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STATE OF MICHIGAN
IN THE SUPREME COURT

KERAN ERNEST,
Individually and as Personal Representative
Of the Estate of Maurice Ernest,
Deceased.

Plaintiff-Appellant,

v

Supreme Court No._____
Court of Appeals Case No. 368566
Oakland County Circuit Court
Case No: 2020-179077 NH

DR. PAUL W. BROWN JR.,
ELMAHDI M. SAEED,
DR. FAROUK M. BELAL,
MCLAREN HEALTH CARE
CORPORATION,
CYPRESS CARDIOLOGY PLLC,,

Defendant-Appellee .

_____/

Oliver Bell Group
Alyson Oliver (P55020)
Paul Matouka (P84874)
Attorneys for Plaintiff
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PLAINTIFF APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

APPENDIX OF EXHIBITS

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Date: May 1, 2025

/s/Alyson Oliver_____

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Exhibit A

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

KERAN ERNEST, Individually and as
Personal Representative of the Estate
Of Maurice Ernest, Deceased,

Plaintiffs,

vs. File No. 2023-119425-NH

DR. PAUL W. BROWN, JR., ELMAHDI M. SAEED, DR. FAROUK M. BELAL, McLAREN HEALTH CARE CORPORATION, CYPRESS CARDIOLOGY, PLLC,

Hon. Celeste D. Bell
(P41453)

Defendants.

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ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY DISPOSITION

At a session of Court held in the Genesee County Courthouse, Flint, Michigan.

PRESENT: HONORABLE CELESTE D. BELL
CIRCUIT JUDGE

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This matter being before the Court on the Motions for Summary Disposition filed by Defendants Elmahdi Saeed, M.D., Dr. Farouk M. Belal, Dr. Paul W. Brown, Jr., and McLaren Health Care Corporation, and the Court having heard oral arguments on October 23, 2023, and being otherwise fully advised;

IT IS ORDERED that the Defendants' Motions for Summary Disposition are hereby GRANTED for the reasons set forth on the record, and Plaintiff's claims against all Defendants are dismissed with prejudice; and

IT IS FURTHER ORDERED that this is a final order which disposes of the last pending claim and closes this case.

CELESTE D. BELL
P-41453

CELESTE D. BELL, CIRCUIT JUDGE

Dated: 10-23-23

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Exhibit B

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

KERAN ERNEST, Individually and as Personal Representative of the Estate Of Maurice Ernest, Deceased,

Plaintiffs,

vs.

File No. 2023-119425-NH

DR. PAUL W. BROWN, JR., ELMAHDI M. SAEED, DR. FAROUK M. BELAL, McLAREN HEALTH CARE CORPORATION, CYPRESS CARDIOLOGY, PLLC,

Hon. Celeste D. Bell (P41453)

Defendants.

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DEFENDANT ELMAHDI M. SAEED, M.D.'S MOTION FOR SUMMARY DISPOSITION

NOW COMES Defendant ELMAHDI SAEED, M.D., by his attorneys, SMITH, MARTIN, POWERS & KNIER, P.C., who, pursuant to MCR 2.116(C)(7), (8), and (10), hereby seeks summary disposition of Plaintiff's claims, stating as follows:

1. This is an action alleging medical malpractice arising out of care and treatment provided by Defendant on July 16, 2020.

2. A two-year statute of limitations applies to claims alleging medical malpractice. MCL 600.5805(6).

3. Plaintiff's complaint was filed on August 14, 2023.

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4. Plaintiff's complaint was not filed within the two-year statute of limitations.

5. Plaintiff's case alleges wrongful death.

6. Plaintiff was issued letters of authority by the Genesee County Probate Court on June 7, 2021.

7. Pursuant to MCL 600.5852, Plaintiff had two years from the date the letters of authority were issued by the Genesee County Probate Court, or until June 7, 2023, in which to commence this action.

8. The sending of a notice of intent to file claim does not toll the time to file suit under MCL 600.5852.

9. As more fully set forth in Defendant's brief in support, Plaintiff's claim is time barred, entitling Defendant to dismissal as a matter of law.

WHEREFORE, Defendant ELMAHDI SAEED, M.D., respectfully requests this Honorable Court grant his Motion for Summary Disposition and dismiss Plaintiff's claims against this Defendant, together with costs and attorney fees wrongfully incurred.

Dated: 9-13-23

SMITH, MARTIN, POWERS & KNIER, P.C.

BY _____

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Attorneys for Defendant Saeed
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PROOF OF SERVICE

On 9-13-23, I served via First Class Mail and electronic transmission a copy of the foregoing upon all counsel of record at their respective addresses and declare under penalty of perjury that this statement is true to the best of my knowledge, information and belief.

Violetta G. Smith

Violetta G. Smith

SMITH, MARTIN, POWERS & KNIER, P.C. 900 WASHINGTON AVENUE , P.O. BOX 219 BAY CITY, MICHIGAN 48707-0219
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Exhibit C

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

KERAN ERNEST,
Individually and as Personal Representative
of the Estate of Maurice Ernest, Deceased,

Plaintiff,

Case No: 2023-119425-NH
Hon. Celeste D. Bell

vs.

DR. PAUL W. BROWN, JR.
ELMAHDI M. SAEED,
DR. FAROUK M. BELAL
MCLAREN HEALTH CARE CORP.,
CYPRESS CARDIOLOGY PLLC,

Defendants.

_____/

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_____/

DEFENDANT FAROUK BELAL M.D.'S
BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

Introduction

Plaintiff Estate of Maurice Ernest has filed this action alleging medical malpractice against Dr. Farouk Belal as well as other healthcare providers. But the Estate has filed it too late. The statute of limitations has long since lapsed and the cause of action cannot

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be preserved under Michigan's wrongful death savings provision. As such, the case must be dismissed pursuant to MCR 2.116(C)(7).

Facts

On February 10, 2023, counsel for the Estate mailed the notice of intent to sue required by MCL 600.2912b.[1] On August 14, 2023 the Estate of Maurice Ernest filed this action alleging medical malpractice.[2] Attached to complaint was the Letters of Authority appointing Keran Ernest as the personal representative of the Estate.[3] Those letters show that the PR was appointed June 7, 2021.

In the complaint, the Estate alleged that Ernest was seen by Dr. Belal on July 17, 2020.[4] Ernest died shortly thereafter.[5] The Estate alleges that Dr. Belal erred by failing to order appropriate testing.[6]

Law and Analysis

A. Standard of Review

Summary disposition may be granted under MCR 2.116(C)(7) if the claim is barred by the statute of limitations. The moving party is permitted but not required to submit documentary evidence. MCR 2.116(G)(2). If submitted, the Court must consider such documentary evidence. MCR 2.116(G)(5). The Court accepts as true the factual allegations in the complaint unless documentary evidence specifically contradicts them. *Waltz v*

[1] Exhibit 1, Notice of Intent.
[2] Exhibit 2, Complaint.
[3] Exhibit 3, Letters of Authority
[4] Complaint, Exhibit 2, ¶14.
[5] Id. ¶15.
[6] Id. ¶44.

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Wyze, 469 Mich 642, 647; 677 NW2d 813 (2004). Absent a factual dispute, the question whether a claim is barred by the statute of limitations is one of law for the Court to decide. *Kincaid v Cardwell*, 300 Mich App 513, 522-23; 834 NW2d 122 (2013).

B. Medical Malpractice Statutes of Limitations

Medical-malpractice claims are subject to a two-year limitation period that starts on the date of the alleged malpractice. MCL 600.5838a(1) (accrual); MCL 600.5805(8) (two-year period). The Estate alleged malpractice claims that accrued on July 17, 2020. The limitation periods for those claims expired July 17, 2022. There can be no dispute that the Estate's complaint wasn't timely under the statutory period of limitation.

The Estate did file the statutorily required notice of intent. But the tolling provisions related to the notice of intent do not save the claim because the notice was filed after the two year statute of limitations expired. MCL 600.5856(c). *Iaksluoto v Mt. Clemens Regional Med. Ctr.*, 500 Mich 304, 581-82. Thus, the tolling provisions are not applicable. Plaintiff's claims are barred by the statute of limitations.

C. Michigan's Wrongful Death Savings Provision

Because this is a claim arising out of a death, the expiration of the statute of limitations is not the end of the inquiry as to whether or not the claim is time-barred. It is anticipated plaintiff will argue that the case is preserved under the wrongful death saving provision. MCL 600.5852.

MCL 600.5852 is "'not a statute of limitations;'" it's "an exception to the statute of limitations.'" *Waltz v Wyse*, 469 Mich 642, 650; 677 NW2d 813 (2004) (emphasis omitted), quoting *Miller v Mercy Mem Hosp*, 466 Mich 196, 199; 644 NW2d 730 (2002) and *Lindsey v*

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Harper Hosp, 455 Mich 56, 65; 564 NW2d 861 (1997). When a would-be plaintiff dies before the limitation period runs, the wrongful-death savings provision gives the personal representative two years after the probate court issues letters of authority to file an action:

> If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. [MCL 600.5852(1).]

The two-year period "runs from the date letters of authority are issued to the first personal representative of an estate." MCL 600.5852(2). Thus, in this case the Estate had until June 7, 2023 to file suit.

Plaintiff may argue that because the Estate served a notice of intent on February 10, 2023 the tolling provision of MCL 600.5856 gives them additional time to file suit. But because the savings provision is not a statute of limitations, the tolling provision of MCL 600.5856 is **not** triggered. *Waltz, supra at 650.*

This Michigan Court of Appeals recently upheld this now 19 year-old holding in *Poniewierski v William Beaumont Hospital Royal Oak*, 2022 WL 17368761 (unpublished COA No. 356925, 2022)[7]. In that case, the alleged malpractice took place no later than June 12, 2017. The personal representative was appointed on May 14, 2018. A notice of intent was sent on April 20, 2020, less than a month before the two years savings period was set to expire. Suit was later filed on October 23, 2020. The defendants moved for summary

[7] Exhibit 4.

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disposition on the basis of the statute of limitations. The trial court granted the motion and plaintiff appealed.

The court of appeals affirmed. The court held that under *Waltz, supra,* "the notice-tolling provision does not apply to the wrongful-death saving provision." *Slip op. at 3.* Because it was not overruled, the *Waltz* holding was binding upon the trial court (and the court of appeals) and as such summary disposition was appropriate. *Slip Op. at 4-5.*

Such is the case here. The Estate of Maurice Ernest had to file this case by June 7, 2023 at the very latest. It did not. As such summary disposition is appropriate.

Relief Requested

WHEREFORE, because the Estate's case against Dr. Farouk Belal is time-barred, defendant moves this court for an order GRANTING his motion for summary disposition pursuant to MCR 2.116(C)(7) and DISMISSING this case with prejudice.

COLLINS EINHORN FARRELL PC

BY: _____

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Dated: September 7, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 7, 2023, she served the above on all counsel of record listed on the above-referenced caption via email and first class mail.

/s/Tammie DeJaeghere
TAMMIE DEJAEGHERE

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Exhibit D

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

KERAN ERNEST, Individually and as Personal Representative for the Estate of MAURICE ERNEST, deceased

Plaintiffs,

-vs-

DR. PAUL W. BROWN JR., DR. ELMAHDI M. SAEED, DR. FAROUK M. BELAL, MCLAREN HEALTH CARE CORPORATION, and CYPRESS CARDIOLOGY, PLLC

Defendants.

