

DISTRICT COURT, CITY AND COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: August 3, 2018 3:52 PM FILING ID: 6B41D3D9968EB CASE NUMBER: 2018CV32895
Plaintiffs: ROBERTA JEWELL f/k/a ROBERTA SULIK AND MARCUS JEWELL v. Defendant: JENNIFER L. VACCA, MD and COLORADO PERMANENTE MEDICAL GROUP, P.C.; and KAISER FOUNDATION HEALTH PLAN OF COLORADO, A COLORADO CORPORATION, a/k/a KAISER PERMANENTE	COURT USE ONLY
<i>Attorneys for Plaintiffs</i> David S. Woodruff, #32585 Henry Minter, #37412 WAHLBERG, WOODRUFF, NIMMO & SLOANE, LLP 4601 DTC Boulevard, Suite 950 Denver, CO 80237 Telephone: 303-571-5302 Fax: 303-571-1806 E-mail: david@denvertriallawyers.com henry@denvertriallawyers.com	Case Number: Courtroom:
COMPLAINT AND JURY DEMAND	

Plaintiffs' Counsel, David S. Woodruff and Henry Minter of the law firm Wahlberg, Woodruff, Nimmo & Sloane LLP, hereby file this Complaint and Jury Demand, and allege as follows:

Parties, Venue, and Jurisdiction

1. Plaintiff Roberta Jewell (formerly known as Roberta Sulik) was a patient/member of Kaiser Permanente during the period of negligence.
2. Plaintiffs Roberta Jewell and Marcus Jewell are husband and wife.

3. Kaiser Permanente is a group model Health Maintenance Organization, comprised of two major organizations in its Colorado subgroup: the Kaiser Foundation Health Plan of Colorado, Inc. ("KFHP") and Colorado Permanente Medical Group, P.C. ("CPMG").
4. At all times material hereto, Defendant KFHP was and is a Colorado corporation, was and is formed in accordance with Colorado laws, is licensed to do business in the State of Colorado and has a principal place of business at 10350 E. Dakota Avenue, Denver, Colorado 80247.
5. At all times material hereto, Defendant CPMG was and is a Colorado corporation, was and is formed in accordance with Colorado laws, is licensed to do business in the State of Colorado and has a principal place of business at 10350 E. Dakota Avenue, Denver, Colorado 80247.
6. At all times relevant hereto, Defendant Jennifer L. Vacca, M.D. ("Vacca") was and is a medical professional licensed by the State of Colorado, holding herself out as a specialist in the field of internal medicine.
7. At all times relevant hereto, Defendant Vacca provided medical care and treatment to Ms. Jewell at Kaiser Permanente.
8. Venue is proper under C.R.C.P. 98.

General Allegations

9. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.

Plaintiff Roberta Jewell's August 2015 Presentation to Kaiser Permanente

10. On August 3, 2015, Ms. Jewell presented to Defendant Jennifer L. Vacca, MD at Kaiser Permanente complaining of a change in bowel habits, abdominal discomfort, fatigue, and rectal bleeding.
11. Ms. Jewell's symptoms of rectal bleeding, fatigue, changes in bowel habits, and abdominal discomfort are symptoms and signs of colorectal cancer.
12. At the time of this visit, Dr. Vacca diagnosed Ms. Jewell with internal hemorrhoids.
13. Dr. Vacca prescribed Ms. Jewell probiotics, stool softeners, and suppositories.
14. Despite Ms. Jewell's symptoms and increased risk for colorectal cancer, Dr. Vacca decided against a colonoscopy.

15. Ms. Jewell had a colonoscopy in 2012, which showed sessile serrated adenoma polyps in her colon. Sessile serrated adenoma polyps are precancerous and increase the risk of colorectal cancer, which is noted in her Kaiser Permanente medical records.
16. Dr. Vacca knew or should have known about the 2012 colonoscopy.
17. Ms. Jewell's father died of colon cancer, which is noted in her Kaiser Permanente medical records.
18. Dr. Vacca knew that Ms. Jewell's father died of colon cancer.
19. Ms. Jewell had many of the risk factors for colorectal cancer, including a history of:
 - a. Being over 50 years of age;
 - b. Adenomatous polyps;
 - c. Colon cancer in the family;
 - d. A low fiber, high-fat diet;
 - e. A sedentary lifestyle;
 - f. Diabetes;
 - g. Obesity; and
 - h. Smoking.
20. The above risk factors are noted in her Kaiser Permanente medical records.
21. Dr. Vacca knew that Ms. Jewell had these risk factors.

