

FILED  
IN JUN 13 PM 3:23

MULTNOMAH COUNTY

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

14CV06895

ANDREW P. NEWCOMB,

PLAINTIFF,

CASE NO. \_\_\_\_\_

vs.

COMPLAINT

KAISER PERMANENTE, KAISER FOUNDATION  
HEALTH PLAN OF THE NORTHWEST, an  
Oregon Non-Profit, KAISER FOUNDATION  
HEALTH PLAN, INC., a California Non-Profit,  
NORTHWEST PERMANENTE, P.C., an Oregon  
Professional Corporation, JEFFREY MYERS,  
P.A., CHRISTOPHER J. RAE, M. D., and LOUIS  
H. LIU, M.D.,

(Medical Negligence;  
Breach of Contract)

(SUBJECT TO MANDATORY ARBITRATION)

REQUEST FOR JURY TRIAL

DEFENDANTS.

Plaintiff Andrew P. Newcomb ("Newcomb"), for his Complaint against defendants Kaiser Permanente, Kaiser Foundation Health Plan of the Northwest, Kaiser Foundation Health Plan, Inc. and Northwest Permanente, P.C., (collectively referred to as "Kaiser Permanente"), Jeffrey Myers, P.A. ("Myers"), Christopher J. Rae, M.D. ("Rae"), and Louis H. Liu, M.D. ("Liu"), states and alleges as follows:

**Allegations Common to All Claims for Relief**

1.

Plaintiff Andrew P. Newcomb is an individual residing in Multnomah County, Oregon, and is a member of Kaiser Permanente's health plan.

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2.

At all times material to this cause of action, Jeffrey Myers, P.A., was employed by Kaiser Permanente as a physician's assistant, engaged in practice in Multnomah County and Clackamas County, Oregon, and was at all times acting within the course and scope of his employment with Kaiser Permanente.

3.

At all times material to this cause of action, Christopher J. Rae, M.D., was a physician employed by Kaiser Permanente, engaged in the practice of medicine and specializing in orthopedic medicine in Multnomah County and Clackamas County, Oregon, and was at all times acting within the course and scope of his employment with Kaiser Permanente.

4.

At all times material to this cause of action, Louis H. Liu, M.D., was a physician employed by Kaiser Permanente, engaged in the practice of medicine and specializing in family practice medicine in Multnomah County and Clackamas County, Oregon, and was at all times acting within the course and scope of his employment with Kaiser Permanente.

5.

Kaiser Permanente is the assumed business name of Kaiser Foundation Health Plan of the Northwest. Kaiser Foundation Health Plan of the Northwest is an Oregon non-profit that provides health care services to Kaiser Permanente members in Multnomah County and Clackamas County, Oregon. Kaiser Foundation Health Plan, Inc., is a California non-profit entity licensed to do business in Oregon, that provides health care services to Kaiser Permanente members in Multnomah County and Clackamas County, Oregon.

6.

Northwest Permanente, P.C., is an Oregon professional corporation that provides health care services to Kaiser Permanente members in Multnomah County and Clackamas County, Oregon.

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7.

At all times material to this cause of action, defendants Jeffrey Myers, P.A., Christopher J. Rae, M.D., and Louis H. Liu, M.D., held themselves out to the general public, and to plaintiff Newcomb as competent and capable in medical diagnosis, treatment and care, as competent and capable in their specific areas of specialized medicine, and as having the same degree of care, skill and diligence used by other physicians, specialists and medical care providers in the community.

8.

On or about November 9, 2011, plaintiff Newcomb contacted Kaiser Permanente's Tualatin Medical Office Family Practice Department, seeking treatment for an injury to his left ankle that he had sustained while participating in an indoor soccer game.

9.

On or about November 10, 2011, an x-ray of plaintiff Newcomb's left ankle was ordered and taken at Kaiser Permanente's Tualatin Medical Office.

10.

On or about November 10, 2011, plaintiff was examined by Jeffrey Myers, P.A., who advised plaintiff Newcomb that the x-ray taken November 10, 2011, showed no fracture. Defendant Myers diagnosed plaintiff Newcomb as having a "severe sprain," and recommended rest, ice, compression and elevation of the foot, and advil, up to 500 mg twice a day with food.

