

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ELAINE GREENBERG, as Executor of the
Estate of GERALD GREENBERG, Deceased

Plaintiff,

-against-

MONTEFIORE NEW ROCHELLE HOSPITAL, DIEGO
ESCOBAR, M.D., and MONTEFIORE HEALTH
SYSTEM, INC.

Defendants.

Index No.

SUMMONS

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your answer, on the plaintiff's attorneys within 20 days after service, or within 30 days if not personally served within the State of New York, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

Plaintiff designates Bronx County as the place of trial. The basis of the venue designated is that defendant Montefiore Health System, Inc. is a resident of Bronx County.

Dated: Brooklyn, New York
January 9, 2019

Lazar Grunsfeld Elnadav, LLP

By: ____/GG/_____
Gerald Grunsfeld
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TO:

MONTEFIORE NEW ROCHELLE HOSPITAL
16 Guion Place,
New Rochelle, NY 10801

DIEGO ESCOBAR, M.D.
24 Skyview Ln,
New Rochelle, NY 10804

MONTEFIORE HEALTH SYSTEM, INC.
111 East 210th Street
Bronx, New York

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COMPLAINT

Index No.

Plaintiff Elaine Greenberg (“Ms. Greenberg”), as Executor of the Estate of Dr. Gerald Greenberg, (“Dr. Greenberg”) complaining of Defendants by her attorneys, Lazar Grunsfeld Elnadav LLP, respectfully alleges:

1. Plaintiff, Elaine Greenberg, is the wife of the decedent-plaintiff, Dr. Gerald Greenberg (“Dr. Greenberg”).
2. Prior to the commencement of this action, Ms. Greenberg was duly appointed Executor of the Estate of Dr. Greenberg, by Order of the Surrogate’s Court of Nassau County, State of New York, dated April 18, 2018.
3. That at all times hereinafter mentioned, defendant MONTEFIORE NEW ROCHELLE HOSPITAL, (“Montefiore Hospital”), was and is a healthcare facility duly organized and existing under and by virtue of the laws of the State of New York, located at 16 Guion Place, in the County of Westchester, State of New York.

4. That at all times stated herein, defendant Montefiore Hospital, held itself out as a healthcare facility that would comply with the wishes of its patients and their families, as expressed in “Medical Orders for Life-Sustaining Treatment” forms and other similar directives.
5. That at all times stated herein, defendant Montefiore Hospital, held itself out as a healthcare facility that was in compliance with New York Public Health Law §2994-f.
6. That at all times hereinafter mentioned, defendant MONTEFIORE HEALTH SYSTEM, INC., (“Montefiore HSI”), was a domestic not-for-profit corporation located at 111 East 210th Street, Bronx, New York.
7. Venue is proper in this County because defendant Montefiore HSI is a resident of Bronx County.
8. That at all times hereinafter mentioned, Montefiore HSI owned and operated Montefiore Hospital.
9. That at all times stated herein, Montefiore HIS held itself out as a healthcare facility that would comply with the wishes of its patients and their families, as expressed in “Medical Orders for Life-Sustaining Treatment” forms and other similar directives.
10. That at all times stated herein, defendant Montefiore HSI, held itself out as a healthcare facility that was in compliance with New York Public Health Law §2994-f.
11. Upon information and belief, defendant Diego Escobar, M.D. (“Dr. Escobar”) resides at 24 Skyview Ln, New Rochelle, NY 10804.
12. At all times relevant hereto, Dr. Escobar was an officer, agent, and employee of Defendants Montefiore Hospital and/or Montefiore HSI and was acting within the course and scope of his employment.

**DR. GREENBERG LEFT EXPLICIT INSTRUCTIONS REGARDING
HIS END OF LIFE TREATMENT CHOICES**

13. On December 21, 2011, Dr. Greenberg executed a Living Will, a Health Care Proxy and Designation of Guardian (“Health Care Proxy”).
14. In the Health Care Proxy, Dr. Greenberg designated his wife, Ms. Greenberg, as his agent for health care decisions.
15. Dr. Greenberg appointed his son, Robert Greenberg, as successor agent if Ms. Greenberg failed or ceased to act, and another son, Michael Greenberg, as successor agent if Ms. Greenberg and Robert Greenberg failed or ceased to act.
16. The Health Care Proxy took effect if and when Dr. Greenberg was unable to make his own health care decisions.
17. In the Living Will, Dr. Greenberg directed that in the event he should be in an incurable mental or physical condition, he did not want to receive antibiotics and that the only medical treatment he wanted to receive was such treatment needed to keep him comfortable and pain-free.
18. Dr. Greenberg was mentally competent when he executed the Living Will and the Health Care Proxy.
19. Dr. Greenberg executed the Living Will and the Health Care Proxy in accordance with his personal values pertaining to end of life decisions.
20. Dr. Greenberg executed the Living Will and the Health Care Proxy with the knowledge, consent, and concurrence of his family, including Ms. Greenberg.
21. Dr. Greenberg’s Living Will was properly witnessed and complied with the applicable statutes for living wills to be valid and enforceable.

