

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF FLORIDA  
Miami Division

**CASE NO.: 08-21813 CIV-JORDAN/MCALILEY**

JANICE LANGBEHN, individually and as  
personal representative of the ESTATE OF  
LISA MARIE POND, and DANIELLE  
LANGBEHN-POND, KATLEYN LANGBEHN-POND,  
and DAVID LANGBEHN-POND, by and through  
their mother and next friend, JANICE LANGBEHN,

Plaintiffs,

vs.

THE PUBLIC HEALTH TRUST OF  
MIAMI-DADE COUNTY, d/b/a  
JACKSON MEMORIAL HOSPITAL,  
GARNETT FREDERICK, DR. ALOIS ZAUNER,  
and DR. CARLOS ALBERTO CRUZ,

Defendants.

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**AMENDED COMPLAINT AND JURY DEMAND**

Plaintiffs Janice Langbehn, individually (“Janice”), and as personal representative of the Estate of Lisa Marie Pond (“Lisa Marie”), and Danielle Langbehn-Pond (“Danielle”), Katelyn Langbehn-Pond (“Katie”), and David Langbehn-Pond (“David”), by and through their mother and next friend Janice Langbehn (collectively, “the Langbehn-Pond Family” or the “Plaintiffs”), sue Defendants The Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital (“Jackson Memorial”), Garnett Frederick (“Frederick”), Dr. Alois Zauner (“Zauner”), and Dr. Carlos Alberto Cruz (“Cruz”) (collectively, “Defendants”), and allege as follows:

**SUMMARY OF THE ACTION**

1. This is an action for damages brought by the Langbehn-Pond Family based upon claims for negligence, negligent infliction of emotional distress, negligence per se, breach of fiduciary duty, and/or reckless, willful, wanton, and/or intentional infliction of emotional distress variously against Jackson Memorial, Frederick, Dr. Alois Zauner, and Dr. Carlos Alberto Cruz.

2. Janice and Lisa Marie were committed life partners and the parents of four jointly adopted children, including Danielle, Katie and David (“the Langbehn-Pond children”).

3. After Lisa Marie arrived by ambulance at Jackson Memorial, Defendants refused to recognize the Langbehn-Pond children as Lisa Marie’s family, failed to provide Janice sufficient and timely information on Lisa Marie’s condition, ignored the need of Janice and the Langbehn-Pond children for supportive services, and prevented Janice from being able to perceive Lisa Marie’s condition in order to make ongoing healthcare decisions; ignored Lisa Marie’s wishes and requests concerning end of life and healthcare decisions that might be able to be expressed through her surrogate, and prevented Janice and the Langbehn-Pond children from being with Lisa Marie for nearly eight hours as Lisa Marie lay dying alone. There was no legitimate justification or necessity for the hospital’s refusal to allow Janice and the Langbehn-Pond children access to Lisa Marie.

4. Because of the negligence and/or willful, wanton, and intentional actions and omissions of Defendants, the members of the Langbehn-Pond family suffered physical, emotional, and/or psychological injury as a result of Janice having been denied timely and sufficient medical information in order to make informed decisions regarding Lisa Marie’s healthcare, as well as having been denied the right to make certain healthcare decisions as Lisa Marie’s healthcare surrogate, and as a result of Janice and the Langbehn-Pond children having

been denied reasonable visitation with and access to Lisa Marie during her dying hours, despite Janice and Lisa Marie's durable power of attorney ("Power of Attorney") and the familial relationships that existed.

5. Defendants' cruel and/or substandard treatment was motivated by anti-gay animus, was contrary to professional standards of care, and a breach of Defendants' duty of reasonable care, as a consequence of which the Plaintiffs have suffered serious and irreparable injury.

### **PARTIES, JURISDICTION, AND VENUE**

6. Plaintiff Janice is an individual domiciled and residing in Lacey, Washington and is a citizen of the United States.

7. Plaintiff Janice is the personal representative of the estate of decedent Lisa Marie, who was until her death an individual domiciled and residing in Lacey, Washington.

8. Plaintiff Danielle is a minor adoptive child of Janice and Lisa Marie domiciled and residing in Lacey, Washington, and is a citizen of the United States.

9. Plaintiff Katie is a minor adoptive child of Janice and Lisa Marie domiciled and residing in Lacey, Washington, and is a citizen of the United States.

10. Plaintiff David is a minor adoptive child of Janice and Lisa Marie domiciled and residing in Lacey, Washington, and is a citizen of the United States.

11. Defendant Public Health Trust d/b/a Jackson Memorial Hospital is an agency and instrumentality of Miami-Dade County, doing business in Miami-Dade County, with its principal place of business located at 1611 NW 12th Avenue, Miami, Florida.

12. Defendant Frederick is an individual domiciled and residing in Miami-Dade County and/or Broward County, Florida, is a citizen of the United States, and at all times material was an employee of Jackson Memorial.

13. Defendant Zauner was an attending physician and among the doctors and professional staff directing and providing care to Lisa Marie at all times material; was partially or wholly responsible for decisions denying access and information to Janice and the Langbehn-Pond children and for the failure to respect the rights imbued in the Power of Attorney documents; is an individual who was domiciled and resided in Florida at all times relevant. And who is currently domiciled and residing in California; is a citizen of the United States, and at all times material was an employee and/ or on the professional staff of Jackson Memorial.

14. Defendant Cruz was an attending physician and among the doctors directing and providing care to Lisa Marie at all times material and was partially or wholly responsible for decisions denying access and information to Janice and the Langbehn-Pond children and for the failure to respect the rights imbued in the Power of Attorney documents; is an individual domiciled and residing in Miami-Dade County and/or Broward County, Florida; is a citizen of the United States; and at all times material was an employee and/or on the professional staff of Jackson Memorial.

15. This action involves negligence and other state law claims where the matter in controversy exceeds the sum or value of \$75,000, exclusive of costs and interests, and is between citizens of the states of Florida or California and citizens of the state of Washington, and therefore this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

16. This Court has *in personam* jurisdiction over Defendants because they are either found in this District, operate or carry on a business having a principal place of business in this

District, and/or operated or carried on a business having a principal place of business in this District at all times relevant and/or are otherwise subject to jurisdiction pursuant to § 48.193, Fla. Stat. (2007).

17. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

18. Plaintiffs have performed all conditions precedent to this action, including but not limited to the notice requirements of § 768.28, Fla. Stat. (2007).

### **FACTUAL BACKGROUND**

#### **A. JACKSON MEMORIAL'S POLICIES**

19. Jackson Memorial holds itself out as providing healthcare and related services according to specific policies and standards as set forth on their publicly accessible website and elsewhere, including but not limited to the following: "Patients' Bill of Rights & Responsibilities," "Social Work & Discharge Planning," and "About Advance Directives" (collectively, "Jackson's Public Policies").

20. These Jackson's Public Policies promise to provide, without limitation:

- a. the right of patients to an environment that preserves dignity;
- b. the right to "fair medical care or help;"
- c. the right to "an environment free from mental . . . sexual and verbal abuse;"
- d. the right to execute Advance Directives (such as durable powers of attorney and designation of health care surrogates), and to have those honored by Jackson Memorial;
- e. "patient-centered care that is holistic, compassionate and culturally sensitive;"
- f. "solutions to the bio-psychosocial" needs of their patients "and families;"

- g. that “crisis and bereavement counseling are available 24-hours a day to patients, families and friends” in the Ryder Trauma Unit;
- h. social workers that “provide the emotional support for the anxiety, fear and questions to be answered” for patients’ “friends and families;”
- i. “social workers [that] have been specially trained to work with individuals and families in dealing with personal and interpersonal crises caused by illness and hospitalization;”
- j. “social workers [that] facilitate family involvement with the entire treatment team” and that “keep the family apprised of the patient’s progress” during a patient’s hospital stay;
- k. “social workers [that] are trained to help patients and families help themselves” and to “assist in acquiring the tools to cope with troubling situations such as ... traumatic illness [and] bereavement;”
- l. a “nurse-patient relationship [that] is based on genuine care and respect, recognizing the individual’s values, developmental stage, disabilities, sexual orientation, nationality, religious, and cultural beliefs;”
- m. “patient representatives” that “serve as liaisons between families/visitors and hospital staff for the resolution of concerns; assist with needed information, patient health care issues, complaints and compliments;”
- n. a “patient representative” available to serve as a liaison between patients and their family between the hours of 2:00 pm and 10:30 pm;
- o. a commitment to “family-centered care to ensure families, significant others and social supports are partners in the delivery of care;” and
- p. “health care with kindness and with respect for patients’ diverse backgrounds and their rights to dignity.”

