

FILED  
2019 FEB 15 01:36 PM  
KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE #: 19-2-04361-0 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

MATTHEW H. GORMAN,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN OF  
WASHINGTON F/K/A GROUP HEALTH  
COOPERATIVE, a Foreign Non-Profit  
Corporation, and MATTHEW L. LYONS, M.D.  
and "JANE DOE LYONS", husband and wife, and  
the marital community thereof,

Defendants.

NO.

COMPLAINT FOR DAMAGES

☐ Electing Voluntary Arbitration

☒ Declining Voluntary Arbitration

COMES NOW the Plaintiff, Matthew H. Gorman, by and through his attorney of record,  
David L. Mann, of Park Chenaour and Associates, Inc. P.S., and for cause of action against  
Defendants, alleges as follows:

**I. INCORPORATION**

1.1 By way of this reference, each paragraph contained herein is incorporated as support for  
each paragraph which follows.

**II. PARTIES, JURISDICTION, AND VENUE**

2.1 Plaintiff Matthew H. Gorman (hereinafter "Mr. Gorman" or sometimes "Matt Gorman"  
or sometimes Plaintiff) is the injured patient.

- 1 2.2 That at all times material hereto, Plaintiff was a resident of Edmonds, Snohomish County,  
2 Washington.
- 3 2.3 Defendant, Kaiser Foundation Health Plan of Washington, (hereinafter “Kaiser”), a  
4 Washington corporation, f/k/a Group Health Cooperative (hereinafter “GHC”), is a  
5 nonprofit health care provider operating at all times material hereto in King County,  
6 Washington. Defendant Kaiser provides health care services through its physicians,  
7 physician’s assistants, office staff, nurses, employees, and agents, including Matthew L.  
8 Lyons, M.D. (hereinafter “Dr. Lyons”) and is subject to liability for wrongful acts and  
9 omissions or other actionable conduct of all its agents, apparent agents, or employees,  
10 including Dr. Lyons. At all times material hereto, Dr. Lyons was an agent and/or employee  
11 of Defendant Kaiser and GHC acting within the course and scope of his employment for  
12 said Defendant. Defendant Kaiser owns and operates Kaiser Permanente Bellevue Medical  
13 Center - Surgery Center f/k/a Bellevue Ambulatory Surgical Center, located at 11511 NE  
14 10<sup>th</sup> Street, Bellevue, Washington 98004.
- 15
- 16 2.4 Defendant, Matthew L. Lyons, M.D. is a Medical Doctor licensed to practice medicine in  
17 the State of Washington and is employed by Defendant Kaiser.
- 18
- 19 2.5 That at all times material hereto, Defendant Dr. Lyons was a resident of Kirkland, King  
20 County, Washington.
- 21
- 22 2.6 That all acts or omissions of Defendants as herein complained occurred in Bellevue, King  
23 County, Washington.
- 24
- 25 2.7 Defendant Kaiser is liable to Plaintiff for negligence of their agents and employees working  
in the course or scope of their employment under the doctrine of *Respondeat Superior*.

2.8 That this court has full and proper personal jurisdiction over all of the parties hereto and over the subject matter herein.

2.9 Venue is proper in King County Superior Court pursuant to RCS 4.12.025(1) and RCW 4.12.020(3).

### **III. COMPLIANCE WITH STATUTORY LAW AND COMMON LAW SPECIFIC TO MEDICAL NEGLIGENCE LAWSUITS**

3.1 Attached as **Exhibit A** is Plaintiff's election to opt out of voluntary arbitration.

3.2 Plaintiff made written, good faith requests for mediation of a dispute related to damages for injury occurring as a result of health care prior to filing this cause of action as required by RCW 7.70.110. Said written requests for mediation were mailed to Defendant Kaiser and to Defendant Dr. Lyons via certified mail, return receipt requested on September 12, 2018. Plaintiff received executed return receipts from the United States Postal Service evidencing that Defendants received Plaintiff's written requests for mediation on or about September 17, 2018 and September 19, 2018 respectively, and agents for Defendants executed the return receipts confirming delivery and receipt of Plaintiff's requests. Compliance with RCW 7.70.110 tolls the statute of limitations provided in RCW 4.16.350 for one year. Thus, this action was commenced within the applicable statutes of limitation.

3.3 Plaintiff alleges an ongoing and continuous course of negligent treatment, culminating with the March 4, 2016 decision by Dr. Lyons to wait for further electro-diagnostic testing upon examination of initial test results of March 2, 2016. Under applicable case law, the three-year statute of limitations under RCW 4.16.350 does not begin to accrue or run until the last date of negligent acts that are part of a substantially uninterrupted course of treatment.