Case No. 23-119425-NH
Hon. Celeste Bell

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CLINE, CLINE & GRIFFIN, P.C.
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MEGAN R. MULDER (P-77597)
Attys for Defs Dr. Brown and McLaren
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DEFENDANTS MCLAREN HEALTH CARE CORPORATION AND DR. PAUL BROWN'S MOTION FOR SUMMARY DISPOSITION IN LIEU OF ANSWER TO PLAINTIFFS' COMPLAINT

NOW COME Defendants, McLaren Health Care Corporation and Dr. Paul Brown, by and through their attorneys, CLINE, CLINE & GRIFFIN, P.C., specifically, J. Brian MacDonald and Megan R. Mulder, and for their Motion for Summary Disposition in Lieu of Answer to Plaintiff's Complaint, hereby state as follows:

1. The instant motion is brought pursuant to MCR 2.116(C)(7) and/or MCR 2.116(D).

2. On or about August 14, 2023, Plaintiff filed her Complaint alleging that Defendants, McLaren Health Care Corporation and Dr. Paul Brown

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(hereinafter "these Defendants"), committed medical malpractice on or about July 16, 2020. (Exhibit 1).

3. The statute of limitations for a claim of medical malpractice is two years from the date of accrual. MCL 600.5805(8).

4. "Accrual" is the date of the act or omission that is the basis for the claim of malpractice. MCL 600.5853a(1).

5. In this matter, the date of accrual was July 16, 2020, meaning the two-year statute of limitations ran on July 16, 2022.

6. Mr. Ernest passed away on July 17, 2020.

7. In a claim for wrongful death, MCL 600.5852 states in pertinent part as follows:

> (1) If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run.
>
> (2) If the action that survives by law is an action alleging medical malpractice, the 2-year period under subsection (1) runs from the date letters of authority are issued to the first personal representative of an estate. Except as provided in subsection (3), the issuance of subsequent letters of authority does not enlarge the time within which the action may be commenced.

8. Letters of authority were issued by the Genesee County Probate Court on June 7, 2021. (Exhibit 2). This was the first personal representative to be appointed.

9. Pursuant to MCL 600.5852, Plaintiff had until June 7, 2023 to file suit.

10. Suit was not filed until August 14, 2023, well past the June 7, 2023 deadline.

11. On or about February 10, 2023, prior to the filing of the Complaint, Plaintiff filed a Notice of Intent, which contained allegations of malpractice against Defendants, McLaren Health Care Corporation and Dr. Paul Brown.

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12. Notably, the Notice of Intent was filed after the expiration of the two-year statute of limitations period, which means the wrongful death savings provision outlined in MCL 600.5852 comes into play.

13. Since the Notice of Intent was filed on February 10, 2023, after the expiration July 16, 2022 two-year statute of limitations period, there is no tolling.

14. Furthermore, the Courts have made clear that MCL 600.5856 does not provide for tolling of a savings provision, and MCL 600.5852 is a savings provision. *Waltz v Wyse,* 469 Mich 642; 677 NW2d 813 (2004). *See also Lentini v Urbancic*, 267 Mich App 579; 705 NW2d 701 (2005).

15. As such, Plaintiff is not entitled to the benefit of tolling because the Notice of Intent was filed after the expiration of the two-year statute of limitations period for malpractice and tolling does not apply to the wrongful death savings provision.

16. Ultimately, Plaintiff had until June 7, 2023 to file the Complaint in the instant matter.

17. Plaintiff's lawsuit was filed on August 14, 2023, well after the expiration of the statute of limitations and summary disposition is warranted.

WHEREFORE Defendants, McLaren Health Care Corporation and Dr. Paul Brown, respectfully request this Honorable Court enter an Order Granting their Motion for Summary Disposition and dismissing Plaintiff's Complaint in its entirety, with prejudice.

Respectfully submitted,

CLINE, CLINE & GRIFFIN, P.C.

Dated: September 13, 2023

Megan Mulder

J. Brian MacDonald P-25887
Megan R. Mulder P-77597
Attys for Defs Dr. Brown and McLaren

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Exhibit E

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August 17, 2023

Sent via USPS First Class Mail and USPS Certified Mail Delivery

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Dr. Elmahdi M. Saeed
c/o Douglas C. Smith
Smith, Martin, Powers & Knier, P.C.
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P.O. Box 219
Bay City, MI 48707

RE: Estate of Maurice Ernest (DOB 4/29/1966/DOD 7/17/2020)

Dear Addressees:

This is an amended Notice of Intent; and amends the Notice of Intent dated February 10, 2023. The introduction of the February 10, 2023 Notice has been deleted, and the amendments are highlighted below.

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Factual Basis of Claim

On July 16, 2020 Mr. Ernest, age 54, presented to the emergency department at McLaren Regional Medical Center in Flint, Michigan (hereinafter "McLaren" complaining of chest pain at 10:53. Mr. Ernest relayed that the onset of chest pain started two days prior and was abrupt, constant, and rated the pain as a six on a scale of one to ten. He noted the quality was heaviness and tightness without modifying factors. Mr. Ernest was noted to have obesity and hypertension and suffering with diaphoresis. He was taking metoprolol, a beta blocker that can mask an elevated heart rate, which is a warning sign for pulmonary embolism. He was seen in the emergency room by Dr. Paul W. Brown (hereinafter "Dr. Brown") and discharged from emergency to the cardiac unit for observation at 06:54, with Dr. Elmahdi M. Saeed (hereinafter "Dr. Saeed" attending. A single x-ray was ordered with findings on July 16, 2020, at 10:06 pm of enlarged heart, mild interstitial prominence of lungs, minimal perihilar/basilar opacities and an impression of mild congestion/edema; conditions that can be signs of pulmonary embolism. EKG was within normal limits according to the chart, and potassium was abnormal at 3.2. WBC was 11.8. Blood pressure was 170/89, and pulse was 59 on July 17, 2020 at 11:00. A consultation was placed for cardiology. Mr. Ernest was seen by Dr. Farouk M. Belal (hereinafter "Dr. Belal") who noted his provisional diagnosis was acute coronary syndrome and hypokalemia. Sinus brady cardia noted at 7/17/20 at 01:44. At no time was D-dimer tested. At no time was CT PE or ventilation-perfusion scan ordered. The chart does not mention shortness of breath generally, which Mr. Ernest was suffering from and complained about. The chart reflects only two vitals. On July 17, 2020 at 1357, while in the observation unit, Mr. Ernest died. Independent autopsy conducted at the Michigan Institute of Forensic Science & Medicine confirmed cause of death as bilateral pulmonary embolism an

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noted fresh and organizing emboli in pulmonary arteries and branches, pulmonary infarcts and pulmonary edema.

Standard of Care

The applicable standard of care required McLaren[1] to use reasonable care in hiring and/or credentialling, retaining and supervising physicians and to refrain from hiring and/or credentialling or retaining physicians who demonstrate a foreseeable threat of injury to patients.

The applicable standard of care required McLaren to follow the Joint Commission (JC) Accreditation Standard RC.01.01.01: maintain complete and accurate medical records for each individual patient.

The applicable standard of care for Drs. Brown, Saeed and Belal required that PERC protocol or Wells' criteria be utilized to rule out pulmonary embolism. Given Mr. Ernest's age of 54, utilization of PERC protocol would have indicated that pulmonary embolism must be part of Mr. Ernest's differential diagnosis. Given that Mr. Ernest exhibited clinical signs that pulmonary embolism was an equally likely diagnosis to heart attack, use of the Wells' criteria would have placed Mr. Ernest in the moderate range to suffer incidence of pulmonary embolism.

The applicable standard of care for Drs. Brown, Saeed and Belal required that an order for D-dimer testing be placed for Mr. Ernest where pulmonary embolism was not ruled out and should have been part of the differential diagnosis.

The applicable standard of care for Drs. Brown, Saeed and Belal required that an order for CT PE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and

[1] This statement is made specifically as it relates to Dr. Farouk Belal, but will be pled as to other Defendants if it is later discovered to be applicable to them.

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should have been part of the differential diagnosis and where Mr. Ernest's presentation was as noted in the 'Factual Basis' section above.

The applicable standard of care for Drs. Brown, Saeed and Belal required that they review Mr. Ernest's vitals to the extent that it could be easily noticed that vitals were not being taken every four hours; and issue orders to correct same.

The applicable standard of care for Dr. Belal required that he timely and accurately review the EKG and, when making diagnoses issue orders commensurate with the diagnosis made.

The applicable standard of care for Dr. Belal, Dr. Brown, and Dr. Saeed required that they initiate anticoagulation to treat pulmonary embolism.

Breach of the Standard of Care

McLaren breached the applicable standard of care when it failed to use reasonable care in hiring and/or credentialling, retaining and supervising physicians and to did not refrain from hiring and/or credentialling or retaining physicians who demonstrate a foreseeable threat of injury to patients.

McLaren breached the applicable standard of care when it failed to follow the Joint Commission (JC) Accreditation Standard RC.01.01.01: maintain complete and accurate medical records for each individual patient.

Drs. Brown, Saeed and Belal breached the applicable standard of care when they failed to utilize PERC protocol or Wells' criteria to rule out pulmonary embolism.

Drs. Brown, Saeed and Belal breached the applicable standard of care when they failed to order D-dimer testing for Mr. Ernest where pulmonary embolism was not ruled out and should have been part of the differential diagnosis.

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Drs. Brown, Saeed and Belal breached the applicable standard of care when they failed to order CT PE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's presentation was as noted in the 'Factual Basis' section above.

Drs. Brown, Saeed and Belal breached the applicable standard of care when they did not review Mr. Ernest's and take notice that vitals were not being taken every four hours; and issue orders to correct same.

Dr. Belal breached the applicable standard of care when he failed to timely and accurately review the EKG and, when making diagnoses, failed to issue orders commensurate with the diagnosis made.

Dr. Belal, Dr. Brown, and Dr. Saeed breached the applicable standard of care when they failed to initiate anticoagulation to treat pulmonary embolism.

Action that Should Have Been Taken to Achieve Compliance with the Standard of Care

To comply with the applicable standard of care McLaren should have used reasonable care in hiring and/or credentialling, retaining and supervising physicians and should have refrained from hiring and/or credentialling or retaining physicians who demonstrate a foreseeable threat of injury to patients.

To comply with the applicable standard of care McLaren should have followed the Joint Commission (JC) Accreditation Standard RC.01.01.01: maintain complete and accurate medical records for each individual patient.

To comply with the applicable standard of care, Drs. Brown, Saeed and Belal should have utilized the PERC protocol or Wells' criteria to rule out pulmonary embolism.

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To comply with the applicable standard of care, Drs. Brown, Saeed and Belal should have ordered testing for D-dimer where pulmonary embolism was not ruled out and should have been part of the differential diagnosis.

To comply with the applicable standard of care, Drs. Brown, Saeed and Belal should have ordered CT PE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's presentation was as noted in the 'Factual Basis' section above.

To comply with the applicable standard of care, Drs. Brown, Saeed and Belal should have reviewed Mr. Ernest's vitals to the extent that it could be easily noticed that vitals were not being taken every four hours; and issue orders to correct same.

To comply with the applicable standard of care, Dr. Belal should have timely and accurately review the EKG and, when making diagnoses issue orders commensurate with the diagnosis.

To comply with the applicable standard of care, Dr. Belal, Dr. Brown, and Dr. Saeed should have timely initiated anticoagulation to treat pulmonary embolism.

