

**23-SCCV-097096**

Jeffrey Hanson  
DEC 18, 2023 03:51 PM

**IN THE STATE COURT OF BIBB COUNTY  
STATE OF GEORGIA**

*Katie Hall Lippert*  
Katie Hall Lippert, Clerk  
Bibb State Court

Jason Hargrove,

Plaintiff,

— *versus* —

Navicent Health, Inc.,

The Medical Center of Central  
Georgia, Inc.,

The Macon Orthopaedic &  
Hand Center, Inc.,

Wayne Kelley, Jr., MD, and

John/Jane Does 1-10,

Defendants.

CIVIL ACTION

FILE NO. \_\_\_\_\_

JURY TRIAL DEMANDED

**PLAINTIFF'S COMPLAINT FOR DAMAGES**

## Nature of This Action

1. This action arises out of medical care negligently provided to 44-year-old Jason Hargrove (“Jason”) in connection with spinal-decompression surgery Jason underwent on February 10, 2022, at Atrium Health Navicent Medical Center (“Atrium” or “Hospital”), in Macon, Georgia.
2. Pursuant to O.C.G.A. § 9-11-9.1, the affidavits of Orthopedic Spine Surgeon Kalman Blumberg, MD, and Nurse Nicole Haley, RN, are attached hereto as Exhibits 1 and 2, respectively. This complaint incorporates the opinions and allegations found in those affidavits.
3. As used here, the phrase “standard of care” means the degree of care and skill ordinarily employed by the medical profession generally under similar conditions and like circumstances as pertained to Defendants’ conduct here.

## Parties, Jurisdiction, and Venue

4. **Plaintiff JASON HARGROVE** is a citizen and resident of Georgia. Plaintiff submits to the personal jurisdiction and venue of this Court.
5. **Defendant NAVICENT HEALTH, INC. (“Navicent”)** is a Georgia nonprofit corporation. Registered agent: Kenneth Banks. Physical address and principal office address: 770 Hemlock Street, Suite A, Macon, GA 31201, in Bibb County.
6. Navicent is subject to the personal jurisdiction of this Court.
7. Navicent is subject to the subject-matter jurisdiction of this Court in this case.
8. Navicent is directly subject to venue in this Court, based each of these three grounds: Navicent maintains its registered office in Bibb County; the cause of action originated in Bibb County and Navicent has an office and transacts business in Bibb County; and the cause of action originated in Bibb County.<sup>1</sup>

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<sup>1</sup> O.C.G.A. §§ 14-2-510 and 14-3-510 provide identical venue provisions for regular business corporations and for nonprofit corporations:

9. Pursuant to O.C.G.A. § 9-10-31, Navicent is also subject to venue in this Court, because at least one of its co-defendants is directly subject to venue here.
10. Navicent has been properly served with this complaint.
11. Navicent has no defense to this lawsuit based on undue delay—whether based on the statute of limitations, the statute of repose, laches, or any other similar theory.
12. At relevant times, Navicent was the employer or other principal of one or more of the providers whose care is at issue here.
13. At relevant times, Navicent was the parent or other affiliate of The Medical Center of Central Georgia, Inc.
14. Navicent thus provided overall coordination (including governance) to The Medical Center of Central Georgia, Inc.
15. At relevant times, Navicent owned and operated Atrium Health Navicent Medical Center, located at 777 Hemlock Street, Macon, GA 31201.

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“Each domestic corporation and each foreign corporation authorized to transact business in this state shall be deemed to reside and to be subject to venue as follows: (1) In civil proceedings generally, in the county of this state where the corporation maintains its registered office . . . (3) In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated, if the corporation has an office and transacts business in that county; (4) In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated.”

These same venue provisions apply to Professional Corporations, because PCs are organized under the general “Business Corporation” provisions of the Georgia Code. *See* O.C.G.A. § 14-7-3.

These venue provisions also apply to Limited Liability Companies, *see* O.C.G.A. § 14-11-1108, and to foreign limited liability partnerships, *see* O.C.G.A. § 14-8-46.

O.C.G.A. 9-10-31 provides that, “joint tort-feasors, obligors, or promisors, or joint contractors or copartners, residing in different counties, may be subject to an action as such in the same action in any county in which one or more of the defendants reside.”

