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Franklin County Ohio Clerk of Courts of the Common Pleas- 2019 Jan 23 8:46 AM-19CV000410

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

CHRISTINE ALLISON, as Administrator of the Estate of TROY L. ALLISON
82 South Gift Street
Columbus, Ohio 43215

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

JASON SCHULZE, RN
2799 Brandon Road
Columbus, Ohio 43221

and

JOHN DOE #1, PHARMACIST WHO APPROVED THE LETHAL DOSAGE OF FENTANYL TO TROY L. ALLISON
Address Unknown

Defendants.

Case No: 19-CV-000353

Judge Kim J. Brown

Jury Demand Endorsed Hereon

AMENDED COMPLAINT

FACTS AND JURISDICTION

1. Pursuant to R.C. 2305.21, Plaintiff Christine Allison brings this action as the duly appointed Administrator of the Estate of Troy L. Allison 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 Jason Schulze, RN ("Defendant Schulze"), a resident of Columbus, Franklin County, Ohio, is a registered nurse by and in the State of Ohio. At all times relevant, Defendant Schulze provided nursing care and services to patients, including Troy Allison, as an employee and/or agent of Mount Carmel.

5. Defendant John Doe #1, name and address unknown, is a registered pharmacist by and in the State of Ohio. At all times relevant, John Doe #1 was a

pharmacist providing pharmacy services as an employee and/or agent of Mount Carmel, including approving of narcotic medication orders to Troy Allison and other patients.

6. Defendants, individually or by and through agents and/or employees, were involved in medical care and treatment of Troy Allison on July 14-15, 2018, while he was a patient at Mount Carmel.

7. Troy Allison was brought to Mount Carmel at around 11:00 PM on July 14, 2018. Less than two hours after arriving, his wife – Plaintiff Christine Allison – was told that Troy Allison was "brain dead" and was encouraged to change his status to "do not resuscitate." Shortly thereafter, Troy Allison was prescribed, and administered, a lethal dose of Fentanyl on or about July 15, 2018.

8. The lethal dose of Fentanyl was ordered by Defendant Husel at 1:25 AM on July 15, 2018, to be given to Troy L. Allison through his IV line.

9. This grossly inappropriate dose was either ordered negligently and not properly reviewed, or was intentionally prescribed by Defendant Husel for the purposes of hastening the termination of Troy Allison's life.

10. Despite the grossly excessive and inappropriate order of Fentanyl, Mount Carmel's electronic medical records system failed to flag and alert Troy Allison'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 Troy Allison's life.

11. On information and belief, Defendant Husel's order of a grossly excessive and inappropriate dosage of Fentanyl was approved by Mount Carmel's pharmacist – Defendant John Doe #1, though such approval and review of the order is not apparent in the Mount Carmel chart for Troy Allison.

12. The grossly excessive and inappropriate dosage of Fentanyl was made available to Defendant Schulze, Troy's nurse.

13. Defendant John Doe #1, the pharmacist, knew that the ordered dosage of Fentanyl was grossly inappropriate, served no therapeutic purpose or function, and would only serve to hasten the termination of Troy Allison's life.

14. Defendant Schulze, administered the lethal dosage on July 15, 2018 at 1:25 AM, with full knowledge that such a grossly inappropriate dose of Fentanyl would hasten the termination of Troy Allison's life.

15. Troy Allison was pronounced dead at approximately 1:28 AM on July 15, 2018, just 3 minutes after receiving the lethal dose of Fentanyl. Troy was 44 years old.

16. On or about December 27, 2018, Plaintiff received a call from a physician-administrator affiliated with Mount Carmel. That administrator informed Plaintiff that Troy Allison was given a lethal dosage of "morphine" by Defendants which hastened and/or caused Troy's premature death.

17. The administrator further informed Plaintiff that all individuals involved in the provision of the excessive dosage of "morphine" were suspended from patient care by Mount Carmel, as a result of, *inter alia*, the actions taken with regard to Troy Allison, and that she may be receiving a call from detectives investigating the 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 a grossly inappropriate and lethal dosage of Fentanyl designed to cause serious harm and death to Troy Allison, on July 15, 2018.

