

IN THE SUPREME COURT OF OHIO

**GENE'A GRIFFITH, EXECUTRIX
FOR THE ESTATE OF HOWARD
E. GRIFFITH, DECEASED**

Case No. 14-1055

Plaintiff-Appellant,

On Appeal from the Stark
County Court of Appeals,
Fifth Appellate District,
Case No. 2013 CA 00142

vs.

AULTMAN HOSPITAL

Defendant-Appellee.

**APPELLANT GENE'A GRIFFITH'S OPPOSITION TO APPELLEE AULTMAN HOSPITAL'S
MOTION TO DISMISS APPEAL AS IMPROVIDENTLY ACCEPTED**

TZANGAS PLAKAS MANNOS LTD.

MILLIGAN PUSATERI CO., LPA

Lee E. Plakas (0008628)
Megan J. Frantz Oldham (0079378) –
Counsel of Record
Collin S. Wise (0089657)
220 Market Avenue South
Eighth Floor
Canton, Ohio 44702
Telephone: (330) 455-6112
Facsimile: (330) 455-2108
Email: lplakas@lawlion.com
mfrantzoldham@lawlion.com
cwise@lawlion.com

Richard S. Milligan (0016385)
Paul J. Pusateri (0067949)
Thomas J. Himmelspach (0038581)
4684 Douglas Circle
P.O. Box 35459
Canton, OH 44735
Telephone: (330) 526-0770
Facsimile: (330) 409-0249
Email: rmilligan@milliganpusateri.com
ppusateri@milliganpusateri.com
thimmelspach@milliganpusateri.com

Counsel for Plaintiff-Appellant

Counsel for Defendant-Appellee

I. INTRODUCTION

Appellee Aultman Hospital's ("Appellee") Motion to Dismiss Appeal as Improvidently Accepted ("Motion to Dismiss") should be denied for the following reasons:

- 1.** Appellee fails to tell this Honorable Court that while the parties reached a settlement as to the separately filed wrongful death and medical negligence case, they **expressly** did not settle the case or controversy at issue in this case; whether Appellee has provided Mr. Griffith's complete medical record is still unsettled.
- 2.** This Appeal is not moot because:
 - a.** The resolution of a wrongful death case has nothing to do with whether a fiduciary is entitled to its decedent's medical records. Appellee's argument incorrectly suggests that once a wrongful death is settled, a fiduciary is not entitled to any of its decedent's medical records.
 - b.** A fiduciary has a statutory right to its decedent's complete medical record irrespective of a wrongful death lawsuit, including whether a wrongful death lawsuit will be filed, has been filed, or has been resolved;
 - c.** Appellee still has not provided Mr. Griffith's complete medical record with certification that it has provided all medical records stored at/by Appellee Hospital;
 - d.** A fiduciary, including Gene'a Griffith, is not required to provide any reason as to why they are requesting its decedent's medical record; per right granted by statute, the representative is unequivocally entitled to receive a copy of the medical record upon request;
 - e.** Although not relevant, possible reasons for Gene'a Griffith wanting her father's complete medical record after the resolution of his wrongful death case include but are not limited to: as documented in his medical record, knowing what happened or did not happen to her father, her family medical history, amending incorrect information, discovering whether fraud occurred in the wrongful death case, and resolution of billing / lien disputes.
- 3.** Further, regardless of the specific facts of this case, this appeal is not moot because it involves matters of public and great general interest and also because the issues involved are capable of repetition, yet evade review. This is demonstrated in the fact that the Court accepted jurisdiction of the case and the numerous amicus briefs that were filed in support of jurisdiction and merit briefs.

4. Appellant's claims are not barred by res judicata because this appeal and the Wrongful Death Case contain two separate and distinct causes of action with two different issues that do not arise out of the same operative facts. Additionally, whether Appellee has provided a complete medical record was not adjudicated in the Wrongful Death Case.

A. Stark County Case No. 2013 CV 00487, Action to Compel Medical Record: Currently Under the Jurisdiction of this Court and Neither Resolved Nor Moot.

