

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

EMILY MOORE,

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS, a
California corporation, NORTHWEST
PERMANENTE P.C., an Oregon
corporation, and CAROL PELMAS,
M.D., an individual,

Defendants.

NO.

COMPLAINT

(Medical Negligence)

CLAIM FOR \$990,000

ORS 21.160(1)(c)

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

Plaintiff alleges:

1.

At all times material hereto, defendant Kaiser Foundation Hospitals (hereinafter "Kaiser") was a California corporation doing business in the State of Oregon, operating hospitals and providing medical services to members of Kaiser Health Plans, including plaintiff Emily Moore.

2.

At all times material hereto, defendant Northwest Permanente, P.C. (hereinafter "Northwest Permanente"), was an Oregon corporation employing physicians and other individuals to furnish health care to Kaiser Health Plan members, and providing physicians for hospitals operated by defendant Kaiser. Defendant Northwest Permanente's principal place of business is in Multnomah County, Oregon.

3.

At all times material hereto, plaintiff Emily Moore was a Kaiser Health Plan member; plaintiff's treating physicians were employees and/or actual or apparent agents of defendant Northwest Permanente, and her medical care as described herein occurred at Kaiser Sunnyside Medical Center, a medical center owned and operated by defendant Kaiser.

4.

At all times material hereto, defendant Carol Pelmas, M.D. (hereinafter "Dr. Pelmas") was a physician licensed in Oregon specializing in orthopedic sports surgery, acting within the course and scope of her employment and/or actual or apparent agency as a physician employed by defendants Kaiser and Northwest Permanente.

5.

On or about June 10, 2016, plaintiff was diagnosed with a full-thickness tear of the anterior cruciate ligament (hereinafter "acl") in her right knee.

6.

On or about July 12, 2016, plaintiff had a consultation appointment with defendants and Dr. Pelmas regarding the torn acl in plaintiff's right knee. Defendant recommended reconstructive surgery of plaintiff's right knee.

7.

On or about August 9, 2016, defendant Dr. Pelmas agreed to perform on plaintiff a right knee arthroscopy, anterior cruciate ligament reconstruction using a patellar tendon graft from left knee.

8.

On or about August 26, 2016, defendant Dr. Pelmas performed a right knee arthroscopy, anterior cruciate ligament reconstruction with patellar tendon graft

1 from plaintiff's left knee. Upon conclusion of surgery, defendant Dr. Pelmas instructed
2 plaintiff to only bear weight on her left leg.

3 9.

4 On or about August 26, 2016, upon discharge, as plaintiff stood up she
5 immediately heard a popping sound from her left knee and felt severe pain in her left
6 leg.

7 10.

8 On or about August 29, 2016, plaintiff was diagnosed with a transverse,
9 displaced fracture of the patella in her left knee at the site of the patellar tendon graft
10 performed on August 26, 2016, and a partial tibial tubercle avulsion on the donor
11 knee.

12 11.

13 On or about August 30, 2016, plaintiff underwent a second surgery
14 performed by defendant Dr. Pelmas for a left open reduction and internal fixation of
15 left patella and tibial tubercle to try to correct plaintiff's injuries to her left leg.

16 12.

17 The conduct of defendants, combining and concurring, was negligent in
18 one or more of the following particulars:

- 19 (a) In failing and/or neglecting to properly advise the plaintiff that the
20 procedure that the plaintiff was requesting [Autologous patellar tendon
21 bone graft ACL reconstruction, taking the graft from the opposite
22 (contralateral) knee] (CBTC ACLR) is a procedure used primarily in
23 athletes who wish to rehabilitate quickly to return to sports;
- 24 (b) In failing and/or neglecting to advise plaintiff that the requested
25 procedure has known donor site morbidity (including patellar tendon
26 rupture and patellar fracture) when compared to the more commonly

1 used autologous hamstring graft;

2 (c) In failing and/or neglecting to advise plaintiff that a hamstring graft is
3 more suited for the non-athlete;

4 (d) In choosing to use the contralateral BTB graft despite having little
5 experience with this method of graft procurement for ACL reconstruction
6 when defendants knew, or reasonably should have known, choosing the
7 contralateral BTB graft could cause injury;

8 (e) In failing and/or neglecting to customize the graft size to the plaintiff's
9 size, when defendants knew, or reasonably should have known, that by
10 not customizing the graft to plaintiff's size the surgery could cause
11 injury;

12 (f) In choosing to use the left patella tissue to perform the surgery instead
13 of using plaintiff's right hamstrings;

14 (g) In failing and neglecting to customize the grafting surgery to plaintiff's
15 physical circumstances;

16 (h) In failing and/or neglecting to splint the donor limb used for the CBTB
17 graft until plaintiff was fully alert and had good leg control and was
18 properly counseled on the precautions for the donor knee; when
19 defendant knew or reasonably should have known by not splinting the
20 donor limb and not properly counseling plaintiff on the precautions for
21 the donor knee weight bearing could cause injury; and

22 (i) In failing and/or neglecting to keep plaintiff for a sufficient time until the
23 patient had fully recovered from anesthesia and had been properly
24 counseled and tested by a knowledgeable physical therapist on proper
25 transfer techniques and precautions for the donor knee; when
26 defendant knew or reasonably should have known by not giving plaintiff

1 properly counseling and testing plaintiff on proper transfer techniques
2 and precautions for the donor knee could cause injury.

3 13.

4 As a direct and proximate result of the conduct of defendants,
5 combining and concurring, plaintiff immediately post operatively suffered a
6 transverse, displaced fracture of her left patella and an avulsion fracture of her left
7 tibial tubercle which required surgical repair and significant rehabilitation. Plaintiff
8 suffered and continues to suffer constant pain in her left knee, impaired motion and
9 gait, muscle atrophy throughout her left leg and hip, muscle spasms in the left lower
10 extremity, right knee and hip pain, weakness throughout plaintiff's left lower extremity.
11 Plaintiff cannot run, jump, or kneel, cannot lift anything heavier than ten (10) pounds,
12 and experiences difficulty using stairs, hiking or engaging in strenuous physical
13 activity. Plaintiff's injuries are permanent and progressive, and have significantly
14 interfered with her ability to carry out daily activities, and limited her ability to enjoy
15 recreational activities. Plaintiff has been rendered sick, sore, depressed, nervous,
16 frustrated, and upset, all to her non-economic damages in the sum of \$650,000.

17 14.

18 In an effort to cure her injuries, plaintiff has incurred reasonable and
19 necessary medical expenses in the approximate sum to date of approximately
20 \$40,000, and will incur future medical expenses of approximately \$50,000, all to her
21 economic damages.

22 15.

23 As a result of her injuries, plaintiff will suffer a permanent impairment to
24 her wage earning ability in the amount of \$250,000, all to her economic damages.

25 ////

26 ////

1 WHEREFORE, plaintiff prays for judgment against the defendants in the
2 amount of \$650,000 non-economic damages, \$340,000 economic damages, for her
3 costs and disbursements incurred herein, and for such other relief as the court may
4 deem just and equitable in these circumstances.

5 DATED this 19th day of July, 2018.

6 SOKOL & FOSTER, P.C.

7
8 By


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