

① VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

• BARBARA WHITAKER, Administrator of the
Estate of Robert J. Goracke, Deceased,

Plaintiff,

vs.

Case No. **2018 12265**

• KIAWANA LEAF,
2101 East Jefferson Street
Rockville, Maryland 20852

• EDGARD A. SEGURA, M.D.,
43480 Yukon Drive, Suite 100
Ashburn, Virginia 20147

• NICHOLAS JAMES HOGAN, M.D.,
44045 Riverside Parkway
Leesburg, Virginia 20176

• VINCENT NGUYEN, M.D.,
8008 Westpark Drive
McLean, Virginia 22102

• CHRISTOPHER NIGEL DEGANNES, M.D.,
8008 Westpark Drive
McLean, Virginia 22102

• JANE ANN LEE, M.D.,
1701 North George Mason Drive
Arlington, Virginia 22205

• CHRISTOPHER DELLA-SANTINA, M.D.,
1701 North George Mason Drive
Arlington, Virginia 22205

• SHEELA RAGHURAM, M.D.,
1701 North George Mason Drive
Arlington, Virginia 22205

HARINI GUDAVALLI, M.D.,
1701 North George Mason Drive
Arlington, Virginia 22205

• MID-ATLANTIC PERMANENTE MEDICAL
GROUP, P.C.,

SERVE: Beverley L. Crump, RA
Bank of America Center, 16th Floor
1111 East Main Street
Richmond, Virginia 23219

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

SERVE: Corporation Service Company, RA
Bank of America Center, 16th Floor
1111 East Main Street
Richmond, Virginia 23219

• KAISER FOUNDATION HEALTH PLAN, INC.,

SERVE: Corporation Service Company, RA
Bank of America Center, 16th Floor
1111 East Main Street
Richmond, Virginia 23219

• COMMONWEALTH EMERGENCY
PHYSICIANS P.C.,

SERVE: Edward Puccio, MD, RA
43555 Barley Court
Ashburn, Virginia 20147

Defendants.

COMPLAINT

COMES NOW Plaintiff, Barbara Whitaker, Administrator of the Estate of Robert J. Goracke, Deceased, by counsel, and in support of her Complaint, states and avers as follows:

PARTIES AND JURISDICTION

1. Plaintiff Barbara Whitaker, Administrator of the Estate of Robert J. Goracke, Deceased, is, and was at all times relevant, a resident of the Commonwealth of Virginia. Prior to his death, Robert J. Goracke, the husband of Barbara Whitaker, also resided in Virginia.

2. Robert J. Goracke (hereinafter "Goracke") died of sepsis on July 4, 2015 in Charlottesville, Virginia.

3. On May 6, 2015, in Loudoun County, Virginia, Barbara Whitaker was qualified as Administrator of the Estate of Robert J. Goracke and as such, is a duly authorized personal representative able to bring a claim for wrongful death. See Exhibit A attached and incorporated by reference.

4. Defendant Mid-Atlantic Permanente Medical Group, P.C (hereinafter "MAPMG"), is, and was at all times relevant, a registered corporation engaged in the practice of medicine in the Commonwealth of Virginia.

5. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. (hereinafter "Kaiser Mid-Atlantic"), is, and was at all times relevant, a registered corporation engaged in the practice of medicine in the Commonwealth of Virginia.

6. Upon information and belief, Defendant Kaiser Foundation Health Plan, Inc. (hereinafter "KFHP"), is, and was at all times relevant, a registered corporation engaged in the practice of medicine in the Commonwealth of Virginia.

7. Upon information and belief, at all times relevant, Defendant Kiawana Leaf was acting in regard to Goracke as an employee and/or agent of Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG.

8. Defendant Edgard A. Segura, MD is, and was at all times relevant, a duly licensed medical doctor practicing in the field of family medicine in the Commonwealth of Virginia as an employee and/or agent of Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG.

9. Defendant Vincent Nguyen, MD, is, and was at all times relevant, a duly licensed medical doctor practicing in the field of family medicine in the Commonwealth of Virginia as an employee and/or agent of Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG.