16. **Defendant THE MEDICAL CENTER OF CENTRAL GEORGIA, INC. (“MC”)** is a Georgia nonprofit corporation. Registered agent: Kenneth Banks. Physical address and principal office address: 770 Hemlock Street, Suite A, Macon, GA 31201, in Bibb County.
17. MC is subject to the personal jurisdiction of this Court.
18. MC is subject to the subject-matter jurisdiction of this Court in this case.
19. MC is directly subject to venue in this Court, based each of these three grounds: MC maintains its registered office in Bibb County; the cause of action originated in Bibb County and MC has an office and transacts business in Bibb County; and the cause of action originated in Bibb County.
20. Pursuant to O.C.G.A. § 9-10-31, MC is also subject to venue in this Court, because at least one of its co-defendants is directly subject to venue here.
21. MC has been properly served with this complaint.
22. MC has no defense to this lawsuit based on undue delay—whether based on the statute of limitations, the statute of repose, laches, or any other similar theory.
23. At relevant times, MC was the employer or other principal of one or more of the providers whose care is at issue here.
24. At relevant times, MC was the parent or other affiliate of Navicent Health, Inc.
25. MC thus provided overall coordination (including governance) to Navicent Health, Inc.
26. At relevant times, MC owned and operated Atrium Health Navicent Medical Center, located at 777 Hemlock Street, Macon, GA 31201.
27. **Defendant THE MACON ORTHOPAEDIC & HAND CENTER, INC. (“Macon Orthopaedic”)** is a Georgia profit corporation. Registered agent:

Robert Thornsberry. Physical address and principal office address: 3708 Northside Drive, Macon, GA 31210, in Bibb County.

28. Macon Orthopaedic is subject to the personal jurisdiction of this Court.
29. Macon Orthopaedic is subject to the subject-matter jurisdiction of this Court in this case.
30. Macon Orthopaedic is directly subject to venue in this Court, based on each of these grounds: Macon Orthopaedic maintains its registered office in Bibb County; the cause of action originated in Bibb County and Macon Orthopaedic has an office and transacts business in Bibb County; and the cause of action originated in Bibb County.
31. Pursuant to O.C.G.A. § 9-10-31, Macon Orthopaedic is also subject to venue in this Court, because at least one of its co-defendants is directly subject to venue here.
32. Macon Orthopaedic has been properly served with this complaint.
33. Macon Orthopaedic has no defense to this lawsuit based on undue delay—whether based on the statute of limitations, the statute of repose, laches, or any other similar theory.
34. At relevant times, Macon Orthopaedic was the employer or other principal of one or more of the providers whose care is at issue here.
35. At relevant times, Macon Orthopaedic was doing business as **OrthoGeorgia Orthopaedic Specialists**.
36. Herein, the Defendants named in the preceding paragraphs may be referred to collectively as the **“Corporate Defendants.”**
37. **Defendant WAYNE KELLEY, JR, MD**, is a citizen and resident of Georgia. Dr. Kelley resides at 4264 Old Club Rd E, Macon, GA, 31210, in Bibb County.
38. Dr. Kelley is subject to the personal jurisdiction of this Court.

39. Dr. Kelley is subject to the subject-matter jurisdiction of this Court in this case.
40. Dr. Kelley is directly subject to venue in this court because Dr. Kelley resides in Bibb County.
41. Pursuant to O.C.G.A. § 9-10-31, Dr. Kelley is also subject to venue in this Court, because at least one of his co-defendants is directly subject to venue here.
42. Dr. Kelley has been properly served with this complaint.
43. Dr. Kelley has no defense to this lawsuit based on undue delay—whether based on the statute of limitations, the statute of repose, laches, or any other similar theory.
44. At relevant times, Dr. Kelley acted as an employee or other agent of one or more of the Corporate Defendants.
45. As Dr. Kelley’s employer(s) or other principal(s) at the time of his negligence, one or more of the Corporate Defendants is/are vicariously liable for his negligence, because he was acting within the scope of his employment or other agency at that time.
46. If another entity was the employer or other principal of Dr. Kelley at the time, that entity is hereby on notice that, but for a mistake concerning the identity of the proper party, this action would have been brought against that entity.
47. **JOHN/JANE DOES 1-10** are yet-unidentified natural and legal persons who may be wholly or partly liable for the negligence and damages alleged here.
48. Once served with process, John/Jane Does 1-10 are subject to the jurisdiction and venue of this Court.

### **Notice of Claims**

49. Plaintiff here incorporates by reference all other paragraphs of this complaint.

50. Plaintiff here incorporates by reference the expert affidavits attached hereto.
51. Plaintiff hereby provides sufficient notice of his claims against the Defendants.<sup>2</sup>
52. For each claim of professional negligence alleged in this action, the alleged acts and omissions also constituted ordinary or simple negligence.
53. For each claim of professional negligence alleged in this action, the alleged acts and omissions also rose to the level of gross negligence.
54. Pursuant to O.C.G.A. § 9-11-9.1, the affidavit of Orthopedic Spine Surgeon Kalman Blumberg, MD, an expert competent to testify as to the standard of care required of Dr. Kelley, is attached as Exhibit 1.
55. Pursuant to O.C.G.A. § 9-11-9.1, the affidavit of Nurse Nicole Haley, RN, an expert competent to testify as to the standard of care required of Hospital nurses, is attached as Exhibit 2.
56. This complaint incorporates the opinions and allegations found in those affidavits.