22. Dr. Greenberg's Health Care Proxy was properly witnessed and complied with the applicable statutes for health care proxies to be valid and enforceable.

WHEN DR. GREENBERG WAS BROUGHT TO MONTEFIORE HOSPITAL IN NOVEMBER 2016, THERE WAS NO POSSIBILITY HE COULD BE CURED

23. In or around 2010, Dr. Greenberg developed early-onset Alzheimer's Disease.

24. Dr. Greenberg eventually moved to Willow Towers, an assisted living facility, in New Rochelle, New York.

25. Between 2008 and 2016, Dr. Greenberg's Alzheimer's Disease advanced significantly, so that by November 2016, he was unable to identify his wife or children and was not able to communicate in any meaningful manner.

26. On November 3, 2016, Dr. Greenberg was found on the floor of his room at Willow Towers. He had been lying on the floor for over a day, would not comply with medical staff, and demonstrated aggressive behavior, attributable to his Alzheimer's Disease.

27. The staff at Willow Towers arranged for Dr. Greenberg to be transported to Montefiore Hospital.

28. Michael Greenberg arrived at Montefiore Hospital shortly after Dr. Greenberg arrived and gave the hospital staff copies of Dr. Greenberg's Living Will and Health Care Proxy.

29. On November 3, 2016, at 10:00 p.m., Michael Greenberg, acting as Dr. Greenberg's health care proxy (because Ms. Greenberg and Robert Greenberg were not at Montefiore Hospital), completed and signed Section E of a Medical Order for Life-Sustaining Treatment ("MOLST") form provided to him by Montefiore Hospital.

30. Section E of the MOLST form set forth the guidelines for Dr. Greenberg's treatment, specifically that:

- a. Dr. Greenberg was to receive comfort measures only;
 - b. Dr. Greenberg was not to receive any intravenous fluids; and
 - c. Dr. Greenberg was not to receive any antibiotics—other comfort measures were to be used to relieve symptoms.
31. Dr. Riera-Gonzalez performed an evaluation at approximately 11:05 p.m. and noted Dr. Greenberg was DNR/DNI, comfort measures only, no intravenous fluids, and no antibiotics.
32. Dr. Riera-Gonzalez contacted Ms. Greenberg by telephone and confirmed that information was correct.
33. Dr. Riera-Gonzalez also noted Michael Greenberg had filled out a MOLST form.
34. Dr. Riera-Gonzalez informed Ms. Greenberg that Dr. Greenberg may have life-threatening sepsis.
35. Ms. Greenberg discussed this information with Michael Greenberg and that Dr. Greenberg's advanced Alzheimer's Disease meant that he would never be able to regain any type of normal mental or physical function.
36. As such, Ms. Greenberg and Michael Greenberg decided that they would honor Dr. Greenberg's wishes that he not receive interventional medical treatment so that his suffering would end as quickly as possible.
37. As such, Ms. Greenberg again instructed Dr. Riera-Gonzalez that Dr. Greenberg was not to receive any antibiotics, or any other medical intervention, other than measures to alleviate any pain and suffering.
38. Shortly after Dr. Riera-Gonzalez finished her examination, Dr. Escobar, an attending physician at Montefiore Hospital, examined Dr. Greenberg.

39. Dr. Escobar noted Dr. Greenberg was not to receive antibiotics or intravenous fluids.
40. Dr. Escobar further noted Dr. Greenberg's family had completed a MOLST form to clarify the goals of care and wrote in the record to "refer to Event note and MOLST form."
41. Pursuant to NY CLS Pub. Health §§ 2994-f, Defendants were required to implement Dr. Greenberg's end of life treatment choices, as expressed through his Living Will, MOLST, and Ms. Greenberg's verbal instructions.
42. In light of Dr. Greenberg's end of life treatment choices, as expressed through his Living Will, MOLST, and Ms. Greenberg's verbal instructions, and pursuant to NY CLS Pub. Health §§ 2994-f, Defendants were not permitted to Order/administer antibiotics or intravenous fluids or any other treatment not designed solely to assist in Dr. Greenberg's comfort.

