DEVON M. JACOB, ESQUIRE
Pa. Sup. Ct. ID: 89182
JACOB LITIGATION
P.O. Box 837, Mechanicsburg, PA 17055-0837
717.796.7733 | djacob@jacoblitigation.com
Counsel for the Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS (Eastern Division)

ESTATE OF RANDALL R. BIANCHI; and	**: Civil Action No.: 1:14-cv-9715**
LYDIA D. CASSARO, *individually,*	**:**
and as the Special Administrator of the	**:**
***Estate of Randall R. Bianchi*;**	**: District Judge:**
Plaintiffs,	**:**
	:
v.	**: CIVIL ACTION – LAW**
	:
HARVEY J. FRIEDMAN;	**:**
DANIEL D. RIVARD;	**: JURY TRIAL DEMANDED**
ALEXANDER M. ZARTAISKY;	**:**
BETH E. GINSBURG;	**:**
THOMAS H. BURNSTINE;	**:**
HEIDI B. FURR;	**:**
KELLEY HARRISON;	**:**
PULMONARY MEDICINE ASSOCIATES;	**:**
BEST PRACTICES INPATIENT CARE, LTD;	**:**
THOMAS H. BURNSTINE, MD SC;	**:**
LAKE COUNTY RADIOLOGY ASSOCIATES;	**:**
ADVOCATE CONDELL MEDICAL CENTER;	**:**
ADVOCATE HEALTH CARE; and	**:**
ADVOCATE PHYSICIAN PARTNERS;	**:**
Defendants.	**:**

COMPLAINT

AND NOW come the Plaintiffs, Estate of Randall R. Bianchi; and Lydia D. Cassaro, individually, and as the Special Administrator of the Estate of Randall R. Bianchi; by and through

their undersigned counsel, Devon M. Jacob, Esquire, and the law firm of Jacob Litigation, and aver as follows:

Introduction

1. This case involves 22-year old Randall R. Bainchi ("Randall"), a former United States Marine, who served his Country in warzones in Afghanistan and Iraqi, and who, as a result, suffered from Post-Traumatic Stress Disorder ("PTSD").

2. The Defendants intentionally permitted Randall to be killed for the purpose of harvesting his organs for donation.

3. At the time, Randall (1) did not have health insurance, (2) suffered from a drug-addition, and (3) had to rely on healthcare surrogates to direct his medical care.

4. But for the intentional trauma and asphyxiation that the Defendants caused him to suffer, Randall's life would have continued.

5. Compensable damages are sought, on account of, among other things, Randall's pain and suffering, loss of life's pleasures, loss of future income, medical bills, and funeral expenses.

6. Punitive damages are sought, on account of the Defendants' outrageous behavior that evidences willful, wanton, and reckless conduct.

Jurisdiction and Venue

7. This action is brought, in part, pursuant to the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd.

8. This Court has original jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331, diversity jurisdiction over the claims asserted by Plaintiff Lydia D. Cassaro in her individual

capacity pursuant to 28 U.S.C. § 1332, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

9. Venue is proper in this Court, as the Defendants are located within the Northern District of Illinois, and the cause of action arose in Lake County, in the Northern District of Illinois (Eastern Division).

Parties

10. Plaintiff, Estate of Randall R. Bianchi ("Estate"), is the Estate of the decedent, Randall R. Bianchi.

11. Plaintiff, Lydia D. Cassaro ("Lydia"), is the biological mother of the decedent, Randall R. Bianchi, and is the Special Administrator of the Estate of Randall R. Bianchi. Ms. Cassaro is an adult individual, who, resides in Deltona, Florida.

12. Defendant, Harvey J. Friedman, M.D., is an adult individual, and a licensed medical professional, employed by Pulmonary Medicine Associates, which is located at 675 W. North Avenue, Suite 214, Melrose Park, IL, 60160-1604. During all relevant times, Defendant Friedman was an agent and/or employee of Advocate Condell Medical Center. Dr. Friedman is certified by the Board of Internal Medicine in internal medicine, critical care medicine, and pulmonology. Dr. Friedman holds himself out to be a pulmonologist.

13. Defendant, Daniel D. Rivard, M.D., is an adult individual and a licensed medical professional, employed by Best Practices Inpatient Care, Ltd, which is located at 3880 Salem Lake Drive, Suite F, Long Grove, IL 60047. During all relevant times, Defendant Rivard was an agent and/or employee of Advocate Condell Medical Center. Dr. Rivard is certified by the American Board of Internal Medicine in internal medicine, and practices as a hospitalist.

14. Defendant, Alexander M. Zartaisky, M.D., is an adult individual and a licensed medical professional, employed by Lake County Radiology Associates, 209 Peterson Road, Libertyville, IL 60048. During all relevant times, Defendant Zartaisky was an agent and/or employee of Advocate Condell Medical Center. Dr. Zartaisky is certified by the American Board of Radiology in diagnostic radiology and neuroradiology.

15. Defendant, Thomas H. Burnstine, M.D., is an adult individual and a licensed medical professional, employed by Thomas H. Burnstine, MD SC, 755 S. Milwaukee Avenue, Suite 220, Libertyville, IL 60048. During all relevant times, Defendant Burnstine was an agent and/or employee of Advocate Condell Medical Center. Dr. Burnstine is board certified in neurology.

