

II. PARTIES

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 3 of Plaintiffs' Original Complaint.
4. Defendant admits the allegations contained in paragraph 4 of Plaintiffs' Original Complaint.
5. Defendant admits that its principal office is located in Dallas, Texas. Defendant admits that it may be served with process by serving its registered agent, CT Corporation System.
6. Defendant denies that Baylor Health Care System was doing business as Baylor Regional Medical Center at Plano.
7. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 7 of Plaintiffs' Original Complaint.

III. PRE-SUIT STATUTORY COMPLIANCE

8. Defendant admits the allegations contained in paragraph 8 of Plaintiffs' Original Complaint.

IV. FACTUAL BACKGROUND

9. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation that research studies show that from 1-in-10 physicians up to 1-6 physicians are impaired by drugs and/or alcohol. Defendant admits that it is appropriate to have a system in place to address impaired physicians.
10. Defendant denies the allegations in paragraph 10 of Plaintiffs' Original Complaint.
11. Defendant denies the allegations in paragraph 11 of Plaintiffs' Original Complaint.

12. Defendant admits the allegation in paragraph 12 of Plaintiffs' Original Complaint that Duntsch was not drug tested prior to obtaining privileges at its facility. Defendant denies that drug testing was required by applicable standards.
13. Defendant denies the allegations in paragraph 13 of Plaintiffs' Original Complaint.
14. Defendant denies the allegations in paragraph 14 of Plaintiffs' Original Complaint.
15. Defendant denies the allegations in paragraph 15 of Plaintiffs' Original Complaint.
16. Defendant denies the allegations in paragraph 16 of Plaintiffs' Original Complaint.
17. Defendant denies the allegations in paragraph 17 of Plaintiffs' Original Complaint.
18. Defendant denies the allegations in paragraph 18 of Plaintiffs' Original Complaint.
19. Defendant denies the allegations in paragraph 19 of Plaintiffs' Original Complaint.
20. Defendant admits the allegation in paragraph 20 of Plaintiffs' Original Complaint that Duntsch performed surgery on Plaintiff Leroy Passmore at Baylor Regional Medical Center at Plano on December 30, 2011. Defendant denies the remaining allegations in paragraph 20 of Plaintiffs' Original Complaint.
21. As set out in paragraph 20 of Defendant's Answer above, Defendant denies that an altercation occurred. Thus, Defendant admits that no report regarding an altercation was made through the chain of command or to the patient. Defendant denies the remaining allegations in paragraph 21 of Plaintiffs' Original Complaint.
22. As set out in paragraph 20 of Defendant's Answer above, Defendant denies that an altercation occurred. Thus, Defendant denies the allegation in paragraph 22 of Plaintiffs' Original Complaint.
23. As set out in paragraph 20 of Defendant's Answer above, Defendant denies that an altercation occurred. Thus, Defendant admits, that Defendant Morgan did not report an

altercation to the patient. Defendant denies the remaining allegation in paragraph 23 of Plaintiffs' Original Complaint.

24. As set out in paragraph 20 of Defendant's Answer above, Defendant denies that an altercation occurred. Thus, Defendant denies the allegation in paragraph 24 of Plaintiffs' Original Complaint.

25. Defendant admits that Duntsch performed a second surgery on January 6, 2012. As set out in paragraph 20 of Defendant's Answer above, Defendant denies that an altercation occurred. Thus, Defendant denies the remaining allegation in paragraph 25 of Plaintiffs' Original Complaint.

26. As set out in paragraph 20 of Defendant's Answer above, Defendant denies that an altercation occurred. Thus, Defendant denies the allegations in paragraph 26 of Plaintiffs' Original Complaint.

27. Defendant admits that Duntsch performed a surgery at Baylor Regional Medical Center at Plano on January 11, 2012. Defendant lacks knowledge or information sufficient to form a belief about the truth about the remaining allegations contained in paragraph 27 of Plaintiffs' Original Complaint.

28. Defendant admits that Duntsch performed a surgery at Baylor Regional Medical Center at Plano on February 2, 2012. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations related to the opinions of other physicians. Defendant denies the remaining allegation contained in paragraph 28 of Plaintiffs' Original Complaint.

29. Defendant admits that Duntsch performed a surgery at Baylor Regional Medical Center of Plano on March 12, 2012. Defendant lacks knowledge or information sufficient to

form a belief about the truth of the remainder of the allegations contained in paragraph 29 of Plaintiffs' Original Complaint.

