

**UNITED STATES DISTRICT FOR THE DISTRICT OF MARYLAND  
Greenbelt Division**

MAAZA O'BRIEN, A Disabled Person,  
by and through her Guardian of the Person  
and Guardian of the Property, Daniel O'Brien  
3 Mooncoin Circle  
Waldorf, MD 20602 (Charles County)

and

DANIEL O'BRIEN, Individually and as Guardian of the  
Person and of the Property of Maaza O'Brien  
3 Mooncoin Circle  
Waldorf, MD 20602 (Charles County)

Plaintiffs

v.

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

REGISTERED AGENT:

The Prentice Hall Corporation  
System Maryland  
7 St. Paul Street, Suite 1660  
Baltimore, MD 21202

and

MID-ATLANTIC PERMANENTE  
MEDICAL GROUP, PC  
2101 E. Jefferson Street  
Rockville, MD 20852

REGISTERED AGENT:

The Prentice Hall Corporation  
System Maryland  
7 St. Paul Street, Suite 1660  
Baltimore, MD 21202

and

Case No. \_\_\_\_\_

CIVISTA HEALTH, INC., d/b/a/ THE UNIVERSITY OF  
MARYLAND CHARLES REGIONAL HEALTH,  
INC.

PO Box 1070  
5 Garrett Avenue  
La Plata, MD 20646

REGISTERED AGENT:

Meaghan M. Arthur  
c/o Civista Health, Inc.  
24th Floor  
250 West Pratt Street  
Baltimore, MD 2121

and

CIVISTA CARE PARTNERS, INC., d/b/a THE  
UNIVERSITY OF MARYLAND CHARLES  
REGIONAL CARE PARTNERS, INC.

PO Box 1070  
5 Garrett Avenue  
La Plata, MD 20646

REGISTERED AGENT:

Meaghan M. Arthur  
c/o Civista Health, Inc.  
24th Floor  
250 West Pratt Street  
Baltimore, MD 2121

and

EMERGENCY MEDICINE ASSOCIATES, P.A.

20010 Century Boulevard  
Suite 200  
Germantown, MD 20874

REGISTERED AGENT:

Jacqueline M. Pollock  
20010 Century Boulevard, Suite 200  
Germantown, MD 20874

and

LIFESTAR RESPONSE OF MARYLAND, INC.  
3710 Commerce Drive, Suite 1006  
Baltimore, MD 21227

REGISTERED AGENT:  
The Corporation Trust, Inc.  
351 West Camden Street  
Baltimore, MD 21201

Defendants

## **COMPLAINT**

### **INTRODUCTION**

1. This case involves the infliction of a preventable catastrophic brain injury on Maaza O'Brien, a 55-year-old resident of Waldorf, Maryland. This brain injury was caused by the failure of Mrs. O'Brien's health care providers and defendant LifeStar Response of Maryland, Inc. to comply with the provisions of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), their failure to comply with basic standards of care, and their failure to obtain the patient's informed consent. As a result of defendants' statutory violations and negligent acts and omissions, plaintiff Maaza O'Brien suffered a respiratory and cardiac arrest during a transfer from the University of Maryland Charles Regional Medical Center ("UMCRMC") to Holy Cross Hospital. This respiratory and cardiac arrest resulted in a severe hypoxic insult to Maaza O'Brien's brain, leaving her severely brain-damaged, unemployable, entirely dependent on the care of others, and in need of a multi-discipline complex care management plan for the remainder of her life.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and 42 U.S.C. §1395dd. This Court has supplemental jurisdiction over common law

counts against all defendants, pursuant to 28 U.S.C. §1367 as such claims are related to and arise out of the same facts as the claims made under 42 U.S.C. §1395dd.

3. Venue in this district is appropriate pursuant to 28 U.S.C. §1391.

4. Plaintiffs filed this claim in the Maryland Health Claims Alternative Dispute Resolution Office, filed certificates and reports from qualified experts, and filed an Election to Waive Arbitration to permit the case to be transferred to this Court. An Order of Transfer was signed by Harry L. Chase, Director of the Health Care Alternative Dispute Resolution Office on January 9, 2014.

