

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

HALEY THOMPSON,

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS, a
California corporation; and NORTHWEST
PERMANENTE, P.C., an Oregon
corporation, doing business as NW
PERMANENTE PHYSICIANS &
SURGEONS P.C.,

Defendants.

Case No.

COMPLAINT
(Medical Negligence)

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

CLAIM FOR \$8,000,000
ORS 21.160(1)(d)

Comes now plaintiff and for claim for relief against the above-named defendants,
complains and alleges as follows:

1.

At all material times herein, plaintiff Haley Thompson was a patient of
defendants, receiving medical treatment from defendants.

2.

At all material times herein, Kaiser Foundation Hospitals was and is a corporation
organized and existing under the laws of the State of California and engaged in the
operation and maintenance of certain hospitals and clinics within the County of
Multnomah, in the State of Oregon.

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3.

At all material times herein, Northwest Permanente, P.C., doing business as NW Permanente Physicians & Surgeons P.C., was and is a professional corporation of physicians and surgeons, duly licensed by the State of Oregon and employed by Kaiser Foundation Hospitals to provide medical and surgical care to their members, and is a corporation organized and existing under and by virtue of the laws of the State of Oregon and is registered to do business within Multnomah County. Defendants will hereinafter be referred to as "Kaiser."

4.

At all times mentioned, Kaiser employed or otherwise engaged as agents, physicians and other medical personnel to provide medical care to patients at its hospitals and clinics. At all times mentioned, Kaiser employees and agents were acting within the course and scope of their employment and/or agency.

5.

On June 19, 2017, plaintiff met with Yvonne Yang, DDS due to ongoing left jaw pain and swelling. Plaintiff's diagnosis was Temporomandibular Joint Disorder, Myalgia and Bruxism.

6.

On July 24, 2017, Yvonne Yang, DDS added an additional diagnosis of Sialoadenitis, noting tenderness in the gland and swelling.

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1 7.

2 On October 10, 2017, plaintiff met with Rebecca Lindsay, MD due to worsening
3 of left facial swelling. Dr. Lindsay provided a diagnosis of left TMJ disorder and soft
4 tissue swelling. An MRI was ordered.
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6 8.

7 On October 18, 2017, MRI imaging results were worrisome for primary osseous
8 malignancy, to be excluded over other etiologies such as chronic osteomyelitis.
9 Recommendation for further evaluation by CT to assess degree of bone involvement
10 and planning for obtaining tissue diagnosis. The imaging reported stated "This is a red
11 dot case."
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13 9.

14 On October 19, 2017, a CT scan of plaintiff's facial bones revealed
15 heterogeneous patchy sclerosis with marked periosteal reaction involving left
16 mandibular condyle, extending to the left mandible angle and posterior alveolar ridge.
17 No discrete lytic or blastic lesion is seen. Surrounding soft tissue edema and
18 enhancement was better seen on MRI. It was concluded these findings may represent
19 inflammatory process such as chronic myositis and chronic osteomyelitis versus
20 infiltrating neoplasm.
21

22 10.

23 On October 26, 2017, plaintiff consulted with Sunshine Dwojak, MD, who
24 diagnosed a facial mass and neoplasm jaw. Dr. Dwojak advised plaintiff that she had a
25 tumor of the left mandible which was concerning for possible osteosarcoma versus
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28 Page 3 – COMPLAINT

1 other bone tumor, such as lymphoma or Ewing's versus chronic infection. A biopsy was
2 ordered.

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4 11.

5 On October 30, 2017, Dr. Dwojak performed a mandible biopsy of lesion (left) on
6 plaintiff's jaw. Dr. Dwojak's pre-and-post diagnosis was facial mass, neoplasm jaw. A 2
7 cm incision was made in the mucosa overlying the ascending ramus of plaintiff's
8 mandible. An osteotome was used to remove a thin fragment of the bone. This bone
9 fragment was forwarded on to pathologist Lester Thompson, MD.
10

11 12.

12 On November 6, 2017, Dr. Thompson diagnosed a fibro-osseous lesion with
13 features suggestive of desmoid fibroma.
14

15 13.

16 On November 29, 2017, Dr. Dwojak advised plaintiff she had a desmoid fibroma
17 of her left mandible, which was a rare, benign tumor, and required complete excision,
18 specifically a segmental mandibulectomy. Surgery was scheduled for January 9, 2018.
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20 14.

21 After CT scans of both of plaintiff's legs in preparation for surgery, it was
22 determined that plaintiff was not a good candidate for fibular reconstruction due to her
23 unusual anatomy. An iliac bone flap would therefore be required.
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25 15.

26 Plaintiff had an elevated white blood count on October 23, 2017 and again on
27 December 22, 2017.

1 16.