16. Defendant, Beth E. Ginsburg, M.D., is an adult individual and a licensed medical professional, employed by Pulmonary Medicine Associates, which is located at 675 W. North Avenue, Suite 214, Melrose Park, IL, 60160-1604. During all relevant times, Defendant Ginsburg was an agent and/or employee of Advocate Condell Medical Center. Dr. Ginsburg is board certified in critical care medicine and pulmonary disease.

17. Defendant, Heidi B. Furr, RN, is an adult individual and a licensed medical professional. During all relevant times, Defendant Furr was an agent and/or employee of Advocate Condell Medical Center, which is located at 801 S. Milwaukee Avenue, Libertyville, Lake County, IL 60048, performing the duties of a registered nurse in the intensive care unit.

18. Defendant, Kelley Harrison, RN, is an adult individual and a licensed medical professional. During all relevant times, Defendant Harrison was an agent and/or employee of

Advocate Condell Medical Center, which is located at 801 S. Milwaukee Avenue, Libertyville, Lake County, IL 60048, performing the duties of a registered nurse.

19. Defendant, Pulmonary Medicine Associates ("Pulmonary"), is located at 675 W. North Avenue, Suite 214, Melrose Park, IL, 60160-1604. During all relevant times, Defendant Pulmonary, employed Dr. Friedman and Dr. Ginsburg.

20. Defendant, Best Practices Inpatient Care, Ltd ("Inpatient Care"), is located at 3880 Salem Lake Drive, Suite F, Long Grove, IL 60047. During all relevant times, Defendant Inpatient Care, employed Dr. Rivard.

21. Defendant, Thomas H. Burnstine, MD SC, is located at 755 S. Milwaukee Avenue, Suite 220, Libertyville, IL 60048. During all relevant times, Thomas H. Burnstine, MD SC, employed Dr. Burnstine.

22. Defendant, Lake County Radiology Associates ("Radiology"), is located at 209 Peterson Road, Libertyville, IL 60048. During all relevant times, Defendant, Radiology, employed Dr. Zartaisky.

23. Defendant, Advocate Condell Medical Center ("Condell"), is located at 801 S. Milwaukee Avenue, Libertyville, Lake County, IL 60048. Defendant Condell is a partner of Defendant APP. The treatment and care provided by Defendant Condell and its agents and employees hastened and caused Randall's death. Defendant Condell acted through its agents and employees, including but not limited to, its physicians, nurses, and administrators.

24. Defendant, Advocate Health Care ("Advocate"), is a not-for-profit health system whose administrative office is located at 3075 Highland Parkway, Suite 600, Downers Grove, IL 60515. Defendant Condell is owned and operated by Defendant Advocate. The treatment and

care provided by Defendant Advocate, and its agents and employees, hastened and caused Randall's death. Defendant Advocate acted through its agents and employees, including but not limited to, its physicians, nurses, and administrators.

25. Defendant, Advocate Physician Partners ("APP"), is located at 1701 West Golf Road, Suite 2-1100, Rolling Meadows, IL 60008. Defendant APP is a medical care management company that holds itself out to be "focused on improving health care quality and outcomes—while reducing the overall cost of care—in both the inpatient and ambulatory settings." Defendant APP provides physicians with incentive pay to encourage its member doctors to reduce the length of patient hospital stays and to reduce healthcare costs. Defendant Condell has partnered with APP. The treatment and care provided by Defendant APP and its medical personnel hastened and caused Randall's death. Defendant APP acted through its agents and employees, including but not limited to, its physicians, nurses, and administrators.

26. Defendants acted through their agents, servants, employees, and partners, who were acting within the scope of their employment, agency, and/or fiduciary duties.

Decedent and Familial Relationships

27. The Decedent is Randall R. Bianchi ("Randall"), who, on the date of his death, lived in Grayslake, Illinois.

28. Lydia D. Cassaro ("Lydia") is Randall's biological mother, who lives in Deltona, Florida.

29. Mark R. Bianchi ("Mark") is Randall's biological father, who is believed to reside in Crystal Lake, Illinois.

30. Aaron J. Lindvall is Randall's biological brother, who lives in McHenry, Illinois.

31. Angelica R. Cassaro is Randall's biological sister, who lives in Debary, Florida.

32. Mikayla M. Cassaro is Randall's biological sister, who lives in Deltona, Florida.

33. CHM, a minor, is Randall's biological brother, who lives in Deltona, Florida.

34. On the date of his death, Randall was not married, and did not have any children.

Factual Background

35. Randall R. Bianchi, is a former United States Marine, who served his Country in warzones in both Afghanistan and Iraqi, and who, as a result, suffered from PTSD.

36. The U.S. government failed to provide Randall with proper mental health treatment.

37. As a result, Randall battled a drug addiction.

38. The drug addiction resulted in an 'other than honorable discharge' from the U.S. Marines, leaving Randall to fend for himself, without Veteran's Association or other health insurance or benefits.

39. On December 21, 2012, Randall and his girlfriend, Leah, returned to his residence in Illinois, after visiting with his mother, Lydia, for a week in Florida.

