

2018-84843 / Court: 190

CAUSE NO: _____

JUDY KVETON, Individually and as	§	IN THE DISTRICT COURT OF
Personal Representative of the Estate of	§	
David Kveton, Deceased; BRADLEY	§	
KVETON; and JENNY KVETON	§	
PENNINGTON	§	
Plaintiffs,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
BAYLOR COLLEGE OF MEDICINE;	§	
BAYLOR ST. LUKE'S MEDICAL	§	
CENTER; CHI ST. LUKE'S HEALTH	§	
BAYLOR COLLEGE OF MEDICINE	§	
MEDICAL CENTER; and ST. LUKE'S	§	
HEALTH SYSTEM CORPORATION	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, JUDY KVETON, Individually and as Personal Representative of the Estate of David Kveton, Deceased, BRADLEY KVETON, and JENNY KVETON PENNINGTON, ("Plaintiffs"), complaining of BAYLOR COLLEGE OF MEDICINE; BAYLOR ST. LUKE'S MEDICAL CENTER; CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER; and ST. LUKE'S HEALTH SYSTEM CORPORATION ("Defendants"), and for cause of action would respectfully show the Court and the jury as follows:

**I.
DISCOVERY CONTROL PLAN**

1. Discovery in this case should be conducted under Level 3, pursuant to Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE. Plaintiffs respectfully request that this Court

enter an appropriate scheduling order so that discovery may be conducted in this case pursuant to Level 3.

II. PARTIES

2. Plaintiff, JUDY KVETON, brings this suit in her individual capacity and as personal representative of the estate of her husband, David Kveton, Deceased. Plaintiffs, BRADLEY KVETON and JENNY KVETON PENNINGTON, bring this suit in their individual capacity. All Plaintiffs are residents of the State of Texas.

3. Defendant, BAYLOR COLLEGE OF MEDICINE (“BCM”), is a domestic nonprofit corporation duly existing and operating pursuant to law as Baylor College of Medicine at 1 Baylor Plaza, Houston, Texas 77030. BCM may be served with citation by serving its registered agent James Banfield at 1 Baylor Plaza, Suite 106a, Houston, Texas 77030, or wherever he may be found.

4. Defendant, BAYLOR ST. LUKE’S MEDICAL CENTER is a hospital duly existing and operating pursuant to law with its principal place of business in Harris, County, Texas. This Defendant may be served with citation by serving its President, Gay Nord, at 6720 Bertner Ave., Houston, Texas 77030, or wherever she may be found.

5. Defendant, CHI ST. LUKE’S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER is a hospital duly existing and operating pursuant to law with its principal place of business in Harris County, Texas. This Defendant may be served with citation by serving its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201, or wherever it may be found.

6. Defendant, ST. LUKE’S HEALTH SYSTEM CORPORATION, is a domestic entity and operating pursuant to law with its principal place of business in Harris County,

Texas. This Defendant may be served with citation by serving its registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201, or wherever it may be found.

7. To the extent that the above-named Defendants are conducting business pursuant to a trade name or assumed name, then suit is brought against them pursuant to the terms of Rule 28 of the Texas Rules of Civil Procedure, and Plaintiffs hereby demand that upon answering this suit, Defendants answer in their correct legal name and assumed name.

III. JURISDICTION AND VENUE

8. Plaintiffs cite to and fully incorporate herein the facts set forth in Sections II, IV, and V of this pleading.

9. Plaintiffs affirmatively plead that this Court has jurisdiction because the damages sought are in excess of the minimum jurisdictional limits of the Court. Furthermore, all of the causes of action asserted in this case arose in the State of Texas, and all of the parties to this action are either residents of the State of Texas or conduct business in this State and committed the torts that are the subject of this suit in whole or in part in Texas, as hereafter alleged in more detail. Furthermore, one or more of the Defendants is a resident of the State of Texas and there is not complete diversity of citizenship. Therefore, this Court has both subject matter and personal jurisdiction over all of the parties and all of the claims.