11.

Plaintiff Newcomb's ankle continued to swell and cause him severe pain, discomfort and limping, requiring the use of crutches for walking, and did not improve with time, so he arranged another visit to the Tualatin Medical Office Family Practice Department, where he was examined by Louis H. Liu, M.D., a family practice specialist, on January 30, 2012.

12.

Defendant Liu ordered an MRI of plaintiff Newcomb's left ankle, which was performed by Kaiser Permanente's Sunnyside Magnetic Resonance Imaging on February 4, 2012. Defendant Liu

1 advised plaintiff Newcomb to call his office for results in a couple of weeks. On February 13, 2012,  
2 defendant Liu diagnosed plaintiff's condition as "arthralgia of ankle or foot," and referred plaintiff for  
3 physical therapy at the Tualatin Medical Office.

4 **13.**

5 Physical therapy did not improve the condition of plaintiff Newcomb's left ankle, which  
6 continued to swell and cause him pain, discomfort, and limping, and on or about April 3, 2012, he  
7 sought care and treatment from Christopher Jason Rae, M.D., and orthopedic specialist in Kaiser  
8 Permanente's Sunnybrook Orthopedics office. Defendant Rae diagnosed plaintiff's injury as a "sprain  
9 of ankle."

10 **14.**

11 The pain, discomfort and swelling of plaintiff Newcomb's left foot and ankle continued  
12 without improvement and on May 23, 2012, defendant Rae ordered an MRI of plaintiff Newcomb's  
13 left ankle, which was performed on June 2, 2012 at Kaiser Permanente's Sunnyside medical office.  
14 Defendant Rae's diagnosis of plaintiff's condition was stated as "arthralgia of ankle or foot."

15 **15.**

16 The pain, discomfort and swelling of plaintiff Newcomb's left foot and ankle continued  
17 without improvement and on or about June 13, 2012, plaintiff Newcomb sought another medical  
18 opinion from Kimberly Workman, M.D., an orthopedic specialist. Upon her review of plaintiff  
19 Newcomb's x-ray from November 10, 2011, she advised plaintiff Newcomb that the x-ray showed a  
20 fracture of plaintiff's left foot, and stated a diagnosis of "closed fracture foot, talus." Dr. Workman  
21 then ordered a CT scan, which was performed on June 22, 2012. On June 29, 2012, upon reviewing  
22 the CT scan, Dr. Workman further diagnosed the fracture as "non-union," a serious complication that  
23 required surgical repair.

24 **16.**

25 On July 30, 2012, plaintiff Newcomb underwent surgery to repair the fracture of his left ankle,  
26 a fracture that should have been diagnosed and treated appropriately in November of 2011. Following

1 surgery he underwent physical therapy and ultimately plaintiff Newcomb's prior symptoms resolved.

2 **FIRST CLAIM FOR RELIEF**

3 **(JEFFREY MYERS, P.A., LOUIS H. LIU, M.D., CHRISTOPHER JASON RAE, M.D., AND KAISER**  
4 **PERMANENTE)**

5 **17.**

6 Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 15,  
7 above.

8 **18.**

9 Defendants Myers, Liu, Rae, Northwest Permanente, P.C., and all Kaiser Permanente  
10 defendants owed a duty to plaintiff Newcomb to use that degree of care, skill and diligence used by  
11 other physicians and medical care providers practicing in the community.

12 **19.**

13 Defendants Myers, Liu, Rae, Northwest Permanente, P.C., and all Kaiser Permanente  
14 defendants breached their duty to plaintiff Newcomb in their care and treatment of him and negligently  
15 failed to use the degree of care, skill and diligence used by ordinarily careful physicians, specialists  
16 and medical care providers in the community, in one or more of the following particulars:

17 **a)** in failing to timely and properly read the November 10, 2011, x-ray of plaintiff Newcomb's  
18 left ankle, which showed a fracture of plaintiff Newcomb's left ankle;

19 **b)** in failing to timely and properly diagnose and treat the fracture of plaintiff Newcomb's left  
20 ankle that was shown on the November 10, 2011, x-ray;

21 **c.)** in failing to timely and properly recommend and schedule surgery to repair the fracture of  
22 plaintiff Newcomb's ankle, which was shown on the November 10, 2011 x-ray;

23 **d.)** in failing over a nearly seven month period to conduct adequate examinations of plaintiff  
24 Newcomb's left ankle or timely and properly read the results of further testing of plaintiff Newcomb's  
25 left ankle, including an MRI and a CT scan, while plaintiff Newcomb was continuing to seek care and  
26 treatment with complaints of pain, swelling, limping, the necessity of crutches, and a lack of

improvement from the time he first sought care and treatment for his ankle injury in November, 2011.

