

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

MARY TYNER,

Plaintiff,

v.

KAISER FOUNDATION HOSPITAL, a  
California corporation, KAISER  
FOUNDATION HEALTH PLANS OF THE  
NORTHWEST, Inc., an Oregon corporation,  
and NORTHWEST PERMANENTE, P.C., an  
Oregon Corporation,

Defendants.

Case No.

COMPLAINT AND DEMAND FOR  
JURY TRIAL (Medical Malpractice)

NOT SUBJECT TO MANDATORY  
ARBITRATION

AMOUNT OF PRAYER: \$4,900,000

Fee: \$ 834 (ORS 21.160(1)(d))

COMES NOW plaintiff MARY TYNER for her claims for relief against defendants,  
alleges as follows:

1.

Plaintiff MARY TYNER is a resident of the State of Oregon and received medical care  
from defendant KAISER PERMANENTE in Oregon.

2.

At all material times herein, defendant KAISER FOUNDATION HOSPITAL was a  
California corporation authorized and/or licensed to do business in Oregon, and conducts regular  
and sustained business activity in Portland, Multnomah County, in the state of Oregon.

3.

At all material times herein, defendant, KAISER FOUNDATION HEALTH PLANS OF  
THE NORTHWEST, INC., is an Oregon corporation with its principle place of business in  
Portland, Multnomah County, Oregon, and provided medical services to members of the public,

1 including MARY TYNER herein, and conducted regular and sustained business activity in  
2 Portland, Multnomah County, Oregon.

3 4.

4 At all material times herein, Defendant NORTHWEST PERMANENTE, P.C., was an  
5 Oregon Corporation, organized and existing under the laws of the State of Oregon, and is  
6 registered to do business within the County of Multnomah, in the State of Oregon. Hereinafter  
7 Kaiser Foundation Hospital, Kaiser Foundation Health Plans of the Northwest, Inc., and  
8 Northwest Permanente, P.C., are referred to collectively as “Defendant Kaiser.”

9 5.

10 At all times material herein, Defendant Kaiser employed or otherwise engaged as  
11 employees and/or agents, physicians, nurses, technicians, and other health care providers, to  
12 provide necessary and integral services to patients receiving healthcare at its facilities in Oregon,  
13 and were acting within the course and scope of their employment for Defendants.

14 6.

15 On or about February 16, 2017, Mary TYNER presented to defendant Kaiser with  
16 complaints of “a loose stool” (diarrhea) for the previous four weeks, since January 23, 2017, and  
17 weight loss. Ms. Tyner was seen by Tara Workman, M.D. Defendants’ medical assistant  
18 documented that Ms. Tyner had not had colorectal screening. No attempts to diagnose the cause  
19 of the diarrhea were made, and no referral for colorectal screening was made.

20 7.

21 On or about July 10, 2017, Mary Tyner called defendant Kaiser and spoke with Timothy  
22 Van Ert, M.D., and reported “20+ days” of diarrhea every hour or so per day and night, with  
23 blood and mucous present in her stool.

24 8.

25 On or about July 11, 2017, Mary Tyner presented to defendant Kaiser and was seen by  
26 Thomas Winston, P.A. At that time Ms. Tyner noted a frequent urge to defecate, but only had a

1 small amount of stool, which varied in consistency. She had lost more than 30 pounds since the  
2 February 16, 2019, visit. Defendants noted that she had not had colorectal screening. She was  
3 also suffering from pain in her groin, which was becoming increasingly worse and requiring her  
4 to walk with the assistance of a walker. Physician's Assistant Winston ordered lab studies,  
5 which revealed the presence of abnormal blood in her stool, an extremely elevated white blood  
6 cell count suggesting infection, abnormally elevated platelets, abnormally low albumin levels,  
7 and very low blood electrolyte levels. Stool studies done July 14, 2017, revealed the presence of  
8 shiga toxin producing E. coli ("STEC"). However, no imaging studies of Ms. Tyner's abdomen  
9 were ordered, and no colonoscopy was ordered.

10 9.

