

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

**WINFREY PENIX, as Administrator
of the Estate of
MELISSA ANN PENIX**
3061 Thomas Avenue
Grove City, Ohio 43123

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

TRINITY HEALTH CORPORATION
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

GREGORY WHITE, RPH
5751 Cambrooke Court
Dublin, Ohio 43016

and

Case No: 19-CV-_____

Judge _____

Jury Demand Endorsed Hereon

WESLEY BLACK, RN
3211 US Highway 62 NE
Washington Court House, Ohio 43160

and

JANET WHITTEY, RPH
6892 Rosewell Lane
New Albany, Ohio 43054

and

JOHN DOES #1-5, ADMINISTRATORS
AT MOUNT CARMEL WEST WHO
WERE MADE AWARE OF THE "FORMAL
REPORT" REGARDING DR. HUSEL ON
OR AROUND OCTOBER 25, 2018
Addresses Unknown

and

JOHN DOES #6-10, NURSE OR
PHARMACY MANAGERS AT MOUNT
CARMEL WEST WHO WERE MADE
AWARE OF THE "FORMAL REPORT"
REGARDING DR. HUSEL ON OR
AROUND OCTOBER 25, 2018
Addresses Unknown

and

JOHN DOES #11-15,
ADMINISTRATORS AT MOUNT
CARMEL WEST WHO WERE MADE
AWARE OF THE "FORMAL REPORT"
REGARDING DR. HUSEL ON OR
AROUND NOVEMBER 29, 2018
Addresses Unknown

and

JOHN DOES #16-20, NURSE OR
PHARMACY MANAGERS AT MOUNT

CARMEL WEST WHO WERE MADE
AWARE OF THE "FORMAL REPORT"
REGARDING DR. HUSEL ON OR
AROUND NOVEMBER 19, 2018
Addresses Unknown

Defendants.

COMPLAINT

INTRODUCTION

1. On October 25, 2018, Mount Carmel received a "formal report" regarding significant concerns about the care provided to its patients by Dr. William Husel.

2. This "formal report" was triggered by the death of James Nickolas Timmons at Mount Carmel West Hospital, just minutes after he received a lethal dose of Fentanyl prescribed by Dr. Husel.

3. To date, Mount Carmel has not identified any action it took in response to this "formal report."

4. Mount Carmel received a second "formal report" relating to inappropriate care by Dr. Husel on November 19, 2018, presumably following the fatal dose of Fentanyl provided to patient Rebecca Walls, resulting in her death just minutes later.

5. Again, there is no indication Mount Carmel took any action to investigate these two "formal reports" or to prevent the events described therein from reoccurring.

6. On his very next shift at Mount Carmel West, Dr. Husel did it again; with the help of his co-Defendants herein, Dr. Husel prescribed another lethal dose of

Fentanyl to another ICU patient – Melissa Penix – and she died within 5 minutes. This time, Dr. Husel gave two times the highest dosage of Fentanyl reported to date, a 2,000 microgram dose of the drug, ensuring Melissa Penix’s life would be terminated.

7. Only after Melissa Penix’s life was terminated, did Mount Carmel take any steps to *prevent* Dr. Husel’s actions from harming any further patients.

8. After permitting Dr. Husel to engage in this behavior at least 34 times between 2014 and 2018, Mount Carmel finally removed him from patient care on November 21, 2018.

9. Two weeks after his removal from the hospital, Mount Carmel reported Dr. Husel’s actions to the State Medical Board of Ohio and to the Prosecutor’s office.

10. Yet another week later, Mount Carmel begins training staff on changes to its procedures, which allowed this systemic failure and resulted in the premature deaths of at least 34 patients over 4 years.

11. Finally, over 5 weeks after Dr. Husel was removed from Mount Carmel, the hospital began informing the families of the 34 victims, about the actions of Dr. Husel.

FACTS AND JURISDICTION

12. Pursuant to R.C. 2305.21, Plaintiff Winfrey Penix brings this action as the duly appointed Administrator of the Estate of Melissa Ann Penix for the exclusive benefit of the next of kin.

13. 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.

