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8 IN THE UNITED STATE DISTRICT COURT

9 EASTERN DISTRICT OF WASHINGTON

10
11 SPOKANE

12 CYDE MARIE ESTES,

13 Plaintiff,

14 v.

15 PROVIDENCE HEALTH & SERVICES
- WASHINGTON, d/b/a PROVIDENCE
16 ST. MARY MEDICAL CENTER, and
17 d/b/a PROVIDENCE MEDICAL
GROUP SOUTHEAST WASHINGTON
18 NEUROSURGERY, and JASON A.
DREYER, D.O., and JANE DOE
19 DREYER, husband and wife and the
marital community thereof,
20

21 Defendants.

) Case No.

) COMPLAINT FOR DAMAGE
(MEDICAL NEGLIGENCE)

22 COMES NOW Plaintiff, CYDE MARIE ESTES, by and through her
23 attorney of record, ROBERT BEATTY-WALTERS, and for her Complaint hereby
24 alleges as follows:

25 **I. INTRODUCTION**

26 1.1 This is a medical malpractice action for damages caused by an

unnecessary and negligent surgery performed by JASON A. DREYER, D.O. on March 21, 2018, at Defendant PROVIDENCE HEALTH & SERVICES - WASHINGTON, d/b/a PROVIDENCE ST. MARY MEDICAL CENTER, which caused severe permanent neurological injury to Plaintiff's lower spine, resulting in failed back surgery syndrome, with severe pain, disability, and loss of mobility, among other injuries as alleged herein.

II. PARTIES

2.1. Plaintiff, CYDE MARIE ESTES, re-alleges paragraph 1.1 as though fully set forth herein.

2.2 Plaintiff, CYDE MARIE ESTES, was at all times relevant to this cause of action over the age of majority and residing in Heppner, Oregon.

2.3. Defendant, PROVIDENCE HEALTH & SERVICES –WASHINGTON (“PROVIDENCE”) is a Washington State nonprofit corporation located in Renton, Washington, and regularly conducting business in Walla Walla County, Washington.

2.4. PROVIDENCE HEALTH & SERVICES - WASHINGTON did business as PROVIDENCE ST. MARY MEDICAL CENTER and PROVIDENCE MEDICAL GROUP SOUTHEAST WASHINGTON NEUROSURGERY. Defendant PROVIDENCE HEALTH & SERVICES - WASHINGTON, d/b/a PROVIDENCE ST. MARY MEDICAL CENTER, and d/b/a PROVIDENCE MEDICAL GROUP SOUTHEAST WASHINGTON NEUROSURGERY are referred to hereinafter collectively and individually as “Defendant PROVIDENCE.”

2.5. Defendant, JASON A. DREYER, D.O. (hereinafter “Defendant DREYER”), was at all times material, an osteopathic physician and surgeon licensed to practice in the state of Washington, specializing in neurosurgery and

engaged in the provision of medical and surgical care to Plaintiff CYDE MARIE ESTES, as an agent and/or employee of Defendant PROVIDENCE. At all times relevant hereto, Defendant DREYER held himself out to be a medical and surgical care provider whose services were offered to the public for compensation. It is unknown to Plaintiff if Defendant DREYER is married; Plaintiff alleges that if he is married, all acts or omissions committed by Defendant DREYER were done both for, and on behalf of the community composed of JASON A. DREYER, D.O. and his wife, JANE DOE DREYER. Based on information and belief he is a citizen of Washington. Defendants JASON A. DREYER, D.O. and his wife, JANE DOE DREYER, are hereinafter referred to as “Defendant DREYER.”

III. JURISDICTION/VENUE

3.1. Plaintiff CYDE MARIE ESTES re-alleges paragraphs 1.1 through 2.5 as though fully set forth herein.

3.2 This court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

3.3. Venue is proper in this court pursuant to 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to the claims alleged in the Complaint occurred in the Eastern District of Washington, specifically the Spokane Division; and, one or more of the Defendants resides in the Eastern District of Washington Court.

IV. FACTS

4.1 Plaintiff CYDE MARIE ESTES re-alleges paragraphs 1.1 through 3.3 as though fully set forth herein.

4.2 Plaintiff CYDE MARIE ESTES underwent lower spine surgery at her

1 L-5 to S-1 in 2007 for radiculopathy. Between 2007 and 2018, Plaintiff had
 2 residual radicular symptoms down her left leg, and occasionally in her right leg.
 3 In 2011, Plaintiff CYDE MARIE ESTES had an MRI of her lower spine, which
 4 showed age-related changes of the vertebrae and discs of her spine at L-3 to L-4,
 5 and L-4 to L-5, and some scarring at the site of her 2007 surgery at L-5 to S-1. On
 6 June 23, 2016, Plaintiff CYDE MARIE ESTES again underwent an MRI of her
 7 lower spine, which showed findings similar to but improved from those from her
 8 2011 MRI. However, she continued to have pain in her lower back with activities
 9 such as gardening, bending, and standing. Plaintiff CYDE MARIE ESTES sought
 10 care with Defendant DREYER in the fall of 2017, for worsening low back pain.
 11 Defendant DREYER recommended extensive surgery to Plaintiff's lumbar spine
 12 from L-2 to S-1, including removal of scar tissue from her 2007 surgery at L-5 to
 13 S-1, and fusion of her vertebrae with instrumentation from L-2 to S-1, using both
 14 anterior, lateral, and posterior approaches. Surgery was planned for March 21,
 15 2018.