20.

As a direct and foreseeable result of the negligence of defendants Myers, Liu, Rae, Northwest Permanente, P.C., and the Kaiser Permanente defendants, plaintiff Newcomb was caused to unnecessarily endure nearly seven months of continuous pain, discomfort, swelling, limping, use of crutches, the inability to perform his usual and normal activities, and difficulty sleeping and working at his normal job, before obtaining an accurate diagnosis of and treatment for his left ankle fracture.

21.

As a direct and foreseeable result of the negligence of defendants Myers, Liu, Rae, Northwest Permanente, P.C., and the Kaiser Permanente , plaintiff's left ankle injury was aggravated and plaintiff Newcomb's bone healing process was delayed, resulting in the serious complication of a non-union fracture, which required surgical repair.

22.

As a direct and foreseeable result of the negligence of defendants Myers, Liu, Rae, Northwest Permanente, P.C., and the Kaiser Permanente defendants, plaintiff Newcomb incurred economic damages for medical and related care costs during the ~~over the~~ nearly seven months prior to obtaining an accurate diagnosis of his ankle fracture from Dr. Workman, in the reasonable and necessary amount of \$3,500.00.

23.

As a direct and foreseeable result of the negligence of defendants Myers, Liu, Rae, Northwest Permanente, P.C., and the Kaiser Permanente defendants, plaintiff Newcomb suffered nearly seven months of continuous physical pain and suffering, difficulty sleeping, anxiety, emotional distress and depression, to his non-economic damage in the amount of \$46,400.00.

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**SECOND CLAIM FOR RELIEF**  
**(AGAINST KAISER PERMANENTE DEFENDANTS)**

**24.**

Plaintiff incorporates herein all of the allegations set forth in paragraphs 1 through 21, above.

**25.**

Plaintiff is a member of Kaiser Permanente and, as such, is entitled to health care pursuant to the terms of the contract that constitutes the Kaiser Permanente health care plan. As a member of Kaiser Permanente, plaintiff has a contractual right to receive competent health care and treatment from the medical professionals who are employed by the Kaiser Permanente defendants. As a member of Kaiser Permanente, plaintiff has a contractual right to receive health care and treatment from medical care providers who are as competent and capable in their specific areas of specialized medicine, and have the same degree of care, skill and diligence used by other physicians, specialists and medical care providers in the community.

**26.**

The Kaiser Permanente defendants' failure to provide competent health care and treatment to plaintiff pursuant to the contract between plaintiff and the Kaiser Permanente defendants constitutes a breach of that contract.

**27.**

The Kaiser Permanente defendants' breach of contract caused plaintiff to incur monetary losses as set forth in paragraphs 22 and 23, above.

**28.**

Plaintiff's damages arise naturally and necessarily from defendants' breach of contract and an award of such damages would place plaintiff in the same position as if the contract had not been breached.

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1       **WHEREFORE**, plaintiff prays for judgment in his favor and against defendants as follows:

- 2       1.)     On plaintiff's First Claim for Relief for negligence against defendants Myers, Liu,  
3               Rae, Northwest Permanente, P.C., and all Kaiser Permanente defendants, for  
4               \$3,500.00 in economic damages and \$46,400.00 in non-economic damages;
- 5       2.)     On plaintiff's Second Claim for Relief against the Kaiser Permanente defendants for  
6               breach of contract, for damages in the amount of \$49,900.00;
- 7       3.)     For plaintiffs' costs and disbursements incurred herein; and for such other and further  
8               relief as the court deems just and equitable.

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10      DATED: June 12, 2014

  
Danna C. Fogarty (OSB #96230)  
Trial Attorney

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