

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

ANGEL McCALL, individually and as the
Next Friend of MAZIAH McCALL, a
Minor,

Plaintiff,

vs.

EMORY HEALTHCARE, INC., ANN
CRITZ, M.D., CHRISTEL A. BILTOFT,
M.D., NIKI KOSMETATOS, SOUTHSIDE
PEDIATRICS, P.C., KISHA WILSON,
M.D., KAISER FOUNDATION HEALTH
PLAN OF GEORGIA, INC.,
CHRISTOPHER GAYDOS, M.D., and
FICTITIOUS PARTIES 1 – 10,

Defendants.

CIVIL ACTION
FILE NO. 15A56442E7

TRIAL BY JURY REQUESTED

COMPLAINT FOR DAMAGES

COMES NOW, Angel McCall, individually and as the next friend of Maziah McCall,
Plaintiff herein and files this, her Complaint for Damages, showing the Court as follows:

PARTIES, JURISDICTION AND VENUE

1.

Angel McCall appears herein as the Plaintiff both individually and as the next friend of
her minor daughter, Maziah McCall. Plaintiff is a citizen of the state of Georgia.

2.

Defendant Emory Healthcare, Inc. (hereinafter "Emory") is a corporation which exists
under the laws of the state of Georgia. Defendant Emory is subject to the jurisdiction of this
Court and may be served with a copy of the Summons and Complaint through its registered

agent for service of process, Jane E. Jordan, who is located at 201 Downan Drive, 101 Adm. Bldg., Atlanta, Fulton County, Georgia 30322.

3.

Defendant Ann Critz, M.D. is a citizen of the state of Georgia who resides at 797 Springdale Road, NE, Atlanta, Georgia 30306. Defendant Critz is subject to the jurisdiction of this Court and may be served with a copy of the Summons and Complaint at her place of residence or business.

4.

Defendant Christol A. Bilotft, M.D. is a citizen of the state of Georgia who resides at 1835 Still Hollow Court, Chesterfield, MO, 63017. Defendant Bilotft is subject to the jurisdiction of this Court and may be served with a copy of the Summons and Complaint at her place of residence or business.

5.

Defendant Niki Kosmetatos, M.D. is a citizen of the state of Georgia who resides at 2185 Foxboro Lane, Atlanta, Georgia 30360. Defendant Kosmetatos is subject to the jurisdiction of this Court and may be served with a copy of the Summons and Complaint at her place of residence or business.

6.

Defendant Southside Pediatrics, P.C. (hereinafter "Southside Pediatrics") is a corporation which exists under the laws of the state of Georgia. Defendant Southside Pediatrics is subject to the jurisdiction of this Court and may be served with a copy of the Summons and Complaint through its registered agent for service of process Ravi Iyer, who is located at 151 North Park Trail, Suite A, Stockbridge, Henry County, Georgia 30281.

7.

Defendant Kisha Wilson, M.D. is a citizen of the state of Georgia who resides at 2379 Millhaven Street Unit 15, Smyrna, Georgia 30080. Defendant Wilson is subject to the jurisdiction of this Court and may be served with a copy of the Summons and Complaint at her place of residence or business.

8.

Defendant, Kaiser Foundation Health Plan of Georgia, Inc. (hereinafter "Kaiser"), is a corporation which exists under the laws of the state of Georgia. Defendant Kaiser is subject to the jurisdiction of this Court and may be served with a copy of the Summons and Complaint through its registered agent for service of process is Corporation Service Company, which is located at 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092.

9.

Christopher Gaydos, M.D. is a citizen of the state of Georgia who resides at 1020 Burton Drive, NE, Atlanta, Georgia 30329. Defendant Gaydos is subject to the jurisdiction of this Court and may be served with a copy of the Summons and Complaint at his place of residence or business.

10.

Upon information and belief, Defendants Fictitious Parties 1 – 10 are citizens of the state of Georgia who are subject to the jurisdiction of this Court.

11.

Venue for this action is properly laid in this Court as to all Defendants.

FACTUAL BACKGROUND

12.

During the times relevant to the subject matter of this Complaint for Damages, Defendant Emory owned and operated a hospital located at 550 Peachtree Street, Atlanta, Georgia 30308, known as Emory Midtown Hospital (hereinafter "Emory Midtown"). Defendant Emory employed physicians, nurses and other medical staff members, including but not limited to Defendants Critz, Biloft and Kosmetatos to provide medical services at Emory Midtown.

13.

