

Whose Identities are Known to Defendants and to those Who Have Not Been Named But Knew the Acts, Omissions, and Wrongful Conduct Towards Plaintiffs and Either Have Been Secreted or Not Now Joined, Yet Are Aware of Defendants' Conduct Who Are Not Known to Plaintiffs But Shall be Ascertained Through Discovery *

Defendants.

PARTIES

1. Plaintiff, Terrance Fontaine, is the Administrator of the Estate of Karla A. Fontaine, having been appointed same in the Montgomery County Probate Court in Case No. 2009EST00657 on April 7, 2009.
2. Plaintiff, Terrance Fontaine, brings this action individually as the surviving spouse of Karla Fontaine and on behalf of the Estate of Karla Fontaine.
3. Plaintiffs, Karlen Jones, Tara Fontaine, and Carlos Fontaine are the minor children of Karla Fontaine. Terrance Fontaine is the guardian of the children of the decedent.
4. Defendant, Good Samaritan Hospital ("GSH") is an Ohio corporation and a duly licensed hospital and/or clinic under the laws of the State of Ohio and its policies for GSH. Defendant GSH through its agent(s), servant(s), and employee(s) were responsible for seeing to, or rendering, appropriate care and treatment to Karla Fontaine on or about March 3, 2009 and at various times previous thereto and thereafter.
5. Defendant, Premier Health Partners ("PHP") is the parent corporation of Good Samaritan Hospital, Miami Valley Hospital, Atrium Medical Center, and Upper Valley Medical Center and is responsible for negotiating and utilizing standards of care and payments from health care insurance providers such as Blue Cross and Blue Shield of Ohio.
6. At all times pertinent herein Defendant Cheryl A. Gill, D.O. ("Gill") was a duly licensed physician engaged in the practice of family medicine in Dayton, Montgomery County, Ohio.

17. Defendants Jane and/or John Does are nurses and/or other health care providers who rendered care and treatment to decedent, Karla Fountaine, whose identities are not yet known but shall be ascertained through discovery.
18. Defendant Anthem Blue Cross and Blue Shield ("BC/BS") is an Ohio corporation and health maintenance organization, managed care organization, and insurer, with its principal place of business in the State of Ohio. BC/BS has provided health insurance benefits to Karla Fountaine in connection with the treatment of injuries suffered as a result of the actions of the other named Defendants. There is a genuine dispute with BC/BS with regards to the existence and/or extent of BC/BS's subrogation rights for health benefits paid on Plaintiff's behalf in connection with these injuries. There is also a genuine issue of BC/BS's liability for providing approval of treatment by Defendants, jointly and severally, and paying for such treatment when BC/BS knew, or should have known of the wrongful act of Defendants and participated in them within the standard of care.
19. Defendant BC/BS failed to perform its duties pursuant to R.C. 1751.73 to insure Dr. Gill, GSH, PHP, and nurse Guilliford when it allowed Dr. Gill obstetrical privileges. (Ex. 2)
20. At all times relevant herein, decedent Karla Fountaine was a patient and/or insured under the joint and several care of Defendants, who were agents and employees for each other and jointly and severally liable.
21. The Defendants performed, adopted and ratified the acts of each other and are therefore jointly and severally liable.

FIRST CAUSE OF ACTION
(Medical Negligence)

22. Plaintiff incorporates all the foregoing paragraphs as if fully rewritten herein.
23. At the time of her death, Karla Fountaine was 34 years old. She had a past medical history of bacterial vaginosis and tuberculosis, both diagnosed by Defendant Gill and not conditions contributory to her death.
24. Karla Fountaine and her husband had been attempting to conceive a child for a long period of time. She became pregnant in May 2007 and delivered on January 5, 2008. Thereafter, she became pregnant again in approximately July 2008 and her estimated delivery date was March 29, 2009.
25. Karla Fountaine was considered to be a high risk pregnancy or should have been considered a high risk pregnancy at the critical portion of her pregnancy. Karla Fountaine progressed through her pregnancy from August 5, 2009 by all