21. On information and belief and by admission, Jackson Memorial has a “liberal visitation policy” which allows visitors to be brought in “as soon as it’s humanly possible and appropriate.”

22. On information and belief, the Board of Directors of The Public Health Trust of Miami-Dade County have promulgated rules and regulations regarding physicians, nurses, attendants and other staff at JMH that concern, without limitation, anti-discrimination policies,

reasonable visitation policies, policies regarding treating patients with dignity, policies regarding providing patients with reasonable access to their family members, policies regarding providing support services to critically ill and dying patients' families, policies regarding respecting patients' healthcare decisions, and policies regarding the proper treatment of healthcare surrogates in accordance with Florida statutes (collectively, "Jackson's Rules and Regulations").

**B. STANDARDS GOVERNING JACKSON MEMORIAL**

23. Jackson Memorial is an accredited member of the Joint Commission on Accreditation of Healthcare Organizations (the "Joint Commission"), an independent, not-for-profit organization that evaluates and accredits hospitals in the United States. As a result of Jackson Memorial obtaining such accreditation, Jackson Memorial must abide by the Joint Commission's standards. These standards are nationally recognized as evidencing and establishing the reasonable standard of care for hospitals and hospital staff.

24. These standards include but are not limited to the following:

- a. That "family" is defined as "[t]he person(s) who plays a significant role in the [patient's] life. This may include a person(s) not legally related to the individual."
- b. A requirement that an accredited hospital "promote patient and family involvement in all aspects of [a patient's] care."
- c. A requirement that an accredited hospital respect the rights of patients to have their "own cultural, psychosocial, spiritual, and personal values, beliefs, and preferences respected."
- d. A requirement that an accredited hospital support "the right of each patient/resident/client to personal dignity."
- e. A requirement that an accredited hospital address the resolution of complaints from patients' families.

**C. LAWS GOVERNING DURABLE POWERS OF ATTORNEY AND THE RIGHTS OF PATIENTS**

25. Florida statutes provide strict guidelines that govern health care professionals with respect to Health Care Advance Directives, which includes the Power of Attorney executed by Lisa Marie and naming Janice as her attorney in fact for health care decisions.

26. The provisions of the Florida statutes governing durable powers of attorney, the right of healthcare surrogates to make healthcare decisions on behalf of the principal and the right to direct one's healthcare include, but are not limited to the following:

- a. A person may plan for incapacity by executing a document or orally designating another person to direct the course of his or her medical treatment upon his or her incapacity;
- b. If the principal has designated a health care surrogate or has delegated authority to make health care decisions to an attorney in fact under a durable power of attorney, the facility shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced;
- c. The surrogate's authority shall commence upon a determination that the principal lacks capacity, and such authority shall remain in effect until a determination that the principal has regained such capacity;
- d. An advance directive executed in another state in compliance with the law of that state or of this state is validly executed for the purposes of the Florida statutes;
- e. The surrogate is authorized and required to make health care decisions based on the decision the surrogate reasonably believes the patient would have made under the circumstances;
- f. The surrogate has authority to provide informed consent, refusal of consent, or withdrawal of consent to any and all health care; and.
- g. The surrogate has the right of access to all records of the principal reasonably necessary for a health care surrogate to make decisions involving health care.



27. Florida statutes provide that hospitals and their staff must provide patients with certain rights, codified as a "Patient's Bill of Rights," which include without limitation:

- a. the right to be given by his or her health care provider information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis, unless it is medically inadvisable or impossible to give this information to the patient, in which case the information must be given to the patient's guardian or a person designated as the patient's representative.;
- b. The right to dignity; and
- c. The right to a prompt and reasonable response to a request.

**D. THE LANGBEHN-POND FAMILY**

28. Janice Langbehn and Lisa Marie Pond were life partners who, up until the time of Lisa Marie's premature death, had been involved in a monogamous, romantic, and emotionally and financially dependent relationship since shortly after meeting each other in 1987. The women participated in a commitment ceremony and Holy Union in Tacoma Community Church in 1991, which recognized and blessed their union in the presence of family and friends, and they considered each other "soul-mates" and one another's closest family member.

29. Janice and Lisa Marie were registered foster parents since 1992, and together fostered 22 children over the years. They became the adoptive parents to four children, each with "special needs" who were considered hard to place.

30. Lisa Marie died inside Jackson Memorial Hospital at age 39. She had been a stay-at-home mom to her and Janice's four adopted children, who ranged in ages from 9 to 17 years old at the time of Lisa Marie's passing. Lisa Marie had been a vibrant part of the Olympia,

Washington community, served as a Girl Scout Troup leader and Parent Teacher Student Association member, taught first communion classes at her church and volunteered at her children's schools.

31. Lisa Marie and Janice thoughtfully and consciously built their lives, and made their home, together; held a joint checking account; owned properties jointly; granted each other power of attorney in the event of incapacity; and otherwise were interdependent and functioned as a family unit in every possible way.

32. Janice and Lisa Marie jointly adopted their first child, Michael, in 1996.

33. In March of 1997, the State of Washington asked Janice and Lisa Marie to consider taking in another hard to place child, David, who was 18 months old at the time. Three days after meeting him, the couple moved the child into their home. David's joint adoption by Janice and Lisa Marie was finalized in May of 1998.

34. David's half-sister, Katie, was 27 days old when she joined the Langbehn-Pond family. Katie's joint adoption by Janice and Lisa Marie was finalized November 2, 1998.

35. The Langbehn-Pond family became complete with the adoption of Danielle, Michael's sister. Danielle transitioned into Janice and Lisa Marie's care in June of 1998. Danielle's joint adoption by Janice and Lisa Marie was finalized April 19, 1999.

**E. THE MISTREATMENT OF THE LANGBEHN-POND FAMILY**

36. On or about February 17, 2007, the Langbehn-Pond family arrived in Miami to depart on a cruise the next day.

37. On or about February 18, 2007, Lisa Marie collapsed aboard a Norwegian Cruise Line ship while it was docked in the Port of Miami. Lisa Marie arrived by ambulance at Ryder Trauma Center ("Ryder"), an emergency facility owned and operated by Defendant Jackson

Memorial, at approximately 3:30 P.M. Janice, Danielle, Katie, and David arrived at Ryder at approximately the same time as Lisa Marie.

38. At Ryder, Janice immediately explained to the admitting clerk, or Jackson Memorial employee of similar title, (hereinafter referenced as "Jane Doe") that she was Lisa Marie's life partner and offered to provide relevant medical history and information; established herself as the appropriate family member to discuss and receive information regarding Lisa Marie's condition; and emphasized her need to be with Lisa Marie as soon as possible. Janice also explained that the Langbehn-Pond children were her and Lisa Marie's legally adopted children.

39. At all times material, Jane Doe appeared to be one of the relevant Jackson Memorial gatekeepers who controlled family members' access to emergency personnel attending to patients at Ryder.

40. Jane Doe denied Janice's efforts to provide medical information regarding Lisa Marie. Further, Jane Doe refused to provide Janice information about Lisa Marie's condition and, over the next eight hours, steadfastly refused to facilitate access for Janice and the Langbehn-Pond children to see or be with Lisa Marie while Lisa Marie was a patient at Ryder.

