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To the Plaintiff in *Greenberg et al.*, Official Records  
Term 2019, No. 01241:  
You are hereby notified to file a written  
response to the Answer and New Matter of

Defendants the City of Philadelphia Medical  
Examiner's Office and Marlon Osbourne, MD,  
within twenty (20) days from service  
hereof or a judgment may be entered  
against you.

\_\_\_\_\_  
s/Ellen Berkowitz  
Ellen Berkowitz  
Senior Attorney

**CITY OF PHILADELPHIA LAW DEPARTMENT**

MARCEL S. PRATT, CITY SOLICITOR  
ELLEN BERKOWITZ  
Senior Attorney  
Identification No. 80186  
1515 Arch Street, 15<sup>th</sup> Floor  
Philadelphia, PA 19102-1595  
Tel (215) 683-5253 and Fax (215) 683-5299

*Attorney for Defendants  
City of Philadelphia  
Medical Examiner & Marlon Osbourne, M.D.*

**JOSHUA GREENBERG et al,**

Plaintiffs

v.

**MARLON OSBOURNE, MD, and  
CITY OF PHILADELPHIA MEDICAL  
EXAMINER'S OFFICE,**

Defendants

CIVIL TRIAL DIVISION

OCT. TERM 2019  
No. 01241

**DEFENDANTS CITY OF PHILADELPHIA MEDICAL EXAMINER AND MARLON  
OSBOURNE'S ANSWER AND NEW MATTER TO PLAINTIFFS' COMPLAINT**

Defendants, the City of Philadelphia Office of the Medical Examiner (the "City,"  
"MEO")<sup>1</sup> and Marlon Osbourne, M.D., ("Dr. Osbourne"), by and through undersigned counsel,  
hereby answer Plaintiffs' Complaint as follows:

<sup>1</sup> The City's Medical Examiner's Office has no separate existence from the City of Philadelphia.

1. The Complaint is a writing which speaks for itself, and any characterization of it is denied. The remainder of paragraph 1 of Plaintiffs' Complaint is denied as conclusions of law to which no further response is required. However, the determination of cause of death is in the sole discretion of the Medical Examiner and is not subject to mandamus. See *Chadwick v. Dauphin County Office of Coroner*, 905 A.2d 600 (Pa. Cmwlth. 2006).

2. Admitted solely that Ellen Greenberg died on January 26, 2011, from multiple stab wounds. Denied that the relevant medical evidence rebuts the conclusion of suicide.

3. Admitted solely that Defendants preliminarily determined the cause of death was homicide. The remainder of Plaintiffs' allegations in paragraph 3 are denied. To the contrary, Defendants changed the cause of death after further investigation by the City of Philadelphia Police Department ruled out homicide.

4. Denied as conclusions of law to which no further response is required. Further denied as contrary to law. *Chadwick*.

5. Denied that the determination of the Medical Examiner that Ellen Greenberg's death was a suicide constitutes misconduct. The City is without knowledge or information sufficient to confirm or deny the averments regarding the alleged "negative consequences" of Defendants' determination, which was well within the bounds of their professional discretion.

6. Defendants are without knowledge or information sufficient to form a belief as to the allegations of paragraph 6 of Plaintiffs' Complaint.

7. Admitted in part and denied in part. At the time of Ellen Greenberg's autopsy, Dr. Osbourne was licensed to practice medicine in Pennsylvania and was employed as a pathologist at the Philadelphia County Medical Examiner's Office ("MEO"). Dr. Osbourne is no longer employed by the City and no longer licensed to practice medicine in Pennsylvania. His current

business address is Palm Beach Medical Examiner's Office, 3126 Gun Club Road, West Palm Beach, Florida, 33406.

8. Admitted solely that the Medical Examiner's Office has sole responsibility for issuing death certificates after determining the cause and manner of death. Plaintiffs' further characterization of the MEO's responsibilities is denied.

9. Denied as conclusions of law as to which no further response is required. By way of further answer, denied that any action of Dr. Osbourne caused any harm to the Plaintiffs.

