

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street Denver, CO 80202	DATE FILED: July 1, 2014 11:43 AM FILING ID: 1BF6E3CECB7D2 CASE NUMBER: 2014CV32588
Plaintiff: ELAINE D'ANTONIO	
Defendants: COLORADO PERMANENTE MEDICAL GROUP, PC KAISER FOUNDATION HEALTH PLAN OF COLORADO JOHN RIOPELLE	
Attorney: Law Office of Thomas J. Eigner Name: Thomas J. Eigner Address: 6972 E. Costilla Pl. Centennial, CO 80112 Phone No.: 303-903-4295 FAX No.: 303-993-6135 E-mail: eignerlaw@comcast.net Atty. Reg. #: 31906	▲ COURT USE ONLY ▲ <hr/> Case Number: Div.: Ctrm:
COMPLAINT AND JURY DEMAND	

Plaintiff, Elaine D'Antonio, by and through her attorney, Thomas Eigner, hereby files her Complaint against Defendant as follows:

PARTIES AND VENUE

1. Plaintiff, Elaine D'Antonio is a resident and citizen of the state of Colorado, residing in Highlands Ranch, Colorado.

2. Defendant, Colorado Permanente Medical Group, PC, is a Colorado professional corporation organized and existing under the laws of the State of Colorado with its principal office located at 10350 E. Dakota Avenue, Denver, Colorado 80231, and registered agent, Corporation Service Company, located at 1560 Broadway, Denver, Colorado 80202.

3. Defendant, Kaiser Foundation Health Plan of Colorado, Inc, is a Colorado corporation organized and existing under the laws of the State of Colorado with its principal office located at One Kaiser Plaza, Oakland, CA 94612, and registered agent, Corporation Service Company, 1560 Broadway, Denver, Colorado 80202.

4. Defendants Colorado Permanente Medical Group, Kaiser Foundation Health Plan of Colorado and any other Kaiser affiliates including but NOT LIMITED TO Kaiser Foundation Health Plan, Kaiser Permanente Senior Advantage, Kaiser Permanente and

others (Kaiser Entities) hold themselves out to their patients and the general public as one entity, have overlapping facilities, staff, and legal representatives, and were known to the Plaintiff at all times relevant to this suit simply as Kaiser or Kaiser Permanente.

5. Defendant John Riopelle held himself out as a physician licensed to practice in Colorado at all times relevant to this suit.

6. Defendant Kaiser Entities held out John Riopelle as a physician working on Kaiser's behalf at all times relevant to this suit.

7. Venue is proper in Denver pursuant to C.R.C.P. 98 as at least some of the corporate Defendants reside in and conduct business within Denver County. Moreover, Defendants committed the tort in Denver County.

GENERAL ALLEGATIONS

8. The foregoing paragraphs and the allegations contained therein are incorporated by reference.

9. John Riopelle performed a routine esophageal scope on Ms. D'Antonio on June 3, 2013 at Kaiser's Franklin Street medical facility in Denver.

10. Dr. Riopelle perforated Ms. D'Antonio stomach and/or esophagus during the procedure. Dr. Riopelle also caused damage to Ms. D'Antonio's lung and liver and caused her to suffer acute peritonitis.

11. Dr. Riopelle did not inform Ms D'Antonio that he had punctured her organs. Instead, Dr. Riopelle released Ms. D'Antonio after the procedure.

12. Hours after Dr. Riopelle punctured her stomach, Ms. D'Antonio was taken by ambulance to Sky Ridge Medical Center where life saving, emergency surgery was performed.

13. Ms. D'Antonio was in the Intensive Care Unit of Skyridge Medical Center for 5 days after lifesaving surgery and in the hospital an additional 5 days after her transfer from ICU.

14. On information and belief, Kaiser did not report the substandard procedure to any state regulatory agency.

15. Kaiser offered Ms. D'antonio \$100 per day spent in the hospital in return for her agreement not to report Dr. Riopelle or Kaiser to any state regulatory authority. On information and belief, the payment to Kaiser members in exchange for their agreement not to report substandard medical care is a standard business practice of Kaiser.