The Manner in Which the Breach was the Proximate Cause of the Claimed Injury

Because McLaren breached the applicable standard of care when it failed to use reasonable care in hiring and/or credentialling, retaining and supervising physicians and to did not refrain from hiring and/or credentialling or retaining physicians who demonstrate a foreseeable threat of injury to patients, it provided employment or privileges to Dr. Belal, who has an extensive disciplinary record that foretold the likelihood that patients such as Mr. Ernest would suffer neglect or injury in his care, and Mr. Ernest in fact did suffer neglect and injury in Dr. Belal's care at McLaren.

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Because McLaren breached the applicable standard of care when it failed follow the Joint Commission (JC) Accreditation Standard RC.01.01.01: maintain complete and accurate medical records for each individual patient, Mr. Ernest's vitals and the flowchart that should have documented his care at McLaren are non-existent and thusly it can only be concluded that such care did not occur. Not taking vitals and not flow-charting care deprived Mr. Ernest's care providers of critical information that would have reflected Mr. Ernest's risk for pulmonary embolism – the untreated condition that in fact caused Mr. Ernest's death.

Because Drs. Brown, Saeed and Belal breached the applicable standard of care when they failed to utilize PERC protocol or Wells' criteria to rule out pulmonary embolism, pulmonary embolism was not addressed at all, and Mr. Ernest in fact died due to pulmonary embolism.

Because Drs. Brown, Saeed and Belal breached the applicable standard of care when they failed to order D-dimer testing for Mr. Ernest where pulmonary embolism was not ruled out and should have been part of the differential diagnosis, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

Because Drs. Brown, Saeed and Belal breached the applicable standard of care when they failed to order CT PE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's presentation was as noted in the 'Factual Basis' section above, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

Because Drs. Brown, Saeed and Belal breached the applicable standard of care when they did not review Mr. Ernest's and take notice that vitals were not being taken every four hours; and issue orders to correct same, vitals that would have provided more warning signs for pulmonary

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embolism did not exist, and pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

Because Dr. Belal breached the applicable standard of care when he failed to timely and accurately review the EKG and, when making diagnoses, and failed to issue orders commensurate with the diagnosis made, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

Because Dr. Belal, Dr. Brown, and Dr. Saeed breached the applicable standard of care when they failed initiate anticoagulation to treat pulmonary embolism, Mr. Ernest in fact suffered and died due to same.

Statement of Vicarious and Institutional Liability

Please take notice that The Estate of Maurice Ernest intends to hold McLaren and any related Corporation directly liable for the negligence of Drs. Brown, Saeed and Belal as well as that of any other medical professional or other agent that was negligent as set forth in this notice pursuant to the doctrines of actual agency, apparent agency, ostensible agency, and joint venture or joint enterprise liability, as well as pursuant to MCL 333.21513(a).

Name of Health Professionals, Entities and Facilities Notified:

McLaren Regional Medical Center
McLaren Health Care Corporation
c/o J. Brian Macdonald
Cline, Cline & Griffin, P.C.
503 S. Saginaw St.
Suite 1000
Flint, MI 48502

Dr. Paul W. Brown Jr.
c/o J. Brian MacDonald
Cline, Cline & Griffin, P.C.
503 S. Saginaw St.
Suite 1000
Flint, MI 48502

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Cypress Cardiology PLLC
c/o Richard A. Joslin, Jr.
Collins Einhorn Farrell PC
4000 Town Center
9th Floor
Southfield, MI 48075

Dr. Farouk M. Belal
c/o Richard A. Joslin, Jr.
Collins Einhorn Farrell PC
4000 Town Center
9th Floor
Southfield, MI 48075

Dr. Elmahdi M. Saeed
c/o Douglas C. Smith
Smith, Martin, Powers & Knier, P.C.
900 Washington Ave.
P.O. Box 219
Bay City, MI 48707

OLIVER LAW GROUP P.C.

Date: August 17, 2023

/s/ Alyson Oliver, Esq.
Alyson Oliver, Esq. (P55020)
50 W. Big Beaver Rd. Ste. 200
Troy, MI 48064
T: (248) 327-6556
E: notifications@oliverlawgroup.com

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Exhibit F

Approved, SCAO

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF GENESEE

LETTERS OF AUTHORITY FOR PERSONAL REPRESENTATIVE

20212175060E

Estate of Maurice Ernest, deceased

TO:

Name and address	Telephone no.
Keran Ernest 3292 Jacque St. Flint, MI 48532	(810) 908-0582

You have been appointed and qualified as personal representative of the estate on 6-7-2021
Date

You are authorized to perform all acts authorized by law unless exceptions are specified below.

[ ] Your authority is limited in the following way:

[ ] You have no authority over the estate's real estate or ownership interests in a business entity that you identified on your acceptance of appointment.

[ ] Other restrictions or limitations are:

[ ]These letters expire: _____
Date

6-7-2021
Date

Nicole Johnson
~~Judge (formal proceedings)~~/Register (informal proceedings) Bar no.

SEE NOTICE OF DUTIES ON SECOND PAGE

CF Legal, PC
Craig R. Fiederlein P55842
Attorney name (type or print) Bar no.
302 E. Court St.
Address
Flint, MI 48502 (810) 232-1112
City, state, zip Telephone no.

I certify that I have compared this copy with the original on file and that it is a correct copy of the original, and on this date, these letters are in full force and effect.

6-7-2021
Date

Nicole Johnson
Deputy Register

Do not write below this line - For court use only

FILED
JUN 07 2021
GENESEE COUNTY

MCL 700.3103, MCL 700.3307, MCL 700.3414, MCL 700.3501, MCL 700.3601

PC 572 (2/13) **LETTERS OF AUTHORITY FOR PERSONAL REPRESENTATIVE** MCR 5.202, MCR 5.206, MCR 5.307, MCR 5.310

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The following provisions are mandatory reporting duties specified in Michigan law and Michigan court rules and are not the only duties required of you. See MCL 700.3701 through MCL 700.3722 for other duties. Your failure to comply may result in the court suspending your powers and appointing a special fiduciary in your place. It may also result in your removal as fiduciary.

CONTINUED ADMINISTRATION: If the estate is not settled within 1 year after the first personal representative's appointment, you must file with the court and send to each interested person a notice that the estate remains under administration, specifying the reasons for the continued administration. You must give this notice within 28 days of the first anniversary of the first personal representative's appointment and all subsequent anniversaries during which the administration remains uncompleted. If such a notice is not received, an interested person may petition the court for a hearing on the necessity for continued administration or for closure of the estate. [MCL 700.3703(4), MCL 700.3951(3), MCR 5.144, MCR 5.307, MCR 5.310]

DUTY TO COMPLETE ADMINISTRATION OF ESTATE: You must complete the administration of the estate and file appropriate closing papers with the court. Failure to do so may result in personal assessment of costs. [MCR 5.310]

CHANGE OF ADDRESS: You are required to inform the court and all interested persons of any change in your address within 7 days of the change.

Additional Duties for Supervised Administration

If this is a supervised administration, in addition to the above reporting duties, you are also required to prepare and file with this court the following written reports or information.

INVENTORY: You are required to file with the probate court an inventory of the assets of the estate within 91 days of the date your letters of authority are issued or as ordered by the court. You must send a copy of the inventory to all presumptive distributees and all other interested persons who request it. The inventory must list in reasonable detail all the property owned by the decedent at the time of death. Each listed item must indicate the fair market value at the time of the decedent's death and the type and amount of any encumbrance. Where the decedent's date of death is on or after March 28, 2013, the lien amount will be deducted from the value of the real property for purposes of calculating the inventory fee under MCL 600.871(2). If the value of any item has been obtained through an appraiser, the inventory should include the appraiser's name and address with the item or items appraised by that appraiser. You must also provide the name and address of each financial institution listed on your inventory at the time the inventory is presented to the court. The address for a financial institution shall be either that of the institution's main headquarters or the branch used most frequently by the personal representative. [MCL 700.3706, MCR 5.307, MCR 5.310(E)]

ACCOUNTS: You are required to file with this court once a year, either on the anniversary date that your letters of authority were issued or on another date you choose (you must notify the court of this date) or more often if the court directs, a complete itemized accounting of your administration of the estate. This itemized accounting must show in detail all income and disbursements and the remaining property, together with the form of the property. Subsequent annual and final accountings must be filed within 56 days following the close of the accounting period. When the estate is ready for closing, you are also required to file a final account with a description of property remaining in the estate. All accounts must be served on the required persons at the same time they are filed with the court, along with proof of service.

ESTATE (OR INHERITANCE) TAX INFORMATION: You are required to submit to the court proof that no estate (or inheritance) taxes are due or that the estate (or inheritance) taxes have been paid. **Note:** The estate may be subject to inheritance tax.

Additional Duties for Unsupervised Administration

If this is an unsupervised administration, in addition to the above reporting duties, you are also required to prepare and provide to all interested persons the following written reports or information.

INVENTORY: You are required to prepare an inventory of the assets of the estate within 91 days from the date your letters of authority are issued and to send a copy of the inventory to all presumptive distributees and all other interested persons who request it. The inventory must list in reasonable detail all the property owned by the decedent at the time of death. Each listed item must indicate the fair market value at the time of the decedent's death and the type and amount of any encumbrance. Where the decedent's date of death is on or after March 28, 2013, the lien amount will be deducted from the value of the real property for purposes of calculating the inventory fee under MCL 600.871(2). You are required within 91 days from the date your letters of authority are issued, to submit to the court the information necessary to calculate the probate inventory fee that you must pay to the probate court. You may use the original inventory for this purpose. [MCL 700.3706, MCR 5.307]

ESTATE (OR INHERITANCE) TAX INFORMATION: You may be required to submit to the court proof that no estate (or inheritance) taxes are due or that the estate (or inheritance) taxes have been paid. **Note:** The estate may be subject to inheritance tax.

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Exhibit G

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

KERAN ERNEST,
Individually and as Personal Representative
Of the Estate of Maurice Ernest,
Deceased.
Plaintiff,

Vs.

2023 119425 -NH

CELESTE D. BELL
P-41453

DR. PAUL W. BROWN JR.,
ELMAHDI M. SAEED,
DR. FAROUK M. BELAL,
MCLAREN HEALTH CARE
CORPORATION,
CYPRESS CARDIOLOGY PLLC,

Defendants.

A TRUE COPY
Genesee County Clerk

/

Alyson Oliver (P55020)
Paul Matouka (P84874)
Attorneys for Plaintiff
50 W. Big Beaver Road, Suite 200
Troy, MI 48084
(248) 327-6556
notifications@oliverlawgroup.com

/

COMPLAINT

There is no pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

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NOW COMES PLAINTIFF, KERAN ERNEST, Individually and as Personal Representative of the Estate of Maurice Ernest, Deceased, by and through its counsel OLIVER LAW GROUP PC, and in support of their Complaint states as follows:

Introduction

This case arises from Defendants' medical malpractice, leading to the wrongful death of the Plaintiff.

Parties

1. Plaintiff Keran Ernest is the duly appointed personal representative by the Genesee Probate Court of the Estate of Maurice Ernest. **Exhibit A.**
2. Prior to his death, Maurice Ernest was an adult resident of Flint Township, County of Genesee, State of Michigan.
3. Upon information and belief, Defendant Brown is a resident of the City of Lake Orion, County of Oakland, State of Michigan.
4. Upon information and belief, Defendant Saeed is a resident of the City of Grand Blanc, County of Genesee, State of Michigan.
5. Upon information and belief, Defendant Belal is a resident of the City of Grand Blanc, County of Genesee, State of Michigan.

