



FILED
13 OCT 22 AM 9:33
FOR MULTNOMAH COUNTY

6
7 IN THE CIRCUIT COURT OF THE STATE OF OREGON

8 FOR THE COUNTY OF MULTNOMAH

14730

9 JOHN MICHAEL KINDLE,

10 Plaintiff,

11 vs.

12 KAISER FOUNDATION HEALTH PLAN
13 OF THE NORTHWEST dba KAISER
14 PERMANENTE, a domestic corporation,
DUNCAN HODGES, M.D., in his individual
15 capacity,
16 Defendants.

)
) Case No.: **1310-14730**
)
) COMPLAINT
) Violation of ORS 659A.403
) Other State Law Claims
) DEMAND FOR JURY TRIAL
) NOT SUBJECT TO MANDATORY
) ARBITRATION
Filing Fee: \$531.00
Prayer for relief: Plaintiff is seeking an
amount determined to be just and fair by a
jury, but not exceeding \$750,000.00

17 COMES NOW, Plaintiff John Michael Kindle, by and though his attorney, Ramón A.
18 Pagán, hereby alleges as follows:

- 19 1. This is an action for declaratory, injunctive and monetary relief, including punitive damages
20 and attorneys' fees and costs, to redress defendants' violations of plaintiff's rights protected
21 by the State of Oregon.
22

23 Page 1 – COMPLAINT

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1
2 **PARTIES**

3 2. Plaintiff John Michael Kindle (“plaintiff” or “Kindle”), was at all material times relevant to
4 this complaint a resident of the State of Oregon, residing at 4622 NE 91st Avenue, Portland
5 Oregon 97220.

6 3. Defendant Kaiser Foundation Health Plan of the Northwest dba Kaiser Permanente
7 (“Kaiser”) is a domestic corporation with its principal place of business located at 500 NE
8 Multnomah Street, Portland Oregon 97232.

9 4. Defendant Duncan Hodges, M.D. (“Hodges”) was at all material times relevant to this
10 complaint an employee of Kaiser, providing medical services at the Sunnyside Medical
11 Center located at 9900 SE Sunnyside Road, Clackamas Oregon 97015 (“Sunnyside”).

12 **General Allegations**

13 5. Plaintiff Kindle is an individual with a disability. Plaintiff has been diagnosed with
14 HIV/AIDS, and had been at all times relevant to this complaint. Plaintiff’s disability
15 impacts major life activities and causes various medical problems and complications.
16 Plaintiff at all times relevant to the allegations in this complaint sought treatment with an
17 immunologist and was active in treating his medical conditions.

18 6. In or about January of 2012, plaintiff sought medical services from Sunnyside.
19 Specifically, plaintiff sought treatment for his left hip, which had been causing him great
20 pain.

21 7. Plaintiff was then referred to Hodges in or about March of 2012. Hodges was aware of
22 plaintiff’s diagnosis of HIV/AIDS, and was provided with plaintiff’s then current laboratory

1 and blood reports.

- 2 8. Based on discussions with plaintiff, Hodges recommended that plaintiff have total hip
3 replacement surgery on his left hip. Hodges recommended this surgery while having full
4 knowledge of plaintiff's HIV/AIDS status and his blood laboratory results regarding his
5 HIV infection and CD4 levels. Hodges did not, at that time, discuss any risks associated
6 with plaintiff's HIV/AIDS diagnosis and the recommended surgery. Plaintiff reluctantly
7 agreed to the surgery.
- 8 9. Hodges required plaintiff to undergo substantial dental work before he could be cleared for
9 the hip replacement surgery. Plaintiff fulfilled this request over several months and was
10 formally approved for surgery, based on his completed dental work and his blood
11 laboratory results regarding his HIV/AIDS infection levels, in September 2012.
- 12 10. Hodges scheduled plaintiff for surgery for October 26, 2012. Plaintiff was required to
13 complete pre-operation preparation procedures in September and October 2012, and he did
14 so without complication.
- 15 11. On October 24, 2012, Hodges abruptly cancelled plaintiff's surgery, stating that he was
16 concerned about plaintiff's infection levels and because he was concerned about the safety
17 of the surgical team. Hodges' stated reasons for the cancellation of the surgery were a false
18 pre-text for intentional discrimination, as plaintiff's laboratory results were not substantially
19 different than prior laboratory results, and Hodges had previously scheduled the operation
20 based on those same laboratory results. In a phone conversation with plaintiff on or about
21 October 24, 2012, Hodges stated that the real reason he was cancelling the surgery was his
22 concern for the safety of the surgical team.

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1 12. Hodges offered no accommodation or alternative for plaintiff's then cancelled surgical
2 procedures. Plaintiff was not at an elevated risk for surgery, and his HIV and CD4 levels
3 posed no substantial risk for the surgical team. Hodges could have performed the surgery
4 without any elevated risk for plaintiff and without any unfeasible or prohibitive
5 accommodations for the surgical team and plaintiff.

