

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

EVELYN M. KASPRAK, individually and as)
Administrator of the Estate of KENNETH)
KASPRAK, deceased,)

Plaintiff,)

v.)

DIPANKAR BANERJEE, M.D.,)
STATE OF ILLINOIS, ILLINOIS DEPARTMENT)
of HUMAN SERVICES, CAROL L. ADAMS, in)
her capacity as Secretary of the Illinois Department)
of Human Services, SHERRY MUNSON and)
RENE COVINGTON,)

Defendants.)

2009L002276
CALENDAR/ROOM X
TIME 00:00
Medical Malpractice

No.

FILED-18
09 FEB 25 PM 12:57
CLERK OF COURT
COURT HOUSE
JUDICIAL CENTER
CHICAGO, ILLINOIS

COMPLAINT AT LAW

EVELYN M. KASPRAK, individually and as Administrator of the Estate of
KENNETH KASPRAK, deceased, for her Complaint against DIPANKAR BANERJEE, M.D.,
the STATE OF ILLINOIS, the ILLINOIS DEPARTMENT of HUMAN SERVICES, CAROL L.
ADAMS, in her capacity as Secretary of the Illinois Department of Human Services, SHERRY
MUNSON and RENE COVINGTON, and each of them, states:

**COUNT I - WRONGFUL DEATH
DIPANKAR BANERJEE, M.D., STATE OF ILLINOIS,
ILLINOIS DEPARTMENT of HUMAN SERVICES,
and CAROL L. ADAMS**

1. EVELYN KASPRAK is the sister of KENNETH KASPRAK
("KENNETH"), a 67 year old man who, since December, 1997 had lived at the WILLIAM A.
HOWE DEVELOPMENTAL CENTER ("HOWE CENTER") in Tinley Park, County of Cook,

Illinois, having been diagnosed with moderate mental retardation and schizoaffective disorder. At times KENNETH suffered from depressive episodes. On February 27, 2008, KENNETH died from aspiration of food bolus during the evening meal at the HOWE CENTER. EVELYN KASPRAK is KENNETH's sole living heir, and on February 24, 2009, EVELYN KASPRAK was appointed Administrator of his Estate.

2. At all times relevant herein, DIPANKAR BANERJEE was and still is a physician licensed to practice medicine in Illinois, and held himself out to the public and the plaintiff as fully qualified and trained in medicine, specifically in the practice of internal and geriatric medicine, and at all relevant times herein was an agent of the STATE OF ILLINOIS, the ILLINOIS DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, to provide medical services to the residents of the HOWE CENTER.

3. At all times relevant herein, the ILLINOIS DEPARTMENT of HUMAN SERVICES ("DEPARTMENT of HUMAN SERVICES") was an agency of the STATE OF ILLINOIS and operated the HOWE CENTER. The STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, acted through defendant DIPANKAR BANERJEE.

4. The HOWE CENTER serves as a direct care facility for hundreds of persons who are referred to as residents. The residents are developmentally disabled and most have mild to profound mental retardation. The residents live in houses at the HOWE CENTER, and employees known as direct support staff are responsible for caring for, treating, and habilitating the residents.

5. At all times relevant herein, SHERRY MUNSON was a resident of

Calumet Park, County of Cook, State of Illinois, and was employed by the STATE OF ILLINOIS, the DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, as direct support staff at the HOWE CENTER.

6. At all times relevant herein, RENE COVINGTON was a resident of Matteson, County of Cook, State of Illinois, and was employed by the STATE OF ILLINOIS, the DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, as direct support staff at the HOWE CENTER.

7. On or about February 27, 2007, DIPANKAR BANERJEE was on duty as the physician in residence during the evening hours. He was aware, or should have been aware, that KENNETH had two previous incidents of choking, that he was at risk for aspiration, and that there were entries in his medical chart directing that his food be cut into small pieces.

8. On February 27, 2008, during the evening meal in KENNETH's building at the HOWE CENTER, KENNETH began choking on his dinner. He became asphyxiated on food bolus and showed signs of increasing respiratory distress, to the point he fell to the floor.


9. DIPANKAR BANERJEE was summoned to the area, and as a medical doctor on the scene should have assumed or supervised the cardiopulmonary resuscitation attempted on KENNETH, but DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, did not step in, properly supervise or otherwise aid in the resuscitation attempt.

10. Paramedics were summoned, and upon their arrival they took over the cardiopulmonary resuscitation. The paramedics cleared KENNETH'S air passageway by removing the food bolus, which DIPANKAR BANERJEE, STATE OF ILLINOIS,

DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, had not done.

11. At all times relevant herein, it was the duty of defendants DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, to diagnose and treat KENNETH in accordance with the prevailing medical practice and opinion in the area and to maintain adequate diagnostic skill and technique to protect him from incurring a foreseeable injury.

