

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION

**ROBERT BROKAMP, as Executor of
the Estate of
VIRGINIA BROKAMP**
12007 London Road
Orient, Ohio 43146

Plaintiff,

vs.

**MOUNT CARMEL HEALTH SYSTEM
D/B/A MOUNT CARMEL WEST**
c/o CT Corporation System, Agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

and

WILLIAM S. HUSEL, D.O.
4757 Aberdeen Avenue
Dublin, Ohio 43016

and

NICOLE PAVLIK, RPH
638B City Park Avenue
Columbus, Ohio 43206

and

TYLER SPRINGER, RN
2121 Legends Drive
Grove City, Ohio 43123

Defendants.

Case No: 19-CV-_____

Judge _____

Jury Demand Endorsed Hereon

COMPLAINT

FACTS AND JURISDICTION

1. Pursuant to R.C. 2305.21, Plaintiff Robert Brokamp brings this action as the duly appointed Executor of the Estate of Virginia Brokamp for the exclusive benefit of the next of kin.

2. Defendant Mount Carmel Health System (“Mount Carmel”) is an Ohio corporation, doing business as Mount Carmel West, which is located in Columbus, Franklin County, Ohio. Mount Carmel provides treatment, by and through its actual and ostensible agents and employees, to those in need of medical care.

3. Defendant William S. Husel, D.O. (“Defendant Husel”), with offices in Franklin County, Ohio, is duly licensed to practice osteopathic medicine by and in the State of Ohio. At all times relevant, Defendant Husel provided treatment for consideration to those in need of medical care as an employee and/or agent of Mount Carmel.

4. Defendant Nicole Pavlik, RPh (“Defendant Pavlik”) is a resident of Columbus, Franklin County, Ohio who is a registered pharmacist by and in the State of Ohio. At all times relevant, Defendant Pavlik was a pharmacist providing pharmacy services as an employee and/or agent of Mount Carmel.

5. Defendant Tyler Springer, RN (“Defendant Springer”) is a resident of Grove City, Franklin County, Ohio who is a registered nurse by and in the State of

Ohio. At all times relevant, Defendant Springer provided nursing care and services to patients as an employee and/or agent of Mount Carmel.

6. Defendants, individually or by and through agents and/or employees, were involved in medical care and treatment of Virginia Brokamp on May 7, 2017, while he was a patient at Mount Carmel.

7. Virginia Brokamp was brought to Mount Carmel on May 6, 2017, due to suffering cardiac arrest. She was admitted to the ICU, resuscitated, and hooked up to a ventilator. Despite aggressive therapy, the Ms. Brokamp's family was encouraged to withdraw care and life support.

8. Shortly thereafter, Virginia Brokamp was prescribed, and administered, a lethal dose of Fentanyl by Defendant Husel.

9. At 1:39 AM on May 7, 2017, Defendant Husel ordered that 200 micrograms (mcg) of Fentanyl be given to Virginia Brokamp through her IV line for palliative ventilator withdrawal.

10. Mount Carmel policy does not permit Fentanyl be given for palliative ventilator withdrawal.

11. This inappropriate dose of Fentanyl was either ordered negligently and not properly reviewed, or was intentionally prescribed by Defendant Husel for the purposes of hastening the termination of Virginia Brokamp's life.

12. Despite the inappropriate order of Fentanyl, Mount Carmel's electronic medical records system failed to flag and alert Virginia Brokamp's medical providers that such an order appeared to be in error. Alternatively, this excessive dose of Fentanyl

was flagged and/or alerted by the system as inappropriate, but Defendants ignored the alerts because the order was intended to hasten the termination of Virginia Brokamp's life.

13. Defendant Husel's order of an inappropriate dosage of Fentanyl was reviewed and approved by Mount Carmel's pharmacist - Defendant Pavlik - and the medication was made available to Defendant Springer, Virginia's nurse in the ICU.

14. Defendant Pavlik knew that the ordered dosage of Fentanyl was inappropriate, served no therapeutic purpose or function, and would only serve to hasten the termination of Virginia Brokamp's life.

