

FILED by Arlington County Circuit Court

10/20/2017

VIRGINIA:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

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PAUL FERGUSON, CLERK
ARLINGTON CIRCUIT COURTRUBY L. LOWE, Guardian ad Litem
for MICHAEL A. TAYLOR, disabled

Plaintiff,

v.

Civil Action No.

JURY TRIAL DEMANDED

KAISER FOUNDATION HEALTH PLAN
OF THE MID-ATLANTIC STATES, INC.,
d/b/a KAISER PERMANENTE201 N. Washington, Street
Falls Church, VA 22046

SERVE: Corporation Service Company

Registered Agent

Bank of America Center, 16th Floor

1111 East Main Street

Richmond, VA 23219

and

MID-ATLANTIC PERMANENTE
MEDICAL GROUP, P.C., d/b/a KAISER
PERMANENTE201 N. Washington, Street
Falls Church, VA 22046

SERVE: Corporation Service Company

Registered Agent

Bank of America Center, 16th Floor

1111 East Main Street

Richmond, VA 23219

and

VIRGINIA HOSPITAL CENTER
ARLINGTON HEALTH SYSTEM
d/b/a VIRGINIA HOSPITAL CENTER1701 N. George Mason Drive
Arlington, VA 22205

SERVE: Robert B. Templin, Jr.

Registered Agent

1701 N. George Mason Dr.

Arlington, VA 22205



CL17002837-00

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Defendants.

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COMPLAINT

Plaintiff Ruby L. Lowe, Guardian ad Litem for Michael A. Taylor, disabled, by counsel, and pursuant to the Rules of the Supreme Court of Virginia moves for judgment against the Defendants Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Mid-Atlantic Permanente Medical Group, P.C. (the Kaiser entities are hereafter collectively referred to as “Kaiser” or “Kaiser Permanente”), and Virginia Hospital Center Arlington Health System (“Virginia Hospital Center”), on the grounds and in the amount set forth below.

1. Jurisdiction in this court for this matter is based upon Code of Virginia §17.1-513.
2. This is an action alleging medical malpractice.
3. Michael A. Taylor is a 26-year-old disabled Virginia resident.
4. On January 18, 2017, Ruby L. Lowe, Michael’s grandmother, qualified as his Guardian ad Litem.

5. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. d/b/a Kaiser Permanente is a foreign Maryland corporation doing business in the Commonwealth of Virginia, and at all relevant times hereto, its employees and agents, including Alexandra Booth, M.D., provided medical care and treatment to patients in the Commonwealth of Virginia, including Michael Taylor.

6. Defendant Mid-Atlantic Permanente Medical Group, P. C., d/b/a Kaiser Permanente is a foreign Maryland corporation doing business in the Commonwealth of Virginia, and at all relevant times hereto, its employees and agents, including Alexandra Booth, M.D., provided medical care and treatment to patients in the Commonwealth of Virginia, including Michael Taylor.

7. Defendant Virginia Hospital Center is a Virginia corporation doing business in the Commonwealth of Virginia, and at all relevant times hereto, its employees and agents provided medical care and treatment to patients in the Commonwealth of Virginia, including Michael Taylor.

8. A patient-health-care-provider relationship existed between Michael Taylor and all Defendants.

9. At all times of which Plaintiff complains, Defendant Kaiser Permanente, by itself and/or through its agents/employees, represented to the public that it possessed the degree of knowledge, ability, and skill possessed by reasonably competent healthcare providers practicing under the same or similar circumstances as those involving Michael Taylor.

10. At all times of which Plaintiff complains, Defendant Mid-Atlantic Permanente Medical Group, P.C., by itself and/or through its agents/employees, represented to the public that it possessed the degree of knowledge, ability, and skill possessed by reasonably competent healthcare providers practicing under the same or similar circumstances as those involving Michael Taylor.

11. At all times of which Plaintiff complains, Defendant Virginia Hospital Center, by itself and/or through its agents/employees, represented to the public that it possessed the degree of knowledge, ability, and skill possessed by reasonably competent healthcare providers practicing under the same or similar circumstances as those involving Michael Taylor.