10. Denied as conclusions of law as to which no further response is required.

11. Admitted that Ellen Greenberg was 27 years old in January 2011. After a reasonable investigation, the City is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 11 of Plaintiffs' Complaint.

12. After a reasonable investigation, the City is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12 of Plaintiffs' Complaint.

13. After a reasonable investigation, the City is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 13 of Plaintiffs' Complaint..

14. The scene of Ellen Greenberg's death is described in official reports which speak for themselves. Any characterization of those writings is denied.

15. The scene of Ellen Greenberg's death is described in official reports which speak for themselves. Any characterization of those writings is denied.

16. Denied.

17. Admitted.

18. Admitted.

19. Admitted solely that the initial autopsy report speaks for itself. Further, the City is without knowledge or information sufficient to form a belief as to the truth of the averments as to the alleged effects of the wounds described.

20. Admitted solely that the initial autopsy report is in writing and speaks for itself. The City is without knowledge or information sufficient to form a belief as to the significance of the bruises described therein.

21. Admitted solely that the initial autopsy report and Certificate of Death speak for themselves. Any further characterization of those documents and their conclusions is denied.

22. Denied as conclusions of law to which no further response is required.

23. The City is without knowledge or information sufficient to form a belief as to the truth of the averment.

24. Denied. The City is without knowledge or information sufficient to form a belief as to the how or whether the public was informed about the MEO's findings.

25. The City is without knowledge or information sufficient to form a belief as to the truth of the averment.

26. Denied. The death certificate was amended on April 4, 2011 to identify suicide as the manner of death. The amended death certificate is in writing and speaks for itself, and any further characterization is denied. Denied that the MEO bowed to "improper public pressure by the Philadelphia Police."

27. Admitted. The amended death certificate is in writing and speaks for itself. Any further characterization is denied, and denied that any explanation was required.

28. Denied that Dr. Osbourne stated that he changed the manner of Ellen Greenberg's death "at the insistence of the police because they said there was a lack of defense wounds."

29. The letter appended to Plaintiff's Complaint as Exhibit D speaks for itself. Any further characterization thereof is denied.

30. Admitted solely that the package sent to Dr. Osbourne included reports from doctors and forensic professionals. These reports are in writing and speak for themselves. Denied, however, that the conclusions of other doctors or professionals have any relevance to Plaintiff's mandamus action.

31. The report and curriculum vitae of Wayne K. Ross, M.D., speak for themselves. Any further characterizations thereof are denied.

32. The report of Cyril M. Wecht, M.D., speaks for itself. Any further characterizations thereof are denied.

33. The report of Henry C. Lee speaks for itself. Any further characterizations thereof are denied.

34. The March 15, 2019 article in the Philadelphia Inquirer is in writing and speaks for itself. Any further characterizations thereof are denied.

35. The referenced letter sent to Dr. Osbourne, including the attachments thereto, is in writing and speaks for itself. Any further characterization thereof is denied. Furthermore, Defendants are without knowledge or information sufficient to form a belief as to the scope and meaning of "other considerations" as used in paragraph 35 of Plaintiffs' Complaint.

36. The referenced letter sent to Dr. Osbourne, including the attachments thereto, is in writing and speaks for itself. Any further characterization thereof, or conclusions which Plaintiffs themselves derive from the contents, are denied.

37. The referenced letter sent to Dr. Osbourne, including the attachments thereto, is in writing and speaks for itself. Any further characterization thereof, or conclusions which Plaintiffs themselves derive from the contents, are denied.

38. Admitted that police investigators made a passing reference to Dr. Rourke's examination and conclusion that it would have impaired Ellen Greenberg's ability to experience pain but preserved her motor skills.

39. Denied that Dr. Rorke-Adams never examined the spinal cord.

40. Denied as conclusions of law. Furthermore, to the extent that the allegations in paragraph 40 represent Plaintiffs' own speculations, denied.

