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August 12, 2014

Michael E. Kunz, Clerk of Court  
United States District Court, Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street, Room 2609  
Philadelphia, PA 19106-1797

RE: Estate of Bernice Goldberg vs. Jefferson Hospital, et als  
Case # 2:14-cv-000980-RB

Dear Mr. Kunz:

Pursuant to your Federal Court instructions, enclosed herein please find a Second Amend Complaint and well as a CD (PDF format of the Second Amended Complaint). As you can see, we have added some new defendants. As a courtesy, I am also enclosing a copy of Judge Buckwalter's Order.

Should you have any questions, please feel free to contact me. Thank you for Your Honor's attention to this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "S. Horn", written over a horizontal line.

Steven M. Horn

SMH:sll

Enc.

Cc: Mary Ellen Reilly, Esquire

Thomas R. Chawluk, Jr., Esquire

**THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

ESTATE OF BERNICE GOLDBERG,  
BY EXECUTOR GARY GOLDBERG,

Plaintiff,

CASE # 2:14-cv-00980-RB

vs.

PHILIP NIMOITYN, M.D., KENNETH  
ROSENBERG, M.D., JAY SELLERS, M.D.,  
MITUL KANZARIA, M.D., MICHAEL  
BARAM, M.D., CARDIOVASCULAR  
ASSOCIATES, THOMAS JEFFERSON  
UNIVERSITY HOSPITAL, (JOHN, JANE,  
CORPORATE, LLC., ASSOCIATIONS,  
PC., DOES.),

**SECOND AMENDED COMPLAINT  
ON BEHALF OF PLAINTIFF AND  
JURY DEMAND**

Defendants.

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**STATEMENT OF CLAIM**

The Estate of Bernice Goldberg and Executor Gary Goldberg, Plaintiffs  
herein, hereby files this claim against the Defendant's, Philip Nimoityn M.D., Jay  
Sellers, M.D., Kenneth Rosenberg, M.D., Mitul Kanzaria, M.D., Michael Baram,  
M.D., Cardiovascular Medical Associates, Thomas Jefferson university Hospital  
John Does 1-10, Janes does 1-10, and Corporate Does 1-10, support there of  
states as follows:

**FACTS COMMON TO ALL COUNTS**

1. The decedent, Bernice Goldberg was a resident of New Jersey, residing at 59  
B Edinburg Lane, Manchester, New Jersey.

2. The Defendant Physicians is are licensed to practice medicine in the State of Pennsylvania and regularly engages in the practice of medicine in Philadelphia, Pennsylvania.
3. The Defendant Philip Nimoityn and Defendant Kenneth Rosenberg are part of a group practice, Cardiovascular Medical Associates, located at 818 Chestnut Street, Philadelphia, Pennsylvania.
4. The amount of this claim exceeds the jurisdiction limit of the District Court in the Eastern District of Pennsylvania (i.e. \$75,000) and the appropriate venue for this claim is Philadelphia, Pennsylvania based upon Diversity Jurisdiction.
5. On or about August 12, 2013 through August 24, 2013, Defendants provided medical services to the decedent during a hospitalization at Thomas Jefferson University Hospital.
6. During this Hospital admission, Defendant Physicians were acting as agent/employee of Thomas Jefferson University Hospital and were providing medical services to the Decedent.
7. During this admission Defendant Nimoityn was the attending physician responsible for the care and treatment of the Decedent and her nutritional status.
8. The Decedent was determined to be unable to make decisions regarding her treatment and the son of the Decedent, Gary Goldberg, had power of attorney to make medical decisions for his mother. Defendant negligently delayed the

determination that the decedent did not have the mental capacity to make medical decisions and this delay was a proximate cause of the pain and suffering and demise of the decedent.

9. On August 16, 2011 at 7:58pm, Gary Goldberg consented to the placement of a PEG tube in his mother for the purpose of providing nutrition to the Decedent.