41. Subsequent to Janice's conversation with Jane Doe, where Janice informed Jane Doe of Janice's relationship to Lisa Marie, Jackson Memorial social worker Defendant Frederick approached Janice and informed her that she should not expect to be provided *any* information on the condition of, or have the ability to be with, Lisa Marie as they were in an "anti-gay city and state." Frederick further informed Janice that she would not be able to get before a court in order to secure the legal papers necessary for her to get information or access to Lisa Marie for several days since it was a holiday weekend.

42. As Defendant Frederick turned to walk away, Janice demanded to be provided with a facsimile number in order to have Lisa Marie's duly executed Power of Attorney sent to the hospital, a copy of which is attached hereto as Exhibit A.

43. On or about 4:15 P.M., and shortly after Janice's conversation with Defendant Frederick, Lisa Marie's Power of Attorney was received by the appropriate Jackson Memorial facsimile machine in the Ryder facility. On information and belief, the facsimiled copy of the Power of Attorney was thereafter placed in Lisa Marie's medical file. Notwithstanding the fact that Jackson Memorial received the Power of Attorney authorizing Janice to act as Lisa Marie's guardian of her person and to make medical decisions for Lisa Marie in the event of her incapacity, Defendants did not acknowledge receipt or provide written notification that Janice's authority under the instrument had commenced as required by law. Moreover, Janice was not provided authorized access to Lisa Marie so that she could make an informed decision regarding the care of Lisa Marie, and for that matter, was not treated any differently than she had been treated prior to receipt of the Power of Attorney document.

44. On information and belief, Defendants Zauner and Cruz, as the attending physicians responsible for the care and treatment of Lisa Marie, and Defendant Frederick, as the assigned social worker for Lisa Marie and her family, knew or should have known of the receipt of the Power of Attorney, the advanced directives of Lisa Marie and Janice's role as guardian of Lisa Marie's person and the person to make decisions given Lisa Marie's incapacity.

45. According to Lisa Marie's medical records, and on information and belief the following events occurred near, at, or after the Power of Attorney document arrived at the hospital:

- a. medical disposition was made at approximately 4:15 P.M. confirming that Lisa Marie had experienced an aneurysm;

- b. medicine was administered to Lisa Marie at approximately 4:30 P.M.;
- c. a surgical procedure was performed involving the placement of a ventria at approximately 5:20 P.M.;
- d. a surgical procedure was performed involving the placement of a central line; and
- e. Lisa Marie was transferred from Ryder to the Neurosurgery Intensive Care Unit of Jackson Memorial at 10:30 P.M.

46. Despite Janice's notification to several Jackson Memorial employees between 3:30 P.M. and 4:15 P.M. that Janice held a durable power of attorney for Lisa Marie and that Janice was Lisa Marie's life partner, and notwithstanding the fact that Jackson Memorial received confirmation of the fact that Janice held that durable power of attorney at approximately 4:15 P.M., no hospital personnel spoke with Janice, sought information from Janice regarding Lisa Marie's medical condition and current medications, provided medical information or sought Janice's consent for medical treatment, including invasive procedures, nor advised Janice of Lisa Marie's medical condition, prognosis or course of treatment until approximately 5:20 P.M.

47. At approximately 5:20 P.M., one of the attending physicians spoke with Janice for approximately one minute and told her that Lisa Marie needed a "brain monitor." Janice consented to the procedure.

48. At approximately 6:10 P.M., two doctors approached Janice to discuss Lisa Marie's condition and surgical options. Janice insisted on calling Lisa Marie's parents, who were thereafter placed on speakerphone for the duration of the conversation, and to whom the doctors directed the remainder of the conversation. Sometime during this conversation, the doctors learned that Lisa Marie's condition had deteriorated and suggested that surgery was not

advisable. Janice requested permission to see Lisa Marie and also advised the doctors that Lisa Marie was an organ donor.

49. At approximately 6:20 P.M., Janice again emphasized the need to see Lisa Marie as soon as possible and requested that she and the Langbehn-Pond children be allowed access to Lisa Marie. Janice was told that they would be able to do so as soon as Lisa Marie was “cleaned up.”

50. Notwithstanding the fact that a doctor admitted that no medical or other legitimate reason existed to prevent Janice and the Langbehn-Pond children from being with their dying family member, none of Defendants and no one from Ryder allowed, invited or escorted Janice or the Langbehn-Pond children into the restricted area where Lisa Marie lay dying.

51. At approximately 6:50 P.M., after requesting a Catholic priest to perform the ceremony of last rites for Lisa Marie from a clergy member who approached Janice in the waiting area, a priest escorted Janice into the trauma area, where Lisa Marie lay alone in a trauma bay, and the priest performed last rites. Janice was immediately escorted back to the waiting area by the priest once the ceremony had concluded at approximately 6:55 P.M.

52. Thereafter, as during the three previous hours, Janice, Danielle, Katie, and David waited and watched as other families (including those with minor children) who entered Ryder were met with compassion; were provided immediate information from Jane Doe, and were escorted into and out of Ryder’s restricted area to see their family member, which treatment was denied to Janice, Danielle, Katie and David..

53. Janice continued to request permission from Jane Doe to see Lisa Marie and to receive ongoing information about her condition approximately every 20 minutes. As before, Jane Doe denied such requests and provided no further information or updates on Lisa Marie’s

condition, and failed to communicate that Lisa Marie had been transferred to another hospital unit within Jackson Memorial.

54. The inability to see Lisa Marie in order to know whether Janice had made a proper decision regarding foregoing surgery or other measures, along with the inability to comfort her partner while she was dying and to provide her children with the opportunity to say goodbye to their mother, caused Janice to become physically ill and caused stomach pain, nausea and vomiting at various times during the course of the day and evening.

55. At approximately 11:30 P.M., Lisa Marie's sister and brother-in-law arrived from Jacksonville, Florida; were immediately recognized as family by Jackson Memorial personnel after Janice introduced them as such; were informed that Lisa Marie had been transferred to another unit in the hospital; and were then promptly provided Lisa Marie's hospital room number.

56. Notwithstanding the fact that Janice informed Defendants and their agents that she held Lisa Marie's Power of Attorney for healthcare decisions upon arrival, and even after the requisite legal forms establishing Janice as Lisa Marie's healthcare surrogate arrived, Jackson Memorial's agents did not allow Janice to sign admission and/or consent forms where those forms specifically provide and require the signature of patient or patient's representative.

57. Notwithstanding the fact that Janice informed Defendants and their agents that she held Lisa Marie's Power of Attorney for healthcare decisions and even after the requisite legal forms establishing Janice as Lisa Marie's healthcare surrogate arrived, Jackson Memorial's agents allowed Lisa Marie's father to sign authorization forms regarding medical treatment on behalf of Lisa Marie.

58. Notwithstanding the fact that Janice informed Defendants and their agents that she held Lisa Marie's Power of Attorney for healthcare decisions and even after the requisite legal forms establishing Janice as Lisa Marie's healthcare surrogate arrived, Jackson Memorial, by and through its agents, ignored Janice's repeated attempts to receive Lisa Marie's medical records.

59. While simultaneously ignoring Janice's valid request for Lisa Marie's medical records, Jackson Memorial, by and through its agents, affirmatively provided Lisa Marie's parents with copies of their daughter's confidential medical records soon after her death, even though they had not requested such confidential records and even though neither were listed as Lisa Marie's healthcare surrogate,.

60. On information and belief, Lisa Marie was semi-conscious and responsive upon arrival and for several hours afterward.

61. On information and belief, as well as based on Defendant's own medical forms and indications in Lisa Marie's medical records, Lisa Marie was placed in restraints throughout the evening in order to protect herself and because no family members were allowed to provide care and supervision.

