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IN THE CIRCUIT COURT OF OREGON
FOR MULTNOMAH COUNTY

<p>JOSEPH BRANCHFLOWER AND BRIANA BRANCHFLOWER, husband and wife</p> <p>Plaintiffs,</p> <p>vs.</p> <p>OREGON HEALTH SCIENCE UNIVERSITY, a Public Corporation, OHSU, an assumed business name, PORTLAND COMPOUNDING PHARMACY LLC, an Oregon Domestic Limited Liability Company, doing business as LLOYD CENTER COMPOUNDING PHARMACY, an assumed business name of PORTLAND COMPOUNDING PHARMACY, LLC, LLOYD CENTER COMPOUNDING PHARMACY, LLC, an Oregon Domestic Limited Liability Company, doing business as LLOYD CENTER PHARMACY, an assumed business name for PORTLAND COMPOUNDING PHARMACY, LLC.</p> <p>Defendants.</p>		<p>Case No.:</p> <p>COMPLAINT</p> <p>MEDICAL NEGLIGENCE Prayer: \$8,200,000.00 FILING FEE: \$884.00 PER ORS 21.160(1)(d)</p> <p>NOT SUBJECT TO MANDATORY ARBITRATION</p>
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1 PLAINTIFFS, Joseph and Briana Branchflower, by way of Complaint against Defendants
2 allege as follows:

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4 **FIRST CLAIM FOR RELIEF**

5 **(Medical Negligence)**

6 1. Plaintiffs Joseph Branchflower and Briana Branchflower are husband and wife.

7 2. At all material times Defendant, Oregon Health Science University, also known as
8 OHSU (“OHSU”), was a licensed Oregon public corporation, which regularly conducts business
9 within Multnomah County and that provided medical services to Joseph Branchflower by its
10 agents and employees, including, but not limited to, Dr. Sdrulla, Dr. Sibell and Mandi Bryson,
11 MA.

12 3. At all material times, Dr. Sdrulla, Dr. Sibell and Mandi Bryson, MA and other
13 OHSU agents and employees acted within the course and scope of their employment/agency
14 and/or duties with defendant OHSU, which is vicariously liable for the negligence of its agents
15 and employees.

16 4. Notice, as required by law, has been given to the OHSU Defendants.

17 5. At all material times Portland Compounding Pharmacy, LLC, was an Oregon
18 Domestic Limited Liability Company, doing business as Lloyd Center Compounding Pharmacy,
19 an assumed business name of Portland Compounding Pharmacy, LLC, and Lloyd Center
20 Pharmacy, an assumed business name for Portland Compounding Pharmacy, LLC, (“Pharmacy
21 defendants”).

22 6. Pharmacy defendants were the owners and operators of a compounding pharmacy
23 business that provided compounded pharmaceuticals to Plaintiff Joseph Branchflower.
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1 7. At all material times, the Pharmacy defendants' agents and employees acted within
2 the course and scope of their employment/agency and/or duties with the pharmacy defendants,
3 which are vicariously liable for the negligence of its agents and employees.

4 8. On or about March 3, 2018 Plaintiff, Joseph Branchflower was evaluated by Dr.
5 Sdrulla in the pain clinic at OHSU with complaints of pain in his bilateral lower back and left
6 groin. It was noted that he had previously achieved pain relief with IV Ketamine that had been
7 administered during a prior inpatient hospital stay.

8 8. On or about March 3, 2018, Dr. Sdrulla provided Joseph Branchflower with a
9 prescription for nasal Ketamine. The prescription was for 150mg/ml with instructions to
10 dispense 5-10 sprays in alternating nostrils every 3 hours.

11 9. Dr. Sdrulla advised Plaintiff that the medication may cause anxiety and the records
12 reflect that the Plaintiff was instructed to discontinue the medication if he experienced adverse
13 effects. No information was provided to Plaintiff about what adverse effects he should look out
14 for and no warnings were provided either by Dr. Sdrulla, OHSU staff or in the written discharge
15 instructions that hallucinations or dissociative behaviors were side effects of the medication to
16 look out for or report.

17 10. On or about March 3, 2018, OHSU providers issued to Plaintiff a prescription for an
18 11 day supply of nasal Ketamine for a total amount of 90 ml.

