

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

**JOSEPH LANZETTA, as Executor of the
Estate of PASQUALE LANZETTA, Deceased**

Plaintiff,

-against-

**MONTEFIORE MEDICAL CENTER, ROBERT
POTENZA, M.D., AND HOWARD HOCHSTER M.D.**

Defendants.

Index No.

SUMMONS

To the above-named Defendants:

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

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

**Dated: Brooklyn, New York
July 1, 2019**

Lazar Grunsfeld Elnadav, LLP

**By: ___/GG/_____
Gerald Grunsfeld
Attorneys for Plaintiff
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Brooklyn, NY 11230
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TO:

MONTEFIORE MEDICAL CENTER
111 EAST 210th STREET
BRONX, NY 10467

ROBERT POTENZA, M.D.,
111 EAST 210th STREET
BRONX, NY 10467

HOWARD HOCHSTER M.D.
2233 Esplanade,
Bronx, NY 10469

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COMPLAINT

Index No.

Plaintiff JOSEPH LANZETTA, as Executor of the Estate of Pasquale Lanzetta, complaining of Defendants by his attorneys, Lazar Grunsfeld Elnadav LLP, respectfully alleges:

1. Plaintiff, Joseph Lanzetta, is the son of the decedent-plaintiff, Pasquale Lanzetta.
2. Prior to the commencement of this action, Joseph Lanzetta was duly appointed Executor of the Estate of Pasquale Lanzetta, by Order of the Surrogate’s Court of Bronx County, State of New York, dated September 17, 2018.
3. That at all times hereinafter mentioned, defendant MONTEFIORE MEDICAL CENTER, (“MONTEFIORE”), was and is a healthcare facility duly organized and existing under and by virtue of the laws of the State of New York, located at 111 EAST 210th STREET BRONX, NY 10467.
4. That at all times stated herein, defendant MONTEFIORE maintained a division known as the Jack D. WEILER Hospital Hospital of the Albert Einstein College of Medicine, located at 1825 Eastchester Rd, The Bronx, NY 10461 (referred to herein as “WEILER”).

5. MONTEFIORE and WEILER held themselves out as healthcare facilities that comply with the wishes of their patients and their families, as expressed in Health Care Proxies, and the verbal instructions of patients.
6. That at all times stated herein, MONTEFIORE and WEILER held themselves out as healthcare facilities that were in compliance with New York Public Health Law §2994-f.
7. Venue is proper in this County because Defendant MONTEFIORE is a resident of Bronx County.
8. That at all times hereinafter mentioned, MONTEFIORE owned and operated MONTEFIORE.
9. That at all times hereinafter mentioned, MONTEFIORE owned and operated WEILER.
10. Upon information and belief, defendant Robert Potenza, M.D. (“Dr. Potenza”) is an employee of MONTEFIORE or WEILER or one of their subsidiary entities.
11. At all times relevant hereto, Dr. Potenza was an officer, agent, and employee of MONTEFIORE or WEILER or one of their subsidiary entities, and was acting within the course and scope of his employment.
12. Upon information and belief, defendant Howard Hochster, M.D. (“Dr. Hochster”) is a former employee of MONTEFIORE or WEILER or one of their subsidiary entities.
13. At all times relevant hereto, Dr. Hochster was an officer, agent, and employee of MONTEFIORE or WEILER or one of their subsidiary entities, and was acting within the course and scope of his employment.

**DEFENDANTS DISREGARDED PASQUALE LANZETTA’S
END OF LIFE INSTRUCTIONS**

14. On December 30, 1993, Pasquale Lanzetta signed a living will, wherein he directed that were he to become terminally ill, or to have irreversible brain damage:

- a. Any medical treatment that would serve solely to delay the dying process should be withheld/withdrawn;
 - b. Any medical treatment to be provided to him should be limited to such treatment needed to keep him comfortable;
 - c. He did not wish to receive any IV hydration; and
 - d. He did not wish to receive any antibiotics.
15. On July 19, 2016, while admitted to WEILER for treatment for a fall, Pasquale Lanzetta signed a non-expiring health care proxy designating his daughter Maria Lanzetta to make his health care decisions on his behalf in the event he became unable to do so for himself.
16. On April 7, 2017, three weeks into his admission for abdominal pain, Defendants determined that Pasquale Lanzetta met the clinical criteria for life-sustaining treatment to be withheld.
17. Dr. Hochster signed a DNR-DNI form and Defendants requested that Joseph Lanzetta also sign the form.
18. Joseph Lanzetta advised Defendants that the hospital had already been provided a copy of the 1993 Living Will and the 2016 Health Care Proxy.
19. Defendants responded that it would be better if Joseph Lanzetta signed the DNR-DNI form regardless.
20. However, as per the instructions contained on the form, this form should not have been filled out because Pasquale Lanzetta's hospital chart included a health care proxy.
21. Joseph Lanzetta was not aware that the DNR-DNI form was not supposed to be filled out in the presence of a Health Care Proxy.