10. Defendant Christopher Nigel DeGannes, MD is and was at all times relevant, a duly licensed medical doctor practicing in the field of internal and hospital medicine in the Commonwealth of Virginia as an employee and/or agent of Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG.

11. Defendant Jane Ann Lee, MD is, and was at all times relevant, a duly licensed medical doctor practicing in the field of internal medicine in the Commonwealth of Virginia as an employee and/or agent of Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG.

12. Defendant Christopher Della-Santina, MD is, and was at all times relevant, a duly licensed medical doctor practicing in the field of internal medicine in the Commonwealth of Virginia as an employee and/or agent of Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG.

13. Defendant Sheela Raghuram, MD is, and was at all times relevant, a duly licensed medical doctor practicing in the field of internal medicine in the Commonwealth of Virginia as an employee and/or agent of Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG.

14. Defendant Harina Gudavalli, MD is, and was at all times relevant, a duly licensed medical doctor practicing in the field of internal medicine in the Commonwealth of Virginia as an employee and/or agent of Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG.

15. Defendant Commonwealth Emergency Physicians, P.C. (hereinafter "CEP") is, and was at all times relevant, a registered corporation engaged in the practice of medicine in the Commonwealth of Virginia.

16. Defendant Nicholas James Hogan, MD is, and was at all times relevant, a duly licensed medical doctor practicing in the field of emergency medicine in the Commonwealth of Virginia as an employee and/or agent of Defendant CEP.

FACTS

17. At all times relevant to this Complaint, Goracke had sought care from and/or had been a patient of the named Defendants for post-operative complaints of joint pain and related swelling and inflammation

18. On March 16, 2015, Plaintiff underwent a colonoscopy at a Kaiser facility.

19. Later in the day on March 16, 2015, Goracke developed sharp and severe joint pain, primarily in his lower extremities.

20. Goracke placed a call to one of the Kaiser call-takers in the afternoon of March 16, 2015 to request an appointment with a Kaiser physician concerning this onset of pain.

21. His call was taken by Defendant Kiawana Leaf.

22. Leaf was a Kaiser Telephone Service Representative, not an advice nurse or healthcare provider.

23. Leaf failed to transfer Goracke's call to a member of Kaiser's medical staff for handling.

24. Leaf advised Goracke that the first appointment he could have was with his primary care physician, Defendant Edgard A. Segura, MD, in the late afternoon of March 18, 2015.

25. In the late afternoon of March 18, 2015, Goracke presented at the medical offices of Dr. Segura in a wheel chair. His pain had become so severe and debilitating that he could no longer ambulate.

26. Dr. Segura examined Goracke, ordered some routine lab work at Goracke's son's request, prescribed a narcotic pain killer for him (which was promptly filled and ingested), and discharged him home.

27. The routine lab work revealed that Goracke was facing renal failure and was suffering from a serious infection.

28. The reports of that lab work were entered into the patient's medical records at Kaiser, but were either not read, or if read, were not reacted to in a medically appropriate manner.

29. Goracke received no pain relief from the narcotic drug prescribed by Dr. Segura, and was driven to the Emergency Department of Inova Loudoun Hospital where he came under the care of Defendant Nicholas James Hogan, M.D.

30. Dr. Hogan examined Goracke and ordered laboratory studies which were completed and reported to Dr. Hogan.

31. The laboratory studies reported to Dr. Hogan again indicated that Goracke was suffering injury and damage to his kidneys and had an infectious process underway.

32. Dr. Hogan failed to react in a medically appropriate way to the information contained in the laboratory reports.

33. Thereafter, having determined that Goracke was a Kaiser patient, Dr. Hogan telephoned a Kaiser representative and determined that Kaiser wanted Goracke transferred to its Clinical Diagnostic Unit ("CDU") in McLean, Virginia.

34. In the early morning hours of March 19, 2015, Dr. Hogan transferred Goracke to the Kaiser CDU.

35. In the alternative, Dr. Hogan either failed to send Goracke's laboratory reports to Kaiser at the time of transport, or sent them at the time of transport.

