



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

ANSWER OF...
September 21, 2020 11:24

By: JEANNE M. MULLIN 0071131

Confirmation Nbr. 2077000

JACQUELINE LARKIN, ADMINISTRATOR

CV 20 932630

vs.

UNIVERSITY HOSPITALS OF CLEVELAND, ET AL.

Judge: NANCY R. MCDONNELL

Pages Filed: 9

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JACQUELINE LARKIN,
ADMINISTRATOR OF THE ESTATE
OF JACKEE LARKIN, DECEASED,

Plaintiff,

-vs-

UNIVERSITY HOSPITALS OF
CLEVELAND, et al.

Defendant.

)
) CASE NO.: CV 20 932630
)
) JUDGE NANCY R. MCDONNELL
)
) **ANSWER OF DEFENDANTS**
) **UNIVERSITY HOSPITALS OF**
) **CLEVELAND, UNIVERSITY**
) **HOSPITALS CASE MEDICAL CENTER,**
) **UNIVERSITY HOSPITALS HEALTH**
) **SYSTEM, INC., UNIVERSITY**
) **HOSPITALS MEDICAL GROUP, INC.,**
) **DAVID ANDREW FOLT, M.D., RAHUL**
) **VIKRAM JASWANEY, M.D., FATEMAH**
) **ARDESHIR-LARIJANI, M.D., AND**
) **MAROUN MATTA, M.D.**
)
) **(Jury Demand Endorsed Hereon)**
)
)
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Now come Defendants, University Hospitals of Cleveland, University Hospitals Case
Medical Center, University Hospitals Health System, Inc., University Hospitals Medical Group,

Inc., David Andrew Folt, M.D., Rahul Vikram Jaswaney, M.D., Fatemah Ardeshir-Larijani, M.D., and Maroun Matta, M.D. (collectively, “Answering Defendants”),¹ by and through counsel, Reminger Co., L.P.A., and for their Answer to Plaintiffs’ Complaint hereby state as follows:

FIRST CLAIM FOR RELIEF – MEDICAL MALPRACTICE

1. One or more of the Answering Defendants admit that University Hospitals of Cleveland, University Hospitals Case Medical Center, University Hospitals Health System, Inc., and University Hospitals Medical Group, Inc. are entities existing under the laws of the State of Ohio and that they are licensed to do business in the State of Ohio as alleged in Paragraph 1 of the Plaintiff’s Complaint. Further answering, these Answering Defendants deny that University Hospitals Health System, Inc. provides medical care to patients as alleged in that Paragraph and further states that University Hospitals Health System, Inc. is not a proper party to this action.

2. One or more of the Answering Defendants admit that David Andrew Folt, M.D., Rahul Vikram Jaswaney, M.D., Fatemah Ardeshir-Larijani, M.D., and Maroun Matta, M.D. are physicians licensed to provide medical care under the laws of the State of Ohio as alleged in Paragraph 2 of the Plaintiff’s Complaint. However, as no specific time frame is referenced in this Paragraph, these Answering Defendants cannot fully admit or deny the allegations contained therein.

3. One or more of the Answering Defendants admit generally that David Andrew Folt, M.D., Rahul Vikram Jaswaney, M.D., Fatemah Ardeshir-Larijani, M.D., and Maroun Matta, M.D. were servants, agents, or employees of one or more of the corporate Defendants as alleged in

¹ Concurrently with this Answer, Defendants Anshul Kumar Badhwar, M.D., Jamal Hajjari, M.D., Nina Robinson Rivera, M.D., Sarah Ann Kennedy, M.D., Justin R. Lappen, M.D., Mada F. Helou, M.D., Michael P. Zacharias, M.D., Steven L. Porter, M.D., Tyler J. Katz, M.D., and Julie Herzog, CNP have filed their Motion to Dismiss requesting an Order from this Court dismissing Plaintiff’s medical claims against them due to Plaintiff’s continued failure to comply with Civ.R. 10(D)(2).

