

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

GARY KEYS,

Plaintiff,

v.

SALEM HEALTH,

Defendant.

CASE NO. 18CV49299

COMPLAINT

**(Negligence, Negligent Infliction of
Emotional Distress)**

Amount Prayed for: \$267,705.00

Filing Fee: \$560 (ORS 21.160(1)(c))

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION
DEMAND FOR JURY TRIAL

1 Plaintiff alleges:

2 **Allegations Common to all Claims for Relief**

3 1.

4 At all times herein mentioned, plaintiff brings this action against defendant for personal
5 injuries caused by the defendant's negligence in Marion County, Oregon.

6 2.

7 At all times mentioned, defendant Salem Health was an Oregon corporation licensed to
8 do business in the state of Oregon and engaged in the business of operating a hospital facility in
9 Salem, Marion County, Oregon ("Salem Health" or "defendant"). Defendant Salem Health holds

1 itself out to the public as providing medical services, including sleep studies. Defendant Salem
2 Health employs nurses, polysomnographic technologists, physicians and other health care
3 professionals and is vicariously liable for their negligent actions to the extent those actions occur
4 during the course and scope of their duties for defendant Salem Health. Defendant Salem Health
5 is vicariously liable for the negligent actions of its apparent and/or actual agents.

6 **3.**

7 Defendant Salem Health is obligated to have policies, procedures or protocols in place to
8 make sure that appropriate care is provided to its patients by its employees and agents, including
9 its sonographers.

10 **4.**

11 At all times mentioned, the nursing staff, registered polysomnographic technologists,
12 physicians and other individuals who provided or who were involved in the treatment and care of
13 plaintiff were acting within the course and scope of their employment or agency with defendant
14 Salem Health, and with apparent or actual agency and authority.

15 **5.**

16 At all times mentioned, Donovan McKee, and Schuyler Thyre MD were employed by
17 Salem Health as polysomnographic technologists and/or medical providers and were actual or
18 apparent agents of defendant Salem Health, and were acting in the course and scope of their
19 employment or agency and with the actual or apparent authority of defendant Salem Health.

20 **6.**

21 On August 3, 2017, at about 8:00 p.m., Mr. Keys presented to Salem Health for a
22 previously scheduled sleep study. He had received a voicemail in which he was told to bring
23 any prescribed sleep aid with him to the appointment.

1 Plaintiff brought with him Ambien that had been prescribed by his primary physician.

2 **7.**

3 After being checked in, at approximately 9:50 PM, the Salem Health polysomnographic
4 technologist administered two Ambien to Mr. Keys, witnessed him take the Ambien, and placed
5 him in bed number five for the duration of the sleep study.

6 **8.**

7 Once asleep, Mr. Keys unconsciously began to remove the mask and his leads. He woke
8 up a few times and acted confused and unsure about where he was. The polysomnographic
9 technologist thereafter terminated the sleep study.

10 **9.**

11 Mr. Keys was in a daze, incoherent, stumbling and confused about where he was. He
12 stumbled several times when attempting to put on his shoes. He was visibly off balance and out
13 of focus.

14 **10.**

15 Mr. Keys was clearly under the influence of Ambien and sleep walking when Salem
16 Health's polysomnographic technologist made him leave the building after midnight.
17 Nonetheless, Salem Health's polysomnographic technologist helped him out of the building,
18 noting that Mr. Keys was off balance on his way to his car.

19 **11.**

20 On August 4, 2017, at about 1:30 AM, plaintiff crashed his vehicle going southbound on
21 I5 at about milepost 253. His vehicle was totaled. He sustained lasting injury. He was arrested
22 for driving under the influence of Ambien.

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12.

As a result of defendant’s negligence, Mr. Keys sustained injuries and damages as more particularly alleged below.

FIRST CLAIM FOR RELIEF

(Count One: Negligence)

13.

Plaintiff realleges paragraphs 1 through 12 as though set forth fully herein.

14.

Defendant was negligent in one or more of the following particulars, each of which created a foreseeable and unreasonable risk of harm to plaintiff:

- a) In failing to exercise due care in the hiring and retention of its agents and employees;
- b) In failing to properly educate its agents and employees with respect to the side effects of medications delivered to plaintiff;
- c) In allowing its agents and employees to release patients in an intoxicated and/or sleep like state;
- d) In failing to exercise ordinary care in supervising its agents and employees conduct;
- e) In failing to prevent the foreseeable misconduct of its agents and employees from causing harm to others including plaintiffs as alleged herein;
- f) In causing foreseeable and unreasonable injury to plaintiff; and
- g) In acting in a manner that was dangerous under the circumstances.

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15.

Defendant's negligence was a substantial factor in causing the accident and causing plaintiff's injuries. As a result of defendant's negligence, plaintiff has suffered the following injuries:

- a) Cervical strains and sprains;
- b) Lumber strains and sprains;
- c) Thoracic strains and sprains;
- d) Radiculopathy;
- e) Headaches;
- f) Nightmares;
- g) PTSD;
- h) Emotional Harm;
- i) Reputational Harm
- j) Susceptibility to re-injury to these same injured areas;
- k) Susceptibility to degenerative process to these same injured areas; and
- l) Physical pain and suffering.

16.

As a further result of his injuries, plaintiff has incurred medical and related expenses in the approximate amount of \$10,000.00.

17.

As a further result of the accident, plaintiff has incurred vehicle damage in the amount of \$7,705.00.

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18.

As a further result of his injuries, plaintiff has, and will continue to suffer, physical and emotional pain and reputational harm. His right to enjoy life has been diminished because of his inability to engage in his normal activities without pain. Plaintiff is entitled to an award of non-economic damages in an amount the jurors find to be appropriate, but not to exceed \$250,000.00.

19.

Plaintiff is further entitled to recover pre-judgment and post-judgment interest at the legal rate of 9% simple per-annum from the date defendant was provided notice of treatment, until paid. Moreover, as plaintiff's damages are ongoing, said amounts are subject to amendment before trial to conform to the evidence.

(Count Two: Negligent Infliction of Emotional Distress)

20.

Plaintiff re-alleges paragraphs 1 through 19 as though set forth fully herein.

21.

Defendant should have known that its actions would cause severe mental or emotional distress upon plaintiff and knew that the distress was a certain or substantially certain result from defendant's conduct.

22.

Defendant was negligent as alleged above in paragraph 14.

23.

Defendant's negligence was a substantial factor in causing plaintiff's injuries.



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24.

The damages caused by the conduct of defendant are described more particularly above in paragraph 18.

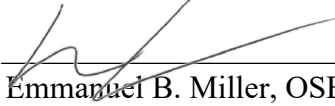
WHEREFORE, plaintiff requests judgment against defendant as follows:

First Claim for Relief

- a) Economic damages in the amount of \$17,705.00;
- b) Non-Economic damages in the amount of \$250,000.00;
- c) Plaintiff's costs and disbursement incurred herein; and
- d) Such other relief that the Court deems just and equitable.

DATED: October 29, 2018.



By: 
 Emmanuel B. Miller, OSB#151319
 Attorney for plaintiff
 Trial Attorney: Emmanuel B. Miller