34. On March 3, 2009 at approximately 8:50 p.m. Karla returned to the emergency room at GSH with complaints of constant throbbing headache and vomiting. She was admitted to the hospital and cared for by nurse Guilliford. Karla Fountaine should have been delivered by C-Section immediately at that time.
35. At approximately 9:00 p.m. on March 3, 2009 nurse Guilliford took Karla's blood pressure and it was 155/100. Her blood pressure had been normal during her pregnancy, averaging 102/62 and over the prior ten years had averaged 105/63 during the time she was treated by Dr. Gill.
36. At approximately 11:49 p.m. on March 3, 2009 Karla complained to nurse Guilliford of constant throbbing headache, vomiting, and her weight had increased to 164 lbs.
37. At approximately 2:08 a.m. Karla complained to nurse Guilliford of nausea and continued headache.
38. At approximately 3:45 a.m. on March 4, 2009 nurse Guilliford found Karla was gasping, unresponsive, vomiting in her bed, and exhibiting stroke-like symptoms.
39. During the entire time from the time Karla Fountaine presented to GSH at 8:50 p.m. on March 3, 2009 until she was found unresponsive in her bed at 3:45 a.m. on March 4, 2009 there was a board certified ob/gyn on duty and physically present at GSH.
40. At no time prior to 3:45 a.m. on March 4, 2009 was the board certified ob/gyn asked to see Karla Fountaine by either Gill or Guilliford.
41. Defendant Gill did not come to the hospital at any time between prior to 3:45 a.m. on March 4, 2009 to examine Karla Fountaine, nor did she request that Karla Fountaine be seen by any other physician.
42. An emergency Cesarean section was performed and Carlos Fountaine was delivered on March 4, 2009 at 5:03 a.m. by board certified ob/gyn Shelley Joiner, M.D., who was physically present at GSH during Karla Fountaine's entire admission.
43. Karla Fountaine died on March 4, 2009 at 5:15 p.m. The cause of death was listed as intracerebral hemorrhage. She had died from severe pre-eclampsia/eclampsia/stroke related to her course of pregnancy.
44. Plaintiff states that Defendants jointly, severally, egregiously, wantonly/ recklessly/willfully, intentionally departed from the accepted standards of medical

51. Defendant GSH propounded a grossly inadequate policy as evidenced by Exhibit 1 and negligently/recklessly/wantonly/willfully failed to see it was enforced upon their nurses and staff doctors.
52. Defendant GSH put Dr. Gill and Nurse Guilliford into the positions and permitted them to monitor, treat, diagnose in the wrongful manner aforesaid, proximately resulting in the injuries and damages to Plaintiffs.
53. Defendant GSH attempted to delegate non-delegable duties of Dr. Gill as established within the standard of care and then failed to enforce policies, determine the method of enforcement, train, or otherwise effect.
54. Under the facts of the case, Dr. Gill, as well as nurse Guilliford are both agents/employees of the Defendant GSH and PHP and agents of each other.
55. The Defendants jointly and severally denied the decedent an increased chance of recovery.

FOURTH CAUSE OF ACTION

(Wrongful Death, Ohio R.C. 2125.01)

56. Plaintiff incorporates all of the foregoing paragraphs as if fully rewritten herein.
57. Plaintiff states that as a direct and proximate result of the negligent, recklessness, wantonness, willfulness, and intentional conduct and medical malpractice of Defendants, plaintiff's decedent met her death on March 4, 2009.
58. The plaintiff's decedent left surviving her a spouse, a 12 year-old daughter, a 1 year-old daughter, an infant son, and other next-of-kin for whose benefit this action is brought.
59. As a direct and proximate result of the wrongful conduct and medical malpractice of the Defendants, jointly and severally, the decedent's husband, daughters, son, and other next-of-kin have been deprived of the decedent's loss of support, loss of services, loss of society, loss of companionship, loss of consortium, loss of care, loss of assistance, loss of attention, loss of protection, loss of advice, loss of guidance, loss of counsel, loss of instruction, loss of training, loss of education, loss of prospective inheritance, and have suffered emotional trauma and mental anguish by reason of the wrongful death of the decedent.
60. Plaintiff has incurred funeral expenses in the approximate sum of \$6,905.10 by reason of the wrongful death of decedent.

