

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES L. RADTKE, JR.,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. 4:13-00213-ERW
)	
Rebecca Winzen, et al.,)	
)	
Defendants.)	

**ANSWER OF DEFENDANT MERCY HOSPITALS EAST COMMUNITIES
IMPROPERLY NAMED AS ST. JOHN'S MERCY MEDICAL CENTER**

COMES NOW Defendant Mercy Hospitals East Communities, improperly named as St. John's Mercy Medical Center, by and through its counsel, and for its answer to Plaintiff's complaint states as follows:

Jurisdiction and Venue

1. Defendant admits that the Court has jurisdiction over these proceedings but denies all allegations and averments set forth in Plaintiff's petition.
2. Defendant admits that venue is proper in the Eastern District of Missouri but denies all allegations and averments set forth in Plaintiff's petition.

Parties

3. Defendant lacks sufficient knowledge or information to either admit or deny the allegations and averments contained in paragraph three and therefore said allegations and averments are denied.
4. Defendant admit that she resides in St. Charles County, Missouri, and that she was previously employed by Mercy Hospitals East Communities formerly known as

St. John's Mercy Health System. Defendant denies the remaining allegations and averments contained in paragraph four of Plaintiff's petition.

5. Defendant lacks sufficient knowledge or information to either admit or deny the allegations and averments contained in paragraph five of Plaintiff's petition and therefore said allegations and averments are denied.

6. Mercy Hospitals East Communities is a not-for-profit corporation in the State of Missouri which operates Mercy Hospital formerly known as St. John's Mercy Medical Center in the County of St. Louis, State of Missouri. Defendant denies the remaining allegations and averments contained in paragraph six of Plaintiff's petition not expressly admitted hereinabove.

7. Mercy Hospitals East Communities is a not-for-profit corporation in the State of Missouri which operates Mercy Hospital formerly known as St. John's Mercy Medical Center in the County of St. Louis, State of Missouri. Defendant denies the remaining allegations and averments contained in paragraph seven of Plaintiff's petition not expressly admitted hereinabove.

8. Mercy Hospitals East Communities is a not-for-profit corporation in the State of Missouri which operates Mercy Hospital formerly known as St. John's Mercy Medical Center in the County of St. Louis, State of Missouri. Defendant denies the remaining allegations and averments contained in paragraph eight of Plaintiff's petition not expressly admitted hereinabove.

9. Mercy Hospitals East Communities is a not-for-profit corporation in the State of Missouri which operates Mercy Hospital formerly known as St. John's Mercy Medical Center in the County of St. Louis, State of Missouri. Defendant denies the

remaining allegations and averments contained in paragraph nine of Plaintiff's petition not expressly admitted hereinabove.

10. Mercy Hospitals East Communities is a not-for-profit corporation in the State of Missouri which operates Mercy Hospital formerly known as St. John's Mercy Medical Center in the County of St. Louis, State of Missouri. Defendant denies the remaining allegations and averments contained in paragraph ten of Plaintiff's petition not expressly admitted hereinabove.

Complaint Narrative

11. Defendant denies the allegations contained in paragraph eleven.
12. Defendant denies the allegations contained in paragraph twelve.
13. Defendant denies the allegations contained in paragraph thirteen.
14. Defendant denies the allegations contained in paragraph fourteen.
15. Defendant denies the allegations contained in paragraph fifteen.
16. Defendant denies the allegations contained in paragraph sixteen.
17. Defendant denies the allegations contained in paragraph seventeen.
18. Defendant denies the allegations contained in paragraph eighteen.
19. Defendant denies the allegations contained in paragraph nineteen.
20. Defendant denies the allegations contained in paragraph twenty.
21. Defendant denies the allegations contained in paragraph twenty-one.
22. Defendant denies the allegations contained in paragraph twenty-two.
23. Defendant denies the allegations contained in paragraph twenty-three.
24. Defendant denies the allegations contained in paragraph twenty-four.
25. Defendant denies the allegations contained in paragraph twenty-five.

26. Defendant denies the allegations contained in paragraph twenty-six.

27. Defendant denies the allegations contained in paragraph twenty-seven.

Count I – False Arrest

28-30. This Defendant makes no response to the allegations and averments contained in Count I insofar as said allegations are not directed to this Defendant. To the extent that any of the allegations and averments contained therein are construed to apply to this Defendant, said allegations and averments are denied.