20. The administration of a lethal dose of Fentanyl to Troy Allison was harmful and offensive.

21. Troy Allison did not consent to receiving a lethal dose of Fentanyl from Defendants.

22. Defendants' administration of the lethal dose of Fentanyl to Troy Allison exhibited a reckless disregard for Troy's health and safety.

23. As a direct and proximate result of the conduct of Defendants, Troy Allison 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 a grossly inappropriate and lethal dosage of Fentanyl to Troy Allison.

25. As a direct and proximate result of the negligence of Defendants, Troy Allison suffered severe and permanent injuries resulting from the lethal dosage of Fentanyl he was given, including a loss of life expectancy.

Count III: Negligence (Survivorship)

26. Defendant John Doe #1 owed a duty of reasonable care to Troy Allison in the services he provided as a registered pharmacist. Defendant John Doe #1 was negligent and breached that duty.

27. As a direct and proximate result of the negligence of Defendant John Doe #1, Troy Allison suffered severe and permanent injuries resulting from the grossly inappropriate and lethal dosage of Fentanyl he was given, including a loss of life expectancy.

Count IV: Intentional Infliction of Emotional Distress

28. 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 Troy Allison and his next of kin, or knew their actions would necessarily result in such emotional harm.

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

30. As a direct and proximate result of the intentional conduct of Defendants, Troy Allison suffered severe and permanent injuries, including a loss of life expectancy and a wrongful death.

31. As a direct and proximate result of the intentional conduct of Defendants, and the injuries and wrongful death of Troy Allison, Plaintiff's beneficiaries.

Count V: Wrongful Death

32. As a direct and proximate result of the intentional acts or omissions, negligence, and/or professional negligence of Defendants as set forth above, Troy Allison suffered a wrongful death on July 15, 2018.

33. As a further direct and proximate result of the negligence and/or professional negligence of the Defendants and the wrongful death of Troy Allison, his 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).

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

PLAINTIFF'S CLAIMS FOR RELIEF AGAINST MOUNT CARMEL

Count VI: Negligent Credentialing

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

36. Defendant Husel was negligent in his treatment of Troy Allison, and as a direct and proximate result of that negligence, he suffered injuries and a wrongful death.

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

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

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

44. 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.

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

Count VII: Negligent Supervision

46. On information and belief, Defendants Husel, Schulze, and John Doe #1 were employees of Mount Carmel at all times relevant, acting within the scope of their employment when they provided care and treatment to Troy Allison, including the ordering, approval, and administration of the grossly inappropriate and lethal dose of Fentanyl.

47. Defendants Husel, Schulze, and John Doe #1 were not competent to care for patients in the manner in which they engaged while employees of Mount Carmel.

48. Mount Carmel was aware either actually, or constructively, of the incompetence of Defendants Husel, Schulze, and John Doe #1.

49. The actions of Defendants Husel, Schulze, and John Doe #1, as set forth herein, caused significant and permanent injury to Troy Allison, including his wrongful death, all of which resulted in damages to Plaintiff and the next of kin.

50. Mount Carmel's negligence in supervising its employees, Defendants Husel, Schulze, and John Doe #1, was a direct and proximate cause of the harm suffered by Troy Allison and Plaintiff.

PUNITIVE DAMAGES

51. 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 27 patients, including Troy Allison.

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

53. As a direct and proximate result of Defendants' egregious misconduct, Troy Allison 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/ Craig S. Tuttle

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Attorneys for Plaintiff

JURY DEMAND

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

/s/ Craig S. Tuttle
Craig S. Tuttle

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2019, a copy of the foregoing document was filed with the Clerk of Courts through the Court's e-filing system, which will serve the following individuals by certified U.S. Mail:

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

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

JASON SCHULZE, RN
2799 Brandon Road
Columbus, Ohio 43221

JOHN DOE #1, PHARMACIST WHO
APPROVED THE LETHAL DOSAGE OF
NARCOTICS TO TROY L. ALLISON
Address Unknown

/s/ Craig S. Tuttle
Craig S. Tuttle

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 Troy Allison l

STEVEN B. BIRD, M.D.

Sworn to and subscribed before me on January 22nd 2019.

Nancy A. Boisvert
NOTARY PUBLIC

EXHIBIT
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