62. Due to Defendant's negligent, and/or willful, wanton, and intentional actions and omissions during the nearly eight hours in which Lisa Marie was at Ryder, the surviving Langbehn-Pond family members have suffered physical injury including but not limited to the exacerbation of Janice's multiple sclerosis symptoms requiring hospitalization not long after the events giving rise to this lawsuit, severe psychological distress, trauma, nausea, insomnia, nightmares, severe depression and symptoms of post-traumatic stress disorder.



**COUNT I**  
**NEGLIGENCE**

**(Janice, the Estate of Lisa Marie, Danielle, Katie, and David**  
**vs.**  
**Jackson Memorial, Frederick, Zauner and Cruz)**

63. Janice, the Estate of Lisa Marie (through Janice), Danielle, Katie, and David hereby repeat and reallege the allegations of paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. The entire healthcare industry or substantially the entire healthcare industry, including hospitals similar in size, composition, and/or function to Jackson Memorial, is governed by the standards promulgated by the Joint Commission.

65. As a result, the Joint Commission's standards set the standard of care Jackson Memorial, Frederick, Zauner, and Cruz owed individually to Janice, Lisa Marie, Danielle, Katie, and David, as either a health care surrogate and/or family members and not to the public generally.

66. Jackson's Public Policies and Jackson's Rules and Regulations regarding the services, care, visitation policies and treatment of patients and their families reflect established standards of care which healthcare workers at hospitals similar in size, composition, and/or function to Jackson Memorial would exercise under the same or similar circumstances.

67. As a result, Jackson's Public Policies and Jackson's Rules and Regulations set the standard of care Jackson Memorial, Frederick, Zauner, and Cruz owed individually to Janice, Lisa Marie, Danielle, Katie, and David, as either patient, health care surrogate or family member and not to the public generally.

68. Further, the conduct of Jackson Memorial, Frederick, Zauner, and Cruz foreseeably created a zone of risk that posed a threat of harm individually to Janice, Lisa Marie,

Danielle, Katie, and David as either patient, a health care surrogate and/or family members, and not to the public generally.

69. Jackson Memorial, Frederick, Zauner, and Cruz breached the standard of care they owed Janice, Lisa Marie, Danielle, Katie, and David by, without limitation:

- a. failing to provide timely and sufficient medical information in order for Janice, as Lisa Marie's healthcare surrogate, to make informed and ongoing decisions regarding Lisa Marie's healthcare;
- b. failing to allow Janice, as Lisa Marie's healthcare surrogate, access to Lisa Marie in order to for her to properly perceive and asses Lisa Marie's condition and thereby determine whether she had made a proper decision to forego surgical or other medical options;
- c. failing to respect the healthcare decisions and reasonable repeated requests of their patient as expressed through her healthcare surrogate;
- d. failing to provide their dying patient with reasonable access to her family without medical or other legitimate justification;
- e. failing to afford Janice, Lisa Marie, Danielle, Katie and David the basic dignity and respect owing to any human being, by denying them reasonable patient access, and communication with family members without medical or other legitimate justification;
- f. failing to recognize Janice as a life partner and a family member of Lisa Marie;
- g. failing to provide their patient with the respect and/or dignity of dying surrounded by her family and loved ones;
- h. failing to recognize Danielle as a family member of Lisa Marie;
- i. failing to recognize Katie as a family member of Lisa Marie;
- j. failing to recognize David as a family member of Lisa Marie;
- k. violating professional standards, Jackson's Public Policies, and Jackson's Rules and Regulations regarding provision of care and services, patient access, and communication with family members; and
- l. otherwise failing to act prudently and reasonably given the foreseeable injury their conduct could cause Janice, Lisa Marie, Danielle, Katie, and David.

70. Jackson Memorial is vicariously liable, under the doctrine of *respondeat superior*, for the tortious acts committed by the acts or omissions of its agents or employees, including, without limitation those of Frederick, Zauner, and Cruz (collectively “defendant agents and employees”).

71. The conduct of Jackson Memorial, Frederick, Zauner, and Cruz towards Janice, Lisa Marie, Danielle, Katie, and David was operational in nature and was the proximate and legal cause of the injuries sustained by Janice, Lisa Marie, Danielle, Katie, and David.

72. As the direct and proximate result of the negligent conduct of Jackson Memorial, Frederick, Zauner, and Cruz, Janice, Lisa Marie, Danielle, Katie, and David have sustained damages.

**WHEREFORE**, Janice, the Estate of Lisa Marie, Danielle, Katie, and David demand judgment against Frederick, Zauner and Cruz for nominal and compensatory damages, and for any further relief this Court deems just and proper.

**COUNT II**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

**(Janice, Danielle, David and Katie**  
**vs.**  
**Jackson Memorial, Frederick, Zauner, and Cruz)**

73. Janice, Danielle, David, and Katie hereby repeat and reallege the allegations of paragraphs 1 through 62 of this Complaint as if fully set forth herein.

74. Jackson Memorial is vicariously liable, under the doctrine of *respondeat superior*, for the tortious acts committed by the acts or omissions of its agents or employees, including, without limitation those of Frederick, Zauner, and Cruz (collectively “defendant agents and employees”).

75. Janice had a close personal relationship with Lisa Marie. Specifically, Lisa Marie was Janice's life partner and was the joint adoptive parent of Danielle, Katie, and David.

76. Janice held Lisa Marie's Power of Attorney, authorizing Janice to make and refuse any and all healthcare decisions for Lisa Marie in the event of her incapacity, to make reasonable requests on behalf of Lisa Marie, and to communicate Lisa Marie's wishes about end-of-life care and related health care decisions.

77. Danielle had a close personal relationship with Lisa Marie. Specifically, Danielle was Lisa Marie's adoptive daughter.

78. Katie had a close personal relationship with Lisa Marie. Specifically, Katie was Lisa Marie's adoptive daughter.

79. David had a close personal relationship with Lisa Marie. Specifically, David was Lisa Marie's adoptive son.

80. Jackson Memorial and its defendant agents and employees breached the duty owed to Janice and the Langbehn-Pond children by, without limitation:

- a. negligently barring Janice, Danielle, David and Katie from visiting, seeing, being with, comforting, or being comforted by, Lisa Marie while she lay dying just steps away where no medical necessity or medical or other legitimate justification existed preventing such conduct;
- b. failing to afford Janice, Danielle, David and Katie the basic dignity and respect owing to any human being, by denying them the ability to be with their family member for many hours, knowing that Lisa Marie was dying just yards away from them, despite Janice's repeated requests and pleading;
- c. failing to timely acknowledge the Power of Attorney, consult with or update Janice regarding Lisa Marie's treatment and condition in a timely fashion or to otherwise recognize Janice's authority as Lisa Marie's healthcare surrogate;
- d. failing to provide Janice, as Lisa Marie's healthcare surrogate, access to Lisa Marie in order to fully assess, ascertain and otherwise perceive Lisa

Marie's condition to determine whether any healthcare decision she may have made, or agreed with, was proper and/or whether to withdraw consent or otherwise seek an alternative course of treatment;

- e. failing to provide written notification to Janice that her authority under Power of Attorney had commenced as required under the law;
- f. violating professional standards and Jackson's Public Policies and Jackson's Rules and Regulations regarding provision of care and services, patient access, and communication with family members;
- g. failing to provide timely, sufficient and ongoing medical information to a patient's healthcare surrogate in order to allow her to make ongoing decisions regarding their patient's healthcare;
- h. failing to respect healthcare decisions, and to respond to the reasonable requests of, their patient as made through her healthcare surrogate
- i. violating statutory duties, professional standards and Jackson's Public Policies and Jackson's Rules and Regulations regarding provision of care and services and provision of an environment that preserves the dignity of, and treats with compassion, its clients, patients, patients' friends and families;
- j. violating professional standards and Jackson's Public Policies and Jackson's Rules and Regulations regarding provision of care and services and nurse-patient relationships that recognize the individual's values and, among other things, the individual's sexual orientation;
- k. violating professional standards, Jackson's Public Policies and Jackson's Rules and Regulations regarding provision of care and services, provision of a social worker or patient representative to provide, or serve as, a liaison between families and visitors, on the one hand, and hospital staff, on the other, for the resolution of concerns; and to assist with needed information, patient health care issues, and complaints; and
- l. failing to provide appropriate social services, including but not limited to failing to provide emotional support, crisis and bereavement counseling.

