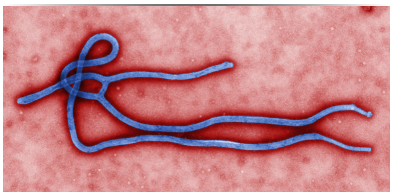
DC-15-02252

CAUSE NO. _____

NINA PHAM, *Plaintiff*, v. TEXAS HEALTH RESOURCES, INC., *Defendant.*	IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS ____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION



"Nina, I have bad news. We're sorry. You tested positive for Ebola."

With those words, 26 year old Nina Pham's life was in peril and forever changed as she became the first person on United States soil to contract the *Zaire ebolavirus* or, as it is now simply known, Ebola. Without wanting to or agreeing to, Nina became the face of America's fight against this fatal and feared pathogen. What no one knew or understood was that she was also a symbol of corporate neglect–a casualty of a hospital system's failure to prepare for a known and impending medical crisis.

In the fall of 2014, Nina was a nurse in the Intensive Care Unit ("ICU") at Texas Health Dallas Presbyterian Hospital ("Presbyterian"), a hospital in the Texas Health Resources ("THR") hospital system. In the ICU, Nina was the first nurse assigned to treat a patient, Thomas Eric Duncan, who had recently traveled to the United States from Western Africa where there is a widespread outbreak of Ebola. In a cruel twist, after watching Mr. Duncan go through the horrific and painful course of the disease as she desperately tried to save his life, Nina herself was diagnosed with Ebola just two days after Mr. Duncan's life was taken by it. Facing the same horrific death sentence as Mr. Duncan, Nina fought through and ultimately survived Ebola. While as a survivor Nina has been applauded publicly–including being named one of *TIME Magazine's* Persons of the Year and one of *The Dallas Morning News'* Texans of the Year–she faces a frighteningly uncertain future medically, professionally, and personally. Nina has pledged to do all that she can to advance the cause of nursing and to defeat Ebola, however she will never outrun the terror of her experience and the lasting impact of her infection.

But in many respects, Nina's story is not a story of Ebola; rather, it is a story of our health care system's greatest asset: compassionate and brave health care providers. And, sadly, it is also a story of the greatest problem facing our health care system and the well-being of patients and those brave workers: controlling corporations like THR that often put bottom-lines, profits and public image ahead of the safety and well-being of patients and health care providers.

Nina brings this case to hold Texas Health Resources accountable for what happened to her and to send a message to corporations like it that the safety of all patients and health care

providers comes first. So when the next viral outbreak occurs–and it will occur–these hospitals will be prepared and those health care providers will be protected.

I.
THE EBOLA CRISIS

Ebola is not a new virus. The virus was originally identified in 1976 following outbreaks in Nzara, Sudan and in Yambuku, Congo.[1] The outbreak in Yambuku first appeared near the Ebola River and is the genesis of the name of the virus.[2] Since then, the World Health Organization ("WHO") has tracked Ebola and confirmed more than 1,700 cases.

Ebola is a particularly lethal and highly communicable virus and causes Ebola virus disease, a hemorrhagic fever known for its very high mortality rate. The virus spreads by direct contact with body fluids, such as blood, of an infected human or other animal, and upon contact with a recently contaminated item or surface. The clinical course of the disease is horrifying: first symptoms are the sudden onset of fever, fatigue, muscle pain, headache, and sore throat. Violent vomiting, diarrhea, rash, and impaired kidney and liver function follow. In some cases, Ebola victims suffer both internal and external bleeding (e.g. oozing from the gums, blood in the stools).[3] Death is often caused by hypovolemia, or low blood pressure from fluid loss due to hemorrhaging. Death occurs in 50 percent of patients.

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[1] WORLD HEALTH ORGANIZATION, *Ebola Virus Disease Fact Sheet N° 103* (September 2014 ed.), available at http://www.who.int/mediacentre/factsheets/fs103/en/ (last visited Dec. 26, 2014).

[2] *Id.*

[3] *Id.*

Its very high mortality rate and communicability make Ebola a major public health risk, and the WHO classifies it as a World Health Organization Risk Group 4 Pathogen (requiring Biosafety Level 4-equivalent containment). It is also a threat to public safety given its potential as a bioterrorism agent, and as such is classified as a U.S. Centers for Disease Control and Prevention Category A Bioterrorism Agent and as a "select agent" under the 2001 Patriot Act and the 2002 Public Health Security and Bioterrorism Preparedness Response Act ("PHSBPRA"). Due to these deadly facts, hospitals in the United States are required to be prepared for and have policies in place to react to select agents like Ebola as a matter of national security.

A. The Ebola epidemic in West Africa.

In December 2013, the largest Ebola outbreak ever documented began in Guinea in Western Africa and has reached epidemic proportions. Ebola subsequently has spread extensively from Guinea to Sierra Leone, and Liberia, and to a lesser extent, Nigeria, Mali, Senegal, United Kingdom, Spain and the United States. The WHO has reported more than 20,000 cases and 8,000 deaths from Ebola, but those numbers are believed to be understated.

By the summer of 2014, news reports began covering the Ebola crisis in West Africa. On August 8, 2014, the WHO Director-General declared the outbreak a "Public Health Emergency of International Concern." That official designation indicates that the Ebola outbreak "constitutes a pubic health risk to other States through the international spread of the disease."[4]

[4] WORLD HEALTH ORGANIZATION, *International Health Regulations*, "IHR Procedures concerning Public Health Emergencies of International Concern," available at http://www.who.int/ihr/procedures/pheic/en/ (last visited December 26, 2014). Since 2005, the International Health Regulations have been legally-binding regulations designed to improve the capacity of all countries to detect, assess, notify and respond to public health threats.

