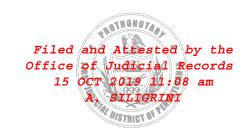
LAMB McERLANE PC

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Attorneys for Plaintiffs

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, DECEASED, 4408 Saybrook Lane Harrisburg, PA 17110,

Plaintiffs,

v.

MARLON OSBOURNE, M.D., 5301 SW 31st Avenue Fort Lauderdale, FLA 33312,

-and-

PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE, 321 University Avenue Philadelphia, PA 19104,

Defendants.

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY

CIVIL ACTION

Term:

No.

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte

entered against you by the court without further notice for any money claimed in the complaint of for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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Philadelphia Bar Association Lawyer Referral and Information Service One Reading Center Philadelphia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197 tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decider a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

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Attorneys for Plaintiffs

PHILADELPHIA COUNTY

IN THE COURT OF COMMON PLEAS

JOSHUA M. GREENBERG, DMD, and

SANDRA GREENBERG, as the

Administrators of the Estate of ELLEN R. GREENBERG, DECEASED,

4408 Saybrook Lane

Harrisburg, PA 17110,

CIVIL ACTION

Plaintiffs, : Term:

: No.

MARLON OSBOURNE, M.D., 5301 SW 31st Avenue

Fort Lauderdale, FLA 33312,

-and-

PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE, 321 University Avenue Philadelphia, PA 19104,

Defendants.

COMPLAINT - IN EQUITY Mandamus and Declaratory Relief Requested

Plaintiffs, Joshua M. Greenberg, DMD, and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased, by and through undersigned counsel, file this Complaint in equity, in the Court of Common Pleas of Philadelphia County, and, in support thereof, aver as follows:

I. Introduction

- 1. This action seeks mandamus or, alternatively, declaratory relief to change the manner of death on the Certificate of Death of Ellen R. Greenberg, deceased, from suicide to "Could not be determined," the category for manner of death Defendants were at a minimum required to check under the circumstances. This action is compelled because the Defendants have declined to voluntarily perform this nondiscretionary act.
- 2. Ellen R. Greenberg died on January 26, 2011, from multiple stab wounds varying in depth to the back of her head and neck, as well as to her chest and abdomen. The medical evidence indicates that not all of these wounds could have possibly been self-inflicted.

 Moreover, this evidence strongly establishes a knife other than the one recovered at the scene was used to inflict many of Ellen's twenty (20) separate stab wounds. Other information, some just recently obtained, firmly draws into doubt if not forcefully rebuts a finding of suicide.
- 3. Unsurprisingly, after thorough autopsy and toxicology examinations, Defendants initially ruled Ellen Greenberg's death was a homicide. Later, and only after the Philadelphia Police Department had begun to publicly contradict the Defendants' medical findings, the Defendants inexplicably changed the manner of her death from homicide to suicide without explanation, and without any compelling reasons or sufficient medical support for this reversal.
- 4. However, as a matter of law, the Defendants had no discretion to change the manner of Ellen's death from homicide to suicide. Instead, under the circumstances here, they were at a minimum required to conclude and record the manner of Ellen's death "Could not be determined." Their selection of suicide further represents an arbitrary and capricious act.
- 5. The negative consequences of the Defendants' misconduct is far reaching, not only impacting Ellen's Estate, but her family members, the vital statistics registration system in

the Commonwealth and United States, and the basic goals of our system of criminal justice and accountability.

II. The Parties

- 6. Plaintiffs Joshua M. Greenberg, DMD, and Sandra Greenberg, husband and wife, are adult individuals and citizens of Pennsylvania, residing at 4408 Saybrook Lane, Harrisburg, PA 17110, and are the parents of Ellen R. Greenberg, deceased. Letters Testamentary have been issued to Joshua M. Greenberg, DMD, and Sandra Greenberg by the Philadelphia County Court of Common Pleas, Orphans Court Division, for the administration of the Estate of Ellen R. Greenberg.
- 7. Defendant Marlon Osbourne, M.D. ("Dr. Osbourne") is, at all times relevant hereto, a physician specializing in the field of pathology, and, in 2011, was duly licensed to practice medicine in Pennsylvania and was employed as a pathologist at the Philadelphia County Medical Examiner's Office. Dr. Osbourne presently maintains a business address at 5301 SW 31st Avenue, Fort Lauderdale, FL 33312.
- 8. Defendant Philadelphia County Medical Examiner's Office ("MEO"), through its affiliated pathologists, has responsibility for issuing death certificates after determining the cause and manner of death, to the extent either or both can be compellingly ascertained, for sudden, unexpected, and unnatural deaths occurring within the boundaries of Philadelphia County. The MEO, through its affiliated pathologists, is charged with conducting an investigation into the cause and manner of death in such circumstances, including, if necessary, performing an autopsy. Ultimately, the MEO pathologist is solely responsible for determining both the cause and manner of death on the Commonwealth's Certification of Death in every case that the MEO

handles. At all times relevant here, the MEO maintained a business address at 321 University Avenue, Philadelphia, PA 19104.

III. Jurisdiction

- 9. Jurisdiction over the parties in the Courts of the Commonwealth of Pennsylvania is proper pursuant to 42 Pa.C.S. Sec. 5301, *et seq*. Specifically, with respect to Dr. Osbourne, it is averred that jurisdiction is proper pursuant to 42 Pa.C.S. Sec. 5322(a)(1)(i), (ii), and (iv) by reason of his transacting business in this Commonwealth and 42 Pa.C.S. Sec. 5322(a)(3) by reason of his having caused the harm at issue by an act or omission in this Commonwealth.
- 10. Venue is proper in the Court of Common Pleas of Philadelphia County under Pa.R.C.P. 1006 and 2103 inasmuch as the MEO regularly conducts business in the County of Philadelphia at 321 University Avenue, Philadelphia PA 19104 and some of the acts and omissions by Dr. Osbourne that form the bases for this lawsuit in equity occurred when he was employed by the MEO at its business address and continued to occur once his employment ended because he alone may be compelled to amend the manner of death stated in Ellen Greenberg's Certification of Death under 28 Pa.Code Sec. 1.37.

IV. Facts

- 11. In January 2011, Ellen Greenberg was 27 years old living in Philadelphia, Pennsylvania, a popular elementary school teacher employed at the Juniata Park Academy located in Philadelphia, PA, and engaged to be married that upcoming August 2011.
- 12. On January 26, 2011, a Wednesday, the Juniata Park Academy closed early due to the heavy snow falling throughout the Philadelphia region. Ellen Greenberg headed home from work, making sure to top off her gas tank on the way to her nearby apartment in the Manayunk neighborhood of Philadelphia.

- 13. Once home, as the blizzard outside continued throughout the afternoon and into the evening, Ellen Greenberg relaxed and began cutting fruit for a salad she would never get the chance to eat.
- 14. Around dinnertime on January 26, 2011, Ellen Greenberg was found dead on her kitchen floor, propped with her head slumped against a cabinet. There was a ten-inch-long, serrated knife imbedded deep in her chest, the last of her twenty (20) stab wounds. Ten (10) of these had been inflicted to the back of her neck and head, including two (2) penetrating deep into her brain.
- 15. At the scene on January 26, 2011, investigators found, along with the half-made fruit salad, blood covering Ellen Greenberg's body, pooled on the floor and present on the surrounding cabinets. The knife block where the knife in Ellen Greenberg's chest was normally kept was upended, its contents having skittered with some force across the counter and into the sink.
- 16. Although most of the police officers who arrived on the scene that night believed immediately that Ellen Greenberg had been murdered, the lead, on-scene Homicide Detective inexplicably ruled the manner of death a suicide. As a result, crime scene protocols and other precautions typically implemented by the police in cases where homicide is suspected were not observed at the apartment.
- 17. Ellen Greenberg's body eventually was transported from her apartment to the MEO's offices in order to conduct an autopsy to ascertain the medical cause and manner of her death.

A. *January 27, 2011 Autopsy*

- 18. The next day, January 27, 2011, at the MEO facility in West Philadelphia, Dr. Osbourne performed the requisite autopsy on Ellen Greenberg's body.
- 19. The medical autopsy revealed that Ellen Greenberg had been stabbed eight (8) separate times in her chest, with the depth of each slash varying from .2 cm to 10 cm. The autopsy further revealed (a) a 6 cm deep puncture in Ellen's abdomen; (b) a 6.5 cm long gash across her scalp; and (c) ten (10) individual stab wounds to her neck ranging in depths from .2 cm to 7 cm. Her cranial cavity had been penetrated by one of her neck wounds, severing the cranial nerves and brain. Medically, this deep laceration alone would have led Ellen to experience severe pain, cranial nerve dysfunction and traumatic brain signs and symptoms, including numbness, tingling, and impaired or loss of consciousness. A true and correct copy of the report and findings by the Office of Medical Examiner is attached hereto and incorporated herein as Exhibit "A."
- 20. In addition to the fatal injuries Ellen endured from repeated stabbings, the autopsy by Dr. Osbourne alarmingly revealed numerous, unexplained bruises covering Ellen's body "in various stages of resolution." Noticeable bruises were found at her upper and lower extremities, and similar bruises were observed on her right upper arm, right forearm, right lower abdomen, right thigh, and above her right knee. Medically, the pattern, severity and number of these bruises suggested repeated physical altercations.
- 21. Confronted with these potent and horrific medical findings, Dr. Osbourne concluded after completing the autopsy on January 27, 2011, that the manner and cause of Ellen Greenberg's death was "homicide" due to "multiple stab wounds," repudiating the prior, non-medical conclusion that her death was a suicide. Dr. Osborne formally memorialized his medical

opinion regarding Ellen Greenberg's death in a Certification of Death which Dr. Osborne signed on January 27, 2011. A true and correct copy of the Certification of Death (dated January 27, 2011) is attached hereto and incorporated herein as Exhibit "B."

B. External Non-Medical Pressure to Change the Manner of Death

- 22. Dr. Osbourne's medical decisions on the cause and manner of Ellen Greenberg's death on January 27, 2011 were final, binding, and not subject to amendment unless additional medical information or autopsy findings became available which compelled a change to either or both decisions.
- 23. On or about February 1, 2011, the public, through a press release by the Philadelphia Police Department, was told of Dr. Osbourne's and the MEO's medical findings as to the cause and manner of Ellen Greenberg's death.
- 24. Inexplicably, however, days later, the Philadelphia Police Department and not Dr. Osbourne or the MEO reversed course, insisting incorrectly that Ellen's case had not been ruled a homicide, but was instead being investigated as suspicious.
- 25. Then, by February 18, 2011, the Philadelphia Police Department without the concurrence of Dr. Osbourne or the MEO officially declared without explanation that the death of Ellen Greenberg had been ruled a suicide.
- 26. Ostensibly bowing to the improper public pressure by the Philadelphia Police Department, the MEO and Dr. Osbourne on March 3, 2011, "officially updated" without explanation Ellen Greenberg's Death Certificate from homicide to suicide.
- 27. On April 4, 2011, Dr. Osbourne, again without explanation, formally changed the manner of Ellen Greenberg's death on her Certificate of Death from homicide to suicide. A true

and correct copy of the Certificate of Death (dated April 4, 2011) is attached hereto and incorporated herein as Exhibit "C."

- 28. Only years later in mid-October 2018, did Dr. Osbourne honestly admit that, in complete dereliction of his legal duty never to delegate to non-medical parties (like the police) decisions pertaining to the determination of the manner of death in MEO cases -- he had changed the manner of Ellen Greenberg's death in April 2011 solely "at the insistence of the police because they said there was a lack of defense wounds."
 - C. Recently Provided Additional Medical Information Mandates Amendment to Ellen Greenberg's April 4, 2011 Certificate of Death
- 29. In September 2019, Plaintiffs formally requested Dr. Osbourne voluntarily amend Ellen Greenberg's Certification of Death to reflect a manner of death other than suicide based on additional medical and other information of which Dr. Osbourne was not familiar in early 2011, a substantial portion of which only became recently available to the Plaintiffs. A true and correct copy of the letter dated September 3, 2019 (without enclosures) is attached hereto and incorporated herein as Exhibit "D."
- 30. The information in the package sent to Dr. Osbourne included reports by several eminently qualified experts in the fields of medical forensics and neuropathology who have unanimously concluded that Ellen's death could not have been the result of a suicide.
- 31. Wayne K. Ross, M.D., a well-credentialed, board-certified pathologist who specializes in forensic pathology and neuropathology, conducted his own independent investigation, including a reexamination of Ellen's spinal cord specimen retained by the MEO, and concluded beyond a doubt, among other things, that it simply is not possible that all of the

wounds suffered by Ellen were self-inflicted. True and correct copies of the reports by Dr. Ross are attached hereto and incorporated herein as Exhibit "E."

- 32. Similarly, Cyril M. Wecht, M.D., also a preeminent forensic pathologist, after conducting his own examination of the complete reports, concluded consistently with Dr. Ross that, not only could this have not been a suicide, but that all pathological indications pointed toward homicide. A true and correct copy of Dr. Wecht's report is attached hereto and incorporated herein as Exhibit "F."
- 33. Henry C. Lee, Ph.D., of the Institute of Forensic Science at the University of New Haven, concluded after reviewing the entire case file that the number and type of wounds inflicted on Ellen Greenberg as well as the bloodstain patterns observed, were consistent with the scene of a homicide, not a suicide. A true and correct copy of Dr. Lee's report is attached hereto and incorporated herein as Exhibit "G."
- 34. Consistent with these findings, as set forth in a March 15, 2019 article published in the *Philadelphia Inquirer*, Guy D'Andrea, a former Philadelphia homicide prosecutor who reviewed the entire case file before leaving the District Attorney's Office, Gregory McDonald, chief deputy coroner for Montgomery County, and Robert D. Keppel, retired chief criminal investigator for the Washington State Attorney General's Office, all determined the physical evidence raised serious questions that not only undermined a finding of suicide in Ellen's case but, in some cases, warranted a determination of homicide.
- 35. The letter accompanying the package also referenced other considerations, which warranted the change of the manner of Ellen's death from suicide.
- 36. For instance, the letter discusses the substantial forensic evidence suggesting more than one weapon was used in Ellen's death, although only one was recovered at the scene.

According to Dr. Ross, powerful evidence exists which establishes that two knives – one serrated, one smooth-bladed – were used in Ellen's death, although the only knife recovered at the scene was of the serrated variety and found imbedded deep in Ellen's chest. The import of Dr. Ross' conclusion cannot be overstated. If a second knife was used in Ellen's death but not recovered at the scene, someone other than Ellen necessarily disposed of it, which alone rules out suicide as a cause of death.

- 37. In addition, expert analysis and a crime scene recreation recently completed persuasively establish that not all of Ellen's wounds could have possibly been self-inflicted. According to Dr. Ross, she would have been rendered physically incapable of inflicting more wounds before the final stab was administered to Ellen's chest. Ellen suffered a significant wound at the base of her skull that penetrated her brain by several centimeters. This particular wound resulted from an upward strike to the base of the skull that would have been difficult, if not impossible, for her to inflict on herself. Moreover, Dr. Ross conducted a forensic examination of a preserved sample of spinal tissue and concluded that the injury inflicted on the nervous system by this blow would have rendered Ellen incapacitated and incapable of performing further harm, up to and including the final stab-wound to the chest. A recreation report included in the package sent to Dr. Osbourne adds further credibility to Dr. Ross' conclusion that the position, angle, force and number of Ellen's wounds suggest Ellen could not have inflicted all the wounds she sustained on herself.
- 38. The recent submission to Dr. Osbourne similarly raises serious questions about the nature and extent of another medical professional's involvement Dr. Lucy Rorke-Adams in Ellen's case in 2011 on which the police purportedly relied in contending Ellen's death was due to suicide. According to the police investigators, when confronted with questions arising

from the irregular wound pattern on Ellen's body, particularly the frequency and severity of certain injuries preceding the final chest wound as noted above, the investigators reached out to Dr. Rorke-Adams, a neuropathologist with whom the Philadelphia Police and MEO consulted from time to time. The police investigators represent in a passing reference that Dr. Rorke-Adams concluded after conducting an examination of the spinal tissue that the damage inflicted at the base of the skull to the brain and spine could have resulted in Ellen merely becoming numb to the pain of the subsequent stab wounds while leaving her still sufficiently ambulatory to inflict further wounds.

- 39. But there is no evidence that Dr. Rorke-Adams ever conducted any examination of Ellen's spinal tissue in 2011. She never issued a report, was never paid for her services, and although there are records of Dr. Rorke-Adams performing examinations on the days preceding and following the date of her alleged examination of Ellen's spinal tissue, there are no records that she performed any work for the City of Philadelphia on the date noted in the report.

 Furthermore, Dr. Rorke-Adams has no recollection of consulting with the Police Department or MEO on that date, and there is no corroborating record of her being picked up and brought to the MEO as the reports suggest. In fact, in interviews with the *Philadelphia Inquirer*, Dr. Rorke-Adams claimed to have no recollection of the case at all and further stated the lack of any invoice or report of her findings confirms that she had no involvement in the case.
- 40. Dr. Rorke-Adams' purported involvement is crucial, as her medical conclusion is a necessary element in the ultimate suicide finding, for without any explanation as to how it was physiologically possible for Ellen to inflict further wounds to her own person after suffering a blow that substantially severed her spinal cord, the ultimate finding of suicide would have been impossible.

- 41. The letter accompanying the package sent to Dr. Osbourne also drew his attention to blood-pattern evidence which suggests Ellen's body was moved or repositioned postmortem. Upon review of the crime scene photographs and other evidence, the independent experts have concluded that Ellen was lying down and later moved into the sitting position in which she was discovered by investigators. For example, clear from the photographs of the scene is a trail of blood running horizontally, parallel to the floor, along the side of Ellen's face, which Detective Scott Eelman confirmed defies the laws of gravity and means Ellen's body was moved after the blood had already dried.
- 42. Detective Eelman, a specialist in crime scene reconstruction who regularly pairs with Dr. Ross, also analyzed the bloodstains on Ellen's sweatpants, sweatshirt and shoes and found other evidence consistent with her being moved or repositioned postmortem, concluding that she had been in a position different from that in which she was found at the time the blood was deposited on her sweatpants, sweatshirt and shoes. A true and correct copy of Detective Eelman's report is attached hereto and incorporated herein as Exhibit "H." He further concluded that Ellen's head had been in several positions during the time of blood flow and for long enough as to have the blood flow across her face and back toward her ear, upward toward her eyes and also downward toward her chin in a manner that is inconsistent with the position in which Ellen was found by investigators.
- 43. Reference is made in the letter to Dr. Osbourne to the absence of any evidence (explicit or implicit) that, on January 26, 2011, Ellen intended to kill herself or wished to die and that she understood the probable consequences of her actions. Instead, the events leading up to Ellen's death are inconsistent with suicide. After leaving work early that day due to the snowstorm, Ellen filled her car's empty gas tank. Also, Ellen was halfway through preparing a

fruit salad when the stabbings began, which salad was left unfinished on the counter as seen in the photographs of the scene. In addition, Ellen's treating psychiatrist, Ellen Berman, M.D., is adamant Ellen was not suicidal. All the wounds to Ellen's chest and abdomen were inflicted through her clothing, which, as the investigators concluded, is highly unusual in cases of suicide. In nearly all documented cases, an individual will lift his or her clothing and stab directly into bare skin. As the independent experts have indicated, Ellen's behavior is not consistent with someone preparing to commit suicide and, when considered in light of the other serious questions surrounding her death, suggests another explanation.

- 44. In the same vein, Ellen's history and behavior are not consistent with those associated with someone intending to commit suicide. Ellen made no verbal or nonverbal expressions of intent to kill herself. No implicit or indirect evidence of intent to die exists. She did not express feelings of hopelessness. She did not rehearse fatal behavior. She made no preparations for death, inappropriate to or unexpected in the context of her life. She made no expressions of farewell or desire to die, or acknowledgement of impending death. She had made no previous suicide attempt, or even previously threatened suicide. She did not have serious depression or mental disorder as confirmed by Dr. Berman. She left no suicide note.
- 45. Moreover, as further pointed out in the letter to Dr. Osbourne, the arguments raised to support a finding of suicide by Ellen are at best inconclusive and plainly require further investigation.
- 46. The principal factor in concluding Ellen's death was suicide was the claim that the front door to her apartment was locked from the inside with the safety bar engaged just prior to and at the time of her death.

- 47. But, as noted in the letter accompanying the package to Dr. Osbourne, that the door was locked from the inside just prior to and at the time of Ellen's death was merely accepted and was never itself properly tested. As noted in the expert reports and visible in the photographs of the apartment, the safety bar remained intact and undamaged, and, although disengaged, was still attached, albeit loosely, to the door and doorframe, respectively. Had the door been forced open from the outside without first disengaging the safety bar as the investigators concluded, at least one of its ends necessarily would have been ripped from its screws in either the door or the doorframe. Tests performed by one investigator using an identical mechanism repeatedly confirmed this. Contrariwise, the damaged but functional safety bar depicted in the photograph was consistent with the application of force to the door, but not entry, as if the door had been pulled from the inside causing the damage seen in the photographs and then manually disengaged.
- 48. The letter to Dr. Osbourne also points out that although a forced entry was reported by Ellen's fiancé, who told the police investigators that, upon finding the safety bar engaged and Ellen not responding to his text messages, he kicked the door open in the presence of a member of the building's security, the member of the security staff allegedly present when Ellen's fiancé allegedly kicked in the door is firm that he was not present as claimed.
- 49. Another of the factors cited by the Philadelphia Police in support of the finding of suicide was the lack of defensive wounds on Ellen's hands and arms, which wounds the police contend would be expected on the victim of a knife attack of this nature. However, as Dr. Ross explained in his report, the stab wound inflicted upward at the base of Ellen's skull to her spine and brain would have been incapacitating and made further resistance impossible. Moreover, Dr. Ross did find evidence of fresh bruises and a fingernail imprint on Ellen's neck, suggesting she

may have been physically overwhelmed and rendered defenseless by her attacker at the outset of the altercation, further explaining the lack of defensive wounds customary in knife attacks.

Moreover, a lack of defensive wounds is not unheard of in these instances, particularly when the victim is attacked quickly so as not to be able to defend herself, what one investigator described as the proverbial "blitz attack."

- 50. A suggestion likewise has been made that Ellen's mental state supports a finding of suicide. As discussed in the letter to Dr. Osbourne, Ellen had obtained treatment for her anxiety in the weeks preceding her death, and there is no indication from her therapist or elsewhere that Ellen had exhibited a predisposition toward self-harm or that she entertained any suicidal ideations at any time. In fact, Dr. Berman maintains Ellen did not exhibit any indications of suicidal ideation while under her professional care. Prescribed Klonopin for her anxiety, the toxicology screens showed levels in her system that were consistent with the prescribed dosage and that Ellen was using the medication as directed.
- 51. Similarly, the claim that websites accessed and Internet searches conducted from Ellen's laptop demonstrate a predisposition to suicide is not founded. Ellen's web browser history has not been fully analyzed, and issues involving access to the Internet from her laptop have never been fully investigated. The question whether Ellen or someone else was in possession of the laptop when the Internet was accessed remains unanswered. The reason(s) why certain websites were accessed from her laptop have not been explored. For instance, it remains unknown whether the links were accessed because they involved current event stories or for some other purpose. These and other relevant inquiries may only be answered through investigation that has not to date been started, let alone completed.

- 52. The abundance of evidence gathered and analyzed to date raises serious questions regarding Ellen Greenberg's manner of death, and Dr. Osborne, having prepared the two prior Certificates of Death—ruling the manner of Ellen's death as both a homicide and suicide, respectively—is charged under the law with the responsibility of revising his previous conclusions if necessary based on newly discovered evidence and analyses.
- 53. Despite receipt of the package, and ample time to review and consider the information contained within it, Dr. Osbourne has not indicated a willingness to voluntarily change the manner of death on Ellen Greenberg's Certificate of Death dated April 4, 2011, nor has he made any attempt to contact representatives of the Plaintiffs to discuss any aspect of the contents of the letter and/or the materials enclosed with the letter.

D. Impact of Dr. Osbourne's and MEO's Acts/Omissions

- 54. The April 4, 2011 changing of the manner of death on Ellen's Certificate of Death from homicide to suicide has harmed and continues to harm the Estate of Ellen Greenberg, deceased, and has other far reaching negative consequences.
- 55. The information in the Certificate of Death is considered *prima facie* evidence of the fact of death that can be introduced in court as evidence, and would have evidentiary value in a claim or dispute involving Ellen's Estate.
- 56. Also, like it or not, our society stigmatizes suicide, disparaging the person who ended her life as selfish, crazy, and looking for an easy way out. Further, this stigma deprives surviving family members of the closure and peace of mind to which they are otherwise entitled.
- 57. Furthermore, the contents of the Death Certificate, particularly the sections on cause and manner of death, are the source for State and national mortality statistics and are relied upon to determine which medical conditions receive research and development funding, to set

public health goals, and to measure health status at local, State, national and international levels. Said another way, the important statistical data derived from death certificates can be no more accurate or reliable than the information provided on the certificate.

- 58. Similarly, the mortality data collected from the information in death certificates, like the one at issue, are valuable to physicians indirectly, as these data influence funding for medical and health research (which may alter clinical practice), and directly, as a research tool. Research topics include examining medical or mental health problems that may be found among specific groups of people and indicating areas in which medical research can have the greatest impact on reducing mortality.
- 59. In addition, the goals of securing justice and promoting criminal accountability are impeded by death certificates containing inaccurate causes or manners of death.

COUNT I

Mandamus

Joshua M. Greenberg, DMD, and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased v. Marlon Osbourne, M.D., and Philadelphia County Medical Examiner's Office

- 60. The representations in the forgoing paragraphs of this Complaint are incorporated herein as though fully set forth at length.
- 61. Defendants' primary responsibility in death registration is to complete the medical part of the death certificate, including the portions of the certificate pertaining to the cause and manner of death.
- 62. The proper completion of the medical sections of the death certificate is of utmost importance to the efficient working of a medical-legal investigative system.

- 63. Once additional medical information becomes available that would change the cause or manner of death originally reported, the original death certificate must be amended by the Defendants by immediately reporting the revised cause or manner of death to the Commonwealth's vital records office or local registrar.
- 64. The National Association of Medical Examiners ("NAME") and Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics ("CDC") distinguish the pertinent manners of death as follows:

Suicide—"results from an injury or poisoning as a result of an intentional, self-inflicted act committed to do self-harm or cause the death of one's self."

Homicide—"occurs when death results from …" an injury or poisoning or from "… a volitional act committed by another person to cause fear, harm, or death. Intent to cause death is a common element but is not required for classification as homicide."

Could not be determined—"used when the information pointing to one manner of death is no more compelling than one or more other competing manners of death when all available information is considered."

See A Guide for Manner of Death Classification ("NAME's Guide"), pertinent portions of which are attached hereto and incorporated herein as Exhibit "I," and Medical Examiners' and Coroners' Handbook on Death Registration and Fetal Death Reporting ("CDC's Handbook"), pertinent portions of which are attached hereto and incorporated herein as Exhibit "J."

65. The distinctions the NAME's Guide and the CDC's Handbook make between "Suicide," "Homicide," and "Could not be determined" as manners of death are followed and adopted in this Commonwealth, as are the other contents of the NAME's Guide and CDC's Handbook.

- 66. In addition, both the NAME's Guide and CDC's Handbook maintain that "suicide" or "homicide" may only be selected as a manner of death if the selection is based on reasonable medical certainty after thorough investigation. Absent such certainty, the manner of death of "Could not be determined" must be checked on the Certificate of Death.
- 67. According to the NAME's Guide, "to classify a death as Suicide, the burden of proof need not be 'beyond any reasonable doubt,' but it should exceed 'more likely than not' (that is, the burden of proof should be more compelling than 51% which barely exceeds chance)."
- 68. As a result, the NAME's Guide maintains that the selection of suicide as a manner of death requires a 70% or greater degree of medical certainty.
- 69. As noted above, upon completion of the autopsy on January 27, 2011, the Defendants obtained overwhelming medical evidence that the manner of Ellen Greenberg's death was a "homicide."
- 70. The Defendants later changed the manner of Ellen Greenberg's death from "homicide" to "suicide" based, not on any additional probative medical evidence obtained in the investigation of this case, but instead on the Philadelphia Police Department's non-medical and explainable argument that Ellen lacked defensive wounds on her hands.
- 71. The necessary degree of medical certainty to support the selection of "Suicide" as the manner of Ellen's death under the NAME's Guide's standards is patently lacking.
- 72. Concomitantly, the information recently supplied to the Defendants in the package provided to Dr. Osbourne, in addition to that information already known to the Defendants in 2011, establish as a matter of law that the selection of "Suicide" as Ellen

Greenberg's manner of death is no more compelling than one or more other competing manners of death when all the available information is considered.

- 73. Indeed, the fact that the Defendants have flip-flopped on the selection of the manner of Ellen Greenberg's death without any medical justification is itself enough to prove, as a matter of law, that the selection of "Suicide" as the manner of death is no more compelling than one or more of the other competing manners of death when all the available information is considered.
- 74. Given the circumstances here, Ellen Greenberg's Certificate of Death dated April 4, 2011 must be changed to indicate that the manner of her death "Could not be determined."

WHEREFORE, the plaintiffs, Joshua M. Greenberg, DMD, and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased, respectfully request that this Honorable Court grant their mandamus relief request and order that the Certification of Death for Ellen R. Greenberg dated April 4, 2011, record a manner of death as "Could not be determined," and such other relief as this Court deems warranted.

COUNT II

Declaratory Relief

Joshua M. Greenberg, DMD, and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased v. Marlon Osbourne, M.D., and Philadelphia County Medical Examiner's Office

- 75. The representations in the forgoing paragraphs of this Complaint are incorporated herein as though fully set forth at length.
- 76. In performing their responsibilities and duties as described above, Defendants cannot act capriciously or arbitrarily, and their discretion is always subject to review.

77. The Defendants' change of the manner of death for Ellen R. Greenberg in the

Certificate of Death dated April 4, 2011 was arbitrary and/or capricious because the selection of

"Suicide" (a) is no more compelling than one or more of the other competing manners of death

when all the available information is considered under the NAME's Guide and the CDC's

Handbook; (b) does not meet the minimum degree of medical certainty necessary to meet the

NAME's Guide's standards; and (c) was based on an unlawful delegation by the Defendants of

their duties to investigate and determine the manner of Ellen Greenberg's death for purposes of

the Certificate of Death.

WHEREFORE, the plaintiffs, Joshua M. Greenberg, DMD, and Sandra Greenberg, as

the Administrators of the Estate of Ellen R. Greenberg, deceased, respectfully request that this

Honorable Court grant their request for declaratory relief and enter an order declaring the manner

of Ellen Greenberg's death to be classified as "Could not be determined," and such other relief as

this Court deems warranted.

Respectfully submitted,

LAMB McERLANE PC

BY:

/s/ Joseph R. Podraza, Jr.

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(215) 609-3170

(610) 430-8000

Date: October 15, 2019

Attorneys for the Plaintiffs

23

Case ID: 191001241

VERIFICATION

I, Joshua M. Greenberg, DMD, am an Administrator of the Estate of Ellen R. Greenberg, a plaintiff in the subject action, and verify that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief. I do further understand that these statements are made subject to the penalties of 18 Pa.C.S. Sec. 4904, relating to unsworn falsification to authorities.

Date

Joshya M. Greenberg, DMD, Administrator of the Estate of Ellen R. Greenberg

VERIFICATION

I, Sandra Greenberg, am an Administrator of the Estate of Ellen R. Greenberg, a plaintiff in the subject action, and verify that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief. I do further understand that these statements are made subject to the penalties of 18 Pa.C.S. Sec. 4904, relating to unsworn falsification to authorities.

75 /16 /19 Date

Sandra Greenberg, Administrator of the

Estate of Ellen R. Greenberg

LAMB McERLANE PC

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Attorneys for Plaintiffs

PHILADELPHIA COUNTY

IN THE COURT OF COMMON PLEAS

JOSHUA M. GREENBERG, DMD, and

SANDRA GREENBERG, as the

Administrators of the Estate of ELLEN R. GREENBERG, DECEASED,

4408 Saybrook Lane

Harrisburg, PA 17110,

CIVIL ACTION

Plaintiffs, Term:

No.

MARLON OSBOURNE, M.D., 5301 SW 31st Avenue

Fort Lauderdale, FLA 33312,

-and-

PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE, 321 University Avenue Philadelphia, PA 19104,

Defendants.

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of* the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

LAMB MCERLANE PC

/s/ Joseph R. Podraza, Jr. By: Joseph R. Podraza, Jr., Esquire ipodraza@lambmcerlane.com

FILED

21 JUN 2021 09:53 am

Civil Administration

T. FOBBS

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TABLE OF EXHIBITS

- A. Plaintiff's Complaint
 - A1 Exhibits to Complaint
- B. Death Certificate, January 27, 2011
- C. Medical Examiner's Final Report
- D. Report of Medical Examiner Investigator Olszewski
- E. Philadelphia <u>Inquirer</u>, "Police Leaning Toward Suicide In Teacher Death," January 29, 2011
- F. Amended Death Certificate, April 4, 2011
- G. Plaintiffs' Reply to New Matter
- H. Philadelphia <u>Inquirer</u>, Stephanie Farr, "Locked Room Mystery," March 15, 2019.
- I. Email from Joe Grace, Office of the Attorney General, to Stephanie Farr,
- J. Declaration of Kirsten Heine, Chief Deputy, Office of the Attorney General
- K. Letter from Joseph Podraza, Esq., to Marlon Osbourne, M.D.
- L. Report of Wayne Ross, M.D. (Complaint Exh.E)
- M. Report of Cyril Wecht, M.D. (Complaint Exh. F)
- N. Report of Lee Institute (Complaint Exh. G)
- O. Report of Scott Eelman (Complaint Exh. H)
- P. Deposition of Lyndsey Emery
- Q. Notes of Lyndsey Emery, August 2019
- R. Declaration of Lyndsey Emery
- S. Plaintiffs' Final Response to Defendants' First Set of Interrogatories
- T. Defendants Letter Requesting Supplemental Answers
- U. Plaintiffs' Supplemental Answer to Defendants' First Set of Interrogatories
- V. Deposition of Samuel Gulino, M.D.
- W. Deposition of Marlon Osbourne, M.D.
- X. National Association of Medical Examiner's Guide

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Attorneys for Plaintiffs

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, DECEASED, 4408 Saybrook Lane Harrisburg, PA 17110,

Plaintiffs,

v.

MARLON OSBOURNE, M.D., 5301 SW 31st Avenue Fort Lauderdale, FLA 33312,

-and-

PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE, 321 University Avenue Philadelphia, PA 19104,

Defendants.

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY

CIVIL ACTION

Term:

No.

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte

entered against you by the court without further notice for any money claimed in the complaint of for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Philadelphia Bar Association Lawyer Referral and Information Service One Reading Center Philadelphia, Pennsylvania 19107 (215) 238-6333 TTY (215) 451-6197 tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decider a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado immediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

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Attorneys for Plaintiffs

PHILADELPHIA COUNTY

IN THE COURT OF COMMON PLEAS

JOSHUA M. GREENBERG, DMD, and

SANDRA GREENBERG, as the

Administrators of the Estate of ELLEN R. GREENBERG, DECEASED,

4408 Saybrook Lane

Harrisburg, PA 17110,

CIVIL ACTION

Plaintiffs, : Term:

. : No.

MARLON OSBOURNE, M.D., 5301 SW 31st Avenue Fort Lauderdale, FLA 33312,

-and-

PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE, 321 University Avenue Philadelphia, PA 19104,

Defendants.

COMPLAINT – IN EQUITY Mandamus and Declaratory Relief Requested

Plaintiffs, Joshua M. Greenberg, DMD, and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased, by and through undersigned counsel, file this Complaint in equity, in the Court of Common Pleas of Philadelphia County, and, in support thereof, aver as follows:

I. Introduction

- 1. This action seeks mandamus or, alternatively, declaratory relief to change the manner of death on the Certificate of Death of Ellen R. Greenberg, deceased, from suicide to "Could not be determined," the category for manner of death Defendants were at a minimum required to check under the circumstances. This action is compelled because the Defendants have declined to voluntarily perform this nondiscretionary act.
- 2. Ellen R. Greenberg died on January 26, 2011, from multiple stab wounds varying in depth to the back of her head and neck, as well as to her chest and abdomen. The medical evidence indicates that not all of these wounds could have possibly been self-inflicted.

 Moreover, this evidence strongly establishes a knife other than the one recovered at the scene was used to inflict many of Ellen's twenty (20) separate stab wounds. Other information, some just recently obtained, firmly draws into doubt if not forcefully rebuts a finding of suicide.
- 3. Unsurprisingly, after thorough autopsy and toxicology examinations, Defendants initially ruled Ellen Greenberg's death was a homicide. Later, and only after the Philadelphia Police Department had begun to publicly contradict the Defendants' medical findings, the Defendants inexplicably changed the manner of her death from homicide to suicide without explanation, and without any compelling reasons or sufficient medical support for this reversal.
- 4. However, as a matter of law, the Defendants had no discretion to change the manner of Ellen's death from homicide to suicide. Instead, under the circumstances here, they were at a minimum required to conclude and record the manner of Ellen's death "Could not be determined." Their selection of suicide further represents an arbitrary and capricious act.
- 5. The negative consequences of the Defendants' misconduct is far reaching, not only impacting Ellen's Estate, but her family members, the vital statistics registration system in

the Commonwealth and United States, and the basic goals of our system of criminal justice and accountability.

II. The Parties

- 6. Plaintiffs Joshua M. Greenberg, DMD, and Sandra Greenberg, husband and wife, are adult individuals and citizens of Pennsylvania, residing at 4408 Saybrook Lane, Harrisburg, PA 17110, and are the parents of Ellen R. Greenberg, deceased. Letters Testamentary have been issued to Joshua M. Greenberg, DMD, and Sandra Greenberg by the Philadelphia County Court of Common Pleas, Orphans Court Division, for the administration of the Estate of Ellen R. Greenberg.
- 7. Defendant Marlon Osbourne, M.D. ("Dr. Osbourne") is, at all times relevant hereto, a physician specializing in the field of pathology, and, in 2011, was duly licensed to practice medicine in Pennsylvania and was employed as a pathologist at the Philadelphia County Medical Examiner's Office. Dr. Osbourne presently maintains a business address at 5301 SW 31st Avenue, Fort Lauderdale, FL 33312.
- 8. Defendant Philadelphia County Medical Examiner's Office ("MEO"), through its affiliated pathologists, has responsibility for issuing death certificates after determining the cause and manner of death, to the extent either or both can be compellingly ascertained, for sudden, unexpected, and unnatural deaths occurring within the boundaries of Philadelphia County. The MEO, through its affiliated pathologists, is charged with conducting an investigation into the cause and manner of death in such circumstances, including, if necessary, performing an autopsy. Ultimately, the MEO pathologist is solely responsible for determining both the cause and manner of death on the Commonwealth's Certification of Death in every case that the MEO

handles. At all times relevant here, the MEO maintained a business address at 321 University Avenue, Philadelphia, PA 19104.