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6. Defendant McLaren Health Care Corporation is an incorporated business located in the City of Flint, County of Genesee, State of Michigan.

7. Defendant Cypress Cardiology PLLC is an incorporated business located in the City of Flint, County of Genesee, State of Michigan.

Jurisdiction/Venue

8. Jurisdiction and venue are proper in Genesee County Circuit Court because the transactions giving rise to the allegations in this Complaint occurred in Genesee County, Michigan and the amount in controversy exceeds $25,000.00.

Facts

9. Plaintiff incorporates the preceding paragraphs as if fully restated herein.

10. On July 16, 2020, Maurice Ernest presented to the emergency department at Defendant McLaren Regional Health Corporation's McLaren Regional Medical Center in Flint, Michigan, complaining of chest pain at 10:53 AM.

11. Maurice Ernest relayed that the onset of chest pain started two days prior and was abrupt, constant, and rated the pain as a six on a scale of one to ten. He noted the quality was heaviness and tightness without modifying factors. He was noted to have obesity and hypertension and suffering with diaphoresis. He was taking metoprolol, a beta blocker that can mask an elevated heart rate, which is a warning sign for pulmonary embolism.

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12. Maurice Ernest was seen in the emergency room by Defendant Brown and discharged from emergency to the cardiac unit for observation at 6:54 PM, with Defendant Saeed attending. At no time was D-dimer tested. At no time was CTPE or ventilation-perfusion scan ordered.

13. A single X-Ray was ordered with findings on July 16, 2020, at 10:06 PM of enlarged heart, mild interstitial prominence of lungs, minimal perihilar/basilar opacities and an impression of mild congestion/edema; conditions that can be signs of pulmonary embolism. EKG was within normal limits according to the chart, and potassium was abnormal at 3.2. WBC was 11.8. Blood pressure was 170/89, and pulse was 59 on July 17, 2020, at 11:00 AM. A consultation was placed for cardiology.

14. Maurice Ernest was seen by Defendant Belal, who noted his provisional diagnosis was acute coronary syndrome and hypokalemia. Sinus bradycardia noted at 7/17/2020 at 1:44 PM. At no time was D-dimer tested. At no time was CTPE or ventilation-perfusion scan ordered. The chart does not mention shortness of breath generally, which Maurice Ernest was suffering from and complained about. The chart reflects only two vitals.

15. On July 17, 2020, at 1:57 PM, while in the observation unit, Maurice Ernest died. Independent autopsy conducted at the Michigan Institute of Forensic Science & Medicine confirmed cause of death as bilateral pulmonary embolism

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and noted fresh and organizing emboli in pulmonary arteries and branches, pulmonary infarcts and pulmonary edema.

Count I – Medical Malpractice

16. Plaintiff incorporates the preceding paragraphs as if fully restated herein.

17. Notice of Intent was served on all Defendants herein on February 10, 2023.

A. Defendant McLaren Health Care Corporation

18. Plaintiff incorporates the preceding paragraphs as if fully restated herein.

19. The Affidavit of Merit of Richard Bays, is attached as **Exhibit B**.

20. The applicable standard of care required that Defendant McLaren Health Care Corporation is that which a reasonably prudent and careful hospital staff, being or ordinary learning, judgment, and skill would or would not do under the same or similar circumstances.

21. The applicable standard of care applicable to McLaren Regional Medical Center required it to provide Maurice Ernest with reasonable care and the care that a reasonably prudent hospital would follow including:

    a. Following the PUBLIC HEALTH CODE Act 368 of 1978 [333.21521 Minimum standards and rules; practices. - Sec. 21521.] which states that: A hospital shall meet the minimum standards and rules authorized by this article and shall endeavor to carry out practices that will further protect the public health and safety,

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prevent the spread of disease, alleviate pain and disability, and prevent premature death;

b. Following the Joint Commission (JC) Accreditation Standards that McLaren Regional Medical Center is required including but not limited to:

   i. Standard LD. 04.03.01 – The hospital provides services that meet patient needs;

   ii. Standard LD.04.03.09 – Care, treatment, and services provided through contractual agreement are provided safely and effectively [See also §CFR §482.12e];

   iii. Standard HR.01.06.01 Staff are competent to perform their responsibilities [Also see CFR§ 482.23];

   iv. Standard MS.03.01.03 The management and coordination of each patient's care, treatment, and services is the responsibility of a practitioner with appropriate privileges;

   v. Standard MS.07.01.01 The organized medical staff provides oversight for the quality of care, treatment, and services by recommending members for appointment to the medical staff;

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vi. Standard LD.03.09.01 The hospital has an organizational-wide, integrated patient safety program within its performance improvement activities;

vii. Standard RI.01.01.01 - The hospital respects, protects, and promotes patient rights. The hospital treats the patient in a dignified and respectful manner that supports his or her dignity;

viii. Standard PC.01.02.01 – The hospital assesses and reassesses its patients; and

ix. Standard RC.01.01.01 - The hospital maintains complete and accurate medical records for each individual patient; provides full, complete and medical records for each individual patient,

c. Following the Emergency Medical Treatment and Labor Act (EMTALA) [a federal law enacted in 1986] that requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status or ability to pay [42 U.S.C. §1395dd]. EMTALA requires Medicare-participating hospitals with emergency departments, such as McLaren Regional Medical Center, to screen and treat the emergency medical conditions of patients in a non-discriminatory manner [id]. An emergency medical condition

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is defined as "a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs" [id]. When an emergency medical condition exists, treatment must be provided until the emergency medical condition is resolved or stabilized. If the hospital does not have the capability to treat the emergency medical condition, an "appropriate" transfer of the patient to another hospital must be done in accordance with the EMTALA provisions;

d. Following the Federal Level Medicare Condition of Participation requirements that McLaren Regional Medical Center is required to comply with, including but not limited to:

   i. § 482.12(e) Condition of Participation: Contracted Services - The governing body must be responsible for services furnished in the hospital whether or not they are furnished under contracts.,

   ii. §482.11 Condition of Participation: Compliance with Federal, State and Local Laws - The hospital must ensure that

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all applicable Federal, State and local law requirements are met. [Including Public Health Code Act 368 of 1978 [333.21521 Minimum standards and rules; practices. - Sec. 21521];

iii. §482.12(a) Standard: Medical Staff. The governing body must: Determine, in accordance with State law, which categories of practitioners are eligible candidates for appointment to the medical staff;

iv. §482.12(a)(2) Appoint members of the medical staff after considering the recommendations of the existing members of the medical staff - Only the hospital's governing body has the authority to grant a practitioner privileges to provide care in the hospital;

v. §482.12(a)(5) Ensure that the medical staff is accountable to the governing body for the quality of care provided to patients - The governing body must ensure that the medical staff as a group is accountable to the governing body for the quality of care provided to patients. The governing body is responsible for the conduct of the hospital and this conduct includes the quality of care provided to patients;

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vi. §482.12(a)(6) Ensure the criteria for selection are individual character, competence, training, experience, and judgment;

vii. §482.22 Condition of Participation: Medical Staff - The hospital must have an organized medical staff that operates under bylaws approved by the governing body, and which is responsible for the quality of medical care provided to patients by the hospital;

viii. §482.55 Condition of Participation: Emergency Services - The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice; and

ix. §482.55(a) - [If emergency services are provided at the hospital] (2) The services must be integrated with other departments of the hospital; Emergency Services integration would include at a minimum: 1) The immediate availability of services, equipment, personnel, and resources of other hospital departments/services to emergency patients; and 2) That the provision of services, equipment, personnel and resources of other hospital departments/services to emergency department patients is within timeframes that

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protect the health and safety of patients and is within acceptable standards of practice.

22. Defendant McLaren Health Care Corporation deviated from the standard of care in their treatment of Maurice Ernest by failing to do the following:

23. Failing to follow the Joint Commission (JC) Accreditation Standards that McLaren Health Care Corporation are required to, including but not limited to:

a. Standard LD.04.03.01 – The hospital provides services that meet patient needs;

b. Standard LD.04.03.09 - Care, treatment, and services provided through contractual agreement are provided safely and effectively [See also CFR §482.12e];

c. Standard HR.01.06.01 Staff are competent to perform their responsibilities [Also see CFR§ 482.23];

d. Standard MS.03.01.03 The management and coordination of each patient's care, treatment, and services is the responsibility of a practitioner with appropriate privileges;

e. Standard MS.07.01.01 The organized medical staff provides oversight for the quality of care, treatment, and services by recommending members for appointment to the medical staff;

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f. Standard LD.03.09.01 The hospital has an organizational-wide, integrated patient safety program within its performance improvement activities;

g. Standard RI.01.01.01 - The hospital respects, protects, and promotes patient rights. The hospital treats the patient in a dignified and respectful manner that supports his or her dignity;

h. Standard RC.01.01.01 - The hospital maintains complete and accurate medical records for each individual patient; provides full, complete and medical records for each individual patient

i. Standard PC.01.02.01 – The hospital assesses and reassesses its patients.

24. Failing to follow the Federal Level Medicare Condition of Participation requirements that McLaren Health Care Corporation are required to comply with, including but not limited to:

a. Failing to follow § 482.12(e) Condition of Participation: Contracted Services – The governing body must be responsible for services furnished in the hospital whether or not they are furnished under contracts.,

b. §482.11 Condition of Participation: Compliance with Federal, State and Local Laws - The hospital must ensure that all applicable

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Federal, State and local law requirements are met. [Including Public Health Code Act 368 of 1978 [333.21521 Minimum standards and rules; practices. - Sec. 21521];

c. §482.12(a) Standard: Medical Staff. The governing body must: Determine, in accordance with State law, which categories of practitioners are eligible candidates for appointment to the medical staff; §482.12(a)(2) Appoint members of the medical staff after considering the recommendations of the existing members of the medical staff - Only the hospital's governing body has the authority to grant a practitioner privileges to provide care in the hospital; §482.12(a)(5) Ensure that the medical staff is accountable to the governing body for the quality of care provided to patients - The governing body must ensure that the medical staff as a group is accountable to the governing body for the quality of care provided to patients. The governing body is responsible for the conduct of the hospital and this conduct includes the quality of care provided to patients; §482.12(a)(6) Ensure the criteria for selection are individual character, competence, training, experience, and judgment;

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d. §482.22 Condition of Participation: Medical Staff - The hospital must have an organized medical staff that operates under bylaws approved by the governing body, and which is responsible for the quality of medical care provided to patients by the hospital;

e. §482.55 Condition of Participation: Emergency Services - The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice; and §482.55(a) - [If emergency services are provided at the hospital] (2) The services must be integrated with other departments of the hospital; Emergency Services integration would include at a minimum: 1) The immediate availability of services, equipment, personnel, and resources of other hospital departments/services to emergency patients; and 2) That the provision of services, equipment, personnel and resources of other hospital departments/services to emergency department patients is within timeframes that protect the health and safety of patients and is within acceptable standards of practice.

f. The Emergency Medical Treatment and Labor Act (EMTALA) [a federal law enacted in 1986] that requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status or ability to pay [42 U.S.C. §1395dd].

