

MEMORANDUM IN SUPPORT

I. THE HUSEL CASES

This is one of 27 cases currently pending in the Franklin County Court of Common Pleas alleging the death of plaintiff's decedent occurred while under the medical care and treatment of Dr. William Husel at Mount Carmel Health System ("Mount Carmel.") (collectively, the "Husel Cases"). Specifically, plaintiffs allege in every case that the death of his or her decedent was caused by an excessive dose of medication ordered by Dr. Husel and administered through the decedent's IV while he or she was a patient at Mount Carmel between approximately September 26, 2014, and November 20, 2018. In this and every other related case, the plaintiff alleges that Mount Carmel failed to properly enact and/or follow appropriate policies and procedures to prevent such conduct, and also failed to properly supervise Dr. Husel and other involved treatment providers. The 27 Husel Cases include the following:

1. *Schottle v. Mount Carmel Health System, et al.*, Case No. 19 CV 353 (Jan. 14, 2019);
2. *Austin v. Mount Carmel Health System, et al.*, Case No. 19 CV 405 (Jan. 15, 2019);
3. *Allison v. Mount Carmel Health System, et al.*, Case No. 19 CV 410 (Jan. 16, 2019);
4. *Thomas v. Mount Carmel Health System, et al.*, Case No. 19 CV 573 (Jan. 22, 2019);
5. *Bellisari v. Mount Carmel Health System, et al.*, Case No. 19 CV 690 (Jan. 25, 2019);
6. *Allen v. Mount Carmel Health System, et al.*, Case No. 19 CV 695 (Jan. 25, 2019);

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7. *Hodge v. Mount Carmel Health System, et al.*, Case No. 19 CV 802 (Jan. 28, 2019);
8. *Welch v. Mount Carmel Health System, et al.*, Case No. 19 CV 806 (Jan. 28, 2019);
9. *Watkins v. Mount Carmel Health System, et al.*, Case No. 19 CV 943 (Jan. 31, 2019);
10. *Marshall v. Mount Carmel Health System, et al.*, Case No. 19 CV 1080 (Feb. 5, 2019);
11. *Weis v. Mount Carmel Health System, et al.*, Case No. 19 CV 1081 (Feb. 5, 2019);
12. *Brigner v. Mount Carmel Health System, et al.*, Case No. 19 CV 1082 (Feb. 5, 2019);
13. *Penix v. Mount Carmel Health System, et al.*, Case No. 19 CV 1138 (Feb. 7, 2019);
14. *Hammond v. Mount Carmel Health System, et al.*, Case No. 19 CV 1182 (Feb. 7, 2019);
15. *McClung v. Mount Carmel Health System, et al.*, Case No. 19 CV 1138 (Feb. 7, 2019);
16. *Young v. Mount Carmel Health System, et al.*, Case No. 19 CV 1290 (Feb. 12, 2019);
17. *Walters v. Mount Carmel Health System, et al.*, Case No. 19 CV 1473 (Feb. 19, 2019);
18. *Buzzard v. Mount Carmel Health System, et al.*, Case No. 19 CV 1474 (Feb. 19, 2019);

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19. *Brokamp v. Mount Carmel Health System, et al.*, Case No. 19 CV 1476 (Feb. 19, 2019);
20. *Blake v. Mount Carmel Health System, et al.*, Case No. 19 CV 1628 (Feb. 22, 2019);
21. *Fortenberry v. Mount Carmel Health System, et al.*, Case No. 19 CV 1629 (Feb. 22, 2019);
22. *Eal v. Mount Carmel Health System, et al.*, Case No. 19 CV 1686 (Feb. 26, 2019);
23. *Castle v. Mount Carmel Health System, et al.*, Case No. 19 CV 1810 (Mar. 1, 2019);
24. *Francies v. Mount Carmel Health System, et al.*, Case No. 19 CV 2105 (Mar. 12, 2019);
25. *Kriegbaum v. Mount Carmel Health System, et al.*, Case No. 19 CV 2187 (Mar. 14, 2019);
26. *McGann v. Mount Carmel Health System, et al.*, Case No. 19 CV 2327 (Mar. 19, 2019); and
27. *Pfaff v. Mount Carmel Health System, et al.*, Case No. 19 CV 2600 (Mar. 27, 2019).

As explained below, these cases should be consolidated because they involve common issues of law and fact and to avoid unnecessary costs and delay.

II. LAW AND ANALYSIS

A. Standard for Consolidation

Under Civil Rule 42(A)(1): “[i]f actions before the court involve a common question of law or fact, the court may: (a) join for hearing or trial any or all matters at issue in the actions; (b) consolidate the actions; or (c) issue any other orders to avoid

unnecessary cost or delay.” Civ.R. 42(A)(1). Further, Local Rule 31.02(E) provides: “When cases involving common questions of law or fact are pending before different trial judges, a party may file a motion to consolidate the cases.” Loc. R. 31.02(E).

“It is within the trial court’s discretion whether to consolidate.” *Waterman v. Kitrick*, 60 Ohio App.3d 7, 14 (10th Dist. 1990). “However, before the actions may be properly consolidated, the court must determine if there is enough commonality of issues to warrant consolidation and if the parties are substantially the same.” *Id.* Further, consolidation is appropriate where it would promote uniformity and consistency with regard to application and interpretation of the relevant law. *Magda v. Ohio Elections Com’n*, Franklin C.C.P. No. 12 CV 13674, 2013 WL 9850656, at *1. “In determining whether claims should be heard separately or together, various issues are considered, including judicial resources, expense to parties, and the risk of inconsistent adjudications.” *Buck v. Milano*, 9th Dist. Summit No. 26463, 2014-Ohio-5640, ¶7. Courts generally favor consolidation wherever possible. *Id.*

Under Franklin County Local Rules, the Motion to Consolidate “shall be filed in each case which the movant seeks to consolidate”¹ and “ruled upon by the trial judge assigned to the case and approved by the trial judge having the lowest numbered case.” Loc. R. 31.02(E)(1). Here, the lowest numbered case is *Schottle v. Mount Carmel Health System d/b/a Mount Carmel West, et. al.*, Franklin C.C.P. Case No. 19cv353 (Jan. 14, 2019), pending before the Honorable Judge Kim Brown. Thus, the decision whether to approve consolidation is left to Judge Brown. See, Loc. R. 31.02(E)(1).