Michael Taylor's Condition, Surgery, and Hospital Admission

12. Prior to the Defendants' negligence, Mr. Taylor was a healthy 24-year old adult. He suffered from obesity but had no other major medical conditions.

13. On March 11, 2016, Mr. Taylor began experiencing abdominal pain and nausea and went the emergency department at Fauquier Hospital.

14. At the emergency department, an ultrasound of the abdomen revealed a gallstone.

15. Because Fauquier is not a Kaiser-approved hospital, Mr. Taylor could not have surgery there.

16. On March 16, 2016, Mr. Taylor saw Jason Singh, M.D., a Kaiser internal medicine physician, to obtain a referral to a Kaiser surgeon.

17. Dr. Singh's assessment included symptomatic gallstone and a high suspicion of obstructive sleep apnea.

18. Dr. Singh ordered a sleep study.

19. Dr. Singh referred Mr. Taylor to Kaiser surgeon, Alexandra Booth, M.D., for consultation regarding gallbladder removal.

20. On March 18, 2016, Mr. Taylor saw Dr. Booth.

21. Dr. Booth noted Mr. Taylor's obesity as well as other signs of sleep apnea. She further noted that a sleep study had been ordered for Mr. Taylor.

22. Dr. Booth wrote that Mr. Taylor "likely" had sleep apnea.

23. Dr. Booth recommended the gall bladder be surgically removed. She scheduled the surgery for April 5, 2016 at Virginia Hospital Center so the sleep study results would be available before surgery.

24. On March 22, 2016, as ordered, Mr. Taylor underwent a sleep study at Kaiser's Fall Church location.

25. On April 5, 2016, Michael Taylor went to Virginia Hospital Center for the scheduled gallbladder removal surgery.

26. Dr. Booth did not have the results of the sleep study on April 5, 2016.
27. Despite not having the sleep study results, Dr. Booth chose to move forward with surgery.
28. During the surgery, Dr. Booth successfully removed Mr. Taylor's gall bladder.
29. Dr. Booth chose to keep Mr. Taylor hospitalized overnight.
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30. Dr. Booth knew that given his "likely" sleep apnea, Mr. Taylor would need to be monitored closely and carefully, and that pain medications would have to be carefully and restrictively provided.
31. In her admitting orders written at approximately 4:30 p.m., Dr. Booth wrote "notify provider for oxygen saturation less than 92%."
32. In her admitting orders, Dr. Booth also wrote "pulse oximetry: continuous once as ordered."
33. Dr. Booth did not order continuous positive airway pressure ("CPAP") therapy for Mr. Taylor.
34. Ruby Lowe, Mr. Taylor's grandmother, spent the late afternoon and evening with Mr. Taylor in his hospital room. During that time Mr. Taylor interacted with her normally.
35. At approximately 11:30 p.m., Virginia Hospital Center staff told Ms. Lowe that she could return in the morning at which time Mr. Taylor would be discharged.
36. Continuous pulse oximetry was not installed on Mr. Taylor.
37. Dr. Booth did not evaluate Mr. Taylor throughout the night.
38. Throughout the night, nurses gave pain medication to Mr. Taylor.
39. At approximately 10:20 a.m. on April 6, 2015, Mr. Taylor was found unresponsive and in respiratory distress.

40. Mr. Taylor's oxygen saturation was below 50%.
41. The rapid response team responded; Mr. Taylor was escalated to a code blue.
42. No health care provider knew how long Mr. Taylor had been without adequate oxygen.
43. Mr. Taylor was taken to the intensive care unit and placed under the care of critical care physicians.
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44. A CT scan of the brain revealed severe, diffuse, cerebral edema consistent with anoxia (lack of oxygen). A second CT scan of the brain confirmed diffuse hypoattenuation in both cerebral hemispheres likely reflecting diffuse cerebral edema due to an underlying anoxic brain injury.