19 11. As Nasal Ketamine was not available on the market as a formulated product,
20 Plaintiff was instructed to take the prescription to a compounding pharmacy to be filled. Plaintiff
21 took the prescription to Portland Compounding Pharmacy LLC, an Oregon Domestic Limited
22 Liability Company, that was doing business under the assumed business names of Lloyd Center
23 Compounding Pharmacy, and Lloyd Center Pharmacy, where it was filled. The pharmacist noted
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1 and told Plaintiff that it was a high dose of Ketamine, but nevertheless filled and dispensed the
2 prescription as ordered by OHSU.

3 12. Plaintiff did not initially take the Ketamine at the full dosage prescribed, but
4 increased it slowly over time in an attempt to get control over his pain. The 11 day supply lasted
5 for approximately 22 days.

6 13. On or about March 29, 2018 Plaintiff called OHSU, spoke to a medical assistant,
7 Mandi Bryson, MA, and requested a refill of the Ketamine. Without evaluation of the Plaintiff,
8 a refill prescription was ordered by an unknown OHSU employee which, according to the
9 records, was identified as a non controlled compound. The records reflect that on March 30,
10 2018 a message was forwarded to OHSU employee, Dr. Sibell by Mandi Bryson, MA with a
11 request that the prescription be re-written as a controlled order as Ketamine is a controlled
12 substance. On March 30, 2018 an OHSU employee, called the Pharmacy defendants, and left a
13 detailed message on the refill line to refill the Ketamine at the same dose as had previously been
14 prescribed - 150 mg/ml nasal spray. An 11-day supply totaling 90ml dispensed by the Lloyd
15 Center Compounding Pharmacy.
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18 14. At the time these prescriptions of Ketamine were ordered and dispensed, Ketamine
19 was not FDA approved for intranasal use and there was no formulated nasal Ketamine product
20 on the market.

21 15. In an effort to achieve maximal pain control, Plaintiff continued to take the
22 Ketamine at doses within the prescribed range.

23 16. On April 3, 2018, Plaintiff experienced a severe episode of dissociative behavior.
24 He attempted to sexually attack his wife. This behavior was completely out of character for the
25 Plaintiff who was at the time 44 years old, had been married for more than 20 years, had 4
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1 children, was a trained minister and a pastor, and had never previously been in trouble with the
2 law. As a result of the attack on his wife, Joseph Branchflower's son called the police who
3 arrived to find him naked in the house. The police entered the house, Plaintiff resisted arrest, and
4 struggled with the police who sent the police dog on him eventually subduing and arresting him.
5 Plaintiff was taken to jail and was charged with attempted rape and mutiple counts of assault
6 against the police officers.

7
8 17. Plaintiff has little to no memory of this incident.

9
10 18. Plaintiff remained in jail for approximately 45 days. He was not permitted to see
11 his wife and children for a considerable period of time. As a result of the incident, and his
12 incarceration, his wife and children were given notice to leave their leased house and had to
13 move into a small apartment. Briana Branchflower had to sell many of the family possessions to
14 pay for legal expenses and moving costs.

15
16 19. Plaintiff, Joseph Branchflower, was evaluated by medical expert, Dr. Robert Julien,
17 an expert in pain management and pharmacology. On September 29, 2018, Dr Julien wrote a
18 report summarizing his findings in which he described Ketamine as being a unique anesthetic
19 drug with side effects that include analgesia, amnesia, and dissociative reactions.

20
21 20. The Ketamine prescription ordered for and dispensed to Joseph Branchflower was
22 formulated at 150mg/ml with instructions to dispense 5-10 sprays every 3-4 hours. This
23 prescription was therefore upto 150mg of Ketamine every 3-4 hours. Dr. Julien described this as
24 a gross overdose of Ketamine, leading to a high likelihood of achieving an anesthetic, amnesic,
25 dissociative level which is what occurred. Dr. Julien concluded that Joseph Branchflower acted
26 under the influence of an overdose of nasal Ketamine.

1 21. Following receipt of Dr. Julien's report, the charges against Joseph Branchflower
2 were dropped.

3 22. Defendant OHSU, acting through its agents and employees, were negligent in the
4 following ways:

5 a) In prescribing nasal Ketamine to Joseph Branchflower when it was not FDA
6 approved for nasal use;

7 b) For prescribing nasal Ketamine to Joseph Branchflower at an excessive and
8 dangerous dose;

9 c) In failing to warn Joseph Branchflower of the potential side effects of
10 hallucinations dissociative behaviors;

11 d) In ordering a refill of nasal Ketamine without evaluating the Plaintiff to assess the
12 efficacy and potential side effects of the nasal Ketamine;

13 e) In issuing a refill of nasal Ketamine at an excessive and dangerous dose.

