



## West Virginia E-Filing Notice

CC-20-2026-C-609

Judge: Tera Salango

To: Raj Shah  
rshah@handl.com

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# NOTICE OF FILING

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

David B. Phelps Sr. v. Charleston Area Medical Center, Inc.

CC-20-2026-C-609

The following complaint was FILED on 5/15/2026 3:50:20 PM

Notice Date: 5/15/2026 3:50:20 PM

Cathy S. Gatson  
CLERK OF THE CIRCUIT COURT  
Kanawha County  
P.O. Box 2351  
CHARLESTON, WV 25301

(304) 357-0440

# COVER SHEET

E-FILED | 5/15/2026 3:50 PM  
CC-20-2026-C-609  
Kanawha County Circuit Clerk  
Cathy S. Gatson

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF KANAWHA COUNTY WEST VIRGINIA

**David B. Phelps Sr. v. Charleston Area Medical Center, Inc.**

**First Plaintiff:**

Business  Individual  
 Government  Other

**First Defendant:**

Business  Individual  
 Government  Other

**Judge:**

Tera Salango

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Medical Malpractice

**Origin:**  Initial Filing  Appeal from Municipal Court  Appeal from Magistrate Court

**Jury Trial Requested:**  Yes  No **Case will be ready for trial by:** 1/10/2028

**Mediation Requested:**  Yes  No

**Substantial Hardship Requested:**  Yes  No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: \_\_\_\_\_

I am proceeding without an attorney

I have an attorney: Raj Shah, 214 Capitol St , Charleston, WV 25301

## SERVED PARTIES

**Name:** Charleston Area Medical Center, Inc.

**Address:** c/o Bernard S. Vallejos P.O. Box 3669, Charleston WV 25336

**Days to Answer:** 30                      **Type of Service:** Filer - Secretary of State

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deterioration, and death were absolutely preventable and unnecessary if CAMC had promptly administered the antidote, Vistogard.

### **PARTIES**

3. Plaintiff David B. Phelps, Sr., is and was a resident of Raleigh County, West Virginia.

4. Decedent Rose Marie Phelps was a resident of Raleigh County, West Virginia.

5. Plaintiff is the surviving spouse of Rose Marie Phelps, who died on August 31, 2025.

6. On or about October 28, 2025, Plaintiff was duly appointed, qualified, and is acting as the Administrator of the Estate of Rose Marie Phelps.

7. Defendant Charleston Area Medical Center, Inc. (hereinafter “CAMC”) is a corporation organized and existing under the laws of the State of West Virginia doing business in Charleston, Kanawha County, West Virginia.

### **PRE-SUIT NOTIFICATION**

8. This action is brought pursuant to the provisions of the West Virginia Medical Professional Liability Act, W.Va. Code § 55-7B-1, *et seq.* (“MPLA”). As required by the MPLA, Defendant was provided a Notice of Claim and a Screening Certificate of Merit prior to the filing of this action.

9. Defendant CAMC refused pre-suit mediation.

### **JURISDICTION**

10. Pursuant to West Virginia Code § 51-2-2, this Court has original jurisdiction over this matter because the amount in controversy exceeds \$7,500.00 exclusive of interest and the claim arose in Kanawha County, West Virginia.

## VENUE

11. Pursuant to West Virginia Code § 56-1-1, venue is appropriate in Kanawha County, West Virginia, because all acts herein complained of occurred in Kanawha County, West Virginia, and Defendant is located in Kanawha County, West Virginia.

## FACTS

12. Plaintiff hereby adopts and incorporates the allegations of the preceding paragraphs as if set forth verbatim.

13. Rose Marie Phelps was diagnosed with stage IIA squamous cell carcinoma of the anal canal in June 2025 by biopsy.

14. Dr. Kok Hoe Chan, Mrs. Phelps' admitting oncologist at CAMC, and Dr. Saad Javaid were in charge of Mrs. Phelps' medical care. Their treatment plan was to initiate radiation and administer chemotherapy in the form of Xeloda, an oral chemotherapy drug commonly used to treat anal cancer.

### CHEMOTHERAPY DRUGS - XELODA (CAPECITABINE) AND 5-FLUOROURACIL ("5-FU")

15. Xeloda (also known as "capecitabine") and/or 5-fluorouracil ("5-FU") are in the class of drugs called Fluoropyrimidines and are one of the most commonly prescribed chemotherapy drugs in oncology. Xeloda, the drug prescribed to Mrs. Phelps, is used to treat certain types of cancers, such as colon, rectal, or anal cancer, as well as breast cancer. Hundreds of thousands of patients in the United States receive Xeloda and 5-FU for cancer treatment each year.

