

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

VICKIE McCLUNG, Individually and as
Administrator of the Estate of Donald H. McClung
3197 B. Ave.
Columbus, OH 43207

Plaintiff,

v.

MOUNT CARMEL HEALTH SYSTEM
dba MOUNT CARMEL WEST
c/o CT Corporation System, Statutory Agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

and

TRINITY HEALTH CORPORATION
c/o CT Corporation System, Statutory Agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

and

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

and

JOHN DOE HOSPITAL ADMINISTRATORS
& EMPLOYEES #1-5
Names and Addresses Unknown to Plaintiff

Defendants.

Case No. 19 CV 1233

Judge Jeffrey M. Brown

FIRST AMENDED COMPLAINT

Jury Demand Endorsed Hereon

FIRST AMENDED COMPLAINT

Now comes Plaintiff Vickie McClung, as Administrator of the Estate of Donald H.

McClung, by and through counsel, Rourke & Blumenthal, LLP, and states as follows:

1. Plaintiff has the right to file this First Amended Complaint as a matter of course because no responsive pleading has been filed by the Defendants yet.

2. Until his death on September 18, 2018, Donald McClung was a resident of Columbus, Ohio.

3. Donald McClung died on September 18, 2018 as a result of a lethal dose of Dilaudid.

4. Plaintiff Vickie McClung was appointed the Administrator of the Estate of Donald H. McClung on February 4, 2019 by the Franklin County Probate Court, Case No. 595996.

5. At all times relevant herein, Defendant Mount Carmel Health System dba Mount Carmel West (hereinafter “Defendant Mount Carmel”) was a non-profit corporation under Ohio laws with its primary place of business in Columbus, Ohio, which employed physicians, pharmacists, nurses, and other personnel for the purpose of providing medical care to the general public. By virtue of the doctrines of *respondeat superior* and vicarious liability, Defendant Mount Carmel is liable for the acts and omissions of its employees and agents.

6. At all times relevant herein, Defendant Trinity Health Corporation (“Defendant Trinity”) is an Indiana corporation, doing business in Ohio as the owner, operator and/or parent company of Defendant Mount Carmel. Defendant Trinity provides treatment, by and through its actual and ostensible agents and employees, to those in need of medical care, including patients at Mount Carmel West Hospital. By virtue of the doctrines of *respondeat superior* and vicarious liability, Defendant Trinity is liable for the acts and omissions of its employees and agents.

7. At all times relevant herein, Defendant William S. Husel, D.O. was a physician licensed to practice medicine in the State of Ohio. At all times relevant herein, he was practicing

medicine in the course and scope of his employment or agency with Defendant Mount Carmel. Dr. Husel was actively involved in the medical care of Donald McClung at the time of his death and is responsible for ordering the lethal dose of medication which caused his death.

8. At all times relevant herein, John Doe Hospital Administrators & Employees #1-5 (names and addresses unknown to Plaintiff) were residents of Ohio and were administrators/employees of Defendant Mount Carmel acting within the course and scope of their employment with the hospital when they failed to timely and adequately protect patients from being harmed by Defendant Dr. Husel's conduct. When the identities of John Doe Hospital Administrators & Employees #1-5 have been determined, Plaintiff will seek leave to amend her Complaint accordingly.

9. Jurisdiction and venue are proper pursuant to Ohio Civil Rule 3 as one or more of the Defendants reside and/or maintain a principal place of business in Franklin County, Ohio.

10. Pursuant to Civ. R. 10(D)(2), attached is an Affidavit of Merit signed by John W. Schweiger, M.D., F.C.C.P.

COMMON FACTUAL ALLEGATIONS

11. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully restated herein.

12. Donald McClung, age 58, was admitted to Mount Carmel West for shortness of breath on September 10, 2018. Studies showed that he had mild congestive heart failure. On September 17, 2018, he was transferred to the ICU where he came under the care of Defendant Dr. Husel. It was the understanding of the McClung family that the plan was for Donald to undergo a heart ablation and possibly receive a pacemaker. Dr. Husel ordered Amiodarone on September 17, 2018 at 0017 and 0025 on September 18, 2018, Donald McClung

was noted to have a pulse ox of 92%, was not on a ventilator, and obeyed commands appropriately.

13. Plaintiff received a call from Dr. Husel at approximately 0200 on September 18 advising that Donald's condition was deteriorating. Based on this discussion, Donald's code status was changed to "DNR" with no escalation of care. Family members arrived at the hospital shortly after Plaintiff's call with Dr. Husel. Donald was sitting up and breathing on his own when they saw him.

14. At 0404, 4mg of Dilaudid IV was ordered by Dr. Husel and administered by Nurse Blair.

15. At 0418, Dr. Husel ordered another 6mg of Dilaudid IV for Donald. This order was verified and signed by the pharmacist and administered by Nurse Macioce-Quinn at 0433.

16. Donald McClung died on September 18, 2018 shortly after being administered the excessive and fatal amount of Dilaudid.

COUNT ONE – NEGLIGENCE

17. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully restated herein.