DEFENDANTS DELIBERATELY VIOLATE DR. GREENBERG'S LIVING WILL, THE MOLST, AND MS. GREENBERG'S VERBAL INSTRUCTIONS

43. On November 4, 2016, at 11:21 a.m., in direct contradiction of the notes in the medical records, Dr. Greenberg's Living Will, the MOLST, and Ms. Greenberg's verbal instructions, and in violation of NY CLS Pub. Health §§ 2994-f, Dr. Escobar placed an order for 1000 mg of ceftriaxone, an antibiotic used to treat sepsis, to be given to Dr. Greenberg intravenously at 100 ml per hour for three days.
44. Shortly thereafter, Dr. Greenberg was given the first dose of ceftriaxone.
45. In addition, Dr. Escobar and the other Defendants deliberately violated Dr. Greenberg's Living Will, the MOLST, and Ms. Greenberg's verbal instructions in that they administered intravenous fluids, a CT, a chest x-ray, an ECG, drew frequent blood tests, administered various medications such as insulin, calcium, vitamin D and Cena-K.

46. None of these actions were needed to alleviate Dr. Greenberg's pain or to make him comfortable.
47. All of these actions performed by the Defendants constituted a deliberate violation of Dr. Greenberg's Living Will, the MOLST, Ms. Greenberg's verbal instructions, and NY CLS Pub. Health §§ 2994-f.
48. These actions performed by the Defendants, caused Dr. Greenberg to recover from the severe sepsis he had.
49. Dr. Greenberg was discharged from Montefiore Hospital on December 2, 2016, and transferred to Calvary Hospital in Bronx, New York, where he remained until his death on December 5, 2016.
50. Had the Defendants not performed these actions, Dr. Greenberg likely would have died from the severe sepsis within four to five days.
51. After recovering from the sepsis, Dr. Greenberg had to endure the pain and discomfort of dying from a lack of hydration/nutrition over a prolonged period of approximately thirty days.
52. Dr. Greenberg would have been spared this additional month of pain and suffering if the Defendants had not taken deliberately violated Dr. Greenberg's Living Will, the MOLST, and Ms. Greenberg's verbal instructions.

COUNT I – MEDICAL MALPRACTICE

53. Plaintiff incorporates the prior paragraphs as though set forth fully herein.
54. Defendant Montefiore Hospital is required to promulgate and adhere to written policies pertaining to an individual's right to accept or refuse medical or surgical treatment and the right to formulate a living will or MOLST.

55. Additionally, defendant Montefiore Hospital had a duty to develop written policies respecting the implementation of such rights and to document in a prominent part of a patient's medical record whether an individual has executed a living will or MOLST.
56. By accepting Dr. Greenberg's Living Will at the time it was delivered upon his admission, the MOLST form after Michael Greenberg signed it, and noting Ms. Greenberg's verbal instructions, defendant Montefiore Hospital agreed to honor Dr. Greenberg's right to direct all aspects of his medical treatment, including his right to decline medical treatment.
57. On November 3, 2016, Montefiore Hospital agreed not to administer any treatment to Dr. Greenberg other than such treatment needed to alleviate pain and suffering.
58. One or more of the Defendants breached their agreement with Dr. Greenberg by failing to promulgate, implement and abide by a policy to ensure compliance with Dr. Greenberg's Living Will, MOLST, and Ms. Greenberg's verbal instructions.
59. One or more of the Defendants breached their agreement with Dr. Greenberg by administering antibiotics, IV Hydration, a CT, a chest x-ray, an ECG, frequent blood tests, various medications such as insulin, calcium, vitamin D and Cena-K, after agreeing not to do so.
60. One or more of the Defendants failed to ensure appropriate communication of the Living Will, MOLST, and Ms. Greenberg's verbal instructions to the doctors and medical staff involved in Dr. Greenberg's medical care and treatment.
61. Said breaches constitute a failure on the part of one or more of the Defendants to abide by their agreement to comply with and respect Dr. Greenberg's Living Will, MOLST, and Ms. Greenberg's verbal instructions to refuse medical treatment in the circumstances presented herein.

- 62. Said breaches constitute a violation of NY CLS Pub. Health §§ 2994-f.
- 63. Said breaches constitute negligence and/or departures from the standard of care on the part of the Defendants.
- 64. As a result of the aforementioned negligence/departures from the standard of care by Defendants, Dr. Greenberg endured continued pain and suffering for more than a month, instead of the four to five days that would have been expected had the Defendants not committed the aforementioned breaches.
- 65. Defendants are thus liable to plaintiff for the pain and suffering they caused Dr. Greenberg as a result of their negligence/departures from the standard of care.
- 66. In addition, the acts of Defendants in deliberately violating Dr. Greenberg's Living Will, the MOLST, and Ms. Greenberg's verbal instructions, as described in the preceding Paragraphs, constituted conduct that was intentional, malicious, outrageous, and aggravated beyond mere negligence.
- 67. In light of such conduct, Defendants are also liable to plaintiff for punitive damages.
- 68. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demand judgment against Defendants in such sum as a jury would find fair, adequate and just.

Dated: Brooklyn, New York
January 9, 2019

Lazar Grunsfeld Elnadav, LLP

By: ____/GG/_____
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