16. One of the serious risks of Xeloda is early-onset toxicity for patients with a specific genetic disorder called "DPD Deficiency". A toxic reaction to Xeloda can be severe and

potentially fatal if not immediately recognized and treated. This toxicity risk has been known for many years and has been well publicized in medical literature since at least 2016<sup>1</sup>.

17. The Food and Drug Administration (“FDA”) includes toxicity risk in its prescribing information and warnings for administering Xeloda.

18. If a patient has any serious side effects in the first few days of receiving Xeloda, the prescribing physician and healthcare providers must consider toxicity and immediately take action to treat it. Early-onset toxicity is very different from the “common” side effects associated with chemotherapy and usually takes several weeks to develop after beginning a course of chemotherapy drugs.

19. The potential for a patient to develop early-onset toxicity to Xeloda and 5-FU was common knowledge among oncologists in the Hematology, Medical Oncology, and Radiation Oncology Departments at CAMC in 2025.

20. DPYD is a gene that produces an enzyme called dihydropyrimidine dehydrogenase (“DPD”). The DPD enzyme helps the body metabolize Xeloda and 5-FU. Some patients have a DPYD variant that prevents their bodies from metabolizing Xeloda and 5-FU normally.<sup>2</sup> Genetic variations in the DPYD gene can lead to enzymes with reduced or absent activity, preventing the body from eliminating the drug.

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<sup>1</sup> FDA approval: uridine triacetate for the treatment of patients following fluorouracil or capecitabine overdose or exhibiting early-onset severe toxicities following administration of these drugs. Clin Cancer Res. 2016; 22:4545-4549.

Ma WW, Saif MW, El-Rayes BF, et al. Emergency use of uridine triacetate for the prevention and treatment of life-threatening 5-fluorouracil and capecitabine toxicity. Cancer. 2017; 123:345-356.

<sup>2</sup> Dihydropyrimidine Dehydrogenase (“DPD”) is an enzyme that catalyzes the breakdown of Xeloda and 5-FU. This enzyme plays a crucial role in the metabolism of pyrimidine bases, such as uracil and thymine. It converts these bases into harmless compounds that can be excreted from the body. The DPYD gene encodes DPD the enzyme.

21. Individuals who have at least one copy of a non-functional DPYD variant will not be able to metabolize Xeloda and 5-FU at normal rates. DYPD variants occur in approximately 3-8% of the Caucasian population who are at risk of developing severe and potentially life-threatening toxicity early during a course of fluoropyrimidines. Some patients have a complete absence of DPD function and will suffer a severe toxic reaction after taking only a few doses of Xeloda or 5-FU.

22. As of August 2025, Xeloda and 5-FU warning labels stated that no dose of Xeloda or 5-FU has been proven safe in individuals with absent DPD activity. Consequently, in such patients where rapid early-onset toxicity occurs, an otherwise standard dosage of Xeloda becomes toxic to a catastrophic and ultimately fatal degree, unless the antidote is immediately given.

**ANTIDOTE FOR EARLY-ONSET TOXICITY: VISTOGARD (URIDINE TRIACETATE)**

23. Given the common usage of Xeloda and 5-FU for a variety of cancers and the significant potential for fatal toxicity, an antidote was developed. Vistogard (also known as “uridine triacetate”) is a drug that was specifically manufactured as an antidote for severe toxicity to Xeloda and 5-FU.

