

\* FILED

14 JUL 30 PM 2:35

CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

14CV10106

KEN TOLLIVER and ALICE TOLLIVER,  
Husband and Wife, Oregon residents,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN OF  
THE NORTHWEST, an Oregon nonprofit  
corporation, doing business as KAISER  
PERMANENTE; KAISER FOUNDATION  
HOSPITALS; NORTHWEST PERMANENTE,  
P.C.; and KAISER FOUNDATION HEALTH  
PLAN, INC.

Defendant.

Case No.

COMPLAINT  
(Medical & Hospital NEGLIGENCE,  
Personal Injury, Medical Malpractice,  
And Loss of Consortium)

Amount in Controversy: \$7,000,000.00

CLAIMS NOT SUBJECT TO  
MANDATORY ARIBTRATION

JURY TRIAL DEMANDED

Plaintiffs alleges as follows:

### PARTIES

1.

At all material times, plaintiff Kenneth R. Tolliver was a member of the Kaiser Foundation Health Plan of the Northwest, dba Kaiser Permanente, and received medical care and treatment from defendants. Mr. Tolliver has been an active member of the Oregon State Bar since 1993. At all material times, plaintiff Alice E. Tolliver was Mr. Tolliver's spouse.

2.

At all material times the doctors, nurses, employees, and other health care personnel that treated Mr. Tolliver, were Oregon licensed physicians, shareholders, employees, agents, and/or subagents of Defendant Northwest Permanente, P.C. (Kaiser Medical Group), and/or Kaiser Foundation Health Plan, Inc, and/or Kaiser Foundation Hospitals (Sunnyside Hospital) and/or

1 Kaiser Foundation Health Plan of the Northwest dba Kaiser Permanente (Kaiser Insurance Plan)  
2 which provides the services of a Health Maintenance Organization to Oregon Residents  
3 (hereinafter defendants and their doctors, nurses, employees, and other health care personnel are  
4 referred to as “defendants”).

5 3.

6 At all material times, Kaiser Foundation Hospitals was a California corporation engaged  
7 in the operation and maintenance of hospitals and clinics in the State of Oregon, and at all times  
8 material was performing regular and sustained business activity within Multnomah County,  
9 Oregon.

#### 10 BACKGROUND FACTS

11 4.

12 At all material times, Mr. Tolliver was a patient of defendants, including Dr. Yong Shin,  
13 the anesthesiologists, nurses, employees, and other health care personnel at Kaiser Sunnyside.  
14 At all material times, each doctor, nurse, employees, and health care personnel at Kaiser  
15 Sunnyside mentioned in this Complaint were working within the course and scope of their  
16 employment for the defendants.

17 5.

18 On or about July 31, 2012, Dr. Yong Shin repaired Mr. Tolliver’s mitral valve through  
19 minimally invasive surgery. Two anesthesiologists worked on him during the surgery. One was  
20 the regular cardiac surgery anesthesiologist and the other was an anesthesiologist who was  
21 interning to specialize in cardiac surgery cases.

22 6.

23 While under surgical anesthesia, and with tubes down his throat, Mr. Tolliver barfed.  
24 Some of the material went into Mr. Tolliver’s lungs. Plaintiffs were not informed of this  
25 following the surgery.

26 7.

1 When Mr. Tolliver awoke from the surgery his right hand/arm was paralyzed. It had  
2 impaired feeling, movement, and control. One of the anesthesiologists told Mr. Tolliver that it  
3 was normal and it would get better soon. But it didn't.

4 8.

5 Following surgery, Mr. Tolliver began to notice nerve pain in his right hand. At the time,  
6 Mr. Tolliver had an IV in his right hand. After Mr. Tolliver informed defendants of the pain and  
7 even requested defendants move the IV, defendants refused to move the IV. He now has Reflex  
8 Sympathetic Dystrophy (RSD) in his Right Hand and Upper Chest.

9  
10  
11 **PLAINTIFF'S FIRST CLAIM FOR RELIEF**  
12 **(Medical Malpractice)**

13 9.

14 Plaintiff Mr. Tolliver re-alleges all of the paragraphs above as if fully set forth herein.

15 10.

16 Defendants and their employees and agents were negligent in rendering medical care and  
17 services to Mr. Tolliver in one or more of the following respects:

- 18 a. Failing to adequately maintain the blood flow to his right arm and its nerves during  
19 the surgery;
- 20 b. Failing to adequately position Mr. Tolliver during surgery to avoid lasting injuries;
- 21 c. Failing and refusing to move the IV from his right hand during and after surgery;
- 22 d. Failing to notify Mr. Tolliver that his lungs had been compromised;
- 23 e. Exposing Mr. Tolliver to poor technique and adverse stimuli while anesthetized;
- 24 f. Releasing Mr. Tolliver from the hospital following surgery prematurely; and
- 25 g. Failing to adequately treat his pneumonia after he returned to the emergency room  
26 following surgery.

11.

1 As a proximate result of the negligence of the defendants (their doctors, nurses,  
2 employees, and other medical personnel) and violations alleged above, Mr. Tolliver sustained  
3 disabling and permanent injuries, including Reflex Sympathetic Dystrophy (RSD), nerve injury,  
4 disability, numbness, parasthesia, painful urination, hypersensitive fingers, shortness of breath,  
5 impaired mobility, impaired mental faculties, and excruciating pain, have caused Mr. Tolliver to  
6 suffer economic damages in the form of past & future medical care and expenses; lost wages and  
7 impaired future earnings, expenses related to medical services and devices; in addition to  
8 substitute domestic services; all to his economic damages of approximately \$3,000,000.00 and  
9 non-economic damages of \$3,000,000.00, both subject to revision at trial.

10  
11 **PLAINTIFF'S SECOND CLAIM FOR RELIEF**  
12 **(Loss of Consortium)**

13 12.

14 Plaintiffs re-allege all of the paragraphs above as if fully set forth herein.

15 13.

16 At all material times, Alice E. Tolliver was and continues to be married to her husband,  
17 Kenneth R. Tolliver. As a result of Mr. Tolliver's injuries caused by the defendants' negligence  
18 and violations, Alice E. Tolliver has suffered the loss of her husband's comfort, love, society,  
19 companionship, consortium, services, and support all to her non-economic damage in the amount  
20 of \$1,000,000.00.

21 **PRAYER**

22 WHEREFORE, plaintiffs demand judgment against Defendants for the following relief:

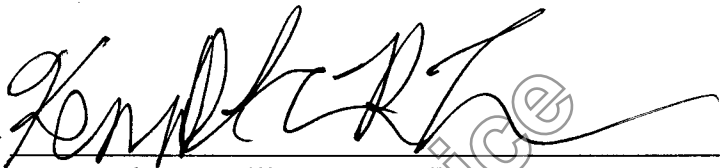
23 1. A judgment in favor of plaintiff Mr. Tolliver and against Defendants in the  
24 amount of \$6,000,000.00 on plaintiff's first claim for relief;

25 2. A judgment in favor of plaintiff Mrs. Tolliver and against Defendants in the  
26 amount of \$1,000,000.00 on plaintiff's second claim for relief;

3. Post-judgment interest on all damages awarded at the statutory rate;

- 1           4.     Plaintiff's prevailing party fees; and  
2           5.     Such other relief as the Court deems appropriate.

3  
4       DATED: July 30, 2014.

5  
6  
7  
8       By   
Kenneth R. Tolliver, OSB #931177  
Attorney for Plaintiffs  
10200 SW Katherine Street  
Tigard OR 972232  
503-544-7945 Voice  
503-213-6122 Fax  
ktolliver@hotmail.com