As part of the August 8 meeting, the WHO issued its "Statement on the 1st Meeting of the IHR Emergency Committee on the 2014 Ebola Outbreak in West Africa" in which the WHO advised that "the Ebola outbreak in West Africa constitutes an 'extraordinary event' and a public health risk to other States" and warned that "the possible consequences of further international spread are particularly serious in view of the virulence of the virus, the intensive community and health facility transmission patterns, and the weak health systems in the currently affected and most at-risk countries." The Statement concluded that "a coordinated international response is deemed essential to stop and reverse the international spread of Ebola." This designation of a "Public Health Emergency of International Concern," used for only the third time in WHO history, is a legal designation that imposes legal measures on disease prevention, surveillance, control, and response, by 194 signatory countries, including the United States.

B. All American hospitals are warned Ebola is coming and that they must prepare.

By early September, the CDC and the American Hospital Association warned THR that Ebola was an imminent threat and that health care provider training and policies should be adopted for screening and diagnosing patients, as well as the development of safe protocols for personal protective equipment to protect health care workers. The CDC offered and produced webinars about how staff should be trained to protect themselves in treating an Ebola patient.

II.
THR IGNORES THE DANGER OF EBOLA

THR was formed in 1997 when Presbyterian Healthcare Resources merged with the Harris Methodist System in Fort Worth. Since 1997, THR has expanded by buying hospitals and

building others. It now consists of 25 hospitals, 62 outpatient facilities, and an enormous physician practice group of more than 500 physicians. THR bills itself as the largest health care system in North Texas. And, while it is nominally a non-profit organization, its growth is largely derived from an aggressive focus on increasing profitability. On its website, it proudly claims $3.8 billion in operating revenue in fiscal year 2013, and $6.1 billion in assets.

One of the primary ways in which THR increases that profitability is through control over the hospitals and physicians in its system. When it benefits THR, such as in avoiding liability in litigation, THR will emphasize that its hospitals are separate legal entities. However, in practice, THR asserts an enormous amount of control over its hospitals and physicians. One such area involves the practice of nursing in its hospitals. THR employs a chief nursing executive and requires the nursing departments at each of THR's hospitals, including Presbyterian, to report to and follow the instruction of THR's chief nursing executive and the systemwide nursing executive team. THR has a stated goal to have uniformity in nursing throughout its system–primarily for cost/profit reasons–and it works aggressively to control nursing to enforce uniformity. THR additionally employs other systemwide clinical officers who have the responsibility and ability to direct the establishing of policies and practices in each of the system hospitals.

A. THR ignores the warnings of Ebola.

In his October 16, 2014 testimony before the U.S. House of Representative Subcommittee on Oversight and Investigation, Daniel Varga, M.D., the Chief Medical Officer for THR admitted that THR was made aware of the danger of Ebola coming to the U.S. Dr. Varga

claimed that on July 28, an Infection Prevention Nurse Specialist at THR first received a CDC health advisory on Ebola virus disease and began sharing it with other THR personnel. Dr. Varga also claimed that on August 1, THR leaders sent an email directing that all hospitals needed to adhere to an epidemiological emergency policy on how to care for patients with Ebola-like symptoms. Included in that email was the THR-drafted epidemiologic emergency policy that specifically addressed Ebola. Dr. Varga testified that additional information was circulated on August 1 and August 13. Dr. Varga told Congress that the Dallas County Health and Human Services Department communicated with THR about Ebola preparations in the months leading up to Mr. Duncan's admission. It must be noted that Dr. Varga made numerous patently false statements to Congress, including falsely claiming the hospital staff was trained to manage Ebola and misrepresenting to Congress what type of personal protective equipment, or PPE, the nurses wore at various times when caring for Mr. Duncan.

Nevertheless, it is clear from THR's testimony and the press releases it has issued that THR was directing the Ebola preparedness for its hospitals. Despite assuming that duty, THR wholly failed to ensure that appropriate polices, procedures, and equipment were in place. Thus tragically, when Ebola finally came to one of its hospitals, the health care providers were at a high risk for exposure to the deadly virus because they were untrained and were not provided appropriate protective equipment.

III.
THR'S FIRST VICTIM: THOMAS ERIC DUNCAN

Thomas Eric Duncan, 41, lived in Monrovia, Liberia, where he worked as a personal driver. In the fall of 2014, Mr. Duncan had plans in place to come to Dallas, Texas, to reunite with his common law wife Louise Troh.[5] Prior to leaving Liberia, Mr. Duncan must have been unknowingly exposed to Ebola[6] and brought the virus to the U.S. when he arrived in Dallas on September 20, 2014.

By September 24, Mr. Duncan began feeling ill, and on the evening of September 25, he went to the emergency room at nearby Presbyterian. The events that occurred in the emergency room have been publicly discussed and became the subject of ever-shifting explanations by THR. But what is ultimately known is that Mr. Duncan was discharged with a diagnosis of sinusitis and a prescription for antibiotics despite the fact he was exhibiting classic symptoms of Ebola and had reported he was recently in Africa. THR has publicly admitted that it made mistakes in the emergency room and that Mr. Duncan should not have been sent home.

Mr. Duncan's condition worsened, and in the early morning of September 28, an ambulance brought him back to Presbyterian. He was examined again in the emergency room all day where it was noted that he had symptoms of fever, explosive diarrhea and projectile vomiting. By 10:20 am, it was suspected that Mr. Duncan had Ebola, and by 1:00 pm,

[5] In reporting, Ms. Troh has been identified as Mr. Duncan's fiancé, but in fact, the two had been married under the common law in Liberia decades earlier.

