

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION

NO. 08-1544-E

BRIAN CLERKIN, ADMINISTRATOR  
OF THE ESTATE OF REBECCA RILEY,  
Plaintiff,

V.  
KAYOKO KIFUJI, M.D. PH.D.,  
Defendant.

COMPLAINT

**Count I.**

1. The plaintiff, Brian Clerkin, is the duly appointed Administrator of the Estate of Rebecca Riley and is a resident of Hanover, Plymouth County, Massachusetts.
2. The defendant, Kayoko Kifuji, M.D. Ph.D., was at all times relevant to this complaint a physician licensed to practice her profession in the Commonwealth of Massachusetts.
3. This action is brought to recover for the wrongful death of Rebecca Riley for the benefit of her next of kin, pursuant to M.G.L.A. c. 229 §1 et seq.
4. At all times relevant to this complaint, the defendant, Kayoko Kifuji, M.D. Ph.D., represented and held herself out to be a physician, skilled in the treatment of various illnesses and conditions and, in particular, represented to the plaintiff's decedent that she was knowledgeable, competent, and qualified to diagnose and treat the plaintiff's decedent's condition on or about 8/27/04 to 12/13/06.
5. On or about 8/27/04 to 12/13/06, the plaintiff's decedent submitted herself to the care and treatment of the defendant, Kayoko Kifuji, M.D. Ph.D., who negligently, carelessly, and without regard for the plaintiff's decedent's health and well-being, treated the plaintiff's decedent in a manner resulting in the plaintiff's decedent's death on 12/13/06.
6. The death of Rebecca Riley and the damage to her estate, were the direct and proximate result of the carelessness, unskillfulness, negligence and improper care and treatment by the defendant, Kayoko Kifuji, M.D. Ph.D., including, but not limited to the following:

Defendant's misrepresentations to the plaintiff's decedent that she was knowledgeable, skillful, and competent to diagnose and treat the plaintiff's decedent's medical condition on or about 8/27/04 to 12/13/06;

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3. This action is brought to recover for the wrongful death of Rebecca Riley for the benefit of her next of kin, pursuant to M.G.L.A. c. 229 §1 et seq.
4. At all times relevant to this complaint, the defendant, Kayoko Kifuji, M.D. Ph.D., represented and held herself out to be a physician, skilled in the treatment of various illnesses and conditions and, in particular, represented to the plaintiff's decedent that she was knowledgeable, competent, and qualified to diagnose and treat the plaintiff's decedent's condition on or about 8/27/04 to 12/13/06.
5. On or about 8/27/04 to 12/13/06, the plaintiff's decedent submitted herself to the care and treatment of the defendant, Kayoko Kifuji, M.D. Ph.D., who negligently, carelessly, and without regard for the plaintiff's decedent's health and well-being, treated the plaintiff's decedent in a manner resulting in the plaintiff's decedent's death on 12/13/06.
6. The death of Rebecca Riley and the damage to her estate, including, but not limited to her funeral and burial expenses, were the direct and proximate result of the malicious, willful, wanton or reckless conduct of the defendant, Kayoko Kifuji, M.D. Ph.D., or by the gross negligence of the defendant on or about 8/27/04 to 12/13/06.

WHEREFORE, the plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, prays judgment against the defendant, Kayoko Kifuji, M.D. Ph.D., for the above-described wrongful death and damage to the estate, together with punitive damages, interest and costs.

#### **Count IV.**

1. The plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, repeats and reavers all of the allegations contained in Paragraphs One through Six of Count III above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the decedent, Rebecca Riley.
3. As the direct and proximate result of the malicious, willful, wanton or reckless conduct of the defendant, Kayoko Kifuji, M.D. Ph.D., the decedent, Rebecca Riley, was caused to suffer consciously up to and until her time of death.

WHEREFORE, the plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, prays judgment against the defendant, Kayoko Kifuji, M.D. Ph.D., for the above-described wrongful death and damage to the estate, together with punitive damages, interest and costs.