16. Kaiser offered Claimant \$100 per days spent in the hospital in return for her agreement not to seek legal representation. On information and belief, the payment to Kaiser members in exchange for their contractual agreement not to seek legal representation is a standard business practice of Kaiser.

17. Kaiser would not initially tell Respondent or her attorney that the risk management department where members were directed to file complaints is actually Kaiser's legal department. On information and belief, the failure to disclose the location of or post information regarding the risk management department is a standard business practice of Kaiser.

FIRST CLAIM FOR RELIEF

Professional Negligence as to Defendant John Riopelle and John Doe Kaiser Employees

18. The foregoing paragraphs and the allegations contained therein are incorporated by reference.

19. John Riopelle performed a routine esophageal scope on Ms. D'Antonio on 6/3/2013 at Kaiser's Franklin Street medical facility in Denver.

20. Dr. Riopelle perforated Ms. D'Antonio stomach and/or esophagus during the procedure. Dr. Riopelle also caused damage to Ms. D'Antonio's lung and liver and caused her to suffer acute peritonitis.

21. Dr. Riopelle breached his standard of care during the procedure.

22. Dr. Riopelle did not adequately monitor and/or inform Ms D'Antonio that he had punctured her organs, constituting a further and distinct breach of the standard of care.

23. Dr. Riopelle's failure to monitor and/or inform Ms. D'Antonio that he had perforated her esophagus was a breach his standard of care during the procedure.

24. As a direct consequence of Dr. Riopelle's puncture of her esophagus, and subsequent failure to inform monitor and/or inform plaintiff of the puncture, Ms. D'Antonio was taken by ambulance to Sky Ridge Medical Center where life saving, emergency surgery was performed.

25. As a direct consequence of Dr. Riopelle's puncture of her esophagus, Ms. D'Antonio was in the Intensive Care Unit of Skyridge Medical Center for 5 days after lifesaving surgery and in the hospital an additional 5 days after her transfer from ICU.

SECOND CLAIM FOR RELIEF
Vicarious Liability as to all Kaiser Entities

26. The foregoing paragraphs and the allegations contained therein are incorporated by reference.

27. Defendants Colorado Permanente Medical Group, Kaiser Foundation Health Plan of Colorado and any other Kaiser affiliates including but NOT LIMITED TO Kaiser Foundation Health Plan, Kaiser Permanente Senior Advantage, Kaiser Permanente and others hold themselves out to their patients and the general public as Kaiser were doing business in Colorado at all, relevant times of this Complaint.

28. Kaiser Defendants employed Dr. Riopelle as a physician and John Doe Kaiser Employees as medical assistants.

29. At the time of Ms. D'Antonio's esophageal scope, Dr. Riopelle and John Doe medical assistants were working within the scope of their employment.

30. Kaiser Defendants are responsible for the acts and/or omissions of its employees.

31. As a direct and proximate results of the conduct of Kaiser Entities and conduct of their employees, Ms. D'Antonio suffered and continues to suffer in the damages, losses and future care in an amount to be determined by the trier of fact.

THIRD CLAIM FOR RELIEF
**Negligent Hiring, Supervision and Training, Retention, and
Entrustment of Facilities as to all Kaiser Entity Defendants**

32. The foregoing paragraphs and the allegations contained therein are incorporated by reference.

33. Defendant Kaiser Entities had knowledge of Dr. Riopelle's and John Doe Employees propensities to provide substandard care to its patients. Alternatively, Defendant Kaiser Entities had a duty to learn that Dr. Riopelle's and John Doe employees were providing substandard care to its patients.

34. Notwithstanding this knowledge, Kaiser Entities hired, employed and retained Dr. Riopelle as a physician and John Doe Kaiser Employees as medical assistants.

35. Notwithstanding this knowledge, Kaiser Entities negligently entrusted its facilities to Dr. Riopelle as a physician and John Doe Kaiser Employees as medical assistants, and also provided equipment, opportunity and resources to practice medicine.