[6] Mr. Duncan would certainly have expressed concern about being exposed to Ebola if he knew he had been exposed when he went to the hospital to seek medical care. It defies common sense to think he would not have mentioned that extremely important bit of information to Ms. Troh or the nurses when he was seeking medical care. Given the confessed problems with THR's electronic medical records, it is unclear what Mr. Duncan did tell the hospital.

Presbyterian contacted the CDC. At 8:30 pm, an Infectious Disease specialist confirmed that Ebola was highly suspected. Mr. Duncan remained in the ER all night and was noted to be deteriorating the next morning.

Finally, at 4:40 pm, on September 29, Mr. Duncan was admitted to the hospital and transferred to a 24-bed intensive care unit from which all other patients had been removed. This was more than 30 hours from when Mr. Duncan was brought to the Presbyterian emergency room. Over the next 8 days, Mr. Duncan's condition deteriorated until his body finally gave in on the morning of Wednesday, October 8, and he was pronounced dead.

We will never know whether Mr. Duncan would have been able to survive if he had been given proper treatment instead of discharged from the emergency room on September 25. We do know that earlier treatment increases the likelihood of survival, and while Mr. Duncan was not in serious condition on September 25, he was in the advanced stages of Ebola on September 28. Had THR heeded the CDC and other warnings and ensured its hospitals were ready for Ebola, Mr. Duncan would have had the best opportunity to possibly survive. Instead, what THR has admitted were "mistakes" robbed Mr. Duncan of that chance and placed others at great risk when his condition progressed to the most dangerous and communicable stages of Ebola.

IV.
NINA CARES FOR HER PATIENT

Nina Pham is the oldest daughter of two Vietnamese immigrants, Peter and Diana Pham. Nina grew up in a Vietnamese community in East Fort Worth, and her devoutly-Catholic family

has long been active in church. Her parents instilled in Nina a deep religious conviction and sense of duty. They taught her the primacy of helping others. Nina excelled in school and ultimately attended Texas Christian University in Fort Worth where she graduated in 2010 with a bachelor of science in Nursing. During her senior year at TCU, Nina did a clinical rotation in the intensive care unit and fell in love with helping ICU patients. Nina was certified by the Texas Board of Nursing in 2010,[7] and, upon graduation, she was hired by Texas Health Dallas Presbyterian Hospital as an ICU nurse.[8]

As an ICU nurse, Nina treated patients in need of advanced life support and monitoring. She dealt with patients who were on ventilators, in need of monitoring of vital signs, required IVs and medications, and patients who needed lifesaving interventions such as Advanced Cardiovascular Life Support, or ACLS. However, ICU nurses are not trained or experienced to treat biosafety level 4 pathogens like Ebola.

A. Nina becomes Mr. Duncan's first nurse.

On the morning of September 29, Nina showed up for her usual shift in the ICU where she had two patients. By the middle of the day, both of her patients were discharged from the ICU. As such, Nina was next up in the rotation to take the next patient admitted to the ICU.

In the early afternoon, Nina's unit manager and the ICU supervisor called her into an office to talk. Nina was told that the ER department had a patient suspected for Ebola, and that

[7] Nina acquired her certificate in Critical Care Nursing on August 1, 2014, little more than a month before she cared for Mr. Duncan.

[8] New graduate nurses are rarely hired directly into critical care units. Most hospitals require one to two years of general nursing experience prior to being considered for employment in intensive care.

the hospital wanted to bring the patient to the ICU, even though he was not a patient that fit the ICU criteria. Nina was told the patient would be hers. She was told Mr. Duncan was in stable condition and could use the bathroom by himself. She was told that she would not have to go in the patient's room much and could just monitor him remotely, all of which turned out to be untrue.

Nina was shocked. She had never been trained to handle infectious diseases, never been told anything about Ebola, how to treat Ebola, or how to protect herself as a nurse treating an Ebola patient. The hospital had never given her ***any*** in-services, training or guidance about Ebola. All Nina knew about Ebola is what she had heard on the television about the deadly outbreak in West Africa.

Nina asked her manager what she should do to protect herself from the deadly disease. Either her manager or her supervisor went to the Internet, searched Google, printed off information regarding what Nina was supposed to do, and handed Nina the printed paper. The ICU did not have any written polices or manuals about treating level 4 infectious disease patients generally or Ebola specifically. ***Even though Mr. Duncan had been at Presbyterian for a day and a half with a differential diagnosis of Ebola, when it came time to admit him to the ICU and have Nina take care of him, the sum total of the information Nina was provided to protect herself before taking on her patient was what her manager "Googled" and printed out from the Internet.***

Contrary to the message THR has pushed in the press, Nina was assigned Mr. Duncan as a patient. She did not volunteer to be his nurse. Nina saw Mr. Duncan like any other patient:

she was a nurse and felt it was her duty to do what she could do to help him. But the myth perpetuated by THR that this was a "volunteer" health care team obscures the dark reality: Nina was put in the position to take care of Mr. Duncan without any prior knowledge of the risks, dangers, or any training. As with any patient, a nurse can attempt to refuse an assignment, but Nina was not inclined to do that because she saw critical care nursing as a calling, and she had a job to do. Unfortunately, THR was sending her to do it without the necessary qualifications or protections to do it safely.

B. THR does not provide appropriate PPE or guidance on how to use it.

As noted, the nurses on the unit had no choice but to use the Internet to find out how to protect themselves. Even though Mr. Duncan had been at Presbyterian for a day and a half, THR did not request or turn over the care to trained professionals from the CDC or another qualified health care facility that was trained and equipped to treat Mr. Duncan, nor did THR contact specialists who knew proper safety for dealing with Ebola, such as the professionals at the nearby Galveston National Laboratory.[9] Nor did THR bring in the most experienced infectious diseases specialists and nurses from within its system to manage his care. Rather, THR placed untrained ICU nurses in this dangerous situation.

