

DISTRICT COURT, CITY & COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	DATE FILED: June 18, 2013 4:33 PM FILING ID: 13C14F1F54E
<b>Plaintiff:</b> VANESSA HAYES-QUINTANA v. <b>Defendant:</b> ANDREW S. WEINFELD, M.D. and KAISER PERMANENTE, A Colorado corporation	▲ COURT USE ONLY ▲
<b>Attorneys for Plaintiff</b> SPENCER FANE & GRIMSHAW LLP William J. Brady, No. 8666 1700 Lincoln Street, Suite 3800 Denver, Colorado 80203 Phone: 303-839-3800   Fax 303-839-3838 E-mail: wbrady@spencerfane.com	<b>Case No.</b>  <b>Div/Cum.</b>
<b>CIVIL COMPLAINT AND JURY DEMAND</b>	

Plaintiff Vanessa Hayes-Quintana ("Plaintiff"), by and through her attorneys Spencer Fane & Grimshaw LLP, for her Complaint and Jury Demand against Defendant Andrew S. Weinfeld, M.D., and Defendant Kaiser Permanente, alleges and avers:

1. Venue is proper in the District Court for the City and County of Denver pursuant to C.R.C.P. 98(c)(5), as the medical treatment and surgery which are the subject of this action were rendered in the City and County of Denver.

2. Plaintiff, at all times relevant hereto, was a resident of Douglas County, Colorado, maintaining her primary residence at 16041 Bluebonnet Drive in Parker, Colorado.

3. Upon information and belief, at all times relevant hereto Defendant Andrew S. Weinfeld, M.D., (the "Defendant physician") a physician licensed by the state of Colorado and authorized to practice medicine within the State, was a general surgeon employed by Defendant Kaiser Permanente, a Colorado corporation, with the Defendant physician's business address and principal place of business located at 2045 Franklin Street, Denver, Colorado 80205.

4. At all times pertinent hereto, Defendant Kaiser Permanente was a California corporation, licensed to do business in Colorado, with regional administrative offices located at 10535 East Dakota Ave., Denver, Colorado, and was the employer of Defendant, Andrew S. Weinfeld, M.D.

5. In the late spring and early summer of 2011, Plaintiff consulted with Dr. Daniel Maher for diagnosis and treatment of multiple hernias during which she was advised to have general surgery performed. Due to a scheduling conflict and Dr. Maher's unavailability to

timely schedule surgery, Dr. Maher referred Plaintiff to the Defendant, Dr. Andrew Weinfeld, M.D.

6. Plaintiff consulted and engaged for compensation the services of the Defendant Weinfeld through Kaiser Permanente to examine, diagnose, prescribe treatment for, and to care for and treat her hernia problems.

7. On June 20, 2011, the Defendant physician further undertook to treat the Plaintiff, by performing outpatient surgery to repair three hernias – one hiatal, one umbilical, and one inguinal. Plaintiff waited three hours after her appointed surgical time before she finally was taken to the operating room at the aforementioned general surgery facility.

8. Plaintiff had never met Dr. Weinfeld previously, and he had not examined Plaintiff before the 20<sup>th</sup> of June, 2011. The surgical scheduling that day ran behind, and the medical personnel Plaintiff was able to observe appeared to be performing their responsibilities in a hurried manner. Plaintiff was the last person remaining in the surgical waiting area, and several excuses and apologies were made throughout the course of the time Plaintiff was present regarding their inability to perform her surgery earlier. Near the end of the afternoon, Plaintiff overheard a male voice state, “Okay, let’s go get this done.”

9. Plaintiff was taken to the pre-op room, was presented an informed consent form by the treating staff personnel, and she signed it. Plaintiff met briefly with the Defendant before surgery, and recalls that he conducted a brief examination and advised her that he would make three incisions to repair the hernias.

10. In attempting to repair the inguinal hernia, the Defendant employed the use of a mesh insert. Said insert currently remains in place.

11. Following surgery, plaintiff experienced severe pain in her groin area, remained confined to her bed for approximately one full week, had to be carried to the bathroom by her spouse to perform bodily functions. She was not ambulatory during this period. Several calls were made to the Defendant physician’s office advising him of these developments. Plaintiff had been previously prescribed painkillers for post-surgical discomfort.

