

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

DELMY E. GONZALEZ

3109 Harview Avenue
Baltimore City, Maryland 21234

and

FRANCISCO J. GONZALEZ-TORRES

3109 Harview Avenue
Baltimore City, Maryland 21234

Plaintiffs,

v.

SONAL KACHROO, M.D.

900 Caton Avenue
Baltimore City, Maryland 21044

and

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

2101 E. Jefferson Street
Rockville, Maryland 20852

Serve On: The Prentice-Hall Corporation System
7 St. Paul Street, Suite 820
Baltimore, Maryland 21202

and

MID-ATLANTIC PERMANENTE
MEDICAL GROUP, P.C.

2101 E. Jefferson Street
Rockville, Maryland 20852

Serve On: The Prentice-Hall Corporation System
7 St. Paul Street, Suite 820
Baltimore, Maryland 21202

Defendants.

* * * * *

COMPLAINT

Plaintiffs, Delmy E. Gonzalez and Francisco J. Gonzalez-Torres, hereby sue the above-named Sonal Kachroo, M.D., Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.,

CASE NO: 24-0-18-004782
JURY TRIAL REQUESTED

Case: 24-0-18-004782
CV File New \$80.00
RIF-New Case \$30.00
Appear Fee \$20.00
MLSC \$25.00
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RDARO & PEEK, LLC
ATTORNEYS AT LAW
NORTH CHARLES STREET
SUITE 2100
BALTIMORE, MARYLAND 21201

(410) 752-6166
TELECOPIER
(410) 752-6013

and Mid-Atlantic Permanente Medical Group, P.C. (hereinafter jointly referred to as "Defendants"), stating as follows:

COUNT I
(Negligence—Medical Malpractice)

1. Jurisdiction of this Court is invoked pursuant to MD. CODE ANN., CTS. & JUD. PROC. §§ 6-102 and 6-103.

2. This matter was originally filed in the Health Care Alternative Dispute Resolution Office of Maryland. After filing two Certificates of Merit (Exhibits 1 and 2) and two Reports of Expert Witnesses (Exhibits 3 and 4) in accordance with the Maryland Healthcare Malpractice Claims Act, MD. CODE ANN., CTS. & JUD. PROC. § 3-2A-01 et seq., the Plaintiffs waived arbitration (Exhibit 5). Therefore, the Plaintiffs have complied with the mandatory conditions precedent for filing this Claim in this Court.

3. Plaintiffs are adult residents of Baltimore City, Maryland.

4. The health care at issue was provided in Baltimore City, Maryland. Defendants carry on a normal course of business in Baltimore City, Maryland. As such, venue is proper in Baltimore City, Maryland.

5. Defendant Sonal Kachroo, M.D., is a physician licensed to practice medicine in the State of Maryland and provides health care to individuals in need thereof. As such, Sonal Kachroo, M.D., in conjunction with the other Defendants, owed to the Plaintiffs a duty to conform her conduct to prevailing standards of care, by herself, and through her agents, servants and/or employees.

6. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. is a business entity organized in accordance with the laws of the State of Maryland, providing health care services to individuals in need thereof. As such, Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., in conjunction with the other Defendants, owed to the Plaintiffs

a duty to conform its conduct to the prevailing standards of care, by itself, and through its agents, servants and/or employees.

7. Defendant Mid-Atlantic Permanente Medical Group, P.C. is a business entity organized in accordance with the laws of the State of Maryland, providing health care services to individuals in need thereof. As such, Defendant Mid-Atlantic Permanente Medical Group, P.C., in conjunction with the other Defendants, owed to the Plaintiffs a duty to conform its conduct to the prevailing standards of care, by itself, and through its agents, servants and/or employees.

8. At all times of which Plaintiffs complain, the Defendants represented to the Plaintiffs and the general public that they possessed the degree of knowledge, ability and skill possessed by reasonably competent medical practitioners, practicing under the same or similar circumstances as those involving Plaintiff Delmy E. Gonzalez.