FIFTH CAUSE OF ACTION

(Declaratory Relief, R.C. 2721.01, Civ. R. 57)

71. Plaintiff incorporates all the foregoing paragraphs as if fully rewritten herein.
72. Plaintiff prays that the Court issue an order pursuant to R.C. 2721.01, et seq., Civil Rules 7, 8, 12,13,14,15 18, 19, 19.1, 20, 21, 26-37, 57, and the unlawful requirements of the Ohio Medical Malpractice Acts, as amended, especially as to involvement or non-involvement, requiring the Defendants or any other party to plead by way of answer, cross-claim, counter claim, or other pleading or motion, and produce evidence on the liability of all potential parties, or any unnamed persons, entities, or otherwise who may be liable to the Plaintiffs or Defendants, jointly or severally, or who otherwise are suitable, necessary or necessary (indispensable and permissive) for joinder, for all claims necessary for a full, complete, and timely adjudication of all causes and claims, including defenses, subrogation, indemnification, contribution to any party or potential party to the litigation of any potential claim in this case, which will count in the just, fair, and timely resolution of said issues at the pleading stage, as required by the Civil Rules. The exact statutes, rules and other laws will be identified in a separate motion and memorandum.
73. Defendant, BC/BS may or may not have rights to claims in the case at bar, all of which Plaintiffs deny by law, right and conduct of said Defendants. BC/BS has forfeited any such claims by violating R.C. 1751.73 et al. and other common law principles; there being no right to payment for wrongful conduct by the providers or payees.
74. The Court should order said insurance to plead its claims and declare its rights or entitlement to said participation of claim for relief, including its compliance with R.C. 1751.73, et al. the law concerning credentialing and the right to disgorge the payments to the other Defendants by BC/BS and not the Plaintiffs.
75. Should the Court Order the Defendant to have the right to present any said claims, the Court should further Order that it proceed to do so under the same standards of the Civil Rules as Plaintiffs against the Defendants, by naming its own expert and lay witnesses presenting all evidence as directed by the Rules of Evidence, Ohio Civil Rules, Montgomery County Local Rules and the Scheduling Order of the Court or waive and forfeit said rights.
76. The Court is requested to declare that BC/BS is required to present any of its claims, defenses, or otherwise, as an indispensable party and not simply as health care provider/payor for the Plaintiffs or Defendants, as well as its position as a Defendant.

79. The Plaintiffs are entitled to complete reimbursement for said services and charges and the aforesaid charges should be disgorged and paid to the Plaintiffs, or any real party in interests, who should be ordered to present by responsive pleading, said claim or be declared to have forfeited any right to same.

TENTH CAUSE OF ACTION

(Negligent Credentialing/Failure to Discipline/Maintenance of Privileges/Peer Review/Adoption)