14. Defendant Trinity Health Corporation (“Trinity”) is an Indiana corporation, doing business in Ohio as the owner, operator, and/or parent company of Mount Carmel. Trinity provides treatment, by and through its actual and ostensible agents and employees, to those in need of medical care, including to patients at Mount Carmel.

15. 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 and/or Trinity.

16. Defendant Gregory White, RPh (“Defendant White”) is a resident of Dublin, Franklin County, Ohio who is a registered pharmacist by and in the State of Ohio. At all times relevant, Defendant White was a pharmacist providing pharmacy services as an employee and/or agent of Mount Carmel and/or Trinity.

17. Defendant Wesley Black, RN (“Defendant Black”) is a resident of Washington Court House, Fayette County, Ohio who is a registered nurse by and in the State of Ohio. At all times relevant, Defendant Black provided nursing care and services to patients as an employee and/or agent of Mount Carmel and/or Trinity.

18. Defendant Janet Whittey, RPh (“Defendant Whittey”), a resident of New Albany, Franklin County, Ohio, is a registered pharmacist by and in the State of Ohio.

At all times relevant, Defendant Whittey was employed as the Chief Pharmacy Officer at Mount Carmel and/or Trinity. On information and belief, Defendant Whittey was responsible for establishing, implementing, and ensuring compliance with policies for safe and appropriate usage of prescription medication, including controlled substances such as Fentanyl, with regard to patients at Mount Carmel. On further information and belief, Defendant Whittey was aware of inappropriate and unsafe prescribing, approving, and administering of Fentanyl by co-Defendants, and failed to take action to prevent such inappropriate Fentanyl use from reoccurring, including in the case of Melissa Penix.

19. Defendants John Doe #1-5, names and addresses unknown, were administrators at Mount Carmel and/or Trinity who were aware of a “formal report” regarding the care of Dr. Husel made on or around October 25, 2018. Plaintiffs have been unable to identify the names and/or identities of Defendants John Doe #1-5 through the exercise of reasonable diligence. Plaintiff reserves the right to substitute a named defendant for such John Doe(s) upon discovery of the name and/or identity of any such individual(s) who were made aware of concerns about Dr. Husel’s care and failed to take appropriate action to prevent harm to Plaintiff.

20. Defendants John Doe #6-10, names and addresses unknown, were nurse and pharmacy managers at Mount Carmel and/or Trinity who were aware of a “formal report” regarding the care of Dr. Husel made on or around November 19, 2018. Plaintiffs have been unable to identify the names and/or identities of Defendants John Doe #1-5 through the exercise of reasonable diligence. Plaintiff reserves the right to

substitute a named defendant for such John Doe(s) upon discovery of the name and/or identity of any such individual(s) who were made aware of concerns about Dr. Husel’s care and failed to take appropriate action to prevent harm to Plaintiff.

21. Defendants John Doe #11-15, names and addresses unknown, were administrators at Mount Carmel and/or Trinity who were aware of a “formal report” regarding the care of Dr. Husel made on or around November 19, 2018. Plaintiffs have been unable to identify the names and/or identities of Defendants John Doe #11-15 through the exercise of reasonable diligence. Plaintiff reserves the right to substitute a named defendant for such John Doe(s) upon discovery of the name and/or identity of any such individual(s) who were made aware of concerns about Dr. Husel’s care and failed to take appropriate action to prevent harm to Plaintiff.

22. Defendants John Doe #16-20, names and addresses unknown, were nurse and pharmacy managers at Mount Carmel and/or Trinity who were aware of a “formal report” regarding the care of Dr. Husel made on or around November 19, 2018. Plaintiffs have been unable to identify the names and/or identities of Defendants John Doe #16-20 through the exercise of reasonable diligence. Plaintiff reserves the right to substitute a named defendant for such John Doe(s) upon discovery of the name and/or identity of any such individual(s) who were made aware of concerns about Dr. Husel’s care and failed to take appropriate action to prevent harm to Plaintiff.

23. Defendants, individually or by and through agents and/or employees, were involved in medical care and treatment of Melissa Penix in November of 2018, while she was a patient at Mount Carmel.

