



ORIGINAL

FILED
ALAMEDA COUNTY

JUN 04 2014

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

Christopher B. Dolan (SBN 165358)
Joshua Watson (SBN 238058)

THE DOLAN LAW FIRM
1438 Market Street
San Francisco, California 94102
Telephone: (415) 421-2800
Facsimile: (415) 421-2830

Attorneys for Plaintiff

WILLIAM TYLER LUSK by and through his Guardian ad Litem JEFF LUSK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

WILLIAM TYLER LUSK by and through his
Guardian ad Litem JEFF LUSK

Case No.

RG14727775

Plaintiff,

COMPLAINT FOR DAMAGES

v.

1. MEDICAL NEGLIGENCE

KAISER PERMANENTE, KAISER
FOUNDATION HOSPITALS, KAISER
FOUNDATION HEALTH PLAN, INC.,
PERMANENTE MEDICAL GROUP, INC.,
RHONDA CALDWELL-WILLIAMS MD,
and DOES 1 - 25

2. LACK OF INFORMED CONSENT

**3. MANAGED CARE NEGLIGENCE
(CIVIL CODE 3428)**

Defendants.

**4. ABUSE OF A DEPENDENT ADULT
(WELFARE & INST. CODE 15610.57,
15657)**

JURY TRIAL DEMANDED

FILED

COMES NOW WILLIAM TYLER LUSK by and through his Guardian ad Litem JEFF LUSK, who alleges the following, and pleas for relief from the Court:

PARTIES

1. WILLIAM TYLER LUSK is an individual over 18 years of age, but who suffers from mental incapacity due to a traumatic injury inflicted on or about January 27, 2013. Mr. Lusk is represented in this matter by his father and Guardian ad Litem JEFF LUSK.
2. KAISER PERMANENTE is an enterprise of unknown form, but believed to be a joint venture of Defendants KAISER FOUNDATION HOSPITALS, KAISER FOUNDATION HEALTH PLAN, INC., and PERMANENTE MEDICAL GROUP, INC. These four defendants have a joint venture through which they market, sell, and provide a consolidated suite of medical and insurance services to consumers in the State of California. All four of these defendants have a principal place of business on Oakland, California, which is located in Alameda County
3. KAISER FOUNDATION HEALTH PLAN is a health care service plan or managed care entity subject to the provisions of California Civil Code 3428.
4. RHONDA CALDWELL-WILLIAMS MD was at all relevant times a medical doctor and employee of KAISER PERMANENTE and/or PERMANENTE MEDICAL GROUP INC. At all relevant times, WILLIAM TYLER LUSK was her patient.
5. DOE I is a health facility allegedly operated by a public entity. DOE I was notified of the intent to commence this litigation in keeping with the requirements of Code of Civil Procedure 364, and thereafter asserted a claim that it was a public entity. Plaintiff names this defendant as a DOE in this matter, pending resolution of tort claim statute issues, reserving the right to amend the complaint to name the entity at a later date.
6. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned each and every defendant was the agent, employee, co-venturer, and partner of each and every other defendant, and in doing the things herein alleged each defendant was acting within the scope of such agency, employment, joint venture, and partnership, and aided,

1 abetted, ratified, and directed one another in the acts and omissions which form the basis of
2 the instant action.

3 7. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 2-
4 25, inclusive, and therefore sues these defendants by such fictitious names, pursuant to
5 California Code of Civil Procedure section 474. Plaintiff will amend this Complaint to
6 allege their true names and capacities when ascertained. Plaintiff is informed and believes
7 and thereupon alleges that each of the fictitiously named defendants aided and abetted
8 and/or is otherwise tortiously responsible in some manner for the occurrences herein
9 alleged, and that Plaintiff's damages as herein alleged were proximately caused by such
10 negligence and/or tortious conduct.

11 8. Plaintiff is informed and believes and thereupon alleges that there exists, and at all times
12 herein mentioned existed, a unity of interests between certain of the Defendants such that
13 any individuality and separateness between these certain Defendants has ceased, and those
14 certain Defendants are the alter ego of the other certain Defendants and exerted control
15 over each other. Adherence to the fiction of the separate existence of these certain
16 Defendants as an entity distinct from other certain Defendants will permit an abuse of the
17 corporate privilege and would sanction fraud and/or promote injustice.

18 19 **JURISDICTION AND VENUE**

20 9. The subject matter is properly heard by this Court, as the amount in controversy as set
21 forth in this Complaint exceeds the statutory minimum and arises under California law.