41. Both the letter sent to Dr. Osbourne and Detective Eelman's report are in writing and speak for themselves. Any further characterization of those writings is denied. Denied that the "experts" referenced in this averment are "independent." Further, Dr. Osbourne was under no legal obligation to accept the opinions of these other people.

42. Detective Eelman's report is in writing and speaks for itself. Any further characterization thereof is denied.

43. The referenced letter to Dr. Osbourne is in writing and speaks for itself. Any further characterization thereof is denied. Further Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments regarding Ellen Greenberg's activities on the date of her death, the identity of the "independent experts" referenced in this paragraph, or their "independence." Finally, denied that there is no evidence that Ellen was considering suicide at the relevant time. *See New Matter.*

44. The City is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 44 of Plaintiffs' Complaint, and they are therefore denied. By way of

further answer, denied that there was no evidence that Ellen was considering suicide at the relevant times. See New Matter.

45. The letter to Dr. Osbourne is in writing and speaks for itself. Any further characterization or arguments by Plaintiffs based on that letter are denied.

46. Admitted that the front door was barred. Denied that this was the principal factor in concluding that Ellen Greenberg's manner of death was suicide.

47. The letter to Dr. Osbourne, as well as the attachments thereto, are in writing and speak for themselves. Any further characterization of those writings is denied, as well as Plaintiffs' speculative conclusions alleged based thereon. To the extent that Plaintiffs rely in this paragraph to unspecified additional "expert reports," Defendants are without knowledge or information sufficient to form a belief as to the identify or contents of those reports, and therefore the allegations are denied.

48. The referenced letter to Dr. Osbourne is in writing and speaks for itself. Any further characterization of that letter is denied.

49. Dr. Ross's report is in writing and speaks for itself. Any further characterization thereof is denied. Defendants are unable to respond to the averment concerning "one [unnamed] investigator." Defendants deny the remainder of the allegations of paragraph 49 as speculative and/or conclusory. speaks for itself.

50. The referenced letter to Dr. Osbourne is in writing and speaks for itself. Any further characterization thereof is denied. Defendants are unable to respond to the averment regarding a "suggestion [that] has been made" without any further specificity. The toxicology report additionally showed trace amounts of Zolpidem, or Ambien, in her system. Defendants are

without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 50 of Plaintiffs' Complaint.

51. The City is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 51 of Plaintiffs' Complaint

52. The averments contained in paragraph 52 of Plaintiffs' Complaint constitute legal conclusions to which no further response is required.

53. Admitted. By way of further answer, Dr. Osbourne is under no obligation to reconsider his determination.

54. The City is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 54 of Plaintiffs' Complaint, and such averments therefore are denied.

55. Denied as conclusions of law.

56. The City is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 56 of Plaintiffs' Complaint, and such averments are therefore denied. Furthermore, any purported stigma is without legal significance in this matter.

57. Admitted solely that certain information contained in death certificates may be compiled and used for various purposes. Denied that the death certificate in this case was either inaccurate, unreliable, or failed to meet legal standards.

58. Admitted solely that certain information contained in death certificates may be compiled and used for various purposes.

59. The City is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 59 of Plaintiffs' Complaint, and those averments therefore are denied.



60. Defendants incorporate their responses to paragraphs 1 through 59 of Plaintiffs' Complaint as if the same were set forth herein at length.

61. Admitted.

62. Admitted.

63. Admitted solely that information that would change the cause or manner of death originally reported would justify an amendment of the death certificate, if in the discretion of the medical examiner such amendment was warranted. All other averments are denied.

64. The portions quoted from the so-called "NAME's Guide" and "CDC's Handbook" are in writing and speak for themselves. Any further characterization of those writings is denied..

65. Admitted solely that the NAME's Guide and CDC Handbook provide "guidance" to medical examiners. By way of further answer, the NAME Guide states, "This book is a Guide. The recommendations contained herein are not standards and should not be used to evaluate the performance of a given certifier in a given case. Death certification and manner-of-death classification require judgment, and room must be allowed for discretion on a case by case basis." Preface and Caveats, p. 2. (Emphasis supplied)

66. The NAME's Guide and CDC Handbook are both in writing and speak for themselves. Any further characterization of those writings is denied.

