

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

STERLING BROWN, individually, and as )  
Guardian of GWENDOLYN BROWN, an )  
Incapacitated adult, )

Plaintiffs )

vs. )

SOUTHEASTERN PAIN SPECIALISTS, P.C.; )  
SOUTHEASTERN PAIN AMBULATORY )  
SURGERY CENTER, LLC; DENNIS C. )  
DOHERTY, D.O.; MARY HARDWICK, R.N.; )  
KEVIN JAMES SHEAHAN, M.D.; ANN )  
YEARIAN, R.N.; AND JOHN DOE #2, ET AL. )

Defendants. )

CIVIL ACTION

FILE NO.: 10EV010621J

**FIRST AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

COMES NOW, Sterling Brown, individually and as Guardian of Gwendolyn Brown, an incapacitated adult, Plaintiff in the above styled action, and files this, his First Amended Complaint for medical malpractice, and respectfully shows this Court the following:

1.

The Plaintiff Sterling Brown is the husband and legal guardian of Gwendolyn Brown, an incapacitated adult.

2.

Plaintiff is a resident of the State of Georgia, and has been at all times relevant hereto.

3.

Defendant Southeastern Pain Specialists, P.C., is a legal entity organized and existing under the laws of the State of Georgia, and was, upon information and belief, at all times applicable to this Complaint, engaged in the business of owning, managing, and/or operating a medical practice

employing or engaging Dennis C. Doherty, D.O. and Kevin James Sheahan, M.D. to practice medicine. Southeastern Pain Specialists, P.C. was served with the original Complaint in this matter by service on its registered agent, Dennis C. Doherty, D.O., on August 3, 2010.

4.

Defendant Southeastern Pain Ambulatory Surgery Center, LLC is a legal entity organized and existing under the laws of the State of Georgia, and was, upon information and belief, at all times applicable to this Complaint, engaged in the business of owning, managing, and/or operating the facility known as Southeastern Pain Ambulatory Surgery Center. Southeastern Pain Ambulatory Surgery Center, LLC and can be served at the following address to wit: 1140 Hammond Drive, D4140, Atlanta, Fulton County, Georgia, or by serving Dennis C. Doherty, D.O.

5.

The claims asserted against Southeastern Pain Ambulatory Surgery Center, LLC in this Amended Complaint arise out of the same conduct, transaction or occurrence set forth or attempted to be set forth in the original Complaint in this matter filed on July 30, 2010.

6.

On or before August 3, 2010, prior to the expiration of the statute of limitations in this matter, Southeastern Pain Ambulatory Surgery Center, LLC received actual notice of the institution of this action by virtue of service of the original Complaint on Dennis C. Doherty, D.O., and therefore will not be prejudiced in maintaining its defense on the merits.

7.

On or before August 3, 2010, Southeastern Pain Ambulatory Surgery Center, LLC knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it as well.

8.

Defendant Dennis C. Doherty, D.O. practices medicine and was personally served with the original Complaint in this matter on August 3, 2010.

9.

Mary Hardwick, R.N., is a registered nurse and was personally served with the original Complaint in this matter on August 11, 2010.

10.

Defendant Kevin James Sheahan, M.D. practices medicine and was personally served with the original complaint in this matter on August 11, 2010.

11.

Ann Yearian, R.N. is a registered nurse and can be served at the following address to wit: 110 Springlaurel Court, Johns Creek, Georgia 30097.

12.

Ann Yearian, R.N. is the person identified as or "Ann" in the medical records relevant to this case and referred to as "John Doe #1" in the original Complaint in this matter filed on July 30, 2010.

13.

The claims asserted against Ann Yearian, R.N. in this Amended Complaint arise out of the same conduct, transaction or occurrence set forth or attempted to be set forth in the original Complaint in this matter filed on July 30, 2010.

14.

On or before September 16, 2010, Ann Yearian, R.N. had received such notice of the institution of this action that she will not be prejudiced in maintaining a defense on the merits.

15.

On or before September 16, 2010, Ann Yearian, R.N. knew or should have known that she was the "Ann" in the medical records relevant to this case and referred to as "John Doe #1" in the original Complaint, and but for a mistake concerning the identity of the proper party, the action would have been brought against her as well.