24. The FDA approved the use of Vistogard for toxicity to Xeloda and 5-FU on December 11, 2015.<sup>3</sup>

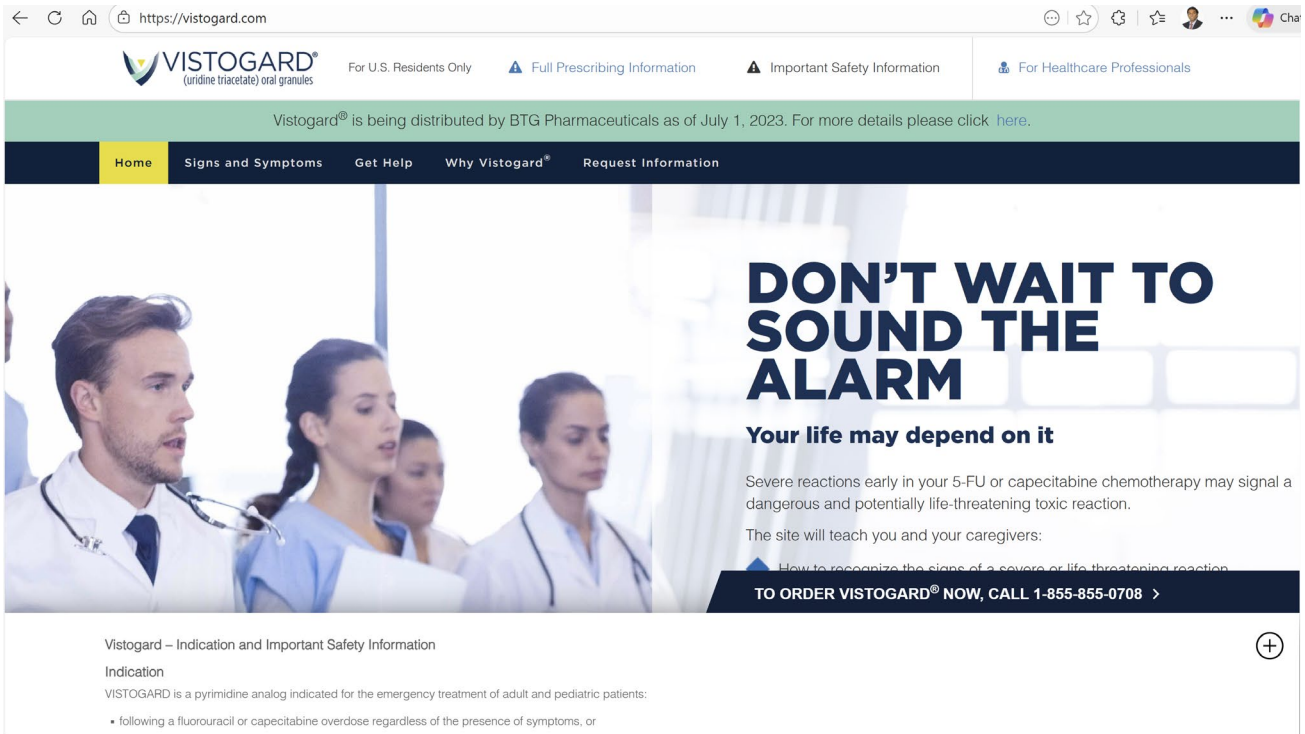
25. Anytime a physician suspects early-onset toxicity to Xeloda and 5-FU, the antidote Vistogard must be given immediately and is recommended to be given within 96 hours of the last administration of Xeloda/5-FU to ensure 96% survival of a patient experiencing life-threatening toxicity. Vistogard is the only known antidote for severe toxicity to Xeloda and 5-FU.

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<sup>3</sup> The FDA approved VISTOGARD based on evidence from two clinical trials including a total of 135 patients who either received an overdose of the cancer treatment fluorouracil or capecitabine, or who developed certain severe or life-threatening toxicities within four days of receiving these cancer treatments.  
<https://www.fda.gov/drugs/drug-approvals-and-databases/drug-trials-snapshots-vistogard>

26. Vistogard can and should be administered to a patient within 96 hours of the last administration of Xeloda/5-FU; however, patient survival decreases as more time passes.

27. There is no time to wait to administer the antidote, and no downside for the patient. As Vistogard’s website explicitly states: “Don’t wait to sound the alarm: your life may depend on it.”



28. In 2025, every oncologist who prescribed Xeloda should have been keenly aware of: 1) the possibility of a patient having a toxic reaction; 2) the existence of the antidote to early-onset toxicity; and 3) the proper administration of Vistogard immediately if toxicity is suspected.

29. This is not the first instance where CAMC failed to administer or timely administer Vistogard to a patient experiencing a toxic reaction to fluoropyrimidines (5-FU or Xeloda), which resulted in the patient’s untimely death. CAMC was on notice of the importance of identifying toxic reactions to Xeloda and 5-FU and immediately treating such toxicity with Vistogard.

30. Every practicing oncologist in the United States who prescribes Xeloda:
- a) Should be aware of the potential for a patient to experience severe and life-threatening toxicity to Xeloda when prescribing this chemotherapy drug;
  - b) Should be able to recognize the signs and symptoms of early-onset toxicity to Xeloda when prescribing this chemotherapy drug;
  - c) Should be aware that there is only one antidote drug, Vistogard, for treatment of early-onset severe toxicity to Xeloda;
  - d) Should know that the antidote drug, Vistogard, must be given immediately if the oncologist suspects possible early-onset severe toxicity to Xeloda;
  - e) Should know that an oncologist cannot wait for days to prescribe and administer the antidote drug;
  - f) Should know that there is no downside to administering Vistogard if toxicity is suspected.

