

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBERT "LEE" LEROY PASSMORE,
III, INDIVIDUALLY AND AS NEXT
FRIEND OF MADELINE PASSMORE
AND ABIGAIL PASSMORE, MINORS;
AND KELLY PASSMORE,

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

Plaintiffs.

v.

CIVIL ACTION NO.: 3:13-cv-05016-K

BAYLOR HEALTH CARE SYSTEM
D/B/A BAYLOR MEDICAL CENTER OF
PLANO; BAYLOR REGIONAL
MEDICAL CENTER OF PLANO; AND
KIMBERLY MORGAN, APN,

Defendants.

**DEFENDANT, KIMBERLY MORGAN, APN'S
ORIGINAL ANSWER TO PLAINTIFFS' ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES KIMBERLY MORGAN, APN, hereinafter "Defendant" in the above-styled and numbered cause, and files Defendant's Original Answer to Plaintiffs' Original Complaint, and in support hereof would respectfully show unto the Court the following:

I. Jurisdiction and Venue

1. This paragraph is a legal allegation of venue and jurisdictional facts relating to other defendants. Defendant has no knowledge of the facts alleged, apart from the fact that she did not commit any act or omission in Dallas County forming the basis of liability.

2. Defendant is without any information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2.

**II.
PARTIES**

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.
4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.
5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.
6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.
7. Defendant admits the allegations contained in paragraph 7 of the Complaint.

**III.
Pre-Suit Statutory Compliance**

8. Defendant denies that she received any pre-suit notice of this claim before being served with the Complaint.

**IV.
Factual Background**

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.
10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint.
11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.
12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.
14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.
15. Defendant admits that she was aware that Duntsch kept alcoholic beverages in his office, but was not aware of a gallon of vodka. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 15 of the Complaint.
16. Defendant admits that she was aware that Baylor asked Duntsch to submit to drug testing, but has no other knowledge or information about the testing or the results. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 16 of the Complaint.
17. Defendant admits that some procedures were rescheduled in the referenced time period, but Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 17 of the Complaint.
18. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint.
19. Defendant admits that at some point in time, she was told that a plastic bag containing a powdered substance was found in a restroom and reported to Dr. Duntsch. Defendant does not recall the exact time frame and has no information about what was in the bag. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 19 of the Complaint.

20. Defendant admits, to the best of her recollection, that she was present in the OR during the surgical procedure performed on Passmore. Her responsibilities included holding retractors and other instruments at the edge of the surgical field. There was an operating microscope and other equipment between her and the surgeons involved. She could not see what was transpiring in the operative field and was not aware of what the surgeons were discussing. She was not aware of any arguments or confrontations at the time of the procedure or thereafter. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint.
21. Defendant was not aware of any altercation during or after the Passmore procedure. She was aware of no events in this surgery for which she believed any reports to any other person were required. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.
22. Defendant was not aware of any altercation during or after the Passmore procedure. She was aware of no events in this surgery for which she believed any reports to any other person were required. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.
23. Defendant was not aware of any altercation during or after the Passmore procedure. She was aware of no events in this surgery for which she believed any reports to the patient or any other person were required. Defendant believes that her actions during the Passmore procedure were consistent with her standard of care. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint.

24. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.
25. Defendant admits, to the best of her recollection that she participated in a second surgical procedure on Mr. Passmore. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.
26. Defendant was not aware of any altercation during or after the Passmore procedure. She was aware of no events in this surgery for which she believed any reports to the patient or any other person were required. Defendant believes that her actions during the Passmore procedure were consistent with her standard of care. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint.
27. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.
28. Defendant recalls a procedure during this approximate time after which it was reported that the patient had a neurologic injury. Around this same time, Defendant heard rumors of an allegation that the patient had used cocaine with Dr. Duntsch. Defendant was asked to submit to a drug test around this time, and the test was negative because defendant is not a drug user. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 28 of the Complaint.
29. Defendant recalls a surgical procedure around this time and a patient that died at around that time. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 29 of the Complaint.

30. Defendant recalls that Duntsch stopped practicing at Baylor, Plano and moved his practice at around this time. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.
31. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint.
32. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.
33. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.
34. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.
35. Defendant admits, on information and belief, that the Texas Medical Board took action against Duntsch.
36. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint. Defendant denies that she violated her professional standards of care.
37. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

V.
Agency

38. Defendant denies that she was an agent of any of the Corporate Defendants. She was an independent contractor working under the statutory supervision of Dr. Duntsch. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.

39. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint.

40. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

**VI.
Causes of Action**

41. Paragraph 41 consists entirely of allegations of entitlement to relief against another party, to which no answer is required of this Defendant. Defendant denies that the plaintiff is entitled to any legal relief on any claim asserted against her.

42. Paragraph 42 consists entirely of allegations of entitlement to relief against another party, to which no answer is required of this Defendant. Defendant denies that the plaintiff is entitled to any legal relief on any claim asserted against her.

43. Defendant denies the allegations contained in paragraph 43 of the Complaint.

44. Defendant denies the allegations contained in paragraph 44 of the Complaint to the extent that the paragraph attempts to state a claim for relief against her.

45. Paragraph 45 consists entirely of allegations of entitlement to relief against another party, to which no answer is required of this Defendant. Defendant denies that the plaintiff is entitled to any legal relief on any claim asserted against her.

46. Paragraph 46 consists entirely of allegations of entitlement to relief against another party, to which no answer is required of this Defendant. Defendant denies that the plaintiff is entitled to any legal relief on any claim asserted against her.

47. Paragraph 47 consists entirely of allegations of entitlement to relief against another party, to which no answer is required of this Defendant. Defendant denies that the plaintiff is entitled to any legal relief on any claim asserted against her.

48. Paragraph 48 consists entirely of allegations of entitlement to relief against another party, to which no answer is required of this Defendant. Defendant denies that the plaintiff is entitled to any legal relief on any claim asserted against her.

**VII.
Damages**

49. Paragraph 49 consists entirely of allegations of entitlement to damages. Defendant denies that the plaintiff is entitled to any legal relief on any claim asserted against her.

**VIII.
Jury Demand**

50. Defendant joins Plaintiff's demand for a jury trial.

**IX.
Opposition to Relief and Allegation of Additional Defenses**

51. Defendant opposes the relief sought in paragraph 51.

52. Defendant asserts that the damages recoverable, if any, are limited as a matter of Texas substantive law. This includes the damage limitations in Chapter 74 of the Texas Civil Practice and Remedies Code.

53. Defendant further asserts the limitations on recovery of medical expenses under Texas substantive law under the Texas Civil Practice and Remedies code. This includes limitation of the amounts recovered to those actually paid or legally incurred under chapter 41 of the Texas Civil Practice and Remedies Code.

54. Pleading further, Defendant would show that it is entitled to a credit or offset equal to the amount of any and all sums that the Plaintiff has received, or may hereinafter receive, by way of settlement with any person or party. Alternatively, pursuant to Rule 48 of the Texas Rules of Civil Procedure, Defendant contends that it is entitled

to a proportionate reduction of any damages found against it based upon the percentage of negligence attributable to the settling tortfeasor, cross claimant, designated third party, or other party to this case. Defendant also asserts that the injuries and damages alleged were caused, in whole or in part, by the conduct or actions of others over whom this defendant had no right of control. Defendant also asserts any and all rights of contribution and indemnity available as a matter of Texas substantive law.

55. In the alternative, and without waiving the foregoing, Defendant affirmatively pleads the defense set forth in Texas Civil Practice and Remedies Code Section 18.091, requiring Plaintiff to prove his/her loss of earning and/or loss of earning capacity in the form which represents his/her net loss after reduction for income tax payments or unpaid tax liability on said loss or earning claim pursuant to any federal income tax law. Tex. Civ. Prac. & Rem. Code Sec. 18.091.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by this suit against Defendant, that Defendant be discharged, and that the Court grant such other and further relief, both general and special, at law and in equity to which Defendant may be justly entitled.

Respectfully submitted,



Kevin E. Oliver
TBN: 152606050
Attorney in Charge
Law Office of Brian J. Judis
Plaza of the Americas, South Tower
600 N. Pearl Street, Suite 1450
Dallas, Texas 75201
Telephone: (214) 220-5600
Direct: (214) 220-5608
Facsimile: (214) 775-4124
E-mail: kevin.oliver@cna.com

**ATTORNEY FOR DEFENDANT
KIMBLERLY MORGAN, APN**

CERTIFICATE OF SERVICE

I certify that on the 6th day of February, 2014, a true and correct copy of the foregoing instrument has been forwarded by electronic transmission via the Court's ECF system to all attorneys of record.



Kevin E. Oliver