11 On or about July 17, 2017, Ms. Tyner presented to defendant Kaiser for follow up. On  
12 this visit, she was seen by Juan Dela Cruz, M.D. Repeat laboratory studies showed continued  
13 infection, and altered electrolyte balance. Defendants offered Ms. Tyner ciprofloxacin, an  
14 antibiotic, to treat her shiga toxin producing E. coli. However, Ms. Tyner declined to take the  
15 antibiotic. She also complained of ongoing pain in her groin, which was still becoming  
16 increasingly worse and was still requiring her to walk with the assistance of a walker. However,  
17 no imaging studies of Ms. Tyner's abdomen were ordered, and no colonoscopy was ordered.

18 10.

19 On July 24, 2017, Ms. Tyner again presented to defendant Kaiser for follow up. At this  
20 visit, she was seen by Linda Onheiber, P.A. Ms. Tyner continued to have diarrhea, with blood in  
21 her stool, and continued to have difficulty walking, requiring her to use a walker. By this visit,  
22 Ms. Tyner had lost 35 pounds since her February 16, 2017, office visit, and was exhibiting signs  
23 of significant functional decline. Physician's Assistant Onheiber ordered additional laboratory  
24 studies, which showed continued infection, continued abnormally low blood electrolyte levels,  
25 low albumin levels, and increasing levels of BUN, showing early impairment of her kidney  
26 function. However, no imaging studies of Ms. Tyner's abdomen were ordered, and no

1 colonoscopy was ordered.

2 11.

3 On or about July 29, 2017, Ms. Tyner was taken by ambulance to defendant Kaiser.  
4 Imaging studies showed a perforated sigmoid colon, likely due to a 12x6 centimeter  
5 mass/malignancy, which was diagnosed as likely cancer of the sigmoid colon. Ms. Tyner was  
6 taken to surgery in critical condition, where attempts were made to repair her colon. Surgery  
7 revealed the presence of significant infection in Ms. Tyner's abdomen and into the muscle fascia  
8 of her left leg.

9 12.

10 Defendants were negligent in one or more of the following ways, which caused injury to  
11 Ms. Tyner:

- 12 a. In failing to refer Ms. Tyner for consultation with a Gastroenterologist after her  
13 July 11, July 17, and July 24, 2017, office visits;
- 14 b. In failing to order any imaging studies of Ms. Tyner's abdomen after she  
15 presented to defendant Kaiser on July 11, July 17, and July 24, 2017;
- 16 c. In failing to order a colonoscopy after Ms. Tyner's July 11, 2017, office visit;
- 17 d. In failing to admit Ms. Tyner to the hospital after her diagnosis of shiga toxin  
18 producing E. coli;
- 19 e. In failing to diagnose Ms. Tyner's colon cancer at any time after her February 16,  
20 2017, office visit, and before her colon perforated on or around July 29, 2017.

21 13.

22 As a result of defendants' negligence, described above, Ms. Tyner suffered a delay in  
23 diagnosis of her colon cancer resulting in perforation of her sigmoid colon, abdominal infection,  
24 and infection into her left leg. As a result of the infection in her left leg, she suffered from  
25 necrotizing fasciitis. After more than 10 surgeries to attempt to save the limb, she suffered a  
26 complete loss of her left leg at the hip joint.

14.

As a result of defendants' negligence, Ms. Tyner lost her left leg and has endured a permanent loss of mobility, and is confined to a wheel chair for the rest of her life. As a result, she has suffered economic damages, including lost income and lost earning capacity, in the amount of \$100,000, medical expenses in the amount of \$300,000, and future medical and life care expenses in the amount of \$1,500,000. In addition, Ms. Tyner has suffered non-economic damages for the permanent loss of mobility, the loss of enjoyment of life and disruption of her activities of daily living in the amount of \$3,000,000. Plaintiff reserves the right to amend or supplement economic damages up to and including through the time of trial.

15.

WHEREFORE, Plaintiff prays for judgment against defendant as follows:

- (a) \$3,000,000 in non-economic damages;
- (b) \$1,900,000 for past and future medical and life care expenses and lost earnings and earning capacity; and,
- (c) Plaintiff's costs and disbursements incurred herein.

DATED this 26<sup>th</sup> day of July, 2019.

*s/Robert Beatty-Walters*

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Attorney for Plaintiff

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