During the times relevant to the subject matter of this Complaint for Damages, Defendant Critz was a physician licensed to practice medicine in the state of Georgia specializing in pediatrics and neonatal-perinatal medicine.

14.

During the times relevant to the subject matter of this Complaint for Damages, Defendant Biloft was a physician licensed to practice medicine in the state of Georgia specializing in pediatrics.

15.

During the times relevant to the subject matter of this Complaint for Damages, Defendant Kosmetatos was a physician licensed to practice medicine in the state of Georgia specializing in neonatology, pediatrics and neonatal-perinatal medicine.

16.

During the times relevant to the subject matter of this Complaint for Damages, Southside Pediatrics was a medical practice group that employed physicians, including Defendant Wilson,

nurses and other staff members to provide medical services to pediatric patients like Maziah McCall.

17.

During the times relevant to the subject matter of this Complaint for Damages, Defendant Wilson was a licensed physician in the state of Georgia specializing in pediatrics. Defendant Wilson was an employee of Defendant Southside Pediatrics.

18.

During the times relevant to the subject matter of this Complaint for Damages, Defendant Kaiser sold medical insurance, operated an HMO and healthcare facilities in the state of Georgia and employed physicians, nurses and other staff members, including but not limited to Defendant Gaydos to provide medical services.

19.

During the times relevant to the subject matter of this Complaint for Damages, Defendant Gaydos was a physician licensed to practice in the state of Georgia, specializing in pediatrics. Defendant Gaydos was an employee of Defendant Kaiser during the times that he provided care and treatment to Maziah McCall.

20.

Maziah McCall was delivered at Emory Midtown Hospital on April 4, 2011. The birth was by way of a vaginal delivery that was unremarkable. However, the registered nurse who attended Maziah shortly after her birth noted that she had a "Mongolian spot" in her sacral area. The observations of the nurse appeared in the skin assessment portion of the "Newborn Admission Assessment." In her assessment, the nurse also described a "fatty pad in sacral area" as a "minor congenital abnormalit[y]."

21.

The following morning, a nurse was called to see Maziah regarding the “fatty pad [in her] sacral area.” The response of the nurse was that “someone [would] come to evaluate [the] newborn.” Approximately fifteen (15) minutes later, Defendant Kosmetatos, a neonatologist, evaluated Maziah. She was cleared to go to a floor with her mother.

22.

At 9:30, a nurse noted the “elevation of tissue at sacral area [that was] soft to touch [with] 0 openings @ site.” Approximately thirty (30) minutes later, Dr. Biltoft, a pediatrics specialist and neonatologist, advised that the “fatty pad [was] noted @ sacral area [,] 0 orders received at this time.” The nurse advised Dr. Biltoft of the fatty pad in Maziah’s sacral area, but received no orders for testing or treatment at that time.

23.

On April 8, 2011, Maziah was discharged from Emory Midtown with no orders for home health. The “Initial Newborn Assessment/Discharge Profile” that was prepared by the medical staff at the hospital noted the abnormality in Maziah’s gluteal cleft and additionally, that an “outpatient sacral ultrasound [was] needed to assess sacral” abnormality. In summary, although the abnormality in Maziah’s sacral/gluteal area was observed and documented several times by the medical staff at Emory Midtown, no diagnostic testing was ever ordered to determine whether it was of a benign or malignant nature.

24.

After her discharge from Emory Midtown, Maziah became a patient of Defendant Wilson at Southside Pediatrics. Over the course of thirteen (13) “well-baby” visits from April 12, 2011 until August 2, 2012, no member of the staff at Southside Pediatrics noted or recommended

diagnostic testing or treatment for the patent abnormality in Maziah's sacral/gluteal area. On each of the thirteen (13) visits, a skin assessment was conducted at Southside Pediatrics, but no diagnostic testing or treatment was ordered regarding the abnormality in Maziah's sacral/gluteal area.

25.

Maziah subsequently became a patient at Kaiser where she had "well-baby" visits. On January 28, 2013, she was seen by Defendant Gaydos, who noted that she had no sacral dimple. She was seen again on April 19, 2013 at which time her genitals and back were examined and found to be normal.

26.

On August 4, 2013, after she noticed that Maziah appeared to be constipated and was experiencing rectal pain, Plaintiff took her to the Emergency Department at Piedmont Henry Hospital. At that hospital, Plaintiff reported that Maziah had indicated that she was having pain in her buttocks and had blood stools. She also related to the staff at Piedmont Henry Hospital that Maziah had been born with the fatty tissue abnormality in her sacral/gluteal area and that it had grown in size as Maziah had aged. After a needle biopsy was conducted, Plaintiff was advised to follow up with Maziah's regular physicians at Kaiser.

