IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

LORI BONTELL, ADMINISTRATOR FOR THE ESTATE OF KAREN MIKALONIS, DECEASED
8220 WESTMINSTER ABBEY BLVD
ORLANDO, FL 32835

Plaintiff,

-vs.-

OHIOHEALTH CORPORATION
3430 OHIO HEALTH PKWY
COLUMBUS, OH 43202

and

DAVID B. MARCUS, M.D.
8212 CAMPDEN LAKES BLVD
DUBLIN, OH 43016-8252

and

YOJAN R. PATEL, M.D.
5425 TALLADEGA DR
DUBLIN, OH 43016-9658

and

EDWARD M. CORDASCO JR., D.O.
4840 CHADDINGTON DR, UNIT 614
DUBLIN, OH 43017-2178

and

CASE NO.:

JUDGE:

COMPLAINT
MEDICAL NEGLIGENCE
RESPONDEAT SUPERIOR
WRONGFUL DEATH

TIMOTHY R. VERRILLI, D.O.
4720 BELL CLASSIC DR
GROVE CITY, OH 43123-1373

and

ERIC D. EGNOT, M.D.
3855 PLEASANTBROOK DR
HILLIARD, OH 43026-5710

and

BRIAN W. PHILLIPS, D.O.
10775 HONEYSUCKLE WAY
PLAIN CITY, OH 43064-2537

and

JOHN DOE NO. 1 (Name Unknown)
3430 OHIO HEALTH PARKWAY
COLUMBUS, OH 43202

and

JOHN DOE NO. 2 (Name Unknown)
3430 OHIO HEALTH PARKWAY
COLUMBUS, OH 43202

and

JOHN DOE NO. 3 (Name Unknown)

Defendants.

Now comes Plaintiff Lori Bontell, Administrator for the Estate of Karen Mikalonis, Deceased ("Plaintiff"), and for her claims for relief which include all claims that the Estate is legally entitled to make on behalf of Decedent Karen Mikalonis' ("Karen") children, heirs, next of

kin, and all others who may have legal claims as a result of her death against Defendants OhioHealth Corporation ("OhioHealth"), David B. Marcus, M.D. ("Dr. Marcus"), Yojan R. Patel, M.D. ("Dr. Patel"), Edward M. Cordasco Jr., D.O. ("Dr. Cordasco"), Timothy R. Verrilli, D.O. ("Dr. Verrilli"), Eric D. Egnot, M.D. ("Dr. Egnot"), Brian W. Phillips, D.O. ("Dr. Phillips"), John Doe No. 1, John Doe No. 2, and John Doe No. 3 (all Defendants named in this action collectively referred to as "Defendants"), and hereby states as follows:

THE PARTIES, JURISDICTION, AND VENUE

1. At all relevant times, OhioHealth was and still is a non-profit corporation incorporated in and registered to conduct business in the State of Ohio, representing itself to be skilled in the diagnosis and treatment of injury, illness, and disease, and further representing itself as providing medical services including pulmonary care and treatment.
2. At all relevant times, Dr. Marcus represented himself to be a licensed and skilled physician in medical care and treatment.
3. At all relevant times, Dr. Patel represented himself to be a licensed and skilled physician in medical care and treatment.
4. At all relevant times, Dr. Cordasco represented himself to be a licensed and skilled physician in medical care and treatment.
5. At all relevant times, Dr. Verrilli represented himself to be a licensed and skilled physician in medical care and treatment.
6. At all relevant times, Dr. Egnot represented himself to be a licensed and skilled physician in medical care and treatment.
7. At all relevant times, Dr. Phillips represented himself to be a licensed and skilled physician in medical care and treatment.

8. After exercising due diligence, the names and addresses of Defendants John Doe Nos. 1 through 3 are unknown by Plaintiff but may include the following description, in addition to other currently unknown person/entities: (a) any known employer of any defendants or of unknown negligent parties; (b) any unknown supervisors of any defendants or of unknown negligent parties; or (c) any known person who provided negligent care to Karen.
9. OhioHealth has its principal place of business in Franklin County, Ohio.
10. Venue is proper in the Franklin County Court of Common Pleas.
11. Subject matter jurisdiction is proper in the Franklin County Court of Common Pleas.

