

FIRST CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARK VELARDE AND LORI VELARDE,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN,
INC.; HAWAII PERMANENTE
MEDICAL GROUP, INC.; KAISER
FOUNDATION HOSPITALS, INC.;
SEEMA MISRA, M.D.; DOE
DEFENDANTS 1-10,

Defendants.

CIVIL NO. 16-1-1898-10
(Other Non-Vehicle Tort)

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COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS TO ANSWER
CIVIL COMPLAINT

COMPLAINT

COME NOW, Plaintiffs, MARK VELARDE AND LORI VELARDE, by and through their attorneys, DAVIS LEVIN LIVINGSTON, and hereby make the following allegations as causes of action against the above-named Defendants.

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INTRODUCTION

1. This is a lawsuit against Defendants, **KAISER FOUNDATION HEALTH PLAN, INC.; HAWAII PERMANENTE MEDICAL GROUP, INC.; KAISER FOUNDATION HOSPITALS, INC.** (collectively referred to as “Kaiser”); **SEEMA MISRA, M.D., and DOE DEFENDANTS 1-10.**

2. These claims arise out of a series of errors and omissions by Defendants in failing to diagnose and treat an aortic dissection on the evening of May 11, 2015, when Mr. Mark Velarde came to the emergency room (“ER”) at Kaiser Permanente Moanalua Medical Center (“Kaiser Moanalua”) complaining of severe chest pain radiating to the back. Defendants failed to utilize appropriate diagnostic tests and studies in the medical evaluation of Mr. Velarde and therefore failed to diagnose and treat an aortic dissection, a life threatening medical emergency. Defendants negligently discharged Mr. Velarde with an emergency medical condition in progress.

Less than eight hours later, Mr. Velarde called 911 after regaining consciousness following a sudden syncopal episode. Emergency Medical Services responded and found Mr. Velarde lying in bed barely conscious, hypotensive, and unable to move his legs. He was rushed to The Queen’s Medical Center where an aortic dissection was diagnosed, and emergency repair of the aortic dissection took place.

Had appropriate diagnostic tests been performed in the Kaiser Moanalua ER, Mr. Velarde’s aortic dissection would have been diagnosed and treated before it caused permanent catastrophic injury to Mr. Velarde. Mr. Velarde is now a permanent paraplegic, due to a vascular spinal cord injury caused by the aortic dissection. He is wheelchair dependent, incontinent of bladder and bowel, and requires 24-hour assistive care. He has suffered additional, severe, life

threatening injures resulting from his paraplegia. The Defendants' negligence has caused, and will continue to cause, Mr. Velarde extreme pain and suffering, severe emotional distress, disfigurement, loss of consortium, loss of enjoyment of life, and enormous economic losses. Mrs. Velarde suffers beside her husband with extreme emotional distress, loss of consortium, and economic losses arising out of Defendants' negligent acts.

PARTIES

3. Plaintiff Mark Velarde ("Mr. Velarde") is an individual residing in Kaneohe, Hawai'i. Mr. Velarde brings this action on his own behalf. At all relevant times, he was an insured under Kaiser's Group Medical and Hospital Service Plan ("Group Plan") and was a resident of the County of Honolulu, State of Hawaii.

4. Plaintiff Lori Velarde ("Mrs. Velarde") is an individual residing in Kaneohe, Hawai'i at all relevant times. Mrs. Velarde is the wife of Mr. Velarde. She brings this action on her own behalf as the spouse and primary care giver of Mark Velarde.

