IN THE CIRCUIT COURT FOR
BALTIMORE CITY, MARYLAND

BILL FLANIGAN, INDIVIDUALLY and as executor for THE ESTATE OF ROBERT DANIEL c/o Wilmer, Cutler & Pickering 2445 M Street, N.W. Washington, DC 20037-1420 (202) 663-6000 Plaintiffs, v. UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION **SERVE: Registered Agent** Mary N. Humphries, Esq. 22 South Greene Street Executive Office Baltimore, MD 21201 (410) 328-8667 Defendant.	Civil Action No. _____

COMPLAINT

COMES NOW Plaintiff Bill Flanigan, by and through his attorneys, for himself and on behalf of the Estate of Robert Daniel ("Estate"), and sues the Defendant, University of Maryland Medical System Corporation ("Defendant Hospital"), and for cause states as follows:

Preliminary Statement

1. Bill Flanigan was Robert Daniel's life partner, closest family member and agent for his health care power of attorney. Daniel, who was coping with HIV disease, feared medical contexts and relied on Flanigan to be his advocate and source of support with doctors.

2. Under the professional standards by which Maryland hospitals must abide to be accredited, "family" is defined as those who play a significant role in a patient's life, with or without a legal relation.

3. Daniel fell fatally ill and Defendant Hospital admitted him, having notice through Daniel's accompanying medical records – and Flanigan's statements to Defendant Hospital at the time – that Flanigan was Daniel's family and legal agent for health care decisions. But Defendant Hospital blocked any communication between Daniel and Flanigan as Daniel slipped into unconsciousness, alone and without comfort, support, and solace during his final hours. The two partners were unable to speak with each other before Daniel's death.

4. For the most critical hours, Defendant Hospital denied Flanigan information about Daniel, and Flanigan was unable to ensure that Daniel's wishes for medical care were honored, or even to know what condition he was in. Instead Flanigan was forced to watch with mounting anguish and humiliation as

families of other patients arrived and quickly were escorted in to see their loved ones.

5. Only when Daniel's biological relatives arrived much later did the Defendant Hospital begin to share information and pave the way for the family to reach Daniel's bedside. By then, however, Daniel had lost consciousness. Both he and his closest family member, Flanigan, had suffered extreme disrespect and trauma.

6. Flanigan sues for the negligence and intentional infliction of emotional distress he suffered himself, as well as that suffered by his life partner Daniel during his final conscious hours.

Jurisdiction

7. This court has jurisdiction pursuant to the Maryland health claims arbitration law. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-2A-06B(f).[1/]

8. The amount of damages sought is more than the required jurisdictional amount. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-2A-02(b).

[1/] Attached as Exhibit A to this Complaint are the documents originally filed in the Maryland Health Claims Arbitration Office, Flanigan's Waiver of Arbitration, and the Order of Transfer.

9. Because Defendant Hospital regularly engages in business in Baltimore City, Maryland, venue is proper in the Circuit Court for Baltimore City, Maryland. *See* Md. Code Ann., Cts. & Jud. Proc. § 6-201(a).

Parties

10. Defendant Hospital is a private hospital, and is a corporation incorporated in Maryland and doing business in Baltimore, Maryland.

11. Flanigan is a resident of San Francisco, California.

12. On October 19, 2000, Daniel died at Defendant Hospital's Baltimore Shock Trauma Center of complications from a form of gangrene. Flanigan was subsequently appointed Executor of Daniel's Estate.

Background

13. Daniel and Flanigan had a warm and supportive relationship, and were committed to each other as a couple, emotionally and financially, for nearly five years before Daniel's death in October 2000. They were one another's closest family member. They registered as "domestic partners" in the City and County of San Francisco on July 5, 1996. They would have married but were not legally permitted to do so as a same-sex couple. Flanigan re-deeded his house so that the two men held the property as joint tenants, and the two men had wills leaving their modest assets to each other.

14. Daniel's health deteriorated in the late 1990s because of his HIV infection. Daniel developed diabetes, among other problems. Flanigan took an active role in Daniel's health care. Flanigan attended Daniel's doctor and hospital visits, fed and cleaned Daniel when he was especially weak, and gave him prescribed injections.

15. Daniel and Flanigan took steps to ensure that Flanigan's authority as Daniel's closest family member would not be questioned in health care settings. The couple executed Durable Powers of Attorney for Health Care Decisions, appointing each other as health care agents. Daniel's power of attorney declared that he did not wish to receive life-sustaining treatment in many specified medical circumstances.