5. Plaintiffs have complied with all prerequisites for requesting transfer of this case from Health Care Alternative Dispute Resolution Office to this Court.

#### **PARTIES**

6. Maaza O'Brien is a resident of Charles County, Maryland. Until the time of her negligently inflicted injury and total disability, she was a multi-decade employee of the Washington Hilton. She is married to Daniel O'Brien. She and her husband have two children, Muneit Marilyn O'Brien, a student at the University of Maryland School of Nursing, and Daniel Lee O'Brien, an electrical engineering student at Morgan State University.

7. Daniel O'Brien is a resident of Charles County, Maryland and the husband of Maaza O'Brien. He and his wife have been married for 27 years. Mr. O'Brien is a graduate of the Culinary Institute of America, and was an employee of Food Lion at the time of his wife's injury. He is currently occupied full-time caring for his wife.

8. Defendant The University of Maryland Charles Regional Health, Inc. and Defendant The University of Maryland Charles Regional Care Partners, Inc., are entities

(the "UMCRMC Entities") organized and existing under the laws of the State of Maryland. They own and operate a hospital formerly known as Civista Medical Center, now currently known as the University of Maryland Charles Regional Medical Center ("UMCRMC"). At all relevant times, the UMCRMC Entities were the actual and apparent employers of the nursing staff who provided care at UMCRMC for Maaza O'Brien (including but not limited to Donna Beall, R.N. and Tillena McDonell, R.N.). All such members of the nursing staff were acting within the scope of their employment, thereby rendering the UMCRMC Entities liable for their negligent acts and omissions. The UMCRMC Entities were also the actual and apparent employers and principals of Puneet Chopra, M.D., the physician who provided care at UMCRMC to Maaza O'Brien. Dr. Chopra was acting within the scope of her apparent and actual employment by the UMCRMC Entities such that they are liable for her negligence or other malfeasance. UMCRMC, which operates an emergency department that was accessed by Maaza O'Brien in January 2013, was and is a participating hospital under Medicare and is therefore covered by the provisions of EMTALA.

9. Defendants Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, PC (the "Kaiser Entities") are entities organized and existing under the laws of the State of Maryland. The Kaiser Entities were the actual and apparent employers of Samuel P. Eng, M.D. in January 2013, and the care that Dr. Eng provided to Maaza O'Brien in January 2013 was provided within his scope of employment by the Kaiser Entities such that these entities are liable for injuries caused by his negligent acts or omissions. The Kaiser Entities are also the employers of the persons responsible for the corporate policies at Kaiser that favor cost

savings over patient wellbeing, such that these entities are liable for injuries caused by the negligent acts and omissions resulting from such corporate policies.

10. Defendant Emergency Medical Associates, P.A. ("EMA") is an entity organized and existing under the laws of the State of Maryland. As of January 2013, EMA staffed the emergency room at the University of Maryland Charles Regional Medical Center and employed Puneet Chopra, M.D., who was acting at all times within the scope of such employment, such that Emergency Medical Associates, P.A. is liable for injuries caused by Dr. Chopra's negligent acts or omissions.

11. Defendant Lifestar Response of Maryland, Inc. ("LRM") is a corporation organized and existing under the laws of the State of Maryland. As of January 2013, Lifestar Response of Maryland, Inc. was involved in the provision of transport services through its actual and apparent agents and employees acting within the scope of their employment.

#### **FACTS APPLICABLE TO ALL COUNTS**

12. Plaintiffs incorporate the allegations in paragraphs 1 through 11 as if fully set forth herein.

13. As of January 2013, Maaza O'Brien was a healthy, happy, and productive wife, mother, and multi-decade employee of Hilton Hotels.