22 10. Venue is proper as the acts and/or omissions giving rise to the Complaint occurred within
23 the County of Alameda. Further one or more defendants has had its principal place of
24 business and/or resides within Alameda, including but not limited to KAISER
25 PERMANENTE.

26 11. Plaintiff has complied with Code of Civil Procedure section 364 by providing all
27 defendants with at least 90 days of notice in writing of the grievance giving rise to this
28 civil action.

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GENERAL ALLEGATIONS

12. On or about January 27, 2013, Plaintiff WILLIAM TYLER LUSK suffered traumatic injuries, including a brain injury, as a result of an motor vehicle collision. The injuries were debilitating physically and mentally such that WILLIAM TYLER LUSK has been dependent on others for his support and ability to remain alive ever since the collision.

13. At the time of his injury WILLIAM TYLER LUSK was a member/customer of the KAISER PERMANENTE medical enterprise such that KAISER PERMANENTE, KAISER FOUNDATION HOSPITALS, KAISER FOUNDATION HEALTH PLAN, INC., and PERMANENTE MEDICAL GROUP, INC. had an obligation to act with due care to provision care for his injuries, provide care for his injuries, and pay for care for his injuries. These four defendants are referred to herein as "the KAISER defendants."

14. WILLIAM TYLER LUSK suffered injuries in the motor vehicle collision which put him at substantial risk for developing a condition referred to as "Heterotopic Ossification," in which soft tissues of the body are converted into bone, including at the hip joints. Hereafter, "HO" shall refer herein to the condition of "Heterotopic Ossification."

15. Preventative care can prevent and/or limit the debilitating effects of HO. The standard of care for treating patients with the injuries suffered by WILLIAM TYLER LUSK includes evaluation for HO and treatment to prevent it or treat it once it begins to occur. Evaluation may be provided in a number of ways, including but not limited to physical inspection of the patient and radiology studies. Treatment may be provided in a number of ways, including but not limited to administration of certain medications and physical therapy under local anesthetic.

16. WILLIAM TYLER LUSK was treated continuously as an inpatient for approximately one month at Highland Hospital in Alameda County. Highland Hospital is not a hospital under the control of the KAISER defendants. Highland accepted WILLIAM TYLER LUSK as an emergency patient, and kept him as a patient until the KAISER defendants insisted he be transferred to their facilities.

17. While WILLIAM TYLER LUSK was a patient at Highland Hospital, Highland Hospital

1 personnel controlled his care, and billed the KAISER defendants for his care. In this
2 manner, there was a division of pecuniary interests between the care providers and insurer.
3 Highland Hospital had the interest to provide quality medical care professionally and also
4 because it could bill the KAISER defendants for providing such care. While WILLIAM
5 TYLER LUSK was at Highland Hospital, the KAISER defendants were obligated to pay
6 for reasonable care that Highland Hospital personnel chose to render.

7 18. On or about February 26, 2013, WILLIAM TYLER LUSK was transferred to facilities
8 controlled by the KAISER defendants. Once WILLIAM TYLER LUSK was at the
9 KAISER defendants' own facilities, there was a shared pecuniary interest with respect to
10 providing him care. KAISER defendants acted as the insurer, the care providers, and
11 hospital/facility administrators. The same enterprise therefore provided care and paid for
12 the care, such that the pecuniary interests of care providers employed by the KAISER
13 defendants were different from Highland Hospital in such fashion that KAISER defendants
14 had an interest in providing less expensive care.

15 19. At the time WILLIAM TYLER LUSK left Highland Hospital on or about February 26,
16 2013, he did not have any detectable level of HO, and certainly had no debilitating form of
17 HO.

18 20. Upon WILLIAM TYLER LUSK'S transfer to KAISER defendants' facility, Defendant
19 RHONDA CALDWELL-WILLIAMS MD was his physician.

20 21. The KAISER defendants and RHONDA CALDWELL-WILLIAMS MD met with the
21 family of WILLIAM TYLER LUSK after his transfer to their facilities. In this meeting,
22 they informed WILLIAM TYLER LUSK's family that there was very little that could be
23 done to help WILLIAM TYLER LUSK, and that he should simply be provided with
24 minimal nursing care until his eventual death. In furtherance of this recommendation, the
25 KAISER defendants and RHONDA CALDWELL-WILLIAMS MD provided the Lusk
26 family with a copy of a medical text entitled "Principles of Brain Injury Rehabilitation"
27 written by Catherine F. Bontke MD and Corwin Boak Ph.D. The chapter includes a
28 discussion of the risk of HO, but this risk was not discussed with the family.