Paragraph 3 of the Plaintiff's Complaint. Further answering, these Answering Defendants specifically deny any and all allegations of negligence as implicitly alleged against them in that Paragraph. These Answering Defendants deny the remaining allegations contained within that Paragraph because they are vague and ambiguous.

4. One or more of the Answering Defendants admit that one or more of the Defendants rendered medical care and treatment to Jackee Larkin from April 4, 2019 through the time of her death on August 31, 2019 as alleged in Paragraph 4 of the Plaintiff's Complaint.

5. These Answering Defendants specifically deny any and all allegations of negligence, breaches in the standards of care, and/or direct or proximate cause as directly or implicitly alleged against them in Paragraph 5 of the Plaintiff's Complaint. Further answering, these Answering Defendants deny the portion of the allegation concerning the word "safe" as that term is vague as used in this Paragraph.

6. These Answering Defendants specifically deny any and all allegations of negligence, breaches in the standard of care and/or direct or proximate cause as directly or implicitly alleged against them in Paragraph 6 of Plaintiff's Complaint.

7. These Answering Defendants specifically deny any and all allegations of negligence, breaches in the standard of care and/or direct or proximate cause as directly or implicitly alleged against them in Paragraph 7 of Plaintiff's Complaint. Further answering, these Answering Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 7 of the Plaintiffs' Complaint as stated and, therefore, deny same for want of knowledge.

8. These Answering Defendants specifically deny any and all allegations of negligence, breaches in the standard of care and/or direct or proximate cause as directly or

implicitly alleged against them in Paragraph 8 of the Plaintiff's Complaint. Further answering, the allegations against these Answering Defendants contained in Paragraph 8 call for legal conclusions to which no response by these Answering Defendants is required.

SECOND CLAIM FOR RELIEF – MEDICAL PRACTICE
WRONGFUL DEATH

9. These Answering Defendants incorporate all answers, admissions, and denials in Paragraph 1 - 8 above as if fully rewritten herein.

10. These Answering Defendants specifically deny any and all allegations of negligence, breaches in the standard of care, wrongful death and/or direct or proximate cause as directly or implicitly alleged against them in Paragraph 10 of the Plaintiff's Complaint.

11. These Answering Defendants specifically deny any and all allegations of negligence, breaches in the standard of care, wrongful death and/or direct or proximate cause as directly or implicitly alleged against them in Paragraph 11 of the Plaintiff's Complaint. These Answering Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 11 of the Plaintiffs' Complaint as stated and, therefore, deny same for want of knowledge.

12. These Answering Defendants specifically deny any and all allegations of negligence, breaches in the standard of care, wrongful death and/or direct or proximate cause as directly or implicitly alleged against them in Paragraph 12 of the Plaintiff's Complaint. These Answering Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 12 of the Plaintiffs' Complaint as stated and, therefore, deny same for want of knowledge.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted against these Answering Defendants.

2. Plaintiff has failed to join a necessary and/or indispensable party.

3. Plaintiff's claims fail as it is not the real party in interest to some, if not all of the claims asserted.

4. Pursuant to Ohio Civ.R. 12(B)(5), there was insufficiency of service of process as to these Answering Defendants.

5. These Answering Defendants will offer proof of the defenses of Plaintiff's and/or Plaintiff's decedent's primary and/or implied assumption of the risk and/or contributory/comparative negligence which will reduce, in whole or in part, Plaintiff's right to recovery, if any.

6. The Plaintiff's and/or Plaintiff's decedent's alleged damages claimed, if any, were caused by the acts and/or omissions of someone other than these Answering Defendants over whom these Answering Defendants had no control or right to control or authority over.

7. The Plaintiff's and/or Plaintiff's decedent's alleged damages were caused by unforeseeable, independent, intervening and/or superseding events beyond the control of and unrelated to the conduct of these Answering Defendants. these Answering Defendants' actions and omissions, if any, were superseded by such unforeseeable, independent, intervening and superseding events of others.