5. At all times relevant to this action, Defendant Kaiser Foundation Health Plan, Inc. was a California non-profit corporation duly licensed to do business in the State of Hawai'i, with its principal place of business and headquarters located at One Kaiser Plaza, 19th Floor, Oakland, California 94612. At all times relevant to this action, Defendant Hawai'i Permanente Medical Group, Inc. ("HPMG") was a Hawai'i for-profit corporation duly licensed to do business in the State of Hawai'i, with its principal place of business and headquarters in Honolulu located at 3288 Moanalua Road, Honolulu, Hawai'i 96819. At all times relevant to this action, Defendant Kaiser Foundation Hospitals, Inc. was a California non-profit corporation duly licensed to do business in the State of Hawai'i, with its principal place of business and headquarters in California at One Kaiser Plaza, Suite 2600, Oakland, California, 94612. Defendant Kaiser

Foundation Hospitals, Inc. operates the Kaiser Permanente Moanalua Medical Center located at 3288 Moanalua Road, Honolulu, Hawai'i 96819.

6. The physicians, nurses and other staff who provided medical care to Mr. Velarde at Kaiser Moanalua on May 11, 2015, as hereinafter alleged, were employees, co-employees, borrowed servants, and/or actual and/or apparent agents of Defendant Kaiser Foundation Health Plan, Inc. and/or Defendant HPMG and/or Defendant Kaiser Foundation Hospitals, Inc., and said entities therefore are vicariously liable, including under the doctrine of *respondeat superior*, for the negligence as alleged in this Complaint.

7. The physicians, nurses, and other staff who provided medical care to Mr. Velarde at Kaiser Moanalua on May 11, 2015, as hereinafter alleged, were provided by Defendant Kaiser Foundation Health Plan, Inc. and/or Defendant HPMG and/or Defendant Kaiser Foundation Hospitals, Inc., and said entities are therefore liable under the doctrine of corporate negligence for the negligence as alleged in this Complaint.

8. Defendant Seema Misra, M.D. ("Dr. Misra") provided medical care to Mr. Velarde, as hereinafter alleged. At all times relevant to this action, Dr. Misra was a resident of the County of Honolulu, State of Hawai'i, and was duly licensed to practice medicine in the State of Hawai'i. All of the medical care provided by Dr. Misra to Mr. Velarde, as hereinafter alleged, was performed by Dr. Misra within the course and scope of her employment and/or agency with Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Inc., and/or HPMG.

9. DOE Defendants 1-10 are included herein under fictitious names for the reason that their true names and identities are presently unknown to Plaintiffs except that they are connected in some manner with Defendants named herein and/or were the parents, agents, employees, employers, directors, officers, representatives, partners, licensees, licensors, or

professional corporations of Defendants named herein and/or were in some manner presently unknown to Plaintiffs, engaged in the activities alleged herein and/or were in some manner and in some degree responsible for the injuries and/or damages to Plaintiffs alleged herein. Plaintiffs hereby pray for leave to certify their true names, identities, capacities, activities, and/or responsibilities when the same are ascertained.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over the claims and injuries set forth in this Complaint pursuant to Hawai'i Revised Statutes, Section 603-21.5, and has personal jurisdiction over Defendants pursuant to Hawai'i Revised Statutes, Section 634-35. All jurisdictional prerequisites to suit under Chapter 671, Hawaii Revised Statutes, have been satisfied.

11. Venue is appropriate in the First Circuit Court of the State of Hawai'i, pursuant to Hawai'i Revised Statutes, Section 603-36.

FACTS COMMON TO ALL CLAIMS

12. On May 11, 2015, at about 5:00 p.m., 54-year old Mr. Velarde presented to the Kaiser Moanalua ("ER"), complaining of sharp chest and mid back pain that had started at about 3:00 p.m. while he was at work.

13. Prior to the onset of pain on May 11, 2015, Mr. Velarde was in generally good health with no acute illness and with his medical care managed by his primary care physician at Kaiser.

14. Upon his arrival to the Kaiser Moanalua ER on May 11, 2015, Mr. Velarde was triaged by Nurse Thomas Esmerelda, acting within the course and scope of his employment with Kaiser.

