



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

16257

PATRICK L. DRURY,

Plaintiff.

v.

DANIEL R. CLAYBURGH, M.D.,
NORTHWEST PERMANENTE, P.C.,
KAISER FOUNDATION HOSPITALS,
KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST dba KAISER
PERMANENTE, DOES 1, 2, AND 3

Defendants.

Case No.

131116257

COMPLAINT

(NEGLIGENCE, PERSONAL INJURY)

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

FILING FEE: \$793

Authority: ORS 21.160(1)(d)

JURY TRIAL DEMANDED

Plaintiff Patrick Drury (Patrick) alleges:

1.

At all times relevant Patrick was a resident of Multnomah County and patient of dermatologist Dr. Marc S. Muramatsu M.D. and Defendant otolaryngologist Dr. Daniel R. Clayburgh.

2.

At all times relevant Drs. Muramatsu and Clayburgh, were Oregon licensed physicians and shareholders, employees, agents and/or subagents of Defendant Northwest Permanente, PC (Kaiser Medical Group) and/or Kaiser Foundation Hospitals (Sunnyside Hospital) and/or Kaiser Foundation Health Plan of the Northwest dba Kaiser Permanente (Kaiser Insurance Plan), and/or Does 1, 2, 3 (Does).

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1 3.

2 At all times relevant the Kaiser Medical Group, Sunnyside Hospital, Kaiser Insurance
3 Plan, and Does were corporations authorized to do and doing business in Multnomah and
4 Clackamas County, Oregon.

5 4.

6 At all times relevant doctors Muramatsu and Clayburgh practiced medicine and
7 rendered medical treatment to Patrick on behalf of the Kaiser Medical Group and/or
8 Sunnyside Hospital and/or Kaiser Insurance Plan and/or Does in Multnomah and/or
9 Clackamas County, Oregon and within the regular course and scope of their employment or
10 agency with the Kaiser Medical Group and/or Sunnyside Hospital and/or Kaiser Insurance
11 Plan and/or Does.

12 5.

13 On or about December 20, 2011, Dr. Muramatsu directed or referred Patrick to Dr.
14 Clayburgh, for surgical excision of a basal cell carcinoma on the upper right side of Patrick's
15 forehead.

16 6.

17 On or about December 20, 2011, Dr. Clayburgh excised the basal cell carcinoma at
18 the Sunnyside Hospital. During the procedure, Dr. Clayburgh severed and then cauterized
19 and sutured blood vessels and nerves, thereby causing Patrick to suffer atypical facial pain - a
20 permanent injury to Patrick's surrounding nerves resulting in excruciating pain across his
21 scalp and inside his brain.

22 7.

23 **COUNT ONE - Failure to Obtain Informed Consent - ORS 677.097**
24 **(Drs. Muramatsu and Clayburgh directly; Kaiser Medical Group and/or Sunnyside**
Hospital and/or Does vicariously)

25 A substantial factor in causing Patrick's permanent injury and pain was the

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1 negligence of defendants in failing to obtain informed consent for the surgery on December
2 20, 2011 in one or more of the following particulars:

3 a. In failing to clearly explain and make understandable to Patrick the treatment to be
4 undertaken;

5 b. In failing to clearly explain and make understandable to Patrick that there were
6 medical and conservative surgical and non-surgical alternative procedures or methods of
7 treatment to be undertaken;

8 c. In failing to clearly explain and make understandable to Patrick that there are risks
9 to the procedure or treatment to be undertaken, including the risks of complications
10 associated with the treatment, including permanent nerve damage and atypical facial pain;

11 d. In failing to ask if Patrick wanted a more detailed explanation of a through c;

12 e. In failing to give Patrick a more detailed explanation of a through c;

13 8.

14 Patrick would not have elected surgical excision of a basal cell carcinoma from his
15 right forehead had he been properly advised of the procedure, its risks and the alternative
16 methods of treatment available.

17 9.

18 **COUNT TWO – Breach of Contract**
19 **(Kaiser Insurance Plan directly)**

20 Defendant Kaiser Insurance Plan contracted with Patrick to provide Patrick health
21 care services and promised to provide appropriate information about his care, including
22 unanticipated outcomes; the benefits and risks of, and alternatives to, recommended
23 treatments or procedures (See Exhibit 1 attached).

24 10.

25 Patrick performed all conditions precedent.

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12.

Defendant Kaiser Insurance Plan breached its duty by not providing Patrick appropriate information about his surgical procedure on December 20, 2011, including unanticipated outcomes; the benefits and risks of, and alternatives to, the recommended treatments or procedures undertaken.

13.

As a result of Kaiser Insurance Plan's breach of duty, Patrick has incurred past medical expenses for diagnosis and treatment of his injuries in the sum of \$3,000, and future medical expenses in the sum of \$30,000.

14.

As a result of Kaiser Insurance Plan's breach, Patrick has been made to suffer humiliation, and mental anguish, fear, apprehension, anxiety and the loss of ability to enjoy life for the remainder of his life, all to his non-economic (general) damage of \$5,000,000.

15.

Patrick demands a trial by jury.

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1 WHEREFORE, plaintiff prays for judgment against defendant Dr. Clayburgh and
2 Kaiser Medical Group and/or Sunnyside Hospital, and/or Does on Count One
3 and against defendant Kaiser Insurance Plan on Count Two as follows:

4 1) Economic (special) damages in the sum of \$3,000 for past and \$30,000 for future
5 medical expenses;

6 2) Noneconomic (general) damages of \$5,000,000.

7 3) Costs and disbursements incurred; and

8 4) Other just and proper equitable relief.

9 Dated: November 25, 2013.

10 

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