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# IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

JANE HANAK, ET AL  
Plaintiff

Case No: CV-23-973505

Judge: JEFFREY P SAFFOLD

WESTERN RESERVE INSURANCE CO., ET AL  
Defendant

## JOURNAL ENTRY

96 DISP.OTHER - FINAL

FINAL AND APPEALABLE DECISION, ORDER, AND ENTRY GRANTING DEFENDANTS' MOTION TO DISMISS. ORDER AND ENTRY DECLARING JANE HANAK AND MARK HANAK VEXATIOUS LITIGATORS. ORDER DENYING DEFENDANTS' MOTION FOR SANCTIONS. ORDER FOR CLERK OF COURTS TO SEND COPY OF THE DECISION TO THE SUPREME COURT OF OHIO FOR PUBLICATION. FINAL. OSJ

COURT COST ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature


Date

2/6/24

The State of Ohio }  
 Cuyahoga County }  
 I, The Clerk of the Court  
 Of Common Pleas within  
 And for said County

I hereby certify that the above and foregoing is truly  
 and copied from the original  
 file in my office  
 my hand and seal of said Court this  
 Day of \_\_\_\_\_ A.D. 20\_\_\_\_

CUYAHOGA COUNTY CLERK OF COURTS  
 Deputy



IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

JANE HANAK, ET AL

PLAINTIFF

v.

WESTERN RESERVE INSURANCE CO.  
ET AL.

DEFENDANTS

CASE NO. CV-23-973505  
JUDGE JEFFERY P SAFFOLD

**FINAL AND APPEALABLE DECISION,  
ORDER, AND ENTRY GRANTING  
DEFENDANTS' MOTION TO DISMISS**

**ORDER AND ENTRY DECLARING JANE  
HANAK AND MARK HANAK  
VEXATIOUS LITIGATORS**

**ORDER FOR CLERK OF COURTS TO  
SEND COPY OF THIS DECISION TO THE  
SUPREME COURT OF OHIO FOR  
PUBLICATION**

I. INTRODUCTION

On April 28, 2017, plaintiff, Jane Hanak underwent surgery at Southwest General Hospital. She and Mark Hanak, her husband, brought this action seeking damages for injuries allegedly sustained as a result of and stemming from the April 2017 medical care. This case is the plaintiffs' seventh attempt to plead claims alleging damages.

Defendants' Motion to Dismiss and Motion for Sanctions and Motion to Declare Plaintiffs as Vexatious Litigators, [Motion No. 5064874] filed 02/06/2023, is fully briefed and before the Court. For the following reasons, the Court grants Defendants' Motion to Dismiss. The Court finds as a matter of law that Jane Hanak and Mark Hanak are Vexatious Litigators in accordance with R.C. 2323.52.

**A. ASSOCIATED FILINGS BEFORE THE COURT AND EARLIER DECISIONS:**

1. Plaintiff's Brief in Opposition and Motion to Strike Motion to Declare Plaintiffs as Vexatious Litigators and Motion for Rule 37E Defendant's Sanctions Spoliation of Evidence, [three separate filings: 5067763, 5067765, 5067773] filed 02/20/2023, denied by entry filed on December 18, 2023;
2. Defendants' Motion to Strike Exhibits Filed in Support of Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss, [5069257] filed 02/27/2023, denied by entry filed on December 18, 2023;
3. Defendants' Reply Brief in Support of Motion to Dismiss and Motion for Sanctions and Motion to Declare Plaintiffs as Vexatious Litigators, filed 02/27/2023;
4. Plaintiffs' Brief in Support in Opposition to Defendants' Motion to Dismiss Plaintiffs' Complaint and Motion to Strike Motion to Declare Plaintiffs as Vexatious Litigators and Motion for Rule 37E Defendant's Sanctions Spoliation of Evidence and Motion for Rule 1.2 Defendants' Scope of Representation and Motion for Rule 1.1 Competence and Motion for Rule 8.4 Professional Misconduct and Rule 4.1 Truthfulness in Statements; Plaintiffs' Motion for OCR 26 (C) Protective Orders, [5070973] filed 03/06/2023, denied by entry filed on December 18, 2023;
5. Defendants' Motion to Strike Plaintiffs' March 6, 2023 Filing, [5072426] filed 03/13/2023, denied by entry filed on December 18, 2023;
6. Plaintiffs' Motion for Summary Judgment Rule 12 (B) with Pertinent Materials by Rule 56 and Reply Briefs in Accordance with Ohio R. Civ. P 6 (C), [5072870] filed 03/13/2023, denied by entry filed on December 18, 2023;
7. Defendants' Brief in Opposition to Plaintiffs' March 13, 2023 Filing, filed 03/15/2023;
8. Defendants' Notice of Supplemental Legal Authority, filed 06/07/2023;
9. Plaintiffs' Motion to Strike Notice of Supplemental Authority, [5096438], filed 06/12/2023, denied by entry filed on July 27, 2023.