[9] The Galveston National Laboratory in Galveston, Texas is a biosafety level 4 (BSL-4) Biocontainment Laboratory. It is one of only two national BSL-4 laboratories in the United States that are the highest safety level facilities dedicated to work with the most dangerous and exotic life-threatening infectious agents, including primarily hemorrahagic diseases such as the Ebola. In other words, one of the two places in this country and one of the handful of places on earth with qualified and trained experts on the containment and treatment of Ebola was only a phone call and an hour's flight away.

Like the others, Nina was left to determine–on her own–what personal protective equipment (PPE) to wear and how to don, doff, and wear it. Based on what she could learn from the Internet, on the first day she cared for Mr. Duncan, Nina put on a regular isolation gown covering her front and back, double gloves, a surgical mask with plastic shield and double booties. Importantly, Nina's neck and hair remained exposed. Nina was not even provided disposable scrubs or a change of clothes. She had to wear the scrubs she wore that first day home, taking out of the hospital clothing that was potentially carrying the virus.

That first day in the IUC, Nina was the only nurse who went in to care for Mr. Duncan, who was very appreciative and nice to Nina. As Nina left for the evening, the care was turned over to the night nurses, who wore similar protections.

C. **Mr. Duncan is diagnosed with Ebola.**

The next day, September 30, Nina returned to the hospital, where the nurses expressed concerns about the adequacy of the equipment available for their personal protection. Specific representations were made to the nurses to not worry about Ebola exposure because the equipment provided to them was sufficient and in fact exceeded what the nurses needed to protect themselves from contracting Ebola–representations that were reckless and false. Still worried, the nurses decided on their own to switch to N95 masks instead of a splatter masks, and they continued wearing the face shield and double gloves, gown and booties. Still, the nurses' neck and hair remained exposed without any options for additional protection.

Early that afternoon, Mr. Duncan's test results confirmed he had Ebola. Nina's heart sank. However, she continued to do everything she could for Mr. Duncan, whose situation had

not yet begun to seriously deteriorate. After staying longer than her shift required, Nina left for the night and turned Mr. Duncan over to the night nurse, Amber Vinson.

That night, the news broke to the public that a patient at Presbyterian had Ebola. Nina's mother, Diana, was worried about Nina and called her. When Nina let her mother know that she was, in fact, treating Mr. Duncan, her mother was afraid for her daughter and tried to convince her to not go into work the next day.

V.

"Nina, do not go back there. Just call in sick or quit." "Mom, I can't abandon him. He is my patient. It's my job. I'm going back."

The first night after Nina began treating Mr. Duncan was a long, dark night for her. She did not know much about Ebola, but she was aware that it was a highly contagious and potentially fatal disease. And she knew that she was not trained to care for highly contagious patients. Nina was scared. And like most people would, she thought about refusing to care for Mr. Duncan. But ultimately Nina's sense of duty, compassion, and bravery won out. She knew Mr. Duncan needed help, and she felt it was her job to help him in his time of need. One powerful factor convinced her she would be fine: Nina believed that THR would warn her and would not put her in any situation that was as dangerous as she feared. So, Nina put her faith in THR that she would be safe. She decided she would go back and continue caring for Mr. Duncan.

A. Nina continues to care for Mr. Duncan.

Even more concerned after Mr. Duncan was definitively diagnosed with Ebola, the nurses located and put on Tyvek or "hazmat" suits with double gloves. They added on "chemo gloves" and taped these to the suit. The nurses also located and added a personal respirator that they covered with a blue gown. All of these decisions with regard to personal protective equipment were made by the nurses without any formal guidance or training by THR supervisors as to what they were supposed to be doing. The nurses were just using their best guesses and their instincts to protect themselves.

Over the course of six 12-14 hour shifts in the following days, Nina worked with other nurses to do their best to help Mr. Duncan as his health deteriorated. In doing so, the health care providers experienced circumstances in taking care of Mr. Duncan that were more like what one would expect in a third world country than what one would expect in a hospital in a nation with a highly developed health care system. The ICU was not designed or equipped to be an infectious disease isolation unit. So instead, clear drop cloths were taped to the ceiling and walls of the hallway to create a makeshift containment facility. As Mr. Duncan's condition deteriorated and biohazardous material increased, there were more issues that THR was unprepared to address. Even though the nurses who cared for Mr. Duncan were not trained in hazardous waste disposal, the hospital did not send people who were trained for such duties to the ICU. That meant these nurses had to clean up the room and the biohazardous waste and dirty sheets on their own. They tied up the sheets in knots and placed them with contagious hazardous material in the ICU room next to Mr. Duncan where it just piled up. All of the talk

publicly about how our superior health care system would make fighting Ebola different in the U.S. stands in stark contrast to what actually occurred when the first patient arrived, and the situation was no better than that in Liberia.

Ebola workers in Zaire.

But in at least one way, Nina and the other nurses had it worse than those health care workers in third world countries: in West Africa, the health care providers wear full "moon suits" when they are treating Ebola patients. Here, at THR's hospital, the health care providers were given only basic coverings that left them exposed to the highly contagious disease. Despite the claims about our advanced health care system, ultimately none of it was brought to bear to protect the health care providers here. Nina Pham would have been better off treating Mr. Duncan in a Liberian Ebola center than in THR's signature hospital.

B. Mr. Duncan passes and Nina is told she is at no risk.

When Mr. Duncan finally passed away on October 8, Nina was heartbroken. The hope that she could save her patient was the one thing that had kept her going through the stress of the situation and fear that she had of the virus. While Mr. Duncan passed early that morning

around 7:51 am, Nina stayed at the hospital until around 2:30 pm in the break room.

