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ALAMEDA COUNTY

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and Donald S. Honigman

CLERK OF THE SUPERIOR COURT

By Ayana Turner
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

(Unlimited Jurisdiction)

RONNA Z. HONIGMAN and DONALD
S. HONIGMAN

No. **RG16826428**

COMPLAINT

Plaintiffs,

(Professional Negligence - Medical
Malpractice; Loss of Consortium)

v.

THE PERMANENTE MEDICAL
GROUP, INC., KAISER FOUNDATION
HOSPITALS, KAISER FOUNDATION
HEALTH PLAN, INC., and DOES 1
through 20, inclusive

Defendants.

Plaintiffs allege as follows:

PARTIES

1. Plaintiffs RONNA Z. HONIGMAN and DONALD S. HONIGMAN are and at all material times hereto have been residents of El Cerrito, California. Both have been enrolled as individual members with the Kaiser Foundation Health Plan since 2010, and at all times thereafter. At all material times herein, Plaintiff RONNA Z. HONIGMAN was over the age of 50 years, in good health and with no ongoing disease or health issues of significance until the onset of the colorectal cancer at issue in this case.

2. Defendant THE PERMANENTE MEDICAL GROUP, INC. ("TPMG") is a California corporation with principal offices in Alameda County, California. It employs all physicians and other providers in Northern California who have been involved in the care and treatment of Plaintiff RONNA Z. HONIGMAN at issue in this Complaint.

1 as recommended by the United States Preventive Services Task Force ("USPSTF") with a
2 rating or grade of "A" or "B".

3 8. Prior to Plaintiffs' enrollment in Defendants' health plan, the USPSTF
4 recommended screening for colorectal cancer. It has stated that "[t]he USPSTF
5 concludes with high certainty that screening for colorectal cancer in average-risk
6 asymptomatic adults aged 50 to 75 years is of substantial net benefit." It has further
7 stated:

8 "For colorectal cancer screening programs to be successful in reducing
9 mortality, they need to involve more than just the screening method in
10 isolation. Screening is a cascade of activities that must occur in concert,
11 cohesively, and in an organized way for benefits to be realized, from the point
12 of the initial screening examination ... to the timely receipt of any necessary
13 diagnostic follow-up and treatment."

14 9. The USPSTF ranked effective colorectal cancer screening (with the above
15 referenced "necessary diagnostic follow-up and treatment") with an "A" rating, thus
16 rendering it part and parcel of the Kaiser health plan's promise of appropriate Preventive
17 Care. Thus, the duties assumed by and imposed upon Defendants have included not
18 simply the duty to provide appropriate diagnostic measures at their discretion, but also
19 and specifically tests and evaluations for the detection of early signs of colorectal cancer.

20 10. The importance of the appropriate discharge of the aforementioned duties
21 cannot be overstated. Indeed, Defendants have, themselves, actively promoted their
22 promise of colorectal cancer screening, prevention and treatment. At all times material
23 hereto, they have published articles, notices and other media wherein they have repeatedly
24 stated the dangers of colorectal cancer, noting that it is the second most dangerous cancer
25 in the United States. Prior to the events at issue in this Complaint, and given the
26 enormous statistical risk of colorectal cancer and the readily available and effective cures
27 upon early detection, Defendants designed, initiated and implemented a program of
28 policies, procedures and protocols to maximize the participation those adult members of,
its health plan, as described by the USPSTF, to be regularly checked for colorectal cancer

1 and to be promptly treated. Defendants, through their various publications,
2 announcements, advertisements and the literature published by physicians employed by
3 them, highlighted colorectal cancer screening and treatment as a central component of
4 their emphasis on preventive care. Defendants' Preventive Care is and has at all material
5 times been the hallmark of Defendants' claims that the health coverage they offer is
6 superior to those of other competitive health plans.