40. While in Florida, Lydia did not observe any evidence that Randall still had a continuing drug problem.

41. During the flight home from Florida to Illinois, Randall proposed to Leah, and Leah accepted his offer of marriage.

42. Later that day, after arriving home, Leah found Randall unconscious, as a result of an apparent accidental heroin overdose.

43. CPR was initiated, and emergency medical personnel transported Randall to the Advocate Condell Medical Center ("Condell"), 801 S. Milwaukee Avenue, Libertyville, Lake County, IL 60048.

44. Randall did not have health insurance, power of attorney, living will, or other medical directive.

45. Randall's driver's license indicated that under appropriate circumstances, he wanted to donate his organs.

46. During all relevant times, Randall was in the medical care of the Individual Defendants and Entity Defendants, who assumed complete responsibility for his care.

47. Randall's surrogates, which included Lydia, relied on the representations of the Defendants, and expected that Randall would receive proper and lawful medical treatment and care.

48. At 1:16 PM, medical personnel administered an AED shock to Randall, and Randall's pulse returned.

49. At 2:00 PM, medical personnel initiated the hospital's cooling protocol.

50. Pursuant to the cooling protocol, the target temperature "will continue for 24 hours from initiation of cooling."

51. In addition, pursuant to the protocol, "controlled re-warming . . . will take about 8 hours."

52. Therefore, pursuant to the hospital's cooling protocol, rewarming should have begun on December 22, 2012, at 2:00 PM, and rewarming should have been completed at around 10:00 PM.

53. The Defendants did not follow the cooling protocol.

54. On December 22, 2012, at 2:21 PM, Defendant, Dr. Daniel D. Rivard (hospitalist/internal medicine), noted that after a pulse was regained, "he was stable for about two hours and then started having muscle fasciculations."

55. The Defendants gave Randall Amiodarone, Dopamine, ivf, Versed, Propofol drip, and Fosphenytoin.

56. Dr. Rivard noted in Randall's medical records that Randall was "estranged from father" and had a "brother in Rockford," and a "mom in FL."

57. At 2:23 PM, Defendant, Alexander M. Zartaisky (diagnostic radiology/neuroradiology), spoke with Randall's mother, and advised her about Randall's medical case and condition.

58. At 2:45 PM, a nurse indicated in the medical records that "Pt's mother is next of kin and was notified by MD of pt's condition. Fiancé reports that his father lives in area but is estranged and has no way of contacting him. Mother's contact info entered in computer by registration."

59. At 3:10 PM, medical records indicate that Randall was medically stable but unresponsive.

60. At 3:34 PM, Randall exhibited signs of shivering and/or mild seizure activity, and as a result, medication was administered to paralyze him.

61. At 3:35 PM, medical records indicate that Defendant Rivard admitted Randall to the intensive care unit ("ICU") in stable condition and that Defendant Rivard counseled the "Family," regarding "diagnosis" and "diagnostic results."

62. Randall was placed on a ventilator.

63. On December 21, 2012, at around 4:10 PM, Dr. Thomas H. Burnstine (neurology) examined Randall and noted, "Muscle twitching does not look like typical seizure activity, and I suspect it is muscle activity; however, I have ordered a stat EEG."

64. At 4:50 PM, Dr. Beth E. Ginsburg (critical care/pulmonary disease), examined Randall and noted "he is definitely twitching and an EEG is now being attempted."

65. Dr. Ginsburg noted at the time that "he is on amiodarone."

66. Dr. Ginsburg further noted that "we will contact Gift of Hope."

67. At around 6:39 PM, Dr. Burnstine performed an Electroencephalograph ("EEG") test on Randall.

68. During the EEG, low voltage discharges were observed, and the test was ultimately determined to be a "severely abnormal electroencephalograph."

69. On December 22, 2012, at around 8:00 AM, Dr. Burnstine noted, "breathing over ventilator at times," which means that Randall had slight improvement in his neurological functioning, despite the presence of Propofol and/or other medications in his system.

70. Dr. Burnstine further noted, "seizures and breathing over vent, seizure seem controlled, he is not brain dead."

71. On December 22, 2012, at around 10:12 AM, while Randall was receiving Propofol and likely other medications, Dr. Harvey J. Friedman (internal medicine, critical care medicine, pulmonology) similarly noted, "Remains unresponsive. RR 16 on AC 16, turned down to rate of 10, and he does breath at 15."

72. At around 11:00 AM, Dr. Rivard noted, "Per nurse, pt has been occasionally breathing over vent."

73. At around 11:50 AM, Dr. Freidman noted, "D/w mother and explained situation. She is having a hard time believing that he OD'ed and that he likely will not improve. Will continue to update her regularly."

74. Lydia advised all Defendants to whom she spoke, not to discontinue life support for any reason, and that she was making arrangements to travel from Florida to the hospital.

75. Pursuant to the Health Care Surrogate Act (755 ILCS 40/10), "Available" under the Act is defined as follows:

> 'Available' means that a person is not 'unavailable'. A person is unavailable if (i) the person's existence is not known, (ii) the person has not been able to be contacted by telephone or mail, or (iii) the person lacks decisional capacity, refuses to accept the office of surrogate, or is unwilling to respond in a manner that indicates a choice among the treatment matters at issue.