Shortly after Mr. Duncan passed, THR had Nina come in for a meeting with the hospital's manager of occupational health and a representative from the CDC. Nina was told that the PPE she wore was safe and that she was at "***no risk***" of having contracted Ebola. Nina was surprised. She had been assuming she was at risk but did not know if the risk was high, medium or low. But she was now told she was at "no risk" at all and that she could freely see her friends and family.[10]

Nina called her friends and family, and she tried to cheer herself up from the loss of Mr. Duncan by having close friends over and spending time with her loved ones, confident in what THR told her that she was not at any risk to them. Had she any reason to think she was, she would not have allowed her loved ones to get close to her.

VI.
NINA FIGHTS FOR HER LIFE
WHILE THR WORRIES ABOUT ITS REPUTATION

Since the time she began treating Mr. Duncan, Nina had been checking her temperature twice a day. Two days after Mr. Duncan passed, Nina woke up at 5:00 am feeling hot and chilly. She checked her temperature, which previously had been hovering in the 97-98 degree range, and her temperature read 99.8. Nina called the hospital's manager of occupational health and told her about the temperature, and the manager informed Nina not to worry about it because it did not meet the 100.4 threshold for concern.

[10] THR told Nurse Amber Vinson the same thing.

In the early hours of the next day, Nina woke up, and her temperature was 100.6. Nina decided she needed to go to the hospital. As she drove to Presbyterian, she called ahead and told them that she was one of Mr. Duncan's nurses, that she had a fever, and that she wanted to be admitted as a "No Information" patient so that her identity would be protected.[11] Nina did not want anyone to know that she might be sick with Ebola.

When Nina arrived at the ER, she was taken back into an isolation room where she stayed the rest of the day while they ran tests. Shortly before midnight, the chief nursing officer for Presbyterian came into Nina's room wearing a full hazmat suit. Nina could tell from his red eyes that it was bad news. That's when she was told she had tested positive for Ebola.

Nina was in shock. Having just watched a terrible and painful death befall Mr. Duncan, Nina knew what was in store for her. Through her shock, fear and panic, she only had one thought: please start aggressive treatment immediately.

During the course of the next several days, Nina courageously battled Ebola. Throughout her admission at Presbyterian, her medical records indicate that Nina's condition was life-threatening, but Nina was determined she would survive.

A. THR was primarily concerned with itself.

Throughout this whole time, THR was worried about one thing above all: its public image. Already suffering from intense media scrutiny and criticism for how it mishandled the initial discharge of Mr. Duncan and his treatment, THR desperately began PR damage control

[11] A "No information" patient is a way to log a patient into the system to protect a patient's privacy so the patient's name is not visible to others accessing the electronic health record. The hospital failed to follow Nina's wishes, and Nina's record was grossly and inappropriately accessed by dozens of people throughout the THR system.

to try to combat the growing distrust in the core competency of THR's hospital. With patients abandoning and avoiding Presbyterian, THR's brand and its revenues were tanking. So, ultimately with the guidance of an outside PR firm, THR launched a public relations offensive designed to increase goodwill.

THR quickly learned that Nina and her dog Bentley had enormous public support and sympathy. So THR began trying to use Nina as a PR tool to save its plummeting image. While Nina laid in isolation, heavily medicated and facing a potentially gruesome death, THR had its PR department calling Nina. The PR Department was trying to release information and use Nina as part of its THR-corporate-driven #PresbyProud campaign.

After Amber Vinson, a second nurse at Presbyterian also was confirmed to have Ebola, THR was in full crisis mode. Public perception was that the hospital was incompetent, and it was in need of good news. Desperately, THR issued a press release that announced Nina's condition had been upgraded from stable to good in hopes that the public would think THR was doing something right.

News Releases

Ebola Update - Patient Condition Report
10/14/2014

Nina Pham Condition Report

Nina Pham is in good condition.

Contact:

Wendell Watson, Director
Public Relations
682-236-6963

However despite publicly claiming Nina was in good condition, Nina's medical records tell another story. Her records show that while THR's PR apparatus was publically proclaiming

Nina's improved condition, health care providers were at the very same time having "end of life discussions" with her in which they tried to convince Nina to not require lifesaving measures, and specifically documenting in Nina's medical record note that she was in such critical condition that she could not make decisions for herself.

Remarkably, on October 14th, the same day THR was issuing press releases reporting that Nina is in "good condition," her medical records contain a progress note from Nina's pulmonologist that states:

> Discussed with her and reviewed in detail the consent form for release of information and she agrees to increased information release
>
> Also discussed End of Life issues with her and for now she desires all levels of support. We agreed to discuss this again
>
> *Critical Care Time:* 60 minutes managing anemia, metabolic derangements, discussed plan of care with family as patient unable to make their own clinical decisions and EVD. Patient's condition is life threatening and without immediate/ongoing intervention would deteriorate. Critical care time is exclusive of procedures.

Indeed, when Diana Pham heard from the news that her daughter's condition had been upgraded to good, she asked the doctors, and the doctors told her that was not the case. The family was shocked and confused.

This particular note in Nina chart encapsulates how improperly THR acted in trying to use Nina Pham as a public relations tool when what she needed was to be cared for like any other patient in a serious medical crisis. The physician notes her condition is "life-threatening" and that he "discussed plan of care with family as patient unable to make their own clinical decisions." But despite her clinical status precluding her from making her own clinical decisions,

the physician–*surely at the direction of THR, as no physician would do this of his own accord*–is also discussing consent forms for release of information so that THR can use the public's concern for Nina to tell a different story, hoping Nina's goodwill will transfer to THR.

Further, the note demonstrates how misaligned THR's priorities were. Even though THR's own records indicate Nina's condition left her unable to make important decisions on her own, THR had no problem asking for and relying on her consent to release information about her to the public for its own corporate benefit. But when Nina expressed her desire to continue all levels of medical support (meaning, that she wanted the doctors and nurses to engage in life-saving measures if necessary), then THR wanted to "discuss it again" later and chose instead to talk to her family about it because Nina was "unable to make their [her] own clinical decisions…." This sort of backwards and repellant action is emblematic of the improper motivations of THR.

