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BY  DEPUTY

Attorneys for Plaintiff JEAN TONASCIA
by and through DEBORAH WAGNER,
Conservator of the Person and Estate of
JEAN TONASCIA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

RG13682454

JEAN TONASCIA, by and through
DEBORAH WAGNER, Conservator of the
Person and Estate of JEAN TONASCIA,

Case No.

Unlimited Civil Case

Plaintiff,

COMPLAINT FOR DAMAGES

v.

BY FAX

KAISER PERMANENTE POST-ACUTE
CARE CENTER, KAISER FOUNDATION
HEALTH PLAN, INC., KAISER
FOUNDATION HOSPITALS, THE
PERMANENTE MEDICAL GROUP, INC.,
and DOES 1 through 100, Inclusive,

Defendants.

COMES NOW plaintiff JEAN TONASCIA, by and through DEBORAH WAGNER,
Conservator of the Person and Estate of JEAN TONASCIA, and alleges as follows:

PRELIMINARY ALLEGATIONS

1. At all times pertinent to this complaint, plaintiff JEAN TONASCIA was an elder, as
defined in California Welfare & Institutions Code §15610.27, and was a resident at the skilled

1 nursing facility owned and/or operated by defendants KAISER PERMANENTE POST-ACUTE
2 CARE CENTER, KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION
3 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. (all referred to hereinafter as
4 KAISER), and various of the Doe defendants, as more particularly set forth below.

5
6 2. At all times pertinent to this complaint, defendant KAISER PERMANENTE POST-
7 ACUTE CARE CENTER (hereinafter KPACC) was a skilled nursing facility operating in San
8 Leandro, County of Alameda, California, providing long-term care and custodial services to
9 individuals such as plaintiff JEAN TONASCIA.

10 3. At all times pertinent to this complaint, plaintiff TONASCIA was a resident at
11 defendant KPACC. At all times pertinent to this complaint defendants KAISER and some of the
12 other defendants were engaged in the business of providing long-term care as a 24-hour health
13 facility as defined in Section 1250(c) of the California Health and Safety Code and subject to the
14 requirements of federal and state law regarding the operation of such facilities.

15
16 4. Plaintiff is unaware of the true names and capacities of defendants DOES 1-100, and
17 will amend her complaint to state those names when the same becomes known to her. Plaintiff is
18 informed and believes, and thereupon alleges, that defendants DOES 1-15 at all times relevant hereto
19 were individuals or entities having an ownership interest in, and/or management and control of, or
20 holding the license to operate, defendant KPACC. Plaintiff is informed and believes, and thereupon
21 alleges that defendants DOES 16-25 were authorized agents, employees, and representatives of
22 defendants KAISER and/or KPACC, and were acting in the position of administrator, director of
23 nursing, nurses, physicians, physicians' assistants, nurse assistants, and/or other healthcare
24 professionals or healthcare entities, involved in plaintiff TONASCIA's care, who negligently failed
25 to render competent medical care and services to plaintiff and/or who failed to provide proper and
26 necessary custodial care. Plaintiff is informed and believes, and thereupon alleges, that defendants
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28

DOES 26-35 were independent nurses, physicians, physicians' assistants, nurses' assistants, clinical researchers or researching entities, or other healthcare individuals or entities who negligently failed to render competent medical care and services to plaintiff and/or who failed to provide proper and necessary custodial care. Defendants DOES 36-100 were other individuals or entities who are responsible in some way for plaintiffs' injuries. At all times relevant to this complaint, defendants were subject to the requirements of federal and state law.

5. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously named defendants was in some fashion or manner liable and legally responsible for the damages and injuries set forth herein. In doing the things hereinafter alleged, defendants, and each of them, acted independently, or as the agents, servants and employees of their co-defendants, and acted within the course and scope of said agency and employment and with the knowledge, consent and approval of their co-defendants. Their conduct was ratified by their co-defendants.