22. Furthermore, if Defendants were going to ask anyone to sign the form, they should have asked Pasquale Lanzetta's daughter to sign the form because Pasquale Lanzetta's health care proxy designated Maria as his health care proxy.
23. Furthermore, if Defendants believed that Pasquale Lanzetta met the clinical criteria so that life-sustaining treatment should be withheld, per the terms of his 1993 Living Will, Defendants should have withheld all medical treatment from this point onwards except for such treatment as was needed to keep him comfortable.
24. Furthermore, Defendants failed to comply with several additional instructions contained on the form.
25. On April 15, 2017, Defendants advised Maria Lanzetta and Joseph Lanzetta that Pasquale Lanzetta had continued to significantly deteriorate, and that his death appeared a question of time and that there was no plausible road to recovery.
26. Upon hearing this information, Maria Lanzetta, acting as her father's health care proxy, instructed Defendants that going forward, Pasquale Lanzetta should only receive treatment needed to minimize his pain and discomfort.
27. Maria Lanzetta's informed Defendants that this directive was informed by her father's instructions to her and her brother that he did not want to receive any medical treatment aside from comfort care once he became terminally sick.
28. Despite this explicit directive to Defendants, from April 15, 2017 until at least April 23, 2017, Defendants violated these instructions on dozens of occasions, administering numerous doses of antibiotics, numerous doses of IV fluids, and drawing blood on several occasions.

29. Upon information and belief Defendants also administered other forms of interventional treatment during this period.
30. Pasquale Lanzetta's medical chart reflects that had it not been for the antibiotics and IV fluids Defendants administered to him on April 15th and April 16th, Pasquale Lanzetta almost certainly would have died by April 17, 2017.
31. Instead, as a direct result of Defendants administering said antibiotics and IV fluids, Pasquale Lanzetta lingered on until May 6, 2017, before finally succumbing to his illness.
32. Thus, Defendants' actions caused Pasquale Lanzetta an additional 20 days of pain and suffering.

COUNT I – MEDICAL MALPRACTICE

33. Plaintiff incorporates the prior paragraphs as though set forth fully herein.
34. Defendant MONTEFIORE is required to develop, promulgate, prominently document, and adhere to written policies pertaining to an individual's right to formulate a living will and health care proxy and right to refuse medical treatment.
35. By accepting Pasquale Lanzetta's Living Will and health care proxy, defendant MONTEFIORE agreed to accept Pasquale Lanzetta's decision to decline medical treatment when he became terminally sick.
36. On April 15, 2017, Maria Lanzetta, acting as Pasquale Lanzetta's health care proxy, instructed Defendants not to administer any treatment to Pasquale Lanzetta other than such treatment as was needed to minimize his pain and suffering.
37. Defendants agreed to this plan of treatment.
38. One or more of the Defendants breached their agreement with Pasquale Lanzetta by failing to promulgate, implement and abide by a policy to ensure compliance with Pasquale

Lanzetta's Living Will, health care proxy, and the verbal instructions of Pasquale Lanzetta's health care proxy.

39. One or more of the Defendants failed to ensure appropriate communication of the Living Will, health care proxy, and Maria Lanzetta's verbal instructions to the doctors and medical staff involved in Pasquale Lanzetta's medical care and treatment.
40. Defendants breached their agreement with Pasquale Lanzetta by administering antibiotics, IV Hydration, blood draws, and other medications, from April 15, 2017 onwards.
41. Said breaches constitute a failure on the part of one or more of the Defendants to abide by their agreement to comply with and respect Pasquale Lanzetta's Living Will, health care proxy, and Maria Lanzetta's verbal instructions.
42. Said breaches constitute a violation of NY CLS Pub. Health §§ 2994-f.
43. Said breaches constitute negligence and/or departures from the standard of care on the part of the Defendants.
44. As a result of the aforementioned negligence/departures from the standard of care by Defendants, Pasquale Lanzetta endured an additional 20 days of severe pain and suffering.
45. Defendants are thus liable to plaintiff for the pain and suffering they caused Pasquale Lanzetta as a result of their negligence/departures from the standard of care.
46. In addition, the acts of Defendants in deliberately violating Pasquale Lanzetta's Living Will, the health care proxy, and Maria Lanzetta's verbal instructions, as described in the preceding Paragraphs, constituted conduct that was intentional, malicious, outrageous, and aggravated beyond mere negligence.
47. In light of such conduct, Defendants are also liable to plaintiff for punitive damages.