9. The Plaintiffs allege that the Defendants, by themselves and through their agents, servants and employees, owed a duty to exercise that degree of skill, judgment and care expected of reasonably competent medical practitioners, practicing under the same or similar circumstances, which duty included the performance of appropriate and timely diagnostic tests and procedures to determine the Plaintiff's condition, appropriate and timely diagnosis of such condition, the employment of appropriate and timely treatment, procedures and/or surgery to correct such condition without injury upon the Plaintiff, continuous evaluation of the Plaintiff's condition and the effects of such treatment, and adjustment of the course of treatment in response to such ongoing surveillance and evaluation, all of which the Defendants failed to do.

10. The Defendants, by themselves and through their agents, servants and employees, were negligent in that they failed to employ appropriate and timely diagnostic tests and procedures to evaluate and diagnose Plaintiff's condition, failed to employ appropriate and

timely treatment to correct such condition, failed to appropriately monitor and evaluate Plaintiff's condition, failed to adjust Plaintiff's treatment in response to appropriate evaluation of the effects of treatment, and were otherwise negligent.

11. The Plaintiffs allege that at all times pertinent herein, Defendant Sonal Kachroo, M.D. provided the care at issue. Upon best information and belief, the Plaintiffs allege that at all times relevant herein Defendants Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, P.C. maintained control over Sonal Kachroo, M.D., including but not limited to, her hiring, work schedule, billing, credentialing, continuing education and performance of professional duties. Additionally, at all times of which Plaintiffs complain, Defendants Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, P.C. represented to the public and to the Plaintiffs that Defendant Sonal Kachroo, M.D. was an agent, servant and/or employee of the corporate Defendants. At all times pertinent herein, Defendant Sonal Kachroo, M.D. acted within the scope of said employment and/or agency relationships as described above. As such, Defendants Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, P.C. are liable based on respondeat superior for the negligent acts of Defendant Sonal Kachroo, M.D.

12. On August 26, 2017, Plaintiff Delmy E. Gonzalez presented for evaluation of her pregnancy at St. Agnes Hospital, which is located in Baltimore City, Maryland. Mrs. Gonzalez was evaluated and treated by Defendant Sonal Kachroo, M.D.

13. Defendant Kachroo noted that Mrs. Gonzalez had a positive home pregnancy test and that her last menstrual period was July 21, 2017. Defendant Kachroo also noted that Mrs. Gonzalez's blood work showed a serum hCG level of 2100 which is within the range of five weeks gestation. Additionally, Defendant Kachroo noted that Mrs. Gonzalez had recently

undergone an ultrasound which showed a right ovarian cyst. An intrauterine gestational sac was not seen.

14. Defendant Kachroo negligently misdiagnosed Mrs. Gonzalez with an ectopic pregnancy. In violation of the standard of care, Defendant Kachroo prematurely diagnosed an ectopic pregnancy without properly following/monitoring the development/progression of Mrs. Gonzalez's pregnancy. Among other things, Defendant Kachroo negligently failed to order/interpret serial ultrasound studies and repeat blood work prior to diagnosing an ectopic pregnancy.

15. After negligently misdiagnosing Mrs. Gonzalez with an ectopic pregnancy, Defendant Kachroo negligently recommended and ordered the administration of methotrexate for termination of Mrs. Gonzalez's pregnancy. Mrs. Gonzalez received two injections of methotrexate¹ and was discharged to home.

16. Over the succeeding days, repeat blood work showed that Mrs. Gonzalez's serum hCG levels continued to be elevated as follows: 4697 on August 29; 4493 on September 1; 4991 on September 2; 4926 on September 5; and 5077 on September 8.

17. On September 9, 2017, Mrs. Gonzalez underwent an ultrasound due to persistently elevated serum hCG levels. The ultrasound showed an intrauterine gestational sac measuring 1.9 x 0.5 x 1.5 cm, consistent with gestational age of six weeks. It was determined that the intrauterine pregnancy was no longer viable.

18. Thereafter, Mrs. Gonzalez underwent a dilation and curettage with suction. The intraoperative findings were noted to be products of conception/villi. The pathology report

¹ Methotrexate is a powerful, toxic drug which has a "black box warning" required by the Food and Drug Administration to warn physicians of the drug's dangerous side effects, including severe and permanent injury to the liver, lungs, kidneys, pancreas and bone marrow.

noted that the uterine contents included chorionic villi and decidua and gestational endometrium (i.e., products of conception).