**II. FAILURE TO STATE A CLAIM**

In order for a Court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ. R. 12(B) (6)), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling her to recovery.

*O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 242, 327 N.E.2d 753 (1975).

A motion to dismiss for failure to state a claim is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 1992-Ohio-73, 605 N.E.2d 378. If the Court considers allegations outside the complaint, the Court shall treat the motion as one for summary judgment pursuant to Civ. R. 56. Id. At 548. Civ. R. 12 (B).

The Court must accept all factual allegations of the complaint as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Byrd v. Faber*, 57 Ohio St.3d 56, 565 N.E.2d 584 (1991), cited by *Abdallah v. Doctor's Assocs.*, 8th Dist. Cuyahoga No. 89157, 2007-Ohio-6065, ¶ 2. The material allegations of the complaint are taken as admitted. "As long as there is a set of facts, consistent with the plaintiffs complaint, which would allow the plaintiff to recover, the Court may not grant a defendant's motion to dismiss." *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 145, 573 N.E.2d 1063 (1991), cited by *Weiler v. Technipower Inc.*, 8th Dist. Cuyahoga No. 111729, 2023-Ohio-465, ¶ 8.

The complaint is not required to state precisely each element that gives rise to a legal basis for recovery as long as fair notice of the nature of the action is provided to the defendant. However, the complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial. *Fancher v. Fancher*, 1st Dist. Hamilton, 8 Ohio App.3d 79, 83, 455 N.E.2d 1344 (1982), cited by *Tuleta v. Med. Mut. of Ohio*, 8th Dist. Cuyahoga No. 100050, 2014-Ohio-396, 6 N.E.3d 106, ¶ 16.

#### A. ACCEPTING FACTUAL ALLEGATIONS OF COMPLAINT AS TRUE

"A complaint will survive a motion to dismiss if, after accepting the factual allegations in the complaint as true, and making reasonable inferences in favor of the complainant, the complaint sets forth adequate facts demonstrating a claim for relief. '[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions [or] a formulaic recitation of the elements of a cause of action ... .'" *Vagas v. City of Hudson*, 9th Dist. Summit No. 24713, 2009-Ohio-6794, ¶ 13.

III. PRO SE LITIGANTS

Pro se civil litigants are bound by the same rules and procedures as litigants who retain counsel. *Heller v. Ohio Dept. of Jobs & Family Servs.*, 8th Dist. Cuyahoga No. 92965, 2010-Ohio-517, ¶ 18. They are not to be accorded greater rights and must accept the results of their own mistakes and errors. *Id.*; *Newton v. City of Cleveland Law Dep't*, 8th Dist. Cuyahoga No. 102042, 2015-Ohio-1460, ¶ 12.

IV. DISCUSSION

Initially, the Court must decide if plaintiffs have alleged facts that support their claims for relief. The following chart lists how the claims are alleged and the essential character of the underlying wrong:

COMPLAINT	CAUSE OF ACTION FRAMED AS	UNDERLYING WRONG
COUNT I	Medical Negligence Criminal Intent to Harm	Torture, assault, intentional infliction of distress, uncredentialed medical provider, altering documents, negligence, recklessness.
COUNT II	Legal Negligence/Rape Victim Survivor Abuse/Perjury”	Negligence, lack of informed consent.
COUNT III	Stalking/Invasion of Privacy/HIPPA Violations,/Obstruction of Justice / Abuse of Power/Rape Victim Abuse/Defamation of character	Failing to report a crime, records defame.
COUNT IV	PTSD/Mental Anguish	Misconduct caused injuries.
COUNT V	Religious Beliefs/Mortal Sin	Medical procedures constitute sin and rape.

