

PIRO, ZINNA, CIFELLI, PARIS & GENITEMPO
Limited Liability Company
David M. Paris, Esq. (NJ ID #012831978)
Email: dparis@pirozinnalaw.com
360 Passaic Avenue
Nutley, New Jersey 07110
Phone: 973-661-0710 / Fax: 973-661-5157
Attorneys for Plaintiffs

MAGDI KHALIL, Individually and
as Executor of the Estate of
Zakaria Khalil and Demiana
Khalil, Individually,

Plaintiffs,

v.

JERSEY CITY MEDICAL CENTER,
KRISTEN R. WILKES, M.D.,
EMERGENCY MEDICAL ASSOCIATES
OF NEW JERSEY, P.A., ALARIS
HEALTH, LLC d/b/a ALARIS
HEALTH AT HAMILTON PARK, JOHN
DOES 1-10 (fictitious names),
JANE DOES 1-10 (fictitious
names) and ABC CORP. 1-10
(fictitious names),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO.: HUD-L-

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiffs, Magdi Khalil, Individually and as Executor of the
Estate of Zakaria Khalil and Demiana Khalil, Individually,
residing at 107 Tonnele Avenue, in the City of Jersey City, County
of Hudson and State of New Jersey, by way of Complaint against the
Defendants, herein says:

THE PARTIES

1. Plaintiffs, Magdi Khalil is the son of Zakaria Khalil
and the Executor of the Estate of Zakaria Khalil and Demiana Khalil

was the lawful spouse of Zakaria Khalil (hereinafter referred to as "Zakaria")

2. Zakaria who was admitted to Defendant, Jersey City Medical Center, 355 Grand Street, in the City of Jersey City, County of Hudson and State of New Jersey, (hereinafter referred to as "JCMC"), on March 18, 2018 and Zakaria died at JCMC on March 27, 2018.

3. Defendant JCMC employed, utilized and otherwise controlled agents, servants and employees, including, but not limited to, residents, house doctors and nurses, who administered care to Zakaria while he was a patient there.

4. Defendant, Kristen R. Wilkes, M.D., (hereinafter referred to as "Wilkes"), was and is a physician, believed to be specializing in emergency medicine, who had admitting privileges and/or was on staff or was otherwise employed at JCMC from March 18, 2018 through March 27, 2018 and upon information and belief, was and is employed by Defendant, Emergency Medical Associates of New Jersey, P.A.

5. Defendant, Emergency Medical Associates of New Jersey, P.A., (hereinafter referred to as "EMA of NJ"), located at 3 Century Drive, Parsippany, New Jersey, is a medical organization or entity duly licensed in the State of New Jersey and during all relevant time periods employed Defendant, Kristen R. Wilkes, M.D., and was responsible for her conduct.

6. Defendant, Alaris Health, LLC d/b/a Alaris Health at Hamilton Park, (hereinafter referred to as "Alaris"), located at 535 Monmouth Street, Jersey City, New Jersey, is a medical organization or entity duly licensed in the State of New Jersey and during all relevant time periods cared for Zakaria Khalil.

7. Defendants, JOHN DOES 1-10 are the names given to unknown persons. These fictitious names are designed to describe unknown physicians, residents, staff members and interns, who rendered care to Zakaria from March 18, 2018 through March 27, 2018, and who committed wrongful, tortious and/or negligent actions while Zakaria was admitted to Defendant, JCMC, and/or Alaris.

8. Defendants, JANE DOES 1-10 are the names given to unknown persons. These fictitious names are designed to describe unknown nurses, physicians assistants or others who rendered care to Zakaria from March 18, 2018 through March 27, 2018, and who committed wrongful, tortious and/or negligent actions while Zakaria was admitted to Defendant, JCMC, and/or Alaris.

9. Defendants, ABC Corp. 1-10 are the names given to unknown entities. These fictitious names are designed to describe unknown medical care facilities and/or entities duly licensed by the State of New Jersey responsible for rendering diagnostic, surgical and/or other medical services or care to Zakaria, through their agents, servants and/or employees.

FIRST COUNT**(TORTIOUS ASSAULT AND BATTERY)**

10. On or about March 18, 2018, shortly after being transferred from Alaris and being admitted as a patient to JCMC, Zakaria was intubated by the Defendant, Wilkes, and/or others unknown to the Plaintiffs at this time, without Zakaria's consent and directly against Zakaria's expressed wishes.