27.

On August 5, 2013, Plaintiff returned Maziah to her regular physicians at Defendant Kaiser. She reported that she had noticed that Maziah was constipated and had swelling in her "bottom for about two weeks and had taken her to a hospital emergency department." Maziah's chart at Kaiser indicates that the chief complaint was of "anal pain [and] a history of fatty tissue

near rectum since birth.” Plaintiff and her daughter were referred to Children’s Healthcare of Atlanta at Scottish-Rite.

28.

After an examination and a pelvic MRI at Children’s Healthcare, Maziah was thought to be suffering from a sacrococcygeal teratoma with a yolk sac component that had limited intraspinal extension at the S1 and S2 levels.

29.

At Children’s Healthcare, the sacral/gluteal mass was found to be malignant and metastatic. On August 8, 2013, in preparation for treatment of the mass, a surgical procedure was performed to insert a powerport. The preoperative and postoperative diagnoses were metastatic sacral tumor.

30.

Following a CT scan of her chest, abdomen and pelvis with contrast, Maziah was further diagnosed as having a malignant sacrococcygeal germ cell tumor with multiple pulmonary and hepatic metastases. At that time, the tumor measured approximately 7.8 cm in maximum transaxial dimension. Multiple variable sized liver and lymphatic lesions were also visualized during the CT scan.

COUNT I

VICARIOUS LIABILITY OF DEFENDANT EMORY HEALTHCARE

31.

Plaintiff adopts and incorporates by reference paragraphs 1 through 30 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count I of her Complaint for Damages.

32.

During the times relevant to this action, Defendant Emory employed physicians, nurses and other professionals as members of its medical staff at Emory Midtown Hospital, including but not limited to Defendants Critz, Kosmetatos, Biltoft and Fictitious Parties 1 – 10.

33.

At all times pertinent to this action, Defendants Critz, Kosmetatos, Biltoft, Fictitious Parties 1 – 10 and other members of the medical staff at Emory Midtown Hospital were acting within the course and scope of their employment with Defendant Emory.

34.

Accordingly, Defendant Emory is vicariously liable under the doctrine of *Respondeat Superior* for the conduct and any negligence on the parts of Defendants Critz, Kosmetatos, Biltoft, Fictitious Parties 1 – 10 and any other members of the medical staff at Emory Midtown Hospital.

COUNT II

**NEGLIGENT TRAINING AND SUPERVISION BY
DEFENDANT EMORY HEALTHCARE**

35.

Plaintiff adopts and incorporates by reference paragraphs 1 through 34 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count II of her Complaint for Damages.

36.

At all times relevant to this action, Defendant Emory employed physicians, nurses and other professionals, including but not limited to Defendants Critz, Kosmetatos, Biltoft and

Fictitious Parties 1 – 10 who were responsible for providing medical services to patients like Maziah McCall.

37.

Defendant Emory negligently failed to train and supervise the members of its medical staff to ensure that they were able to provide timely and appropriate medical care and treatment to patients like Maziah McCall.

38.

As an actual and proximate consequence of Defendant Emory's negligence in failing to properly train and supervise members of its medical staff, including but not limited to Defendants Critz, Kosmetatos, Biltoft and Fictitious Parties 1 – 10, Maziah McCall was deprived of the opportunity to have effective treatment of the malignant tumor in her sacral/gluteal area.

COUNT III

NEGLIGENCE OF DEFENDANTS CRITZ, KOSMETATOS AND BILTOFT

39.

Plaintiff adopts and incorporates by reference paragraphs 1 through 38 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count III of her Complaint for Damages.

40.

At all times relevant to the allegations set forth herein, Defendants Critz, Kosmetatos and Biltoft were employed by Defendant Emory as physicians. The negligence of Defendants Critz, Kosmetatos and Biltoft is set forth in detail in the Affidavit of Jean J. Steichen, M.D., which is attached hereto pursuant to O.C.G.A. § 9-11-9.1.

41.

As a proximate consequence of the negligence of Defendants Critz, Kosmetatos and Biltoft, Plaintiff's daughter, Maziah McCall, was deprived of timely and appropriate treatment of the malignant tumor in her sacral/gluteal area and thus, suffered a serious injury.

COUNT IV

NEGLIGENCE OF FICTITIOUS PARTIES 1 - 10

42.

Plaintiff adopts and incorporates by reference paragraphs 1 through 41 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count IV of her Complaint for Damages.

43.

