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OF OHIO
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IN THE COURT OF CLAIMS FOR THE STATE OF OHIO

MATTHEW RIES, Admr., et al.,

Plaintiff,

vs.

THE OHIO STATE UNIVERSITY MEDICAL CENTER,

Defendant.

Case No. 2010-10335

Judge Patrick M. McGrath

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, by and through counsel, respectfully submits the following response in opposition to Defendant's motion for partial summary judgment.

Respectfully submitted,

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ON COMPUTER

MEMORANDUM IN OPPOSITION

I. Introduction

On March 11, 2015, Defendant filed a response to Plaintiff's motion for leave to file a motion for partial summary judgment, incorporating its own motion for leave to move for partial summary judgment. On April 1, 2015, this Court granted both parties leave to file motions for partial summary judgment. However, during the interim, on March 20, 2015, the Court granted Plaintiff's motion to have its requests for admissions deemed admitted. Defendant's admissions obviate the need for Plaintiff to rely upon some of the testimony alleged to be hearsay. As a result, the purported grounds for partial summary judgment advanced by Defendant fail and Defendant's motion must be overruled.

II. Law and Argument

The purpose of the summary judgment process is to allow the court to analyze evidence and ascertain the need for trial. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 375 N.E.2d 46 (1978). "The purpose of summary judgment is not to try issues of fact, but is rather to determine whether triable issues of fact exist." *Cowan v. Interdyne Corp.*, 3rd Dist. Allen No. 1-12-26, 2013-Ohio-642, ¶ 11, quoting *Lakota Loc. Schools Dist. Bd. of Edn. v. Brickner*, 108 Ohio App.3d 637, 643, 671 N.E.2d 578 (6th Dist. 1996). In order for summary judgment to be granted, Defendant must show "that there is no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law." Civ. R. 56(C); *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107, 662 N.E.2d 264.

Although captioned as a motion for partial summary judgment, Defendant's motion is in essence a motion *in limine* to exclude what it believes to be inadmissible hearsay.

> [T]he purpose of a motion *in limine* is to avoid the injection into the trial, of matters which are irrelevant, inadmissible and prejudicial. * * * It also serves the useful purpose of raising and pointing out before trial, certain evidentiary rulings that the Court may be called upon to make.

Eastman v. Hirsh, 8th Dist. Cuyahoga No. 90081, 2008-Ohio-3042, ¶ 26, quoting *State v. Maurer*, 15 Ohio St.3d 239, 259, 473 N.E.2d 768 (1984), quoting *Redding v. Ferguson*, 501 S.W.2d 717, 722 (Tex. Civ. App. 1973). The issues raised in Defendant's motion for partial summary judgment are evidentiary issues bearing on the admissibility of certain testimony from the decedent's wife, Cyrelle McNew. Even if the Court were to rule that the testimony at issue is inadmissible, Plaintiff's wrongful death claim against Defendant would not fail as a matter of law as the claim itself is based upon a number of acts on the part of the physicians and nurses, not just those facts related to the telephone calls about which Mrs. McNew testified.

A. The Facts Regarding Two Of The Three Telephone Conversations At Issue Have Been Conclusively Established By Defendant's Admissions.

In its motion, Defendant argues that Plaintiff must produce something more than hearsay testimony to establish the factual foundation of his claims. Plaintiff agrees. However, in this case the evidence at issue is an admission by a party opponent and an exception to the hearsay rule under Evid. R. 803 and Evid. R. 804. In addition, the statements of Michael McNew have been conclusively established by Defendant's failure to timely respond to Plaintiff's requests for admissions which have now been deemed to be admitted by the Court. Under Civ. R. 56, matters in unanswered requests for admissions are admitted and deemed conclusively established for purposes of summary judgment, as well as trial. *Little v. Pyle*, 4th Dist. Highland No. 402, 1980 Ohio App. LEXIS 12975, *6, citing *Schmelzer v. Farrar*, 40 Ohio App.2d 440, 320 N.E.2d 707 (10th Dist. 1974).