14. On or about January 24, 2013 Maaza O'Brien developed a cough with acute shortness of breath. She also reported fatigue. She was seen for these symptoms by Dr. Hutcheson in the Camp Springs office of Kaiser Permanente. She was diagnosed with dyspnea and placed on the antibiotic Levaquin, as well as Albuterol, Codeine-Guaifenesin and Lactulose. She also underwent imaging of her chest, including plain x-

rays and a CT angiogram. The x-ray was interpreted to show a right lung base infiltrate, and the CT angiogram was reported to demonstrate possible right lower lobe consolidation versus atelectasis and an elevated right hemi-diaphragm.

15. Over the next two days Mrs. O'Brien's condition worsened significantly. On January 26, 2013, her shortness of breath became more severe, and she became extremely fatigued. Her husband called Kaiser and was instructed to have her seen at the emergency room. He took her to the emergency room at UMCRMC.

16. Plaintiff Maaza O'Brien and her husband arrived in the UMCRMC Emergency Department at approximately 4:06 p.m. The triage providers documented that she had been diagnosed with pneumonia two days before with increased shortness of breath starting one day before. She complained of pain on breathing and noted that she had had some nausea and vomiting. Her breath sounds were diminished. Oxygen saturation monitoring revealed oxygen saturation of 89% on room air. Arterial blood gas lab studies revealed a high base excess of 11.6, a high HCO<sub>3</sub> of 40, a high PCO<sub>2</sub> of 76.2, a low PO<sub>2</sub> of 79, and a low pH of 7.33. These abnormal laboratory results were called into the emergency physician on duty, Dr. Chopra, at 4:54 p.m. The call providing these lab results was noted to be a "critical call." The patient remained in the emergency room for several more hours. Notwithstanding her abnormal arterial blood gases, particularly her retention of CO<sub>2</sub>, Mrs. O'Brien was given Dilaudid 1 mg IV (a/k/a hydromorphone), which is known to suppress respirations even further. According to the medical record, this medication was administered by Donna Beall, R.N. at 6:19 p.m.

17. At approximately 7:28 p.m., Dr. Chopra, the emergency physician at UMCRMC, had a telephone consultation with Samuel P. Eng, a physician working in the

Kaiser Entities' Kensington facility. After their discussion regarding Mrs. O'Brien, Dr. Eng and Dr. Chopra decided to transfer the patient from UMCRMC in LaPlata to Holy Cross Hospital in Silver Spring, a distance of about 50 miles. Dr. Chopra and Dr. Eng also decided to send the patient by a Basic Life Support ("BLS") ambulance, which offered only minimal respiratory monitoring and little or no respiratory support for a patient suffering respiratory compromise. Dr. Chopra took these actions as the actual and apparent agent and employee of EMA and the UMCRMC Entities. Dr. Eng took these actions as the actual and apparent agent and employee of the Kaiser Entities.

18. The transfer of plaintiff Maaza O'Brien by EMA and the UMCRMC Entities to Holy Cross Hospital was instigated and requested by the Kaiser Entities, which together constitute the health maintenance organization responsible for payment of Mrs. O'Brien's medical and hospital bills in this case. On information and belief, the Kaiser Entities and Holy Cross Hospital have a favorable financial arrangement which was allowed to influence the transfer of this patient. The transfer occurred without obtaining the patient's informed consent and without explaining to the patient the risks and lack of benefit of such a transfer.

19. The patient remained in the emergency department at UMCRMC pending the arrival of the BLS transport team.

20. The BLS transport team employed by Defendant Lifestar Response of Maryland arrived at UMCRMC at approximately 10:26 p.m. The BLS ambulance personnel included but were not limited to Donna Connelly and Jacquelyn Madison.

21. The ambulance personnel noted in their initial assessment that the patient was unresponsive at the time of their arrival. They also noted that a nurse at UMCRMC



asked if they were a BLS or ALS (advanced life support) crew, and the crew replied they were only a BLS unit. According to the Lifestar Response narrative record for this trip, a nurse disclosed that although the patient's systolic blood pressure had been at 210, "it was ok to transport."