10. Venue is proper in Harris County, Texas under the general venue statute of TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) (West 2012) because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas and no mandatory venue provision applies.

IV.
WRONGFUL DEATH AND SURVIVAL ACTIONS

11. These claims are brought pursuant to § 71.002 and § 71.021 of the Texas Civil Practice & Remedies Code, more commonly referred to as Wrongful Death and Survival Actions. Judy Kveton was appointed independent executor of her husband's estate in 17 CPR-030279 in Ft. Bend County, Texas and is the sole beneficiary under her husband's will. Plaintiffs are the sole statutory beneficiaries under the Texas Wrongful Death Statute, and are entitled to maintain individual claims thereunder.

V.
FACTUAL BACKGROUND

12. The phone call David Kveton had been waiting for finally came on January 24, 2017. For more than a decade Mr. Kveton, 64, had struggled with an increasingly debilitating heart condition. By November of 2014, Mr. Kveton had reached the point where a heart transplant was necessary. This call was to tell him a heart had been found.

13. While Mr. Kveton and his wife Judy had anxiety about the surgery, they knew it was necessary. They also took comfort in the fact that it was being performed at a legendary institution—Baylor St. Luke's Medical Center in the Texas Medical Center ("St. Luke's"), a joint venture equally owned by Baylor College of Medicine ("BCM") and St. Luke's Health System Corporation (also known as CHI St. Luke's Health)—a subsidiary of Catholic Health Initiatives, one of the nation's largest healthcare systems. The Kvetons had done their research. They knew St. Luke's was world-renowned. They had heard of the famed surgeons, Dr. Denton Cooley and Dr. O.H. Bud Frazier. They knew St. Luke's was where the first successful heart and artificial heart transplants occurred. They had also seen St. Luke's, St. Luke's Health System Corporation's, and Baylor College of

Medicine's advertising—touting their skill, competency, and unparalleled expertise—working to convince patients that in a city with several options they were the ones to turn to. The Kvetons were so convinced that when Memorial Hermann Heart & Vascular Institute hired Mr. Kveton's cardiologist and several other physicians to start a heart transplant program there and asked the Kvetons to follow them to the new program, the Kvetons held to what they trusted. When the Kvetons arrived at St. Luke's, they arrived believing they were at the best place in the world for a heart transplant.

14. Things moved quickly. Around 3:00 P.M. the next afternoon, Mr. Kveton was being prepped for a surgery that would end up lasting well beyond midnight. When Dr. Morgan came out of the operating room to meet Ms. Kveton, he told her things had gone well. But things were not going well. Mr. Kveton was in critical condition. A day later, Dr. Morgan placed Mr. Kveton on extracorporeal membrane oxygenation or ECMO, an advanced life support system that does the work of both the heart and the lungs. Several other surgeries followed. Six days after the transplant, Mr. Kveton was taken off ECMO only to be put back on a short time later. Mr. Kveton never woke up, and Mrs. Kveton was told that further care was futile. The family decided to remove life support. On February 2nd, Mr. Kveton died.

15. The family was in shock. When Mrs. Kveton got home that afternoon she received a phone call from none other than Dr. Frazier asking for permission to perform an autopsy to find out what had gone so terribly wrong. Mrs. Kveton gave her consent, but no one ever called her back to tell her what they found. Instead she got a bill for more than \$1,000,000.

16. Mrs. Kveton's grief turned to anger a couple of months later when she opened the

following letter:

To the family of Mr. David Otto Kveton,

I am very sorry for your recent loss of David and extend my sincere condolences.

I struggled with whether or not I should be writing this letter, however, my conscience dictated that you have the right to know the circumstances surrounding your husbands death.

Dr. Morgan, the Surgeon that performed the Transplant, has had mishap, after mishap with patients over the past year since arriving at CHI/Baylor. It was the opinion of many Professionals, i.e.; Surgeons, Internal Medicine, Pulmonologists, Nurses etc that he was incompetent and should not have been allowed to operate on Patients. This was apparent from the results that he compiled over the last year.