10. During this admission Defendants had a duty to make sure treatment was instituted specifically regarding the placement of a PEG tube and the PEG was not placed. As a result, decedent's condition was exacerbated by lack of nutrition which led to her demise.

11. Defendants owed a duty to Decedent to provide medical care and to make sure medical care needed was instituted within acceptable standards of care within the medical community and Defendant breached this standard of care because the PEG tube was not placed and the Decedent died.

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12. As a direct and proximate result of the breach of the applicable standard of medical care by Defendants, the Decedent suffered conscious pain and suffering and died.

13. The injuries and damages sustained were the direct and proximate result of the negligent actions of Defendants without any act or omission on the part of the decedent and the decedent did not assume the risk of her injuries.

14. The Defendants are licensed to practice medicine in the State of Pennsylvania and regularly engage in the practice of medicine in Philadelphia, Pennsylvania.
15. Defendants did intentional and maliciously withhold from the decedent food and water and stated to the beneficiaries that decedent would not be given any food or water because it was determined that she was going to die anyway. This conduct not only is a deviation from the standard of care and a proximate cause of death, it is egregious.
16. During a prior admission in May of 2011 decedent was evaluated by a psychiatrist for competency regarding the ability to make medical decisions. She was found not to be competent.
17. Decedent went to the ER on August 11, 2011 at Jefferson and was then admitted August 12, 2011. The nursing transfer summary documents the family's insistence that their mother be given a puree diet because attempts at passing a NG tube the past week were not successful.
18. The history and physical confirms the decedent was a "very poor historian" and was "poorly cooperative".
19. An August 12, 2011 progress note timed at 10:00 indicates the decedent was adamant about not getting a PEG tube. She stated that she will eat and that she is not eating because she "is rebelling against the world". She believed that her son doesn't have control over her and that he can "just wait until she's dead." The same note continues confirming the Dr. Kanzaria's

concern regarding the patient's **nutritional status**. The physician spent a considerable amount of time discussing the need for a PEG tube. He tried to explain to her that with better nutrition she will heal better. It was also explained to her that a PEG tube would provide nutrition which would make her stronger. The same note confirms the decedent will be evaluated for **competency**.

20. On August 15, 2011 at 11:00 hours there is a Gastroenterology note indicating the healthcare providers were discussing a feeding tube versus a PEG tube. Gary Goldberg requested a NG tube but that this had failed in the past.
21. A note dated August 16, 2011 and timed at 05:00 hours indicates that a NG tube had been placed but the patient was found with the tube coiled in her mouth so it was pulled and removed. A nurse then tried to feed her dinner and she ate a couple spoonfuls of apple sauce, peaches and vanilla ice cream.
22. One hour later at 06:00 a NG tube was again passed and removed because the patient was uncooperative. She would not drink water.
23. A note dated August 16, 2011 at 06:30 indicates possible PEG tube placement and that they would again attempt a NG tube first.
24. At 11:45 am on August 16, 2011, it is documented that NG tube placement was unsuccessful and that there is a need to discuss with the patient's son/power of attorney if he is agreeable. If so can plan endoscopic PEG.

25. The son, Gary Goldberg was contacted and gave consent for a PEG tube at approximately 3:15pm August 16, 2011.
26. A nutrition note of August 16, 2011 at 13:38 hours indicates the patient will receive a PEG tube and that it is likely nutritional support will be long-term so PEG would be more appropriate.
27. A consent form was signed on August 16, 2011 at 17:20 hours for Percutaneous Endoscopic Gastrostomy Tube Placement(PEG) via phone by Gary Goldberg.
28. A consent form was signed via phone by Gary Goldberg for anesthesia for the PEG tube on August 16, 2011at 7:58pm.
29. On August 17, 2011 at 05:00 the patient was given nothing by mouth (NPO) for PEG placement today.
30. A note on August 17, 2011 at 6:20 am indicates Peg placement and that same was discussed with the son yesterday.
31. A GI note on August 17, 2011 at 07:00 hours confirms the patient "to go for Peg today".
32. A psychiatric consultation was performed on August 17, 2011at 11:05 and the patient was found to not have the capacity to make medical decisions. This opinion was formulated 55 minutes later at 12:00 hours. Page 4 of the consultation report is dated August 18, 2011 at 10:15 hours.

