

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND
CIVIL DIVISION

Vasef Jenabi
3320 Chiswick Court - Apt. 1B
Silver Spring, MD 20906

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS d/b/a
GAITHERSBURG MEDICAL CENTER
One Kaiser Plaza
Oakland, CA 94612

SERVE: The Prentice-Hall Corporation
System, MA
7 St. Paul Street - Suite 820
Baltimore, MD 21202

KAISER FOUNDATION HEALTH PLAN OF
THE MID-ATLANTIC STATES, INC.
2101 E. Jefferson Street
Rockville, MD 20852

SERVE: The Prentice-Hall Corporation
System, MA
7 St. Paul Street-Suite 820
Baltimore, MD 21202

KAISER FOUNDATION HEALTH PLAN, INC.
One Kaiser Plaza
19th Floor
Oakland, CA 94612

SERVE: CSC-Lawyers Incorporating
Service Company
7 St. Paul Street - Suite 820
Baltimore, MD 21202

Defendants.

Case No. _____

COMPLAINT

2017 NOV -6 PM 3:23

FILED

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The Plaintiff, Vasef Jenabi, by and through his attorneys, Joseph Musso and Ashcraft & Gerel, LLP, files the following action against the Defendants named in the foregoing claim pursuant to Md. Cts & Jud. Proc. Ann. 3-2A-01 et seq.

The amount of this claim exceeds Thirty Thousand Dollars (\$30,000.00) and venue is proper in Montgomery County, Maryland.

At all times material to this claim, Plaintiff exercised due care and diligence without any contributory negligence or assumption of the risk.

1. Jurisdiction is vested pursuant to Maryland Code Ann., Courts and Judicial Proceedings, Title 3.
2. Plaintiff, Vasef Jenabi, was at all times relevant herein, a resident of the State of Maryland residing at 3320 Chiswick Court, Apt 1B, Silver Spring, MD 20906.
3. At all relevant times herein, Vasef Jenabi was a patient at Kaiser Permanente Gaithersburg Medical Center located at 655 Watkins Mill Road, Gaithersburg, MD 20879.
4. At all relevant times herein, Defendant, Kaiser Foundation Hospitals was doing business as Gaithersburg Medical Center. Kaiser Foundation Hospitals d/b/a Gaithersburg Medical Center and was a corporation doing business in the State of Maryland providing medical services and treatment to patients such as the Plaintiff, Vasef Jenabi. Kaiser Foundation Hospitals' principal office is located at One Kaiser Plaza, Oakland, CA 94612.
5. At all relevant times herein, upon information and belief, Defendant, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. is a corporation which owns and/or operates Defendant, Kaiser Foundation Hospitals d/b/a Gaithersburg Medical Center. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.'s principal office is located at 2101 E. Jefferson Street, Rockville, MD 20852.

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6. At all relevant times herein, upon information and belief, Defendant, Kaiser Foundation Health Plan, Inc. is the parent company which owns and/or operates Defendant Kaiser, Foundation Hospitals d/b/a Gaithersburg Medical Center. Kaiser Foundation Health Plan, Inc.'s principal office is located at One Kaiser Plaza, Oakland, CA 94612.

7. At all relevant times herein, the aforementioned Defendants held themselves out as an outpatient ambulatory care facility, providing necessary and appropriate care to meet the needs of patients, such as the Plaintiff, Vasef Jenabi, and that it complied with the applicable standard of care as well as all state and federal regulations and statutes.

STATEMENT OF FACTS

8. On or about February 10, 2014, Vasef Jenabi was admitted to Gaithersburg Medical Center for dizziness and unsteady gait.

9. At the time of his admission, Mr. Jenabi was 73 years old, with a past medical history which included diabetes, insomnia, hypotension, hypertension, benign prostatic hypertrophy and hypokalemia.