INTRODUCTION

12. Pneumonia is an infection that inflames the tissue in one or both lungs. Pneumonia may cause cough with phlegm or sputum, fever, chills, and difficulty breathing.
13. A variety of organisms, including bacteria and viruses, can cause pneumonia.
14. Pneumonia can range in seriousness from mild to life-threatening.
15. Certain risk factors increase a person's chance of developing pneumonia. Such risk factors include, but are not limited to, being hospitalized, and having a weakened or suppressed immune system due to immunosuppressive drugs.
16. Symptoms of pneumonia include, but are not limited to, difficulty breathing, chest pain while breathing or coughing, confusion or changes in mental awareness, fatigue, and lower than normal blood oxygen levels.
17. Determining the cause of pneumonia (viral vs. bacterial) is critical because pneumonia will be treated differently depending on its cause.
18. If started early enough, bacterial pneumonia is effectively treated with appropriate antibiotics.

19. If bacterial pneumonia is misdiagnosed as viral pneumonia, the patient may die due to the delay in effective antimicrobial therapy.

20. The etiology of pneumonia is often uncertain. Whenever bacterial etiology cannot be excluded with certainty, empiric antibiotics are indicated.

FACTUAL ALLEGATION

21. Plaintiff realleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

22. On December 4, 2021, Karen allegedly tested for SARS-CoV-2 via an at-home testing kit. She later reported that the test was positive. There is no official record of this test's results.

23. At-home COVID-19 testing kits have a significant percentage of false positives.

24. On December 4, 2021, Jeffrey Mueller, M.D. ("Dr. Mueller") prescribed ivermectin and azithromycin.

25. On December 5, 2021, Dr. Mueller prescribed hydroxychloroquine, an immunosuppressant.

26. On December 9, 2021, Karen's primary care physician, Brian Boyle, M.D., prescribed methylprednisolone and an albuterol inhaler.

27. Methylprednisolone is a corticosteroid that suppresses the body's immune system. The immunosuppressant effects of methylprednisolone and hydroxychloroquine make a person more susceptible to infection.

28. By December 10, 2021, Karen was feeling much better. She felt so much better that she cleaned her house and began Christmas shopping online. However, Karen began feeling fatigued later in the evening. When she climbed the stairs in her home, she had a hard time breathing.

29. It is very uncommon for a COVID-19 patient to get worse after significant clinical improvement.

30. It is the ordinary presentation for staphylococcus pneumonia to appear sometime after recovery from a viral upper respiratory infection.

Karen goes to the Powell, Ohio emergency room with trouble breathing

31. On December 11, 2021, at approximately 01:00, Karen presented to the Powell Free Standing Emergency Department (the "ER"), a facility operated by OhioHealth.

32. Upon admittance to the ER, Karen's vital signs were taken: blood pressure of 112/56; heart rate of 105 beats per minute; temperature of 98.2°F; respiratory rate of 22; and blood oxygen saturation of 84%.

33. These vital signs are consistent with bacterial pneumonia.

34. These vital signs meet the generally accepted criteria for sepsis in 2021, according to the Society of Critical Care Medicine.

35. The ER staff performed an x-ray of Karen's chest. Dr. Marcus reviewed the imaging, and the radiologist interpreted the image as "Strandy interstitial opacities in the bilateral mid- to lower lung zones, left greater than right, is consistent with atypical infectious infiltrate/viral pneumonia."

36. Imaging showing atypical infectious infiltrate/viral pneumonia is a non-specific finding which could indicate bacterial pneumonia.

37. Despite this non-specific finding, Dr. Marcus records that the "Chest x-ray appears to show the usual Covid bilateral infiltrates." Dr. Marcus later wrote on Karen's transfer order, "X-ray shows usual Covid infiltrates."

38. There is no such thing as COVID-19 usual bilateral infiltrates. The chest x-ray image of COVID-19 is a spectrum ranging from normal to complete opacification of both lungs.

39. ER staff performed a blood test. The test showed an elevated white blood cell count ("WBC") of 14.61 and an elevated absolute neutrophil count of 12.63.

40. An elevated absolute white blood cell count combined with an elevated absolute neutrophil count is consistent with a bacterial infection.

Defendants disregard evidence of bacterial pneumonia and only treat Karen for COVID-19

41. Prior to her death, Karen had been a licensed practical nurse for over twenty years.

42. At approximately 06:55, Karen requested that she be administered Rocephin (ceftriaxone). Rocephin is a third-generation cephalosporin antibiotic used for the treatment of bacterial infection.

43. Karen stated that "all my doctors in Florida, and my [nurse practitioner] in West Virginia are screaming as to why am I not getting any antibiotics? I need Rocephin for my pneumonia"

44. According to the medical record, Dr. Patel "educated her on how we do not treat viruses with antibiotics." At this point, Karen's x-ray was inconclusive, and her blood test results were consistent with a bacterial infection.

