

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

<i>JAMES L. RADTKE, JR.,</i>)	
)	
Plaintiff,)	
)	
v.)	
)	4:13-cv-00213-ERW
<i>REBECCA WINZEN, ARTURO CALVO</i>)	
<i>TACA, JR., AMANDA WILHELM,</i>)	
<i>ALLEN FRANCES, M.D., AMERICAN</i>)	
<i>PSYCHIATRIC ASSOCIATION, MERCY</i>)	Defendant demands trial by jury
<i>HEALTH AND ST. LOUIS COUNTY,</i>)	
)	
Defendants.)	

**ANSWER OF DEFENDANT ARTURO CALVO TACA, JR., M.D.
TO PLAINTIFF’S AMENDED COMPLAINT**

COMES NOW Defendant, Arturo Calvo Taca, Jr., M.D., by and through counsel, and for his answer to the plaintiff’s Amended Complaint states as follows:

JURISDICTION AND VENUE

1. Defendant denies liability, but admits that as pleaded, this Court has jurisdiction over this claim.
2. Defendant denies liability, but admits that as pleaded, venue is proper in the Eastern District of Missouri, Eastern Division.
3. Admitted.
4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein and, therefore, denies same.
5. Defendant admits that he is a Missouri licensed physician residing in St. Louis County, Missouri, but denies the remaining allegations contained herein.

6. Defendant admits that there is a behavioral health care unit located inside Mercy Hospital St. Louis, but defendant denies the remaining allegations contained herein.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein and, therefore, denies same.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein and, therefore, denies same.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein and, therefore, denies same.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein and, therefore, denies same.

COMPLAINT NARRATIVE

11. Denied.

12-14. Defendant admits the existence of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, but denies the remaining allegations contained herein.

15. Denied.

16. Denied.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein and, therefore, denies same.

18-28. Denied.

COUNT I – FALSE ARREST v DEFENDANT WILHELM

This Count is not directed towards this Defendant so no answer is required. However, should any of the allegations contained herein be construed against this Defendant, they are denied.

COUNT II – FALSE ARREST v DEFENDANT POLICE

This Count is not directed towards this Defendant so no answer is required. However, should any of the allegations contained herein be construed against this Defendant, they are denied.

**COUNT III – FALSE IMPRISONMENT v DEFENDANTS WINZEN,
DR. TACA AND MERCY**

Defendant incorporates herein his answers to the allegations of Paragraphs 11-28.

35. Denied.

36. Denied.

COUNT IV – BATTERY v DEFENDANTS TACA AND MERCY

Defendant incorporates herein his answers to the allegations of Paragraphs 11-28.

37. Denied.

38. Denied.

**COUNT V – CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS v
ALL DEFENDANTS**

Defendant incorporates herein his answers to the allegations of Paragraphs 11-28.

39. Denied.

40. Denied.

41. Denied.

**COUNT VI – (NON-MEDICAL) NEGLIGENCE v
DEFENDANTS APA AND FRANCES**

This Count is not directed towards this Defendant so no answer is required. However, should any of the allegations contained herein be construed against this Defendant, they are denied.

COUNT VII – DEFAMATION V DEFENDANTS WINZE, TACA AND MERCY

Defendant incorporates herein his answers to the allegations of Paragraphs 11-28.

48. Defendant admits the existence of medical / psychiatric records on the plaintiff, but denies the remaining allegations contained herein.

49. Denied.

50. Denied.

51. Denied.

COUNT VIII – STRICT PRODUCT LIABILITY v DEFENDANT APA

This Count is not directed towards this Defendant so no answer is required. However, should any of the allegations contained herein be construed against this Defendant, they are denied.

AFFIRMATIVE DEFENSES TO ALL COUNTS

1. In further answer and defense, defendant intends to rely upon the rights and benefits of RSMO. Chapter 538, as amended by H.B.393 on August 28, 2005, including all subparts, and, requests the damage caps set forth in §538.210, the limitations on liability for non-employees in §538.210 and, pursuant to §538.220.2 defendant requests that the Court include in any judgment a requirement that future damages be paid in whole or in part in periodic or installment payments and subject to forfeiture under that statute, set the duration of future medical payments using the life expectancy evidence of the plaintiff, and set the interest rate per the Federal Reserve Board.

2. Defendant requests an apportionment of fault among all parties to this suit and among all tort-feasors. Should there be no apportionment of fault with settling defendants, than defendant seeks a reduction/credit for any settlement monies received by the plaintiff from any

tort-feasor under RSMO. § 537.060.

3. For further answer and defense, Defendant states that he intends to rely upon the provisions of RSMO §490.715, including without limitation, the provision on medical bills.

4. In further answer and defense, defendant states that plaintiff voluntarily agreed to his admission to Mercy Hospital St. Louis on February 5, 2011 and that upon his request was released from the hospital. The Complaint fails to state a claim upon which relief can be granted. The Complaint is brought in bad faith by both plaintiff and his attorney. There is no reasonable, factual or legal basis for this Complaint and it is in violation of Rule 11.

5. In further answer and defense, plaintiff's injuries, if any, were proximately caused by his own conduct that led to his family members signing affidavits that he was a danger to self and others.

6. In further answer and defense, Dr. Taca acted in good faith, without any negligence and, to the extent applicable, is entitled to civil immunity as set out in RSMO §632.440.

7 The Amended Complaint fails to state a claim upon which relief can be granted. There is no violation of 42 USC Section 1983 as there is no arrest, the defendants acted reasonable in reliance on the affidavits submitted by third parties, there is qualified immunity for good faith actions, and no constitutional deprivation.

WHEREFORE, having fully answered, Defendant Dr. Taca prays this Court dismiss the Petition and award him costs and expenses associated with this litigation.

SANDBERG, PHOENIX & von GONTARD, P.C.

By: /s/Kenneth W. Bean

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Certificate of Service

I hereby certify that on 30th day of April, 2013, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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/s/Kenneth W. Bean