

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE OHIO COURT OF CLAIMS

2015 JAN 12 AM 10: 29

BARBARA A. COOPER,
Executor of the Estate of
Charles E. Cooper, deceased.
22 Spring Lane
Tiffin, Ohio 44883

Plaintiff,

-vs-

THE STATE OF OHIO
The Ohio State University Medical
Center
c/o Ohio Attorney General Mike DeWine
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

Defendant.

Case No.: **2015 - 000 17**

Judge:

COMPLAINT

PARTIES AND JURISDICTION

1. This Court has exclusive jurisdiction of the claims filed herein pursuant to Ohio Revised Code Chapter 2473 as the Defendant is a state entity. See Boggs v. State, (1983), 8 Ohio St.3d 15.

2. At all times relevant herein, Plaintiff's decedent Charles E. Cooper was a resident of Tiffin, Seneca County, State of Ohio, who passed away prematurely on May 15, 2014. Plaintiff Barbara A. Young was appointed Executor of the estate of her husband by the Probate Court of Seneca County, Ohio in Case Number 20141174. She brings this action pursuant to Ohio Revised Code Section 2125.01 et seq., for the wrongful death of Charles E. Cooper and for the exclusive benefit of his survivors, Kelli Dariano, Ty Cooper and Chad Cooper.

3. At all times relevant herein, Defendant State of Ohio, by and through The Ohio State University Medical Center (hereinafter "the Defendant"), provided education and training

ON COMPUTER

to physicians, fellows, residents, interns, CRNA's, perfusionists, nurses and/or technicians within its programs and were engaged in the business of providing medical treatment and hospital services for consideration to those in need of medical care.

4. At all times relevant, herein, Defendant acted through agents and employees and/or independent contractors, including, but not limited to physicians, fellows, residents, interns, CRNA's, perfusionists, nurses and technicians who were within the course and scope of their employment and authority.

5. At all times relevant herein, Enver Ozer, MD; Stanley Sells, Laser Tech; Michael Hubbell, M.D.; Gaylynn Speas, M.D.; Derek Foerschler; Judith Jackson, RN; Bethanie Vangen, Tammy Lyn Morrison, RN; Louise Williams, RN; and other unidentified physicians, residents, nurses CRNA's, technicians and/or health care providers acted in their roles as employees and/or agents of Defendant and were involved in the care and treatment of Plaintiff's decedent Charles Cooper.

6. At all times relevant herein, there existed a professional medical relationship by and between Plaintiff Bryan A. Huff and the Defendant, with all the rights, duties and obligations attendant thereto.

7. Pursuant to Ohio Civ.R. 10(D), the Affidavit of Merit of Martin S. Trott, M.D. is attached hereto.

FIRST CLAIM FOR RELIEF – MEDICAL NEGLIGENCE

8. Plaintiffs hereby incorporate paragraphs one through seven of this Complaint as if fully restated herein.

9. On or about July 1, 2010, Plaintiff's decedent Charles Cooper was admitted to The Ohio State University Medical Center where he underwent a direct microlaryngoscopy with

laser vaporization of the left true vocal cord lesion when an airway fire occurred as a result of 100% oxygen flowing during the use of the laser.

10. The medical care and treatment provided by Defendant, by and through its employees and/or agents, was performed in a negligent and unskillful manner in that they failed to exercise the degree of skill and care an ordinarily prudent physician, anesthesiologist, resident, CRNA, nurse, technician and/or other health care provider would have exercised under like or similar circumstances. Specifically, Defendant, by and through its agents and employees, failed to adequately perform the surgical procedure; failed to keep Plaintiff's decedent safe and out of harms' way, failed to prevent the airway fire from occurring during his surgical procedure, and, were negligent in other respects as well.

11. At all times relevant herein, Defendant The Ohio State University Medical Center was negligent in failing to properly train, instruct, and or otherwise supervise its employees and others working at OSU Medical Center as to the proper procedure and protocols to be utilized when utilizing a laser during a surgical procedure.

