

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202 Telephone No.: (720) 865-8301	DATE FILED: December 2, 2015 12:20 PM FILING ID: 1353B93D5C7C9 CASE NUMBER: 2015CV34209
Plaintiff: <b>DENESA MANIS</b>	
v.	
Defendants: <b>SCL HEALTH – FRONT RANGE, INC., a Colorado corporation, d/b/a ST. JOSEPH HOSPITAL, KAISER FOUNDATION HEALTH PLAN OF COLORADO, a Colorado health maintenance organization, and TERRY L. DE ARAGON, R.N., individually.</b>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Plaintiff CRISTIANO LAW, LLC Francis V. Cristiano 50 S. Steele St., Suite 930 Denver, CO 80209 Telephone No.: (303) 407-1777 Fax No.: (303) 322-9574 E-mail: frank@cristianolaw.com Atty. Reg. #: 7578	
Case Number:	Courtroom:
<p style="text-align: center;"><b>COMPLAINT AND CERTIFICATION PURSUANT TO §13-20-602(1)(A), C.R.S.</b></p>	

Plaintiff, Denesa Manis, by and through her undersigned attorneys, as her complaint against defendants, states and alleges as follows:

### PARTIES, JURISDICTION, AND VENUE

1. At all times relevant hereto, the plaintiff, Denesa Manis ("Plaintiff"), was and is an individual who resided at 3035 Fillmore Street, Denver, CO 80205 in the City and County of Denver, State of Colorado.

2. At all times relevant hereto, the defendant, SCL Health – Front Range, Inc. ("SCL") owned and operated the Saint Joseph Hospital (the "Hospital", or "St. Joseph Hospital"). SCL is and was a Colorado nonprofit corporation. St. Joseph Hospital is located at 1835 Franklin Street, Denver, CO 80218. SCL's registered agent is InCorp Services, Inc., 36 S. 18<sup>th</sup> Ave., Ste. D, Brighton, CO 80601.

3. At all times relevant hereto, the defendant Kaiser Foundation Health Plan of Colorado ("Kaiser") was and is a Colorado health maintenance organization, which owns and operates Kaiser Permanente facilities throughout the country, including Colorado. Kaiser's registered agent and registered office is Corporation Service Company, 1560 Broadway, Suite 2090, Denver, CO 80202. Plaintiff was and is a Medicaid beneficiary, and receives Medicaid benefits provided by Kaiser.

4. At all times relevant hereto, the defendant, Terry L. DeAragon, R.N. ("DeAragon"), was and is a nurse who was in the course and scope of her employment as an employee of SCL, working at the St. Joseph Hospital.

5. Venue is proper in this court pursuant to C.R.C.P. 98(c)(1).

**Claim for Relief**  
*(Claim for Negligence Against All Defendants)*

6. On December 2, 2013, plaintiff was admitted to the St. Joseph Hospital for elective bariatric surgery to treat her obesity. On that same day, the surgery was conducted. Plaintiff tolerated the procedure well with no complications. She was thereafter taken to the PACU for recovery and then transferred to a hospital room. Plaintiff received routine perioperative care. Her diet was advanced as tolerated and began tolerating a bariatric clear liquid diet. Her pain was well controlled and was thereupon managed with PO medications. She progressed well and was ordered to be discharged by her attending physician in good condition on December 3, 2013.

7. Upon discharge she was prescribed a 5mg./5ml. or 1% solution of oxycodone for pain management. Per the prescription, she was to take 10 ml. by mouth every four hours as needed for pain. This would amount to an ingestion of 10 mg. of the active ingredient of oxycodone, which is a morphine derivative.

8. Before leaving her room, Plaintiff complained of pain and asked for IV medication to treat such. DeAragon, who was her attending nurse, explained to Plaintiff and Plaintiff's sister, Demetria Manis ("Demi"), who was in the room, that the IV line was no longer functional and instructed Demi to go to the hospital pharmacy, which is owned and operated by Kaiser, to get her discharge medication for the oxycodone, so that Plaintiff could be administered such in lieu of medication via her IV line.

9. Demi complied with this instruction and went to the pharmacy. Apparently because the pharmacy did not have a 1% solutions of oxycodone as prescribed, it instead dispensed a 20 mg./ml., i.e., a 20% solution, or one that was 20 times the strength of the original contemplated solution strength, with the direction on the box explaining that Plaintiff should be administered only .25-.5ml. (5 mg.-10 mg.) orally every four hours as needed for pain, instead of 10 ml. of a 1% solution. The box also contained a teardrop type applicator, which could contain no more than 1 ml. of the solution, as well as designated the milligrams per dosage level in

increments of .25 ml. - e.g., 5 mg. for .25 ml., 10 mg. for .5 ml., etc. The Kaiser pharmacy duly advised Demi that the concentration for the solution was greater and that much less of the solution was required to be administered. Given that the oxycodone was a Schedule II narcotic, however, the pharmacy would have violated clearly defined government regulations and standards of care to have changed the prescription without a new order being written by the doctor. There is no indication in the record provided by the hospital that such occurred. Thus, the pharmacy was likely negligent in changing the prescription.

