

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
WINCHESTER DIVISION**

**Julee Harris, for herself as spouse and
widow of Kenneth C. Harris, deceased,
and on behalf of the children and natural
heirs at law of Kenneth C. Harris, deceased,
Stephanie N. Harris, C.M.H., a minor, and
M.D.H., a minor, and Stephanie N. Harris,**

Plaintiffs,

v.

**United States of America, Coffee County
Medical Group, LLC (d/b/a United Reg.
Medical Center), Neil E. Christopher, MD,
Sheryl Dietrich, R.N. and Mallory
Pesaturo, L.P.N.,**

Defendants.

**Case No. 4:13-cv-30
JUDGE CARTER**

JURY DEMAND

AMENDED COMPLAINT FOR WRONGFUL DEATH

Comes now the plaintiff, Julee Harris, for herself as the surviving spouse of Kenneth C. Harris, deceased, and on behalf of the children and heirs at law of Kenneth C. Harris, Stephanie N. Harris, C.M.H., a minor, and M.D.H., a minor, and Stephanie N. Harris, and for their complaint against the United States of America, Coffee County Medical Group, LLC (d/b/a United Regional Medical Center), Neil E. Christopher, M.D., Sheryl Dietrich, R.N. and Mallory L. Pesaturo, L.P.N., would respectfully show the Court as follows:

I. INTRODUCTION

1. This is a civil action seeking damages against the United States of America, Coffee County Medical Group, LLC (d/b/a United Regional Medical Center), Neil E. Christopher, M.D., Sheryl Dietrich, R.N. and Mallory L. Pesaturo, L.P.N. for the wrongful death of Kenneth C. Harris, deceased, brought pursuant to Tenn. Code Ann. § 20-5-106(a) and §20-5-110(a) (wrongful death) and Tenn. Code Ann. § 29-26-101, *et seq.* (medical malpractice). This civil action is further brought pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§

1346(B), 2671-2680, premised upon the medical malpractice of Kim Taylor, FNP and Ocoee Regional Health Corporation, which plaintiff will hereinafter allege are deemed employees of the Public Health Service.

II. JURISDICTION

2. The jurisdiction of this Court arises under 28 U.S.C. § 1346(B) pursuant to the Public Health Service Act of 1944 (PHSA) and the Federally Supported Health Center Assistance Act of 1992 and 1995. Under § 224 of the Public Health Service Act of 1944 (the "PHSA"), the remedies provided under the FTCA are the exclusive means for resolving tort claims against employees of the Public Health Service acting within the scope of their employment. *See* 42 U.S.C. § 233(a). The Federally Supported Health Centers Assistance Act of 1992 ("FSHCAA"), Pub. L. No. 102-501, 106 Stat. 3268 (1992), amended § 224 of the PHSA to extend FTCA coverage to certain health centers that receive federal funding under §330 of the PHSA, 42 U.S.C. § 254(b), by authorizing the Department of Health and Human Services ("HHS") to "deem" them employees of the Public Health Service. 42 U.S.C. § 233(g)-(n). Plaintiff will hereinafter allege, upon information and belief founded after reasonable inquiry, that the defendants, Ocoee Regional Health Corporation and Kim Taylor, FNP, are deemed employees of the Public Health Service by virtue of receiving federal funding under § 330 of the PHSA and by virtue of Notice of Deeming Action (FTCA Deeming Notice No.: 1-F00000937-10-1) issued on October 19, 2010 by the Department of Health and Human Services for coverage period January 1, 2011 through December 31, 2011.

3. The jurisdiction of this Court over Coffee County Medical Group, LLC (d/b/a United Regional Medical Center), Neil E. Christopher, M.D., Sheryl Dietrich, R.N. and Mallory L. Pesaturo, L.P.N. arises pursuant to 28 U.S.C.A. § 1367(a) which grants supplemental jurisdiction over all other claims that are so related to claims within the original (and, in this case, exclusive) jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. The defendant, United States of America specifically

identified these defendants by affirmative defense alleging the comparative fault of these defendants in it's Amended Answer to Complaint filed on October 8, 2013. [Doc. #11]

III. PARTIES

4. The plaintiffs, Julee Harris and Stephanie N. Harris, and the decedent, Kenneth C. Harris, and the children of the decedent were at all times referenced herein citizens, residents and domiciliaries of the State of Tennessee and maintained their principal residence in the Town of Altamont, County of Grundy.