III. Jurisdiction

- 9. Jurisdiction over the parties in the Courts of the Commonwealth of Pennsylvania is proper pursuant to 42 Pa.C.S. Sec. 5301, *et seq*. Specifically, with respect to Dr. Osbourne, it is averred that jurisdiction is proper pursuant to 42 Pa.C.S. Sec. 5322(a)(1)(i), (ii), and (iv) by reason of his transacting business in this Commonwealth and 42 Pa.C.S. Sec. 5322(a)(3) by reason of his having caused the harm at issue by an act or omission in this Commonwealth.
- 10. Venue is proper in the Court of Common Pleas of Philadelphia County under Pa.R.C.P. 1006 and 2103 inasmuch as the MEO regularly conducts business in the County of Philadelphia at 321 University Avenue, Philadelphia PA 19104 and some of the acts and omissions by Dr. Osbourne that form the bases for this lawsuit in equity occurred when he was employed by the MEO at its business address and continued to occur once his employment ended because he alone may be compelled to amend the manner of death stated in Ellen Greenberg's Certification of Death under 28 Pa.Code Sec. 1.37.

IV. Facts

- 11. In January 2011, Ellen Greenberg was 27 years old living in Philadelphia, Pennsylvania, a popular elementary school teacher employed at the Juniata Park Academy located in Philadelphia, PA, and engaged to be married that upcoming August 2011.
- 12. On January 26, 2011, a Wednesday, the Juniata Park Academy closed early due to the heavy snow falling throughout the Philadelphia region. Ellen Greenberg headed home from work, making sure to top off her gas tank on the way to her nearby apartment in the Manayunk neighborhood of Philadelphia.

- 13. Once home, as the blizzard outside continued throughout the afternoon and into the evening, Ellen Greenberg relaxed and began cutting fruit for a salad she would never get the chance to eat.
- 14. Around dinnertime on January 26, 2011, Ellen Greenberg was found dead on her kitchen floor, propped with her head slumped against a cabinet. There was a ten-inch-long, serrated knife imbedded deep in her chest, the last of her twenty (20) stab wounds. Ten (10) of these had been inflicted to the back of her neck and head, including two (2) penetrating deep into her brain.
- 15. At the scene on January 26, 2011, investigators found, along with the half-made fruit salad, blood covering Ellen Greenberg's body, pooled on the floor and present on the surrounding cabinets. The knife block where the knife in Ellen Greenberg's chest was normally kept was upended, its contents having skittered with some force across the counter and into the sink.
- 16. Although most of the police officers who arrived on the scene that night believed immediately that Ellen Greenberg had been murdered, the lead, on-scene Homicide Detective inexplicably ruled the manner of death a suicide. As a result, crime scene protocols and other precautions typically implemented by the police in cases where homicide is suspected were not observed at the apartment.
- 17. Ellen Greenberg's body eventually was transported from her apartment to the MEO's offices in order to conduct an autopsy to ascertain the medical cause and manner of her death.

A. *January 27, 2011 Autopsy*

- 18. The next day, January 27, 2011, at the MEO facility in West Philadelphia, Dr. Osbourne performed the requisite autopsy on Ellen Greenberg's body.
- 19. The medical autopsy revealed that Ellen Greenberg had been stabbed eight (8) separate times in her chest, with the depth of each slash varying from .2 cm to 10 cm. The autopsy further revealed (a) a 6 cm deep puncture in Ellen's abdomen; (b) a 6.5 cm long gash across her scalp; and (c) ten (10) individual stab wounds to her neck ranging in depths from .2 cm to 7 cm. Her cranial cavity had been penetrated by one of her neck wounds, severing the cranial nerves and brain. Medically, this deep laceration alone would have led Ellen to experience severe pain, cranial nerve dysfunction and traumatic brain signs and symptoms, including numbness, tingling, and impaired or loss of consciousness. A true and correct copy of the report and findings by the Office of Medical Examiner is attached hereto and incorporated herein as Exhibit "A."
- 20. In addition to the fatal injuries Ellen endured from repeated stabbings, the autopsy by Dr. Osbourne alarmingly revealed numerous, unexplained bruises covering Ellen's body "in various stages of resolution." Noticeable bruises were found at her upper and lower extremities, and similar bruises were observed on her right upper arm, right forearm, right lower abdomen, right thigh, and above her right knee. Medically, the pattern, severity and number of these bruises suggested repeated physical altercations.
- 21. Confronted with these potent and horrific medical findings, Dr. Osbourne concluded after completing the autopsy on January 27, 2011, that the manner and cause of Ellen Greenberg's death was "homicide" due to "multiple stab wounds," repudiating the prior, non-medical conclusion that her death was a suicide. Dr. Osborne formally memorialized his medical

opinion regarding Ellen Greenberg's death in a Certification of Death which Dr. Osborne signed on January 27, 2011. A true and correct copy of the Certification of Death (dated January 27, 2011) is attached hereto and incorporated herein as Exhibit "B."

B. External Non-Medical Pressure to Change the Manner of Death

- 22. Dr. Osbourne's medical decisions on the cause and manner of Ellen Greenberg's death on January 27, 2011 were final, binding, and not subject to amendment unless additional medical information or autopsy findings became available which compelled a change to either or both decisions.
- 23. On or about February 1, 2011, the public, through a press release by the Philadelphia Police Department, was told of Dr. Osbourne's and the MEO's medical findings as to the cause and manner of Ellen Greenberg's death.
- 24. Inexplicably, however, days later, the Philadelphia Police Department and not Dr. Osbourne or the MEO reversed course, insisting incorrectly that Ellen's case had not been ruled a homicide, but was instead being investigated as suspicious.
- 25. Then, by February 18, 2011, the Philadelphia Police Department without the concurrence of Dr. Osbourne or the MEO officially declared without explanation that the death of Ellen Greenberg had been ruled a suicide.
- 26. Ostensibly bowing to the improper public pressure by the Philadelphia Police Department, the MEO and Dr. Osbourne on March 3, 2011, "officially updated" without explanation Ellen Greenberg's Death Certificate from homicide to suicide.
- 27. On April 4, 2011, Dr. Osbourne, again without explanation, formally changed the manner of Ellen Greenberg's death on her Certificate of Death from homicide to suicide. A true

and correct copy of the Certificate of Death (dated April 4, 2011) is attached hereto and incorporated herein as Exhibit "C."

- 28. Only years later in mid-October 2018, did Dr. Osbourne honestly admit that, in complete dereliction of his legal duty never to delegate to non-medical parties (like the police) decisions pertaining to the determination of the manner of death in MEO cases -- he had changed the manner of Ellen Greenberg's death in April 2011 solely "at the insistence of the police because they said there was a lack of defense wounds."
 - C. Recently Provided Additional Medical Information Mandates Amendment to Ellen Greenberg's April 4, 2011 Certificate of Death
- 29. In September 2019, Plaintiffs formally requested Dr. Osbourne voluntarily amend Ellen Greenberg's Certification of Death to reflect a manner of death other than suicide based on additional medical and other information of which Dr. Osbourne was not familiar in early 2011, a substantial portion of which only became recently available to the Plaintiffs. A true and correct copy of the letter dated September 3, 2019 (without enclosures) is attached hereto and incorporated herein as Exhibit "D."
- 30. The information in the package sent to Dr. Osbourne included reports by several eminently qualified experts in the fields of medical forensics and neuropathology who have unanimously concluded that Ellen's death could not have been the result of a suicide.
- 31. Wayne K. Ross, M.D., a well-credentialed, board-certified pathologist who specializes in forensic pathology and neuropathology, conducted his own independent investigation, including a reexamination of Ellen's spinal cord specimen retained by the MEO, and concluded beyond a doubt, among other things, that it simply is not possible that all of the

wounds suffered by Ellen were self-inflicted. True and correct copies of the reports by Dr. Ross are attached hereto and incorporated herein as Exhibit "E."

- 32. Similarly, Cyril M. Wecht, M.D., also a preeminent forensic pathologist, after conducting his own examination of the complete reports, concluded consistently with Dr. Ross that, not only could this have not been a suicide, but that all pathological indications pointed toward homicide. A true and correct copy of Dr. Wecht's report is attached hereto and incorporated herein as Exhibit "F."
- 33. Henry C. Lee, Ph.D., of the Institute of Forensic Science at the University of New Haven, concluded after reviewing the entire case file that the number and type of wounds inflicted on Ellen Greenberg as well as the bloodstain patterns observed, were consistent with the scene of a homicide, not a suicide. A true and correct copy of Dr. Lee's report is attached hereto and incorporated herein as Exhibit "G."
- 34. Consistent with these findings, as set forth in a March 15, 2019 article published in the *Philadelphia Inquirer*, Guy D'Andrea, a former Philadelphia homicide prosecutor who reviewed the entire case file before leaving the District Attorney's Office, Gregory McDonald, chief deputy coroner for Montgomery County, and Robert D. Keppel, retired chief criminal investigator for the Washington State Attorney General's Office, all determined the physical evidence raised serious questions that not only undermined a finding of suicide in Ellen's case but, in some cases, warranted a determination of homicide.
- 35. The letter accompanying the package also referenced other considerations, which warranted the change of the manner of Ellen's death from suicide.
- 36. For instance, the letter discusses the substantial forensic evidence suggesting more than one weapon was used in Ellen's death, although only one was recovered at the scene.

According to Dr. Ross, powerful evidence exists which establishes that two knives – one serrated, one smooth-bladed – were used in Ellen's death, although the only knife recovered at the scene was of the serrated variety and found imbedded deep in Ellen's chest. The import of Dr. Ross' conclusion cannot be overstated. If a second knife was used in Ellen's death but not recovered at the scene, someone other than Ellen necessarily disposed of it, which alone rules out suicide as a cause of death.

- 37. In addition, expert analysis and a crime scene recreation recently completed persuasively establish that not all of Ellen's wounds could have possibly been self-inflicted. According to Dr. Ross, she would have been rendered physically incapable of inflicting more wounds before the final stab was administered to Ellen's chest. Ellen suffered a significant wound at the base of her skull that penetrated her brain by several centimeters. This particular wound resulted from an upward strike to the base of the skull that would have been difficult, if not impossible, for her to inflict on herself. Moreover, Dr. Ross conducted a forensic examination of a preserved sample of spinal tissue and concluded that the injury inflicted on the nervous system by this blow would have rendered Ellen incapacitated and incapable of performing further harm, up to and including the final stab-wound to the chest. A recreation report included in the package sent to Dr. Osbourne adds further credibility to Dr. Ross' conclusion that the position, angle, force and number of Ellen's wounds suggest Ellen could not have inflicted all the wounds she sustained on herself.
- 38. The recent submission to Dr. Osbourne similarly raises serious questions about the nature and extent of another medical professional's involvement Dr. Lucy Rorke-Adams in Ellen's case in 2011 on which the police purportedly relied in contending Ellen's death was due to suicide. According to the police investigators, when confronted with questions arising

from the irregular wound pattern on Ellen's body, particularly the frequency and severity of certain injuries preceding the final chest wound as noted above, the investigators reached out to Dr. Rorke-Adams, a neuropathologist with whom the Philadelphia Police and MEO consulted from time to time. The police investigators represent in a passing reference that Dr. Rorke-Adams concluded after conducting an examination of the spinal tissue that the damage inflicted at the base of the skull to the brain and spine could have resulted in Ellen merely becoming numb to the pain of the subsequent stab wounds while leaving her still sufficiently ambulatory to inflict further wounds.

- 39. But there is no evidence that Dr. Rorke-Adams ever conducted any examination of Ellen's spinal tissue in 2011. She never issued a report, was never paid for her services, and although there are records of Dr. Rorke-Adams performing examinations on the days preceding and following the date of her alleged examination of Ellen's spinal tissue, there are no records that she performed any work for the City of Philadelphia on the date noted in the report.

 Furthermore, Dr. Rorke-Adams has no recollection of consulting with the Police Department or MEO on that date, and there is no corroborating record of her being picked up and brought to the MEO as the reports suggest. In fact, in interviews with the *Philadelphia Inquirer*, Dr. Rorke-Adams claimed to have no recollection of the case at all and further stated the lack of any invoice or report of her findings confirms that she had no involvement in the case.
- 40. Dr. Rorke-Adams' purported involvement is crucial, as her medical conclusion is a necessary element in the ultimate suicide finding, for without any explanation as to how it was physiologically possible for Ellen to inflict further wounds to her own person after suffering a blow that substantially severed her spinal cord, the ultimate finding of suicide would have been impossible.

- 41. The letter accompanying the package sent to Dr. Osbourne also drew his attention to blood-pattern evidence which suggests Ellen's body was moved or repositioned postmortem. Upon review of the crime scene photographs and other evidence, the independent experts have concluded that Ellen was lying down and later moved into the sitting position in which she was discovered by investigators. For example, clear from the photographs of the scene is a trail of blood running horizontally, parallel to the floor, along the side of Ellen's face, which Detective Scott Eelman confirmed defies the laws of gravity and means Ellen's body was moved after the blood had already dried.
- 42. Detective Eelman, a specialist in crime scene reconstruction who regularly pairs with Dr. Ross, also analyzed the bloodstains on Ellen's sweatpants, sweatshirt and shoes and found other evidence consistent with her being moved or repositioned postmortem, concluding that she had been in a position different from that in which she was found at the time the blood was deposited on her sweatpants, sweatshirt and shoes. A true and correct copy of Detective Eelman's report is attached hereto and incorporated herein as Exhibit "H." He further concluded that Ellen's head had been in several positions during the time of blood flow and for long enough as to have the blood flow across her face and back toward her ear, upward toward her eyes and also downward toward her chin in a manner that is inconsistent with the position in which Ellen was found by investigators.
- 43. Reference is made in the letter to Dr. Osbourne to the absence of any evidence (explicit or implicit) that, on January 26, 2011, Ellen intended to kill herself or wished to die and that she understood the probable consequences of her actions. Instead, the events leading up to Ellen's death are inconsistent with suicide. After leaving work early that day due to the snowstorm, Ellen filled her car's empty gas tank. Also, Ellen was halfway through preparing a

fruit salad when the stabbings began, which salad was left unfinished on the counter as seen in the photographs of the scene. In addition, Ellen's treating psychiatrist, Ellen Berman, M.D., is adamant Ellen was not suicidal. All the wounds to Ellen's chest and abdomen were inflicted through her clothing, which, as the investigators concluded, is highly unusual in cases of suicide. In nearly all documented cases, an individual will lift his or her clothing and stab directly into bare skin. As the independent experts have indicated, Ellen's behavior is not consistent with someone preparing to commit suicide and, when considered in light of the other serious questions surrounding her death, suggests another explanation.

- 44. In the same vein, Ellen's history and behavior are not consistent with those associated with someone intending to commit suicide. Ellen made no verbal or nonverbal expressions of intent to kill herself. No implicit or indirect evidence of intent to die exists. She did not express feelings of hopelessness. She did not rehearse fatal behavior. She made no preparations for death, inappropriate to or unexpected in the context of her life. She made no expressions of farewell or desire to die, or acknowledgement of impending death. She had made no previous suicide attempt, or even previously threatened suicide. She did not have serious depression or mental disorder as confirmed by Dr. Berman. She left no suicide note.
- 45. Moreover, as further pointed out in the letter to Dr. Osbourne, the arguments raised to support a finding of suicide by Ellen are at best inconclusive and plainly require further investigation.
- 46. The principal factor in concluding Ellen's death was suicide was the claim that the front door to her apartment was locked from the inside with the safety bar engaged just prior to and at the time of her death.

- 47. But, as noted in the letter accompanying the package to Dr. Osbourne, that the door was locked from the inside just prior to and at the time of Ellen's death was merely accepted and was never itself properly tested. As noted in the expert reports and visible in the photographs of the apartment, the safety bar remained intact and undamaged, and, although disengaged, was still attached, albeit loosely, to the door and doorframe, respectively. Had the door been forced open from the outside without first disengaging the safety bar as the investigators concluded, at least one of its ends necessarily would have been ripped from its screws in either the door or the doorframe. Tests performed by one investigator using an identical mechanism repeatedly confirmed this. Contrariwise, the damaged but functional safety bar depicted in the photograph was consistent with the application of force to the door, but not entry, as if the door had been pulled from the inside causing the damage seen in the photographs and then manually disengaged.
- 48. The letter to Dr. Osbourne also points out that although a forced entry was reported by Ellen's fiancé, who told the police investigators that, upon finding the safety bar engaged and Ellen not responding to his text messages, he kicked the door open in the presence of a member of the building's security, the member of the security staff allegedly present when Ellen's fiancé allegedly kicked in the door is firm that he was not present as claimed.
- 49. Another of the factors cited by the Philadelphia Police in support of the finding of suicide was the lack of defensive wounds on Ellen's hands and arms, which wounds the police contend would be expected on the victim of a knife attack of this nature. However, as Dr. Ross explained in his report, the stab wound inflicted upward at the base of Ellen's skull to her spine and brain would have been incapacitating and made further resistance impossible. Moreover, Dr. Ross did find evidence of fresh bruises and a fingernail imprint on Ellen's neck, suggesting she

may have been physically overwhelmed and rendered defenseless by her attacker at the outset of the altercation, further explaining the lack of defensive wounds customary in knife attacks.

Moreover, a lack of defensive wounds is not unheard of in these instances, particularly when the victim is attacked quickly so as not to be able to defend herself, what one investigator described as the proverbial "blitz attack."

- 50. A suggestion likewise has been made that Ellen's mental state supports a finding of suicide. As discussed in the letter to Dr. Osbourne, Ellen had obtained treatment for her anxiety in the weeks preceding her death, and there is no indication from her therapist or elsewhere that Ellen had exhibited a predisposition toward self-harm or that she entertained any suicidal ideations at any time. In fact, Dr. Berman maintains Ellen did not exhibit any indications of suicidal ideation while under her professional care. Prescribed Klonopin for her anxiety, the toxicology screens showed levels in her system that were consistent with the prescribed dosage and that Ellen was using the medication as directed.
- 51. Similarly, the claim that websites accessed and Internet searches conducted from Ellen's laptop demonstrate a predisposition to suicide is not founded. Ellen's web browser history has not been fully analyzed, and issues involving access to the Internet from her laptop have never been fully investigated. The question whether Ellen or someone else was in possession of the laptop when the Internet was accessed remains unanswered. The reason(s) why certain websites were accessed from her laptop have not been explored. For instance, it remains unknown whether the links were accessed because they involved current event stories or for some other purpose. These and other relevant inquiries may only be answered through investigation that has not to date been started, let alone completed.

- 52. The abundance of evidence gathered and analyzed to date raises serious questions regarding Ellen Greenberg's manner of death, and Dr. Osborne, having prepared the two prior Certificates of Death—ruling the manner of Ellen's death as both a homicide and suicide, respectively—is charged under the law with the responsibility of revising his previous conclusions if necessary based on newly discovered evidence and analyses.
- 53. Despite receipt of the package, and ample time to review and consider the information contained within it, Dr. Osbourne has not indicated a willingness to voluntarily change the manner of death on Ellen Greenberg's Certificate of Death dated April 4, 2011, nor has he made any attempt to contact representatives of the Plaintiffs to discuss any aspect of the contents of the letter and/or the materials enclosed with the letter.

D. Impact of Dr. Osbourne's and MEO's Acts/Omissions

- 54. The April 4, 2011 changing of the manner of death on Ellen's Certificate of Death from homicide to suicide has harmed and continues to harm the Estate of Ellen Greenberg, deceased, and has other far reaching negative consequences.
- 55. The information in the Certificate of Death is considered *prima facie* evidence of the fact of death that can be introduced in court as evidence, and would have evidentiary value in a claim or dispute involving Ellen's Estate.
- 56. Also, like it or not, our society stigmatizes suicide, disparaging the person who ended her life as selfish, crazy, and looking for an easy way out. Further, this stigma deprives surviving family members of the closure and peace of mind to which they are otherwise entitled.
- 57. Furthermore, the contents of the Death Certificate, particularly the sections on cause and manner of death, are the source for State and national mortality statistics and are relied upon to determine which medical conditions receive research and development funding, to set

public health goals, and to measure health status at local, State, national and international levels. Said another way, the important statistical data derived from death certificates can be no more accurate or reliable than the information provided on the certificate.

- 58. Similarly, the mortality data collected from the information in death certificates, like the one at issue, are valuable to physicians indirectly, as these data influence funding for medical and health research (which may alter clinical practice), and directly, as a research tool. Research topics include examining medical or mental health problems that may be found among specific groups of people and indicating areas in which medical research can have the greatest impact on reducing mortality.
- 59. In addition, the goals of securing justice and promoting criminal accountability are impeded by death certificates containing inaccurate causes or manners of death.

COUNT I

Mandamus

Joshua M. Greenberg, DMD, and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased v. Marlon Osbourne, M.D., and Philadelphia County Medical Examiner's Office

- 60. The representations in the forgoing paragraphs of this Complaint are incorporated herein as though fully set forth at length.
- 61. Defendants' primary responsibility in death registration is to complete the medical part of the death certificate, including the portions of the certificate pertaining to the cause and manner of death.
- 62. The proper completion of the medical sections of the death certificate is of utmost importance to the efficient working of a medical-legal investigative system.

- 63. Once additional medical information becomes available that would change the cause or manner of death originally reported, the original death certificate must be amended by the Defendants by immediately reporting the revised cause or manner of death to the Commonwealth's vital records office or local registrar.
- 64. The National Association of Medical Examiners ("NAME") and Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics ("CDC") distinguish the pertinent manners of death as follows:

Suicide—"results from an injury or poisoning as a result of an intentional, self-inflicted act committed to do self-harm or cause the death of one's self."

Homicide—"occurs when death results from …" an injury or poisoning or from "… a volitional act committed by another person to cause fear, harm, or death. Intent to cause death is a common element but is not required for classification as homicide."

Could not be determined—"used when the information pointing to one manner of death is no more compelling than one or more other competing manners of death when all available information is considered."

See A Guide for Manner of Death Classification ("NAME's Guide"), pertinent portions of which are attached hereto and incorporated herein as Exhibit "I," and Medical Examiners' and Coroners' Handbook on Death Registration and Fetal Death Reporting ("CDC's Handbook"), pertinent portions of which are attached hereto and incorporated herein as Exhibit "J."

65. The distinctions the NAME's Guide and the CDC's Handbook make between "Suicide," "Homicide," and "Could not be determined" as manners of death are followed and adopted in this Commonwealth, as are the other contents of the NAME's Guide and CDC's Handbook.

- 66. In addition, both the NAME's Guide and CDC's Handbook maintain that "suicide" or "homicide" may only be selected as a manner of death if the selection is based on reasonable medical certainty after thorough investigation. Absent such certainty, the manner of death of "Could not be determined" must be checked on the Certificate of Death.
- 67. According to the NAME's Guide, "to classify a death as Suicide, the burden of proof need not be 'beyond any reasonable doubt,' but it should exceed 'more likely than not' (that is, the burden of proof should be more compelling than 51% which barely exceeds chance)."
- 68. As a result, the NAME's Guide maintains that the selection of suicide as a manner of death requires a 70% or greater degree of medical certainty.
- 69. As noted above, upon completion of the autopsy on January 27, 2011, the Defendants obtained overwhelming medical evidence that the manner of Ellen Greenberg's death was a "homicide."
- 70. The Defendants later changed the manner of Ellen Greenberg's death from "homicide" to "suicide" based, not on any additional probative medical evidence obtained in the investigation of this case, but instead on the Philadelphia Police Department's non-medical and explainable argument that Ellen lacked defensive wounds on her hands.
- 71. The necessary degree of medical certainty to support the selection of "Suicide" as the manner of Ellen's death under the NAME's Guide's standards is patently lacking.
- 72. Concomitantly, the information recently supplied to the Defendants in the package provided to Dr. Osbourne, in addition to that information already known to the Defendants in 2011, establish as a matter of law that the selection of "Suicide" as Ellen

Greenberg's manner of death is no more compelling than one or more other competing manners of death when all the available information is considered.

- 73. Indeed, the fact that the Defendants have flip-flopped on the selection of the manner of Ellen Greenberg's death without any medical justification is itself enough to prove, as a matter of law, that the selection of "Suicide" as the manner of death is no more compelling than one or more of the other competing manners of death when all the available information is considered.
- 74. Given the circumstances here, Ellen Greenberg's Certificate of Death dated April 4, 2011 must be changed to indicate that the manner of her death "Could not be determined."

WHEREFORE, the plaintiffs, Joshua M. Greenberg, DMD, and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased, respectfully request that this Honorable Court grant their mandamus relief request and order that the Certification of Death for Ellen R. Greenberg dated April 4, 2011, record a manner of death as "Could not be determined," and such other relief as this Court deems warranted.

COUNT II

Declaratory Relief

Joshua M. Greenberg, DMD, and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased v. Marlon Osbourne, M.D., and Philadelphia County Medical Examiner's Office

- 75. The representations in the forgoing paragraphs of this Complaint are incorporated herein as though fully set forth at length.
- 76. In performing their responsibilities and duties as described above, Defendants cannot act capriciously or arbitrarily, and their discretion is always subject to review.

77. The Defendants' change of the manner of death for Ellen R. Greenberg in the

Certificate of Death dated April 4, 2011 was arbitrary and/or capricious because the selection of

"Suicide" (a) is no more compelling than one or more of the other competing manners of death

when all the available information is considered under the NAME's Guide and the CDC's

Handbook; (b) does not meet the minimum degree of medical certainty necessary to meet the

NAME's Guide's standards; and (c) was based on an unlawful delegation by the Defendants of

their duties to investigate and determine the manner of Ellen Greenberg's death for purposes of

the Certificate of Death.

WHEREFORE, the plaintiffs, Joshua M. Greenberg, DMD, and Sandra Greenberg, as

the Administrators of the Estate of Ellen R. Greenberg, deceased, respectfully request that this

Honorable Court grant their request for declaratory relief and enter an order declaring the manner

of Ellen Greenberg's death to be classified as "Could not be determined," and such other relief as

this Court deems warranted.

Respectfully submitted,

LAMB McERLANE PC

BY:

/s/ Joseph R. Podraza, Jr.

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Date: October 15, 2019

Attorneys for the Plaintiffs

VERIFICATION

I, Joshua M. Greenberg, DMD, am an Administrator of the Estate of Ellen R. Greenberg, a plaintiff in the subject action, and verify that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief. I do further understand that these statements are made subject to the penalties of 18 Pa.C.S. Sec. 4904, relating to unsworn falsification to authorities.

Date

Joshya M. Greenberg, DMD, Administrator of the Estate of Ellen R. Greenberg

VERIFICATION

I, Sandra Greenberg, am an Administrator of the Estate of Ellen R. Greenberg, a plaintiff in the subject action, and verify that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief. I do further understand that these statements are made subject to the penalties of 18 Pa.C.S. Sec. 4904, relating to unsworn falsification to authorities.

19 /10 /19 Date

Sandra Greenberg, Administrator of the

Estate of Ellen R. Greenberg

LAMB McERLANE PC

Joseph R. Podraza, Jr., Esquire (ID No. 53612) William H. Trask, Esquire (ID No. 318229) One South Broad Street – Suite 1500 Philadelphia, PA 19107 (215) 609-3170 (610) 430-8000

Attorneys for Plaintiffs

PHILADELPHIA COUNTY

IN THE COURT OF COMMON PLEAS

JOSHUA M. GREENBERG, DMD, and

SANDRA GREENBERG, as the

Administrators of the Estate of ELLEN R. GREENBERG, DECEASED,

4408 Saybrook Lane

Harrisburg, PA 17110,

CIVIL ACTION

Plaintiffs, Term:

No.

MARLON OSBOURNE, M.D., 5301 SW 31st Avenue

Fort Lauderdale, FLA 33312,

-and-

PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE, 321 University Avenue Philadelphia, PA 19104,

Defendants.

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of* the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

LAMB MCERLANE PC

/s/ Joseph R. Podraza, Jr. By: Joseph R. Podraza, Jr., Esquire ipodraza@lambmcerlane.com

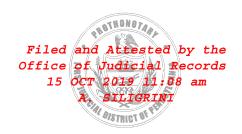


EXHIBIT "A"



City of Philadelphia Office of the Medical Examiner

321 University Avenue Philadelphia, PA 19104

Case Number

: 11-00420

Date of Death

: Jan 26 2011

IMPANGS AND OPINTONS - LINE - SECOND DECEDENT'S NAME HEIGHT WELLIT. ELLEN R. GREENBERG 27 Years White Female 5 ft 7 in 136 1Ь FAONOUNCED DEAD BY DATE & TIME 4601 Flat Rock Rd Unit 603 Medic-S Jan 26 2011 6:40PM Philadelphia PA D WITNESS NAME ADDRESS 4408 Saybrook Lane Harrisburg PA Joshua Greenberg Father

Findings:

- Multiple stab wounds to the chest, abdomen, and back of neck. There is an incised wound to right occipital scalp
 - o The wounds are associated injuries to the aortic arch, the upper lobe of the left lung,, liver, and the cervical spinal cord at C2-C3 level dorsally
 - o There are bilateral hemothroraces, a hemopericardium, a small collection of subarachnoid blood over the vermis and the base of the right cerebellar hemisphere
- The knife (12.5 centimeter blade) is present in one of the chest wound (at a depth of 10 centimeter)
- Multiple confusions on upper and lower extremities in various stages of resolution

Cause of Death:

Multiple Stab Wounds

Other Significant Conditions:

Manner of Death:

Homicide

Marion Osbourne, M.D.
Assistant Medical Examiner

Control No.: 21063511

Case Number
Date of Death

: 11-00420 : Jan 26 2011

FREPORT OF EXAMINATION IN THE

DECEDENT'S NAME ELLEN R. GREENBERG

An autopsy was performed on the body of the decedent at the Philadelphia Medical Examiner's Office on January 27, 2011. The external examination was started at approximately 9AM. The internal examination was started at approximately 11AM.

Clothing: The clothing that accompanies the decedent consists of grey/purple hooded sweatshirt, grey sweat pants, and brown boots.

EXTERNAL EXAMINATION:

The body is that of a 5 foot 7 inch, 136 pound, white female who appears compatible with reported age of 27 years. The attaumatic scalp is covered by brown hair. The facial bones have no palpable fractures. The irides are brown. The sclerae are white. The conjunctivae have no petechiae. The external auditory meatures have no discharge. The nares are patent. The nasal bones and nasal septum are intact. The lips are attaumatic. The oral cavity has no injuries. The tongue has no injuries. The teeth are natural and in good repair. The neck is symmetric. The chest is symmetric. The abdomen is flat. The body habitus is mesomorphic. The back is symmetric. The upper and lower extremities have no deformities or fractures. The external genitalia are those of an adult female. The anus and perincum have no trauma or abnormalities.

STAB WOUND "A" OF CHEST:

An elliptical, horizontally oriented 0.4 x 0.2 centimeter stab wound is centered 30 centimeters below the top of the head in the midline of the chest. The medial end of the wound is sharp. The lateral end is blunt. The edges of the wound are smooth, The wound is approximately 0.4 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is from to back.

STAB WOUND "B" OF CHEST:

An elliptical, horizontally oriented 0.3 x 0.1 centimeter stab wound is centered 31 centimeters below the top of the head in the midline of the chest. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.3 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back

STAB WOUND "C" OF CHEST:

An elliptical, obliquely oriented 2 x 0.6 centimeter stab wound is centered 29 centimeters below the top of the head, and 4.5 centimeters to the right of midline. The sharp end is in the 5 o'clock position. The blunt end is in the 10 o'clock position. The edges of the wound are smooth. The wound is approximately 1.7 centimeters when reapproximated. The wound extends through the skin and muscles of the right side of the chest and the right clavicle for a depth of 1.4 centimeters.

Associated with the wound track are hemotrhages in the adjacent soft tissues and muscles of the right side of the chest and beneath the right clavicle.

Care 19:49:4001241 Control No.: 21063511 The pathway of the wound with the body in the normal anatomic position is slightly right to left, front to back and slightly upward.

STAB WOUND "D" OF CHEST:

An elliptical, horizontally oriented 0.3 x 0.1 centimeter stab wound is centered 33 centimeters below the top of the head and 2.7 to the right of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.3 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back.

STAB WOUND "E" OF CHEST:

An elliptical, horizontally oriented 1.7×0.5 centimeter stab wound is centered 33 centimeters below the top of the head, and 2.5 centimeters to the left of midline. The sharp end is in the 3 o'clock position. The blunt end is in the 9 o'clock position. The edges of the wound are smooth. The wound is approximately 1.6 centimeters when reapproximated. The wound extends for a depth of 10 centimeters through the skin and muscles of the left side of the chest, the left second intercostal space, into the superior mediastinum.

Associated with the wound track are hemorxhages in the adjacent soft tissues and muscles of the left side of the chest, creates a 2.4 centimeter incised defect to the aertic arch, and a incises the upper lobe of the left lung. The pericardial sac contains 120 milliliters of liquid and clotted blood. The left pleural cavity contains 600 milliliters of liquid blood. The right pleural cavity contains 500 milliliters of liquid blood.

The pathway of the wound with the body in the normal anatomic position is left to right, front to back and slightly downward.

STAB WOUND "F" OF CHEST:

An elliptical, vertically oriented 0.6 x 0.2 contineter stab wound is centered 34.5 centimeters below the top of the head and 0.8 to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. Tho wound is approximately 0.5 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back.

STAB WOUND "G" OF CHEST:

An elliptical, vertically oriented 0.6 x 0.2 centimeter stab wound is centered 34.5 centimeters below the top of the head in the midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.5 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back.

STAB WOUND "H" OF CHEST:

An elliptical, vertically oriented 1.5 x 0.5 centimeter stab wound is centered 42 centimeters below the top of the head in the midline. The sharp end is in the 6 o'clock position. The blunt end is in the 12 o'clock position. The edges of the wound are smooth. The wound is approximately 1.5 centimeters when reapproximated. The wound extends for a depth of 4 centimeters through the skin and muscles chest, through the right sixth intercostal space, and 2.3 centimeter into the liver.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the right side of the chest a 2.3

centimeter deep liver defect, and intraabdominal blood.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, front to back.

STAB WOUND "I" OF ABDOMEN:

An elliptical, vertically oriented 2 x 0.8 centimeter stab wound is centered 46 centimeters below the top of the head in the midline. The sharp end is in the 6 o'clock position. The blunt end is in the 12 o'clock position. The edges of the wound are smooth. The wound is approximately 1.9 centimeters when reapproximated. The wound extends for a depth of 6 centimeters through the skin and muscles of the abdominal wall.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the abdominal, intramesentric hemorrhage and intraabdominal blood.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, front to back.

INCISED WOUND "J" OF SCALP:

An obliquely oriented 6.5 x 1.1 centimeter wound is centered 8 centimeters above the right external auditory measus, and 6 centimeters to the right of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 6.5 centimeters when reapproximated. The wound extends through the skin and the scalp.

STAB WOUND "K" OF NECK:

An elliptical, vertically oriented 2×0.2 centimeter stab wound is centered 9 centimeters below the top of the head, and 2 centimeters to the left of midline. A 1×0.2 centimeter serrated abrasion is associated with the wound. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1 centimeter when reapproximated. The 0.3 centimeter deep wound extends through the skin of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, back to front.

STAB WOUND "L" OF NECK:

An elliptical, vertically oriented 1.1 x 0.6 centimeter stab wound is centered 14 centimeters below the top of the head, and 4 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1.1 centimeter when reapproximated. The 0.2 centimeter deep wound extends through the skin of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly left to right back to front.

STAB WOUND "M" OF NECK:

An elliptical, vertically oriented 0.2 x 0.1 centimeter stab wound is centered 11 centimeters below the top of the head in the midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.2 centimeter when reapproximated. The 0.3 centimeter deep wound extends through the skin of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is back to front.

Printed on: 4/15/2011

STAB WOUND "N" OF NECK:

An elliptical, vertically oriented 1.1×0.4 centimeter stab wound is centered 13 centimeters below the top of the head, and 0.5 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1.2 centimeter when reapproximated. The 8 centimeter deep wound extends through the skin and muscles of the posterior neck through the occipital triangle and into the ligamentum nuchae.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck, a defect in the ligamentum nuchae, incises small vessels overlying the cerebellum, creating a subarachnoid hemorrhage over the vermis, the caudal aspect of the right cerebellar hemisphere.

The pathway of the wound with the body in the normal anatomic position is left to right, back to front and upward.

STAB WOUND "O" OF NECK:

An elliptical, horizontally oriented 1.2 x 0.6 centimeter stab wound is centered 14 centimeters below the top of the head, and 6.8 centimeters below the right external auditory measus. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1.4 centimeter when reapproximated. The 3 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is right to left, back to from.

STAB WOUND "P" OF NECK:

An elliptical, vertically oriented 1 x 0.3 centimeter stab wound is centered 13.5 centimeters below the top of the head, and 2 centimeters to the right of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1 centimeter when reapproximated. The 2.1 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is right to left, back to front.

STAB WOUND "Q" OF NECK:

An elliptical, vertically oriented 0.6 x 0.3 centimeter stab wound is centered 15 centimeters below the top of the head, and 3 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.6 centimeters when reapproximated. The 2 contimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorthages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, back to front.

STAB WOUND "R" OF NECK: .

An elliptical, vertically oriented 0.9 x 0.6 centimeter stab wound is centered 16 centimeters below the top of the head, and 3 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.9 centimeters when reapproximated. The 1.9 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly loft to right, back to front.

STAB WOUND "S" OF NECK:

An elliptical, vertically oriented 0.5 x 0.1 centimeter stab wound is centered 16.5 centimeters below the top of the head, and 1.1 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.5 centimeters when reapproximated. The 2.1 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck,

The pathway of the wound with the body in the normal anatomic position is slightly left to right, back to front

STAB WOUND "T" OF NECK:

An elliptical, horizontally oriented 1.5 x 0.3 centimeter stab wound is centered 16.5 centimeters below the top of the head, and 4.5 centimeters to the right of midline. The medial end of the wound is sharp. The lateral end is blunt. The edges of the wound are smooth. The wound is approximately 1.5 centimeters when reapproximated. The 7 centimeter deep wound extends through the skin, and muscles of the back, between the second and third cervical vertebra laterally, and incises the dura covering the subjecent spinal cord.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the left side of the back, a defect of the dura and focal epidural hemorrhage. Grossly there is bulging of the cervical cord subjects to the dural defect.

Note: Neuropathologist Dr. Lucy Rouke examined the spinal cord and concluded that there is no defect of the spinal cord.

The pathway of the wound with the body in the normal anatomic position is right to left, back to front.

OTHER INJURIES.