76. Despite the fact that Lydia was "available" to consult with about and to direct Randall's medical care, the Defendants advised Lydia that since Randall's estranged father, Mark, was at the hospital, they would be taking direction from Mark only.

77. Lydia advised the Defendants that they were required by law to follow her medical directions, and reiterated the fact that she did not give consent to the termination of life support, or to a do not resuscitate order ("DNR").

78. Lydia communicated clearly and unequivocally to the Defendants that she wanted the Defendants to use all medical means necessary to save and preserve Randall's life; regardless of the possibility of long-term disability.

79. Since Lydia, Mark, and the Defendants were not in agreement regarding the proper course of treatment to be provided to Randall, the Defendants should have convened a medical ethics committee, or similar type committee, to mediate the apparent dispute.

80. In the alternative, if the Defendants wished to deviate from the course of care directed by the surrogates, or if the Defendants were unable to obtain a majority opinion/direction from the surrogates, the Defendants should have requested court intervention.

81. Due to the failure to implement and/or follow proper policies regarding hospital administration the Defendants failed to convene a medical ethics committee and/or seek court intervention.

82. Likewise, instead of providing Randall with a sufficient opportunity to improve or recover, the Defendants rushed to declare Randall brain dead, so that his organs could be harvested.

83. On December 22, 2012, at around 2:40 PM, Dr. Burnstine performed a follow-up EEG test on Randall while he was still medicated.

84. Dr. Burnstine determined that the EEG exhibited "electrocerebral silence," and the medical records indicate that Dr. Burnstine advised Dr. Freidman accordingly.

85. Despite the fact that a cerebral blood flow study is the most reliable test for determining whether brain functioning is intact, the Defendants failed to conduct a cerebral blood flow study.

86. Moreover, Dr. Freidman did not perform another EEG test to confirm the diagnosis of "electrocerebral silence."

87. The applicable standard of care is for the Defendants to keep an accurate medical record of the treatment provided or not provided to patients.

88. After the EEG test, however, the Defendants inexplicably stopped recording in the medical records whether or not Randall was breathing over the ventilator, and other relevant facts regarding Randall's treatment or non-treatment.

89. Furthermore, the Defendants stopped providing medical treatment intended to improve Randall's medical condition and prolong his life.

90. Instead, the Defendants began to administer medical treatment to Randall's organs, to protect the organs, and to prepare the organs for harvesting.

91. The medical treatment administered to Randall's organs negatively impacted Randall's medical condition and prognosis.

92. Despite the fact that only a few hours prior, two doctors and one nurse had confirmed that Randall was breathing over the ventilator, at 4:00 PM, medical records indicate that Dr. Friedman administered an apnea test.

93. The apnea test, which cuts off oxygen to the brain, causes hypoxia and hypercapnia, and will bring about severe, irreversible brain damage in patients, who, with proper care, would otherwise have survived.

94. Despite being available, the Defendants did not obtain informed consent from both Lydia and Mark to perform the apnea test.

95. To the contrary, Lydia had already communicated clearly and unequivocally to the Defendants that she wanted the Defendants to use all medical means necessary to save and preserve Randall's life; a goal undermined by the administration of an apnea test.

96. It is believed that discovery will reveal, and therefore averred, (a) that medically accepted prerequisites for the apnea test, and (b) accepted standards for conducting the apnea test, were not followed.

97. By way of example, it is believed and therefore averred that since Randall's liver and kidneys were not functioning at full strength, the Defendants performed the aforementioned diagnostic testing while Propofol and/or other medications or drugs remained in Randall's system, and while he was still sedated and/or paralyzed.

98. Moreover, it is believed and therefore averred that Randall was, or should have been, still hypothermic when the Dr. Friedman performed the apnea test.

99. Dr. Friedman, a pulmonologist, who is neither a neurologist nor a neurosurgeon, decided that his findings during the apnea test indicated that brain death had occurred.

100. Despite knowing that Randall was estranged from his father, per Dr. Freidman, he "updated father at bedside."

101. After the first apnea test, Dr. Freidman noted, "GOH coming."

102. At 4:05 PM, Heidi Furr, ICU RN, noted the following in her progress note:

> Progress Note: Pt brought from ER on cart, placed on ICU bed and monitors. BP high, HR 90, sinus. Dopamine stopped, IVF bolus stopped. *Pt cool, on cooling blanket, but not currently cooling since he's already hypothermic*. Intraoseous IV removed. Using left hand PIV and right femoral TLC. Foley temp hooked up to monitor. Assessment completed. Dr. Ginsburg notified that pt has arrived. Critical care panel repeated. 1700 3 amps of bicarb given and adjustments made in vent support.1705 GOH notified. EEG here, test taking approximately 30 minutes. Then Dr. Bernstein here reading EEG. 1800 rechecking abg. Vent adjustments made. Insulin drip started per protocol. *1830 Dr. Ginsburg placing arterial line. Levo drip started for low BP (SBP 80's). GOH at bedside, updated.*

103. At 8:00 PM, Dr. Friedman, administered a second apnea test, likely causing further irreversible brain injury.

104. The Defendants did not obtain informed consent from both Lydia and Mark to perform the second apnea test.

105. To the contrary, Lydia had already communicated clearly and unequivocally to the Defendants that she wanted the Defendants to use all medical means necessary to save and preserve Randall's life; a goal undermined by the administration of a second apnea test.