Plaintiff Roberta Jewell's 2016 Presentation to Kaiser Permanente

22. Although Ms. Jewell's symptoms did not resolve, she continued to treat with probiotics and hydrocortisone for hemorrhoids, precisely as ordered by Dr. Vacca.
23. Neither Dr. Vacca nor any other Kaiser Permanente employee contacted Ms. Jewell to follow up on her treatment or check that her symptoms were resolving.
24. On October 17, 2016, Ms. Jewell presented to Kristin E. Walden, P.A. at Kaiser Permanente for a routine obstetrics exam.
25. At this time, Ms. Jewell continued to suffer from rectal bleeding.
26. Kristen Walden, P.A. immediately referred Ms. Jewell for a colonoscopy.
27. Dr. Vacca failed to approve the colonoscopy for three months.

Plaintiff Roberta Jewell's 2017 Presentation to Kaiser Permanente

28. On January 23, 2017, Ms. Jewell underwent a colonoscopy.
29. A gastroenterologist discovered a mass and polyps.
30. A biopsy of the mass and polyps removed from Ms. Jewell's colon revealed an invasive adenocarcinoma.
31. A CT of Ms. Jewell's abdomen and pelvis completed on January 23, 2017 was "suggestive of metastatic colonic adenocarcinoma."
32. Three days later, on January 26, 2017, Ms. Jewell received her diagnosis: colorectal cancer.
33. Unfortunately, the cancer had metastasized to the liver.
34. Ms. Jewell's oncologist notes that her cancer is now incurable.
35. Since the time of Plaintiff's cancer diagnosis, Plaintiff has undergone radiation therapy, systemic chemotherapy, and multiple surgeries. Her surgeries include low anterior resection with primary anastomosis; sigmoidoscopy, exploratory laparotomy, loop ileostomy, drainage and stent of anastomotic leak; drainage of pelvic abscess, wound VAC change, and repositioning of drain; rigid proctoscopy with washout of pelvic abscess, exploratory laparoscopy, lysis of adhesions, creation of end colostomy, and ileostomy takedown; and drainage of a reoccurring abdominal abscess with wound VAC placement.
36. As a result of her multiple surgeries and cancer diagnosis, Ms. Jewell has a permanent colostomy bag, and is prone to pelvic infections/abscesses due to her poor immune system functioning.
37. As a result of her delayed cancer diagnoses, Ms. Jewell has a diminished life expectancy.
38. Ms. Jewell has had to take extensive time off from work and has been unable to work for extended periods of time because of her cancer diagnoses and ongoing treatment. As a result, Ms. Jewell has lost earnings and will continue to lose her earning capacity.

KFHP and CPMG

39. KFHP is a health plan that arranges comprehensive, integrated medical care for its members.

40. KFHP operates medical offices in Colorado where members receive primary medical care, specialty care, urgent care, radiology, laboratory, and pharmacy services from KFHP employees or affiliated health care providers.
41. CPMG is a physician-owned, for-profit integrated group medical practice of physicians that provides medical care for KFHP members.
42. KFHP has a mutually exclusive contract with CPMG to provide medical care to its members.
43. CPMG has a mutually exclusive contract with KFHP for the provision of health services to KFHP members.
44. KFHP prepays CPMG a set dollar amount monthly for each enrolled member's medical care.
45. CPMG pays physicians a salary and supplements the salaries with incentives.
46. Dr. Vacca signed an employment contract with CPMG.
47. Ms. Jewell was a member of KFHP and received her medical care from the Defendants until December 31, 2017.

First Claim for Relief
(Medical Negligence: Jennifer L. Vacca, MD)

48. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.
49. At all times material hereto, Defendant Vacca held herself out as a specialist in the field of internal medicine and practiced as a primary care provider (PCP).
50. At all times material hereto, Defendant Vacca practiced on a PCP team.
51. At all times material hereto, Defendant Vacca was engaged in a physician-patient relationship with Ms. Jewell, in that she assumed care and treatment of Ms. Jewell in August 2015, while she was a patient at Defendant KFHP.
52. At all times material hereto, Defendant Vacca owed a duty to Ms. Jewell to exercise the degree of skill, care, caution, diligence, and foresight exercised by a reasonably careful physician under the same or similar circumstances.

