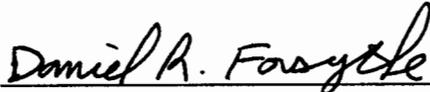




Despite the allegations set forth in plaintiffs' motion about Mr. Gullett – the temporary agency nurse whose immunity must be determined by this Court – he was not providing nursing services at OSUMC pursuant to a personal services contract with OSUMC. Neither he nor his agency, Medical Staffing Options, had a contract with OSUMC. According to the contract between OSUMC and a different third-party group to contract with agencies and provide temporary nurses at OSUMC, it was clear that a temporary nurse, such as Mr. Gullett, would not be considered an employee. Nonetheless, plaintiffs' arguments pertaining to immunity have no relevance to the issue of whether they should be allowed to amend their complaint.

The claim of agency by estoppel against the state – in which a state hospital is liable for the actions or omissions of a non-employee – has simply never been found to exist, pursuant to *Clark v. Southview Hosp. & Family Health Ctr.* Therefore, Defendant respectfully urges this court to overrule plaintiffs' motion for leave.

Respectfully submitted,  
MICHAEL DEWINE  
Ohio Attorney General

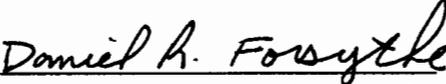


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was sent by regular U.S. mail, postage prepaid, this 17<sup>TH</sup> day of December, 2013, to

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