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EMTALA requires Medicare-participating hospitals with emergency departments, such as McLaren Regional Medical Center, to screen and treat the emergency medical conditions of patients in a non-discriminatory manner [*id*]. An emergency medical condition is defined as "a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs" [*id*]. When an emergency medical condition exists, treatment must be provided until the emergency medical condition is resolved or stabilized. If the hospital does not have the capability to treat the emergency medical condition, an "appropriate" transfer of the patient to another hospital must be done in accordance with the EMTALA provisions.

25. To comply with the standard of care McLaren Health Care Corporation were required to comply with the standards, acts, conditions and guidance set forth above, and refrain from failing to follow all or any of them.

26. Defendant McLaren Regional Medical Center's failure to comply with the standard of care was a proximate cause of Maurice Ernest's death where strict

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adherence to same would have resulted in treatment for the pulmonary embolism which ultimately took his life.

B. Defendant Paul W. Brown Jr.

27. Plaintiff incorporates the preceding paragraphs as if fully restated herein.

28. The Affidavit of Merit of Ken Zafren is attached as **Exhibit C**.

29. The applicable standard of care for Defendant Paul W. Brown Jr. is that of a reasonably prudent emergency medicine specialist of ordinary learning, judgment, or skill confronted with the same or similar circumstances.

30. The applicable standard of care for Defendant Paul W. Brown Jr. (hereinafter Dr. Brown), an emergency medicine specialist required that the pulmonary embolism be included in the differential diagnosis for Mr. Ernest, whose symptoms included chest pain and shortness of breath.

31. The standard of care required that Defendant Paul W. Brown Jr. to:

a. Use a pulmonary embolism scoring system or clinical gestalt to rule pulmonary embolism in or out;

b. Order testing for D-dimer when pulmonary embolism was not ruled out and pulmonary embolism should have remained part of the differential diagnosis until it was ruled out;

c. Order a CTPE or other appropriate testing when pulmonary embolism was not ruled out and pulmonary embolism should have

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remained part of the differential diagnosis for Mr. Ernest until it was ruled out;

d. Initiated anticoagulation to treat pulmonary embolism.

32. Dr. Brown deviated from the standard of care by:

a. Failing to use a pulmonary embolism scoring system or clinical gestalt to evaluate the risk of pulmonary embolism.

b. Failing to order D-dimer testing for Mr. Ernest when pulmonary embolism was not ruled out and should have remained part of the different diagnosis.

c. Failing to order a CTPE or other test to rule pulmonary embolism in or out. Dr. Brown deviated from the standard of care by not ruling pulmonary embolism in or out.

d. Failing to initiate anticoagulation for treatment of pulmonary embolism.

33. To comply with the applicable standard of care Dr. Brown should have done the following:

a. Used a pulmonary embolism scoring system or clinical gestalt to rule pulmonary embolism in or out.

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b. Ordered testing for D-dimer when pulmonary embolism was not ruled out and pulmonary embolism should have remained part of the differential diagnosis.

c. Ordered a CTPE or other appropriate testing when pulmonary embolism was not ruled out and pulmonary embolism should have remained part of the differential diagnosis for Mr. Ernest, who had symptoms or chest pain and shortness of breath without a definite diagnosis of heart attack.

d. Initiated anticoagulation to treat pulmonary embolism.

34. Dr. Brown's breach of the standard of care was a proximate cause of Plaintiff's injuries for the following reasons:

a. Failing to use a pulmonary embolism scoring system or clinical gestalt to rule our pulmonary embolism. Mr. Ernest died from a pulmonary embolism.

b. Failing to order D-dimer testing for Mr. Ernest when pulmonary embolism was not ruled out and should have remained part of the differential diagnosis. Dr. Brown failed to detect the pulmonary embolism. Mr. Ernest died from a pulmonary embolism.

c. Failing to order a CTPE or other appropriate testing for pulmonary embolism. Pulmonary embolism was not ruled out and should have

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remained part of the differential diagnosis for Mr. Ernest who had chest pain and shortness of breath. Dr. Brown failed to diagnose and treat the pulmonary embolism. Mr. Ernest died from a pulmonary embolism.

d. Failing to timely initiate anticoagulation to treat pulmonary embolism. Dr. Brown did not initiate anticoagulation. Mr. Ernest died from pulmonary embolism.

C. Defendant Elmahdi M. Saeed

35. Plaintiff incorporates the preceding paragraphs as if fully restated herein.

36. The Affidavit of Merit of Vince Faridani is attached as **Exhibit D.**

37. The applicable standard of care for Defendant Elmahdi M. Saeed is that of a reasonably prudent internal medicine specialist of ordinary learning, judgment, or skill confronted with the same or similar circumstances.

38. The applicable standard of care for Defendant Dr. Elmahdi M. Saeed (hereinafter Dr. Saeed), an internal medicine specialist required:

a. PERC protocol or Wells criteria be utilized to rule out pulmonary embolism. Given Mr. Ernest's age of 54, utilization of PERC protocol would have indicated that pulmonary embolism must be part of Mr. Ernest's differential diagnosis. Given that Mr. Ernest exhibited clinical signs that pulmonary embolism was an equally

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likely diagnosis to heart attack, use of the Wells' criteria would have placed Mr. Ernest in the moderate range to suffer incidence of pulmonary embolism.

b. An order for D-dimer testing be placed for Mr. Ernest where pulmonary embolism was not ruled out and should have been part of the differential diagnosis.

c. An order for CTPE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's presentation was suffering, complaining of shortness of breath and chest pain.

d. Initiate parenteral anticoagulation using the parenteral anticoagulant heparin, which is commonly used to treat pulmonary embolism.

39. Dr. Saeed deviated from the standard of care and treatment of Maurice Ernest by:

a. Failing to utilize PERC protocol or Wells' criteria to rule out pulmonary embolism.

b. Failing to order D-dimer testing for Mr. Ernest where pulmonary embolism was not ruled out and should have been part of the different diagnosis.

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c. Failing to order CTPE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's condition was as listed above.

d. Failing to initiate parenteral anticoagulation using the parenteral anticoagulant heparin.

40. To comply with the applicable standard of care Dr. Saeed should have done the following:

a. Utilized the PERC protocol or Wells' criteria to rule out pulmonary embolism.

b. Ordered testing for D-dimer where pulmonary embolism was not ruled out and should have been part of the differential diagnosis.

c. Ordered CTPE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's presentation was as listed above.

d. Failing to initiate parenteral anticoagulation using the parenteral anticoagulant heparin.

41. Dr. Saeed's breach of the standard of care was a proximate cause of Plaintiff's injuries for the following reasons:

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a. Failing to utilize PERC protocol or Wells' criteria to rule out pulmonary embolism, pulmonary embolism was not addressed at all, and Mr. Ernest in fact died due to pulmonary embolism.

b. Failing to order D-dimer testing for Mr. Ernest when pulmonary embolism was not ruled out and should have been part of the differential diagnosis, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

c. Failing to order CTPE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernests's presentation was as listed above, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

d. Failing to timely initiate parenteral anticoagulants using parenteral anticoagulants such as heparin to address pulmonary embolism, parenteral anticoagulants were not administered and Mr. Ernest in fact died due to same.

D. Defendant Farouk M. Belal

38. The Affidavit of Merit of Thomas C. Hilton is attached as **Exhibit E.**

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42. The applicable standard of care for Defendant Farouk M. Belal is that of a reasonably prudent cardiologist of ordinary learning, judgment, or skill confronted with the same or similar circumstances.

43. The applicable standard of care for Dr. Farouk M. Belal (hereinafter Dr. Belal) required that:

a. Mr. Ernest be recognized as a 54-year-old morbidly obese, hyperlipidemic male with hypertension, hypertensive cardiovascular disease and left ventricular hypertrophy with a history of right leg trauma with vascular injury for which he had undergone right anterior tibial artery aneurysm repair with graft 12/18/2018. As such he was at increased risk both for coronary heart disease and for venous thromboembolic disease with pulmonary embolism.

b. Order appropriate testing for both coronary heart disease and for venous thromboembolic disease with pulmonary embolism be completely urgently on admission to the hospital. When the ECG and cardiac enzymes failed to confirm a diagnosis of myocardial infarction the standard of care was to rule out pulmonary embolism with a CTA of the chest or a V/Q lung scan.

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c. To initiate a D-dimer test in this case where more probably than not it would have been abnormal and would have prompted additional diagnostic testing that would have confirmed the diagnosis of bilateral pulmonary embolism.

d. To initiate standard therapy for both unstable angina and for possible pulmonary embolism. For both conditions appropriate management requires prompt initiation of parenteral anticoagulation.

e. To prescribe antiplatelet therapy with aspirin and a platelet P2y12 receptor blocked, parenteral anticoagulation, high intensity statin therapy, beta blockers, unless contraindications existed upon establishing an initial diagnosis of unstable angina.

44. Defendant Belal breached the applicable standard of care when he:

a. Failed to recognize Mr. Ernest as a 54-year-old morbidly obese, hyperlipidemic male with hypertension, hypertensive cardiovascular disease and left ventricular hypertrophy with a history of right leg trauma with vascular injury for which he had undergone right anterior tibial artery aneurysm repair with graft 12/18/2018 that was at increased risk both for coronary heart disease and for venous thromboembolic disease with pulmonary embolism.

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b. Failed to order appropriate testing for both coronary heart disease and for venous thromboembolic disease with pulmonary embolism be completed urgently on admission to the hospital.

c. Failed to rule out pulmonary embolism with a CTA of the chest or a V/Q lung scan when the ECG and cardiac enzymes failed to confirm a diagnosis of myocardial infarction.

d. Failed to initiate a D-dimer test in this case which more probably than not would have been abnormal and would have prompted additional diagnostic testing that would have confirmed the diagnosis of bilateral pulmonary embolism.

e. Failed to initiate standard therapy both for unstable angina and for possible pulmonary embolism with prompt initiation of parenteral anticoagulation.

f. Failed to treat Mr. Ernest appropriately for initial diagnosis of unstable angina by initiating Antiplatelet therapy with aspirin and a platelet P2y12 receptor blocked, parenteral anticoagulation, high intensity statin therapy, beta blockers.

35. To comply with the applicable standard of care, Dr. Belal should have:

a. recognized Mr. Ernest as a 54-year-old morbidly obese, hyperlipidemic male with hypertension, hypertensive cardiovascular disease and left

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ventricular hypertrophy with a history of right leg trauma with vascular injury for which he had undergone right anterior tibial artery aneurysm repair with graft 12/18/2018. As such he was at increased risk both for coronary heart disease and for venous thromboembolic disease with pulmonary embolism.

b. Ordered appropriate testing for both coronary heart disease and for venous thromboembolic disease with pulmonary embolism be completely urgently on admission to the hospital. When the ECG and cardiac enzymes failed to confirm a diagnosis of myocardial infarction the standard of care was to rule out pulmonary embolism with a CTA of the chest or a V/Q lung scan.

c. Initiated a D-dimer test in this case where more probably than not it would have been abnormal and would have prompted additional diagnostic testing that would have confirmed the diagnosis of bilateral pulmonary embolism.

d. Initiated standard therapy for both unstable angina and for possible pulmonary embolism. For both conditions appropriate management requires prompt initiation of parenteral anticoagulation.

e. Prescribe antiplatelet therapy with aspirin and a platelet P2y12 receptor blocked, parenteral anticoagulation, high intensity statin therapy, beta

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blockers unless contraindications existed upon establishing an initial diagnosis of unstable angina.