15. Nurse Esmerelda documented Mr. Velarde's pain level at 8/10, described as aching, throbbing and continuous, and worse with inspiration. Mr. Velarde's vital signs were recorded on admission at 5:02 p.m. Nurse Michael Amos, acting within the course and scope of his employment with Kaiser, assumed care of Mr. Velarde after the initial nursing triage was completed.

16. Dr. Seema Misra, acting within the course and scope of her employment with Kaiser, was the ER physician who provided medical care to Mr. Velarde in the ER on May 11, 2015. Based on her clinical examination and her evaluation of Mr. Velarde's signs and symptoms, Dr. Misra knew or should have known that the differential diagnosis for Mr. Velarde included an aortic dissection.

17. Mr. Velarde remained in the Kaiser Moanalua ER until he was discharged home at about 8:45 p.m. on May 11, 2015. Although Dr. Misra ordered various diagnostic tests and prescribed various treatments for Mr. Velarde during Mr. Velarde's stay in the ER on May 11, 2015, Dr. Misra failed to order appropriate diagnostic tests to rule out an aortic dissection.

18. At about 7:30 p.m., Nurse Thomas gave report to the night shift Nurse Ashley Kahala, who assumed care of Mr. Velarde, acting within the course and scope of her employment with Kaiser. At 7:38 p.m., Nurse Kahala documented that Mr. Velarde's pain level remained at 8/10 in intensity, described as throbbing and continuous.

19. Mr. Velarde was discharged home from Kaiser Moanalua ER at about 8:45 p.m. on May 11, 2015. He was provided with discharge instructions for bronchitis and chest pain and given prescriptions for Prednisone, Azithromycin, Ibuprofen, and Pepcid. He was told to follow up with his primary care provider for further potential cardiac workup "as deemed necessary."

20. If appropriate diagnostic tests to rule out an aortic dissection had been performed while Mr. Velarde was in the Kaiser Moanalua ER on May 11, 2015, as the standard of care required, Mr. Velarde's impending aortic dissection would have been diagnosed at that time, allowing treatment

that would have prevented the catastrophic injury that Mr. Velarde suffered as a result of the aortic dissection.

21. Prior to his discharge from the Kaiser Moanalua ER, Mr. Velarde called his wife who was in Florida at the time, and told her he was being discharged. Mrs. Velarde called a neighbor to pick him up, because Mr. Velarde reported to her that he was in pain and too weak to drive.

22. Less than 8 hours after his discharge, at about 4:30 a.m., Mr. Velarde experienced a syncopal episode while using the bathroom and woke up on the bathroom floor. He then crawled to his bed and called 911. Emergency Medical Services (“EMS”) personnel arrived at the Velarde home at 5:08 a.m. on May 12, 2015.

23. Mr. Velarde was placed in spinal precautions and transferred to the emergency room at The Queen’s Medical Center (“QMC”), arriving at 6:07 a.m., on May 12, 2015. The trauma team at QMC was mobilized upon Mr. Velarde’s arrival. Dr. Samuel N. Cooper was the emergency room physician on duty at QMC.

24. The QMC ER staff performed a full emergency medical work up of Mr. Velarde, including CT scans of the head, cervical and thoracic spine, abdomen and pelvis, and a CT angiogram of the chest. Mr. Velarde was quickly diagnosed with a Stanford Type A, Aortic Dissection. The aortic dissection began at the aortic root and traversed through the aortic arch, terminating at the abdominal aortic bifurcation just proximal to the iliacs. Dr. Cooper documented that Mr. Velarde could not move his legs and that he was experiencing numbness and tingling.

25. At about 8.00 a.m., Mr. Velarde was transferred to the Intensive Care Unit for stabilization prior to surgery where he was cared for by Intensivist Dr. Yasi Trivedi and the QMC critical care team. Mr. Velarde required blood products and inotropes for stabilization of his blood pressure and he was intubated due to respiratory distress.

