

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

AURORA R. SALVADOR, Individually *

and *

AURORA R. SALVADOR, *
as Personal Representative of *
the Estate of Jose Roberto Salvador, *
Deceased, *

BOTH OF: *
2002 Avenel Road, *
Adelphi, Maryland, 20783 *

Plaintiffs, *

v. *

Case No.: _____
Jury Trial Demanded

KAISER FOUNDATION HEALTH PLAN *
of the MID ATLANTIC STATES, INC. *
2101 E. Jefferson Street *
Rockville, Maryland 20852 *

SERVE: The Prentice -Hall Corporation *
System, M *
7 St. Paul Street, Suite 1660 *
Baltimore, Maryland 21202 *

and *

MID ATLANTIC PERMANENTE MEDICAL *
GROUP, P.C. *
2101 E. Jefferson Street *
Rockville, Maryland 20852 *

SERVE: The Prentice -Hall Corporation *
System, M *
7 St. Paul Street, Suite 1660 *
Baltimore, Maryland 21202 *

Defendants. *

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* * * * *

COMPLAINT

COMES NOW the Plaintiff, Aurora Salvador, Individually and as Personal Representative of the Estate Jose R. Salvador., Deceased, by and through their attorneys, Shadoan, Michael & Wells, LLP, and Gregory K. Wells, Esquire, and sues Defendants, Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C., and for cause of action states:

PARTIES

1. Plaintiff Aurora R. Salvador is the Personal Representative of the Estate of Jose Roberto Salvador, who died on September 23, 2016, having been appointed as such by Register of Wills for Prince George's County, Maryland on October 21, 2016. Plaintiff Aurora Salvador is, and at all times relevant herein was, an adult resident of the State of Maryland, residing at 2002 Avenel Road, Adelphi, Maryland 20783. Plaintiff Aurora R. Salvador is also the sole surviving child (daughter) of Decedent Jose Roberto Salvador.

2. At all times relevant hereto, the Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C., were Maryland professional corporations providing health care services in the District of Columbia and its surrounding suburbs and communities to those persons in need thereof. Upon information and belief, at all times relevant hereto, the physicians, nurses, and other health care professional attending providing medical care to Jose Salvador at Kaiser Permanente facilities, including but not limited to, Jesse Iwanski,

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M.D. and Gregory M. Ford, M.D., were agents, servants, and/or employees of Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and/or Mid Atlantic Permanente Medical Group, and acting in such capacity while providing medical care to Jose Salvador. At all times relevant to this claim, Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc, and Mid Atlantic Permanente Medical Group, P.C., owed a duty to Plaintiffs to provide medical care and treatment consistent with the applicable prevailing standards of care.

JURISDICTION AND VENUE

3. Jurisdiction of this court is invoked pursuant to D.C. Code Sections 11-921 and 13-423 D.C. Official Code (2001 Ed.), as the Defendants regularly transact business in the District of Columbia providing medical services at several facilities owned and/or operated by them in the District of Columbia, including facilities in where they transacted business with Plaintiffs' decedent. Further, the Defendants caused tortious injury within the District of Columbia by an act or omission in the District of Columbia.

4. Venue in this court is proper because the cause of action arose in the District of Columbia.

CONDITIONS PRECEDENT

5. Pursuant to Section 16-2802 of the D.C. Code, Plaintiffs provided written notice of their claim for unliquidated damages to Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C.; Gregory Ford, M.D.; and all agents as identified in the Stipulation of Agency (Ex. 1); by letters mailed October 23, 2017, sent via certified mail, return receipt requested, to their last

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known addresses. Receipt of each of the aforementioned letters was confirmed by the United States Postal Service.

FACTS COMMON TO ALL COUNTS

6. Plaintiffs incorporate herein by reference each and every allegation set forth in paragraphs 1 through 5 above as though fully set forth herein and further state as follows

7. On September 12, 2016, Jose Roberto Salvador, then a 63-year old male who worked as a carpenter for Clark Construction Co. Inc., presented to the Kaiser Permanente Capital Hill Medical Center, Urgent Care CDU, 700 2nd Street, N. E., Washington, D.C., with acute right knee pain that began the day before. Mr. Salvador was evaluated at that time by Jesse Iwanski, M.D. The medical history recorded by Dr. Iwanski indicated that Mr. Salvador had experienced the acute onset of right knee pain on the previous day, unrelated to any episode of trauma, injury or unusual activity. Mr. Salvador indicated that his knee pain had initially been primarily localized to an area just above his right patella but over the subsequent 24 it had spread to involve an area posterior to his knee, just proximal to his right calf. Mr. Salvatore's knee pain was aggravated by weight bearing, including walking and standing activities, and was characterized as severe in nature (described as 9/10 initially but then improved somewhat to 7/10 after being given an injection of the anti-inflammatory medication Toradol.) Mr. Salvador described his knee as feeling like it would give out when he experienced pain exacerbations. The medical history also noted that Mr.