8. These Answering Defendants are entitled to a set-off pursuant to R.C. 2307.28 and the fault of the other/non-parties pursuant to R.C. 2307.22 and 23.

9. Plaintiff's failed to join all necessary, proper, and/or indispensable parties, including, but not limited to, potential subrogees.

10. Plaintiff's claims may be barred by the doctrines of waiver, release, unclean hands, laches, and/or estoppel as discovery may produce evidence of same.

11. Plaintiff's claims may be barred to the extent that the claimed injuries of Plaintiff's decedent happened from pre-existing unrelated and/or pre-existing medical and/or psychiatric conditions and/or procedures and/or an act outside of their control.

12. Plaintiff and/or Plaintiff's decedent may have failed to mitigate its damages/losses.

13. Plaintiff's decedent's alleged injuries and damages, which are denied, were not due to or caused by any alleged fault, lack of care, negligence, or breach of duty by these Answering Defendants.

14. Plaintiff's purported claims of corporate negligence or corporate malfeasance are not cognizable under Ohio law in the context of medical claims and must be dismissed with prejudice.

15. One or more of Plaintiff's claims may be barred by the applicable statute of limitations.

16. One or more aspects of Plaintiff's claims may be barred by the applicable statute of repose set forth in R.C. 2305.113.

17. One or more aspects of Plaintiff's claims may lack a reasonable good faith basis to bring this medical claim, thereby, entitling these Answering Defendants to an award of attorney's fees and costs against Plaintiff as provided in R.C. 2323.42.

18. One or more aspects of Plaintiff's decedent's injuries or damages of which Plaintiff complains, are attributable to one or more persons from whom Plaintiff does not seek recovery in this action.

19. One or more aspects of Plaintiff's decedent's injuries or damages alleged in Plaintiff's Complaint were caused by the acts or omissions of others, whose conduct these Answering Defendants have no reason to anticipate and for whose conduct these Answering Defendants are and were not responsible.

20. These Answering Defendants assert that they are entitled to common law and statutory set-off (R.C. 2307.28) of any monies received by the Plaintiff for the injury at issue in the Complaint.

21. These Answering Defendants maintain that the only fair and proper evidence of medical expense, as an item of damages, is the amount of medical expense actually incurred by a payor. Amounts charged but not collected are improper evidence insofar as if awarded, they would constitute a windfall recovery.

22. These Answering Defendants assert that the injury or harm suffered by Plaintiff or Plaintiff's decedent at issue in this case was not foreseeable.

23. These Answering Defendants are entitled to an apportionment of liability to other parties and non-parties to this action pursuant to R.C. 2307.23.

24. One or more of the Answering Defendants owed no duty to Plaintiff or Plaintiff's decedent and are not proper parties to this action.

25. Plaintiff lacks standing to assert one or more of the causes of action asserted in Plaintiff's Complaint.

26. Plaintiff's Complaint fails to comply with Rule 10(D)(2) as to one or more of the defendant physicians named in the Complaint.

27. These answering Defendants reserve the right to add any additional affirmative defenses as the evidence and discovery so disclose.

WHEREFORE, having fully answered Plaintiff's Complaint, these Answering Defendants pray that Plaintiff's Complaint be dismissed, with all costs assessed to the Plaintiff.

Respectfully submitted,

/s/ Jeanne Mullin

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Counsel for Defendants

JURY DEMAND

Pursuant to Civil Rule 38(B), these Answering Defendants demand a jury trial on all triable issues.

/s/ Jeanne Mullin

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Christine Santoni, Esq. (0062110)
REMINGER CO., L.P.A.

Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served via email and the Court's electronic docketing system on this 21st day of September, 2020, upon the following:

Jonathan D. Mester, Esq.
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