45. Standard medical practice treats viral infections with antibiotics on a frequent basis due to uncertainty of etiology and the catastrophic risk of delaying appropriate therapy for bacterial infection.

46. At approximately 09:36, Karen again requested that she be administered intravenous antibiotics.

47. Despite her two requests for intravenous antibiotics, Karen was only administered dexamethasone and intravenous fluids.

48. At this point, there was no conclusive evidence for COVID-19 etiology. Because it was unclear whether Karen had a bacterial infection or a viral infection, Dr. Patel and/or Dr. Marcus should have prescribed antibiotics to Karen to treat what could have been (and was) bacterial pneumonia.

49. Prescription of antibiotics at this stage would have been consistent with the Society of Critical Care Medicine guidelines: "For adults with possible sepsis without shock, we suggest a time-limited course of rapid investigation and if concern for infection persists, the administration of antimicrobials within 3 hours from the time when sepsis was first recognized."[1]

50. At 21:38, Karen was transferred to Dublin Methodist Hospital (the "Hospital").

51. Up to this point, Karen had not received any antibiotics.

52. Up to this point, no medical professional had tested Karen for a bacterial infection.

53. Up to this point, Defendants had not tested Karen for COVID-19.

54. Up to this point, no imaging showed definitively that Karen was suffering from COVID-19.

55. Up to this point, the clinical course, chest imaging, and laboratory tests were all consistent with staphylococcus pneumonia.

[1] Society of Critical Care Medicine 2021 Sepsis Guidelines, https://www.sccm.org/Clinical-Resources/Guidelines/Guidelines/Surviving-Sepsis-Guidelines-2021, last accessed December 20, 2022.

Karen arrives at Dublin Methodist Hospital
where the physicians blindly assume she has viral pneumonia

56. On December 11, 2021, at approximately 22:35, Dr. Verrilli did intake with Karen and discussed Rocephin, Pulmicort (budesonide), Actemra (tocilizumab), and Decadron (dexamethasone). Dr. Verrilli's diagnosis was not certain, and therefore antibiotics should have been included in therapy.

57. Immediately upon admission to Dublin Methodist Hospital, a bronchoscopic culture should have been considered to determine the etiology of Karen's pneumonia.

58. On December 12, 2021, at approximately 12:59, Dr. Cordasco evaluated Karen and escalated her steroid dosage. Dr. Cordasco did not consider a possible bacterial infection in Karen's lungs. Dr. Cordasco also did not consider a bronchoscopic culture to determine the etiology of Karen's pneumonia.

59. On December 12, 2021, at approximately 01:04, a second blood test was taken. The blood test showed rising (and even higher) WBC at 16.64 and absolute neutrophils at 15.07 (90.565% of total WBC).

60. On December 12, 2021, at approximately 01:28, Dr. Egnot examined Karen. He did not make any orders nor any descriptive notes of the encounter. Dr. Egnot did not note any concern of bacterial infection.

61. On December 13, 2021, at approximately 08:27, new labs showed *still* increasing WBC count at 16.13 and absolute neutrophils at 14.60 (90.515% of total WBC). Dr. Phillips noted "acute hypoxemic respiratory failure COVID-19 viral pneumonia," and "viral sepsis." Dr. Phillips did not note any possibility of bacterial infection and instead attributed the increase in her WBC solely to the use of steroids.

62. Up to this point, Karen had not received any antibiotics.

63. Up to this point, no medical professional had tested Karen for a bacterial infection.

64. Up to this point, Defendants had not tested Karen for COVID-19.

65. Up to this point, no imaging showed definitively that Karen was suffering from COVID-19.

66. Up to this point, the clinical course, chest imaging, and laboratory tests were all consistent with staphylococcus pneumonia.

Karen has bacterial pneumonia, not COVID-19,
and she begins a downward spiral as the infection goes totally untreated

67. On December 14, 2022, at approximately 12:26, Dr. Phillips prescribed Karen Olumiant (baricitinib).

68. Olumiant-treated patients are at increased risk of serious bacterial, fungal, viral, and opportunistic infections.

69. The same day, the next round of labs returns WBC at 19.44 and neutrophils at 17.69 (90.998% of total WBC). A sputum culture test is ordered. Sputum cultures have significant risk of false positives and false negatives because they can only reliably reach areas in the upper respiratory tract and pneumonia sets in the lower respiratory tract. A bronchoscopic culture is the preferred method to obtain a definitive determination of the etiology of pneumonia because it reaches areas deeper in the respiratory tract.