15. Defendant Springer, administered the dosage on May 7, 2017 at 1:39 AM, with full knowledge that such an inappropriate dose of Fentanyl would hasten the termination of Virginia Brokamp's life.

16. Virginia Brokamp was pronounced dead at approximately 1:48 AM on May 7, 2017, just 9 minutes after receiving the inappropriate dose of Fentanyl. Virginia was 72 years old when she died.

17. On January 24, 2019, Plaintiff received a call from a physician-administrator affiliated with Mount Carmel. That administrator informed him that Virginia Brokamp received an excessive dosage of pain medication from Defendants, but claimed it was not the "cause of her death."

18. As to the medical claims included herein, an Affidavit of Merit is attached hereto as Exhibit 1, and incorporated herein as contemplated by Civ.R. 10(D)(2).

PLAINTIFF'S CLAIMS FOR RELIEF AGAINST DEFENDANTS

Count I: Battery (Survivorship)

19. Defendants, individually or by and through agents or employees, intentionally ordered and administered an inappropriate dosage of Fentanyl designed to cause serious harm and death to Virginia Brokamp, on May 7, 2017.

20. The administration of Fentanyl to Virginia Brokamp was harmful and offensive.

21. Virginia Brokamp did not consent to receiving this inappropriate dose of Fentanyl from Defendants.

22. Defendants' administration of the inappropriate dose of Fentanyl to Virginia Brokamp exhibited a reckless disregard for her health and safety.

23. As a direct and proximate result of the conduct of Defendants, Virginia Brokamp suffered significant harm and death.

Count II: Medical Negligence (Survivorship)

24. Defendants, individually and/or vicariously by and through agents or employees, were professionally negligent and fell below the accepted standards of care in that they failed to exercise the degree of care required under similar circumstances by, *inter alia*, prescribing, providing, and administering an inappropriate dosage of Fentanyl to Virginia Brokamp.

25. As a direct and proximate result of the negligence of Defendants, Virginia Brokamp suffered severe and permanent injuries resulting from the inappropriate dosage of Fentanyl she was given, including a loss of life expectancy.

Count III: Intentional Infliction of Emotional Distress

26. In taking the actions described herein, Defendants, either individually or by and through actual or ostensible agents and/or employees, intended to cause serious emotional harm to Virginia Brokamp and her next of kin, or knew their actions would necessarily result in such emotional harm.

27. Defendants, either individually or by and through actual or ostensible agents and/or employees engaged in extreme and outrageous conduct as described herein.

28. As a direct and proximate result of the intentional conduct of Defendants, Virginia Brokamp suffered severe and permanent injuries, including a loss of life expectancy and a wrongful death.

29. As a direct and proximate result of the intentional conduct of Defendants, and the injuries and wrongful death of Virginia Brokamp, Plaintiff's beneficiaries suffered serious emotional distress and harm.

Count IV: Wrongful Death

30. As a direct and proximate result of the intentional acts or omissions, negligence, and/or professional negligence of Defendants as set forth above, Virginia Brokamp suffered a wrongful death on May 7, 2017.

31. As a further direct and proximate result of the negligence and/or professional negligence of the Defendants and the wrongful death of Virginia Brokamp, her next of kin have suffered mental anguish as well as pecuniary and non-pecuniary losses, including, but not limited to, loss of society, support, services, care, assistance,

attention, protection, advice, guidance, counsel, instruction, training, and education, and any other items specified in R.C. 2125.02(B).

32. As a further direct and proximate result of the negligence and/or professional negligence of Defendants and the wrongful death of Virginia Brokamp, the Estate has incurred reasonable burial and funeral expenses.

PLAINTIFF'S CLAIMS FOR RELIEF AGAINST MOUNT CARMEL

Count V: Negligent Credentialing

33. Mount Carmel granted privileges to Defendant Husel, when he was inadequately trained and incompetent to perform critical care and anesthesia services.

34. Defendant Husel was negligent in his treatment of Virginia Brokamp, and as a direct and proximate result of that negligence, she suffered injuries and a wrongful death.

35. In addition to his negligence in treating Virginia Brokamp, Defendant Husel is alleged to have been negligent in providing care to additional patients under similar circumstances to those presented in this case.