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<sup>2</sup> See *Atlanta Women's Specialists v. Trabue*, 310 Ga. 331 (2020) ("Georgia is a notice pleading jurisdiction. Generally, our Civil Practice Act (CPA) advances liberality of pleading. ... [A] complaint need only provide fair notice of what the plaintiff's claim is and the grounds upon which it rests . . . [The] objective of the CPA is to avoid technicalities and to require only a short and plain statement of the claim that will give the defendant fair notice of what the claim is and a general indication of the type of litigation involved; the discovery process bears the burden of filling in details.") (cleaned up).

### **Professional Negligence: Dr. Kelley and Corporate Defendants**

57. Plaintiff here incorporates by reference all other paragraphs of this complaint.
58. At relevant times, Dr. Wayne Kelley, Jr., was a physician engaged in the practice of medicine in the State of Georgia.
59. By 2021, Dr. Kelley entered into a physician-patient relationship with Jason Hargrove.
60. Dr. Kelley thus had a duty to provide care to Jason Hargrove within the applicable standard of care.
61. Dr. Kelley failed to comply with the applicable standard of care in the care he provided Jason.
62. On February 10, 2022, for example, Dr. Kelley violated the standard of care by using a posterior approach in performing spinal-decompression surgery on Jason, injuring Jason's spinal-cord, resulting in permanent neurologic deficits, including paralysis and incontinence. *See Exhibit 1.*
63. At relevant times, Dr. Kelley was an employee or other agent of one or more of the Corporate Defendants, and was acting within the course and scope of his employment or other agency.
64. One or more of the Corporate Defendants are therefore liable for Dr. Kelley's failures to comply with the applicable standard of care.

### **Professional Negligence: Nurses and Corporate Defendants**

65. Plaintiff here incorporates by reference all other paragraphs of this complaint.
66. At relevant times in 2022, nurses working at the Hospital were registered nurses engaged in the practice of nursing in the State of Georgia.
67. In February and March 2022, such nurses entered into a nurse-patient relationship with Jason Hargrove.



68. These nurses thus had a duty to provide Jason care within the applicable standard of care.
69. In providing Jason care, such nurses failed to comply with the applicable standard of care.
70. At relevant times, for example, Hospital nurses violated requirements of the standard of care, by failing to monitor, clean, and reposition Jason, causing him additional pain, suffering, discomfort, humiliation, and other harms. *See* Exhibit 2.
71. At relevant times, each of these Hospital nurses was an employee or other agent of one or more of the Corporate Defendants, and was acting within the course and scope of his or her employment or other agency.
72. One or more of the Corporate Defendants are therefore liable for each failure of each of these nurses to comply with the applicable standard of care.

### **Administrative Negligence: Corporate Defendants**

73. Plaintiff here incorporates by reference all other paragraphs of this complaint.
74. Georgia law recognizes that ordinary negligence in the form of negligent administration can contribute to a chain of events that includes harmful medical malpractice.<sup>3</sup>
75. Each of the Corporate Defendants owed Jason Hargrove and his family ordinary duties of care.
76. Each of the Corporate Defendants breached those duties.

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<sup>3</sup> *See, e.g., Dent v. Memorial Hospital*, 270 Ga. 316 (1998) (reversing judgment in favor of hospital, because jury instructions did not make clear that both ordinary negligence and professional malpractice would authorize a verdict against the hospital); *Lowndes County Health v. Copeland*, 352 Ga. App. 233 (2019) (affirming verdict for both ordinary negligence and professional negligence against skilled nursing facility).

77. Each of the Corporate Defendants is directly liable for the breach of those duties.
78. Each of the Corporate Defendants breached those duties through the acts and omissions of administrators not licensed for the professions listed in O.C.G.A. § 9-11-9.1(g).
79. Each of the Corporate Defendants breached those duties through the acts and omissions of professional staff performing purely administrative tasks.
80. Administrators failed, for example, to staff the Hospital with enough nurses, technicians, physical therapists, and other providers to ensure that post-operative patients were promptly rounded on, cleaned, and repositioned.
81. Administrators also failed, for example, to develop and promulgate, or otherwise to provide training on and enforcement of, appropriate policies on monitoring, cleaning, and repositioning patients.
82. Negligent administration by Corporate Defendants created unnecessary and unreasonable potential for error by providers involved in Jason's care.
83. Negligently administered systems and organizational cultures facilitated, rather than prevented, individual error.
84. By violating duties of ordinary care, the Corporate Defendants harmed Jason.
85. The administrators directly responsible for the negligent administration were employees or servants, or actual or ostensible agents, of one or more of the Corporate Defendants.
86. The Corporate Defendants are thus vicariously liable for the ordinary negligence of those administrators.