B. THR ambushes Nina on Video

Perhaps the act most indicative of THR's callousness in the pursuit of good PR happened on the day Nina finally got transferred to the National Institutes of Health ("NIH") in Bethesda, Maryland. THR desperately wanted to claim credit for making Nina better so that the public would not believe that Nina was being transferred because she was not receiving proper medical

care. Before she departed for NIH, one of Nina's physicians entered her room with a tiny GoPro camera under his hood filming everything in the room. The physician tried to get Nina to say good things about Presbyterian and to get her to say that she was feeling well and wished she was not being transferred. Nina, unclear as to what was occurring, did not give the answers THR was looking for. The physician tried to tease out any good sound bites he could get but mostly failed. Finally at the end of the discussions, he made Nina tear up a little bit and then respond with optimistic statements.

THR immediately edited the video to make it look as good as possible for THR. Then THR released it to the press and published it on the THR YouTube site. It had the effect THR wanted. Quickly it was rebroadcast around the world in what appeared to be a very "rah-rah" message from the beloved Nurse Pham about how good a hospital Presbyterian was and how she was "Presby Proud."

Never once did THR get Nina's permission to be used as a PR pawn like this. Never once did THR discuss its purposes or motivations or tell Nina what it was going to do with the information it sought from her. Instead, THR went to this young lady who was not in the position to be making any such decisions, and used her when she was in the darkest moment of her life, all for THR's own benefit.

VII.
NINA BEATS EBOLA BUT FACES AN UNCERTAIN FUTURE

At the NIH, Nina was treated in a facility properly prepared and equipped for treating Ebola. The situation there was vastly different. Where the THR facility was marked by

confusion, unpreparedness and an overwhelming concern about public relations, the environment at the NIH exuded total confidence and preparedness. Moreover, the NIH executives and team, led by Dr. Anthony Fauci, were singularly focused on making sure Nina survived and beat Ebola. Fortunately, Nina was eventually discharged from the NIH Ebola free, receiving a hug from Dr. Fauci. From NIH, she was taken to the White House where President Obama embraced her for the whole world to see.

Unfortunately, even cured, not everyone will embrace Nina. She faces the potentially life-long stigma of being the "Ebola nurse." When she goes out in public, some people act afraid of her.

It is not clear what the future holds for Nina.

Professionally, she doubts whether she can ever be a critical care nurse again – in part because of the emotional stress and anxiety over the trauma she experienced and in part because of the fear and stigma that follows her. So despite only just beginning to pursue her dream of a career in critical care nursing, Nina is now faced with the possibility of never returning to her passion.

On a personal level, Nina has suffered through unspeakable horror. After overcoming the fear, stress and anguish of watching what happened to Mr. Duncan, Nina then had to face the reality that she could suffer the same fate. This young lady faced death and the grief of

parents afraid of the most painful of losses–the loss of a child. Nina was put in the position to make "end of life" decisions, underscoring the likelihood of death.

Although Nina's fear of dying from Ebola now exists only in her frequent nightmares, she is worried about her future as her long-term medical prognosis remains unknown. No one knows the long-term medical impact of having Ebola. Emerging evidence shows that there are likely serious long-term effects, including potential vision loss and worse. Moreover, Nina was given large doses of experimental drugs, the long-term side effects of which are unknown but likely to be significant. Likewise, the potential costs of managing those long-term side effects is unknown. Of greatest concern is the question of whether this will affect Nina's ability to have children, something that has always been important to her. Nina must deal with what no young person of her age should have to face: a potentially bleak medical future with indeterminate costs of future needs.

Beyond the professional and medical uncertainty, Nina faces long-term effects on her enjoyment of life and personal relationships. In addition to the nightmares and anxiety she has, she faces isolation caused by the stigma of the disease that will follow her with each person she meets, as some people keep their distance and treat her as "different." And for a young, vibrant female like Nina, one major concern is whether she will ever be looked upon as the same by friends, patients, or even a partner. These uncertainties have changed her life.

Health care providers like Nina Pham are what make our health care system great. They are the ones who step in to take care of patients who are in the greatest need. But to do their jobs well and safely, they need the backing of a system that is willing to invest in safety and do

everything it can do to support these health care providers. Profit-hungry corporate systems like THR fail to do that as they lose sight of what matters most in health care and instead focus on growth, cost control, and branding a sterling image.

When Nina needed THR the most, THR failed her, despite the fact that THR wanted to sell her to the public as the face of the company. Nina wants to bring this to light in order to ensure that THR refocuses on what is important and does not fail her or any other health care provider again. Since Nina does not feel she can go back to what she loved about nursing, she hopes this lawsuit is a new way to help others as an advocate for what is right.

Nina Pham files this Original Petition and respectfully shows the following:

VIII.
PARTIES

1. At all relevant time periods, Nina Pham was a resident of Dallas County, Texas.

2. Texas Health Resources, Inc. is a Texas corporation with a principle place of business in Tarrant County, Texas and may be served through its registered agent for service of process:

Donald B. Collins
612 E. Lamar Blvd., Ste. 1400
Arlington, Texas 76011

IX.
DISCOVERY CONTROL PLAN

3. Plaintiff intends that discovery be conducted under Level III of TEXAS RULE OF CIVIL PROCEDURE 190.3.

X.
JURISDICTION AND VENUE

4. Venue is proper in Dallas County pursuant to TEXAS CIVIL PRACTICES & REMEDIES CODE §15.002(a)(1) because all or a substantial part of the events or omissions giving rise to these claims occurred in Dallas County.