The right upper arm has a round 3 x 4 centimeter contusion. The right forearm has a 3 x 1.5 centimeter area of three round contusions. The right lower quadrant of the abdomen has a 3 x 3.5 centimeter contusion. The right thigh has vertical row of round contusions that are a 2.5 x 3 centimeter, 4.5 x 3 centimeter, and 5 x 6 centimeters. Above the right knee is a 4.5 x 3 centimeter area of three round contusions.

INTERNAL EXAMINATION:

The firm, brown, muscles of the anterior neck, have no hemorrhage or injuries. The adjacent connective tissue and vessels of the anterior aspect of the cervical spine are unremarkable. The clavicles, sternum, and pelvic bones have no fractures. The hyoid bone and thyroid cartilage are intact. The peritoneal cavity has no adhesions. The intrathoracic and intraabdominal organs are in their normal positions.

The smooth epicardium has a normal amount of subepicardial adipose tissue in a normal distribution. The heart is 230 grams. The right coronary artery supplies the posterior interventricular septum. The coronary arteries have no atherosclerosis. The chambers of the heart contain no mural thrombi. The atrioventricular and semilumar valves are normally formed and have no calcifications, nodularity, or vegetations. The coronary arteries arise normally from the sinuses of Valsalva. The firm, red-brown, homogenous myocardium has no areas of fibrosis or necrosis. Injuries to the aorta are as previously described. The aorta arises from its usual position, has a normal branching pattern and no atherosclerosis. The pulmonary arteries have no thromboemboli.

The larynx and trachea have no foreign objects or mucous plugs. The right and left lungs are 220 grams and 200 grams, respectively. Injuries to the right lung are as previously described. The smooth pink-tan to purple visceral pleural surfaces have mild anthracosis. The red-maroon and congested lung parenchyma has no areas of consolidation, granulomata or masses. The tracheobronchial tree has no mucous plugs or foreign objects.

REPORT OF EXAMINATION ELLEN R. GREENBERG

Page 6 of 6

The esophagus has a white-tan, longitudinally folded mucosa and no varices. The empty stomach has a pink smooth serosa. The tan gastric mucosa has rugal folds and no erosions or ulcers. The small and large intestines have tan, smooth serosa and no perforation, obstruction, masses or ischemic injuries. The appendix is normal. The rectum is filled with green stool.

The 1160 gram liver has an intact capsule, red-brown congested parenchyma and no masses or cysts. The galibladder is empty. The tan, lobulated pancreas has no masses or cysts.

The 100 gram spleen has a lavender intact capsule, red-maroon parenchyma and inconspicuous Malpighian corpuscles. The parasortic, paratracheal, and mediastinal lymph nodes are inconspicuous.

The right and left kidneys are 110 grams and 140 grams, respectively. The cortical surfaces are smooth. The renal parenchyma has pale cortices and distinct and prominent medullary pyramids. The calyces and pelves are not dilated and have no masses or calculi. The ureters are unobstructed and normal in course and caliber to the urinary bladder. The urinary bladder contains 100 milliliters of yellow urine.

The vagina has a smooth mucosa and no lesions. The cervix is normal. The uterus has a normal shape and normal myometrial thickness. The endometrium is smooth and has no lesions. The ovaries are normal. The fallopian tubes have normal caliber.

The brown, bilobed thyroid gland has no masses or cysts. The parathyroid glands are inconspicuous. The adrenal glands have thin yellow cortices and brown medullae.

The reflected scalp has no subgaleal hemorrhages. The calvarium and skull base are intact. The epidural and subdural spaces have no liquid accumulations. A small amount of subarachnoid blood covers the rostral surface of the vermis, right cerebellar hemisphere, and the basal cisterns. No gross parenchymal defects are identified in theses areas. The leptomeninges are thin and translucent. The brain is 1440 grams. The cerebral hemispheres are symmetric. The corpus callosum is intact. The basilar artery, its tributaries and branches have no atherosclerosis or aneurysms. The cingulate gyri, unci and cerebellar tonsils are not hemiated.

Marion Osbourne, M.D. Assistant Medical Examiner

(End of Report)



EXHIBIT "B"

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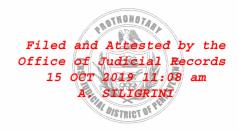


EXHIBIT "C"

This is to certify that this is a true copy of the record which is on file in the Pennsylvania Department of Fleatin, in accordance

WARNING: It is illegal to duplicate this copy by photostat or photograph.



Marina O'Reilly Matthew Marina O'Reilly Matthew Acting State Registrar

JUL 21 2011

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the Vital Statistics Law of 1955, as amended.

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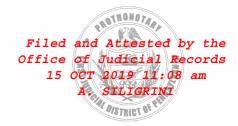


EXHIBIT "D"



September 3, 2019

VIA OVERNIGHT MAIL

Marlon Osbourne, M.D. Broward County Office of Medical Examiner 5301 SW 31st Avenue Fort Lauderdale, FLA 33312

Re: Death Investigation of Ellen Greenberg

Dear Dr. Osbourne:

I write in regards to the 2011 death of Ellen Greenberg and your ultimate findings to alert you to a number of questions that east serious doubt in the minds of various medical and neuropathological experts as to your conclusion that Ellen's cause of death was suicide. In our view, these questions warrant a closer examination of the case, further investigation of the circumstances surrounding her untimely death, and ultimately your voluntary amendment of Ellen's Death Certificate to include a cause of death other than suicide as permitted under Pennsylvania law.

The telling bases for the requested amendment by you of the cause of death listed on Ellen's Death Certificate are discussed below. But before you consider them, please allow me to address a preliminary matter that you are probably thinking: Do I have the authority to amend Ellen's Death Certificate despite my no longer being associated with the Philadelphia Medical Examiner's Office? The answer is, "Yes." Pennsylvania law specifically empowers only you with the continuing authority to amend Ellen's Death Certificate to change the cause of death from suicide to something else despite your no longer acting as a pathologist in Pennsylvania. Moreover, I would be happy to prepare and send to you the documents needed to effectuate the requested amendment. After reviewing the remainder of this letter, I would appreciate if you would notify me of your willingness or unwillingness to amend Ellen's Death Certificate within fourteen (14) days of the date of this letter. I will presume your unwillingness should I receive no response from you within the specified time.

As you read the remainder of this letter, please keep in mind that the Estate of Ellen Greenberg and her family only want to learn the truth surrounding Ellen's death. They believe

Dr. Osbourne September 3, 2019 Page 2 of 6

the truth cannot be determined absent a more comprehensive investigation into the circumstances surrounding Ellen's death. As a human being, don't you believe that they are entitled to some closure and hopefully peace of mind from Ellen's untimely and unnatural passing?

Experts Unanimously Conclude Ellen's Death Was Not A Suicide

Enclosed are copies of reports by several eminently qualified experts in the fields of medical forensics and neuropathology who have unanimously concluded that Ellen's death could not have been the result of a suicide. Wayne K. Ross, M.D., a well-credentialed, board-certified pathologist who specializes in forensic pathology and neuropathology, conducted his own independent investigation, including a reexamination of Ellen's spinal cord specimen retained by the Medical Examiner's office and concluded beyond a doubt, among other things, that it simply is not possible that all of the wounds suffered by Ellen were self-inflicted. Similarly, Cyril M. Wecht, M.D., also a preeminent forensic pathologist, after conducting his own examination of the complete reports, concluded consistently with Dr. Ross, that not only could this have not been a suicide, but that all pathological indications pointed toward homicide. Henry C. Lee. Ph.D., of the Institute of Forensic Science at the University of New Haven, concluded after reviewing the entire case file that the number and type of wounds inflicted as well as the bloodstain patterns observed, were consistent with the scene of a homicide, not a suicide. Consistent with these findings, as set forth in a March 15, 2019 article published in the Philadelphia Inquirer. Guy D'Andrea, a former Philadelphia homicide prosecutor who reviewed the entire case file before leaving the District Attorney's Office, Gregory McDonald, chief deputy coroner for Montgomery County, and Robert D. Keppel, retired chief criminal investigator for the Washington State Attorney General's Office, all determined the physical evidence raised serious questions that undermined a finding of suicide in Ellen's case and, in some cases, warranted a determination of homicide.

As briefly summarized below, the unanimous conclusions of these experts coupled with other serious concerns militating against a finding of suicide, warrant your reconsideration of Ellen's cause of death and ultimately your amendment of her death certificate to reflect a cause of death other than suicide.

Other Material Considerations Warranting the Reconsideration of Ellen's Cause of Death

1. Evidence that two knives were used in Ellen's death

According to Wayne K. Ross, M.D., there is substantial forensic evidence suggesting more than one weapon was used in Ellen's death, although only one was recovered at the scene. Dr. Ross concluded a strong likelihood that two knives -- one serrated, one smooth-bladed -were used in Ellen's death, although the only knife recovered at the scene was of the serrated variety and found imbedded four inches in Ellen's chest. The import of Dr. Ross' conclusion cannot be overstated. If a second knife was used in Ellen's death but not recovered at the scene,

> Case ID: 191001241 Control No.: 21063511

Lamb McErland | 24 5 Market 51 PO Box 565 | West Chester PA 19381 | Phone 6(0.430,8000 lax 610 692.0877 Dr. Osbourne September 3, 2019 Page 3 of 6

someone other than Ellen necessarily disposed of it, which alone rules out suicide as a cause of death

2. Studies of the wound pattern suggest not all could have been self-inflicted

According to Dr. Ross, it is very unlikely that several of the wounds suffered by Ellen could have been administered by Ellen herself, and categorically impossible for all of the wounds to have been self-inflicted. The cumulative effect of the wounds suggest that before the final stab was administered to Ellen's chest, she would have been rendered physically incapable of inflicting more wounds. Ellen suffered a significant wound at the base of her skull that penetrated her brain by several centimeters. This particular wound resulted from an upward strike to the base of the skull that would have been difficult, if not impossible, for an individual to inflict on herself. Moreover, Dr. Ross conducted a forensic examination of a preserved sample of spinal tissue and concluded that the injury inflicted on the nervous system by this blow would have rendered Ellen incapacitated and incapable of performing further harm, including the final stab-wound to the chest. Finally, Dr. Ross' position is credibly supported by the recreation report of this matter also included with the enclosed materials.

3. Questions concerning the involvement of Dr. Lucy Rorke-Adams

Although the police investigators relied heavily on the conclusions of Lucy Rorke-Adams, M.D., in justifying their findings of suicide, serious questions have arisen regarding Dr. Rorke-Adams' involvement. According to the police investigators, when confronted with questions arising from the irregular wound pattern, particularly the above frequency and severity of certain injuries preceding the final chest wound, but determined to find a medical explanation consistent with a finding of suicide, investigators reached out to Dr. Rorke-Adams, a neuropathologist with whom the Philadelphia Police and Medical Examiner's Office consulted from time to time. According to the report, Dr. Rorke-Adams concluded after conducting an examination of the spinal tissue that the damage inflicted at the base of the skull to the brain and spine could have resulted in Ellen becoming numb to the pain of the subsequent stab wounds while leaving her still sufficiently ambulatory to inflict those further wounds. But there is no evidence that Dr. Rorke-Adams ever conducted any examination of Ellen's spinal tissue. She never issued a report, was never paid for her services, and although there are records of Dr. Rorke-Adams performing examinations on the days preceding and following the date of her alleged examination of Ellen's spinal tissue, there are no records that she performed any work for the City of Philadelphia on the date noted in the report. Furthermore, Dr. Rorke-Adams has no recollection of consulting with the Police Department or ME's office on that date, and there is no corroborating record of her being picked up and brought to the ME's office as the reports suggest. In fact, in interviews with the Philadelphia Inquirer. Dr. Rorke-Adams claimed to have no recollection of the case at all and further stated the lack of any invoice or report of her findings confirms that she had no involvement in the case.

Dr. Osbourne September 3, 2019 Page 4 of 6

Dr. Rorke-Adams' involvement is crucial as her medical conclusion is a necessary element in the ultimate suicide finding, for without any explanation as to how it was physiologically possible for Ellen to inflict further wounds to her own person after suffering a blow that substantially severed her spinal cord, the ultimate finding of suicide would have been impossible.

4. Blood pattern evidence suggests Ellen's body was moved or repositioned

Upon review of the crime scene photographs and other evidence, the independent experts have concluded that Ellen was lying down and later moved into the sitting position in which she was discovered by investigators. For example, clear from the photographs of the scene is a trail of blood running horizontally, parallel to the floor, along the side of Ellen's face, which Detective Scott Eelman concluded defies the laws of gravity and suggests Ellen was moved from the original position she had been in when the blood dried. Detective Eelman, a specialist in crime scene reconstruction who regularly pairs with Dr. Ross, also analyzed the bloodstains on Ellen's sweatpants, sweatshirt and shoes and found other evidence consistent with her being moved or repositioned postmortem, concluding that she had been in a position different from that in which she was found at the time the blood was deposited on her sweatpants, sweatshirt and shoes. He further concluded that Ellen's head had been in several positions during the time of blood flow and for long enough as to have the blood flow across her face and back toward her ear, upward toward her eyes and also downward toward her chin in a manner that is inconsistent with the position in which Ellen was found by investigators.

5. Knife block suggests altercation

The condition of the crime scene raised serious questions for the independent experts that, for these experts, support a finding of homicide rather than suicide. Among these questionable conditions, the heavy knife block from which at least one weapon was retrieved was found laying on its side, pulled over with sufficient force to have knocked two of the knives stored therein across the counter and into the sink. The condition of the knife block and knives is consistent with someone grabbing a knife quickly and forcefully as if in the midst of an altercation with another individual rather than that of a person who, alone in the kitchen, pulled a knife out for use, at least initially, for the preparation of a fruit salad.

6. Ellen's behavior that day is not consistent with suicide

Events leading up to Ellen's death are also inconsistent with suicide. After leaving work early that day due to the snow storm, Ellen filled her car's empty gas tank. Also, Ellen was halfway through preparing a fruit salad, which was left unfinished on the counter as seen in the photographs of the scene. In addition, Ellen's treating psychiatrist, Ellen Berman, M.D., is firm Ellen was not suicidal. Finally, all the wounds to Ellen's chest and abdomen were inflicted through her clothing, which as the investigators concluded, is highly unusual in cases of suicide,

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Dr. Osbourne September 3, 2019 Page 5 of 6

In nearly all documented cases, an individual will lift his or her clothing and stab directly into the skin. As the independent experts have indicated. Ellen's behavior is not consistent with someone preparing to commit suicide and when considered in light of the other serious questions surrounding her death, suggest another explanation.

Facts Suggested to Support a Finding of Suicide Are Inconclusive/Require Further Investigation

1. Door locked from the inside

That the door was locked from the inside with the safety bar engaged was the principal factor in concluding that Ellen's death was a suicide. Indeed, this factor was so critical in the minds of the original investigators, the remainder of the investigation seemed an exercise in uncovering explanations, no matter how unlikely, to justify that initial prejudgment. But that the door was locked from the inside at the time of Ellen's death was merely accepted and was never itself properly tested. As noted in the expert reports and visible in the photographs of the apartment, the safety bar remained intact and undamaged, and, although disengaged, was still attached, albeit loosely, to the door and doorframe, respectively. Had the door been forced open from the outside without first disengaging the safety bar as the investigators concluded, at least one of its ends would necessarily have been ripped from its screws in either the door or the doorframe. Tests performed by one investigator using an identical mechanism repeatedly confirmed this. Contrarywise, the damaged but functional safety bar depicted in the photograph was consistent with the application of force to the door, but not entry, as if the door had been pulled from the inside causing the damage seen in the photographs and then manually disengaged.

Although a forced entry was reported by Ellen's fiancé, who told the police investigators that, upon finding the safety bar engaged and Ellen not responding to his text messages, he kicked the door open in the presence of a member of the building's security, the member of the security staff allegedly present when Ellen's fiancé kicked the door is firm that he was not present as alleged.

2. Lack of defensive wounds

Another of the factors cited in support of the finding of suicide was the lack of defensive wounds on Ellen's hands and arms, which would be expected on the victim of a knife attack of this nature. However, as Dr. Ross explained in his report, the stab wound inflicted upward at the base of Ellen's skull to her spine and brain would have been incapacitating and made further resistance impossible. Moreover, Dr. Ross did find evidence of fresh bruises and a fingernail imprint on Ellen's neck, suggesting she may have been physically overwhelmed and rendered defenseless by her attacker at the outset of the altercation, further explaining the lack of defensive wounds customary in knife attacks. Moreover, a lack of defensive wounds is not

Dr. Osbourne September 3, 2019 Page 6 of 6

unheard of in these instances, particularly when the victim is attacked quickly so as not to be able to defend herself, the proverbial "blitz attack."

3. Mental state

Ellen had obtained treatment for her anxiety in the weeks preceding her death, and there is no indication from her therapist or elsewhere that Ellen had exhibited a predisposition toward self-harm or that she entertained any suicidal ideations at any time. In fact, Dr. Berman maintains Ellen did not exhibit any indications of suicidal ideation while under her professional care. Prescribed Klonopin for her anxiety, the toxicology screens showed levels in her system that were consistent with the prescribed dosage and that Ellen was using the medication as directed.

Conclusion

This is a case that requires a closer examination and more thorough investigation, which can only be accomplished by your amending Ellen's Death Certificate to reflect a cause of death other than suicide. A conclusion of suicide is simply not supported by the evidence and, in light of the facts and circumstances raised by independent experts, constitutes a capricious exercise of discretion.

Thank you for your prompt attention to this matter. Ellen's Estate, her family, and I strongly urge you to agree to amend her Death Certificate to enable her to receive justice. I look forward to hearing from you.

Respectfully yours.

JOSHPN R. PODRAZA, JR.

JRP psk Encls.

cc: Dr. Joshua Greenberg



EXHIBIT "E"

WAYNE K. ROSS, M.D., P.C.

Specializing in Forensic and Neuropathology

David Skinner, Office Manager P.O. BOX 774 Uwchland PA 19480 (717) 481-8510 (P)

October 18, 2016

Thomas P. Brennan Jr., Consultant Criminal Investigative Analysis 1409 Regency Circle Harrisburg, Pennsylvania 17110

Re: C16-119 Greenberg, Ellen

Dear Mr. Brennan,

At your request, I reviewed materials pertaining to the death of Ellen Greenberg who was found dead in her apartment in Philadelphia after sustaining multiple stab wounds. The knife was still in her chest. In addition, blood stain evidence was observed around the body in the kitchen. The door entrance locking mechanism/door was damaged.

The autopsy was performed by the Philadelphia Medical Examiner. The cause of death was multiple stab wounds and the original manner of death was a homicide. Later, the medical examiner changed the manner of death to suicide.

It is my opinion that the investigating authorities should pursue this case as a homicide. It is further my opinion to a reasonable degree of medical certainty that the manner of death is a homicide.

Sincerely,

Dr Wayne Ross

Wayne K. Ross MD, PC 101 Fellowship Rd. #774 Uwchland, PA 19480 PH: 717-481-8510

waynekross12@gmail.com

WAYNE K. ROSS, M.D., P.C.

Specializing in Forensic and Neuropathology
101 Fellowship Rd #774 | Uwchland, PA 19480 | (717) 481-8510

David Skinner, Office Manager

January 10, 2017

Thomas P. Brennan Jr., Consultant Criminal Investigative Analysis 1409 Regency Circle Harrisburg, Pennsylvania 17110

RE: Greenberg, Ellen (C16-119)

MATERIALS RECEIVED:

- Inspection Date of Organ Tissue- August 3rd 2016
- Scene Photographs
- Autopsy Report
- Autopsy Photographs

After review of the above information, I can offer the following opinions to a reasonable degree of medical certainty:

- There was evidence of a stab wound which penetrated the cranial cavity and severed the
 cranial nerves and brain. As a result she would experience severe pain, cranial nerve
 dysfunction and traumatic brain signs and symptoms including numbness, tingling, irregular
 heartbeat and bradycardia, respiratory depression, neurogenic shock and impaired/loss of
 consciousness.
- There was evidence of strangulation. There was a mark over the front of the neck which was consistent with a fingernail mark. There were multiple bruises under the neck and in the strap muscles over the right side of the neck. The patterns were compatible with a manual strangulation.
- 3. There were multiple bruises over the body some of which were fresh, many of which were older. The patterns were consistent with a repeated beating.
- 4. The scene findings were indicative of a homicide.

Should further information become available, we reserve the right to amend this report at that time.

Wayne K. Ross, M.D.

Van K. Mu



EXHIBIT "F"

CYRIL H. WECHT, M.D., J.D.

1119 PENN AVENUE

SUITE 404

PITTSBURGH, PENNSYLVANIA 15222

(412) 281-9090 FAX (412) 201-9050 BMAIL obveolytefyi.net

PORBNSIC PATHOLOGY LEGAL MEDICINE

January 11, 2012

Dr. Joshua Greenberg 4408 Saybrook Lane Harrisburg, PA 17110

Re: Ellen Greenberg, Deceased

Dear Dr. Greenberg:

Pursuant to your request, I have reviewed all the records and materials pertaining to the death of your daughter.

CLINICAL SUMMARY

Ms. Ellen Greenberg, 27 years old, was found dead by her fiance, Mr. Samuel Goldberg, in their locked apartment on January 26, 2011. Mr. Goldberg reported that he had left their apartment for the gym in their apartment building at 16:45 that afternoon and returned between 17:15 to 17:30. He stated that he tried to contact the decedent via text message, telephone and email for approximately one hour in attempting to get back in, but he got no response (confirmed by incoming texts and email in decedent's cell phone between 1732 and 1754).

The 911 call was made at 1833. The solid bar door guard was broken (consistent with Mr. Goldberg's report of forcing in the door). An apartment security man was reportedly present during Mr. Goldberg's entry. He was briefly instructed to start CPR until he noticed a knife in her chest and was instructed to stop. Medics pronounced death at 1840.

There was no evidence of a struggle, Valuables were present and nothing was missing in the apartment. The decedent was found supine in the kitchen, her head and upper body resting against the lower half of the kitchen cabinets. Blood was present on the head, in the hair and on the neck. Multiple chest wounds were observed. A knife was embedded in her left chest. It was a

single edged serrated blade approximately 12.5 cm in length and 1.5 cm wide with a handle approximately 12.5 cm in length. The right hand with blood in it was closed in a loose fist. There was no note or anything to indicate suicide on the computers or in the rest of the well kept apartment. The last outgoing call in the decedent's cell phone was for 30 seconds on 1/26/11 at 1433. The recipient of the telephone call was not identified.

The decedent was clothed in a T-shirt, sweat pants, underwear, a zippered shirt and UGG boots. Blood was present on the head, in the hair, on the front side of the shirts, on the front of her pants and on the top of both boots. A pair of eyeglasses was on the floor to her right. A white towel was grasped in her left hand. It is not known if there was blood on the towel. A hair tie "scrunchie" was on her right wrist.

The decedent was in a committed relationship with Sam Goldberg. They had been together for 3 years, and were recently engaged. Her parents had no reservations about their relationship. There is no knowledge of any verbal or physical abuse. No report of a detailed interrogation of the fiance is available. (How did the decedent behave before Mr. Goldberg went to the gym only 30 minutes earlier? Her mother stated that when she spoke with the decedent that morning, they "had a pleasant conversation. She gave no indication that something was imminently wrong.")

Her mother knew that her daughter was "struggling with something". Ms. Greenberg was seeing a psychiatrist, Dr. Ellen Berman. Ms. Greenberg visited the psychiatrist on January 12, 17 and 19. She was upset and stressed about her job as a school teacher for the District of Philadelphia, where she had been employed for three years. She had expressed that she was overwhelmed with her classroom work. She had been prescribed Zoloft first, then switched to a low dose of Xanax. After no success, the doctor prescribed Ambien and Klonopin. On January 17, it was specifically noted by the psychiatrist: "she starts thinking about everything else – not suicidal." On January 19, Dr. Berman noted: "way better". Ms. Greenberg denied any verbal or physical confrontations with her fiancé.

Also reviewed is diary-like emailed account (imgperio@gmail.com). Ms. Ellen Greenberg reportedly responded to this close friend's text on January 26 about 12 pm saying "yah, you are getting out early" (Philadelphia schools were getting out early on account of the snow storm). Ms. Greenberg's response was "Thank Goodness".

This same friend went to Ms. Greenberg's apartment with Mr. and Mrs. Greenberg about a month after her death. She narrates that Mrs. Greenberg found blood on the bathroom floor near the gym, recalling that her daughter's fiancé was in the gym on the day of her friend's death. They notified the police, who came to take samples on the floor at the apartment where they "smelled marihuana". Dr. Greenberg, the decedent's father, apparently told the police that Mr. Sam Goldberg "smoked a lot and that police had found marihuana and paraphernalia in the

apartment" the night of Ms. Greenberg's death. (Ms. Ellen Greenberg was suggested to have known her fiancé engaged in this drug usage, but she did not participate in such activity.)

As published in newspapers on February 1, 2011, "the Medical Examiner's Office ruled the death as a homicide", based on the Philadelphia Police Department's announcement on January 28. A few days later, the Police Department backed away, making a statement that the case had not been ruled a homicide and was being investigated as "suspicious". However, on February 18, 2011, the police retracted their original ruling, and officially declared that the death of Ellen Greenberg had been ruled a suicide.

Philadelphia City Assistant Medical Examiner Marlon Osbourne, M.D., listed "multiple stab wounds" as the cause of death. The manner was ruled to be suicide.

There were multiple stab wounds to the chest (8), abdomen (1), back of neck (10) and scalp (1). A knife with a 12.5 cm blade was present in the 10 cm. deep chest wound. There were injuries to the aortic arch, the left upper lung lobe, liver and dorsal cervical spinal cord at C2-C3. There were associated bilateral hemothorax and hemopericardium. The wounds were listed as follows:

Chest: (8 wounds)

- A. Front to back (0.2 cm deep) midline
- B. Front to back (0.2 cm deep) midline
- C. Right to left (1.4 cm deep) right chest, front to back, slightly upward
- D. Front to back (2.7 cm right of midline, 0.2 cm deep) front to back
- E. Left to right, front to back and slightly downward, (horizontal, 10 cm deep left 2nd ICS, sharp end @ 3:00, blunt end @ 9:00 superior mediastinum, aortic arch, left upper lung lobe, 600 cc left pleural hemothorax, 500 cc right pleural hemothorax, 120 cc hemopericardium
- F. Front to back (0.2 cm deep)
- G. Front to back (0.2 cm)
- H. Front to back, slightly left to right (4 cm deep, vertical blunt end @ 12:00, sharp end @ 6:00 through right 6th ICS

Abdomen (1)

I. Front to back, slightly left to right (6 cm deep)

Head (1)

J. Right occipital scalp (8 cm above right external auditory meatus

Neck (10 wounds)

- K. Back to front, slightly left to right (0.3 cm deep) vertical
- L. Back to front, slightly left to right (0.2 cm deep) vertical
- M. Back to front (0.3 cm deep) vertical
- N. Back to front (8 cm deep) through occipital triangle into ligamentum nuchae, small vessels overlying cerebellum, subarachnoid over vermis, caudal right cerebellar hemisphere
- O. Back to front (3 cm deep), horizontal right to left
- P. Back to front, (2.1 cm deep), vertical right to left
- Q. Back to front (2 cm deep) vertical, slightly left to right
- R. Back to front (1.9 cm deep), vertical slightly left to right
- S. Back to front (2.1 cm deep) vertical left of midline slightly left to right
- T. Back to front (7 cm deep) horizontal between 2nd and 3rd cervical vertebrae, incising dura over spinal cord right to left 4.5 cm right of midline: no defect in spinal cord

Multiple contusions "in various stages of resolution" were present on the upper and lower extremities: right upper arm, right forearm (3), right lower abdomen, right thigh (round contusions in a vertical row) and above the right knee (3).

223 color photographs at the scene and at autopsy have been submitted. No toxicology reports are found in the materials submitted. (Reportedly, the tests were negative.) Ms. Greenberg had seen psychiatrist Dr. Ellen Berman. Her handwritten notes from three patient visits have been reviewed. There had not been any summary of a detailed interrogation of the fiancé.

MEDICOLEGAL QUESTION

What was the most likely manner of death?

Suicidal stab wounds can rarely be multiple. Suicides by stabbing are becoming less frequent, with simpler choices being drugs, hanging, or gunshot. Cutting of the wrist and throat is often associated with suicide, whereas stab wounds to the back are unlikely to be suicide.

A murder usually involves multiple stab wounds to the side, back or stomach. In a suicide, there may be additional cuts across the wrist, or tentative stabbings to see if it will hurt, or to work up courage. Then there will usually only be one wound and most likely in the chest.

The multiple stab wounds to the back of the upper neck and lower head found at autopsy were unlikely suicidal stab wounds especially the different directions that K, L, Q, R and S with vertical direction left to right, straight vertical of M, N and T, and, right to left horizontal, O and vertical P.

The locations of the stab wounds high up the back of neck and lower back of head are also unlikely for self-inflicted wounds.

A suicide victim will frequently leave a note. There was none. There was also no indication that the decedent was suicidal from the standpoint of her own family, friends, professional associates and the psychiatrist who had evaluated her. There had not been any indication that she had the intention to commit suicide, or was depressed during the day she was found dead. She seemed her usual self in the morning when she had a telephone conversation with her mother, and later at mid-day during her texting with a friend at approximately noon. It would be important to find out from the fiancé how she behaved barely half an hour before, when he left their apartment as he claimed.

A suicide victim will rarely stab herself through her clothing. Instead, she will open her shirt to expose the skin. Stabbing through clothing may indicate homicide. It is not known if fingerprints on the knife were taken and examined.

OPINION

Following the review of all submitted documents, the results of the autopsy and the accounts from the investigation, based upon reasonable degree of medical certainty, it is my professional opinion that the manner of the death of Ellen Greenberg is strongly suspicious of homicide.

Very truly yours,

Cyril H. Wecht, M.D., J.D.

CHW/srw



EXHIBIT "G"



January 29, 2018

Mr. Thomas P. Brennan, Jr. Criminal Investigative Analysis



Re: Decedent- Ellen R. Greenberg

Items reviewed:

- 1. Case reports
- 2. Photographs

Submitted by: Thomas P. Brennan Jr.

Harrisburg, Pennsylvania

After review of the photographs and reports sent to the Henry Lee Institute of Forensic Science, the following were observed.

 Photo #1 shows a view of the door leading into the residence with security lock visible. Some damage appears to be in the area of this lock in the close-up photograph. There does not appear to be damage to the doorjamb or evidence of break in at the dead bolt lock from the other side of the door.

A person can be seen on the floor, in the corner of the kitchen cabinets.

2. The view of the decedent in Photo #2 shows a female on the kitchen floor with her head and shoulders against the corner cabinets near the stove and sink. A pair of glasses are on the floor to the decedent's right hand. Blood-like stains are seen on the floor and on the woman's dothing. A white towel is in her left hand. Several blood-like stains appear to be on the kitchen counter near the sink.

- 3. A close-up view of the decedent's head and shoulders is seen in photo #3 shows a knife in her left upper chest. There are blood-like stains on the knife, her face and her clothes. There appear to be several cuts on her head. The blood is flowing in different directions on her face. This could mean that she moved after receiving the initial bleeding injuries to her head. The location of several of the wounds would be a difficult position for her to cause these wounds.
- 4. The decedent's upper body and the cabinets behind her are shown in Photograph #4. Swipe-lype patters can be seen on the cabinet corner area. There are also some blood spatter patterns and a blood dripping in a downward direction on the cabinet to her right. These stains indicate that the decedent received some of her wounds while she was above the level of the stains. The swipe patterns are consistent with having been formed when she fell to the floor.
- 5. Photograph #5 shows her middle torso and lower arms. There are at least 300 400 blood drops on her upper thighs and waist area. These stains are consistent with vertical blood drops, formed when blood fell from her wounds onto this area while she was in a sitting position. There is also blood on the floor between her legs. Based on the appearance of the bloodstains and their locations, these are consistent with the knife being inserted at the area where she was found. She later fell onto the floor with the dripping wounds over her legs.

Some blood-like stains are seen on her right hand. No defensive-type wounds can be seen.

- 6. The decedent's lower extremities are shown in photograph #6. Multiple blood drops are seen on the upper legs, with addition drops noted on the lover legs and on the boot tops. A closer view of the left boot (photograph #7) shows several vertical blood drops on the boot top and the sides of the boot sole. Some of these stains appear to be the result of vertical blood drops. Based on the number and distribution of the drops, these stains are consistent with having been from her initial injuries. If the decedent had received a massive injury while upright, the number of stains should have been greater.
- 7. The decedent's right hand and the area around her right hand is shown in photograph #8. There is a blood smear on her right hand. A few blood drops can be seen on the floor, which may indicate that she was upright for some of her injuries. There is no indication of cleaning in this area.
- 8. Photograph #9 is a closer view of the bloodstains on the cabinet doors near the decedent's head. Several bloodstains can be seen that are dripping downward, further indicating that she was upright when she received some of her wounds. A small amount of cast-off type bloodstains are also seen in this area of the cabinets, indicating a downward direction.
- 9. Photograph #10 is a close-up picture of reddish-colored stains on the counter. It is unknown if this stain is in fact blood; if, however, it is blood, it is consistent with a blood drop with some spatter. This would be further indication that the decedent was upright when she received some of her injuries, and then subsequently fell to the floor, leaning back against the cabinet.

- 10. Photograph #11 shows the inside of the sink in the kitchen. Two knives and a wash brush are in the sink. Other photographs (See photograph #12) show cut fruit and other knives on the kitchen counter.
- 11. Review of the medical examiner findings showed that the decedent received multiple stab wounds to the chest, abdomen, neck and scalp. Multiple contusions / bruising were noted at various locations on her upper and lower extremities. These bruises were apparently in various stages of healing.

Summary of findings:

After review of the reports and the photographs, the kitchen area where the decedent was found is consistent with the primary, indoor scene. Assuming that all of the blood noted was the decedent's blood, the bloodstain patterns indicate that she was in a standing position when she received her initial injuries, which caused the blood dripping on the kitchen sink, counter, cabinet and drops on the floor. Subsequently, she was on the floor with her head leaning forward, producing all of the blood drops that fell onto her pants and between her legs.

Two separate contact stains were found on the cabinet near her: one stain was consistent with a wipe from right to left; the second was consistent with a hair swipe, Indicating her halr with blood from her head injury, came in contact with the cabinet in a downward direction.

The stab wounds noted in the photographs are consistent with being caused by a knife, but there is no indication of the length or width of the knife, except for the wound in which the knife was embedded to the handle. The decedent received additional wounds to her heck and head that were not clear in the scene photographs. Therefore, it is not possible to make additional observations on those patterns at this time.

The number and type of wounds and bloodstain patterns observed are consistent with a homicide scene.

Elaine M. Pagliaro, MS, JD

Henry C. Lee, PhD



EXHIBIT "H"

Detective Scott Eelman

Specializing in Crime Scene Reconstruction, Evidence Processing and Management

> 101 Ironstone Drive Lititz, PA 17543 (717) 278-3263

ATTORNEY WORK PRODUCT PERSONAL AND CONFIDENTIAL

April 14, 2017

RE: Ellen R. Greenberg (Case #17-001)

INFORMATION:

I was contacted by Dr. Wayne K. Ross who asked that I review a case for him to perform a crime scene reconstruction. Dr. Ross provided the below listed items for my review.

MATERIALS REVEIWED:

1. Autopsy photos

2. Crime scene photos taken by the Philadelphia Medical Examiner's Office

3. Philadelphia Medical Examiner's report

4. Philadelphia Medical Examiner's Office Investigator report

5. Expert report of Dr. Cyril Wecht, M.D.

ANALYSIS OF INFORMATION:

Ellen R. Greenberg was a 27-year-old female found deceased in an apartment she shared with her fiance, Samuel Goldberg. According to the Medical Examiner's Investigator's report, Mr. Goldberg reported that he left Ms. Greenberg in the apartment by herself when he went to the gym at approximately 1645 hours. He indicated that he returned approximately 30 – 45 minutes later and found the apartment door locked. Mr. Goldberg stated he used his key to attempt entry but found that the security latch had been engaged and he was unable to enter. He waited approximately I hour prior to forcing entry to the apartment. Mr. Goldberg indicated an apartment building security person was present at the time he forced entry.

The photographs of the crime scene depict Ms. Greenberg scated on the kitchen floor against the corner cabinet. She is found slumped downward resting on her buttocks and lower back. Her arms are extended parallel to her upper body with both hands rotated slightly inward from the anatomical position. A white in color towel is noted clenched in her left hand which is also extended toward her feet. Her legs are extended with her feet rotated outward. She is wearing a pair of light brown/tan in color Ugg boots, a pair of gray in color sweatpants tucked into the boots, a dark gray in color zip-up sweatshirt and a dark gray in color T-shirt underneath of the sweatshirt. Her head is noted to be turned to the right and tilted slightly forward with her chin resting on her right shoulder and the right side of her head resting against the cabinet face.

The handle of a knife is present protruding from the upper left chest of Ms. Greenberg. Bloodstains are noted on the sweatshirt, sweatpants, boots, hands and face of Ms. Greenberg. Bloodstains are also noted on the floor immediately adjacent to her body and the cabinet faces adjacent to her body. Two large knives are noted in the right side of the double sink. A kitchen the knife block is noted on the counter in the corner. The knife block is overturned and two empty spaces are observed. A pair of cyeglasses is noted on the floor near her right hand. A "scrunchy" type elastic hair tie is noted around the right wrist.

The boots show small circular and elliptical bloodstains to the top portion of the foot of the boots; with the left boot displaying a greater number of stains than the right. The left shows circular bloodstains on the upward facing aspects of the boots with the elliptical shaped stains following the contour of the boot along the toe and insole areas and associated satellite stains. The left boot shows only five or six circular and elliptical bloodstains. The circular bloodstains are along the upward facing aspect of the boot with the elliptical shaped stains following the contour of the boot along the insole area. No overt bloodstains are noted to the upper portions of either of the boots or the back of the boots. The sole of the right boot does show some evidence of bloodstains but none of the photographs depict enough of the sole of the boot for thorough evaluation. The sole of the left boot cannot be thoroughly evaluated in these photographs.