He was removed from performing Lung transplants because of his poor patient outcomes and other Surgeons refusing to assist him. However Baylor allowed him to continue performing Heart Transplants despite his numerous complications, deaths, and poor outcomes. They allowed this despite feed back from other Professionals in the hospital that he was not competent technically and suffers from poor judgement overall.

The Hospital system is set up in a manner that protects the Physicians from legal recourse by limiting information it shares with Patients families and Attorneys. I do not know if you have been given the specific details regarding the technical aspects of David's surgery, however I do believe that you deserve the right to know.

If you will look at this website:

<http://www.beckershospitalreview.com/rankings-and-ratings/these-28-hospitals-have-the-worst-organ-transplant-outcomes.html>

you will see that St. Lukes/Baylor has some of the worst outcomes in the country regarding Heart Transplants. Was David and the family made aware of this?

Again, I offer my sympathies for your loss. However I feel that David was not given the opportunity he deserved after struggling with his disease for so long.

Sincerely,

Concerned

What Mrs. Kveton did not know was that the dam the Defendants had constructed to keep her and others like her from the truth was about to break. After multiple requests, and even litigation, Mrs. Kveton was able to obtain all of Mr. Kveton's medical records, including the records from UNOS and LifeGift. They told the story that BCM and St. Luke's were unwilling to tell.

17. According to the records, the donor was a 6'0, 197 pound, 19-year-old male located in Shreveport, Louisiana. As one might expect from a donor that young, the testing performed to ensure suitability for transplant revealed the donor's heart was in optimal condition. However, the heart was not the first organ St. Luke's accepted. According to the records, St. Luke's originally accepted the lungs and then later decided to accept the heart too. A team of BCM physicians flew to Shreveport to retrieve the lungs and heart. A cross clamp was placed at 5:00 p.m. and the heart was retrieved from the donor's body at 5:19 p.m. Twenty minutes later, the lungs were retrieved and the organs were flown back to Houston on what was reported to be a 50-minute flight.

18. Back in Houston, the records show Mr. Kveton was taken to surgery around 3:30 the same afternoon. Assisting Dr. Morgan was another physician doing a fellowship at BCM named Dr. David Daniels. Dr. Morgan's operative note from the transplant is brief and omits critically important information, including something known as ischemic time. Total ischemic time refers to the total time from aortic cross clamp of the donor's heart at the donor hospital to the time of releasing the aortic cross clamp at the recipient institution after transplant. For purposes of transplantation, the standard of care requires surgeons to be aware of warm and cold ischemic times. Warm ischemic time refers to the amount of time that an organ remains at body temperature after its blood supply is stopped or reduced. Cold ischemic time refers to the amount of time that the organ is chilled or cold and not receiving blood. When this case is tried, the evidence will show that the generally accepted standard of care is to keep ischemic time under four hours. The evidence will also show that the reason for this standard of care is that it is well known that compliance with the standard of care is related to better outcomes, particularly as it relates to what is known as

graft failure. According to the anesthesia records, the ischemic time in David's case was four hours and twenty-three minutes. As the UNOS records bluntly state in bolded red letters, "Maximum Cold Ischemic Time Exceeded."

19. According to the records, complications were evident at the time of Dr. Morgan's surgery. Specifically, the anesthesia records note biventricular heart failure and vasopelgia-hypotension which required high doses of inotropes and vasoconstrictors as well as a prolonged cardiopulmonary bypass time which is known to and did actually result in a severe coagulopathy or bleeding disorder that required a number of blood products. By the end of the surgery, although Mr. Kveton's heart function had improved, it was not normal. Dr. Morgan decided to leave his chest open. In addition, according to Dr. Morgan's note, "atrial and ventricular pacing wires were placed" to control the heart's rhythm.