81. Jackson Memorial and its defendant agents and employees failed to use the degree of care that is expected of a reasonably competent hospital and hospital staff in the same or similar circumstances.

82. A fiduciary, special relationship and/or special professional duty exists between the trauma unit treating physicians and the patient's healthcare surrogate upon a determination of incompetency; in particular, a fiduciary, special relationship and/or special professional duty existed between Defendants and Janice as Lisa Marie's healthcare surrogate.

83. A fiduciary, special relationship and/or special professional duty exists between the trauma unit treating physicians and/or the social worker assigned to the trauma unit and the families of its incompetent and/or dying patients; in particular, a fiduciary, special relationship and/or special professional duty existed between Defendants and Janice and the Langbehn-Pond children as the family of Lisa Marie.

84. Jackson's Public Policies and Jackson's Rules and Regulations regarding the services, care, visitation policies and treatment of patients and their families reflect established standards of care which healthcare workers at hospitals similar in size, composition, and/or function to Jackson Memorial would exercise under the same or similar circumstances.

85. Additionally, the entire healthcare industry or substantially the entire healthcare industry, including hospitals similar in size, composition, and/or function to Jackson Memorial, is governed by the standards promulgated by the Joint Commission.

86. As a result, the Joint Commission's standards, Jackson's Public Policies, and Jackson's Rules and Regulations set the reasonable standard of care Jackson Memorial, Frederick, Zauner, and Cruz owed individually to Janice, Danielle, Katie, and David, as health care surrogate or family members and not to the public generally.

87. Florida Supreme Court precedent and well-settled public policy principles also support a special duty between Jackson Memorial, Frederick, Zauner, and Cruz and Janice, Danielle, Katie, and David to the extent Jackson Memorial, Frederick, Zauner, and Cruz should

have reasonably foreseen that their negligent conduct would cause profound mental pain and anguish to Janice, Danielle, Katie, and David, with irreversible consequences.

88. Jackson Memorial, Frederick, Zauner, and Cruz breached this special duty by, without limitation, their conduct described in paragraph 80 above.

89. Jackson Memorial and its defendant agents' or employees' actions and omissions were negligent and/or so reckless or wanting in care as to constitute a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

90. It was foreseeable that grave emotional injuries would flow from the breach of duties described in paragraph 80 above, including but not limited to refusing to allow family members to see their loved one and say goodbye to their dying family member or otherwise allow reasonable access to the family members of a dying patient; and/or by refusing to provide sufficient information to a healthcare surrogate in order for her to ensure that her failure to object to a recommended course of treatment was proper and to otherwise refuse to allow the surrogate to assess the patient's condition in order to make healthcare decision and/or by refusing to abide by the surrogate's requests and decisions concerning a dying patient's wishes, where no medical or other legitimate justification exists for doing so.

91. As a direct and proximate result of the actions and omissions of Jackson Memorial, Frederick, Zauner, Cruz, and other agents or employees of Jackson Memorial, and/or Jackson Memorial's negligent failure to train its agents or employees and/or enforce Jackson's Public Policies and Jackson's Rules and Regulations, Janice, Danielle, David and Katie suffered physical injury.

92. Janice, Danielle, David, and Katie's physical injuries were caused by the psychological trauma and severe emotional distress that resulted from Jackson Memorial, Frederick, Zauner, and Cruz's actions and omissions described herein.

**WHEREFORE**, Janice, individually and as the mother and next friend of Danielle, Katie, and David, demands judgment against Jackson Memorial, Frederick, Zauner, and Cruz for nominal and compensatory damages, and for any further relief this Court deems just and proper.

**COUNT III**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

**(The Estate of Lisa Marie**  
**vs.**  
**Jackson Memorial, Frederick, Zauner, and Cruz)**

93. The Estate of Lisa Marie, through Janice, hereby repeats and realleges the allegations of paragraphs 1 through 62 of this Complaint as if fully set forth herein.

94. Jackson Memorial is vicariously liable, under the doctrine of *respondeat superior*, for the tortious acts and omissions committed by its agents or employees, including, without limitation those of Frederick, Zauner, and Cruz (collectively "defendant agents or employees").

95. Lisa Marie gave Janice Power of Attorney, authorizing Janice to make any and all healthcare decisions on her behalf in the event of her incapacity, which authority necessarily extended to decisions regarding visitation consistent with the hospital's policies.

96. Jackson Memorial and its defendant agents and employees owed a duty to Lisa Marie to respect her decisions and wishes as expressed by Lisa Marie's duly appointed Power of Attorney to allow the Langbehn-Pond Family to be with her in her dying hours.

97. Jackson Memorial and its defendant agents and employees failed to use the degree of care that is expected of a reasonably competent hospital and hospital staff in the same or similar circumstances.



98. Jackson Memorial and its defendant agents and employees breached the duty owed to Lisa Marie by, without limitation:

- a. negligently barring the Langbehn-Pond Family from visiting, seeing, being with, and comforting, Lisa Marie in her dying hours;
- b. failing to recognize or treat Lisa Marie's life partner and the Langbehn-Pond children as Lisa Marie's family members;
- c. failing to afford Lisa Marie the basic dignity and respect owing to any human being who is dying by denying her the ability to have her immediate family members by her side where the family is just yards away and despite knowing Lisa Marie's wishes as expressed through her representative to allow one or more family members to be with her in those critical and irreplaceable moments at the end of life;
- d. failing to timely acknowledge the Power of Attorney, or to otherwise consult with Janice regarding Lisa Marie's treatment in a timely fashion;
- e. violating professional standards, Jackson's Public Policies and Jackson's Rules and Regulations requiring reasonable patient access, and communication with family members;
- f. violating professional standards, Jackson's Public Policies, and Jackson's Rules and Regulations requiring an environment that preserves the dignity of, and treats with compassion, its clients, patients, patients' friends and families; and by
- g. violating professional standards, Jackson's Public Policies and Jackson's Rules and Regulations requiring nurse-patient relationships that recognize the individual's values and, among other things, the individual's sexual orientation.
- h. violating statutory obligations, professional standards, Jackson's Public Policies, and Jackson's Rules and Regulations regarding respecting the authority of healthcare surrogates to make decisions on behalf of incompetent patients and to promptly respond to reasonable requests.

99. Jackson Memorial and defendant agents and employees failed to use the degree of care that is expected of a reasonably competent hospital and hospital staff in the same or similar circumstances.

100. A fiduciary, special relationship and/or special professional duty existed between Jackson Memorial, by itself and/or through its defendant agents and employees and the families of its incompetent and/or dying patients; in particular, a fiduciary, special relationship and/or special professional duty existed between Defendants and Lisa Marie.

101. Jackson's Public Policies and Jackson's Rules and Regulations regarding the services, care, visitation policies and treatment of patients and their families reflect established standards of care which healthcare workers at hospitals similar in size, composition, and/or function to Jackson Memorial would exercise under the same or similar circumstances.

102. Additionally, the entire healthcare industry or substantially the entire healthcare industry, including hospitals similar in size, composition, and/or function to Jackson Memorial, is governed by the standards promulgated by the Joint Commission.

103. As a result, the Joint Commission's standards set the reasonable standard of care Jackson Memorial, Frederick, Zauner, and Cruz owed individually to Lisa Marie, and not to the public generally.

104. Florida Supreme Court precedent and well-settled public policy principles also support a fiduciary relationship and special duty between Jackson Memorial, Frederick, Zauner, and Cruz and Lisa Marie to the extent Jackson Memorial, Frederick, Zauner, and Cruz should have reasonably foreseen that their negligent conduct in isolating a patient from her family would cause profound mental pain and anguish to Lisa Marie, with irreversible consequences.