12. More than one week following surgery, Plaintiff was able to get out of bed and walk, and noticed in her reflection in her bathroom mirror that the inguinal hernia was still present. She mentioned this to her husband, and she called the Defendant physician’s office to advise him of such. She was advised to make an appointment.

13. Upon return to the Defendant’s office for further follow-up, the Defendant physician advised the Plaintiff that he “never found the hernia.” He also advised her that she “may have sustained a reinjury” between the date of the surgery that he performed and her presentation to him that day. The pre-surgical diagnosis of an inguinal hernia was confirmed. Thereafter, the hiatal and umbilical hernias healed without incident.

14. Upon information and belief and as a result of subsequent diagnosis by other licensed physicians, Plaintiff's inguinal hernia was not repaired by the Defendant physician.

15. Upon information and belief and after consultation with other expert physicians in the area of the Defendant physician's expertise, Plaintiff has been informed, and alleges, that an inguinal hernia was present on and before June 20<sup>th</sup>, 2011, and was not properly treated by Defendant physician, which treatment was below the proper standard of care for physician's practicing general surgery, and, specifically the repair of inguinal hernias.

16. At all times pertinent hereto, Defendant Weinfeld was acting within the course and scope of his employment with Defendant Kaiser Permanente.

17. As a direct and proximate result of the Defendant physician's actions, the Plaintiff's inguinal hernia remains visible, has caused both nerve and tissue injury, persistent and at times debilitating pain, numbness and discomfort, is cosmetically displeasing and disfiguring, and continues to impair Plaintiff's daily functions, requiring further corrective surgery, now scheduled for this summer.

FIRST CLAIM FOR RELIEF  
(Negligence)

18. Plaintiff incorporates by reference paragraphs 1 through 17 of this Complaint as if the same were fully set forth herein.

19. Defendant Weinfeld performed the inguinal hernia surgery in a manner that was below the proper standard of care, and failed to prevent further harm occurring to the Plaintiff, and as such his actions constitute negligence.

20. As a direct result of Defendant Weinfeld's negligence, Plaintiff has suffered

a) past, present and future injuries, damages and losses, including but not limited to numbness at the surgical site, continuing pain and discomfort from the hernia, discomfort from the surgical mesh, diminished musculature tissue in one leg, nerve and potential lymph node damage, a cosmetically disfiguring appearance, and significant physical restrictions on her daily activities.

b) severe emotional distress and loss of enjoyment of life, including loss of conjugal benefits

c) loss of time

d) reasonable and necessary medical expenses and other incidental and out of pocket expenses, all of value as yet undetermined.

e) many of the injuries Plaintiff has sustained are believed to be potentially permanent and debilitating, and Plaintiff has also sustained economic losses for medical

treatment and non-economic damages, directly as a result of Defendant physician's negligence.

SECOND CLAIM FOR RELIEF  
(Negligence/Respondeat Superior)

21. Plaintiff incorporates by reference paragraphs 1 through 20 of this Complaint as if the same were fully set forth herein.

22. Defendant Kaiser Permanente is liable for any of the Defendant physician's actions performed within the course and scope of his employment which caused damages to the Plaintiff under the Doctrine of Respondeat Superior.

23. Many of the injuries Plaintiff has sustained are believed to be potentially permanent and debilitating, and Plaintiff has also sustained economic losses for medical treatment and non-economic damages, directly as a result of both Defendant Kaiser and Defendant physician's negligence.

WHEREFORE, Plaintiff Vanessa Hayes-Quintana prays that judgment be entered against Defendant Andrew S. Weinfeld, M.D. and against Defendant Kaiser Permanente, for compensatory damages for the aforementioned injuries, damages and losses in an amount to be determined at trial, for all costs, expert witness fees, interest, and for other and further relief as the Court may deem just and proper.

PLAINTIFF HEREBY DEMANDS TRIAL TO A JURY OF SIX MEMBERS.

Respectfully submitted this 18th day of June, 2013.

GRIMSHAW & HARRING, P.C.

*Per C.R.C.P. 121, §1-26(9), an original signature is on file.*

S/ William J. Brady

William J. Brady

Plaintiff's Address:

16041 Bluebonnet Drive  
Parker, Colorado 80134