33. On August 18, 2011 a note timed at 8:00 a.m. indicates the patient refused the PEG tube and that a psychiatric consultation was completed and that they were awaiting a report on competency.
34. A progress note of August 19, 2011 at 02:15 hours is the first time a decrease in the decedent's oxygen saturation levels is documented.
35. Gary Goldberg is the Executor of the Estate of Bernice Goldberg and the son of Bernice Goldberg. He is an attorney at law licensed for 37 years to practice law in New Jersey and Pennsylvania.
36. Mr. Goldberg is personally familiar with the events surrounding his mother's death at Jefferson Hospital on August 24, 2011.
37. Decedent was a strong woman. It was impossible to survive when the hospital and the doctors who swore an oath, were the architects of, and orchestrated her death.
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38. Decedent was born on July 31, 1930. She was a resident of Manchester, New Jersey and originally transferred into Jefferson Hospital from Kimball Medical Center in Lakewood, New Jersey. She was transferred to Jefferson because of the high quality of care Mr. Goldberg expected her to receive at Jefferson. She was admitted by Dr. Philip Nimointyn, as he knew her, having cleared her for surgery at Rothman years before.
39. In a May 2011 admission, the decedent had been declared incompetent by Jefferson psychiatrists, and Mr. Goldberg had power of attorney in connection



with his mother's treatment at Jefferson. He became concerned over the course of her treatment at Jefferson. The hospital discharged her to a rehab, with a 20,000 white count, which rose to 52,000 a day later, resulting in decedent being rushed back to Jefferson. The hospital and doctors were rushing her out, and no longer wanted her as a patient. An Ethics Meeting was urgently convened on July 7, 2011, to discuss the family's concerns about the quality of care, with the Ethics Committee recognizing decedent was incompetent to make medical decisions, and that Mr. Goldberg had power of attorney to make medical decisions for her.

40. Decedent went back and forth between Jefferson Hospital and the rehab. Mr. Goldberg put her in a rehab in Philadelphia so that she would be close to Jefferson even though it required him to travel from New Jersey to Pennsylvania. Decedent was admitted for the on August 11, 2011. The Hospital was not happy to see her again as we admitted through the ER. I was told that she had been admitted too many times, and it was now time to come up with a plan so that she would not keep coming back.

41. On the final admission, from the outset, on August 11, 2011, Mr. Goldberg continued to be concerned over the quality of care, the lack of nutrition, and the need to place a peg tube so that my decedent would be nourished. He repeatedly complained to the hospital administrator's office. He was unable repeatedly to get Dr. Nimointyn on the telephone. He went to the Hospital Administrator's office. The Administrator's office also was unable to reach Dr. Nimointyn, and left messages. While still in the Hospital Administrator's

office, Dr. Nimointyn called. He was not happy. Dr. Nimointyn told me that he had just gotten off the telephone with the hospital's attorney, that I had butted heads with a lot of people, and that if I didn't stop complaining, that the hospital would not want to treat my mother anymore.

42. Day after day, Mr. Goldberg was given a different story as to why a peg tube was not placed to nourish my mother. On or about August 17, 2011, he received a call early in the morning that decedent was scheduled for the peg tube. When I arrived at the Hospital in the afternoon. He was told that the peg tube was not placed. He was furious and extremely angry and demanded to see Dr. Nimointyn. Dr. Nimointyn's resident, Dr. Kanzaria, arrived and told me that he "could not advocate for a peg tube", that he believed that the decedent was competent to make her own decisions and that she did not want a peg tube, even though hospital psychiatrists found her to be incompetent to make medical decisions, and even though I had power of attorney. Mr. Goldberg told him unequivocally that he had the power to make the decision to have the peg tube placed, that he was not asking him to advocate for a peg tube, that he was the advocate, and that he demanded that the peg tube be placed, Mr. Goldberg yelled, "I WANT THAT PEG TUBE!" There was a note in big letters on the board in my mother's room in 10 Pavilion, which boldly stated that she should not be given food or water.
43. On or about August 19, 2011, decedent began to have difficulty breathing. Dr. Jay Sellers from the Intensive Care Unit came to her room at 10 Pavilion and determined that she should be transferred to ICU.

