

DENVER DISTRICT COURT, CITY AND COUNTY
OF DENVER, STATE OF COLORADO

Address: 1437 Bannock Street,
Denver, CO 80202

Plaintiff: JOSEPHINE JANSEN

Defendants:
MINA SHABNAM LEE, M.D.
THOMAS ARTHUR GETTELMAN, M.D.
ANDREA L. ANDERSON, N.P. and
COLORADO PERMANENTE GROUP, P.C. and
KAISER FOUNDATION HEALTH PLAN OF
COLORADO

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Case Number:

Div:

COMPLAINT AND JURY DEMAND

COMES NOW, the Plaintiff, through undersigned counsel, and complains against the Defendants, and each of them, as follows:

A. GENERAL ALLEGATIONS

1. At all times pertinent Josephine Jansen, hereinafter referred to as "Plaintiff" resided at 3233

Osage Street, within the City and County of Denver, State of Colorado.

2. At all times pertinent, Defendant Mina Shabnam Lee, M.D, hereinafter referred to as "Defendant Lee" was and is a physician specializing in urology. At all times pertinent, Defendant Lee had, as her principal business address, 2045 Franklin Street, within the City and County of Denver, State of Colorado.

3. At all times pertinent, Thomas Arthur Gettelman, M.D., hereinafter referred to as "Defendant Gettelman" was and is a physician specializing in anesthesiology. At all times pertinent Defendant Gettelman had as his place of business the Kaiser Anesthesia Department located on the second floor at 2045 Franklin Street, within the City and County of Denver, State of Colorado.

4. At all times pertinent Andrea L. Anderson was and is a Nurse Practitioner employed by Kaiser and having her place of practice located within the City and County of Denver, State of Colorado.

5. Defendant Colorado Permanente Medical Group, P.C. at all relevant times hereto was a Colorado corporation engaged in the business of providing medical services in the City and County of Denver, State of Colorado.

6. Defendant Kaiser Foundation Health Plan of Colorado, at all times relevant hereto, was a Colorado corporation engaged in the business of providing healthcare coverage services in the City and County of Denver, State of Colorado.

7. At all times relevant hereto, Defendant Anderson was acting as an employee, agent or parent agent of Defendant Colorado Permanente Group, P.C. and/or Defendant Kaiser Foundation Health Plan of Colorado.

8. Venue is appropriate pursuant to Rule 98 C.R.C.P. within the City and County of Denver because the individual Defendants, and each of them, practice medicine within the City and County of Denver and have their offices within the City and County of Denver, State of Colorado, and the incident, which forms the subject matter of this lawsuit occurred within the City and County of Denver, State of Colorado.

9. The Plaintiff, born on July 26, 1940, has, for many years, been a subscriber of the Kaiser Permanente Colorado HMO.

10. In approximately January of 2011 the Plaintiff noted that she had some blood in her urine.

11. Various radiographic images were taken and it was determined that the Plaintiff had a

bladder mass on the left posterior wall that measured approximately 5cm. x 4cm. in size.

12. Given the Plaintiff's condition she was referred to Defendant Lee, a specialist, by her primary care physician, Dr. Sean Riley.

13. On or about April 1, 2011, the Plaintiff came to see, as a patient, Defendant Lee. At that time Dr. Lee noted the patient's history of hematuria, and Defendant Lee noted the fact that the Plaintiff has several positive urine cultures since September 20, 2010, and also noted, among other things, that the Plaintiff had a significant history of cigarette smoking.

14. At that time Defendant Lee further noted that the Plaintiff currently had been taking a variety of prescription medicines including:

- a. Sulfamethoxazole-Trimethoprin
- b. Lisinopril-Hydrochlorothiazide (HCTZ)
- c. Morphine
- d. Oxycodone
- e. Estradiol
- f. Medroxyprogesterone
- g. Omeprazole
- h. Aledronate
- i. Calcium Carbonate
- j. Levothroid
- k. Fluoxetine
- l. Minocycline

15. Given the Plaintiff's symptoms and associated findings it was recommended that the Plaintiff undergo a surgical procedure with respect to this mass in her bladder. The surgical procedure was described as a "bladder transurethral resection neoplasm." The surgeon was to be Defendant Lee.

16. On or about April 7, 2011, the Plaintiff underwent a pre-operative evaluation at Kaiser. According to that note "the labs ordered per surgeon." The reference to "surgeon" is and was to Defendant Lee.

17. The pre-operative examination was performed by Defendant Andrea Anderson, a Nurse Practitioner.

18. Defendant Anderson at all times pertinent, acted on behalf of and was an agent of Defendants of Defendants Kaiser Foundation Health Plan of Colorado and/or Colorado Permanente

Medical Group.