106. It is believed that discovery will reveal, and therefore averred, (a) that medically accepted prerequisites for the second apnea test, and (b) accepted standards for conducting the second apnea test, were not followed.

107. At 8:06 PM, Defendant Kelley Harrison, a nurse, indicated in the medical records the following:

> Family notified that apnea test was positive for brain death. I called the patients mother in Florida to inform her of the results. She insisted that we were lying and was in shock. Father at bedside and told staff that his son was an organ donor and requested to speak to Gift of Hope. Gift of hope spoke with Father and aunt who were at the bedside. *Mother called back and was upset saying that the results were made up and she was going to seek counsel if we "pull the plug"*. The patients aunt spoke with the patients mother (they are sisters)[1] and tried to inform her of the grave prognosis of her son, but the mother is unable to come to Illinois.[2] The father is in agreement to honor the patients wishes for organ donation.

108. At 8:17 PM, Dr. Friedman, a pulmonologist, pronounced Randall dead.

[1] Lydia does not have a sister.

[2] Lydia advised the Defendants that while she could not get to the hospital immediately because she was in Florida, she was making financial and travel arrangements to get to Illinois as soon as possible, and that she intended to seek a second medical opinion.

109. It is believed that discovery will reveal, and therefore averred, that before pronouncing Randall dead, despite their availability, Dr. Freidman did not consult with a neurologist and/or neurosurgeon to determine Randall's diagnosis, prognosis, or whether or not brain death criteria had been met.

110. Likewise, it is believed that discovery will reveal that despite their availability, no neurologist and/or neurosurgeon examined Randall or participated in the diagnosis of brain death.

111. In Illinois, legal "death" occurs "when, according to accepted medical standards, there is (i) an irreversible cessation of circulatory and respiratory functions; or (ii) an irreversible cessation of all functions of the entire brain, including the brain stem." 755 ILCS 50/1-10.

112. The diagnosis of brain death signifies the loss of those critical brain functions that maintain the integrity of the body as a living organism.

113. The loss of critical brain functions would result in the disintegration and deterioration of Randall's body, regardless of whether or not he remained on mechanical life support systems.

114. However, it is believed that discovery will reveal, and therefore averred, that despite pronouncing Randall brain "dead," the Defendants cannot establish that Randall suffered an "irreversible cessation of *all functions* of the *entire* brain, including the brain stem" as required.

115. Specifically, it is believed that discovery will reveal, and therefore averred, that despite being declared brain dead, Randall's brain continued to regulate his body's homeostatic functions, i.e., circulation, digestion, metabolism of food, excretion of wastes, hormonal balance, temperature, PH, salt and water balance, wound healing, and growth.

116. Since Lydia and Mark, as Randall's biological parents, were in an equal class, in order for the Defendants to be permitted to lawfully terminate life support, *both* Lydia *and* Mark needed to provide informed consent for the removal of life support and a DNR, which neither of them did.

117. To the contrary, Lydia had already communicated clearly and unequivocally to the Defendants that she wanted the Defendants to use all medical means necessary to save and preserve Randall's life – not to "pull the plug" – a goal undermined by the administration of two apnea tests, Randall's removal from the ventilator, and the Defendants' cessation of medical treatment necessary to sustain life.

118. Moreover, despite knowing that Randall was estranged from his father, and despite knowing that Lydia remained immediately accessible by telephone, the Defendants permitted Mark only to make unilateral end-of-life medical decisions on Randall's behalf, and pressured Mark into agreeing to the termination of life support, and to a DNR.

119. When Lydia called the hospital to speak with the Defendants, the Defendants refused to speak with her.

120. Instead, the Defendants told Lydia that she should speak with Mark and his fiancé, because according to the Defendants, Mark and his fiancé were directing Randall's care.

121. The Defendants did not explain to Mark that an agreement to the termination of life support, and a DNR for the purpose of harvesting Randall's organs, would change the medical treatment being provided to Randall, and would set in motion a chain of events that would ensure Randall's demise.

122. Based solely on Mark's *uninformed* consent, Dr. Friedman and other Defendants discontinued Randall's life support, causing his untimely death.

123. It is believed and therefore averred that Randall had neither experienced brain death nor cardiac death prior to when life support was terminated.

124. Since Randall's medical condition had improved in the 24-hour period of time from when Randall was admitted to the hospital on December 21, 2012, the Defendants should have based their medical decisions and treatment plan on the entire clinical picture and not just on the EEG.

125. Had the Defendants done so, the Defendants would not have (a) deviated from the cooling protocol, (b) conducted EEG tests less than 24 hours apart, (c) conducted two apnea tests that likely caused irreversible brain injury, and (d) removed Randall from the ventilator and discontinued necessary medical treatment when they did.

