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FILED
Superior Court Of California,
Sacramento
04/04/2013
emedina
By _____, Deputy
Case Number:
34-2013-00142837

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

MARY MARTINELLI, individually and as
MARGE F. WENTZ'S successor in interest;

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS, a
California corporation, KAISER
FOUNDATION HEALTH PLAN, INC., THE
PERMANENTE MEDICAL GROUP, INC.,
ESKATON, a California corporation,
MYO SHIN, M.D., and DOES 1 through
70, inclusive,

Defendants.

Case No. _____

COMPLAINT

1. Elder Abuse; Wel. & Inst. Code
§§ 15610, et seq., 15657
2. Medical Malpractice - Wrongful
Death

GENERAL ALLEGATIONS

1 The true names and capacities, whether individual, corporate, associate or
otherwise, of the defendants DOES 1 through 70, inclusive, are unknown to plaintiffs, who
therefore sue such defendants by such fictitious names, and plaintiffs will amend this
complaint to show their true names and capacities when the same have been ascertained.
Plaintiffs are informed and believe and thereon allege that each of the defendants, DOES 1
through 70, inclusive, is responsible under law in some manner, negligently, in warranty,
strictly, intentionally, or otherwise, for the events and happenings herein referred to and
proximately thereby caused injuries and damages to plaintiffs as herein alleged.

1 2. Plaintiff is now, and at all times herein mentioned was, a citizen of and
2 resident within the State of California.

3 3. Plaintiffs are informed and believe and therefore allege that defendants,
4 ESKATON, and DOES 1 through 35, are now, and at all times herein mentioned were,
5 California business entities, corporations, associations, partnerships or other type of
6 business entities in the business of providing long-term and short-term care as a twenty-
7 four hour health facility as defined in Health & Safety Code section 1250(c), and was at all
8 times mentioned doing business at 5318 Manzanita Avenue, Carmichael, CA 95608.
9 Plaintiffs will seek leave to insert the correct designation when the same has been
10 ascertained.

11 4. Defendants KAISER FOUNDATION HOSPITALS, a California corporation,
12 KAISER FOUNDATION HEALTH PLAN, INC., THE PERMANENTE MEDICAL GROUP, INC.,
13 (hereafter collectively KAISER), MYO SHIN, M.D., and DOES 36 through 70, and each of
14 them, are now, and at all times herein mentioned were, citizens of and residents within the
15 State of California, or doing business in the State of California, County of Sacramento, and
16 the amount in controversy exceeds the minimum jurisdictional limits of the Court.

17 5. Plaintiffs are informed and believe and therefore allege that, at all times
18 herein mentioned, each of the defendants, was the agent, employee, principal or employer
19 of each of the remaining defendants and was at all times acting within the course and
20 scope of said relationships and each defendant has authorized, ratified and approved the
21 acts of each of the remaining defendants.

22 6. Plaintiffs are informed and believe and thereon allege that on or about
23 March 1, 2012, MARGE F. WENTZ was admitted to ESKATON, and DOES 1 through 35, for
24 convalescent care. Defendants ESKATON, and DOES 1 through 35, and each of them
25 assumed the care and custody of MARGE F. WENTZ, and assured plaintiffs that MARGE F.
26 WENTZ would be well cared for in their facility, including but not limited to providing for
27 her physical health and well-being, administering proper medications, and rendering
28 appropriate medical care for her on-going and/or developing medical conditions.

7. Plaintiffs are informed and believe and thereon allege that during the course of care, ESKATON, KAISER, MYO SHIN, M.D., and DOES 1 through 70, and each of them, administered medications in type or amount harmful to Plaintiff, and thereafter failed to provide for MARGE F. WENTZ including but not limited to providing for her physical health and well-being, and rendering appropriate medical care for her on-going and developing medical conditions.

8. Plaintiff, MARY MARTINELLI, individually and as decedent MARGE F. WENTZ'S successor in interest, complain of defendants and DOES 1 through 70, each of them, and as for a First Cause of Action, alleges as follows:

FIRST CAUSE OF ACTION

(Elder Abuse-Survival Cause of Action)

9. Plaintiff refers to and re-alleges each and every allegation of this Complaint as though set forth fully herein.

10. At all times herein mentioned, Plaintiff MARGE F. WENTZ, was a 93-year old woman recovering from injuries she sustained after falling in her home. Accordingly, under the provisions of Welfare & Institutions Code section 15610.27, Plaintiff MARGE F. WENTZ was an "elder" at all times while she was a patient of ESKATON, KAISER, MYO SHIN, M.D., and DOES 1 through 70.

