

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2018 CA 015521 XXXX MB AD

CIVIL DIVISION

JOSEPH LANCELOT LESTER III, M.D., by
and through LINDSAY STORTZ, Guardian
of JOSEPH LANCELOT LESTER III,

Plaintiff,

vs.

JFK MEDICAL CENTER LIMITED
PARTNERSHIP d/b/a JFK MEDICAL
CENTER and EDUARDO J. JUSINO,
M.D.,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, JOSEPH LANCELOT LESTER III M.D., by and through LINDSAY STORTZ, Guardian of JOSEPH LANCELOT LESTER III hereby sues Defendants, JFK MEDICAL CENTER LIMITED PARTNERSHIP d/b/a JFK MEDICAL CENTER and EDUARDO J. JUSINO, M.D., and alleges:

1. This is an action for medical negligence which resulted in catastrophic injury to JOSEPH LANCELOT LESTER III, M.D.
2. The amount in controversy is in excess of \$15,000.00, exclusive of interest and costs, and is within the jurisdiction of this Court.
3. Venue is proper in this Court because the acts complained of took place in Palm Beach County, Florida.

4. The Plaintiff is JOSEPH LANCELOT LESTER III, M.D., hereinafter “DR LESTER” by and through LINDSAY STORTZ, Guardian of JOSEPH LANCELOT LESTER III. The Order Appointing Limited Guardianship was entered in the Circuit Court for Palm Beach County, Florida, Probate Division, File No. 502018GA00023XXXXMB, In Re: Guardianship of Joseph Lancelot Lester III on August 21, 2018. Attached as Exhibit “A” is the Order Appointing Lindsay Stortz as Limited Guardian of JOSEPH LANCELOT LESTER III.

5. The Defendant, JFK MEDICAL CENTER LIMITED PARTNERSHIP d/b/a JFK MEDICAL CENTER, hereinafter “JFK MEDICAL CENTER” is a hospital licensed to operate in the State of Florida and, at all times relevant, was operating in the State of Florida.

6. EDUARDO J. JUSINO, M.D., hereinafter “DR. JUSINO” is a licensed medical doctor in the State of Florida and, at all times relevant, has been licensed to practice in the State of Florida.

7. There has been full and complete compliance by Plaintiff with respect to the pre-suit notice and all requirements of Chapter 766 of the Florida Statutes, precedent to the causes of action pled herein.

8. All conditions precedent have either been met or waived.

FACTS GIVING RISE TO THE CLAIM

9. DR. LESTER, former Chief of Cardiovascular Surgery and Chairman of the Department of Cardiovascular and Thoracic Surgery at JFK MEDICAL CENTER and a practicing cardiothoracic surgeon, was admitted to JFK MEDICAL CENTER on May 9, 2018 and underwent a bilateral decompressive laminectomy with partial facetectomy, foraminotomy and posterolateral arthrodesis with autograft performed by Steven Dutcher, D.O.

10. DR. LESTER was recovering from the surgery on May 10, 2018 and had been given a number of medications including muscle relaxants and narcotics for pain relief. He had been placed on a Patient-Controlled Analgesia (PCA) pump to receive a potent narcotic, Dilaudid, through an intravenous line with a limitation of dosage of 3mg per hour.

11. Dilaudid is clinically similar to heroin and is one of the strongest painkiller opioids used in medicine. It is 8 times more potent than morphine and it's most common and deadly side-effect is respiratory depression causing death, especially in older patients such as DR. LESTER if not promptly addressed and treated.

12. Since DR. LESTER was still in pain from the surgery, DR. JUSINO, a pain management physician on the medical staff at JFK MEDICAL CENTER, ordered that DR. LESTER be given more Dilaudid. DR. JUSINO ordered a 4mg dose of Dilaudid to be injected directly through his I.V., in addition to the maximum limit dose of up to 3mg of Dilaudid that he was already receiving through his PCA pump and to increase the PCA maximum limit dose to 4mg per hour.

13. DR. LESTER could only give himself a 0.3mg dose per button push spaced over time with a 3mg per hour maximum limit.

14. DR. LESTER had been charted as being "opioid naïve," meaning he did not have a high tolerance for narcotic medications and this was subsequently changed to "opioid tolerant" meaning that he was tolerant of larger doses of opioid medications. This was done in order to have the hospital pharmacy release more Dilaudid. DR. LESTER was 74 years old and had a history of coronary artery disease, insulin-dependent diabetes mellitus and prior spinal surgery.