1 22. The KAISER defendants and RHONDA CALDWELL-WILLIAMS MD did not fairly
2 explain the available treatment options to the Lusk family at the aforementioned meeting.
3 They did not disclose or arrange for appropriate cognitive therapy or physical therapy. The
4 theme of the meeting was essentially that WILLIAM TYLER LUSK should be turned over
5 to a nursing facility.

6 23. The KAISER defendants did not properly evaluate or treat WILLIAM TYLER LUSK for
7 HO. As a result, his HO advanced to an extreme presentation in which one of his legs
8 contracted at the hip such that his leg was elevated and bent. This occurred after
9 WILLIAM TYLER LUSK was at facilities controlled by the Kaiser defendants, and was
10 the result of the Kaiser defendants and RHONDA CALDWELL-WILLIAMS MD not
11 appropriately evaluating and treating WILLIAM TYLER LUSK for HO.

12 24. The KAISER defendants did not properly evaluate or treat WILLIAM TYLER LUSK for
13 potential for brain injury therapy. However, WILLIAM TYLER LUSK was an
14 appropriate candidate for such therapy, and should have been provided with such therapy
15 within the relevant standard of care.

16 25. The Lusk family advocated for better care for WILLIAM TYLER LUSK, and eventually
17 pressured the KAISER defendants and RHONDA CALDWELL-WILLIAMS MD to
18 permit WILLIAM TYLER LUSK to be transferred to Craig Hospital in Colorado for brain
19 injury therapy.

20 26. Shortly before WILLIAM TYLER LUSK was to be transferred to Craig Hospital, the Lusk
21 family learned for the first time that WILLIAM TYLER LUSK had suffered HO. Prior
22 that moment, the KAISER defendants and RHONDA CALDWELL-WILLIAMS MD told
23 the Lusk family that WILLIAM TYLER LUSK'S leg was lifted and bent due to muscle
24 contractions. The Lusk family was informed of the error in diagnosis less than one year
25 before the Notice of Intent to Sue referenced in paragraph 11 of this Complaint was served.

26 27. As a result of the absence of evaluation and treatment of his HO, WILLIAM TYLER
27 LUSK suffered injury and harm, including but not limited to permanent disfigurement,
28 pain, disability, along with attendant damages.

1 28. After receiving treatment at Craig Hospital, and subsequent treatment paid for by the Lusk
2 family out-of-pocket, WILLIAM TYLER LUSK made notable improvement with respect
3 to his brain injury. He became self-aware and communicative. He continues to show
4 potential for improvement. However, due to the HO, he is wheelchair bound and suffers
5 obvious disfigurement.

6 29. While WILLIAM TYLER LUSK was a patient at facilities controlled and/or contracted by
7 the KAISER defendants, he developed decubitus ulcers. These developed, went
8 undetected, and went untreated in such fashion as to be the result of medical care that was
9 below the relevant standard of care.

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11 **FIRST CAUSE OF ACTION: MEDICAL MALPRACTICE**
12 **BY PLAINTIFF AGAINST KAISER PERMANENTE, KAISER FOUNDATION**
13 **HOSPITALS, PERMANENTE MEDICAL GROUP, INC., RHONDA CALDWELL-**
14 **WILLIAMS MD, and DOES 4 – 20**

15 30. All paragraphs above are incorporated by reference as if fully re-stated here.

16 31. At all relevant times WILLIAM TYLER LUSK was the patient of the KAISER
17 defendants, RHONDA CALDWELL-WILLIAMS MD, DOES 4 – 20, and each of them.

18 32. At all relevant times the KAISER defendants, RHONDA CALDWELL-WILLIAMS MD,
19 DOES 4 – 20, and each of them owed a duty to provide medical care to WILLIAM
20 TYLER LUSK within the relevant medical standards of care. This includes but is not
21 limited to providing care for HO and brain injury.

22 33. During such time that WILLIAM TYLER LUSK was a patient of DOE 1, the KAISER
23 defendants and RHONDA CALDWELL-WILLIAMS MD had the duty to oversee his care
24 and ensure it was provided within the standard of care. DOE 1 had an independent duty to
25 treat WILLIAM TYLER LUSK within the standard of care.