12. Notwithstanding said duty, defendants DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, committed one or more of the following careless or negligent acts and/or omissions:

- 
- 1) failed to provide cardiopulmonary resuscitation when summoned to KENNETH's side when Kenneth went into respiratory distress on February 27, 2008;
 - 2) failed to take over the cardiopulmonary resuscitation upon DIPANKAR BANERJEE's arrival at KENNETH's side;
 - 3) failed to clear or direct others to clear KENNETH's air passageway as a first step to administering cardiopulmonary resuscitation;
 - 4) failed to visually check in KENNETH's mouth to ensure his air passageway was clear and that air was moving into him during the cardiopulmonary resuscitation;
 - 5) failed to check KENNETH's lung function with a stethoscope to ascertain whether air was moving into KENNETH;
 - 6) failed to monitor the administration of medications to KENNETH, which may have increased KENNETH's risk of asphyxiation; and
 - 7) otherwise carelessly and negligently cared for and treated KENNETH.

13. As a direct and proximate result of one or more of the stated negligent acts or omissions of DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, KENNETH suffered injuries which resulted in his death on February 27, 2008.

14. KENNETH left surviving him as his heir and next of kin EVELYN M.

KASPRAK, who sustained pecuniary loss as a result of his death, including the loss of love guidance, affection, companionship and society.

15. EVELYN M. KASPRAK is the court appointed Administrator of the Estate of KENNETH C. KASPRAK and she brings this action under the authority of the Illinois Wrongful Death Act. See 740 ILCS 180/1 *et. seq.*

16. EVELYN M. KASPRAK, as Administrator of the Estate of KENNETH C. KASPRAK, deceased, became obligated for various hospital, medical and funeral expenses pursuant to the Illinois Family Expense Act. See 750 ILCS 65/15.

17. Attached hereto as Exhibit 1 in support of this Count of the Complaint is the affidavit of the plaintiff's attorney under Section 2-622 of the Illinois Code of Civil Procedure. See 735 ILCS 5/2-622.

WHEREFORE, EVELYN M. KASPRAK, individually and as Administrator of the Estate of KENNETH C. KASPRAK, requests that judgment be entered against DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, in an amount in excess of the jurisdictional amount of the Law Division of the Circuit Court of Cook County, and such other relief the Court deems just and warranted.

**COUNT II – SURVIVAL ACTION
DIPANKAR BANERJEE, M.D., STATE OF ILLINOIS,
ILLINOIS DEPARTMENT of HUMAN SERVICES,
and CAROL L. ADAMS**

1. EVELYN KASPRAK is the sister of KENNETH KASPRAK ("KENNETH"), a 67 year old man who, since December, 1997 had lived at the WILLIAM A.

HOWE DEVELOPMENTAL CENTER ("HOWE CENTER") in Tinley Park, County of Cook, Illinois, having been diagnosed with moderate mental retardation and schizoaffective disorder. At times KENNETH suffered from depressive episodes. On February 27, 2008, KENNETH died from aspiration of food bolus during the evening meal at the HOWE CENTER. EVELYN KASPRAK is KENNETH's sole living heir, and on February 24 2009, EVELYN KASPRAK was appointed Administrator of his Estate.

2. At all times relevant herein, DIPANKAR BANERJEE was and still is a physician licensed to practice medicine in Illinois, and held himself out to the public and the plaintiff as fully qualified and trained in medicine, specifically in the practice of internal and geriatric medicine, and at all relevant times herein was an agent of the STATE OF ILLINOIS, the ILLINOIS DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, to provide medical services to the residents of the HOWE CENTER.

3. At all times relevant herein, the ILLINOIS DEPARTMENT of HUMAN SERVICES ("DEPARTMENT of HUMAN SERVICES") was an agency of the STATE OF ILLINOIS and operated the HOWE CENTER. The STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, acted through defendant DIPANKAR BANERJEE.

4. The HOWE CENTER serves as a direct care facility for hundreds of persons who are referred to as residents. The residents are developmentally disabled and MOST have mild to profound mental retardation. The residents live in houses at the HOWE CENTER, and employees known as direct support staff are responsible for caring for, treating, and habilitating the residents.

5. At all times relevant herein, SHERRY MUNSON was a resident of Calumet Park, County of Cook, State of Illinois, and was employed by the STATE OF ILLINOIS, the DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, as direct support staff at the HOWE CENTER.

6. At all times relevant herein, RENE COVINGTON was a resident of Matteson, County of Cook, State of Illinois, and was employed by the STATE OF ILLINOIS, the DEPARTMENT of HUMAN SERVICES, the HPWE CENTER, and each of them, as direct support staff at the HOWE CENTER.

7. On or about February 27, 2007, DIPANKAR BANERJEE was on duty as the physician in residence during the evening hours. He was aware, or should have been aware, that KENNETH had two previous incidents of choking, that he was at risk for aspiration, and that there were entries in his medical chart directing that his food be cut into small pieces.

