

CAUSE NO: \_\_\_\_\_

LAZERICK ESKRIDGE	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
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

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**PLAINTIFF'S ORIGINAL PETITION**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LAZERICK ESKRIDGE, ("Plaintiff"), 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. Plaintiff respectfully requests 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, LAZERICK ESKRIDGE, is an individual residing in Harris County,

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 Plaintiff hereby demands that upon

answering this suit, Defendants answer in their correct legal name and assumed name.

**III.  
JURISDICTION AND VENUE**

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

9. Plaintiff affirmatively pleads 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.

**V.  
FACTUAL BACKGROUND**

11. On the night of February 8, 2017, 46-year-old Lazerick Eskridge got the call he had been waiting for. Years earlier Mr. Eskridge's heart was damaged by chemotherapy treatments and after waiting on the heart transplant list for two years, this was the call to tell him that a heart had been found.

12. Like most heart transplant patients, Mr. Eskridge had anxiety about the surgery.

However, he knew it was necessary and prayed that he would be finally able to play with his kids the way he had always wanted to. He also took comfort in the fact that his surgery 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. Mr. Eskridge had done his research. He knew St. Luke’s was world-renowned. He had heard of the famed surgeons, Dr. Denton Cooley and Dr. O.H. “Bud” Frazier. He knew St. Luke’s was where groundbreaking heart surgeries had been performed before. He 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. Like other patients in the St. Luke’s heart transplant program, Mr. Eskridge had the opportunity to transfer to Memorial Hermann when his cardiologist left to start the heart transplant program there, but Mr. Eskridge had been convinced that he was at the best place he could possibly be for a heart transplant.

14. Surgery was scheduled for the following day. Mr. Eskridge and his wife were greeted before surgery by Dr. Masahiro Ono who told the Eskridges that he would be performing the transplant. However, hours later it was Dr. Jeffrey Morgan who met Mrs. Eskridge in the waiting room to tell her everything had gone fine. But things were not fine. An hour later a nurse reported to Mrs. Eskridge that her husband had been taken back to surgery and was in critical condition.

15. When Lazerick Eskridge walked into St. Luke’s he never could have predicted what

was in store. In the end, Mr. Eskridge would remain hospitalized for more than three months. During his hospitalization he would endure numerous surgeries and be forced to fight through a number of life-threatening infections and complications which all stemmed from the original transplant. By the time Mr. Eskridge was discharged home, he was a shell of the man he had been, debilitated from months of being bed ridden and having lost 70 pounds. Furthermore, it can legitimately be said that he left St. Luke's in far worse condition than when he came in. His new heart was not functioning optimally and now he had permanent kidney damage which required dialysis. In addition, he had suffered a debilitating injury to his right diaphragm that prevented him from getting a full breath. It would be more than a year before the Eskridges learned why things had gone so terribly wrong.

16. In April of 2018, the Eskridges met with a cardiologist who had been present on the night of the transplant, Dr. Joggy George. Also present that day was a reporter with the Houston Chronicle who was working on a ground-breaking report on the failings of St. Luke's heart transplant program. During this visit, Dr. George informed the Eskridges that he was told that a major vein connected to the heart must have been stitched through during the transplant causing blood to back up into Mr. Eskridge's head. He explained how Mr. Eskridge's subsequent complications could all be explained by this surgical error. The Eskridges were floored.

17. When confronted with Ms. Eskridge's case by the Chronicle, Dr. Morgan reportedly claimed that he "thoroughly explained the situation to the family." However, the evidence will show that it appears he has been trying to cover up what happened since the night of the surgery. According to the medical records, Dr. Morgan was the primary

surgeon for Mr. Eskridge's transplant. Also listed as the co-primary surgeon is Dr. O Howard Frazier. Other records suggest that Dr. Ravi Ghanta was the first assistant. The operative report itself thought was signed by Dr. Morgan and states "complications: none." Although it mentions that there was heart dysfunction during the surgery and that a right atrium bypass was required, there is absolutely no mention of any vein being sutured closed. In addition, conspicuously and suspiciously absent from Dr. Morgan's operative notes are events that are documented elsewhere. For example, in the anesthesia records, others present for the surgery documented that "after undraping: head appears swollen...Patient repret," suggesting that the case was being finished when it had to be restarted. Although Dr. Morgan was unwilling to disclose what had transpired, the evidence will show that the complications that followed ultimately speak for themselves. In addition, other medical teams including the St. Luke's infectious disease service were repeatedly writing notes like "an innominate to RA bypass was performed due to stenosis at the [superior vena cava] anastomosis." The evidence will also show that Mr. Eskridge's prolonged hospitalization and a number of the permanent injuries he suffered can all be traced to this surgical error. This includes damage to his kidneys and damage to the phrenic nerve from poor surgical technique which prevents Mr. Eskridge's lung from inflating properly and carries with it a number of comorbidities. Although the Eskridge's now had an explanation for what occurred, they would feel even more betrayed when they learned that Mr. Eskridge's terrible ordeal was just the tip of the iceberg.

18. On May 16, 2018, The Houston Chronicle and ProPublica published an article highlighting the program's failings and bringing attention to Mr. Eskridge's and others' care and 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.<sup>1</sup>

19. 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

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<sup>1</sup> 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>.

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

20. However, not only did the Defendants not make the changes that were needed to protect patients like Lazerick Eskridge 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 Lazerick Eskridge into a deadly situation. Although some of the more egregious misrepresentations were removed from the internet a day after hospital administrators were questioned about them, the efforts to deny and deflect continued after the initial Houston Chronicle article was published. A website was created.<sup>3</sup> 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 Center 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

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<sup>2</sup> 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>

<sup>3</sup> See Heart Transplant Facts available at [www.chistlukeshealth.org/heart-transplant-facts](http://www.chistlukeshealth.org/heart-transplant-facts)



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 of 2018 Dr. Morgan was replaced. Tragically, for patients like Lazerick Eskridge, it was far too little and far too late.

## VI. CAUSES OF ACTION

21. At all times material to this cause, the physicians caring for Lazerick Eskridge while he was a patient at Baylor St. Luke’s Medical Center, including but not limited to, Dr. Jeffrey Morgan, Dr. O Howard Frazier, and Dr. Ravi Ghanta, 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***

22. When this case is tried, the evidence will show that during the initial transplant and/or during subsequent surgeries prior to February 19, 2017, the physicians caring for Mr. Eskridge or providing services related to his care, including but not limited to, Dr. Jeffrey Morgan, Dr. Dr. O Howard Frazier, Dr. Ravi Ghanta, and/or the other surgeons who participated in Mr. Eskeridge’s care, breached the standard of care in their care and

treatment of Lazerick Eskridge; 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 the Plaintiff's resulting injuries and damages in this case. This negligence includes, but is not limited to, the following:

- 1) The manner in which surgery was performed;
- 2) Injuring a major vessel and/or allowing that vessel to be injured;
- 3) The failure to adequately respond to an intra-operative complication;
- 4) Injuring the phrenic nerve; and/or
- 5) Failing to act as a reasonable and prudent supervising physician.

***COUNT 2: NEGLIGENT/MALICIOUS CREDENTIALING***

23. 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, or otherwise allowing him to perform Lazerick Eskridge'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. Eskridge'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 the Defendants placed their own prestige and profit over patients' safety. The evidence will show that these actions proximately caused the Plaintiff's resulting injuries and damages in this case.

***COUNT 3: FRAUD***

24. 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. Lazerick Eskridge justifiably relied on the Defendants' representations and did allow Defendants to treat him but would not have done so had the false representations not been made. Defendants' false representations of material fact that Lazerick Eskridge relied upon were a proximate cause of Lazerick Eskridge's 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***

25. 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 Lazerick Eskridge justifiably relied on that information, and the Plaintiff suffered damages proximately caused by reliance on the false information.

***COUNT 5: VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICE ACT***

26. Lazerick Eskridge was a person 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. Lazerick Eskridge 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 Plaintiff's resulting injuries and damages.

27. 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 the Plaintiff complains. As a direct result of Defendants' knowing misconduct, Mr. Eskridge suffered mental anguish damages. Accordingly, Defendants are liable to Mr. Eskridge for mental anguish damages suffered by Mr. Eskridge and additional damages of up to three times the amount of economic damages as permitted by the Texas Deceptive Trade Practices Act.

**VII.  
DAMAGES**

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

- a. Physical pain sustained in the past;

- b. Physical pain that, in reasonable probability, the Plaintiff will sustain in the future;
- c. Mental anguish sustained in the past;
- d. Mental anguish that in reasonable probability the Plaintiff will sustain in the future;
- e. Physical impairment sustained in the past;
- f. Physical impairment that, in reasonable probability, the Plaintiff will sustain in the future; and
- g. Medical care expenses in the past;
- h. Medical care expenses that, in reasonable probability, the Plaintiff will sustain in the future.

29. 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, Plaintiff is entitled to and therefore asserts a claim for punitive damages in an amount sufficient to punish and deter Defendants and other similar facilities from such conduct in the future. The Defendants acted with conscious indifference of Mr. Eskridge's rights, safety, health, and welfare.

30. 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 Plaintiff for the mental anguish damages and additional damages of up to three times the amount of economic damages.

31. The Defendants' conduct as alleged in this petition and the resulting damage and loss to the Plaintiff has also necessitated Plaintiff's retention of the attorneys whose names are subscribed to this petition. Under the laws and statutes of the state of Texas, the Plaintiff is entitled to recover from the Defendant an additional sum to compensate Plaintiff 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.

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

**VIII.  
DISCOVERY REQUESTS**

33. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests 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**

34. Plaintiff 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**

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

**XI.  
EXPERT REPORT**

36. Pursuant to Chapter 74 of the Texas Civil Practice and Remedies Code, Plaintiff hereby serves on the parties the expert report and curriculum vitae required. The expert report and curriculum vitae of Michael Koumjian, M.D., F.A.C.S., F.A.C.C. are attached hereto as Exhibits A and B respectively and are served in compliance with the Texas Rules of Civil Procedure.

**XII.  
JURY TRIAL**

37. Plaintiff respectfully requests a jury trial in accordance with the applicable provisions of the Texas Rules of Civil Procedure.


**XIII.  
PRAYER**

38. For the above reasons, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial Plaintiff 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 interest 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 CHRISTIE & GREEN**

  
John J. Brothers, Texas Bar No: 24064955

712 Main Street, Suite 800

Houston, Texas 77002

Telephone: 832-767-1673

Facsimile: 832-767-1783

Email: firm@bcg.law

**ATTORNEY FOR PLAINTIFF**