COUNT VI	Duty to Disclose/Aid and Abet/Complicity/Infliction of Emotional Distress	Concealment of crime and fraud, attorney misconduct; hospital officials and police actions.
COUNT VII	Gastro Intestinal Pain/Spasms/Infection/Inflammation /Pre-Cancerous Cells/Diverticulosis/Illegal use of antibiotics during surgery	Injuries suffered.
COUNT VIII	Loss of consortium/Mutilation of Sexual Organs	Injuries.
COUNT IX	Sex Crimes/Nude Photos	Wrongful acts.
COUNT X	Auto Immunity Exasperation	Injuries and heightened risk for future disease.
COUNT XI	SW General Criminal Tampering with evidence/Falsifying Medical Records/Altering medical information and documentation-felony crime	Violated record-keeping rules, concealment of wrongful conduct and intent.
COUNT XII	Torture/Deliberate and calculated act of extreme cruel and inhuman nature/Infliction of excruciating - agonizing physical and mental pain and suffering	Physicians performed experimental acts, concealment of various wrongs from authorities
COUNT XIII	Police Brutality/Obstruction of Justice/Illegal Investigation/Tampering with Evidence/Mishandling evidence/Fabricating a False report/Witness Tampering/Coercion/Intimidation/Collusion	Public authorities, hospitals and insurers' wrongdoing; suppressed, tampered with, mishandled evidence

COUNT XIV	CEO Aiding and Abetting/Obstruction of Justice/Compliance Actions/Criminal Negligent Acts and Omission/Interference/Coercion	Hospital officers and law enforcement, inadequate investigation; acts and omissions caused injustice and loss of remedies; failed to comply with internal, professional association and state administrative regulations
COUNT XV	Negligent Employment and Retention	Unqualified medical providers wrongfully credentialed

At the initial pleading stage, the Court accepts all factual allegations of the Complaint as true and draws all reasonable inferences in favor of the Hanaks'. As long as there are facts consistent with the Complaint that would allow a recovery for Plaintiffs against Western Reserve Insurance Company, University Hospitals Health Systems, Inc., William A. Young, Lieutenant Jason Melda, Chief Tristan Harker, Southwest General Health Center, or University Hospitals Medical Group Inc.<sup>1</sup> the Court may not grant that defendant's motion to dismiss.

**A. MEDICAL CLAIMS ARE ASSERTED**

Defendants base their motion to dismiss on the grounds that several of Hanaks' claims are medical claims that should have been brought within one year after accrual. "... [A]n action upon a medical ... claim shall be commenced within one year after the cause of action accrued." R.C. 2305.113 (A).

R.C. 2305.113(E)(3) defines a medical claim as any claim that is asserted in any civil action against a physician or hospital or an employee or agent of the

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<sup>1</sup> The Complaint names University Hospitals Medical Group, Inc. without asserting any factual allegations against it.

same that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following: (a) derivative claims for relief that arise from the plan of care, medical diagnosis, or treatment of a person; (b) claims that arise out of the plan of care, medical diagnosis, or treatment of any person and to which either of the following applies: (i) the claim results from acts or omissions in providing medical care; (ii) the claim results from the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment. *Young v. UC Health, W. Chester Hosp., LLC*, 1st Dist. Hamilton Nos. C-150562, C-150566, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 19.

Although Plaintiffs' claims are not pleaded as medical malpractice claims they may be subject to the one – year statute of limitations contained in R.C. 2305.113 if they are determined to be "medical claims" under that statute despite how the claims are alleged. Courts must look at the essential character of the underlying wrong which the complaint alleges to determine what statute of limitations applies; the form is immaterial. *Breno v. City of Mentor*, 8th Dist. Cuyahoga No. 81861, 2003-Ohio-4051, ¶¶ 10-11; *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984).

University Hospitals Health Systems, Inc., Southwest General Health Center, and University Hospitals Medical Group Inc. are hospitals, clinics, and William A. Young is an individual responsible for the hospital's operation. By definition, in most instances in this case, these defendants are covered by R.C. 2305.113 and its definition of "medical claim."<sup>2</sup>

Some of the wrongs committed by these defendants are pleaded by plaintiffs as torture, assault, intentional / negligent infliction of distress, negligence, recklessness, misconduct causing injuries, medical procedures constituting sin and rape, and experimental acts. Again, what matters is the actual nature or subject matter of the allegations.

The basis of Hanaks' claims happened on April 28, 2017 when the surgery was performed. Because the essential character of these claims arises out of the medical diagnosis, care, or treatment provided in April 2017 to Jane Hanak, by definition they are medical claims.

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<sup>2</sup> R.C. 2305.113 applies to Mr. Young as he is a person with responsibilities that include the hospital's operation.



## B. THE MEDICAL CLAIMS ARE TIME-BARRED

Because the wrong (variously pleaded by plaintiffs as medical negligence, legal negligence, torture, assault, intentional / negligent infliction of distress, negligence, recklessness, misconduct causing injuries, medical procedures constituting sin and rape, experimental acts, illegal use of antibiotics during surgery, mutilation of sexual organs, auto immunity exasperation) is a “medical claim”, the statute of limitations provides a one-year time limit for commencing suit after the injury occurred or was discovered (accrued). R.C. 2305.113 (A). The medical claims arose in April 2017 and are time-barred by the one – year statute of limitations.