7 11. It is indeed true that, when detected early, colorectal cancer is not simply
8 survivable, but that the probability of survival increases enormously. Even better, the
9 intrusiveness, pain and/or discomfort and any debilitation caused by treatments is
10 minimized when caught early. As the the USPSTF itself has stated, "[t]reatment of early-
11 stage colorectal cancer generally consists of local excision or simple polypectomy for
12 tumors limited to the colonic mucosa or surgical resection (via laparoscopy or open
13 approach) with anastomosis for larger, localized lesions." Given the success of screening,
14 the success of early treatment and the devastating consequences of delayed diagnosis - all
15 well documented in the prevailing medical literature - it is no wonder that Defendants
16 have hailed their program, purportedly designed in compliance with the USPSTF
17 recommendations, as a primary feature of their health plan coverage.

18 12. Defendants have advertised that their colorectal preventive program consists of
19 a multi-tiered screening program:

- 20 1. **annually** using a stool test, called the fecal immunochemical test or FIT;
- 21 2. **every five years** with a sigmoidoscopy, which examines the lower colon,
22 every five years **and**
- 23 3. **every 10 years** with a colonoscopy, which examines the entire colon.

24 13. On March 7, 2011, within less than four months of becoming a Kaiser member,
25 Plaintiff RONNA Z. HONIGMAN opted to participate in Defendants' colorectal cancer
26 screening program by submitting a stool sample for fecal occult blood immunoassay
27 testing. On March 12, 2011, the results of the testing were noted to be positive, ie., that
28

1 indeed occult blood was detected. The test results indicated the possibility of colorectal
2 cancer and indicated the need for appropriate follow up testing and regular monitoring.

3 14. On or about May 9, 2011, and as a result of the positive FIT test result, Plaintiff
4 RONNA Z. HONIGMAN underwent a colonoscopy performed by a endoscopic physician
5 employed by TPMG. The physician noted and documented in her report of the procedure
6 the presence of an angiodyslasia, a small vascular malformation, which is not known to
7 cause or lead to colorectal cancer, and further noted that it was not bleeding and that no
8 treatment was recommended. The physician further noted and documented the presence
9 of one or more small internal hemorrhoids. The physician further noted and documented
10 that the hemorrhoid was not bleeding and that no treatment was recommended. Internal
11 hemorrhoids are not known to cause or lead to colorectal cancer.

12 15. The discharge instructions provided to Plaintiff RONNA Z. HONIGMAN
13 stated, "Your colon appears healthy and normal. Hemorrhoids were noted. *Your next*
14 *colon screening test can be considered in 10 years.*" (Emphasis added) The discharge
15 instructions issued to Plaintiff made no reference to Defendants' other recommended
16 screening measures, ie., annual FIT testing or sigmoidoscopy. They made no reference to
17 further monitoring of the hemorrhoid or the availability of less intrusive means to
18 evaluate the hemorrhoid, or of any recommendations should the patient note bleeding
19 upon bowel movement be noted. The discharge instructions failed to provide advise
20 Plaintiff that the detection of a hemorrhoid would impact the recommended program for
21 colorectal cancer screening.

22 16. The express discharge instructions were, instead, consistent with and an the
23 policies, procedures and protocols designed and employed by Defendants in connection
24 with their much touted colorectal screening program which should be utilized by all
25 patients over 50.

26 17. On June 24, 2011, Plaintiff RONNA Z. HONIGMAN presented to Defendants'
27 physician for office visit following the colonoscopy. The physician documented a history
28 of a positive FIT and normal colonoscopy. The non-bleeding hemorrhoid was noted as

1 well. Plaintiff was reassured that her colorectal condition was normal and healthy and
2 told that her next screening would be a colonoscopy in ten years. No mention for further
3 screening, sigmoidoscopy, or the availability of other tests and/or evaluations was
4 mentioned to Plaintiff. She was, effectively, advised to ignore the presence of the
5 hemorrhoid.

6 18. Thereafter, Plaintiff RONNA Z. HONIGMAN periodically presented to
7 Defendants for issues related to her medical condition. On September 2, 2014, she visited
8 her physician employed by Defendants, complained that she had observed blood in her
9 stool. Her physician documented and concluded this significant change in her condition
10 was attributable to the hemorrhoid which had been previously documented as not
11 bleeding. No tests or evaluations were performed - or even recommended - to confirm
12 this simple and erroneous diagnosis - that the visible blood was attributable to a change in
13 the condition of the non-bleeding hemorrhoid, or to determine whether Plaintiff was
14 presenting with a symptom that characterized the early onset of colorectal cancer.