After nearly seven (7) months of failed attempts to secure the complete medical record of Howard Griffith, Appellant filed a Complaint on February 12, 2013, seeking not only the complete medical record for Mr. Griffith and an explanation for any alterations or deletions from the record, but also costs and any other relief which the Court deemed appropriate.

After the split decision affirming the trial court's order granting Appellee's Motion for Summary Judgment, Appellant filed a Notice of Appeal and accompanying Memorandum in Support of Jurisdiction on June 23, 2014 asking this Court to take jurisdiction pursuant to S.Ct.Prac.R. 5.02(A)(3). S.Ct.Prac.R. 5.02(A)(3) permits this Court jurisdiction over cases that "**involve[] a question of public or great general interest** pursuant to Article IV, Section 2(B)(2)(e) of the Ohio Constitution." (Emphasis added.) Amicus briefs in support of jurisdiction were also filed/joined by the Stark County Association for Justice, Miami Valley Trial Lawyers Association, Summit County Association for Justice, and the Central Ohio Association for Justice.

This Court accepted jurisdiction on October 8, 2014, and Appellant thereafter filed her Merit Brief on December 29, 2014, at which time the Briefs of Amici Curiae: (i) AARP; (ii) Ohio Association for Justice; (iii) Summit County Association for Justice; (iv) Southwest Ohio Trial Lawyers Association; and (v) Stark County Association for Justice were also filed/joined. On January 15, 2015, Appellee filed a Stipulation for Extension of Time to file its Merit Brief and thereafter moved to dismiss this appeal on January 29, 2015.

The proposition of law accepted for jurisdiction in the present case is:

A hospital should not be permitted to withhold portions of a patient's medical record by unilaterally selecting and storing those medical records in a department other than its medical records department.

B. Stark County Case No. 2013 CV 01234, Wrongful Death Lawsuit: the Resolution of the Wrongful Death Case Expressly did Not Resolve the Present Issue before the Court.

Separately, Gene'a Griffith, as Executrix for the Estate of Howard Griffith, filed claims for a wrongful death and medical negligence against Aultman Hospital on May 6, 2013 ("Wrongful Death Case").¹ The parties reached a settlement agreement as to the Wrongful Death Case. In its Motion to Dismiss, Appellee fails to tell this Court that the parties **expressly excluded this appeal and the underlying controversy from that settlement:**

The parties desire to enter into this Agreement to provide, among other things, for consideration in full settlement and discharge of all claims and actions of the Plaintiff for damages which allegedly arose out of or due to the Incident, on the terms and conditions set forth in this Agreement. **This agreement is not a settlement of the claims and sought relief asserted in *Gene'a Griffith v. Aultman Hospital, Stark County Court of Common Pleas Case No. 2013 CV 00487, currently pending as Ohio Supreme Court case No. 2014-1055.***

(Emphasis added.) A true and accurate copy of the Release and Settlement Agreement is attached hereto as **Exhibit 1** with confidential terms redacted.

The issue in that case was not whether cardiac monitoring strips stored in risk management were medical records, but simply whether Appellee and its employees breached the standard of care in monitoring and caring for Mr. Griffith, causing Mr. Griffith injury and death. Although neither the claims nor relief sought in this case were the subject of that release, Appellee now moves this Court to dismiss this appeal.

¹ Appellant did not assert an action to compel Mr. Griffith's medical record in the Wrongful Death Case.

II. LAW AND ARGUMENT

A. Appellant's Claims Before This Court Are Still Justiciable Because Appellee Has Yet to Produce a Complete Medical Record for All Records in Appellee's Possession.

Appellee argues that this Appeal is moot because the Wrongful Death Case was settled and dismissed. This dismissal has no bearing on whether a reasonable finder of fact could conclude that Appellee has still failed to produce a complete medical record. Even today, Appellant is entitled to request a complete medical record for Howard Griffith.

An appeal becomes moot only when “an event occurs, without the fault of either party, which renders it impossible for the court to grant **any** relief.” (Emphasis added.) *State ex rel. Gaylor, Inc. v. Goodenow*, 125 Ohio St.3d 407, 2010-Ohio-1844, 928 N.E.2d 728, ¶ 10; quoting *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910). However, “if an actual controversy exists because it is possible for a court to grant the requested relief, the case is not moot, and a consideration of the merits is warranted.” *Id.* at ¶ 11.