Defendant's motion for partial summary judgment addresses three telephone conversations. These conversations occurred on September 15th, September 17th (identified in the motion as September 16th), and September 18th. The admissions establish the telephone conversations that occurred on September 17th and 18th. Thus, even without Cyrelle McNew's testimony regarding these telephone calls, the evidence necessary to establish the factual foundation for Plaintiff's claims is established by the admissions.

Defendant cannot produce computer records from the dates in question even though Dr. Husain's staff routinely noted the incoming calls in the patient's computerized chart. (Sharp TR 11-15; Starrett TR 12-15) Dr. Husain admitted that he failed to make any notes of the telephone conversations. (Dr. Husain TR 114) Dr. Husain claims that at the time he was not documenting his telephone conversations. (Dr. Husain TR 120) This has all changed because he now makes and keeps notes of these conversations in the electronic record. (Dr. Husain TR 121-122)

1. September 17th Call By Michael To Dr. Husain's Office

On September 17th, Michael and Cyrelle discussed that Michael would call the doctor's office concerning bruising that they believed to be caused by the prescribed Tramadol. (McNew TR 45) Cyrelle went to work and, upon her return, Michael informed Cyrelle that he had in fact called the doctor's office and they had informed him to stop taking Tramadol. (McNew TR 47) Michael McNew had placed a call to Dr. Husain's office to advise Dr. Husain that he was experiencing bruising at 8:08 a.m. on September 17, 2009. (See Telephone Log attached to the Admissions as Exhibit A) Plaintiff acknowledges that there was initially some confusion over whether Mr. McNew made this call on September 16th or 17th. However, the telephone records establish that the call occurred on September 17, 2009.

Plaintiff no longer needs to rely upon the testimony of Mrs. McNew to establish this fact because this Court has ruled that the facts related to the call are deemed admitted. Specifically, Defendant has admitted that "Michael McNew placed a phone call to an employee and/or agent of this Defendant on the morning of September 17, 2009 at approximately 8:08 a.m." and that "an employee and/or agent of this Defendant provided instructions by phone to Michael McNew to stop taking Tramadol due, in part to reporting bruising on September 17, 2009." (Combined Requests for Admissions and Interrogatories, Request Nos. 3 and 4)

An admission by a party-opponent is not hearsay. Evid. R. 801(D)(2). An admission by a party-opponent is a statement "offered against a party and is (a) the party's own statement, in either an individual or a representative capacity, or * * * (d) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, * * * " Evid. R. 801(D)(2). Whether Mrs. McNew heard Michael speaking to Dr. Husain or one of his nurses or physician assistants, any direction that he was given would have been an admission by a party opponent and not hearsay.

2. September 18th Calls at 8:04 a.m. and 2:08 p.m. (10 Minute Call)

Michael McNew placed the first phone call to Dr. Husain's office at 8:04 a.m. and told Dr. Husain's staff that he was having shortness of breath. (McNew TR 51, 57) Cyrelle and Michael were concerned over symptoms of shortness of breath and believed it to be caused by the Oxycodone, the drug substituted for the Tramadol. (McNew TR 51-52) Michael asked the staff to request that Dr. Husain call them. After not getting a return phone call, Cyrelle called the office again. (McNew TR 51-52, 57) Shortly thereafter Dr. Husain finally called back. (McNew TR 51-52, 57) In this ten minute phone call, Cyrelle told Dr. Husain about all of the symptoms Michael was experiencing including the bruising, continued bleeding, shortness of breath, and

extreme pain. (McNew TR52) At one point, Dr. Husain asked to speak to Michael but Michael was in too much pain to talk on the phone. (McNew TR 52) Dr. Husain asked Cyrelle where they lived. He also asked if Michael had a cardiologist and Cyrelle told him that he did not have a cardiologist. (McNew TR 52, 56) Dr. Husain told Cyrelle that Michael should follow up with a physician the following week. (McNew TR 52-54) At 8:00 p.m. that night, Michael went into a coma from a brain bleed. All of this evidence qualifies as an admission against a party opponent. Dr. Husain called Cyrelle the next day to see how Michael was doing and was told that Michael was in a coma. (McNew TR 72-73) Dr. Husain does not deny that these conversations occurred, but claims he can remember virtually nothing. (Dr. Husain TR 114)