15 19. On January 2, 2015, Plaintiff presented to her Kaiser physician with symptoms
16 of an upper respiratory infection. During the visit, Plaintiff again advised the physician
17 that she continued to experience blood in her stools. The physician failed to even
18 document the complaint. She did however again reassure Plaintiff that it was the
19 hemorrhoid that was the cause of the bleeding and that she should not have any concern.
20 No further evaluations or tests, let alone referrals to a specialist, were offered or made.

21 20. As of February, 2015, the evidence of visible blood in the stools continued.
22 Plaintiff RONNA Z. HONIGMAN emailed her physician and again reported the presence
23 of blood in her stool. She specifically referenced Defendants' program for colorectal
24 cancer screening, noting that her husband had been annually receiving the FIT test and
25 asked, "How do we determine whether we need to do a follow up test?" The physician's
26 reply expressly referenced the normal colonoscopy which was, as of that time four years
27 old, and stated simply that "You have a hemorrhoid, that is why you are bleeding." The
28 physician to ask a single question that could reveal important information, such as the

1 color, nature or amount of bleeding. She did not recommend an office evaluation or
2 mention the option of a referral to a specialist. In short, she did nothing to confirm that
3 this new and potentially lethal symptom could properly be attributed to a four year old
4 non-bleeding hemorrhoid.

5 21. Based upon this unfounded assumption and erroneous assumption, Defendants
6 failed to recommend, let alone perform, any further diagnostic testing to evaluate the
7 possibility that a far more serious and potentially lethal condition had developed - one that
8 Defendants had expressly promised its patient population that it would zealously guard
9 against and treat appropriately.

10 22. Several months thereafter, in June, 2015, PLAINTIFF RONNA Z.
11 HONIGMAN again presented to her TPMG physician and again reported that was
12 continuing to see blood in her stools. Again, her TPMG physician made no arrangements
13 or recommendations for further diagnostic testing, let alone referral to a specialist.

14 23. In early January, 2016, Plaintiff RONNA Z. HONIGMAN again inquired about
15 the bloody eliminations. Upon her uncompromising and insistent demands, her physician
16 finally agreed to permit Plaintiff to be seen by a specialist - a gastroenterologist - who
17 immediately ordered labs, and as soon as the lab results were obtained, realized that an
18 immediate follow up colonoscopy to identify the etiology of the bleeding in the stool was
19 indicated.

20 24. On January 28, 2016, a colonoscopy was performed. The biopsy revealed
21 colorectal adenocarcinoma. The cancer was staged at III B, an advanced stage, because it
22 had, by this time, spread to her lymph nodes and otherwise presented the signs of an
23 advanced stage of colorectal cancer.

24 25. As a direct result of the delay in diagnostic testing and treatment, the colorectal
25 cancer which could have been effectively treated with minimally intrusive surgical
26 resection of the tumor, required a far more extensive surgery and a prolonged period of
27 multiple and highly aggressive chemotherapy sessions which have caused Plaintiff very
28 painful side effects and reactions, and a debilitated lifestyle.

FIRST CAUSE OF ACTION
PROFESSIONAL NEGLIGENCE

26. Defendants and each of them were negligent in their care and treatment of RONNA Z. HONIGMAN in that they failed to conduct proper testing and treatment of Plaintiffs' condition; erroneously concluded, without any medical or factual basis, that the significant change in Plaintiffs' condition was attributable to a previously non-bleeding and asymptomatic hemorrhoid, failed to inform Plaintiff of the risk that the change in her condition could be attributable to a potentially lethal onset of colorectal cancer, failed to offer Plaintiff the option of a referral to a specialist, failed to conduct evaluations and tests to evaluate Plaintiff after the significant change in her condition, and, among other things, failed to inform Plaintiff about or even make available to her the screening and treatment services for colorectal cancer prevention pursuant to the program it had formulated and implemented years previously. Defendants negligently designed their colorectal screening and treatment program with the effect that it excluded such a critical and central component from its promised Preventive Care Program for that very large population of patients who, incidentally, present with the common and innocuous condition of internal hemorrhoids. Such acts and omissions fall below the applicable standard of care.