Count II – False Arrest

31-33. This Defendant makes no response to the allegations and averments contained in Count II insofar as said allegations are not directed to this Defendant. To the extent that any of the allegations and averments contained therein are construed to apply to this Defendant, said allegations and averments are denied.

Count III – False Imprisonment

Defendant incorporates its responses to paragraphs eleven through twenty-seven as if set forth hereinafter.

34. Defendant denies the allegations contained in paragraph thirty-four.

35. Defendant denies the allegations contained in paragraph thirty-five.

Count IV – Battery

Defendant incorporates and adopts its responses to the allegations set forth in paragraphs eleven through twenty-seven as if fully set forth hereinafter.

36. Defendant denies the allegations contained in paragraph thirty-six.

37. Defendant denies the allegations contained in paragraph thirty-seven.

Count V – Conspiracy to Interfere with Civil Rights

Defendant incorporates by reference its responses to paragraphs eleven through twenty-seven as if set forth hereinafter.

38. Defendant denies the allegations contained in paragraph thirty-eight.

39. Defendant denies the allegations contained in paragraph thirty-nine.

40. Defendant denies the allegations contained in paragraph forty.

General Denial

Defendant denies all allegations and averments contained in Plaintiff's petition not expressly admitted herein.

Affirmative Defenses

1. For further answer and defense, Defendant states that she intends to rely upon and utilize the benefits of Chapter 538 R.S.Mo., including all subparts thereof including but not limited to §538.220 requiring future damages to be paid in whole or in part in periodic or installment payments, §538.215 requiring that all future damages which are itemized be expressed by the trier of fact at present value.

2. Pursuant to §537.060 R.S.Mo., Defendant asserts that in the event any judgment is rendered against this Defendant, this Defendant is entitled to a reduction in such judgment equal to the stipulated amount set forth in any settlement agreement between Plaintiff and any settling party, or in the amount of the consideration paid by such party to Plaintiff, whichever is greater.

3. For further answer and defense, Defendant states that she intends to rely upon the provisions of §490.715 R.S.Mo., limiting the economic damages for medical expenses to the amounts actually paid to a healthcare provider. Defendant further

states that she is entitled to a setoff, credit, or reduction from claimed economic damages for any amounts which were not billed to Plaintiff for treatment or otherwise paid on his behalf.

4. For further answer and defense, Defendant states that she intends to rely upon the provisions of §537.067 R.S.Mo., regarding and concerning joint and several liability of defendants in tort actions.

5. For further answer and defense, Defendant states that Plaintiff's petition fails to state a cause of action and/or prayer for relief against this Defendant upon which relief can be granted.

6. For further answer and defense, Defendant states that Plaintiff's injuries, if any, were proximately caused by his own conduct.

7. For further answer and defense, Defendant states that Plaintiff voluntarily agreed to admission to the hospital and therefore there is no reasonable, factual, or legal basis for Plaintiff's complaint.

8. For further answer and defense, Defendant states that she is entitled to civil immunity as set forth in the provisions of §532.440 R.S.Mo., and the doctrines of qualified immunity and official immunity.

WHEREFORE, having fully answered, Defendant prays to be hence dismissed with her costs and for such other and further relief as the Court deems just and proper.

/s/ James C. Thoele

James C. Thoele, #34491MO
Brinker & Doyen, L.L.P.
34 N. Meramec Avenue, 5th Floor
Clayton, Missouri 63105
314-863-6311
Fax: 314-863-8197
jthoele@brinkerdoyen.com
Attorneys for Defendants
Rebecca M. Winzen and
Mercy Hospitals East Communities

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed this 30 day of April, 2013, to:

S. Randolph Kretchmar
1170 Michigan Avenue
Wilmette, Illinois 60091
Attorney for Plaintiff

Kenneth W. Bean
Sandberg, Phoenix & von Gontard, P.C.
600 Washington Avenue, 15th Floor
St. Louis, Missouri 63101-1313
Attorneys for Defendant Taca, M.D.

Mark Sableman
Thompson Coburn, L.L.P.
One U.S. Bank Plaza
St. Louis, Missouri 63101
Attorneys for Defendant
American Psychiatric Association

/s/ James C. Thoele