80. Plaintiff incorporates all the foregoing paragraphs as if fully rewritten herein.
81. Plaintiff states that Defendant GSH was negligent, reckless, wanton, willful, intentional, and malicious (wrongful conduct) in the credentialing process and in granting and/or renewing the privileges of Gill when it knew, or should have known, she did not have the training, education, experience, or credentials to treat Plaintiff and others similarly situated in the public.
82. Plaintiff further states that Defendant GSH was willful and malicious in failing to recognize and act upon notice and knowledge in the course of the care and treatment of Plaintiff and others in the public. The exact extent of Defendant's wrongful conduct can be further proven by ascertaining like and similar injuries and deceased patients through the discovery process.
83. Plaintiff states that GSH was negligent, reckless, wanton, willful, intentional, and malicious and deviated from the standard of care in failing to adhere to the rules and regulations set forth by the Joint Commission on Hospital Accreditation (JCOHA), the State of Ohio (Ex. 2), and its own rules and by-laws in its credentialing process including the credentialing and maintenance of privileges process as it relates to obstetrics and high risks obstetrics as it pertained to Karla Fountaine, as well as soliciting, or allowing the solicitations, the public for patients in a like and similar unlawful manner for treatment by unqualified/less qualified physicians.
84. Plaintiff further states the Defendant GSH acted willfully, wantonly, intentionally, and with reckless disregard for the rights and safety of Plaintiff's decedent that was substantially certain to result in injury to Plaintiff and that said wrongful constitutes at least gross negligence, or other culpable wrongful conduct, requiring that punitive damages be considered and assessed.
85. The Defendant GSH, in its efforts to become a network with as many facilities and physicians as possible, has wrongfully acted against its stated statutory, corporate, and medical purposes proximately resulting in the wrongful acts

97. As a direct and proximate result of the Plaintiff's decedent's and Plaintiff's reliance upon the representations made by the Defendants, the Plaintiff suffered the injuries, death, and damages pled herein.

TWELFTH CAUSE OF ACTION
(Constructive Fraud²)

98. Plaintiff incorporates all the foregoing paragraphs as if fully rewritten herein.
99. The Plaintiff and the Defendants, as providers of medical care, had a special confidential and/or fiduciary relationship which afforded the Defendants the powers and means to take advantage and exercise undue influence and control over Plaintiff.
100. The relationship of the Plaintiff, and the public, to the Defendants are valuable social and economic interests based upon an enforced confidence of the Plaintiff and public.
101. The breach of these valuable social and economic interests and enforced concept of confidence, trust, and fiduciary relationship proximately caused injury and damages to the Plaintiff and will continue to cause death, injury, harm and danger of harm, injury or death unless remedied.
102. Constructive fraud, as opposed to actual fraud, concealment, misrepresentation and breach of duty to disclose.

THIRTEENTH CAUSE OF ACTION
(Lack of Ability to Treat/ Abandonment)

103. Plaintiff incorporates all the foregoing paragraphs as if fully rewritten herein.
104. Defendant Gill was totally inadequately trained and inexperienced in the performance of diagnosis, care, surgery, follow-up care, and medical treatment for the Plaintiff's decedent, as she did so in such a manner as to be negligent, grossly negligent, reckless, wanton, and willful and, in doing so, displayed a conscious indifference to the serious medical and familial needs of the Plaintiff.
105. Defendant GSH, its agents, employees, and assigns, knew, or should have known, or were reckless, wanton, willful, grossly negligent, intentional, and malicious in allowing the wrongful conduct of Gill whom they knew or should

² *Haines v. Giambrone* (1984), 14 Ohio App. 3d 400, 471 N.E. 2d 801

114. Plaintiffs incorporate all the foregoing paragraphs as if fully rewritten herein.
115. The payment of funds by BC/BS has resulted in an unjust enrichment of some of the Defendants who failed in their respective duties and responsibilities for the care and necessity of care and the ensuring payment for same should be denied.
116. These Defendants should be responsible for any said direct repayment of any claim by BC/BS, not by subrogation, reimbursement, assignment, or statute, lien, purportedly common law, or any other means, and not by the Plaintiff, directly or indirectly.
117. The Defendants should be disgorged of these payments by BC/BS and further should be responsible for the payment of the additional amounts of any reasonable value, not the actual amounts as compensatory damages, and the Court should so declare.
118. The Court should find said payments by BC/BS to be an unjust enrichment to the Defendants and/or disgorge the payments from the Defendants directly.
119. The Court is further asked to declare the Plaintiff's medical expenses are the reasonable value and not just the reduced paid amount.
120. The Court is further asked to declare that by reason of the sub-standard services of the Defendants, BC/BS is not entitled to claim repayment of any payment under any theory at law being in privity with the Defendants paid.

