

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION

NO. 18.0873 E

LLOYD PALTER, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF ANN PALTER,  
Plaintiff,

V.  
JAMES GREENBERG, M.D.,  
Defendant.

**COMPLAINT**

SUFFOLK SUPERIOR COURT  
CIVIL DIVISION  
2018 MAR 1 11:52 AM  
MICHAEL JOSEPH  
CLERK / REGISTRAR

**Count I.**

1. The plaintiff, Lloyd Palter, is the duly appointed Personal Representative of the Estate of Ann Palter and is a resident of Sharon, Norfolk County, Massachusetts.
2. The defendant, James Greenberg, M.D., was at all times relevant to this complaint a physician licensed to practice his profession in the Commonwealth of Massachusetts, and practicing in Suffolk County.
3. This action is brought to recover for the wrongful death of Ann Palter for the benefit of her next of kin, pursuant to M.G.L.A. c. 229 §1 et seq.
4. At all times relevant to this complaint, the defendant, James Greenberg, M.D., represented and held himself out to be a physician, skilled in the treatment of various illnesses and conditions and, in particular, represented to the plaintiff's decedent that he was knowledgeable, competent, and qualified to diagnose and treat the plaintiff's decedent's condition on or about 2/22/12 - 3/27/14.
5. On or about 2/22/12 - 3/27/14, the plaintiff's decedent submitted herself to the care and treatment of the defendant, James Greenberg, M.D., who negligently, carelessly, and without regard for the plaintiff's decedent's health and well-being, treated the plaintiff's decedent in a manner resulting in the plaintiff's decedent's death on 7/11/16.
6. The death of Ann Palter and the damage to her estate, were the direct and proximate result of the carelessness, unskillfulness, negligence and improper care and treatment by the defendant, James Greenberg, M.D., including, but not limited to the following:
  - a. Defendant's misrepresentations to the plaintiff's decedent that he was knowledgeable, skillful, and competent to diagnose and treat the plaintiff's decedent's medical condition on or about 2/22/12 - 3/27/14;

- b. Defendant's failure to adequately and properly diagnose the plaintiff's decedent's medical condition on or about 2/22/12 - 3/27/14, and his failure to prescribe proper and timely treatment for said condition;
- c. Defendant's failure to recognize, or have the knowledge to recognize his inability and lack of skill to diagnose and treat the plaintiff's decedent, when the defendant knew or should have known in the exercise of due care, the foreseeable consequences of his inability and failure to properly and skillfully provide the plaintiff's decedent with acceptable medical and diagnostic services;
- d. Defendant's failure to possess or negligent failure to exercise that degree of skill, training, and care as is possessed and exercised by average qualified members of the medical profession practicing his specialty; and
- e. Defendant's failure to inform and to warn of the risks involved in or associated with the plaintiff's decedent's condition and failure to inform and to warn about the treatment of said condition.

WHEREFORE, the plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, prays judgment against the defendant, James Greenberg, M.D., for the above-described wrongful death and damage to the estate, together with interest and costs.

### **Count II.**

1. The plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, repeats and reavers all of the allegations contained in Paragraphs One through Six of Count I above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the decedent, Ann Palter.
3. As the direct and proximate result of the carelessness and negligence of the defendant, James Greenberg, M.D., the decedent, Ann Palter, was caused to suffer consciously up to and until her time of death.

WHEREFORE, the plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, prays judgment against the defendant, James Greenberg, M.D., in an amount to be determined by a jury, together with interest and costs.

### **Count III.**

1. The plaintiff, Lloyd Palter, is the duly appointed Personal Representative of the Estate of Ann Palter and is a resident of Sharon, Norfolk County, Massachusetts.
2. The defendant, James Greenberg, M.D., was at all times relevant to this complaint a physician licensed to practice his profession in the Commonwealth of Massachusetts.



3. This action is brought to recover for the wrongful death of Ann Palter for the benefit of her next of kin, pursuant to M.G.L.A. c. 229 §1 et seq.
4. At all times relevant to this complaint, the defendant, James Greenberg, M.D., represented and held himself out to be a physician, skilled in the treatment of various illnesses and conditions and, in particular, represented to the plaintiff's decedent that he was knowledgeable, competent, and qualified to diagnose and treat the plaintiff's decedent's condition on or about 2/22/12 - 3/27/14.
5. On or about 2/22/12 - 3/27/14, the plaintiff's decedent submitted herself to the care and treatment of the defendant, James Greenberg, M.D., who negligently, carelessly, and without regard for the plaintiff's decedent's health and well-being, treated the plaintiff's decedent in a manner resulting in the plaintiff's decedent's death on 7/11/16.
6. The death of Ann Palter and the damage to her estate, including, but not limited to her funeral and burial expenses, were the direct and proximate result of the malicious, willful, wanton or reckless conduct of the defendant, James Greenberg, M.D., or by the gross negligence of the defendant on or about 2/22/12 - 3/27/14.