During the times relevant to this lawsuit, Defendant Emory employed nurses to provide care and treatment to patients like Maziah McCall.

44.

The nurses at Emory Midtown Hospital who were responsible for providing care and treatment to Maziah McCall remain unidentified at this point, but are designated herein as Fictitious Parties 1 – 10.

45.

The negligence of Fictitious Parties 1 – 10 is described in detail in the Affidavit of Jean J. Steichen, M.D., which is attached hereto pursuant to O.C.G.A. § 9-11-9.1.

COUNT V

VICARIOUS LIABILITY OF DEFENDANT SOUTHSIDE PEDIATRICS

46.

Plaintiff adopts and incorporates by reference paragraphs 1 through 45 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count V of her Complaint for Damages.

47.

During the times relevant to this action, Defendant Southside Pediatrics employed physicians, nurses and other professionals to provide medical care to patients like Plaintiff's daughter, Maziah McCall.

48.

Defendant Wilson, Fictitious Parties 1 – 10 and other members of Southside Pediatrics medical staff negligently failed to provide medical care and treatment to Maziah McCall in a timely and appropriate manner. The negligence of Defendants Wilson and Fictitious Parties 1 – 10 is described in detail in the Affidavit of Jean J. Steichen, M.D., which is attached hereto pursuant to O.C.G.A. § 9-11-9.1.

49.

At all times relevant to the claims set forth in this action, Defendants Wilson and Fictitious Parties 1 – 10 were acting within the course and scope of their employment with Defendant Southside Pediatrics. Accordingly, Defendant Southside Pediatrics is vicariously liable for the conduct and any negligence of Defendants Wilson and Fictitious Parties 1 – 10 under the doctrine of *Respondeat Superior*.

50.

As an actual and proximate consequence of the negligence of Defendants Wilson and Fictitious Parties 1 – 10, Plaintiff's daughter, Maziah McCall, was deprived of the opportunity to receive timely and effective treatment of the malignant mass in her sacral/gluteal area and thus, sustained a serious injury.

COUNT VI

**NEGLIGENT TRAINING AND SUPERVISION
BY DEFENDANT SOUTHSIDE PEDIATRICS**

51.

Plaintiff adopts and incorporates by reference paragraphs 1 through 50 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count VI of her Complaint for Damages.

52.

At all times relevant to this action, Defendant Southside Pediatrics employed physicians, nurses and other professionals, including but not limited to Defendant Wilson and Fictitious Parties 1 – 10 who were responsible for providing medical services to patients like Maziah McCall.

53.

Defendant Southside Pediatrics negligently failed to train and supervise the members of its medical staff to ensure that they were able to provide timely and appropriate medical care and treatment to patients like Maziah McCall.

54.

As an actual and proximate consequence of Defendant Southside Pediatrics' negligence in failing to properly train and supervise members of its medical staff, including but not limited

to Defendant s Wilson and Fictitious Parties 1 – 10, Maziah McCall was deprived of the opportunity to have effective treatment of the malignant tumor in her sacral/gluteal area.

COUNT VII

NEGLIGENCE OF DEFENDANT WILSON

55.

Plaintiff adopts and incorporates by reference paragraphs 1 through 54 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count VII of her Complaint for Damages.

56.

At all times relevant to the allegations set forth herein, Defendant Wilson was employed by Defendant Southside Pediatrics as a physician. The negligence of Defendant Wilson is set forth in detail in the Affidavit of Jean J. Steichen, M.D., which is attached hereto pursuant to O.C.G.A. § 9-11-9.1.

57.

As a proximate consequence of the negligence of Defendant Wilson, Plaintiff's daughter, Maziah McCall, was deprived of timely and appropriate treatment of the malignant tumor in her sacral/gluteal area and thus suffered a serious injury.

COUNT VIII

VICARIOUS LIABILITY OF DEFENDANT KAISER

58.

Plaintiff adopts and incorporates by reference paragraphs 1 through 57 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count VIII of her Complaint for Damages.

59.

During the times relevant to this action, Defendant Kaiser employed Defendant Gaydos, nurses and other medical staff members to provide care to patients like Maziah McCall. The nurses employed by Defendant Kaiser are designated herein as Fictitious Parties 1 – 10.

60.

Defendant Gaydos, Fictitious Parties 1 – 10 and other members of Defendant Kaiser's medical staff negligently failed to provide medical care and treatment to Maziah McCall in a timely and appropriate manner. The negligence of Defendants Gaydos and Fictitious Parties 1 – 10 is described in detail in the Affidavit of Jean J. Steichen, M.D., which is attached hereto pursuant to O.C.G.A. § 9-11-9.1.