19. Defendant Anderson had a duty to perform a reasonable and thorough pre-operative examination of the Plaintiff which would have included the ordering of necessary tests and laboratory data.

20. The record from the April 7, 2011 examination was available to Defendant Lee prior to surgery thereby enabling Defendant Lee to order, if she felt it appropriate, additional tests or laboratory data.

21. At all times pertinent, Defendant Lee, the surgeon, had a responsibility of assessing the Plaintiff's condition prior to surgery. Defendant Lee, in that connection, had an obligation to determine if the Plaintiff was an appropriate surgical candidate and that the requisite tests and studies, prior to surgery, had been performed or ordered in advance of the surgery. If, for example, Defendant Lee believed that a lab needed to be ordered, she could have done so readily and easily.

22. In addition to Defendant Lee being the surgeon, the anesthesiologist assigned to this case was Defendant Gettelman.

23. Defendant Gettelman also had a duty to determine that the Plaintiff would be reasonably safe during the course of the surgery and, moreover, in the period following her surgery that the patient would receive appropriate care and attention until such time as Plaintiff was transferred to the floor or discharged home after care in the PACU. Defendant Gettelman had a duty to the Plaintiff to ensure that the appropriate and necessary tests were performed pre-operatively. And, likewise, if, for instance Defendant Gettelman believed a test result was required to plan and execute a safe anesthetic, he could have - with some ease - readily ordered a lab test before initiating anesthesia.

24. On the 7th of April, 2011, various labs were ordered including a white blood count, hemoglobin, hematocrit, platelet, etc. However, one test, regarding the Plaintiff's sodium (Na) was not ordered. In fact, the last time, per the Kaiser records, that a sodium lab was drawn on the Plaintiff was November 24, 2009, almost 17 months before the scheduled surgery of April 12, 2011. All of this information would have been available to Defendant, Lee as well as Defendant Gettelman before the surgery.

25. On April 12, 2011, the Plaintiff underwent the transurethral resection of her bladder tumor. The surgeon who was responsible for the Plaintiff's care and who performed the surgery was Defendant Lee. The anesthesiologist was Defendant Gettelman.

26. Both Defendants Lee and Gettelman proceeded with the scheduled surgery and anesthesia despite having obtained no recent sodium lab value on the patient. Moreover, the surgery proceeded

although the records indicated that the most recent sodium level had been obtained in November of 2009 well in excess of one year before the surgery.

27. Either Defendant Anderson or Defendant Lee or Defendant Gettelman could have easily ordered a simple blood test which would have included a panel of electrolytes such as sodium.

28. The ordering of a sodium lab value is extremely easy, and non harmful to the patient, and would only take a matter of minutes to obtain. However, the priorities of each defendant were such as not to obtain this test.

29. Moreover at least one of the drugs that the Plaintiff was taking, Hydrochlorothiazide, (HCTZ) is a diuretic and has the effect of lowering some electrolyte lab values.

30. During the surgical procedure performed by Defendant Lee various and serious complications occurred.

31. According to the time sheet by Defendant Gettelman, the surgery anesthesia commenced at 7:47 a.m. and ended at 11:10.a.m.

32. Following the surgery the Plaintiff sustained severe and irreparable injury. She went into shock caused by abnormal and an almost deadly level of sodium, Plaintiff's bladder was ruptured during the surgery and shortly following the surgery it was determined that Plaintiff had developed severe hyponatremia which was complicated by acute cardiac decompression due to the stress induced cardiomyopathy, respiratory failure, renal failure requiring dialysis, prolonged ventilation, and significant neurological injuries. This cascade of horrific events including multi organ failure, were caused by the negligence of the Defendants.

33. At all times pertinent the Defendants, and each of them, had a duty to provide reasonable and appropriate medical care, within their specialties, to the Plaintiff. As will be discussed subsequently, the Defendants, and each of them, breached their duties of due care owed to the Plaintiff and as a consequence the Plaintiff sustained serious injuries and damages. Much of her damages are permanent in nature and her life has been forever changed.

34. Plaintiff's condition required extensive hospitalization, and then was followed by a significant stay at a rehabilitation hospital. The Plaintiff has incurred substantial economic losses including the loss of her career.

B. FIRST CLAIM FOR RELIEF
(Claim as to Defendant Lee)

35. Plaintiff incorporates paragraphs 1 through 34 as though set forth fully below.

36. Defendant Lee had a duty to provide reasonable and appropriate urological care to the Plaintiff. Defendant Lee breached her duty of care in three significant areas: pre-surgical care; surgical care; and post surgical care.