16. Daniel feared visits to health care facilities and medical treatment in general, and did not like communicating with doctors. Flanigan took primary responsibility for dealing with doctors during Daniel's long illness. Daniel told his mother and siblings, who were very supportive of the couple's relationship, that Flanigan was fully informed about Daniel's medical condition and was taking care of Daniel's medical affairs. The couple also made promises to help each other to carry out their wishes during health crises, and promised to let each other know if death for the other were imminent. Daniel often repeated his aversion to having life-support methods used to Flanigan and other family members during the last few years of his life.

Daniel's Illness in Maryland

17. On October 15, 2000, Daniel became seriously ill while Daniel and Flanigan were traveling to visit Daniel's sister in Washington, D.C. Flanigan took Daniel to the nearest hospital: Harford Hospital in Havre de Grace, Maryland. Flanigan gave the hospital staff a copy of Daniel's Durable Power of Attorney for Health Care Decisions. The staff subsequently assured Flanigan that the document had been placed in Daniel's file. Flanigan was Daniel's primary contact with the Harford Hospital staff, and he stayed in Daniel's room and spent the night in a chair by the bed.

18. At Harford Hospital, the attending physician advocated inserting a breathing tube in response to Daniel's labored breathing. The physician advised Flanigan and Daniel that Daniel's lungs would fail — perhaps as soon as the next day — without one. Daniel nonetheless vigorously refused to have a tube inserted. Immediately after the discussion with the attending physician, Flanigan and Daniel phoned Daniel's primary care physician in California, who stressed that Flanigan would need to play a central role in ensuring that Daniel's wishes regarding life-sustaining measures such as a breathing tube were honored.

19. On the following day, October 16, 2000, a Harford Hospital physician explained to Flanigan that Daniel's condition was critical and required surgery that Harford Hospital could not handle. As a result, Harford Hospital transferred Daniel by ambulance to the Defendant Hospital's Shock Trauma

Center. In order to be with Daniel and speak with the surgeons before any surgery, Flanigan immediately drove to the Defendant Hospital as quickly as possible.

20. On information and belief, the Durable Power of Attorney for Health Care Decisions that Flanigan had been granted was included in Daniel's medical records, which accompanied Daniel from Harford Hospital to Defendant Hospital.

21. On information and belief, the information that Flanigan was a person significant to Daniel was included in Daniel's records, which accompanied Daniel from Harford Hospital to Defendant Hospital.

Events at Defendant Hospital

22. Daniel was admitted by Defendant Hospital at or around 6:45 p.m. on October 16, 2000. He was treated by Thomas Scalea, attending physician, for complications arising from AIDS, including diabetic ketoacidosis and a grave complication of Fournier's gangrene.

23. On information and belief, at the time of Daniel's admission Defendant Hospital was on notice from the accompanying records that Flanigan had been granted Daniel's health care power of attorney and that Flanigan was Daniel's most significant personal contact.

24. Flanigan arrived at Defendant Hospital between 6:00 p.m. and 6:30 p.m. on October 16, 2000. Flanigan identified himself to Defendant Hospital's Shock Trauma Center receptionist as Daniel's legal domestic partner and explained that Daniel was being transferred there from Harford Hospital. Flanigan told the receptionist that Daniel was in critical condition, and made clear that Flanigan needed to see Daniel and to speak to the surgeons before any surgery was performed.

25. By no later than 6:30 p.m. on October 16, 2000, therefore, Defendant Hospital had verbal notice from Flanigan, Daniel's domestic partner, that a person significant to Daniel was in the Shock Trauma Center's reception area.

26. Flanigan was concerned about whether Defendant Hospital's surgeons were aware of Daniel's extremely low T-cell count (which made Daniel very vulnerable medically), and whether the surgeons knew of Daniel's strong desire not to have life-prolonging medical measures performed on him (*e.g.*, insertion of a breathing tube) if his life would otherwise end. Flanigan needed to be present to have a discussion with hospital staff about the planned treatment. Flanigan also needed to support Daniel, to have Daniel know that he was present, and to say goodbye if that became necessary, as they had promised each other.

27. Defendant Hospital's receptionist referred Flanigan to a staff person in an office located behind the receptionist desk. The staff person

confirmed on a computer database that Daniel was on his way to Defendant Hospital. She told Flanigan that she would inform the surgeons that Flanigan needed to speak to them prior to surgery, and that he needed to see Daniel.

28. By close to 7:00 p.m., Defendant Hospital's staff had not conferred with, nor asked for, Flanigan. At that point, Flanigan called Harford Hospital and confirmed that Daniel had in fact left by ambulance at approximately 6:10 p.m. Flanigan then returned to the staff person behind the reception desk at Defendant Hospital and inquired about the status of his request to see Daniel and to speak to the surgeons. The staff person again checked the computer database, confirmed that Daniel had been admitted to Defendant Hospital, and told Flanigan that a nurse would come to get him within a few minutes.