30. Defendant denies the allegations set forth in paragraph 30 of Plaintiffs' Original Complaint.

31. Defendant denies the allegations set forth in paragraph 31 of Plaintiffs' Original Complaint.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 32 of Plaintiffs' Original Complaint.

33. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 33 of Plaintiffs' Original Complaint.

34. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 34 of Plaintiffs' Original Complaint.

35. Defendant admits the allegations set forth in paragraph 35 of Plaintiffs' Original Complaint.

36. Defendant denies the allegations set forth in paragraph 36 of Plaintiffs' Original Complaint.

37. Defendant denies the allegation set forth in paragraph 37 of Plaintiffs' Original Complaint.

V. AGENCY

38. Defendant denies that the nurses in the operating room were agents, representatives or employees of Baylor Health Care System and acting within the scope of such agency/employment. Defendant further denies that Baylor Health Care System is liable

for the acts and omissions of the nurses under the doctrines of agency and *respondeat superior*.

39. Defendant denies the allegations contained in paragraph 39.

40. Defendant denies the allegations contained in paragraph 40.

VI. CAUSES OF ACTION

41. Defendant denies the allegations contained in paragraph 41, including subparts (a) – (f), are denied.

42. Defendant denies the allegations contained in paragraph 42.

43. Defendant denies the allegations contained in paragraph 43.

44. Defendant denies the allegations contained in paragraph 44.

45. Defendant denies the allegations contained in paragraph 45.

46. Defendant denies the allegations contained in paragraph 46.

47. Defendant denies the allegations contained in paragraph 47.

48. Defendant denies the allegations contained in paragraph 48.

VII. DAMAGES

49. Defendant denies the allegations contained in paragraph 49.

VIII. JURY DEMAND

50. Defendant joins in Plaintiffs' demand for a trial by jury.

IX. PRAYER

51. Defendant opposes the relief sought in Plaintiffs' prayer

X. AFFIRMATIVE DEFENSES

52. In the unlikely event it is held liable in the above-referenced cause, Defendant asserts that the damages recoverable shall be limited, as provided by Chapter 74 of the Texas Civil Practice & Remedies Code, including but not limited to those limits contained in sections 74.301 through 74.303.

53. In the unlikely event it is held liable for economic damages, Defendant further asserts that the recovery of medical or health care expenses is limited by section 41.0105 of the Texas Civil Practice and Remedies Code to the amount actually paid or incurred by or on behalf of Plaintiffs.
54. In the unlikely event the Court or jury finds that Defendant, along with any other defendant, is liable to Plaintiffs for damages, Defendant asserts that it is entitled to contribution and/or the assignment of proportionate responsibility pursuant to *Texas Civil Practice & Remedies Code* section 32.001, *et seq.* and section 33.001, *et seq.* or any other applicable statute or common law rule.
55. Defendant asserts its right to limit the recovery of prejudgment interest, if any, against it in accordance with Chapter 304 of the Texas Finance Code, Chapters 41 and 74 of the Texas Civil Practice & Remedies Code, and any other applicable common law, statute, or rule.
56. Defendant asserts that it is entitled to the limitation on the accrual of postjudgment interest on any award of damages subject to Medicare subrogation right under 42 U.S.C. Section 1395y(b)(2)(B), as provided in section 41.014 of the Texas Civil Practice and Remedies Code.
57. In the unlikely event the Court or jury finds that Defendant is liable to Plaintiffs for punitive damages, Defendant affirmatively invokes all limitations on liability and damages contained in Chapter 41 of the Texas Civil Practice & Remedies Code, including without limitation those contained in sections 41.006, 41.007, and 41.008. Defendant also affirmatively invokes any common-law caps on punitive damages available under either Texas law or federal law.

WHEREFORE, PREMISES CONSIDERED, Defendant Baylor Health Care System prays that Plaintiffs take nothing by this suit, that Defendant be discharged without liability, and that Defendant have all other relief to which they may show themselves justly entitled.

Respectfully submitted,

COOPER & SCULLY, P.C.

By: /s/ John A. Scully

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**ATTORNEYS FOR DEFENDANTS BAYLOR
HEALTH CARE SYSTEM AND BAYLOR
REGIONAL MEDICAL CENTER AT PLANO**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's CM/ECF system on this 23rd day of January, 2014.

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/s/ John A. Scully

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