15. The 4mg I.V. dose of Dilaudid and the increase to a maximum of 4mg per hour of Dilaudid through the PCA pump were ordered by DR. JUSINO in the medical record which was

then given to hospital employee, Joann Robinson, R.N. Nurse Robinson was alarmed at the massive doses of Dilaudid ordered and went up the chain of command of the nursing staff at JFK MEDICAL CENTER talking to 2 supervisors regarding her concerns. They told her to simply follow the doctor's orders and did not caution her that she should administer the Dilaudid slowly or monitor the patient carefully for respiratory depression as required by hospital policy and appropriate nursing care.

16. Nurse Robinson injected the 4mg Dilaudid intravenously in one dose, failing to give it slowly as ordered - an administration process known as titration - and left before monitoring the effects of this massive dose of Dilaudid on DR. LESTER.

17. Despite specific orders from DR. JUSINO through the pharmacy that the life-saving drug Naloxone - more commonly known as Narcan - be readily available, there was no Narcan with the nurse or at the bedside of DR. LESTER. Narcan is a drug used to rapidly reverse the effects of opioids such as Dilaudid in an overdose and quickly restore breathing.

18. Within minutes of the Dilaudid injection DR. LESTER went into respiratory arrest. No nurse responded quickly or appropriately and the first doctor to arrive was a medical resident in training. He did not call a Code Blue or start CPR even though DR. LESTER was pulseless at the time. Rather, he called his Chief Resident for help. Approximately 15 minutes, or more, transpired before the belated administration of the Narcan was given in an unsuccessful attempt to counteract the effects of this massive dose of Dilaudid. The window of opportunity to rescue DR. LESTER was lost.

19. As a direct result of the narcotic overdose and the failure of the hospital staff to appropriately respond, DR. LESTER suffered complete respiratory collapse, cardiac arrest and anoxic brain injury resulting in a coma. His coma was noted in the hospital records to be "narcotic

induced.”

20. DR. LESTER was transferred to the intensive care unit at JFK MEDICAL CENTER where he was found to have a life-threatening brain injury. He was eventually transferred to a higher level of care in Miami and then to Spaulding Rehabilitative Hospital in Boston, Massachusetts for continuing care and treatment.

21. DR. LESTER has not regained consciousness since the narcotic overdose and remains in a vegetative state. His condition will either remain unchanged or will slowly respond to intensive therapy, but he will need 24 hour, 7 days a week skilled nursing and rehabilitative care for the rest of his life.

22. DR. LESTER’S injury is a direct result of the negligent prescribing and administration of Dilaudid by both DR. JUSINO and the agents and employees of JFK MEDICAL CENTER and their failure to properly monitor DR. LESTER’S condition after the massive Dilaudid injection and to appropriately take steps to reverse the effects of the severe narcotic overdose.

COUNT I
CLAIM AGAINST JFK MEDICAL CENTER LIMITED PARTNERSHIP
d/b/a JFK MEDICAL CENTER

23. The Plaintiff realleges the allegations in paragraphs 1 through 22 as though fully set forth herein.

24. At all times material hereto, pursuant to Florida Statutes, including but not limited to, §766.110 and common law, JFK MEDICAL CENTER had a nondelegable duty to provide medical staff and nurses capable of providing appropriate medical care to DR. LESTER during his post-surgical recuperation. JFK MEDICAL CENTER breached their duty of care by failing to provide competent care to DR. LESTER through hospital employee Joann Robinson, R.N., nursing

staff, and others who properly failed to respond to the narcotic overdose as follows:

1. Failure to have appropriate policies and procedures for the hospital pharmacy's delivery of Dilaudid;
2. Failure to verify existing policies and procedures for the hospital's delivery of Dilaudid to DR. LESTER were followed;
3. Failure of hospital employees to appropriately access the chain of command for concerns of the Dilaudid increase to DR. LESTER;
4. Failure to properly administer Dilaudid;
5. Failure to properly monitor the post injection effects of Dilaudid on DR. LESTER;
6. Failure to properly respond to the post injection Dilaudid overdose by hospital agents and employees by, but not limited to, failing to promptly perform CPR, intubation, and failure to call Rapid Response and a Code Blue; and
7. Failure to properly care for DR. LESTER within the appropriate standards of medical care.

25. As a result of the negligence and gross deviation of the standard of care by JFK MEDICAL CENTER and its agents and employees, DR. LESTER suffered catastrophic damages as follows:

- a) loss of net accumulations;
- b) medical expenses;
- c) pain and suffering;
- d) loss of the capacity for the enjoyment of life; and
- e) diminished life expectancy.