14 f) In failing to administer test doses of nasal Ketamine at the doses prescribed in a
15 monitored medical setting.
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17 The Pharmacy defendants, Portland Compounding Pharmacy, LLC, doing business as
18 Lloyd Center Compounding Pharmacy, and Lloyd Center Pharmacy, acting through its agents
19 and employees were negligent in the following ways:
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21 a) In dispensing nasal Ketamine to Joseph Branchflower when it was not FDA
22 approved for nasal use;

23 b) In dispensing nasal Ketamine to Joseph Branchflower at an excessive and
24 dangerous dose;
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1 c) In failing to warn Joseph Branchflower of the potential side effects of
2 hallucinations and dissociative behaviors;

3 d) In dispensing a refill of the nasal Ketamine at an excessive and dangerous dose;

4 e) In failing to verify and question the prescriptions with the ordering provider.
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6 23. As a result of these events, Plaintiff Joseph Branchflower suffered physical injuries
7 during the course of his arrest, including dog bites. He experienced pain from his underlying
8 medical conditions while incarcerated and not receiving pain medications for a period of time.
9 He has suffered physical, and emotional distress and psychological trauma including anxiety,
10 depression, nightmares, and post traumatic stress disorder. He has and may likely continue to
11 seek care for his injuries. He has suffered social and emotional injury due to the loss of his
12 reputation and impact on familial relationships and friendships. He suffered the loss of his home
13 and financial loss of household possessions that were sold or given away as a result of the
14 eviction that resulted from the incident leading to the arrest. He has and continues to suffer pain,
15 emotional distress and interference with his usual and customary professional, personal,
16 parental, spousal and leisure activities.
17

18 24. As a result of defendants' negligence, and the damages sustained by Joseph
19 Branchflower, Plaintiff Briana Branchflower has suffered from the loss of consortium of her
20 husband, Joseph Branchflower, her loss of consortium damages are described in paragraph 38 of
21 this complaint.
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23 25. Joseph Branchflower has suffered non-economic damages for past and future pain
24 and suffering, loss of enjoyment of life and loss of consortium in the approximate amount of
25 \$3,000,000.00.
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1 26. Briana Branchflower has suffered non-economic damages for loss of consortium in
2 the approximate amount of \$2,000,000.00.

3 27. Joseph and Briana Branchflower have suffered economic damages in the
4 approximate amount of \$147,600.00, that may continue to increase in the future.

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6 **SECOND CLAIM FOR RELIEF**
7 **(Failure to obtain informed consent)**

8 28. Plaintiffs incorporate by reference the allegations in paragraphs 1-22 above.

9 29. Defendant OHSU acting through its agents and employees failed to obtain Joseph
10 Branchflower's informed consent to the prescriptions for nasal Ketamine on March 3, 2018,
11 and March 29, 2018 in the following respects:

12 a.) In failing to advise Joseph Branchflower that the use of nasal Ketamine for pain
13 control was an off label use and not approved by the FDA;

14 b.) In failing to adequately warn Joseph Branchflower about the risks of nasal
15 Ketamine including dissociative behaviors and hallucinations;

16 c.) In failing to advise Joseph Branchflower to stop taking Ketamine if he
17 experienced any hallucinations or dissociative behaviors;

18 d.) In failing to advise Joseph Branchflower that there may be alternative procedures
19 or methods of treatment;

20 e.) In failing to ask Joseph Branchflower if he wanted a more detailed explanation of
21 the nasal Ketamine treatment;

22 f.) Joseph Branchflower consented to the use of nasal Ketamine without being
23 aware of said facts and risks referenced above;

24 g.) Joseph Branchflower would not have consented to the use of Ketamine and/or
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1 the continued use of Ketamine had he been aware of said fact and risks referenced above;

2 h.) Plaintiff Joseph Branchflower agreed to the use and continued use of nasal
3 Ketamine without having been fully advised of all the material risks and facts, and specifically
4 the risks of dissociative behaviors;

5 30. Plaintiffs incorporate by reference all the damage allegations in paragraphs 23-27
6 above.