29. After another period of time elapsed with no word from Defendant Hospital's staff, at approximately 7:15 p.m. Flanigan picked up the telephone in the reception area designated for patient inquiries. After identifying himself on the telephone, Flanigan was told by a Defendant Hospital staff member that only "family" members were allowed to see patients in the Shock Trauma Center, and that "partners" did not qualify. Flanigan explained that he had a Durable Power of Attorney for Health Care Decisions, and that he and Daniel were registered as domestic partners. Flanigan began to cry, saying that he wanted to be able to say goodbye to Daniel. He was put on hold, and then was told that a nurse would

come to get him in approximately ten minutes. He was in an obviously fragile emotional state.

30. At or near 7:15 p.m. on October 16, 2000, Defendant Hospital was further on notice from Flanigan's own communications with Defendant Hospital's reception staff that Flanigan was Daniel's agent for an advance directive.

31. Flanigan then went over to the receptionist and, in front of several witnesses, asked to speak to a manager and reiterated that he held Daniel's Durable Power of Attorney for Health Care Decisions. The receptionist said that she would call her manager. She made a telephone call and then reported to Flanigan that the manager would be "down in a minute."

32. After another period of time had elapsed and the manager had not arrived, Flanigan again inquired of the receptionist, who told Flanigan that he was "next on the list."

33. Flanigan again waited. Throughout his wait, family members of other patients arrived and quickly were called to the patient area to see their loved ones and to confer with doctors. This happened time and again, while Flanigan continued to wait.

34. Increasingly demoralized and distraught, Flanigan asked the receptionist repeatedly over three more hours for access to Daniel. The receptionist put Flanigan off each time.

35. Flanigan had earlier notified Daniel's mother and other relatives of Daniel's critical health situation. Approximately four hours after Daniel arrived at Defendant Hospital, with Flanigan consistently seeking information about and access to Daniel during that period, Daniel's sister arrived, and thereafter Daniel's mother arrived from New Mexico.

36. As soon as Daniel's sister made her presence known to the staff, Defendant Hospital began providing the information about Daniel's status that had been consistently denied to Flanigan. Once Daniel's mother arrived, Defendant Hospital's staff finally permitted Flanigan and the rest of the family to see Daniel for the first time.

37. At that point, Daniel was no longer conscious. His eyes were taped shut and a breathing tube had been inserted — contrary to Daniel's wishes as expressed to Flanigan repeatedly, to his primary care physician in California, and in his Durable Power of Attorney for Health Care Decisions. Flanigan remained at Daniel's side during all available visiting hours, but never saw Daniel conscious again.

38. Daniel died three days after he was admitted to Defendant Hospital.

39. According to a nurse at Defendant Hospital, Daniel apparently regained consciousness for a brief time during one of the final two nights of his life. During this brief moment of consciousness, which took place late at night

after visiting hours, Daniel attempted to pull out the breathing tube. Defendant Hospital responded by tying down Daniel's arms.

40. While Daniel was still hospitalized, another nurse — to whom Flanigan had described his experience on the evening of Daniel's admission to the Defendant Hospital's Shock Trauma Center — told Flanigan that he had submitted a statement detailing the treatment of Flanigan that evening to Defendant Hospital's administration.

41. Also while Daniel was still hospitalized, someone from Defendant Hospital's administration telephoned Flanigan to explain that the behavior of the staff towards Flanigan on the evening of Daniel's admission was the result of a breakdown in training, that Defendant Hospital had had similar problems in the past with employees who used a restrictive definition of family, and that Defendant Hospital needed to train its employees better.

42. On information and belief, Defendant Hospital's employees were acting within the scope of their duties during all relevant times on October 16-19, 2000.

Accreditation Standards

43. To be licensed to operate in Maryland, a hospital must be accredited. *See* Md. Code Ann., Health-Gen. I § 19-319(c)(2)(i).

44. Maryland law defines "[a]ccredited hospital" as "a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations." Md. Code Ann., Health-Gen. I § 19-301(b).