26 34. In acting as alleged herein, the KAISER defendants, RHONDA CALDWELL-WILLIAMS
27 MD, DOES 4 – 20, and each of them breached their duty to WILLIAM TYLER LUSK by,
28 *inter alia*, failing to properly examine him for HO, failing to detect his HO in a timely

1 fashion, failing to treat his HO, and failing to treat and/or refer him for appropriate
2 evaluation and care with respect to both his HO and his brain injury. The KAISER
3 defendants, RHONDA CALDWELL-WILLIAMS MD, DOES 4 – 20, and each of them
4 also violated the standard of care by allowing the development and inadequate detection
5 and treatment of bedsores on WILLIAM TYLER LUSK'S body.

6 35. As a direct and proximate result of these breaches of the standard of care, WILLIAM
7 TYLER LUSK suffered injury and attendant damages.

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9 **SECOND CAUSE OF ACTION: LACK OF INFORMED CONSENT**
10 **BY PLAINTIFF AGAINST KAISER PERMANENTE, KAISER FOUNDATION**
11 **HOSPITALS, PERMANENTE MEDICAL GROUP, INC., RHONDA CALDWELL-**
12 **WILLIAMS MD, and DOES 4 – 20**

13 36. All paragraphs above are incorporated by reference as if fully re-stated here.

14 37. In providing the course of treatment alleged herein, specifically as related to the course of
15 treatment for brain injury and evaluation and treatment of HO prior to WILLIAM TYLER
16 LUSK'S transfer to Craig Hospital, the KAISER defendants, RHONDA CALDWELL-
17 WILLIAMS MD, DOES 4 – 20, and each of them, failed to obtain informed consent from
18 WILLIAM TYLER LUSK or his designated medical care decision maker(s).

19 38. The KAISER defendants, RHONDA CALDWELL-WILLIAMS MD, DOES 4 – 20, and
20 each of them, undertook a treatment plan after WILLIAM TYLER LUSK's transfer from
21 Highland Hospital that essentially consisted of warehousing WILLIAM TYLER LUSK
22 with nursing care, but not providing treatment for his brain injury, risk of HO, or actual
23 HO.

24 39. The KAISER defendants, RHONDA CALDWELL-WILLIAMS MD, DOES 4 – 20, and
25 each of them did not explain to WILLIAM TYLER LUSK or his designated medical care
26 decision maker(s) the likelihood of success and risks of this treatment plan, and did not
27 disclose the risk posed by such non-treatment and non-evaluation in terms that reasonable
28 person would understand.

1 40. If reasonable persons in the position of WILLIAM TYLER LUSK or his designated
2 medical care decision maker(s) had been informed of the results and risks of the treatment
3 plan, and alternative treatment plans, they would not have agreed to the treatment plan, and
4 would have insisted on a plan that included HO monitoring and treatment for the brain
5 injury.

6 41. WILLIAM TYLER LUSK was harmed by a result or risk that these defendants should
7 have explained before embarking on the treatment plan, specifically the development of
8 advanced HO and unnecessary delay in cognitive recovery. Plaintiff reserves the issue of
9 whether the delay in cognitive treatment resulted in the diminishment of maximum
10 medical improvement.

11 42. As a direct and proximate result, WILLIAM TYLER LUSK suffered injury and attendant
12 damages.

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14 **THIRD CAUSE OF ACTION:**

15 **MANAGED CARE NEGLIGENCE (CIVIL CODE 3428)**

16 **BY PLAINTIFF AGAINST KAISER PERMANENTE, KAISER FOUNDATION HEALTH**

17 **PLAN, INC., AND DOES 2-3.**

18 43. All paragraphs above are incorporated by reference as if fully re-stated here.

19 44. KAISER PERMANENTE, KAISER FOUNDATION HEALTH PLAN INC., DOES 2-3,
20 and each of them are health care service plans and/or managed care entities with respect to
21 Civil Code section 3428.

22 45. WILLIAM TYLER LUSK is and was at all relevant times a covered member, subscriber,
23 and enrollee of KAISER PERMANENTE, KAISER FOUNDATION HEALTH PLAN
24 INC., DOES 2-3, and each of them.

25 46. KAISER PERMANENTE, KAISER FOUNDATION HEALTH PLAN INC., DOES 2-3,
26 and each of them owe and at all relevant times owed WILLIAM TYLER LUSK a duty of
27 ordinary care such that they are individually and collectively liable to him for substantial
28 harm caused by any unreasonable denial, delay, or modification of health care service

1 pursuant to Civil Code section 3428.