Furthermore, within the similar context of a public records request, this Court has held that a public-records mandamus case does not become moot simply because one side offers “bare unverified assertions” that the records were released. *State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 8.

The dismissal of the Wrongful Death Case did not dispose of Appellant's right to a complete medical record. The record remains void of any evidence that Appellee has ever produced a certification that Appellant has received every medical record in Appellee's possession/control. Accordingly, Appellant's right to receive all medical records stored in Appellee's Risk Management Department, or elsewhere, remains a justiciable controversy.

B. This Appeal Remains Justiciable Because a Patient’s Right to Receive a Complete Medical Record is Not Contingent on the Possibility or Existence of a Medical Negligence or Wrongful Death Lawsuit.

Appellee further moves this Court to dismiss this Appeal because in its opinion, Appellant no longer has a need for a complete medical record both because Mr. Griffith is deceased and therefore does not need further treatment, and secondly because the Wrongful Death Case was settled and dismissed. Whether Appellee feels there is a proper need for providing a complete medical record does not alter the fact that Appellant has a right to receive a Complete Medical Record by Federal and State Statute.² Appellee’s argument incorrectly suggests that once a wrongful death claim is settled, a fiduciary is not entitled to any of the decedent’s medical records. Instead, the resolution of a wrongful death case has nothing to do with whether a fiduciary is entitled to the decedent’s medical records.

In its Motion to Dismiss, Appellee assumes that “[Appellant] has no further need for her decedent’s medical records, either for any future care or to support a medical negligence claim.” (Appellee’s Motion to Dismiss, p. 4). However, R.C. 3701.74, has no requirement regarding why a person is seeking medical records, and instead it merely states that any “patient, a patient’s personal representative, or an authorized person who wishes to examine or obtain a copy of part or all of a medical record” may request to do so. R.C. 3701.74(B). The relationship between the Wrongful Death Case and this Appeal does not render this Appeal moot because Appellant has not received the relief she is entitled to and that is still able to be granted.

While no reason is required for a fiduciary to obtain a decedent’s medical record, such reasons in the present case for Gene’a Griffith to possibly want a copy of her father’s complete medical record even with the resolution of his Wrongful Death Case include, based on such medical record, what happened or did not happened with respect to her father’s medical care, her family medical history,

² 45 CFR 164.524; R.C. 3701.74(B).

amending incorrect information,³ discovering whether fraud occurred in the wrongful death case,⁴ and inquiring as to billing/lien disputes.

Appellee argues that an estate representative's duty is limited to administering the estate, and that "Appellant has no authority to maintain an action unconnected to the estate." While Appellee relies upon *Heckler v. Schueler*, 12 Ohio St. 2d 58, 61, in stating that **the principal function** of the fiduciary is to protect, preserve, and pay out assets, *Heckler* does not state those are the only functions the estate representative can have on behalf of the estate. In fact, when a person is deceased the only people allowed to obtain medical records for the deceased include the executor or administrator of the patient's estate, or the person responsible for the patient's estate if not probated.⁵ Accordingly, aside from the duties listed in *Heckler*, Appellant also has the exclusive ability to request a complete medical record. If the estate's representative is the only person which the legislature has granted the ability and function to obtain medical records – then *Heckler's* non-exhaustive list cannot preclude Appellant from the other functions granted by statute.

C. The Issues Raised in this Appeal Are A Matter of Public or Great General Interest.

Article IV, Section 2(B)(2)(e) of the Ohio Constitution grants this Court Jurisdiction, "in cases of public or great general interest." As evidenced by the numerous concerns raised by the Amici Curiae – and in particular, those raised by the AARP, this is certainly that type of case. This is further evidenced by the fact that this Court originally took jurisdiction for that reason.

³ 45 CFR 164.526.