126. The nurse Defendants either knew or should have known that under the circumstances and current state of the law, unless *both* Mark *and* Lydia provided informed consent to (a) specific medical treatments, or (b) removing Randall from the ventilator and ceasing other necessary life sustaining medical treatment, they were not lawfully permitted to do so.

127. As nurses, the nurse Defendants were obligated to advocate on Randall's behalf but failed to do anything to challenge or stop the course of medical treatment, which resulted in Randall's untimely death.

128. But for the desire to harvest Randall's organs and to free up a hospital bed, there was no reason for the Defendants to rush to declare Randall dead.

129. During all relevant times, the Individual Defendants acted pursuant to the policies and practices of the entity Defendants, and in furtherance of the entities' financial and business interests.

130. It should be noted that Defendant APP provides physicians with incentive pay to encourage its member doctors to reduce the length of patient hospital stays and to reduce healthcare costs.

131. The entity Defendants knew of, permitted, and ratified, the Individual Defendants' aforementioned conduct.

132. The Survival Act of Illinois (755 ILCS 5/27-6) has been codified under the Probate Act of 1975.

133. Pursuant to the Survival Act, the cause of actions belonging to Randall in life survive his death.

COUNT I

Plaintiff Estate v. Defendant Entities
Violation of the Federal EMTALA, 42 U.S.C. § 1395dd

134. Paragraphs 1-133 are incorporated herein by reference.

135. The Defendant entities participate in the Medicare program, and are therefore required by law to comply with the EMTALA.

136. The EMTALA imposes two duties on hospitals: (1) when "any individual" comes to a hospital's emergency room seeking examination and treatment, the hospital must "provide for an appropriate medical screening examination," and (2) if the hospital determines an individual has an "emergency medical condition," the hospital must either: (a) provide further examination

and treatment so as to "stabilize" the patient's condition before discharging the patient, or (b) transfer the individual to another medical facility.

137. Randall presented at Condell with a qualifying emergency medical condition.

138. The Defendant entities failed to provide Randall with an appropriate medical screening examination.

139. In addition, after admitting Randall to inpatient medical care, the Defendant entities failed to provide Randall with necessary further examination and treatment, so as to stabilize his medical condition.

140. Instead, the Defendant entities withdrew a ventilator and necessary medical treatment, thereby causing and hastening Randall's untimely death.

141. Finally, the Defendants failed to transfer Randall to another medical center that would have been better able to treat his medical condition.

142. It is believed and therefore averred that Randall was indigent and suffered from a drug addiction.

143. It is believed and therefore averred that the Defendant entities engaged in their unlawful conduct because of the significant daily financial burden on the Defendant entities to continue to provide medical treatment to Randall.

144. Moreover, it is believed and therefore averred that the Defendant entities engaged in their unlawful conduct because Randall's drug addiction did not mesh with the Defendant entities' beliefs.

145. Finally, it is believed and therefore averred that the Defendant entities engaged in their unlawful conduct because of the financial incentive and benefit associated with the cessation of medical care and the harvesting of organs in this instance.

COUNT II

Plaintiff Estate v. Defendants
Violation of the Illinois EMTA, 210 ILCS 70/1

146. Paragraphs 1-145 are incorporated herein by reference.

147. The Illinois EMTA provides, "No hospital, physician, dentist or other provider of professional health care licensed under the laws of this State may refuse to provide needed emergency treatment to any person whose life would be threatened in the absence of such treatment, because of that person's inability to pay therefor, nor because of the source of any payment promised therefor."

148. After admitting Randall to inpatient medical care, the Defendants failed to provide Randall with necessary further examination and treatment, so as to stabilize his medical condition.

149. Instead, the Defendants withdrew a ventilator and necessary medical treatment, causing and hastening Randall's death.

150. Randall was indigent and suffered from a drug addiction.

151. It is believed and therefore averred that the Defendants engaged in their unlawful conduct because of the significant daily financial burden on the Defendant entities to continue to provide medical treatment to Randall.

152. Moreover, it is believed and therefore averred that the Defendants engaged in their unlawful conduct because of the financial incentive and benefit associated with the cessation of medical care and the harvesting of organs in this instance.

COUNT III

Plaintiff Estate v. Defendants
Violation of Illinois Health Care Surrogate Act (Act), 755 ILCS 40/1, *et seq.*

153. Paragraphs 1-152 are incorporated herein by reference.

154. After examining Randall, the Defendant attending physicians determined that Randall lacked decisional capacity and noted this fact in writing his medical records by stating their observations, findings, diagnosis, and prognosis.

155. The Defendants next determined that there was no authorized agent to act on Randall's behalf; thus, the Defendants determined that a surrogate needed to be located.

156. Pursuant to the Health Care Surrogate Act (HCSA), the Defendants determined that both Lydia and Mark, Randall's parents, were available, competent, and legally authorized surrogates to act on Randall's behalf.

157. As such, the Defendants repeatedly provided both Lydia and Mark with updates, albeit at times incomplete and/or misleading, regarding Randall's medical diagnosis and prognosis, intended to influence their medical decisions.

158. Pursuant to the HCSA, "decisions concerning medical treatment on behalf of an adult patient who lacks decisional capacity may be made by a surrogate decision maker, in consultation with the attending physician, with the exception that decisions to forgo life-sustaining treatment may only be made when a patient has a "qualifying condition."

