

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANGELA LOWE,	)	CASE NO. 1:08-cv-01339
)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
)	
vs.	)	<u>JOINT ANSWER OF DEFENDANTS</u>
	)	<u>MIDWEST MEDICAL STAFFING, INC.,</u>
CUYAHOGA COUNTY/BOARD OF	)	<u>EMMANUEL O. TUFFUOR, M.D.,</u>
COMMISSIONERS, <i>et al.</i>,	)	<u>DONALD KELLON, M.D., AND</u>
	)	<u>LEOPOLDO ALVARADO, M.D. TO</u>
Defendants.	)	<u>PLAINTIFF'S FOURTH AMENDED</u>
	)	<u>COMPLAINT</u>
)	
	)	<u>(Jury Demand Endorsed Hereon)</u>

RESPONSE TO I. INTRODUCTION

1. These answering Defendants admit that Sean Levert was incarcerated in the Cuyahoga County Jail on March 24, 2008. Further answering, these answering Defendants deny the remaining allegations contained in Paragraph 1.

RESPONSE TO II. JURISDICTION

2. Denied for want of knowledge and otherwise.

RESPONSE TO III. PARTIES

3. Admitted.

4. The allegations contained in Paragraph 4 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 4 are neither admitted nor denied.

5. The allegations contained in Paragraph 5 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 5 are neither admitted nor denied.

6. The allegations contained in Paragraph 6 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 6 are neither admitted nor denied.

7. The allegations contained in Paragraph 7 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 7 are neither admitted nor denied.

8. Admitted.

9. Denied that Dr. Kellon was an agent of MMS. Further answering, the remaining allegations contained in Paragraph 9 are admitted.

10. Denied that Dr. Alvarado was an agent of MMS. Further answering, the remaining allegations contained in Paragraph 10 are admitted.

11. Denied that Dr. Tuffuor was an agent of MMS. Further answering, the remaining allegations contained in Paragraph 11 are admitted.

12. The allegations contained in Paragraph 12 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 12 are neither admitted nor denied

13. The allegations contained in Paragraph 13 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 13 are neither admitted nor denied

14. The allegations contained in Paragraph 14 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 14 are neither admitted nor denied

15. The allegations contained in Paragraph 15 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 15 are neither admitted nor denied

16. The allegations contained in Paragraph 16 are not directed to these answering Defendants. Therefore the allegations contained in Paragraph 16 are neither admitted nor denied

17. Denied for want of knowledge and otherwise.

RESPONSE TO IV. FACTS

18. Denied for want of knowledge and otherwise.

19. Denied for want of knowledge and otherwise.

20. Admitted that Sean Levert pled guilty to non-payment of child support and was sentenced to prison. Further answering, each and every other allegation contained in Paragraph 20 is denied for want of knowledge and otherwise.

21. Denied for want of knowledge and otherwise.

22. Admitted.

23. Denied for want of knowledge and otherwise.

24. Denied for want of knowledge and otherwise.

25. Denied for want of knowledge and otherwise.

26. Denied for want of knowledge and otherwise.

27. Denied for want of knowledge and otherwise.

28. Denied as to these answering Defendants.

29. Denied as to these answering Defendants.

30. Admitted.

31. Admitted.

32. Admitted.

33. Denied as to these answering Defendants.

34. Admitted.

35. Denied for want of knowledge and otherwise as to these answering Defendants.

36. Denied for want of knowledge and otherwise as to these answering Defendants.

37. Denied for want of knowledge and otherwise as to these answering Defendants.

38. Denied for want of knowledge and otherwise as to these answering Defendants.

39. Denied for want of knowledge and otherwise as to these answering Defendants.

40. Denied for want of knowledge and otherwise as to these answering Defendants.

41. Denied for want of knowledge and otherwise as to these answering Defendants.
42. Denied for want of knowledge and otherwise as to these answering Defendants.
43. Denied for want of knowledge and otherwise as to these answering Defendants.
44. Denied for want of knowledge and otherwise as to these answering Defendants.
45. Denied for want of knowledge and otherwise as to these answering Defendants.
46. Denied for want of knowledge and otherwise as to these answering Defendants.
47. Denied for want of knowledge and otherwise as to these answering Defendants.
48. Denied for want of knowledge and otherwise as to these answering Defendants.
49. Denied for want of knowledge and otherwise as to these answering Defendants.
50. Denied for want of knowledge and otherwise as to these answering Defendants.

Admitted that Sean Levert was never physically seen by a physician or psychiatrist after being transferred to the mental health unit.

51. Denied for want of knowledge and otherwise as to these answering Defendants.
52. Denied.
53. Denied for want of knowledge and otherwise as to these answering Defendants.
54. These answering Defendants deny that Defendant Lawrence “failed” to administer the injection. It is admitted that Sean Levert did not receive the injection. Further answering, the remaining allegations contained in Paragraph 54 are admitted by these answering Defendants.

55. Denied.
56. Denied as to these answering Defendants.
57. Denied as to these answering Defendants.
58. Denied as to these answering Defendants.