5. The plaintiff, Julee Harris, was lawfully married to Kenneth C. Harris, deceased, and three children were born of the union of the plaintiff, Julee Harris and Kenneth C. Harris, deceased, to wit: Stephanie N. Harris, born August 9, 1994; C.M.H., born April 12, 1997; and M.D.H., born April 22, 2008. That the within referenced plaintiff, Julee Harris, and the children identified herein are the sole heirs at law of Kenneth C. Harris, deceased.

6. That the United States of America is the party defendant to this action as a result of the tortious conduct of Ocoee Regional Health Corporation which was at all times relevant to this complaint a non-profit domestic corporation organized and existing under the laws of the State of Tennessee with it's principal offices located at 126 Polk Street, City of Benton, County of Polk. That Ocoee Regional Health Corporation operates a medical clinic known as Grundy County Primary Care within the County of Grundy, State of Tennessee and is the employer of Kim Taylor, FNP, who was at all times referenced in this complaint, a citizen and resident of the State of Tennessee and who's tortious conduct also occasions this civil action against the United States of America.

7. That Ocoee Regional Health Corporation and Kim Taylor, FNP, are deemed employees of the Public Health Service.

8. That Kim Taylor, FNP, was at all times relevant hereto the employee of Ocoee Regional Health Corporation and was acting within the course and scope of her employment as a

family nurse practitioner at Ocoee Regional Health Corporation's out-patient clinic, Grundy County Primary Care.

9. That the defendant, Coffee Medical Group, LLC, d/b/a United Regional Medical Center (hereinafter, "URMC"), was at all times relevant to this complaint, a domestic limited liability company organized and existing under the laws of the State of Tennessee with its principal offices located at 121 North Irwin Street, City of Manchester, County of Coffee Tennessee. That the defendant, URMC operates an inpatient and outpatient hospital and emergency services department in the City of Manchester, Tennessee and is a "Health care provider" as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(B) and (E).

10. That the defendant, Neil E. Christopher, M.D., was at all times relevant to this complaint, a citizen and resident of the State of Tennessee and a physician licensed to practice and practicing medicine in the State of Tennessee and is a "Health care provider" as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(A).

11. That the defendant, Sheryl Dietrich, R.N., was at all times referenced in this complaint, a citizen and resident of the State of Tennessee and a registered nurse licensed to practice professional nursing in the State of Tennessee and is a "Health care provider" as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(A).

12. That the defendant, Mallory Pesaturo, L.P.N., was at all times referenced in this complaint, a citizen and resident of the State of Tennessee and a licensed practical nurse licensed to practice practical nursing in the State of Tennessee and is a "Health care provider" as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(A).

IV. VICARIOUS LIABILITY

13. That at all times relevant to this complaint, the defendants, Sheryl Dietrich, R.N. and Mallory Pesaturo, L.P.N., were acting within the course and scope of their employment with the defendant, URMC, such that the defendant URMC is vicariously responsible for the negligent acts and omissions of the defendants, Sheryl Dietrich, R.N. and Mallory Pesaturo, L.P.N.

V. VENUE

14. That at all times relevant hereto, the plaintiffs resided and the tortious acts hereinafter alleged as to the defendant, United States of America, occurred in the County of Grundy, State of Tennessee.

15. That the claims for relief of the plaintiffs as to the defendants, Coffee County Medical Group, LLC, Neil E. Christopher, M.D., Sheryl Dietrich, R.N., and Mallory Pesaturo, L.P.N., arise out of tortious conduct which occurred in the County of Coffee, State of Tennessee.

