

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

**KAREN WEIS, as Special
Administrator of the Estate of
TIMOTHY FITZPATRICK**
570 North State Street
Westerville, Ohio 43082

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

DEREK DREYER, RN
317 East Wheeling Street
Lancaster, Ohio 43130

and

MEGAN RUFFNER, RPH
15455 Payne Road
Marysville, Ohio 43040

Defendants.

Case No: 19-CV-_____

Judge _____

Jury Demand Endorsed Hereon

COMPLAINT

FACTS AND JURISDICTION

1. Pursuant to R.C. 2113.15, Plaintiff Karen Weis brings this action as the duly appointed Special Administrator of the Estate of Timothy Fitzpatrick 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 Derek Dreyer, RN (“Defendant Dreyer”), a resident of Lancaster, Fairfield County, Ohio, is a registered nurse by and in the State of Ohio. At all times relevant, Defendant Dreyer provided nursing care and services to patients, including Timothy Fitzpatrick, as an employee and/or agent of Mount Carmel.

5. Defendant Megan Ruffner, RPh (“Defendant Ruffner”) a resident of Marysville, Union County, Ohio is a registered pharmacist by and in the State of Ohio.

At all times relevant, Defendant Ruffner was a pharmacist providing pharmacy services as an employee and/or agent of Mount Carmel, including approving of narcotic medication orders to Timothy Fitzpatrick and other patients.

6. Defendants, individually or by and through agents and/or employees, were involved in medical care and treatment of Timothy Fitzpatrick on October 9, 2017, while he was a patient at Mount Carmel.

7. Timothy Fitzpatrick was brought to Mount Carmel on September 30, 2017 due to altered mental status. He was diagnosed with pleural effusions, was intubated, and admitted to the ICU. His respiratory status did not improve much over the following week with aggressive therapy.

8. Ultimately, the family was encouraged to withdraw further care and Timothy Fitzpatrick was prescribed, and administered, a lethal dose of Fentanyl.

9. The lethal dose of Fentanyl was ordered by Defendant Husel at 8:24 PM on October 9, 2017, to be given to Timothy Fitzpatrick through his IV line.

10. 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 Timothy Fitzpatrick's life.

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

12. Defendant Husel's order of a grossly excessive and inappropriate dosage of Fentanyl was approved by Mount Carmel's pharmacist - Defendant Ruffner - at 8:49 PM on October 9.

13. The grossly excessive and inappropriate dosage of Fentanyl was made available to Defendant Dreyer, Timothy Fitzpatrick's nurse.

14. Defendant Ruffner, 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 Timothy Fitzpatrick's life.

15. Defendant Dreyer, administered the lethal dosage on October 9, 2017 at 9:03 PM, with full knowledge that such a grossly inappropriate dose of Fentanyl would hasten the termination of Timothy Fitzpatrick's life.

16. Timothy Fitzpatrick was pronounced dead at 9:10 PM on October 9, 2017, just 7 minutes after receiving the lethal dose of Fentanyl. Tim was 55 years old.

17. On or about December 27, 2018, the family of Timothy Fitzpatrick received a call from a physician-administrator affiliated with Mount Carmel. That administrator informed the family that Timothy Fitzpatrick received an excessive dosage of pain medication which may have hastened and/or caused Timothy Fitzpatrick's premature 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 Timothy Fitzpatrick, on October 9, 2017.

20. The administration of a lethal dose of Fentanyl to Timothy Fitzpatrick was harmful and offensive.

21. Timothy Fitzpatrick did not consent to receiving a lethal dose of Fentanyl from Defendants.

22. Defendants' administration of the lethal dose of Fentanyl to Timothy Fitzpatrick exhibited a reckless disregard for his health and safety.

23. As a direct and proximate result of the conduct of Defendants, Timothy Fitzpatrick 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 Timothy Fitzpatrick.

25. As a direct and proximate result of the negligence of Defendants, Timothy Fitzpatrick 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 Ruffner owed a duty of reasonable care to Timothy Fitzpatrick in the services he provided as a registered pharmacist. Defendant Ruffner was negligent and breached that duty.

27. As a direct and proximate result of the negligence of Defendant Ruffner, Timothy Fitzpatrick 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 Timothy Fitzpatrick 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, Timothy Fitzpatrick 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 Timothy Fitzpatrick, Plaintiff's beneficiaries suffered serious emotional distress and harm.

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, Timothy Fitzpatrick suffered a wrongful death on October 9, 2017.

33. As a further direct and proximate result of the negligence and/or professional negligence of the Defendants and the wrongful death of Timothy Fitzpatrick, 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 Timothy Fitzpatrick, 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 Timothy Fitzpatrick, 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 Timothy Fitzpatrick, 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 Timothy Fitzpatrick would not have suffered the above described injuries and damages.

Count VII: Negligent Supervision

46. On information and belief, Defendants Husel, Dreyer, and Ruffner were employees of Mount Carmel at all times relevant, acting within the scope of their employment when they provided care and treatment to Timothy Fitzpatrick, including the ordering, approval, and administration of the grossly inappropriate and lethal dose of Fentanyl.

47. Defendants Husel, Dreyer, and Ruffner 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, Dreyer, and Ruffner.

49. The actions of Defendants Husel, Dreyer, and Ruffner, as set forth herein, caused significant and permanent injury to Timothy Fitzpatrick, 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, Dreyer, and Ruffner, was a direct and proximate cause of the harm suffered by Timothy Fitzpatrick 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 34 patients, including Timothy Fitzpatrick and another patient less than 2 hours after him on October 9, 2017.

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

53. As a direct and proximate result of Defendants' egregious misconduct, Timothy Fitzpatrick 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
Gerald S. Leeseberg (0000928)
Anne M. Valentine (0028286)
Craig S. Tuttle (0086251)
LEESEBERG & VALENTINE

175 S. Third Street, Penthouse One
Columbus, Ohio 43215
Tel: 614/221.2223
Fax: 614/221.3106
Email: gsl@leesebergvalentine.com
 avalentine@leesebergvalentine.com
 ctuttle@leesebergvalentine.com
Attorneys for Plaintiff

JURY DEMAND

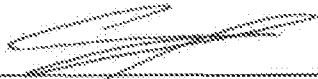
Plaintiff hereby respectfully demands a jury of eight as to all issues contained
herein.

/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 Timothy Fitzpatrick.



 STEVEN B. BIRD, M.D.

Sworn to and subscribed before me on January 26, 2019.



 NOTARY PUBLIC