53. Defendant Vacca deviated from that standard of care and was negligent with respect to her care and treatment of Ms. Jewell, including, but not limited to, the following acts or failures to act:

- a. Negligently failing to properly recognize, evaluate, diagnose, and treat Ms. Jewell's medical condition on August 3, 2015;
- b. Negligently failing to properly monitor Ms. Jewell's medical condition;
- c. Negligently failing to order appropriate follow up regarding the status of Ms. Jewell's medical condition.
- d. Negligently failing to advise Ms. Jewell of the nature of her medical condition, the nature of available treatments and alternatives, and the risks and benefits of the treatments and alternatives, including obtaining a second opinion.
- e. Negligently providing medical care and treatment that was not appropriate for Ms. Jewell's medical condition;
- f. Negligently failing to order and refer Ms. Jewell for appropriate diagnostic tests, including a colonoscopy, while under her care;
- g. Negligently failing to adequately consider or investigate Ms. Jewell's presenting symptoms, past medical history, lifestyle, and family history of colon cancer when providing medical care and treatment to Ms. Jewell;
- h. Negligently delaying medical care and treatment to Ms. Jewell, including a colonoscopy, which resulted in her diagnosis of colon cancer, causing her permanent injury; and
- i. Negligently failing to act in a reasonable and prudent manner by providing medical care and treatment to Ms. Jewell while she was under her care and treatment at Defendant KFHP that fell below the applicable standard of care for specialists in the field of internal medicine.

54. As a direct and proximate result of Defendant Vacca's negligence as set forth above, Ms. Jewell suffered permanent injuries. Additionally, as a result of the negligence of Defendant Vacca, Plaintiffs have suffered injuries, damages, and losses including but not limited to: diminished life expectancy; grief, pain, suffering, emotional distress/losses; loss of society, companionship and affection; loss of Ms. Jewell's past and future earnings and financial support; impairment of quality of life; past and future medical expenses; all of which will continue into the future for an amount to be determined by the jury in this case.

Second Claim for Relief
(Negligence: KFHP)

55. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.
56. Defendant KFHP is vicariously liable for the negligent acts of its agents, servants, and employees in their care and treatment of Ms. Jewell to the extent provided under Colorado law.
57. Upon providing care and treatment to Ms. Jewell, Defendant KFHP, through each of its employees, had a duty to ascertain necessary health information, including past medical history, current health conditions, symptoms, medications, and family history. Employees of Defendant KFHP, including but not limited to Defendant Vacca, while acting within the course and scope of their employment with KFHP, failed to obtain this necessary health information.
58. Upon providing care and treatment to Ms. Jewell, Defendant KFHP, through each of its employees, had a duty to monitor and provide follow-up for current and ongoing health conditions. Employees of Defendant KFHP, including but not limited to Defendant Vacca, while acting within the course and scope of their employment with KFHP, failed to monitor and provide follow-up care.
59. Thus, Defendant KFHP is vicariously liable for the negligent acts and/or omissions of its agents and/or employees, including Defendant Vacca, identified herein and those employees whose names are not specifically identified herein.
60. As a direct and proximate result of Defendant KFHP's negligence as set forth above, Ms. Jewell suffered permanent injuries. Additionally, as a result of the negligence of Defendant Vacca, Plaintiffs have suffered injuries, damages, and losses including but not limited to: diminished life expectancy; grief, pain, suffering, emotional distress/losses; loss of society, companionship and affection; loss of Ms. Jewell's past and future earnings and financial support; impairment of quality of life; past and future medical expenses; all of which will continue into the future for an amount to be determined by the jury in this case.

Third Claim for Relief
(Negligence: CPMG)

61. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.

62. Defendant CPMG owed a duty to its patients, including Ms. Jewell, to use reasonable care in creating, implementing, and enforcing policies, procedures, and protocols to ensure consistent and safe delivery of medical care to its patients.
63. Additionally, Defendant CPMG owed a duty to its patients, including Ms. Jewell, to use reasonable care in hiring, training, and supervising its physicians and medical professionals to recognize situations that require a colonoscopy prior to its recommended "due" date.
64. In hiring, training, and supervising its physicians and medical professionals, Defendant CPMG had a duty to use reasonable care to ensure that its employees' lack of training, knowledge, education, or experience did not create an undue risk of harm to patients, including Ms. Jewell.
65. Defendant CPMG created and participated in a financial system that caused or contributed to the failure to obtain a colonoscopy in a timely fashion.
66. Defendant CPMG failed to implement protocols and systems which would have prevented a delay in treating a patient with the signs and symptoms of colon cancer.
67. Defendant CPMG breached its duties and failed to use reasonable care with regard to patients presenting with rectal bleeding, including Ms. Jewell.
68. As a direct and proximate result of Defendant CPMG's negligence as set forth above, Ms. Jewell suffered permanent injuries. Additionally, as a result of the negligence of Defendant Vacca, Plaintiffs have suffered injuries, damages, and losses including but not limited to: diminished life expectancy; grief, pain, suffering, emotional distress/losses; loss of society, companionship and affection; loss of Ms. Jewell's past and future earnings and financial support; impairment of quality of life; past and future medical expenses; all of which will continue into the future for an amount to be determined by the jury in this case.