67. The NAME's Guide is a writing which speaks for itself. Any further characterization of that writing is denied.

68. The NAME's Guide is a writing which speaks for itself. Any further characterization of that writing is denied. By way of further answer, the NAME's Guide itself specifically states that its recommendations are not standards and should not be used to evaluate the performance of a given certifier in a given case.

69. Admitted solely that the Defendants initially concluded the death was a homicide. Denied that upon completion of the autopsy, the Defendants obtained “overwhelming medical evidence” that the manner of Ellen Greenberg’s death was a homicide.

70. Admitted solely that Dr. Osbourne changed the death certificate based upon a sound professional evaluation of probative evidence. All other allegations of paragraph 70 of Plaintiffs’ Complaint are denied.

71. Denied as a conclusion of law.

72. Denied as a conclusion of law

73. Denied. By way of further answer, Defendants did not “flip-flop” on the determination of the manner of Ellen Greenberg’s death, and the revision of the manner of death had a sound professional basis.

74. Denied as a conclusion of law. By way of further answer, in Pennsylvania the conclusions of the medical examiner are not susceptible to amendment by mandamus.

75. Defendants incorporate their responses to paragraphs 1 through 74 of this Answer as if the same were set forth in full at length.

76. Denied as conclusions of law.

77. Denied as conclusions of law. By way of further answer, denied that the MEO’s determination was arbitrary and capricious, or that there is any justification for compelling the amendment of the death certificate.

#### **New Matter**

78. Defendants incorporate the preceding paragraphs of this Answer as if set forth at length in this paragraph.

79. Marlon Osbourne, M.D., is employed by the Palm Beach Medical Examiner and is no longer licensed to practice medicine in the Commonwealth of Pennsylvania.

80. On information and belief, Plaintiffs have relentlessly pursued various means of challenging the conclusion of the MEO with respect to their daughter's cause of death.

81. On information and belief, the Homicide Unit of the District Attorney's Office was aware of this matter in 2011 and 2017 and did not pursue charges.

82. The District Attorney is not bound by the Medical Examiner's determination of the manner of death in deciding whether to pursue homicide.

83. Plaintiffs previously retained Larry Krasner, now the District Attorney of Philadelphia, to assist them in this matter.

84. On information and belief, Plaintiffs approached Mr. Krasner and asked him to reopen the investigation into Ellen's death.

85. On information and belief, Mr. Krasner referred the case to the State Attorney General in February 2018.

86. In March 2019, the Attorney General's office completed an investigation and also concluded that Ellen Greenberg had committed suicide.

87. The AG's office identified computer forensic evidence that showed that Ellen Greenberg had been researching methods of suicide.

88. The AG's office further recovered texts between Ellen and her mother and provided them to a reporter for the Philadelphia *Inquirer*. On information and belief, on January 8, 2011, Ellen texted her mother, "I'm starting the med I know u don't understand but I can't keep living with feeling this way." The day before her death, her mother texted her, "You need to see a professional."

89. On information and belief, this evidence, in addition to its investigation and its review of the relevant criminal information, led the AG to conclude that Ellen Greenberg committed suicide.

90. The preeminent legal authority in the Commonwealth, asked by the current District Attorney to review the evidence in this case, concluded that the evidence supported the MEO's determination that the manner of death was suicide and declined to intervene or recommend further review.

**WHEREFORE**, the City Defendants request that this Court dismiss Plaintiffs' Complaint with prejudice pursuant to Pa R.C.P. 1028(a)(4).