11. The conduct/actions/performance applicable to Defendants, JCMC, Wilkes, EMA of NJ, JOHN DOES 1-10 and JANE DOES 1-10, constituted an assault and battery upon Zakaria. The wrongful actions and/or conduct of these Defendants proximately caused Zakaria's prolonged and needless conscious pain and suffering from March 18, 2018 until his death on March 27, 2018.

12. Specifically, on March 18, 2018, Zakaria was transferred from Alaris and admitted to JCMC for respiratory distress. Zakaria entered the facility with a "DNR" bracelet on his wrist.

13. Upon admission to JCMC on March 18, 2018, Zakaria was put on life support via intubation by order of the admitting physician, Defendant, Wilkes.

14. Zakaria had a DNR and/or DNI on record at the Defendants, Alaris and JCMC, including a DNR and/or DNI entered in his record of admission at JCMC which ended hours before his admission on March 18, 2018, and prior to recent admissions to JCMC, thereby

notifying the Defendants that he did not consent to being resuscitated including by way of intubation.

15. Defendants, jointly and severally, failed to communicate and/or comply with Zakaria's directives and as a result, he was therefore resuscitated nevertheless and intubated against his expressed direction.

16. Specifically at JCMC, Defendants, jointly, severally and/or individually, put Zakaria on life support via intubation on March 18, 2018, even though there was a DNR and/or DNI on record at JCMC and Alaris

17. As a result of Defendants' tortious conduct, Plaintiff, Magdi Khalil, Zakaria's healthcare proxy, in conjunction with the Plaintiff, Damiana Khalil, Zakaria's wife and Magdi's mother, were forced to make the decision to remove life support from Zakaria, in accordance with Zakaria's wishes and instructions, although this decision by Magdi Khalil and Damiana Khalil was in violation of the tenants of their religion and Zakaria ultimately died on March 27, 2018 shortly after life support was removed.

18. As a direct and proximate result of the Defendants' wrongful conduct and/or actions, Zakaria was, as previously described, caused to be intubated even though there was a DNR and/or DNI on record at both Alaris and JCMC, and said intubation was expressly against his stated wishes. The Defendants' conduct was a proximate cause of Zakaria's prolonged pain and suffering

and the necessity that Zakaria's family violate their religious beliefs to alleviate Zakaria's pain and suffering.

WHEREFORE, Plaintiffs, Magdi Khalil, Individually and as Executor of the Estate of Zakaria Khalil and Demiana Khalil, Individually, demand judgment against the Defendants, JCMC, Kristen R. Wilkes, M.D., EMA of NJ, Alaris Health, LLC d/b/a Alaris Health at Hamilton Park, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10, jointly and severally for all compensatory damages, costs of suit, interest, reasonable attorney's fees, pursuant to the Survival Act, and all other damages the Court deems just and fair.

SECOND COUNT

(UNLAWFUL ASSAULT AND BATTERY)

19. Plaintiffs repeat the allegations contained in the preceding paragraphs as if same were set forth at length herein.

20. Plaintiffs bring this action for the Defendants' unlawful assault and battery upon Zakaria which began on March 18, 2018 through and until the time of his death on March 27, 2018, by the Defendants, JCMC, Wilkes, EMA of NJ, John Does 1-10, Jane Does 1-10 and ABC Corp. 1-10, contributed to by Alaris' failure to communicate Zakaria's directive upon his transfer to JCMC.

WHEREFORE, Plaintiffs, Magdi Khalil, Individually and as Executor of the Estate of Zakaria Khalil and Demiana Khalil, Individually, demand judgment against the Defendants, JCMC,

Kristen R. Wilkes, M.D., EMA of NJ, Alaris Health, LLC d/b/a Alaris Health at Hamilton Park, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10, jointly and severally for all compensatory damages, punitive damages, costs of suit, interest, reasonable attorney's fees, pursuant to the Survival Act, and all other damages the Court deems just and fair.