20. Despite the complications that occurred during surgery, the records indicate Mr. Kveton's heart improved. The following morning a bedside test revealed normal left and right ventricle function, an encouraging sign. Additionally, a CT scan of the head revealed no acute conditions that suggested any brain damage. However, on the morning of January 27th, a nurse who was caring for Mr. Kveton turned him despite the fact he had an open chest. It appears this turn was consistent with an order signed by Dr. Daniels following the surgery, but the consequences were devastating. The following entry comes straight from the medical records:

0945: Upon turning, patient lost atrial lead pacemaker capture (rate 60s; ventricular leads were wrapped) and subsequently became profoundly hypotensive (SvO2 30s). Cardiology at bedside; ventricular epicardial leads hooked up to pacer and now pacing appropriately at 110 bpm.

The same nurse documented elsewhere that Mr. Kveton's blood pressure dropped precipitously. When this case is tried, the evidence will show that turning patients like Mr. Kveton with open chests and a recovering heart carries major risks and should only be done

when absolutely necessary. The evidence will further show there was no reason to expose Mr. Kveton to such extreme risk at the time he was turned.

21. However, this error was compounded by a mistake Dr. Morgan and/or Dr. Daniels made at the time of the transplant. The evidence will also show that the standard of care requires that when a heart requires pacing, both atrial and ventricular leads should be unwrapped and connected to a pacer box, as Dr. Morgan's note says was done in this case. The evidence will show that the reason for this is because it is well known that events like what occurred on the 27th can and do happen and also well known that leads sometimes fail. The evidence will show that the benefit of connecting both leads is that it allows for an immediate remedy as opposed to the delay that results from having to unwrap and connect the alternate leads. However, that was not done for Mr. Kveton. As a result, what should have been a quick and easy fix was a prolonged event that would permanently damage Mr. Kveton's new heart.

22. Mrs. Kveton was never told this event occurred, but the medical records show that after this event the heart was no longer improving but was instead getting much worse. The medications Mr. Kveton was on to keep his blood pressure up had to be doubled. Within a few hours an intra-aortic balloon pump (IABP) was placed to improve Mr. Kveton's cardiac output and hemodynamics due to "cardiogenic shock." At 2:40 p.m., when these efforts were insufficient, Dr. Morgan took Mr. Kveton back to the operating room for emergent intra operative mechanical circulatory support central ECMO with placement of a left ventricle vent. At the time of surgery, Dr. Morgan noted severely impaired function with an ejection fraction of just 20%. Because Mr. Kveton was now on ECMO a powerful anticoagulant or blood thinner known as Heparin had to be initiated via IV. The evidence

will show that a heart that was on its way to recovery was now doomed to fail and the stage was set for further complications.

23. The medical records also show that the following day there were signs of neurologic compromise. Jerky head movements were noticed which resulted in the addition of Propofol. Later that afternoon the IABP was replaced after an x-ray discovered a bent tip. However, Mr. Kveton remained hypotensive and on pressors. This continued on the 29th. By the 30th, it was apparent a total artificial heart was going to be necessary as a bridge to transplant. Overnight, Mr. Kveton was observed off of one of the sedatives but noted to be minimally responsive. On the morning of the 31st, a head CT showed a hypodensity suggesting an acute infarction. In addition, throughout the day lab values suggesting that Mr. Kveton was over-coagulated and at risk of bleeding started to be returned. For example, one of the physicians caring for Mr. Kveton, Dr. Siavosh Saatee, had previously stated the goal of one test, the PTT or partial thromboplastin time, was between 60-80 seconds. However, Mr. Kveton's values on the 31st were 82.9, 91, and 85.8. In addition, his platelet counts fell from 51 at 11:20 a.m. to 41 at 6:44 p.m. When this case is tried, the evidence will show the standard of care required Mr. Kveton's physicians to recognize that these values reflected higher levels of anticoagulation than desired which placed him at risk of a bleeding disorder, and required a response. However, the evidence will show this was essentially ignored. On the evening of the 31st another study revealed a large circumferential pericardial effusion or bleed which required yet another trip to the OR where the bleed was addressed and ECMO was removed.