In addition, Defendant's admissions obviate the need for Mrs. McNew's testimony regarding the telephone calls made on September 18, 2009 at 8:04 a.m. and 2:08 p.m. (See Telephone Log attached to the Admissions as Exhibit A) Defendant admitted that OSUMC received phone calls from the McNews on September 18, 2009 at approximately 8:04 a.m. and at approximately 2:08 p.m. (Combined Requests for Admissions and Interrogatories, Request Nos. 7 and 8) Dr. Husain finally returned Mr. McNew's calls on September 18th at approximately 2:30 p.m. (Combined Requests for Admissions and Interrogatories, Request No. 9 and Telephone Log attached to the Admissions as Exhibit A) During that call, Mrs. McNew told Dr. Husain that Michael McNew was experiencing shortness of breath and had bruising on his arm. (Combined Requests for Admissions and Interrogatories, Request Nos. 10 and 11) Since Mrs. McNew was the individual who actually spoke to Dr. Husain on September 18th, she can testify regarding the substance of her conversation with him that afternoon. Defendant's admissions prevent Defendant from offering contrary testimony.

The telephone records reflecting the calls made by Michael and Cyrelle McNew on these dates further substantiate these calls which were made to OSUMC Surgery Department at their number, 614-257-2264. (See Telephone Log attached to the Admissions as Exhibit A) The telephone records were authenticated through the admissions. (Combined Requests for Admissions and Interrogatories, Request Nos. 5 and 6)

B. Evidence Of The Telephone Conversation On September 15, 2009 Is Admissible Under Evid. R. 803(4).

The only telephone conversation at issue that was not the subject of the requests for admissions is the call made on September 15th. Mrs. McNew was actually present during this conversation and heard what Michael reported to Dr. Husain.

> Q. You encouraged him to call. Did you call yourself and speak to someone?
>
> A. I was with him when he called.
>
> Q. He got on the phone and called somebody?
>
> A. Right. And we discussed that he would explain clearly that he was saturating five plus layers of gauze.
>
> Q. You heard what he said?
>
> A. Right.
>
> Q. Did you make a note of what he said?
>
> A. Did I make a note in my notes?
>
> Q. Yes.
>
> A. Yes.
>
> Q. What does it say?
>
> A. It says, "Mike called Dr. Husian (sic) and explained that he was 'saturating through five plus layers of gauze not just spotting.' And he was told to see what happens."

Q. Is that an exact quote?

A. Yes.

(Cyrelle McNew Depo., pp. 40-41) Cyrelle McNew is able to testify about what she heard Michael tell Dr. Husain because she heard Michael's end of the conversation. That in and of itself establishes what information Dr. Husain had before him on September 15th.

Michael's statement to Dr. Husain, specifically that he was "saturating through five plus layers of gauze not just spotting", was made for the purposes of medical diagnosis and treatment and falls within the exception in Evid. R. 803(4).[1] Evid. R. 803(4) excludes from hearsay "statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Michael's statement, which was made in the presence of Mrs. McNew, is admissible.

Moreover, it is not necessary to offer Mrs. McNew's testimony regarding the telephone conversation for the truth of the matter asserted. Instead, the evidence is only intended to show that Dr. Husain was aware of the fact that Michael was reporting excessive bleeding that was occurring on September 15th. As such, it is not hearsay as defined in Evid. R. 801(C) and is therefore admissible.