27. Because Defendants had undertaken to formulate and implement a comprehensive program to screen for and treat colorectal cancer for all members over the age of 50, without excepting that very large and significant portion of that population with hemorrhoids, Defendants undertook to develop policies, procedures and protocols applicable to all patients, such as Plaintiff, who are over 50, in good health and asymptomatic, including those who, incidentally, have been diagnosed with non-bleeding internal hemorrhoids. Such persons, including Plaintiff, will foreseeably develop colorectal cancer. Defendants voluntarily assumed the duty to ensure that such persons would also be screened for colorectal cancer.

1 28. The program, policies, procedures and protocols adopted and implemented by
2 Defendants entirely ignored that large population of patients and, as in this case, relegated
3 them to a colonoscopy every ten years or more regardless of whether they developed
4 significant new symptoms, such as blood in the stools.

5 29. The failure to include provisions for patients such as Plaintiff, who have an
6 incidental non-bleeding hemorrhoid in the colorectal screening program was a breach of
7 the duty to provide such services to Plaintiff and the entire population of patients over the
8 age of 50 who similarly have one or more hemorrhoids.

9 30. The aforementioned acts and omissions, and others that will be revealed as
10 discovery in the case progresses, were negligent and beneath the applicable standard of
11 care.

12 31. As a result of the foregoing negligent acts and omissions and professional
13 negligence, Plaintiff RONNA Z. HONIGMAN has endured the advancement of a
14 colorectal cancer which could have, should have and would have been diagnosed at a an
15 early stage and which would have permitted a cure with the generally minimally intrusive
16 surgical procedure and without the necessity of the painful and debilitating chemotherapy
17 with all of the side effects that Plaintiff has suffered.

18 32. As a result of the foregoing acts and omissions, Plaintiff RONNA Z.
19 HONIGMAN has endured and will continue to endure great physical pain and suffering
20 and severe emotional distress. She has incurred medical expenses and other costs and
21 expenses for her care and treatment, and will continue to incur such expenses and costs
22 for the remainder of her life. She has lost income lost income and will continue to suffer
23 a loss of income and earning capacity for the rest of her life. She has suffered other
24 incidental and consequential damages in amounts to be proven at trial.

25 SECOND CAUSE OF ACTION

26 LOSS OF CONSORTIUM

27 33. Plaintiff DONALD S. HONIGMAN, adopts and incorporates herein as if fully
28 set forth the allegations set forth in Paragraphs 1 through 32, above.

1 34. At all material times, Plaintiff DONALD S. HONIGMAN has been and is the
2 lawful husband of RONNA Z. HONIGMAN.

3 35. As a result of the aforementioned acts and omissions, DONALD S.
4 HONIGMAN has sustained a loss of the support, services, companionship, society,
5 affection, relations and consortium of his wife, RONNA Z. HONIGMAN. Such losses
6 include both general and special damages in amounts to be proven at trial.

7 COMPLIANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 364

8 36. More than 90 days prior to commencing this action, counsel for Plaintiff herein
9 provided notice to Defendants of their intent to commence this action pursuant to
10 California Code of Civil Procedure section 364.

11 PRAYER

12 WHEREFORE, Plaintiffs pray for judgment as set forth below:

- 13 1) For general damages in an amount to be proven at trial;
14 2) For special damages in an amount to be proven at trial;
15 3) For costs of suit incurred;
16 4) For prejudgment interest at the maximum legal rate;
17 5) For such other and further relief as the Court may deem appropriate.

18
19 Dated: August 7, 2016

Respectfully submitted,

20 **LAW OFFICES OF DAVID S. RAND**

21
22 By 

David S. Rand

23 Attorneys for Plaintiffs RONNA Z.
24 HONIGMAN and DONALD S.
25 HONIGMAN
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