24. The records also show that Dr. Morgan took Mr. Kveton to the operating room again on the 1st to close his chest only to take him back to the operating room the same day

to reinsert the central ECMO he had just removed. A neurologic examination that afternoon found Mr. Kveton was comatose, with no pupillary reaction, no cough/gag reflex and no response to painful stimuli. It was on this day that doctors started to write that the prognosis was “dismal.” The next day, the records confirm the consensus that all hope was lost.

25. In short, when this case is tried, the evidence will show that from the day the donor heart was received until the day Mr. Kveton died there were a number of errors, including but not limited to those discussed above, by the physicians at Baylor College of Medicine and the nurses at Baylor St. Luke’s Medical Center that accumulated and compounded until they eventually resulted in Mr. Kveton’s death. However, as if that were not bad enough, a subsequent investigation by The Houston Chronicle and ProPublica revealed that Mr. Kveton’s death was just the tip of the iceberg.

26. On May 16, 2018, The Houston Chronicle and ProPublica published an article highlighting the program’s failings and bringing attention to Mr. Kveton’s care and Mrs. Kveton’s search for answers. The journalists found that “in recent years, the famed program has performed an outsized number of transplants resulting in death or unusual complications, has lost several top physicians, and has scaled back its ambition for treating high-risk patients, all the while marketing itself based on its storied past...” Contrary to the Defendants’ marketing materials, the journalists found that “twice as many St. Luke’s patients died within a year as would have been expected” and that in this metric, the program “ranks near the bottom nationally, according to the most recently published data.” They also found that between mid-2016 and mid-2017, the length of stay for heart transplant patients was the third longest of 125 programs in the country. With respect to Dr. Morgan, the journalists uncovered that he was far from experienced, having served as

the lead surgeon in only 18 heart transplants in the five years prior to his hiring as head of St. Luke's transplant program. They also found prior lawsuits and examples of several errors, including sewing a major vein shut in one of his very first surgeries at St. Luke's in early 2016.¹

27. The journalists spoke to several of Dr. Morgan's colleagues who made it abundantly clear that Dr. Morgan's errors were both pervasive and widely known. Dr. Roberta Bogaev asked administrators to commission an external review in late 2016 and stated, "It becomes very ethically challenging to recommend transplant if you don't have that confidence level in your surgeon." Dr. Deborah Meyers, the medical director of the St. Luke's Heart Failure Program until early 2017 said, "I had multiple conversations with multiple administrators during my tenure who were unwilling to get an external review to address the problems and unwilling to make substantial changes." In a letter obtained by CBS News after the Chronicle/ProPublica article was published, Dr. Meyers wrote a letter to St. Luke's president, Ms. Nord, identifying the root cause of the failings:

"In my opinion the shocking story of the Baylor St. Luke's CHI transplant program is one of greed, careerism, corporate takeovers, appalling administrative oversight, failure of leadership, poor hiring practices, completely avoidable lawsuits, and the inevitable public distortions of their underlying mission, all of which have occurred as medicine has become perverted into "big business."

In the era of corporate medicine patient care has been reduced to "patient volume" and "RVUs" (relative value units). "Profit" is euphemistically called "margin" and the relentless focus on margin and patient volume, rather than on the individual patient and the development of patient centered

¹ Mike Hixenbaugh and Charles Ornstein, *Heart Failure*, Houston Chronicle (May 16, 2018), <https://houstonchronicle.com/news/investigations/article/heart-failure-patients-suffer-at-St-Lukes-Houston-12916224>.

programs has driven much of the poor decision-making that has resulted in the abysmal failures highlighted by the article.”²