12. As a direct and proximate result of the negligence and failures of Defendant and as a direct and proximate result of the airway fire, Plaintiff's decedent underwent an emergent tracheostomy and right bronchoscopy to remove foreign bodies. As a result of his injuries, he suffered from mucous plugging issues requiring frequent daily suctioning. Plaintiff's decedent's post airway recovery was complicated due to dyspnea, secretions and airway debris that resulted in numerous hospitalizations and surgical debridement procedures; tracheal tube replacements and tracheal dilation procedures. In addition, Plaintiff's decedent lost a significant portion of his sense of smell and taste and, his voice was incredibly weak.

SECOND CLAIM FOR RELIEF – WRONGFUL DEATH

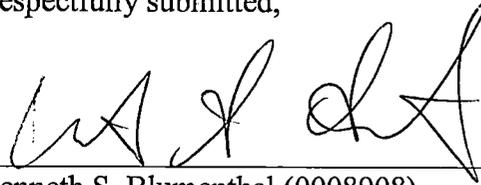
13. Plaintiffs hereby incorporate paragraphs one through twelve of this Complaint as if fully restated herein.

14. As a direct and proximate cause of the negligence and failures of Defendant, Plaintiff's decedent, Charles Cooper died prematurely on May 15, 2014.

15. As a direct and proximate result of the negligence of Defendant as set forth above, Charles Cooper's survivors, including his children, Kelli Dariano, Ty Cooper and Chad Cooper as well as all other next of kin, have suffered the loss of his society, support, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education, and have suffered extreme mental anguish and grief, and have been otherwise damaged since his premature and wrongful death on May 15, 2014. As such, his survivors and next of kin are entitled to compensation in an amount reasonable and proper to commensurate with their losses as set forth herein. Decedent's wrongful death beneficiaries further suffered and incurred all other damages contemplated by Ohio Revised Code Chapter 2125.

WHEREFORE, Plaintiff hereby demands judgment against the Defendant for compensatory damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000), plus interest, pre-judgment interest as determined by law, her costs herein expended, and any other relief this Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. S. Blumenthal', written over a horizontal line.

Kenneth S. Blumenthal (0008908)

Rourke & Blumenthal, Esq.

495 S. High St., Suite 450

Columbus, Ohio 43215

kblumenthal@randblp.com

614/220-9200 Telephone

614/220-7900 Facsimile

Attorneys for Plaintiff

IN THE COURT OF CLAIMS, STATE OF OHIO

Barbara A. Cooper, as Executor of the
Estate of Charles E. Cooper :

Plaintiff : Case No.

vs. :

The Ohio State University Medical Center :

Defendant :

AFFIDAVIT OF MERIT OF MARTIN S. TROTT, M.D.

State of Wyoming, County of Teton, to-wit:

Martin S. Trott, M.D., F.A.C.S., being first duly sworn according to the law
deposes and states as follows:

1. I submit this Affidavit of Merit in accordance with the Ohio Civil Rule of
Procedure, Rule 10(D)(2)(a).

2. I am a physician licensed to practice medicine in the State of Wyoming
and, I am certified by the American Board of Otolaryngology.

3. I devote at least three quarters of my professional time in the active
clinical practice in my field of licensure or, to its instruction in an accredited school.

4. I am familiar with the standard of care in this case.

5. I have been provided with and have reviewed all of the medical records of
Charles Cooper reasonably available to the Plaintiff concerning the allegations contained
in Plaintiff's Complaint.

6. Based on the information and documentation provided to me and, based
upon my education, experience, and review of the medical records of Charles Cooper, it
is my opinion as to a reasonable degree of medical probability that the standard of care

was breached by Defendant, The Ohio State University Medical Center, by and through its agents and employees, at the time of their treatment to Plaintiff Charles Cooper and, said breach caused injury to Plaintiff Charles Cooper and resulted in his premature death.

Further Affiant Sayeth Naught.


MARTIN S. TROTT, M.D., F.A.C.S.

Sworn to and subscribed in my presence this 2 day of December, 2014.


Notary Public