24. Review of the Mount Carmel medical records reveals that Melissa Penix was prescribed, and administered, a lethal dose of the drug Fentanyl on November 20, 2018.

25. Specifically, Defendant Husel ordered that *2,000 micrograms* of Fentanyl be given to Melissa Penix, through her IV, which dosage was approved by Defendant White, and administered by Defendant Black.

26. This grossly inappropriate dose was either ordered negligently and not properly reviewed, or was intentionally prescribed by Defendant Husel for the purposes of terminating Melissa Penix's life.

27. Despite the grossly excessive and inappropriate order of Fentanyl, Mount Carmel's electronic medical records system failed to flag and alert Melissa Penix'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 terminate Melissa Penix's life.

28. Defendant Husel's order of a grossly excessive and inappropriate dosage of Fentanyl was reviewed and approved by Mount Carmel's pharmacist - Defendant White - and the medication was made available to Defendant Black, Melissa's nurse.

29. Defendant White knew that the ordered dosage of Fentanyl was grossly inappropriate, served no therapeutic purpose or function, and would only serve to terminate Melissa Penix's life.

30. Defendant Black, administered the lethal dosage at 10:48 PM on November 20, 2018, with full knowledge that such a grossly inappropriate dose of Fentanyl would terminate Melissa Penix's life.

31. Melissa Penix was pronounced dead at 10:53 on November 20, 2018, just 5 minutes after receiving the lethal dose of Fentanyl.

32. On December 28, 2018, Plaintiff received a call from a physician-administrator affiliated with Mount Carmel and/or Trinity. That administrator informed Plaintiff that his wife, Melissa Penix, was given an excessive dosage of Fentanyl by Defendants which hastened and/or caused Melissa's premature death.

33. The administrator further informed Plaintiff that all individuals involved in the provision of the excessive dosage of Fentanyl were suspended from patient care by Mount Carmel, as a result of, *inter alia*, the actions taken with regard to Melissa Penix.

34. On January 14, 2019, Plaintiff received yet another call from Mount Carmel administration to inform him that the actions described herein are not an isolated event, but rather, a repeated course of conduct by Defendants with respect to at least 27 patients at Mount Carmel. Further, multiple physicians, nurses, and pharmacists have been removed from patient care based on this conduct.

35. On this second call, Plaintiff and his family were also informed by Mount Carmel that Melissa's death "prompted our investigation" into Dr. Husel and this issue.

36. The death of Melissa Penix "prompted" Mount Carmel's investigation, despite Mount Carmel receiving "formal notice," on *at least* two prior occasions, of Dr.

Husel's inappropriate prescribing of Fentanyl to patients, who died shortly thereafter.

37. Subsequent press releases from Mount Carmel acknowledged that 3 patients, including Melissa Penix, received inappropriate doses of Fentanyl *after* Mount Carmel was aware of formal reports relating to the concerning actions of Defendants.

38. 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)

39. Defendants, individually or by and through agents or employees, intentionally ordered and administered a grossly inappropriate and lethal dosage of the narcotic, Fentanyl, designed to cause serious harm and death to Melissa Penix, on November 20, 2018.

40. The administration of a lethal dose of Fentanyl to Melissa Penix was harmful and offensive.

41. Melissa Penix did not consent to receiving a lethal dose of Fentanyl from Defendants.

42. Defendants' administration of the lethal dose of Fentanyl to Melissa Penix exhibited a reckless disregard for Janet's health and safety.

43. As a direct and proximate result of the conduct of Defendants, Melissa Penix suffered significant harm and death.

Count II: Medical Negligence (Survivorship)

44. 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 Melissa Penix.

45. As a direct and proximate result of the negligence of Defendants, Melissa Penix suffered severe and permanent injuries resulting from the lethal dosage of Fentanyl she was given, including a loss of life expectancy.

Count III: Negligence (Survivorship)

46. Defendant White owed a duty of reasonable care to Melissa Penix in the services he provided as a registered pharmacist. Defendant White was negligent and breached that duty.

47. As a direct and proximate result of the negligence of Defendant White, Melissa Penix suffered severe and permanent injuries resulting from the grossly inappropriate and lethal dosage of Fentanyl she was given, including a loss of life expectancy.