5. This Court has jurisdiction because the amount in controversy exceeds the minimum jurisdictional amounts of the Court.

XI.
CAUSES OF ACTION

Count One: Negligence of THR.

6. Plaintiff incorporates the preceding paragraphs in this Count.

7. At all relevant times, THR controlled nursing at Presbyterian, through its corporate control of Presbyterian, and through shared decision making in each of the THR system hospitals that are required to report to THR's Chief Nursing Executive and THR's Nursing Executive Team (NET). THR directs nursing through the system-wide nursing service.

8. At all relevant times, THR controlled the "Ebola response" at Presbyterian.

9. In so doing, THR was negligent in the following particulars:

a. failing to act with ordinary care;

b. failing to recognize the likelihood and appreciate the danger of the Ebola virus coming to its hospitals;

c. failing to develop and implement policies and procedures on how to respond to the presence of the Ebola virus in the patient population;

d. failing to ensure that all health care providers were trained on policies and procedures on how to recognize, appreciate, contain and treat the Ebola virus in the patient population;

e. failing to train nurses on proper protection, including how to don and doff PPE;

f. failing to ensure that the hospitals have appropriate personal protective equipment;

g. failing to notify the appropriate authorities and get qualified people to manage the Ebola patients; and

h. failing to protect Nina Pham from a foreseeable harm.

10. THR's acts or omissions are a proximate cause of Nina's damages resulting from these tragic events. Nina hereby prays for and seeks all available damages as set forth below.

Count Two: Negligent Undertaking under Restatement (Second) of Torts § 323.

11. Plaintiff incorporates the preceding paragraphs in this count.

12. THR undertook, for pecuniary benefit, to control the methods, policies and procedures, and conditions of nursing care at Presbyterian and thus assumed a duty, *inter alia*, to train, warn, and protect those nurses under the Restatement (Second) of Torts § 323.

13. Further, THR undertook, for pecuniary benefit, to control the response to the Ebola virus at Presbyterian, including the development of policies and procedures, and thus assumed a duty, *inter alia*, to train, warn, and protect against the dangers of the Ebola virus under the Restatement (Second) of Torts § 323.

14. Having assumed those duties, THR was negligent as set forth in the preceding count, including in failing to adequately protect, warn, and train nurses against the dangers of the Ebola virus.

15. Nina suffered harm as a result of THR's failure to exercise reasonable care in fulfilling those duties.

16. THR's failure to exercise reasonable care in fulfilling those duties increased the risk of harm to Nina, or in the alternative, Nina was harmed in reliance upon THR's failure to warn her of dangers known to it.

17. THR's acts or omissions are a proximate cause of Nina's damages resulting from these tragic events. Nina hereby prays for and seeks all available damages as set forth below.

Count Three: Premises Liability.

18. Plaintiff incorporates the preceding paragraphs in this count.

19. At all times relevant hereto, THR owned, occupied, possessed, exercised control over, or had the right to control the premises at Presbyterian at which Nina was injured. As such, THR owed the highest duties of care to Nurse Pham as an invitee to warn her and protect her from the inherently dangerous conditions at Presbyterian that existed as a result of the presence of a highly communicable viral agent and in the inadequacy of the safety measures in place to deal with that dangerous condition.

20. THR knew or should have known of the danger of Ebola and the inadequacy of its preparations and Presbyterian's capability to treat patients such as Mr. Duncan, all of which resulted in a dangerous condition for Nina. THR thus should have either warned about or made safe the dangerous condition by, *inter alia*,

a. warning Nurse Pham that the PPE provided was inadequate;

b. training Nurse Pham on how to properly don and doff PPE;

c. training Nurse Pham about how to treat patients with the Ebola virus and which activities increase the risk of exposure;

d. assigning qualified experts to oversee the care of Mr. Duncan and actions of the nurses;

e. transferring Mr. Duncan to a facility equipped to safely treat him instead of admitting him to an ICU not used for infectious diseases, or, in the alternative, bringing qualified experts to take over Mr. Duncan's care and the premises thereby eliminating the dangerous condition to Nurse Pham and those similarly situated; and

f. failing to provide appropriate safety equipment to protect anyone exposed to Mr. Duncan.

21. THR negligently and grossly negligently failed to meet those duties, and it was foreseeable that the conditions posed such an extreme degree and unreasonable risk of harm to an untrained and unprotected nurse like Nurse Pham, that failing to meet those duties would proximately cause damage to nurses like Nurse Pham.

22. THR's acts or omissions are a proximate cause of Nina's damages resulting from these tragic events. Nina hereby prays for and seeks all available damages as set forth below.

Count Four: Invasion of Privacy.

23. Plaintiff incorporates the preceding paragraphs in this count.

24. At all relevant times, Nina Pham had a right to privacy, seclusion and ownership over her name and likeness. Nina requested such privacy by being asked to be a "No information" patient, and Nina had a reasonable expectation that information regarding her identity, her medical condition or her personal image would be kept private.

25. THR, through its agents, intentionally intruded on Nina's solitude, seclusion and private affairs when Nina was in a life-or-death situation. It would be highly offensive to a reasonable person that a patient, like Nina, would be in isolation with a highly communicable and lethal virus, and yet her THR was disclosing highly personal medical information about her, filming her without her informed consent, and generally attempting to use her for purposes of THR's public relations.

26. Further, THR, through its agents, publicized information about Nina's private life, including her identity, her personal health information, and other personal facts that the public had no right to know and for which THR had no right to publicize. As set forth above, such disclosures would be highly offensive to a reasonable person.

27. Finally, THR, through its agents, appropriated Nina's name and likeness for the value associated with it. Through a number of press releases, a video, and other press efforts, THR's use of Nina can be identified, and THR did so for its advantage.