The bloodstains on the sweatpants show primarily circular and elliptical shaped bloodstains to the front portions of the upper pant legs. There are no obvious bloodstains noted to the lower pant legs below the knees. The left pant leg shows a larger number of circular bloodstains with associated wicking due to the nature of the cloth material of the sweatpants. The circular bloodstains are larger than those visible on the boots. The right pant leg shows a lesser number of circular bloodstains with associated wicking. Some transfer stains are noted to the anterior portion of the upper pant leg. A void area is noted to the upper leg/lower pelvis area of the sweatpants into the crotch portion of the sweatpants. Circular and elliptical bloodstains are noted covering the outer portions of the anterior hip region of the sweatpants. The lower portion of the gray T-shirt is observed covering the upper portion of the sweatpants. Circular/elliptical shaped bloodstains are noted to the lower margin of the T-shirt in this region. A void area is observed from the upper portion of these bloodstains along the lower margin up to the lower margin of the sweatshirt where it covers the T-shirt. Multiple circular and elliptical bloodstains are noted on the anterior portion of the sweatshirt covering the front pocket area with associated wicking more so in the area of the zipper. Some circular and elliptical bloodstains are noted alongside the zipper above this area in the area of the lower rib margin and epigastric region. Void patterns are noted to the front of the sweatshirt beneath the area of both breasts. Elongated elliptical and flow pattern bloodstains are noted to the upper portion of the sweatshirt overlying both breasts; more so on the right than the left. A void pattern is noted overlying the left upper breast region of the sweatshirt. The cloth along the zipper shows clear wicking of blood from the lower rib margin area continuously to its termination at the top of the sweatshirt. No obvious bloodstains are observed to the left upper shoulder, left arm or the left side of the attached hood of the sweatshirt. Multiple circular and elliptical shaped bloodstains and flow pattern bloodstains are noted to the right upper arm region of the sweatshirt. A few circular and elliptical bloodstains are noted to the right lower sleeve of the sweatshirt.

The floor area to the right of Ms. Greenberg shows a few small circular bloodstains. The towel in her left hand shows only a singular bloodstain to the lower portion and a reddish/pink colored area near her left hand. No obvious bloodstains are noted to her left hand. A singular elliptical shaped bloodstain is noted on a cabinet face to the right of the stove.

The floor surface between the legs of Ms. Greenberg showed numerous circular and elliptical bloodstains between her upper legs. There is also evidence of diluted pooled blood between her upper thighs in the crotch area. Dark staining, presumed to be urine, is noted from the crotch area of the sweatpants and upper thighs. No overt bloodstains are noted between the lower legs. There is a collection of dark colored longer hairs noted on the floor between the lower legs of Ms. Greenberg.

The floor area to the left of Ms. Greenberg's right leg and arm shows several bloodstain patterns. Several small circular bloodstains are noted on the floor in the area of the eyeglasses. The arms of the eyeglasses are extended. The frames are dark in color thus making any determination of bloodstains on the frames

more difficult. There is a reddish/pink colored discoloration noted to the right lens of the eyeglasses which may represent blood. A larger patterned bloodstain is noted between the eyeglasses and Ms. Greenberg right hand. There is also a defined edge noted to the bloodstain. The lower edge of the bloodstained towards Ms. Greenberg's feet shows a defined edge and some diluted/altered bloodstain.

The cabinet door face beneath the right side of the double sink shows two distinct bloodstain patterns. There are series of five bloodstains in a linear pattern from lower left upper right. Three of these bloodstains are larger in volume than the subsequent two. The angle of these bloodstains is primarily downward at a relatively low angle. The second set of bloodstains is noted in the upper right corner of the cabinet face. These bloodstains have a slight left to right directionality are primarily downward.

The corner cabinet has two faces to the cabinet door. The face beneath the sink side of the counter shows three sets of distinct swipe patterns. The first set is toward the top left corner of the cabinet under the handle and has a horizontal motion toward the corner of the cabinet. The second set appears below into the right of the first and has a more downward motion with slight motion toward the corner the cabinet. The third set is below the first along the leading edge of the cabinet face. It is a lighter swipe pattern and has a horizontal motion. A small transfer pattern is noted between the first and third swipe patterns. The adjacent face of the coroner cabinet on the stove side of the counter shows several smaller transfer type bloodstains. The available set of photographs is not sufficient for a determination on whether these are swipe patterns or simply transfer.

The bloodstains to her face show primarily flow patterns and transfer patterns. A significant flow pattern stain is noted emanating from her upper right forehead, diagonally across her forehead to the left eyebrow region. A second set of flow patterns appears to originate from the corner of her left eye. The first branch of this flow pattern flows downward alongside of the left side of her nose and terminates under her left nares. The second branch of this flow pattern moves across the lower aspect of her left cheekbone were it appears to pool or at least spread out and moves downward. It diverges into two branches; the first of which terminates at the left corner of the mouth and the second appears to terminate just lateral to this. The third branch flows from the left cheekbone lateral to the first two, flows downward just lateral to the left corner of her mouth and down to the left side of her chin. Another branch from the wider area along her left cheekbone moves rearward toward her ear and slightly upward. Yet another branch moves rearward toward her ear, slightly further than the previous branch, and then moves slightly upward. Another branch moves from her left cheekbone laterally and slightly downward toward the corner of her jaw and into her hairline below and behind her left ear. A large area of bloodstain is noted on the upper portion of the bridge of her nose between her eyes. Bloodstains are observed to the right side of the face as well but these photographs fail to clearly depict this area enough for a thorough analysis.

The photographs from the front door are reviewed. There is damage noted to the door side of the security latch which is still attached to the door. The screws are still present in the screw hole. The doorjamb side of the security latch does not appear to show any damage. The floor underneath the door area, while it is difficult to see with the photographs given, does not show any evidence of debris from the damaged security latch.

No photographs were received of the refrigerator, kitchen pantry/closet or any portion of that wall between the kitchen and the front door. No photographs are received of the ceiling of the kitchen area. No photographs are received of Mr. Goldberg, his footwear or his clothing.

The autopsy report from the Philadelphia Medical Examiner's Office concludes that Ms. Greenberg suffered eight stab wounds to her chest, one stab wound to her abdomen, and incised wound to her scalp and 10 stab wounds to her posterior neck.

FINDINGS AND OPINIONS:

 Ms. Greenberg died as a result of stab wounds to the back of her neck, abdomen and chest. A significant incised wound was also noted to the back of the right side of her scalp.

- 2. Is Greenberg was found in the corner of the kitchen area of the apartment between the sink and the stove. Her back was leaning against the corner cabinet, she was slumped downward with her feet and arms extended. A white and colored towel was located in her left hand and was also extended downward toward her feet. Her head was found to be tilted slightly forward and to the right with her chin resting against her right shoulder and the right lateral portion of her head resting against the face of the coroner cabinet.
- The bloodstains on her face are inconsistent with the position in which she was found. Specifically the bloodstain flow pattern diagonally across her forehead from the right to the left and terminating in the left eyebrow would move against the law of gravity. This particular flow pattern indicates that her head was tilted slightly backwards and to the left as the origination of that blood occurred in the hairline somewhere above and to the right of the anterior forehead. The blood flow from the medial corner of the left eye has several branches. The branch closest to the nose would be consistent with the position in which she was found. It flows along the left side of the nose and terminates underneath the left nares. The remaining branches of this complex bloodstain do not comport with the position in which she was found. A significant amount of blood flowed from the medial corner of her left eye, moved across her left cheek and across the surface of a raised cheekbone. From there, this complex bloodstain has several branches which indicate her head was in different positions as this blood flowed. The first branch, moving medially to laterally, moves down the front of the face just lateral to the left side of the nose and splits into two branches; one of which terminates in the left corner of the mouth and the other terminates just lateral to the left corner of the mouth. The next branch, moving laterally, continues laterally across her cheekbone and then proceeds downward lateral to the second branch, lateral to the left corner of her mouth and proceeds down to the left side of her jawbone between the chin and the corner of the jaw. The next branch, moving laterally, continues from the cheekbone and moves slightly upward toward the eye before terminating. This would indicate that the head was lying back either in a flat or lowered position. The next branch follows the larger stain pattern across the cheekbone and then also moves upward toward the ear before terminating. In a larger, seemingly more significant, flow pattern bloodstain moves laterally across the cheek to the corner of the jaw proceeding rearward into the hairline below and behind the left ear. This would again move against the flow of gravity given the position in which the body was found. This bloodstain indicates that her head was intact tilted back or completely flat at the time of this blood flow.
- The circular and elliptical bloodstains noted to the sweatshirt indicate the source of the blood is from above this level, most likely the head or neck. These bloodstains are consistent with dropped blood and would indicate that the head of the victim was tilted forward at the time of their deposition. The void patterns in the sweatshirt comport with this theory and can be accounted for by folds in the sweatshirt if the entire body was leaning forward with the head/neck complex leaning forward. This would also account for the circular appearing bloodstains noted to the lower portion of the T-shirt sticking out from under the sweatshirt and the circular bloodstains noted to the upper legs of the sweatpants. The stains are all consistent with dropped blood. The circular appearing bloodstains on the shirt and the upper pants indicate that the source of the blood was directly over or nearly directly over the pants and shirt where the bloodstains were deposited. The greater number of circular bloodstains noted to the left upper leg as compared to the right upper leg of the sweatpants would indicate that the source of the blood would have been concentrated for a longer period of time over the left upper leg. The lack of bloodstains to the lower legs of the pants coupled with the small circular bloodstains to the tops of the boots would indicate that the lower legs were obstructed from the dropped blood. This would be consistent with Ms. Greenberg being in a scated position, her head leaning forward with her feet flat on the floor. The void patterns to the upper portion of the sweatpants between the waist and the upper legs are also consistent with this theory.
- Should Ms. Greenberg have been standing at the time of the blood being dropped onto her upper pants, these bloodstains would be elliptical in nature with some evidence of directionality. One would also expect to find bloodstains on the lower pant legs as well.

- 6. While no photographs were provided of the back of Ms. Greenberg's clothing, the blood flow patterns and injuries to the neck would indicate that bloodstains were present to the back of her clothing. While some transfer patterns were observed to the stove side cabinet face of the corner cabinet, there were no significant transfer patterns noted to this area.
- 7. Swipe patterns noted on the sink side cabinet face of the corner cabinet indicate Ms. Greenberg's bloody hair came in contact with this cabinet face. The first contact was near the opening side of the cabinet face and moved rearward. Her head was then separated from the cabinet face and later recontacted the cabinet face in a lower position than the original contact where it moved backward and slightly downward. No other obvious swipe patterns were noted to the cabinet face. None of these bloodstains accounts for the flow patterns noted to the front of Ms. Greenberg's face.
- The number and volume of drops noted to her sweatshirt, her sweatpants and her boots is significant.
 The number of bloodstains on the floor, however, is minimal in comparison to those found on her
 clothing.
- 9. The bloodstain noted to the floor between her right hand and the eyeglasses is of particular interest. This bloodstain has a hard edge indicating that there was either an intervening object preventing the flow of blood any further or that the bloodstain was somehow altered. Although it is difficult to discern given the photographs presented, there is an area of pinkish discoloration noted to the lower edge of the bloodstain which may indicate some form of attempt to clean up or other alteration of the bloodstain. There is also a significant pattern noted within the bloodstain itself which may be consistent with the footwear pattern or something else.
- 10. Though the photographs do not clearly depict the bottoms of Ms. Greenberg's boots, there are some bloodstains evident to the bottom of the right boot. Were the pattern bloodstain to have been made by Ms. Greenberg's boot, one would expect to see other pattern transfer stains on the floor in other locations where she stepped. One would also expect to see a larger bloodstain pattern covering the surface of the sole of her right boot.
- 11. It is my opinion, that Ms. Greenberg was not in the position in which she was found at the time that the blood was deposited on her sweatpants, sweatshirt and shoes. It is also my opinion that Ms. Greenberg's head had been in several positions during the time of blood flow and it remained so for enough time as to have the blood flow across her face and back toward her ear, upward toward her eyes and also downward toward her chin.
- 12. It is my opinion that the bloodstain evidence in this case is inconsistent with position in which Ms. Greenberg was found. Furthermore, I have serious concerns regarding the patterned bloodstain to the left of Ms. Greenberg's right leg, the minimal amount of bloodstains on the floor in comparison with those found on the clothing of Ms. Greenberg and the flow patterns of the bloodstains on Ms. Greenberg's face relative to the position in which she was found.

These opinions were formed using the information available at the time of the evaluation and examination. I reserve the right to amend these opinions should further information become available.

Respectfully,

Detective Scott Eelman

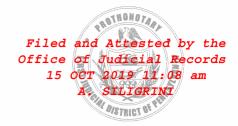


EXHIBIT "I"

A Guide For Manner of Death Classification

First Edition



National Association of Medical Examiners ®

Prepared by
Randy Hanzlick, MD
John C. Hunsaker III, MD, JD
Gregory J. Davis, MD

Approved by the NAME Board of Directors February 2002

recognize the recurrent debates about manner-of-death classification and arrive at a consensus approach for the commonly encountered manner of death dilemmas. We can "agree to disagree-- but to not be disagreeable," to quote New York City Medical Examiner Charles Hirsch. All agree, however, on the fundamental premise that manner of death is circumstance-dependent, not autopsy-dependent. To that end, the suggestions in this Guide are made based on experience, the literature, and a goal for greater consistency.

Other Background Information:

The death certificate is used for several major purposes. One purpose is to serve as legal documentation that a specific individual has died. In general, the death certificate serves as legal proof that death has occurred, but not as legal proof of the cause of death. Other major purposes of the death certificate are to: (a) provide information for mortality statistics that may be used to assess the Nation's health; (b) systematically catalogue causes of morbidity and mortality; and (c) develop priorities for funding and programs that involve public health and safety issues.

In general, the *certifier of death* completes the cause-of-death section and attests that, to the best of the certifier's knowledge, the person stated died of the cause(s) and circumstances reported on the death certificate. It is important to remember that these "facts" only represent the certifier's opinion and are not written in stone or legally binding. Information on the death certificate may be changed, if needed. In general, states require that the certifier of death be a licensed physician, a medical examiner, or a coroner. In some states, lay coroners may serve as certifier, but such certifiers can and should rely upon physician input and guidance when completing the death certificate.

Because the cause and manner of death are opinions, judgment is required to formulate both for reporting on the death certificate. The degree of certainty required to classify the manner of death depends sometimes on the circumstances of the death. Although such issues will be discussed in further detail below, a general scheme of incremental "degrees of certainty" is as follows:

- Undetermined (less than 50% certainty)
- Reasonable medical or investigative probability (Greater than a 50:50 chance; more likely than not)
- Preponderance of medical/investigative evidence (For practical purposes, let's say about 70% or greater certainty)
- Clear and convincing medical/investigative evidence (For practical purposes, let's say 90% or greater certainty)
- Beyond any reasonable doubt (essentially 100% certainty)
- Beyond any doubt (100% certainty)

Seldom, for the purpose of manner-of-death classification, is "beyond a reasonable doubt" required as the burden of proof. In many cases, "reasonable probability" will suffice, but in other instances such as suicide, case law or prudence may require a

"preponderance" of evidence—or in homicide—"clear and convincing evidence" may be required or recommended. Further references to these principles will follow on the discussion of specific scenarios, as appropriate, below.

The certifier's responsibilities include professional, administrative, and quasi-judicial elements. The conclusions that lead to manner-of-death classification are drawn at some point during an ongoing investigation. Cases are seldom, if ever, truly "closed" because the conclusions regarding manner of death may be changed (amended) anytime based on new relevant and material information. It is also important to remember that the conclusions reached for the purpose of manner-of-death classification may not be the same as those of other entities and officials. Such differences are expected because of the different roles and viewpoints of those entities and officials. In virtually all instances, explanations for such differences are usually apparent and readily offered. It is also important to remember that new developments in medicine and forensic science may provide the relevant and/or material information that leads to a need for reclassification of manner of death.

Manner-of-death classification has, to a significant degree, an element of history and tradition. When asked why manner of death is classified in a specific way, a not-uncommon response is "that's the way I was trained" or "that's the way its always been done where I have worked." Tradition, history, training, and local idiosyncrasies in the criminal justice and law enforcement communities can have impact upon manner-of-death classification strategy. This phenomenon is recognized and is taken into account during the development of principles in this Guide.

Finally, one cannot escape the need to consider **intent** when classifying manner of death. However, the definition of, or need to consider "intent" may vary depending on the case. One basic consideration is beyond dispute: the concept of intent differs when manner-of-death classification issues are compared with other paradigms such as legal code and public health strategies. These issues will be addressed in various scenarios below. The take-home point devolving from contemporary practice is that a singular definition and application of "intent" does not work in the context of manner-of-death classification.

General Principles:

There are several General Principles that may guide manner-of-death classification for the purposes of the death certificate. It is important to recognize that the death certificate has unique uses which dictate a special set of guidelines for manner-of-death classification.

A. There are exceptions to every "rule," but every rule holds true most of the time. Therefore, rules can be modified or broken in exceptional circumstances but can, and should be followed most of the time.

B. There are basic, general "rules" for classifying manner of death.

• Natural deaths are due solely or nearly totally to disease and/or the aging process

"intentional" (such as inflicted injury in child abuse or shooting a person during a robbery) or "unintentional" (such as falling from a building). Thus, assessment of "intent" does relate to manner-of-death classification: it necessarily underlies the quasijudicial responsibility derived from the enabling law in the relevant jurisdiction of the death certifier. However, the legal view of intent may differ from the death investigator's viewpoint. It is sometimes agonizingly difficult, and occasionally impossible, for the unbiased investigator to infer a victim's or "perpetrator's" intent. Intent is also much more apparent in some cases than others. For this reason, the concept of "voluntary acts" or "volition" may be useful. In general, if a person's death results at the "hands of another" who committed a harmful volitional act directed at the victim, the death may be considered a homicide from the death investigation standpoint. For example, consider the case of a variation of firearms "roulette" in which the game is played as usual (one bullet in the revolver's cylinder) except that another person holds the gun to the "player's" head, spins the cylinder, pulls the trigger, and the gun discharges and kills the "player." All acts (loading the gun, spinning the cylinder, placing the gun to the head, and pulling the trigger) were both volitional and intentional. Although there may not have been intent to kill the victim, the victim died because of the harmful, intentional, volitional act committed by another person. Thus, the manner of death may be classified as homicide because of the intentional or volitional act—not because there was intent to kill.

Principles and recommendations for specific types of cases.

- 1. To classify a death as Suicide, the burden of proof need not be "beyond any reasonable doubt," but it should exceed "more likely than not" (that is, the burden of proof should be more compelling than 51%, which barely exceeds chance). In general, requiring a "preponderance of evidence" is a reasonable practice when deciding whether to classify a death as suicide. In some states, case or other law requires that a preponderance of evidence exist to classify death as suicide. In short, if classification as suicide is little more than an informed guess or mere speculation, accident or undetermined are deemed to be better options.
- 2. When a natural event occurs in a hostile environment, as when someone has a myocardial infarct while swimming, and there is a likelihood that the person was alive when the face became immersed (i.e., the person was still alive while in the hostile environment), preference is usually given to the non-natural manner unless it is clear that death occurred before entry into the hostile environment. In the example cited (drowning because of a myocardial infarct while swimming), the manner of death would be appropriately classified as **Accident**. In this instance, a modified "but-for" test can be applied. "But-for" the hostile environment, death would have been considerably less likely to occur when it did and may not have occurred at all.
- **3.** Consequences of chronic substance abuse, such as alcoholic cirrhosis, alcohol withdrawal seizures, endocarditis secondary to chronic IV drug abuse, and emphysema associated with smoking, have been traditionally designated as **Natural** manner. The

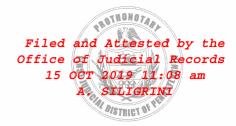
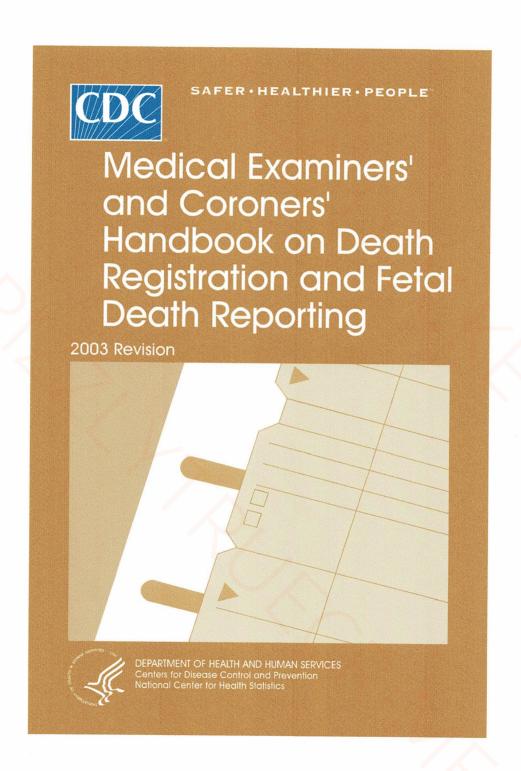


EXHIBIT "J"



related medical conditions as early as possible. However, all cause information reported on death certificates is important and is analyzed.

In the sections that follow, detailed instructions are given on how to complete Parts I and II. A number of examples of properly completed certificates with case histories are provided in this section to illustrate how the cause of death should be reported. Some common problems are also discussed later in this section.

Changes to cause of death

Should additional medical information or autopsy findings become available that would change the cause or causes of death originally reported, the original death certificate should be amended by the medical-legal officer by **immediately** reporting the revised cause of death to the State vital records office or local registrar.

Instructions

The cause-of-death section consists of two parts. **Part I** is for reporting a chain of events leading directly to death, with the **immediate cause** of death (the final disease, injury, or complication directly causing death) on line (a) and the **underlying cause** of death (the disease or injury that initiated the chain of events that led directly and inevitably to death) on the lowest used line. **Part II** is for reporting all other significant diseases, conditions, or injuries that contributed to death but which did not result in the underlying cause of death given in **Part I**.

The cause-of-death information should be the medical examiner's or coroner's best medical OPINION. Report each disease, abnormality, injury, or poisoning that the medical examiner or coroner believe adversely affected the decedent. A condition can be listed as "probable" even if it has not been definitively diagnosed.

If an organ system failure (such as congestive heart failure, hepatic failure, renal failure, or respiratory failure) is listed as a cause of death, always report its etiology on the line(s) beneath it (for example, renal failure **due to** Type I diabetes mellitus or renal failure **due to** ethylene glycol poisoning).

When indicating neoplasms as a cause of death, include the following: a) primary site or that the primary site is unknown, b) benign or malignant, c) cell type or that the cell type is unknown, d) grade of neoplasm, and e) part or lobe of organ affected (for example, a primary well-differentiated squamous cell carcinoma, lung, left upper lobe).

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supplemental report of cause of death with the State registrar. Information on the proper form to use and procedure to follow can be obtained from his or her State registrar.

Circumstances of injury or violence—Space is provided on the death certificate for reporting the manner of death; check one of the following boxes: Natural, Accident, Suicide, Homicide, Pending Investigation, or Could not be determined. If "Pending Investigation" is checked, it should be changed after the investigation is completed. The appropriate State amendment procedures should be used to modify this item.

When the death was the result of an external cause, the medical examiner or coroner should specify whether it was an accident, suicide, or homicide and describe the circumstances in items 38–44. In item 43 a clear, brief statement as to how the injury occurred should be made, indicating the circumstances or cause, such as "Burned using gasoline to light stove," "Slipped and fell while shoveling snow," "Self-inflicted handgun wound," or "Stabbed by sharp instrument."

Bearing in mind that accident prevention programs, assessment of motor vehicle fatalities, and so forth, depend upon the proper wording of this item, the medical examiner or coroner should, in as few words as possible, describe the injury-producing situation. If the death was due to a vehicu lar accident, be sure to indicate whether the decedent was a driver, pas senger, or pedestrian, and the type of vehicle(s) involved.

The medical examiner or coroner should state whether the injury occurred while the deceased was at work at his or her usual occupation and give the specific location where the accident took place.

The National Association of Medical Examiners has put together a guide on how **manner** of death may be determined (9). In certain cases, the manner of death preferred by the medical examiner community and the disease classification differ. As a result, it is important to specify the circum stances (e.g., item 43) involved so that both communities are able to make appropriate use of the information.

In the cases of violent death where the medical examiner or coroner cannot decide which of the terms—accident, suicide, or homicide—best describes the manner of death, "Could not be determined" should be checked. The medical examiner or coroner should bear in mind that "Could not be determined" is intended solely for cases in which it is impossible to estab lish with reasonable medical certainty the circumstances of death after thorough investigation. This category should not be used for cases "Pend ing Investigation."

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The National Association of Medical Examiners makes the following distinctions between manners of death (9):

Natural—"due solely or nearly totally to disease and/or the aging process."

Accident—"there is little or no evidence that the injury or poisoning oc curred with intent to harm or cause death. In essence, the fatal outcome was unintentional."

Suicide—"results from an injury or poisoning as a result of an intentional, self-inflicted act committed to do self-harm or cause the death of one's self."

Homicide—"occurs when death results from..." an injury or poisoning or from "...a volitional act committed by another person to cause fear, harm, or death. Intent to cause death is a common element but is not required for classification as homicide."

Could not be determined—"used when the information pointing to one manner of death is no more compelling than one or more other competing manners of death when all available information is considered."

Pending investigation—used when determination of manner depends on further information.

One of the more difficult tasks of the medical examiner or coroner is to determine whether a death is an accident or the result of an intent to end life. The medical examiner or coroner must use all information available to make a determination about the death. This may include information from his or her own investigation, police reports, staff investigations, and dis cussions with the family and friends of the decedent.

Determining a suicide

- There is evidence that death was self-inflicted. Pathological (autopsy), toxicological, investigatory, and psychological evidence, and state ments of the decedent or witnesses, may be used for this determina tion.
- There is evidence (explicit and/or implicit) that at the time of injury the
 decedent intended to kill self or wished to die and that the decedent
 understood the probable consequences of his or her actions.
 - Explicit verbal or nonverbal expression of intent to kill self
 - Implicit or indirect evidence of intent to die, such as the following:

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- Expression of hopelessness
- Effort to procure or learn about means of death or rehearse fatal behavior
- Preparations for death, inappropriate to or unexpected in the context of the decedent's life
- Expression of farewell or desire to die, or acknowledgment of impending death
- Precautions to avoid rescue
- Evidence that decedent recognized high potential lethality of means of death
- Previous suicide attempt
- Previous suicide threat
- Stressful events or significant losses (actual or threatened)
- Serious depression or mental disorder (10,11)

When cause cannot be determined

It is well known that a professionally competent, searching autopsy and toxicological examination of the body fluids and organs, coupled with the best available bacteriologic, virologic, and immunologic studies, may fail to reveal the cause of death.

If this is the case and if the investigation has been pursued as far as possible, then the medical examiner or coroner will have no recourse but to indicate in one form or another that the cause of death "Could not be determined." One possible phrase is "Cause of death not determined at autopsy and toxicological examination." This is better than the term "Un known" as it at least indicates the extent of the investigation undertaken.

Deferred "pending investigation"

Most, if not all, medical-legal investigative systems make provisions for cases in which the cause or manner of death cannot be immediately determined. Local laws vary somewhat as to how to handle such cases.

The procedure followed most frequently is to require that the death certificate be completed insofar as possible and filed within the time limits specified by law. Once the cause and/or manner of death are determined, a supplemental report must be prepared and filed by the medical-legal officer. This supplemental report becomes a part of the death certificate that is on file for the decedent.

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EXHIBIT "B"

DEATH CERTIFICATE

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EXHIBIT "C" MEO REPORT FIN



City of Philadelphia Office of the Medical Examiner

321 University Avenue Philadelphia, PA 19104

Case Number

: 11-00420

Date of Death

: Jan 26 2011

FINDINGS AND OPINIONS

DECEDENT'S NAME ELLEN R. GREENBERG	AGE	RACE	sex	HEIGHT	WEIGHT
	27 Years	White	Female	5 ft 7 in	136 lb
pronounced dead by Medic-5	AT 4601 Flat Rock F Philadelphia PA	Jan 26 2011 6:40PM			
id witness name	ADDRESS	RELATION			
Joshua Greenberg	4408 Saybrook L	Father			

Findings:

The decedent is a 27-year-old female with a history of anxiety. Per the police investigation the decedents' live in fiancé returned home from the gym to find door locked and the security latch on the door. He made several attempts to contact the decedent by yelling into the apartment, sending her a series of text messages, sending her an E-mail, and calling her phone. The fiancé ultimately broke into the apartment and found her dead in the kitchen.

- Multiple stab wounds to the chest, abdomen, and back of neck. A knife (12.5 centimeter blade) is present in one of the chest wound (at a depth of 10 centimeter). There is an incised wound to right occipital scalp
 - The wounds are associated injuries to the aortic arch, the upper lobe of the left lung, liver, and the cervical spinal cord at C2-C3 level dorsally.
 - o The spinal cord injury was evaluated grossly by neuropathology. It was concluded that the injury to the spinal cord would not have incapacitated the decent. Therefore the decent would be able to inflict the subsequent stab wounds to her body.
 - There are bilateral hemothoraces, a hemopericardium, a small collection of subarachnoid blood over the vermis and the base of the right cerebellar hemisphere. There are no gross defects to the parenchyma of the cerebellum or brainstem.
- Multiple contusions are on upper and lower extremities in various stages of resolution
- DNA analysis of blood stains on the knife and the decedent clothing only match her DNA
- Analysis of the decedent's laptop provided no additional information

Cause of Death:

Multiple Stab Wounds

Other Significant Conditions:

Manner of Death:

Suicide

Marlon Osbourne, M.D. Assistant Medical Examiner

City of Philadelphia Office of the Medical Examiner

321 University Avenue Philadelphia, PA 19104

Case Number

11-00420

Date of Death Jan 26 2011

REPORT OF EXAMINATION

DECEDENT'S NAME

ELLEN R. GREENBERG

An autopsy was performed on the body of the decedent at the Philadelphia Medical Examiner's Office on January 27, 2011. The external examination was started at approximately 9AM. The internal examination was started at approximately 11AM.

Clothing: The clothing that accompanies the decedent consists of grey/purple hooded sweatshirt, grey sweat pants, and brown boots.

EXTERNAL EXAMINATION:

The body is that of a 5 foot 7 inch, 136 pound, white female who appears compatible with reported age of 27 years. The atraumatic scalp is covered by brown hair. The facial bones have no palpable fractures. The irides are brown. The sclerae are white. The conjunctivae have no petechiae. The external auditory meatuses have no discharge. The nares are patent. The nasal bones and nasal septum are intact. The lips are atraumatic. The oral cavity has no injuries. The tongue has no injuries. The teeth are natural and in good repair. The neck is symmetric. The chest is symmetric. The abdomen is flat. The body habitus is mesomorphic. The back is symmetric. The upper and lower extremities have no deformities or fractures. The external genitalia are those of an adult female. The anus and perineum have no trauma or abnormalities.

STAB WOUND "A" OF CHEST:

An elliptical, horizontally oriented 0.4×0.2 centimeter stab wound is centered 30 centimeters below the top of the head in the midline of the chest. The medial end of the wound is sharp. The lateral end is blunt. The edges of the wound are smooth. The wound is approximately 0.4 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back.

STAB WOUND "B" OF CHEST:

An elliptical, horizontally oriented 0.3×0.1 centimeter stab wound is centered 31 centimeters below the top of the head in the midline of the chest. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.3 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back.

STAB WOUND "C" OF CHEST:

An elliptical, obliquely oriented 2 x 0.6 centimeter stab wound is centered 29 centimeters below the top of the head, and 4.5 centimeters to the right of midline. The sharp end is in the 5 o'clock position. The blunt end is in the 10 o'clock position. The edges of the wound are smooth. The wound is approximately 1.7 centimeters when reapproximated. The wound extends through the skin and muscles of the right side of the chest and the right clavicle for a depth of 1.4 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the right side of the chest and beneath the right clavicle.

The pathway of the wound with the body in the normal anatomic position is slightly right to left, front to back and slightly upward.

STAB WOUND "D" OF CHEST:

An elliptical, horizontally oriented 0.3×0.1 centimeter stab wound is centered 33 centimeters below the top of the head and 2.7 to the right of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.3 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back.

STAB WOUND "E" OF CHEST:

An elliptical, horizontally oriented 1.7 x 0.5 centimeter stab wound is centered 33 centimeters below the top of the head, and 2.5 centimeters to the left of midline. The sharp end is in the 3 o'clock position. The blunt end is in the 9 o'clock position. The edges of the wound are smooth. The wound is approximately 1.6 centimeters when reapproximated. The wound extends for a depth of 10 centimeters through the skin and muscles of the left side of the chest, the left second intercostal space, into the superior mediastinum.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the left side of the chest, creates a 2.4 centimeter incised defect to the aortic arch, and a incises the upper lobe of the left lung. The pericardial sac contains 120 milliliters of liquid and clotted blood. The left pleural cavity contains 600 milliliters of liquid blood. The right pleural cavity contains 500 milliliters of liquid blood.

The pathway of the wound with the body in the normal anatomic position is left to right, front to back and slightly downward.

STAB WOUND "F" OF CHEST:

An elliptical, vertically oriented 0.6×0.2 centimeter stab wound is centered 34.5 centimeters below the top of the head and 0.8 to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.5 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back.

STAB WOUND "G" OF CHEST:

An elliptical, vertically oriented 0.6 x 0.2 centimeter stab wound is centered 34.5 centimeters below the top of the head in the midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.5 centimeters when reapproximated. The wound extends through the skin of the chest for a depth of 0.2 centimeters.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the chest

The pathway of the wound with the body in the normal anatomic position is front to back.

STAB WOUND "H" OF CHEST:

An elliptical, vertically oriented 1.5 x 0.5 centimeter stab wound is centered 42 centimeters below the top of the head in the midline. The sharp end is in the 6 o'clock position. The blunt end is in the 12 o'clock position. The edges of the wound are smooth. The wound is approximately 1.5 centimeters when reapproximated. The wound extends for a depth of 4 centimeters through the skin and muscles chest, through the right sixth intercostal space, and 2.3 centimeter into the liver.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the right side of the chest a 2.3

centimeter deep liver defect, and intraabdominal blood.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, front to back.

STAB WOUND "I" OF ABDOMEN:

An elliptical, vertically oriented 2 x 0.8 centimeter stab wound is centered 46 centimeters below the top of the head in the midline. The sharp end is in the 6 o'clock position. The blunt end is in the 12 o'clock position. The edges of the wound are smooth. The wound is approximately 1.9 centimeters when reapproximated. The wound extends for a depth of 6 centimeters through the skin and muscles of the abdominal wall.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the abdominal, intramesentric hemorrhage and intraabdominal blood.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, front to back.

INCISED WOUND "J" OF SCALP:

An obliquely oriented 6.5 x 1.1 centimeter wound is centered 8 centimeters above the right external auditory meatus, and 6 centimeters to the right of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 6.5 centimeters when reapproximated. The wound extends through the skin and the scalp.

STAB WOUND "K" OF NECK:

An elliptical, vertically oriented 2×0.2 centimeter stab wound is centered 9 centimeters below the top of the head, and 2 centimeters to the left of midline. A 1×0.2 centimeter serrated abrasion is associated with the wound. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1 centimeter when reapproximated. The 0.3 centimeter deep wound extends through the skin of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, back to front.

STAB WOUND "L" OF NECK:

An elliptical, vertically oriented 1.1×0.6 centimeter stab wound is centered 14 centimeters below the top of the head, and 4 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1.1 centimeter when reapproximated. The 0.2 centimeter deep wound extends through the skin of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly left to right back to front.

STAB WOUND "M" OF NECK:

An elliptical, vertically oriented 0.2 x 0.1 centimeter stab wound is centered 11 centimeters below the top of the head in the midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.2 centimeter when reapproximated. The 0.3 centimeter deep wound extends through the skin of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is back to front.

STAB WOUND "N" OF NECK:

An elliptical, vertically oriented 1.1×0.4 centimeter stab wound is centered 13 centimeters below the top of the head, and 0.5 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1.2 centimeter when reapproximated. The 8 centimeter deep wound extends through the skin and muscles of the posterior neck through the occipital triangle and into the ligamentum nuchae.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck, a defect in the ligamentum nuchae, incises small vessels overlying the cerebellum, creating a subarachnoid hemorrhage over the vermis, the caudal aspect of the right cerebellar hemisphere.

The pathway of the wound with the body in the normal anatomic position is left to right, back to front and upward.

STAB WOUND "O" OF NECK:

An elliptical, horizontally oriented 1.2 x 0.6 centimeter stab wound is centered 14 centimeters below the top of the head, and 6.8 centimeters below the right external auditory meatus. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1.4 centimeter when reapproximated. The 3 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is right to left, back to front.

STAB WOUND "P" OF NECK:

An elliptical, vertically oriented 1 x 0.3 centimeter stab wound is centered 13.5 centimeters below the top of the head, and 2 centimeters to the right of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 1 centimeter when reapproximated. The 2.1 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is right to left, back to front.

STAB WOUND "Q" OF NECK:

An elliptical, vertically oriented 0.6 x 0.3 centimeter stab wound is centered 15 centimeters below the top of the head, and 3 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.6 centimeters when reapproximated. The 2 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, back to front.

STAB WOUND "R" OF NECK:

An elliptical, vertically oriented 0.9 x 0.6 centimeter stab wound is centered 16 centimeters below the top of the head, and 3 centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.9centimeters when reapproximated. The 1.9 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, back to front.

STAB WOUND "S" OF NECK:

An elliptical, vertically oriented 0.5 x 0.1 centimeter stab wound is centered 16.5 centimeters below the top of the head, and 1.1centimeters to the left of midline. The ends of the wound are sharp. The edges of the wound are smooth. The wound is approximately 0.5 centimeters when reapproximated. The 2.1 centimeter deep wound extends through the skin and muscles of the posterior neck.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the posterior neck.

The pathway of the wound with the body in the normal anatomic position is slightly left to right, back to front.

STAB WOUND "T" OF NECK:

An elliptical, horizontally oriented 1.5×0.3 centimeter stab wound is centered 16.5 centimeters below the top of the head, and 4.5 centimeters to the right of midline. The medial end of the wound is sharp. The lateral end is blunt. The edges of the wound are smooth. The wound is approximately 1.5 centimeters when reapproximated. The 7 centimeter deep wound extends through the skin, and muscles of the back, between the second and third cervical vertebra laterally, and incises the dura covering the subjacent spinal cord.

Associated with the wound track are hemorrhages in the adjacent soft tissues and muscles of the left side of the back, a defect of the dura and focal epidural hemorrhage. Grossly there is bulging of the cervical cord subjacent to the dural defect.

Note: Neuropathologist Dr. Lucy Rouke examined the spinal cord and concluded that there is no defect of the spinal cord.

The pathway of the wound with the body in the normal anatomic position is right to left, back to front.

OTHER INJURIES:

The right upper arm has a round 3×4 centimeter contusion. The right forearm has a 3×1.5 centimeter area of three round contusions. The right lower quadrant of the abdomen has a 3×3.5 centimeter contusion. The right thigh has vertical row of round contusions that are a 2.5×3 centimeter, 4.5×3 centimeter, and 5×6 centimeters. Above the right knee is a 4.5×3 centimeter area of three round contusions.

INTERNAL EXAMINATION:

The firm, brown, muscles of the anterior neck, have no hemorrhage or injuries. The adjacent connective tissue and vessels of the anterior aspect of the cervical spine are unremarkable. The clavicles, sternum, and pelvic bones have no fractures. The hyoid bone and thyroid cartilage are intact. The peritoneal cavity has no adhesions. The intrathoracic and intraabdominal organs are in their normal positions.