FIFTEENTH CAUSE OF ACTION

(Declaratory Relief/ 180 Day Notice of Potential Claims of Actually Designated Defendants or Potential Defendants Known by Good Samaritan Hospital³)

121. Plaintiffs incorporate all the foregoing paragraphs as if fully rewritten herein.
122. Plaintiffs seek a Declaration from the Court, after pleadings by the Defendants as to the involvement or joinder of any allegedly necessary parties, "empty chair" defendants, non-parties, third parties, employees, assigns, servants, or other unnamed parties regarding to whom the Defendants may intend to assign any portion of liability or claim their presence is necessary/indispensable for any purpose of pleading, trial, or litigation, or to those who may otherwise be liable to the Plaintiff for their

³ Will be addressed by separate motion.

or jointly, and demand the named Defendants, to admit, deny, aver or plead as to such need for the unnamed parties under their good faith duties to investigate and affirmatively plead upon their knowledge in good faith as to such need to so name them, or utilize their right to utilize them in or as an affirmative defense. They are plead as follows, with the expectation that the requirements of good-faith pleading require specific admissions or denials regarding the need for these persons to be named parties or otherwise to be utilized by the Defendants as named or unnamed parties, being claimed as a necessary/indispensable party, or used as affirmative defense, or otherwise implicated in Plaintiff's or Defendants' claims as defenses, or other incidents of the case at bar as the knowledge is particularly with the Defendants.
Admit or Deny:

- a. Bradley S. Jacobs, M.D. is not needed as a party to adjudicate the claims and issues in the case, or that Bradley S. Jacobs is or is not liable to the Plaintiff.
- b. Charles L. Bane, M.D. is not needed as a party to adjudicate the claims and issues in this case, or that Charles L. Bane is or is not liable to the Plaintiff.
- c. Shelly C. Joiner, M.D. is not needed as a party to adjudicate the claims and issues in this case, or that Shelly C. Joiner is or is not liable to the Plaintiff.
- d. Amir I. Malik, M.D. is not needed as a party to adjudicate the claims and issues in this case, or that Amir I. Malik is or is not liable to the Plaintiff.
- e. Mary Fisher, R.N. is not needed as a party to adjudicate the claims and issues in this case, or that Mary Fisher is or is not liable to the Plaintiff.
- f. Antonia Tomlinson, R.N. is not needed as a party to adjudicate the claims and issues in this case, or that Antonia Tomlinson is or is not liable to the Plaintiff.
- g. Cathy Saunders, R.N. is not needed as a party to adjudicate the claims and issues in this case, or that Cathy Saunders is or is not liable to the Plaintiff.
- h. Karen Mateer, R.N. is not needed as a party to adjudicate the claims and issues in this case, or that Karen Mateer is or is not liable to the Plaintiff.
- i. Diana Pearson, R.N. is not needed as a party to adjudicate the claims and issues in this case, or that Diana Pearson is or is not liable to the Plaintiff.

- w. C. King, R.N. is not needed as a party to adjudicate the claims and issues in this case, or that C. King is or is not liable to the Plaintiff.
 - x. B. Parsons, R.T. is not needed as a party to adjudicate the claims and issues in this case, or that B. Parsons is or is not liable to the Plaintiff.
 - y. Carole Smith, C.N.S. is not needed as a party to adjudicate the claims and issues in this case, or that Carole Smith is or is not liable to the Plaintiff.
 - z. Malgorzata Rachwal, R.N. is not needed as a party to adjudicate the claims and issues in this case, or that Malgorzata Rachwal is or is not liable to the Plaintiff.
 - aa. Any other person in the health care/medical records of Karla Fountaine from February 28, 2009 to March 4, 2009 at Good Samaritan Hospital is not needed as a party to adjudicate the claims and issues in this case, or that any other person in the health care/medical records of Karla Fountaine from February 28, 2009 to March 4, 2009 at Good Samaritan Hospital is or is not liable to the Plaintiff.
127. Plaintiff asks that the Court Declare, with respect to the initially named Defendants, that these individuals and no other unnamed parties share any portion of liability for Plaintiff's claims or as necessary parties needed to fully adjudicate Plaintiff's claims in this case or be presented under R.C. 2307.23(c) and R.C. 2307.22, et seq.
128. The Plaintiff requested the Defendant, GSH, to dispense with this need but said Defendant refused to do so.