Count IV: Intentional Infliction of Emotional Distress

48. 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 Melissa Penix and her next of kin, or knew their actions would necessarily result in such emotional harm.

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

50. As a direct and proximate result of the intentional conduct of Defendants, Melissa Penix suffered severe and permanent injuries, including a loss of life expectancy and a wrongful death.

51. As a direct and proximate result of the intentional conduct of Defendants, and the injuries and wrongful death of Melissa Penix, Plaintiff's beneficiaries

Count V: Wrongful Death

52. As a direct and proximate result of the intentional acts or omissions, negligence, and/or professional negligence of Defendants as set forth above, Melissa Penix suffered a wrongful death on November 20, 2018.

53. As a further direct and proximate result of the negligence and/or professional negligence of the Defendants and the wrongful death of Melissa Penix, her 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).

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

PLAINTIFF'S CLAIMS FOR RELIEF AGAINST MOUNT CARMEL AND TRINITY

Count VI: Negligent Credentialing

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

56. Defendant Husel was negligent in his treatment of Melissa Penix, and as a direct and proximate result of that negligence, she suffered injuries and a wrongful death.

57. In addition to his negligence in treating Melissa Penix, Defendant Husel, on information and belief, is alleged to have been negligent in providing care to additional patients under similar circumstances to those presented in this case.

58. Mount Carmel and/or Trinity 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.

59. Mount Carmel and/or Trinity, 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.

60. Mount Carmel and/or Trinity 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.

61. Mount Carmel and/or Trinity failed to adequately review and evaluate Defendant Husel's education, character, fitness to practice osteopathic medicine, and his past performance as a specialist.

62. Mount Carmel and/or Trinity 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.

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

64. But for the negligence of Mount Carmel and/or Trinity, Defendant Husel would not have been granted staff privileges to care for critical care patients at its facilities.

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

Count VII: Negligent Supervision

66. On information and belief, Defendants Husel, White, and Black were agents or employees of Mount Carmel and/or Trinity at all times relevant, acting within the scope of their employment when they provided care and treatment to Melissa Penix, including the ordering, approval, and administration of the grossly inappropriate and lethal dose of Fentanyl.

67. Defendants Husel, White, and Black were not competent to care for patients in the manner in which they engaged while agents or employees of Mount Carmel and/or Trinity.

68. Mount Carmel and/or Trinity were aware either actually, or constructively, of the incompetence of Defendants Husel, White, and Black. Regarding Dr. Husel, Mount Carmel received at least two “formal reports” about Dr. Husel’s care, and on information and belief, received numerous additional verbal or “informal” reports about Defendants’ actions.

69. The actions of Defendants Husel, White, and Black, as set forth herein, caused significant and permanent injury to Melissa Penix, including her wrongful death, all of which resulted in damages to Plaintiff and the next of kin.

70. Mount Carmel’s and/or Trinity’s negligence in supervising its employees, Defendants Husel, White, and Black, was a direct and proximate cause of the harm suffered by Melissa Penix and Plaintiff.

PUNITIVE DAMAGES

71. The conduct of Defendants could only result from Mount Carmel’s and/or Trinity’s systemic deficiencies and practices, which they failed to remedy, and which resulted in significant harm to at least 34 patients, including Melissa Penix.

72. Specifically, Mount Carmel and/or Trinity took no action to prevent Defendants from ordering, providing, and administering a lethal dose of Fentanyl to Melissa Penix, despite the John Doe Defendants receiving multiple reports of concerning behavior and medical care relating to other Mount Carmel patients.

73. Defendants’ engaged in willful, wanton, and reckless misconduct and malice, exhibiting a reckless disregard for the health and safety of their patients, including Melissa Penix, and created a great probability of causing substantial harm.

74. As a direct and proximate result of Defendants’ egregious misconduct and inaction, Melissa Penix 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/ Gerald S. Leeseberg
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JURY DEMAND

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

/s/ Gerald S. Leeseberg
Gerald S. Leeseberg

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 Melissa Penix.



STEVEN B. BIRD, M.D.

Sworn to and subscribed before me on February 7th, 2019.



NOTARY PUBLIC