22. The ambulance crew noted further that the patient continued to be unresponsive during the transfer of custody from the hospital to the Lifestar Response team.

23. The ambulance crew further documented the patient was "never responsive" during the trip from UMCRCM to Holy Cross Hospital. During that trip, there was no monitoring of the patient's respirations, no pulse-ox machine, and no monitoring of the patient's ventilatory effort other than by visualizing chest movement at 11:30 p.m. and 11:50 p.m. This level of respiratory monitoring and support was wholly inadequate for a patient in the condition of Maaza O'Brien.

24. Upon arrival at Holy Cross Hospital at 12:10 a.m. on January 27, 2013, the patient was noted to be in respiratory and cardiac arrest. Lifestar Response personnel and a nurse from Holy Cross Hospital began chest compressions. A code was called.

25. At no time prior to the transfer to Holy Cross Hospital by BLS ambulance did anyone explain to Maaza or Daniel O'Brien that the risks of transfer included unmonitored respiratory arrest, unmonitored cardiac arrest, or resulting hypoxic brain injury.

26. At the time of her transfer, Maaza O'Brien was in an unstable respiratory and cardiac condition and had been administered a potent analgesic medication, Dilaudid, which further depressed her respiratory effort.

27. At the time of her transfer, Maaza O'Brien's health care providers and transport crew knew or should have known that she was not stable for transfer and that her condition severely impaired her ability to breathe and rendered the transport unsafe. They also knew or should have known that the use of a BLS ambulance further exacerbated the risks and dangers involved in transferring this patient.

28. After approximately a 15-minute resuscitative effort at Holy Cross Hospital, the patient's pulse and cardiac function returned. At this time she was intubated and on a ventilator, but had suffered a severe hypoxic insult to her brain. Her admission note to Holy Cross Hospital states that she was unresponsive when the EMS unit came to transport her, that she was noted to be floppy at that time when they transferred her to a stretcher for transport, and that she had gone into respiratory arrest before arriving at the Holy Cross Hospital emergency room.

29. Maaza O'Brien's severe brain injury was caused by the negligence of the defendants named as parties in this case, and by UMCRMC's failure to abide by the requirements of 42 U.S.C. §1395dd.

30. As a result of the hypoxic brain injury caused by the defendants' misconduct, Maaza O'Brien is severely and permanently disabled. She has major deficits in motor function, cognitive function, memory, executive function, speech, and attention. She has been rendered unable to work. She needs constant care and supervision. She is no longer able to perform any of her normal daily activities in the

home, socially, or at work. She has required and will continue to require multi-specialty medical attention, including additional primary care, neurological care, cognitive, speech, and occupational therapy, assistance with activities of daily living, and supervision on a 24-hours-per-day, 7-days-per-week basis for the rest of her life.

31. As a further result of the anoxic brain injury inflicted by defendants' negligence and failure to comply with statutory requirements, Daniel and Maaza O'Brien have suffered damage to their marital relationship and loss of marital and related services.

**COUNT I**

**Violations of EMTALA – 42 U.S.C. §1395dd: UMCRMC Entities  
(University of Maryland Charles Regional Health, Inc. and  
University of Maryland Charles Regional Care Partners, Inc.)**

32. Plaintiffs incorporate by reference allegations 1 through 31 of this Complaint.

33. The UMCRMC Entities, doing business as the University of Maryland Charles Regional Medical Center, own and operate a participating hospital as defined by EMTALA, which is located in Charles County, Maryland, and which includes an emergency department to which plaintiff Maaza O'Brien presented as a patient on January 26, 2013.

34. At the time when plaintiff Maaza O'Brien sought emergency medical attention at the emergency department owned and operated by the UMCRMC Entities, she presented with an emergency medical condition and required assessment and stabilization.

35. The UMCRMC Entities d/b/a University of Maryland Charles Regional Medical Center knew that plaintiff had an emergency condition in the form of respiratory distress, respiratory deficiency, diminished oxygen saturation of her blood, and insufficient ventilation to allow for the exchange of carbon dioxide.