⁴ As this Court has recognized, a party may file an action to set aside a settlement agreement where the settlement agreement was procured through fraud. *Haller v. Borrer Corp.*, 50 Ohio St.3d 10, 13, 552 N.E.2d 207, 210 (1990). "A release of liability procured through fraud in the inducement is voidable only, and can be contested only after a return or tender of consideration. Cases of fraud in the inducement " * * * are those in which the plaintiff, while admitting that he released his claim for damages and received a consideration therefor, asserts that he was induced to do so by the defendant's fraud or misrepresentation. The fraud relates not to the nature or purport of the release, but to the facts inducing its execution, as, for instance, where there is a misrepresentation as to the nature or extent of the plaintiff's injuries." *Id.* at 210, citing *Picklesimer v. Baltimore & Ohio RR. Co.*, *supra*, 151 Ohio St. at 4, 38 O.O. at 478, 84 N.E.2d at 215-216.

⁵ R.C. 3701.74(A)(11).

As one Amicus Curiae explained the public interest:

The majority opinion serves no citizen of this State, whether it be a doctor consulted for a second opinion, a patient transferring to another medical provider or a daughter seeking answers to her father's death.

(SCAJ and MVTLA Brief in Support of Jurisdiction at Page 3.) Similarly, the AARP, who has served as a national nonprofit and nonpartisan organization since 1958 very capably explained why this issue is of great public and general interest to its membership, in stating that "AARP's interest in this matter is to ensure that older people have complete access to their medical records so that they can correct inaccuracies, understand the history of their care, and make informed decisions about their health care."

(Brief of Amicus Curie AARP at 1.)

This axiomatic principle is true "even where appeals to this court might be deemed technically moot, this court may nevertheless hear them where, as here, the appeal contains issues of great public or general interest." *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.*, 73 Ohio St.3d 590, 598, 1995-Ohio-301, 653 N.E.2d 646, 653 (1995) citing *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St.3d 28, 505 N.E.2d 966 (1987); See also *In re Suspension of Huffer from Circleville High School*, 47 Ohio St.3d 12, 14, 546 N.E.2d 1308 (1989).

In considering whether a matter is of public or great general interest, the court looks not only to the nature of the issue to be decided, but also to the effect that deciding the issue will have on the public. See *Ottawa Cty. Bd. of Commrs. v. Seckler*, 122 Ohio App.3d 617, 619-20, 702 N.E.2d 495 (1997) (holding that because the issue in the appeal could affect large numbers of Ohio property owners, it was a matter of public or great general interest); *Citizens World v. Canfield Twp.*, 152 Ohio App.3d 252, 2003-Ohio-1604, 787 N.E.2d, ¶ 9 (7th Dist.) (holding that the expenditure of public funds related to residents of a political subdivision is a matter of great public interest.)

As was already substantially briefed in Appellant’s Memorandum in Support of Jurisdiction, and that of the Amici Curiae, the resolution of this question is one of enormous concern to the public and is one of great general interest, deserving to be heard by this Court. In particular:

1. This issue has the ability to affect large numbers of Ohioans who assert their right to receive their entire medical record from a hospital pursuant to R.C. 3701.74 to better assist them in making informed health care choices and in correcting errors;
2. With the recent advances made in electronic medical records, and their increasing use across Ohio, it is of great general and public interest whether R.C. 3701.74 has application to those electronic medical records which a health care provider decides to save and store;
3. The question involved has wide-reaching effects in the ability of patients to receive complete, true, and accurate copies of their medical records as prescribed by statute; and
4. It is of great general and public interest that a patient’s statutory right to receive a complete medical record be upheld so that they can evaluate all medical information without having to file a medical negligence lawsuit just to receive a complete copy of his medical records.

D. The Issues Raised in this Appeal Are Capable of Repetition, Yet Evading Review.

Even if this Court determines that this case is now moot because the Wrongful Death Case was dismissed, and even if it does not see a question of great general or public interest, this is a case that is often capable of repetition, yet evading review. This might explain the dearth of case law providing meaningful interpretation to R.C. 3701.74.

Even if a case would otherwise be moot, this Court has jurisdiction to hear a case, “‘if it is capable of repetition, yet evading review.’” *State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St.3d 165, 2009-Ohio-590, 902 N.E.2d 976, ¶ 11; quoting *State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007-Ohio-4643, 873 N.E.2d 314, ¶ 10. This exception applies where both of the following factors are present:

1. The challenged action is too short in its duration to be fully litigated before its cessation or expiration; and
2. There is a reasonable expectation that the same complaining party will be subject to the same action again.