159. Pursuant to the HCSA, (1) the attending physician shall note the existence of a "qualifying condition" in writing in the patient's medical record, and (2) a qualified physician must note his/her concurrence in the medical record.

160. It is believed and therefore averred that neither occurred in Randall's case.

161. Therefore, it is believed and therefore averred that at the time when the Defendants terminated life support, Randall had not been properly diagnosed as suffering from a "qualifying condition."

162. Moreover, pursuant to the HCSA, the Defendants knew that prior to the Defendants being authorized to terminate life support, (a) a surrogate decision maker must express his/her decision to forgo life-sustaining treatment to the attending physician and one adult witness, and (b) the decision and the substance of any known discussion before making the decision must be documented by the attending physician in the patient's medical record and signed by the witness.

163. Again, it is believed and therefore averred that neither occurred in Randall's case.

164. Furthermore, pursuant to the HCSA, the decision to terminate life support must be made after, and completely independent of, the decision of whether or not a patient suffers from a qualifying medical condition under the Act.

165. As evidenced by GOH being bedside at 6:30 PM on December 22, 2012, prior to the second apnea test being performed, the Defendants blended the issues and began to discuss the termination of life support and the donation of Randall's organs prior to confirming and certifying that Randall suffered from a qualifying medical condition.

166. Finally, pursuant to the HCSA, where there are multiple surrogate decision makers at the same priority level, as in the case of Lydia and Mark, absent the existence of a custodial

parent or the initiation of guardianship proceedings by a minority surrogate, surrogate decisions can only be made by a majority of surrogates at the same priority level.

167. The Defendants knew that Lydia and Mark disagreed about whether or not life support should be discontinued, and opted without legal authority to permit Mark only, who was known to be estranged, to decide the issue.

168. The Defendants failure to comply with their obligations pursuant to the HCSA proximately caused Randall's pain and suffering, and untimely death.

169. The Illinois Health Care Surrogate Act, 755 ILCS 40/25, further provides in relevant part that "If 2 or more surrogates who are in the same category and have equal priority [such as Lydia and Mark] indicate to the attending physician that they disagree about the health care matter at issue, a majority of the available persons in that category (or the parent with custodial rights) shall control, unless the minority (or the parent without custodial rights) initiates guardianship proceedings in accordance with the Probate Act of 1975 [755 ILCS 5/1-1 et seq.]."

170. The Act further provides, "After a surrogate has been identified, the name, address, telephone number, and relationship of that person to the patient shall be recorded in the patient's medical record."

171. Finally, the Act provides, "In the event an individual in a higher, a lower, or the same priority level or a health care provider seeks to challenge the priority of or the life-sustaining treatment decision of the recognized surrogate decision maker, the challenging party may initiate guardianship proceedings in accordance with the Probate Act of 1975 [755 ILCS 5/1-1 et seq.]."

172. Lydia and Mark were surrogates in the same category with equal priority.

173. Lydia and Mark communicated to the Defendants that they disagreed about whether or not life support measures should be terminated.

174. Lydia advised the Defendants that she intended to seek an injunction to stop the Defendants from terminating life support.

175. In this regard, on Friday, December 21, 2012, Lydia consulted with counsel, and was advised that as soon as the Court opened, appropriate documents would be filed to seek an injunction to prevent the immediate removal of Randall's life support.

176. While Lydia informed the Defendants that she intended to take legal action, no other persons or entities initiated guardianship proceedings or was appointed guardian over Randall.

177. Regardless, the Defendants terminated Randall's life support and caused his untimely death.

COUNT IV

Plaintiff Estate v. Defendants
Medical Malpractice Pursuant to Illinois Law

178. Paragraphs 1-177 are incorporated herein by reference.

179. Medical malpractice occurs when a doctor or other healthcare professional, or institution, breaches the standard of care when treating a patient, resulting in an injury or death.

180. The standard of care is the generally accepted set of standards and practices that other medical professionals would take when treating a similar patient.

181. The Defendants breached the standard of care when treating Randall, which caused Randall's unlawful and untimely death.

182. Prior to the running of the statute of limitations, Plaintiff will file a certificate of merit as required by law.

COUNT V

Plaintiff Estate v. Defendants
Medical-Battery Pursuant to Illinois Civil Law

183. Paragraphs 1-182 are incorporated herein by reference.

184. In a medical-battery case, an injured party can recover by establishing either that there was no consent to the medical treatment performed, or that the treatment substantially varied from the consent.

185. The Defendants committed medical-battery against Randall by performing and/or removing medical treatments without his or his surrogates' informed consent.

186. The actions constituting medical-battery caused Randall's unlawful and untimely death.

COUNT VI

Plaintiff Cassaro v. Defendants
Intentional Infliction of Emotional Distress

187. Paragraphs 1-186 are incorporated herein by reference.

188. To state a claim for intentional infliction of emotional distress, a Plaintiff must establish the following: (1) the Defendants' conduct must be extreme and outrageous, as measured by the sensibilities of the average member of the community; (2) the Defendant must either intend that his conduct cause severe emotional distress, or know that there is a high probability that the conduct will cause severe emotional distress; and (3) the resulting emotional distress must be so severe that no reasonable person could be expected to endure it.