8. On February 27, 2008, during the evening meal in KENNETH's building at the HOWE CENTER, KENNETH began choking on his dinner until he became asphyxiated on food bolus and showed signs of increasing respiratory distress, until he fell to the floor.

9. DIPANKAR BANERJEE was summoned to the area, and as a medical doctor on the scene should have assumed or supervised the cardiopulmonary resuscitation attempted on KENNETH, but DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, did not step in, properly supervise or otherwise aid in the resuscitation attempt.

10. Paramedics were summoned, and upon their arrival they took over the cardiopulmonary resuscitation. The paramedics cleared KENNETH'S air passageway by

removing the food bolus, which DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, had not done.

11. At all times relevant herein, it was the duty of defendants DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, to diagnose and treat KENNETH in accordance with the prevailing medical practice and opinion in the area and to maintain adequate diagnostic skill and technique to protect him from incurring a foreseeable injury.

12. Notwithstanding said duty, defendants DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, committed one or more of the following careless or negligent acts and/or omissions:

- 1) failed to provide cardiopulmonary resuscitation when summoned to KENNETH's side when Kenneth went into respiratory distress on February 27, 2008;
- 2) failed to take over the cardiopulmonary resuscitation upon DIPANKAR BANERJEE's arrival at KENNETH's side;
- 3) failed to clear or direct others to clear KENNETH's air passageway as a first step to administering cardiopulmonary resuscitation;
- 4) failed to visually check in KENNETH's mouth to ensure his air passageway was clear and that air was moving into him during the cardiopulmonary resuscitation;
- 5) failed to check KENNETH's lung function with a stethoscope to ascertain whether air was moving into KENNETH;
- 6) failed to monitor the administration of medications to KENNETH, which may have increased KENNETH's risk of asphyxiation; and
- 7) otherwise carelessly and negligently cared for and treated KENNETH.

13. As a direct and proximate result of one or more of the stated negligent acts or omissions of DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, KENNETH suffered injuries of a physical, personal and pecuniary nature, including conscious pain and suffering, prior to his death on

February 27, 2008, and, had he survived, he would have been entitled to bring an action for damages and such action has survived him..

14. EVELYN M. KASPRAK is the court appointed Administrator of the Estate of KENNETH C. KASPRAK and she brings this action under the authority of the Illinois Survival Act. See 755 ILCS 5/27-6.

15. Attached hereto as Exhibit 1 in support of this Count of the Complaint is the affidavit of the plaintiff's attorney under Section 2-622 of the Illinois Code of Civil Procedure. See 735 ILCS 5/2-622.

WHEREFORE, EVELYN M. KASPRAK, individually and as Administrator of the Estate of KENNETH C. KASPRAK, requests that judgment be entered against DIPANKAR BANERJEE, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, in an amount in excess of the jurisdictional amount of the Law Division of the Circuit Court of Cook County, and such other relief the Court deems just and warranted.

**COUNT III – WRONGFUL DEATH
SHERRY MUNSON, RENE COVINGTON, STATE OF ILLINOIS,
ILLINOIS DEPARTMENT of HUMAN SERVICES,
and CAROL L. ADAMS**

1. EVELYN KASPRAK is the sister of KENNETH KASPRAK ("KENNETH"), a 67 year old man who, since December, 1997 had lived at the WILLIAM A. HOWE DEVELOPMENTAL CENTER ("HOWE CENTER") in Tinley Park, County of Cook, Illinois, having been diagnosed with moderate mental retardation and schizoaffective disorder. At times KENNETH suffered from depressive episodes. On February 27, 2008, KENNETH died

from aspiration of food bolus during the evening meal at the HOWE CENTER. EVELYN KASPRAK is KENNETH's sole living heir, and on February 24, 2009, EVELYN KASPRAK was appointed Administrator of his Estate.

2. At all times relevant herein, the ILLINOIS DEPARTMENT of HUMAN SERVICES ("DEPARTMENT of HUMAN SERVICES") was an agency of the STATE OF ILLINOIS and operated the HOWE CENTER. The STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, acted through defendants SHERRY MUNSON, RENE COVINGTON, and each of them.

3. The HOWE CENTER serves as a direct care facility for hundreds of persons who are referred to as residents. The residents are developmentally disabled and most have mild to profound mental retardation. The residents live in houses at the HOWE CENTER, and employees known as direct support staff are responsible for caring for, treating, and habilitating the residents.

4. At all times relevant herein, SHERRY MUNSON was a resident of Calumet Park, County of Cook, State of Illinois, and was employed by the STATE OF ILLINOIS, the DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, as direct support staff at the HOWE CENTER.