45. The critical care team informed Mr. Taylor's family, including Ms. Lowe, that he may not survive or that, if he did, Mr. Taylor would have permanent and significant damage.

46. Mr. Taylor was placed on a ventilator.

47. On April 6, 2016, the day after Dr. Booth performed surgery, Kaiser reported the results of Mr. Taylor's sleep study.

48. Kaiser diagnosed Mr. Taylor with severe obstructive sleep apnea. Kaiser recommended Mr. Taylor receive treatment including the use of CPAP.

Michael Taylor's Irreversible Brain Damage and Permanent Injuries

49. Mr. Taylor remained at Virginia Hospital Center until April 29, 2016 when he was transferred to BridgePoint Capitol Hill, a long-term acute care facility in Washington, D.C.

50. Since that time, Michael Taylor has seen a myriad of health care providers and been shuffled from long-term care facilities to hospitals, including Southern Maryland Hospital,

Virginia Hospital Center, Reston Hospital Center, Future Care Pine View in Clinton, Maryland, and Potomac Falls Health & Rehabilitation Center.

51. Mr. Taylor has suffered permanent brain damage.

52. Mr. Taylor is unable to walk, prepare meals, or toilet himself.

53. Mr. Taylor is unable to extricate himself from the chair in which he spends his waking hours.

54. Mr. Taylor lives in one room of his grandmother's home where he requires 24/7 aid.

55. Mr. Taylor requires ambulance transport to attend doctor visits.

56. If there is an emergency such as a fire in Ms. Lowe's home, Mr. Taylor cannot leave the home.

57. Michael Taylor has suffered and will continue to suffer from permanent and irreversible brain damage, wasting of musculature, pain, amongst other ailments, which have left him permanently unable to care for himself.

COUNT I – Medical Malpractice – Kaiser Permanente

58. Plaintiff incorporates all prior paragraphs as if fully set forth herein.

59. Kaiser Permanente owed to Michael Taylor a duty to exercise that degree of skill, judgment, and care expected of a reasonably competent medical entity, through its staff physicians, agents, employees, apparent agents, nurses, and medical staff, practicing under the same or similar circumstances as those involving Michael Taylor, which duties included operating at the appropriate time, writing clear orders, timely obtaining the results of testing; having in place appropriate safety mechanisms to ensure that patient testing results are received prior to elective surgery; having in place appropriate safety mechanisms to ensure order errors or unclear orders

are recognized before causing harm, knowing how to recognize, report, and treat order errors or unclear orders, and having in place appropriate safety mechanisms to ensure that order errors are promptly recognized and treated – all of which Kaiser Permanente failed to do.

60. Kaiser Permanente is vicariously liable under the doctrine of *respondeat superior* for the acts of its staff physicians, agents, employees, apparent agents, nurses, and medical staff including Dr. Booth.

61. Kaiser Permanente was further negligent, institutionally and vicariously through its staff physicians, agents, employees, apparent agents, nurses, and medical staff in that it:

- a. failed to adequately supervise staff;
- b. failed to write complete and clear physician orders;
- c. failed to write accurate orders;
- d. failed to ensure physician orders were being followed;
- e. failed to order continuous pulse oximetry;
- f. failed to order appropriate medication/dosage for Mr. Taylor;
- g. failed to order appropriate monitoring of Mr. Taylor;
- h. failed to timely obtain the results of a sleep study for obstructive sleep apnea;
- i. proceeded with elective surgery despite not having sleep study results;
- j. failed to order CPAP for Mr. Taylor;
- k. failed to timely and properly treat and monitor Mr. Taylor's obstructive sleep apnea;
- l. failed to ensure that Mr. Taylor was on a floor that was capable of continuous pulse oximetry monitoring;

- m. failed to communicate among Kaiser providers to ensure all relevant information was available prior to surgery; and
 - n. was otherwise negligent.
62. Michael Taylor suffered injuries as a direct and proximate result of Kaiser Permanente's institutional and vicarious negligence.