36. Dr. Belal's breach of the standard of care was a proximate cause of Plaintiff's injuries for the following reasons:

a. By failing to recognize and appreciate Mr. Ernest's presentation and order D-dimer, CTA chest or VQ lung scan for Mr. Ernest, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

b. failing to timely initiate antiplatelet therapy with aspirin and a platelet P2Y12 receptor blocker, high intensity statin, beta blockers and parenteral anticoagulants contributed to Mr. Ernest's death.

Count II – Wrongful Death

37. Plaintiff incorporates the preceding paragraphs as if fully restated herein.

38. The breaches of the standard of care by all Defendants stated herein were a proximate cause of the Plaintiff's untimely and painful death.

Vicarious and Institutional Liability

39. Plaintiff incorporates the preceding paragraphs as if fully restated herein.

40. Defendants McClaren Health Care Corporation and Cypress Cardiology PLLC are vicariously liable for the negligence of the individual defendants within their employ, agency or joint ventures pursuant to the doctrines of

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actual agency, apparent agency, ostensible agency, joint venture, joint enterprise liability as well as MCL 333.21513(a)[1].

Damages

41. Plaintiff incorporates the preceding paragraphs as if fully restated herein.

42. Due to Defendant's unlawful conduct as set forth herein, Plaintiff has been damaged as follows:

a. Economic damages

b. Non-economic damages

c. Attorney fees, cost of suit and interest;

d. All other damages that this Court finds appropriate.

Respectfully submitted;

Date: August 10, 2023

/s/Alyson Oliver
Oliver Law Group PC
50 W. Big Beaver Road, Suite 200
Troy, MI 48084
Phone: (248) 327-6556
Fax: (248) 436-3385
aoliver@oliverlawgroup.com
Attorneys for Plaintiff

[1] MCL 333.21513(a) is applicable to Defendants who own, operate, or are the governing body of a hospital licensed under MCL 333.20101 et. seq only.

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

KERAN ERNEST,
Individually and as Personal Representative
Of the Estate of Maurice Ernest,
Deceased.
Plaintiff,

Vs. 2023- -NH

DR. PAUL W. BROWN JR.,
ELMAHDI M. SAEED,
DR. FAROUK M. BELAL,
MCLAREN HEALTH CARE
CORPORATION,
CYPRESS CARDIOLOGY PLLC,

Defendants.

_____/

Alyson Oliver (P55020)
Paul Matouka (P84874)
Attorneys for Plaintiff
50 W. Big Beaver Road, Suite 200
Troy, MI 48084
(248) 327-6556
notifications@oliverlawgroup.com

_____/

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted;

Date: August 10, 2023

/s/Alyson Oliver
Oliver Law Group PC
50 W. Big Beaver Road, Suite 200
Troy, MI 48084
Phone: (248) 327-6556
Fax: (248) 436-3385
aoliver@oliverlawgroup.com
Attorneys for Plaintiff

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Exhibit A

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Approved, SCAO

STATE OF MICHIGAN PROBATE COURT COUNTY OF GENESEE	LETTERS OF AUTHORITY FOR PERSONAL REPRESENTATIVE	2021217506DE

Estate of Maurice Ernest, deceased

TO:

Name and address	Telephone no.
Keran Ernest 3292 Jacque St. Flint, MI 48532	(810) 908-0582

You have been appointed and qualified as personal representative of the estate on 6-7-2021
Date

You are authorized to perform all acts authorized by law unless exceptions are specified below.

[ ] Your authority is limited in the following way:

[ ] You have no authority over the estate's real estate or ownership interests in a business entity that you identified on your acceptance of appointment.

[ ] Other restrictions or limitations are:

[ ] These letters expire: _____
Date

6-7-2021
Date

Nicole Johnson
~~Judge (formal proceedings)~~/Register (informal proceedings) Bar no.

SEE NOTICE OF DUTIES ON SECOND PAGE

CF Legal, PC
Craig R. Fiederlein P55842
Attorney name (type or print) Bar no.
302 E. Court St.
Address
Flint, MI 48502 (810) 232-1112
City, state, zip Telephone no.

I certify that I have compared this copy with the original on file and that it is a correct copy of the original, and on this date, these letters are in full force and effect.

6-7-2021
Date

Nicole Johnson
Deputy Register

Do not write below this line - For court use only

FILED
JUN 07 2021
GENESEE COUNTY
PROBATE COURT

MCL 700.3103, MCL 700.3307, MCL 700.3414, MCL 700.3504, MCL 700.3601, MCR 5.202, MCR 5.206, MCR 5.307, MCR 5.310

PC 572 (2/13) LETTERS OF AUTHORITY FOR PERSONAL REPRESENTATIVE

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Exhibit B

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AFFIDAVIT OF MERIT – RICHARD BAYS JD, MBA, RN, LNCC

I, Richard Bays, JD, MBA, RN, LNCC, being first duly sworn upon my oath, depose and state:

1. I am an adult competent and qualified to testify to the matters contained herein and do so from my own personal knowledge. If called to testify at trial, I would repeat the substance of the facts stated herein.
2. I have been supplied with and reviewed the records of Maurice Ernest to form the factual basis for this Affidavit: All medical records we have for McLaren Regional Medical Center.
3. I am a JD, MBA, RN and LNCC specializing in healthcare/hospital administration.
4. I am board certified by the Accreditation Board for Specialty Nursing Certification (ABSNC).
5. As a practicing registered nurse, I have experience in assessing and treating patients with emergency conditions and credentialling/privileging healthcare providers. I am familiar with the standard of practice or care applicable to hospitals/healthcare facilities regarding this issue.
6. I have served on a panel appointed by the Texas Legislature that oversees Preventable Adverse Events (PAE's) occurring in all hospitals licensed by the Texas State Department of Health Services and I currently sit on the Texas Nurses Association's (TNA) Regulatory Advisory Panel.
7. At all relevant times, including during the year immediately preceding the date of the occurrence that is the basis of this action, I devoted the majority of my professional time to the practice of nursing with emphasis on healthcare/hospital administration.

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8. I am familiar with the standard of practice or care applicable to McLaren Regional Medical Center.

9. The standard of practice or care applicable to McLaren Regional Medical Center is that which a reasonably prudent and careful hospital staff, being of ordinary learning, judgment, and skill, would or would not do under the same or similar circumstances.

10. The standard of practice or care applicable to McLaren Regional Medical Center required it to provide Maurice Ernest with reasonable care and the care that a reasonably prudent hospital would follow includes; Follow the PUBLIC HEALTH CODE Act 368 of 1978 [333.21521 Minimum standards and rules; practices. - Sec. 21521.] which states that: A hospital shall meet the minimum standards and rules authorized by this article and shall endeavor to *carry out practices* that will further *protect the public health and safety*, prevent the spread of disease, alleviate pain and disability, and prevent premature death; following the Joint Commission (JC) Accreditation Standards that McLaren Regional Medical Center is required including but not limited to: Standard LD.04.03.01 – The hospital provides services that meet patient needs; Standard LD.04.03.09 - Care, treatment, and services provided through contractual agreement are provided safely and effectively [See also CFR §482.12e]; Standard HR.01.06.01 Staff are competent to perform their responsibilities [Also see CFR§ 482.23]; Standard MS.03.01.03 The management and coordination of each patient's care, treatment, and services is the responsibility of a practitioner with appropriate privileges; Standard MS.07.01.01 The organized medical staff provides oversight for the quality of care, treatment, and services by recommending members for appointment to the medical staff; Standard LD.03.09.01 The hospital has an

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organizational-wide, integrated patient safety program within its performance improvement activities; Standard RI.01.01.01 - The hospital respects, protects, and promotes patient rights. The hospital treats the patient in a dignified and respectful manner that supports his or her dignity; Standard PC.01.02.01 – The hospital assesses and reassesses its patients; and Standard RC.01.01.01 - The hospital maintains complete and accurate medical records for each individual patient; provides full, complete and medical records for each individual patient, by following the Emergency Medical Treatment and Labor Act (EMTALA) [a federal law enacted in 1986] that requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status or ability to pay [42 U.S.C. §1395dd]. EMTALA requires Medicare-participating hospitals with emergency departments, such as McLaren Regional Medical Center, to screen and treat the emergency medical conditions of patients in a non-discriminatory manner [*id*]. An emergency medical condition is defined as "a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs" [*id*]. When an emergency medical condition exists, treatment must be provided until the emergency medical condition is resolved or stabilized. If the hospital does not have the capability to treat the emergency medical condition, an "appropriate" transfer of the patient to another hospital must be done in accordance with the EMTALA provisions, by following the Federal Level Medicare Condition of Participation requirements that McLaren Regional Medical Center is required to comply with,

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including but not limited to: § 482.12(e) Condition of Participation: Contracted Services - The governing body must be responsible for services furnished in the hospital whether or not they are furnished under contracts., §482.11 Condition of Participation: Compliance with Federal, State and Local Laws - The hospital must ensure that all applicable Federal, State and local law requirements are met. [Including Public Health Code Act 368 of 1978 [333.21521 Minimum standards and rules; practices. - Sec. 21521]; §482.12(a) Standard: Medical Staff. The governing body must: Determine, in accordance with State law, which categories of practitioners are eligible candidates for appointment to the medical staff; §482.12(a)(2) Appoint members of the medical staff after considering the recommendations of the existing members of the medical staff - Only the hospital's governing body has the authority to grant a practitioner privileges to provide care in the hospital; §482.12(a)(5) Ensure that the medical staff is accountable to the governing body for the quality of care provided to patients - The governing body must ensure that the medical staff as a group is accountable to the governing body for the quality of care provided to patients. The governing body is responsible for the conduct of the hospital and this conduct includes the quality of care provided to patients; §482.12(a)(6) Ensure the criteria for selection are individual character, competence, training, experience, and judgment; §482.22 Condition of Participation: Medical Staff - The hospital must have an organized medical staff that operates under bylaws approved by the governing body, and which is responsible for the quality of medical care provided to patients by the hospital; §482.55 Condition of Participation: Emergency Services - The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice; and

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§482.55(a) - [If emergency services are provided at the hospital] (2) The services must be integrated with other departments of the hospital; Emergency Services integration would include at a minimum: 1) The immediate availability of services, equipment, personnel, and resources of other hospital departments/services to emergency patients; and 2) That the provision of services, equipment, personnel and resources of other hospital departments/services to emergency department patients is within timeframes that protect the health and safety of patients and is within acceptable standards of practice.

