

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

CATHERINE SHAUKLAS,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST, dba KAISER
PERMANENTE; KAISER FOUNDATION
HOSPITALS, TARA WAYT, D.O.,
DEBRA KAYE DAVIS, M.D., and
SCOTT EMERY, M.D.,

Defendants.

Case No.

**COMPLAINT
Medical Negligence**

**(Claim for \$2,200,000.00
(non-economic damages))**

**(Not subject to mandatory
arbitration)**
[ORS 677.095, ORS 677.097]

Plaintiff alleges:

1.

Plaintiff (hereinafter "Shauklas") is an adult resident of Clackamas County, State of Oregon.

2.

Defendant Kaiser Foundation Health Plan of the Northwest (hereinafter "Kaiser Health Plan"), doing business as, Kaiser Permanente, is a California corporation, registered in the State of Oregon, with an assumed business name of Kaiser Permanente. Defendant Kaiser Foundation Health Plan of the Northwest, doing business as Kaiser Permanente, conducts regular and ongoing business activities in Multnomah County and Clackamas County, Oregon.

3.

Defendant Kaiser Foundation Hospitals (hereinafter "Kaiser Hospitals") is a California corporation, registered in the State of Oregon, which conducts regular and ongoing business activities in Clackamas County, Oregon. Defendant Kaiser Hospitals operates the Kaiser Sunnyside Medical Center, a medical facility in Clackamas County, Oregon.

4.

Kaiser Permanente is licensed as a Health Care Service Contractor and direct provider of healthcare services in the state of Oregon. Kaiser Permanente is the commercial name and affiliated business form under which defendants Kaiser Foundation Hospitals, Kaiser Foundation Health Plan of the Northwest, and Northwest Permanente, P.C. operate and provide medical services in the state of Oregon. These defendants (hereinafter Kaiser Defendants), were jointly engaged in the practice of medicine and the delivery of other healthcare services. At all material times, the Kaiser Defendants acted as a single, integrated, coordinated operation providing medical services and care to Plaintiff.

5.

At all material times, Defendants Tara Wayt, DO, ("Defendant Wayt"), Kaye Davis, MD, ("Defendant Davis") and Defendant Scott Emery, MD, ("Defendant Emery") were physicians engaged in the practice of medicine through Kaiser in Multnomah County, Oregon.

6.

Defendant Kaiser Health Plan, doing business as Kaiser Permanente, explicitly identifies itself as a fully integrated healthcare delivery system with providers, hospitals, pharmacies, and labs all working together to provide healthcare for members. As such, Defendant NW Permanente provides and arranges for its physicians, including Doctors Wayt, Davis and Emery

1 to provide medical care for Defendant Kaiser Health Plan's members. Defendant Kaiser
2 Hospitals provides infrastructure and facilities for the use of Defendant NW Permanente, to
3 provide medical services to Defendant Kaiser Health Plan's members. The Kaiser Defendants
4 hold themselves out to the general public and Plaintiff as operating as a single integrated
5 healthcare service provider.

6 FIRST CLAIM FOR RELIEF
7 (Negligence – Medical Malpractice)

8 7.

9 Plaintiff re-alleges and incorporates paragraphs 1 - 6 above.

10 8.

11 On approximately November 5, 2014, Shauklas was standing in Home Depot, holding on
12 to a shopping cart, when her legs gave way and she fell onto the floor. She felt immediate pain in
13 her left knee. Approximately 11 days later, she sought treatment from Kaiser Permanente
14 Emergency Department, where she was seen by Tara Wayt, DO. She complained of joint pain,
15 tingling, sensory change, tenderness, an inability to bear weight on her left leg, and left hip pain.
16 An X-ray and CT of her left knee was negative for any fracture or dislocation. She was provided
17 with a hinged knee brace, and prescribed Percocet for pain relief.

18 9.

19 Shauklas returned to Kaiser Permanente on November 18, 2014, and was seen by Debra
20 Kaye Davis, MD, with complaints that the pain was radiating to her left hip. Rather than doing
21 any further testing, she was prescribed additional pain medication, Norco, and advised to elevate
22 and ice her leg, and to use crutches or a wheel chair.

10.

Shauklas again returned to Kaiser Permanente on November 20, 2015, where she was seen by Dr. Scott Emery. She again described sharp shooting pain in the region of the left hip, with weight bearing. She was prescribed gabapentin, which she declined in favor of continuing use of the previously prescribed medications, which had been previously prescribed to her. She was prescribed physical therapy.

11.

Shauklas telephoned Kaiser Permanente on November 25, 2014, and complained of increased pain in her hip, stating she was unable to walk to the bathroom. She was just given a refill of her prescription for oxycodone.

12.

Shauklas had a telephone consult with Nancy McManus, physical therapist, on November 26, 2014. Shauklas indicated she felt unable to participate in physical therapy at that time, and requested a power wheelchair because of the extreme difficulties maneuvering her manual wheelchair. On December 2, 2014, Ms. Shauklas requested home health provide her with physical therapy, as she was unable to get out of the house, or drive to physical therapy appointments. The referral was not made until December 4, 2014.

13.

On December 13, 2014, Shauklas again went to Kaiser Permanente and was seen by Duc Hoai Nguyen, DO. She had been attempting to obtain refills of her pain medications, but her requests had been denied. Her pain had substantially increased and was even more debilitating by this time. An xray indicated Ms. Shauklas had actually been suffering from a displaced left intertrochanteric femur fracture. She was almost immediately scheduled for surgical repair the

1 following day; however an emergent trauma case took precedence and her surgery was delayed
2 until December 16, 2015 while she suffered excruciating pain. On December 16, 2015, Shauklas
3 finally underwent surgical repair of her hip fracture. Pin and reconstruction screws were inserted
4 into the fractured hip. She was not released from the hospital until December 18, 2015.