C. Any Determination Of Admissibility Under Evid. R. 804(B)(5) Is Premature.

In its motion for partial summary judgment, Defendant maintains that Mrs. McNew's testimony regarding the telephone conversations does not fall within the hearsay exceptions in

[1] Defendant also argues the hearsay exception in Evid. R. 803(4) does not apply because it permits only the healthcare provider's testimony regarding statements made by the declarant for purposes of diagnosis and treatment. There is nothing in the language in Evid. R. 803(4) that specifically limits the application of the exception to testimony of a healthcare provider; the rule only requires that the statement be made to a healthcare provider for purposes of medical diagnosis and treatment which, of course, can be witnessed by anyone.

Evid. R. 804(B)(5). However, until testimony is presented at trial, any such determination is premature. Evid. R. 804(B)(5) expressly provides:

> The following are not excluded by the hearsay rule: * * * (5) The statement was made by a decedent * * *, where (a) the estate or personal representative of the decedent's estate * * * is a party, and (b) the statement was made before the death * * *, and (c) the statement is offered to rebut testimony by an adverse party on a matter which was within the knowledge of the decedent * * * .

All three of the elements must be satisfied for the testimony to be admissible. *Ponti v. Erieside Clinic*, 11th Dist. Lake No. 93-L-205, 1995 Ohio App. LEXIS 977 (Mar. 17, 1995), unreported, *10, citing *Eberly v. A-P Controls, Inc.*, 61 Ohio St.3d 27, 30-33, 572 N.E.2d 633 (1991). Defendant argues that Plaintiff cannot satisfy the third element as neither Dr. Rothbaum nor Dr. Husain has offered testimony regarding the telephone conversations. Until the case actually goes to trial, the parties have no way of knowing what testimony will be presented and whether rebuttal testimony from Mrs. McNew will be necessary. As a practical matter, based on the admissions, the testimony may not even be necessary.

In *Ponti*, the doctor argued that the trial court erred by allowing the decedent's husband to testify concerning the statements made by his wife regarding conversations she had with her doctor during her office visits. In *Ponti*, the wife saw her doctor when she detected a lump in her breast. The doctor argued that the statements were not admissible because they were not offered to rebut the testimony of an adverse party. The court of appeals disagreed noting that they "do not share appellant's interpretation of the rule that to constitute rebuttal testimony, the evidence must be presented to counter the testimony of a witness called by the adverse party." *Id.* The court held that calling an adverse witness in the plaintiff's case-in-chief as if on cross-examination was sufficient to satisfy the third condition in Evid. R. 804(B)(5). *Id.* at *11.

In *Ponti*, the doctor also claimed that the testimony did not rebut any statement he had made regarding conversations with Mrs. Ponti. The court disagreed, reasoning that:

> [D]uring cross-examination, he stated that he had advised Mrs. Ponti of the potential consequences of not proceeding with the biopsy, otherwise he would not have scheduled the biopsy to which she agreed. The testimony of appellee refuted this assertion, suggesting that appellant had downplayed significance of the lump and had not fully warned the decedent. This testimony rebutted that of the appellant, even though offered in appellee's case in chief.

Id. The court held that the decedent's statements to her husband were admissible. *Id.*

Ordinarily, statements offered under Evid. R. 804(B)(5) cannot be presented during the plaintiff's case-in-chief. *Drew v. Marino*, 9th Dist. Summit No. 21458, 2004-Ohio-1071, ¶ 17. "However, the statements of the decedent can be offered to rebut an adverse parties' [sic] testimony after an adverse party has testified as if on cross-examination." *Id.* citing *Bobko v. Sagen*, 61 Ohio App.3d 397, 410, 572 N.E.2d 823 (1989). In *Drew*, the appellees were called during appellant's case-in-chief as adverse parties and testified as if on cross-examination. The court held that the trial court erred by excluding the testimony because the third element in Evid. R. 804(B)(5) had been satisfied because the testimony presented by appellant was offered to rebut an adverse party's testimony after an adverse party had testified as if on cross-examination. *Id.* at ¶ 19.