11. McLaren Regional Medical Center deviated from the standard of care in their treatment of Maurice Ernest by: Failing to follow the Joint Commission (JC) Accreditation Standards that McLaren Regional Medical Center are required to, including but not limited to:

    1. Standard LD.04.03.01 – The hospital provides services that meet patient needs;
    2. Standard LD.04.03.09 - Care, treatment, and services provided through contractual agreement are provided safely and effectively [See also CFR §482.12e];
    3. Standard HR.01.06.01 Staff are competent to perform their responsibilities [Also see CFR§ 482.23];
    4. Standard MS.03.01.03 The management and coordination of each patient's care, treatment, and services is the responsibility of a practitioner with appropriate privileges;
    5. Standard MS.07.01.01 The organized medical staff provides oversight for the quality of care, treatment, and services by recommending members for appointment to the medical staff;

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6. Standard LD.03.09.01 The hospital has an organizational-wide, integrated patient safety program within its performance improvement activities;
7. Standard RI.01.01.01 - The hospital respects, protects, and promotes patient rights. The hospital treats the patient in a dignified and respectful manner that supports his or her dignity;
8. Standard RC.01.01.01 - The hospital maintains complete and accurate medical records for each individual patient; provides full, complete and medical records for each individual patient
9. Standard PC.01.02.01 – The hospital assesses and reassesses its patients.

a. Failing to follow the Federal Level Medicare Condition of Participation requirements that McLaren Regional Medical Center are required to comply with, including but not limited to:

1. Failing to follow § 482.12(e) Condition of Participation: Contracted Services - The governing body must be responsible for services furnished in the hospital whether or not they are furnished under contracts.,
2. §482.11 Condition of Participation: Compliance with Federal, State and Local Laws - The hospital must ensure that all applicable Federal, State and local law requirements are met. [Including Public Health Code Act 368 of 1978 [333.21521 Minimum standards and rules; practices. - Sec. 21521];
3. §482.12(a) Standard: Medical Staff. The governing body must: Determine, in accordance with State law, which categories of practitioners are eligible candidates for appointment to the medical staff; §482.12(a)(2) Appoint members of the medical staff after considering the recommendations of the existing members of the medical staff - Only the hospital's governing body has the authority to grant a practitioner privileges to provide care in the hospital; §482.12(a)(5) Ensure that the medical staff is accountable to the governing body for the quality of care provided to patients - The governing body must ensure that

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the medical staff as a group is accountable to the governing body for the quality of care provided to patients. The governing body is responsible for the conduct of the hospital and this conduct includes the quality of care provided to patients; §482.12(a)(6) Ensure the criteria for selection are individual character, competence, training, experience, and judgment;

4. §482.22 Condition of Participation: Medical Staff - The hospital must have an organized medical staff that operates under bylaws approved by the governing body, and which is responsible for the quality of medical care provided to patients by the hospital;
5. §482.55 Condition of Participation: Emergency Services - The hospital must meet the emergency needs of patients in accordance with acceptable standards of practice; and §482.55(a) - [If emergency services are provided at the hospital] (2) The services must be integrated with other departments of the hospital; Emergency Services integration would include at a minimum: 1) The immediate availability of services, equipment, personnel, and resources of other hospital departments/services to emergency patients; and 2) That the provision of services, equipment, personnel and resources of other hospital departments/services to emergency department patients is within timeframes that protect the health and safety of patients and is within acceptable standards of practice.
6. The Emergency Medical Treatment and Labor Act (EMTALA) [a federal law enacted in 1986] that requires anyone coming to an emergency department to be stabilized and treated, regardless of their insurance status or ability to pay [42 U.S.C. §1395dd]. EMTALA requires Medicare-participating hospitals with emergency departments, such as McLaren Regional Medical Center, to screen and treat the emergency medical conditions of patients in a non-discriminatory manner [*id*]. An emergency medical condition is defined as "a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of bodily organs" [*id*]. When an emergency medical condition exists, treatment must be provided until the emergency medical condition is resolved or stabilized. If the hospital does not have the capability to

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treat the emergency medical condition, an "appropriate" transfer of the patient to another hospital must be done in accordance with the EMTALA provisions.

12. To comply with the standard of care, McLaren Regional Medical Center were required to comply with the standards of care set forth herein, and refrain from failing to follow all or any of these standards of care.

13. I am of the opinion that McLaren Regional Medical Center staff did not comply with the applicable standard of practice or care.

14. The factual basis for this opinion is as follows:

    a. Plaintiff Maurice Ernest presented to the emergency department at McLaren Regional Medical Center in Flint, Michigan complaining of chest pain at 10:53 on July 16, 2020.

    b. Mr. Ernest relayed that the onset of chest pain started two days prior and was abrupt, constant, and rated the pain as a six on a scale of one to ten. He noted the quality was heaviness and tightness without modifying factors. Mr. Ernest was noted to have obesity and hypertension and suffering with diaphoresis. He was taking metoprolol, a beta blocker that can mask an elevated heart rate, which is a warning sign for pulmonary embolism.

    c. A single x-ray was ordered with findings on July 16, 2020 at 10:06 pm of enlarged heart, mild interstitial prominence of lungs, minimal perihilar/basilar opacities and an impression of mild congestion/edema; conditions that can be signs of pulmonary embolism.

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d. He was seen in the emergency room by Dr. Paul W. Brown and discharged from the emergency department to the cardiac unit for observation at 06:54, with Dr. Elmahdi M. Saeed attending.

e. Blood pressure was 170/89, and pulse was 59 on July 17, 2020 at 11:00.

f. A consultation was placed for cardiology. Mr. Ernest was seen by Dr. Farouk M. Belal who noted his provisional diagnosis was acute coronary syndrome and hypokalemia. Sinus brady cardia noted at 7/17/20 at 01:44.

g. At no time was D-dimer tested. At no time was CT PE or ventilation-perfusion scan ordered.

h. The chart does not mention shortness of breath generally, which Mr. Ernest was suffering from and complained about.

i. The chart reflects Mr. Ernest vital signs were only taken two times.

j. On July 17, 2020 at 13:57, while in the observation unit, Mr. Ernest died.

k. Independent autopsy conducted at the Michigan Institute of Forensic Science & Medicine confirmed cause of death as bilateral pulmonary embolism and noted fresh and organizing emboli in pulmonary arteries and branches, pulmonary infarcts and pulmonary edema.

15. It is my opinion that as a direct and proximate result of the deviations in the standard of care set forth above, McLaren Regional Medical Center deviated from the expected standard of care.

16. Because I am of the opinion that McLaren Regional Medical Center breached the applicable standard of care, I am of the opinion that McLaren Regional Medical Center professional corporation, agents and employees, if any, also breached the applicable

standard of practice or care under the circumstances of this matter as it relates to issues relative to hospital administration.

17. Because I am of the opinion that McLaren Regional Medical Center did not comply with the applicable standard of practice or care, and because I am of the opinion that Maurice Ernest's injuries and damages are related to the deviation from the applicable standard of care by McLaren Regional Medical Center ; I am of the opinion that this is a direct and proximate causal relationship between the injuries and damages alleged and the care and treatment rendered by McLaren Regional Medical Center.

18. I may have additional or different opinions and reserve the right to supplement or amend these opinions pending review of additional information.

Further, Affiant Sayeth Naught.

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I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTAITONS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Richard Bays, JD, MBA, RN, LNCC

Subscribed and sworn to before me, a Notary Public,
This 12th day of July, 2023

Notary Public

Acting at: Tarrant County, Texas

NICKOLAS WHITE
Notary Public, State of Texas
Comm. Expires 03-29-2027
Notary ID 134278832

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Exhibit C

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AFFIDAVIT OF MERIT OF KEN ZAFREN, M.D.

NOW COMES KEN ZAFREN, MD, having been duly sworn to make only truthful averments based on personal knowledge, my medical training and experience, my review and research related to this case, and under the penalty of perjury, do hereby state as follows:

1. I am Ken Zafren, MD. I maintain certification from the American Board of Emergency Medicine.
2. I was so licensed and certified and spent the majority of my professional time in the active clinical practice and/or instruction of emergency medicine in an accredited program for the year preceding the incidents giving rise to this claim.
3. I have reviewed the Notice of Intent sent in this matter pursuant to MCL 600.2912b as well as the relevant medical records provided by the plaintiff's attorney concerning the allegations contained in the notice.
4. The standard of care applicable in this matter is that of a reasonably prudent physician of ordinary learning, judgment, and skill practicing emergency medicine confronted with the same or similar circumstances.
5. The standard of care for Dr. Paul W. Brown Jr. (hereinafter Dr. Brown), required that pulmonary embolism be included in the differential diagnosis for Mr. Ernest, whose symptoms included chest pain and shortness of breath.
    a. Dr. Brown could not have ruled out pulmonary embolism by using the Pulmonary Embolism Rule out Criterial (PERC) because Mr. Ernest was 54 years old. One of the criteria for ruling out pulmonary embolism using the PERC is age ≤50. Dr. Brown could have used a scoring system such as the Wells' Pulmonary Embolism (PE) score or the Revised Geneva Score to

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assess the risk of pulmonary embolism or he could have used clinical gestalt (clinical judgment). Based on Mr. Ernest's symptoms of chest pain and shortness of breath without a definite diagnosis of heart attack, pulmonary embolism was an equally likely diagnosis. Use of the Wells' criteria would have given a Wells' PE score of 3, placing Mr. Ernest in the moderate risk group (16% incidence of pulmonary embolism). Even if Dr. Brown had incorrectly calculated a Wells' PE score of 0, this would still have classified Mr. Ernest's risk for PE as low risk, rather than no risk. Use of the Revised Geneva Score would have given a score of 0, placing Mr. Ernest in the low risk group (7-9% incidence of pulmonary embolism). Use of clinical gestalt could not have placed Mr. Ernest in a no-risk group for pulmonary embolism.

b. No matter what method Dr. Brown used to assess the risk of pulmonary embolism, the applicable standard of care required that he order D-dimer testing for Mr. because pulmonary embolism was not ruled out and should have remained part of the differential diagnosis.

c. D-dimer testing would more likely than not have been positive. The applicable standard of care for Dr. Brown, given a positive D-dimer test, would have required that he order a computed tomography pulmonary angiogram (CTPA) to rule pulmonary embolism in or out. An acceptable alternative would have been for Dr. Brown to order a doppler ultrasound of the lower extremities to diagnose deep venous thrombosis. If this test had been positive, a CTPA would not have been necessary. If the lower extremity doppler ultrasound did not show a DVT, the standard of care would have been for Dr. Brown to order

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a CTPA. Dr. Brown could also theoretically have met the standard of care by ordering a ventilation perfusion scan to rule pulmonary embolism, but this test is currently used only when there are contraindications to CTPA. Mr. Ernest had no contraindications to CTPA.

d. A CTPA or lower extremity doppler ultrasound would more likely than not have been positive for pulmonary embolism or deep venous thrombosis, making the diagnosis of pulmonary embolism. The applicable standard of care for Dr. Brown would have been to initiate anticoagulation for treatment of pulmonary embolism.

6. It is my professional opinion that Dr. Brown deviated from the standard of care his and her care and treatment of Maurice Ernest by:

   a. Failing to use a pulmonary embolism scoring system or clinical gestalt to evaluate the risk of pulmonary embolism.

   b. Failing to order D-dimer testing for Mr. Ernest when pulmonary embolism was not ruled out and should have remained part of the different diagnosis.

   c. Failing to order a CTPA or other test to rule pulmonary embolism in or out. Dr. Brown deviated from the standard of care by not ruling pulmonary embolism in or out.

   d. Failing to initiate anticoagulation for treatment of pulmonary embolism

7. To comply with the applicable standard of care Dr. Brown should have done the following:

   a. Used a pulmonary embolism scoring system or clinical gestalt to rule pulmonary embolism in or out.