28. However, not only did the Defendants not make the changes that were needed to protect patients like David Kveton from a dangerous surgeon, they continued to actively misrepresent the quality of the program in an effort to drive “patient volume” and obtain the desired “margin,” luring patients like David Kveton into a deadly situation. Although some of the more egregious misrepresentations were removed a day after hospital administrators were questioned about them, the efforts to deny and deflect continued after the initial article was published. A website was created.³ In reply to Dr. Myers’ letter, Ms. Nord reportedly implored her not to send the letter to reporters. But powerful players were already acting. In June, The Centers for Medicare and Medicaid services announced it would cut off Medicare funding for heart transplants at St. Luke’s after concluding the hospital had not adequately addressed its issues. Around the same time, the Defendants put the program on a 14-day inactive status only to reopen it—a decision the evidence will show was made not because massive problems had been fixed in two weeks but because once again the hospital was prioritizing profits over patients. Although the Defendants claimed at the time not to have identified “systemic issues related to the quality of the program,” in October, Dr. Morgan was replaced. Tragically, for patients like David Kveton, it was far too little and far too late.

VI. CAUSES OF ACTION

29. At all times material to this cause, the physicians caring for David Kveton while he

² Letter from Dr. Deborah Meyers as published in CBS News, *Widow seeks “truth” amid patient deaths at renowned heart transplant program* (June 12, 2018) available at <https://www.cbsnews.com/news/baylor-st-lukes-medical-center-houston-renowned-heart-transplant-program-suspended>

³ See Heart Transplant Facts available at www.chistolukeshealth.org/heart-transplant-facts

was a patient at Baylor St. Luke's Medical Center, including but not limited to, Dr. Jeffrey Morgan, Dr. David Daniels, Dr. Siavosh Saatee, and Dr. Arthur Bracey, were acting within the course and scope of their employment and/or agency as the employees, servants, agents, and/or alter egos of BAYLOR COLLEGE OF MEDICINE; BAYLOR ST. LUKE'S MEDICAL CENTER; CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER; and/or ST. LUKE'S HEALTH SYSTEM CORPORATION. Therefore, these Defendants are liable under the doctrines known as *respondeat superior*, *alter ego*, apparent, and/or ostensible agency, and/or agency by estoppel as those terms are defined and applied under the laws and statutes of the State of Texas.

30. At all times material to this cause, the nurses, assistants, technicians, and others who cared for David Kveton while he was a patient at Baylor St. Luke's Medical Center were acting within the course and scope of their employment and/or agency as the employees, servants, agents, and/or alter egos of BAYLOR COLLEGE OF MEDICINE; BAYLOR ST. LUKE'S MEDICAL CENTER; CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER; and/or ST. LUKE'S HEALTH SYSTEM CORPORATION. Therefore, these Defendants are liable under the doctrines known as *respondeat superior*, *alter ego*, apparent, and/or ostensible agency, and/or agency by estoppel as those terms are defined and applied under the laws and statutes of the State of Texas.

COUNT 1: NEGLIGENCE

31. When this case is tried, the evidence will show that from the time organs were being retrieved to the time David Kveton died, the physicians caring for him or providing services related to his care, including but not limited to, Dr. Jeffrey Morgan, Dr. David Daniels, Dr.

Siavosh Saatee, and Dr. Arthur Bracey, breached the standard of care in their care and treatment of David Kveton, said breaches of the standard of care constitute negligence as that term is defined by the laws and statutes of this State; and such breaches of the standard of care singularly or in combination with each other and the other actions of negligence identified in this petition proximately caused David Kveton's death and Plaintiffs' resulting injuries and damages in this case. This negligence includes, but is not limited to, the following:

- 1) Allowing prolonged ischemic time;
- 2) The manner in which surgery was performed;
- 3) Failing to unwrap and connect all pacing wires;
- 4) Writing an order to turn Mr. Kveton;
- 5) Failing to act as a reasonable and prudent supervising physician; and
- 6) Failing to adequately respond to an increased risk of bleeding.

