

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 COUNTY

A.B.,)	Case No.: 15CV05508
)	
Plaintiff,)	COMPLAINT FOR NEGLIGENCE,
)	BATTERY, IIED, BREACH OF
vs.)	FIDUCIARY DUTY
)	
THE OREGON CLINIC, an Oregon)	(NOT SUBJECT TO MANDATORY
professional corporation,)	ARBITRATION)
)	
Defendant)	PRAYER: Within the parameters of
)	ORS 21.160(1)(d)
)	JURY TRIAL DEMANDED

Plaintiff demands a jury trial and alleges:

1.

A.B. is a sixty year old, married mother of three who has degrees from City University of New York and Columbia University, and has held volunteer leadership positions in two internationally-known non-profit organizations.

2.

The Oregon Clinic, P.C., is an Oregon domestic professional corporation which is and at all times mentioned herein has been in the business of providing medical services.

1 3.

2 Jeffrey Weprin, MD, is and at all times mentioned herein has been a
3 medical doctor and specialist in gastroenterology, and operator of a specialty
4 medical clinic providing colonoscopy procedures to members of the public. At
5 all times mentioned herein, Dr. Weprin has been an employee of The Oregon
6 Clinic, P.C.

7 4.

8 Scott Jolliffe is and at all times mentioned herein has been a certified
9 registered nurse anesthetist (CRNA) working under Dr. Jeffrey Weprin, and an
10 employee of The Oregon Clinic, P.C.

11 5.

12 Paul Still is and at all times mentioned herein has been a medical
13 assistant working under Dr. Jeffrey Weprin, and an employee of The Oregon
14 Clinic, P.C.

15 6.

16 Norah Jensen is and at all times mentioned herein has been a registered
17 nurse (RN) working under Dr. Jeffrey Weprin, and an employee of The Oregon
18 Clinic, P.C.

19 7.

20 On or about April 21, 2014, plaintiff A.B. underwent a colonoscopy at
21 The Oregon Clinic. It was a procedure she had undergone uneventfully on
22 previous occasions. The attending physician was Jeffrey Weprin, MD,

1 attending or providing recovery services were Scott Jolliffe, Paul Still, and
2 Norah Jensen.

3 8.

4 Between the time that plaintiff was anesthetized by Scott Jolliffe, CRNA,
5 in the operating room, and the time that plaintiff regained consciousness in the
6 recovery room, plaintiff A.B. was sexually assaulted.

7 9.

8 Plaintiff entrusted herself to the care of Jeffrey Weprin, M.D.; Scott
9 Jolliffe, CRNA; Paul Still, medical assistant; and Norah Jensen, RN; based
10 upon their status, employment, and training, and each of those medical
11 providers was aware plaintiff was relying upon them out of trust for their
12 status, employment, and training, and one or more of these medical providers
13 sexually assaulted plaintiff, and all acts which led to the sexual abuse were
14 motivated, at least partly, by a purpose to serve the corporate defendant, such
15 acts were of a kind which each of the medical providers was hired to perform,
16 and all acts of sexual abuse described herein were the result of the status,
17 employment, training, and reliance therein of these medical providers by
18 plaintiff, and all acts of sexual abuse were the result of acts which were within
19 the scope of the employment of those engaging in the abuse.

20 10.

21 All medical providers mentioned herein were at all times mentioned
22 herein acting as employees, agents, or apparent agents of The Oregon Clinic,
23

1 and all acts described herein were within the course of such employment and
2 the scope of such agency and apparent agency.

3 11.

4 As a result of the above-described sexual assault and abuse, plaintiff
5 suffered bruising and abrasions on the exterior and the interior of her vaginal
6 area, and the cervix, and suffered, continues to suffer, and may permanently
7 suffer from a great sense of personal violation, humiliation, fear, and extreme
8 post-traumatic stress, aggravation of stress, and social isolation, all to her
9 noneconomic damages within the parameters of ORS 21.160(1)(d).

10 FOR A FIRST CLAIM FOR RELIEF AGAINST THE OREGON CLINIC FOR
11 NEGLIGENCE, plaintiff alleges:

12 12.

13 Plaintiff realleges and incorporates by reference paragraphs 1-11, above.

14 13.

15 A cause of all injury alleged herein was the negligence of defendant The
16 Oregon Clinic, by and through its agents, apparent agents, and employees as
17 described herein in failing to provide adequate security to plaintiff A.B. when
18 she was unconscious or in a severely diminished state of consciousness,
19 helpless, completely within the control of such employees, and accordingly
20 vulnerable to being sexually abused.

1 FOR A SECOND CLAIM FOR RELIEF AGAINST THE OREGON CLINIC
2 FOR BATTERY, plaintiff alleges:

3 14.

4 Plaintiff realleges and incorporates by reference paragraphs 1-11, above.

5 15.

6 A cause of all injuries described herein was the deliberate sexual battery
7 of plaintiff by one or more of the above employees, agents, or apparent agents
8 of defendant.

9 FOR A THIRD CLAIM FOR RELIEF AGAINST THE OREGON CLINIC FOR
10 INTENTIONAL INFLICTION OF EMTIONAL DISTRESS, plaintiff alleges:

11 16.