The smooth epicardium has a normal amount of subepicardial adipose tissue in a normal distribution. The heart is 230 grams. The right coronary artery supplies the posterior interventricular septum. The coronary arteries have no atherosclerosis. The chambers of the heart contain no mural thrombi. The atrioventricular and semilunar valves are normally formed and have no calcifications, nodularity, or vegetations. The coronary arteries arise normally from the sinuses of Valsalva. The firm, red-brown, homogenous myocardium has no areas of fibrosis or necrosis. Injuries to the aorta are as previously described. The aorta arises from its usual position, has a normal branching pattern and no atherosclerosis. The pulmonary arteries have no thromboemboli.

The larynx and trachea have no foreign objects or mucous plugs. The right and left lungs are 220 grams and 200 grams, respectively. Injuries to the right lung are as previously described. The smooth pink-tan to purple visceral pleural surfaces have mild anthracosis. The red-maroon and congested lung parenchyma has no areas of consolidation, granulomata or masses. The tracheobronchial tree has no mucous plugs or foreign objects.

The esophagus has a white-tan, longitudinally folded mucosa and no varices. The empty stomach has a pink smooth serosa. The tan gastric mucosa has rugal folds and no erosions or ulcers. The small and large intestines have tan, smooth serosa and no perforation, obstruction, masses or ischemic injuries. The appendix is normal. The rectum is filled with green stool.

The 1160 gram liver has an intact capsule, red-brown congested parenchyma and no masses or cysts. The gallbladder is empty. The tan, lobulated pancreas has no masses or cysts.

The 100 gram spleen has a lavender intact capsule, red-maroon parenchyma and inconspicuous Malpighian corpuscles. The paraaortic, paratracheal, and mediastinal lymph nodes are inconspicuous.

The right and left kidneys are 110 grams and 140 grams, respectively. The cortical surfaces are smooth. The renal parenchyma has pale cortices and distinct and prominent medullary pyramids. The calyces and pelves are not dilated and have no masses or calculi. The ureters are unobstructed and normal in course and caliber to the urinary bladder. The urinary bladder contains 100 milliliters of yellow urine.

The vagina has a smooth mucosa and no lesions. The cervix is normal. The uterus has a normal shape and normal myometrial thickness. The endometrium is smooth and has no lesions. The ovaries are normal. The fallopian tubes have normal caliber.

The brown, bilobed thyroid gland has no masses or cysts. The parathyroid glands are inconspicuous. The adrenal glands have thin yellow cortices and brown medullae.

The reflected scalp has no subgaleal hemorrhages. The calvarium and skull base are intact. The epidural and subdural spaces have no liquid accumulations. A small amount of subarachnoid blood covers the rostral surface of the vermis, right cerebellar hemisphere, and the basal cisterns. No gross parenchymal defects are identified in theses areas. The leptomeninges are thin and translucent. The brain is 1440 grams. The cerebral hemispheres are symmetric. The corpus callosum is intact. The basilar artery, its tributaries and branches have no atherosclerosis or aneurysms. The cingulate gyri, unci and cerebellar tonsils are not herniated.

Marlon Osbourne, M.D. Assistant Medical Examiner

(End of Report)



Toxicology Report

City of Philadelphia Office of the Medical Examiner CASE NO. 11-00420

Name: ELLEN R. GREENBERG

Age: 27 Years

Sex: Female Race White

Pathologist:

Marlon Osbourne

ELISA - Enzyme Immunoassay

BENZODIAZEPINES

Blood, Cardiac (F)

Negative

FENTANYL

Blood, Cardiac (F)

Negative

OPIATES

Blood, Cardiac (F)

Negative

OPLATES

Urine

Negative

Wet Chemical Tests - Colorimetry

VOLATILES

Blood, Cardiac (F)

Negative

Drug Screen - SPE, GC/MSD

ZOLPIDEM

Urine

Trace

ZOLPIDEM

Blood, Cardiac (F)

Trace

Benzodiazepine Confirmation/Quantitation - SPE, GC/MSD

CLONAZEPAM

Blood, Cardiac (F)

<7.5 µg/L

Analysis Notes

Volatiles analysis is a colorimetric method that screens for low molecular weight organic volatile reducing agents such as ethanol, methanol, isopropanol, acetaldehyde, and formaldehyde.

Drug Screen by GC/MSD includes screening for the following drug(s) and class of drugs: anticonvulsants, antidepressants, antihistamines, anticholinergics, barbiturates, muscle relaxants and non-steriodal anti-inflammatory agents (excluding salicylates), non-benzodiazepine sedative-hypnotics. Detection of specific compounds of each class is concentration dependent and not all drugs of each class are detected. Certain compounds outside of these classes are also detected. Common incidental findings such as caffeine and metabolites or nicotine and metabolites are not reported.

Benzodiazepine Confirmation/Quantitation is a GC/MSD screen/quantitation for: diazepam, nordiazepam, oxazepam, temazepam, alprazolam, triazolam, estazolam, midazolam, lorazepam, clonazepam, 7-aminoclonazepam.

Enzyme immunoassay testing results are preliminary. Any positive results must be confirmed by another technique.

Toxicologist:

Lisa A. Mundy

Date:

2/8/2011

Page 1 of 1

EXHIBIT "D" OLSZEWSKI REPORT JANUARY 26, 2011

> Case ID: 191001241 Control No.: 21063511



Report of Death Investigation City of Philadelphia Office of the Medical Examiner Department of Public Health

Case Number:

11-00420

1/26/2011 7:31:00 PM

ELLEN R. GREENBERG

4601 Flat Rock Rd. Unit 603 Philadelphia

PA 19127

136-76-9691

(717) 579-9258

27 Years Jun 23, 1983 White

Female Marlon Osbourne

Investigator:

Jaime Budd

ReportedBy:

Det. Sierra #9103, Homicide

Place of Pronouncement: Residence

Brought to hospital by:

Date:

Place of Death:

4601 Flat Rock Rd. Unit 603 1/26/2011 6:40:00 PM

Death Date:

Pronounced By:

Medic-5

Address:

Employer:

School Dist Philadelphia

Occupation:

Teacher

Non-Jurisdictional Status

Date:

Reviewed By:

Date

Approved By:

Date:

Body Ordered

By: Jaime Budd

Via Police

to OME

Date: 1/26/2011 7:34:00 PM

Sign Out by Inquiry?

No

SignOut by Hospital Autopsy? No

Notifications

Ву

Date

Relatives

Med.Agencies

Official Agencies

Hospital Requests Autopsy?

Legal Consent By:

Pending No Refused: No

Alias:

Ellen Greenburg

Circumstances:

The dec'd fiancé, Samuel Goldberg, reportedly came home from the gym, kicked in the door and found the dec'd with a knife in her chest. NWDD on location. No further info at this time. Inv. Olszewski to the scene.

Scene Investigation: Fiancé, Samuel Goldberg DOB: 1/28/1982 s/a, reportedly left the decedent around 1645 went to the gym. He returned around 1715-1730 and was unable to get into the apartment. The door was secure from the inside. He proceeded to contact the decedent via text message, telephone calls and emails for approximately an hour before he forced entry into the apartment. He immediately discovered her and called 911, he was briefly instructed to start CPR until he noticed a knife in her chest, then he stopped.

The decedent is found supine in the kitchen with her head and some of her upper body/shoulders resting against the lower half of the kitchen cabinets. There is a knife embedded in her left chest, through her clothing. The decedent has multiple stab wounds: at the chest where the knife is located, a few superficial grouped nearby, one to the left upper chest near the clavicle, 2 more at the mid chest between and just below the breasts.

She is clad in a zipper up shirt overtop a t-shirt, sweatpants, underwear, and UGG boots. There are defects to the shirts consistent with the underlying wounds. Blood is present on the head, in the hair, on the front side of shirts, along her pants on the front side and on the top of both of her boots. The right boot has blood on the sole. The blood around her his generally confined to the area of the body, on the floor underneath, on the cabinets behind her, two separate drops on the granite counter top above.

Printed on:

April 14, 2011 9:38 am Case ID: 19100 Control No.: 21063511



Report of Death Investigation City of Philadelphia Office of the Medical Examiner Department of Public Health

Case Number: 11-00420

1/26/2011 7:31:00 PM

ELLEN R. GREENBERG

4601 Flat Rock Rd. Unit 603

Philadelphia PA 19127

Jun 23, 1983

27 Years White

136-76-9691

Female Marlon Osbourne

(717) 579-9258

A few kitchen knives are in the sink adjacent to the body. There is no evident blood. A knife block is on the counter turned over to the side. Also no evident blood. The knife in her body is consistent with the knife set found in the sink and in the block.

The lock, a common solid bar door guard, is broken, obviously forced in, consistent with the fiancés report. There is no evidence of a struggle in the kitchen area or anywhere else in the apartment. There are numerous valuables present, including 3 laptop computers. Nothing is missing. There is no note found. A paper booklet is in the decedents pocketbook, resembles a journal of medications and her state of mind, last dated 1/16. The only way to exit the apartment with the front doorway locked is through a rear slider leading to a patio. The patio is 6 stories high. There is snow present with no tracks or footprints, completely undisturbed.

Psychiatrist: Dr Ellen Berman (610) 667-4617.

Rx: alprazolam, clonazepam, zolpidem. Rx meds are recovered from the bedroom drawer.

See scene report, photos, interviews and identification for further information...SO

1/27/11 HOMICIDE, Det Sierra and Peters notified of the death, 1/27/11 Knife recovered during examination, signed over to homicide Detective Sierra, Reciept in case file...SO

1/28/11 Psychiatrist Ellen Berman records subpoenaed, placed in case file...SO

Informant Statement:

Date:

1/27/2011

Relation: Father

Name:

Joshua Greenberg

Phone: (717) 233-0754

Addess: 4408 Saybrook Lane Harrisburg PA

The identification was completed via telephone by the decedents parents, Joshua and Sandra Greenberg. They were notified of the death by the parents of the decedents fiancée.

Mom states she last talked to the decedent the same day at 0700 when they were both on their way to work. They had a pleasant conversation. She gave no indication that something was imminently wrong. The decedent has been battling issues with anxiety since the end of last year. Mom states she was "struggling with something", for which she urged her to seek help. She was seeing a psychiatrist, Ellen Berman, in Merion Station. The decedent as described as anxious, insecure, not sure of herself and not liking how she felt, characteristics that were not the norm her entire life. The decedent expressed to family that she was a bit overwhelmed with her classroom work. The decedents occupation is a teacher for the School District of Philadelphia, currently teaching at Juniata Academy Elementary School, employed for 3 years. She is described as a bright woman, who was very successful and recently received her master's degree in Education and certified in Reading specialty. The day the incident occurred is the same day that school grades were to be handed in. She may have been stressed about the schoolwork, as she is described as very caring for her students.

The decedent was in a committed relationship with Sam Goldberg. They have been together for 3 years, recently engaged over the summer. The parents have no reservations about their relationship. They described the fiancé Sam as a "fine young man." They were happy to have him as an in-law. They have no knowledge of any verbal or physical abuse.

The parents deny any previous suicide attempts or ideations. The incident is a surprise to them despite her



Report of Death Investigation City of Philadelphia Office of the Medical Examiner Department of Public Health

Case Number: 1

<u>11-00420</u>

1/26/2011 7:31:00 PM

ELLEN R. GREENBERG

4601 Flat Rock Rd. Unit 603 Philadelphia PA 19127

Philadelphia 27 Years

White

(717) 579-9258 Female

Jun 23, 1983

136-76-9691

Marlon Osbourne

issues with anxiety.

Printed on:

April 14, 2011 9:38 am Case ID: 191001241

Filed and Attested by the

IN THE COURT OF COMPANY AND THE COURT OF COURT OF

PHILADELPHIA COUNTY

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, deceased,

: CIVIL ACTION

Plaintiffs, : October Term 2019

: No. 01241

MARLON OSBOURNE, M.D., and PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE,

V.

explaining how it came to be lost.

Defendants.

ORDER

AND NOW, this day of, 2021, upon consideration of
Plaintiffs' Motion to Compel and Defendants' Response thereto, if any, Defendants are hereby
ORDERED to produce to Plaintiffs within days a copy of the video taken by Melissa Ward
of Ellen R. Greenberg's apartment and thereafter surrendered to the Philadelphia Police
Department;
It is further ORDERED that, if such video cannot be located in the possession, custody
or control of the Defendants, a person with knowledge shall, within days, submit to this
Court, a sworn declaration confirming the video is not in the possession, custody or control of
the Defendants, attesting to all efforts undertaken by Defendants to locate said video, and

BY THE COURT:

Certification Due Date: 06/14/202 Response Date: 06/21/202 Case ID: 19100124

Case 1D. 131001241 Control No.: 21061025

LAMB McERLANE PC

Joseph R. Podraza, Jr., Esquire (ID No. 53612) William H. Trask, Esquire (ID No. 318229) One South Broad Street – Suite 1500 Philadelphia, PA 19107 (215) 609-3170 (610) 430-8000

Attorneys for Plaintiffs

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, deceased,

Plaintiffs,

V.

MARLON OSBOURNE, M.D., and PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE,

Defendants.

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY

CIVIL ACTION

October Term 2019 No. 01241

MOTION TO COMPEL

Plaintiffs, the Joshua and Sandra Greenberg, Administrators of the Estate of Ellen R. Greenberg, deceased ("Plaintiffs"), file this Motion to Compel Defendants to produce the video recording made by a third-party and provided to the Philadelphia Police Department, related to key claims and defenses in this action, and in support thereof, avers as follows:

1. The above action seeks mandamus and declaratory relief against the City of Philadelphia, Office of the Medical Examiner ("MEO") and Dr. Marlon Osborne, the forensic pathologist who ultimately concluded, without a sufficient legal or medical basis, that the manner of Ellen R. Greenberg's death was suicide, despite having been stabbed twenty times, including ten in the back of her neck and head.

Certification Due Date: 06/14/202 Response Date: 06/21/202 Case ID: 19100124

- 2. Among the key issues in this case concern whether Dr. Osborne has sufficient support—meaning 70% or greater certainty—for his finding of suicide: having initially determined on the basis of the medical evidence obtained at autopsy that Ellen's death was a homicide, Osborne now claims reliance on information later obtained from police investigators concerning the state of Ellen's apartment as the critical basis for his decision to revise Ellen's manner of death to suicide.
- 3. Plaintiffs requested the production of all evidence, documents, recordings and the like related to Ellen's death investigation. True and correct copies of the Plaintiffs Requests for Production of Documents are attached hereto as Exhibit "A."
- 4. The Defendants eventually produced some documents from the Medical Examiner's Office, including copies of scene and autopsy photographs, investigation and autopsy reports, and some correspondence between MEO personnel and the Greenberg family or their representatives.
- 5. A number of other items known to exist were not produced until specifically identified by the Plaintiff—and even then only under threat of court intervention—including copies of the 9-1-1 call recording and surveillance video depicting the lobby and other public areas of the apartment building where Ellen died.
- 6. The Plaintiffs have recently learned that the following morning, while forensic pathologist Dr. Marlon Osborne began his autopsy of Ellen's body that would result in a finding of homicide, the PPD provided Melissa Ware, the manager of the apartment building where Ellen had died, with contact information for a crime scene cleaning service and authorized her to have the apartment cleaned and disinfected before conducting a homicide investigation.

Certification Due Date: 06/14/202 Response Date: 06/21/202

Case 1D: 191001241 Control No.: 21061025

- 7. Plaintiffs independently learned Ware had the presence of mind to film the apartment, its condition, and its contents before it was sanitized of all evidence and thereafter provided police investigators with her video recording.
- 8. Immediately upon learning of the existence of the videotape, Plaintiffs requested that the Defendants produce a copy.
 - 9. The rules governing discovery in Pennsylvania provide

...a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party....

Pa. R.C.P. 4003.1 (a).

- 10. Video depicting the apartment, including evidence later relied upon to justify the very manner of death determination which is the subject of this lawsuit, is plainly relevant.
- 11. Defendants have not objected to Plaintiffs' request. Rather counsel for the Defendants advised that the video simply cannot be found.
- 12. But this is not the first time the Defendants have made such a claim with regard to video evidence. Previously, Plaintiff requested surveillance video from the lobby of the building where Ellen died, which the Defendants initially claimed did not exist in their files. Only after 11 months did the Defendants grudgingly locate and produce that video. *See* Email Threads Dated August 13, 2020 and January 25, 2021, copies of which are attached hereto as Exhibits "E" and "B," respectively.
- 13. Given that history, and the importance of the Ware video, Plaintiffs require more than the informal assurance of counsel that the video is not in the possession, custody or control of the Defendants.

Certification Due Date: 06/14/202 Response Date: 06/21/202

' Case ID: 191001241 Control No.: 21061025

- 14. For this reason, if indeed the video does not exist, Plaintiffs requested that Defendants, provide a sworn statement, prepared by the individual with knowledge, confirming that fact and attesting to the efforts undertaken in reaching that conclusion and explaining what happened to the videotape.
- 15. After initially agreeing to provide a sworn statement to that effect, the Defendants ultimately provided the same, informal assurance of counsel that was earlier shown to be unreliable. (*Compare* Ex. C, Email dated May 20, 2021, 12:11 PM ("I...will get you a sworn statement.") and Ex. D, email dated May 25, 2021 ("There is no videotape in the Greenberg file...").
- 16. Defendants must produce the videotape, and if the City has indeed lost it, someone with knowledge must be called upon to confirm it was lost, attest to any and all efforts undertaken in reaching that conclusion, and explain what happened to it.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that this Court order Defendants to produce a copy of Ware's video or, in the incredible event this crucial evidence has been lost or destroyed, submit a declaration prepared by an individual with knowledge confirming the video does not exist, attesting to what efforts were undertaken to locate it, and explaining how it was lost.

LAMB McERLANE PC

By: /s/ Joseph R. Podraza, Jr.
Joseph R. Podraza, Jr., Esquire
jpodraza@lambmcerlane.com
William H. Trask, Esquire
wtrask@lambmcerlane.com
One South Broad Street, Suite 1500
Philadelphia, PA 19107
(215) 609-3170

Certification Due Date: 06/14/202 Response Date: 06/21/202 Case ID: 19100124

Case 1D: 191001241 Control No.: 21061025

Counsel for Plaintiffs, Joshua Greenberg and Sandra Greenberg, Administrators of the Estate of Ellen Greenberg

Dated: June 4, 2021

EXHIBIT A

Certification Due Date: 06/14/2021 Response Date: 06/21/2021 Case ID: 191001241 Control No.: 21061025

LAMB McERLANE PC

Joseph R. Podraza, Jr., Esquire (ID No. 53612) William H. Trask, Esquire (ID No. 318229) One South Broad Street – Suite 1500 Philadelphia, PA 19107 (215) 609-3170 (610) 430-8000

Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, deceased,

PHILADELPHIA COUNTY

Plaintiffs,

October Term 2019

CIVIL ACTION

No. 01241

V.

MARLON OSBOURNE, M.D., and PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE,

Defendants.

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS

Pursuant to Rule 4009.1 of the Pennsylvania Rules of Civil Procedure, Plaintiffs Joshua M. Greenberg, DMD and Sandra Greenberg, as Administrators of the Estate of Ellen R. Greenberg, serve the following First Set of Requests for Production of Documents directed to Defendant the Philadelphia Office of the Medical Examiner. Plaintiff requests that the Defendant produce the documents described below for inspection and copying at the offices of Lamb McErlane PC, One South Broad Street, Suite 1500, Philadelphia, Pennsylvania 19107, within thirty (30) days of service and in accordance with the Pennsylvania Rules of Civil Procedure and the following definitions and instructions.

Certification Due Date: 06/14/2021 Response Date: 06/21/2021 Case ID: 191001241 Control No.: 21061025

DEFINITIONS

For the purpose of these Document Requests the following definitions apply:

- A. "MEO," shall at all times herein refer to Defendant the Philadelphia Medical Examiner's Office, which maintained a business address at 321 University Avenue, Philadelphia, PA 19104 during the relevant period.
- B. "Police Department" shall all times herein refer to the Philadelphia Police Department, headquartered at 750 Race Street, Philadelphia, PA 19106.
 - C. "Greenberg" shall at all times herein refer to Ellen R. Greenberg, deceased.
- D. "Communication" means any oral, written or other exchange of words, thoughts or ideas to another person or entity, whether in person, in a group, in a meeting, by telephone, by letter, facsimile, email, text message, direct message, voicemail message, social media posting, or by any other process, electronic or otherwise. All written communications include, but not limited to, printed, typed, e-mailed, handwritten or other readable "documents" as that term is defined below.
- E. "Document" is an all-inclusive term, referring to any writing or recorded or graphic matter however produced or reproduced. The term "document" includes, but not limited to, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, tax returns, and financial statements of any kind. The term "Document" includes all electronic data compilations and files, including email, text messages, public and private social media postings and messages, word processing documents, spreadsheets, and other forms of electronic or digital data, however stored or maintained.

Certification Due Date: 06/14/202 Response Date: 06/21/202

Case ID: 191001241 Control No.: 21061025 F. The terms "referring to," "relating to," "pertaining to," "in connection with" and "with respect to" should be read to include documents, communications, meetings and/or information that reflect, summarize, describe or relate to the matters that are the subject of these Requests. These terms shall mean regarding, in any way directly or indirectly, a document or a class of documents, event, act or occurrence and include, but are not limited to, compromising, constituting, analyzing, evidencing, comparing, discussing, showing, forming the basis of, containing, or supporting the event, act or occurrence.

INSTRUCTIONS

- 1. These Document Requests extend to all responsive documents in the possession, custody or control of the City of Philadelphia, including any department, division, or office thereof, and all documents produced in response to these Document Requests must be organized and labeled to correspond with the numbered paragraphs of the individual Document Requests. If there are no documents responsive to any individual Document Request, you must so state in writing.
- 2. All responsive documents in the form of electronically stored information ("ESI"), including emails, text messages and like documents, must be produced in native format, with all metadata preserved.
- 3. For any responsive document not within the possession, custody or control of the City of Philadelphia or any department, division, or office thereof, identify each such document individually, explain why the document is inaccessible, and further specify: (1) the document's present location; (2) the document's author, including present or last known address; (3) the document's date; (4) if applicable, the document's sender and recipient; and (5) if applicable, the date when the document was destroyed, lost or otherwise disposed of.

Certification Due Date: 06/14/202 Response Date: 06/21/202

Case ID: 191001241 Control No.: 21061025

- 4. To the extent that you object to any specific Document Request, in whole or in part, on the grounds that the information sought is privileged or otherwise protected from discovery, you must respond to the portions of the request for which no privilege is claimed. With respect to that portion of the request for which privilege is claimed, identify: (1) the specific type of privilege, protection or statutory authority that you contend applies; (2) the facts that you rely on to support the privilege claim; (3) the form in which the allegedly privileged information exists (e.g., memorandum, letter, etc.); and (4) the document's subject matter. You must also identify the document's date, the name and address of the person who signed or prepared the document, the name(s) and address(es) of any person who received or reviewed the document, and the name and address of the person who now possesses the document.
- 5. These Requests for Production of Documents are deemed continuing in nature and call for prompt supplemental production whenever you receive or discover additional documents covered by these Requests for Production of Documents. You should promptly supplement your answers to these Requests for Production of Documents should you obtain documents different from or in addition to documents previously produced, upon the basis of which you know a prior response was incorrect or incomplete when made, or that a response, though correct and complete when made, is no longer true and complete.
- 6. Unless otherwise expressly stated, the Relevant Period of time to which these Requests for Production of Documents extends is from January 2011 to the present.

Document Requests

Defendant is requested to produce, in accordance with the above Definitions and Instructions, the following documents related to the January 26, 2011 death of Ellen R. Greenberg and any subsequent investigation thereof:

Certification Due Date: 06/14/202 Response Date: 06/21/202

Case 1D: 191001241 Control No.: 21061025 1. The entire MEO Investigative File related to the death of Greenberg, including all

photographs.

2. The entire MEO Report related to the death of Greenberg including the entire

ME's jacket, the Autopsy Report, photographs, the MEO findings, and toxicology findings

and/or report.

3. Any and all crime scene investigation records of the MEO or Police Department

related to the death of Greenberg, including reports, property receipts, logs, evidence records,

findings, and photographs.

4. The complete Crime Scene Log created and maintained in connection with the

Greenberg matter.

5. The complete Homicide Log reflecting any entry related to and/or concerning the

Greenberg matter.

6. Any and all property receipts related to the death of Greenberg and/or the

investigation thereof.

7. Any and all communications to, from, between, among or including any MEO

employee, including emails, texts and other electronic communications, related to the death of

Greenberg and/or the investigation thereof.

8. Any and all communications, including text messages, emails and other electronic

communications, to, from, between, among or including any Philadelphia Police Department

personnel, Medical Examiner's Office personnel, Lawrence Krasner, Esquire, the Philadelphia

Police Commissioner, and any District Attorney's Office personnel, including without limitation,

Guy D'Andrea, Esquire.

Certification Due Date: 06/14/20 Response Date: 06/21/20

sponse Date: 06/21/20 Case ID: 1910012

- 9. Any and all search warrants issued in connection with the death of Greenberg and/or the investigation thereof, together with any and all appurtenant affidavits of probable cause.
- 10. A copy of the recording of the call placed to 9-1-1 emergency dispatch by Samuel Goldberg on January 26, 2011 in connection with the Greenberg matter.
- 11. A detailed description of all fingerprint cards and analyses performed in connection with the Greenberg matter, including the results thereof.
- 12. Any and all DNA analyses performed in connection with the Greenberg matter, including any and all reports associated or prepared in connection therewith.

LAMB McERLANE PC

Dated: February 13, 2020 By: __/s/ William H. Trask

William H. Trask, Esquire

Case ID: 19100124 Control No.: 2106102

CERTIFICATE OF SERVICE

I, William H. Trask, Esquire, hereby certify that a true and correct copy of the foregoing document was served this day via email on the person indicated below:

> Ellen Berkowitz, Esquire Senior Attorney City of Philadelphia Law Department 1515 Arch Street, 15th Floor Philadelphia, PA 19102-1595 ellen.berkowitz@phila.gov

> > (Counsel for Defendants)

LAMB McERLANE PC

Dated: February 13, 2020 By:__/s/ William H. Trask

William H. Trask, Esquire

LAMB McERLANE PC

Joseph R. Podraza, Jr., Esquire (ID No. 53612) William H. Trask, Esquire (ID No. 318229) One South Broad Street – Suite 1500 Philadelphia, PA 19107 (215) 609-3170 (610) 430-8000

Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, deceased,

CIVIL ACTION

Plaintiffs,

October Term 2019

No. 01241

V.

MARLON OSBOURNE, M.D., and PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE,

Defendants.

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS

Pursuant to Rule 4009.1 of the Pennsylvania Rules of Civil Procedure, Plaintiffs Joshua M. Greenberg, DMD and Sandra Greenberg, as Administrators of the Estate of Ellen R. Greenberg, serve the following First Set of Requests for Production of Documents directed to Defendant the Philadelphia Office of the Medical Examiner. Plaintiff requests that the Defendant produce the documents described below for inspection and copying at the offices of Lamb McErlane PC, One South Broad Street, Suite 1500, Philadelphia, Pennsylvania 19107, within thirty (30) days of service and in accordance with the Pennsylvania Rules of Civil Procedure and the following definitions and instructions.

Certification Due Date: 06/14/2021 Response Date: 06/21/2021 Case ID: 191001241 Control No.: 21061025

DEFINITIONS

For the purpose of these Document Requests the following definitions apply:

A. "MEO," shall at all times herein refer to Defendant the Philadelphia Medical

Examiner's Office, which maintained a business address at 321 University Avenue, Philadelphia,

PA 19104 during the relevant period.

B. "Police Department" shall all times herein refer to the Philadelphia Police

Department, headquartered at 750 Race Street, Philadelphia, PA 19106.

C. "Greenberg" shall at all times herein refer to Ellen R. Greenberg, deceased.

D. "Communication" means any oral, written or other exchange of words, thoughts

or ideas to another person or entity, whether in person, in a group, in a meeting, by telephone, by

letter, facsimile, email, text message, direct message, voicemail message, social media posting,

or by any other process, electronic or otherwise. All written communications include, but not

limited to, printed, typed, e-mailed, handwritten or other readable "documents" as that term is

defined below.

E. "Document" is an all-inclusive term, referring to any writing or recorded or

graphic matter however produced or reproduced. The term "document" includes, but not limited

to, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules,

analyses, drawings, diagrams, invoices, purchase orders, pleadings, questionnaires, contracts,

bills, checks, drafts, diaries, logs, proposals, print-outs, recordings, telegrams, films, tax returns,

and financial statements of any kind. The term "Document" includes all electronic data

compilations and files, including email, text messages, public and private social media postings

and messages, word processing documents, spreadsheets, and other forms of electronic or digital

data, however stored or maintained.

Certification Due Date: 06/14/202 Response Date: 06/21/202

> Case ID: 19100124 Control No.: 2106102

F. The terms "referring to," "relating to," "pertaining to," "in connection with" and "with respect to" should be read to include documents, communications, meetings and/or information that reflect, summarize, describe or relate to the matters that are the subject of these Requests. These terms shall mean regarding, in any way directly or indirectly, a document or a class of documents, event, act or occurrence and include, but are not limited to, compromising, constituting, analyzing, evidencing, comparing, discussing, showing, forming the basis of, containing, or supporting the event, act or occurrence.

INSTRUCTIONS

- 1. These Document Requests extend to all responsive documents in the possession, custody or control of the City of Philadelphia, including any department, division, or office thereof, and all documents produced in response to these Document Requests must be organized and labeled to correspond with the numbered paragraphs of the individual Document Requests. If there are no documents responsive to any individual Document Request, you must so state in writing.
- 2. All responsive documents in the form of electronically stored information ("ESI"), including emails, text messages and like documents, must be produced in native format, with all metadata preserved.
- 3. For any responsive document not within the possession, custody or control of the City of Philadelphia or any department, division, or office thereof, identify each such document individually, explain why the document is inaccessible, and further specify: (1) the document's present location; (2) the document's author, including present or last known address; (3) the document's date; (4) if applicable, the document's sender and recipient; and (5) if applicable, the date when the document was destroyed, lost or otherwise disposed of.

Certification Due Date: 06/14/202 Response Date: 06/21/202 Case ID: 1010012/

- 4. To the extent that you object to any specific Document Request, in whole or in part, on the grounds that the information sought is privileged or otherwise protected from discovery, you must respond to the portions of the request for which no privilege is claimed. With respect to that portion of the request for which privilege is claimed, identify: (1) the specific type of privilege, protection or statutory authority that you contend applies; (2) the facts that you rely on to support the privilege claim; (3) the form in which the allegedly privileged information exists (e.g., memorandum, letter, etc.); and (4) the document's subject matter. You must also identify the document's date, the name and address of the person who signed or prepared the document, the name(s) and address(es) of any person who received or reviewed the document, and the name and address of the person who now possesses the document.
- 5. These Requests for Production of Documents are deemed continuing in nature and call for prompt supplemental production whenever you receive or discover additional documents covered by these Requests for Production of Documents. You should promptly supplement your answers to these Requests for Production of Documents should you obtain documents different from or in addition to documents previously produced, upon the basis of which you know a prior response was incorrect or incomplete when made, or that a response, though correct and complete when made, is no longer true and complete.
- 6. Unless otherwise expressly stated, the Relevant Period of time to which these Requests for Production of Documents extends is from January 2011 to the present.

Document Requests

Defendant is requested to produce, in accordance with the above Definitions and Instructions, the following documents related to the January 26, 2011 death of Ellen R. Greenberg and any subsequent investigation thereof:

Certification Due Date: 06/14/202 Response Date: 06/21/202 Case ID: 19100124

- 1. Any and all statements of any individuals recorded on form 75-483.
- 2. The complete 75-489 report.
- 3. The complete "H Record."
- 4. Any and all statements of any individuals recorded on form 75-48a.
- 5. The statement or statements of Samuel Goldberg.
- 6. Any and all completed 75-48 forms.
- 7. The complete PARS report.
- 8. Any and all documents or reports prepared by, or evidence examined or maintained by, RCF Labs including the RCF Report and cloned copies of the hard drives retrieved from any laptop computers in connection with the Greenberg matter.
- 9. Copies of all recordings of all radio dispatch communications and/or transmissions from all bands and all districts, including the citywide band and any private channel transmissions related to the Greenberg matter.
- 10. Copies of any and all surveillance videos retrieved from 4601 Flat Rock Road, Philadelphia, Pennsylvania in connection with the Greenberg matter.
- 11. Any and all data retrieved from and/or related to Greenberg's or Samuel Goldberg's key fob, including the dates and times of entry and exit to and from locked facilities or areas at 4601 Flat Rock Road, Philadelphia, Pennsylvania including the Greenberg residence, building, garage, gym/exercise facility and/or other facilities or areas with controlled, recorded or monitored access at the premises.
- 12. The knife recovered from Greenberg's body at 4601 Flat Rock Road,
 Philadelphia, Pennsylvania including precise measurements and other physical characteristics, as
 well as any blood, fingerprint, DNA or other analyses performed.

Certification Due Date: 06/14/2022 Response Date: 06/21/2022 Case ID: 19100124

LAMB McERLANE PC

By: <u>/s/ William H. Trask</u>
William H. Trask, Esquire Dated: February 14, 2020

CERTIFICATE OF SERVICE

I, William H. Trask, Esquire, hereby certify that a true and correct copy of the foregoing document was served this day *via* email on the person indicated below:

Ellen Berkowitz, Esquire
Senior Attorney
City of Philadelphia Law Department
1515 Arch Street, 15th Floor
Philadelphia, PA 19102-1595
ellen.berkowitz@phila.gov

(Counsel for Defendants)

LAMB McERLANE PC

Dated: February 14, 2020

By: <u>/s/ William H. Trask</u>

William H. Trask, Esquire

Certification Due Date: 06/14/202 Response Date: 06/21/202 Case ID: 19100124

EXHIBIT B

Certification Due Date: 06/14/2021 Response Date: 06/21/2021 Case ID: 191001241 Control No.: 21061025

William Trask

From: Ellen Berkowitz <Ellen.Berkowitz@phila.gov>

Sent: Monday, January 25, 2021 3:21 PM

To: Joseph Podraza
Cc: William Trask

Subject: RE: Additional Material -- MEO

Sure.

Still working on the tech issue, have two filings due today. My secretary is actually in the office tomorrow and I'm hoping (!) she can help with the video file.

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com>

Sent: Monday, January 25, 2021 3:17 PM

To: Ellen Berkowitz < Ellen. Berkowitz@phila.gov>

Cc: William Trask <wtrask@lambmcerlane.com>; Joseph Podraza <jpodraza@lambmcerlane.com>

Subject: RE: Additional Material -- MEO

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Ellen:

Any update on when we may receive the video for the lobby? Also, we would like to proceed with depositions in February 2021. Initially, we would like to schedule the depositions for Drs. Osbourne, Emery, and Gulino. Can you inquire into their availability for a deposition? Thanks. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov >

Sent: Tuesday, January 19, 2021 10:59 AM

To: Joseph Podraza < <u>ipodraza@lambmcerlane.com</u>> **Cc:** William Trask < <u>wtrask@lambmcerlane.com</u>>

Subject: RE: Additional Material -- MEO

Can you call me? What file do you mean?

I have the video for the lobby in the format I received it in, and I'm sorry – converting it fell off my radar. Thank you for the reminder.

Ellen Berkowitz Senior Attorney

Certification Due Date: 06/14/2021 Response Date: 06/21/2021 Case ID: 191001241

City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com>

Sent: Tuesday, January 19, 2021 10:56 AM

To: Ellen Berkowitz < Ellen. Berkowitz@phila.gov>

Cc: William Trask < wtrask@lambmcerlane.com >; Joseph Podraza < jpodraza@lambmcerlane.com >

Subject: RE: Additional Material -- MEO

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Ellen:

Hope all is well. It has been awhile since we last had contact. Has the file for Ellen been sent to you? Do you have the videotape f the lobby? We would like to complete these preliminary tasks before proceeding with depositions. Thanks. Joe

From: Joseph Podraza

Sent: Wednesday, December 23, 2020 1:37 PM **To:** Ellen Berkowitz < <u>Ellen.Berkowitz@phila.gov</u>>

Cc: William Trask <wtrask@lambmcerlane.com>; Joseph Podraza <jpodraza@lambmcerlane.com>

Subject: RE: Additional Material -- MEO

Ellen:

Thank you for the update. We will inquire about whether we will need access to the original slides. Please also identify the name of the neuropathologist mentioned in your below email and provide us with a copy of any document or the like memorializing any aspect of the neuropathologist's examination/evaluation. Also, a draft of the petition requesting extraordinary relief is attached. Please review and advise of any comments. We would like to file the document on Monday, 12-28-20. Thanks. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov > Sent: Wednesday, December 23, 2020 10:48 AM To: Joseph Podraza < ipodraza@lambmcerlane.com >

Cc: William Trask < wtrask@lambmcerlane.com >; Colleen Davis < cdavis@lambmcerlane.com >; Eleanor N Ewing

<Eleanor.Ewing@phila.gov>

Subject: Additional Material -- MEO

Hi-

I wanted to let you know that I got a call from the ME.

Prior to your filing the complaint, he'd received a query from the Greenbergs regarding analysis of the spinal cord. The ME's new neuropathologist examined the spinal cord and took slides. When Dr. Gulino sent me the file, he forgot to include these, as they weren't part of the original file. I will be forwarding the digital files to you. If you would like an expert to look at the original slides, that can be arranged – the ME's office has protocols for that.

Certification Due Date: 06/14/202 Response Date: 06/21/202 Case ID: 19100124

Let me know if you intend to file for more time.

Be safe and well, and happy holidays.

Ellen.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com>

Sent: Monday, December 14, 2020 9:29 AM **To:** Ellen Berkowitz < <u>Ellen.Berkowitz@phila.gov</u>>

Cc: William Trask wtrask@lambmcerlane.com; Colleen Davis cdavis@lambmcerlane.com; Joseph Podraza

<jpodraza@lambmcerlane.com>

Subject: RE: RCFL files

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Ellen:

Given your response below, are you agreeable to requesting an extension of the present case activity deadlines? If so, we can prepare the petition for joint submission once acceptable to you. Thanks. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Sent: Monday, December 7, 2020 11:01 AM

To: Joseph Podraza < jpodraza@lambmcerlane.com>

Cc: William Trask < wtrask@lambmcerlane.com; Colleen Davis < cdavis@lambmcerlane.com>

Subject: RE: RCFL files

I have five agency appeals due in January and I doubt very much I can schedule Dr. Osborne (in Florida) and Dr. Gulino) this month, but I will reach out to them.