28. THR's invasion of Nina's privacy rights are a proximate cause of Nina's damages resulting from these tragic events. Nina hereby prays for and seeks all available damages as set forth below.

Count Five: Fraud.

29. Plaintiff incorporates the preceding paragraphs in this count.

30. THR, through its agents, made material representations to Nina Pham about her privacy and THR's need to release information. Those material representations were known to be false

or made recklessly with the intent that Nina would rely on those representations. Nina did rely on them, to the extent she had capacity to do so.

31. THR's fraudulent representations proximately caused damages to Nina, and Nina hereby prays for and seeks all available damages as set forth below.

Count Six: Securing the Execution of Document by Deception.

32. Plaintiff incorporates the preceding paragraphs in this count.

33. THR knowingly and intentionally misrepresented facts to Nina with the intent to defraud and induce her to agree to the release of information regarding her medical conditions and views of Presbyterian. THR knowingly made false representations or omitted necessary information regarding the reasons THR was seeking such releases and what THR would do with any such information so released. In this regard, THR mislead Nina, as she had no intention of allowing THR to release false information about her condition or use her likeness as a public relations tool for THR's corporate benefit. Relying upon THR's deception, Nina executed written releases that adversely affected the property and interests of Nina and her family.

34. THR's conduct in that regard is a proximate cause of Nina's damages. Nina hereby prays for and seeks all available damages as set forth below.

E. Count Seven: Gross Negligence of THR.

35. Plaintiff incorporates the above paragraphs by reference.

36. Plaintiff avers that the conduct of THR as set forth above constitutes gross negligence as those terms are defined by law. THR was consciously aware of an extreme degree of risk to the health care workers such as Nina Pham and those similarly situated, but it nevertheless

proceeded in failing to act to protect them in complete disregard for the rights, safety and welfare of Nina and those similarly situated.

37. For this gross negligence, Plaintiff specifically pleads for the recovery of exemplary damages as set forth herein.

XII.
AGENCY

38. At all relevant times, the employees or agents of THR whose conduct is implicated were in the course and scope of their employment or acting as agents of THR such that THR is liable for the conduct of those employees or agents.

XIII.
DAMAGES

A. Damages to Nina Pham

39. As a result of the negligence of THR, Nina suffered through severe physical, emotional, and reputational injury and will likely suffer in the future such injuries. Nina therefore prays for damages, including, but not limited to the following:

a. Physical pain and mental anguish sustained in the past;

b. Physical pain and mental anguish that, in reasonable probability, Nina will sustain in the future;

c. Physical impairment sustained in the past;

d. Physical impairment that, in reasonable probability, Nina will sustain in the future;

e. Loss of enjoyment of life sustained in the past;

f. Loss of enjoyment of life that, in reasonable probability, Nina will sustain in the future;

g. Medical care expenses sustained in the past;

h. Medical care expenses that, in reasonable probability, Nina will sustain in the future;

i. Loss of earning capacity that, in reasonable probability, Nina will sustain in the future;

j. Loss of reputation sustained in the past;

k. Loss of reputation that, in reasonable probability, Nina will sustain in the future;

l. Restitution damages for loss of value associated with her name, reputation and goodwill.

40. The above damages exceed the minimal jurisdiction of this Court, and Nina prays for full recovery of such damages following a trial by jury.

B. Exemplary Damages

41. Nina alleges that each and every negligent act or omission of THR and its agents, as set forth above, when viewed objectively from the standpoint of policymakers, involved an extreme degree of risk, considering the probability and magnitude of the physical harm to others and that THR had actual subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of Nina and other nurses and health care providers at Presbyterian, and as such, such conduct amounts to gross negligence or malice, as those terms are defined by law, so as to give rise to an award of exemplary or punitive damages, for which Nina now pleads against THR. Additionally, by reason of such conduct, Nina is

entitled to and therefore asserts a claim for punitive and exemplary damages in an amount sufficient to punish and deter THR, and other corporate owners of hospitals like them, from such conduct in the future.

42. Additionally, each of the malicious and fraudulent acts of THR independently give rise to an award of exemplary or punitive damages, for which Nina now pleads against THR in an amount sufficient to punish and deter THR, and other corporate owners of hospitals like them, from such conduct in the future.

XIV.
PRE-JUDGMENT AND POSTJUDGMENT INTEREST

43. Nina requests pre-judgment and post-judgment interest in accordance with the maximum legal interest rates allowable as interpreted under the laws of the State of Texas.

XV.
REQUEST FOR A JURY TRIAL

44. Nina demands a jury trial on all issues so triable and contemporaneously with the filing of this Petition submits the applicable fee.

XVI.
REQUEST FOR DISCLOSURE

45. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 194, Defendant is requested to disclose the information and material described in Rule 194.2. The written responses to the above requests for disclosure should conform to Rule 194.3 and the materials, documents, and/or copies of same should be produced in compliance with Rule 194.4. The written responses, materials, and

documents are to be delivered to the ALDOUS LAW FIRM, 2311 Cedar Springs Road, Suite 200, Dallas, Texas 75201, as required following receipt of this request.

XVII.
PRAYER

46. Nina prays that THR be cited to appear and answer herein, and that upon final determination of these causes of action, Nina receive a judgment against THR awarding Nina damages as follows:

a. Actual, compensatory, consequential, exemplary, and punitive damages, in an amount in excess of the minimal limits of the Court;

b. Costs of Court;

c. Prejudgment interest at the highest rate allowed by law from the earliest time allowed by law;

d. Interest on judgment at the highest legal rate from the date of judgment until collected; and

e. All such other and further relief at law and in equity to which Nina may show herself to be justly entitled.

Respectfully submitted,

/s/ Charla G. Aldous

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