36. Mount Carmel had a duty to evaluate and determine the ability and competency of Defendant Husel to care for patients commensurate with his licensure and within the applicable standard of care.

37. Mount Carmel, by and through their employees, agents, and staff physician committees, was negligent in selecting or retaining Defendant Husel and/or in granting him staff privileges.

38. Mount Carmel continued to allow, and/or failed to revoke Defendant Husel's privileges at its facilities when it knew or should have known of Defendant Husel's incompetence and/or history of practicing medicine so as to fall below the applicable standard of care.

39. Mount Carmel failed to adequately review and evaluate Defendant Husel's education, character, fitness to practice osteopathic medicine, and his past performance as a specialist.

40. Mount Carmel ignored or failed to investigate the care and treatment provided by Defendant Husel to other patients, including failing to investigate patient complaints and/or other evidence of Defendant Husel's incompetence.

41. Mount Carmel committed other acts or omissions constituting the tort of negligent credentialing, which may be determined during the discovery process or trial.

42. But for the negligence of Mount Carmel, Defendant Husel would not have been granted staff privileges to care for critical care patients at its facilities.

43. But for the negligence of Mount Carmel in selecting and/or retaining Defendant Husel, he would not have been granted staff privileges, and Virginia Brokamp would not have suffered the above described injuries and damages.

Count VI: Negligent Supervision

44. On information and belief, Defendants Husel, Pavlik, and Springer were employees of Mount Carmel at all times relevant, acting within the scope of their employment when they provided care and treatment to Virginia Brokamp, including the ordering, approval, and administration of the inappropriate dose of Fentanyl.

45. Defendants Husel, Pavlik, and Springer were not competent to care for patients in the manner in which they engaged while employees of Mount Carmel.

46. Mount Carmel was aware either actually, or constructively, of the incompetence of Defendants Husel, Pavlik, and Springer.

47. The actions of Defendants Husel, Pavlik, and Springer, as set forth herein, caused significant and permanent injury to Virginia Brokamp, including her wrongful death, all of which resulted in damages to Plaintiff and the next of kin.

48. Mount Carmel's negligence in supervising its employees, Defendants Husel, Pavlik, and Springer, was a direct and proximate cause of the harm suffered by Virginia Brokamp and Plaintiff.

PUNITIVE DAMAGES

49. The conduct of Defendants could only result from Mount Carmel's systemic deficiencies and practices, which Mount Carmel failed to remedy, and which resulted in significant harm to at least 34 patients, including Virginia Brokamp.

50. Defendants' engaged in willful, wanton, and reckless misconduct and malice, exhibiting a reckless disregard for the health and safety of their patients, including Virginia Brokamp, and created a great probability of causing substantial harm.

51. As a direct and proximate result of Defendants' egregious misconduct, Virginia Brokamp suffered injury and a wrongful death, as set forth above.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus interest, the costs of this action, and

any other relief this Court deems just and equitable, including punitive damages for the intentional, egregious, and reckless misconduct of Defendants.

Respectfully submitted,

/s/ Gerald S. Leeseberg
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JURY DEMAND

Plaintiff hereby respectfully demands a jury of eight as to all issues contained herein.

/s/ Gerald S. Leeseberg
Gerald S. Leeseberg

AFFIDAVIT OF MERIT

Steven B. Bird, M.D., being first duly sworn, states the following to be true:

1. I submit this Affidavit of Merit in accordance with Ohio Civil Rule 10(D)(2)(a).
2. I am licensed to practice medicine by the Massachusetts Board of Registration in Medicine and am board certified in Emergency Medicine and Toxicology.
3. I devote at least one-half of my professional time to the active clinical practice of medicine, or to its instruction in an accredited school.
4. I have reviewed all medical records reasonably available to Plaintiff concerning the allegations contained in the Complaint.
5. I am familiar with the applicable standards of care in this case.
6. In my opinion, the standard of care was breached by Defendants and such breaches were a direct and proximate cause of injuries and death to Virginia Brokamp.



STEVEN B. BIRD, M.D.

Sworn to and subscribed before me on February 15th 2019.

Nancy A. Bourne
NOTARY PUBLIC