2 On January 9, 2018, plaintiff underwent a tracheostomy, removal of a segment of
3 her left mandible, including removal of three teeth, followed by reconstruction of left
4 mandible with vascularized iliac crest free flap, locking screws inserted, and mesh
5 construction of left hip donor site.
6

7 17.

8 Post-surgery this section of plaintiff's left mandible was sent to Dr. Thompson for
9 examination.
10

11 18.

12 In a report dated January 15, 2018, Dr. Thompson offered the opinion the
13 material in the resection was significantly different from the previous biopsy, which only
14 showed fibrous connective tissue and some isolated odontogenic elements. He
15 recommended defendants obtain a consultation from a bone pathologist with expertise
16 in jaw lesions to make certain further management was appropriate.
17

18 19.

19 Ms. Thompson's medical records and pathology were sent to Massachusetts
20 General, Department of Musculoskeletal Imaging, for further evaluation. Dr. Ivan
21 Chebib, MD concluded the findings were most consistent with reactive changes to
22 osteomyelitis. Specifically, the morphologic features, in correlation with radiology, were
23 consistent with acute chronic osteomyelitis.
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20.

On February 8, 2018, Dr. Dwojak advised plaintiff that the final pathology differed from the initial biopsy and showed not desmoid fibroma but rather chronic osteomyelitis. Dr. Dwojak informed plaintiff her decision to resect plaintiff's jaw was based upon the biopsy results received from Dr. Thompson. Dr. Dwojak also informed Ms. Thompson management for osteomyelitis is intravenous antibiotics with the possibility of debridement of the mandible. She also informed Ms. Thompson that a complete excision, specifically a segmental mandibulectomy, was reserved for cases which are unresponsive to treatment known as refractory cases.

21.

At all times mentioned, Defendants, and each of them, acting through their employees and agents, were negligent in one or more of the following particulars:

- 1) In failing to diagnose osteomyelitis;
- 2) In diagnosing desmoid fibroma of the left mandible.
- 3) In failing to consult an oral pathologist prior to performing surgery;
- 4) In failing to treat plaintiff with intravenous antibiotics and debridement of her jaw if necessary;
- 5) In failing to obtain adequate pathology samples from plaintiff's jaw prior to surgery;
- 6) In performing a segmental mandibulectomy, vascularized iliac crest (DCIA) free flap and mesh reconstruction of her left hip, and tracheostomy on January 9, 2018;

- 1 7) In failing to obtain and test additional pathology intraoperatively on January 9,
2 2018;
3
4 8) In reassuring Haley Thompson in 2017 and 2018 her jaw condition was a
5 desmoid fibroma of the left mandible and not osteomyelitis;
6
7 9) In injuring the lateral cutaneous nerve of her left leg.

7 22.

8 During the course of plaintiff's treatment, plaintiff did not and in the exercise of
9 reasonable care should not have discovered that she had a claim for professional
10 malpractice until within two years of the filing of this action.
11

12 23.

13 As a result of the negligence of defendants, and each of them, plaintiff was
14 subjected to unnecessary surgeries, including a segmental mandibulectomy, a
15 tracheostomy, a reconstruction of her left mandible with vascularized iliac crest (DCIA)
16 free flap and mesh reconstruction of her left hip, resulting in loss of her
17 temporomandibular joint, pseudoarthrosis, jaw arthritis, malocclusion, a shifting of her
18 teeth, facial numbness, left leg numbness, injury to the lateral cutaneous nerve of her
19 left leg, permanent damage to the nerves, muscles, bony structure and soft tissue of her
20 face, hip and legs with the loss of motor function, facial asymmetry, loss of strength,
21 loss of sensation, gait disturbance, scarring, and has caused to suffer noneconomic
22 damages in the form of past and future pain and suffering, as well as, loss of enjoyment
23 of life and inability to engage in activities apart from employment. To date, Haley
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1 Thompson's noneconomic damages are reasonable in an amount to be determined by
2 a jury at trial but not to exceed \$7.5 million.

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4 24.

5 As a result of the negligence of defendants, and each of them, Haley Thompson
6 has suffered permanent injury to her face, jaw, hip and/or leg that will require future
7 surgeries. To date she has suffered economic damage in the form of past and future
8 medical care and expenses, lost wages and impaired earning earnings in a reasonable
9 amount to be determined by a jury at trial but not expected to exceed \$500,000.
10

11 WHEREFORE, plaintiff prays for judgment against the defendants, and each of
12 them, in a reasonable amount to be determined by a jury at trial but not expected to
13 exceed as follows:

- 14 1) For noneconomic damages in the amount of \$7.5 million;
15 2) For economic damages in the amount of \$500,000;
16 3) For such other, further and additional relief as the court deems just and equitable
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18 Dated this 22nd day of November, 2019.

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