16. Venue is proper pursuant to 28 U.S.C. § 1402.

V. CONDITIONS PRECEDENT

A. Exhaustion of Administrative Remedies

17. That the acts of negligence hereinafter complained of and subject to the FTCA occurred on the 12th day of October, 2011.

18. That on September 6, 2012 the undersigned, counsel for the plaintiff, sent by United States Mail, certified, return receipt requested, Forms SF-95, Claim(s) for Damage, Injury, or Death to the United States Department of Health & Human Resources, along with supporting documentation and correspondence detailing the nature of the claims. Two claims were asserted, one for the plaintiff, for herself and in her representative capacity seeking damages in the amount of \$5,000,000.00 for the wrongful death of Kenneth C. Harris, deceased, and a claim on behalf of Stephanie N. Harris, the natural child of the plaintiff, Julee Harris and the decedent, Kenneth C. Harris, and who attained her majority following the death of Kenneth C. Harris, in the amount of \$2,000,000.00 for the wrongful death of Kenneth C. Harris, deceased.

19. That on or about September 17, 2012 the United States Department of Health & Human Services issued correspondence from the Office of the General Counsel acknowledging receipt of the claims on September 11, 2012 and requesting that additional evidence be submitted within three months.

20. That on November 7, 2012 the undersigned, counsel for the plaintiff, submitted all of the additional evidence requested by the Office of the General Counsel via Federal Express 2nd day air (per the request) with delivery verification on November 9, 2012.

21. That six (6) months elapsed from the date plaintiffs filed their claims and that the claims were neither accepted or denied at the time the plaintiffs filed their original complaint and they are therefore deemed denied pursuant to 45 C.F.R. § 35.2(b) and 28 U.S.C. § 2675(a).

B. Compliance with Tennessee Medical Malpractice Act

22. That Ocoee Regional Health Corporation operates a medical clinic known as Grundy County Primary Care within the County of Grundy, State of Tennessee and is a “Health care provider” as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(B) and (E).

23. That Kim Taylor, FNP, was at all times referenced in this complaint a family nurse practitioner licensed to practice as an advanced practice nurse in the State of Tennessee and is a “Health care provider” as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(A).

24. That the defendant, Neil E. Christopher, M.D., was at all times relevant to this complaint, a physician licensed to practice and practicing medicine in the State of Tennessee and is a “Health care provider” as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(A).

25. That the defendant, Sheryl Dietrich, R.N., was at all times referenced in this complaint, a registered nurse licensed to practice professional nursing in the State of Tennessee and is a “Health care provider” as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(A).

26. That the defendant, Mallory Pesaturo, L.P.N., was at all times referenced in this complaint, a “Health care provider” as that term is defined by Tenn. Code Ann. § 29-26-101(a)(2)(A).

27. That the plaintiff has complied with the provisions of Tenn. Code Ann. § 29-26-121(a) by personal delivery of the notice required thereby upon the health care providers identified herein at least sixty (60) days before the filing of the instant complaint. A true and correct copy of the notice personally served upon Ocoee Regional Health Corporation is attached

hereto as “Exhibit A.” A true and correct copy of the notice personally served upon Grundy County Primary Care is attached hereto as “Exhibit B.” A true and correct copy of the notice personally served upon Kim Taylor, FNP, is attached hereto as “Exhibit C.” A true and correct copy of the notice personally served upon Coffee County Medical Group, LLC, is attached hereto as “Exhibit D.” A true and correct copy of the notice personally served upon Neil E. Christopher, M.D., is attached hereto as “Exhibit E.” A true and correct copy of the notice personally served upon Sheryl Dietrich, R.N., is attached hereto as “Exhibit F.” A true and correct copy of the notice personally served upon Mallory Pesaturo, L.P.N., is attached hereto as “Exhibit G.”

28. That a Certificate of Good Faith is attached hereto as “Exhibit H” pursuant to Tenn. Code Ann. § 29-26-122(a) as to Ocoee Regional Health Corporation, Grundy County Primary Care and Kim Taylor, FNP.