A statute of repose bars any suit that is brought after a specified time since the defendant acted even if this period ends before the plaintiff has suffered a resulting injury. 66 Oh Jur. Limitations and Laches § 5. The four-year statute of repose allows the Hanaks no more than four years after the wrong occurred in April 2017 to file the action even if the injury does not accrue because it is undiscovered until after four years. R.C. 2305.113 (C). *Ruther v. Kaiser*, 134 Ohio St.3d 408, 2012-Ohio-5686, 983 N.E.2d 291.

The claims brought against University Hospitals Health Systems, Inc., Southwest General Health Center, William A. Young, and University Hospitals Medical Group Inc. are medical claims. R.C. 2305.113 (E)(3). The Hanaks commenced their action after the four-year statute of repose. The actions upon the claims against University Hospitals Health Systems, Inc., Southwest General Health Center, William A. Young, and University Hospitals Medical Group Inc. are barred by the statute of repose. The defendants’ motion to dismiss is well – taken.

## C. THE MEDICAL CLAIMS FAIL WITHOUT AFFIDAVIT OF MERIT

An affidavit of merit establishing the adequacy of the claims against these defendants must accompany the complaint. Civ. R. 10 (D)(2). Because Hanaks’ medical claims are not supported by any affidavit of merit they fail to state a claim upon which relief can be granted and cannot proceed.

## D. THE NEGLIGENT CREDENTIALING CLAIMS FAIL

Considering the Civ. R. 12 (B)(6) standard, the Court assumes to be true that University Hospital (UH) operates as a partner with Southwest General Health Center (Southwest). Plaintiffs bring claims of negligent credentialing

against UH, William A. Young, and Southwest. Negligent credentialing is a separate and independent claim from medical negligence.

A hospital has a duty to grant and continue staff privileges only to competent doctors. *Schelling v. Humphrey*, 123 Ohio St.3d 387, 2009-Ohio-4175, 916 N.E.2d 1029, ¶ 17. A claim for negligent credentialing and retention is a medical claim because it results from the "hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment." R.C. 2305.113(E)(3)(b)(ii). *Young v. UC Health, W. Chester Hosp., LLC*, 1<sup>st</sup> Dist. Hamilton Nos. C-150562, C-150566, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21.

A plaintiff cannot proceed on a negligent-credentialing claim against a hospital without a prior finding that the plaintiff's injury was caused by the physician's malpractice. *Walling v. Brenya*, 171 Ohio St.3d. 346, 2022-Ohio-4265, 218 N.E.3d 731, ¶ 11. There is no prior finding of medical negligence against a physician in this case. Without an adjudication or stipulation that a physician committed medical malpractice, the Hanaks' negligent credentialing claims against UH, William A. Young, and Southwest cannot proceed.

The medical negligence and negligent credentialing claims, are medical claims as defined by R.C. 2305.113 (E)(3). None are supported by an affidavit of merit. None of Hanaks' claims are brought within the applicable statutes of limitations or repose.

#### E. THE INFORMED CONSENT CLAIMS FAIL

A cause of action premised on the failure of a physician to obtain informed consent is a "medical claim" as defined by R.C. 2305.113(E)(3), because it is a "claim that is asserted in [a] civil action against a physician ... and that arises out of the medical diagnosis, care, or treatment of any person." *White v. Leimbach*, 131 Ohio St.3d 21, 2011-Ohio-6238, 959 N.E.2d 1033, ¶ 24. These "informed consent" claims (e.g., experimentation, additional procedures, nude photographs) are not supported by any affidavit of merit. They are untimely. They fail to state a claim upon which relief can be granted and cannot proceed.

#### F. PLAINTIFFS' CLAIMS FOR SPOILIATION CANNOT BE PROVEN

Plaintiffs brings claims of evidence destruction against UH, William A. Young, and Southwest. The elements of a claim for destruction of evidence are (1) pending or probable litigation involving the plaintiff, (2) knowledge on the part of defendant that litigation exists or is probable, (3) willful destruction of evidence by defendant designed to disrupt the plaintiff's case, (4) disruption of the

plaintiff's case, and (5) damages proximately caused by the defendant's acts. *Smith v. Howard Johnson Co.*, 67 Ohio St.3d 28, 29, 615 N.E.2d 1037 (1993). With plaintiffs unable to bring the other claims, there is no other pending or probable litigation: Hanaks cannot prove disruption of their case. Consequently, their claim for spoliation or destroyed evidence fails.