105. Jackson Memorial, Frederick, Zauner, and Cruz breached this special duty by their conduct described in paragraph 98 above.

106. It was foreseeable that grave emotional injuries would flow from the breach of duties described in paragraph 98 above, including but not limited to denying loved ones the

ability to be with a patient in his or her final hours where no medical or other legitimate justification exists for doing so.

107. Lisa Marie was touched, contacted by, and otherwise impacted in the course of treatment while a patient in Jackson Memorial including but not limited to physically placing her in isolation from her family.

108. As a direct and proximate result of the actions and omissions of Frederick, Zauner and Cruz, and Jackson Memorial's negligent failure to train its employees and enforce Jackson's Public Policies, Lisa Marie suffered psychological trauma and severe emotional distress.

**WHEREFORE**, the Estate of Lisa Marie, through Janice, demands judgment against Jackson Memorial and individual Defendants, Frederick, Zauner and/or Cruz for nominal and compensatory damages, and for any further relief this Court deems just and proper.

**COUNT IV**  
**NEGLIGENCE PER SE**

**(Janice, the Estate of Lisa Marie, Danielle, Katie, and David**  
**vs.**  
**Jackson Memorial, Frederick, Zauner and Cruz)**

109. Janice, the Estate of Lisa Marie (through Janice), Danielle, Katie and David hereby repeat and reallege the allegations of paragraphs 1 through 62 of this Complaint as if fully set forth herein.

110. In accordance with applicable laws, professional standards of the industry, and the Joint Commission's standards, Jackson's Public Policies, and Jackson's Rules and Regulations, Jackson Memorial and its agents and employees were required to provide Janice, Lisa Marie, Danielle, Katie and David with reasonable visitation and patient access, and communication with family members, as more fully described in herein.

111. In accordance with applicable laws, professional standards of the industry, the Joint Commission's standards, Jackson's Public Policies, Jackson's Rules and Regulations, and Florida statutes, Jackson Memorial and its defendant agents and employees were required to honor Lisa Marie's Power of Attorney.

112. Jackson Memorial and its defendant agents and employees failed to adhere to applicable laws, professional standards of the industry, and the Joint Commission's standards by, without limitation:

- a. denying Janice, Lisa Marie, Danielle, Katie and David reasonable patient access, and communication with family members without medical or other legitimate justification;
- b. failing to recognize Janice as a life partner and a family member of Lisa Marie;
- c. failing to recognize Danielle as a family member of Lisa Marie;
- d. failing to recognize Katie as a family member of Lisa Marie;
- e. failing to recognize David as a family member of Lisa Marie;
- f. failing to timely honor Lisa Marie's Power of Attorney, and to respect her wishes as expressed through her Power of Attorney;
- g. failing to provide written notification to Janice that her authority under Power of Attorney had commenced as required under the law, and otherwise failing to provide sufficient information in order for her to properly exercise her authority as healthcare surrogate;
- h. failing to provide access to Lisa Marie so that the health care surrogate with the power of attorney could make an informed decision regarding the care and treatment of Lisa Marie;
- i. failing to honor the healthcare decisions, wishes and respond to the requests regarding Lisa Marie's healthcare as expressed through her surrogate;
- j. failing to treat their patient with respect;

- k. failing to provide emotional support and support services to Janice and the Langbehn-Pond children despite knowing that their family member patient was dying;
- l. violating professional standards, Jackson's Public Policies, and Jackson's Rules and Regulations requiring reasonable patient access, and communication with family members; and by
- m. violating professional standards, Jackson's Public Policies, and Jackson's Rules and Regulations requiring an environment that preserves the dignity of, and treats with compassion, its clients, patients, patients' friends and families.

113. Jackson Memorial's and its agents and employees' conduct in failing to adhere to applicable laws, professional standards of the industry, Jackson's Public Policies, Jackson's Rules and Regulations, and the Joint Commission's standards, fell below the conduct that is expected of a reasonably competent hospital and hospital staff in the same or similar circumstances.

114. A fiduciary, special relationship and/or special professional duty existed between Jackson Memorial, by itself and/or through defendant agents and employees, and its incompetent and/or dying patients; in particular, a special relationship and/or special professional duty existed between Defendants and Lisa Marie.

115. A fiduciary, special relationship and/or special professional duty existed between Jackson Memorial, by itself and/or through its defendant agents and employees, and the healthcare surrogates of their incompetent patients; in particular, a special relationship and/or special professional duty existed between Defendants and Janice.

116. A fiduciary, special relationship and/or special professional duty existed between Jackson Memorial, by itself and/or through its defendant agents and employees, and the families of its incompetent and/or dying patients; in particular, a special relationship and/or special

professional duty existed between Defendants and Janice and the Langbehn-Pond children as the family of Lisa Marie.

117. It was foreseeable that grave emotional injuries would flow from the breach of duties described in paragraph 112 above, including but not limited to refusing to provide information to loved ones on the condition of, and to allow access to, a patient in her last hours where no medical or other legitimate justification exists for doing so.

118. As a direct and proximate result of Jackson Memorial's and its defendant agents and employees' actions and omissions, and/or Jackson Memorial's failure to train its agents and employees, Janice, Lisa Marie, Danielle, Katie and David sustained injuries within a short time of the actions and omissions of Defendants as described herein which caused them damages.

**WHEREFORE**, Janice, the Estate of Lisa Marie (through Janice), Danielle, Katie and David demand judgment against Jackson Memorial and the individual Defendants Frederick, Zauner and Cruz for nominal and compensatory damages, and for any further relief this Court deems just and proper.

**COUNT V**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

**(Janice, Danielle, David, and Katie**  
**vs.**  
**Frederick, Zauner, and Cruz)**

119. Janice hereby repeats and realleges the allegations of paragraphs 1 through 62 of this Complaint as if fully set forth herein.

120. Janice had a close personal relationship with Lisa Marie. Specifically, Lisa Marie was Janice's life partner and was the joint adoptive parent of Danielle, Katie, and David.

121. Danielle had a close personal relationship with Lisa Marie. Specifically, Danielle was Lisa Marie's adoptive daughter.

122. Katie had a close personal relationship with Lisa Marie. Specifically, Katie was Lisa Marie's adoptive daughter.

123. David had a close personal relationship with Lisa Marie. Specifically, David was Lisa Marie's adoptive son.

124. Janice held Lisa Marie's Power of Attorney, authorizing Janice to make healthcare decisions for Lisa Marie in the event of her incapacity.

125. Frederick, Zauner and Cruz acted intentionally, willfully, wantonly, or recklessly, by, without limitation:

- a. knowingly allowing a patient to move toward certain death over the course of many hours without allowing their family and loved ones to see them or say goodbye;
- b. barring Janice, Danielle, David and Katie from visiting, seeing, being with, comforting, or being comforted by, Lisa Marie in her final hours, without medical or other legitimate justification;
- c. refusing to recognize or treat Janice, Danielle, David and Katie as Lisa Marie's family in her last hours where no medical necessity existed preventing such conduct;
- d. denying Janice the basic dignity and respect owing to any human being, by not allowing this family to be together for brief periods in the last hours of one family member's life, despite repeated requests and pleading; and by
- e. refusing to timely acknowledge the Power of Attorney, or to otherwise consult with Janice regarding Lisa Marie's medical history, wishes, and treatment in a timely and ongoing fashion.

126. The conduct of Frederick, Zauner and Cruz towards Janice, Danielle, David and Katie was extreme and outrageous and went beyond the bounds of decency.

127. As a direct and proximate result of the conduct of Frederick, Zauner and Cruz, Janice, Danielle, David and Katie suffered severe psychological trauma and emotional distress.

**WHEREFORE**, Janice, Danielle, David and Katie demand judgment against Frederick, Zauner and Cruz for nominal, compensatory and punitive damages, and for any further relief this Court deems just and proper.