63. Michael Taylor suffered pain, injuries, mental anguish, and was otherwise damaged as a direct and proximate result of Kaiser Permanente's institutional and vicarious negligence. Mr. Taylor will never work again and will require permanent care for the remainder of his life.

WHEREFORE, Plaintiff Michael Taylor requests judgment against each Defendant in the amount of \$20,000,000 (twenty million dollars), jointly and severally, to be determined by the evidence, applicable law, in all sums permissible in Virginia, to include pre- and post-judgment interest and costs, in all sums permissible in Virginia.

COUNT II – Medical Malpractice – Virginia Hospital Center

71. Plaintiff incorporates all prior paragraphs as if fully set forth herein.
72. Virginia Hospital Center owed to Michael Taylor a duty to exercise that degree of skill, judgment, and care expected of a reasonably competent medical facility, through its staff physicians, agents, employees, apparent agents, nurses, and medical staff, practicing under the same or similar circumstances as those involving Michael Taylor, which duties included, *inter alia*, identifying and clarifying physician orders, appropriately and correctly following physician orders, informing attending physicians of failures to follow orders; having in place appropriate safety mechanisms to ensure that order errors are recognized before causing harm, knowing how to recognize, report, and treat order errors, and having in place appropriate safety mechanisms to ensure that order errors are promptly recognized and treated – all of which Virginia Hospital Center failed to do.

73. Virginia Hospital Center is vicariously liable under the doctrine of *respondeat superior* for the acts of its staff physicians, agents, employees, apparent agents, nurses, and medical staff.

74. Virginia Hospital Center was further negligent, institutionally and vicariously through its staff physicians, agents, employees, apparent agents, nurses, and medical staff in that it:

- a. failed to supervise nursing staff appropriately;
- b. failed to identify and clarify unclear or incomplete physician orders;
- c. failed to follow physician order to continuously monitor pulse oximetry;
- d. failed to ensure that the patient was on a floor that was capable of continuous pulse oximetry monitoring;
- e. failed to inform the attending physician that the patient was not receiving continuous pulse oximetry;
- f. failed to inform the attending physician that the patient was not on a floor that was capable of continuously monitoring pulse oximetry;
- g. failed to have in place adequate policies and procedures to prevent the failure to follow a physician order;
- h. failed to have in place adequate policies and procedures to timely and properly assess injury resulting from failure to continuously monitor pulse oximetry;
- i. failed to provide proper training to the nursing staff on continuous pulse oximetry;
- j. failed to have a computer system in place that allowed for a physician to clearly write an order;
- k. overmedicated Mr. Taylor;

- l. failed to properly monitor Mr. Taylor after administration of medication;
- m. failed to adequately monitor and chart Mr. Taylor and his condition;
- n. failed to timely identify an emergency situation;
- o. failed to timely and correctly run a code; and
- p. was otherwise negligent.

75. Michael Taylor suffered injuries as a direct and proximate result of Virginia Hospital Center's institutional and vicarious negligence.


76. Michael Taylor suffered pain, injuries, mental anguish, and was otherwise damaged as a direct and proximate result of Virginia Hospital Center's institutional and vicarious negligence. He will never work again and will require permanent care for the remainder of his life.

WHEREFORE, Plaintiff Michael Taylor requests judgment against each Defendant in the amount of \$20,000,000 (twenty million dollars), jointly and severally, to be determined by the evidence, applicable law, in all sums permissible in Virginia, to include pre- and post-judgment interest and costs, in all sums permissible in Virginia.

A jury trial is hereby demanded pursuant to Code of Virginia § 8.01-336(A) and Virginia Rule 3:21(b) "Jury Trial of Right."

Respectfully submitted,

PERRY CHARNOFF PLLC



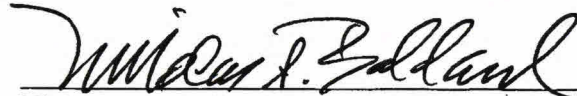
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