**G. OTHER ALLEGATIONS FAIL TO STATE A CLAIM AGAINST WILLIAM A. YOUNG**

Hanaks allege William A. Young committed several wrongs involving duties associated with his role as a corporate officer of Southwest General Health Center: concealed criminal conduct, concealed / committed fraud, complicit with other's misconduct, obstructed justice, tampered with and mishandled evidence and witnesses, fabricated false reports, colluded with others, inadequately investigated wrongdoing, interfered with investigations, employed and retained and allowed unqualified medical providers to practice, and failed to abide with internal, professional association, and state administrative regulations.

The allegations that defendants attempted to avoid liability by misstating or misrepresenting facts, misinforming, and concealing information relate to the medical care Hanaks received in April, 2017. See *Freeman v. Durrani*, 1st Dist. Hamilton No. C-180197, 2019-Ohio-3643, 144 N.E.3d 1067. Where the allegations frame what is a medical claim in the language of fraud (or something else), it remains a medical claim. The words Hanaks' used do not change their action into fraud. Clothing a medical claim in the language of something else does not convert a medical claim into an action based on something else.

Further, the essential grounds and object of the complaint show the claims against Young result from his responsibilities for the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment to Jane Hanak, i.e., medical claims related to the surgery performed in April, 2027. For the reasons given, the allegations fail to state a claim upon which relief can be granted.

Additionally, to the extent Hanaks are attempting to assert a civil cause of action for damages resulting from criminal conduct by William A. Young (e.g., concealment, complicity, obstruction, tampering, fabrication, collusion), the actions seek a civil penalty for Young's criminal conduct under R.C. 2307.60. The statute, R.C. 2307.60, contemplates a penalty. Those claims are time-barred because the conduct occurred more than one year before this suit was filed. R.C.

2305.11(A). See *Steinbrick v. Cleveland Elec. Illum. Co.*, 8th Dist. Cuyahoga No. 66035, 1994 Ohio App. LEXIS 3756 (Aug. 25, 1994).

The various regulations plaintiffs allege were breached by William A. Young do not authorize a private right of action. E.g., *OhioHealth Corp. v. Ryan*, 10<sup>th</sup> Dist. Franklin No. 10AP-937, 2012-Ohio-60, ¶19. Failing to comply with internal, professional association and state administrative regulations does not give rise to an independent cause of action in tort or contract.

#### H. ALLEGATIONS FAIL TO STATE A CLAIM AGAINST LIEUTENANT JASON MELDA; CHIEF TRISTAN HARKER

Plaintiffs allege several wrongs regarding misconduct by police officers' handling of evidence, reports, and investigation into the surgery performed in April, 2027. Hanaks are attempting to assert a civil action for damages resulting from law enforcement malpractice while officers, in their official capacity, performed governmental functions directly or inextricably related to plaintiffs' medical claims.

The employee of a political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee. R.C. 2744.03 (A)(3).

Further, claims asserted against an employee of a political subdivision in the employee's official capacity is an action against the entity itself and the employees are entitled to the same immunity due the political subdivision. *Digiorgio v. City of Cleveland*, 8th Dist. Cuyahoga No. 95945, 2011-Ohio-5878, ¶ 32.

The complaint is insufficient. It does not state a plausible claim for relief against these defendants.

#### I. ALLEGATIONS FAIL TO STATE A CLAIM AGAINST WESTERN RESERVE INSURANCE CO.

Hanaks' complaint names Western Reserve Insurance Co. Complaint, ¶¶ 11, 90. It is the liability insurer for Southwest General Health Center and University Hospitals.

Ohio law is clear that an injured party cannot directly sue the insurer of a tortfeasor because the injured party is not a third-party beneficiary of a liability insurance contract. *Chitlik v. Allstate Ins. Co.*, 34 Ohio App.2d 193, 299 N.E.2d 295

(8<sup>th</sup> Dist. Cuyahoga 1973). A claim of bad faith cannot be brought against an insurer by a third-party claimant. *Siemientkowski v. State Farm Ins. Co.*, 8th Dist. Cuyahoga No. 85323, 2005-Ohio-4295, ¶ 20, and cited authority. The Hanaks cannot proceed with their claims against Western Reserve Insurance Co.

J. ALLEGATIONS FAIL TO STATE A CLAIM AGAINST UNIVERSITY HOSPITALS MEDICAL GROUP INC.

The Hanaks' complaint does not make any claim against this defendant. There are no facts alleged that would allow a recovery. Plaintiffs failed to state a claim against University Hospitals Medical Group Inc. upon which relief can be granted.