36. Upon Goracke's arrival at the Kaiser CDU, he came under the initial care of Defendant Vincent Nguyen, MD who, in the alternative, failed to read and appreciate the laboratory reports which accompanied Goracke, or, finding none, failed to consult with Dr. Hogan about the results of all laboratory studies performed at the Inova Loudoun Hospital Emergency Department.

37. Thereafter, Goracke's care was transferred from Dr. Nguyen to Defendant Christopher Nigel DeGannes, MD, and, thereafter, from Dr. DeGannes to Defendant Jane Ann Lee, MD, and, thereafter, to Defendant Christopher Della-Santina, MD.

38. Dr. Nguyen, Dr. DeGannes, Dr. Lee and Dr. Della-Santina all failed to reviewed the laboratory reports which accompanied Goracke from the Inova Loudoun Hospital Emergency Department to the Kaiser CDU, if they had accompanied Goracke's transport to the Kaiser CDU, and/or the laboratory reports of the laboratory studies ordered by Dr. Segura and made a part of the patient's Kaiser file.

39. Despite Goracke's consistently abnormal kidney test laboratory values and their progressive decline, no urine specimen was collected until 15:18 on March 19, 2015, which, when analyzed, revealed the presence of protein and red blood cells.

40. It was not until 18:00 on March 19 that a second urine specimen was collected, which revealed white blood cells too numerous to count per high power field, 2+ bacteria per high power field, and 3-5 white blood cell casts.

41. None of the Kaiser CDU Defendants reacted to the abnormal urinalysis or considered it in light of the patient's deteriorating kidney function.

42. Thereafter, Goracke was transferred from Kaiser to Reston Hospital Center.

43. Upon arrival at Reston Hospital Center, Goracke came under the care of two additional Kaiser physicians, Sheela Raghuram, MD, and Harini Gudavalli, MD.

44. Notwithstanding all of the medical information available to Dr. Raghuram and Dr. Gudavalli, at no time during the balance of March 19, 2015 did either doctor diagnose that Goracke was suffering from an infectious process.

45. In the morning of March 20, 2015, some three and one-half days after Goracke first sought medical attention for complaints which arose out of an infectious process, one which could have been and should have been earlier diagnosed if the defendant physicians had performed their professional services within the accepted standard of medical care, Goracke was diagnosed not only with an infectious process, but diagnosed as septic from it, and was finally started on antibiotics.

COUNT I
Survival Action/Negligence/Medical Malpractice

46. Plaintiff incorporates paragraphs 1 through 45 herein as though set forth in full text.

47. The failure of Defendant Leaf to involve a medical healthcare provider in the decision of how and when to give Goracke an appointment with a medical provider constituted an act of negligence which was a proximate cause of the delay in Goracke's ultimate diagnosis of suffering from an infectious process and was a proximate cause of Goracke becoming septic by the time of his diagnosis.

48. As healthcare providers rendering services to their patient, Goracke, the defendant physicians had a duty to use the same degree of skill and care as that of reasonably prudent

physicians practicing in their respective fields and providing such care in the Commonwealth of Virginia.

49. The failures of the individually named defendant physicians to read, understand and appreciate Goracke's laboratory records and reports, and assimilate that information with his clinical course and subsequent laboratory values, and, consequently, their failure to understand and appreciate that the patient was suffering from an infectious process constituted a deviation from the accepted standard of professional care due Goracke, and were failures which were the proximate cause of his becoming septic.

50. At all times relevant to this action, Defendants Leaf, Segura, Nguyen, DeGannes, Lee, Della-Santina, Raghuram and Gudavalli were employees and/or agents of KFHP, Kaiser Mid-Atlantic and/or MAPMG, and were acting within the scope and course of their employment therewith.

51. KFHP, Kaiser Mid-Atlantic and MAPMG are liable *respondeat superior* for the negligence of Defendant Leaf and the deviations from the accepted standards of medical care by Defendants Segura, Nguyen, DeGannes, Lee, Della-Santina, Raghuram and Gudavalli.