16.

Defendant John Doe #2, et al. are other people generally identified in medical records relevant to this case.

17.

Jurisdiction is proper in this Court.

18.

Venue is proper in this Court.

19.

Plaintiff's cause of action against Defendants is brought, in part, pursuant to O.C.G.A. § 51-1-27 for medical malpractice, medical negligence, violations of applicable standards of medical skill and care as ordinarily employed, practiced and exercised by physicians under the same or similar and like circumstances throughout the United States.

20.

On or about September 16, 2008, Gwendolyn Brown was under the care and treatment of defendants Southeastern Pain Specialists, P.C. and Southeastern Pain Ambulatory Surgery Center, LLC.

21.

At all times material hereto, Dennis C. Doherty, D.O. acted both individually and under the auspices of defendant Southeastern Pain Specialists, P.C.

22.

On or about September 16, 2008, Gwendolyn Brown presented to Southeastern Pain Ambulatory Surgery Center, LLC where Dennis Doherty, D.O. performed a repeat bilateral transforaminal epidural steroid injection under intravenous sedation, with the assistance of Southeastern Pain Ambulatory Surgery Center, LLC employees, including at least Mary Hardwick, R.N. and Ann Yearian, R.N.

23.

At all times relevant hereto, Mary Hardwick, R.N. and Ann Yearian, R.N. were the employees and/or agents of Southeastern Pain Ambulatory Surgery Center, LLC, and Southeastern Pain Ambulatory Surgery Center, LLC is vicariously liable for their negligent acts or omissions as set forth herein.

24.

The procedure was performed with Ms. Brown in the prone position.

25.

Sedation was overseen for all or part of the procedure by Ann Yearian, R.N. and Mary Hardwick, R.N., under the supervision of Dr. Doherty.

26.

Ann Yearian, R.N. is a healthcare professional who was responsible and present during the September 16, 2008 epidural procedure performed on Ms. Brown.

27.

A pulse oximeter was initially utilized to monitor Ms. Brown's oxygen saturation.

28.

During the course of the procedure, difficulties developed in maintaining an adequate airway.

29.

The pulse oximeter indicated a precipitous drop in the oxygenation status, to such an extent that readings were non-existent or difficult to obtain.

30.

In assessing Ms. Brown's oxygenation status from there forward, Dr. Doherty repeatedly relied on physical observations rather than the pulse oximeter, which continued to indicate critically poor oxygenation status.

31.

Despite Ms. Brown's critically poor oxygenation status, Dr. Doherty and Southeastern Pain Ambulatory Surgery Center, LLC employees, including at least Mary Hardwick, R.N. and Ann Yearian, R.N., continued with the procedure. No attempts to intubate Ms. Brown were made.

32.

Following completion of the procedure, Ms. Brown could not be aroused and EMTs were finally called to transport her to the hospital.

33.

The EMTs transported Ms. Brown to Saint Joseph's Hospital of Atlanta.

34.

Ms. Brown was admitted to the hospital and was diagnosed with severe anoxic encephalopathy.

35.

Defendant Dennis C. Doherty, D.O. was negligent by deviating from the standard of care and skill exercised by physicians generally under similar conditions and like surrounding circumstances as those presented by Gwendolyn Brown in 2008.

36.

Defendant Dennis C. Doherty, D.O. was negligent by failing to maintain verbal contact with a heavily sedated patient in the prone position throughout the procedure, particularly given that there was no Certified Registered Nurse Anesthetist ("CRNA") or physician anesthesiologist at the head of the table to observe the patient's airway while the patient was placed in the prone position and under sedation.

37.

Defendant Dennis C. Doherty, D.O. was negligent by failing to appropriately respond when Ms. Brown's oxygen saturation had fallen to dangerously low levels and by failing to timely secure an airway.

38.

Defendant Dennis C. Doherty, D.O. was negligent by failing to promptly contact emergency medical services to transport Ms. Brown to a hospital.

39.