2 47. KAISER PERMANENTE, KAISER FOUNDATION HEALTH PLAN INC., DOES 2-3,
3 and each of them breached their duty of care to WILLIAM TYLER LUSK in failing to
4 provide for evaluation and treatment of his HO and brain injury. This failure to provide
5 care was not only medical negligence by WILLIAM TYLER LUSK'S actual medical
6 providers, but was the result of KAISER PERMANENTE, KAISER FOUNDATION
7 HEALTH PLAN INC., DOES 2-3, and each of them not provisioning care for WILLIAM
8 TYLER LUSK and, on information and belief, setting policies, coverages, and incentives
9 that unreasonably prevented WILLIAM TYLER LUSK from receiving the necessary
10 evaluation and treatment under the standard of care. The KAISER defendants deferred to
11 their unified pecuniary interests such that they denied and delayed WILLIAM TYLER
12 LUSK the appropriate care in furtherance of their own monetary benefit.

13 48. As a direct and proximate result, WILLIAM TYLER LUSK suffered substantial harm,
14 including but not limited to significant impairment of a limb, significant disfigurement,
15 and an unnecessarily extended period of serious cognitive impairment. Plaintiff reserves
16 the issue of whether he will suffer a permanent diminishment of maximum medical
17 improvement due to such delay.

18 49. As a direct and proximate result, WILLIAM TYLER LUSK suffered injury and attendant
19 damages.

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21 **FOURTH CAUSE OF ACTION: ABUSE OF A DEPENDENT ADULT**

22 **(WELFARE & INST. CODE 15610.57, 15657)**

23 **BY PLAINTIFF AGAINST KAISER PERMANENTE, KAISER FOUNDATION**
24 **HOSPITALS, PERMANENTE MEDICAL GROUP, INC., and DOES 1, 21-25**

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26 50. All paragraphs above are incorporated by reference as if fully re-stated here.

27 51. In the relevant time period, WILLIAM TYLER LUSK was neglected within the meaning
28 of the Elder Abuse and Dependent Adult Civil Protection Act by the KAISER defendants,

DOES 1, 21-25, and each of them. This neglect arose from failure to provide evaluation and treatment for HO, decubitus ulcers, and brain injury. This allegation is not for the negligent rendering of care, but for the complete absence of the care in these areas. Said Defendants, and each of them, did not simply render poor care for the stated conditions, but instead knew that care was necessary, and knowingly withheld any care in furtherance of their own pecuniary interests – electing to warehouse WILLIAM TYLER LUSK rather than evaluate and treat him for his conditions. In so acting, these defendants failed to use the degree of care that a reasonable person would have used in the same situation with respect to providing for WILLIAM TYLER LUSK’S physical and mental health needs.

52. At all relevant times, WILLIAM TYLER LUSK was a dependent adult based upon his cognitive and physical disabilities arising from the motor vehicle collision discussed herein.

53. At all relevant times KAISER defendants, DOES 1, 21-25, and each of them had accepted care and custody of WILLIAM TYLER LUSK.

54. As a direct and proximate result, WILLIAM TYLER LUSK suffered injury and attendant damages.

55. This conduct was engaged in by these defendants, including through their employees DOES 22-25, with recklessness, oppression, fraud and malice. Such intention and state of mind is evident from the pecuniary motivations of such behavior, from misrepresentations and omissions in representations to the Lusk family concerning WILLIAM TYLER LUSK’S diagnosis and prognosis, and the pattern of withholding necessary evaluation and treatment that was clearly indicated within the standard of care. As a result of such behavior, Plaintiff is entitled to enhanced remedies pursuant to the Elder Abuse and Dependent Adult Civil Protection Act, including but not limited to Welfare and Institutions Code section 15657.

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PRAYER FOR RELIEF

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Wherefore, Plaintiff prays for judgments against the Defendants, and each of them, as

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follows:

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1. For general damages in an amount to be determined at trial;

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2. For special damages in an amount to be determined at trial;

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3. For costs of suit herein incurred;

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4. For attorneys fees as to the Fourth Cause of Action (Dependent Adult Abuse).

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5. For prejudgment interest; and;

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6. For any other or further relief as the Court may deem just and proper.

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Respectfully submitted,

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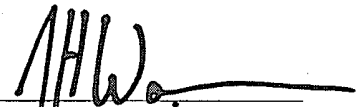
Dated: June 3, 2014

THE DOLAN LAW FIRM

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By:



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CHRISTOPHER B. DOLAN

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JOSHUA H. WATSON

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Attorneys for Plaintiff Tyler Lusk

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