Respectfully submitted,

/s/ Ellen Berkowitz  
Ellen Berkowitz  
Senior Attorney  
Pa. Attorney ID No. 80186  
City of Philadelphia Law Department  
(215) 683-5253  
ellen.berkowitz@phila.gov

DATE: January 27, 2020


	:	
<b>JOSHUA GREENBERG et al,</b>	:	CIVIL TRIAL DIVISION
	:	
Plaintiffs	:	
	:	
v.	:	
	:	OCT. TERM 2019
<b>MARLON OSBOURNE, MD, and</b>	:	No. 01241
<b>CITY OF PHILADELPHIA MEDICAL</b>	:	
<b>EXAMINER'S OFFICE,</b>	:	
	:	
Defendants	:	
	:	

**VERIFICATION**

I, Sam Gulino, hereby verify that:

1. I serve as the Medical Examiner for the City of Philadelphia.
2. I am authorized to make this verification on behalf of the City of Philadelphia;
3. I hereby verify that the averments of fact and statements contained in the foregoing Answer with New Matter of Defendants the City of Philadelphia Medical Examiner's Office and Marlon Osbourne, M.D., to Plaintiff's Complaint are true and correct to the best of my knowledge, information, and belief; and
4. I understand that I make the foregoing statements subject to the penalties of 18 PA. CONS. STAT. § 4904 (relating to unsworn falsification to authorities).

Dated: January 24, 2020

  
 \_\_\_\_\_  
 Sam Gulino, Medical Examiner, City of Philadelphia

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**JOSHUA GREENBERG et al,**

Plaintiffs

v.

**MARLON OSBOURNE, MD, and  
CITY OF PHILADELPHIA MEDICAL  
EXAMINER'S OFFICE,**

Defendants

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CIVIL TRIAL DIVISION

OCT. TERM 2019  
No. 01241

**VERIFICATION**

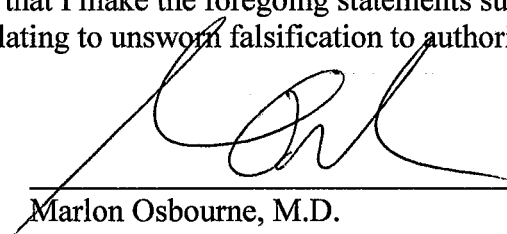
I, Marlon Osbourne, M.D., hereby verify that:

1. In 2011 I was a pathologist at the City of Philadelphia Medical Examiner's Office, where I conducted the autopsy of Ellen Greenberg.

2. I hereby verify that the averments of fact and statements contained in the foregoing Answer with New Matter of Defendants the City of Philadelphia Medical Examiner's Office and Marlon Osbourne, M.D., to Plaintiff's Complaint are true and correct to the best of my knowledge, information, and belief; and

3. I understand that I make the foregoing statements subject to the penalties of 18 PA. CONS. STAT. § 4904 (relating to unsworn falsification to authorities).

Dated: January 24, 2020

  
\_\_\_\_\_  
Marlon Osbourne, M.D.

**CITY OF PHILADELPHIA LAW DEPARTMENT**

**MARCEL S. PRATT, CITY SOLICITOR**

**ELLEN BERKOWITZ**

Senior Attorney

Identification No. 80186

1515 Arch Street, 15<sup>th</sup> Floor

Philadelphia, PA 19102-1595

Tel (215) 683-5253 and Fax (215) 683-5299

*Attorney for Defendants, Marlon Osbourne*

*and City of Philadelphia*

*Office of the Medical Examiner*

**JOSHUA M. GREENBERG and  
SANDRA GREENBERG, administrators  
of the  
Estate of Ellen R. Greenberg**

Plaintiffs

v.

**MARLON OSBOURNE, MD, and  
CITY OF PHILADELPHIA OFFICE  
Of the MEDICAL EXAMINER**

Defendants

CIVIL TRIAL DIVISION

OCT. TERM 2019

No. 01241

**CERTIFICATE OF SERVICE**

I, Ellen Berkowitz, Senior Attorney, hereby certify that I served a true and correct copy of the foregoing Answer of Defendants City of Philadelphia MEO and Marlon Osbourne, M.D., 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.

/s/ Ellen Berkowitz  
Ellen Berkowitz  
Senior Attorney  
1515 Arch Street, 15th Floor  
Philadelphia, PA 19102-1595

Date: January 27, 2020