THIRD COUNT

(ORDINARY NEGLIGENCE, GROSS NEGLIGENCE AND RECKLESS MISCONDUCT)

21. Plaintiffs repeat the allegations contained in the preceding paragraphs as if same were set forth at length herein.

22. Zakaria's pain and prolonged suffering, and the pain and suffering sustained by the Plaintiffs, were caused by the ordinary negligence, gross negligence, carelessness and recklessness of Defendants, JCMC, Wilkes, EMA of NJ, Alaris, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10, jointly and severally in the following particular respects:

- a. Failed to communicate Zakaria's directive upon his transfer;
- b. Failed to review the history and medical chart of Zakaria;
- c. Failed to see and/or review Zakaria's person as he was wearing a "DNR" bracelet on his wrist when he was cared for by the Defendants;
- d. Intubated Zakaria both without Zakaria's consent and against Zakaria's wishes and expressed instructions;
- e. Prolonged Zakaria's pain and suffering;

- f. Caused the Plaintiffs to violate Zakaria's and Zakaria's family's strongly held religious beliefs;
- g. Were otherwise ordinarily negligent, grossly negligent and/or reckless.

23. Defendants, JCMC, Wilkes, EMA of NJ, Alaris, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10's wrongful conduct constitutes ordinary negligence, gross negligence and reckless disregard for Zakaria's wishes which prolonged his pain and suffering and made it necessary that Zakaria's family violate their religious beliefs and Zakaria's religious beliefs to alleviate Zakaria's pain and suffering.

WHEREFORE, Plaintiffs, Magdi Khalil, Individually and as Executor of the Estate of Zakaria Khalil and Demiana Khalil, Individually, demand judgment against the Defendants, JCMC, Kristen R. Wilkes, M.D., EMA of NJ, Alaris Health, LLC d/b/a Alaris Health at Hamilton Park, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10, jointly and severally for compensatory damages, punitive damages, costs of suit, interest, reasonable attorney's fees pursuant to the Survival Act, and all other damages the Court deems just and fair.

FOURTH COUNT

(NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS)

24. Plaintiffs repeat each and every allegation of the preceding paragraphs as if same were set forth at length herein.

25. Defendants, jointly and severally, negligently inflicted emotional distress upon Plaintiffs, in that beginning on March 18, 2018, Plaintiffs observed the battery, the ordinary negligence, the gross negligence, and the reckless misconduct of the Defendants, and observed Zakaria's conscious pain and suffering inflicted upon Zakaria therefrom until the time of his death on March 27, 2018, resulting from the wrongful conduct of the Defendants alleged herein and Plaintiffs suffered, and continue to suffer, severe emotional injury and distress as a result thereof, and of the heart-wrenching decision they were required to make due to Defendants' wrongful conduct.

26. Plaintiffs shared a marital and/or intimate familial relationship with Zakaria.

WHEREFORE, Plaintiffs, Magdi Khalil, Individually and as Executor of the Estate of Zakaria Khalil and Demiana Khalil, Individually, demand judgment against the Defendants, JCMC, Kristen R. Wilkes, M.D., EMA of NJ, Alaris Health, LLC d/b/a Alaris Health at Hamilton Park, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10, jointly and severally for all compensatory damages, costs of suit, interest, reasonable attorney's fees, and all other damages the Court deems just and fair.

FIFTH COUNT

(WANTON AND WILLFUL DISREGARD OF PLAINTIFF'S PERSONAL RIGHTS AND SENSITIVITIES - PUNITIVE DAMAGES)

27. Plaintiffs repeat each and every allegation of the preceding paragraphs as if same were set forth at length herein.

28. The Defendants' battery aforesaid, and failure to communicate and abide by Zakaria's direction, given the circumstances herein, represents a touching of Zakaria for which consent was not given, which actions took place with a wanton disregard of Zakaria's personal rights, sensitivities and/or beliefs and with foreseeable harmful consequences.

29. As a result of the foregoing, Plaintiffs are entitled to an award of punitive damages against the Defendants, jointly and severally.

WHEREFORE, Plaintiffs, Magdi Khalil, Individually and as Executor of the Estate of Zakaria Khalil and Demiana Khalil, Individually, demand judgment against the Defendants, JCMC, Kristen R. Wilkes, M.D., EMA of NJ, Alaris Health, LLC d/b/a Alaris Health at Hamilton Park, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10, jointly and severally for all compensatory damages, punitive damages, costs of suit, interest, reasonable attorney's fees, pursuant to the Survival Act, and all other damages the Court deems just and fair.

SIXTH COUNT

**(VIOLATION OF THE NEW JERSEY ADVANCE DIRECTIVES
FOR HEALTH CARE ACT)**

30. Plaintiffs repeat each and every allegation of the preceding paragraphs as if same were set forth at length herein.

31. The actions of the Defendants aforesaid constitute one or more violations of the New Jersey Advance Directives for Health Care Act (N.J.S.A. 26:2H-53 et. seq.) where in part it is stated that the Act,

"...recognizes the inherent dignity and value of human life and within this context recognizes that fundamental right of individuals to make health care decisions to have life-prolonging medical or surgical means or procedures provided, withheld or withdrawn" (N.J.S.A. 26:2H-54(b)).

