

The Philadelphia Inquirer

An EMT said this Delaware County COVID patient didn't need to go to the hospital. She died the next day.

A Delco woman's family is hoping to be among the few to successfully sue over the care a COVID patient received.

Keisha Cappel, sitting with her father, Alfonso Jones, holds a portrait of her sister, Tamika Jones, who died from COVID-19. EMTs told Jones she didn't need to go to the hospital, a lawsuit filed by the family alleges. Read more Monica Herndon / Staff Photographer

by Jason Laughlin

Feb 23, 2023

COVID had so ravaged Tamika Jones' lungs she could barely finish a sentence without gasping for breath when the emergency medical technicians arrived at her Delaware County home on Jan. 22, 2021.

The 46-year-old struggled to stand, and couldn't get to the bathroom without a walker. An EMT did not check her temperature, blood pressure, or heart rate — or see if she needed oxygen — yet urged her not to go to the hospital.

The next day, she died.

"He left my sister to die," Jones' sister, Keisha Cappel, said, crying during a recent phone interview. "There was nothing I could do."

For two years, Cappel and her father, Alfonso Jones, sought to hold the health-care workers responsible. But lawyer after lawyer told her the family had few options due to the sweeping legal protections enacted to shield medical providers from civil liability during the public health emergency, Cappel said.

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She finally filed lawsuits last month in the U.S. Eastern District of Pennsylvania and state court, a rare attempt to demand accountability over claims of a botched COVID medical response. Just 24 cases alleging wrongful death or malpractice related to COVID have been filed in Pennsylvania, according to the COVID-19 Complaint Tracker maintained by the international law firm Hunton Andrews Kurth. The tracker shows the number of COVID-related cases nationally but does not provide further detail.

COVID cases could be hard to win, since the pandemic was so complex. In addition, conditions early in the pandemic, including a lack of effective treatments, safety gear shortages, and overcrowded hospitals, prompted Pennsylvania and more than half of the states to protect health-care workers from liability, according to Amwins, a specialty insurance provider. The protections vary by state, and Pennsylvania's was still in effect when Jones died.

Jones' family is seeking financial damages for wrongful death and gross negligence from defendants including two EMTs, Aston Township Fire Department command personnel, the director of Delaware

County's Department of Emergency Services, and Crozer Health, which the suit states was involved in training the two EMTs. The lawsuit also claims the EMTs, Delaware County, Aston Township, the township's fire department, and the department's command staff and members of its oversight committee violated Jones' civil rights by putting her life in danger.

"It's very important that we have justice," Cappel said. "My sister mattered, and they treated her like her life didn't matter at all."

A representative of Crozer declined to comment beyond saying the health system did not employ or manage the EMTs. A lawyer representing the township would not say whether the two EMTs are still working with the township fire department, but they are not currently listed on Aston Township Emergency Medical Services' online staff roster. Other lawyers representing the defendants either declined to comment or did not respond to calls and emails.

Aston Township filed a motion to dismiss the suit this month, and the family's attorney on Wednesday dropped all but the civil rights charges against the municipality, Delaware County, and the fire department.

A family devastated by COVID

Jones quit her job in adult day care when the pandemic started in 2020 so she could help her mother, Brenda Jones who had stage-four breast cancer. In January 2021, COVID devastated the household.

Alfonso, Jones' and Cappel's father, collapsed on the bathroom floor while infected with the virus. Cappel took him to the hospital on Jan. 17. Their mother died of the virus three days later. By the time Alfonso came home almost a week later, both his wife and daughter had died.

'Why is she panting like that?'

The family's lawsuit alleges the following events occurred on Jan. 22, 2021:

When Cappel called 911, her description of Jones' condition should have prompted the Delaware County emergency dispatcher to send paramedics trained to start an IV, administer medication to help breathing, and use a CPAP machine, the suit states. Instead, dispatch sent a basic life support crew, who are not permitted to insert needles and can administer fewer medications.

Two EMTs responded, Aaron Kisela and Eoin Marshall. Kisela had 12 years of experience as an EMT, but never entered the home. When Marshall asked him if he wanted to evaluate Jones, he declined, saying, "I've got a wife and kids to think about."

Cappel told Marshall, who had recently been hired, that her sister was struggling to breathe and couldn't walk. Cappel told him a home pulse oximeter showed her sister's blood oxygen level was 42%. Anything over 95% is considered normal, according to the Centers for Disease Control and Prevention. Marshall said if the device was correct, Jones should be dead.

Marshall never checked Jones' vitals, the suit states. He used his own oximeter on Jones, which gave a reading of 35%, but said the devices were unreliable. The devices can be inaccurate, particularly on people with darker skin, but typically the error is an overestimated oxygen level, many studies have shown, including research published in 2022 by academics at Johns Hopkins Medicine and the University of Michigan.

“She should be OK,” Marshall said, according to the suit.

“Why is she panting like that?” Cappel remembered asking.

“That’s what COVID patients look like,” Marshall said.

He listened to her lungs with a stethoscope and said they sounded clear and her color looked normal.

From her bed, Jones asked Marshall what he thought she should do. About two weeks earlier, Delaware County had reported what would be its highest COVID hospitalization figures during the pandemic, though the numbers were dropping when Jones became sick, according to the New York Times COVID tracker.

“I’d stay here,” Marshall said. “They are really wanting people to stay home. Your best chance is to stay here.”

The EMTs later filed a report saying they had not performed any medical examination. “No patient assessed,” the report stated, adding that Jones was “not showing any signs of respiratory distress” and didn’t want to go to the hospital.

Marshall and Kisela, both paid EMTs, failed to properly evaluate Jones, the suit alleges, and didn’t follow protocols dictating when a sick patient should go to the hospital.

Mylander, the attorney representing the family, said in an interview that Jones was pressured to stay home, “by the person who was supposed to be the authority on what was best for her health.”

The next day, Cappel called 911 again, and another ambulance crew came to the home. Jones was unconscious when they arrived and died before they could take her to the hospital.

The legal obstacles

Jones’ family filed the Pennsylvania suit almost two years after her death, just days before state and federal statutes of limitations expired, Mylander said.

The family’s suit could be a test of a 2020 emergency order signed by former Gov. Tom Wolf that shielded health-care workers from civil liability over COVID care, “except in the cases of willful misconduct or gross negligence.” In late 2020, Wolf vetoed efforts to expand immunity to hospitals. In June 2021, liability immunity for workers expired when the state legislature ended the state’s COVID disaster declaration.

The protections were needed because COVID was a novel and deadly illness without clear treatment protocols, said Curt Schroder, executive director of the Pennsylvania Coalition for Civil Justice Reform, which advocates for business and health-care interests.

Critics, however, say the liability shields may have dissuaded lawyers from taking valid cases.

“Immunity is dangerous because it runs the risk of excusing wrongful behavior,” said **Tobi Millrood**, a Philadelphia lawyer and former president of the American Association for Justice, a national trial lawyers association.

Jones' attorney, and two other attorneys who read the complaint, told The Inquirer that the facts alleged in the suit went beyond conduct the COVID protections were designed to shield.

"This is not a COVID case," said Martin Kardon, of the Philadelphia law firm Kanter, Bernstein & Kardon, after reviewing the lawsuit. "It's a medical emergency that was ignored."

Published Feb. 23, 2023