36. The UMCRMC Entities d/b/a University of Maryland Charles Regional Medical Center knew that plaintiff Maaza O'Brien was not in a stable condition and that her respiratory capacity was impaired such that she could not be transferred safely.

37. The UMCRMC Entities d/b/a University of Maryland Charles Regional Medical Center also knew that plaintiff Maaza O'Brien had been administered a narcotic medication, Dilaudid, which further depressed her respiratory effort.

38. The UMCRMC Entities d/b/a University of Maryland Charles Regional Medical Center improperly and improvidently transferred Maaza O'Brien despite the fact that she had not been stabilized.

39. The UMCRMC Entities d/b/a University of Maryland Charles Regional Medical Center transferred plaintiff Maaza O'Brien without providing a summary of the risks and benefits and without the patient's informed consent.

40. The transfer was also inappropriate in that the UMCRMC Entities d/b/a University of Maryland Charles Regional Medical Center failed to provide medical treatment in order to minimize the risks that transfer posed to Maaza O'Brien's health.

41. The transfer was further inappropriate in that the UMCRMC Entities d/b/a University of Maryland Charles Regional Medical Center failed to provide qualified personnel and transportation equipment as required and necessary in light of the patient's condition.

42. As a result of the foregoing violations of EMTALA, Maaza O'Brien suffered the injuries set forth above.

WHEREFORE, plaintiffs demand judgment for an amount in excess of the jurisdictional limit of the District Court of Maryland against defendant The University of Maryland Charles Regional Health, Inc. and defendant The University of Maryland Charles Regional Care Partners, Inc.

## **COUNT II**

### **Negligence: All Defendants**

43. Plaintiffs incorporate by reference paragraphs 1 through 42 as if fully set forth herein.

44. Maaza O'Brien was a patient of the defendants identified in this Complaint, including but not limited to the Kaiser Entities, the UMCRMC Entities, EMA, and Lifestar Response of Maryland, and their actual and apparent agents and employees acting within the scope of their employment.

45. Maaza O'Brien had a health care provider/ patient relationship with the healthcare provider defendants.

46. All defendants had a duty to treat her in accordance with accepted standards of care.

47. The defendants identified above deviated from accepted standards of care and were negligent as follows:

#### **Deviations by the Kaiser Entities**

- a) The Kaiser Entities failed to appropriately assess the patient;

- b) The Kaiser Entities failed to hospitalize the patient in January 2013 when she had signs and symptoms of respiratory distress and pulmonary dysfunction necessitating hospitalization;
- c) The Kaiser Entities failed to prescribe and administer an appropriate antibiotic regimen to the patient;
- d) The Kaiser Entities requested and approved transfer when plaintiff was not in a stable condition; and
- e) The Kaiser Entities requested and approved transfer by BLS ambulance, such that the patient lacked necessary monitoring for her respirations, for her CO<sub>2</sub> exchange, for her ventilation, for her oxygenation, and for her other respiratory and cardiac functions.

Deviations by the UMCRMC Entities

- f) The UMCRMC Entities failed to perform an adequate assessment of the patient and failed to order timely and necessary testing, including repeat ABGs;
- g) The UMCRMC Entities failed to admit and retain the patient in the hospital;
- h) The UMCRMC Entities failed to provide needed care and treatment, including close monitoring, fluid support, and administration of antibiotic medication, and failed to stabilize the patient before transfer;
- i) The UMCRMC Entities approved transfer of the patient in respiratory distress while on Dilaudid;

- j) The UMCRMC Entities administered contraindicated and inappropriate medication and failed to counter or reverse the effects of such medication;
- k) The UMCRMC Entities transferred the patient in an unresponsive state;
- l) The UMCRMC Entities transferred the patient without respiratory monitoring or respiratory support, without monitoring of oxygenation, and without providing a means of preventing respiratory arrest and resulting anoxic brain injury; and
- m) The UMCRMC Entities violated physician and nursing standards of care, including standards of care relating to patient assessment, transportation, and monitoring, with resulting failure to reassess prior to transfer when the patient was unresponsive and on medications known to diminish respiratory function, and allowing the patient to be transferred without respiratory support or monitoring.