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Salvador had type II insulin dependent diabetes.

8. On Mr. Salvador's physical exam he was afebrile and his right knee exam demonstrated no evidence of injury, swelling, ecchymosis, deformity, ligamentous laxity or instability, rash, erythema, warmth or joint effusion. Mr. Salvador demonstrated tenderness to palpation along the anterior aspect of his right knee just above the patella and posterior to his knee along the proximal aspect of his popliteal fossa. Mr. Salvador also experienced pain in those areas of tenderness with knee range of motion. There was no mention of any evaluation for or observation of findings to his history of "skin subcutaneous abscesses." Mr. Salvador's right knee x-rays demonstrated findings of mild tricompartmental osteoarthritis, chondrocalcinosis and a mild knee effusion. There was no findings of acute bony injury or of any past episode of injury or trauma.

9. Five days later, on September 17, 2016, Mr. Salvador was seen in the Holy Cross Hospital emergency department in Silver Spring, Maryland, for continued and worsening knee pain and swelling. Mr. Salvador gave the same history on to the health care providers in the Holy Cross Hospital emergency room that he related to Dr. Iwanski on September 12, 2016. The History of Present Illness noted that "Pt with atraumatic knee swelling for six days. Already evaluated by Kaiser, prescribed ibuprofen and scheduled for ortho follow-up in 2 days, but pt reports pain is poorly controlled." On physical exam, Mr. Salvador's right knee demonstrated tenderness, swelling, effusion and limited range of motion due to pain. Right knee x-rays were obtained, with findings interpreted to be osteoarthritis and joint effusion. A reexamination/reevaluation concluded, among other things, a "pt with pain from knee effusion", which effusion was thought to be related to

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degenerative changes. Mr. Salvador was discharged with a diagnosis of "Effusion of the right knee joint", given a brace and prescribed Percocet.

10. Two days later, on September 19, 2016, Mr. Salvador was evaluated at the Kaiser Permanente Capital Hill Medical Center in the Orthopedics Department. He was seen by Gregory M. Ford, M.D. Mr. Salvador gave Dr. Ford the same history he had given at the time of his Kaiser Permanente Capital Hill Medical Center Urgent Care CDU visit 7 days earlier and at the time of his Holy Cross Health visit 2 days previously. Despite his use of ibuprofen, limited activity, a knee immobilizer and crutches, Mr. Salvador's knee pain and swelling had worsened. His knee range of motion was 5 degrees - 90 degrees of flexion. Mr. Salvador experienced pain upon ligament testing, although his ligaments were stable. His right knee x-ray showed the same findings as previously recorded on September 12, 2016 - mild tricompartmental osteoarthritis, chondrocalcinosis and no evidence of trauma or injury. Dr. Ford also noted right knee effusion.

11. Despite Mr. Salvador's worsening right knee pain and swelling over the previous eight days, and particularly, [knee pain in a type II diabetic patient with no history of previous knee trauma or injury, that had worsened despite the patient's use of anti-inflammatory medications, limited activity, a knee immobilizer and crutches, Dr. Ford did not entertain some type of inflammatory arthropathy in his differential diagnosis, with a septic joint being the most likely diagnosis, which diagnosis needed to be confirmed or ruled out on an urgent basis. Dr. Ford did not evaluate Mr. Salvador's condition with (1) a temperature, (2) inflammatory serologic markers (CBC, differential, ESR and CRP), (3) a HgA1c, and (4) an analysis of the knee joint synovial fluid (CBC, differential, crystals and

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culture and sensitivity).

12. Instead, Dr. Ford gave Mr. Salvador an intra-articular steroid injection with lidocaine and Kenalog without aspirating the knee joint at the time of the injection. Dr. Ford advised Mr. Salvador's daughter that if the injection did not improve his symptoms, to contact the office for further recommendations. Dr. Ford did not advise Mr. Salvador or his daughter with regard to any signs of potential infection. Rather, weight-bearing and activity tolerance advise was given.

13. The next day, on September 20, 2016, Mr. Salvador was seen in the Holy Cross Hospital emergency department due to a change in mental status, pain and fatigue. He was admitted to the medical ICU because of altered mental status, lactic acidosis, acute renal failure and septic shock. He was started on clindamycin, vancomycin and Zosyn and his blood cultures grew out MRSA. However, Mr. Salvador quickly became hypotensive and was started on CVVH protocol because of continued severe metabolic acidosis. He required additional vasopressors and intubation with maximal ventilation support and because of his multi-organ failure from septic shock and his unstable hemodynamic status, Mr. Salvador was transferred to the University of Maryland Medical Center ("UMMC") for more intensive care. At UMMC, Mr. Salvador's right knee was aspirated by the orthopedic service and the aspirate showed frank pus but the patient was too severely ill and his medical status was too unstable for him to be taken to the OR for an irrigation and debridement of his knee.