FIRST CAUSE OF ACTION

ELDER ABUSE

6. Plaintiff hereby incorporates the allegations asserted in paragraphs 1-5.

7. Plaintiff TONASCIA was a resident at defendant KPACC from on or about April 11, 2013 through April 25, 2013. Plaintiff TONASCIA was 90 years old and an elder, as defined in California Welfare & Institutions Code §15610.27, and she was a patient of defendants KAISER and KPACC and certain of the DOE defendants, as more particularly set forth below.

8. At all times mentioned herein, defendant KPACC was a skilled nursing facility operating in Alameda County. Plaintiff is informed and believes that defendant KPACC and other defendants were licensed by the State of California to operate defendant skilled nursing facility.

9. Plaintiff alleges, upon information and belief, that, at all times mentioned herein, defendants KAISER and KPACC and certain of the DOE defendants were licensed or unlicensed

1 healthcare providers, or employees of these defendants, rendering care to elderly residents as a
2 skilled nursing facility in the capacities of owner, licensee, administrator, medical director, nurses,
3 certified nursing assistants, nurse's aides or otherwise, to residents at the skilled nursing facility
4 known as KPACC, including plaintiff.

5
6 10. In doing the things herein alleged, defendants and each of them, acted as the agents,
7 servants, and employees of their co-defendants, and each acted within the course and scope of said
8 agency and employment and with the knowledge, consent and approval of their co-defendants, who
9 ratified their conduct. At all times herein mentioned, defendant KPACC and the other defendants,
10 as owner(s), administrator(s), licensee(s) and medical director had knowledge of, ratified, and/or
11 otherwise authorized all of the acts or omissions that caused the injuries suffered by plaintiff,
12 including, but not limited to, the hiring and retention of unqualified and untrained staff, the failure
13 to provide sufficient numbers of qualified staff and failing to train staff to meet the needs of each of
14 their residents and patients, and the repeated failures to ensure that plaintiff received proper care, as
15 set forth in this complaint.
16

17 11. At all times relevant to this action defendants had the care and custody of plaintiff
18 TONASCIA in that she resided at their skilled nursing facility on a 24-hour basis as a resident and/or
19 patient.
20

21 12. Because plaintiff TONASCIA was a resident of defendants' facility, defendants had
22 a duty under common law and California state law to protect her and to benefit facility residents such
23 as she. Defendants owed a duty to plaintiff to provide her with care, including personal assistance,
24 observation and supervision, to maintain her highest practicable level of physical, mental and
25 psycho-social well being.
26

27 13. Without limiting the generality of the foregoing, defendants owed a duty to:

28 (a) Maintain facility personnel at all times sufficient in number and competent

1 in ability to provide services necessary to meet plaintiff's needs, including the
2 provision of assistance and care in those activities of daily living which she
3 was unable to do for herself;

- 4 (b) Follow, implement, and adhere to all physician orders and family requests;
5 (c) Monitor and accurately record plaintiff's condition, and report meaningful
6 changes therein to her attending physician and family members;
7
8 (d) Establish and implement a resident care plan for plaintiff based upon, and
9 including, without limitation, an ongoing process of identifying her care
10 needs, including but not limited to care needs pertaining to skin;
11 (e) Maintain staffing at levels adequate to meet plaintiff's needs;
12 (f) Follow proper care standards to maximize the health, safety and well being
13 of plaintiff;
14
15 (g) Observe, monitor, supervise, and attend to plaintiff, who was known to have
16 conditions which required ongoing care;
17 (h) Observe and assess plaintiff, and provide care as needed;
18 (i) Monitor and assess the condition of plaintiff's skin, and identify and
19 implement methods to prevent skin breakdown and pressure wounds;
20
21 (j) Monitor, manage and relieve plaintiff's pain.