26. Once stabilized, Mr. Velarde was taken to the operating room at QMC. The operation performed by cardiothoracic surgeon Dr. Douglas Dang included a transesophageal echocardiogram, and a repair of the descending aortic dissection using a 32 mm Hemashield platinum woven double velour vascular graft.

27. Mr. Velarde spent nine days in the hospital post-operatively recovering from his surgery. Mr. Velarde was treated for cardiogenic and hemorrhagic shock, respiratory failure, malignant hypertension, paraplegia, neurogenic bowel and bladder, anemia, coagulopathy, acute kidney injury and metabolic acidosis.

28. Mr. Velarde eventually recovered from surgery but was left a permanent paraplegic. His permanent paraplegia is due to a vascular spinal cord injury caused by the aortic dissection that Defendants failed to diagnose and treat. Had Defendants properly diagnosed and treated Mr. Velarde's aortic dissection, Mr. Velarde's permanent paraplegia would have been prevented.

29. On May 21, 2015, Mr. Velarde was discharged to the Rehab Hospital of the Pacific (RHOP). Mr. Velarde was then transferred to the Ann Pearl skilled nursing facility in Kaneohe, where he stayed from June 8, 2015 to June 25, 2015. After a second stay in at RHOP, Mr. Velarde finally was discharged home on July 31, 2015.

30. Mr. Velarde currently resides at home and requires 24-hour assistive care. Plaintiff Lori Velarde, has been providing care to Mr. Velarde, with the occasional help of close friends. Prior to his discharge, members of his church community came to his home to install major home modifications, including remodeling the upstairs bathroom to be ADA compliant, installing a chair lift from the ground floor to the second floor where the Velarde's bedroom and main bathroom are located, and building a deck for Mr. Velarde to be able to go outside.

31. Mr. Velarde's paraplegia is permanent. He is unable to work, and requires assistance with all activities of daily living, including toileting, bathing, dressing, preparing meals, transfers to and from his bed. Mr. Velarde can no longer drive, do housework, do handyman work, or garden, among many other activities. He is in constant pain, and struggles with severe depression, anger, anxiety, and frustration.

32. In November 2015, Mr. Velarde developed a small decubitus ulcer to his coccyx. He went to see his primary care physician at Kaiser, Dr. Choy, who monitored the wound. In December 2015, Dr. Choy referred Mr. Velarde to Lynne Ikeda, NP for sharp debridement in the surgery department at Kaiser. Over the next six months, the decubitus ulcer worsened in size and depth.

33. Between December 2015 and April 2016, Defendant Kaiser health care providers performed outpatient monitoring and treatment of Mr. Velarde's decubitus ulcer and pressure wounds.

34. In April, 2016, Defendant Kaiser also arranged for outpatient home visits and wound care through Castle Home Care.

35. The diagnosis and treatment of Mr. Velarde's decubitus ulcer and pressure wounds by Dr. Choy, Nurse Ikeda and other Kaiser staff, were done within the course and scope of their employment with Kaiser.

36. During the outpatient monitoring and treatment provided by and/or arranged through Defendant Kaiser, Mr. Velarde's decubitus ulcers grew in size and tunneled down to invade his organs. Defendant Kaiser health care providers knew, or should have known, that Mr. Velarde's wounds were not responding to the medical treatment provided by Kaiser, and were, in fact, getting much worse and not better, and that a life-threatening condition was developing.

37. On July 21, 2016, Mr. Velarde was urgently hospitalized at QMC. He had developed sepsis, a blood stream infection caused by infection of the large, deep, decubitus ulcers which had tunneled through his anus and had reached the bone.

38. While hospitalized at QMC, Mr. Velarde required urgent surgical debridement of his wounds and a temporary colostomy due to the depth and severity of the pressure ulcers. He was discharged home on August 18, 2016 on bedrest.

39. Mr. Velarde has been readmitted on October 1, 2016 to QMC for reconstructive plastic surgery related to the ulcers and possible revision of the colostomy.