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8 **ALTERNATIVE THIRD CLAIM FOR RELIEF**
9 **(Negligent Infliction of Emotional Distress - Joseph Branchflower)**

10 In the alternative to the First Claim for relief, Plaintiff, Joseph Branchflower, alleges as
11 follows:

12 31. Plaintiff incorporates by reference the allegations in paragraphs 1-22 above.

13 32. Defendants were in a special relationship with Joseph Branchflower, and knew or
14 should have known, that he would rely on the medical and pharmaceutical recommendations and
15 medications they provided.

16 33. Defendants had a duty to protect Joseph Branchflower from unnecessary and
17 avoidable emotional distress and psychological injury by providing Joseph Branchflower,
18 medical and pharmaceutical care that met the standard of care.

19 34. The negligent care by the defendants, as alleged above, has and continues to cause
20 Joseph Branchflower severe emotional and psychological distress. He has suffered PTSD,
21 anxiety, depression and a welter of negative feelings of guilt, remorse, anguish, bewilderment,
22 anger, betrayal, depression, and despair because of the damages caused by the defendants'
23 negligence.
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1 35. Joseph Branchflower has suffered non-economic damages for past and future pain
2 and suffering, loss of enjoyment of life and loss of consortium in the approximate amount of
3 \$3,000,000.00.

4 36. Joseph and Briana Branchflower have suffered economic damages in the
5 approximate amount of \$147,600.00, that may continue to increase in the future.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Loss of Consortium)**

8 37. Plaintiffs incorporate by reference the allegations in paragraphs 1-23, and 28-30
9 above.

10 38. As a result of defendants' negligence, and failure to obtain informed consent, and
11 the damages sustained by Joseph Branchflower, Plaintiff Briana Branchflower has suffered
12 from the loss of consortium of her husband, Joseph Branchflower. She suffered the loss of
13 society, companionship, love, support, affection and guidance of her husband during and after
14 his period of incarceration. She suffered from the loss of her home and financial loss of
15 household possessions that were sold or given away as a result of the eviction that resulted
16 from the incident and arrest. She has and continues to suffer from these losses.

17 39. Briana Branchflower has suffered non-economic damages for loss of consortium in
18 the approximate amount of \$2,000,000.00.

19 **DAMAGES**

20 40. As a consequence of defendants' negligence plaintiffs have sustained the injuries,
21 damages, and losses referenced in paragraphs 23-27, 30, 34- 36, and 39 herein.

22 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants as
23 follows:
24

1 **First Claim for Relief:**

2 a) For economic damages to plaintiffs Joseph and Briana Branchflower, in the
3 approximate amount of \$147,600.00, that may continue to increase in the future.

4 b) For non economic damages to plaintiff Joseph Branchflower in an estimated
5 amount of \$3,000,000 (\$3 Million).

6 c) For non economic damages to plaintiff Briana Branchflower, for her loss of
7 consortium claims, as described in the fourth claim for relief.
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9 d) For Plaintiffs' costs and disbursements incurred herein on all claims.

10 **Second Claim for Relief:**

11 a) For economic damages to plaintiffs Joseph and Briana Branchflower, in the
12 approximate amount of \$147,600.00, that may continue to increase in the future.

13 b) For non economic damages to plaintiff Joseph Branchflower in an estimated
14 amount of \$3,000,000 (\$3 Million).

15 c) For Plaintiffs' costs and disbursements incurred herein on all claims.
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17 **Alternative Third Claim for Relief:**

18 a) For economic damages to plaintiffs Joseph and Briana Branchflower, in the
19 approximate amount of \$147,600.00, that may continue to increase in the future.

20 b) For non economic damages to plaintiff Joseph Branchflower in an estimated
21 amount of \$3,000,000 (\$3 Million).

22 c) For Plaintiffs' costs and disbursements incurred herein on all claims.
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1 **Fourth Claim for Relief:**

2 a) For economic damages to plaintiffs Joseph and Briana Branchflower, in the
3 approximate amount of \$147,600.00, that may continue to increase in the future.

4 b) For non economic damages to plaintiff Briana Branchflower in an estimated
5 amount of \$2,000,000 (\$2 Million).

6 c) For Plaintiffs' costs and disbursements incurred herein on all claims.
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9 DATED this 20th of March, 2020.

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13 _____
14 JANE E. CLARK, OSB#: 031791
15 Of Attorney for Plaintiffs
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