Id. at ¶ 11; quoting *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 729 N.E.2d 1182 (2000).

After seven (7) months of requesting a complete medical record, Appellant filed the Complaint, which led to this appeal. However, a plaintiff only has one year in which to bring a medical claim action, in which they would have a separate right to submit discovery requests and file motions to compel. R.C. 2305.113. Accordingly, for any estate representative who opens an estate, submits requests for the complete medical record, and determines there are omissions to those records, the conclusion of a lawsuit to compel production of the medical record pursuant to R.C. 3701.74 may very well occur near or after the statute of limitations in R.C. 2305.113. That, in addition to the requirement to provide medical records sufficient for an affidavit of merit, makes it difficult to fully litigate whether a complete medical record has been provided, prior to the statute of limitations for a medical claim lawsuit.

Furthermore, Appellee’s argument that Appellant has no practical need to still receive a complete medical record does not change the fact that Appellant still has the right to do so. Accordingly, there remains a reasonable expectation that Appellant could be subject to the same action again if Appellant again made a fourth request to Appellee for a complete medical record.

E. This Appeal is Not Barred by the Doctrine of Res Judicata.

Lastly, Appellee makes the strained argument that because Appellant settled the Wrongful Death Case with Appellee, this appeal is barred by res judicata. Appellee urges this Court to expand the doctrine of res judicata to mean that the settlement of one lawsuit bars a separate lawsuit filed arising out of separate circumstances and with a separate prayer for relief.

However, res judicata bars any “subsequent action on the same claim or cause of action between the parties or those in privity with them.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 380, 653 N.E.2d

226 (1995). The cause of action in the Complaint pursuant to R.C. 3701.74 arose out of Appellee's failure to provide Appellant with a complete medical record. The facts giving rise to the case was not the underlying negligent care for Mr. Griffith, but instead was Appellee's failure to provide a complete medical record to his estate's representative. Conversely, the facts giving rise to the Wrongful Death Case involved the care and treatment of Mr. Griffith at Appellee.

Furthermore, if Appellee found the cases to be so closely related to create res judicata, then it would have made this argument in the Wrongful Death Case after the trial court granted summary judgment in the case at issue here. Appellee failed to make that argument at that time, and has thus waived any argument that these cases are res judicata.

III. CONCLUSION

For the foregoing reasons, this case remains justiciable, is not moot, was accepted and should be heard because of the public or great general interest, and the likelihood that this issue will continue to evade review which would lead to the likelihood that patients will have to file medical claim cases just to gain the power to receive a complete medical record, rather than rely on their statutory right to request and receive the record to review before ever having to make the decision of whether a medical claim lawsuit is warranted. Accordingly, this Court should deny Appellee's Motion to Dismiss.

DATED: February 9, 2015

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD

/s/ Megan J. Frantz Oldham

Lee E. Plakas (0008628)

Megan J. Frantz Oldham (0079378) –

Counsel of Record

Collin S. Wise (0089657)

220 Market Avenue South - Eighth Floor

Canton, Ohio 44702

Telephone: (330) 455-6112

Facsimile: (330) 455-2108

Email: lplakas@lawlion.com

mfrantzoldham@lawlion.com

cwise@lawlion.com

Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Electronic Mail this 9th day of February, 2015 upon the following:

Richard S. Milligan

Paul J. Pusateri

Thomas J. Himmelpach

MILLIGAN PUASATERI CO., LPA

4684 Douglas Circle

P.O. Box 35459

Canton, OH 44735

Email: rmilligan@milliganpusateri.com

ppusateri@milliganpusateri.com

thimmelpach@milliganpusateri.com

Counsel for Defendant-Appellee

/s/ Megan J. Frantz Oldham

Megan J. Frantz Oldham

Counsel for Plaintiff-Appellee

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is made and entered into between **Gene’a Griffith, Individually and as Executrix for the Estate of Howard Griffith and Aultman Hospital**, (“the Parties”). The “Plaintiff” shall mean Gene’a Griffith, Individually and as Executrix for the Estate of Howard Griffith, and her respective heirs, executors, administrators, personal representatives, successors and assigns. The “Defendant” shall mean Aultman Hospital, and its affiliates, subsidiaries, insurers, officers, directors, employees, servants, agents, successors and assigns.