10. Demi thereupon paid the small co-pay charge for the medication, believed to have been less than \$2, took the prescription, and left the pharmacy for Plaintiff's room.

11. When she reached the room, Demi gave the box containing the solution to DeAragon and advised DeAragon of what the pharmacy has said concerning the strength of the solution. DeAragon seemed to argue with Demi and advised that Plaintiff was going to need more of the solution than what was dispensed by the pharmacy, and that they should go back and try to get more.

12. At that point, DeAragon took the vial containing the solution from the box, negligently ignored the instructions on the box regarding the prescribed .25 -.5ml. dosage level, negligently ignored the 20% concentration of the solution noted on the box, negligently ignored the small 1 ml. calibrated teardrop applicator that was provided with the prescription, as well as negligently ignored Demi's statement regarding what the pharmacy had told her, and apparently being guided by the original prescription for a 1% solution to be administered in a 10 ml. volume, negligently poured 8 ml. of the solution into a small calibrated vial, and gave it to Plaintiff to take, thereby administering to her a lethal dose of approximately 160 mg. of the active ingredient in oxycodone, a heroin derivative, or at least 16 times the maximum dose she was prescribed. Plaintiff followed DeAragon's instructions, and thereupon swallowed the 8 ml. of the solution given to her by DeAragon.

13. Plaintiff thereafter left the room and began making her way to the discharge area in the hospital. Within approximately 15 minutes from the time she swallowed the medication as administered to her by DeAragon, and just before she was about to exit the hospital, Plaintiff went into a complete respiratory arrest as a result of the massive overdose of the solution she had received, and lost consciousness, which was followed by a cardiac arrest.

14. Although the medical personnel at St. Joseph Hospital were ultimately able to revive her, she incurred significant damages and injuries, including extensive physical and emotional trauma and injury incurred during the necessary treatment for her revival, as well as longer term injuries to be shown by the evidence, including a likely hypoxic brain injury, all as a result of her respiratory and cardiac arrests. She as well spent a total of approximately two months in the hospital during the months of December 2013 and January 2014 for treatment of these injuries, and incurred extensive medical bills regarding her reasonable and necessary medical care, all of which will be demonstrated by the evidence.

15. As referenced above, Plaintiff's injuries include hypoxic brain injury and a compromise of her mental functioning. Since that time, she has not been able to work as a tax preparer as she had been prior to the incident. She is extremely fatigued, and mentally compromised. She as well, has frequent chest pains, insomnia, and nightmares. She is chronically depressed.

16. These and other injuries as will be revealed by the evidence at trial, have continued since the date of the accident, and are expected to continue permanently throughout the course of plaintiff's life.

17. Based upon such, plaintiff claims that she has the following injuries, losses, and damages as will be shown by the evidence at trial:

- a. Past and future loss of income;
- b. Past and future medical care costs, including subrogated claims;
- c. Necessary life care expenses;
- d. Other general damages, including pain and suffering, loss of enjoyment of life, loss of time, and emotional distress; and
- e. Personal disability.

WHEREFORE, plaintiff prays this honorable court that judgment be entered in her favor and against defendants, jointly and severally, for her damages proven at trial, plus pre- and post-judgment interest as by law allowed, plus attorneys' fees and costs, and for any further relief she may be entitled to, based upon the evidence, and as allowed by law or equity.

#### **Certificate of Review**

Plaintiff contends that with regard to the negligence of DeArgon as imputed to her employer SOL by principles of respondent superior liability, the standards for such are within the common knowledge of the community, e.g., to carefully follow prescription and dosage directions given with dispensed pharmaceutical and particularly narcotic products. Thus, expert testimony is not necessary to support such claim. The standards that Kaiser may have violated in changing Plaintiff's prescription without a doctor's order are well defined as well by government regulations, and expert testimony is not necessary with regard to such claim as well.

Regardless, the attorneys listed below certify to this court that a licensed professional with expertise in the area of the alleged negligent conduct of both defendants has been consulted with pursuant to §13-20-602(1)(a), C.R.S., and has reviewed the known facts, including such records, documents and materials which the professional has found to be relevant to the allegations of negligent conduct, and based on the review of such facts, has concluded that the

filing of the claims herein does not lack substantial justification within the meaning of §13-17-102(4), C.R.S. Such reviewer consultant meets the requirements of §13-64-401, C.R.S.

Dated this 2<sup>nd</sup> day of December, 2015,

CRISTIANO LAW, LLC.

By: /s/Francis V. Cristiano  
Francis V. Cristiano

Plaintiff's address:  
3035 Fillmore Street  
Denver, CO 80205

*Pursuant to C.R.C.P. 121 1-26(7) a printed or printable copy of the foregoing document with original or scanned signatures shall be maintained in Cristiano Law, LLC's client files and made available for inspection by other parties or the court upon request.*