16 4.3 On or about March 21, 2018, Plaintiff CYDE MARIE ESTES
 17 underwent an extensive surgical procedure on her lower spine at PROVIDENCE
 18 ST. MARY MEDICAL CENTER in Walla Walla, Washington, which was
 19 reported and billed to Plaintiff and her health insurance companies to include the
 20 following:

- 21 1. Anterior lumbar interbody arthrodesis L4-5 and L5-S1, anterior
- 22 approach.
- 23 2. Anterior lumbar interbody arthrodesis L2-3, L3-4, lateral approach.
- 24 3. Anterior plate and screws L4-5.
- 25 4. Separate anterior plate and screws L5-S1.
- 26 5. Posterolateral arthrodesis L2-3, L3-4, L4-5, L5-S1.

1 6. Posterior spinal instrumentation from L2-S1.

2 7. PEEK interbody spacer L2-3, L3-4, L4-5, L5-S1.

3 8. Laminectomies L3, L4, L5, S1 for the purpose of decompression, and,

4 9. Coregistration for spinal navigation.

5 4.4 The surgery was performed by Defendant DREYER, using anterior,
6 lateral, and posterior approaches to Plaintiff's lower spine, with the assistance of
7 surgeon Frederick I. Field, M.D., for access to the anterior lumbar spine. The
8 surgery took more than 9 hours to complete.

9 4.5 Although this surgery was performed on March 21, 2018, no pre-
10 operative MRI had been done on Plaintiff's lumbar spine since June 23, 2016.

11 4.6 Defendant PROVIDENCE and the physicians involved in this
12 surgery, including Defendant DREYER, billed Plaintiff and her medical insurance
13 companies Regence Blue Cross Blue Shield of Oregon and/or Moda Health
14 Connexus over \$300,000 for this surgical procedure and hospitalization, including
15 over \$100,000 for the cost of the medical hardware devices implanted into
16 Plaintiff's lumbar spine from L-2 through S-1. In addition, Defendant DREYER
17 and Defendant PROVIDENCE billed the Plaintiff and her medical insurance
18 companies for procedures that were not actually performed on Plaintiff's spine.

19 4.7 During this surgery, Defendant DREYER negligently caused injury to
20 Plaintiff's spine and spinal nerves, including her arachnoid nerve center, caused
21 injury to Plaintiff's spinal dura, and unnecessarily fused her lumbar vertebrae from
22 L-2 through S-1, using unnecessary and excessive medical device instrumentation,
23 causing permanent injury to Plaintiff's lower spine.

24 4.8 Defendant PROVIDENCE and Defendant DREYER both profited
25 from Defendant DREYER'S unnecessary and excessive surgery performed on the
26 Plaintiff and billed to the Plaintiff and her health insurance companies. Defendant

1 PROVIDENCE utilized a compensation system for its employed surgeons which
2 created incentives for surgeons, including Defendant DREYER, to over treat and
3 over bill their patients, when such treatment was not medically necessary.

4 4.9 Experts have concluded that this surgery was not medically necessary
5 and excessive, and caused unnecessary and permanent harm to the Plaintiff.

6 4.10 Defendant DREYER, on information and belief, was at all material
7 times an employee of Defendant PROVIDENCE, and thus the actual agent of
8 Defendant PROVIDENCE. Defendant DREYER committed these negligent acts
9 during the scope of his employment with and for the benefit of Defendant
10 PROVIDENCE and while performing duties as an agent of PROVIDENCE.

11 4.11 As a direct and proximate result of Defendant DREYER'S actions or
12 omissions which constituted negligence, Plaintiff CYDE MARIE ESTES suffered
13 injuries and damages in an amount and to an extent to be set forth fully at trial.

14
15 **V.**

16 **CAUSE OF ACTION FOR NEGLIGENCE VS**
17 **PROVIDENCE HEALTH & SERVICES-WASHINGTON,**
18 **d/b/a PROVIDENCE ST. MARY MEDICAL CENTER, and d/b/a/**
19 **PROVIDENCE MEDICAL GROUP SOUTHEAST WASHINGTON**
20 **NEUROSURGERY (DEFENDANT PROVIDENCE)**

21 5.1 Plaintiff CYDE MARIE ESTES re-alleges paragraphs 1.1 through
22 4.11 as though fully set forth herein.