37. With respect to the Plaintiff's pre-surgical care Defendant Lee was negligent in one or more of the following particulars:

- a. In failing to order a pre-operative sodium on this patient.
- b. In failing to adequately assess the Plaintiff's medical condition before surgery.
- c. In failing to look at or study the Plaintiff's records which would have shown that her last sodium level had been drawn November 7, 2009, well over one year before this bladder surgery.
- d. In failing to properly supervise or monitor the Nurse Practitioner who on April 7, 2011 evaluated Plaintiff for surgery.
- e. In failing to be appropriately prepared for the surgery of April 12, 2011.
- f. In failing to check and determine if the Plaintiff, given her medications, and past history, was an appropriate candidate for the surgery.
- g. In failing to postpone the surgery in light of there being no recent sodium level available in this patient.
- h. In failing to have an adequate understanding of the patient's metabolic condition before surgery.
- i. In being otherwise unprepared for the surgery of April 12, 2011.

38. Intra operatively, Defendant failed to perform the surgery in a reasonable and appropriate fashion. Defendant was negligent, during the performance of the surgery, in one or more of the following particulars:

- a. In performing the surgery in a dilatory fashion, the surgery - taking too long to perform - only added extra and excessive stress to the Plaintiff.

- b. In causing a rupture of the bladder.
- c. In failing to understand the Plaintiff's physical condition and the need not to prolong the surgery.
- d. In failing to take into account the Plaintiff's metabolic condition during the surgery.
- e. In causing the Plaintiff to have dilutional hyponatrimia in light of the bladder rupture.
- f. In failing to adequately consider the effects of fluid absorption as a result of the surgical misadventure.
- g. In placing unwarranted and unnecessary stress upon the patient and, in essence, "setting up" the patient for the horrid events (including going into shock) following the surgery.

39. Following this surgery, during which the Plaintiff's bladder ruptured, Defendant Lee failed to properly provide reasonable and adequate post surgical care to the Plaintiff. Defendant was negligent in the post surgical management in one or more of the following particulars:

- a. In failing to check in a timely manner the Plaintiff's serum sodium while the patient was in the recovery room (PACU).
- b. In failing to properly monitor the Plaintiff's condition post operatively, especially after the complication occurred.
- c. In failing to have a proper understanding of the Plaintiff's medical condition following the surgery.
- d. In failing to timely respond or adequately anticipate the medical needs of the Plaintiff following the surgery; and
- e. In failing to appreciate the Plaintiff's post surgical condition which required diligent care - including the ordering and the obtaining of important laboratory data.
- f. In being otherwise negligent in the care and treatment she provided to the Plaintiff following the surgical procedure of April 12, 2011.

40. As a direct and proximate result of the negligent acts and actions of Defendant Lee the Plaintiff went on to sustain devastating injuries. The Plaintiff for a significant period of time was in respiratory failure and hyponatremic shock. Plaintiff's condition required her to be on a ventilator for a significant period of time. Plaintiff had to be hospitalized for a lengthy period of time, much of which was in the ICU, followed by a hospitalization at Kindred Hospital for a substantial length of time. Plaintiff was in the ICU for days on end and sustained serious injuries to her bodily functions. She developed multi organ failure. Her injuries included respiratory failure, septic shock, cardiogenic shock, cardiomyopathy, HSV, pneumonia, renal failure requiring dialysis, anemia requiring multiple transfusions, prolonged ventilation, poor nutrition and a host of other maladies. Further, she has sustained permanent neurological impairments.

41. Defendant's superficial approach to this patient - particularly in having no understanding of her sodium prior to surgery - set into motion the cascade of horrifying complications which followed the surgery. And her operative and post operative mismanagement (especially in not ordering a serum sodium immediately post surgery) caused and further and increased harm to Plaintiff.

42. As a result of the injuries sustained by the Plaintiff, caused directly and proximately by the negligence of Defendant Lee, the Plaintiff incurred significant pain, suffering and loss of enjoyment of life. Further, Plaintiff sustained permanent physical and neurological impairment and incurred substantial economic losses including the loss of her employment.

WHEREFORE, Plaintiff prays as set forth following her Fourth Claim for Relief.

C. SECOND CLAIM FOR RELIEF
(Claim as to Defendant Gettelman)

43. Plaintiff incorporates paragraphs 1 through 42 as though set forth fully below.

44. Defendant Gettelman likewise was negligent in three distinct areas: his pre-anesthesia evaluation; during the operation during in which he was the anesthesiologist; and the post operative care he provided, after which the surgery was completed but while the Plaintiff was in the recovery room. In each specific area the care provided by Dr. Gettelman was negligent, substandard, and outside the scope of what a reasonable anesthesiologist would be expected to do under the same or similar circumstances.

45. With respect to the negligence of Dr. Gettelman regarding the pre-operative evaluation and testing, Dr. Gettelman:

- a. Failed to perform an appropriate pre-operative evaluation.