### **Count V.**

1. The plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, repeats and reavers all of the allegations contained in Paragraphs One through Six of Count I above, as if expressly rewritten and set forth herein.
2. On or about 8/27/04 to 12/13/06, the defendant, Kayoko Kifuji, M.D. Ph.D., contracted with the plaintiff's decedent to provide professional services related to the plaintiff's decedent's medical care and treatment.
3. The defendant, Kayoko Kifuji, M.D. Ph.D., expressly and impliedly warranted to the plaintiff's decedent that she would perform and render said professional services in accordance with accepted standards for the practice of medicine, and that she would possess and exercise that degree of skill and care possessed and exercised by the average qualified members of the medical profession practicing her specialty.
4. On or about 8/27/04 to 12/13/06, the defendant, Kayoko Kifuji, M.D. Ph.D., breached her express and implied warranties by failing to perform and render professional services in accordance with accepted standards for the practice of medicine, and by failing to possess and exercise that degree of skill and care possessed and exercised by the average qualified members of the medical profession practicing her specialty, which breach resulted in the death of Rebecca Riley.
5. The death of Rebecca Riley and the damage to her estate, including, but not limited to her funeral and burial expenses, were the direct and proximate result of the defendant, Kayoko Kifuji, M.D. Ph.D.'s breach of express and implied warranties.

WHEREFORE, the plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, prays judgment against the defendant, Kayoko Kifuji, M.D. Ph.D., for the above-described wrongful death and damage to the estate, together with interest and costs.

### **Count VI.**

1. The plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, repeats and reavers all of the allegations contained in Paragraphs One through Five of Count V above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the decedent, Rebecca Riley.
3. As the direct and proximate result of the breach of express and implied warranties by the defendant, Kayoko Kifuji, M.D. Ph.D., the plaintiff's decedent, Rebecca Riley, was caused to suffer consciously up to and until her time of death.

WHEREFORE, the plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, prays judgment against the defendant, Kayoko Kifuji, M.D. Ph.D., in an amount to be determined by a jury, together with interest and costs.

### **Count VII.**

1. The plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, repeats and reavers all of the allegations contained in Paragraphs One through Six of Count I above, as if expressly rewritten and set forth herein.
2. On or about 8/27/04 to 12/13/06, average qualified members of the medical profession practicing the defendant's specialty knew or should have known of the risks, potential consequences and alternatives to the defendant's choice of treatment of the plaintiff's decedent.
3. On or about 8/27/04 to 12/13/06, the defendant, Kayoko Kifuji, M.D. Ph.D., knew or should have known of the risks, potential consequences and alternatives to the defendant's choice of treatment of the plaintiff's decedent.
4. On or about 8/27/04 to 12/13/06, the defendant, Kayoko Kifuji, M.D. Ph.D., did not inform the plaintiff's decedent of the alternatives to and risks and potential consequences of the defendant's choice of treatment of the plaintiff's decedent.
5. If the defendant, Kayoko Kifuji, M.D. Ph.D., had informed the plaintiff's decedent of the alternatives to and risks and potential consequences of the defendant's choice of treatment of the plaintiff's decedent, neither the plaintiff's decedent nor a reasonable person in her position would have elected the defendant's choice of treatment.
6. The alternatives to and the risks and potential consequences of the defendant's choice of treatment were material to a decision by the plaintiff's decedent and a reasonable person in her position as to whether to undergo the defendant's choice of treatment.
7. The death of Rebecca Riley and the damage to her estate, including, but not limited to her funeral and burial expenses, were the direct and proximate result of the defendant, Kayoko Kifuji, M.D. Ph.D.'s failure to obtain the informed consent of the plaintiff's decedent.

WHEREFORE, the plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, prays judgment against the defendant, Kayoko Kifuji, M.D. Ph.D., for the above-described wrongful death and damage to the estate, together with interest and costs.

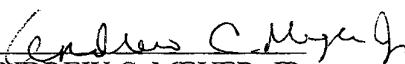
### **Count VIII.**

1. The plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, repeats and reavers all of the allegations contained in Paragraphs One through Seven of Count VII above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the decedent, Rebecca Riley.
3. As the direct and proximate result of the defendant, Kayoko Kifuji, M.D. Ph.D.'s failure to inform the plaintiff's decedent of the alternatives to and risks and potential consequences of the defendant's treatment, the decedent, Rebecca Riley, was caused to suffer consciously up to and until her time of death.

WHEREFORE, the plaintiff, Brian Clerkin, as duly appointed Administrator of the Estate of Rebecca Riley, prays judgment against the defendant, Kayoko Kifuji, M.D. Ph.D., in an amount to be determined by a jury, together with interest and costs.

PLAINTIFF CLAIMS TRIAL BY JURY.

Respectfully submitted,  
The plaintiff,  
By his attorney,

  
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