

mechanical ventilation were required. Despite intubation, she required medications to support her blood pressure. Though the doctors continued to increase her blood pressure support, unfortunately Ms. Penix continued to fail, resulting in the need for maximum support. Her family decided she would not want to be put on a ventilator and requested removal of the support that was sustaining Ms. Penix's life. For want of knowledge, because they are not true, or as a matter of form because the allegations are not directed at this answering Defendant and/or require no responsive pleading, this answering Defendant denies any and all remaining allegations made and contained in paragraph 15 of Plaintiff's Complaint.

2. For want of knowledge, because they are not true, or as a matter of form because the allegations are not directed at this answering Defendant and/or require no responsive pleading, this answering Defendant denies any and all allegations made and contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73 and 74 of Plaintiff's Complaint.

3. This answering Defendant denies any and all allegations set forth in Plaintiff's Complaint that are not specifically admitted as true herein.

AFFIRMATIVE DEFENSES

4. This Defendant is immune to this suit and not liable in damages in this tort or any tort of this nature pursuant to R.C. 1337.15 et. seq. and R.C. 2133.11 et. seq.

5. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

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6. Plaintiff's claims for recovery are barred by the equitable doctrines of waiver, estoppel (and/or promissory estoppel) and/or laches.

7. Plaintiff's Complaint is inadequate pursuant to Civil Rule 10(D)(2).

8. Plaintiff has failed to join necessary and/or indispensable parties pursuant to Rules 19 and 19.1 of the Ohio Rules of Civil Procedure.

9. Plaintiff and/or Plaintiff's decedent's claimed injuries and damages were caused by the superseding and/or intervening acts of other parties or persons over whom this Defendant had and could have had no control.

10. This Defendant is entitled to a set-off of damages and/or limitation of damages pursuant to statute.

11. The injuries and damages of which Plaintiff complains are contributed to by one or more persons from whom Plaintiff did not seek recovery in this action pursuant to R.C. 2307.23(C).

12. Plaintiff may not be the real party in interest over all or part of this claim.

13. Plaintiff may lack capacity to pursue this action.

14. Defendant asserts the defense of failure to mitigate damages.

15. Defendant asserts the defense of legal waiver.

16. Defendant asserts the defense of the statute of frauds as to any applicable claims.

17. Defendant asserts the defense of parol evidence as to any applicable claims.

18. Defendant asserts a lack of privity.

19. As to any applicable causes of action, Defendant asserts the defense of lack of malice and/or lack of intent.

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20. This answering Defendant respectfully reserves the right to assert additional affirmative defenses if ongoing discovery reveals that such defenses are warranted.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant William S. Husel, D.O., prays that Plaintiff's Complaint be dismissed as against him with prejudice and that he be allowed to go hence without delay and with his costs.

ARNOLD TODARO WELCH & FOLIANO CO., L.P.A.

By: /s/ Gregory B. Foliano
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Counsel for Defendant
William S. Husel, D.O.

JURY DEMAND

Defendant William S. Husel, D.O., hereby demands a trial by jury of the within action.

/s/ Gregory B. Foliano
Gregory B. Foliano (0047239)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Clerk via this Court's ECF/eFiling system this 30th day of April, 2019, which will provide service to all counsel of record.

/s/ Gregory B. Foliano
Gregory B. Foliano (0047239)

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