Still working on the tech issue, hoping to resolve today.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

Certification Due Date: 06/14/202 Response Date: 06/21/202 Case ID: 19100124

Case 1D. 191001241 Control No.: 21061025 From: Joseph Podraza < jpodraza@lambmcerlane.com>

Sent: Monday, December 7, 2020 9:57 AM **To:** Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Cc: William Trask wtrask@lambmcerlane.com; Joseph Podraza jpodraza@lambmcerlane.com; Colleen Davis

<<u>cdavis@lambmcerlane.com</u>>

Subject: RE: RCFL files

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Ellen:

Hope all is well. Any update on the below file and/or videotape of lobby? Also, can you obtain dates in December 2020 for Drs. Osbourne and Gulino's depositions? If not possible this month, can you inquire when next year they each would be available for a full-day deposition? We also would like to schedule the depositions of Dr. Rorke-Adams and Sam Goldberg. Could you please provide dates when of your availability so we may plan around them? Thanks. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov > Sent: Monday, November 30, 2020 11:52 PM
To: Joseph Podraza < ipodraza@lambmcerlane.com > Cc: William Trask < wtrask@lambmcerlane.com >

Subject: RE: RCFL files

Hi-

They have sent a file, but I can't see it – having technical difficulties. I've looped in the IT guy in the Law department and we're trying to get through that hurdle. If it is the right file, I will send it along.

I haven't forgotten about you.

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com >

Sent: Monday, November 23, 2020 1:26 PM **To:** Ellen Berkowitz < <u>Ellen.Berkowitz@phila.gov</u>>

Cc: William Trask <wtrask@lambmcerlane.com>; Joseph Podraza <jpodraza@lambmcerlane.com>

Subject: RE: RCFL files

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Thanks Ellen. Joe

From: Ellen Berkowitz < Ellen. Berkowitz@phila.gov>

Sent: Monday, November 23, 2020 1:24 PM

Certification Due Date: 06/14/2021 Response Date: 06/21/2021 Case ID: 191001241 Control No : 21061025 **To:** Joseph Podraza < <u>ipodraza@lambmcerlane.com</u>> **Cc:** William Trask < <u>wtrask@lambmcerlane.com</u>>

Subject: RE: RCFL files

Because of your questions I went back to PPD and I am working on it. Give me a little more time.

Thank you.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com >

Sent: Monday, November 23, 2020 8:44 AM **To:** Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Cc: William Trask <wtrask@lambmcerlane.com>; Joseph Podraza <jpodraza@lambmcerlane.com>

Subject: RE: RCFL files

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Ellen:

May we please receive clarification as requested below on the lobby videotape? Thanks. Joe

From: Joseph Podraza

Sent: Wednesday, November 18, 2020 2:49 PM **To:** Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Cc: William Trask < wtrask@lambmcerlane.com>; Joseph Podraza < jpodraza@lambmcerlane.com>

Subject: RE: RCFL files

Ellen:

We know the videotape of the lobby exited and was seized by the PPD. Are they saying the videotape was destroyed, was it sent to AG, or otherwise disposed? Thanks. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov > Sent: Wednesday, November 18, 2020 2:42 PM
To: Joseph Podraza < jpodraza@lambmcerlane.com > Cc: William Trask < wtrask@lambmcerlane.com >

Subject: RE: RCFL files

They checked again and do not have surveillance video from the building.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department

Certification Due Date: 06/14/2022 Response Date: 06/21/2022 Case ID: 191001242

Case 1D: 191001241 Control No.: 21061025 Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Joseph Podraza < <u>ipodraza@lambmcerlane.com</u>>
Sent: Wednesday, November 18, 2020 12:12 PM
To: Ellen Berkowitz < <u>Ellen.Berkowitz@phila.gov</u>>

Cc: William Trask <wtrask@lambmcerlane.com>; Joseph Podraza <jpodraza@lambmcerlane.com>

Subject: RE: RCFL files

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Thanks Ellen. It is very important that we promptly obtain a copy of the videotape of the lobby. Our ability to proceed with depositions is directly impeded by our not having a copy of this videotape. Please let us know if there is anything we can do to help in this endeavor. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov > Sent: Wednesday, November 18, 2020 12:09 PM
To: Joseph Podraza < ipodraza@lambmcerlane.com > Cc: William Trask < wtrask@lambmcerlane.com >

Subject: RE: RCFL files

As far as I know, Joe, I have all the materials gathered by the PPD. I requested their complete file and I believe they sent it. I have repeatedly asked them for various items, e.g., the videotape I thought you were requesting.

I wrote to my contact on November 5th and he has not responded. I will check back with him right now. I would note that PPD would not be able to authenticate lobby video, but if they have it – it is not in my materials – I will send it along.

Ellen.

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: Joseph Podraza < <u>ipodraza@lambmcerlane.com</u>>
Sent: Wednesday, November 18, 2020 11:12 AM
To: Ellen Berkowitz < <u>Ellen.Berkowitz@phila.gov</u>>

Cc: William Trask < wtrask@lambmcerlane.com; Joseph Podraza < jpodraza@lambmcerlane.com>

Subject: RE: RCFL files

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Certification Due Date: 06/14/202 Response Date: 06/21/202

Ellen:

I just read your below email. I am sorry but I do not understand what you are saying. Do you possess all the materials gathered by the PPD relating to Ellen Greenberg? Is the videotape somewhere other than in "the materials you received?" What materials have you received and from whom? Are you saying the videotape now does not exist? If it may be somewhere else or in the possession of someone else, then where and in whose possession? Has this person or entity been contacted in order to retrieve the videotape? These are just some of the questions that come immediately to mind after reading your recent email. The videotape is very important evidence which we have been requesting now for a considerable period of time. Please answer these questions and specify what is the present status of the videotape. Thank you. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov Sent: Wednesday, November 18, 2020 10:08 AM

To: Joseph Podraza < jpodraza@lambmcerlane.com Cc: William Trask < wtrask@lambmcerlane.com >

Subject: RE: RCFL files

I don't see a videotape from the lobby in the materials I received.

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com >

Sent: Monday, November 16, 2020 2:55 PM **To:** Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Cc: William Trask <wtrask@lambmcerlane.com>; Joseph Podraza <jpodraza@lambmcerlane.com>

Subject: RE: RCFL files

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Ellen:

Could you please provide an update on the status of the lobby videotape? Thanks. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Sent: Thursday, November 5, 2020 2:54 PM

To: Joseph Podraza < <u>ipodraza@lambmcerlane.com</u>> **Cc:** William Trask < <u>wtrask@lambmcerlane.com</u>>

Subject: RE: RCFL files

So this is lobby videotape, not crime scene videotape? I'll see what I can find out. (Will also check with D'Andrea, of course.)

Ellen Berkowitz Senior Attorney

Certification Due Date: 06/14/2021 Response Date: 06/21/2021 Case ID: 191001241

Control No.: 21061025

City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com>

Sent: Thursday, November 5, 2020 12:54 PM **To:** Ellen Berkowitz < <u>Ellen.Berkowitz@phila.gov</u>>

Cc: William Trask < wtrask@lambmcerlane.com >; Joseph Podraza < jpodraza@lambmcerlane.com >

Subject: RE: RCFL files

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The ADA told the Greenbergs the videotape was reviewed and former ADA D'Andrea actually viewed the videotape of the lobby some time later. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Sent: Thursday, November 5, 2020 12:17 PM

To: Joseph Podraza < jpodraza@lambmcerlane.com > Cc: William Trask < wtrask@lambmcerlane.com >

Subject: RE: RCFL files

Why do you think this?

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: Joseph Podraza < ipodraza@lambmcerlane.com >

Sent: Thursday, November 5, 2020 11:32 AM **To:** Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Cc: William Trask <wtrask@lambmcerlane.com>; Joseph Podraza <jpodraza@lambmcerlane.com>

Subject: Re: RCFL files

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Ellen:

Why not? It was taken by the police. Has it been destroyed. Joe

Sent from my iPhone

Certification Due Date: 06/14/2022 Response Date: 06/21/2022 Case ID: 19100124

On Nov 5, 2020, at 10:04 AM, Ellen Berkowitz < Ellen.Berkowitz@phila.gov> wrote:

There is no videotape.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Ellen Berkowitz

Sent: Thursday, October 29, 2020 1:03 PM

To: Joseph Podraza < jpodraza@lambmcerlane.com> Cc: William Trask < wtrask@lambmcerlane.com>

Subject: RE: RCFL files

Let me check with the PPD guy again (he was supposed to get back to me) and I'll get back to you. He did not believe there was a videotape. However, please note that I would assert CHRIA for such a tape as well – I turned over the 911 call because that is clearly outside the meaning of "investigatory."

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com>

Sent: Thursday, October 29, 2020 8:09 AM To: Ellen Berkowitz < Ellen. Berkowitz@phila.gov>

Cc: Joseph Podraza < jpodraza@lambmcerlane.com >; William Trask < wtrask@lambmcerlane.com >

Subject: Re: RCFL files

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Ellen:

Just wanted to follow up if there is any update on the videotape. Recognize you have a lot on your plate, so please let me know where things stand when you have a moment. Thanks. Joe

Sent from my iPhone

On Oct 13, 2020, at 3:53 PM, Ellen Berkowitz < Ellen.Berkowitz@phila.gov>.wrote:
Certification Due Date: 06/14/
Response Date: 06/21/

P.S. I am driving to Pittsburgh tomorrow and they are putting my mother in hospice, so my availability will be limited. I hope you understand.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Ellen Berkowitz

Sent: Tuesday, October 13, 2020 3:52 PM

To: Joseph Podraza < jpodraza@lambmcerlane.com >; William Trask

<wtrask@lambmcerlane.com>

Subject: RCFL files

The Justice Department has approved the release of the attached files from RCFL.

Thank you.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

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EXHIBIT C

William Trask

From: Ellen Berkowitz <Ellen.Berkowitz@phila.gov>

Sent: Thursday, May 20, 2021 12:11 PM

To: William Trask
Cc: Joseph Podraza
Subject: RE: Ware's Video

The person who did the search was not available this week. I will be speaking with him on Monday, and will get you a sworn statement.

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: Ellen Berkowitz

Sent: Tuesday, May 18, 2021 5:43 PM

To: William Trask <wtrask@lambmcerlane.com> **Cc:** Joseph Podraza <jpodraza@lambmcerlane.com>

Subject: RE: Ware's Video

Noting that this was a supplemental request, I am happy to do that assuming that the person is around by Thursday. I've already reached out.

They haven't granted the extension yet, that I noticed?

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: William Trask <wtrask@lambmcerlane.com>

Sent: Tuesday, May 18, 2021 4:17 PM

To: Ellen Berkowitz < <u>Ellen.Berkowitz@phila.gov</u>> **Cc:** Joseph Podraza < <u>ipodraza@lambmcerlane.com</u>>

Subject: RE: Ware's Video

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Ellen,

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We'd like to have a full accounting of the efforts that have been made to search for the Ware video, by whom, when, and the extent of the search. And we would like that person to complete a sworn statement as to this information. Please provide us with this information by COB Thursday. Thanks,

Will

From: Ellen Berkowitz < Ellen. Berkowitz@phila.gov>

Sent: Friday, May 7, 2021 4:48 PM

To: William Trask < <u>wtrask@lambmcerlane.com</u>> **Cc:** Joseph Podraza < <u>jpodraza@lambmcerlane.com</u>>

Subject: RE: Ware's Video

There is only the surveillance video we provided.

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: William Trask < wtrask@lambmcerlane.com >

Sent: Friday, May 7, 2021 3:34 PM

To: Ellen Berkowitz < <u>Ellen.Berkowitz@phila.gov</u>> **Cc:** Joseph Podraza < <u>ipodraza@lambmcerlane.com</u>>

Subject: Ware's Video

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Hi Ellen,

Can you update me on where things stand getting us the videotape?

Thanks, Will

William H. Trask

LAMB MCERLANE PC One South Broad Street Suite 1500 Philadelphia, PA 19107 wtrask@lambmcerlane.com (215) 609-3148

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EXHIBIT D

William Trask

From: Ellen Berkowitz < Ellen. Berkowitz@phila.gov>

Sent: Tuesday, May 25, 2021 12:20 PM To: Joseph Podraza; William Trask

Subject: video

Joe, Will,

There is no videotape in the Greenberg file, digital or otherwise, other than the surveillance footage we previously provided.

Ellen.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

Control No.: 21061025

EXHIBIT E

William Trask

From: Joseph Podraza

Sent: Thursday, August 13, 2020 11:05 AM **To:** Ellen Berkowitz; William Trask

Cc: Joseph Podraza **Subject:** RE: Greenberg

Thanks. We'll take the lead in obtaining a copy of the FBI report for both of us and will keep you posted on our progress. In the interim, anything you can do to expedite our receipt of a copy of the videotape and 911 recording would be greatly appreciated. Joe

From: Ellen Berkowitz <Ellen.Berkowitz@phila.gov>

Sent: Thursday, August 13, 2020 10:22 AM

To: Joseph Podraza <jpodraza@lambmcerlane.com>; William Trask <wtrask@lambmcerlane.com>

Subject: RE: Greenberg

You are welcome to request their file.

Ellen Berkowitz
Senior Attorney
City of Philadelphia Law Department
Affirmative & General Litigation Group -- Pensions
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
215-683-5253
215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com>

Sent: Thursday, August 13, 2020 10:07 AM

To: Ellen Berkowitz < Ellen.Berkowitz@phila.gov >; William Trask < wtrask@lambmcerlane.com >

Cc: Joseph Podraza < jpodraza@lambmcerlane.com>

Subject: RE: Greenberg

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Understand. But I believe they would supply you with their file or, at a minimum, provide a copy of the FBI report if you requested it from them. Alternatively, the FBI Lab will supply a copy of its report to you upon request. Thanks. Joe

From: Ellen Berkowitz < Ellen. Berkowitz@phila.gov>

Sent: Thursday, August 13, 2020 10:02 AM

To: Joseph Podraza < jpodraza@lambmcerlane.com >; William Trask < wtrask@lambmcerlane.com >

Subject: RE: Greenberg

The AG's office did not provide their file to me.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department

Certification Due Date: 06/14/2022 Response Date: 06/21/2022

Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com >

Sent: Thursday, August 13, 2020 9:43 AM

To: Ellen Berkowitz < Ellen.Berkowitz@phila.gov >; William Trask < wtrask@lambmcerlane.com >

Cc: Joseph Podraza < jpodraza@lambmcerlane.com >

Subject: RE: Greenberg

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Ellen:

Thank you for your response. Please do whatever can be done to expedite our receipt of the discrete items identified in my below email. Also, we would appreciate if you would call the AG's office to obtain a copy of the FBI report for them in the event it is no longer in the possession of the PPD, MEO, or other City agency. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Sent: Thursday, August 13, 2020 9:38 AM

To: Joseph Podraza < jpodraza@lambmcerlane.com >; William Trask < wtrask@lambmcerlane.com >

Subject: RE: Greenberg

Hi – I am back in Philadelphia and digging out, and as soon as I have access to the files, I will begin sending them over. But I can't give you a date by which I'll be able to give you those particular items, because since they're on my computer it's not a matter of rummaging through folders – it's actually more difficult than if they were physical objects in labeled folders.. I'm not even sure if I have all of those items – the FBI reports may be in the possession of the AG (again, I don't know). While you have been patient, please understand that <u>all</u> of our cases have been pushed back.

Ellen.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

From: Joseph Podraza < jpodraza@lambmcerlane.com>

Sent: Thursday, August 13, 2020 9:10 AM

To: Ellen Berkowitz < Ellen.Berkowitz@phila.gov >; William Trask < wtrask@lambmcerlane.com >

Cc: Joseph Podraza < jpodraza@lambmcerlane.com>

Subject: RE: Greenberg

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Ellen:

Hope all is well. I email to request that you provide us with a date by which we may expect receipt of at least the videotape, the 911 call, and a copy of the FBI analysis of/report on the hard-drives of Ellen's personal and work laptops. I believe we have been very patient to date and reasonable in working with you on proceeding with discovery given the pandemic and your personal needs. However, it is very important that we now proceed promptly on receiving at least these very discrete discovery items. Thanks. Joe

From: Joseph Podraza

Sent: Monday, July 20, 2020 9:09 AM

To: Ellen Berkowitz < Ellen Berkowitz@phila.gov>; William Trask < wtrask@lambmcerlane.com>

Cc: Joseph Podraza < jpodraza@lambmcerlane.com>

Subject: RE: Greenberg

Ellen:

Any update on this? We are particularly interested in viewing the videotape, hearing the 911 call, reviewing the forensic lab report from the FBI lab to the PPD, and the PPD's docs. To avoid delay, we will treat these materials as confidential while we complete a protective order agreement. If possible could we pick up some or all of these materials this week? Thanks. Joe

From: Ellen Berkowitz < Ellen.Berkowitz@phila.gov>

Sent: Monday, June 29, 2020 5:53 PM

To: Joseph Podraza < jpodraza@lambmcerlane.com >; William Trask < wtrask@lambmcerlane.com >

Subject: Greenberg

Hi-

I hope you two are weathering this well.

I should in the not-too-distant future be able to send along materials from the ME's office, but I wanted to let you know that I am headed to Pittsburgh for a couple of weeks because my father is having heart surgery. I just wanted to let you know that, and ask for your continued patience.

Thank you.

Ellen.

Ellen Berkowitz Senior Attorney City of Philadelphia Law Department Affirmative & General Litigation Group -- Pensions 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 215-683-5069 (fax)

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LAMB McERLANE PC

Joseph R. Podraza, Jr., Esquire (ID No. 53612) William H. Trask, Esquire (ID No. 318229) One South Broad Street – Suite 1500 Philadelphia, PA 19107 (215) 609-3170 (610) 430-8000

Attorneys for Plaintiffs

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, deceased,

Plaintiffs,

V.

MARLON OSBOURNE, M.D., and PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE,

Defendants.

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY

CIVIL ACTION

October Term 2019 No. 01241

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL

Plaintiffs, Joshua and Sandra Greenberg, Administrators of the Estate of Ellen R. Greenberg, deceased ("Plaintiffs"), move to compel the Defendants to produce a critical videotape made by a third party or to produce a detailed affidavit of the efforts (if any) which have been made to locate, retrieve, and produce the requested videotape. The videotape is key to claims and defenses in this action, and its insufficiently explained spoliation while in the possession of the Defendants should result in severe sanction(s) against them. Moreover, as detailed below, the Defendants have been less then forthright in producing central discovery in this case, insisting they do not possess the requested evidence only to miraculously obtain and then produce it once threatened with court intervention. For these reasons, Plaintiffs request that this Court order the Defendants to produce the videotape or, in the alternative, produce a detailed

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affidavit describing what efforts (if any) were made to locate the videotape and explaining what happened to it; and order a hearing to consider sanction(s) for the spoliation of this critical evidence should the status of the videotape continue to be insufficiently explained by the Defendants.

I. MATTER BEFORE THE COURT

The above action seeks mandamus and declaratory relief against the City of Philadelphia, Office of the Medical Examiner ("MEO") and Dr. Marlon Osborne, the forensic pathologist who ultimately concluded, without a sufficient legal or medical basis, that the manner of Ellen R. Greenberg's death was suicide. Ellen was stabbed twenty times, including ten in the back of her neck and head. At least two of the wounds to the back of her neck pierced her spinal column and brain. A pathologist with the MEO trained in neuropathology examined affected portions of Ellen's preserved spinal column and testified under oath as to the absence of hemorrhage associated with at least one of the examined stabbing injuries. She further testified, based on her experience and training within reasonable medical certainty, that the most plausible explanation for the lack of hemorrhage is that this cut to the spinal column occurred after Ellen was already dead. This means not all of Ellen's stab-wounds were self-inflicted and, by extension, that Ellen did not commit suicide, but was murdered.

Osborne, without having knowledge of the above medical conclusions later rendered by an MEO colleague trained in neuropathology, nevertheless initially correctly ruled Ellen's death a homicide on the basis of his autopsy findings. Unfortunately, Osborne later changed his conclusion from homicide to suicide based on provably false information he was given by the police and other agency representatives. Osbourne testified he would agree Ellen's manner of death cannot be suicide if, in fact, the information the police and others gave him was either false

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or disputed. It bears repeating, Osbourne was never told that a colleague in the MEO believes, based on her subsequent examination, that some of the wounds were inflicted when Ellen was already dead and therefore necessarily inflicted by someone else.

Disturbingly, Plaintiffs have recently learned the Philadelphia Police Department ("PPD") authorized the destruction of the crime scene prior to the start of their homicide investigation. Shockingly, before Osbourne finished the autopsy and concluded Ellen's death was a homicide, the PPD allowed third-parties to have access to the crime scene without police escort AND authorized the scene to be cleaned by a crime-scene clean-up service recommended by the PPD to the apartment building manager. These third-parties removed laptops, cell phones, and other items from the premises while the cleaning service sanitized the crime scene before a forensic homicide examination could be completed.

Notwithstanding the PPD's disturbing deviation from basic crime-scene protocols,

Plaintiffs have independently learned a conscientious third-party building employee made a

video recording of the scene prior to its being compromised as discussed above. Plaintiffs have

further learned that this person was later required to turn her video over to the PPD. This video is

among the only evidence depicting the state of the apartment where Ellen died and is crucial to

opinions by Plaintiffs' expert witness that Ellen's death is a patent homicide and in assessing

Osborne's decision to revise the manner of death from homicide to suicide.

Immediately upon learning of the video, Plaintiffs requested that a copy be produced. The City has not objected to the Plaintiffs' request. Instead, the City has responded simply that the video cannot be located while ultimately shrugging off Plaintiffs' requests for a sworn statement regarding efforts to find it. Importantly, many months earlier, Plaintiffs requested Defendants produce a copy of the videotape of the lobby of the building where Ellen was murdered. Like

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here, the City did not object to the request, but instead represented they did not have it. Not

accepting their response, Plaintiffs pressed Defendants for the lobby videotape, referring to

record entries establishing the lobby videotapes were in Defendants' possession. Plaintiffs also

demanded an accounting of the efforts made by Defendants or on their behalf to find the seized

lobby videotape. When these actions by Plaintiff still failed to gain access to the lobby videotape

or a detailed explanation of what happened to the videotape post-seizure by the PPD, Plaintiffs

threatened to seek court-intervention. Miraculously, the Defendants found and produced a copy

of the lobby videotape.

Like the lobby videotape, PPD seized the crime scene videotape taken by the third party

employed by the landlord. The parties agree Plaintiffs are entitled to a copy of the crime scene

videotape. Defendants' cryptic response that they cannot locate it is not enough. They should be

required to produce the crime scene videotape or describe in detail why the videotape cannot be

found, the efforts made to find it, and explain what happened to it. If the videotape is not

produced, the Defendants should be required to suffer the consequences of the unexplained or

insufficiently explained spoliation of this critical piece of evidence.

II. **QUESTION PRESENTED**

Whether the City of Philadelphia should be compelled to produce video evidence

obtained by a third party depicting scene of decedent's death prior to its becoming irreparably

compromised or, in the alternative, a detailed declaration by an individual with knowledge

confirming the video does not exist and attesting to what efforts were undertaken to locate it and

what happened to it.

Suggested answer: Yes

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III. FACTUAL BACKGROUND

Responding to a 9-1-1 call on the evening of January 26, 2011, authorities discovered Ellen R. Greenberg's body, slumped on the kitchen floor of the apartment she shared with her fiancé, with a 10-inch knife in her chest. Failing to notice, among other things, the 10 stabwounds to the back of Ellen's neck and head, and assuming Ellen had been locked in the apartment alone at the time of her death, scene investigators initially treated Ellen's death as a suicide.

The Plaintiffs have recently learned that the following morning, while forensic pathologist Dr. Marlon Osborne began his autopsy of Ellen's body, the PPD provided Melissa Ware, the manager of the apartment building where Ellen had died, with contact information for a crime scene cleaning service and authorized her to have the apartment cleaned and disinfected. PPD also authorized other third parties to enter the premises unescorted by a PPD member.

While the apartment was being sanitized and evidence—some of which was later surrendered to police—was being removed from the premises, Dr. Osborne completed his autopsy. Upon discovering numerous injuries overlooked by scene investigators—including the knife wounds to Ellen's spine and brain, a deep cut on the side of Ellen's head, and bruising all over her body, including on her head and wrists—he declared the manner of death a homicide. Unfortunately, by the time Dr. Osborne's findings triggered a formal homicide investigation and the PPD had obtained a warrant to enter the apartment to collect fingerprint, DNA and blood pattern evidence, the scene of the crime had been scoured and irreparably compromised.

After approximately two months, and after an unprecedented meeting with members of the MEO, PPD and District Attorney's Office, Dr. Osborne revised his initial manner of death

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determination from homicide to suicide. Osborne has since confirmed his decision was based in large part on information presented by police investigators related to the scene of Ellen's death, including evidence that allegedly corroborated initial accounts of Ellen having been locked alone in the apartment at the time. Because this evidence, now discredited or placed in genuine dispute through discovery, was insufficient as a matter of law to support Osborne's suicide finding, Plaintiffs filed the instant suit compelling Osborne to amend, or the MEO to retract and replace, Ellen's death certificate to reflect a manner of death other than suicide.

In discovery, Plaintiffs requested the production of all evidence, documents, recordings and the like related to Ellen's death investigation. (True and correct copies of the Plaintiffs Requests for Production of Documents are attached hereto as Exhibit "A.") The Defendants eventually produced some documents from the Medical Examiner's Office, such as copies of scene and autopsy photographs, investigation and autopsy reports, and some correspondence between MEO personnel and the Greenberg family or their representatives. A number of other items known to exist were not produced until specifically identified by the Plaintiff—and even then only under threat of court intervention—including copies of the 9-1-1 call recording and surveillance video depicting the lobby and other public areas of the apartment building where Ellen died. Although Plaintiffs have every reason to believe additional discovery is being withheld, there has been no indication from the City what, if anything, exists in the City's files—no written responses to document requests, no objections, no privilege log—so as to enable the Plaintiffs to direct further, specific requests.

Despite the City's obfuscation, Plaintiffs independently learned the building manager who arranged to have the crime scene cleaned prior to the homicide unit's investigation had the presence of mind to film the apartment, its condition, and its contents before it was sanitized of

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all evidence. Plaintiffs also understand the manager, Melissa Ware, thereafter surrendered her video recording to police investigators, among whom was Sergeant Timothy Cooney. Because the PPD allowed the crime scene to be cleaned before conducting their investigation, this video may be the only evidence capable of corroborating or refuting the only facts Osborne claims to have relied upon to support changing the manner of death to suicide. Given the importance Dr. Osborne has placed on police accounts of the state of the apartment in revising Ellen's manner of death from homicide to suicide, a video recording of the apartment, its condition and its contents captured before the scene was compromised is crucial to evaluating Dr. Osborne's revised finding, the central issue in this case.

Immediately upon learning of the existence of the videotape, Plaintiffs requested that they be provided with a copy. The Defendants do not object to Plaintiffs' request; rather counsel for the City has assured the Plaintiffs that no such video exists. Setting aside the unlikelihood that key evidence of this sort would have been lost or destroyed, this is not the first time the City has claimed materials requested by the Plaintiffs in discovery simply do not exist. In point of fact, and further illustrating the questionable reliability of the City's assurances, Defendants repeatedly claimed the lobby videotape initially requested in February 2020 did not exist before finally producing it the following year, but only after Plaintiffs refused, over the course of months, to accept the Defendants' assurances. (*See, e.g.,* Ex. B, Email Thread dated Oct. 13, 2020 to Jan. 25, 2021).

Given the importance of the evidence in both this case and the prior suicide finding, and considering the City's history of finding discovery materials long after repeatedly assuring Plaintiffs no such materials exist, the City's informal assurance through counsel is simply not acceptable. Therefore, Plaintiffs requested that Defendants provide a declaration prepared by the

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individual with knowledge confirming the video does not exist and attesting to the efforts undertaken in reaching that conclusion. After initially agreeing to provide a sworn statement to that effect, the Defendants ultimately provided the same, informal assurance of counsel that was earlier shown to be unreliable. (Compare Ex. C, Email dated May 20, 2021, 12:11 PM ("I...will get you a sworn statement.") and Ex. D, email dated May 25, 2021 ("There is no videotape in the Greenberg file..."). Plaintiffs now request that the video be produced or, in the alternative, that an individual with knowledge be directed to prepare a sworn statement confirming the video does not exist and attesting to what efforts were undertaken to locate it and what happened to it. Thereafter, depending on the Defendants' response, a spoliation sanction hearing may be warranted.

IV. ARGUMENT

A. The City Does Not Dispute That the Video Recording Sought by Plaintiff Is Relevant to Key Claims and Defenses in This Litigation

Among the key issues in this case concern whether Dr. Osborne has sufficient support—meaning 70% or greater certainty—for his eventual, revised finding of suicide. Having initially determined on the basis of the medical evidence obtained at autopsy that Ellen's death was a homicide, Osborne now claims reliance on information later obtained from police investigators concerning the state of Ellen's apartment as the critical basis for his decision to revise Ellen's manner of death to suicide.

The rules governing discovery in Pennsylvania provide

...a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party....

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Pa. R.C.P. 4003.1 (a). Video depicting the apartment, including the very evidence later relied upon to justify the revised manner of death determination which is the subject of this lawsuit, is plainly relevant. The Plaintiffs served Defendants with two sets of requests for the production of documents on February 13 and 14, 2020, respectively. (Ex. A.) The Defendants never submitted objections or written responses to Plaintiffs' document requests. Instead, on October 9, 2020, Defendants produced some responsive documents consisting of records from the Medical Examiner's Office, including copies of scene and autopsy photographs, investigation and autopsy reports, and some correspondence between MEO personnel and the Greenberg family or their representatives. Other than the 9-1-1 call recording and lobby surveillance video that were eventually, grudgingly turned over, no other material requested by Plaintiffs the preceding February was produced. Although Plaintiffs have had every reason to believe additional discovery is being withheld, the City has never served written responses to the Plaintiffs requests, lodged objections, or provided a privilege log. Thus, there has been no indication from the City what, if anything, exists in the City's files to enable the Plaintiffs to direct further, specific requests.

No indication, that is, until Plaintiffs learned that Melissa Ware, the property manager overseeing the building where Ellen died, videotaped the scene and turned a copy over to Sergeant Cooney of the PPD. Immediately upon learning of the video's existence, Plaintiffs requested that a copy be produced. Defendants, for their part, claim to be unable to locate it.

But, as noted above, this is not the first time the Defendants have made such a claim, only to "find" the video after months of Plaintiffs' insisting it must exist and be produced. By way of illustration, Plaintiffs in February 2020 requested that Defendants produce the surveillance video depicting the lobby and other common areas of the apartment building where Ellen died. (Ex. A,

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Plaintiffs Second Request for production of Documents, No. 10.) By the end of July, having received nothing in response to their document requests, Plaintiffs specifically inquired into the status of a few key items including the lobby videotape. (*See* Ex. E, Email Thread dated Jun. 29, 2020 to Aug. 13, 2020, at email dated July 20, 2020, 9:09 AM ("We are particularly interested in viewing the videotape..."). By November 2020, Defendants were insisting there was no videotape. (*See* Ex. B, Email Thread dated Oct. 13, 2020 to Jan. 25, 2021, emails dated Nov. 5, 2020, 10:04 AM ("*There is no videotape*."); Nov. 18, 2020, 10:08 AM ("*I don't see a videotape from the lobby in the materials I received*."), and 2:42 PM ("*They checked again and do not have surveillance video from the building*."). Eventually, PPD located and provided counsel with a copy of the video, which was ultimately produced, after some difficulty, at the end of January 2021. (Ex. B, emails dated Nov. 30, 2020, 11:52 PM ("They have sent me a file..."); Dec. 7, 2020, 11:01 AM ("Still working on the tech issue..."); Jan. 19, 2021 ("I have the video for the lobby...") and; Jan. 25, 2021, 3:21 PM ("Still working on the tech issue...").

The video Ware captured of the crime scene is a crucial piece of evidence, perhaps the only evidence that exists that can support or refute Dr. Osborne's decision to amend his initial homicide determination. The suggestion that the video is missing or was never obtained is simply not credible. The video is a key piece of evidence, and only recording, depicting the state of the crime scene before it was compromised, and Ware not only described taking the video, but identified the officer with whom she had contact at the time she surrendered it. In addition to the video itself, the Defendants will have property receipts and evidence logs attesting to the chain of custody, including whether the video was given to the District Attorney's Office or among the materials shared with the Attorney General's investigators.

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Plaintiffs do not lightly challenge the City's claim that it cannot be found, but given the

history of similar claims by the Defendants as illustrated above, Plaintiffs require more than the

mere informal assurance of counsel. For this reason, if indeed the video does not exist, Plaintiffs

requested that Defendants, provide a sworn statement, prepared by the individual with

knowledge, confirming that fact and attesting to the efforts undertaken in reaching that

conclusion and explaining what happened to the videotape. After initially agreeing to provide a

sworn statement to that effect, the Defendants ultimately provided the same, informal assurance

of counsel that was earlier shown to be unreliable. (*Compare Ex. C*, Email dated May 20, 2021,

12:11 PM ("I...will get you a sworn statement.") and Ex. D, email dated May 25, 2021 ("There

is no videotape in the Greenberg file..."). With the discovery period now coming to an end,

Plaintiffs no longer have the luxury of waiting another 11 months while the videotape is

grudgingly located. Defendants must produce it, and if the City has indeed lost it, someone with

knowledge must be called upon to confirm it was lost and attest to any and all efforts undertaken

in reaching that conclusion.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court order Defendants

to produce a copy of Ware's video or, in the unlikely event this crucial evidence has been lost or

destroyed, submit a declaration prepared by an individual with knowledge confirming the video

does not exist, attesting to what efforts were undertaken to locate it, and explaining how it was

lost.

LAMB McERLANE PC

By: /s/ Joseph R. Podraza, Jr.

Joseph R. Podraza, Jr., Esquire

jpodraza@lambmcerlane.com

Certification Due Date: 06/14/ Response Date: 06/21/

William H. Trask, Esquire wtrask@lambmcerlane.com One South Broad Street, Suite 1500 Philadelphia, PA 19107 (215) 609-3170

Counsel for Plaintiffs, Joshua Greenberg and Sandra Greenberg, Administrators of the Estate of Ellen Greenberg

Dated: June 4, 2021

Control No.: 21061025

LAMB McERLANE PC

Joseph R. Podraza, Jr., Esquire (ID No. 53612) William H. Trask, Esquire (ID No. 318229) One South Broad Street – Suite 1500 Philadelphia, PA 19107 (215) 609-3170 (610) 430-8000

Attorneys for Plaintiffs

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, deceased,

Plaintiffs,

V.

MARLON OSBOURNE, M.D., and PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE,

Defendants.

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY

CIVIL ACTION

October Term 2019 No. 01241

ATTORNEY CERTIFICATION OF GOOD FAITH

The undersigned counsel hereby certifies and attests to communications with opposing counsel regarding the discovery matters contained in the foregoing motion, but despite best efforts have been unable to resolve the dispute.

LAMB McERLANE PC

Dated: June 4, 2021

By: /s/ Joseph R. Podraza, Jr.
Joseph R. Podraza, Jr., Esquire
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William H. Trask, Esquire
wtrask@lambmcerlane.com
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Philadelphia, PA 19107
(215) 609-3170

CERTIFICATE OF SERVICE

I, Joseph R. Podraza, Jr., Esquire, hereby certify that I served a true and correct copy of the foregoing pleading on June 4, 2021, by sending this paper to the Court's electronic filing system (EFS) website pursuant to Pa.R.C.P. 205.4(g) and Phila. Civil Rule *205.4(f), and by virtue of automatic electronic service by the Court to all parties who have entered their appearance on the Court's electronic docket:

LAMB McERLANE PC

BY: /s/ Joseph R. Podraza

Joseph R. Podraza, Jr., Esquire jpodraza@lambmcerlane.com

Date: June 4, 2021

Certification Due Date: 06/14/2021 Response Date: 06/21/2021

FILED

21 JUN 2021 09:53 am

Civil Administration

T. FOBBS

EXHIBIT "Q" Emery Notes 8 29 19

NEUROPATHOLOGY EXAMINATION

Name of Decedent:		Outside Case #	-420
Autopsy Performed by:		Date of Autopsy:	
Brain Cutting by:	Lyndsey A. Emery, MD, PhD	Date of Brain Cutting: 8/19/19	
Brain Weight (grams):			*
Specimen for Examination:	□ Brain □ Dura	□ Spinal Cord	□ Eyes
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		VIII.	

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EXHIBIT "R" Declaration of Lyndsey Emery MD PhD

DECLARATION OF LYNDSEY EMERY, M.D., Ph.D., PURSUANT TO 42 Pa.C.S. § 6206

I, Lyndsey Emery, declare of my own personal knowledge:

- 1. My name is Lyndsey Emery. I am an Assistant Medical Examiner at the Office of the Medical Examiner in Philadelphia, where I have worked since October, 2017.
- 2. On May 11, 2021, I gave testimony in a deposition in the matter of Greenberg v. Osbourne and City of Philadelphia Office of the Medical Examiner regarding my examination of a portion of the vertebral column, spinal cord, and brain of Ellen Greenberg on August 29, 2019.
- 3. When questioned about a sharp object wound to the back of the neck, I testified that ordinarily one would expect to see some hemorrhage around an area of injury.
- 4. There are several explanations for a lack of hemorrhage in an area of injury, including: that nothing was injured along the wound path to result in hemorrhage; that there was not enough survival interval for there to be reaction hemorrhage; that bleeding in other areas of the body prevented bleeding in this area; that the injury took place after death; and that there is artifactual absence of hemorrhage and/or artifactual presence of injury as a result of probing at the time of the autopsy.
- 5. The plaintiff's counsel did not ask me to elaborate on other possible explanations except for the possibility of injury occurring after her death. When questioned by the City's counsel about other explanations, I did not fully understand the scope of her question and did not offer additional explanations as I have outlined herein.
- 6. Hemorrhaging requires, at a minimum, an injury to a blood vessel, blood volume within that blood vessel, and some degree of blood pressure (or "pulse"). The absence of any of these factors (no vascular injury, decreased blood volume, and/or decreased blood pressure) could result in a lack of hemorrhage in an injured area.
- 7. Furthermore, hemorrhaging can be affected by multiple additional factors, including: the sequence of injury or injuries; the presence of additional injuries; the characteristics of the wound (type, location, so forth); the position of the body; and the state of the person with injuries ("fight or flight", clotting problems, etc.).
- 8. It is not possible for me to determine which of these explanations given in paragraph 4 is most probable.
- 9. My examination was limited to a few portions of brain, a portion of the spinal cord, and a portion of the cervical vertebral column, and as I testified in my deposition, I formed no opinion as to the manner of death.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, subject to the penalties of 42 Pa. C.S. § 6206 for unsworn declarations.

Executed on this 10 day of June, 2021.

Lyndsey Emery, M.D., Ph.D

EXHIBIT "S" Ps Final Responses and Objections to First Set of Interrogs

LAMB McERLANE PC

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Attorneys for Plaintiffs

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN

R. GREENBERG, DECEASED,

Plaintiffs,

MARLON OSBOURNE, M.D.,

-and-

PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE.