70. On December 15, 2021, the next round of labs returns WBC at a rapidly increasing 25.13 and absolute neutrophils at 22.48 (89.455% of total WBC).

71. The same day, at approximately 08:56, Dr. Cordasco finally contemplates that the infection in Karen's lungs may be bacterial. At this point, the bacterial infection was already severe.

72. Dr. Cordasco notes in the record:

> Given leukocytosis and prior fever as well as sputum Gram stain notable for significant white cell elevation plus many gram-positive cocci, initiate antimicrobial therapy pending results of culture

73. Sputum gram stain is more reliable than sputum culture results in determining pneumonia etiology.

74. At last, on December 15, 2021, Karen was prescribed intravenous antibiotics (vancomycin and Rocephin).

75. The same day, Dr. Phillips evaluates Karen at approximately 13:08. He stops treatment with Olumiant because of "likely bacterial pneumonia."

76. On December 16, 2021, the next round of labs returns WBC at a rapidly increasing 30.47 and absolute neutrophils at 28.15 (92.386% of total WBC).

77. Also on December 16, 2021, at approximately 10:15, the December 14, 2021, sputum culture returned a negative result.

78. Also on December 16, 2021, Dr. Phillips notes that Karen is on "ceftriaxone [Rocephin] for potential bacterial pneumonia."

79. Antibiotics (vancomycin and Rocephin) were halted after one day of treatment on December 16, 2021, due to the negative sputum culture result. The negative sputum culture should not have reversed the decision to start antibiotics.

80. On December 16, 2021, Karen was sedated and intubated.

81. Also on December 16, 2021, the first x-ray since the ER intake x-ray was performed to check the placement of the orogastric tube.

82. The second x-ray image from December 16, 2021 was much worse. It showed acute respiratory distress syndrome ("ARDS"). From this point on, the chest x-ray is consistent with bacterial pneumonia.

83. ARDS occurs when pulmonary capillaries leak protein into the lung interstitium. The leakage of protein causes fluid to accumulate in the lung interstitium. A later stage of

ARDS called ‘alveolar flooding’ occurs when fluid or pus builds up in the air sacs (alveoli) in the lungs. This prevents the lungs from filling up with enough air and lowers the amount of oxygen that reaches the bloodstream. ARDS is a non-specific finding and may be caused by many things, including bacterial pneumonia, sepsis, renal failure, heart attack, COVID-19, etc.

84. Up to this point, Defendants had not tested Karen for COVID-19.

85. Up to this point, no imaging showed definitively that Karen was suffering from COVID-19.

86. Up to this point, the clinical course, chest imaging, and laboratory tests were all consistent with staphylococcus pneumonia.

After antibiotics were halted, Karen's mistreated bacterial pneumonia continues to progress and eventually kills Karen

87. On December 25, 2021, Karen's body temperature rose to 101°F. A blood culture was ordered and taken immediately. A sputum culture was ordered. The results of the blood culture were negative. The negative blood culture result was inconclusive because of prior use of antibiotics.

88. For no apparent reason, the sputum culture was not collected until the evening of December 27 at 16:23.

89. On December 28, 2021, vancomycin was reinitiated due to gram-positive cocci in the December 27 sputum culture.

90. On December 29, 2021, the sputum culture returned positive for methicillin-susceptible Staphylococcus aureus (“MSSA”).

91. MSSA is a community-acquired infection; it is not a hospital-acquired infection. Therefore, the MSSA must have been present when Karen arrived at the ER.

92. In response to the MSSA positive culture, intravenous Cefazolin is administered.

93. A third x-ray is ordered on December 29, 2021 for "hypoxia." The image shows worsening ARDS, but the root cause is still non-specific.

94. Despite the newly ordered antibiotics, it's too late. In the evening of New Year's Day, 2022, the bacterial infection overwhelmed Karen's lungs and organs and Karen passed away.

95. Up to this point, Defendants had not tested Karen for COVID-19.

96. Up to this point, no imaging showed definitively that Karen was suffering from COVID-19.

97. Up to this point, the clinical course, chest imaging, and laboratory tests were all consistent with staphylococcus pneumonia.

98. Karen's family ordered an autopsy. The findings were consistent with staphylococcus pneumonia and ARDS. Andrew Sibley, M.D. found:

> Briefly, your mother died of cardiorespiratory failure due to complications of organizing pneumonia/diffuse alveolar damage with superimposed bacterial pneumonia.