WHEREFORE, the plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, prays judgment against the defendant, James Greenberg, M.D., for the above-described wrongful death and damage to the estate, together with punitive damages, interest and costs.

#### **Count IV.**

1. The plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, repeats and reavers all of the allegations contained in Paragraphs One through Six of Count III above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the decedent, Ann Palter.
3. As the direct and proximate result of the malicious, willful, wanton or reckless conduct of the defendant, James Greenberg, M.D., the decedent, Ann Palter, was caused to suffer consciously up to and until her time of death.

WHEREFORE, the plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, prays judgment against the defendant, James Greenberg, M.D., for the above-described wrongful death and damage to the estate, together with punitive damages, interest and costs.

## **Count V.**

1. The plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, repeats and reavers all of the allegations contained in Paragraphs One through Six of Count I above, as if expressly rewritten and set forth herein.
2. On or about 2/22/12 - 3/27/14, the defendant, James Greenberg, M.D., contracted with the plaintiff's decedent to provide professional services related to the plaintiff's decedent's medical care and treatment.
3. The defendant, James Greenberg, M.D., expressly and impliedly warranted to the plaintiff's decedent that he would perform and render said professional services in accordance with accepted standards for the practice of medicine, and that he would possess and exercise that degree of skill and care possessed and exercised by the average qualified members of the medical profession practicing his specialty.
4. On or about 2/22/12 - 3/27/14, the defendant, James Greenberg, M.D., breached his express and implied warranties by failing to perform and render professional services in accordance with accepted standards for the practice of medicine, and by failing to possess and exercise that degree of skill and care possessed and exercised by the average qualified members of the medical profession practicing his specialty, which breach resulted in the death of Ann Palter.
5. The death of Ann Palter and the damage to her estate, including, but not limited to her funeral and burial expenses, were the direct and proximate result of the defendant, James Greenberg, M.D.'s breach of express and implied warranties.

WHEREFORE, the plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, prays judgment against the defendant, James Greenberg, M.D., for the above-described wrongful death and damage to the estate, together with interest and costs.

## **Count VI.**

1. The plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, repeats and reavers all of the allegations contained in Paragraphs One through Five of Count V above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the decedent, Ann Palter.
3. As the direct and proximate result of the breach of express and implied warranties by the defendant, James Greenberg, M.D., the plaintiff's decedent, Ann Palter, was caused to suffer consciously up to and until her time of death.

WHEREFORE, the plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, prays judgment against the defendant, James Greenberg, M.D., in an amount to be determined by a jury, together with interest and costs.



## **Count VII.**

1. The plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, repeats and reavers all of the allegations contained in Paragraphs One through Six of Count I above, as if expressly rewritten and set forth herein.
2. On or about 2/22/12 - 3/27/14, average qualified members of the medical profession practicing the defendant's specialty knew or should have known of the risks, potential consequences and alternatives to the defendant's choice of treatment of the plaintiff's decedent.
3. On or about 2/22/12 - 3/27/14, the defendant, James Greenberg, M.D., knew or should have known of the risks, potential consequences and alternatives to the defendant's choice of treatment of the plaintiff's decedent.
4. On or about 2/22/12 - 3/27/14, the defendant, James Greenberg, M.D., did not inform the plaintiff's decedent of the alternatives to and risks and potential consequences of the defendant's choice of treatment of the plaintiff's decedent.
5. If the defendant, James Greenberg, M.D., had informed the plaintiff's decedent of the alternatives to and risks and potential consequences of the defendant's choice of treatment of the plaintiff's decedent, neither the plaintiff's decedent nor a reasonable person in her position would have elected the defendant's choice of treatment.
6. The alternatives to and the risks and potential consequences of the defendant's choice of treatment were material to a decision by the plaintiff's decedent and a reasonable person in her position as to whether to undergo the defendant's choice of treatment.
7. The death of Ann Palter and the damage to her estate, including, but not limited to her funeral and burial expenses, were the direct and proximate result of the defendant, James Greenberg, M.D.'s failure to obtain the informed consent of the plaintiff's decedent.

WHEREFORE, the plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, prays judgment against the defendant, James Greenberg, M.D., for the above-described wrongful death and damage to the estate, together with interest and costs.


## **Count VIII.**

1. The plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, repeats and reavers all of the allegations contained in Paragraphs One through Seven of Count VII above, as if expressly rewritten and set forth herein.
2. This action is brought to recover for the conscious pain and suffering of the decedent, Ann Palter.
3. As the direct and proximate result of the defendant, James Greenberg, M.D.'s failure to inform the plaintiff's decedent of the alternatives to and risks and potential consequences of the defendant's treatment, the decedent, Ann Palter, was caused to suffer consciously up to and until her time of death.

WHEREFORE, the plaintiff, Lloyd Palter, as duly appointed Personal Representative of the Estate of Ann Palter, prays judgment against the defendant, James Greenberg, M.D., in an amount to be determined by a jury, together with interest and costs.

PLAINTIFF CLAIMS TRIAL BY JURY.

Respectfully submitted,  
The plaintiff,  
By his attorney,



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