Defendants.

IN THE COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

CIVIL ACTION

October TERM 2019

No. 01241

PLAINTIFFS' ANSWERS AND OBJECTIONS TO DEFENDANTS' FIRST SET OF **INTERROGATORIES**

Plaintiffs, Joshua M. Greenberg and Sandra Greenberg, as the Administrators of the Estate of Ellen R. Greenberg, deceased, hereby object and/or respond to Defendants' first set of interrogatories.

Identify any and all person(s) answering or providing **Interrogatory Number 1:** information utilized in preparing answers to these Interrogatories, providing said person's full name, date and place of birth, social security number, occupation, employer, residence and business address, relationship to Ellen Greenberg or to Plaintiffs, and source of authority to answer or provide information on Plaintiffs' behalf.

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RESPONSE: The responding persons are the Administrators of the Estate of Ellen R. Greenberg.

Interrogatory Number 2: State and identify with particularity the factual basis for your representation in Paragraph 1 of the Complaint that "[t]his action is compelled because the Defendants have declined to voluntarily perform this nondiscretionary act." Specifically explain what is meant by "nondiscretionary act."

RESPONSE: This interrogatory is objected to inasmuch as the response to it impermissibly requires a legal opinion by laypeople. Subject to and without waiving this objection, the Merriam-Webster Dictionary defines "nondiscretionary act" to mean an act "not left to discretion or exercised at one's own discretion."

Interrogatory Number 3: State and identify with particularity the factual basis for your representation at Paragraph 2 of the Complaint that "Other information, some just recently obtained, firmly draws into doubt – if not forcefully rebuts – a finding of suicide."

RESPONSE: Many of the facts are specifically delineated in Exhibit "D" to the Complaint, the substance of which are incorporated herein as Exhibit "A." Additional facts include the absence of actual searches on Ellen's computer which support a finding of a predisposition to death or suicide.

Interrogatory Number 4: State and identify with particularity the source of law underpinning the statement at paragraph 4 of the Complaint that "as a matter of law, the Defendants had no discretion to change the manner of Ellen's death from homicide to suicide."

RESPONSE: The National Association of Medical Examiners ("NAME") and Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics ("CDC") distinguish the pertinent manners of death as follows:

Suicide—"results from an injury or poisoning as a result of an intentional, self-inflicted act committed to do self-harm or cause the death of one's self"

Homicide—"occurs when death results from ..." an injury or poisoning or from "... a volitional act committed by another person to cause fear, harm,

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or death. Intent to cause death is a common element but is not required for classification as homicide."

Could not be determined—"used when the information pointing to one manner of death is no more compelling than one or more other competing manners of death when all available information is considered."

See A Guide for Manner of Death Classification ("NAME's Guide") and Medical Examiners' and Coroners' Handbook on Death Registration and Fetal Death Reporting ("CDC's Handbook"). The distinctions the NAME's Guide and the CDC's Handbook make between "Suicide," "Homicide," and "Could not be determined" as manners of death are followed and adopted in this Commonwealth, as are the other contents of the Name's Guide and CDC's Handbook.

In addition, both the NAME's Guide and CDC's Handbook maintain that "suicide" or "homicide" may only be selected as a manner of death if the selection is based on reasonable medical certainty after thorough investigation. Absent such certainty, the manner of death of "Could not be determined" must be checked on the Certificate of Death. According to the NAME's Guide, "to classify a death as Suicide, the burden of proof need not be 'beyond any reasonable doubt,' but it should exceed 'more likely than not' (that is, the burden of proof should be more compelling than 51% which barely exceeds chance)." As a result, the NAME's Guide maintains that the selection of suicide as a manner of death requires 70% or greater degree of medical certainty.

As noted in the Complaint, upon completion of the autopsy on January 27, 2011, the Defendants obtained overwhelming medical evidence that the manner of Ellen Greenberg's death was a "homicide." The Defendants later changed the manner of Ellen Greenberg's death from "homicide" to "suicide" based, not on any additional probative medical evidence obtained in the investigation of this case, but instead on the Philadelphia Police Department's non-medical and explainable argument that Ellen lacked defensive wounds on her hands. The necessary degree of medical certainty to support the selection of "Suicide" as the manner of Ellen's death under the NAME's Guide's standards is patently lacking.

Concomitantly, the information supplied to the Defendants in the package provided to Dr. Osbourne, in addition to that information already known to the Defendants in 2011, establish as a matter of law that the selection of "Suicide" as Ellen Greenberg's manner of death is no more compelling than one or more other competing manners of death when all the available information is considered. Indeed, the fact that the Defendants have flip-flopped on the selection of the manner of Ellen Greenberg's death without any medical justification is itself enough to prove, as a matter of law, that the selection of "Suicide" as the manner of death is no more compelling than one or more of the other competing manners of death when all the available information is considered. Given the circumstances here, Ellen Greenberg's Certificate of Death dated April 4, 2011 must be changed to indicate that the manner of her death "Could not be determined."

Interrogatory Number 5: State and identify with particularity the "negative consequences" referred to in paragraph 5 of the Complaint on "Ellen's estate, . . . family members, vital statistics . . . and the basic goals of our system of criminal justice." Specifically identify for each plaintiff in their individual capacity what the negative consequences are.

RESPONSE: The April 4, 2011 changing of the manner of death on Ellen's Certificate of Death from homicide to suicide has harmed and continues to harm the Estate of Ellen Greenberg, deceased, and has other far reaching negative consequences. The information in the Certificate of Death is considered prima facie evidence of the fact of death that can be introduced in court as evidence, and would have evidentiary value in a claim or dispute involving Ellen's Estate. Also, like it or not, our society stigmatizes suicide, disparaging the person who ended her life as selfish, crazy, and looking for an easy way out. Further, this stigma deprives surviving family members (e.g., the Administrators) of the closure and peace of mind to which they are otherwise entitled. Furthermore, the contents of the Death Certificate, particularly the sections on cause and manner of death, are the source for State and national mortality statistics and are used to determine which medical conditions receive research and development funding, to set public health goals, and to measure health status at local, State, national and international levels. Said another way, the important statistical data derived from death certificates can be no more accurate or reliable than the information provided on the certificate.

Similarly, the mortality data collected from the information in death certificates, like the one at issue, are valuable to physicians indirectly, as these data influence funding for medical and health research (which may alter clinical practice), and directly, as a research tool. Research topics include examining medical or mental health problems that may be found among specific groups of people and indicating areas in which medical research can have the greatest impact on reducing mortality. In addition, the goals of securing justice and promoting criminal accountability are impeded by death certificates containing inaccurate causes or manners of death.

Interrogatory Number 6: State and identify with particularity each and every benefit that an altered death certificate or a declaration that the manner of death "could not be determined" would confer on plaintiffs.

RESPONSE: See response to Interrogatory no. 5 and it would benefit the general public if Ellen's killer(s) were actually brought to justice.

Interrogatory Number 7: State and identify with particularity the basis for the statement at paragraph 13 of the Complaint that "Ellen Greenberg relaxed."

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RESPONSE: Among other things, upon returning home, Ellen changed into comfortable clothes and partook in activities (like preparing a fruit salad) that are normally considered acts of pleasure or relaxation in the confines of one's home.

Interrogatory Number 8: State and identify with particularity the basis for the statement at paragraph 16 of the Complaint that "most of the police officers who arrived on the scene that night believed immediately that Ellen Greenberg had been murdered." Name each police officer, badge number, and the basis for their statement of belief.

RESPONSE: Unfortunately, the name of each officer, badge number, and statement attributable to the officer cannot be supplied because the City has failed to produce the reports and the like within the possession of the Philadelphia Police Department despite requests for this information made by the Administrators in this litigation.

Interrogatory Number 9: State and identify with particularity the basis for the statement in that same paragraph 16 that "crime scene protocols and other precautions typically implemented by the police . . . were not observed at the apartment." Identify and name the sources of this statement, each and every way in which such protocols and precautions allegedly were not observed, and identify and provide any documents that support this statement.

RESPONSE: It is the Administrators understanding that the scene was not treated as a crime scene until after Ellen's death was declared a homicide by Dr. Osbourne on January 27, 2011. This understanding is confirmed by Guy D'Andrea, a former Assistant District Attorney, who independently reviewed the case file while employed in the District Attorney's Office and represented to an individual associated with the Administrators that, following his review of the file, a basic death investigation was never performed by the PPD. Even something as basic as UV black lighting was not done by the PPD, an act universally viewed as rudimentary in crime scene investigations (particularly those involving body fluids or blood).

Interrogatory Number 10: State and identify with particularity the basis for the statement in paragraph 20 of the Complaint that the bruises found on Ellen's body "suggested"

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repeated physical altercations." Provide support for this conclusion to the exclusion of other causes of bruising, such as exercise or self-harm.

RESPONSE: The autopsy photographs, which depict multiple contusions of Ellen's upper and lower extremities of various resolutions, are biomechanically consistent with assailant-oriented trauma and not self-infliction. Further, Wayne Ross, M.D., a specialist in forensic and neuropathology, states there was evidence of strangulation on Ellen's neck and the multiple bruises over her body (some of which were fresh) were of a pattern consistent with a repeated beating.

Interrogatory Number 11: State and identify with particularity the basis for the statement at paragraph 22 of the Complaint that Dr. Osbourne's initial medical determination was "final, binding and not subject to amendment." Specifically, explain the basis for the conclusion that only "additional medical information or autopsy findings" could be considered as a basis for modifying the cause and manner of death, and not any information gathered through police investigation.

RESPONSE: This interrogatory is objected to inasmuch as the response to it impermissibly requires a legal opinion by laypeople. Subject to and without waiving this objection, see 28 Pa.Code Sec. 1.37.

Interrogatory Number 12: State and identify with particularity the source for the statement at paragraph 23 of the Complaint that "the public, through a press release" was told of Dr. Osbourne's and the MEO's medical findings as to the cause and manner of Ellen Greenberg's death."

RESPONSE: Reports by 6ABC on January 30, 2011 and Philadelphia Neighbors on February 7, 2011.

Interrogatory Number 13: State and identify with particularity the source for the statement in paragraph 25 that the Police Department insisted "incorrectly" that the case had not been ruled a homicide.

RESPONSE: See response to Interrogatory nos. 3 and 14.

Interrogatory Number 14: State and identify with particularity the source of the statement in paragraph 26 that the Medical Examiner "bowed to improper public pressure," – what the nature of the pressure was and the source of the evidence that the Medical Examiner bowed to it -- or admit the statement is without support.

RESPONSE: NBC 10 report on January 27, 2011; Police news release on January 29, 2011; CBS News report on January 31, 2011; Philadelphia Neighbors report dated February 7, 2011; Montgomery News report dated February 11, 2011; WHYY report dated February 18, 2011; Roxborough-Manayunk, PA Patch report on February 18, 2011; and October 2018 conference call involving Tom Brennan, Dr. Ross, and Dr. Osbourne in which Dr. Osbourne stated Ellen's cause of death was changed "at the insistence of the police because they said there was a lack of defense wounds."

Interrogatory Number 15: State and identify the source of the statement attributed to Dr. Osbourne in paragraph 28 of the Complaint that "he had changed the manner of Ellen Greenberg's death . . . solely 'at the insistence of the police because they said there was a lack of defensive wounds," the date he purportedly made this statement, and the names of all people to whom he purportedly made it. In that same paragraph, please explain the basis for the statement that Dr. Osbourne's consideration of police evidence constituted a "complete dereliction of his legal duty never to delegate to non-medical parties." Finally, explain the basis for your conclusion that he delegated his decision to non-medical parties.

RESPONSE: This interrogatory is objected to inasmuch as the response to it impermissibly requires a legal opinion by laypeople. Subject to and without waiving this objection, see response to Interrogatory nos. 11 and 14.

Interrogatory Number 16: Identify Ellen Greenberg's ten closest friends at the time of her death. Explain how she knew each person and for how long.

RESPONSE: Erica Hamilton, Harrisburg, PA; Debbie Schwab, Plymouth Meeting, PA; Allison Rosenfeld Stern, Plymouth Meeting, PA; Lauren Parnes Sachs, Armonk, New York; Pamela Rosenberg, Washington DC.

Interrogatory Number 17: State and identify with particularity any and all plans Ellen Greenberg had made for her wedding, including the name of anyone she had mentioned as participating in the bridal party.

RESPONSE: Regarding Ellen's upcoming wedding, the Administrators were aware of Heather Hoffman, who was the contact at the Hershey Hotel; Hank Lane, who was a representative of the band; Jeffrey's Flowers, who were the retained florist; Priscilla of Boston, who were retained for the wedding dress; and Cliff Mautner, who was the retained photographer. The vendors returned their deposits following Ellen's death and were very sympathetic about Ellen's passing. As far as the Administrators are aware, Ellen had not yet selected her bridal party.

Interrogatory Number 18: State and identify with particularity every occasion of which Plaintiffs are aware when Ellen Greenberg used the words "I don't want to live" in any context.

RESPONSE: The Administrators are not aware of any such occasion.

Interrogatory Number 19: State and identify with particularity every occasion of which Plaintiffs are aware when Ellen Greenberg used the words "suicide" or "kill myself."

RESPONSE: The Administrators are not aware of any such occasion.

Interrogatory Number 20: State and identify with particularity every occasion of which Plaintiffs are aware when, during the ten years prior to her death, Ellen Greenberg expressed feelings of anxiety, worry, sadness, or depression.

RESPONSE: In January 2011, Ellen seemed anxious on occasion, but not unduly anxious. The care she received from Dr. Berman seemed to effectively deal with Ellen's anxiety. Ellen was not depressed, sad, or worried.

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Interrogatory Number 21: State and identify with particularity any occasion on which Plaintiffs have knowledge that Ellen Greenberg harmed herself in any way at any time in her life.

RESPONSE: The Administrators are not aware of any such occasion.

Interrogatory Number 22: State and identify with particularity any occasion on which Plaintiffs have knowledge that Ellen used or ingested any illegal drugs, including but not limited to marijuana, or drank to excess.

RESPONSE: The Administrators are not aware of any such occasion.

Respectfully submitted,

LAMB McERLANE PC

RY.

Joseph R. Podraza, Jr., Esquire podraza alambmcerlane.com

William H. Trask, Esquire wtrask@lambmcerlane.com

One South Broad Street – Suite 1500

Philadelphia, PA 19107

(215) 609-3170

(610) 430-8000

Date: March 17, 2021

Attorneys for the Plaintiffs

VERIFICATION

I, Joshua M. Greenberg, DMD, Administrator of the Estate of Ellen R. Greenberg, deceased, verify that the factual statements in the foregoing document are true and correct to the best of my knowledge, information and belief. I do further understand that these statements are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

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Joshua M. Greenberg Soshua M. Greenberg, DMD Joshua M. Greenberg, DMD, Administrator of the Estate of Ellen R. Greenberg, deceased

VERIFICATION

I, Sandra Greenberg, Administrator of the Estate of Ellen R. Greenberg, deceased, verify that the factual statements in the foregoing document are true and correct to the best of my knowledge, information and belief. I do further understand that these statements are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

03/1	7/202	1

Date

Sandra Greenberg

Sandra Greenberg, Administrator of the Estate of Ellen R. Greenberg, deceased

CERTIFICATE OF SERVICE

I, Joseph R. Podraza, Jr., Esquire, hereby certify that a true and correct copy of the forgoing answers to Defendants' First Set of Interrogatories was served on the below individual by electronic mail (per agreement of counsel) on the below indicated date:

Ellen Berkowitz, Senior Attorney 1515 Arch Street, 15th Floor Philadelphia, PA 19102 Ellen.berkowitz@phila.gov Attorney for Defendants

RY.

Joseph R. Podraza, Jr., Esquire

Date: March 18, 2021

EXHIBIT "A"



September 3, 2019

ILIONERSIGHT MAIL

Marlon Osbourne, M.D. Broward County Office of Medical Examiner 5301.8W 31st Avenue For Funderdale, FLA 53312

Re: Death Investigation of Ellen Greenberg

Dear Dr. Osbourne

Laws Wellerian

I write in regards to the 2011 death of Ellen Greenberg and your ultimate findings to alert you to a number of questions that east serious doubt in the minds of various medical and neuropathological experts as to your conclusion that Ellen's cause of death was suicide. In our view, these questions warrant a closer examination of the case, further investigation of the circumstances surrounding her untimely death, and ultimately your voluntary amendment of Ellen's Death Certificate to include a cause of death other than suicide as permitted under Pennsylvania Lov.

The telling bases for the requested amendment by you of the cause of death listed on I flen's Death Certificate are discussed below. But before you consider them, please allow me to address a preliminary matter that you are probably thinking. Do I have the authority to amend I flen's Death Certificate despite my no longer being associated with the Philadelphia Medical I xaminer's Office? The answer is: "Yes." Pennsylvania law specifically empowers only you with the continuing authority to amend I flen's Death Certificate to change the cause of death from saicide to something else despite your no longer acting as a pathologist in Pennsylvania. Moreover, I would be happy to prepare and send to you the documents needed to effect that would notify me of your willingness or unwillingness to amend I flen's Death Certificate within fourteen (14) days of the date of this letter. I will presume your unwillingness should I receive no response from you within the specified time.

As you read the remainder of this letter, please keep in mind that the Listate of Ellen Greenberg and her family only want to learn the truth surrounding Ellen's death. They believe



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the truth cannot be determined absent a more comprehensive investigation into the circumstances surrounding Ellen's death. As a human being, don't you believe that they are entitled to some closure and hopefully peace of mind from Ellen's antimely and unnatural passing?

Experts Unanimously Conclude Ellen's Death Was Not A Suicide

Enclosed are copies of reports by several emmently qualified experts in the fields of medical forensics and neuropathology who have unanimously concluded that Ellen's death could not have been the result of a suicide. Wayne K. Ross, M.D., a well-credentialed, board-certified pathologist who specializes in forensic pathology and neuropathology, conducted his own independent investigation, including a reexamination of Ellen's spinal cord specimen retained by the Medical Lyaminer's office and concluded beyond a doubt, among other things, that it simply is not possible that all of the wounds suffered by I flen were self-inflicted. Similarly, Cyril M. Weelt, M.D., also a preemment forensic pathologist, after conducting his own examination of the complete reports, concluded consistently with Dr. Ross, that not only could this have not been a suicide, but that all pathological indications pointed toward homicide. Henry C. Lee. Ph.D. of the Institute of Forensic Science at the University of New Haven, concluded after reviewing the entire case file that the number and type of wounds inflicted as well as the bloodstam patterns observed, were consistent with the scene of a homicide, not a suicide, Consistent with these findings, as set forth in a March 15, 2019 article published in the Philadelphia Inquirer, Guy D. Andrea, a former Philadelphia homicide prosecutor who reviewed the entire case file before leaving the District Attorney's Office, Gregory McDonald, chief deputy coroner for Montgomery County, and Robert D. Keppel, retired chief criminal investigator for the Washington State Attorney General's Office, all determined the physical evidence raised serious questions that undermined a finding of suicide in Ellen's case and, in some eases, warranted a determination of homicide

As briefly summarized below, the unanimous conclusions of these experts coupled with other serious concerns militating against a finding of suicide, warrant your reconsideration of I llen's cause of death and ultimately your amendment of her death certificate to reflect a cause of death other than suicide.

Other Material Considerations Warranting the Reconsideration of Ellen's Cause of Death

1. Evidence that two knives were used in Ellen's death.

According to Wayne K. Ross, M.D., there is substantial forensic evidence suggesting more than one weapon was used in Ellen's death, although only one was recovered at the scene Dr. Ross concluded a strong likelihood that two knives -- one serrated, one smooth-bladed -- were used in Ellen's death, although the only knife recovered at the scene was of the serrated variety and found imbedded four inches in Ellen's chest. The import of Dr. Ross' conclusion cannot be overstated. If a second knife was used in Ellen's death but not recovered at the scene

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someone other than Ellen necessarily disposed of it, which alone rules out suicide as a cause of death

2 Studies of the wound pattern suggest not all could have been self-inflicted

According to Dr. Ross, it is very unlikely that several of the wounds suffered by Ellen could have been administered by Ellen herself, and categorically impossible for all of the wounds to have been self-inflicted. The cumulative effect of the wounds suggest that before the final stab was administered to Ellen's chest, she would have been rendered physically incapable of inflicting more wounds. Ellen suffered a significant wound at the base of her skull that penetrated her brain by several centimeters. This particular wound resulted from an upward strike to the base of the skull that would have been difficult, if not impossible, for an individual to inflict on herself. Moreover, Dr. Ross conducted a forensic examination of a preserved sample of spinal tissue and concluded that the injury inflicted on the nervous system by this blow would have rendered Ellen incapacitated and incapable of performing further harm, including the final stab-wound to the chest. Finally, Dr. Ross' position is credibly supported by the recreation report of this matter also included with the enclosed materials.

3. Questions concerning the involvement of Dr. Lucy Rorke-Adams

Although the police investigators rehed heavily on the conclusions of Lucy Rorke-Adams, M.D., in justifying their findings of suicide, serious questions have arisen regarding Dr Rorke-Adams' involvement. According to the police investigators, when confronted with questions arising from the irregular wound pattern, particularly the above frequency and severny of certain imuries preceding the final chest wound, but determined to find a medical explanation consistent with a finding of suicide, investigators reached out to Dr. Roike-Adams, a neuropathologist with whom the Philadelphia Police and Medical Examiner's Office consulted from time to time. According to the report, Dr. Rorke-Adams concluded after conducting an examination of the spinal tissue that the damage inflicted at the base of the skull to the brain and spine could have resulted in Ellen becoming numb to the pain of the subsequent stab wounds while leaving her still sufficiently ambulatory to inflict those further wounds. But there is no evidence that Dr. Rorke-Adams ever conducted any examination of I llen's spinal tissue. She never issued a report, was never paid for her services, and although there are records of Dr Rorke-Adams performing examinations on the days preceding and following the date of her alleged examination of Ellen's spinal tissue, there are no records that she performed any work for the City of Philadelphia on the date noted in the report. Furthermore. Dr. Rorke-Adams has no recollection of consulting with the Police Department or MI's office on that date, and there is no corroborating record of her being picked up and brought to the MI's office as the reports suggest. In fact, in interviews with the Philadelphia Inquirer, Dr. Rorke-Adams claimed to have no recollection of the case at all and further stated the lack of any invoice or report of her findings confirms that she had no involvement in the case

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Dr. Rorke-Adams' involvement is crucial as her medical conclusion is a necessary element in the ultimate suicide finding, for without any explanation as to how it was physiologically possible for I llen to inflict further wounds to her own person after suffering a blow that substantially severed her spinal cord, the ultimate finding of suicide would have been impossible

4. Blood pattern evalence suggests Elien's body was moved or repositioned

Upon review of the crime scene photographs and other evidence, the independent experts have concluded that Ellen was lying down and later moved into the sitting position in which she was discovered by investigators. For example, clear from the photographs of the scene is a trail of blood running horizontally, parallel to the floor, along the side of Ellen's face, which Detective Scott Felman concluded defies the laws of gravity and suggests Ellen was moved from the original position she had been in when the blood dried. Detective Felman, a specialist incrime scene reconstruction who regularly pairs with Dr. Ross, also analyzed the bloodstains on Ellen's sweatpants, sweatshirt and shoes and found other evidence consistent with her being moved or repositioned postmortem, concluding that she had been in a position different from that in which she was found at the time the blood was deposited on her sweatpants, sweatshirt and shoes. He further concluded that Ellen's head had been in several positions during the time of blood flow and for long enough as to have the blood flow across her face and back toward her ear, upward toward her eyes and also downward toward her chin in a manner that is inconsistent with the position in which Ellen was found by investigators.

5. Knife block suggests aftereation

The condition of the crime scene raised serious questions for the independent experts that, for these experts, support a finding of homicide rather than suicide. Among these questionable conditions, the heavy kinter block from which at least one weapon was retrieved was found laying on its side, pulled over with sufficient force to have knocked two of the knives stored therein across the counter and into the sink. The condition of the knife block and knives is consistent with someone grabbing a kinter quickly and forecfully as if in the midst of an altercation with another individual rather than that of a person who, alone in the kitchen, pulled a kinter out for use, at least initially, for the preparation of a fruit salad.

6 Ellen's behavior that day is not consistent with suicide

Events leading up to Filen's death are also inconsistent with stacide. After leaving work early that day due to the snow storm. Ellen filled her car's empty gas tank. Also, Filen was halfway through preparing a fruit salad, which was left unfinished on the counter as seen in the photographs of the scene. In addition, Filen's treating psychiatrist, Filen Berman, M.D., is firm Ellen was not suicidal. Finally, all the wounds to Ellen's chest and abdomen were fafficted through her clothing, which as the investigators concluded, is highly anusual in cases of suicide

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In nearly all documented cases, an individual will lift his or her clothing and stab directly into the skin. As the independent experts have indicated. Ellen's behavior is not consistent with someone preparing to commit suicide and when considered in light of the other serious questions surrounding her death, suggest another explanation

Facts Suggested to Support a Finding of Suicide Are Inconclusive Require Further Investigation

1. Door locked from the inside

That the door was locked from the inside with the safety bar engaged was the principal factor in concluding that I flen's death was a suicide. Indeed, this factor was so critical in the minds of the original investigators, the remainder of the investigation seemed an exercise in uncovering explanations, no matter how unlikely, to justify that initial prejudgment. But that the door was locked from the inside at the time of I flen's death was merely accepted and was never itself properly tested. As noted in the expert reports and visible in the photographs of the apartment, the safety bar remained intact and undamaged, and, although disengaged, was still attached, albeit loosely, to the door and doorframe, respectively. Had the door been forced open from the outside without first disengaging the safety bar as the investigators concluded, at least one of its ends would necessarily have been ripped from its serews in either the door or the doorframe. Tests performed by one investigator using an identical mechanism repeatedly confirmed this. Contrarywise, the damaged but functional safety bar depicted in the photograph was consistent with the application of force to the door, but not entry, as if the door had been pulled from the inside causing the damage seen in the photographs and then manually disensaged.

Although a forced entry was reported by Ellen's france, who told the police investigators that, upon finding the safety bar engaged and Ellen not responding to his text messages, he kicked the door open in the presence of a member of the building's security, the member of the security staff allegedly present when Ellen's france kicked the door is firm that he was not present as alleged.

2. Lack of detensive wounds

Another of the factors cited in support of the finding of suicide was the lack of defensive wounds on Ellen's hands and arms, which would be expected on the victim of a knile attack of this nature. However, as Dr. Ross explained in his report, the stab wound inflicted upward at the base of Ellen's skull to her spine and brain would have been incapacitating and made further resistance impossible. Moreover, Dr. Ross did find evidence of fresh bruises and a fingernal imprint on Ellen's neck, suggesting she may have been physically overwhelmed and rendered defenseless by her attacker at the outset of the altereation, further explaining the lack of defensive wounds customary in knife attacks. Moreover, a lack of defensive wounds is not

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unheard of in these instances, particularly when the victim is attacked quickly so as not to be able to defend herself, the proverbial "blitz attack

3. Montal state

Ellen had obtained treatment for her anxiety in the weeks preceding her death, and there is no indication from her therapist or elsewhere that I llen had exhibited a predisposition toward self-harm or that she entertained any suicidal ideations at any time. In fact, Dr. Berman maintains Hen did not exhibit my indications of suicidal ideation while under her professional care. Prescribed Klonopin for her anxiety, the toxicology screens showed levels in her system that were consistent with the prescribed dosage and that Ellen was using the medication as directed

Conclusion

This is a case that requires a closer examination and more thorough investigation, which can only be accomplished by your amending Ellen's Death Certificate to reflect a cause of death other than suicide. A conclusion of suicide is simply not supported by the evidence and, in light of the facts and circumstances raised by independent experts, constitutes a capricious exercise of discretion

Thank you for your prompt attention to this matter. Ellen's Estate, her family, and I strongly urge you to agree to amend her Death Certificate to enable her to receive justice. I look forward to hearing from you.

Respectfully yours.

R PODRIVAL JR

HRP pisk Encls

cc. Dr. Joshua Greenberg

Case ID: 191001241

EXHIBIT "T" Def Letter Req Supplemental Answers



LAW DEPARTMENT One Parkway 1515 Arch Street Philadelphia, PA 19102-1595

Diana P. Cortes City Solicitor

Ellen Berkowitz Senior Attorney 1515 Arch Street, 15th Floor Philadelphia, PA 19102 215-683-5253 (direct) 215-880-9854 (cell) Ellen.Berkowitz @phila.gov

April 27, 2021

VIA E-MAIL:

jpodraza@lambmcerlane.com wtrask@lambmcerlane.com Joseph Podraza, Esq. William Trask, Esq. Lamb McErlane 1 South Broad Street, Suite 1500 Philadelphia, PA 19107

Re: Plaintiff's Response to Defendant's First Set of Interrogatories

Dear Joe and Will:

By this letter I am asking that you promptly supplement a few of your responses to Defendants' First Set of Interrogatories, sent to you as a PDF on February 10, 2021, as a Word document on February 11, 2021, and then re-sent to you on March 9, 2021. A number of the responses you sent on March 18th are non-responsive in large part. Please respond as requested below by close of business on April 29th, or I will be forced to file a Motion to Compel. Since you did not file a Motion for Extraordinary Relief as you indicated you planned, I do not have the ability to give you more time, but these are only a few and you had the Interrogatories in February, so I am hopeful you will be able to address them.

Please follow the Definitions and Instructions for responding, included in the original Interrogatories, and direct your clients to adhere to them.

1. Interrogatory 1: You failed to provide the name, date of birth, social security number, occupation, employer, residence and business address of the Plaintiffs and merely respond that they are the Administrators of the Estate of Ellen Greenberg. At No. 5, you

- acknowledge that they are here parents. Please provide a full answer, as requested on February 10th.
- 2. Interrogatory 2: You filed a complaint asserting mandamus and alleging that Defendants "declined to voluntarily perform this non-discretionary act." By its terms, the interrogatory asked you to identify what the non-discretionary act was, not to provide a dictionary definition of non-discretionary. What specific, non-discretionary act were Defendants obligated to perform?
- 3. Interrogatory 5. You were asked to state with particularity the negative consequences referred to in ¶ 5 of the Complaint. Please identify what <u>actual</u> legal matters regarding the estate require a different manner of death on the death certificate. Specifically identify all claims and disputes in which the death certificate has been an issue. Attach relevant correspondence and list case numbers.
- 4. Interrogatory 8. Your response to this interrogatory was deficient in that you failed to state the basis for your assertion at ¶ 16 of the Complaint that "most of the police officers . . . believed immediately that Ellen Greenberg had been murdered." State the source of your assertion that "most" police officers had this belief. Attach relevant documents, as requested in the Definitions and Instructions, and/or identify the source of this statement by name and provide contact information for the individual who supplied it. If you have no basis for this statement, state that.
- 5. Interrogatory No. 9. As directed in "Definitions and Instructions," please identify and provide contact information for the "individual associated with the Administrators" whom you assert received information from Guy D'Andrea, and provide contact information for Mr. D'Andrea and the date he provided this information to the "individual." Please clarify in the sentence "following his review of the file" whether you are referring to Mr. D'Andrea or to the "individual known to Administrators." Attach any documents obtained from Mr. D'Andrea or from "the individual associated with Administrators" in support of the assertion at ¶ 16 of the Complaint that crime scene protocols were not observed.
- 6. Interrogatory No. 10. Please provide non-opinion evidence that excludes exercise or self-harm as the source of Ellen Greenberg's bruising. If there is no non-opinion evidence, state that.
- 7. Interrogatory No. 11. Your response cites to the Vital Statistics portion of the Pennsylvania Code and is non-responsive. Please respond to the basis for your assertion that no non-medical information can be considered as a basis for modifying the manner of death.
- 8. Interrogatory No. 14. Please attach all reports and articles in support of your assertion that the Medical Examiner "bowed to improper pressure." In addition, please provide the exact date of the alleged conference call with Tom Brennan, Dr. Ross and Dr. Osbourne

and any notes or transcripts. Please explain how the conference call was arranged. Please provide contact information for Tom Brennan, as directed in "Definitions and Instructions."

9. Interrogatory No. 16. Please respond per the "Definitions and Instructions" section of the Interrogatories sent on February 10, 2021 by providing contact information for each of these people, not a city. Please respond to part of the interrogatory asking how Ellen Greenberg knew each of them and for how long.

Very truly yours,

Ellen Berkowitz Senior Attorney

EXHIBIT "U" Ps Suppl Answers to Ds Interrog

LAMB McERLANE PC

Joseph R. Podraza, Jr., Esquire (ID No. 53612) William H. Trask, Esquire (ID No. 318229) One South Broad Street – Suite 1500 Philadelphia, PA 19107 (215) 609-3170 (610) 430-8000

Attorneys for Plaintiffs

JOSHUA M. GREENBERG, DMD, and SANDRA GREENBERG, as the Administrators of the Estate of ELLEN R. GREENBERG, deceased,

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY

Plaintiffs,

CIVIL ACTION

October Term 2019 No. 01241

MARLON OSBOURNE, M.D., and PHILADELPHIA COUNTY MEDICAL EXAMINER'S OFFICE,

Defendants.

PLAINTIFF'S SUPPLEMENTAL ANSWERS AND OBJECTIONS TO **DEFENDANTS' FIRST SET OF INTERROGATORIES**

Plaintiffs, Joshua M. Greenberg and Sandra Greenberg, Administrators of the Estate of Ellen R. Greenberg, deceased, incorporate by this reference Plaintiffs objections and responses to Defendants' First Set of Interrogatories and hereby supplement their objections and responses to Interrogatory Nos. 1-2, 5, 8-11, 14 and 16 as follows:

* * *

Interrogatory Number 1: Identify any and all person(s) answering or providing information utilized in preparing answers to these Interrogatories, providing said person's full name, date and place of birth, social security number, occupation, employer, residence and

business address, relationship to Ellen Greenberg or to Plaintiffs, and source of authority to answer or provide information on Plaintiffs' behalf.

RESPONSE No. 1: The responding persons are the Administrators of the Estate of Ellen R. Greenberg.

SUPPLEMENTAL RESPONSE No. 1: Objection. Plaintiffs object to this interrogatory insofar as it seeks social security numbers, dates of birth, occupation and employment information that are not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objection, the responding persons are the Administrators of the Estate of Ellen R. Greenberg, identified in the Complaint at ¶ 6 as Joshua M. Greenberg, DMD and Sandra Greenberg, the parents of Ellen R. Greenberg, deceased, residing at 4408 Saybrook Lane, Harrisburg, Pennsylvania 17110.

* * *

Interrogatory Number 2: State and identify with particularity the factual basis for your representation in Paragraph 1 of the Complaint that "[t]his action is compelled because the Defendants have declined to voluntarily perform this nondiscretionary act." Specifically explain what is meant by "nondiscretionary act."

RESPONSE No. 2: This interrogatory is objected to inasmuch as the response to it impermissibly requires a legal opinion by laypeople. Subject to and without waiving this objection, the Merriam-Webster Dictionary defines "nondiscretionary act" to mean an act "not left to discretion or exercised at one's own discretion."

SUPPLEMENTAL RESPONSE No. 2: See Complaint ¶ 1, which identifies the non-discretionary act Defendants declined to perform thereby compelling the commencement of this lawsuit, specifically "to change the manner of death on the Certificate of Death of Ellen R. Greenberg, deceased, from suicide to 'Could not be determined'...."

* * *

Interrogatory Number 5: State and identify with particularity the "negative consequences" referred to in paragraph 5 of the Complaint on "Ellen's estate, ... family members, vital statistics ... and the basic goals of our system of criminal justice." Specifically identify for each plaintiff in their individual capacity what the negative consequences are.

RESPONSE No. 5: The April4, 2011 changing of the manner of death on Ellen's Certificate of Death from homicide to suicide has harmed and continues to harm the Estate of Ellen Greenberg, deceased, and has other far reaching negative consequences. The information in the Certificate of Death is considered prima facie evidence of the fact of death that can be introduced in court as evidence, and would have evidentiary value in a claim or dispute involving Ellen's Estate. Also, like it or not, our society stigmatizes suicide, disparaging the person who ended her life as selfish, crazy, and looking for an easy way out. Further, this stigma deprives surviving family members (e.g., the Administrators) of the closure and peace of mind to which they are otherwise entitled. Furthermore, the contents of the Death Certificate, particularly the sections on cause and manner of death, are the source for State and national mortality statistics and are used to determine which medical conditions receive research and development funding, to set public health goals, and to measure health status at local, State, national and international levels. Said another way, the important statistical data derived from death certificates can be no more accurate or reliable than the information provided on the certificate.

Similarly, the mortality data collected from the information in death certificates, like the one at issue, are valuable to physicians indirectly, as these data influence funding for medical and health research (which may alter clinical practice), and directly, as a research tool. Research topics include examining medical or mental health problems that may be found among specific groups of people and indicating areas in which medical research can have the greatest impact on reducing mortality. In addition, the goals of securing justice and promoting criminal accountability are impeded by death certificates containing inaccurate causes or manners of death.

SUPPLEMENTAL RESPONSE No. 5: Objection. Plaintiff objects to this Interrogatory to the extent it seeks a legal conclusion. Subject to and without waiver of this objection or any prior response, to the extent the manner of death identified in the Certificate of Death of Ellen R. Greenberg is amended or otherwise changed to a manner other than "Suicide," such alteration would have bearing on the resumption of further investigative efforts by authorities and on the ability of the Plaintiffs to pursue an action for wrongful death should the aforesaid investigation uncover new information.

* * *

Interrogatory Number 8: State and identify with particularity the basis for the statement at paragraph 16 of the Complaint that "most of the police officers who arrived on the scene that night believed immediately that Ellen Greenberg had been murdered." Name each police officer, badge number, and the basis for their statement of belief.

RESPONSE No. 8: Unfortunately, the name of each officer, badge number, and statement attributable to the officer cannot be supplied because the City has failed to produce the reports and the like within the possession of the Philadelphia Police Department despite requests for this information made by the Administrators in this litigation.

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SUPPLEMENTAL RESPONSE No. 8: Plaintiffs are informed and therefore believe from Venice Lofts Apartment personnel that police officers responding to the scene expressed on January 26, 2011 their views that there had been a murder in the sixth-floor apartment of Ellen R. Greenberg. Unfortunately, no names, addresses or badge numbers were provided at the time.

* * *

Interrogatory Number 9: State and identify with particularity the basis for the statement in that sanle paragraph 16 that "crime scene protocols and other precautions typically implemented by the police ... were not observed at the apartment." Identify and name the sources of this statement, each and every way in which such protocols and precautions allegedly were not observed, and identify and provide any documents that support this statement.