V. RES JUDICATA

Res judicata requires a plaintiff to "present every ground for relief in the first action, or be forever barred from asserting it." *Hempstead v. Cleveland Bd. of Edn.*, 8th Dist. Cuyahoga No. 90955, 2008-Ohio-5350, ¶ 7. For a claim to be barred by this doctrine, four elements must be met: "(1) a prior final, valid decision on the merits by the court of competent jurisdiction; (2) a second action involving the same parties, or their privies, as the first; (3) a second action raising claims that were or could have been litigated in the first action; and (4) a second action arising out of transaction or occurrence that was the subject matter of the previous action." *Portage Cty. Bd. of Comms. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, ¶ 84, quoting *Hapgood v. Warren*, (6th Cir. 1997) 127 F.3d 490, 493.

As noted, this is the Hanaks' seventh action asserting facts pleading claims alleging damages as a result of the events on April 28, 2017. The following overview of the lawsuits summarizes the final decisions, the parties, claims that were litigated, and the subject matter of the previous actions. The details are useful for resolving the legal issues of res judicata (and vexatious litigator).

A. CV-19-921015 JANE HANAK, ET AL. vs. KIMBERLY KRAUS, M.D., ET AL.<sup>3</sup>

The Hanaks' initial medical-malpractice action was filed on September 5, 2019 against Kimberly Kraus, M.D. and Anthony J. Gingo, M.D. Plaintiffs' counsel filed a notice of voluntary dismissal on January 23, 2020. Plaintiff had not filed an affidavit of merit before dismissing the complaint.

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<sup>3</sup> The Complaint named Kimberly Kraus, M.D., Anthony J. Gingo, M.D., Anthony J. Gingo, M.D., Inc. D.B.A. Drs. Gingo and Kraus Women's Health Specialists, and Drs. Gingo and Kraus Women's Health Specialists Inc.

B. CV-21-943309 JANE HANAK, ET AL vs. KIMBERLY KRAUS, ET AL<sup>4</sup>

In 2021, plaintiffs sued the same parties she originally sued in 2019 (CV-19-921015). Although plaintiffs filed an affidavit of merit, the Common Pleas Court ruled it was deficient. For that reason and because the complaint was not filed timely, the Court dismissed the complaint. The 8<sup>th</sup> Dist. Cuyahoga County Appellate Court affirmed the dismissal (CA-21-110884). The Ohio Supreme Court declined to hear a further appeal (2022-0907).

C. CV-22-963270 JANE HANAK, ET AL vs. SOUTHWEST GENERAL HOSPITAL,<sup>5</sup>

In May, 2022, plaintiffs brought another action. In that case the Complaint named the hospital that employed the surgical assistant and registered nurses, and the anesthesiologist and nurse anesthesiologist who provided medical services at the time of the surgery. The hospital ombudsman was sued as well.

The Court dismissed plaintiffs' claims against the anesthesiologist and nurse anesthesiologist because plaintiffs did not include an affidavit of merit and the action was barred by the statutes of limitations and repose.

As to the others, the Court found each of plaintiffs' claims of misconduct against the hospital employees, no matter how pleaded, were actually claims of medical malpractice that related to the care and treatment arising from the April 2017 surgery. Similarly, the Court decided plaintiffs' other claims - that defendants recommended unnecessary care or their conduct constituted fraud (or misrepresentations) - were medical claims. None were accompanied by an affidavit of merit. Additionally, those actions and the claims of civil liability for criminal conduct were not brought within the applicable statutes of limitations.

The Court dismissed the remaining claims.

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) does not provide for a private cause of action if a medical provider discloses protected information.
- Plaintiffs cannot maintain claims for human rights violations under the Universal Declaration of Human Rights.

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<sup>4</sup> This pro se Complaint named the same defendants as listed in the first suit.

<sup>5</sup> Plaintiff's third lawsuit named Southwest General Hospital, Southwest General Hospital Ombudsman Karen Miller, Ohio Anesthesia Group, Inc. John J. Staszak D.O., Ohio Anesthesia Group, Inc. Darleen S Gedeon C.R.N.A., Southwest General Hospital Claudia Klein, SA, Southwest General Hospital Bethany Linville, R.N., Southwest General Hospital Kristin Spring, R.N., and Southwest General Hospital Heather L. Kendle, R.N.

- There is no private cause of action for alleged violations of standards promulgated by the Joint Commission of Accredited Hospitals Organization.
- Any spoliation claim could not be proven because, with all claims being dismissed, there is no pending or probable litigation that could be disrupted.