14. Mr. Salvador's medical status continued to decline despite intensive treatment and unfortunately he was pronounced dead at 0313 on September 23, 2016. The right

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knee fluid aspirated prior to his death was found to be positive for staphylococcus auerus and determined to lead to toxic shock syndrome, ultimately leading to Jose Salvador's untimely death.

**COUNT ONE
SURVIVAL ACTION**

15. Plaintiffs incorporate herein by reference each and every allegation set forth in paragraphs 1 through 14 above as though fully set forth herein and further state as follows:

16. Plaintiff Aurora R. Salvador is the Legal Representative of Jose Roberto Salvador, Deceased, and brings this action pursuant to D. C. Official Code, §12-101, (2001 Ed., June 2017 Cumulative Supplement) to recover any and all damages the decedent could have pursued had he survived.

17. The Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C. acting through their agents, servants and/or employees, including, but not limited to, Gregory Ford, M.D., owed a duty to Plaintiffs' Decedent, Jose Roberto Salvador, to provide medical care and treatment consistent with the applicable prevailing standards of care. Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc, and Mid Atlantic Permanente Medical Group, P.C., held out to the general public, and to Plaintiffs in particular, that the physicians and other health care providers attending to Jose Roberto Salvador, including, but not limited to, Gregory Ford, M.D. were agents, servants and/or employees of Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and/or Mid Atlantic Permanente Medical Group. Plaintiffs' Decent Jose Roberto R. Salvador believed such representations

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and relied on the same for purposes of receiving care from Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and/or Mid Atlantic Permanente Medical Group.

18. The Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C. failed to exercise the degree of care, skill and judgment reasonably expected of other health care providers with similar skills acting under the same or similar circumstances and were negligent in the management, care and treatment of Decedent Jose Roberto Salvador, including, but not limited to the following particulars:

- a) failing to recognize risk factors for infection;
- b) failing to evaluate the cause of the patient's atraumatic right knee pain;
- c) failing to consider inflammatory arthropathy and joint infection in the differential diagnosis;
- d) failing to rule out right knee infection;
- e) failing to aspirate right knee fluid and submitting for testing, i.e., culture ;
- f) injecting steroid medication into knee joint without first determining etiology of patient's knee;
- g) failing to advise patient of sign and symptoms of infection;
- h) failing to diagnose patient's condition; and
- h) for other and further reasons as may be determined during the course of discovery pursuant to the Superior Court Rules of Civil Procedure.

19. As a direct and proximate result of the negligence of the Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente

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Medical Group, P.C., the infection in Jose Salvador's right knee went undiagnosed and was exacerbated by Defendant's treatment, allowing it to progress and ultimately leading to substantial conscious pain, suffering, mental anguish and death.

20. As a direct and proximate result of the negligence of the Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C., for which Jose Roberto Salvador would have been able to maintain an action against the aforesaid Defendants had he lived, and without any negligence on the part of Decedent Jose Roberto Salvador contributing thereto, Jose Roberto Salvador suffered substantial conscious pain and suffering, to include physical pain and mental anguish, prior to his death on September 23, 2016, as well as pecuniary losses.

21. WHEREFORE, Plaintiff Aurora Salvador, as Legal Representative of the Decedent Jose R. Salvador, demands judgment for full compensatory damages among other things, the medical expenses, the decedent's conscious pain and suffering and the expenses of his funeral against the Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C., jointly and severally, plus interest, costs and any and all other relief in the amount of Three Million Dollars (\$3,000,000.00) besides the costs and interests hereof.

COUNT TWO
WRONGFUL DEATH

22. Plaintiffs incorporate herein by reference each and every allegation set forth in paragraphs 1 through 21 above as though fully set forth herein and further state as follows

23. Plaintiff Aurora R. Salvador is the Personal Representative of the Estate of Jose Roberto Salvador and brings this action pursuant to D. C. Official Code, §16-27091 et

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seq., (2001 Ed., June 2017 Cumulative Supplement).

24. As a direct and proximate result of the aforesaid negligence of the Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C. which wrongfully caused the death of Jose Roberto Salvador, and without any negligence on the part of Decedent Jose Roberto Salvador contributing thereto, Plaintiff Aurora Salvador, Personal Representative of the Estate of Jose Roberto Salvador has suffered pecuniary losses, lost services to the family, including loss of care, education, training, guidance, and personal advice, as well as the reasonable expenses of Jose Roberto Salvador's last illness and burial.

25. WHEREFORE, Plaintiff Aurora R. Salvador, Personal Representative of the Estate of Jose Roberto Salvador, demands judgment for full compensatory damages against the Defendants Kaiser Foundation Health Plan of the Mid Atlantic States, Inc., and Mid Atlantic Permanente Medical Group, P.C. , jointly and severally, plus interest, costs and any and all other relief in the amount of Three Million Dollars (\$3,000,000.00) besides the costs and interests hereof.

Respectfully submitted,

SHADOAN, MICHAEL & WELLS, LLP.

By:



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