59. Denied as to these answering Defendants.

60. Denied as to these answering Defendants.

61. Denied as to these answering Defendants.

RESPONSE TO V. FIRST CAUSE OF ACTION - 42 U.S.C. §1983

62. Denied as to these answering Defendants.

63. Denied as to these answering Defendants.

64. Denied as to these answering Defendants.

65. Denied as to these answering Defendants.

RESPONSE TO VI. SECOND CAUSE OF ACTION - WRONGFUL DEATH

66. Denied as to these answering Defendants.

RESPONSE TO VII. THIRD CAUSE OF ACTION - MALPRACTICE BY PHYSICIANS

67. Denied as to these answering Defendants.

68. Denied as to these answering Defendants.

69. Denied as to these answering Defendants.

RESPONSE TO VIII. FOURTH CAUSE OF ACTION - MALPRACTICE BY NURSES

70. The allegations contained in Paragraph 70 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

71. The allegations contained in Paragraph 71 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

**RESPONSE TO IX. FIFTH CAUSE OF ACTION - NEGLIGENCE BY MMS AND
MEDICAL DIRECTOR**

72. Midwest Medical Staffing (MMS) avers that the physicians it provided to work in the Cuyahoga County Jail were not employees or agents, but rather were independent contractors. It is admitted that the physicians who provided medical care to Sean Levert had a duty to provide reasonable medical care. It is denied that the physicians provided to the

Cuyahoga County Jail by MMS were employees or agents of Emmanuel Tuffuor, M.D. It is averred that MMS and Dr. Emmanuel Tuffuor did not provide medical care to Sean Levert while he was incarcerated.

73. With respect to MMS, it is admitted that it has a duty to provide physicians to the Cuyahoga County Jail who are qualified to provide medical care at the Jail. It has a duty to use reasonable care in determining the qualification of the independent contractor physicians provided to the Cuyahoga County Jail for medical services. It is denied that the physicians supplied to the Cuyahoga County Jail are agents or employees of MMS. It is denied that Dr. Tuffuor provides physicians to work at the Cuyahoga County Jail because the contract is between MMS and the Cuyahoga County Jail.

74. Denied.

75. Denied.

76. Denied.

**RESPONSE TO X. SIXTH CAUSE OF ACTION - NEGLIGENT AND RECKLESS
BREACH OF DUTY BY SHERIFF, JAIL DIRECTOR, HEALTH CARE MANAGER
AND COUNTY**

77. The allegations contained in Paragraph 77 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

78. The allegations contained in Paragraph 78 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

79. The allegations contained in Paragraph 79 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

80. The allegations contained in Paragraph 80 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

81. The allegations contained in Paragraph 81 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

82. The allegations contained in Paragraph 82 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

83. The allegations contained in Paragraph 83 are not directed to these answering Defendants, and therefore the allegations are neither admitted nor denied.

RESPONSE TO XI. SEVENTH CAUSE OF ACTION - LOSS OF CONSORTIUM

84. Denied for want of knowledge and otherwise.

85. The allegations contained in Paragraph 85 are denied as to these answering Defendants.

86. The allegations contained in Paragraph 86 are denied as to these answering Defendants.

87. These answering Defendants deny each and every statement and allegation directed toward them that are not specifically admitted to be true herein.

AFFIRMATIVE DEFENSES

1. Plaintiffs Complaint fails to state a claim against these Defendants upon which relief can be granted.

2. All or part of the claims set forth in Plaintiff's Complaint are barred by the applicable statute of limitations.

3. This Court lacks jurisdiction of the within action by virtue of the Plaintiffs failure to comply with the pleading requirements as required by the Ohio Revised Code.

4. Plaintiff has failed to join necessary and/or indispensable parties to this lawsuit.

5. Plaintiffs damages, if any, are the result of events or circumstances, intervening or otherwise, beyond the control of these Defendants.

6. Plaintiffs damages, if any, were proximately caused by the intervening and/or superseding misconduct of parties not under the control of these Defendants.

7. One or more of Plaintiff's claims is barred by the applicable statute of limitations set forth in O.R.C. §2305.112, and/or the doctrine of waiver, estoppel or laches.

8. All or part of the injuries or damages alleged in Plaintiff's Complaint were caused by the acts and omissions of another or others, whose conduct these Defendants have no reason to anticipate and for whose conduct these Defendants are and were not responsible. (O.R.C. §2307.22 et seq.)

9. One or more of Plaintiffs claims for damages are subject to the limits on certain types of damages, and this Court is without jurisdiction to enter judgment for Plaintiff beyond the limitations set forth in O.R.C. §2323.43.

10. These Defendants are entitled to a set-off from any judgment against them all sums paid to the Plaintiff by any source whatsoever.

11. These Defendants reserve their right to assert any additional defenses which discovery in this matter reveals are applicable.

12. These Defendants are entitled to all of the defenses and immunities provided under Chapter 2744.01 of the Ohio Revised Code, which bar Plaintiff's state law claims.

13. Defendants are entitled to qualified good faith immunity.

WHEREFORE, having fully answered, these answering Defendants pray that Plaintiff's Fourth Amended Complaint be dismissed at Plaintiff's cost.

/s/ Patrick J. Murphy

Patrick J. Murphy (0029503)

Keith Hansbrough (0072671)

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Attorneys for Defendants Midwest Medical Staffing, Inc., Emmanuel O. Tuffuor, M.D., Donald Kellon, M.D. and Leopoldo Alvarado, M.D.

JURY DEMAND

Defendants Midwest Medical Staffing, Inc., Emmanuel O. Tuffuor, M.D., Donald Kellon, M.D. and Leopoldo Alvarado, M.D. demand a trial by jury, said jury to be composed of the maximum number of jurors allowed by law.

/s/ Patrick J. Murphy

Patrick J. Murphy (0029503)

Keith Hansbrough (0072671)

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2010, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ Patrick J. Murphy
Patrick J. Murphy (0029503)
Keith Hansbrough (0072671)