D. CV-22-963730 JANE HANAK vs. UNIVERSITY HOSPITALS, ET AL<sup>6</sup>

Plaintiffs' fourth complaint asserted claims connected with the 2017 medical care, and claims that alleged legal malpractice, assault and battery, sexual imposition, concealment, fraud, complicity, civil recovery for criminal actions, private action to enforce HIPPA, and human rights violations. The Court dismissed the lawsuit because the complaint failed to state a claim upon which relief can be granted.

E. CV-22-964069 JANE HANAK, ET AL vs. ANTHONY GINGO MD, ET AL<sup>7</sup>

The Hanaks sued the hospital, surgeon, and nurse in 2022, claiming those defendants were liable for gross negligence, vicarious negligence, sexual assault and battery, coercion, conspiring, insurance fraud, intent to harm, gross sexual imposition, menacing by stalking, HIPPA photo violations, concealment of evidence, breach of a duty to disclose, tampering with records, informed consent, and defamation of character.

As other Courts had decided, this complaint presented medical claims. Framing the medical claims as something other than medical claims does not change the fact they are medical claims. Plaintiffs could not avoid the time-bar of the statute of limitations by asserting the actions are timely because they are based upon criminal conduct, fraud, breach of contract, or they are classified as claims for human rights violations and criminal conduct including felonious assault and battery, intent to harm, conspiracy, and sexual assault.

The Court granted the hospital, Southwest General Health Center judgment on the pleadings, finding that the plaintiffs could prove no set of facts in support of their claims that would entitle them to relief. Summary judgment was granted to the doctor, Anthony J. Gingo, Jr., M.D., the nurse, Holly Gingo, R.N., and Gingo,

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<sup>6</sup> Jane Hanak's fourth complaint named University Hospitals and University Hospitals Senior Litigation Analyst, Katie Perry.

<sup>7</sup> Anthony J Gingo, M.D., Holly Gingo, R.N., Gingo Incorporated, and Southwest General Hospital were sued in Hanaks' fifth action.

Inc. The Court ruled the claims were time-barred by the statutes of limitations and repose, res judicata barred the claims, and Ohio does not recognize the several causes of action under any set of facts.

F. CV-22-964286 JANE HANAK vs. KIMBERLY KRAUS MD, ET AL<sup>8</sup>

The Court dismissed plaintiffs' claims against Kimberly Kraus, M.D. and Gingo Incorporated because they are barred by the doctrine of res judicata.

The other defendants, Southwest General Hospital and Southwest House Providers J. A. Hayes, PAC-Surgery Assistant were granted judgment on the pleadings for the same reasons articulated by the Courts that had dismissed Hanaks' complaints in the five prior cases, among them:

- Medical claims (including a physician's failure to obtain informed consent) were unsubstantiated by an affidavit of merit and the applicable statute of limitations and statute of repose barred the medical claims.
- Criminal allegations and human rights violations are not a proper basis for a civil action, or do not amount to actionable legal claims or theories that are recognized under the law.
- Any civil recovery for criminal wrongdoing is time-barred.
- Any claim of fraud (spoliation, altering, and falsifying medical records) is insufficiently pled.
- Claims of concealment or duty to disclose are insufficiently pled as elements of a fraud claim and are not viable.
- Nothing in the Ohio administrative code provides a basis for plaintiffs to pursue recovery for civil liability.

G. THE CLAIMS AGAINST UNIVERSITY HOSPITALS HEALTH SYSTEM, INC., SOUTHWEST GENERAL HEALTH CENTER, UNIVERSITY HOSPITALS MEDICAL GROUP, INC., AND WILLIAM A. YOUNG ARE BARRED BY THE DOCTRINE OF RES JUDICATA

For purposes of res judicata, there is commonality of interest involving the defendants in this case (University Hospitals Health System, Inc., Southwest General Health Center, and University Hospitals Medical Group, Inc.) with the entities named in the earlier complaints. The claims were litigated against these

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<sup>8</sup> In her sixth case, Ms. Hanak sued Kimberly A. Kraus, M.D., Gingo Incorporated, Southwest General Hospital, and Southwest House Providers J. A. Hayes PAC-Surgery Assistant.



defendants or could have been litigated in those cases against them and William A. Young.

## VI. VEXATIOUS LITIGATORS

R.C. 2323.52 is an attempt to address the problem of vexatious litigation in Ohio. The objective of the statute is to prevent the abuse of the judicial system by vexatious litigators who deplete resources, "unnecessarily [encroach] upon the judicial machinery needed by others for the vindication of legitimate rights," and attempt "to intimidate public officials and employees or cause the emotional and financial decimation of their targets." *Mayer v. Bristow*, 91 Ohio St.3d 3, 13, 740 N.E.2d 656 (2000). The statute allows a person who has "defended against habitual and persistent vexatious conduct" to ask a trial court to declare the person who engaged in that conduct a vexatious litigator. *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 36.