32. When this case is tried, the evidence will also show that Baylor College of Medicine, Baylor St. Luke's Medical Center, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation and its nurses breached the standard of care in their care and treatment of David Kveton, said breaches of the standard of care constitute negligence as that term is defined by the laws and statutes of this State; and such breaches of the standard of care singularly or in combination with each other and the other actions of negligence identified in this petition proximately caused David Kveton's death and Plaintiffs' resulting injuries and damages in this case. This negligence includes, but is not limited to, the following:

- 1) Turning a patient when it was unsafe to do so;

- 2) Failing to appropriately respond when the pacing wire lost capture;
- 3) Failing to adequately train and supervise the nursing staff; and
- 4) Failing to adequately supervise or otherwise take appropriate steps to prevent a physician Defendants knew or should have known posed an unreasonable risk of harm from injuring patients like David Kveton.

COUNT 2: NEGLIGENT/MALICIOUS CREDENTIALING

33. When this case is tried, the evidence will also show that Baylor College of Medicine, Baylor St. Luke's Medical Center, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation breached the standard of care in credentialing Dr. Morgan, extending and renewing his privileges to perform heart transplant surgeries, failing to adequately and timely review his privileges, and otherwise allowing him to perform David Kveton's surgery. The evidence will show that not only did the Defendants know that Dr. Morgan was a danger to patients by the date of Mr. Kveton's surgery, but also that they maliciously allowed him to continue performing heart surgeries without appropriate precautions, ignoring the concerns of other physicians and staff as they placed their own prestige and profit over patients' safety. The evidence will show that these actions proximately caused David Kveton's death and Plaintiffs' resulting injuries and damages in this case.

COUNT 3: FRAUD

34. When this case is tried, the evidence will show that Baylor College of Medicine, Baylor St. Luke's Medical Center, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation willfully and knowingly made a number of false representations regarding the experience and expertise of the heart transplant program at St. Luke's as well as patient outcomes with the intent of inducing the

public to turn to them for care and treatment. The Kvetons justifiably relied on the Defendants' representations and did allow Defendants to treat David Kveton but would not have done so had the false representations not been made. Defendants' false representations of material fact that David and Judy Kveton relied upon were a proximate cause of David Kveton's death and the Plaintiffs' resulting injuries and damages. Because Defendants knew the representations were false at the time they were made, the representations were grossly negligent, fraudulent, and malicious and constitute conduct for which the law allows the imposition of exemplary damages.

COUNT 4: NEGLIGENT MISREPRESENTATIONS

35. Pleading in the alternative, when this case is tried, the evidence will show that Baylor College of Medicine, Baylor St. Luke's Medical Center, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation provided information in the course of its business regarding the experience and expertise of their heart transplant programs as well as patient outcomes, the information supplied was false, Defendants did not exercise reasonable care in obtaining or communicating the information; that David and Judy Kveton justifiably relied on that information, and the Plaintiffs suffered damages proximately caused by reliance on the false information.

COUNT 5: VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICE ACT

36. David and Judy Kveton were persons within the meaning of Texas Civil Practice and Remedies Code §38.002, *et. seq.* Baylor College of Medicine, Baylor St. Luke's Medical Center, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation engaged in actions that violate the Texas Deceptive Trade Practices Act by making untrue and misleading representations of material fact

regarding the experience and expertise of the heart transplant program at St. Luke's as well as patient outcomes with the intent of inducing the public to turn to them for care and treatment. David and Judy Kveton detrimentally relied on the false, misleading, or deceptive act or practice and Defendants' false, misleading or deceptive act or practice was a producing cause of the Plaintiffs' resulting injuries and damages.

37. The Defendants' conduct as described above was committed knowingly. Defendants were actually aware, at the time of the conduct, of the falsity, deception, and unfairness of the conduct about which Plaintiffs complain. As a direct result of Defendants' knowing misconduct, Plaintiffs suffered mental anguish damages. Accordingly, Defendants are liable to Plaintiff for mental anguish damages suffered by Plaintiffs and additional damages of up to three times the amount of economic damages as permitted by the Texas Deceptive Trade Practices Act.