11. At all times herein mentioned, the Defendants, and each of them, knew or should have known that the conduct complained of herein was directed to senior citizen MARGE F. WENTZ. Further, MARGE F. WENTZ was substantially more vulnerable than other members of the public to the conduct of the Defendants, and each of them, because of age, poor health or infirmity, impaired understanding, restricted mobility, and/or disability. In addition, Plaintiff MARGE F. WENTZ actually suffered, among other injuries, substantial physical, emotional or economic damage resulting from the Defendants' conduct.

12. As a result of Defendants' conduct, and each of them, Plaintiff MARGE F. WENTZ was forced to endure great pain, mental anguish, humiliation, feelings of

1 helplessness, and desperation.

2 13. Because MARGE F. WENTZ was a patient and resident of KAISER and
3 ESKATON, Defendants and each of them had a duty under federal and state regulations
4 (which were designed for the protection and benefit of resident patients like MARGE F.
5 WENTZ) to provide her care, comfort, and safety. Without limitation, Defendants had a
6 duty follow, implement, and adhere to all physician orders; to monitor and record MARGE
7 F. WENTZ's condition and report meaningful changes in condition to the attending
8 physician; to note and properly react to emergent conditions; to timely transfer MARGE F.
9 WENTZ to an acute care facility or otherwise provide an adequate level of care; to establish
10 and maintain, as well as implement, a patient care plan for MARGE F. WENTZ based upon
11 and including, without limitation, an ongoing process of identifying her care needs; to
12 maintain accurate records of MARGE F. WENTZ's condition; to properly and accurately
13 administer medication and diagnostic tests; to accord to MARGE F. WENTZ an appropriate
14 level of dignity and respect, and not subject her to abuse and neglect; and to comply with
15 the applicable provisions of the Federal Code of Regulations.

16 14. During the period of her residency at KAISER and ESKATON, from
17 approximately March 2012, through April 2012, each Defendant breached their duties to
18 MARGE F. WENTZ. These breaches were intentional and in reckless disregard for the
19 probability that severe injury would result from their failure to carefully adhere to their
20 duties. Defendants knew or should have known that there was a probability that disease,
21 injury, and death would result from the failure to adhere to their duties. In particular, and
22 without limiting the generality of the foregoing, Defendants and each of them intentionally
23 and with deliberate indifference to MARGE F. WENTZ's health and safety, failed without
24 limitation, to monitor Ms. WENTZ's condition and maintain her physical health and well-
25 being, to follow, implement, and adhere to all physician orders; to monitor and record
26 MARGE F. WENTZ's condition and report meaningful changes in condition to the attending
27 physician; to note and properly react to emergent conditions; to timely transfer MARGE F.
28 WENTZ to an acute care facility or otherwise provide an adequate level of care; to establish

1 and maintain, as well as implement, a patient care plan for MARGE F. WENTZ based upon
2 and including, without limitation, an ongoing process of identifying her care needs; to
3 maintain accurate records of MARGE F. WENTZ's condition; to properly and accurately
4 administer medication and diagnostic tests; to accord to MARGE F. WENTZ an appropriate
5 level of dignity and respect, and not subject her to abuse and neglect; to comply with
6 Health and Safety Code section 1599.1; and to comply with the applicable provisions of the
7 Federal Code of Regulations.

8 15. As a proximate result of the negligence, reckless, willful, malicious, and
9 despicable conduct of the Defendants, and each of them, as alleged herein, MARGE F.
10 WENTZ sustained medical expenses, and developed significant injuries and conditions
11 including but not limited to Stevens-Johnson syndrome and severe emotional distress.

12 16. At all times herein mentioned, Defendants and each of them knew of the need
13 for the regulations and laws described above and knew that the lives and health of their
14 patients were at risk whenever they failed to meet such duties. The Defendants and each
15 of them knew that their routine, patterned, and repeated failure to comply with such duties
16 would probably result in injuries to patients, including MARGE F. WENTZ. In breaching
17 their duties to MARGE F. WENTZ, Defendants and each of them acted intentionally in
18 conscious failure to avoid perils to MARGE F. WENTZ, all according to their plan of
19 minimizing patient care, thereby increasing the profitability of Defendants' business
20 operation. In doing so, Defendants breached certain other duties that require Defendants
21 and each of them to devote their resources to the care and treatment of patients, and to
22 protect the health and safety of patients like MARGE F. WENTZ.