#### IV. FACTS

- 4.1 On Wednesday, November 11, 2015, Plaintiff Mr. Gorman, underwent a surgical revision right elbow ulnar collateral ligament reconstruction with left palmaris longus autograft, right elbow ulnar nerve neurolysis and revision submuscular transposition, and debridement, right medial epicondylitis.
- 4.2 The above-referenced surgical procedure was performed by Defendant Dr. Lyons at Defendant Kaiser's medical facility in Bellevue.
- 4.3 Following the surgical procedure, Matt Gorman awoke with a marked change in neurologic status including dense numbness in the right arm and fingers in the right hand, inability to control the erratic movement of multiple fingers on his right hand, clawing of the right hand, and extreme post-operative swelling accompanied by exquisite pain unlike any of his previous surgeries.

#### V. CAUSE OF ACTIONS

- 5.1 Medical Negligence. The care and treatment provided by Defendants and their agents did not follow the accepted standard of care required to be exercised and proximately caused injury to Plaintiff Matt Gorman.
- 5.2 As a direct and proximate result of the negligence, carelessness, and other fault of the defendants, plaintiff has suffered general and special damages, which may include but are not limited to health care expenses, loss of enjoyment of life, conscious pain, suffering, anxiety, emotional distress, humiliation, and fear.
- 5.3 Defendants violated RCW 7.70 et seq.
- 5.4 Defendants are at fault pursuant to the following violations of law and/or legal theories:
- a. Medical Negligence;

- 1 b. Informed Consent;
- 2 c. Common Law Negligence;
- 3 d. Respondeat Superior (employee/agency);
- 4 e. Corporate Negligence; and
- 5 f. Ostensible/Apparent Agency (*Adamski v. Tacoma General Hospital*, 20 Wn. App.
- 6 98, 579 P.2d 970 (Div. 2, 1978)).

## 7 VI. DAMAGES

- 8
- 9 6.1 Defendants above alleged violations of law were a proximate cause of injuries and damages
- 10 to Plaintiff.
- 11 6.2 The acts and omissions of Defendants directly and proximately caused Plaintiff Mr.
- 12 Gorman to suffer severe and permanent injuries, causing past and future general and special
- 13 damages; such damages are both mental and physical, including, pain and suffering, mental
- 14 anguish, disability, permanent disfigurement, loss of enjoyment of life, loss of earnings
- 15 and loss of earning capacity, and all other elements of damages allowed by law.

## 16 VII. PROXIMATE CAUSE AND INJURIES

- 17
- 18 7.1 The above violations of law were a proximate cause of injuries and damages to Plaintiff as
- 19 a result of Defendants' acts and omissions herein.
- 20 7.2 Plaintiff Mr. Gorman has sustained general damages, including but not limited to pain and
- 21 suffering, disability, and loss of enjoyment of life.
- 22 7.3 Plaintiff Mr. Gorman has incurred out-of-pocket expenses, including but not limited to
- 23 medical expense, income loss, and other expenses in an amount that will be proven at trial.

## 24 VIII. ATTORNEY FEES

- 25 8.1 Plaintiff is entitled to reasonable attorney fees and costs in prosecuting this action.

1                                   **IX.     DECLINATION FOR ARBITRATION OF CLAIM**

2   9.1     Plaintiff hereby **declines** to submit the above claim to arbitration under RCW Chapter  
3           7.70A

4           WHEREFORE, plaintiff prays for judgment against the above-named Defendants as  
5 follows:

- 6           a.     Economic Damages;
- 7           b.     Non-economic Damages;
- 8           c.     Prejudgment interest on liquidated sums from the time the expenses were incurred  
9                   to the time at the appropriate and proper rate of interest; and
- 10          d.     For such relief the Court finds just and reasonable.

11           Having set forth his complaints, Plaintiff requests that the Court enter judgment against  
12 Defendants, jointly and severally, for all injuries and damages sustained by the Plaintiff in the  
13 amounts to be proven in trial, together with his reasonable costs and fees incurred herein, and  
14 such further relief as justice requires.

15           DATED: February 15, 2019

16                                   **PARK CHENAUR & ASSOC., INC., P.S.**

17                                   

18                                   \_\_\_\_\_  
19 David L. Mann, WSBA #50577  
20 Attorney for Plaintiff  
21  
22  
23  
24  
25

Courthouse News Service

# EXHIBIT A



**DECLARATION OF CLIENT REGARDING VOLUNTARY ARBITRATION**

I, Matthew H. Gorman, declare under penalty of perjury under the laws of the State of Washington as follows:

1. The undersigned is the Plaintiff in the lawsuit Gorman v. Kaiser Foundation Health Plan of Washington f/k/a Group Health Cooperative and Matthew L. Lyons, M.D.;
2. I have read the attached provisions of the Voluntary Arbitration act; and
3. Our lawyers have answered our questions about the Act.

I hereby elect to:

☒ [XX] Opt out of the Voluntary Arbitration Act and try my case to a jury.

☐ [ ] Opt into the Voluntary Arbitration Act recognizing there is a \$1 million limit on any recovery.

Dated: February 15, 2019

MATTHEW H. GORMAN