40. Mrs. Velarde has been providing the enormous assistive care her husband requires, while at the same time trying to work part time at Kaiser Moanalua Medical Center. Kaiser Moanalua inexplicably has been cutting back on Mrs. Velarde's work hours, which has increased the Velarde's financial distress caused by the Defendants negligence.

MEDICAL NEGLIGENCE

41. The Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 40, above, as if fully set forth herein. At all relevant times, Defendants each owed a duty to Plaintiffs to exercise that degree of care, skill and diligence ordinarily exercised by such health care providers in the application of their skills and in the performance of their profession.

42. Defendants, acting individually and/or by and through their actual and/or apparent agents and/or employees, each breached the aforesaid duty of care owed to Plaintiff Mark Velarde by actions and inactions that include, but are not limited to, the following:

- (a) The failure to utilize appropriate diagnostic tests and studies in the medical evaluation of Mr. Velarde, resulting in the failure to diagnose and treat Mr. Velarde's aortic dissection;
- (b) The failure to respond appropriately to Mr. Velarde's signs and symptoms, resulting in the failure and to diagnose and treat Mr. Velarde's aortic dissection;
- (c) The discharge of Mr. Velarde from the Kaiser Moanalua ER without having made an appropriate diagnosis and with an emergency medical condition in progress;
- (d) The failure to obtain Mr. Velarde's informed consent to the medical care provided to him in the Kaiser Moanalua ER; and/or
- (e) The failure of Kaiser to provide appropriate care for Mr. Velarde's decubitus ulcers, as aforesaid.

43. Some or all of the negligent acts and omissions as set forth above occurred as a result of Defendant Kaiser's negligent failure to hire and retain competent physicians, to mandate safety protocols to ensure that medical treatment within the standard of care is provided, and to provide follow-up care that is sufficiently tailored to the needs of each patient. Kaiser Defendants are, therefore, directly liable for the harms suffered by Mr. and Mrs. Velarde.

44. Some or all of the negligent acts and omissions as set forth above were done by health care providers who were acting within the course and scope of their employment and /or actual and/or apparent agency relationship with Kaiser, such that Kaiser is vicariously liable for said negligence, including under the doctrine of *respondeat superior*.

45. Defendants' negligence, as aforesaid, caused substantial delay in the diagnosis and treatment of Mr. Velarde's aortic dissection, resulting in Mr. Velarde's permanent paraplegia. Defendants' negligence, as aforesaid, caused substantial worsening in Mr. Velarde's

condition, resulting in wounds and decubitus ulcers which tunneled through Mr. Velarde's tissues and organs, sepsis, and additional surgeries.

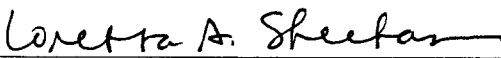
46. Defendants are liable for Mr. Velarde's catastrophic injury, extreme pain and suffering, disfigurement, severe emotional distress, loss of consortium, loss of enjoyment of life, enormous economic losses, loss of independence, and permanent and total disability. In addition, Defendants' negligence, as aforesaid, was a substantial factor in causing Mrs. Velarde's enormous economic losses, extreme emotional distress, mental anguish, and loss of consortium.

47. Plaintiffs are entitled to recover reasonable compensation for all of the care, goods, and services that have been provided and will continue to be provided to Mark Velarde as necessitated by Defendants' negligence.

48. As a direct and proximate result of the negligent acts and omissions by Defendants, as set forth above, Plaintiffs are entitled to recover special and general damages in amounts to be shown at trial.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against each and all Defendants, jointly and severally, for such special and general compensatory damages as are appropriate, together with costs of suit, attorney's fees, pre-judgment interest, post-judgment interest, and such additional relief as the Court deems just and proper under the circumstances.

DATED: Honolulu, Hawai'i, October 10, 2016.



MARK S. DAVIS
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Attorneys for Plaintiffs