10. Despite Mr. Jenabi's risk for falls upon admission to Gaithersburg Medical Center, no fall prevention measures such as TAG or pressure alarms, wedge cushions, keeping bed in the lowest position or any other standard fall prevention measures were implemented during his stay.

11. On or about February 11, 2014, at approximately 2:00 a.m., Mr. Jenabi fell asleep, while under the care of Gaithersburg Medical Center staff.

12. On or about February 11, 2014, at approximately 7:00 a.m., Mr. Jenabi woke up in intense pain on his left side with his body shaking uncontrollably.

13. Disoriented, a neurologist was called to evaluate Mr. Jenabi's condition, including the possibility of a stroke. At no point during the evaluation was Mr. Jenabi

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informed that he had suffered a fall during the night. Upon information and belief, Mr. Jenabi was put back into bed by Gaithersburg Medical Center staff following the fall.

14. After a subsequent MRI revealed that Mr. Jenabi had not suffered a stroke, he was assured by Gaithersburg Medical Center staff that although his condition was stable, he would be transferred to Holy Cross Hospital to further evaluate his elevated blood pressure. He was admitted to Holy Cross Hospital on or about February 11, 2014.

15. Upon admission to Holy Cross Hospital, Mr. Jenabi was informed by Holy Cross staff that he had suffered a fall while at Gaithersburg Medical Center, and was found on the floor confused and incontinent of urine.

16. There is no documentation in the Gaithersburg Medical Center records of Mr. Jenabi suffering a fall during the night, or being evaluated.

17. He was discharged from Holy Cross Hospital on or about February 12, 2014. A subsequent x-ray revealed a left proximal fibula fracture and humerus fracture.

18. As a direct result of the negligence, malpractice and failure of the aforementioned Defendants, Vasef Jenabi suffered horrible pain, anguish and suffering, incurred extensive medical bills for treatment and had a significant and precipitous decline in his health.

COUNT I
(NEGLIGENCE-KAISER FOUNDATION HOSPITALS d/b/a
GAITHERSBURG MEDICAL CENTER)

Plaintiff hereby adopts and incorporates by reference the previous paragraphs above, and further states:

19. Defendant, Kaiser Foundation Hospitals d/b/a Gaithersburg Medical Center controlled the management and health care decisions made concerning Gaithersburg Medical Center and exercised control over, and authorized the daily work of the employees at that facility. Defendant did so through the following practices:

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- a. By providing an administrator;
- b. By providing other management and supervising personnel;
- c. By providing direct care staff including nurses and aides charged with the responsibility of protecting patients who are at risk of falling from avoidable falls;
- d. By providing policies and procedures, which governed the staff's performance and the delivery of care;
- e. By influencing and/or controlling management and budgetary decisions which directly affected the care of the patients; and
- f. By providing training to staff.

20. Individuals providing care to Mr. Jenabi at Gaithersburg Medical Center were, at all relevant times herein, employees and/or agents of Defendant and subject to its supervision, and acting within the scope of their employment or agency. Defendant previously authorized and/or subsequently ratified the actions and/or inactions of the individuals providing care for Mr. Jenabi, described in this Complaint.

21. Defendant represented to Mr. Jenabi that it could adequately care for him in providing rehabilitative and medical care; and that it would provide a staff of sufficient numbers, properly supervised, trained and equipped to meet the total care and needs of Mr. Jenabi. On this basis, Mr. Jenabi placed his trust in Defendant.

22. Defendant owed Mr. Jenabi a non-delegable duty to:
- a. Provide proper care for Mr. Jenabi as a known fall risk;
 - b. Create an adequate care plan to prevent falls or other accidents;
 - c. Implement interventions in order to reduce the risk or prevent falls and other accidents;
 - d. Continually evaluate Mr. Jenabi and adjust care as needed;
 - e. Adequately supervise and/or monitor Mr. Jenabi;

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- f. Provide and/or utilize assistive devices to prevent falls or injury;
- g. Perform an immediate full body assessment upon realizing Mr.