32. As a direct and proximate result of the Defendants' wrongful conduct and/or actions, Zakaria was, as previously described, caused to be intubated even though there was a DNR and/or DNI on record at both Alaris and JCMC, and said intubation was expressly against his stated wishes. The Defendants' conduct was a proximate cause of Zakaria's prolonged pain and suffering and the necessity that Zakaria's family violate their religious beliefs to alleviate Zakaria's pain and suffering, and the Plaintiffs individually suffered emotional injury and distress as aforesaid.

WHEREFORE, Plaintiffs, Magdi Khalil, Individually and as Executor of the Estate of Zakaria Khalil and Demiana Khalil, Individually, demand judgment against the Defendants, JCMC, Kristen R. Wilkes, M.D., EMA of NJ, Alaris Health, LLC d/b/a Alaris Health at Hamilton Park, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10, jointly and severally for all compensatory damages, costs of suit, interest, reasonable attorney's fees, pursuant to the Survival Act, and pursuant to their right to recover damages for their individual injuries, and all other damages the Court deems just and fair.

SEVENTH COUNT

**(VIOLATION OF THE NEW JERSEY ADMINISTRATIVE CODE REGARDING
MEDICAL RECORDS AND ADVANCE DIRECTIVES)**

33. Plaintiffs repeat each and every allegation of the preceding paragraphs as if same were set forth at length herein.

34. The actions of the Defendants aforesaid constitute one or more violations of the New Jersey Administrative Code Title 8, regarding medical records policies and procedures related to advance directives.

35. As a direct and proximate result of the Defendants' wrongful conduct and/or actions, Zakaria was, as previously described, caused to be intubated even though there was a DNR and/or DNI on record at both Alaris and JCMC, and said intubation was expressly against his stated wishes. The Defendants' conduct

was a proximate cause of Zakaria's prolonged pain and suffering and the necessity that Zakaria's family violate their religious beliefs to alleviate Zakaria's pain and suffering, and the Plaintiffs individually suffered emotional injury and distress as aforesaid.

WHEREFORE, Plaintiffs, Magdi Khalil, Individually and as Executor of the Estate of Zakaria Khalil and Demiana Khalil, Individually, demand judgment against the Defendants, JCMC, Kristen R. Wilkes, M.D., EMA of NJ, Alaris Health, LLC d/b/a Alaris Health at Hamilton Park, JOHN DOES 1-10, JANE DOES 1-10 and ABC Corp. 1-10, jointly and severally for all compensatory damages, costs of suit, interest, reasonable attorney's fees, pursuant to the Survival Act, and pursuant to their right to recover damages for their individual injuries, and all other damages the Court deems just and fair.

JURY DEMAND

Plaintiffs hereby demand trial by jury as to all matters herein.

TRIAL DESIGNATION

Pursuant to Rule 4:25-4, Daniel R. Bevere, Esq. and David M. Paris, Esq. are hereby designated as trial counsel for the within matter.

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify, pursuant to Rule 4:5-1, that the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in this action at this time.

CERTIFICATION OF COMPLIANCE

Pursuant to Rule 1:38-7(c) and Rule 4:5-1, I hereby certify that all personal information has been redacted from this pleading in the above referenced matter as no personal information was provided.

I further certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

PIRO, ZINNA, CIFELLI, PARIS & GENITEMPO
Attorneys for Plaintiffs

By: David M. Paris
DAVID M. PARIS, ESQ.
Member of the firm

Dated: March 13, 2020.

Civil Case Information Statement

Case Details: HUDSON | Civil Part Docket# L-001091-20

Case Caption: KHALIL MAGDI VS JERSEY CITY
MEDICAL CENTER

Case Initiation Date: 03/13/2020

Attorney Name: DAVID M PARIS

Firm Name: PIRO ZINNA CIFELLI, ET AL

Address: 360 PASSAIC AVE

NUTLEY NJ 071102787

Phone: 9736610710

Name of Party: PLAINTIFF : Khalil, Magdi

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ASSAULT AND BATTERY

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

03/13/2020

Dated

/s/ DAVID M PARIS

Signed