45. To receive accreditation from the Joint Commission on the Accreditation of Healthcare Organizations ("JCAHO"), a hospital must, among other things, abide by applicable accreditation standards. *See* Joint Commission on Accreditation of Healthcare Organizations, 2001 Hospital Accreditation Standards (2001). These accreditation standards require a hospital, among other things, to:

- "promote patient and family involvement in all aspects of [a patient's] care," *id.* at 73 (R1.1.2);
- "clearly explain any proposed treatments or procedures to the patient and, when appropriate, the family," *id.* (R1.1.2.1);
- "ensure that the "family participates in care decisions;" *id.* at 74 (R1.1.2.2);
- "address[] advance directives," *id.* at 75 (R1.1.2.4);
- ensure that "[a]ny restrictions on communication are fully explained to the patient and family, and are determined with their participation," *id.* at 77 (R.1.3.6.1.1);
- assess "[e]ach patient's physical, psychological, and social status," *id.* at 87 (PE.1);

- ensure that "[c]are is planned and provided in an interdisciplinary, collaborative manner" that "includes the family, as appropriate," *id.* at 107 (TX.1.2);
- "[discuss] with the patient and family about the need for, risk of, and alternatives to blood transfusion when blood or blood components may be needed," *id.* at 103 (TX.5.2.2);
- "plan[] for and support[] the provision and coordination of patient education activities," including "patient and family participation in care and decision making," *id.* at 145 (PF.1);
- "keep[] the patient and the patient's family informed of the care process," *id.* at 155 (CC.6.1.1); and
- ensure that all staff are adequately trained, *see id.* at 222-26 (HR.1-6.2).

46. JCAHO standards define "family" as "[t]he person(s) who plays a significant role in the individual's life. This may include a person(s) not legally related to the individual." *Id.* at 322.

FIRST CAUSE OF ACTION (Flanigan)
Negligence:
Exclusion of Family from Treatment
Decisions and Contact with Patient

47. Flanigan realleges and incorporates by reference the allegations set forth in paragraphs 1 through 46.

48. Defendant Hospital is vicariously liable, under the doctrine of respondeat superior, for the tortious acts committed by its employees.

49. Defendant Hospital violated professional standards of care – including applicable accreditation standards – requiring reasonable patient access to, and communication and consultation with, family and advance directive agents. Those violations included, among other things, failing to consult Flanigan concerning Daniel's health care (including making health care decisions and choosing appropriate care at the end of Daniel's life), refusing to honor the advance directive, rebuffing Flanigan's attempts to obtain information about Daniel so that Flanigan was sufficiently aware of Daniel's situation to enable him to perform his duties as Daniel's agent, and denying Flanigan access to, and communication with, Daniel for support, comfort and solace.

50. As a direct and proximate result of Defendant Hospital's failure to use the degree of care that is expected of a reasonably competent hospital in the same or similar circumstances, Flanigan sustained damages at Defendant Hospital, which included, but were not limited to, experiencing the profound emotional pain and loss of dignity associated with being denied access to, and the ability to communicate with, his life partner who was fatally ill and needing support; being unable to support his dying partner as he had promised; realizing that his window of opportunity to say goodbye to Daniel was slipping away; and being prevented from assisting Daniel with his end-of-life care decisions as he

had promised, including support regarding treatment that Daniel repeatedly had declared that he did not want.

51. As a direct and proximate result of Defendant Hospital's conduct, Flanigan has also experienced severe emotional distress and damages subsequent to that night at Defendant Hospital, including, but not limited to, periods of dysfunction that resulted in emergency room treatment related to his interactions with Defendant Hospital.

SECOND CAUSE OF ACTION (Estate)
Negligence:
Failure to Treat Patient with Reasonable Level of Professional Care

52. The Estate realleges and incorporates by reference the allegations set forth in paragraphs 1 through 51.

53. Defendant Hospital is vicariously liable, under the doctrine of respondeat superior, for the tortious acts committed by its employees.

54. Defendant Hospital violated professional standards of care – including applicable accreditation standards – requiring reasonable patient access to, and communication and consultation with, family and advance directive agents. Those violations included, among other things, failing to consult Flanigan concerning Daniel's health care (including making health care decisions and choosing appropriate care at the end of Daniel's life), refusing to honor an advance directive, rebuffing Flanigan's attempts to obtain information about

Daniel so that Flanigan was sufficiently aware of Daniel's situation to enable him to perform his duties as Daniel's agent, and denying Flanigan access to, and communication with, Daniel for comfort, support and solace.

55. Defendant Hospital's conduct directly and proximately caused Daniel to suffer severe and debilitating emotional distress.

56. As a direct and proximate result of Defendant Hospital's failure to use the degree of care that is expected of a reasonably competent hospital in the same or similar circumstances, Daniel sustained damages at Defendant Hospital, which included, but were not limited to, experiencing the profound emotional pain and loss of dignity associated with being denied access to, and the ability to communicate with, his life partner on whom he relied for support in the medical contexts he feared and sought to be with in facing death; being unable to know from Flanigan that death was imminent and say goodbye to Flanigan; and being prevented from having Flanigan's comfort and assistance with end-of-life care decisions, including preventing treatment that Daniel repeatedly had declared that he did not want.