52. At all times relevant to this action, Defendant Hogan was an employee and/or agent of CEP, and was acting within the scope and course of his employment therewith.

53. CEP is liable *respondeat superior* for Defendant Hogan's deviations from the accepted standard of medical care.

54. As a direct and proximate cause of the negligence of Defendant Leaf and the deviations from the standard of care of Defendants Segura, Hogan, Nguyen, DeGannes, Lee, Della-Santina, Raghuram and Gudavalli, Goracke suffered physical bodily injury, associated pain and suffering, emotional distress, deformity, inconvenience and medical expenses.

WHEREFORE, Plaintiff Barbara Whitaker, Administrator of the Estate of Robert J. Goracke, Deceased, demands judgment against Defendants Mid-Atlantic Permanente Medical Group, PC, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Kaiser Foundation Health Plan, Inc., Commonwealth Emergency Physicians PC, Kiawana Leaf, Edgard A. Segura, MD, Nicholas James Hogan, MD, Vincent Nguyen, MD, Christopher Nigel DeGannes, MD, Jane Ann Lee, MD, Christopher Della-Santina, MD, Sheela Raghuram, MD, and Harina Gudavalli, MD, jointly and severally, on her survival action in the form of compensatory damages in the amount of TWO MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS (\$2,150,000.00), together with pre-judgment interest from the date of the incident forward, costs incurred by Plaintiff in this matter as provided by law, post-judgment interest, and any other relief that this Court deems just and proper under the circumstances of this case.

COUNT II
Wrongful Death/Negligence/Medical Malpractice

55. Plaintiff incorporates paragraphs 1 through 54 herein as though set forth in full text.

56. The failure of Defendant Leaf to involve a medical healthcare provider in the decision of how and when to give Goracke an appointment with a medical provider constituted an act of negligence which was a proximate cause of the delay in Goracke's ultimate diagnosis of suffering from an infectious process and was a proximate cause of Goracke becoming septic by the time of his diagnosis.

57. As healthcare providers rendering services to their patient, Goracke, the defendant physicians had a duty to use the same degree of skill and care as that of reasonably prudent physicians practicing in their respective fields and providing such care in the Commonwealth of Virginia.

58. The failures of the individually named defendant physicians to read, understand and appreciate Goracke's laboratory records and reports, and assimilate that information with his clinical course and subsequent laboratory values, and, consequently, their failure to understand and appreciate that the patient was suffering from an infectious process constituted a deviation from the accepted standard of professional care due Goracke, and were failures which were the proximate cause of his becoming septic.

59. At all times relevant to this action, Defendants Leaf, Segura, Nguyen, DeGannes, Lee, Della-Santina, Raghuram and Gudavalli were employees and/or agents of KFHP, Kaiser Mid-Atlantic and/or MAPMG, and were acting within the scope and course of their employment therewith.

60. KFHP, Kaiser Mid-Atlantic and MAPMG are liable *respondeat superior* for the negligence of Defendant Leaf and the deviations from the accepted standards of medical care by Defendants Segura, Nguyen, DeGannes, Lee, Della-Santina, Raghuram and Gudavalli.

61. At all times relevant to this action, Defendant Hogan was an employee and/or agent of CEP, and was acting within the scope and course of his employment therewith.

62. CEP is liable *respondeat superior* for Defendant Hogan's deviations from the accepted standard of medical care.

63. In the alternative, the negligence of Defendant Leaf and the deviations from the standards of care of Defendants Seguro, Hogan, Nguyen, Degannes, Lee, Della-Santina, Raghuram and Gudavalli were a direct and proximate cause of the death of Robert J. Goracke.