12 Plaintiff realleges and incorporates by reference paragraphs 1-10, above.

13 17.

14 Immediately upon waking from anesthesia, plaintiff A.B. insisted to
15 the above-described medical providers that something had gone very wrong
16 while she was unconscious, and that she had somehow been harmed, and she
17 was visibly tearful, afraid, and emotionally upset.

18 18.

19 Days later, independent medical providers observed the above-described
20 physical evidence of such sexual violation, and diagnosed plaintiff with having
21 been sexually battered or raped.

1 19.

2 High officials of The Oregon Clinic were thereupon notified that a
3 predatory sexual assault on plaintiff may have taken place at the specialty
4 medical clinic operated by Jeffrey Weprin, MD, at The Oregon Clinic, and knew
5 the risk that such predatory conduct may have happened in the past, and the
6 risk that this presented to future patients.

7 20.

8 Agents and employees of The Oregon Clinic, including those specifically
9 named herein, knew that uncertainty about just what had been done to A.B.,
10 how it was done, and by whom, was a source of great distress to A.B., and that
11 an investigation of such facts could greatly alleviate such suffering, and that
12 failing or refusing to conduct a reasonable inquiry into such matters would
13 become known to A.B., and would be substantially certain to cause the plaintiff
14 severe and enduring emotional distress. Nonetheless, The Oregon Clinic, by
15 and through its agents and employees, including those named herein, failed to
16 conduct such an investigation.

17 21.

18 A part of any such reasonable investigation as described above would
19 include cooperation with any police investigation of this matter, and such an
20 investigation was initiated by detectives with knowledge and experience in
21 investigating sexual crimes, nonetheless:

22 a. Scott Jolliffe, CRNA, refused to be interviewed by police
23 investigators;

1 b. Paul Still, medical assistant refused to be interviewed by police
2 investigators;

3 c. Norah Jensen, RN, refused to be interviewed by police
4 investigators; and

5 d. Jeffrey Weprin, MD, provided only limited information to police in
6 the presence of his attorney, and failed to participate in the police investigation
7 thereafter.

8 22.

9 As a result of The Oregon Clinic's failures and refusals to reasonably
10 investigate or to provide all reasonable assistance to outside police
11 investigators as described above, plaintiff suffered, continues to suffer, and
12 may permanently suffer from further severe emotional distress, feelings of great
13 uncertainty, and a sense of betrayal and abandonment, all to her noneconomic
14 damages within the parameters of ORS 21.160(1)(d).

15 23.

16 The conduct of The Oregon Clinic as described herein constitutes an
17 extraordinary transgression of the bounds of socially-tolerable behavior
18 towards the plaintiff as well as past and future patients of the defendant.

19 FOR A FOURTH CLAIM FOR RELIEF AGAINST THE OREGON CLINIC
20 FOR BREACH OF FIDUCIARY DUTY, plaintiff alleges:

21 24.

22 Plaintiff realleges and incorporates by reference paragraphs 1-8 and 10,
23 above.

1 25.

2 At all times mentioned herein The Oregon Clinic and actual or apparent
3 agents and employees of the Oregon clinic acting in the course and scope of
4 their agency and employment 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 rendered vulnerable and unconscious by them in their custody.

7 26.

8 While plaintiff was unconscious and vulnerable defendant had a
9 fiduciary duty to protect plaintiff.

10 27.

11 As a result of defendant's breach of that duty, plaintiff suffered bruising
12 and abrasions on the exterior and the interior of her vaginal area, and the
13 cervix, and suffered, continues to suffer, and may permanently suffer from a
14 great sense of personal violation, humiliation, fear, and severe post-traumatic
15 stress, aggravation of stress, and social isolation, all to her noneconomic
16 damages within the parameters of ORS 21.160(1)(d).

17 28.

18 After plaintiff awoke from unconsciousness, thereafter and to the
19 present, plaintiff had and has a strong need to understand what had happened
20 to her while she had been unconscious. Defendant and the agents and
21 employees who had been present while plaintiff was vulnerable and or
22 unconscious had a fiduciary duty to disclose to the plaintiff any and all
23 observations they had made, and information that they had learned, or could

1 learn about what had happened. Defendant also breached its fiduciary duty by
2 failing to do so.

3 29.

4 As a result of the above-described breach of fiduciary duty, plaintiff
5 suffered, continues to suffer, and may permanently suffer from further severe
6 emotional distress, feelings of great uncertainty, and a sense of betrayal and
7 abandonment, all to her noneconomic damages within the parameters of ORS
8 21.160(1)(d).

9 WHEREFORE, plaintiff prays for judgment against defendant The Oregon
10 Clinic for noneconomic damages within the parameters of ORS 21.160(1)(d),
11 and for her costs and disbursements necessarily incurred herein.

12 Dated: March 10, 2015.

13
14 _____
15 Gregory Kafoury, OSB #741663
16 Kafoury@kafourymcdougal.com
17 Mark McDougal, OSB #890869
18 mcdougal@kafourymcdougal.com
19 Jason Kafoury, OSB #091200
20 jkafoury@kafourymcdougal.com
21 Attorneys for Plaintiff

22 Plaintiff hereby provides notice of her intent to amend to include a claim
23 for punitive damages.