19. The standard of care required Defendant Kachroo to not diagnose Mrs. Gonzalez's pregnancy as an ectopic pregnancy and to not counsel, recommend and order the administration of methotrexate prior to following/monitoring the development/progression of the pregnancy. Had Defendant Kachroo complied with the standard of care, appropriate work up and management of the development/progression of Mrs. Gonzalez's pregnancy would have led to the diagnosis of a viable intrauterine pregnancy, and Mrs. Gonzalez's unborn child would not have died. Mrs. Gonzalez also would not have received methotrexate and would not have undergone a dilation and curettage had Defendant Kachroo complied with the standard of care.

20. Defendant Kachroo breached the standard of care by, inter alia, negligently and carelessly:

- (a) failing to timely and appropriately assess, evaluate, monitor, diagnose and treat Mrs. Gonzalez's pregnancy;
- (b) failing to timely and appropriately obtain, appreciate and assess Mrs. Gonzalez's complete medical history;
- (c) failing to timely order, perform and/or appropriately interpret the proper tests, procedures, work up and follow up care to diagnose and treat Mrs. Gonzalez's pregnancy;
- (d) misdiagnosing Mrs. Gonzalez with an ectopic pregnancy;
- (e) prematurely diagnosing Mrs. Gonzalez's pregnancy as an ectopic pregnancy without properly following/monitoring the development/progression of the pregnancy;
- (f) failing to order/interpret serial ultrasound studies and repeat blood work prior to diagnosing an ectopic pregnancy;
- (g) counseling, recommending and ordering the administration of methotrexate for termination of Mrs. Gonzalez's pregnancy;
- (h) failing to order, perform and appropriately interpret the proper tests, procedures, work up and follow up care to properly diagnose and treat Mrs. Gonzalez's intrauterine pregnancy;

- (i) failing to appropriately recognize and appreciate the significance of Mrs. Gonzalez's ultrasound findings;
- (j) failing to allow Mrs. Gonzalez's pregnancy to develop/progress;
- (k) failing to timely obtain appropriate consultations;
- (l) failing to obtain informed consent;
- (m) failing to adequately inform Mrs. Gonzalez that more experienced and/or more competent physicians were available to assess, evaluate, monitor, diagnose and/or treat her pregnancy;
- (n) failing to adequately inform Mrs. Gonzalez of past injuries and/or bad outcomes regarding prior patients who had her condition; and
- (o) failing to otherwise comply with accepted standards of care.

21. Absent the above-described negligence, Mrs. Gonzalez would have been successfully treated without injury. Instead, as a result of the Defendants' negligence, Mrs. Gonzalez suffered severe and permanent injury, including the loss of a viable intrauterine pregnancy.

22. As a direct and proximate result of the Defendants' negligence, the Plaintiff has in the past and will in the future sustain severe and irreversible injury, including, but not limited to, mental anguish, emotional pain and suffering and other non-economic damages for which claim is made. In addition, Plaintiff has in the past and will in the future suffer economic harm as a result of the Defendants' negligence including, but not limited to, medical expenses, lost wages, future lost earnings, diminished earning capacity, lost services and other economic damages recoverable by law.

23. The Plaintiffs allege that the negligence of the Defendants is a proximate cause of Mrs. Gonzalez's serious and irreversible injuries, permanent damages, disability, and economic and non-economic damages.

24. The Plaintiffs were not contributorily negligent, nor did they voluntarily assume any known risk.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, jointly and severally, in an amount in excess of \$30,000.00.

COUNT II
(Failure to Obtain Informed Consent)

25. The Plaintiffs hereby incorporate the allegations contained in Paragraphs 1 – 24 as stated above.

26. The Defendants, by themselves and through their agents, servants and employees, owed to Plaintiff Delmy E. Gonzalez a duty to adequately and properly inform, advise and explain all appropriate diagnostic testing and treatment alternatives and the risks thereof. The Defendants failed to obtain Mrs. Gonzalez's informed consent by failing to adequately and properly inform, advise, explain and offer to her all appropriate diagnostic testing and treatment alternatives and the risks associated with each.