64. Upon his death, Robert J. Goracke left surviving the following statutory beneficiaries under Va. Code § 8.01-53:

A. A widow, Barbara Whitaker

- B. A son, Justice Goracke
- C. A son, B. David Goracke
- D. A stepson, Thomas Jackson Whitaker
- E. A stepson, Stuart Michael Whitaker

65. As a direct and proximate result of the death of Robert J. Goracke, each of the above-named statutory beneficiaries has sustained injury, loss and damage as follows:

- A. sorrow, mental anguish and loss of solace, including, but not limited to, the loss of Goracke's society, companionship, comfort, guidance, kindly offices and advice;
- B. loss of the services, protection, care and assistance provided by Goracke;
- C. expenses incurred for Goracke's care, treatment and hospitalization incident to the injury which resulted in his death;
- D. reasonable funeral expenses; and
- E. such other damages as may seem fair and just to a jury.

WHEREFORE, in the alternative, Plaintiff Barbara Whitaker, Administrator of the Estate of Robert J. Goracke, Deceased, demands judgment against Defendants Mid-Atlantic Permanente Medical Group, PC, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Kaiser Foundation Health Plan, Inc., Commonwealth Emergency Physicians PC, Kiawana Leaf, Edgard A. Segura, MD, Nicholas James Hogan, MD, Vincent Nguyen, MD, Christopher Nigel DeGannes, MD, Jane Ann Lee, MD, Christopher Della-Santina, MD, Sheela Raghuram, MD, and Harina Gudavalli, MD, jointly and severally, on her wrongful death action in the form of compensatory damages in the amount of TWO MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS (\$2,150,000.00), together with pre-judgment interest from the date of

the incident forward, costs incurred by Plaintiff in this matter as provided by law, post-judgment interest, and any other relief that this Court deems just and proper under the circumstances of this case.

COUNT III
Willful and Wanton Misconduct

66. Plaintiff incorporates paragraphs 1 through 65 herein as though set forth in full text.

67. From the time of the correct diagnosis of Goracke's condition, sepsis, on the morning of March 20, 2015, until the transfer of his care to the University of Virginia and its physicians, the level and manner of his care provided by Defendants KFHP, Kaiser Mid-Atlantic and/or MAPMG (hereinafter collectively "Kaiser Defendants") appeared to be influenced by several medically inappropriate considerations—the significant cost of his care if there were to be attempts to salvage him from his sepsis, the probable long term care costs if he were so salvaged, and the risk that the unforgivable delay in his diagnosis and the initiation of treatment might be discovered and result in litigation.

68. Dialysis for his renal failure was delayed.

69. Goracke's wife and son were encouraged to "let him go" and institute only palliative care.

70. Kaiser Defendants proposed to unilaterally transfer him to a nursing facility in the District of Columbia where his death would not generate large wrongful death damages when compared to Virginia.

71. Kaiser Defendants refused to pay for any nursing or rehabilitation expenses unless he were transferred to a facility of its choosing.

72. These acts combined exhibit a conscious disregard of Goracke's rights, or reckless indifference to the consequences to Goracke, when Kaiser Defendants were aware of their conduct and aware from knowledge of existing circumstances and conditions that their conduct would probably result in injury to another.

73. These acts by Kaiser Defendants constituted a direct and proximate cause of Goracke's injuries and damages as described in Paragraph 54 *supra*; or, in the alternative, a direct and proximate cause of Goracke's death and the damages to his statutory beneficiaries as described in Paragraph 65 *supra*.

WHEREFORE, Plaintiff Barbara Whitaker, Administrator of the Estate of Robert J. Goracke, Deceased, demands judgment against Defendants Mid-Atlantic Permanente Medical Group, PC, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Kaiser Foundation Health Plan, Inc., jointly and severally, on her wrongful death action, or, in the alternative, her survival action, in the form of compensatory and punitive damages in the amount of TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00), together with pre-judgment interest from the date of the incident forward, costs incurred by Plaintiff in this matter as provided by law, post-judgment interest, and any other relief that this Court deems just and proper under the circumstances of this case.

A JURY TRIAL IS DEMANDED.

Respectfully Submitted,

BARBARA WHITAKER, Administrator of
the Estate of Robert J. Goracke, Deceased,
By Counsel,

Robert T. Hall by
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