Exhibit A, the Affidavit of Stephen E. Abram, M.D., was attached to the original Complaint in this case in compliance with O.C.G.A. § 9-11-9.1 and is re-submitted herewith and incorporated by reference as if fully set forth herein. Said Affidavit sets forth at least one act of professional negligence on the part of Dr. Doherty and Dr. Sheahan. A copy of the medical records from Southeastern Pain Specialists, P.C. were attached as Exhibit B to the original Complaint for Medical Malpractice in this matter filed on July 30, 2010 and are attached hereto as Exhibit B as well.

40.

At all times material hereto, Defendants Mary Hardwick, R.N. and Ann Yearian, R.N. were employed by Defendant Southeastern Pain Ambulatory Surgery Center, LLC, and acted within the course and scope of their employment.

41.

Defendants Mary Hardwick, R.N. and Ann Yearian, R.N. and other healthcare professionals deviated from the standard of care and skill exercised by nurses generally under similar conditions and like surrounding circumstances as described more particularly below.

42.

Defendants Mary Hardwick, R.N. and Ann Yearian, R.N. were negligent by failing to timely institute ACLS protocol based on airway assessment, which would have included turning Ms. Brown on her back to a supine position, checking Ms. Brown's airway, checking whether

Ms. Brown's chest was rising and falling, or initiating the use of an ambu bag or other means of oxygen administration.

43.

Defendants Mary Hardwick, R.N. and Ann Yearian, R.N. were negligent by failing to maintain ongoing verbal contact with Ms. Brown during the procedure which is a breach of the standard of care.

44.

Defendants Mary Hardwick, R.N. and Ann Yearian, R.N. were negligent by failing to promptly contact emergency medical services to transport Ms. Brown to a hospital. Contacting 911 is part of the ACLS protocol.

45.

Exhibit C, the Affidavit of Brenda J. Splawn, RN, MS, CPAN, FNP, was attached to the original Complaint in this case in compliance with O.C.G.A. § 9-11-9.1 and is re-submitted herewith and incorporated by reference as if fully set forth herein. Said Affidavit sets forth at least one act of professional negligence on the part of Mary Hardwick, R.N. and Ann Yearian, R.N., the person identified as "Ann" and referred to as "John Doe #1" in the original Complaint.

46.

Defendant John Doe #2 et al. are unidentified persons referenced in relevant medical records, and are liable to the extent that they undertook a duty of care similar to that described for Defendants Mary Hardwick, R.N. and Ann Yearian, R.N.

47.

At all times material hereto, Kevin James Sheahan, M.D. acted individually and under the auspices of defendant Southeastern Pain Specialists, P.C.

48.

Upon information and belief, Dr. Sheahan regularly practiced medicine with Dennis C. Doherty, D.O. by and through their professional corporation, Southeastern Pain Specialists, P.C., at or shortly before September 16, 2008.

49.

Upon information and belief, Mary Hardwick R.N. and Ann Yearian R.N. regularly worked closely with Dennis C. Doherty, D.O. by and through their professional nursing employment with Southeastern Pain Ambulatory Surgery Center, LLC, at or shortly before September 16, 2008.

50.

On and before September 16, 2008, Dr. Doherty was impaired by a condition that interfered with his ability to engage safely in professional activities, including the practice of medicine.

51.

Upon information and belief, Dr. Sheahan was aware that Dennis C. Doherty, D.O. was impaired by a condition that interfered with his ability to engage safely in professional activities, including the practice of medicine.

52.

Upon information and belief, Mary Hardwick R.N. and Ann Yearian R.N. were each aware that Dennis C. Doherty, D.O. was impaired by a condition that interfered with his ability to engage safely in professional activities, including the practice of medicine.

53.

Dr. Sheahan had a duty to report such an impaired physician. The duty stems from the physicians' obligation to protect patients against foreseeable harm.

54.

Defendant Kevin James Sheahan, M.D. was negligent by failing to report or intervene to prevent Dr. Doherty from harming patients such as Gwendolyn Brown.

55.

Defendants Dr. Sheahan, Mary Hardwick, R.N., Ann Yearian, R.N. each had a duty to warn patients and potential patients of Dr. Doherty, Southeastern Pain Specialists, P.C., and Southeastern Pain Ambulatory Surgery Center, LLC that Dr. Doherty presented a danger to himself or others through his practice of medicine. The duty stems from the physicians' obligation to protect patients against foreseeable harm.

