

IN THE COURT OF CLAIMS FOR THE STATE OF OHIO

Cyrelle McNew

And

Matthew Reis, Admin.  
of the Estate of  
Michael McNew, dec'd.

Plaintiff,

Vs.

The Ohio State University  
Medical Center, et al.

Defendants.

ORIGINAL

Case No.: 2010-10335

Judge Clark

FILED  
COURT OF CLAIMS  
OF OHIO  
2011 OCT 17 PM 2:33

Matthew Reis, Admin.  
of the Estate of  
Michael McNew, dec'd.

Plaintiff,

vs.

The Ohio State University  
Medical Center, et al.

Defendants.

~~Case No. 2011-11246~~

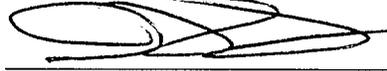
Judge Joseph T. Clark

PLAINTIFFS' MOTION TO CONSOLIDATE

Now come Plaintiffs, by and through counsel, and pursuant to Rule 42(A) of the Ohio Rules of Civil Procedure and Local Rule 31.02(E), hereby move this Court to consolidate Case No.: 2010-10335, pending before Judge Clark, with Case No.: 2011-11246, also pending before Judge Clark. The reasons for Plaintiffs' Motion are set forth in the following Memorandum in Support, incorporated herein by reference.

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Respectfully submitted,



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**MEMORANDUM IN SUPPORT**

Civ. R. 42(A) and Loc. R. 31.02(E) allow actions to be consolidated where they involve a common question of law or fact, so as to avoid unnecessary costs or delay. In this instance, the facts giving rise to both lawsuits occurred as a result of the medical treatment rendered to Plaintiff Cyrelle McNew's husband, Decedent Michael McNew, by agents and/or employees of Defendants State of Ohio, The Ohio State University Medical Center and/or Ohio State University Physicians, including but not limited to Syed Husain, M.D. and Howard R. Rothbaum, M.D. in 2008 and 2009. The Decedent, Michael McNew, passed away on September 18, 2009.

These two separate lawsuits arise from the medical treatment rendered to Decedent Michael McNew. Ohio Rule of Civil Procedure 42(A) provides as follows:

**Consolidation.** When actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The decision whether to consolidate is within the discretion of the trial court. *Waterman v. Kitrick*, 60 Ohio App.3d 7, 14, 572 N.E.2d 250, 256-257 (Franklin County

1990). A trial court may consolidate pending actions before it if there are common questions of law or fact between the actions. *Id.* The Court should be mindful of the purpose of consolidation, which is the saving of time when a joint trial is used as opposed to separate trials. *Id.*

There can be no question that common questions of causation and damages exist in both cases. Michael McNew presented to employees and/or agents of Defendants The Ohio State University Medical Center/State of Ohio for care and treatment, and specifically Howard R. Rothbaum, M.D., on September 3, 2008 for a physical. It is believed that Dr. Rothbaum is associated with Defendants via the entities known as OSU Internal Medicine, Inc., and/or OSU Internal Medicine at Stoneridge/Dublin. Thereafter, on August 27, 2009, Mr. McNew was evaluated for symptoms related to nausea, diarrhea, sore throat, fatigue, rectal bleeding and bruising. The Decedent was again evaluated on September 14, 2009 at which time Dr. Rothbaum referred the decedent to Dr. Husain. On or about September 15, 2009, Dr. Husain, believed to be associated with Defendants, via Ohio State University Physicians, Inc., drained the Decedent's hemorrhoid. Thereafter, Decedent experienced a large amount of bleeding, began to experience shortness of breath and bruising and lost consciousness on the evening of September 18, 2009. During September 18<sup>th</sup>, several calls were made to Dr. Husain about the severity of his pain and shortness of breath, with at least one return call from Dr. Husain instructing the decedent to take additional pain medicine. When the decedent lost consciousness the evening of September 18, 2009, he was taken by ambulance to Dublin Methodist Hospital, then transferred to Riverside Methodist Hospital, where he died on September 19, 2009. His cause of death was from a cerebral hemorrhage from

thrombocytopenia, which went undiagnosed by employees and/or agents of the Defendants named here.

Suit under Case No. 2010-10335 was brought September 3, 2010, prior to the one year anniversary of the decedent's death, against The Ohio State University Medical Center, alleging claims against employees and/or agents, and specifically Dr. Husain, pertaining to the care at issue. Thereafter, on September 19, 2011, at the two-year anniversary of the decedent's death, a separate suit under Case No. 2011-11246 was filed against The Ohio State University Medical Center/State of Ohio to protect the two-year wrongful death statute, making specific allegations against Dr. Rothbaum for his role in the care and treatment of the decedent. Under Case No. 2010-10335, the undersigned has repeatedly requested the depositions of Dr. Rothbaum and Dr. Husain, but has not been granted access. (It should be noted that Dr. Husain was previously deposed under Case No. 2010-10335, but on a limited basis as to immunity issues, only, without any exploration of his actual care and treatment of the decedent).

Consolidating these two actions will serve the interest of judicial economy. Both lawsuits arise from the exact same set of facts, involve the exact same common questions of law, and involve the care and treatment rendered to the Decedent, Michael McNew. Both lawsuits were filed in a timely manner. Therefore, these two lawsuits should be consolidated.

For the foregoing reasons and in the interest of judicial economy, it is submitted that Case No. 2011-11246 be consolidated with the earlier filed Case No. 2010-10335, and thereafter the combined cases should proceed through discovery and trial together.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was served by ordinary mail on this 17<sup>th</sup> day of October, 2011 to the following:

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