

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

RICHARD NYDAM,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST, a corporation;
NORTHWEST PERMANENTE, P.C., a
corporation; KAISER FOUNDATION
HOSPITALS, a corporation; and TARAJEET
KAUR, M.D.,

Defendants.

Case No.

COMPLAINT
(Medical Negligence)

(\$750,000 prayer, *subject to amendment*)

Filing fee: \$531; ORS 21.160(1)(c)

Claims Not Subject to Mandatory Arbitration

Demand for Jury Trial

Plaintiff alleges:

1.

At all material times, defendant Kaiser Foundation Health Plan of the Northwest (“Health Plan”) was an Oregon corporation engaged in the business of providing hospital and medical services to its members, and was engaged in regular, sustained business activity in Multnomah County, Oregon.

2.

At all material times, defendant Northwest Permanente, P.C. (“P.C.”) was an Oregon professional corporation, engaged in the business of providing medical services to members of the

1 Health Plan, and engaged in regular, sustained business activity in Multnomah County, Oregon.

2 3.

3 At all material times, defendant Kaiser Foundation Hospitals ("Kaiser Foundation") was a
4 California corporation qualified to do business in Oregon, engaged in the operation of medical and
5 hospital facilities, and engaged in regular, sustained business activity in Multnomah County,
6 Oregon.

7 4.

8 At all material times, defendants Health Plan, P.C. and Kaiser Foundation operated
9 together as a joint venture ("Kaiser") in providing medical, hospital and surgical services to
10 members of the Health Plan, including Mr. Nydam, the plaintiff herein.

11 5.

12 At all material times, defendant Taranjeet Kaur, M.D. ("Kaur") was a physician licensed to
13 practice in Oregon. At all material times, Kaur was the actual or apparent agent, or employee, of
14 Health Plan, P.C., and/or Kaiser Foundation, and was acting in the course and scope of such
15 agency and/or employment.

16 6.

17 At all material times, Mr. Nydam was a patient under the care and treatment of defendants.
18 While a patient under the care and treatment of defendants, the defendants, and each of them,
19 owed to Mr. Nydam the duty to treat him with reasonable care, skill and diligence in an ordinarily
20 careful manner to avoid unnecessarily creating or causing harm, injury or death.

21 7.

22 In March 2014, Mr. Nydam had a sigmoid colectomy with primary anastomosis for
23 diverticulitis. He developed an incisional hernia that was repaired by Kaiser on or about October
24

1 14, 2014. Mesh was placed at that time in a preperitoneal position.

2 8.

3 On or about October 27, 2014, Mr. Nydam was seen by Kaur for a post-operative clinic
4 visit. Mr. Nydam had a bulge near the midline incision that was thought to be a seroma or a
5 hematoma. There was no redness or signs of any infection.

6 Kaur opened the incision and there was immediate return of bloody fluid that was
7 evacuated with a syringe. Kaur then placed a finger *into the wound and in contact with the mesh*
8 *that was placed earlier*. The mesh was exposed to the air during this process, as well as being
9 exposed to contact by Kaur's finger.

10 The wound, now open, was packed and covered. Mr. Nydam was sent home.

11 9.

12 After the procedure on October 27, 2014, and after Kaur had opened the abdominal wound,
13 exposing the mesh to the open air, and inserting her finger into the abdominal wound in contact
14 with the mesh, the abdominal wound failed to heal and close. The abdominal wound became
15 infected, with purulent drainage and oozing. Two chronically draining sinuses developed in the
16 area of the wound, requiring numerous dressing changes and causing chronic pain, requiring
17 ongoing narcotic medications. The wound was diagnosed later as chronically infected, down to
18 and including the mesh.

19 Surgical intervention was then recommended to remove the infected mesh. On July 22,
20 2015, Mr. Nydam underwent another surgery to remove the infected mesh, to implant other mesh
21 material, and to close the hernia defect a second time.

22 10.

23 The negligence of the defendants, as set forth herein, caused Mr. Nydam to suffer months
24
25
26

1 of chronic pain, to have to pack and change numerous wound dressings, to develop a chronically
2 infected non-healing wound with sinus tracts of infection, to develop a chronic infection of the
3 surgical mesh that was originally implanted October 15, 2014, and to have to undergo an
4 additional abdominal surgery for mesh removal, mesh re-implantation, and hernia wound closure.

5 The negligence of the defendants as set forth herein, also caused Mr. Nydam physical and
6 mental pain and suffering, mental anguish, emotional distress, and physical disability. One or
7 more of these conditions may be permanent in nature. For his noneconomic damages and in
8 accordance with Oregon law, Mr. Nydam seeks such amount as the jury may deem just and
9 appropriate, not to exceed the sum of \$750,000.00. This number may change, depending on
10 whether plaintiff's condition(s) resolve(s), persist(s), or worsen(s).
11

12 11.

13 On or about October 27, 2014, defendants were negligent in one or more of the following
14 particulars:

- 15 (a) By creating a wider incision than was necessary to drain fluid from beneath the wound;
16 (b) By exposing the implanted mesh to open air when it was known or should have been known
17 that this created an unnecessary and unreasonable risk of bacteria seeding into and infecting the
18 mesh and surrounding tissue;
19 (c) By physically contacting or touching the implanted mesh when it was known or should have
20 been known that this created an unnecessary and unreasonable risk of bacteria seeding into and
21 infecting the mesh and surrounding tissue;
22 (d) By not seeking consultation with, or assistance from, another physician or surgeon before
23 opening the abdominal wound and exposing the mesh to open air;
24 (e) By not seeking consultation with, or assistance from, another physician or surgeon before
25 touching or disrupting the implanted mesh;
26

1 (f) By assuming it was safe to open and expose the mesh to the open air and to physical contact.

2 WHEREFORE, plaintiff prays for judgment against defendants as follows:

3 1. For plaintiff's noneconomic damages in such amount as the jury may deem just and
4 appropriate, not to exceed the sum of \$750,000;

5 2. For plaintiff's costs and disbursements incurred herein;

6 3. For such other relief as the court may deem appropriate.

7 DATED this 14th day of October, 2016.

8 J. WILLIAM SAVAGE, P.C.

9
10 s/ J. William Savage
11 J. William Savage, OSB 77334
12 Of Attorneys for Plaintiff; Trial Attorney

13 Demand for Jury Trial

14 Plaintiff hereby demands a trial by jury of all issues triable by a jury.

15 J. WILLIAM SAVAGE, P.C.

16
17 s/ J. William Savage
18 J. William Savage, OSB 77334
19 Trial Attorney

20 Plaintiff's Attorneys

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