How Evid. R. 804(B)(5) is applied is further explained in *Dissinger v. Jack P. Hennessey Co.*, 1st Dist. Hamilton No. C-850292, 1986 Ohio App. LEXIS 6393 (Apr. 16, 1986), unreported, where the court affirmed the trial court's exclusion of testimony from the wife regarding out-of-court statements made by the decedent to her and to his physician about the cause of his injury. *Dissinger* illustrates how the rebuttal evidence must be used in the case-in-chief. There the court

found that the appellees did not introduce evidence about the decedent's failure to advise them of the circumstances of his injury until after the appellant testified. The court explained:

> If appellant had given the controverted testimony in her case-in-rebuttal, the statements might have been admissible, not to prove their truth, but to prove only that the statements were made. The court could have admitted the statements along with a proper limiting instruction, under Evid. R. 105. However, in the context of the framework of the trial, the court did not err in refusing to admit the statements under appellant's non-hearsay theory because that theory, at the time it was argued, was patently premature.

Id. at *13. Although in *Dissinger* the court did not cite Evid. R. 804(B)(5), the analysis applied was consistent with the analysis used by courts applying Evid. R. 804(B)(5).

Finally, Defendant argues that Mrs. McNew's testimony regarding the conversation that led Michael to stop taking Tramadol is not admissible to explain Michael's conduct. As previously noted, whether this testimony is admissible is no longer relevant because Defendant has admitted that the conversation occurred and what information was communicated during this conversation by way of the admissions.

III. Conclusion

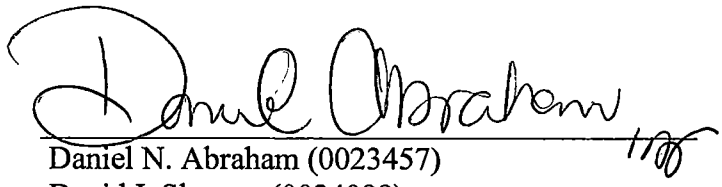
Plaintiff's case does not exclusively rely on the telephone conversations addressed in Defendant's motion for partial summary judgment. For example, the excessive bleeding symptoms alone should have resulted in Dr. Husain seeing Michael McNew. (Dr. Hockenberry TR 41-43; Dr. Johansen TR 73) The transcripts of the depositions of all of Plaintiff's experts have been filed and support that Dr. Husain fell below the standard of care in treating Michael and responding to his concerns following surgery.

The issues raised in Defendant's motion for partial summary judgment are evidentiary issues that are not appropriate matters for resolution on summary judgment. These evidentiary issues can, and should be, addressed at trial. In this case, Defendant's challenge to the evidence

related to the telephone conversations is not valid and the evidence is admissible under exceptions to the hearsay rule. The evidence has also been conclusively established through the admissions.

For the forgoing reasons, Plaintiff respectfully requests that the Court overrule Defendant's motion for partial summary judgment.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served upon the following counsel of record via email only, this 23rd day of April, 2015:

Daniel R. Forsythe, Esq.
Jeffrey L. Maloon, Esq.
Office of the Ohio Attorney General
Court of Claims Defense Section
150 East Gay Street, Suite 1800
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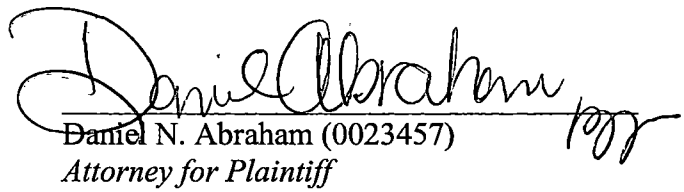
Attorneys for Defendant



Daniel N. Abraham (0023457)
Attorney for Plaintiff

IN THE COURT OF CLAIMS FOR THE STATE OF OHIO

MATTHEW RIES, Admr., et al.,

Plaintiff,

vs.

Case No. 2010-10335

Judge Joseph T. Clark

THE OHIO STATE UNIVERSITY MEDICAL CENTER,

Defendant.