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¹ Contemporaneously herewith, a Motion to Consolidate has been filed in all 27 Husel Cases.

If so approved, an entry shall be prepared in accordance with Loc. R. 25.² *Id.* The entry shall bear the complete case captions of all cases to be consolidated and signature spaces for all assigned trial judges. *Id.* The entry shall be initially presented to the trial judge having the lowest numbered case (Judge Brown). *Id.* After signature by the trial judge having the lowest numbered case, the movant shall present the entry for signature by each trial judge whose cases are affected by the consolidation. *Id.*

If consolidated, each case shall remain separate and distinct. Loc. R. 31.02(E)(2). All subsequent pleadings shall bear the complete captions of all consolidated cases and shall be filed in each case. *Id.* The case schedule of the lowest numbered case shall control the proceedings in the consolidated cases, unless otherwise ordered by the trial judge. *Id.*

B. Consolidation is Appropriate Since the Husel Cases Involve Common Questions of Law and Fact, and Consolidation Promotes Judicial Economy and Avoids Unnecessary Costs and Delay.

The Husel Cases involve common questions of law and fact, and therefore, should be consolidated in order to promote judicial economy and avoid unnecessary costs and delay. Factually, every case arises from the same allegations: the death of the respective plaintiff's decedent at Mount Carmel West while under the medical care and treatment of Dr. Husel. More specifically, every case alleges that Dr. Husel ordered a negligent dosage of medication (in most cases, Fentanyl), which is alleged to have caused the decedent's death. Further, every one of the plaintiffs claim that Mount Carmel lacked adequate policies, procedures, and oversight in order to prevent such alleged conduct.

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² For the Court's convenience, a proposed Judgment Entry is attached.

It is anticipated that each of the 27 plaintiffs (many represented by the same counsel) will seek to depose the same representatives of Mount Carmel. Every plaintiff will seek to discover the policies and procedures of Mount Carmel. It is also anticipated that every plaintiff will seek to depose Dr. Husel. All of the plaintiffs will seek to depose the pharmacists and nurses involved in the care and treatment of their decedents regarding that care and treatment and their knowledge of applicable policies and procedures. Also, many of the same documents will be relevant to every case, such as policies, procedures, and personnel files.

Legally, every case involves the same claims for negligence, wrongful death, and seeks punitive damages. Every case will involve resolution of the same defenses, and will also require the Court to rule on certain discovery disputes and other issues of law. Consolidation is required so that applicable laws can be applied uniformly and consistently to each claim. *See, Magda*, 2013 WL 9850656, at *1 (consolidating administrative appeals where, even though the appeals would have to be reviewed on separate underlying records, nearly identical issues were involved and consolidation promoted the interests of consistency and uniformity in the application of law to facts); *Buck*, 2014-Ohio-5640, ¶7 (finding the trial court abused its discretion when it did not grant consolidation because “the issues and the parties in the two cases overlap considerably” and “[g]iven the degree to which these cases are intertwined, . . . the failure to consolidate them created a significant risk of inconsistent adjudications.”).

By way of example, in these cases Dr. Husel has plead immunity under Ohio statutes R.C. 1337.15 and/or 2133.11. (See, e.g., Case Numbers 19 CV 405, 573, and 802). When and if the Court must decide whether the immunity statute applies as a matter of law, such a decision is relevant in all of the Husel Cases. Similar issues

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regarding Mount Carmel's duties and liability in law for Dr. Husel's actions are likely to arise. There are also the issues of discovery and a stay, as this Defendant has already requested in three cases. After discovery, the same jury instructions should be agreed to and read to juries at trial of these cases. Pretrial motions in limine should be decided consistently. Necessarily there will be many rulings in each of these cases that will apply to all of the Husel cases, and a consolidation will promote uniformity and consistency in application and interpretation of the relevant law. *See Magda, supra.*

As a practical matter, the logistics of maintaining 27 case schedules and repeating discovery in 27 cases presents a significant burden that can be avoided through consolidation. Consolidating these cases allows the Court to efficiently manage its docket and expend judicial resources. It will enable the parties to methodically manage and investigate 27 similar claims, saving the Court from having to oversee the same issues in individual cases, each on a different timeline. By consolidating the Husel Cases, the Court can get all of these cases on the same schedule, before one judge, and efficiently prepare these cases for trial.

III. CONCLUSION

Each of the 27 Husel Cases arise from identical circumstances, allege the same claims, involve the same defendants, and raise similar issues of law and fact. Thus, in the interests of judicial economy, avoiding unnecessary costs and delay, and avoiding inconsistent rulings, Defendant requests that the Court consolidate the Husel Cases and thereafter, the combined cases should proceed through discovery and be prepared for trial. Defendant does not move to consolidate the cases for trial at this time.

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A proposed Judgment Entry granting this Motion and providing signature lines for every judge assigned in each of the Husel Cases is attached for the Court's convenience.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2019, I electronically filed the foregoing with the Clerk of the Court using the ECF/eFiling system, which will send notification of such filing to all counsel of record.

/s/ Gregory B. Foliano

Gregory B. Foliano

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