22 14. Plaintiff TONASCIA was admitted to KPACC on or about April 11, 2012, following
23 treatment for a hip fracture at the KAISER facility in Santa Rosa, California. At admission, plaintiff
24 TONASCIA was elderly, frail and completely dependent on defendants for assistance with all
25 activities of daily living. Plaintiff TONASCIA required assistance with eating, being positioned in
26 her bed, being transferred to and from her bed, dressing, bathing, toileting, grooming, and wheelchair
27 locomotion. Plaintiff TONASCIA suffered from advanced cognitive deficit and was unable to
28

1 comprehend directions or to focus for completion of tasks. Plaintiff TONASCIA also had impaired
2 communication skills and therefore it was critical for defendants to pay careful and close attention
3 to her condition because plaintiff was unable to let defendants know when she was hurting and in
4 pain. In addition, plaintiff was at very high risk of skin breakdown because of her decreased
5 mobility, her cognitive impairment and refusal of care, edema in her right lower leg, and
6 anticoagulant medication therapy that she was receiving. Plaintiff was also at increased risk of heel
7 ulcer because of her recent hip fracture and surgical repair of the fracture. In an assessment of
8 plaintiff's condition, defendants acknowledged that plaintiff was at severe risk of skin breakdown
9 and pressure wounds.
10

11 15. Plaintiff TONASCIA was 90 years old at her admission to KPACC. Because of her
12 mental and physical deficits, plaintiff was at increased risk for skin breakdown. Plaintiff was unable
13 to move herself in her bed on her own, and she was unable to get out of her bed on her own. It was
14 critically important for defendants to relieve pressure on plaintiff's heels by "floating" her heels to
15 prevent plaintiff's heels from resting on the surface of the bed at all times.
16

17 16. Because of her mental and physical deficits, plaintiff TONASCIA was unable to re-
18 position herself in her bed, unable to move herself to or from her bed without assistance, and she was
19 completely dependent on defendants to assist her with re-positioning in the bed and transfers to or
20 from the bed and a wheelchair. Defendants had actual knowledge of all of the physical conditions
21 and circumstances that made plaintiff TONASCIA a very fragile patient, and defendants had actual
22 knowledge that plaintiff was susceptible to skin breakdown and required assistance to prevent the
23 development of pressure wounds.
24

25 17. During the time that plaintiff TONASCIA was a patient at defendant KPACC
26 defendants abused and neglected her by recklessly failing to relieve pressure on plaintiff's heels,
27 thereby exposing plaintiff to the danger of pressure wounds. Defendants knew that plaintiff was at
28

1 high risk for developing pressure wounds because of her decreased mobility, her cognitive
2 impairment and refusal of care, edema in her right lower leg, and anticoagulant medication therapy
3 that she was receiving. Defendants knew that plaintiff was also at increased risk of heel ulcer
4 because of her recent hip fracture and surgical repair of the fracture. In fact, in an assessment of
5 plaintiff's condition, defendants acknowledged that plaintiff was at severe risk of skin breakdown
6 and pressure wounds.
7

8 18. Pursuant to California Code of Regulations, title 22, §72311, defendants were
9 required to develop a plan of care in which they identified plaintiff's care needs based on an
10 assessment of plaintiff's condition, and defendants were also required to implement that plan of care
11 to ensure that plaintiff received needed care. Defendants recklessly violated the duties set forth in
12 §72311, as set forth below.
13

14 19. At plaintiff's admission to KPACC, defendants prepared a plan of care pertaining to
15 plaintiff's skin integrity. The plan of care stated as its goal that plaintiff's skin would remain
16 intact and free of skin breakdown. Defendants failed, however, to implement that plan and
17 recklessly permitted plaintiff to develop a large pressure ulcer on her right heel. Defendants failed
18 to implement their plan of care in all of the following ways:
19

20 (a) Pursuant to the skin integrity plan of care, plaintiff was to be re-assessed at
21 any change in condition. Defendants failed to perform any re-assessment for
22 plaintiff's skin integrity plan of care, despite the fact that plaintiff had a
23 change in condition that consisted of skin breakdown on her right heel.

24 (b) Pursuant to the skin integrity plan of care, defendants had a duty to evaluate
25 and measure plaintiff's heel wound weekly. Defendants failed to perform
26 such weekly assessment of plaintiff's heel wound. The first mention of
27 plaintiff's heel wound in the medical chart is April 25, 2013, at which time
28

1 the wound was so advanced that it was covered with black eschar measuring
2 approximately 4cm x 5cm.