29. That a Certificate of Good Faith is attached hereto as “Exhibit I” pursuant to Tenn. Code Ann. § 29-26-122(a) as to Coffee County Medical Group, LLC, Neil E. Christopher, M.D., Sheryl Dietrich, R.N. and Mallory Pesaturo, L.P.N.

VI. ALLEGATIONS OF FACT AND NEGLIGENT CONDUCT

30. That on the 12th day of October, 2011 the plaintiff, Julee Harris, presented in person to Kim Taylor, FNP at Grundy County Primary Care and tearfully explained to Nurse Taylor that her husband, the decedent, Kenneth C. Harris, had been sick since returning from Michigan and that he was steadily getting sicker; the plaintiff advised Nurse Taylor that the decedent’s color was wrong, that he was unable to sleep because he complained that when he laid down, he felt like he was drowning, that he was taking baking soda and Tums every 45 minutes secondary to his complaints of heartburn and that he just felt exhausted. That in response to the plaintiff’s pleading, she was provided with an immediate appointment for Kenneth C. Harris and she returned home to transport him back to Grundy County Primary Care. Kenneth C. Harris had

difficulty putting his shirt on and getting from his house to the car; he was, On October 12, 2011 visibly in severe distress to even a layperson.

31. That upon arriving at Grundy County Primary Care with Kenneth C. Harris, the plaintiff accompanied him to the examining room and she again related to Nurse Taylor that her husband was unable to sleep laying down secondary to feeling like he was drowning.

32. That Kim Taylor, FNP, undertook the treatment of the decedent, Kenneth C. Harris, but in doing so she acted with less than or failed to act with ordinary and reasonable care in accordance with the recognized standard of acceptable professional practice in her profession in the community in which she practices or in a similar community on the 12th day of October, 2011. More specifically, the defendant, Kim Taylor, FNP was negligent, *inter alia*, in the following particulars:

a. That upon learning that the decedent, Kenneth C. Harris, was unable to lay down secondary to feeling like he was drowning in that position, it constitutes gross medical negligence for a nurse practitioner to fail to consider heart attack and order an ECG (which test was readily available at Grundy County Primary Care) or refer a patient presenting with that symptom to a cardiologist or inpatient facility with cardiology service.

b. That the record of history and physical examination prepared by or available to Nurse Taylor should have led a nurse practitioner exercising ordinary and reasonable care to the conclusion that Kenneth C. Harris was suffering from heart failure or, at the very least, prompted her to conduct additional testing which would have led her to the conclusion that Kenneth C. Harris was suffering from heart failure. These indications include:

- (i) Diminished breath sounds in both bases;
- (ii) Chest pain;
- (iii) Enlarged heart;

- (iv) High blood pressure recorded at 148/68;
- (v) Coronary artery disease;
- (vi) Hypertension;
- (vii) Heartburn, indigestion;
- (viii) Shortness of breath;
- (ix) A family history of heart disease and high blood pressure, with a history of patient's father dying of myocardial infarction at age 51;
- (x) Proteinuria greater than 1000; and
- (xi) 47 year old male standing 5 feet 11 inches and weighing 268.75 pounds.

33. That Kim Taylor, FNP negligently diagnosed COPD and GERD and prescribed an antibiotic, an allergy medication and a medication to treat gastroesophageal reflux, which diagnosis and treatment misled the decedent and his wife and prevented them from obtaining treatment which would have prevented the death of Kenneth C. Harris.

34. That at all times relevant hereto, the defendant, URMC, held itself out as an emergency medical clinic with the facilities, equipment, staffing and expertise to provide emergency medical services.

35. That at all times relevant hereto, the defendants, Neil E. Christopher, M.D., Sheryl Dietrich, R.N. and Mallory Pesaturo, L.P.N., held themselves out as possessing qualifications in the field of emergency medicine by virtue of education, training and experience in the field of emergency medicine.

36. That on the 16th day of October, 2011 at the time of 9:10 p.m., the plaintiff, Julee Harris, presented to URMC emergency room with her husband, the decedent, Kenneth C. Harris, secondary to the decedent's complaints of shortness of breath, chest pain, tightness in chest and a feeling that he was drowning if he laid down and having to sleep sitting up.