WHEREFORE, JOSEPH LANCELOT LESTER III, M.D., by and through LINDSAY STORTZ, Guardian of JOSEPH LANCELOT LESTER III demands judgment against the Defendant, JFK MEDICAL CENTER LIMITED PARTNERSHIP d/b/a JFK MEDICAL CENTER, for compensatory damages and costs and any other relief this Court deems fit and proper and demands a trial by jury of all issues triable as right by jury.

COUNT II
CLAIM AGAINST JFK MEDICAL CENTER LIMITED PARTNERSHIP d/b/a JFK
MEDICAL CENTER FOR VICARIOUS LIABILITY

26. Plaintiff realleges the allegations in paragraphs 1 through 22 as though fully set forth herein.

27. At all times material hereto pursuant to Florida Statutes, including but not limited to §766.110 and common law, JFK MEDICAL CENTER had a non-delegable duty to provide medical staff and nurses capable of providing appropriate care to DR. LESTER during his post-surgical recuperation. JFK MEDICAL CENTER is vicariously liable for the negligence of their hospital employees and staff including but not limited to Joann Robinson, R.N., her supervisors, hospital resident doctors and its hospital pharmacy employees for their failure to properly care for DR. LESTER while in the course and scope of their employment as follows:

1. Failure of pharmacy employees to ensure that the medication being prescribed to DR. LESTER was being appropriately prescribed for an opiate naïve patient and being appropriately administered;
2. Failure of Joann Robinson, R.N. to verify that DR. LESTER was an appropriate patient for a massive dose of Dilaudid, failure to follow the chain of command, failure to properly administer the Dilaudid and failure to properly monitor his condition after the administration of the Dilaudid;

3. Failure of Joann Robinson, R.N. and other hospital employees, agents and resident physicians to properly monitor and respond to the respiratory emergency caused by the narcotic overdose of DR. LESTER;
4. Failure to properly care for DR. LESTER during his respiratory collapse and resuscitation efforts; and
5. Failure of JFK MEDICAL CENTER employees and agents real or apparent, to properly care for DR. LESTER within the appropriate standards of medical care.

28. As a result of the negligence and gross deviation of the standard of care by JFK MEDICAL CENTER agents and employees, both real and apparent, JFK MEDICAL CENTER is vicariously liable for their actions and breaches of the standard of care causing DR. LESTER to suffer catastrophic damages as follows:

- a. loss of net accumulations;
- b. medical expenses;
- c. pain and suffering;
- d. loss of the capacity for the enjoyment of life; and
- e. diminished life expectancy.

29. These damages are severe, permanent and will continue in the future.

WHEREFORE, JOSEPH LANCELOT LESTER III, M.D., by and through LINDSAY STORTZ, Guardian of JOSEPH LANCELOT LESTER III demands judgment against the Defendant, JFK MEDICAL CENTER LIMITED PARTNERSHIP d/b/a JFK MEDICAL CENTER, for compensatory damages and costs and any other relief this Court deems fit and proper and demands a trial by jury of all issues triable as right by jury.

COUNT III
CLAIM AGAINST EDUARDO J. JUSINO, M.D.

30. The Plaintiff realleges the allegations in paragraphs 1 through 22 as though fully set forth therein.

31. At all times herein, DR. JUSINO had a duty to safely provide pain management care and was negligent in his treatment of DR. LESTER at all times material hereto in the following ways, and these negligent acts constitute a departure from the standard of care required of this Defendant:

1. Failure to properly examine and fully assess DR. LESTER and his medical history prior to prescribing the additional pain medication given prior to his drug overdose and respiratory arrest;
2. Failure to consult with DR. LESTER'S other physicians and specialists more knowledgeable about the significance of DR. LESTER'S condition and the appropriateness of the pain management protocol of DR. JUSINO;
3. Failure to properly review the medical records of DR. LESTER to determine his opioid tolerance;
4. Falsification of request for additional Dilaudid through the pharmacy by inaccurately charting that DR. LESTER was opioid tolerant;
5. Failing to properly instruct the hospital personnel in the administration of the 4mg Dilaudid I.V. injection which was to be done as "titrate" and that he was to be monitored closely thereafter with Narcan ready to be administered if necessary, to counteract any drug overdose;
6. Failure to assure the nursing personnel administering the additional narcotics prescribed by DR. JUSINO were adequately trained in the administration of

these drugs, the monitoring of the patient, and the ability to counteract any potential drug overdose;

7. Failing to remain in the hospital to verify that the massive dose of Dilaudid ordered by DR. JUSINO to be given to DR. LESTER through the I.V. and to additionally raise the Dilaudid level of his PCA pump did not cause adverse consequences to DR. LESTER; and
8. Failure to appropriately treat DR. LESTER within the appropriate standard of medical care.