189. The Defendants' conduct in knowingly violating state and federal law, and established standards and procedures in the medical profession, and purposefully causing Randall's untimely and unlawful death, is extreme and outrageous.

190. The Defendants knew that there was a high probability that ignoring Lydia's authority pursuant to the Illinois Health Care Surrogate Act and acting contrary to her stated medical direction thereby causing Randall's unlawful and untimely death would cause Lydia to suffer severe emotional distress.

191. The emotional distress associated with Lydia knowing that her son was being unlawfully killed so that his organs could be harvested, and that she was unable to prevent the Defendants from doing so, was so severe that no reasonable person could be expected to endure it.

192. Moreover, the Defendants did not provide Lydia with an opportunity to say goodbye to her son before they caused his untimely death.

COUNT VII

Plaintiff Cassaro v. Defendants
Illinois Wrongful Death

193. Paragraphs 1-192 are incorporated herein by reference.

194. It is generally accepted that to ensure that the cessation of brain function is "irreversible," physicians must determine the cause of coma, exclude mimicking medical conditions, and observe the patient for a period of time to exclude the possibility of recovery.

195. The medical testing as performed by the Defendants deviated from acceptable medical standards and practices, and therefore, could not and did not definitively establish the "irreversible cessation of all functions of the entire brain, including the brain stem."

196. Regardless, without the necessary legal authority to do so, and in violation of accepted medical standards and practices, the Defendants removed Randall from the ventilator, and discontinued other necessary medical treatments, thereby causing Randal's untimely death, so that his organs could be harvested.

197. Pursuant to § 740 ILCS 180/2, Lydia seeks fair and just compensation with reference to the pecuniary injuries resulting from Randall's death, including but not limited to damages for grief, sorrow, and mental suffering; loss of family advice, counsel, guidance, instruction, and training services; loss of family accompaniment services; and loss of consortium, love, and companionship.

COUNT VIII

Plaintiffs v. Defendant Entities
Vicariously Liability Pursuant to Illinois Civil Law

198. Paragraphs 1-197 are incorporated herein by reference.

199. A hospital is vicariously liable for the negligent acts of an independent contractor physician if (a) it acts in a manner, or knowingly acquiesces in the acts of an agent, that would lead a reasonable person to conclude that the physician is its agent or employee, and (b) the patient reasonably relies upon such conduct. See Gilbert v. Sycamore Municipal Hospital, 622 N.E.2d 788 (1993).

200. It may be assumed that if a patient has not selected a specific physician, he is relying

upon the hospital to provide complete care, and even if he has selected a physician to perform particular services, he may be relying on the hospital for support services like radiology, pathology, or anesthesiology. See York v. Rush-Presbyterian-St. Luke's Medical Center, 854 N.E.2d 635 (2006).

201. Defendants Condell, Advocate, and APP, acted in a manner to lead the Plaintiffs to conclude that the Co-defendants were their agents and/or employees.

202. Moreover, the Plaintiffs were relying on Defendants Condell, Advocate, and APP, to provide Randall with complete medical care, including all support services.

203. Therefore, the Defendant Entities are vicariously liable for the actions of the Co-defendants.

COUNT IX

Plaintiffs v. Defendants
Civil Conspiracy Pursuant to Illinois Civil Law

204. Paragraphs 1-203 are incorporated herein by reference.

205. To state a claim for civil conspiracy, the Plaintiff must establish the following: (1) an agreement to accomplish by concerted action either an unlawful purpose or a lawful purpose by unlawful means; (2) a tortious act committed in furtherance of that agreement; and (3) an injury caused by the Defendant.

206. The Defendants agreed to commit the aforementioned actions in violation of state and federal law, and accepted medical standards and practices, without obtaining informed consent from Randall or his authorized surrogates.

207. The Defendants' actions were in furtherance of their agreement.

208. The Defendants' actions caused Randall's unlawful and untimely death and the Plaintiffs' injuries.

WHEREFORE, the Plaintiffs respectfully request that judgment be entered in their favor as follows:

A. That this Court declare that the Defendants' actions violated their statutory rights;

B. That this Court declare that the Defendants are jointly and severally liable for all damages;

C. Compensatory damages, including but not limited to pain and suffering; loss of the value of life; loss of future wages and benefits; loss of companionship, comfort, financial support, and guidance caused by the death; loss of consortium; and the survivor's emotional suffering.

D. Punitive damages as permitted by law;

E. Reasonable attorney's fees and costs;

F. A jury trial; and,

G. Such other financial or equitable relief as is reasonable and just.

Jury Trial Demand

Plaintiffs respectfully request a trial by jury on all claims/issues in this matter that may be tried to a jury.

Respectfully Submitted,

Date: December 4, 2014

DEVON M. JACOB, ESQUIRE
Pa. Sup. Ct. I.D. 89182
Counsel for Plaintiffs

JACOB LITIGATION
P.O. Box 837, Mechanicsburg, Pa. 17055-0837
717.796.7733 | djacob@jacoblitigation.com