27. The Defendants, by themselves and through their agents, servants and employees, owed to Mrs. Gonzalez a duty to obtain informed consent. The Defendants owed to Mrs. Gonzalez a duty to adequately and properly inform, advise and explain the recommended treatment plan and any alternative diagnostic/treatment plans and to warn Mrs. Gonzalez of any material risks or dangers inherent in each diagnostic/treatment plan, so as to enable Mrs. Gonzalez to make an intelligent and informed choice about whether or not to undergo the proposed treatment plan.

28. Defendants failed to adequately and properly inform, advise and explain to Mrs. Gonzalez the nature of the condition to be treated; the nature of the treatment plan being proposed; the probability of success of the proposed treatment plan; the alternatives to the proposed treatment plan; and every material risk of negative consequences of the treatment plan

being proposed. Defendants failed to adequately and properly offer, inform, advise and explain the material benefits of allowing Mrs. Gonzalez's pregnancy to develop/progress. Defendants failed to adequately and properly offer, inform, advise, and explain the material benefits of monitoring the development/progression of Mrs. Gonzalez's pregnancy with serial ultrasound studies and repeat blood work. Defendants failed to adequately and properly inform, advise and explain the material risks and potential negative consequences of administering methotrexate to Mrs. Gonzalez prior to monitoring the development/progression of her pregnancy.

29. As a result of the Defendants' failure to adequately and properly inform, advise, and explain the recommended treatment plan, Mrs. Gonzalez was denied the right to make an informed decision about whether or not to agree to the proposed treatment plan. Consequently, Defendants failed to obtain Mrs. Gonzalez's informed consent. Had Defendants adequately and properly offered, informed, advised and explained alternative diagnostic/treatment plans, including, inter alia, monitoring the development/progression of Mrs. Gonzalez's pregnancy with serial ultrasound studies and repeat blood work, a reasonable person in Mrs. Gonzalez's position would not have consented to undergo the Defendants' proposed treatment plan.

30. As a direct and proximate result of the Defendants' failure to obtain Mrs. Gonzalez's informed consent, the Plaintiff has in the past and will in the future sustain severe and irreversible injury, including, but not limited to, mental anguish, emotional pain and suffering and other non-economic damages for which claim is made. In addition, Plaintiff has in the past and will in the future suffer economic harm including, but not limited to, medical expenses, lost wages, future lost earnings, diminished earning capacity, lost services and other economic damages recoverable by law.

31. The Plaintiffs allege that the Defendants' failure to obtain informed consent was a proximate cause of the Plaintiff's serious and irreversible injuries, permanent damages, disability, and economic and non-economic damages.

32. The Plaintiffs were not contributorily negligent, nor did they voluntarily assume any known risk.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, jointly and severally, in an amount in excess of \$30,000.00.

COUNT III
Loss of Consortium

33. The Plaintiffs hereby incorporate the allegations contained in Paragraphs 1 – 32 as stated above.

34. At all times relevant to this claim, Plaintiffs Delmy E. Gonzalez and Francisco J. Gonzalez-Torres were and still are husband and wife.

35. As a direct and proximate result of the Defendants' negligence, the Plaintiffs have suffered severe and irreparable harm to their marital unit, including but not limited to, severe emotional distress and loss of service, assistance, affection and consortium. Accordingly, the Plaintiffs seek all damages recoverable under Maryland law for loss of consortium.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, jointly and severally, in an amount in excess of \$30,000.00.

Respectfully submitted,



Thomas C. Cardaro

Jeffrey L. Peek

C. Drew Fritch

Samuel V.D. Lewis

Cardaro & Peek, L.L.C.

201 North Charles Street

Suite 2100


Baltimore, Maryland 21201

(410) 752-6166

Attorneys for Plaintiffs

JURY TRIAL REQUEST

Plaintiffs hereby request a jury trial.



Thomas C. Cardaro