VII. DAMAGES

38. The above breaches of the standard of care by Defendants were a proximate cause of harm to Plaintiffs. As a result of Defendants' conduct set forth above, Plaintiffs suffered damages, including, but not limited to, the following:

1. Loss of companionship and society sustained in the past; that is, the loss of positive benefits flowing from the love, comfort, companionship, and society that Plaintiffs, in reasonable probability, would have received from Mr. Kveton had he lived;
2. Loss of companionship and society that, in reasonable probability, will be sustained in the future;
3. Mental anguish sustained in the past; that is, the emotional pain, torment, and suffering experienced by Plaintiffs because of the death of Mr. Kveton; and

4. Mental anguish that, in reasonable probability, will be sustained in the future.
5. Pecuniary loss sustained in the past.
6. Pecuniary loss that, in reasonable probability, will be sustained in the future.

39. This suit is also instituted by Judy Kveton in her representative capacity as personal representative of the estate of David Kveton, Deceased, for the recovery of the following, which are provided under the Survival Statute:

1. Pain and Mental Anguish; that is, the conscious physical pain and emotional pain, torment, and suffering experienced by Mr. Kveton before his death as a result of the occurrence in question;
2. Medical Expenses; that is, the reasonable expense of the necessary medical and hospital care received by Mr. Kveton for treatment of injuries sustained by him as a result of the occurrence in question;
3. Funeral and burial expenses; that is, the reasonable amount of expenses for funeral and burial for Mr. Kveton reasonably suitable to his station in life.

40. The wrongful conduct specifically alleged above constitutes both malice and gross negligence as such terms are defined by law. By reason of such willful, malicious, and intentional conduct, Plaintiffs are entitled to and therefore assert a claim for punitive damages in an amount sufficient to punish and deter Defendants and other similar facilities from such conduct in the future. Defendants acted with conscious indifference of Mr. Kveton's rights, safety, health, and welfare.

41. The Defendants' conduct as alleged in this petition was also committed knowingly and intentionally under the Texas Deceptive Trade Practices Act. Under the Texas Deceptive Trade Practices Act, the Defendants are liable to Plaintiffs for the mental anguish damages and additional damages of up to three times the amount of economic damages.

42. The Defendants' conduct as alleged in this petition and the resulting damage and loss to the Plaintiffs has also necessitated Plaintiffs' retention of the attorneys whose names are subscribed to this petition. Under the laws and statutes of the state of Texas, the Plaintiffs are entitled to recover from the Defendant an additional sum to compensate Plaintiffs for a reasonable fee for such attorney's necessary services in the preparation and prosecution of this action as well as a reasonable fee for any appeals.

43. The damages pled exceed the minimal jurisdictional limits of this Court.

**VIII.
DISCOVERY REQUESTS**

44. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs request Defendants to disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2(a) through (l) of the Texas Rules of Civil Procedure.

**IX.
NOTICE**

45. Plaintiffs provided one or more Defendant with written notice of their claims as required by the Texas Civil Practice & Remedies Code §74.051, of the Medical Liability and Insurance Improvement Act.

**X.
EXPERT REPORT**

46. Pursuant to Chapter 74 of the Texas Civil Practice and Remedies Code, Plaintiff will serve under separate cover the expert report and curriculum vitae required.

**XI.
JURY TRIAL**

47. Plaintiffs respectfully request a jury trial in accordance with the applicable provisions of the Texas Rules of Civil Procedure.


XII.
PRAYER

48. For the above reasons, Plaintiffs request that Defendants be cited to appear and answer, and that on final trial Plaintiffs have judgment against Defendants, jointly and severally, for:

- (a) All actual damages, general and special, to which they show themselves justly entitled;
- (b) Pre-judgment and post-judgment to the extent allowed by law;
- (c) All costs incurred in this lawsuit; and
- (d) Such other and further relief, at law and in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

BROWN & BROTHERS



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