PLAINTIFF'S COMBINED FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, REQUESTS FOR ADMISSION AND INTERROGATORIES TO DEFENDANT

Pursuant to the Ohio Rules of Civil Procedure governing discovery requests, Plaintiff hereby requests that the referenced Defendant produce and permit said Plaintiff to inspect, copy or photograph the following documents, admit or deny the following Requests for Admission and answer the following Interrogatories.. As directed by the Ohio Civil Rules Defendant shall serve written responses to this request within twenty eight (28) days of service hereof at the office of David I. Shroyer, Esq., Colley, Shroyer & Abraham Co., LPA. Copies of the requested documents may be attached to the written response.

DEFINITIONS

The term "document" as used herein means all writings of any kind, including, but not limited to, the original and all non-identical copies, whether different from originals by reason of notation made on such copies or otherwise; letters; books; manuals; telegrams; memoranda; tape recordings; records; reports; contracts; analysis; calendar or diary entries; notes; charges; diagrams; lists; minutes and records of meetings and conferences and

REQUESTS FOR ADMISSION AND
CALL LOG

telephonic or other communications; and any other items from which information can be received with or without the use of detection devices in the possession, custody or control of Defendant, Defendant's representatives, attorneys or other persons acting for/on Defendant's behalf.

DOCUMENTS REQUESTED

1. Complete copy of all records pertaining to documentation from nurses/medical assistants/staff or other categories of personnel for phone calls from Michael or Cyrelle McNew to an employee or agent of this Defendant (including but not limited to the offices of Dr. Husain and/or Dr. Rothbaum) from August 12 to September 18, 2011, including but not limited to the following:

    1. Phone call(s) that lead up to the August 12, 2011 nurse's visit via Dr. Rothbaum's office

    2. Phone call(s) that led up to the September 14, 2011 visit with Dr. Rothbaum.

    3. Any and all calls received from, or placed to, Michael or Cyrelle McNew on September 17, 2011.

    4. Any and all calls received from, or placed to, Michael or Cyrelle McNew on September 18, 2011.

Response:

2. A complete copy of any and all office records, phone records, phone logs, metadata, emails, computer generated records, text messages, pager messages or other recorded or written data associated with any of the above-referenced calls.

Response:

3. A complete copy of any and all office records, phone records, phone logs, metadata, emails, computer generated records, text messages, pager messages or other recorded or written data from August 1 to September 30, 2011 associated with:

1. Dr. Husain's pager identified in his deposition as ending with 1372.

2. Dr. Husain's personal cell phone ending in 8813 as identified in his deposition.

3. Any other pager numbers or personal phone numbers associated with Dr. Husain

Response:

4. Logs, whether handwritten or maintained by computer or other recorded instrument, associated with any and all calls received from, or placed to, Michael or Cyrelle McNew, from August 1 to September 30, 2011.

Response:

5. Copies of any and all policies, procedures, protocols or guidelines in place at OSUMC from 2011 to the present regarding the receiving of or returning of patient related phone calls applicable to the internal medicine department and/or Dr. Rothbaum's office, the surgery department and/or Dr. Husain's office, including but not limited to the documentation/recording of such phone calls, the type of information that should be obtained when receiving or responding to a patient related phone call and what subsequent steps an OSUMC employee should take upon receipt of a patient related phone call, including but not limited to policies, procedures, protocols or guidelines governing medical assistants, receptionists or other medical office staff personnel.

Response:

6. Copies of any and all exhibits Defendant intends to introduce into evidence at the trial of the within matter.

Response:

7. Copies of any and all medical literature which Defendant plans on establishing as "reliable authority" pursuant to Ohio Rules of Evidence 803(18) for use at trial.

Response:

COMBINED REQUESTS FOR ADMISSIONS AND INTERROGATORIES

1. Admit that documentation not otherwise produced herein, pertaining to phone calls placed by Michael or Cyrelle McNew to an employee or agent of this Defendant (including but not limited to the offices of Dr. Husain and/or Dr. Rothbaum) from August 12 to September 18, 2011 was destroyed.