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b. Ordered testing for D-dimer when pulmonary embolism was not ruled out and should have remained part of the differential diagnosis.

c. Ordered a CTPA or other appropriate testing when pulmonary embolism was not ruled out and should have remained part of the differential diagnosis for Mr. Ernest, who had symptoms of chest pain and shortness of breath without a definite diagnosis of heart attack.

d. Failing to initiate anticoagulation to treat pulmonary embolism

8. Dr. Brown's breach of the standard of care was the proximate cause of Plaintiff's injuries for the following reasons:

a. Failing to use a pulmonary embolism scoring system or clinical gestalt to rule out pulmonary embolism. Mr. Ernest died from a pulmonary embolism.

b. Failing to order D-dimer testing for Mr. Ernest when pulmonary embolism was not ruled out and should have remained part of the differential diagnosis. Dr. Brown failed to detect the pulmonary embolism. Mr. Ernest died from a pulmonary embolism.

c. Failing to order a CTPA or other appropriate testing for pulmonary embolism. Pulmonary embolism was not ruled out and should have remained part of the differential diagnosis for Mr. Ernest who had chest pain and shortness of breath. Dr. Brown failed to diagnose and treat the pulmonary embolism. Mr. Ernest died from a pulmonary embolism.

d. Failing to timely initiate anticoagulation to treat pulmonary embolism. Dr. Brown did not initiate anticoagulation. Mr. Ernest died from a pulmonary embolism.

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9. The averments above as to Dr. Paul W. Brown Jr are equally applicable to Defendants McLaren Health Care Corporation and Cypress Cardiology PLLC.
10. These opinions are subject to modification and supplementation based on additional information in the future.
11. This affidavit is filed in accordance with MCL 600.2912.

Date: July 25, 2023

/s/

Ken Zafren M.D.

Subscribed and sworn to before
me in Anchorage County, Alaska
/s/ Leleiga Tauauvea
Notary Name: Tauauvea
Notary public, State of Alaska, County of Anchorage
My commission expires: 2/4/27

State of Alaska
NOTARY PUBLIC
Leleiga Tauauvea
My Commission Expires 2/4/27

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Exhibit D

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AFFIDAVIT OF MERIT OF VINCE FARIDANI, M.D.

NOW COMES VINCE FARIDANI, MD, having been duly sworn to make only truthful averments based on personal knowledge, my medical training and experience, my review and research related to this case, and under the penalty of perjury, do hereby state as follows:

1. I am Vince Faridani, MD. I maintain Board Certification in internal medicine and fundamental critical care support. I maintain Advanced Cardiovascular Life Support (ACLS) and Basic Life Support (BLS) certification.
2. I was so licensed and certified and spent the majority of my professional time in the active clinical practice of internal medicine in an accredited program for the year preceding the incidents giving rise to this claim.
3. I have reviewed the Notice of Intent sent in this matter pursuant to MCL 600.2912b as well as the relevant medical records provided by the plaintiff's attorney concerning the allegations contained in the notice.
4. The standard of care applicable in this matter is that of a reasonably prudent physician of internal medicine of ordinary learning, judgment, or skill confronted with the same or similar circumstances.
5. The standard of care for Elmahdi M. Saeed (hereinafter Dr. Saeed) required that:
    a. PERC protocol or Wells' criteria be utilized to rule out pulmonary embolism. Given Mr. Ernest's age of 54, utilization of PERC protocol would have indicated that pulmonary embolism must be part of Mr. Ernest's differential diagnosis. Given that Mr. Ernest exhibited clinical signs that pulmonary embolism was an equally likely diagnosis to heart attack, use of the Wells'

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criteria would have placed Mr. Ernest in the moderate range to suffer incidence of pulmonary embolism.

b. An order for D-dimer testing be placed for Mr. Ernest where pulmonary embolism was not ruled out and should have been part of the differential diagnosis.

c. An order for CT PE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's presentation was suffering, complaining of shortness of breath and chest pain.

d. Initiate parenteral anticoagulation using the parenteral anticoagulant heparin, which is commonly used to treat pulmonary embolism.

5. It is my professional opinion that Dr. Saeed deviated from the standard of care his care and treatment of Maurice Ernest by:

a. Failing to utilize PERC protocol or Wells' criteria to rule out pulmonary embolism.

b. Failing to order D-dimer testing for Mr. Ernest where pulmonary embolism was not ruled out and should have been part of the different diagnosis.

c. Failing to order CT PE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's condition was as listed above.

d. Failing to initiate parenteral anticoagulation using the parenteral anticoagulant heparin.

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6. To comply with the applicable standard of care Dr. Saeed should have done the following:
    a. Utilized the PERC protocol or Wells' criteria to rule out pulmonary embolism.
    b. Ordered testing for D-dimer where pulmonary embolism was not ruled out and should have been part of the differential diagnosis.
    c. Ordered CT PE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernest's presentation was as listed above.
    d. Failing to initiate parenteral anticoagulation using the parenteral anticoagulant heparin.
7. Dr Saeed's breach of the standard of care was the proximate cause of Plaintiff's injuries for the following reasons:
    a. Failing to utilize PERC protocol or Wells' criteria to rule out pulmonary embolism, pulmonary embolism was not addressed at all, and Mr. Ernest in fact died due to pulmonary embolism.
    b. Failing to order D-dimer testing for Mr. Ernest when pulmonary embolism was not ruled out and should have been part of the differential diagnosis, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.
    c. Failing to order CT PE or ventilation-perfusion scan be placed where pulmonary embolism was not ruled out and should have been part of the differential diagnosis and where Mr. Ernests's presentation was as listed

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above, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

d. Failing to timely initiate parenteral anticoagulants using parenteral anticoagulants such as heparin to address pulmonary embolism, parenteral anticoagulants were not administered and Mr. Ernest in fact died due to same.

8. The averments above as to Dr. Elmahdi M. Saeed are equally applicable to Defendants McLaren Health Care Corporation and Cypress Cardiology PLLC.

9. These opinions are subject to modification and supplementation based on additional information in the future.

10. This affidavit is filed in accordance with MCL 600.2912.

Date: June 2nd, 2023

/s/ Vince Faridani M.D.

Subscribed and sworn to before
me in Brevard County, Florida
/s/ Trishia Otto

Notary Name: Trishia Otto
Notary public, State of Florida, County of Brevard
My commission expires: Jan. 03, 2027

TRISHIA OTTO
Notary Public - State of Florida
Commission # HH 345623
My Comm. Expires Jan 3, 2027
Bonded through National Notary Assn.

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Exhibit E

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AFFIDAVIT OF MERIT OF THOMAS HILTON, M.D.

NOW COMES THOMAS HILTON, MD, having been duly sworn to make only truthful averments based on personal knowledge, my medical training and experience, my review and research related to this case, and under the penalty of perjury, do hereby state as follows:

I am Thomas Hilton, MD. I maintain Board Certification in Internal Medicine and Cardiovascular disease. I am licensed to practice in the state of Florida.

I was so licensed and certified and spent the majority of my professional time in the active clinical practice and/or instruction of cardiology in an accredited program for the year preceding the incidents giving rise to this claim.

I have reviewed the Notice of Intent sent in this matter pursuant to MCL 600.2912b as well as the relevant medical records provided by the plaintiff's attorney concerning the allegations contained in the notice.

The standard of care applicable in this matter is that of a reasonably prudent cardiologist of ordinary learning, judgment, or skill confronted with the same or similar circumstances.

The standard of care for Dr. Farouk M. Belal (hereinafter Dr. Belal) required that:

Mr. Ernest be recognized as 54 year-old morbidly obese, hyperlipidemic male with hypertension, hypertensive cardiovascular disease and left ventricular hypertrophy with a history of right leg trauma with vascular injury for which he had undergone right anterior tibial artery aneurysm repair with graft 12/18/2018. As such he was at increased risk both for coronary heart disease and for venous thromboembolic disease with pulmonary embolism.

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The applicable standard of care for Dr. Belal required that appropriate testing for both for coronary heart disease and for venous thromboembolic disease with pulmonary embolism be completed urgently on admission to the hospital. When the ECG and cardiac enzymes failed to confirm a diagnosis of myocardial infarction the standard of care was to rule out pulmonary embolism with a CTA of the chest or a V/Q lung scan.

A D-dimer test in this case more probably than not would have been abnormal and would have prompted additional diagnostic testing that would have confirmed the diagnosis of bilateral pulmonary embolism.

The applicable standard of care for Dr. Belal was to initiate standard therapy for both unstable angina and for possible pulmonary embolism. For both conditions appropriate management requires prompt initiation of parenteral anticoagulation (either unfractionated heparin or low molecular weight heparin).

The applicable standard of care for Dr. Belal when he established an initial diagnosis of unstable angina was to prescribe these treatments unless contraindications existed:

antiplatelet therapy with aspirin and a platelet P2Y12 receptor blocker

parenteral anticoagulation (either unfractionated heparin or low molecular weight heparin)

high intensity statin therapy

beta blockers

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It is my professional opinion that Dr. Belal deviated from the standard of care and treatment of Maurice Ernest by:

Failure to recognize Mr Ernest as 54 year-old morbidly obese, hyperlipidemic male with hypertension, hypertensive cardiovascular disease and left ventricular hypertrophy with a history of right leg trauma with vascular injury for which he had undergone right anterior tibial artery aneurysm repair with graft 12/18/2018 that was at increased risk both for coronary heart disease and for venous thromboembolic disease with pulmonary embolism.

Failure to order appropriate testing for both for coronary heart disease and for venous thromboembolic disease with pulmonary embolism to be completed urgently on admission to the hospital.

Failure to rule out pulmonary embolism with a CTA of the chest or a V/Q lung scan when the ECG and cardiac enzymes failed to confirm a diagnosis of myocardial infarction.

Failure to order a D-dimer test that more probably than not would have been abnormal and would have prompted additional diagnostic testing that would have confirmed the diagnosis of bilateral pulmonary embolism.

Failure to initiate standard therapy both for unstable angina and for possible pulmonary embolism with prompt initiation of parenteral anticoagulation (either unfractionated heparin or low molecular weight heparin)

Failure to treat Mr Ernest appropriately for initial diagnosis of unstable angina by initiating:

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antiplatelet therapy with aspirin and a platelet P2Y12 receptor blocker

parenteral anticoagulation (either unfractionated heparin or low molecular weight heparin)

high intensity statin therapy

beta blockers

To comply with the applicable standard of care Dr. Belal should have done the following:

Ordered D-dimer to rule out pulmonary embolism

Ordered CTA chest or a ventilation-perfusion scan to rule out pulmonary embolism

Initiated parenteral anticoagulation STAT in the emergency department.

Dr. Belal's breach of the standard of care was the proximate cause of Plaintiff's injuries for the following reasons:

Failing to order D-dimer, CTA chest or VQ lung scan for Mr. Ernest, pulmonary embolism was not detected and treated, and Mr. Ernest in fact died due to same.

Failing to timely initiate antiplatelet therapy with aspirin and a platelet P2Y12 receptor blocker, high intensity statin, beta blockers and parenteral anticoagulants contributed to Mr. Ernest's death from myocardial ischemia, congestive heart failure, pulmonary embolism and possible ventricular arrhythmia.

The averments above as to Dr. Farouk M. Belal, are equally applicable to Defendants McLaren Health Care Corporation and Cypress Cardiology PLLC.

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These opinions are subject to modification and supplementation based on additional information in the future.

This affidavit is filed in accordance with MCL 600.2912.

Date: July 26, 2023

/s/
Thomas Hilton M.D.

Subscribed and sworn to before
me in DUVAL County, Florida
/s/
Notary Name: JOHN MUSSER
Notary public, State of Florida, County of DUVAL
My commission expires:

Notary Public State of Florida
John Musser
My Commission
HH 197147
Exp. 11/30/2025