18. Defendants named herein, individually and by and through employees or agent, jointly and severally, were negligent in the care rendered to Donald McClung. The negligence includes, but is not limited to, ordering, approving, and administering a lethal dose of Dilaudid to Donald McClung on September 18, 2018. Furthermore, Defendants Mount Carmel and Trinity were negligent in the hiring, credentialing, training and in the supervision of its employees, including Defendant Dr. Husel, pharmacists, and the nursing staff. Defendants Mount Carmel and Trinity and John Does Hospital Administrators & Employees #1-5 were also negligent in

failing to take appropriate action to protect patients from receiving excessive and fatal medication overdoses by Dr. Husel and other members of the Mount Carmel medical staff. Defendants Mount Carmel and Trinity were negligent for failing to ensure a system was in place at Mount Carmel West to monitor and prevent large doses of central nervous system medications from being accessed from the automated medication dispensing system by overriding warnings and prior approvals from pharmacists. Defendants Mount Carmel and Trinity were also negligent for failing to adequately train medical staff regarding reporting and preventing inappropriate conduct by other staff members which harmed patients. Defendants were negligent in other respects as well.

19. As a direct and proximate result of the negligence described herein, Donald McClung suffered injury, conscious pain and suffering, was stripped of the dignity of life, had his rights violated, and ultimately died.

20. As a further direct and proximate result of the negligence described herein, Donald McClung suffered a loss of chance of recovery from his medical condition. This lost chance of recovery resulted in the damages described herein.

COUNT TWO – BATTERY

21. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully restated herein.

22. Defendants, individually and by and through agents or employees, intentionally ordered and administered a grossly inappropriate and lethal dose of medication designed to cause serious harm and death to Donald McClung on September 18, 2018.

23. The administration of this lethal dose of medication to Donald McClung was harmful and offensive.

24. Donald McClung did not consent to receiving a lethal dose of medication from Defendants.

25. Defendants' administration of the lethal dose of medication to Donald McClung constituted a reckless disregard for his health, safety, and dignity.

26. As a direct and proximate result of the conduct of Defendants, Donald McClung suffered significant harm and death.

COUNT THREE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

27. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully restated herein.

28. In taking the actions described herein, Defendants, either individually or through its agents or employees, intended to cause serious emotional harm to Donald McClung, Plaintiff, who was present during the events, including Donald's death, and Donald McClung's surviving family.

29. The conduct of the Defendants was extreme and outrageous.

30. As a direct and proximate cause of the intentional conduct of the Defendants, Donald McClung suffered injury, was stripped of the dignity of life, had his rights violated, and ultimately died.

31. As a further direct and proximate cause of the intentional conduct of the Defendants, Plaintiff and the other beneficiaries of the decedent suffered significant emotional distress and harm.

COUNT FOUR – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

32. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully restated herein.

33. As a direct and proximate result of the failures and negligence of the Defendants as described herein, individually and by and through employees and agents, Defendants prematurely concluded that Donald McClung was near death and so advised his family. Based on this information, Plaintiff made the decision to change the code status for Donald McClung to “do not resuscitate” on September 18, 2018.

34. As a direct and proximate result of the failures and negligence of the Defendants as described herein, Plaintiff, who was physically present during this event and witnessed Donald McClung pass away, suffers from, and will continue to suffer from, severe and debilitating emotional distress and anguish as a result of the manner in which Donald McClung died. Plaintiff suffers from, and will continue to suffer from, severe emotional distress and anguish from the after-acquired knowledge that Donald McClung was negligently or intentionally killed.

35. Plaintiff’s severe emotional distress and anguish was reasonably foreseeable by Defendants in light of their egregious conduct.

COUNT FIVE – WRONGFUL DEATH

36. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully restated herein.

37. As a direct and proximate cause of the failures and negligence of the Defendants described herein, individually and by and through employees and agents, Donald McClung wrongfully and prematurely died on September 18, 2018.

38. As a direct and proximate result of the failures and negligence of the Defendants described herein, individually and by and through employees and agents, and the resulting death of Donald McClung, his Estate incurred funeral expenses as well as other expenses.

39. As a further direct and proximate result of the failures and negligence of the Defendants described herein, individually and by and through employees and agents, and the premature death of Donald McClung, his survivors, including, but not limited to his surviving spouse, Vickie McClung, children, Kenda McClung and Katryna McClung, and other next of kin, have suffered severe mental anguish, emotional distress, and have otherwise been damaged as contemplated by Ohio's wrongful death statute. Donald McClung's survivors and next of kin are entitled to be compensated in an amount reasonable, proper, and commensurate with their losses.

COUNT SIX – PUNITIVE DAMAGES

40. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully restated herein.

41. Defendants Mount Carmel and Trinity have acknowledged publicly that at least 35 patients were given excessive and fatal medication dosages at the direction of Dr. Husel over the course of approximately three-years.

42. Defendants engaged in willful, wanton and reckless misconduct and malice, exhibiting a conscious and reckless disregard for the health and safety of their patients, including Donald McClung. Defendants Mount Carmel and Trinity knew, or should have known, about the egregious conduct of Dr. Husel and other staff members well before receiving formal notice on October 25, 2018. Specifically, incredibly high amounts of central nervous system medications were being taken from the pharmacy without a medically justifiable reason and numerous pharmacists and nurses were involved in the approval and administration of medications that obviously served no medical purpose.

43. As a direct and proximate result of Defendants' conduct, Donald McClung suffered injury and death, and Plaintiff and other surviving family suffered emotional distress, thereby making Defendants liable for punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount in excess of \$25,000, plus interest, costs, and other relief that this Court deems just and equitable, including punitive damages for the intentional, egregious, and reckless misconduct of the Defendants.

Respectfully submitted,

/s/ Michael J. Rourke

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JURY DEMAND

Plaintiff, by and through counsel, hereby demands a jury of eight persons on all issues set forth herein.

/s/ Michael J. Rourke

Michael J. Rourke (0022950)
Timothy M. Mahler (0079574)

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing First Amended Complaint has been electronically filed this 1st day of April, 2019, and will be served on the following counsel of record.

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