56.

Defendants Dr. Sheahan, Mary Hardwick, R.N., Ann Yearian, R.N. were negligent by failing to warn patients and potential patients of Dr. Doherty, Southeastern Pain Specialists, P.C. and Southeastern Pain Ambulatory Surgery Center, LLC that he presented a danger to himself or others or to intervene to prevent Dr. Doherty from harming patients such as Gwendolyn Brown.

57.

All Defendants' negligent acts and omissions described herein and in the Affidavits of Stephen E. Abram, M.D. and Brenda Splawn, RN, MS, CPAN, FNP proximately caused or contributed to the anoxic brain injury suffered by Gwendolyn Brown.

58.

Plaintiffs seek recovery for the personal injury, lost wages, pain and suffering inflicted upon Gwendolyn Brown by the Defendants, together with past, present and future medical expenses and any other expenses incurred in connection with the incident.

59.

The Defendants' negligence has rendered Gwendolyn Brown immobile and helpless. She requires constant supervision, can no longer walk or communicate, and is both mentally and physically incapacitated for life.

60.

Sterling Brown seeks legal redress for loss of consortium proximately caused by the aforesaid negligence committed by the Defendants.

61.

Defendant Dennis C. Doherty, D.O. acted with willful misconduct, malice, fraud, oppression, wantonness and an entire want of care raising the presumption of conscience indifference to the consequences. Accordingly, Plaintiff is entitled to recover punitive damages from Defendant Dr. Doherty in accordance with the enlightened conscience of an impartial jury.

62.

To avoid filing this lawsuit, the Plaintiff attempted to settle with Defendants insurance carrier, to no avail. Because Defendants actions evidence a species of bad faith, were and are stubbornly litigious, and have caused Plaintiffs undue expense, Plaintiffs are entitled to recover their necessary expenses of litigation, including an award of reasonable attorneys' fees and expenses required by this action. (O.C.G.A. § 13-6-11) Furthermore, Plaintiffs are entitled to all

expenses of litigation and attorneys' fees pursuant to all other Georgia statutory and common law.

WHEREFORE, Plaintiffs pray that they have judgment against Defendants Southeastern Pain Specialists, P.C., Southeastern Pain Ambulatory Surgery Center, LLC, Dennis C. Doherty, D.O., Mary Hardwick, R.N., Kevin James Sheahan, M.D., and Ann Yearian, R.N. as follows:

- (a) That Plaintiffs recover the full value of the altered quality of life of Gwendolyn Brown in an amount to be determined by the jury;
- (b) That Plaintiffs recover for pain and suffering endured by Gwendolyn Brown in an amount to be determined by the jury;
- (c) That Plaintiffs recover past, present and future lost wages, medical expenses and any other expenses in an amount to be proven at trial;
- (d) That Sterling Brown recover for his loss of consortium;
- (e) That Plaintiffs recover the cost of this litigation;
- (f) That Plaintiffs punitive damages be awarded against Dennis C. Doherty, D.O.;
- (g) That Plaintiffs recover other further relief as this Court deems appropriate;  
and
- (h) That a trial by jury take place as to all issues.

Respectfully submitted this 25<sup>th</sup> day of May, 2011.

s/ Daniel M. Epstein  
JAMES (JAY) SADD  
Georgia State Bar No.: 622010  
DANIEL M. EPSTEIN  
Georgia Bar No. 249529

**SLAPPEY & SADD**  
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SOUTHEASTERN PAIN SPECIALISTS, P.C.; )  
DENNIS C. DOHERTY, D.O.; MARY )  
HARDWICK, R.N.; KEVIN JAMES )  
SHEAHAN, M.D.; JOHN DOE #1; AND )  
JOHN DOE #2, ET AL. )  
 )  
Defendants. )

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of **First Amended Complaint for Medical Malpractice** has been furnished upon all parties via LexisNexis File & Serve and by placing same in the U.S. Mail, proper postage affixed thereto, addressed as follows:

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Respectfully submitted this 25<sup>th</sup> day of May, 2011.

/s/ Daniel M. Epstein  
DANIEL M. EPSTEIN