23 5.2 Defendant PROVIDENCE owed Plaintiff CYDE MARIE ESTES a
24 nondelegable duty of care to assure that she received safe and appropriate surgical
25 care, performed in a safe and reasonable manner, and to adopt written policies and
26 procedures specific to surgical services, and to provide for medical staff who were

1 qualified, trained, and supervised subject to the medical direction of Defendant
2 PROVIDENCE.

3 5.3 Defendant PROVIDENCE had a duty to select and retain only
4 competent physicians and surgeons; a duty to formulate, adopt and enforce
5 adequate rules and policies to ensure quality care for their patients, including a
6 duty to maintain a coordinated quality improvement program for the improvement
7 of the quality of health care services rendered to patients and the identification and
8 prevention of medical malpractice; a duty to supervise its members and employees
9 to assure that they adhere to the relevant standard of patient care, including a duty
10 to create quality improvement committees to monitor and review the performance
11 of their medical staff; and, a duty to maintain and continuously collect information
12 concerning the hospital's experience with negative health care outcomes and
13 incidents injurious to patients as they relate to specific physicians and surgeons.

14 5.4 Defendant PROVIDENCE breached the afore listed duties by,
15 without limitation:

16 5.4.1 Failing to formulate, adopt and enforce adequate rules,
17 policies; and/or adopting policing or practices which in
18 themselves created an unnecessary and unreasonable risk of
19 harm to Plaintiff CYDE MARIE ESTES;

20 5.4.2 Failing to ensure proper oversight of employees or agents to
21 assure that Plaintiff CYDE MARIE ESTES'S care was
22 appropriate and within the relevant standard of care;

23 5.4.3 Defendant PROVIDENCE, negligently failed to monitor,
24 proctor, or control, the surgical practice of Defendant
25 DREYER when Defendant PROVIDENCE knew or should
26 have known that such monitoring, proctoring, or control was

1 necessary because of results of prior surgical cases of
2 Defendant DREYER;

3 5.4.4 Defendant PROVIDENCE, negligently failed to restrict or
4 terminate Defendant DREYER'S surgical privileges and/or his
5 employment prior to March 21, 2018, when Defendant
6 PROVIDENCE knew or should have known that Defendant
7 DREYER had performed other medically unnecessary and
8 excessive neurosurgical procedures including unnecessary
9 spinal fusions, and used unnecessary instrumentation and
10 medical hardware for the purpose earning excessive profits;

11 5.4.5 In failing to restrict or terminate Defendant DREYER'S
12 surgical privileges and/or his employment prior to March 21,
13 2018, when Defendant PROVIDENCE knew or should have
14 known that Defendant DREYER had caused other patient
15 injuries in connection with neurosurgical procedures, including
16 unnecessary spinal fusions, and the use of unnecessary
17 instrumentation and medical hardware;

18 5.4.6 In failing to have properly-trained and objective surgeons
19 systematically reviewing and scrutinizing Defendant
20 DREYER'S surgeries performed at Defendant PROVIDENCE
21 prior to March 21, 2018, for medical necessity and standard of
22 care or other harm;

23 5.4.7 In failing to have in place proper, effective and consistent
24 quality assurance review processes and procedures that were
25 unbiased and based upon reviews by objective physicians and
26 surgeons trained in peer review, as required by law, and the

1 standard of care for hospitals; and,

2 5.4.8 In deviating below the standard of care for a Hospital by failing
3 to adequately monitor, proctor or control, neurosurgical cases
4 performed by Defendant DREYER to assure his surgical care
5 was medically necessary and not done for the purposes of
6 earning excessive profit.

7 5.5 In respect to the above, PROVIDENCE, individually, and by and
8 through the acts and omissions of its agents, representatives, employees and/or
9 ostensible agents, failed to exercise the degree of skill and learning of a reasonably
10 prudent hospital providing medical and neurosurgical care, including through
11 employee or agent neurosurgeons performing in the same or similar
12 circumstances; and, the failure to exercise such skill, care and learning was a
13 proximate cause of the injuries and damages sustained by Plaintiff CYDE MARIE
14 ESTES, as set forth herein above. PROVIDENCE is directly liable to the named
15 Plaintiff under the corporate negligence doctrine.