RESPONSE No. 9: It is the Administrators understanding that the scene was not treated as a crime scene until after Ellen's death was declared a homicide by Dr. Osbourne on January 27, 2011. This understanding is confirmed by Guy D'Andrea, a former Assistant District Attorney, who independently reviewed the case file while employed in the District Attorney's Office and represented to an individual associated with the Administrators that, following his review of the file, a basic death investigation was never performed by the PPD. Even something as basic as UV black lighting was not done by the PPD, an act universally viewed as rudimentary in crime scene investigations (particularly those involving body fluids or blood).

SUPPLEMENTAL RESPONSE No. 9: Thomas P. Brennan, Jr., 1409 Regency Circle, Harrisburg, Pennsylvania 17110. Guy D'Andrea, Esquire, LAFFEY, BUCCI & KENT LLP, 1100 Ludlow Street, Suite 300, Philadelphia, Pennsylvania 19107. By way of further answer, see D'Andrea interview broadcast nationally on the Oxygen Network for its program "Accident, Suicide or Murder." See also the document production of Defendants, which contains no forensic homicide report or any reference to the preparation or existence of same.

* * *

Interrogatory Number 10: State and identify with particularity the basis for the statement in paragraph 20 of the Complaint that the bruises found on Ellen's body "suggested repeated physical altercations." Provide support for this conclusion to the exclusion of other causes of bruising, such as exercise or self-harm.

RESPONSE No. 10: The autopsy photographs, which depict multiple contusions of Ellen's upper and lower extremities of various resolutions, are biomechanically consistent with assailant-oriented trauma and not self-infliction. Further, Wayne Ross, M.D., a specialist in forensic and neuropathology, states there was evidence of strangulation on Ellen's neck and the multiple bruises over her body (some of which were fresh) were of a pattern consistent with a repeated beating.

SUPPLEMENTAL RESPONSE No. 10: Responding Plaintiffs confirm Ellen R. Greenberg did not participate in contact sports, exercise or other activities that would account for her substantial bruising. Furthermore, when asked what efforts were made to determine the cause of the significant bruising documented throughout the autopsy report and accompanying photographs, Marlon Osborne, MD explained:

I believe I had asked the investigator to find out, through talking to the family, about anything -- if they knew anything about the bruising. Again, I don't think our efforts to speak to the boyfriend were met successfully. And that would have been a question I would have had the investigator ask him. But I don't know that any answer was ever garnered from the boyfriend at that time regarding the bruising.

M. Osborne Dep. (Apr. 22, 2021) at pp. 106:16 – 107:7. Thus, Dr. Osborne was unable to rule out suspicions that these bruises were consistent with a pattern of repeated abuse, as confirmed by Plaintiffs' pathologist, due to the insufficiency of Defendants' investigation.

* * *

Interrogatory Number 11: State and identify with particularity the basis for the statement at paragraph 22 of the Complaint that Dr. Osbourne's initial medical determination was "final, binding and not subject to amendment." Specifically, explain the basis for the conclusion that only "additional medical information or autopsy findings" could be considered as a basis for modifying the cause and manner of death, and not any information gathered through police investigation.

RESPONSE No. 11: This interrogatory is objected to inasmuch as the response to it impermissibly requires a legal opinion by laypeople. Subject to and without waiving this objection, see 28 Pa.Code Sec. 1.37.

SUPPLEMENTAL RESPONSE No. 11: See Osborne Dep. (Apr. 22, 2021) at pp. 91-94, wherein Dr. Osborne explained that his decision to change the manner of death from Homicide to Suicide was based on non-medical information provided by police investigators and the District Attorney's Office, which non-medical evidence, if called into

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question, would require that the manner of death be changed back consistent with his medical findings or, at minimum, changed to undetermined.

* * *

Interrogatory Number 14: State and identify with particularity the source of the statement in paragraph 26 that the Medical Examiner "bowed to improper public pressure,"-what the nature of the pressure was and the source of the evidence that the Medical Examiner bowed to it -- or admit the statement is without support.

RESPONSE No. 14: NBC 10 report on January 27, 2011; Police news release on January 29, 2011; CBS News report on January 31, 2011; Philadelphia Neighbors report dated February 7, 2011; Montgomery News report dated February 11, 2011; WHYY report dated February 18, 2011; Roxborough-Manayunk, PA Patch report on February 18, 2011; and October 2018 conference call involving Tom Brennan, Dr. Ross, and Dr. Osbourne in which Dr. Osbourne stated Ellen's cause of death was changed "at the insistence of the police because they said there was a lack of defense wounds."

SUPPLEMENTAL RESPONSE No. 14: Objection. Plaintiff objects to this Interrogatory insofar as it seeks the production of publicly accessible reports and articles already identified by Plaintiffs, which are as readily available to the Defendants as to the Plaintiffs. Subject to and without waiver of the foregoing objection, see attached memorandum of Thomas P. Brennan dated September 15, 2013 bearing Bates Nos. P0001 – P0007 and documents produced by Defendants at Bates Nos. PHILA 0085 – PHILA 0087.

* * *

Interrogatory Number 16: Identify Ellen Greenberg's ten closest friends at the time of her death. Explain how she knew each person and for how long.

RESPONSE No. 16: Erica Hamilton, Harrisburg, PA; Debbie Schwab, Plymouth Meeting, PA; Allison Rosenfeld Stern, Plymouth Meeting, PA; Lauren Parnes Sachs, Armonk, New York; Pamela Rosenberg, Washington DC.

SUPPLEMENTAL RESPONSE No. 16: Objection. Plaintiff objects to this interrogatory as vague and as seeking information not reasonably calculated to the lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objection:

Erica Hamilton: 6560 St. George Dr., Harrisburg, Pennsylvania 17112. Knew Ellen Greenberg since childhood; attended middle school, high school and college together.

Debbie Schwab: 101 Black Walnut Ln, Plymouth Meeting, Pennsylvania 19462. Second cousin to Ellen Greenberg through Debbie's marriage.

Allison Rosenfeld Stern: 136 Woodbine Way, Plymouth Meeting, Pennsylvania 19462. Knew Ellen Greenberg since childhood; attended middle school, high school and college together; roommates for a time after college.

Lauren Parnes Sachs: 85 Byram Ridge Rd., Armonk, New York 10504. Knew Ellen Greenberg since childhood; attended middle school, high school and college together.

Pamela Rosenberg: 3245 Royal Fern Pl., Rockville, Maryland 20852. Families knew each other and introduced them; lived in the same building while in Washington DC during the 2005-2007 period.

LAMB McERLANE PC

Dated: April 30, 2021

By: /s/ Joseph R. Podraza, Jr.
Joseph R. Podraza, Jr., Esquire
jpodraza@lambmcerlane.com
William H. Trask, Esquire
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T. FOBBS

EXHIBIT "L"

Ross Report Pl Exh E

WAYNE K. ROSS, M.D., P.C.

Specializing in Forensic and Neuropathology

David Skinner, Office Manager P.O. BOX 774 Uwchland PA 19480 (717) 481-8510 (P)

October 18, 2016

Thomas P. Brennan Jr., Consultant Criminal Investigative Analysis 1409 Regency Circle Harrisburg, Pennsylvania 17110

Re: C16-119 Greenberg, Ellen

Dear Mr. Brennan,

At your request, I reviewed materials pertaining to the death of Ellen Greenberg who was found dead in her apartment in Philadelphia after sustaining multiple stab wounds. The knife was still in her chest. In addition, blood stain evidence was observed around the body in the kitchen. The door entrance locking mechanism/door was damaged.

The autopsy was performed by the Philadelphia Medical Examiner. The cause of death was multiple stab wounds and the original manner of death was a homicide. Later, the medical examiner changed the manner of death to suicide.

It is my opinion that the investigating authorities should pursue this case as a homicide. It is further my opinion to a reasonable degree of medical certainty that the manner of death is a homicide.

Sincerely,

Dr Wayne Ross

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David Skinner, Office Manager

January 10, 2017

Thomas P. Brennan Jr., Consultant Criminal Investigative Analysis 1409 Regency Circle Harrisburg, Pennsylvania 17110

RE: Greenberg, Ellen (C16-119)

MATERIALS RECEIVED:

- Inspection Date of Organ Tissue- August 3rd 2016
- Scene Photographs
- Autopsy Report
- Autopsy Photographs

After review of the above information, I can offer the following opinions to a reasonable degree of medical certainty:

- There was evidence of a stab wound which penetrated the cranial cavity and severed the
 cranial nerves and brain. As a result she would experience severe pain, cranial nerve
 dysfunction and traumatic brain signs and symptoms including numbness, tingling, irregular
 heartbeat and bradycardia, respiratory depression, neurogenic shock and impaired/loss of
 consciousness.
- There was evidence of strangulation. There was a mark over the front of the neck which was consistent with a fingernail mark. There were multiple bruises under the neck and in the strap muscles over the right side of the neck. The patterns were compatible with a manual strangulation.
- 3. There were multiple bruises over the body some of which were fresh, many of which were older. The patterns were consistent with a repeated beating.
- 4. The scene findings were indicative of a homicide.

Should further information become available, we reserve the right to amend this report at that time.

Wayne K. Ross, M.D.

Dave K. Mun

EXHIBIT "M" Wecht Report Pl Exh F

CYRIL H. WECHT, M.D., J.D.

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PORBNSIC PATHOLOGY LEGAL MEDICINE

January 11, 2012

Dr. Joshua Greenberg 4408 Saybrook Lane Harrisburg, PA 17110

Re: Ellen Greenberg, Deceased

Dear Dr. Greenberg:

Pursuant to your request, I have reviewed all the records and materials pertaining to the death of your daughter.

CLINICAL SUMMARY

Ms. Ellen Greenberg, 27 years old, was found dead by her fiance, Mr. Samuel Goldberg, in their locked apartment on January 26, 2011. Mr. Goldberg reported that he had left their apartment for the gym in their apartment building at 16:45 that afternoon and returned between 17:15 to 17:30. He stated that he tried to contact the decedent via text message, telephone and email for approximately one hour in attempting to get back in, but he got no response (confirmed by incoming texts and email in decedent's cell phone between 1732 and 1754).

The 911 call was made at 1833. The solid bar door guard was broken (consistent with Mr. Goldberg's report of forcing in the door). An apartment security man was reportedly present during Mr. Goldberg's entry. He was briefly instructed to start CPR until he noticed a knife in her chest and was instructed to stop. Medics pronounced death at 1840.

There was no evidence of a struggle, Valuables were present and nothing was missing in the apartment. The decedent was found supine in the kitchen, her head and upper body resting against the lower half of the kitchen cabinets. Blood was present on the head, in the hair and on the neck. Multiple chest wounds were observed. A knife was embedded in her left chest. It was a

single edged serrated blade approximately 12.5 cm in length and 1.5 cm wide with a handle approximately 12.5 cm in length. The right hand with blood in it was closed in a loose fist. There was no note or anything to indicate suicide on the computers or in the rest of the well kept apartment. The last outgoing call in the decedent's cell phone was for 30 seconds on 1/26/11 at 1433. The recipient of the telephone call was not identified.

The decedent was clothed in a T-shirt, sweat pants, underwear, a zippered shirt and UGG boots. Blood was present on the head, in the hair, on the front side of the shirts, on the front of her pants and on the top of both boots. A pair of eyeglasses was on the floor to her right. A white towel was grasped in her left hand. It is not known if there was blood on the towel. A hair tie "scrunchie" was on her right wrist.

The decedent was in a committed relationship with Sam Goldberg. They had been together for 3 years, and were recently engaged. Her parents had no reservations about their relationship. There is no knowledge of any verbal or physical abuse. No report of a detailed interrogation of the fiance is available. (How did the decedent behave before Mr. Goldberg went to the gym only 30 minutes earlier? Her mother stated that when she spoke with the decedent that morning, they "had a pleasant conversation. She gave no indication that something was imminently wrong.")

Her mother knew that her daughter was "struggling with something". Ms. Greenberg was seeing a psychiatrist, Dr. Ellen Berman. Ms. Greenberg visited the psychiatrist on January 12, 17 and 19. She was upset and stressed about her job as a school teacher for the District of Philadelphia, where she had been employed for three years. She had expressed that she was overwhelmed with her classroom work. She had been prescribed Zoloft first, then switched to a low dose of Xanax. After no success, the doctor prescribed Ambien and Klonopin. On January 17, it was specifically noted by the psychiatrist: "she starts thinking about everything else – not suicidal." On January 19, Dr. Berman noted: "way better". Ms. Greenberg denied any verbal or physical confrontations with her fiancé.

Also reviewed is diary-like emailed account (imgperio@gmail.com). Ms. Ellen Greenberg reportedly responded to this close friend's text on January 26 about 12 pm saying "yah, you are getting out early" (Philadelphia schools were getting out early on account of the snow storm). Ms. Greenberg's response was "Thank Goodness".

This same friend went to Ms. Greenberg's apartment with Mr. and Mrs. Greenberg about a month after her death. She narrates that Mrs. Greenberg found blood on the bathroom floor near the gym, recalling that her daughter's fiancé was in the gym on the day of her friend's death. They notified the police, who came to take samples on the floor at the apartment where they "smelled marihuana". Dr. Greenberg, the decedent's father, apparently told the police that Mr. Sam Goldberg "smoked a lot and that police had found marihuana and paraphernalia in the

apartment" the night of Ms. Greenberg's death. (Ms. Ellen Greenberg was suggested to have known her fiancé engaged in this drug usage, but she did not participate in such activity.)

As published in newspapers on February 1, 2011, "the Medical Examiner's Office ruled the death as a homicide", based on the Philadelphia Police Department's announcement on January 28. A few days later, the Police Department backed away, making a statement that the case had not been ruled a homicide and was being investigated as "suspicious". However, on February 18, 2011, the police retracted their original ruling, and officially declared that the death of Ellen Greenberg had been ruled a suicide.

Philadelphia City Assistant Medical Examiner Marlon Osbourne, M.D., listed "multiple stab wounds" as the cause of death. The manner was ruled to be suicide.

There were multiple stab wounds to the chest (8), abdomen (1), back of neck (10) and scalp (1). A knife with a 12.5 cm blade was present in the 10 cm. deep chest wound. There were injuries to the aortic arch, the left upper lung lobe, liver and dorsal cervical spinal cord at C2-C3. There were associated bilateral hemothorax and hemopericardium. The wounds were listed as follows:

Chest: (8 wounds)

- A. Front to back (0.2 cm deep) midline
- B. Front to back (0.2 cm deep) midline
- C. Right to left (1.4 cm deep) right chest, front to back, slightly upward
- D. Front to back (2.7 cm right of midline, 0.2 cm deep) front to back
- E. Left to right, front to back and slightly downward, (horizontal, 10 cm deep left 2nd ICS, sharp end @ 3:00, blunt end @ 9:00 superior mediastinum, aortic arch, left upper lung lobe, 600 cc left pleural hemothorax, 500 cc right pleural hemothorax, 120 cc hemopericardium
- F. Front to back (0.2 cm deep)
- G. Front to back (0.2 cm)
- H. Front to back, slightly left to right (4 cm deep, vertical blunt end @ 12:00, sharp end @ 6:00 through right 6th ICS

Abdomen (1)

I. Front to back, slightly left to right (6 cm deep)

Head (1)

J. Right occipital scalp (8 cm above right external auditory meatus

Neck (10 wounds)

- K. Back to front, slightly left to right (0.3 cm deep) vertical
- L. Back to front, slightly left to right (0.2 cm deep) vertical
- M. Back to front (0.3 cm deep) vertical
- N. Back to front (8 cm deep) through occipital triangle into ligamentum nuchae, small vessels overlying cerebellum, subarachnoid over vermis, caudal right cerebellar hemisphere
- O. Back to front (3 cm deep), horizontal right to left
- P. Back to front, (2.1 cm deep), vertical right to left
- Q. Back to front (2 cm deep) vertical, slightly left to right
- R. Back to front (1.9 cm deep), vertical slightly left to right
- S. Back to front (2.1 cm deep) vertical left of midline slightly left to right
- T. Back to front (7 cm deep) horizontal between 2nd and 3rd cervical vertebrae, incising dura over spinal cord right to left 4.5 cm right of midline: no defect in spinal cord

Multiple contusions "in various stages of resolution" were present on the upper and lower extremities: right upper arm, right forearm (3), right lower abdomen, right thigh (round contusions in a vertical row) and above the right knee (3).

223 color photographs at the scene and at autopsy have been submitted. No toxicology reports are found in the materials submitted. (Reportedly, the tests were negative.) Ms. Greenberg had seen psychiatrist Dr. Ellen Berman. Her handwritten notes from three patient visits have been reviewed. There had not been any summary of a detailed interrogation of the fiancé.

MEDICOLEGAL QUESTION

What was the most likely manner of death?

Suicidal stab wounds can rarely be multiple. Suicides by stabbing are becoming less frequent, with simpler choices being drugs, hanging, or gunshot. Cutting of the wrist and throat is often associated with suicide, whereas stab wounds to the back are unlikely to be suicide.

A murder usually involves multiple stab wounds to the side, back or stomach. In a suicide, there may be additional cuts across the wrist, or tentative stabbings to see if it will hurt, or to work up courage. Then there will usually only be one wound and most likely in the chest.

The multiple stab wounds to the back of the upper neck and lower head found at autopsy were unlikely suicidal stab wounds especially the different directions that K, L, Q, R and S with vertical direction left to right, straight vertical of M, N and T, and, right to left horizontal, O and vertical P.

The locations of the stab wounds high up the back of neck and lower back of head are also unlikely for self-inflicted wounds.

A suicide victim will frequently leave a note. There was none. There was also no indication that the decedent was suicidal from the standpoint of her own family, friends, professional associates and the psychiatrist who had evaluated her. There had not been any indication that she had the intention to commit suicide, or was depressed during the day she was found dead. She seemed her usual self in the morning when she had a telephone conversation with her mother, and later at mid-day during her texting with a friend at approximately noon. It would be important to find out from the fiancé how she behaved barely half an hour before, when he left their apartment as he claimed.

A suicide victim will rarely stab herself through her clothing. Instead, she will open her shirt to expose the skin. Stabbing through clothing may indicate homicide. It is not known if fingerprints on the knife were taken and examined.

OPINION

Following the review of all submitted documents, the results of the autopsy and the accounts from the investigation, based upon reasonable degree of medical certainty, it is my professional opinion that the manner of the death of Ellen Greenberg is strongly suspicious of homicide.

Very truly yours,

Cyril H. Wecht, M.D., J.D.

CHW/srw

EXHIBIT "N" Lee Institute PI Ex G



January 29, 2018

Mr. Thomas P. Brennan, Jr. Criminal Investigative Analysis



Re: Decedent- Ellen R. Greenberg

Items reviewed:

- 1. Case reports
- 2. Photographs

Submitted by: Thomas P. Brennan Jr.

Harrisburg, Pennsylvania

After review of the photographs and reports sent to the Henry Lee Institute of Forensic Science, the following were observed.

 Photo #1 shows a view of the door leading into the residence with security lock visible. Some damage appears to be in the area of this lock in the close-up photograph. There does not appear to be damage to the doorjamb or evidence of break in at the dead bolt lock from the other side of the door.

A person can be seen on the floor, in the corner of the kitchen cabinets.

2. The view of the decedent in Photo #2 shows a female on the kitchen floor with her head and shoulders against the corner cabinets near the stove and sink. A pair of glasses are on the floor to the decedent's right hand. Blood-like stains are seen on the floor and on the woman's dothing. A white towel is in her left hand. Several blood-like stains appear to be on the kitchen counter near the sink.

- 3. A close-up view of the decedent's head and shoulders is seen in photo #3 shows a knife in her left upper chest. There are blood-like stains on the knife, her face and her clothes. There appear to be several cuts on her head. The blood is flowing in different directions on her face. This could mean that she moved after receiving the initial bleeding injuries to her head. The location of several of the wounds would be a difficult position for her to cause these wounds.
- 4. The decedent's upper body and the cabinets behind her are shown in Photograph #4. Swipe-lype patters can be seen on the cabinet corner area. There are also some blood spatter patterns and a blood dripping in a downward direction on the cabinet to her right. These stains indicate that the decedent received some of her wounds while she was above the level of the stains. The swipe patterns are consistent with having been formed when she fell to the floor.
- 5. Photograph #5 shows her middle torso and lower arms. There are at least 300 400 blood drops on her upper thighs and waist area. These stains are consistent with vertical blood drops, formed when blood fell from her wounds onto this area while she was in a sitting position. There is also blood on the floor between her legs. Based on the appearance of the bloodstains and their locations, these are consistent with the knife being inserted at the area where she was found. She later fell onto the floor with the dripping wounds over her legs.

Some blood-like stains are seen on her right hand. No defensive-type wounds can be seen.

- 6. The decedent's lower extremities are shown in photograph #6. Multiple blood drops are seen on the upper legs, with addition drops noted on the lover legs and on the boot tops. A closer view of the left boot (photograph #7) shows several vertical blood drops on the boot top and the sides of the boot sole. Some of these stains appear to be the result of vertical blood drops. Based on the number and distribution of the drops, these stains are consistent with having been from her initial injuries. If the decedent had received a massive injury while upright, the number of stains should have been greater.
- 7. The decedent's right hand and the area around her right hand is shown in photograph #8. There is a blood smear on her right hand. A few blood drops can be seen on the floor, which may indicate that she was upright for some of her injuries. There is no indication of cleaning in this area.
- 8. Photograph #9 is a closer view of the bloodstains on the cabinet doors near the decedent's head. Several bloodstains can be seen that are dripping downward, further indicating that she was upright when she received some of her wounds. A small amount of cast-off type bloodstains are also seen in this area of the cabinets, indicating a downward direction.
- 9. Photograph #10 is a close-up picture of reddish-colored stains on the counter. It is unknown if this stain is in fact blood; if, however, it is blood, it is consistent with a blood drop with some spatter. This would be further indication that the decedent was upright when she received some of her injuries, and then subsequently fell to the floor, leaning back against the cabinet.

- 10. Photograph #11 shows the inside of the sink in the kitchen. Two knives and a wash brush are in the sink. Other photographs (See photograph #12) show cut fruit and other knives on the kitchen counter.
- 11. Review of the medical examiner findings showed that the decedent received multiple stab wounds to the chest, abdomen, neck and scalp. Multiple contusions / bruising were noted at various locations on her upper and lower extremities. These bruises were apparently in various stages of healing.

Summary of findings:

After review of the reports and the photographs, the kitchen area where the decedent was found is consistent with the primary, indoor scene. Assuming that all of the blood noted was the decedent's blood, the bloodstain patterns indicate that she was in a standing position when she received her initial injuries, which caused the blood dripping on the kitchen sink, counter, cabinet and drops on the floor. Subsequently, she was on the floor with her head leaning forward, producing all of the blood drops that fell onto her pants and between her legs.

Two separate contact stains were found on the cabinet near her: one stain was consistent with a wipe from right to left; the second was consistent with a hair swipe, Indicating her halr with blood from her head injury, came in contact with the cabinet in a downward direction.

The stab wounds noted in the photographs are consistent with being caused by a knife, but there is no indication of the length or width of the knife, except for the wound in which the knife was embedded to the handle. The decedent received additional wounds to her heck and head that were not clear in the scene photographs. Therefore, it is not possible to make additional observations on those patterns at this time.

The number and type of wounds and bloodstain patterns observed are consistent with a homicide scene.

Elaine M. Pagliaro, MS, JD

Henry C. Lee, PhD

EXHIBIT "O" Eelman Pl Exh H

Detective Scott Eelman

Specializing in Crime Scene Reconstruction, Evidence Processing and Management

> 101 Ironstone Drive Lititz, PA 17543 (717) 278-3263

ATTORNEY WORK PRODUCT PERSONAL AND CONFIDENTIAL

April 14, 2017

RE: Ellen R. Greenberg (Case #17-001)

INFORMATION:

I was contacted by Dr. Wayne K. Ross who asked that I review a case for him to perform a crime scene reconstruction. Dr. Ross provided the below listed items for my review.

MATERIALS REVEIWED:

1. Autopsy photos

2. Crime scene photos taken by the Philadelphia Medical Examiner's Office

3. Philadelphia Medical Examiner's report

4. Philadelphia Medical Examiner's Office Investigator report

5. Expert report of Dr. Cyril Wecht, M.D.

ANALYSIS OF INFORMATION:

Ellen R. Greenberg was a 27-year-old female found deceased in an apartment she shared with her fiance, Samuel Goldberg. According to the Medical Examiner's Investigator's report, Mr. Goldberg reported that he left Ms. Greenberg in the apartment by herself when he went to the gym at approximately 1645 hours. He indicated that he returned approximately 30 – 45 minutes later and found the apartment door locked. Mr. Goldberg stated he used his key to attempt entry but found that the security latch had been engaged and he was unable to enter. He waited approximately I hour prior to forcing entry to the apartment. Mr. Goldberg indicated an apartment building security person was present at the time he forced entry.

The photographs of the crime scene depict Ms. Greenberg scated on the kitchen floor against the corner cabinet. She is found slumped downward resting on her buttocks and lower back. Her arms are extended parallel to her upper body with both hands rotated slightly inward from the anatomical position. A white in color towel is noted clenched in her left hand which is also extended toward her feet. Her legs are extended with her feet rotated outward. She is wearing a pair of light brown/tan in color Ugg boots, a pair of gray in color sweatpants tucked into the boots, a dark gray in color zip-up sweatshirt and a dark gray in color T-shirt underneath of the sweatshirt. Her head is noted to be turned to the right and tilted slightly forward with her chin resting on her right shoulder and the right side of her head resting against the cabinet face.

The handle of a knife is present protruding from the upper left chest of Ms. Greenberg. Bloodstains are noted on the sweatshirt, sweatpants, boots, hands and face of Ms. Greenberg. Bloodstains are also noted on the floor immediately adjacent to her body and the cabinet faces adjacent to her body. Two large knives are noted in the right side of the double sink. A kitchen the knife block is noted on the counter in the corner. The knife block is overturned and two empty spaces are observed. A pair of cyeglasses is noted on the floor near her right hand. A "scrunchy" type elastic hair tie is noted around the right wrist.

The boots show small circular and elliptical bloodstains to the top portion of the foot of the boots; with the left boot displaying a greater number of stains than the right. The left shows circular bloodstains on the upward facing aspects of the boots with the elliptical shaped stains following the contour of the boot along the toe and insole areas and associated satellite stains. The left boot shows only five or six circular and elliptical bloodstains. The circular bloodstains are along the upward facing aspect of the boot with the elliptical shaped stains following the contour of the boot along the insole area. No overt bloodstains are noted to the upper portions of either of the boots or the back of the boots. The sole of the right boot does show some evidence of bloodstains but none of the photographs depict enough of the sole of the boot for thorough evaluation. The sole of the left boot cannot be thoroughly evaluated in these photographs.

The bloodstains on the sweatpants show primarily circular and elliptical shaped bloodstains to the front portions of the upper pant legs. There are no obvious bloodstains noted to the lower pant legs below the knees. The left pant leg shows a larger number of circular bloodstains with associated wicking due to the nature of the cloth material of the sweatpants. The circular bloodstains are larger than those visible on the boots. The right pant leg shows a lesser number of circular bloodstains with associated wicking. Some transfer stains are noted to the anterior portion of the upper pant leg. A void area is noted to the upper leg/lower pelvis area of the sweatpants into the crotch portion of the sweatpants. Circular and elliptical bloodstains are noted covering the outer portions of the anterior hip region of the sweatpants. The lower portion of the gray T-shirt is observed covering the upper portion of the sweatpants. Circular/elliptical shaped bloodstains are noted to the lower margin of the T-shirt in this region. A void area is observed from the upper portion of these bloodstains along the lower margin up to the lower margin of the sweatshirt where it covers the T-shirt. Multiple circular and elliptical bloodstains are noted on the anterior portion of the sweatshirt covering the front pocket area with associated wicking more so in the area of the zipper. Some circular and elliptical bloodstains are noted alongside the zipper above this area in the area of the lower rib margin and epigastric region. Void patterns are noted to the front of the sweatshirt beneath the area of both breasts. Elongated elliptical and flow pattern bloodstains are noted to the upper portion of the sweatshirt overlying both breasts; more so on the right than the left. A void pattern is noted overlying the left upper breast region of the sweatshirt. The cloth along the zipper shows clear wicking of blood from the lower rib margin area continuously to its termination at the top of the sweatshirt. No obvious bloodstains are observed to the left upper shoulder, left arm or the left side of the attached hood of the sweatshirt. Multiple circular and elliptical shaped bloodstains and flow pattern bloodstains are noted to the right upper arm region of the sweatshirt. A few circular and elliptical bloodstains are noted to the right lower sleeve of the sweatshirt.

The floor area to the right of Ms. Greenberg shows a few small circular bloodstains. The towel in her left hand shows only a singular bloodstain to the lower portion and a reddish/pink colored area near her left hand. No obvious bloodstains are noted to her left hand. A singular elliptical shaped bloodstain is noted on a cabinet face to the right of the stove.

The floor surface between the legs of Ms. Greenberg showed numerous circular and elliptical bloodstains between her upper legs. There is also evidence of diluted pooled blood between her upper thighs in the crotch area. Dark staining, presumed to be urine, is noted from the crotch area of the sweatpants and upper thighs. No overt bloodstains are noted between the lower legs. There is a collection of dark colored longer hairs noted on the floor between the lower legs of Ms. Greenberg.

The floor area to the left of Ms. Greenberg's right leg and arm shows several bloodstain patterns. Several small circular bloodstains are noted on the floor in the area of the eyeglasses. The arms of the eyeglasses are extended. The frames are dark in color thus making any determination of bloodstains on the frames

more difficult. There is a reddish/pink colored discoloration noted to the right lens of the eyeglasses which may represent blood. A larger patterned bloodstain is noted between the eyeglasses and Ms. Greenberg right hand. There is also a defined edge noted to the bloodstain. The lower edge of the bloodstained towards Ms. Greenberg's feet shows a defined edge and some diluted/altered bloodstain.

The cabinet door face beneath the right side of the double sink shows two distinct bloodstain patterns. There are series of five bloodstains in a linear pattern from lower left upper right. Three of these bloodstains are larger in volume than the subsequent two. The angle of these bloodstains is primarily downward at a relatively low angle. The second set of bloodstains is noted in the upper right corner of the cabinet face. These bloodstains have a slight left to right directionality are primarily downward.

The corner cabinet has two faces to the cabinet door. The face beneath the sink side of the counter shows three sets of distinct swipe patterns. The first set is toward the top left corner of the cabinet under the handle and has a horizontal motion toward the corner of the cabinet. The second set appears below into the right of the first and has a more downward motion with slight motion toward the corner the cabinet. The third set is below the first along the leading edge of the cabinet face. It is a lighter swipe pattern and has a horizontal motion. A small transfer pattern is noted between the first and third swipe patterns. The adjacent face of the coroner cabinet on the stove side of the counter shows several smaller transfer type bloodstains. The available set of photographs is not sufficient for a determination on whether these are swipe patterns or simply transfer.

The bloodstains to her face show primarily flow patterns and transfer patterns. A significant flow pattern stain is noted emanating from her upper right forehead, diagonally across her forehead to the left eyebrow region. A second set of flow patterns appears to originate from the corner of her left eye. The first branch of this flow pattern flows downward alongside of the left side of her nose and terminates under her left nares. The second branch of this flow pattern moves across the lower aspect of her left cheekbone were it appears to pool or at least spread out and moves downward. It diverges into two branches; the first of which terminates at the left corner of the mouth and the second appears to terminate just lateral to this. The third branch flows from the left cheekbone lateral to the first two, flows downward just lateral to the left corner of her mouth and down to the left side of her chin. Another branch from the wider area along her left cheekbone moves rearward toward her ear and slightly upward. Yet another branch moves rearward toward her ear, slightly further than the previous branch, and then moves slightly upward. Another branch moves from her left cheekbone laterally and slightly downward toward the corner of her jaw and into her hairline below and behind her left ear. A large area of bloodstain is noted on the upper portion of the bridge of her nose between her eyes. Bloodstains are observed to the right side of the face as well but these photographs fail to clearly depict this area enough for a thorough analysis.

The photographs from the front door are reviewed. There is damage noted to the door side of the security latch which is still attached to the door. The screws are still present in the screw hole. The doorjamb side of the security latch does not appear to show any damage. The floor underneath the door area, while it is difficult to see with the photographs given, does not show any evidence of debris from the damaged security latch.

No photographs were received of the refrigerator, kitchen pantry/closet or any portion of that wall between the kitchen and the front door. No photographs are received of the ceiling of the kitchen area. No photographs are received of Mr. Goldberg, his footwear or his clothing.

The autopsy report from the Philadelphia Medical Examiner's Office concludes that Ms. Greenberg suffered eight stab wounds to her chest, one stab wound to her abdomen, and incised wound to her scalp and 10 stab wounds to her posterior neck.

FINDINGS AND OPINIONS:

 Ms. Greenberg died as a result of stab wounds to the back of her neck, abdomen and chest. A significant incised wound was also noted to the back of the right side of her scalp.

- 2. Is Greenberg was found in the corner of the kitchen area of the apartment between the sink and the stove. Her back was leaning against the corner cabinet, she was slumped downward with her feet and arms extended. A white and colored towel was located in her left hand and was also extended downward toward her feet. Her head was found to be tilted slightly forward and to the right with her chin resting against her right shoulder and the right lateral portion of her head resting against the face of the coroner cabinet.
- The bloodstains on her face are inconsistent with the position in which she was found. Specifically the bloodstain flow pattern diagonally across her forehead from the right to the left and terminating in the left eyebrow would move against the law of gravity. This particular flow pattern indicates that her head was tilted slightly backwards and to the left as the origination of that blood occurred in the hairline somewhere above and to the right of the anterior forehead. The blood flow from the medial corner of the left eye has several branches. The branch closest to the nose would be consistent with the position in which she was found. It flows along the left side of the nose and terminates underneath the left nares. The remaining branches of this complex bloodstain do not comport with the position in which she was found. A significant amount of blood flowed from the medial corner of her left eye, moved across her left cheek and across the surface of a raised cheekbone. From there, this complex bloodstain has several branches which indicate her head was in different positions as this blood flowed. The first branch, moving medially to laterally, moves down the front of the face just lateral to the left side of the nose and splits into two branches; one of which terminates in the left corner of the mouth and the other terminates just lateral to the left corner of the mouth. The next branch, moving laterally, continues laterally across her cheekbone and then proceeds downward lateral to the second branch, lateral to the left corner of her mouth and proceeds down to the left side of her jawbone between the chin and the corner of the jaw. The next branch, moving laterally, continues from the cheekbone and moves slightly upward toward the eye before terminating. This would indicate that the head was lying back either in a flat or lowered position. The next branch follows the larger stain pattern across the cheekbone and then also moves upward toward the ear before terminating. In a larger, seemingly more significant, flow pattern bloodstain moves laterally across the cheek to the corner of the jaw proceeding rearward into the hairline below and behind the left ear. This would again move against the flow of gravity given the position in which the body was found. This bloodstain indicates that her head was intact tilted back or completely flat at the time of this blood flow.
- The circular and elliptical bloodstains noted to the sweatshirt indicate the source of the blood is from above this level, most likely the head or neck. These bloodstains are consistent with dropped blood and would indicate that the head of the victim was tilted forward at the time of their deposition. The void patterns in the sweatshirt comport with this theory and can be accounted for by folds in the sweatshirt if the entire body was leaning forward with the head/neck complex leaning forward. This would also account for the circular appearing bloodstains noted to the lower portion of the T-shirt sticking out from under the sweatshirt and the circular bloodstains noted to the upper legs of the sweatpants. The stains are all consistent with dropped blood. The circular appearing bloodstains on the shirt and the upper pants indicate that the source of the blood was directly over or nearly directly over the pants and shirt where the bloodstains were deposited. The greater number of circular bloodstains noted to the left upper leg as compared to the right upper leg of the sweatpants would indicate that the source of the blood would have been concentrated for a longer period of time over the left upper leg. The lack of bloodstains to the lower legs of the pants coupled with the small circular bloodstains to the tops of the boots would indicate that the lower legs were obstructed from the dropped blood. This would be consistent with Ms. Greenberg being in a scated position, her head leaning forward with her feet flat on the floor. The void patterns to the upper portion of the sweatpants between the waist and the upper legs are also consistent with this theory.
- Should Ms. Greenberg have been standing at the time of the blood being dropped onto her upper pants, these bloodstains would be elliptical in nature with some evidence of directionality. One would also expect to find bloodstains on the lower pant legs as well.

- 6. While no photographs were provided of the back of Ms. Greenberg's clothing, the blood flow patterns and injuries to the neck would indicate that bloodstains were present to the back of her clothing. While some transfer patterns were observed to the stove side cabinet face of the corner cabinet, there were no significant transfer patterns noted to this area.
- 7. Swipe patterns noted on the sink side cabinet face of the corner cabinet indicate Ms. Greenberg's bloody hair came in contact with this cabinet face. The first contact was near the opening side of the cabinet face and moved rearward. Her head was then separated from the cabinet face and later recontacted the cabinet face in a lower position than the original contact where it moved backward and slightly downward. No other obvious swipe patterns were noted to the cabinet face. None of these bloodstains accounts for the flow patterns noted to the front of Ms. Greenberg's face.
- The number and volume of drops noted to her sweatshirt, her sweatpants and her boots is significant.
 The number of bloodstains on the floor, however, is minimal in comparison to those found on her
 clothing.
- 9. The bloodstain noted to the floor between her right hand and the eyeglasses is of particular interest. This bloodstain has a hard edge indicating that there was either an intervening object preventing the flow of blood any further or that the bloodstain was somehow altered. Although it is difficult to discern given the photographs presented, there is an area of pinkish discoloration noted to the lower edge of the bloodstain which may indicate some form of attempt to clean up or other alteration of the bloodstain. There is also a significant pattern noted within the bloodstain itself which may be consistent with the footwear pattern or something else.
- 10. Though the photographs do not clearly depict the bottoms of Ms. Greenberg's boots, there are some bloodstains evident to the bottom of the right boot. Were the pattern bloodstain to have been made by Ms. Greenberg's boot, one would expect to see other pattern transfer stains on the floor in other locations where she stepped. One would also expect to see a larger bloodstain pattern covering the surface of the sole of her right boot.
- 11. It is my opinion, that Ms. Greenberg was not in the position in which she was found at the time that the blood was deposited on her sweatpants, sweatshirt and shoes. It is also my opinion that Ms. Greenberg's head had been in several positions during the time of blood flow and it remained so for enough time as to have the blood flow across her face and back toward her ear, upward toward her eyes and also downward toward her chin.
- 12. It is my opinion that the bloodstain evidence in this case is inconsistent with position in which Ms. Greenberg was found. Furthermore, I have serious concerns regarding the patterned bloodstain to the left of Ms. Greenberg's right leg, the minimal amount of bloodstains on the floor in comparison with those found on the clothing of Ms. Greenberg and the flow patterns of the bloodstains on Ms. Greenberg's face relative to the position in which she was found.

These opinions were formed using the information available at the time of the evaluation and examination. I reserve the right to amend these opinions should further information become available.

Respectfully,

Detective Scott Eelman