37. That the defendants, URMC, Neil E. Christopher, M.D., Sheryl Dietrich, R.N. and Mallory Pesaturo, L.P.N., undertook the treatment of the decedent, Kenneth C. Harris, but in doing so they each acted with less than or failed to act with ordinary and reasonable care in accordance with the recognized standard of acceptable professional practice in their respective professions in the community in which the defendants practice or in a similar community on the 16th day of October, 2011. More specifically, the defendants were negligent, *inter alia*, in the following particulars:

a. That the standard of acceptable professional practice for a hospital, nurses and physicians operating an emergency room in Manchester, Tennessee or similar communities, for patients which present to the emergency room with signs and symptoms concerning for heart attack requires that an ECG be obtained and presented to the attending physician within 15 minutes of triage.

b. That the plaintiff's decedent, Kenneth C. Harris, presented to the emergency department of URMC at 9:10 p.m. on the evening of October 26, 2011 with signs and symptoms clearly concerning for heart attack. However, an ECG was not obtained until 10:35 p.m. – over an hour after the triage time recorded at 9:24 p.m. and almost an hour and a half after the patient's arrival at the emergency room.

c. That Sheryl Dietrich, R.N. and Mallory Pesaturo, L.P.N., failed to properly triage the decedent, Kenneth C. Harris, and/or failed to recognize very clear and well known signs and symptoms of heart attack or, in the alternative, failed to initiate the proper protocol for patient's presenting with signs and symptoms concerning for heart attack.

d. That URMC, Sheryl Dietrich, R.N. and Mallory Pesaturo, L.P.N., failed to follow the established protocol for patients presenting to the emergency department with signs and symptoms of heart attack; or, in the alternative, and in

the event that URMC did not have an established protocol which required that patient's presenting with signs and symptoms of cardiac ischemia be administered an ECG within fifteen minutes of triage, then URMC breached the standard of care applicable to emergency departments in Manchester, Tennessee or similar communities by its failure to establish such a protocol.

e. That the defendant, Neil E. Christopher, M.D., was the attending physician at URMC emergency room on the evening of the 16th day of October, 2011 and was responsible for ensuring that emergency room protocols were followed and that patient's presenting to the emergency room were treated in accordance with the recognized standard of care. Notwithstanding these duties, and notwithstanding the fact that the defendant, Neil E. Christopher, M.D., was at the decedent's bedside at 9:55 p.m., an ECG was not obtained and a report provided to the attending physician for an additional 40 minutes.

f. That obtaining an ECG within 15 minutes of triage is the minimum standard of care owed by a hospital, physician and nurses in Coffee County, Tennessee and similar communities to a patient that presents with signs and symptoms of heart attack; that URMC, by and through its nurses, Sheryl Dietrich, R.N., Mallory Pesaturo, L.P.N. and Neil E. Christopher, M.D., should have recognized that the plaintiff's decedent had suffered or was suffering from a heart attack and the standard of care required that an ECG be administered STAT – as soon as possible.

g. That Sheryl Dietrich, R.N. and Mallory Pesaturo, L.P.N., further breached the recognized standard of care in their respective professions in failing to recognize the classic signs and symptoms of heart attack which the decedent, Kenneth C. Harris, presented with on the evening of October 16, 2011.

h. That URMC further breached the recognized standard of care for a hospital operating an emergency department by its failure to have in place and/or enforce a protocol for the immediate treatment of patients presenting with classic signs and symptoms of heart attack.

i. That Neil E. Christopher, M.D., further breached the recognized standard of care in his profession in failing to:

- (i) Recognize the classic signs and symptoms of a heart attack;
- (ii) Failure to demand a STAT ECG;
- (iii) Failure to provide prompt and reasonable medical management for pulmonary edema, blood pressure and heart rate;
- (iv) Failure to timely order administration of a cardiac monitor;
- (v) Failure to order expedited blood work;
- (vi) Failure to consult a cardiologist;
- (vii) Failure to order transport to a cath lab; and
- (viii) Failure to provide any ameliorative treatment until 10:40 p.m.

