 the Plaintiff was referred to the Podiatry service and was seen by Carron Grant, D.P.M. Dr. Grant noted that Plaintiff had a foreign body in his foot which Dr. Grant removed. Dr. Grant debrided the ulcer, applied an antibiotic/offloading pad, and prescribed Keflex, an antibiotic.

13. On August 11, 2015 Plaintiff was seen at a Kaiser facility by Debra Javins, P.A.-C. in follow-up to the foreign body extraction. Ms. Javins noted that Plaintiff had taken the oral antibiotics and was currently applying antibiotic ointment and band-aid to the wound. Ms. Javins noted that the wound was healed and that there were no signs of infection.

14. On September 18, 2015 Plaintiff was again seen by Ms. Javins at which time she noted that he had a new onset foot wound. The size of the wound was noted to be 1.3 cm x 0.9 cm x 0.4 cm. No drainage was noted, and Ms. Javins noted that there were no signs of infection.

15. At this same visit, a CAM boot was dispensed with the instruction to avoid weight-bearing. Ms. Javins also ordered an x-ray of the left foot.

16. On September 22, 2015 Plaintiff was again seen by Ms. Javins in follow-up. The records indicate that Plaintiff was also examined by Dr. Grant at this visit. It was noted that Plaintiff was non-compliant with the CAM boot in that he was wearing his regular boots to work.

17. At this same visit, the size of the wound was noted to be 1.3 cm x 0.9 cm x 1.1 cm, which was deeper than it had been on the previous visit. Serous drainage was noted on probe of the wound. The wound was described as non-healing, and there were no signs or symptoms of infection.

18. An x-ray taken on September 22, 2015 indicated that osteomyelitis was not seen.

19. An MRI performed on September 27, 2015 did not reveal evidence of acute osteomyelitis.

20. On September 30, 2015 Plaintiff was seen again by Ms. Javins in follow up. Plaintiff was not seen by a doctor at that visit, although Ms. Javins' note was co-signed without change by Nathanael Dayes, M.D. the next day.

21. On September 30, 2015 Plaintiff's wound was noted to be 1.3 cm x 0.9 cm x 1.1 cm, and he was noted to have serosanguinous drainage. Ms. Javins noted that the wound was non-healing, although she noted that there were no signs or symptoms of infection. Ms. Javins did not culture the wound, did not prescribe antibiotics and did not perform a vascular check, all of which are violations of the standard of care.

22. At this same visit on September 30, 2015, Ms. Javins placed Plaintiff in a TCC EZ cast and wrote in the chart that Plaintiff was to return to the office in one week (although it appears that an appointment may have been made for him to return in five days on Monday, October 5, 2015).

23. Given the Plaintiff's presentation and history (including his uncontrolled diabetes and his prior documented non-compliance) and given the manufacturer instructions regarding use of the TCC EZ cast, it was a violation of the standard of care to instruct the Plaintiff to return in one week, or even in five days. The Plaintiff needed to be seen within 2-3 days maximum to change the cast and inspect the wound.

24. On October 1, 2015 Dr. Dayes signed off on Ms. Javins' note without change, which is a violation of the standard of care. Dr. Dayes, as the physician supervising a physician assistant's care, had the obligation to recognize that Ms. Javins' care was inappropriate and to take action to ensure that the Plaintiff was promptly seen and properly treated. Dr. Dayes failed to do so.

25. On October 5, 2015 Plaintiff apparently had a scheduled appointment to come back to Kaiser, but he called to reschedule and apparently failed to appear on that date.

26. On October 6, 2015 Plaintiff presented to a Kaiser urgent care facility at which time his wound was clearly infected and was noted to be giving off an odor.

27. Plaintiff was subsequently taken to an outside hospital where he underwent a below the knee amputation, which was later revised to an above the knee amputation.

COUNT I
(Medical Negligence)

28. Plaintiff hereby incorporates the prior paragraphs of this pleading as if fully stated herein.

29. The Defendants, including their real and/or ostensible employees and/or agents, including but not limited to Debra Javins, P.A.-C. and Nathanael Dayes, M.D. owed to the Plaintiff the duty to exercise that degree of care, skill, and judgment ordinarily possessed by health care providers in the same or similar circumstances.

30. At all times relevant hereto, the Defendants, including their real and/or ostensible employees and/or agents referenced above, were negligent in their care and treatment of the Plaintiff and breached the applicable standard of care. The negligent acts include, but are not limited to, the following particulars:

- a. Failing to culture the wound;
- b. Failing to order antibiotics;
- c. Failing to perform a vascular exam;
- d. Placing Plaintiff in a TCC EZ cast and instructing the Plaintiff to return to the office in one week, or five days;
- e. Failing to have the Plaintiff return to the office in 2-3 days;

- f. Failing to recognize the significance of the Plaintiff's uncontrolled diabetes and non-compliance with prior orders;
- g. Failing to perform timely and appropriate exam;
- h. Failing to prevent the development of wound infection;
- i. Failing to prevent the Plaintiff's lower extremity amputation;
- j. Defendants may have been otherwise negligent, the details of which may surface during discovery.

31. As a direct and proximate result of the above-referenced deviations from the standard of care, the Plaintiff developed an infected wound and was required to undergo lower extremity amputation.

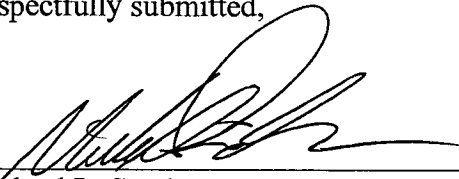
32. As a further direct and proximate result of the above-referenced deviations from the standard of care, the Plaintiff suffered mental anguish, bodily injury, disability, physical pain and suffering, inconvenience, discomfort, loss of ability to enjoy his usual activities of life, unnecessary procedures, medical and rehabilitation expenses (past, present and future), loss of income (past, present and future) and other painful sequelae of his amputation.

33. Had the Defendants complied with the standard of care, the Plaintiff would not have suffered the damages alleged.

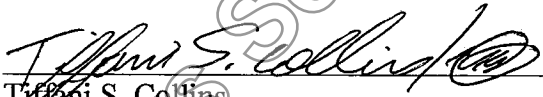
34. The Plaintiff was not contributorily negligent.

WHEREFORE, the Plaintiff demands judgment against the Defendants for all damages and injuries sustained in an amount in excess of the required jurisdictional amount as specified in ~~Sections 3-2A-02(a) and (b) of the Courts and Judicial Proceedings Article of the Maryland Code,~~
exclusive of interests and costs, and any other legal or equitable relief as justice requires.

Respectfully submitted,



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DEMAND FOR JURY TRIAL

The Plaintiff, by and through his undersigned attorneys, hereby demands a trial by jury on the issues raised herein.



Michael L. Sanders

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CIVIL DIVISION