ADMIT DENY

2. Fully describe by date, author and the content/type/purpose of any and all documentation not otherwise produced herein, pertaining to phone calls placed by Michael or Cyrelle McNew to an employee or agent of this Defendant (including but not limited to the offices of Dr. Husain and/or Dr. Rothbaum) from August 12 to September 18, 2011, and the date such documentation was destroyed.

ANSWER:

3. Admit that Michael McNew placed a phone call to an employee and/or agent of this Defendant on the morning of September 17, 2011 at approximately 8:08 a.m.

ADMIT DENY

4. Admit that an employee and/or agents of this Defendant provided instructions by phone to Michael McNew to stop taking Tramadol due, in part to reporting bruising on September 17, 2011.

ADMIT DENY

5. Admit that Exhibit A is a fair and accurate copy of the telephone records of Michael and Cyrelle McNew and that such records are admissible under Rules of Evidence 803(6) as business records.

ADMIT DENY

6. Admit that telephone number 614-257-2264 was assigned to OSUMC Surgery Department as of September, 2011.

ADMIT DENY

7. Admit that OSUMC received a phone call from the McNews on September 18, 2011 at approximately 8:04 a.m.

ADMIT DENY

8. Admit that OSUMC received a phone call from the McNews on September 18, 2011 at approximately 2:08 p.m.

ADMIT DENY

9. Admit that Dr. Husain called the McNews back on the afternoon of September 18, 2011 at approximately 2:32 p.m.

ADMIT DENY

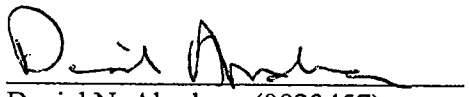
10. Admit that on September 18, 2011, Dr. Husain was told by Cyrelle McNew that Michael McNew was experiencing shortness of breath.

ADMIT DENY

11. Admit that on September 18, 2011, Dr. Husain was told by Cyrelle McNew that Michael McNew had bruising on his arm.

ADMIT DENY

Respectfully Submitted,



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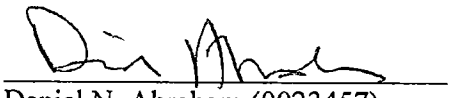
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served upon the following counsel of record via email only, this 8th day of December 2014:

Daniel R. Forsythe, Esq.
Jeffrey L. Maloon, Esq.
Office of the Ohio Attorney General
Court of Claims Defense Section
150 East Gay Street, Suite 1800
Columbus, OH 43215
Attorneys for Defendant



Daniel N. Abraham (0023457)
David I. Shroyer (0024099)
Counsel for Plaintiff

Call Detail (Continued)

User Name: MICHAEL MCNEW **617-780-9641**

Rate Code: RM45=450 Rollover Mins, 5KNW=5000 N&W
Rate Period (PD): DT=Daytime, NW=Nwknd