Deviations by Emergency Medical Associates

- n) EMA failed to perform an adequate assessment of the patient;
- o) EMA failed to order timely and necessary testing, including repeat ABGs;
- p) EMA failed to hospitalize the patient emergently with respiratory support, including intubation or intensive care unit monitoring of her respiratory function;
- q) EMA ordered the administration of contraindicated medications and failed to counter or reverse the effects of those medications;
- r) EMA ordered transfer of a patient who was not stable; and

- s) EMA ordered transfer of a patient by ambulance without necessary life support or monitoring of respiratory function despite knowing that the patient's respiratory condition was compromised;

Deviations by Lifestar Response of Maryland

- u) LRM accepted a patient for transfer who was not stable;
- v) LRM transferred a patient in need of an ACLS-equipped ambulance without providing any monitoring or support for her respiratory function;
- w) LRM failed to detect respiratory compromise and respiratory arrest in a timely fashion;
- x) LRM failed to reverse respiratory arrest and respiratory compromise in a timely fashion;
- y) LRM failed to monitor vital signs and respiratory effort in an appropriate manner; and
- z) LRM accepted a patient in need of monitoring of oxygen saturations without the equipment needed to do such monitoring.

48. As a result of the defendants' deviations from standards of care as set forth above, Maaza O'Brien suffered a severe anoxic brain injury and related injuries and damages.

WHEREFORE, plaintiffs demand judgment for an amount in excess of the jurisdictional limit of the District Court of Maryland against all defendants, jointly and severally.

**COUNT III**

**Lack of Informed Consent: All Defendants**



49. Plaintiffs incorporate by reference paragraphs 1 through 47 as if fully set forth herein.

50. The Defendants identified above failed to obtain the patient's informed consent regarding the risks of delayed hospitalization and the risks of transfer while in an unstable condition, and the risks of transportation without appropriate monitoring and available respiratory support.

51. As a result of the failure of the defendants identified above to obtain the patient's informed consent regarding the risks of delayed hospitalization and the risks of transfer while in an unstable condition, and the risks of transportation without appropriate monitoring and available respiratory support, plaintiff Maaza O'Brien suffered injuries and damages as aforesaid.

WHEREFORE, plaintiffs demand judgment for an amount in excess of the jurisdictional limit of the District Court of Maryland against all defendants, jointly and severally.

#### **COUNT IV**

##### **Loss of Consortium: All Defendants**

52. Plaintiffs incorporate by reference paragraphs 1 through 51 as if fully set forth herein.

53. Daniel O'Brien and Maaza O'Brien were husband and wife at all times relevant to this action and remain husband and wife today.

54. As a result of the misconduct by Defendants as set forth above, plaintiff Maaza O'Brien has suffered a severe and permanent brain injury.

55. As a further result of the misconduct by defendants as set forth above, plaintiffs have suffered damage to their marital relationship and a severe and permanent loss of marital and related services, and plaintiff Daniel O'Brien has been caused to provide 24-hour, 7-days-per-week care for his wife.

WHEREFORE, plaintiffs demand judgment for an amount in excess of the jurisdictional limit of the District Court of Maryland against all defendants, jointly and severally.

Respectfully Submitted,



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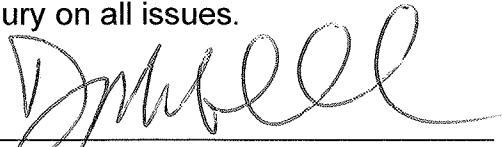
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Attorneys for Plaintiffs

**JURY PRAYER**

Plaintiffs demand a trial by jury on all issues.



Gerard E. Mitchell

Denis C. Mitchell