23 17. The conduct of the Defendants, and each of them, as alleged herein
24 constitutes abuse and neglect as defined in California Welfare and Institutions Code section
25 15610.57 in that Defendants failed to exercise the degree and care that a reasonable
26 person having care and custody of MARGE F. WENTZ would exercise. Because the neglect
27 and abuse was reckless and done with oppression, and malice, this action falls within the
28 statutory scope of Welfare and Institutions Code section 15657, *et. al.*, and as such this

1 action cannot be considered one based simply on professional negligence. Therefore,
2 Defendants are subject to heightened civil remedies pursuant to the provisions of Welfare
3 and Institutions Code section 15657.

4 18. The breach of duty, as set forth above, was the legal result of the motive and
5 plan to put profits over the health and safety of their patients, and Defendants and each of
6 them have acted with malice and oppression, and an award of punitive damages in a sum
7 according to proof at trial is justified, warranted, and appropriate.

8 19. Pursuant to the provisions of California Welfare and Institutions Code section
9 15657 (a) and (b), the Defendants, and each of them, are liable to Plaintiff for damages,
10 including, but not limited to MARGE F. WENTZ's pain and suffering, medical expenses, as
11 well as attorney's fees and costs.

12 **SECOND CAUSE OF ACTION**

13 **(Medical Negligence)**

14 20. Plaintiff refers to and re-alleges each and every allegation of this Complaint
15 as though set forth fully herein

16 21. Plaintiff MARGE F. WENTZ was being treated by principals and employees of
17 KAISER, ESKATON, MYO SHIN, M.D., and DOES 1 through 70.

18 22. On or about March 1, 2012, and thereafter, Defendants, and each of them,
19 negligently cared for, diagnosed, and treated Plaintiff, and failed to exercise the standard
20 of care and skill ordinarily and reasonably required of physicians, surgeons, hospitals,
21 nurses, midwives, etc. by, negligently failing to properly monitor, diagnose and treat
22 MARGE F. WENTZ, resulting in the onset and progression of Stevens-Johnson syndrome
23 that ultimately lead to her death, among other injuries.

24 23. As a proximate result of the negligence and carelessness of Defendants and
25 each of them, Plaintiff has been required to bear additional medical expenses, lost
26 earnings, other costs, incidental and special damages that are unknown at this time but
27 Plaintiff shall seek leave to amend this pleading when the same has been ascertained,
28 together with prejudgment interest thereon from the date of Plaintiff's first CCP §998 offer

1 to compromise.

2 24. As a further proximate result of the negligence of the Defendants, and each
3 of them, Plaintiff was hurt and injured in her health, strength and activity, sustaining injury
4 to her body and shock and injury to his nervous system and person, all of which said
5 injuries caused and continue to cause Plaintiff great mental, physical, and nervous pain and
6 suffering. Plaintiff is informed and believes and therefore alleges that these injuries will
7 result in some permanent disability to Plaintiff, all to her general damage in a sum in
8 excess of the minimum jurisdictional limits of the Court, and that she is entitled to
9 prejudgment interest on that amount when determined, from the date of claimant's CCP
10 §998 offer to compromise

11 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of
12 them, for:

13 1. General damages in a sum in excess of the minimum jurisdictional limits of
14 the Court;

15 2. All medical and incidental expenses according to proof;

16 3. For all damages, including treble damages, pursuant to Civil Code § 3345;

17 4. All prejudgment interest on general and special damages from the date of
18 Plaintiff' Code of Civil Procedure § 998 offer to compromise;

19 5. Post-judgment interests, if any, incurred;

20 6. For an award of all monies equal to the profit realized from the Defendants'
21 conduct alleged and for prejudgment interest thereon according to law;

22 7. Punitive damages in an amount commensurate with Defendants' ability to
23 pay and sufficient to deter such conduct in the future;

24 8. All costs of suit;

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26 ///

27 ///

28 ///

1 9. For an award of attorneys' fees herein incurred pursuant to Welfare and
2 Institutions Code § 15657, et seq.;

3 10. Such other and further relief as this Court may deem just and proper.
4

5 DATED: April 3, 2013

KERSHAW, CUTTER, & RATZNOFF, LLP

By: _____

SEAN M. PATRICK

Courthouse News Service

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COUNTY OF SACRAMENTO

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