

IN THE COURT OF CLAIMS OF OHIO

2013 DEC -5 PM 3: 54

LUDELLA DICKENS, Admr., etc., :
 :
Plaintiff, :
 : Case No. 2013-00204
v. :
 : Judge Dale A. Crawford
THE OHIO STATE UNIVERSITY :
MEDICAL CENTER, :
 :
Defendant.

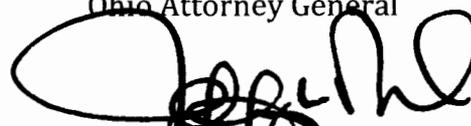
**DEFENDANT OHIO STATE UNIVERSITY MEDICAL CENTER'S
MOTION TO COMPEL**

Pursuant to Civ. R. 37(A), Defendant Ohio State University Medical Center respectfully requests an Order to compel Plaintiff to produce, within the next thirty days, certain medical records or an authorization signed by Ms. Dickens, as Administrator of the Estate of Ella F. Whitehead, to permit Defendant to obtain the records. The medical records at issue involve Ms. Whitehead's admission to an emergency department on April 2, 2012.

A memorandum in support of this motion is set forth below.

Respectfully submitted,

MICHAEL DeWINE
Ohio Attorney General



Jeffrey L. Maloon (0007003)
Assistant Attorney General
Court of Claims Defense Section
150 East Gay Street
18th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7447
Facsimile: (614) 644-9185
jeffrey.maloon@ohioattorneygeneral.gov

ON COMPUTER

Co-counsel for Defendant

MEMORANDUM IN SUPPORT

This medical negligence/wrongful death case was filed April 1, 2013, on behalf of the Estate of Ella F. Whitehead. In her Complaint, Plaintiff alleges that Ms. Whitehead received substandard medical care during an office visit with her family physicians at OSU Care Point East. The date of the office visit was April 23, 2012. The patient was being seen that day in follow-up to an automobile accident that occurred on April 2, 2012.

During the evaluation, Ms. Whitehead mentioned that two days prior, she had experienced chest discomfort and shortness of breath, both of which resolved later that day. The patient did not have a family history of cardiac disease and her only cardiac risk factor was hyperlipidemia, which was being controlled with medication. Dr. Belmund Catague, a third-year family practice resident, performed an EKG and, when comparing it to a previous study performed in 2009, noted subtle changes. Due to these findings, Dr. Catague ordered a stress test that was to be performed two days later. Unfortunately, Ms. Whitehead died either that evening or the following morning.

According to Plaintiff's discovery responses, Ms. Whitehead was taken to an emergency department after the automobile accident wherein she was evaluated. Presumably, the patient was placed on a cardiac monitor and her attending physician ordered certain diagnostic tests. Therefore, the records may be relevant to the case. In addition, Defendant has consulted potential expert witnesses who

have indicated that the emergency department records may have a bearing on their opinions in this case.

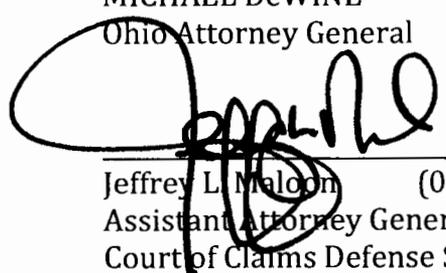
Defendant has made numerous requests for the records at issue. Defendant has also complied with the notice requirement of Civ. R. 37(A) and there has been no response to that notice. *See, Affidavit of Jeffrey L. Maloon, attached hereto as Exhibit A.*

Plaintiff may take the position that she does not know the name of the facility in which Ms. Whitehead was admitted. However, that information should be readily available from medical bills, correspondence from Ms. Whitehead's health insurance carrier, and other avenues.

Based upon the foregoing, Defendant Ohio State University Medical Center respectfully requests an Order to compel Plaintiffs to produce, within the next thirty days, certain medical records or an authorization signed by Ms. Dickens, as Administrator of the Estate of Ella F. Whitehead, in order to permit Defendant to obtain the records.

Respectfully submitted,

MICHAEL DeWINE
Ohio Attorney General



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Assistant Attorney General
Court of Claims Defense Section
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Co-counsel for Defendant

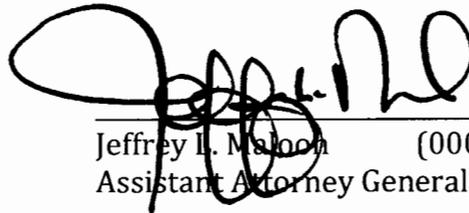
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by regular U.S. mail, postage prepaid, this 5th day of December 2013, upon the following counsel of record:

Mark E. Defossez, Esquire
The Donahey Law Firm
495 South High Street
Suite 300
Columbus, Ohio 43215

and

Andrew W. Cecil, Esquire
Cecil & Geiser, L.L.P.
495 South High Street
Suite 400
Columbus, Ohio 43215
Attorneys for Plaintiff



Jeffrey L. Maloon (0007003)
Assistant Attorney General

ec: Paula L. Paoletti, Esquire
Amber Wootton Hertlein, Esquire

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MEDICAL CENTER, :
Defendant. :

AFFIDAVIT OF JEFFREY L. MALOON

COUNTY OF FRANKLIN:

SS

STATE OF OHIO:

JEFFREY L. MALOON, first being duly sworn in accordance with the law,
deposes and states:

1. I am an Assistant Attorney General in the Court of Claims Defense Section assigned as counsel for Defendant Ohio State University Medical Center.

2. I have personal knowledge of the information and matters set forth herein.

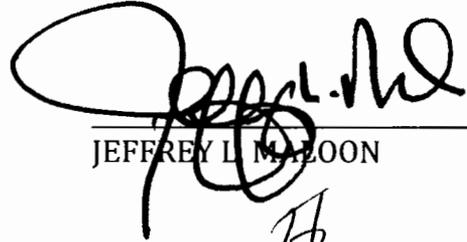
3. Upon receiving Plaintiff's discovery responses, I requested either a copy of the emergency department records of April 2, 2012 or an authorization signed by Ms. Dickens that would permit me to obtain those records.

4. Plaintiff's counsel initially indicated that he was unable to determine the facility in which Ms. Whitehead was admitted, but that he would take further steps to ascertain that information.

5. The records have yet to be produced.

6. I have complied with the notice requirement within Civ. R. 37(A) by forwarding a letter to counsel dated November 13, 2013.

FURTHER AFFIANT SAYETH NAUGHT.



JEFFREY L. MALOON

SWORN TO BEFORE ME and subscribed in my presence this 24 day of December, 2013.



Notary Public

My Commission Expires:



BRIAN M. KNEAFSEY JR. ATTORNEY AT LAW
Notary Public - State of Ohio
My Commission Has No Expiration Date
O.R.C. Section 147.03