61.

At all times relevant to the claims set forth in this action, Defendants Gaydos and Fictitious Parties 1 – 10 were acting within the course and scope of their employment with Defendant Kaiser. Accordingly, Defendant Kaiser is vicariously liable for the conduct and any negligence of Defendants Gaydos and Fictitious Parties 1 – 10 under the doctrine of *Respondeat Superior*.

62.

As an actual and proximate consequence of the negligence of Defendants Gaydos and Fictitious Parties 1 - 10, Plaintiff's daughter, Maziah McCall, was deprived of the opportunity to receive timely and effective treatment of the malignant mass in her sacral/gluteal area and thus, sustained a serious injury.

COUNT IX

**NEGLIGENT TRAINING AND SUPERVISION BY DEFENDANT KAISER
FOUNDATION HEALTH PLAN OF GEORGIA, INC.**

63.

Plaintiff adopts and incorporates by reference paragraphs 1 through 62 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count IX of her Complaint for Damages.

64.

Defendant Kaiser negligently failed to train and supervise Defendants Gaydos and Fictitious Parties 1 – 10 to ensure that they were able to provide medical care and treatment to patients like Maziah McCall in a timely and appropriate manner.

65.

As an actual and proximate consequence of Defendant Kaiser's negligent failure to train and supervise Defendants Gaydos and Fictitious Parties 1 – 10, Maziah McCall was deprived of the opportunity to receive timely and appropriate treatment of the malignant tumor in her sacral/gluteal area and thus, sustained a serious injury.

COUNT X

NEGLIGENCE OF DEFENDANT GAYDOS

66.

Plaintiff adopts and incorporates by reference paragraphs 1 through 65 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count X of her Complaint for Damages.

67.

At all times relevant to the allegations set forth herein, Defendant Gaydos was employed

by Defendant Kaiser as a physician. The negligence of Defendant Gaydos is set forth in detail in the Affidavit of John J. Steichen, M.D., which is attached hereto pursuant to O.C.G.A. § 9-11-9.1. As a proximate consequence of the negligence of Defendant Gaydos, Plaintiff's daughter, Maziah McCall, was deprived of timely and appropriate treatment of the malignant tumor in her sacral/gluteal area and thus suffered a serious injury.

COUNT XI

PUNITIVE DAMAGES

68.

Plaintiff adopts and incorporates by reference paragraphs 1 through 67 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count XI of her Complaint for Damages.

69.

The negligence of the Defendants as described in the preceding paragraphs of this Complaint was willful, wanton, oppressive and evidences that entire lack of care which raises the presumption of conscious indifference to the consequences. Accordingly, Plaintiff is entitled to recover punitive damages under O.C.G.A. § 51-12-5.1.

COUNT XII

ATTORNEY'S FEES AND EXPENSES OF LITIGATION

70.

Plaintiff adopts and incorporates by reference paragraphs 1 through 69 of her Complaint for Damages as if said paragraphs are set forth fully herein with respect to Count XII of her Complaint for Damages.

There exists no bona fide dispute as to the Defendants' liability for injuries sustained by Plaintiff's daughter, Maziah McCall, and said Defendants have caused Plaintiff unnecessary trouble and expense in forcing her to file and prosecute this lawsuit to recover damages. Accordingly, Plaintiff is authorized to recover expenses of litigation, including reasonable attorney's fees from the Defendants pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiff respectfully requests that she be granted the following relief:

- (a) that a copy of the Summons and Complaint be served upon each Defendants;
- (b) that she have a trial by jury as to each and every appropriate issue;
- (c) the recovery of special damages, including but not limited to past and future medical expenses in an amount to be proven at trial, but not less than \$100,000.00;
- (d) the recovery of general compensatory damages;
- (e) a judgment against each Defendant;
- (f) that all costs of this action be cast against the Defendants;
- (g) reasonable attorney's fees and litigation expenses under O.C.G.A. § 13-6-11;
- (h) punitive damages; and
- (i) any and all such further relief as the Court may deem just and appropriate.

This 24th day of July, 2015.

STEWART, SEAY & FELTON, LLC

/s/ Quinton S. Seay
 Quinton S. Seay
 Georgia Bar No. 634025
 Eugene Felton, Jr.
 Georgia Bar No. 257840

STATE COURT OF
 DEKALB COUNTY, GA.
 7/24/2015 4:13:18 PM
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ATTORNEYS FOR PLAINTIFF