Jenabi had sustained trauma and notify him directly of the incident and its consequences to his health prior to discharging him to another facility;

- h. Report the incident and assessment of injuries to the subsequent healthcare provider prior to the discharge of the patient, Mr. Jenabi;

- i. Timely diagnose and treat Mr. Jenabi's injuries after the fall;
- j. Provide adequate nursing care to Mr. Jenabi;
- k. Provide adequate personnel and staff to care for Mr. Jenabi; and
- l. Abide by all applicable laws, regulations and industry standards.

23. Defendant, Kaiser Foundation Hospitals d/b/a Gaithersburg Medical Center, through its actions and/or omissions or those of its agents, servants and employees breached the appropriate standard of care and its non-delegable duty by failing to:

- a. Properly care for Mr. Jenabi as a fall risk;
- b. Create an adequate care plan to prevent falls and other accidents;
- c. Implement interventions in order to reduce the risk or prevent falls and other accidents;
- d. Continually evaluate Mr. Jenabi and adjust care as needed;
- e. Adequately supervise and/or monitor Mr. Jenabi;
- f. Provide and/or utilize assistance devices to prevent falls or injury;
- g. Perform an immediate full body assessment upon realizing Mr. Jenabi had sustained trauma and notify him directly of the incident and its consequences to his health prior to discharging him to another facility;
- h. Report the incident and assessment of injuries to the subsequent healthcare provider prior to the discharge of the patient, Mr. Jenabi;

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- i. Timely diagnose and treat Mr. Jenabi's injuries after the fall;
- j. Provide adequate nursing care to Mr. Jenabi;
- k. Provide adequate personnel and staff to care for Mr. Jenabi; and
- l. Abide by all applicable laws, regulations and industry standards.

24. As a direct and proximate result of Defendant's breaches as set forth above, Mr. Jenabi sustained multiple injuries including, but not limited to a left proximal fibula fracture, humerus fracture, pain, mental suffering, medical expenses, out-of-pocket and other expenses, and a serious decline in health and quality of life.

WHEREFORE, Plaintiff, Vasef Jenabi, hereby prays for monetary damages against Defendant, Kaiser Foundation Hospitals d/b/a Gaithersburg Medical Center, in a fair and just amount that exceeds the minimum jurisdiction amount required for a hearing in this forum, plus interest and costs and such other and further relief as this forum may deem just and proper.

COUNT II
(NEGLIGENCE-KAISER FOUNDATION HEALTH PLAN OF THE
MID-ATLANTIC STATES, INC.

Plaintiff hereby adopts and incorporates by reference the previous paragraphs above, and further states:

25. Defendant, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. controlled the management and health care decisions made concerning Gaithersburg Medical Center and exercised control over, and authorized the daily work of the employees at that facility. Defendant did so through the following practices:

- a. By providing an administrator;
- b. By providing other management and supervising personnel;
- c. By providing direct care staff including nurses and aides charged with the responsibility of protecting patients who are at risk of falling from avoidable falls;

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d. By providing policies and procedures, which governed the staff's performance and the delivery of care;

e. By influencing and/or controlling management and budgetary decisions which directly affected the care of the patients; and

f. By providing training to staff.

26. Individuals providing care to Mr. Jenabi at Gaithersburg Medical Center were, at all relevant times herein, employees and/or agents of Defendant and subject to its supervision, and acting within the scope of their employment or agency. Defendant previously authorized and/or subsequently ratified the actions and/or inactions of the individuals providing care for Mr. Jenabi, described in this Complaint.

27. Defendant represented to Mr. Jenabi that it could adequately care for him in providing rehabilitative and medical care; and that it would provide a staff of sufficient numbers, properly supervised, trained and equipped to meet the total care and needs of Mr. Jenabi. On this basis, Mr. Jenabi placed his trust in Defendant.