**COUNT VI**  
**BREACH OF FIDUCIARY RELATIONSHIP**

**(The Estate of Lisa Marie  
vs.  
Jackson Memorial, Zauner, and Cruz)**

128. The Estate of Lisa Marie (through Janice), hereby repeats and realleges the allegations of paragraphs 1 through 62 of this Complaint as if fully set forth herein.

129. A fiduciary relationship existed between Lisa Marie and each of her treating physicians, including but not limited to Defendants Zauner and Cruz.

130. Defendants Zauner and Cruz breached their fiduciary duties of, without limitation, loyalty, trust and good faith to their patient, Lisa Marie, by, without limitation:

- a. failing to provide Lisa Marie's healthcare surrogate with access to Lisa Marie in order to assess and perceive her medical condition and to otherwise make fully informed decisions about Lisa Marie's healthcare and to make appropriate and ongoing healthcare decisions in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice;
- b. failing to treat Lisa Marie with respect by denying her visitation privileges and access to her family for even brief periods over an eight hour period and while she moved from brain activity to brain death without medical or legitimate justification, in violation of medical ethics and generally accepted medical practice;
- c. failing to provide medical treatment to Lisa Marie in accordance with her wishes and in her best interest by ignoring her decisions as expressed through her healthcare surrogate in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice;
- d. failing to respond to Lisa Marie's requests for reasonable family visitation and access as expressed through her healthcare surrogate in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice;



- e. discriminating against Lisa Marie and Lisa Marie's family based on her sexual orientation and/or same-sex relationship and familial status in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice;
- f. and by otherwise failing to recognize, acknowledge and/or respect her validly executed healthcare power of attorney and her right to make choices pertaining to her health and to direct the course of her medical treatment. in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice.

131. Jackson Memorial is vicariously liable, under the doctrine of *respondeat superior*, for the tortious acts committed by the acts or omissions of its agents or employees, including, without limitation those of Zauner, and Cruz (collectively "defendant agents and employees").

132. As a direct and proximate result of the conduct of Zauner and Cruz and/or Jackson Memorial's failure to train its agents and employees, Janice suffered extreme indignities and emotional injury.

**WHEREFORE**, the Estate of Lisa Marie demands judgment against Jackson Memorial Zauner and Cruz for nominal, compensatory and punitive damages, and for any further relief this Court deems just and proper.

**COUNT VII**  
**BREACH OF FIDUCIARY RELATIONSHIP**

**(Janice**  
**vs.**  
**Jackson Memorial, Zauner, and Cruz)**

133. Janice hereby repeats and realleges the allegations of paragraphs 1 through 62 of this Complaint as if fully set forth herein.

134. A fiduciary relationship existed between Janice and each of Lisa Marie's treating physicians, including but not limited to Defendants Zauner and Cruz, based upon their fiduciary

relationship with their incapacitated patient which duties flowed to Janice upon a determination of Lisa Marie's incapacity.

135. Additionally, or alternatively, a fiduciary relationship existed between Janice and each of Lisa Marie's treating physicians based on the trust and confidence she bestowed upon them and which trust and confidence they accepted.

136. Defendants Zauner and Cruz breached their fiduciary duty to Janice, by, without limitation:

- a. failing to provide Janice, as Lisa Marie's healthcare surrogate, with access to Lisa Marie in order to assess and perceive her medical condition and to otherwise ensure that any decision, or acquiescence in medical treatment, was proper and to make fully informed decisions about Lisa Marie's healthcare and to make appropriate and ongoing healthcare decisions in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice;
- b. failing to treat Janice, as Lisa Marie's healthcare surrogate, with respect by denying Janice and Lisa Marie visitation privileges for even brief periods over an eight hour period and while Lisa Marie moved from brain activity to brain death without medical or legitimate justification, in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice;
- c. failing to provide medical treatment to Lisa Marie in accordance with Janice's requests and decisions, as reflective of Lisa Marie's wishes, requests and decisions, and in Lisa Marie's best interest by ignoring Janice's decisions and failing to respond to reasonable requests in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice;
- d. discriminating against Janice and Lisa Marie and Janice and Lisa Marie's family based on their sexual orientation and/or same-sex relationship and familial status in violation of hospital policies, national standards, medical ethics and/or generally accepted medical practice;
- e. and by otherwise failing to recognize, acknowledge and/or respect the validly executed healthcare power of attorney and her right to make choices pertaining to her health and to direct the course of her medical treatment;

- f. failing to respond to Janice's requests for reasonable family visitation and access to Lisa Marie;
- g. and by otherwise ignoring the validly executed healthcare power of attorney and Janice's right to make choices pertaining to Lisa Marie's health and to direct the course of her medical treatment in violation of state law, hospital policies, national standards, medical ethics and/or generally accepted medical practice.

137. Jackson Memorial is vicariously liable, under the doctrine of *respondeat superior*, for the tortious acts committed by the acts or omissions of its agents or employees, including, without limitation those of Zauner, and Cruz (collectively "defendant agents and employees")

138. As a direct and proximate result of the conduct of Zauner and Cruz, and/or Jackson Memorial's failure to train its agents and employees, Janice suffered severe psychological trauma, emotional distress and physical injuries.

**WHEREFORE**, Janice demands judgment against Jackson Memorial Zauner and Cruz for nominal, compensatory and punitive damages, and for any further relief this Court deems just and proper.

**COUNT VIII**  
**BREACH OF FIDUCIARY RELATIONSHIP**

**(Janice, Danielle, David, and Katie**  
**vs.**  
**Jackson Memorial and Frederick)**

139. Janice hereby repeats and realleges the allegations of paragraphs 1 through 62 of this Complaint as if fully set forth herein.

140. A fiduciary relationship existed between Janice, Danielle, David, Katie, as the family of Jackson Memorial's critically ill admitted patient, and Frederick, as the social worker who held himself as the mental health professional whose duty it was to provide appropriate mental health and support services, counseling, information, communication and to other appropriate services.

141. Defendant Frederick breached his fiduciary duty to Janice, Danielle, David, and Katie by his actions and omissions, including without limitation:

- a) failing to provide crisis and bereavement counseling in violation of hospital policy and/or social worker ethics and principles;
- b) failing to provide the emotional support for the anxiety, fear and questions to be answered for patients' friends and families in violation of hospital policy and/or social worker ethics and principles;"
- c) failing to work with individuals and families in dealing with personal and interpersonal crises caused by illness and hospitalization in violation of hospital policy and/or social worker ethics and principles;
- d) failing to facilitate family involvement with the entire treatment team in violation of hospital policy and/or social worker ethics and principles;
- e) failing to keep the family apprised of the patient's progress in violation of hospital policy and/or social worker ethics and principles;
- f) failing to help patients and families help themselves and to assist in acquiring the tools to cope with troubling situations such as traumatic illness [and] bereavement in violation of hospital policy and/or social worker ethics and principles; and
- g) otherwise failing to provide information about appropriate accommodations, waiting area, telephone access, and ordinary information customarily provided to patients' families in the same or similar circumstances by a hospital social worker in violation of hospital policy and/or social worker ethics and principles.

142. As a direct and proximate result of the conduct of Frederick, Janice, David, Danielle, and Katie suffered severe psychological trauma, emotional distress and physical injuries.

**WHEREFORE**, Janice, David, Danielle, and Katie's demands judgment against Jackson Memorial Zauner and Cruz for nominal, compensatory and punitive damages, and for any further relief this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs Janice, the Estate of Lisa Marie (through Janice), Danielle, Katie and David  
hereby demand a trial by jury of all issues so triable in this action.

Respectfully submitted,

BAKER & McKENZIE LLP  
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By: /s/ Donald J. Hayden

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 02, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Donald J. Hayden  
Donald J. Hayden

**SERVICE LIST**

**JANICE LANGBEHN, et al. vs. THE PUBLIC HEALTH TRUST OF MIAMI-DADE COUNTY  
CASE NO. 08-21813-CIV-JORDAN/MCALILEY  
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA**

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LANGHEIN FUND

→ pacific time

or

4:17 Eastern time

HEALTH CARE DIRECTIVE

Directive made on February 6, 2001.