31. Prior to starting any patient on Xeloda or 5-FU, a simple and inexpensive test is available to determine whether a patient has DPD deficiency. However, it takes several days to obtain results, and if providers choose to prescribe Xeloda or 5-FU without pre-testing a patient, they cannot wait for the DPYD test results before administering the antidote if a toxic reaction is suspected.

#### **ROSE MARIE PHELPS' MEDICAL TREATMENT AT CAMC**

32. Despite having anal cancer, Mrs. Phelps' prognosis was very good.
33. Mrs. Phelps sought treatment at CAMC, in part, based on its representations that:

We treat more people with cancer than any other hospital in Southern West Virginia. Research has shown that more experience can lead to better outcomes, especially for complex procedures.

Since 1947, CAMC's cancer program has been accredited by the American College of Surgeons Commission on Cancer. Only one-third of cancer programs nationwide receive this accreditation, which certifies that a program has met or surpassed 34 quality care standards.

CAMC uses the latest in advanced technology and testing to provide sophisticated genetic testing to identify and screen patients for increased risks of hereditary cancer. This service is offered to patients of the CAMC Cancer Center, Breast Center and Obstetrics and Gynecology Center.

Genetic testing for cancer risk allow patients and their doctors to be proactive in the prevention, early detection and treatment of cancer, as well as identifying family members who may also be at risk.

34. CAMC assigned Drs. Chan and Javaid, as Mrs. Phelps' physicians, recommended and prescribed Xeloda to treat Mrs. Phelps' cancer.

35. Drs. Chan, Javaid, and CAMC never informed Mrs. Phelps or her husband of any significant or material risks associated with taking Xeloda.

36. Drs. Chan, Javaid, and CAMC never informed Mrs. Phelps or her husband that a significant percentage of patients have a genetic deficiency that prevents their body from metabolizing Xeloda, and if Mrs. Phelps had such a genetic deficiency, she might develop a severe toxicity that would kill her if not recognized and treated immediately.

37. Drs. Chan, Javaid, and CAMC never informed Mrs. Phelps or her husband that a simple, cost-effective blood test was available to indicate whether Mrs. Phelps had the relevant genetic deficiency.

38. Drs. Chan, Javaid, and CAMC never informed Mrs. Phelps or her husband that this genetic test would determine whether taking Xeloda could be dangerous for or potentially fatal to her. Drs. Chan, Javaid, and CAMC never recommended to Mrs. Phelps or her husband that Mrs. Phelps should consider taking this genetic test before starting Xeloda, especially since there was plenty of time to take the test before Mrs. Phelps began her chemotherapy treatment.

39. Drs. Chan, Javaid, and CAMC never informed or educated Mrs. Phelps or her husband as to the signs and symptoms of early-onset toxicity to Xeloda.

40. Drs. Chan, Javaid, and CAMC never informed Mrs. Phelps or her husband of the need to be vigilant and watch for developing or worsening signs and symptoms of early-onset toxicity to Xeloda.

41. Drs. Chan, Javaid, and CAMC never took the time to explain to Mrs. Phelps or her husband the urgency of treatment for any suspected signs and symptoms of early-onset toxicity to Xeloda.

42. Drs. Chan, Javaid, and CAMC never informed Mrs. Phelps or her husband that there was an antidote, Vistogard, that must be immediately administered to save her life if Mrs. Phelps experienced toxicity to Xeloda.

43. The information CAMC and Drs. Chan and Javaid provided to Mrs. Phelps and her husband was woefully insufficient and failed to provide any of the material risks of severe toxicity, the possibility of DPD deficiency, the availability of DYPD genetic testing, the signs and symptoms of toxicity, or the availability of an antidote, Vistogard, that must be given immediately. This is information that EVERY patient had the right to know and every physician should have imparted to the patient before the patient decides to take Xeloda. The information provided by CAMC to Mrs. Phelps did not meet the basic requirements of the FDA's warning label for Xeloda as of 2025.

38. Most notably, no one, not CAMC, not Dr. Chan, not Dr. Javaid, ever informed Mrs. Phelps or her husband of the signs and symptoms of a possible early-onset toxic reaction to Xeloda, which include, but are not limited to, acute or early onset of any of the following:

- (a) Swelling/erythema in the tongue, mouth, face or eyes;

- (b) skin redness, feeling of sunburn;
- (c) stomatitis, mucositis, pharyngitis, sores in the mouth and throat;
- (d) difficulty swallowing, eating or drinking;
- (e) skin rashes, hyperpigmentation of skin, erythroderma;
- (f) pancytopenia;
- (g) fever.

