

2021CI23859

CAUSE NO. _____

SAMANTHA GARNER, as	§	IN THE DISTRICT COURT
Representative of the Estate of BOBBY	§	
GARNER, Deceased,	§	Bexar County - 288th District Court
	§	
Plaintiff,	§	___ JUDICIAL DISTRICT
	§	
v.	§	BEXAR COUNTY, TEXAS
	§	
VHS SAN ANTONIO PARTNERS, LLC	§	
d/b/a BAPTIST HEALTH SYSTEM and	§	
ST. LUKE’S BAPTIST HOSPITAL,	§	
	§	
Defendants.	§	

PLAINTIFF’S ORIGINAL PETITION

Plaintiff SAMANTHA GARNER (“Plaintiff”), in her capacity as the legal representative of the estate of BOBBY GARNER (“Mr. Garner” or the “Decedent”), files this Original Petition against Defendants VHS San Antonio Partners, LLC d/b/a Baptist Health System (“VHS”) and St. Luke’s Baptist Hospital (“St. Luke’s” and, with VHS, “St. Luke’s Hospital” or “Defendants”) and in support hereof would respectfully show the following:

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.3 of the Texas Rules of Civil Procedure, Plaintiff alleges that discovery in this case should be conducted under Level II.

PARTIES AND SERVICE

2. Plaintiff is a resident of Williamson County, Texas.

3. Defendant VHS is a Delaware limited liability company with its principal place of business at 20 Burton Hills Boulevard, Suite 100, Nashville, Tennessee 37215. VHS may be served through its registered agent for service of process, National Registered Agents, Inc.,

located at 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. Defendant VHS does business in this state because it owns and operates several hospitals in San Antonio under the name Baptist Health System, including St. Luke's. Pursuant to Tex. Civ. Prac. & Rem. Code § 17.042(2), Defendant VHS also does business in Texas because, as set forth herein, it has committed torts in this state. As such, VHS has sufficient related and unrelated minimum contacts to make it amenable to the jurisdiction of Texas courts. This Court therefore has personal jurisdiction over VHS.

4. Defendant St. Luke's is a hospital owned and operated by VHS, located at 7930 Floyd Curl Drive, San Antonio, Texas 78229. Pursuant to Tex. Civ. Prac. & Rem. Code § 17.043, because this action arises from St. Luke's business in this state, St. Luke's may be served with process by serving its President and CEO, Philip Koovakada, at his business address of 7930 Floyd Curl Drive, San Antonio, Texas 78229. This Court therefore has personal jurisdiction over St. Luke's.

SUBJECT MATTER JURISDICTION AND VENUE

5. Venue is proper and maintainable in Bexar County, Texas under Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claims made in this lawsuit occurred in Bexar County.

6. This Court has jurisdiction in this action because Plaintiff's damages exceed the minimum jurisdictional limits of this Court. Pursuant to Tex. Civ. Prac. & Rem. Code § 74.053, Plaintiff will not specify an amount of money claimed as damages.

STATUTORY NOTICE

7. Without waiving her claim that the injuries to Decedent are not associated with a health care claim, Plaintiff has complied with Tex. Civ. Prac. & Rem. Code §§ 74.051 and

74.052 prior to filing this Petition. Further, all conditions precedent have been performed or have occurred in accordance with Texas Rule of Civil Procedure 54.

PRELIMINARY STATEMENT

8. On May 19, 2021, Mr. Garner went to St. Luke's seeking medical care for worsening neck pain from a prior injury. A little over two weeks later, he left St. Luke's mortally wounded, and he died on July 11, 2021, as a result of those wounds.

9. Mr. Garner's mortal wound was a wholly unnecessary trauma to his spine caused by a male nurse at St. Luke's Hospital (the "Assaulting Nurse")¹ who angrily assaulted Mr. Garner. That trauma rendered Mr. Garner a quadriplegic and led to his untimely death.

10. The assault on Mr. Garner had nothing to do with the provision of health care. Excited that he was being allowed to go home, Mr. Garner was lingering in his hospital room's bathroom, hoping that he could have the bowel movement necessary for release from St. Luke's. The Assaulting Nurse, impatient with Mr. Garner, grabbed Mr. Garner and threw him into his hospital bed, angrily announcing "I'm the boss!" as he did so (the "Assault"). Mr. Garner felt the trauma in his neck as he landed, and he was paralyzed from that point until his death six weeks later.

11. The Assault killed Mr. Garner, and Plaintiff brings survivorship claims sounding in battery, negligent hiring and supervision and gross negligence against Defendants for this egregious and intentional act.

12. Plaintiff's claims for the Assault are not health care liability claims under the Texas Medical Liability Act (Tex. Civ. Prac. & Rem. Code § 74.001 *et seq.*) because Plaintiff seeks recovery for the Assault, Mr. Garner did not actually or impliedly consent to the Assault,

¹ Plaintiff does not currently know the identity of the Assaulting Nurse, and St. Luke's Hospital has refused to provide Plaintiff with his name.

and the only possible relationship between the Assault and healthcare is that the Assault occurred in a healthcare facility.

13. Nonetheless, should Plaintiff's claims for the Assault be deemed health care liability claims by the Court, Plaintiff also brings an alternative survivorship claim sounding in negligence and medical malpractice.

FACTUAL BACKGROUND

14. In August 2020, Mr. Garner suffered a fall that left him with recurrent neck pain. Although he was initially able to manage the pain with physical therapy and medications, over time the pain grew worse. On May 19, 2021, Mr. Garner's pain was severe enough that he went to the emergency room at St. Luke's for treatment.

15. Mr. Garner was admitted to St. Luke's that same day after imaging tests revealed a cancerous mass in his cervical vertebrae, along with spinal canal stenosis and bulging discs. Despite the presence of the cancerous mass, on May 24, 2021, surgeons at St. Luke's performed an operation on Mr. Garner's neck, including a laminectomy at the C3-C4 vertebrae and the insertion of instrumentation that effectively fused the C2-C5 vertebrae. A subsequent biopsy performed on May 26 confirmed the presence of cancer.

16. On May 28, the doctors at St. Luke's told Mr. Garner that he was recovering well from his surgery and could be discharged the following day, May 29, with follow-up outpatient treatments for the tumors. In fact, doctors prescribed Mr. Garner medications to take to prepare him for the radiation treatment that would follow his release from the hospital. At this point, Mr. Garner was in good spirits and was walking, talking and making jokes.

17. However, early in the morning of May 29, 2021, all of that changed. The Assaulting Nurse was called to help Mr. Garner use the bathroom in his hospital room. Apparently frustrated with the length of time Mr. Garner was taking in the bathroom, the

Assaulting Nurse pulled Mr. Garner from the toilet by his shoulder and violently hurled Mr. Garner into the bed. As he did so, the Assaulting Nurse yelled, "I'm the boss!"

18. As soon as Mr. Garner crashed into the bed, he knew something was terribly wrong. He instantly felt pain, tingling and a buzzing sensation throughout his body. Terrified, Mr. Garner immediately called his brother to tell him what happened, and Mr. Garner also reported the Assault to the head nurse on duty at the time. Before long, Mr. Garner lost consciousness. When he regained consciousness, he had lost feeling in half of his body. By the end of the day, he was completely paralyzed from the neck down. Exhibit A is a photograph taken of Mr. Garner a few days before the Assault; Exhibit B depicts Mr. Garner after the Assault.

19. The Assault rendered Mr. Garner a quadriplegic. Indeed, the Assault was so severe that, according to St. Luke's own records, images taken after the Assault "revealed *new* bilateral pedicle fractures of C5 with posterior subluxation of the lateral mass" (emphasis added). In other words, the attack not only damaged Mr. Garner's spine along the recently inserted instrumentation, it also caused two fresh breaks in his neck. One of Mr. Garner's surgeons was so surprised by these new breaks that he described them to Mr. Garner's family as "impact" fractures similar to those one would suffer in a car accident.

20. Mr. Garner underwent emergency surgery on May 30 in an attempt to ameliorate the damage caused by the Assault. However, even with this additional surgery, Mr. Garner remained paralyzed from the neck down. Furthermore, Mr. Garner had to undergo a tracheotomy in order to breathe.

21. In the aftermath of the Assault, Mr. Garner grew despondent from the pain and disability; he was also terrified that the Assaulting Nurse would return and finish the job. In

addition, Mr. Garner developed an infection from the tracheotomy that, as noted above, was necessary for him to breathe. Mr. Garner also developed infections in his catheter and intravenous sites, as well as pneumonia. To make matters worse, the Assault left Mr. Garner too weak to undergo the follow up cancer treatments recommended by his doctors.

22. Doctors at St. Luke's told Mr. Garner that without these cancer treatments, and in light of his quadriplegia, his prognosis was grim. Unfortunately, they were correct. Mr. Garner was discharged from St. Luke's on June 9, 2021, and passed away a little over a month later, on July 11, 2021. The report from Mr. Garner's autopsy (attached as Exhibit C) reflects that his immediate causes of death were acute bronchopneumonia and heart disease and that these complications were likely caused, or aggravated, by the quadriplegia that resulted from the Assault.

CAUSES OF ACTION

Survivorship/Battery: All Defendants

23. Plaintiff incorporates and realleges Paragraphs 1-22 above as if fully restated herein.

24. Plaintiff, in her capacity as the legal representative of Mr. Garner's estate, brings this survivorship claim for battery pursuant to Tex. Civ. Prac. & Rem. Code § 71.021. Mr. Garner suffered injuries as a direct and proximate result of the conduct of St. Luke's Hospital and/or its agents including, but not limited to, the Assaulting Nurse, and would have been entitled to bring the causes of action set forth herein arising from his injuries had he lived.

25. The Assault was an intentional, offensive touching by the Assaulting Nurse on Mr. Garner that resulted in the mortal injuries described in this Petition.

26. St. Luke's Hospital is liable for the actions of the Assaulting Nurse under principles of *respondeat superior*. Upon information and belief, the Assaulting Nurse was an

employee or agent of St. Luke's Hospital at all times material hereto. At the time of the Assault, the Assaulting Nurse was performing his authorized duties, specifically, assisting Mr. Garner with using the toilet. Thus, the Assaulting Nurse was acting within the scope of his employment and authority at St. Luke's Hospital, was acting in the furtherance of St. Luke's Hospital business and was keeping with the object for which the Assaulting Nurse was hired.

Survivorship/Negligence Hiring And Supervision: All Defendants

27. Plaintiff incorporates and realleges Paragraphs 1-22 above as if fully restated herein.

28. Plaintiff, in her capacity as the legal representative of Mr. Garner's estate, brings this survivorship claim for negligent hiring and supervision pursuant to Tex. Civ. Prac. & Rem. Code § 71.021. Mr. Garner suffered injuries as a direct and proximate result of the conduct of St. Luke's Hospital and/or its agents including, but not limited to, the Assaulting Nurse, and would have been entitled to bring the causes of action set forth herein arising from his injuries had he lived.

29. St. Luke's Hospital had a duty to patients like Mr. Garner to hire, supervise and retain competent employees and to protect patients from inappropriate actions by its employees and agents. St. Luke's Hospital breached that duty when it hired or retained the Assaulting Nurse and/or when it failed to properly supervise the Assaulting Nurse. St. Luke's Hospital's breach of that duty resulted in the Assault, which proximately caused the mortal injuries described in this Petition.

Survivorship/Gross Negligence: All Defendants

30. Plaintiff incorporates and realleges Paragraphs 1-22 above as if fully restated herein.

31. Plaintiff, in her capacity as the legal representative of Mr. Garner's estate, brings this survivorship claim for gross negligence pursuant to Tex. Civ. Prac. & Rem. Code § 71.021. Mr. Garner suffered injuries as a direct and proximate result of the conduct of St. Luke's Hospital and/or its agents including, but not limited to, the Assaulting Nurse, and would have been entitled to bring the causes of action set forth herein arising from his injuries had he lived.

32. The Assault constituted an act of gross negligence. Viewed objectively from the standpoint of St. Luke's Hospital and/or the Assaulting Nurse, the manhandling and tossing of Mr. Garner into his hospital bed involved an extreme degree of risk. Mr. Garner had cervical surgery just days before, and thus the probability and magnitude of potential harm to Mr. Garner was obvious. St. Luke's Hospital and/or the Assaulting Nurse had actual, subjective awareness of those risks, but nevertheless acted in conscious indifference to Mr. Garner's rights, safety and welfare.

Survivorship/Negligence and Medical Malpractice: All Defendants

33. Plaintiff incorporates and realleges Paragraphs 1-22 above as if fully restated herein.

34. Should the Assault be deemed a health care liability claim, Plaintiff, alternatively and in her capacity as the legal representative of Mr. Garner's estate, brings this survivorship claim for negligence and medical malpractice pursuant to Tex. Civ. Prac. & Rem. Code § 71.021. Mr. Garner suffered injuries as a direct and proximate result of the conduct of St. Luke's Hospital and/or its agents including, but not limited to, the Assaulting Nurse, and would have been entitled to bring the causes of action set forth herein arising from his injuries had he lived.

35. St. Luke's Hospital had a duty to act within certain accepted standards of care when caring for patients like Mr. Garner who were admitted to that hospital. St. Luke's Hospital breached those standards of care when its employee or agent committed the Assault. That Assault proximately caused the debilitating injuries described in this Petition.

DAMAGES

36. Plaintiff incorporates and realleges Paragraphs 1-22 above as if fully restated herein.

37. Plaintiff seeks to recover economic damages resulting from the Assault. Plaintiff also seeks economic damages in the form of reasonable and necessary medical expenses incurred as a result of the Assault, as defined in Tex. Civ. Prac. & Rem. Code § 41.001(4).

38. Plaintiff seeks non-economic damages for the physical pain, suffering, disability, mental pain and anguish, and loss of the enjoyment of life that Mr. Garner sustained as a result of the Assault and the injuries caused by the Assault, as defined in Texas Civ. Prac. & Rem. Code § 41.001(12).

39. Plaintiff seeks exemplary damages for the outrageous, malicious and otherwise morally reprehensible conduct described in this Petition, as defined in Tex. Civ. Prac. & Rem. Code § 41.001(5). Plaintiff also seeks these exemplary damages to punish St. Luke's Hospital's malicious, wrongful behavior and to deter it from engaging in similar conduct in the future.

40. Plaintiff seeks pre- and post-judgment interest on past damages as the highest rate allowed from the earliest time allowed under Texas law, together with all taxable costs.

PRESERVING EVIDENCE

41. Plaintiff hereby requests and demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting therefrom, including statements, photographs, videotapes, audiotapes, surveillance or security tapes or information, business or medical records, incident reports, tenant files, periodic reports, financial statements, bills, telephone call slips or records, estimates, invoices, checks, measurements, correspondence, facsimiles, email, voice mail, text messages, and any electronic image or information related to the referenced incident or damages. Failure to maintain such items will constitute “spoliation” of the evidence.

JURY TRIAL

42. Plaintiff respectfully requests that the trial of this action be by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein and that upon final trial and other hearing of this cause, Plaintiff recover damages from Defendants in accordance with the evidence, including economic damages, non-economic damages, exemplary damages as the jury deem them deserving; that Plaintiff recover costs of court herein expended; that Plaintiff recover interest to which Plaintiff is justly entitled under the law, both pre- and post-judgment; and for such other further relief, both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Dated: Houston, Texas
November 16, 2021



David Berg
State Bar No. 02187000
BERG & ANDROPHY
3704 Travis Street
Houston, Texas 77002
713-529-5622

ATTORNEY-IN-CHARGE
FOR PLAINTIFF

Of counsel:

Jenny H. Kim
Michael M. Fay
BERG & ANDROPHY
120 West 45th Street, Suite 3801
New York, New York 10036

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

David Berg on behalf of David Berg
Bar No. 02187000
dberg@bafirm.com
Envelope ID: 59186768
Status as of 11/16/2021 8:30 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jenny H. Kim		jkim@bafirm.com	11/16/2021 7:59:26 AM	SENT
Michael M. Fay		mfay@bafirm.com	11/16/2021 7:59:26 AM	SENT
David Berg		dberg@bafirm.com	11/16/2021 7:59:26 AM	SENT
Veronica Fort		vfort@bafirm.com	11/16/2021 7:59:26 AM	SENT
Emily Burgess		eburgess@bafirm.com	11/16/2021 7:59:26 AM	SENT