16 5.6 Additionally, PROVIDENCE is vicariously liable for the negligence
17 of its employees and agents, including Defendant DREYER, and subject to the
18 doctrine of respondeat superior. In this regard, PROVIDENCE is liable to Plaintiff
19 for the following breaches of the standard of care for lumbar spine surgery by its
20 employees or agents (without limitation):

21 5.6.1 Failing to order and review an MRI of Plaintiff's lumbar spine
22 before performing surgery on March 21, 2018;

23 5.6.2 In performing surgery on Plaintiff's lumbar spine when such
24 surgery was not medically necessary;

25 5.6.3 In negligently recommending and using excessive medical
26 device hardware instrumentation on Plaintiff's spine when such

1 instrumentation was not medically necessary;

2 5.6.4 In recommending and then removing scar tissue from
3 Plaintiff's previous L-5 to S-1, spinal surgery; and,

4 5.6.5 In using substandard surgical technique in attempting to
5 remove scar tissue from Plaintiff's previous L-5 to S-1, spinal
6 surgery causing a tear in Plaintiff's spinal dura, resulting in a
7 permanent pseudomeningocele, and other permanent injuries to
8 Plaintiff's spinal nerves.

9 5.7 The breaches in the standard of care by PROVIDENCE employees
10 and/or agents were a proximate cause of the injuries and damages sustained by
11 Plaintiff CYDE MARIE ESTES, as set forth herein above.

12 **VI.**

13 **CAUSE OF ACTION FOR NEGLIGENCE**

14 **VS JASON A. DREYER, D.O.**

15 6.1 Plaintiff re-alleges paragraphs 1.1 through 5.7 as though fully set
16 forth herein.

17 6.2 In performing his duties as a neurosurgeon, Defendant DREYER had
18 a duty of care to act with the degree of skill and learning of a reasonably prudent
19 neurosurgeon performing in the same or similar circumstances.

20 6.3 Defendant DREYER breached his duty of care and was negligent by,
21 without limitation: failing to follow the standard of care for reasonably prudent
22 neurosurgeons performing in the same or similar circumstances during the course
23 and scope of his pre-surgical, surgical, and follow-up care of Plaintiff CYDE
24 MARIE ESTES as follows:

25 6.3.1 Failing to order and review an MRI of Plaintiff's lumbar spine
26 before performing surgery on March 21, 2018;

6.3.2 In performing surgery on Plaintiff's lumbar spine when such surgery was not medically necessary;

6.3.3 In negligently recommending and using excessive medical device hardware instrumentation on Plaintiff's spine when such instrumentation was not medically necessary;

6.3.4 In recommending the removal of and then attempting to remove scar tissue from Plaintiff's previous L-5 to S-1, spinal surgery; and,

6.3.5 In using substandard surgical technique in attempting to remove scar tissue from Plaintiff's previous L-5 to S-1, spinal surgery causing a tear in Plaintiff's spinal dura, resulting in a permanent pseudomeningocele, and other permanent injuries to Plaintiff's spinal nerves.

6.4 Defendant DREYER committed these negligent acts during the scope of his employment with and for Defendant PROVIDENCE and while performing duties as an actual agent of PROVIDENCE.

6.5 As a direct and proximate result of Defendant DREYER'S actions or omissions which constituted negligence, Plaintiff CYDE MARIE ESTES suffered injuries and damages in an amount and to an extent to be set forth fully at trial. Defendant DREYER is now liable to Plaintiff for his breach of the duty of care as set forth herein above.

VII. ACTING IN CONCERT

7.1 Plaintiff re-alleges paragraphs 1.1 through 6.5 as though fully set forth herein.

7.2 At all times relevant hereto, the named Defendants, as well as their involved employees or agents, were acting in concert. As set forth herein above,

1 all acts or omissions of the Defendants, their employees or agents in respect to the
2 negligent care of Plaintiff CYDE MARIE ESTES and related injuries and damages
3 are indivisible. The Defendants are jointly and severally liable for the damages
4 caused by the negligent care of Plaintiff CYDE MARIE ESTES.

5 **VIII. PRAYER FOR RELIEF**

6 8.1 Plaintiff re-alleges paragraphs 1.1 through 7.2 as though fully set
7 forth herein.

8 8.2 NOW WHEREFORE, Plaintiff prays for judgment against the
9 above-named Defendants as follows:

10 8.2.1 For an award of special damages in an amount to be proven at
11 trial;

12 8.2.2 For an award of general damages in an amount to be proven at
13 trial;

14 8.2.3 For an award of attorney's fees and costs if available;

15 8.2.4 For an award of statutory, exemplary, or punitive damages if
16 available;

17 8.2.5 For an award of prejudgment interest;

18 8.2.6 For such other and further relief, as the court deems just and
19 equitable.

20 8.3 Plaintiff reserves the right to amend the Complaint pursuant to the
21 Court rules.

22 **Demand for trial by Jury:** Plaintiff hereby demands that this case be tried

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1 to a jury panel of 12 jurors with a number of alternates as agreed by the parties and
2 ordered by the Court.

3 DATED this 19th day of March, 2021.

4 LAW OFFICE OF ROBERT BEATTY-WALTERS

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