I, LISA MARIE POND, the undersigned Declarer, having the capacity to make health care decisions, willfully, and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

(a) If at any time I should be diagnosed in writing to be in a terminal condition by the attending physician, or in a permanent unconscious condition by two physicians, and where the application of life-sustaining treatment would serve only to artificially prolong the process of my dying, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally. I understand by using this form that a terminal condition means an incurable and irreversible condition caused by injury, disease, or illness, that would within reasonable medical judgment cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment would serve only to prolong the process of dying. I further understand in using this form that a permanent unconscious condition means an incurable and irreversible condition in which I am medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(b) In the absence of my ability to give directions regarding the use of such life-sustaining treatment, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment, and I accept the consequences of such refusal. If another person is appointed to make these decisions for me, whether through a durable power of attorney or otherwise, I request that the person be guided by this directive and any other clear expressions of my desires.

(c) If I am diagnosed to be in a terminal condition or in a permanent unconscious condition (check one):

I do want to have artificially provided nutrition and hydration.

I do not want to have artificially provided nutrition and hydration.

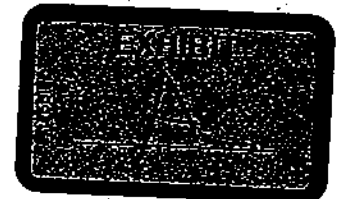
(d) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

(e) I understand the full import of this directive and I am emotionally and mentally capable to make the health care decisions contained in this directive.

(f) I understand that before I sign this directive, I can add to or delete from or otherwise change the wording of this directive and that I may add to or delete from this directive at any time and that any changes shall be consistent with Washington state law or federal constitutional law to be legally valid.

COPY

3378233 NOS 10/08/67  
POND, LISA MARIE WF  
4920 50TH AVE S.E. 98503  
7049 VE4 W 04/17/07 VE4





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LANGBEHN POND

PAGE 82

(g) It is my wish that every part of this directive be fully implemented. If for any reason any part is held invalid it is my wish that the remainder of my directive be implemented.

This directive is made pursuant to the provisions of Laws of 1979, Ch. 112 (RCW 70.122.030) and as amended in 1992, RCW 70.122.010.

Lisa Marie Poff  
DECLARER a resident of Lacey  
CITY  
Thurston WA  
COUNTY STATE

The declarer has been personally known to each of the undersigned witnesses and we believe the declarer to be capable of making health care decisions.

Margaret Hill, residing at Olympia  
WITNESS CITY  
Thurston WA  
COUNTY STATE

Catherine Hitchman, residing at Olympia  
WITNESS CITY  
Thurston WA  
COUNTY STATE

3378233 NOS 10/08/67  
POND, LISA MARIE WF  
4920 50TH AVE. S.E. 98503  
7049 VE4 N 04/17/97 VE4

COPY

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DURABLE POWER OF ATTORNEY

The undersigned, LISA MARIE POND, as principal, domiciled in the State of Washington, hereby revokes all powers of attorney previously granted and hereby designates JANICE LANGBEHN to be the attorney-in-fact, but if the designated attorney-in-fact shall be or become unable or unwilling to act, then NETTIE POND shall be the attorney-in-fact for the principal as follows:

Duration. This power of attorney becomes effective upon the execution of this document and shall remain in effect to the extent permitted by Chapter 11.94 of the Revised Code of Washington or until revoked, notwithstanding any uncertainty as to whether the principal is dead or alive.

Disability of Principal. This power of attorney shall not be affected by the disability of the principal.

Appointment of Guardian. To the extent permitted by Chapter 11.94 of the Revised Code of Washington, the principal hereby nominates the attorney-in-fact to be guardian of the person and estate for the principal, but if the designated guardian shall be or become unable or unwilling to act as guardian of the person and estate of a principal, then the alternate attorney-in-fact designated above is hereby nominated to be such guardian.

Power. The attorney-in-fact shall have the power to do all things with respect to the assets and liabilities of the principal, real or personal, wherever located, as the principal could do if present and competent, with full power of substitution and revocation, including the power:

Provide for Principal. To provide for the support, maintenance, and health of the principal.

Enter Safe Deposit Box. To enter any safe deposit box in the name of the principal.

Make Withdrawals and Deposits. To make withdrawals from or deposits to any account in any financial institution, any money market fund, any securities account, or any other cash account in the name of principal.

Optional Transfer of Assets. To transfer all or part of the assets from the principal to the attorney-in-fact or any heirs.

Exercise Trust Powers. To exercise all power, authority and discretion with regard to the property, rights, and interests of the principal, which a trustee may exercise under the laws of the State of Washington on the date of this instrument as if all such laws are effective as of this date.

Transfer Property and Execute Documents. To lease, let, bargain, sell, convey, mortgage and hypothecate lands, tenements and hereditaments and to sign, seal, execute, deliver, and acknowledge such deeds, leases, assignments, covenants agreements, and such other instruments in writing of

Witnesses

3378233 NOS 10/58987  
POND, LISA MARIE WF  
4920 50TH AVE S.E. 98503  
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Principal

154

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LANGBEHN POND

PAGE 04

whatever kind and nature as may be necessary or proper upon such terms and conditions as a trustee sees fit.

Health Care. To provide informed consent for health care decisions on the principal's behalf subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5).

Ratification. The principal hereby ratifies and confirms all that the attorney-in-fact lawfully shall do or cause to be done by virtue of the power granted herein.

Reliance. All persons dealing with a principal's acting attorney-in-fact hereunder are entitled to rely on the apparent authority of the attorney-in-fact, unless they have actual knowledge of invalidity in the execution of or the revocation of this power, or of the termination of this power by death of the principal.

Photocopies. Photocopies of this document are as valid as the original.

Dated: February 6 2001.

*Lisa Marie Pond*  
PRINCIPAL

STATE OF WASHINGTON )  
County of Thurston ) ss.

On this day LISA MARIE POND personally before me appeared and is to me known to be the individual described in and who executed the within and foregoing instrument; and she acknowledged to me that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal on 2-6- 2001.



*Marianne Derr*  
Printed Name: Marianne Derr  
Notary Public in and for the State of Washington, residing at Wassonia, WA  
Commission Expires: 10-09-07

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POND, LISA MARIE Page 2  
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Witnesses

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PAGE 05

AFFIDAVIT OF WITNESSES TO THE DURABLE POWER OF ATTORNEY OF

LISA MARIE POND

STATE OF WASHINGTON )

) ss.

County of Thurston )

Each of the undersigned, being duly sworn on oath, states that on February 6, 2001.

Witnesses I am over 18 years of age and competent to be a witness to the durable power of attorney the principal named above (the principal), who is personally known to me.

Principal's Action The principal in my presence and in the presence of the other witness whose signature appears with mine below signed the foregoing instrument and requested that I and the other witness act as witnesses to his durable power of attorney and make this affidavit.

Principal's Competency I believe that at the time of the principal's previously mentioned signing and request the principal was of sound mind and was not acting under any duress, menace, fraud, undue influence, or misrepresentation.

Witnesses' Action The other witness and I in the presence of the principal and of each other now affix our signatures as witnesses to the durable power of attorney of the principal and make this affidavit.

Catherine Herway Residing at Olympia WA  
WITNESS

Margaret Hahn Residing at Olympia, WA  
WITNESS

SUBSCRIBED AND SWORN to before me on 2-6, 2001.



Marianne Derr  
Printed Name: Marianne Derr  
Notary Public in and for the State of  
Washington, residing at: Olympia WA  
Commission Expires: 10-08-03

3378233 NOS 10/08/67  
POND, LISA MARIE WF  
4920 50TH AVE S.E. 98503  
7049 YEA N 04/17/07 YEA

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Principal  
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