28. Defendant owed Mr. Jenabi a non-delegable duty to:

- a. Provide proper care for Mr. Jenabi as a known fall risk;
- b. Create an adequate care plan to prevent falls or other accidents;
- c. Implement interventions in order to reduce the risk or prevent falls and other accidents;
- d. Continually evaluate Mr. Jenabi and adjust care as needed;
- e. Adequately supervise and/or monitor Mr. Jenabi;
- f. Provide and/or utilize assistive devices to prevent falls or injury;
- g. Perform an immediate full body assessment upon realizing Mr. Jenabi had sustained trauma and notify him directly of the incident and its consequences to his health prior to discharging him to another facility;

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- h. Report the incident and assessment of injuries to the subsequent healthcare provider prior to the discharge of the patient, Mr. Jenabi;
- i. Timely diagnose and treat Mr. Jenabi's injuries after the fall;
- j. Provide adequate nursing care to Mr. Jenabi;
- k. Provide adequate personnel and staff to care for Mr. Jenabi; and
- l. Abide by all applicable laws, regulations and industry standards.

29. Defendant, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., through its actions and/or omissions or those of its agents, servants and employees breached the appropriate standard of care and its non-delegable duty by failing to:

- a. Properly care for Mr. Jenabi as a fall risk;
- b. Create an adequate care plan to prevent falls and other accidents;
- c. Implement interventions in order to reduce the risk or prevent falls and other accidents;
- d. Continually evaluate Mr. Jenabi and adjust care as needed;
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30. As a direct and proximate result of Defendant's breaches as set forth above, Mr. Jenabi sustained multiple injuries including, but not limited to a left proximal fibula fracture, humerus fracture, pain, mental suffering, medical expenses, out-of-pocket and other expenses, and a serious decline in health and quality of life.

WHEREFORE, Plaintiff, Vasef Jenabi, hereby prays for monetary damages against Defendant, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., in a fair and just amount that exceeds the minimum jurisdiction amount required for a hearing in this forum, plus interest and costs and such other and further relief as this forum may deem just and proper.

COUNT III
(NEGLIGENCE-KAISER FOUNDATION HEALTH PLAN, INC.)

Plaintiff hereby adopts and incorporates by reference the previous paragraphs above, and further states:

31. Defendant, Kaiser Foundation Health Plan, Inc. controlled the management and health care decisions made concerning Gaithersburg Medical Center and exercised control over, and authorized the daily work of the employees at that facility. Defendant did so through the following practices:

- a. By providing an administrator;
- b. By providing other management and supervising personnel;
- c. By providing direct care staff including nurses and aides charged with the responsibility of protecting patients who are at risk of falling from avoidable falls;
- d. By providing policies and procedures, which governed the staff's performance and the delivery of care;
- e. By influencing and/or controlling management and budgetary decisions which directly affected the care of the patients; and

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f. By providing training to staff.

32. Individuals providing care to Mr. Jenabi at Gaithersburg Medical Center were, at all relevant times herein, employees and/or agents of Defendant and subject to its supervision, and acting within the scope of their employment or agency. Defendant previously authorized and/or subsequently ratified the actions and/or inactions of the individuals providing care for Mr. Jenabi, described in this Complaint.

33. Defendant represented to Mr. Jenabi that it could adequately care for him in providing rehabilitative and medical care; and that it would provide a staff of sufficient numbers, properly supervised, trained and equipped to meet the total care and needs of Mr. Jenabi. On this basis, Mr. Jenabi placed his trust in Defendant.

34. Defendant owed Mr. Jenabi a non-delegable duty to:

- a. Provide proper care for Mr. Jenabi as a known fall risk;
- b. Create an adequate care plan to prevent falls or other accidents;
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- i. Timely diagnose and treat Mr. Jenabi's injuries after the fall;
- j. Provide adequate nursing care to Mr. Jenabi;

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Respectfully submitted,

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JURY TRIAL REQUESTED

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