44. Rose Marie Phelps was a 57-year-old woman when she was diagnosed with SCC of the anal canal on June 11, 2025.

45. CAMC physicians Chan and Javaid undertook the administration of Mrs. Phelps cancer treatment for CAMC.

46. On August 13, 2025, at the direction of Drs. Chan and Javaid, Mrs. Phelps began concurrent chemotherapy and radiation therapy.

47. Prior to beginning her chemotherapy treatment, neither Dr. Chan, nor Dr. Javaid, nor anyone else at CAMC, ever informed Mrs. Phelps of any significant or material risks associated with taking the drugs Xeloda or 5-FU.

48. Neither Dr. Chan, Dr. Javaid, nor anyone else at CAMC ever informed Mrs. Phelps of the possibility of DPD deficiency or the existence of a simple and cost-effective test to determine if Mrs. Phelps suffered therefrom.

49. Mrs. Phelps was never informed by anyone at CAMC that if she had a DPD deficiency, she would develop a severe toxic reaction to Xeloda or 5-FU that would kill her if not treated promptly.

50. Mrs. Phelps was never informed by anyone at CAMC that there was an antidote to Xeloda or 5-FU toxicity that was virtually 100% effective if given promptly after symptoms of a toxic reaction appeared.

51. On August 14, 2025, one day after her initial treatment with Xeloda, Mrs. Phelps called CAMC to request that her next appointment be delayed until later in the day because she had been awake all night due to nausea.

52. On August 15, 2025, Mrs. Phelps was administered Xeloda and radiation treatment. Her face had increased in redness by this time and was showing signs of swelling, and she was having difficulty swallowing her medicine and food. She also started experiencing redness in the palms of her hands and soles of her feet. Her body temperature increased to 99 degrees Fahrenheit. The medical staff administering her treatment did not seem concerned about her symptoms and inexplicitly sent her home.

53. On August 16, 2025, Mrs. Phelps had no scheduled treatments. She felt terrible. Her face, feet, and hands were even redder and sorer to the touch. She was having increased difficulty swallowing and throat dryness. Mrs. Phelps' temperature was still above normal, and her face continued swelling. Her husband went to the local store to get her food that she could possibly eat without difficulty, such as popsicles, pudding, and Jello.

54. On August 17, 2025, Mrs. Phelps had no scheduled treatments. Overnight, she had no improvement in symptoms. By the evening of August 17, 2025, her face, hands, and feet were significantly worse. Her mouth and throat were severely sore to the point where all she could do was consume ice chips. She was unable to eat or drink anything. She was having difficulty using her hands when, for example, opening medicines or gripping items due to pain in her palms. She

was also having difficulty walking due to soreness and swelling in her feet. She contemplated going to the emergency room, but she was scheduled for her next treatment the following day.

55. On August 18, 2025, Mrs. Phelps returned to CAMC complaining of multiple symptoms consistent with Xeloda poisoning. She was experiencing nausea, vomiting, dizziness, sore throat and fatigue. By the morning, Mrs. Phelps' face and lips were extremely red. Her lips looked as if she was wearing bright red lipstick. Mrs. Phelps arrived at CAMC Cancer Center for her treatment. The medical staff was made aware and shown how severe her symptoms were.

56. On August 18, 2025, despite knowing that Mrs. Phelps had just started a chemotherapy regimen of Xeloda, CAMC diagnosed her with dehydration and treated her with a saline infusion and Compazine and Zofran for her nausea. CAMC then discharged Mrs. Phelps.

57. The next day, August 19, 2025, Mrs. Phelps again returned to CAMC with distressing symptoms of Xeloda toxicity, rather than the "common" side effects associated with chemotherapy.

58. On August 19, 2025, 24 hours after she was discharged by CAMC, Mrs. Phelps returned and presented with a generalized rash, lip edema, rash and erythema of the face and neck, red rash to the groin and under both breasts, skin sensitivity with a burning sensation of the hands and feet and epigastric pain.

59. On August 19, 2025, knowing that Mrs. Phelps had recently received Xeloda chemotherapy treatment, CAMC diagnosed her with a medication reaction and recommended that her Xeloda administration be suspended.

60. CAMC failed to administer Vistogard to Mrs. Phelps on August 19, 2025. Instead, CAMC discharged Mrs. Phelps from the hospital and sent her home.