Fourth Claim for Relief
(Negligence: KFHP)

69. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.
70. Defendant KFHP owed a duty to its patients, including Ms. Jewell, to use reasonable care in creating, implementing, and enforcing policies, procedures, and protocols to ensure consistent and safe delivery of medical care to its patients.

71. Additionally, Defendant KFHP owed a duty to its patients, including Ms. Jewell, to use reasonable care in hiring, training, and supervising its medical professionals to recognize situations that require a colonoscopy prior to its recommended "due" date.
72. Further, Defendant KFHP owed a duty to its patients, including Ms. Jewell, to timely approve and schedule a colonoscopy as recommend by medical staff.
73. In hiring, training, and supervising its medical professionals, Defendant KFHP had a duty to use reasonable care to ensure that its employees' lack of training, knowledge, education, or experience did not create an undue risk of harm to patients, including Ms. Jewell.
74. Defendant KFHP created a financial system that caused or contributed to the failure to obtain a colonoscopy in a timely fashion.
75. Defendant KFHP failed to implement protocols and systems which would have prevented a delay in treating a patient with the signs and symptoms of colon cancer.
76. Defendant KFHP breached its duties and failed to use reasonable care with regard to patients presenting with symptoms including rectal bleeding, including Ms. Jewell.
77. As a direct and proximate result of Defendant KFHP's negligence as set forth above, Ms. Jewell suffered permanent injuries. Additionally, as a result of the negligence of Defendant Vacca, Plaintiffs have suffered injuries, damages, and losses including but not limited to: diminished life expectancy; grief, pain, suffering, emotional distress/losses; loss of society, companionship and affection; loss of Ms. Jewell's past and future earnings and financial support; impairment of quality of life; past and future medical expenses; all of which will continue into the future for an amount to be determined by the jury in this case.

Fifth Claim for Relief

(Joint & Several Liability Pursuant to C.R.S. 13-21-111.5(4))

78. Plaintiffs incorporate by reference each and every paragraph contained herein.
79. In providing care and treatment to Ms. Jewell, Defendant CPMG and its employees, Defendant KFHP and its employees, and Defendant Vacca, acted in concert to provide a course of care and treatment to Ms. Jewell.
80. In providing care and treatment to Ms. Jewell, the named Defendants knowingly agreed upon a common plan to treat Ms. Jewell's medical condition.

81. Defendants expressly or impliedly agreed to work with each other to treat Ms. Jewell's medical condition and knowingly agreed upon a common plan or design to treat Ms. Jewell's medical condition.
82. Upon information and belief, all named defendants shared a mutual understanding and agreement as to the course of medical care and treatment they would employ in treating Ms. Jewell's condition.
83. Accordingly, all named Defendants herein are jointly and severally liable for damages suffered by the plaintiffs, pursuant to C.R.S. 13-21-111.5(4).
84. As a direct and proximate result of Defendant's joint negligence as set forth above, Ms. Jewell suffered permanent injuries. Additionally, as a result of the negligence of Defendant Vacca, Plaintiffs have suffered injuries, damages, and losses including but not limited to: diminished life expectancy; grief, pain, suffering, emotional distress/losses; loss of society, companionship and affection; loss of Ms. Jewell's past and future earnings and financial support; impairment of quality of life; past and future medical expenses; all of which will continue into the future for an amount to be determined by the jury in this case.

**Sixth Claim for Relief
(Loss of Consortium)**

85. Plaintiffs incorporate by reference each and every paragraph contained herein.
86. As a direct and proximate result of the negligence described herein, Mr. Marcus Jewell, as the husband of Roberta Jewell, suffered a loss of consortium. He is therefore entitled to an award of noneconomic and economic damages to compensate him for the loss of his wife's society, services, comfort, companionship, and support.

Prayer for Relief

WHEREFORE, Plaintiffs pray that judgment be entered in favor of Plaintiffs and against the above-named Defendants for general and special damages in an amount which will fully and fairly compensate them for their injuries and damages both past and future. Plaintiffs further pray that the Court award them prejudgment and post judgment interest as permitted by Colorado law, costs of this suit, fees as recoverable by law, and for such other and further relief as this Court may deem just and proper.

PLAINTIFFS REQUESTS A JURY OF SIX TO HEAR ALL ISSUES IN THIS CASE.

DATED: August 3, 2018

Respectfully submitted,

WAHLBERG, WOODRUFF, NIMMO & SLOANE, LLP

In accordance with C.R.C.P. 121 §1-26(9) a printed copy of this document with signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

/s/ Henry Minter
David S. Woodruff, #32585
Henry Minter, #37412
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