I. Recitals

A. During an admission at Aultman Hospital in May of 2012, Gene’a Griffith claims that her decedent, Howard Griffith, sustained physical injuries as a result of the alleged conduct of Defendant (the “Incident”). In connection with the Incident, Plaintiff has filed a Complaint, captioned *Griffith v. Aultman Hospital, et al.*, Case No. 2013 CV 01234, in the Court of Common Pleas, Stark County, State of Ohio, which includes counts based upon tort and/or tort type claims, including medical malpractice and wrongful death.

B. The Parties desire to enter into this Agreement to provide, among other things, for consideration in full settlement and discharge of all claims and actions of the Plaintiff for damages which allegedly arose out of or due to the Incident, on the terms and conditions set forth in this Agreement. This agreement is not a settlement of the claims and sought relief asserted in *Gene’s Griffith v. Aultman Hospital*, Stark County Court of Common Pleas Case No. 2013 CV 00487, currently pending as Ohio Supreme Court case No. 2014-1055. Plaintiff intends to pursue those claims and defendant reserves the right to argue they should be dismissed based on the dismissal entry filed as a result of this settlement.

NOW, THEREFORE, the Plaintiff agrees as follows:

II. Release

Appellant's Exhibit 1

A. Release and Discharge. In consideration of the payment of Redacted Redacted and for other good and valuable consideration (the "Payment"), the receipt and sufficiency of which is hereby acknowledged, with the exception of the claims and sought relief asserted in *Gene's Griffith v. Aultman Hospital*, Stark County Court of Common Pleas Case No. 2013 CV 00487, currently pending as Supreme Court case No. 2014-1055, the Plaintiff hereby completely releases and forever discharges the Defendant, and agents, employees, insurers, affiliates, subsidiaries, corporations, companies, members, officers, directors, successors and assigns, from any and all past, present, or future claims, demands, actions, damages, costs, expenses, loss of services, and causes of action of any kind or character, whether based in tort, contract, or other theory of recovery, whether known or unknown, which have arisen in the past or which may arise in the future, whether directly or indirectly, caused by, connected with or resulting from the Incident. This release and discharge shall be a fully binding and complete settlement among all Parties to this Agreement, and their heirs, assigns, and successors.

With the exception of the claims asserted in and currently pending in Ohio Supreme Court case No. 2014-1055, Plaintiff acknowledges and agrees that this release and discharge is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages and expenses which exist as of this date, but of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Plaintiff's decision to enter into this Agreement. Plaintiff further agrees that the Plaintiff has accepted the considerations set forth in Paragraph III herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be other than the Plaintiff believes. It is understood and agreed to by the Parties that this settlement is a compromise of a disputed claim.

B. Injuries Known and Unknown. Plaintiff fully understands that the Plaintiff's decedent may have suffered injuries and damages that are unknown to the Plaintiff at present. With the exception of the claims asserted in and currently pending in Ohio Supreme Court case No. 2014-1055, Plaintiff acknowledges that the consideration received under this Agreement is intended to and does release and discharge the Defendant from any claims for, or consequences arising from, the injuries which allegedly arose from the Incident, Plaintiff

hereby waives any rights to assert in the future any claims not now known or suspected even though, if such claims were known, such knowledge would materially affect the terms of this Agreement.

C. Application of Release and Discharge. This release and discharge shall also apply to any Defendant's past, present, and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, including all doctors, subsidiaries, affiliates, reinsurers, officers, directors, members, partners, predecessors and successors in interest, assigns and all other persons, agents, employees, insurers, subsidiaries, corporations, companies, members, officers and directors with whom any of the former have been, are now, or may hereafter be affiliated.