61. On August 20, 2025, one day later and for the third straight day, Mrs. Phelps returned to CAMC. This time she returned to the emergency department with severe and worsening symptoms of Xeloda poisoning.

62. On August 20, 2025, Mrs. Phelps presented with redness of the face, swelling in the mouth and throat, shortness of breath and chest pain, difficulty swallowing and an inability to eat. A significant rash had developed over much of her body and she was experiencing nausea and vomiting.

63. On August 20, 2025, Mrs. Phelps lab results showed profound bone marrow suppression and severe systemic toxicity, a presentation that is highly characteristic of Xeloda toxicity.

64. Mrs. Phelps lab results on August 20, 2025, presented a clear picture of a person suffering life-threatening and unmitigated chemical toxicity. At the same time, Mrs. Phelps reported to CAMC staff that she had been experiencing rapidly worsening symptoms of Xeloda poisoning over the 5-day period that CAMC was administering Xeloda to her.

65. On August 20, 2025, despite knowing that Mrs. Phelps was experiencing life-threatening symptoms and despite having the alarming lab results, CAMC diagnosed her as having an acute allergic reaction to medication and recommended discontinuing her chemotherapy medications.

66. On August 20, 2025, despite knowing that Mrs. Phelps was experiencing an acute allergic reaction to chemotherapy medications, including Xeloda, CAMC did not administer the only known and proven antidote to Xeloda toxicity, Vistogard.

67. On August 20, 2025, despite treating numerous cancer patients, including Mrs. Phelps, with Xeloda, CAMC did not have even one dose of Vistogard in its hospital pharmacy.

68. On August 21, 2025, Mrs. Phelps' condition continued to deteriorate as the chemotherapy drug continued to attack her body. She suffered from drooling and difficulty swallowing due to severe mouth and throat pain, as well as ulcerations on the base of her tongue and the roof of her mouth.

69. Mrs. Phelps' laboratory results from August 21, 2025 showed a precipitous decline across multiple organ systems highlighting a catastrophic systemic collapse that is typical of a Xeloda overdose. These symptoms and lab results were glaring red flags that should have triggered immediate recognition and the urgent administration of the rescue antidote Vistogard.

70. On August 21, 2025, CAMC did not administer Mrs. Phelps Vistogard.

71. On August 21, 2025, CAMC did not have a single dose of Vistogard in its hospital pharmacy.

72. At no time during this period of hospitalization did anyone from CAMC ever inform Mrs. Phelps or her husband of the serious nature of Mrs. Phelps' lab results.

73. Rather than order the immediate administration of Vistogard on August 21, 2025, Dr. Javaid ordered a full gene sequencing test to determine if Mrs. Phelps suffered from DPYD variant. This simple and cost-effective test could easily have been performed before Mrs. Phelps received a single dose of Xeloda.

74. CAMC did not administer the gene sequencing test on August 21, 2025. Remarkably, despite knowing that Mrs. Phelps had been administered a regimen of Xeloda the previous week, that she was now experiencing serious life-threatening symptoms, and that her lab results showed a system-wide collapse, the gene sequencing test was placed on hold until her next scheduled appointment on August 25, 2025.

75. CAMC did not administer Mrs. Phelps Vistogard on August 22, 2025.

76. On August 22, 2025, CAMC did not have a single dose of Vistogard available in its hospital pharmacy.

77. CAMC did not administer Mrs. Phelps Vistogard on August 23, 2025.

78. On August 23, 2025, CAMC did not have a single dose of Vistogard available in its hospital pharmacy.

79. CAMC did not administer Mrs. Phelps Vistogard on August 24, 2025.

80. On August 24, 2025, CAMC did not have a single dose of Vistogard available in its hospital pharmacy.

81. On August 25, 2025, Mrs. Phelps' husband contacted CAMC on her behalf and reported Mrs. Phelps was suffering from fever, rash, an inability to eat or drink, an inability to swallow, and red streaks around the eyes.

82. Mrs. Phelps returned to CAMC on August 25, 2025.

83. Upon examination on August 25, 2025, Mrs. Phelps' symptoms had continued to worsen. Her lab results on August 25, 2025, were equally alarming as on August 21, 2025.

84. Mrs. Phelps was admitted to the hospital again on August 25, 2025. She presented with vomiting, swollen tongue, rosy red rash over lips, edema on the palms of her hands and the soles of her feet, cough, fever, burning urination, cloudiness of urine, chest pain, vision changes, shortness of breath, abdominal pain, nausea, diarrhea and dysuria. Her face and eyes continued to worsen to the point where her eyelids were severely red and swollen. Her hands and feet were blistered. She started forming severe blood clots in both her arms and legs, and was told she may be developing pneumonia.