SIXTEENTH CAUSE OF ACTION
(Direct Claims Against Blue Cross and Blue Shield⁵)

129. Plaintiff incorporates all the foregoing paragraphs as if fully rewritten herein.
130. The provisions of R.C. 1751.73, 1751.54, and 1751.75 are attached as Ex. 2.
131. The Defendant BC/BS had a contractual relationship with Plaintiff's decedent and under the aforesaid statutes, a duty to assure quality and quality assurance by PHP, GSH, Guilliford, Gill, and AFP.

⁵ *Sandler v. Health Plan of Nev., Inc.* No. 2:08-CV-00466, RHL-LRL, 2008 U.S. Dist. LEXIS 115687), D.C. Nevada, June 25; 2008; *Meyer v. Health Plan of Nevada, et al.*, Case No. A583799 (Clark Co. Nevada), 2012 WL8855483.

Respectfully submitted,

s/Dwight D. Brannon

Dwight D. Brannon (0021657)

Attorney for Plaintiffs

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JURY DEMAND

Plaintiff demands a trial by jury on all issues presented herein.

s/Dwight D. Brannon

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ORC Ann. 1751.71

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TITLE 17. CORPORATIONS -- PARTNERSHIPS
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CHAPTER 1751. HEALTH INSURING CORPORATION LAW

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ORC Ann. 1751.71 (2013)

§ 1751.71. Public or private subsidies

Each health insuring corporation subject to this chapter may accept from governmental agencies, or from private persons, payments covering all or part of the cost of policies, contracts, and agreements entered into between the health insuring corporation and its subscribers or groups of subscribers.

 History:

147 v S 67. Eff 6-4-97.

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ORC Ann. 1751.73

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ORC Ann. 1751.73 (2013)

§ 1751.73. Duty to implement quality assurance program; filing of certificate

Each health insuring corporation providing basic health care services shall implement a quality assurance program for use in connection with those policies, contracts, and agreements providing basic health care services. Each health insuring corporation required to implement a quality assurance program shall annually file a certificate with the superintendent of insurance certifying that its quality assurance program does all of the following:

(A) Identifies a corporate board or committee or designates an executive staff person responsible for program implementation and compliance;

(B) Includes a process enabling the selection and retention of quality providers and health care facilities through credentialing, recredentialing, and monitoring procedures;

(C) Provides for ongoing monitoring of the quality assurance program;

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*** Annotations current through August 16, 2013 ***

TITLE 17. CORPORATIONS -- PARTNERSHIPS
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QUALITY ASSURANCE PROGRAMS

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ORC Ann. 1751.74 (2013)

§ 1751.74. Contents of program

(A) To implement a quality assurance program required by section 1715.73* of the Revised Code, a health insuring corporation shall do both of the following:

(1) Develop and maintain the appropriate infrastructure and disclosure systems necessary to measure and report, on a regular basis, the quality of health care services provided to enrollees, based on a systematic collection, analysis, and reporting of relevant data. The health insuring corporation shall assure that a committee that includes participating physicians have the opportunity to participate in developing, implementing, and evaluating the quality assurance program and all other programs implemented by the health insuring corporation that relate to the utilization of health care services. A committee that includes participating physicians shall also have the opportunity to participate in the derivation of data assessments, statistical analyses, and outcome interpretations from programs monitoring the utilization of health care services.

(2) Develop and maintain an organizational program for designing, measuring, assessing, and

The effective date is set by section 3 of HB 361.

🔗 Related Statutes & Rules:

Cross-Reference to Related Statutes:

Accreditation of program, RC § 1751.75.

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