VII. DAMAGES

38. That at the time of his death, Kenneth C. Harris, was age 47 years, married to the plaintiff, Julee Harris, and was the sole source of support for his wife and three minor children. The decedent, Kenneth C. Harris, was at the time of his death and had been for many years gainfully employed at Yorozu Automotive Tennessee.

39. That as a direct and proximate result of the negligence of the defendants, the plaintiff's decedent, Kenneth C. Harris, suffered extensive and severe injuries and great pain of body and mind, all of which resulted in his death.

40. That as a further direct and proximate result of the negligence of the defendants, the plaintiff, Julee Harris, was caused to lose the consortium, society and services of her spouse, Kenneth C. Harris.

41. That as a further direct and proximate result of the negligence of the defendants, the decedent's children, Stephanie N. Harris, C.M.H., a minor, and M.D.H., a minor, were caused to lose the consortium, society and services of their father, Kenneth C. Harris.

42. That as a further direct and proximate result of the negligence of the defendants, the plaintiff, Julee Harris, and the children of the decedent, Stephanie N. Harris, C.M.H., a minor, and M.D.H., a minor, were caused to lose the financial and other support of their husband and father, respectively.

43. That as a further direct and proximate result of the negligence of the defendants, the plaintiff, Julee Harris incurred medical, funeral and other final expenses.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiff, Julee Harris, demands judgment against the defendants, United States of America, Coffee County Medical Group, LLC, Neil E. Christopher, M.D., Sheryl Dietrich, R.N., and Mallory Pesaturo, L.P.N., as follows:

1. That proper process be issued upon the defendants and that the defendant be required to answer this complaint within the time period allotted by law.

2. That this Court enter an Order granting the plaintiffs a judgment against the defendants for compensatory damages including, but not limited to, damages for wrongful death, in the amount of Seven Million Dollars (\$7,000,000.00).

3. That this Court enter an Order granting the plaintiffs a judgment for damages, costs, attorney's fees and expert fees and such other and further relief as the Court deems just and equitable.

4. That in accordance with the Federal Rules of Civil Procedure, that the plaintiffs be granted a trial by jury on all issues.

5. That this Court enter an Order granting the plaintiffs pre and post-judgment interest along with attorney fees and costs as allowed by law.

6. For such other, further, special, extraordinary and general relief to which the plaintiffs are entitled under the circumstances of this cause.

Respectfully submitted,

Julee Harris, for herself as spouse and widow of Kenneth C. Harris, deceased, and on behalf of the children and natural heirs at law of Kenneth C. Harris, deceased, Stephanie N. Harris, C.M.H., a minor, and M.D.H., a minor, and Stephanie N. Harris

By Counsel:

HENRY, McCORD, BEAN, MILLER, GABRIEL & LaBAR, P.L.L.C.

By: /s/Clifton N. Miller
Clifton N. Miller (B.P.R. #014958)
Attorneys for Plaintiffs
300 N. Jackson Street
Tullahoma, TN 37388
(931)455-9301

Law Offices of Jonathan R. Bunn

/s/Jonathan R. Bunn
Jonathan R. Bunn, B.P.R. #014765
Attorney for the Plaintiffs
414 Wilson Avenue, Suite 101
Post Office Box 170
Tullahoma, TN 37388
Tel.: (931)393-3468
Fax.: (931)571-8236
e-mail: atlaw@lighttube.net

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Amended Complaint for Wrongful Death and all exhibits thereto was served upon the defendant, United States of America, by placing same in the United States Mails, first-class postage prepaid and appropriately addressed to the United States' counsel of record:

Loretta S. Harber
Assistant U.S. Attorney
United States Attorney's Office
Eastern District of Tennessee
800 Market Street, Suite 211
Knoxville, TN 37902

William J. Monahan
Assistant United States Attorney
United States Attorney's Office
Eastern District of Tennessee
800 Market Street, Suite 211
Knoxville, TN 37902

all on this the 26th day of February, 2014.

/s/Clifton N. Miller
Clifton N. Miller