36. As a direct and proximate result of Kaiser Entities' negligent hiring, supervision and training, retention and entrustment of facilities to Dr. Riopelle and Kaiser assistants, Ms. D'Antonio suffered and continues to suffer in the damages, losses and future care in an amount to be determined by the trier of fact.

FOURTH CLAIM FOR RELIEF

Unfair or Deceptive Trade Practice pursuant to CRS § 6-1-101, et.seq., Colorado Consumer Protection Act as to all Defendants

37. The foregoing paragraphs and the allegations contained therein are incorporated by reference.

38. At all times relevant to this Complaint, Defendants falsely represented to Ms. D'Antonio that she would be provided with a quality of medical care that did not fall below the standard of care required of Colorado medical providers.

39. At all times relevant to this Complaint, Defendants in publicly and widely disseminated media and in oral representations to the Plaintiff, to prospective and actual consumers of their medical services and to the general public, misrepresented the quality, standard and grade of care they were capable of providing to the Ms. D'Antonio and other patients of Dr. Riopelle and Kaiser Entities.

40. These representations were made expressly as an inducement to Ms. D'Antonio and other members of the public to utilize the services of Dr. Riopelle and Kaiser Entities.

41. The RESOLVE program is a benefit offered to Kaiser patients as a contractual benefit to policy holders.

42. Under the RESOLVE program, Kaiser offered Ms. D'Antonio \$100 per day spent in the hospital in return for her agreement not to report Dr. Riopelle or Kaiser to any state regulatory authority. On information and belief, the payment to Kaiser members in exchange for their contractual agreement not to report substandard medical care is a standard business practice of Kaiser.

43. Under the RESOLVE program, Kaiser offered Ms. D'Antonio \$100 per day spent in the hospital in return for her agreement not to seek legal representation. On information and belief, the payment to Kaiser members in exchange for their contractual agreement not to seek legal representation is a standard business practice of Kaiser.

44. When Ms. D'Antonio consulted legal counsel, Kaiser sent her a letter informing her she was no longer eligible for compensation under the RESOLVE program.

45. Kaiser was aware at all times that Ms. D'Antonio was a senior citizen. Kaiser as a standard business practice pressures senior citizens to accept the RESOLVE payments, with multiple telephone calls and correspondence after threatening the senior citizens that consultation with a legal representative will end all chances to participate in the RESOLVE program.

46. Kaiser would not initially tell Ms. D'Antonio or her attorney that the risk management department where members were directed to file complaints is actually Kaiser's legal department.

47. Kaiser's false representations and deceptive trade practices constitute deceptive trade practices as defined by CRS § 6-1-105, et. seq., which permits this claim for actual damages sustained and for treble damages against defendants who know or should know of the deceptive nature of their representations.

48. Kaiser acquired substantial profits as a result of engaging in the above enumerated business practices.

49. The deceptive trade and advertising practices enumerated above impacted the public as actual or potential consumers of Kaiser's services, including Ms. D'Antonio and her family.

50. As a direct and proximate result of the above enumerated trade and advertising practices, Ms. D'Antonio suffered medical harm, as well as emotional distress.

DAMAGES

1. Ms. D'Antonio has suffered economic damages as a result of Respondents' negligence including out of pocket costs and costs of care in an amount to be determined by a trier of fact.
2. Ms. D'Antonio will seek recovery for future medical care in an amount to be determined by a trier of fact.
3. Ms. D'Antonio has suffered and continues to suffer noneconomic damages, and will seek the statutory maximum for disfigurement, pain, suffering, inconvenience and anxiety.
4. Ms. D'Antonio will seek recovery of treble damages, attorney's fees and costs pursuant to the Colorado Consumer Protection Act.

5. Ms. D'Antonio reserves the right to seek exemplary damages and/or damages under Colorado statute if a pattern of gross negligence or deceit is found in the course of discovery.
6. Ms. D'Antonio will request such other relief as the Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully submitted this 1st day of July, 2014.

Law Office of Thomas J. Eigner, LLC

/s/Thomas J. Eigner

Printed copy with original signature
available at office of attorney.

Plaintiffs' Address:

Elaine D'Antonio
6377 Monterey Place
Highlands Ranch, CO 80130