85. CAMC administered Benadryl and Dexamethasone and various topical treatments.

86. CAMC did not administer Vistogard to Mrs. Phelps on August 25, 2025.

87. On August 25, 2025, CAMC did not have a single dose of Vistogard available in its hospital pharmacy.

88. On August 26, 2025, CAMC transferred Mrs. Phelps to the ICU; however, there still appeared to be no sense of urgency by anyone at CAMC. After transferring Mrs. Phelps to the ICU, CAMC scheduled a follow-up appointment with Dr. Saad on August 28, 2025, for a treatment discussion to determine next steps.

89. CAMC did not administer Mrs. Phelps Vistogard on August 26, 2025.

90. On August 26, 2025, CAMC did not have a single dose of Vistogard available in its hospital pharmacy.

91. CAMC did not administer Mrs. Phelps Vistogard on August 27, 2025.

92. On August 27, 2025, CAMC did not have a single dose of Vistogard available in its hospital pharmacy.

93. CAMC did not administer Mrs. Phelps Vistogard on August 28, 2025.

94. On August 28, 2025, CAMC did not have a single dose of Vistogard available in its hospital pharmacy.

95. At some point during her hospitalization, a full DPYD gene sequencing test was performed, and it confirmed that Mrs. Phelps had compound heterozygous variants in the DPYD gene, making her a poor metabolizer of Xeloda.

96. On August 29, 2025, Mrs. Phelps was finally prescribed Vistogard.

97. CAMC did not administer Vistogard to Mrs. Phelps on August 29, 2025.

98. On August 29, 2025, CAMC did not have a single dose of Vistogard available in its hospital pharmacy to administer to Mrs. Phelps after it had been ordered.

99. On August 29, 2025, CAMC ordered Vistogard. The ordered medication had to be delivered by a distributor in Kentucky and flown to its hospital in Charleston, further delaying the administration of Vistogard by 24 hours after it was finally ordered.

100. Vistogard was first administered to Mrs. Phelps on August 30, 2025.

101. Because of the long and inexcusable delay in the administration of the antidote Vistogard, Mrs. Phelps continued to suffer and decline.

102. Mrs. Phelps spent the last few hours of her life restrained to her hospital bed.

103. Mrs. Phelps died on August 31, 2025, from complications due to early-onset severe Xeloda toxicity caused by DPD deficiency.



## **COUNT I: PROFESSIONAL NEGLIGENCE**

104. Plaintiff hereby adopts and incorporates by reference the allegations contained in the foregoing paragraphs as if set forth verbatim herein.

105. At all times material to this civil action, Defendant CAMC, provided medical care and treatment to Rose Marie Phelps through Drs. Chan, Javaid, and other healthcare providers acting incident to and within the course and scope of their agency or employment with Defendant CAMC.

106. At all times material to this civil action, Defendant CAMC held itself out to Mrs. Phelps, its patients, and members of the general public as being qualified to furnish comprehensive and competent oncology services to its patients through its physicians and other healthcare providers.

107. At all times material to this civil action, Defendant CAMC, institutionally and by acting through its agents or employees, negligently failed to properly educate, train and supervise its healthcare providers regarding patients experiencing early-onset severe toxic reaction to the chemotherapy drugs Xeloda (capecitabine) and 5-fluorouracil (“5-FU”), and the availability of an antidote, Vistogard (uridine triacetate), that must be giving immediately when a physician suspects a toxic reaction to these chemotherapy drugs.

108. At all times material to this civil action, Dr. Chan and Dr. Javaid were physicians licensed to practice medicine in the State of West Virginia and held themselves out to their patients and members of the general public as physicians skilled in the practice of oncology.