3 (c) Pursuant to the skin integrity plan of care, defendants had a duty to turn and
4 reposition plaintiff as needed. Defendants failed to turn and reposition
5 plaintiff, and failed to relieve pressure on plaintiff's heels, which ultimately
6 resulted in the development of a pressure ulcer on plaintiff's right heel.
7

8 (d) Pursuant to the skin integrity plan of care, defendants had a duty to inspect
9 and moisturize plaintiff's feet daily. Defendants failed to inspect or
10 moisturize plaintiff's feet, and failed to discover that plaintiff was developing
11 a pressure wound on her right heel. By repeatedly failing to inspect or
12 moisturize plaintiff's feet, defendants allowed that heel wound to develop to
13 the point that it was covered with black eschar of approximately 4 cm x 5cm.
14 By repeatedly failing to inspect or moisturize plaintiff's feet, defendants also
15 failed to take measures to prevent the heel wound from worsening to the
16 point that it was covered with black eschar of approximately 4cm x 5cm.
17

18 (e) Pursuant to the skin integrity plan of care, defendants had a duty to remove
19 any protective garments and inspect plaintiff's heels every shift. Defendants
20 repeatedly failed to perform such inspections, shift after shift, thus allowing
21 the wound on plaintiff's heel to continue to worsen.
22

23 (f) Pursuant to the skin integrity plan of care, defendants had a duty to elevate
24 plaintiff's legs to prevent skin breakdown and pressure ulcers. Defendants
25 repeatedly failed to elevate plaintiff's legs, thus allowing a pressure wound
26 to develop on plaintiff's right heel.
27

28 20. As a direct and proximate result of the negligence and neglect of defendants, plaintiff

1 sustained injury which caused her to endure intense physical and emotional pain and suffering, and
2 to incur medical expenses for the care and treatment of said injuries.

3 21. The damages and injuries suffered by plaintiff are the direct legal result of the
4 negligence, reckless, willful, intentional, and malicious acts or omissions of the defendants, and each
5 of them, who failed to adequately and appropriately provide proper care to plaintiff, and who failed
6 to monitor, supervise, and control her physical condition, and who failed to respond to plaintiff's
7 complaints and deteriorating physical condition and provide plaintiff with an adequate and
8 appropriate and reasonable level of care, monitoring, supervision and treatment. Defendants knew
9 that the purpose of plaintiff's skin integrity plan of care was to prevent skin breakdown and the
10 development of pressure ulcers, and knew that the purpose of a plan of care is to ensure that
11 a patient receives needed care. Defendants further knew that plaintiff was at serious risk of
12 developing skin breakdown and pressure ulcers, and knew that it was highly probable that plaintiff
13 would develop skin breakdown and/or pressure ulcers if defendants failed to carry out plaintiff's skin
14 integrity plan of care, yet defendants knowingly disregarded that risk by repeatedly failing to carry
15 out their duties as set forth in plaintiff's skin integrity plan of care.
16
17

18 WHEREFORE, plaintiff prays for relief as set forth below:
19

20 SECOND CAUSE OF ACTION

21 MEDICAL NEGLIGENCE

22 22. Plaintiff hereby incorporates the allegations asserted in paragraphs 1-21.

23 23. At all times pertinent hereto defendants, and each of them, had the care and custody
24 of plaintiff, in that she resided at the skilled nursing facility known as KPACC on a 24-hour basis
25 as a resident and/or a patient.
26

27 24. Defendants, and each of them, negligently failed to meet the standard of care for
28 medical services provided to plaintiff JEAN TONASCIA.

25. As a direct legal result of the negligence of the defendants, and each of them, plaintiff suffered injury and incurred medical expenses, and sustained great physical and emotional pain and discomfort, all to her general and special damages as will be proven at trial.

WHEREFORE, plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION

VIOLATION OF HEALTH & SAFETY CODE §1430

(Against the Licensee of Defendant KPACC)

26. Plaintiff hereby incorporates the allegations asserted in paragraphs 1-25.

27. Defendant KPACC and certain of the DOE defendants were issued a license by the State of California to operate the skilled nursing facility known as KAISER PERMANENTE POST-ACUTE CARE CENTER. Because plaintiff was at times a patient and resident of defendants' skilled nursing facility, defendants owed her certain duties under federal and state laws designated and implemented for the protection of patients and residents of skilled nursing facilities such as plaintiff.