5 14.

6 On a follow-up exam on February 3, 2015, Shauklas noted she was having pain and a
7 limited range of motion. She began physical therapy treatments, which continued until March 7,
8 2015. At that time, Shauklas again complained of more increased pain and an inability to bear
9 weight on her left leg. An additional x-ray indicated that the interlocking surgical screws had
10 broken, providing minimal healing at the fracture site. It was determined by the treating
11 physician that the hardware would need to be removed and yet another additional replacement
12 surgical procedure was scheduled for March 10, 2015.

13 15.

14 Shauklas has had persistent pain from the date of the original negligence through the
15 present. The injuries she suffered have caused her significant discomfort and distress. Plaintiff
16 has been told she will most likely experience recurrent aggravations of her symptoms throughout
17 the remainder of her life.

18 16.

19 As a result of the care received by Kaiser and damage caused by the negligence of
20 Defendants, Plaintiff suffered severe and excruciating pain from November 16, 2014, (the day
21 she first sought treatment, through December 13, 2104, when she was properly diagnosed. She
22 frequently informed Defendants of the pain in her hip, and requested an xray of her hip, all of
23 which was ignored by Defendants. She further suffers from pain and weakness in her hip, and
24

1 must require the use of crutches for assistance in ambulating. She will most likely experience
2 recurrent aggravations of her symptoms throughout the remainder of her life.

3 17.

4 Shauklas has suffered a great deal of physical and emotional distress due to Defendants'
5 medical negligence. Defendant's negligence arises out a failure to properly diagnose the severity
6 of the damage, which resulted in improper surgical procedure.

7 18.

8 Defendant was negligent in one or more of the following particulars:

- 9 a. By failing to adequately examine, x-ray and diagnose the hip fracture suffered by
10 Plaintiff;
11 b. In failing to use the degree of care and skill necessary to diagnose and repair the
12 fracture in Plaintiff's hip

13 19.

14 As a direct result of Defendants' negligence, Shauklas suffered injuries including, but not
15 limited to:

- 16 a. A prolonged painful and difficult period of recovery;
17 b. Permanent injury as a result of the defendants' negligence; and
18 c. Permanent intermittent pain and weakness in Plaintiff's hip.

20 DAMAGES

21 20.

22 Defendant's negligence directly resulted in unnecessary severe physical, mental, and
23 emotional pain and suffering, and unnecessary medical treatment, and Shauklas is entitled to
24 recover damages from and against Defendants for said negligence.

25 PAGE 6 - COMPLAINT (MEDICAL NEGLIGENCE) - CATHERINE SHAUKLAS V. KAISER, ET. AL.

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21.

As a further direct result of each and all of the Defendants' negligence, Shauklas has failed to regain her pre-loss level of functioning. Shauklas has suffered, continues to suffer, and will in the future suffer from physical pain and discomfort, decreased strength and mobility, permanent disability, mental anguish, distress, loss of enjoyment of life, permanent scarring, and is otherwise damaged. Economic damages currently entail and anticipate growing: Kaiser Permanente, \$4,022.00; Prescriptions, \$486.34; Physical Therapy/medical supplies \$885.14. These economic payments have been paid or hope to be paid as soon as possible but total \$5,393.48.

22.

Since the surgery and subsequent procedures, Shauklas has been unable to participate in many of the activities she enjoyed, including but not limited to:

- a. She is unable to perform many tasks of daily living, for example lifting more than five pounds, without assistance;
- b. She cannot perform normal housework including tasks which require heavy lifting;
- c. Any activity that requires lifting over a few pounds or for a length of time over a few minutes must be done with her left hand. Even reading a book or relaxing with her arms above her head is disturbed due to her injury;
- d. Normal daily activities that we all take for granted must be planned and thought out because the lifestyle and activities she has come to know must be done differently;
- f. Shauklas suffers a great deal of ongoing physical and emotional distress.

23.

As a direct result of the negligence and deviations from the standard of care by Defendants as set forth above, Shauklas was injured. She has been caused to incur doctor, drug and other medical expenses, and may be reasonably expected to incur additional suffering, mental anguish and anxiety, and discomfort, and she will continue to endure the same in the future. Shauklas suffers from as degree of permanent partial impairment as a result of her injuries.

24.

As a further result of Defendants' negligence, Shauklas has suffered economic damages by way of past and future medical expenses, in the approximate amount of \$5,393.48, which amount to be further established at trial.

FOR A JURY TRIAL

25.

Plaintiff demands a jury trial.

WHEREFORE, Plaintiff prays for a judgment against Defendants in a sum which will reasonably compensate her for all of her injuries and damages as follows:

1. For an award of non-economic damages for pain, suffering, emotional distress and loss of enjoyment of life in the sum of \$2,200,00.00;
2. For an award of economic damages for past and future medical and therapy expenses in the approximate amount of \$5,393.48, which amount is to be further determined at trial;
3. Economic losses for future maintenance on her home and property in amounts to be determined at trial; and

1 4. For Plaintiff's costs and disbursements incurred herein.

2 DATED this 16TH day of November, 2016.

3 /s/ Brent J. Goodfellow

4 Brent J. Goodfellow, OSB #033277

5 Attorney for Plaintiff

6 bjgoodfellow@johnstone-law.com

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