

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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

GARY WEITZEL, Personal)	Case No.:
Representative of the Estate of)	
JUDITH KAY WEITZEL, plaintiff,)	COMPLAINT FOR SEXUAL ABUSE
)	
Plaintiff,)	(NOT SUBJECT TO MANDATORY
)	ARBITRATION)
vs.)	
)	JURY TRIAL DEMANDED
KAISER FOUNDATION HEALTH PLAN)	
OF THE NORTHWEST, an Oregon)	Prayer: \$750,000
corporation; NORTHWEST)	ORS 21.160(1)(c)
PERMANENTE, P.C., an Oregon)	Filing Fee: \$531
corporation,)	
)	
Defendants)	

Plaintiff demands a jury trial and alleges:

1.

Kaiser Foundation Health Plan of the Northwest (hereinafter, "Kaiser NW") is and at all times mentioned herein has been a health plan providing medical services throughout the State of Oregon, including Multnomah County.

//
//
//

1 2.

2 Northwest Permanente, P.C., (hereinafter, "Permanente") is and at all
3 times mentioned herein has been an Oregon corporation, and is an
4 organization of doctors providing medical services in the State of Oregon.

5 3.

6 Gary Weitzel is the duly-appointed personal representative of the Estate
7 of his wife, Judith Kay Weitzel.

8 **FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR SEXUAL**
9 **ABUSE, PLAINTIFF ALLEGES:**

10 4.

11 Plaintiff realleges paragraphs 1-3, herein.

12 5.

13 Judith Kay Weitzel, deceased, was at all times mentioned herein a
14 patient of defendants at the Kaiser Sunnyside Hospital, which is owned and
15 operated by defendants.

16 6.

17 On or about July 28, 2015, Judith Kay Weitzel was a patient at the
18 above-described hospital.

19 7.

20 One of her attending nurses was a male nurse whom Kaiser refused to
21 identify, despite the fact that he was involved in inserting and adjusting a Foley
22 catheter, and doing "groin checks," and that standards for medical charting

1 would require his identification. Additionally, a complaint was made by Gary
2 Weitzel shortly after he learned of the below-described abuse at a time when
3 identifying the male nurse would have been easily done.

4 8.

5 Shortly after Gary Weitzel's wife died, a Kaiser Senior Director of Patient
6 Safety wrote a letter that stated they had conducted a thorough investigation of
7 his complaint. The letter stated that they did not know who the male nurse
8 was, and that the "unknown male nurse did not act inappropriately" and
9 followed "nursing standards of care." The letter further stated that the male
10 nurse that they could not identify "was no longer employed with Kaiser." The
11 Kaiser Senior Director of Patient Safety who wrote the letter was in charge at
12 the time when Alex Woolner, who was convicted of numerous sexual crimes at
13 Kaiser over a period of time in 2016 became "no longer employed with Kaiser"
14 due to being put in jail. After Gary Weitzel retained a lawyer, Kaiser
15 represented that they now know who the male nurse was and identified the
16 nurse as Tyler Hine, R.N.

17 9.

18 The male nurse was at all times mentioned herein an employee, agent, or
19 apparent agent of defendants, and was acting within the course and scope of
20 such employment, agency, or apparent agency.

1 10.

2 At the above-described medical appointment, the male nurse, in the
3 course of providing necessary medical evaluation and treatment, examined and
4 touched Judith Kay Weitzel in her vaginal area in a manner unnecessarily
5 tactile and intrusive.

6 11.

7 Judith Kay Weitzel believed that the male nurse's training,
8 professionalism, and employment status indicated that he would treat her only
9 in a professional and medically necessary manner, and she accordingly allowed
10 him to touch her in a manner and in places where she would not ordinarily
11 allow a stranger who was not a medical professional to do.

12 12.

13 The male nurse knew that Judith Kay Weitzel trusted him and exploited
14 the opportunity that arose from his training, status, employment, and agency
15 in order to touch plaintiff in places and ways, including in the vaginal area, in
16 which she would not ordinarily allow a stranger to touch her, and part of the
17 motivation for his acts at least initially was to do the professional work that he
18 was hired to do, and so was in service to the defendants, and part of his
19 motivation was to gain Mrs. Weitzel's trust and control of her body in order
20 that he might violate her sexually, and to do so for his own personal
21 gratification, and all acts of sexual violation described herein were an
22 outgrowth of and the result of acts of the kind that the male nurse was hired to

1 perform, and all acts prior to the sexual violation were motivated, at least in
2 part, by a desire to serve the corporate defendants in a professional manner.

3 13.

4 The above-described touching was intended to be in violation of plaintiff's
5 right to be free from unlawful sexual touching, was intended to be offensive,
6 and was perceived as offensive, and consent was obtained by the exploitation of
7 plaintiff's status.

8 14.

9 As a result of the above-described battery, Judith Kay Weitzel suffered,
10 and continued to suffer from feelings of personal violation, humiliation,
11 embarrassment, disgust, resentment, anger, a sense of vulnerability, lack of
12 trust and intrusive thoughts, all to her noneconomic damages in the amount of
13 \$750,000.

14 15.

15 All acts of the male nurse described herein created liability for the
16 defendants, and each of them, by *respondeat superior*.

17 **SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS FOR FIDUCIARY**
18 **DUTY, PLAINTIFFS ALLEGE:**

19 16.

20 Plaintiff realleges and incorporates by reference paragraphs 1 – 3, 5-11,
21 above.

1 17.

2 At all times mentioned herein, defendants Kaiser and actual or apparent
3 agents and employees of Kaiser were acting in the course and scope of their
4 agency and employment and had a fiduciary duty to plaintiff who had placed
5 special trust and confidence in them to protect and oversee her while she was
6 in their custody.

7 18.

8 While Judith Weitzel was vulnerable and very ill in a Kaiser hospital
9 room, defendants had a fiduciary duty to protect her.

10 19.

11 Judith Weitzel was aware her husband had complained about her sexual
12 assault, and aware Kaiser had not responded to her husband's Complaint, and
13 had subjected her to extreme fear that her assailant would re-enter her room.

14 20.

15 Defendant and the agents and employees who had been present while
16 plaintiff was vulnerable and/or unconscious had a fiduciary duty to disclose to
17 the plaintiff any and all observations they had made, and information that they
18 had learned, or could learn about what happened. Judith Weitzel died without
19 Kaiser having met its duty.

20 21.

21 As a result of the above-described breach of fiduciary duty, plaintiff
22 suffered from severe emotional distress, feelings of great uncertainty, and a
23

1 sense of betrayal and abandonment, all to her noneconomic damages in an
2 amount to be proven at trial.

3
4 WHEREFORE, plaintiff prays for judgment against defendants in the
5 amount of \$750,000 in noneconomic damages, and for her necessary costs and
6 disbursements incurred herein.

7 Dated: September 21, 2017.

8 */s/ Mark McDougal*

9 _____
Gregory Kafoury, OSB #741663

Kafoury@kafourymcdougal.com

10 Mark McDougal, OSB #890869

mcdougal@kafourymcdougal.com

11 Jason Kafoury, OSB #091200

jkafoury@kafourymcdougal.com

12 Attorneys for Plaintiff

13
14 Plaintiff hereby provides notice of his intent to amend to include a claim
15 for punitive damages.