Item	Day	Date	Time	Number Called	Call To	Min	Rate Code	Rate Pd	Feature	Airtime Charge	LD/Add'l Charge	Total Charge
56		09/14	12:51PM	614-210-7616	DUBLIN OH	1	RM45	DT				0.00
57		09/14	1:00PM	614-210-7616	DUBLIN OH	5	RM45	DT				0.00
58		09/14	1:08PM	614-791-6450	DUBLIN OH	1	RM45	DT				0.00
59		09/14	1:08PM	614-210-6057	DUBLIN OH	2	RM45	DT				0.00
60		09/14	1:10PM	614-793-5145	DUBLIN OH	1	RM45	DT				0.00
61		09/14	1:11PM	614-791-6450	DUBLIN OH	2	RM45	DT				0.00
62		09/14	1:18PM	617-373-3943	BOSTON MA	1	RM45	DT				0.00
63		09/14	1:28PM	617-780-9641	INCOMI CL	3	RM45	DT				0.00
64		09/14	1:42PM	617-373-3943	BOSTON MA	7	RM45	DT				0.00
65		09/14	3:51PM	614-336-3108	DUBLIN OH	3	RM45	DT				0.00
66		09/14	5:09PM	617-780-9641	INCOMI CL	2	RM45	DT				0.00
67		09/14	9:01PM	508-668-7043	WALPOL MA	18	5KNW	NW				0.00
68	TUE	09/15	11:07AM	614-210-7616	DUBLIN OH	1	RM45	DT				0.00
69		09/15	11:08AM	614-793-5145	DUBLIN OH	1	RM45	DT				0.00
70		09/15	1:26PM	617-373-3943	BOSTON MA	4	RM45	DT				0.00
71		09/15	1:38PM	614-210-6057	DUBLIN OH	2	RM45	DT				0.00
72		09/15	5:41PM	614-336-3108	DUBLIN OH	1	RM45	DT				0.00
73		09/15	5:50PM	614-210-7616	DUBLIN OH	1	RM45	DT				0.00
74		09/15	5:51PM	614-793-5145	DUBLIN OH	1	RM45	DT				0.00
75		09/15	6:38PM	508-668-7043	WALPOL MA	19	RM45	DT				0.00
76	WED	09/16	9:11AM	614-210-7616	DUBLIN OH	1	RM45	DT				0.00
77		09/16	9:13AM	614-791-6450	DUBLIN OH	9	RM45	DT				0.00
78		09/16	9:22AM	614-210-7616	DUBLIN OH	1	RM45	DT				0.00
79		09/16	3:06PM	614-210-6057	DUBLIN OH	2	RM45	DT				0.00
80		09/16	7:19PM	508-668-7043	WALPOL MA	4	RM45	DT				0.00
81		09/16	8:10PM	508-668-7043	WALPOL MA	2	5KNW	NW				0.00
82	THU	09/17	8:03AM	614-257-2264	COLUMB OH	4	RM45	DT				0.00
83		09/17	9:54AM	617-780-9641	INCOMI CL	4	RM45	DT				0.00
84		09/17	12:28PM	617-780-9641	INCOMI CL	3	RM45	DT				0.00
85		09/17	5:11PM	617-331-4058	BOSTON MA	1	RM45	DT				0.00
86	FRI	09/18	8:04AM	614-257-2264	COLUMB OH	2	RM45	DT				0.00
87		09/18	8:37AM	617-373-3943	BOSTON MA	1	RM45	DT				0.00
88		09/18	2:08PM	614-257-2264	COLUMB OH	6	RM45	DT				0.00
89		09/18	2:32PM	617-780-9641	INCOMI CL	10	RM45	DT				0.00
90		09/18	4:18PM	617-780-9641	INCOMI CL	1	RM45	DT				0.00
91		09/18	5:33PM	508-668-7043	WALPOL MA	32	RM45	DT				0.00
92	SAT	09/19	9:24AM	617-780-9641	INCOMI CL	1	5KNW	NW				0.00
93		09/19	12:12PM	617-780-9641	INCOMI CL	4	5KNW	NW				0.00
			Subtotal Minutes			307						0.00
Total						307						0.00

Data Detail

User Name: MICHAEL MCNEW **617-780-9641**

Rate Code: CMB1=MEDIA MAX UNL MNET, TMI1=Text Msg Pay Per Use
Rate Period (PD): AT=Anytime
Feature: GPRR=GPRS $0.00 rate APN002, SMH=SMS per msg $0.20 MO/MT - PPU

Item	Day	Date	Time	To/From	Type	Msg/KB/Min	Rate Code	Rate Pd	Feature	In/Out	Total Charge
1	FRI	09/04	7:18AM	614-896-1069	Text Message	1 Msg	TMI1	AT	SMH	In	0.20
2	MON	09/07	9:21PM	617-899-5492	MTM TEXT MESSAG	1 Msg	TMI1	AT	SMH	In	0.20
		Subtotal of Msg's				2 Msg					0.40
3	SAT	09/19	7:52AM	Data Transfer	Data	7 KB	CMB1	AT	GPRR	Out	0.00
4		09/19	10:14AM	Data Transfer	Data	42 KB	CMB1	AT	GPRR	Out	0.00

Exhibit A