

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

ROBERT KING, ADMINISTRATOR)
OF THE ESTATE OF MINNIE KING,)
DECEASED)
525 Diagonal Road, Apartment 912)
Akron, Ohio 44320)

Plaintiff,

v.

SUMMA HEALTH SYSTEM,)
AKRON CITY HOSPITAL,)
ROBERT A. GERBERRY,)
STATUTORY AGENT)
525 East Market Street)
Akron, Ohio 44304)

And

THOMAS S. LEHNER, M.D.)
3300 Greenwich Road, #8)
Norton, Ohio 44203)

Defendants.

CASE NO.:

JUDGE:

COMPLAINT

AFFIDAVIT OF MERIT
ATTACHED

NOW COMES Robert King, Plaintiff in the above captioned case and for his Complaint states as follows:

FIRST CLAIM FOR RELIEF

1. Plaintiff Robert King is the Administrator of the Estate of Minnie King, having been appointed in the Summit County Probate Court, case number 2013 ES 00703. Minnie King died on March 23, 2013.

2. At all relevant times Defendants Summa Health System and Thomas Lehner, M.D., were doing business in and providing healthcare services in Summit County, Ohio.

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3. From on or about October 26, 2012 through February 22, 2013, Minnie King was a resident at Wyant Woods Care Center in Akron, Ohio. Defendant Dr. Thomas Lehner was a physician providing care for Minnie King during that period of time, and possibly at Akron City Hospital in the month thereafter. The medical care provided by Defendant Dr. Lehner was negligent and a breach of the standard of care and that negligence/breach directly and proximately caused or contributed to the wrongful death of Plaintiff's decedent Minnie King.

4. Robert King brings this action on behalf of the next of kin of Minnie King. As a direct and proximate result of the negligence of Defendant Dr. Lehner, the next of kin of Minnie King have sustained injury, harm and damage arising out of her wrongful death, including loss of services of the decedent; loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education, along with mental anguish.

SECOND CLAIM FOR RELIEF

5. Plaintiff incorporates by reference the allegations set forth above as if fully contained herein.

6. From February 22, 2013 to March 23, 2013, Plaintiff's decedent Minnie King was a patient at Akron City Hospital, part of Summa Health System (Summa).

7. While a patient there, Summa withheld or withdrew life-sustaining treatment from Minnie King, without consent, including taking away her medications, putting her on the palliative care unit, ordering hospice involvement, making her comfort care only and failing to discharge her to an extended care facility. In doing so, Defendant Summa violated the requirements set forth in section 2133.08 of the Ohio Revised Code, including:

- The failure to obtain written consent, witnessed by two appropriate individuals, from the majority of Minnie King's adult children to the withholding or withdrawing of life-sustaining treatment;
- The failure on the part of the attending physician and one other physician who examined Minnie King to determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that Minnie King was in a terminal condition;
- Failure by the attending physician to determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that Minnie King no longer was able to make informed decisions regarding the administration of life-sustaining treatment and that there was no reasonable possibility that she would regain the capacity to make those informed decisions;
- Defendant failed to determine whether Minnie King had a declaration that addressed her intent should she be determined to be in a terminal condition, or whether she had a Durable Power of Attorney for Healthcare;
- Defendant failed to obtain the consent of the majority of Minnie King's adult children and failed to make a good faith effort and use reasonable diligence to notify Minnie King's adult children who would be available within a reasonable period of time, and failed to provide them with information sufficient to satisfy the requirements of informed consent.

8. In addition to the above, Defendant Summa administered sedating medications and failed to provide nutrition to Minnie King, which caused her to become unresponsive, except in

the last few days of her life, when food was given which led to aspiration pneumonia, acute respiratory failure and caused or contributed to her death.

9. Defendant Summa's conduct, by and through its agents and employees and the independent medical practitioners practicing in Akron City Hospital under the doctrine of agency by estoppel was knowing, intentional, wanton, reckless and/or negligent and/or a breach of the standard of care and/or was negligence *per se*.

10. As a direct and proximate result of the knowing, intentional, reckless, wanton and/or negligent conduct of Defendant Summa, the next of kin of Minnie King have sustained injury, harm and damage arising out of her wrongful death, including loss of services of the decedent; loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education, along with mental anguish.

THIRD CLAIM FOR RELIEF

11. Plaintiff restates the allegations set forth above as if fully contained herein.

12. The aforesaid conduct of Defendant Summa constituted a conscious disregard for the rights and safety of Minnie King and her next of kin, which had a great probability of causing substantial harm, and did in fact cause substantial harm, resulting in the wrongful death of Minnie King.

13. The Affidavit of Merit executed by Frank Lazzerini, M.D. is attached.

WHEREFORE, having set forth his Complaint, Plaintiff hereby demands judgment in his favor and compensatory damages in an amount in excess of \$25,000, and punitive damages in

the amount of \$2,500,000, (Two Million, Five Hundred Thousand Dollars) together with interest, costs and whatever other relief this Court deems proper.

Respectfully submitted,

JAMES J. GUTBROD, ATTORNEY AT LAW

s/ James J. Gutbrod

JAMES J. GUTBROD (0034414)

Attorney for Plaintiff

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Plaintiff,

v.

SUMMA HEALTH SYSTEM AKRON
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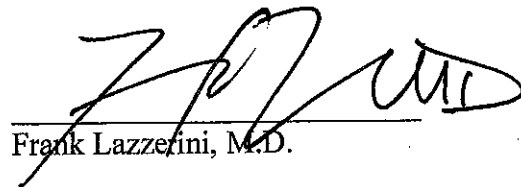
) CASE NO.:

) JUDGE:

) AFFIDAVIT OF MERIT

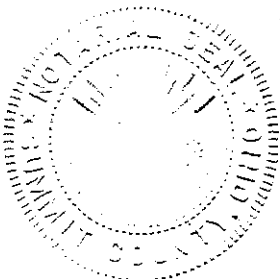
Frank Lazzerini, M.D., being first duly sworn, states the following to be true:

1. I am licensed to practice medicine in the State of Ohio.
2. I devote in excess of 50% of my professional time to the active clinical practice of medicine or to its instruction in an accredited teaching hospital.
3. I have reviewed all relevant medical records of the Plaintiff's decedent Minnie King, to include records from Summa Akron City Hospital and Wyant Woods Care Center.
4. I am familiar with the standard of care applicable to the care and treatment of Plaintiff's decedent Minnie King.
5. It is my opinion with reasonable medical probability that the standard of care was breached by Defendants Summa Health System Akron City Hospital and Thomas Lehner, M.D., and that this breach of standard of care caused in whole or in part injury, harm and damage and death to Plaintiff's decedent Minnie King.


Frank Lazzerini, M.D.

Sworn to and subscribed before me on this 20 day of March, 2015.


NOTARY PUBLIC



JAMES J. GUTBROD, Attorney at Law
Notary Public - State of Ohio
My Commission has no expiration date
Section 147 of R.C.

Daniel M. Horrigan, Summit County Clerk of Courts