> There is debris, mixed inflammation, and fibrinous material within many alveolar spaces, and alveolar walls are markedly thickened due to evolving fibrosis. There is mixed inflammation interstitially and within alveolar spaces. In addition, there are abscesses in both lower lobes with large clusters of neutrophils, fibrinous material, parenchymal necrosis, and clusters of bacteria (cocci). In the right lower lobe away from areas of larger abscess, are scattered small clusters of neutrophils forming microabscesses.

99. Karen's death was directly and proximately caused by Defendants' failure to, in a timely manner, properly diagnose and treat the bacterial pneumonia that killed her.

100. Among other things, Defendants should have immediately treated Karen with antibiotics until they could definitively rule out a bacterial infection in her lungs.

101. To not take the basic step of administering antibiotics, even in light of requests from Karen and requests from her physician in Florida, constituted conscious disregard for the rights and safety of Karen and had a great probability of causing substantial harm to Karen. This especially true given, *inter alia*, the immunosuppressive drugs she was taking, imaging consistent with bacterial pneumonia, and clinical course consistent with staphylococcus pneumonia.

COUNT ONE – MEDICAL NEGLIGENCE AND RESPONDEAT SUPERIOR
(AS TO ALL DEFENDANTS)

102. Plaintiff realleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

103. At all times relevant herein, OhioHealth employed, engaged and/or contracted with employees, agents, and/or contractees to provide medical care and treatment to patients, including Karen, and in furtherance of their business, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips.

104. At all times relevant herein, OhioHealth had a duty to exercise reasonable care in the selection, hiring, training, monitoring, and supervision of those medical providers they employ, engage, and contract with to provide medical care and treatment to patients.

105. To preserve this potential cause of action, in breach of this duty, OhioHealth carelessly and negligently failed to exercise reasonable care in the selection, hiring, training, monitoring and/or supervision of those medical providers, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips.

106. At all times relevant herein, OhioHealth, through its agents, employees, and contractees, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips, had the duty of exercising that degree of professional care as is

customarily exercised by reasonably prudent physicians, and other medical professionals skilled in the practice of their respective profession and specialty.

107. In breach of their duties and standards of care, OhioHealth, itself and through its agents, employees, and/or contractees, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips, recklessly, carelessly and negligently failed to exercise that degree of professional care required, including but not limited to failing to properly diagnosis, treat, care, monitor, and assess, Karen's life-threatening conditions, and inadequate policies/procedures or the like in effect failing to timely and properly trigger/alert the consideration of bacterial pneumonia as a diagnosis.

108. As a direct and proximate result of the negligence of OhioHealth, itself and through its agents, employees, and/or contractees, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips, Karen suffered bodily injury, an increased risk of harm, a loss of chance of recovery or survival, and died on January 1, 2022.

109. Further, as a direct and proximate result of the negligence of OhioHealth, itself and through its agents, employees and/or contractees, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips, Karen incurred medical expenses.

110. Further, as a direct and proximate result of the negligence of OhioHealth, itself and through its agents, employees, and/or contractees, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips, Karen suffered physical pain and discomfort, emotional distress and anxiety, and loss of wages and earning potential.

COUNT TWO – WRONGFUL DEATH
(AS TO ALL DEFENDANTS)

111. Plaintiff realleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

112. This claim is brought pursuant to Section 2125.02 of the Ohio Revised Code for the benefit of the heirs and surviving next of kin of Karen, and all others who may have a legal claim as a result of her death, including but not limited to her children and next of kin.

113. As a direct and proximate result of the negligence of OhioHealth, itself and through its agents, employees, and/or contractees, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips, Plaintiff, as the personal representative of the Estate of Karen Mikalonis, incurred funeral and burial expenses.

114. Further, as a direct and proximate result of the negligence of OhioHealth, itself and through its agents, employees, and/or contractees, including but not limited to Dr. Marcus, Dr. Patel, Dr. Cordasco, Dr. Verrilli, Dr. Egnot, and Dr. Phillips, Plaintiff and the decedent's next of kin have incurred losses allowed under R.C. § 2125.02, including, but not limited to, the loss of Karen's support from her reasonably expected earnings capacity; have incurred the loss of the decedent's services, maintenance, society, companionship, care, assistance, attention, protection, advice, guidance; counsel, instruction, training, education, and have further suffered mental anguish.

WHEREFORE, as to Counts One and Two, Plaintiff demands judgment against Defendants, jointly and severally, in an amount in excess of twenty-five thousand dollars ($25,000.00), plus punitive damages, attorney fees, interest, costs, and any other relief that this Court deems appropriate.

Respectfully submitted,

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