"Vexatious litigator" is a person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, ... and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. R.C. 2323.52 (A)(3). "Vexatious conduct" means conduct of a party in a civil action that obviously serves merely to harass or maliciously injure another party to the civil action, the conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or the conduct is imposed solely for delay. R.C. 2323.52 (A)(2).

Litigation underlying the defendants' vexatious litigator claim relates to the seven lawsuits brought by the Hanaks. A court may examine other actions that the Hanaks participated in to determine whether plaintiffs are "vexatious litigators." *Davie*, ¶ 41.

### A. EXAMINING HANAKS' LAWSUITS

The court examines the nature of Hanaks' conduct in the other cases in this jurisdiction and this case to determine their vexatious conduct. This court has reviewed plaintiffs' pleadings, motions, other filings and their conduct in the several cases. As already noted, Hanaks' lawsuits are essentially against the same parties, based on the same facts, and assert the same general claims. All arise out of the April 2017 medical care.

After reviewing four years of earlier filings and this case, the Court finds Defendants have demonstrated:

1. Plaintiffs have filed voluminous pleadings and motions that are meritless, unsubstantiated, and barred by the statute of limitations and repose.
2. The Hanaks continue attempting to relitigate the merits of their April 2017 medical claim after adverse rulings in six cases.
3. The Hanaks repeatedly allege claims that are false, not actionable or are based on theories that are not recognized by existing law, or are barred by res judicata.
4. Plaintiffs have advanced identical issues that have been found meritless or have been rejected previously.
5. The Hanaks have misrepresented facts and law.
6. There are various filings that include defamatory and personal attacks on parties, non-parties, and lawyers that are demeaning, harassing, and embarrassing.

**B. FINDING PLAINTIFFS HAVE ENGAGED IN VEXATIOUS CONDUCT**

Numerous courts have rejected Hanaks' lawsuits, theories, and arguments. That has not been enough. By continuing to pursue meritless claims after multiple adverse rulings, the Court concludes Jane Hanak and Mark Hanak have habitually, persistently and without reasonable grounds engaged in vexatious conduct in Cuyahoga County Common Pleas Court within the meaning of R. C. 2323.52(A)(2). Their conduct has had the effect of harassing defendants who have been obligated to defend themselves against lawsuits based on claims that were previously rejected as unwarranted. The Hanaks have engaged in conduct that is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

**VII. CONCLUSION**

Accordingly, being fully advised in this matter, the Court enters final judgment as follows:

- A. The Defendants' motion to dismiss the Complaint, filed 02/06/2023, is GRANTED;

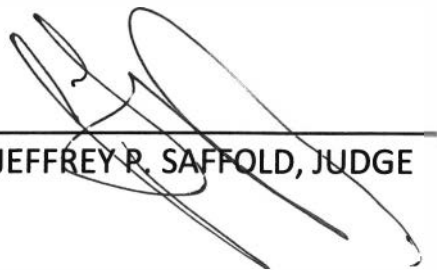
- B. The Defendants' motion to declare Plaintiffs, Jane Hanak and Mark Hanak to be vexatious litigators under R.C. 2323.52, filed 02/06/2023, is GRANTED;
- C. The Defendants' motion for sanctions, filed 02/06/2023, is DENIED;
- D. As the Court has determined and declared that Jane Hanak and Mark Hanak are vexatious litigators, the Court further orders that pursuant to R.C. 2323.52, Jane Hanak and Mark Hanak are each prohibited from doing the following without first obtaining leave of Court to proceed:
  - 1. Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
  - 2. Continuing any legal proceedings that the vexatious litigator had instituted in the court of claims or in a court of common pleas, municipal court, or county court prior to the entry of the order;
  - 3. Making any application, other than an application for leave to proceed under R.C. 2323.52(F), in any legal proceedings instituted by either Plaintiff, Jane Hanak and Mark Hanak, or another person in the court of claims or in a court of common pleas, municipal court, or county court.

**The Clerk of Courts is hereby ordered to send a certified copy of this Order to the Ohio Supreme Court for publication pursuant to R.C. 2323.52(H).**

**THIS IS A FINAL APPEALABLE ORDER.**

IT IS SO ORDERED.

DATED: 2/6/24

  
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JEFFREY P. SAFFOLD, JUDGE