- b. Failed to determine if the appropriate tests had been performed pre-operatively including a sodium level.
- c. Failed to consider that the patient was on a significant amount of medications including HCTC, (a medication which could lower a patient's sodium).
- d. He should have considered that there was a risk for bladder perforation which with ongoing bladder irrigation would further lower electrolytes including sodium.
- e. He failed to alert the surgeon that there was no recent sodium level obtained on this patient.
- f. In short, Dr. Gettelman did not thoroughly or properly evaluate the patient before allowing the patient to undergo the surgical procedure.

46. During the surgery Defendant Gettelman's care was also negligent in one or more of the following particulars:

- a. In failing to protect the Plaintiff's airway from fluid aspiration.
- b. In failing to take into account the effects of low tidal volumes (under 400) for the entirety of the procedure.
- c. In failing to take into account the risks for aspiration.
- d. In failing to recognize the potential for the presence of fluid in the airway.
- e. Having the patient have a prolonged exposure of her airways to the aspirated stomach contents.
- f. In failing to ask Defendant Lee to abort or postpone the procedure in light of the inadequate information available at the time of the surgery regarding the patient's electrolyte status.
- g. In being otherwise negligent in the performance of his duties as an anesthesiologist during the operative period.

47. Following the surgery the Plaintiff's condition was extremely delicate and Defendant Gettelman was negligent in one or more of the following particulars.

- a. In failing to properly assess the patient's metabolic status in a timely manner;
- b. In failing to order timely sodium.
- c. Given the fact that her oxygen saturations decreased peri-operatively to a level documented at 78%-81% his response was to merely give more oxygen which was inappropriate under the circumstances..
- d. In failing to properly check on the patient while she was in the Post Anesthesia Care Unit (PACU) and respond to her needs - which by that time were becoming quite significant.

48. As a direct and proximate result of the negligent acts and actions of Defendant Gettelman the Plaintiff went on to sustain horrific injuries and complications. The Plaintiff went into hypotensive shock (caused by the negligence of Defendants not checking her sodium and subjecting her to a significant surgery). Because of the shock and this dire medical condition she was on a ventilator for quite some time. She had, among other things, aspiration and she required extensive care in the ICU. She sustained acute respiratory failure, septic shock, cardiogenic shock, pneumonia, kidney failure requiring dialysis, anemia requiring numerous transfusion, and a host of other medical maladies. In addition to suffering from multi organ failure she sustained permanent neurological injury.

49. As a direct and proximate result of the negligence of Defendant Gettelman the Plaintiff incurred significant pain, suffering, and loss of enjoyment of life. Further, Plaintiff sustained permanent physical and neurological impairment and incurred substantial economic losses including the loss of her employment.

WHEREFORE, Plaintiff prays as set forth following her Fourth Claim for Relief.

D. THIRD CLAIM FOR RELIEF
(Claim as to Defendant Anderson)

50. Plaintiff incorporates paragraphs 1 through 49 as though set forth fully set forth fully below.
51. During her pre-operative screening, examination and evaluation of the Plaintiff, Defendant Anderson should have realized that the last sodium lab value on the Plaintiff had been taken in November 2009. Defendant Anderson should have realized the need to order a panel of electrolytes which would have included a serum sodium level.

52. Defendant Anderson was negligent in failing to order the requisite and appropriate laboratory tests prior to the Plaintiff undergoing surgery.

53. As a direct and proximate result of the Plaintiff's metabolic condition the Plaintiff went on to sustain horrific injuries and damages as result of the surgery as described above.

54. By failing to order a serum sodium on the Plaintiff and having the Plaintiff proceed with surgery caused significant risk of harm to the Plaintiff. In fact, the Plaintiff did incur substantial injuries and damages as described above.

WHEREFORE, Plaintiff prays as set forth following her Fourth Claim for Relief.

E. FOURTH CLAIM FOR RELIEF

(Negligence as to Defendants Colorado Permanente Medical Group, LLC and Kaiser Foundation Health Plan of Colorado by way of the Doctrine of Respondeat Superior)

55. Plaintiff incorporates paragraph 1 through 54 as though set forth fully below.

56. The negligent acts or omissions of Defendant Anderson, as described above, occurred while she was an employee or agent of Defendants and were within the course and scope of her employment.

57. At all times pertinent Defendant Anderson was acting within the course and scope of her agency or employment.

58. Defendants Colorado Permanente Medical Group, LLC and Kaiser Foundation Health Plan of Colorado are liable for damages resulting from the acts and omissions of/or their agents and employees under the Doctrine of Respondeat Superior.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, for interest at the legal rate, expert witness fees, costs of this action, and for such other and further relief as this Honorable Court deems just and proper in the premises.

PLAINTIFF REQUEST THAT THIS MATTER BE HEARD BY A JURY OF SIX (6) PERSONS.

Respectfully submitted,

John Astuno, Jr.

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