6 13. Plaintiff underwent left hip surgery at a hospital not owned by Kaiser several months after
7 the intentional, discriminatory acts of the defendants without complication and without any
8 special accommodations, and with substantially similar blood reports and laboratory results
9 as he had when defendants discriminated against him.

10 **FIRST CLAIM FOR RELIEF**

11 **Violation of ORS 659A.403**

12 **(Against Defendants Kaiser and Hodges)**

13 14. Plaintiff realleges and incorporates paragraphs 1 through 13 above.

14 15. Sunnyside is a public accommodation run by a private entity, Kaiser, as defined by ORS
15 659A.400(1)(a).

16 16. Hodges was, at all times relevant hereto, an employee of Kaiser working at Sunnyside.

17 17. Plaintiff has, and had at all times relevant hereto, a disability as defined by ORS 659A.104.

18 Specifically, plaintiff was suffering at all times relevant hereto from HIV/AIDS, a medical
19 impairment which severely restricts and limits the major bodily functions, including the
20 immune system. At all times relevant hereto, defendants were aware of plaintiff's
21 disability.

22 18. Defendants intentionally discriminated against plaintiff based on plaintiff's disability.

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Defendants refused to perform medical procedures for plaintiff because of plaintiff's disability. Defendants also refused to accommodate plaintiff's disability or offer feasible alternatives to accommodate plaintiff's disability.

19. Plaintiff is entitled to a declaration that defendants violated his rights under Oregon law, including that he was denied medical services at Sunnyside because of his HIV/AIDS status.

20. Plaintiff is entitled to injunctive relief in the form of modification of the administrative rules, procedures and policies that led to the denial of medical services based on plaintiff's HIV/AIDS status, so that patients with similar disabilities and symptoms will not suffer discrimination and denial of services in the future.

21. As a proximate cause of defendants' intentional discriminatory actions, plaintiff has suffered humiliation, frustration, distress, physical pain and suffering, mental anguish, anxiety and loss of services due to the denial of medical services as a result of his HIV/AIDS status. Due to plaintiff's suffering because of defendants' actions, plaintiff is entitled to an award of compensatory damages in the amount of \$750,000.00.

22. Plaintiff is also entitled to an award of attorney's fees and costs, including expert witness fees and disbursements, incurred herein pursuant to ORS 659A.885.

SECOND CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

(Against Defendants Hodges and Kaiser)

23. Plaintiff realleges and incorporates paragraphs 1 through 22 above.

24. Defendants intended to cause plaintiff severe emotional distress by their actions, and/or

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1 should have known that plaintiff was substantially certain to experience severe emotional
2 distress as a result of their actions.

3 25. Defendants' actions constituted an extraordinary transgression of the bounds of socially
4 tolerable conduct.

5 26. As a result of the conduct of defendants, plaintiff has suffered and will continue to suffer
6 from emotional distress, pain, distress, fear, anxiety, humiliation, discomfort, and loss of
7 enjoyment of life and is entitled to an award of compensatory damages in the amount of
8 \$750,000.00.

9 **PUNITIVE DAMAGES WILL BE SOUGHT**

10 27. Plaintiff will seek to amend his complaint to add punitive damages against the individually
11 named defendants.

12 **DEMAND FOR JURY TRIAL**

13 28. Plaintiff demands a jury trial.

14 **PRAYER**

15 Wherefore, plaintiff prays for judgment against defendants as follows:

16 **Against Defendant Kaiser**

- 17 1. A declaration that defendant Kaiser violated plaintiff's rights;
- 18 2. Injunctive relief in the form of modification of the administrative rules, procedures
19 and policies that led to Kaiser's denial of medical services to plaintiff as a result of
20 plaintiff's HIV/AIDS status so that patients with similar disabilities and symptoms
21 will not suffer discrimination in the future;
- 22 3. An award of compensatory damages in an amount to be determined as just and fair by

1 a jury, and in no event greater than \$750,000.00; and

2 4. Plaintiff's attorneys' fees, costs and expert fees incurred herein.

3 **Against Defendant Hodges**

4 1. A declaration that defendant Hodges violated plaintiff's rights;

5 2. Compensatory damages in an amount to be determined as just and fair by a jury and
6 in no event greater than \$750,000.00; and

7 3. Plaintiff's attorneys' fees, costs and expert fees incurred herein.

8
9 RESPECTFULLY SUBMITTED this 22nd day of October, 2013.

10
11 THE LAW OFFICE OF RAMON A. PAGAN

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13 
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20 Attorney for Plaintiff John Michael Kindle

21 Trial Attorney: Ramon Pagan