32. As a result of these departures from the standard of care by EDUARDO J. JUSINO, M.D., DR. LESTER suffered catastrophic damages as follows:

- a) loss of net accumulations;
- b) medical expenses;
- c) pain and suffering;
- d) loss of the capacity for the enjoyment of life; and
- e) diminished life expectancy.

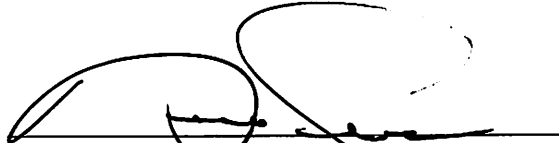
33. These damages are severe, permanent and will continue in the future.

WHEREFORE, JOSEPH LANCELOT LESTER III, M.D., by and through LINDSAY STORTZ, Guardian of JOSEPH LANCELOT LESTER III demands judgment against the Defendant, EDUARDO J. JUSINO, M.D., for compensatory damages and costs and any other relief this Court deems fit and proper and demands a trial by jury of all issues triable as right by jury.

CERTIFICATE OF COUNSEL

I hereby certify Plaintiff's counsel has satisfied all conditions precedent to filing suit pursuant to §766, Florida Statutes and has made a reasonable investigation as permitted by the


circumstances to determine that there are grounds for a good-faith belief that there has been negligence in the treatment of the Plaintiff by each named Defendant.



David W. Spicer, Esquire
Florida Bar # 0306290

Dated this 11th day of December 2018.

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

IN RE: GUARDIANSHIP OF

PROBATE DIVISION

JOSEPH LANCELOT LESTER, III

FILE NO. 502018GA000236XXXXMB

An alleged incapacitated person.

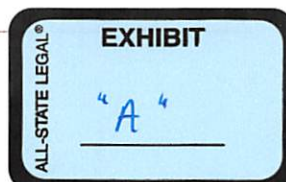
ORDER APPOINTING LIMITED GUARDIAN

THIS CAUSE having come before the Court on the Petition for Appointment of Limited Guardian filed herein by Lindsay Stortz with respect to Joseph Lancelot Lester, III (hereinafter the "Ward"), and the Court having considered the reports of the examining committee appointed by this Court, having considered all alternatives to guardianship, and the evidence adduced at the hearing, finds, based on the clear and convincing evidence presented, as follows:

1. The Ward suffers from incapacities of the following nature and scope: The Ward suffered anoxic brain injury on or around May 10, 2018. As a result of same, the Ward remains in a vegetative state, unable to make decisions of any kind.

2. The areas in which the Ward lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for the Ward's physical or mental health or safety are:

- (X) to contract,
- (X) to sue and defend lawsuits
- (X) to apply for government benefits,
- (X) to manage property or to make any gift or disposition of property,
- () to determine the Ward's residence,
- () to consent to medical and mental health treatment,
- () to make decisions about the Ward's social environment or other social aspects of the Ward's life.



3. The specific legal disabilities to which the Ward is subject (the rights the Ward is incapable of exercising are:

- to marry
- to vote
- to contract
- to travel
- to sue and defend lawsuits
- to have a driver's license
- to determine his or her residency
- to seek or retain employment
- to personally apply for government benefits
- to manage property or to make any gift or disposition of property
- to make decisions about his or her social environment or other social aspects of his or her life
- to consent to medical and mental health treatment

4. It is in the best interests of the Ward that a limited guardian of the property of the Ward be appointed; accordingly, after making the above noted findings, it is,

ORDERED AND ADJUDGED as follows:

1. Lindsay Stortz is qualified to serve and is hereby appointed as Limited Guardian of the Property of Joseph Lancelot Lester, III, hereinafter (the "Ward").


2. Upon taking the prescribed oath, filing designation of resident agent and acceptance and entering into bond in the amount of \$ payable to the Governor of the State of Florida and his successors in office, conditioned on the faithful performance of all duties by the guardian, letters of guardianship shall be issued to the guardian granting the following powers and duties:

- to contract,

- (X) to sue and defend lawsuits,
- (X) to apply for government benefits,
- (X) to manage property and make any gift or disposition of the property,
- () to determine the Ward's residence,
- () to consent to medical and mental health treatment,
- () to make decisions about his social environment or other social aspects of his life.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida, this

27th day of August, 2018.



 Circuit Judge

Copies furnished to:

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STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office with redactions, if any as required by law.

THIS 27th DAY OF AUGUST, 2018

SHARON R. BOCK
 CLERK & COMPTROLLER

By 

 DEPUTY CLERK