## IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Troy L. Walters, as Administrator of the Estate of Michael Walters.

Plaintiff,

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VS.

Mount Carmel Health System d/b/a Mount Carmel West, et al.,

Defendants.

Case No. 2019 CV 1473

Judge Julie Lynch

Jury Demand Endorsed Hereon

# ANSWER OF DEFENDANT WILLIAM S. HUSEL, D.O., TO PLAINTIFF'S COMPLAINT

Now comes Defendant William S. Husel, D.O., and answers Plaintiff's Complaint as follows:

1. This answering Defendant specifically admits that William S. Husel, D.O., is a doctor duly licensed to practice medicine by and in the State of Ohio. This answering Defendant specifically states that Plaintiff's decedent, Michael Walters, was transferred from a nursing home, where he had lived since 2014 after a stroke left him disabled, to Mount Carmel on October 6, 2017. The nursing home noted they had seen him two hours before, and when they came back in he was obtunded. By the time he got to the emergency department, he was unresponsive and blue. He had to be intubated, and he vomited during the intubation, likely aspirating. Following that, the doctors noted he deteriorated significantly with shock, decreasing oxygenation, increasing mechanical ventilation requirements, rapid atrial fibrillation, and instability in his blood pressures. The palliative care team contacted the patient's brother, who told him the patient would not want to be on life support and they did not want to the patient to suffer. They opted for withdrawal of care, to focus on comfort. For want of knowledge, because they are

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2075 MARBLE CLIFF OFFICE PARK COLUMBUS, OHIO 43215-1053 (614) 485-1800 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 paragraphs 3 and 7 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, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 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 and 55 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.

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's claims, in whole or in part, are barred by the applicable statutes

of limitations.

9. Plaintiff has failed to join necessary and/or indispensable parties pursuant

to Rules 19 and 19.1 of the Ohio Rules of Civil Procedure.

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10. 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.

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

damages pursuant to statute.

12. 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).

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

14. Plaintiff may lack capacity to pursue this action.

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

16. Defendant asserts the defense of legal waiver.

17. Defendant asserts a lack of privity.

18. As to any applicable causes of action, Defendant asserts the defense of

lack of malice and/or lack of intent.

19. 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.

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

By: /s/ Gregory B. Foliano

Gregory B. Foliano (0047239) 2075 Marble Cliff Office Park

Columbus, Ohio 43215 gfoliano@arnoldlaw.net

Phone: (614) 324-4533 Fax: (614) 324-4534 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.

<u>/s/ Gregory B. Foliano</u> Gregory B. Foliano (0047239)

# **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 30<sup>th</sup> day of April, 2019, which will provide service to all counsel of record.

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<u>/s/ Gregory B. Foliano</u>

Gregory B. Foliano (0047239)