### **Breach of Duties to Inform and Obtain Consent**

87. Plaintiff here incorporates by reference all other paragraphs of this complaint.

88. Healthcare providers (including healthcare organizations) owe patients certain professional, statutory, and ethical duties to inform patients about material facts concerning their physical condition and to obtain their informed consent to certain treatments.
89. If a patient is incapacitated, healthcare providers and organizations owe these duties to the patient's next-of-kin.
90. Pursuant to O.G.C.A. § 31-9-6.1, physicians must obtain their patients' informed consent to certain surgical and diagnostic procedures, including a posterior laminectomy.
91. Because healthcare providers and organizations stand in a fiduciary relationship with their patients, healthcare providers and organizations owe patients fiduciary duties, including the duty to inform patients of all material information concerning their physical condition.
92. According to section 8.6 of the AMA Code of Medical Ethics, "individual physicians who have been involved in a (possible) medical error should . . . disclose the occurrence of the error," and "explain the nature of the (potential) harm." In fact, physicians should "acknowledge the error and express professional and compassionate concern toward patients who have been harmed," and should "explain efforts that are being taken to prevent similar occurrences in the future."
93. Here, Defendants breached these duties by, for example, failing to disclose to Jason that there are safer alternatives to a posterior laminectomy, that it was error to use a posterior approach, and that the posterior laminectomy injured Jason's spinal cord, resulting in permanent neurologic deficits.
94. In failing to disclose the safer alternatives, Defendants also failed to obtain Jason's informed consent to the spinal-decompression surgery.

### **Causation**

95. Plaintiff here incorporates by reference all other paragraphs of this complaint.

96. As the direct and proximate result of wrongdoing alleged herein, Jason Hargrove experienced pain, suffering, and permanent injury.
97. As the direct and proximate result of wrongdoing alleged herein, Jason Hargrove will live with pain, suffering, and permanent injury the rest of his life, including paralysis, incontinence, and other devastating deficits.
98. As the direct and proximate result of wrongdoing alleged herein, Jason Hargrove experienced distress, anguish, humiliation, discomfort, pain, suffering, and other harms during his Atrium hospitalization in 2022.
99. As the direct and proximate result of wrongdoing alleged herein, Plaintiff's family has experienced pain, suffering, emotional distress, and other damages.

### **O.C.G.A. § 13-6-11 Claims**

100. Plaintiff here incorporates by reference all other paragraphs of this complaint.
101. Insofar as Plaintiff shows that Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiff unnecessary trouble and expense, Plaintiff is entitled to his expenses of litigation pursuant to O.C.G.A. § 13-6-11, including reasonable attorneys' fees.
102. Each Defendant does not acknowledge any wrongdoing in the care he, she, or its employees or agents provided Jason Hargrove in 2022.
103. Each Defendant is satisfied with the care he, she, or its employees or agents provided Jason Hargrove in 2022.
104. The care each Defendant provided Jason Hargrove in 2022 is in keeping with the Defendant's standards and practices.
105. The care each Defendant provided Jason in 2022 represents the quality of care the Defendant generally provides to patients.

## Prayer for Relief

106. As a direct and proximate result of the Defendants' conduct, Plaintiff is entitled to recover from Defendants reasonable compensatory damages in an amount exceeding \$10,000.00 to be determined by a fair and impartial jury, for all damages Plaintiff has suffered, including physical, emotional, and economic injuries.
107. WHEREFORE, Plaintiff demands a trial by jury, and judgment against the Defendants as follows:
- a. compensatory damages in an amount exceeding \$10,000.00 to be determined by a fair and impartial jury,
  - b. all costs of this action,
  - c. expenses of litigation pursuant to O.C.G.A. § 13-6-11,
  - d. punitive damages, and
  - e. such other and further relief as the Court deems just and proper.

December 18, 2023

Respectfully submitted,

/s/ Lloyd N. Bell

Lloyd N. Bell

Georgia Bar No. 048800

Daniel E. Holloway

Georgia Bar No. 658026

Mauricio A. Gonzalez

Georgia Bar No. 585841

BELL LAW FIRM

1201 Peachtree St. N.E., Suite 2000

Atlanta, GA 30361

(404) 249-6767 (tel)

bell@BellLawFirm.com  
dan@BellLawFirm.com  
mauricio@BellLawFirm.com

**Attorneys for Plaintiff**