44. When decedent first arrived in ICU, Mr. Goldberg was advised by Dr. Vaid that on Monday she would receive a PIC line, so that she could be nourished. Dr. Sellers, at that time, also agreed that "nutrition is key", and that albumin levels showed that she was malnourished, and a PIC line with TPN would be placed.

45. On Monday, Dr. Vaid was no longer assigned to the case. Mr. Goldberg discussed care and treatment with Dr. Baram, Dr. Nimoityn and Dr. Sellers and demanded that she be fed and hydrated. He told them that he wanted everything done for her, even including dialysis to help her kidney function. They steadfastly refused to feed or hydrate her. He told them that while my mother was just an 80 year old woman to them, she was his mother, and demanded that she be fed and hydrated.

46. Mr. Goldberg went to the Hospital Administrator's office and spoke with Dr. Merli's secretary, who sent him to patient services.

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47. On August 22, 2011, Mr. Goldberg went to Susan Emory, the Nutrition Specialist in ICU. At first, Susan Emory was concerned about what he told her, that his mother was not being fed or hydrated, she too advising that "it all starts with nutrition". She seemed quite concerned, and said that she would look into the matter immediately. Later that day, he again went back to Susan Emory. Her attitude had now changed. She said she looked into the matter, and that she had spoken with my mother's doctors, and that she could do

nothing to help, that her "hands were tied". He begged her to help, and go with him to the Hospital Administrator's office, but she refused.

48. On Tuesday, August 23, 2011, Dr. Rosenberg came into my mother's room.

After examining my mother for a few moments, with my mother still conscious, he bellowed, "She's worse today than yesterday ... she's done."

The Dr. Rosenberg stated that "she did not want a peg tube, she did not want anything." Mr. Goldberg demanded that Dr. Rosenberg leave the room and that his actions and the actions of the other doctors would be referred to a prosecutor.

49. Throughout this admission, both before and after decedent went into the ICU,

Donna Applegate and Mr. Goldberg witnessed their mother begging, pleading, for food and water, saying repeatedly, while crying, "please get me something to eat and drink ... I'm hungry, I'm thirsty ... my mouth is so dry" ...

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"help me". When she was in the ICU, Mr. Goldberg and his sister, Donna

Applegate were unable to feed or hydrate her because she constantly wore a

mask. Donna Applegate laid her head on her mother's stomach and said that

she could hear her empty stomach grumbling from hunger pains. Her

condition continued to worsen. A hospital official came and took a picture of

my mother, and then denied doing so. During the day Mr. Goldberg was

advised that a second emergency ethics meeting was scheduled for 9:00 a.m.

on August 24, 2011.

50. Not having been nourished or hydrated for so long, decedent began to slip.

She cried, "I'm hanging by a thread." On the evening of August 23, 2011, Mr. Goldberg was advised by the shift nurse caring for my mother, Kim, that "she had nothing hanging by her bed", that "she has no food, no water, no medication". The nurse went to talk to the doctor on duty, to demand and find out why my mother had nothing, and asked that my mother be given nourishment and hydration, but to no avail.