109. Dr. Javaid and Dr. Chan, while acting incident to and within the course and scope of their agency or employment with Defendant CAMC, negligently failed to exercise that degree of care, skill, and diligence ordinarily employed by physicians generally and oncologists

specifically under similar conditions and like surrounding circumstances in their care and treatment of Rose Marie Phelps. Specifically, Dr. Chan, Dr. Javaid, and other CAMC employees deviated from, and fell below, the applicable standard of care by:

- a. Failing to provide proper informed consent;
- b. Failing to inform Mrs. Phelps of the potential risk of severe toxic reaction to Xeloda that can be fatal if not immediately treated;
- c. Failing to inform Mrs. Phelps of the signs and symptoms of toxicity so that Mrs. Phelps and her family could be vigilant and keenly aware of the need for prompt medical intervention if such signs and symptoms arise, especially those of early-onset toxicity;
- d. Failing to inform Mrs. Phelps that there is a simple test available before starting Xeloda to determine whether Mrs. Phelps would likely develop severe toxicity to Xeloda;
- e. Failing to inform Mrs. Phelps that there is a lifesaving antidote to treat severe toxicity that must be given immediately or as quickly as possible when signs and symptoms of toxicity arise to avoid death;
- f. Failing to recognize Mrs. Phelps' signs and symptoms of severe, early-onset life-threatening toxicity to Xeloda once they became aware of such progressively worsening signs and symptoms on August 18, 19,20,21, and thereafter; and
- g. Failing to take immediate action to expeditiously order, prescribe, and ensure that the life-saving antidote Vistogard was administered to Mrs. Phelps when Dr. Kok Hoe Chan and Dr. Saad Javaid became aware of Mrs. Phelps' signs and symptoms of early-onset toxic reaction to Xeloda within days of starting the medication.

110. At all times material to this action, Dr. Chan and Dr. Javaid were acting incident to and within the course and scope of their agency or employment with Defendant CAMC and therefore, Defendant CAMC is vicariously liable for the acts and omissions of Dr. Chan, Dr. Javaid, and its other healthcare providers treating Mrs. Phelps under the doctrine of *repondeat superior* and/or agency.

111. As a direct and proximate result of the negligence of Defendant, Mrs. Phelps suffered great pain of body and mind, incurred medical expenses and other significant related expenses, and suffered a wrongful and untimely death on August 31, 2025.

### **COUNT II – WRONGFUL DEATH**

112. Plaintiff hereby adopts and incorporates by reference the allegations of this Complaint as if set forth verbatim herein.

113. As a direct and proximate result of the acts and omissions of Dr. Chan, Dr. Javaid, and other employees of Defendant CAMC, for which Defendant CAMC is vicariously liable and responsible under the doctrine of *respondeat superior*, Rose Marie Phelps died. As such, Plaintiff asserts a claim for wrongful death under W. Va. Code § 55-7-5.

114. Plaintiff seeks all damages permissible under W. Va. Code § 55-7-5, including but not limited to:

- (a) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of decedent Rose Marie Phelps;
- (b) Expense for the care, treatment and hospitalizations of decedent Rose Marie Phelps;
- (c) Compensation for reasonably expected (i) loss of income; (ii) services, protection, care and assistance provided by Rose Marie Phelps;
- (d) Funeral and burial expenses.

### **PUNITIVE CONDUCT**

115. Plaintiff hereby adopts and incorporates by reference the allegations of the preceding paragraphs of this Complaint as if set forth verbatim herein.

116. Pursuant to the doctrine of *respondeat superior*, Defendant CAMC is responsible for the acts and omissions of its employees, servants or agents done in the scope of their employment. All actions herein complained of regarding the acts or omissions of Drs. Chan, Javaid, and other employees of CAMC were doing so in the scope of their employment with Defendant CAMC.

117. As a direct and proximate result of the acts or omissions of CAMC's employees, servants and agents, as described herein and for which Defendant CAMC is vicariously liable and responsible for under the doctrine of *respondeat superior*, Rose Marie Phelps died. As such, Plaintiff asserts a claim for punitive damages.

118. Punitive damages are appropriate in this case as the acts and omissions of Dr. Chan, Dr. Javaid, and other employees, servants, and agents of Defendant CAMC, as herein described, were undertaken with a conscious, reckless, and outrageous indifference to the health, safety, and welfare of Rose Marie Phelps.

### **PRAYER**

**WHEREFORE**, Plaintiff demands judgment against Defendant Charleston Area Medical Center for such an amount as will be determined by a jury in accordance with the law of the State of West Virginia. Plaintiff seeks damages from Defendant for injuries and death, including, but not limited to: pain and suffering, annoyance and inconvenience, both past and future, mental anguish and emotional distress, loss of income and benefits, medical expenses, funeral and burial expenses, each and every item of damages set forth in W. Va. Code § 55-7-6, loss of society, companionship, and services, punitive damages, costs and attorneys' fees, pre-judgment and post-judgment interest and such further relief as this Court deems just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES.**

**DATED: May 15, 2026**

**DAVID B. PHELPS, SR.**

**By Counsel.**

**/s/ Raj A. Shah 05/15/2026**

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