THIRD CAUSE OF ACTION (Flanigan)
Intentional Infliction of Emotional Distress

57. Flanigan realleges and incorporates by reference the allegations set forth in paragraphs 1 through 56.

58. Defendant Hospital is vicariously liable, under the doctrine of respondeat superior, for the tortious acts committed by its employees.

59. Defendant Hospital's failure, among other things, to involve Flanigan in Daniel's health care decisions and to permit Flanigan to communicate with Daniel as Daniel was dying was intentional or reckless. For example, Defendant Hospital knew that Flanigan's emotional state was fragile and that, based on its conduct, Flanigan's emotional state would deteriorate even further.

60. Defendant Hospital's intentional conduct, including exercising its position of authority over Flanigan to preclude him from getting information about or seeing Daniel and from contributing to Daniel's health care decisions and carrying out his wishes, was extreme and outrageous and went beyond the bounds of decency, and is intolerable in a civilized community.

61. Defendant Hospital's outrageous conduct directly and proximately caused Flanigan to suffer severe and debilitating emotional distress that night.

62. As a direct and proximate result of Defendant Hospital's conduct, Flanigan sustained damages that night at Defendant Hospital, which included, but were not limited to, experiencing the profound loss of dignity and emotional pain associated with being denied access to, and the ability to communicate with, his life partner who was fatally ill and needing comfort, support and solace; being unable to be able to support, his dying partner, as he had promised; realizing that

his window of opportunity to say goodbye to Daniel was slipping away; and being prevented from assisting Daniel with his end-of-life care decisions as he had promised, including support regarding treatment that Daniel repeatedly had declared that he did not want.

63. As a direct and proximate result of Defendant Hospital's conduct, Flanigan has also experienced severe emotional distress subsequent to that night at Defendant Hospital, including, but not limited to, a period of dysfunction that resulted in emergency room treatment related to how he was treated by Defendant Hospital.

64. Flanigan's emotional distress, which directly resulted from Defendant Hospital's conduct, is severe, long-lasting, and extremely damaging.

FOURTH CAUSE OF ACTION (Estate)
Intentional Infliction of Emotion Distress

65. The Estate realleges and incorporates by reference the allegations set forth in paragraphs 1 through 64.

66. Defendant Hospital is vicariously liable, under the doctrine of respondeat superior, for the tortious acts committed by its employees.

67. Defendant Hospital's failure, among other things, to involve Flanigan in Daniel's health care decisions and to permit Daniel to communicate with Flanigan as Daniel was dying was intentional or reckless. For example, Defendant Hospital knew that Daniel was near the end of his life and that his

emotional state was fragile and that, based on its conduct, Daniel's emotional state would deteriorate even further.

68. Defendant Hospital's intentional conduct, including exercising its position of authority over Daniel to preclude him from seeing his closest family member during his final conscious and pain-filled hours, and from having the benefit of Flanigan's input into his health care decisions and carrying out his wishes, was extreme and outrageous and went beyond the bounds of decency, and is intolerable in a civilized community.

69. Defendant Hospital's outrageous conduct directly and proximately caused Daniel to suffer severe and debilitating emotional distress.

70. As a direct and proximate result of Defendant Hospital's failure to use the degree of care that is expected of a reasonably competent hospital in the same or similar circumstances, Daniel sustained damages at Defendant Hospital, which included, but were not limited to, experiencing the profound emotional pain and loss of dignity associated with being denied access to, and the ability to communicate with, his life partner on whom he relied for support in the medical contexts he feared and sought to be with in facing death; being unable to know from Flanigan that death was imminent and to say goodbye to Flanigan; and being prevented from having Flanigan's comfort and assistance with end-of-life care decisions, including preventing treatment that Daniel repeatedly had declared that he did not want.

Prayer for Relief

WHEREFORE, Flanigan prays that relief be entered against Defendant Hospital granting:

71. A finding of liability, in that the Defendant was negligent toward, and intentionally inflicted emotional distress upon, Flanigan and Daniel.

72. Compensatory damages, including economic and non-economic damages, and punitive damages, in an amount in excess of the required jurisdictional amount.

73. Attorneys' fees and other fees and costs incurred by Flanigan in bringing this suit.

74. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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DEMAND FOR JURY TRIAL

Plaintiff Bill Flanigan, individually and as Executor of the Estate of Robert Daniel, demands a trial by jury.

_____
Anne Harkavy

DATED: February ___, 2002