28. At all times, defendants knew of the existence of said laws, and knew that residents such as plaintiff were at risk of injury whenever defendants failed to meet the duties imposed by said laws. Defendants knew that their pattern and repeated failure to comply with the above-described duties and laws would probably, if not certainly, result in injuries to residents such as plaintiff.

29. Despite such knowledge, defendants knowingly, willfully, wantonly and/or recklessly ignored or otherwise violated laws and regulations, including but not limited to California Code of Regulations, title 22. In violating these laws, defendants acted in conscious and willful disregard of the health and safety of plaintiff, and allowed her to suffer thereby.

30. In their failures to provide proper care to plaintiff, as described above, defendants committed class "A" and/or class "B" violations, as described in Health & Safety Code §1424.

1 Pursuant to Health & Safety Code §1430(a), plaintiff may prosecute an action for civil damages, and
2 may recover damages in an amount not to exceed the maximum amount of civil penalties that could
3 be assessed on account of said violations.

4 31. In their failures to provide proper care to plaintiff, as described above, defendants
5 have violated plaintiff's rights, as set forth in the Patients Bill of Rights in section 72527 of title 22
6 of the California Code of Regulations, and other applicable federal or state laws or regulations.
7 Pursuant to Health & Safety Code §1430(b), plaintiff may prosecute a civil action against defendants
8 for said violations, and may recover monetary damages, including costs and attorney's fees. In
9 addition to their violation of CCR, title 22, §72527, defendants have also violated other state and
10 federal regulations, including but not limited to CCR, title 22, §72309 (by failing to provide a
11 nursing staff organized and equipped to provide skilled nursing care on a continuous basis), §72311
12 (by failing to properly develop and implement an appropriate plan of care for plaintiff), §72315 (by
13 failing to treat plaintiff with respect by allowing her to suffer severe pain and discomfort day after
14 day), §72517 (by failing to properly train staff to develop and improve necessary skills and
15 knowledge), and including but not limited to 42 CFR §483.13(b) (by failing to protect plaintiff from
16 abuse and neglect), §483.15 (by failing to promote, maintain and enhance plaintiff's quality of life),
17 §483.15(a) (by failing to treat plaintiff with dignity and respect), §483.15(f)(1) (by failing to properly
18 assess plaintiff and develop a plan of care designed to maintain her physical, mental and
19 psychosocial well-being), §483.75(g) (by failing to employ sufficient qualified professional staff to
20 assess, develop and implement a comprehensive care plan for plaintiff), §483.20(d) (by failing to use
21 a proper assessment to develop an appropriate plan of care for plaintiff), §483.20(k) (by failing to
22 develop a comprehensive care plan for plaintiff), §483.25(a)(1) (by failing to ensure that plaintiff's
23 ability to engage in activities of daily living did not deteriorate), §483.25(a)(2) (by failing to provide
24 maintenance and restorative programs to plaintiff to achieve and maintain the highest practicable
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1 outcome), §483.25(a)(3) (by failing to provide plaintiff with the necessary services to carry out her
2 activities of daily living), §483.30 (by failing to provide sufficient nursing staff to provide services
3 to attain or maintain the highest practicable physical, mental and psychosocial well-being of
4 residents, including plaintiff), §483.30(a)(1) (by failing to provide sufficient staff to provide proper
5 care).

6
7 32. These violations of plaintiff's rights occurred repeatedly and continuously throughout
8 plaintiff's stay at defendants' skilled nursing facility.

9 WHEREFORE, plaintiff prays for relief as set forth below.

- 10 1. For special damages according to proof;
11 2. For general damages according to proof;
12 3. For punitive damages;
13 4. For attorneys' fees;
14 5. For costs of suit;
15 6. For such other and further relief as the court deems proper.

16
17 Dated: June 4, 2013

TARKINGTON, O'NEILL, BARRACK & CHONG
A Professional Corporation

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19
20 By: Margaret S. Flynn
MARGARET S. FLYNN
21 Attorneys for Plaintiffs
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