5. At all times relevant herein, RENE COVINGTON was a resident of Matteson, County of Cook, State of Illinois, and was employed by the STATE OF ILLINOIS, the DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, as direct support staff at the HOWE CENTER.

6. On February 27, 2008, during the evening meal in KENNETH's building

at the HOWE CENTER, KENNETH began choking on his dinner. He became asphyxiated on food bolus and showed signs of increasing respiratory distress, to the point he fell to the floor.

7. At the same place and time, SHERRY MUNSON and RENE COVINGTON were the direct support staff on duty, but neither came to KENNETH'S aid or summoned help by use of the emergency system in place at the HOWE CENTER. SHERRY MUNSON attempted to use it but thought the system was inoperable because she did not get a dial tone when she picked up the receiver. The system takes a few moments to activate when the receiver is lifted, but SHERRY MUNSON, RENE COVINGTON, and each of them, did not know how to work it as neither had been trained in its use. SHERRY MUNSON walked to a nurse's station in an adjacent building and reported that KENNETH "did not look right."

8. A nurse and SHERRY MUNSON returned to the area, where cardiopulmonary resuscitation was attempted on KENNETH.

9. Paramedics were summoned, and upon their arrival they took over the cardiopulmonary resuscitation. The paramedics cleared KENNETH'S air passageway by removing the food bolus, which SHERRY MUNSON, RENE COVINGTON, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, had not done.

10. At all times relevant herein, it was the duty of defendants SHERRY MUNSON, RENE COVINGTON, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, to protect KENNETH from incurring a foreseeable injury.

11. Notwithstanding said duty, defendants SHERRY MUNSON, RENE

COVINGTON, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L.

ADAMS, and each of them, committed one or more of the following careless or negligent acts

and/or omissions:

- a. failed to train its employees on the use of the emergency system;
- b. failed to summon aid to relieve KENNETH's asphyxiation;
- c. failed to understand the urgency of KENNETH's condition;
- d. failed to adequately explain to medical personnel that KENNETH was asphyxiating;
- e. failed to clear KENNETH'S air passageway before administering CPR;
- f. failed to properly administer CPR;
- g. failed to prevent a foreseeable injury to KENNETH; and
- h. carelessly and negligently cared for and treated KENNETH.

12. As a direct and proximate result of one or more of the stated negligent acts or omissions of SHERRY MUNSON, RENE COVINGTON, STATE OF ILLINOIS,

DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, KENNETH suffered injuries which resulted in his death on February 27, 2008.

13. KENNETH left surviving him as his heir and next of kin EVELYN M. KASPRAK, who sustained pecuniary loss as a result of his death, including the loss of love, guidance, affection, companionship and society.

14. EVELYN M. KASPRAK is the court appointed Administrator of the Estate of KENNETH C. KASPRAK and she brings this action under the authority of the Illinois Wrongful Death Act. See 740 ILCS 180/1 *et. seq.*

15. EVELYN M. KASPRAK, as Administrator of the Estate of KENNETH C. KASPRAK, deceased, became obligated for various hospital, medical and funeral expenses pursuant to the Illinois Family Expense Act. See 750 ILCS 65/15.

WHEREFORE, EVELYN M. KASPRAK, individually and as Administrator of

the Estate of KENNETH C. KASPRAK, requests that judgment be entered against SHERRY MUNSON, RENE COVINGTON, STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, in an amount in excess of the jurisdictional amount of the Law Division of the Circuit Court of Cook County, and such other relief the Court deems just and warranted.

**COUNT IV – SURVIVAL ACTION
SHERRY MUNSON, RENE COVINGTON, STATE OF ILLINOIS,
ILLINOIS DEPARTMENT of HUMAN SERVICES,
and CAROL L. ADAMS**

1. EVELYN KASPRAK is the sister of KENNETH KASPRAK ("KENNETH"), a 67 year old man who, since December, 1997 had lived at the WILLIAM A. HOWE DEVELOPMENTAL CENTER ("HOWE CENTER") in Tinley Park, County of Cook, Illinois, having been diagnosed with moderate mental retardation and schizoaffective disorder. At times KENNETH suffered from depressive episodes. On February 27, 2008, KENNETH died from aspiration of food bolus during the evening meal at the HOWE CENTER. EVELYN KASPRAK is KENNETH's sole living heir, and on February 24, 2009, EVELYN KASPRAK was appointed Administrator of his Estate.

2. At all times relevant herein, the ILLINOIS DEPARTMENT of HUMAN SERVICES ("DEPARTMENT of HUMAN SERVICES") was an agency of the STATE OF ILLINOIS and operated the HOWE CENTER. The STATE OF ILLINOIS, DEPARTMENT of HUMAN SERVICES, CAROL L. ADAMS, and each of them, acted through defendant SHERRY MUNSON, RENE COVINGTON, and each of them.

3. The HOWE CENTER serves as a direct care facility for hundreds of