51. Mr. Goldberg then went to the desk and asked to see the physician in charge.

He was told to go back to the room, and that the doctor would meet him there. Dr. Jay Sellers came to the outside of the room. At that time, he demanded that his mother be given nourishment and hydrated. Dr. Sellers, said "The team has decided that your mother is going to die anyway so we are not going to feed or hydrate her." Mr. Goldberg responded that he did not have that authority, and that he had decision making authority over his mother's care, and demanded that she be fed and hydrated. Dr. Sellers again repeated that, "The team has decided that your mother is going to die anyway, so we are not going to feed or hydrate her". Mr. Goldberg reminded Dr. Sellers that Dr. Kevorkian died in prison, and that he and his colleagues would be held accountable for their actions.

52. Mr. Goldberg then asked to see Dr. Sellers' shift supervisor, who was Dr.

Peters. Dr. Peters took, him and his two sisters into the ICU visitor's lounge, at which time Mr. Goldberg explained that the family wanted their mother fed and hydrated. Mr. Goldberg told Dr. Peters what Dr. Sellers said and she

began to cry and said that "Dr. Sellers was wrong" and that this matter will be discussed with Dr. Nimoityn. Mr. Goldberg told her that euthanasia was illegal. She again began to cry, and agreed that euthanasia was illegal, and said again that Dr. Sellers and the team's decision was wrong".

53. At 5:11 a.m., on the morning of August 24, 2011, my mother, Bernice Goldberg, passed away. It was a very painful and slow death for her and for the family.

54. Jefferson Hospital and the defendants said that decedent had been there too many times and that they needed to come up with a plan. Dr. Philip Nimointyn, Dr. Jay Sellers, Dr. Baram and Dr. Rosenberg came up with a plan. They intentional disregarded the power of attorney, and intentionally deprived the decedent of nourishment and hydration causing her death. Mr. Goldberg felt so strongly that they killed my mother, that the day after sitting Shiva, I went to the Philadelphia District Attorney to report that a murder had been committed at Jefferson. On the same day, I went to the United States Department of Justice and filed a Complaint.

55. Defendants violated their oath, to heal the sick. Defendants intentionally killed the decedent. They intentionally took away the family's right to make medical decisions for their mother. They intentionally cut decedent's life short.

56. The Defendants must be held accountable for their actions. This case cries out not just for compensatory damages, but also punitive damages.

57. Even if decedent was going to die anyway when she was in ICU, she had the right to die more comfortably. Defendants conspired to intentionally withhold food and water, and tortured decedent the family. Defendants committed a crime against humanity and for that, they should be punished. Dr. Sellers had a duty, even if the team had decided that decedent was not to be fed or hydrated, to go to the hospital administrator and report what the team had decided. Instead, Dr. Sellers acquiesced, and went along with the killing of decedent.

58. Decedent was a difficult patient and was costing the hospital money as the hospital could have received more for the bed with another patient. I was a persistent advocate for her, watching and questioning, and demanding. In the end, Defendants wanted to show Mr. Goldberg who was in control, notwithstanding his power of attorney to make medical decisions. Defendants refused to follow my instructions to give my mother food and hydration, even though the objective tests showed that she was malnourished.

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59. Dr. Nimointyn, and Dr. Sellers intentionally withheld food and hydration. If decedent was going to die anyway when she was in ICU, giving her food and water, would have made her death more comfortable and more humane. Defendants tortured decedent and the family, to show that they, and they alone, were in control.

**COUNT ONE**

1. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1-59 above.
2. The Defendants deviated from the acceptable standard of medical care and these deviations were the proximate cause of the decedent's pain and suffering and wrongful Death by:
  - a. Delaying determination that the decedent was not mentally competent to make her own medical decisions.
  - b. Failing to order a STAT Psychological Consultation especially in light of the statements by the decedent and the prior evaluation of incompetency in May of 2011.
  - c. Failing to acknowledge the finding of August 17, 2011 that the decedent did not have the mental capacity to make medical decisions.
  - d. Failing to follow the requests by the Gary Goldberg to place a PEG tube after he consented to same on August 16, 2011.
  - e. Failing to acknowledge Gary Goldberg's power of attorney.
  - f. Failing to nourish the decedent with food and water.
3. The actions of the Defendants were outrageous and were motivated by an evil intent to shorten the life of the decedent. The defendants were recklessly



indifferent to the wellbeing of the decedent both generally and in the following particular respects:

- a. Defendant Physicians were very annoyed to see the decedent during the August admission to Thomas Jefferson University Hospital.
  - b. Defendant Physicians said that decedent had been admitted too many times.
  - c. Defendant Physicians said that they did not want the decedent to come back to the hospital again.
  - d. Defendant Physicians said that they would come up with a plan so that the decedent will not come back to the Hospital.
  - e. It was obvious the decedent was did not have the mental capacity to make medical decisions for herself.
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- f. In a prior admission three months before the decedent had a psychological evaluation for competency and she was found not to be capable of making medical decisions for herself.
  - g. The first day of the August admission it was determined that she must have another psychological evaluation for competency and that she probably needed a PEG tube.
  - h. The psychological evaluation did not take place until almost a week later even though the decedent was clearly becoming more and more malnourished.

- i. After the decedent was again found to be unable to make medical decisions the Defendant Physicians failed to acknowledge that she was incompetent and repeatedly refused to give water or food or a PEG tube to the decedent.
- j. The Defendant Physicians intentionally failed to give the decedent food, water and a PEG tube even though Gary Goldberg insisted and had power of attorney.
- k. The Defendant Physicians continued to say to Gary Goldberg that the decedent did not want a PEG tube even though she was not competent and continued to say that the decedent was going to die anyway.
- l. The Defendant Physicians told Gary Goldberg that "he had butted heads with a lot of people and that if he did not stop complaining they would not treat his mother, the decedent. They said this after consulting with the Hospital's attorney.
- m. The Defendant's conspired together to institute a plan for treatment for the August 2011 admission designed to slowly weaken the decedent by malnourishing her motivated by an evil intent and total disregard for her wellbeing for the sole purpose of causing the decedent to expire.
- n. The Defendant physicians were recklessly indifferent to the wellbeing of the decedent.

Wherefore, and as a direct and proximate result, plaintiff claims compensatory damages, including but not limited to severe conscious pain and suffering, mental anguish, discomfort, humiliation, severe emotional distress, and accumulated medical bills and punitive damages against defendants, jointly and severally in an amount to be determined at trial, plus costs, and for any relief that this Honorable Court determines necessary and appropriate. The decedent's beneficiaries suffered and will permanently suffer emotionally because they witnessed the unnecessary pain and suffering of their mother, are forever deprived of the company of their mother and suffer emotionally due to the untimely and wrongful death of their mother and therefore seek compensatory and punitive damages as a result of the negligence, outrageous, reckless indifferent and intentional conduct of the defendants.

## COUNT TWO

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1. Plaintiff re-alleges and incorporates by reference herein all of the allegations contained in paragraphs 1-59 above.
2. The defendants were acting within the scope of their employment and agency with Thomas Jefferson University Hospital.
3. Defendant Thomas Jefferson Hospital negligently granted privileges to the defendant doctors and or negligently hired the Defendant Doctors.
4. Thomas Jefferson University Hospital conspired with the Defendant Physicians to intentionally deprive the decedent water and food and a PEG

tube in reckless disregard for the wellbeing of the decedent for the intended purpose of causing her early demise.

Wherefore, plaintiff demands judgment in his favor and against all Defendants, jointly and severally, for compensatory and punitive damages, interest and costs, and for any relief that this Honorable Court determines necessary and appropriate.

**DESIGNATION OF TRIAL COUNSEL**

Plaintiff, Estate of Bernice Goldberg and Executor Gary Goldberg, designates Reynolds and Horn, P.C. as trial counsel in the above captioned matter.

**JURY TRIAL DEMAND**

The undersigned, attorney for the Plaintiffs, hereby demands Trial by Jury as to all issues in this matter.

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Reynolds & Horn, P.C.

BY:

  
Steven M. Horn, Esquire  
ID#000051987

DATED: