

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
CAROL FITZSIMMONS, as Administratrix of the Goods,  
Chattels, and Credits of CHRISTINE ANN GONGOLEWSKI,  
deceased,

**AMENDED VERIFIED  
COMPLAINT**

Index No.: 616451/2020

Plaintiff,

-against-

PLANNED PARENTHOOD HUDSON PECONIC, INC.,  
JOHN T. MATHER MEMORIAL HOSPITAL OF PORT  
JEFFERSON, NEW YORK, INC., MICHELLE CRADDOCK,  
N.P., JAMES THOMAS KELLY, D.O., ZWANGER &  
PESIRI RADIOLOGY GROUP, LLP, PORT JEFFERSON  
MEDICAL ASSOCIATES, and NORTHWELL HEALTH,  
INC.,

Defendants.

-----X  
Plaintiff, CAROL FITZSIMMONS, as Administratrix of the Goods, Chattels, and  
Credits of CHRISTINE ANN GONGOLEWSKI, deceased, by her attorneys, ZUCKER &  
REGEV, P.C., complaining of the defendants herein, respectfully shows to this Honorable  
Court and alleges, upon information and belief:

**VENUE**

1. Venue in this action properly lies in Suffolk County pursuant to C.P.L.R. §503  
on the grounds that the decedent was and plaintiff is a resident of the County of Suffolk and  
that a substantial part of the events or omissions giving rise to the claims herein occurred in  
Suffolk County.

**THE PARTIES**

2. Plaintiff, CAROL FITZSIMMONS, is the duly appointed Administratrix of the  
goods, chattels, and credits which were of CHRISTINE ANN GONGOLEWSKI, deceased,

Letters of Administration having been issued by the Surrogate of Suffolk on the 10th day of September, 2020.

3. Upon information and belief, at all times hereinafter mentioned, defendant PLANNED PARENTHOOD HUDSON PECONIC, INC. (hereinafter PPHP) was a corporation duly organized and existing under and by virtue of the laws of the State of New York.

4. Upon information and belief, at all times hereinafter mentioned, defendant PPHP held itself out to the public, and more particularly to the plaintiff's decedent herein, as rendering and being capable of rendering medical care and treatment in accordance with standards of good and accepted medical practice.

5. Upon information and belief, at all times hereinafter mentioned, defendant PPHP owned a medical facility located at 450 Waverly Avenue, Patchogue, New York.

6. Upon information and belief, at all times hereinafter mentioned, defendant PPHP operated a medical facility located at 450 Waverly Avenue, Patchogue, New York.

7. Upon information and belief, at all times hereinafter mentioned, defendant PPHP owned a medical facility located at 70 Maple Avenue, Smithtown, New York.

8. Upon information and belief, at all times hereinafter mentioned, defendant PPHP operated a medical facility located at 70 Maple Avenue, Smithtown, New York.

9. Upon information and belief, at all times hereinafter mentioned, defendant PPHP hired and/or retained various physicians, nurses, technicians, and other individuals for the purpose of rendering medical care and treatment to patients at the aforesaid medical facilities.

10. Upon information and belief, at all times hereinafter mentioned, defendant JOHN T. MATHER MEMORIAL HOSPITAL OF PORT JEFFERSON, NEW YORK, INC. (hereinafter MATHER HOSPITAL) was a corporation duly organized and existing under and by virtue of the laws of the State of New York.

11. Upon information and belief, at all times hereinafter mentioned, defendant MATHER HOSPITAL held itself out to the public, and more particularly to the plaintiff's decedent herein, as rendering and being capable of rendering hospital care and treatment in accordance with standards of good and accepted medical practice.

12. Upon information and belief, at all times hereinafter mentioned, defendant MATHER HOSPITAL owned a hospital facility located at 75 North Country Road, Port Jefferson, New York.

13. Upon information and belief, at all times hereinafter mentioned, defendant MATHER HOSPITAL operated a hospital facility located at 75 North Country Road, Port Jefferson, New York.

14. Upon information and belief, at all times hereinafter mentioned, defendant MATHER HOSPITAL hired and/or retained various physicians, nurses, technicians, and other individuals for the purpose of rendering hospital care and treatment to patients at the aforesaid hospital facility.

15. Upon information and belief, at all times hereinafter mentioned, defendant MICHELLE CRADDOCK, N.P. (hereinafter CRADDOCK) was a nurse practitioner duly licensed to render medical care in the State of New York.

16. Upon information and belief, at all times hereinafter mentioned, defendant CRADDOCK held herself out to the public, and more particularly to the plaintiff's decedent

herein, as a specialist in the field of family medicine and having the requisite skill and knowledge of nurse practitioners practicing in that field.

17. Upon information and belief, at all times hereinafter mentioned, defendant JAMES THOMAS KELLY, D.O. (hereinafter KELLY) was a physician duly licensed to render medical care in the State of New York.

18. Upon information and belief, at all times hereinafter mentioned, defendant KELLY held himself out to the public, and more particularly to the plaintiff's decedent herein, as a specialist in the field of family medicine and having the requisite skill and knowledge of physicians practicing in that field.

19. Upon information and belief, at all times hereinafter mentioned, defendant KELLY maintained an office for the practice of medicine at 70 North Country Road, Suite 105, Port Jefferson, New York.

20. Upon information and belief, at all times hereinafter mentioned, defendant KELLY operated an office for the practice of medicine at 70 North Country Road, Suite 105, Port Jefferson, New York.

21. Upon information and belief, at all times hereinafter mentioned, defendant KELLY hired and/or retained various physicians, nurses, technicians, and other individuals for the purpose of rendering medical care and treatment to patients at the aforesaid medical facility.

22. Upon information and belief, at all times hereinafter mentioned, defendant ZWANGER & PESIRI RADIOLOGY GROUP, LLP (hereinafter ZWANGER) was a Limited Liability Partnership duly organized and existing under and by virtue of the laws of the State of New York.

23. Upon information and belief, at all times hereinafter mentioned, defendant ZWANGER held itself out to the public, and more particularly to the plaintiff's decedent herein, as rendering and being capable of rendering medical care and treatment in accordance with standards of good and accepted medical practice.

24. Upon information and belief, at all times hereinafter mentioned, defendant ZWANGER owned a medical facility located at 220 Belle Mead Road, East Setauket, New York.

25. Upon information and belief, at all times hereinafter mentioned, defendant ZWANGER operated a medical facility located at 220 Belle Mead Road, East Setauket, New York.

26. Upon information and belief, at all times hereinafter mentioned, defendant ZWANGER hired and/or retained various physicians, nurses, technicians, and other individuals for the purpose of rendering medical care and treatment to patients at the aforesaid medical facility.

27. Upon information and belief, at all times hereinafter mentioned, defendant PORT JEFFERSON MEDICAL ASSOCIATES (hereinafter PJMA) was a corporation duly organized and existing under and by virtue of the laws of the State of New York.

28. Upon information and belief, at all times hereinafter mentioned, defendant PJMA held itself out to the public, and more particularly to the plaintiff's decedent herein, as rendering and being capable of rendering medical care and treatment in accordance with standards of good and accepted medical practice.

29. Upon information and belief, at all times hereinafter mentioned, defendant PJMA owned a medical facility located at 70 North Country Road, Suite 105, Port Jefferson, New York.

30. Upon information and belief, at all times hereinafter mentioned, defendant PJMA operated a medical facility located at 70 North Country Road, Suite 105, Port Jefferson, New York.

31. Upon information and belief, at all times hereinafter mentioned, defendant PJMA hired and/or retained various physicians, nurses, technicians, and other individuals for the purpose of rendering medical care and treatment to patients at the aforesaid medical facility.

32. Upon information and belief, at all times hereinafter mentioned, defendant NORTHWELL HEALTH, INC. (hereinafter NORTHWELL) was a corporation duly organized and existing under and by virtue of the laws of the State of New York.

33. Upon information and belief, at all times hereinafter mentioned, defendant NORTHWELL held itself out to the public, and more particularly to the plaintiff's decedent herein, as rendering and being capable of rendering medical care and treatment in accordance with standards of good and accepted medical practice.

34. Upon information and belief, at all times hereinafter mentioned, defendant NORTHWELL owned a medical facility located at 2000 Marcus Avenue, New Hyde Park, New York.

35. Upon information and belief, at all times hereinafter mentioned, defendant NORTHWELL operated a medical facility located at 2000 Marcus Avenue, New Hyde Park, New York.

36. Upon information and belief, at all times hereinafter mentioned, defendant NORTHWELL hired and/or retained various physicians, nurses, technicians, and other individuals for the purpose of rendering medical care and treatment to patients at the aforesaid medical facility.

37. Upon information and belief, at all times hereinafter mentioned, defendant CRADDOCK was employed by defendant PJMA.

38. Upon information and belief, at all times hereinafter mentioned, defendant CRADDOCK rendered medical care and treatment to plaintiff's decedent in the course of her employment for and/or in furtherance of the business of defendant PJMA.

39. Upon information and belief, at all times hereinafter mentioned, defendant CRADDOCK was employed by defendant NORTHWELL.

40. Upon information and belief, at all times hereinafter mentioned, defendant CRADDOCK rendered medical care and treatment to plaintiff's decedent in the course of her employment for and/or in furtherance of the business of defendant NORTHWELL.

41. Upon information and belief, at all times hereinafter mentioned, defendant KELLY was employed by defendant PJMA.

42. Upon information and belief, at all times hereinafter mentioned, defendant KELLY rendered medical care and treatment to plaintiff's decedent in the course of his employment for and/or in furtherance of the business of defendant PJMA.

43. Upon information and belief, at all times hereinafter mentioned, defendant KELLY was employed by defendant MATHER HOSPITAL.

44. Upon information and belief, at all times hereinafter mentioned, defendant KELLY rendered medical care and treatment to plaintiff's decedent in the course of his employment for and/or in furtherance of the business of defendant MATHER HOSPITAL.

45. Upon information and belief, at all times hereinafter mentioned, defendant KELLY was employed by defendant NORTHWELL.

46. Upon information and belief, at all times hereinafter mentioned, defendant KELLY rendered medical care and treatment to plaintiff's decedent in the course of his employment for and/or in furtherance of the business of defendant NORTHWELL.

#### **STATEMENT OF FACTS**

47. On or about July 1, 2014, plaintiff's decedent presented to defendant PLANNED PARENTHOOD with certain signs, symptoms, and complaints.

48. On and between July 1, 2014 and August 1, 2017, plaintiff's decedent received regular and continuous medical care and treatment from defendant PLANNED PARENTHOOD for the aforesaid certain signs, symptoms, and complaints.

49. On and between July 1, 2014 and January 18, 2018, plaintiff's decedent received regular and continuous medical care and treatment from defendant ZWANGER for the aforesaid certain signs, symptoms, and complaints.

50. On and between July 1, 2014 and January 18, 2018, plaintiff's decedent received regular and continuous medical care and treatment from defendant KELLY for the aforesaid certain signs, symptoms, and complaints.

51. On and between July 1, 2014 and January 18, 2018, plaintiff's decedent received regular and continuous medical care and treatment from defendant PJMA for the aforesaid certain signs, symptoms, and complaints.

52. On and between July 1, 2014 and January 18, 2018, plaintiff's decedent received regular and continuous medical care and treatment from defendant NORTHWELL for the aforesaid certain signs, symptoms, and complaints.

53. On or about April 11, 2016, plaintiff's decedent presented to defendant MATHER HOSPITAL with certain signs, symptoms, and complaints.

54. On or about October 24, 2017, plaintiff's decedent presented to defendant MATHER HOSPITAL with certain signs, symptoms and complaints including, but not limited to, pneumonia.

55. On or about November 14, 2017, plaintiff's decedent presented to defendant ZWANGER, was treated by defendant CRADDOCK, and underwent a chest x-ray.

56. On or about November 30, 2017, plaintiff's decedent presented to defendant ZWANGER, was treated by defendant CRADDOCK, and underwent a chest x-ray.

57. On or about January 2, 2018, plaintiff's decedent presented to defendant ZWANGER, was treated by defendant CRADDOCK, and underwent a chest CT scan.

58. On or about January 18, 2018, plaintiff's decedent was diagnosed with lung cancer.

59. On or about February 3, 2019, plaintiff's decedent suffered an untimely death.

**AS AND FOR A FIRST CAUSE OF ACTION**

60. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs 1 through 59 above with the same force and effect as if set forth herein more fully at length.

61. The aforesaid medical care and treatment rendered by the defendants to plaintiff's decedent was rendered in a negligent and improper manner and failed to conform

with standards of good and accepted medical practice in failing to timely and properly diagnose and treat the condition from which the plaintiff's decedent was then suffering.

62. As a result of the negligence, malpractice, and wrongdoing of the defendants as aforesaid, and without any fault on the part of plaintiff's decedent contributing thereto, plaintiff's decedent was caused to sustain serious, severe, and permanent personal injuries, and has suffered physical pain and mental anguish, and an untimely death.

63. The limitation of liability provisions of Article 16 of the CPLR do not apply herein by virtue of the fact that the defendants acted jointly and in concert to render the aforesaid medical care and treatment and pursuant to the doctrine of respondent superior.

64. By virtue of the foregoing, plaintiff's decedent has been caused to suffer damages in an amount that exceeds the jurisdictional limit of all other courts which would otherwise have jurisdiction herein.

**AS AND FOR A SECOND CAUSE OF ACTION**

65. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs 1 through 64 with the same force and effect as if set forth herein more fully at length.

66. As a result of the wrongdoing, carelessness, negligence, and malpractice of the defendants as aforesaid, and without any fault on the part of the plaintiff's decedent contributing thereto, plaintiff's decedent was caused to suffer an untimely and wrongful death.

67. As a result of the wrongdoing, carelessness, negligence, and malpractice of the defendants as aforesaid, and without any fault on the part of the plaintiff's decedent contributing thereto, plaintiff's decedent is next of kin and heirs at law have been caused to

incur funeral, medical and other necessary expenses and have been deprived of the support, services, comfort, society and contribution of plaintiff's decedent, all to their damage.

68. By reason of the foregoing, plaintiff's decedent's next of kin and heirs at law and distributees have been damaged in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction herein.

**CPLR ARTICLE 16 NOT APPLICABLE**

69. The limitation of liability provisions of article 16 of the CPLR do not apply herein by virtue of the fact that the defendants acted knowingly or intentionally, and in concert with each other, in rendering care and treatment to the plaintiff's decedent and in committing the negligent acts and/or omissions upon which liability herein is based and pursuant to the doctrine of respondeat superior.

WHEREFORE, plaintiff demands judgment against the defendants on the First and Second Causes of Action in amounts that exceed the jurisdictional limits of all lower courts that would otherwise have jurisdiction, together with interest, costs, and disbursements of this action.

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/s/Aaron M. Ser  
Aaron M. Ser  
ZUCKER & REGEV, P.C.  
Attorneys for Plaintiff  
186 Joralemon Street  
Brooklyn, NY 11201  
(718) 624-1211

STATE OF NEW YORK                    )  
   )  
 COUNTY OF KINGS                    )                    ss.:

I, Aaron M. Ser, the undersigned, am an attorney admitted to practice in the Courts of New York State and say that: I am the attorney of record or of counsel with the attorney(s) of record, for the plaintiff. I have read the annexed SUMMONS & COMPLAINT, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Reports, records, memoranda, and other pertinent data necessary for the prosecution of the within action.

The reason I make this affirmation instead of plaintiff is that deponent's office is located in a County other than the County in which plaintiff resides.

I affirm the foregoing statements are true under the penalties of perjury.

Dated: Brooklyn, New York  
 February 2, 2021

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 /s/Aaron M. Ser  
 AARON M. SER