III. Payment to Plaintiff at Settlement

Defendant will pay Redacted
Redacted to the Plaintiff, and Plaintiff's counsel, Tzangas, Plakas & Mannos, Ltd., and the Court costs associated with this lawsuit. This payment shall include, but is not limited to, all out of pocket expenses, attorney fees, all medical liens, all rights of recovery, all consortium claims, all medical subrogation claims, all workers' compensation subrogation claims, known and unknown, and claims for general damages. In consideration of the above payment, Plaintiff further agrees that in the event any claim is made against Defendant arising out of the injuries allegedly sustained by Plaintiff from treatment rendered on or after the dates hereinbefore mentioned, Plaintiff will indemnify Defendant for any payment Defendant are required by law to make to a third party. In the event Defendant receives notice of any such claim, Defendant will immediately put Plaintiff on notice of such claim and permit Plaintiff to participate in the determination of the value of the asserted claim. Plaintiff specifically acknowledges that out of the funds paid in settlement, she has the duty to settle any claims for reimbursement of medical expenses.

IV. Entire Agreement

This Agreement contains the entire agreement between the Plaintiff and the Defendant with regard to the matters set forth herein. There are no other understandings or

agreements, verbal or otherwise, in relation to this Agreement, between the Parties except as expressly set forth herein.

This Agreement is intended to conform with the requirements of Internal Revenue Code Sections 104(a)(2) and 130. All provisions of this Agreement should be construed in a manner so as to effectuate that intent.

V. Reading of Agreement

In entering into this Agreement, the Plaintiff represents that the Plaintiff has completely read all of its terms and that such terms are fully understood and voluntarily accepted by the Plaintiff. Plaintiff has been represented by counsel of the Plaintiff's choice.

VI. Future Cooperation

Plaintiff agrees to cooperate fully, to execute any and all supplementary documents, and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement which are not inconsistent with its terms.

Upon execution of this Agreement by the undersigned, Plaintiff hereby authorizes and directs the Plaintiff's counsel to execute and file with the Court as part of the record, a final dismissal with prejudice of and from any and all claims and demands of the Plaintiff against the Defendant.

VII. Drafting of Agreement and Reliance by Plaintiff

This Agreement has been negotiated by the respective Parties through counsel. The Parties to this Agreement contemplate and intend that the Payment set forth herein constitutes damages received on account of personal injuries or sickness, arising from the Incident, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended. Plaintiff warrants, represents, and agrees that the Plaintiff is not relying on the advice of the Defendant, anyone associated with them, including their attorneys, as to the legal and income tax or other consequences of any kind arising out of this Agreement.

Accordingly, the Plaintiff hereby releases and holds harmless the Defendant, and any and all counsel or consultants for the Defendant from any claim, cause of action, or other rights of any kind which the Plaintiff may assert because the legal, income tax or other consequences of this Agreement are other than those anticipated by the Plaintiff.

The Parties signing this Agreement, and each of them, warrant and represent that no promise, inducement or agreement not expressed in this Agreement has been made to them and that this Agreement constitutes the entire agreement between the Parties and that the terms of this Agreement are contractual and not mere recitals.

Plaintiff represents and agrees that the Plaintiff has read this Agreement and fully understands it, and has been advised by counsel of the Plaintiff's own choosing as to the propriety and legal effect of executing it, and neither the Agreement nor the compromise and settlement recited herein were induced by fraud, coercion, compulsion or mistake, nor is this Agreement, nor the compromise and settlement, made in reliance upon any statement or representation of the Defendant or any of the parties released by this Agreement, or their representatives, agents or attorneys.

VIII. Warranty of Capacity to Execute Agreement

The Plaintiff represents and warrants that, with the exception of contingency fee contracts and any agreements which may exist between the Plaintiff and Plaintiff's counsel relative to the reimbursement of litigation expenses and Medicare, no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, and that the Plaintiff has the sole right and exclusive authority to execute this Agreement and receive the sums specified herein and that the Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement. Plaintiff will satisfy any claim by Medicare's for reimbursement.

IX. Confidentiality

The Parties agree that the amount of settlement is confidential and may not be disclosed by either Party other than as needed to effectuate the Agreement's terms or as required by law.

X. Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

XI. Signatures and Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to constitute one and the same document.

Dated: 1/14/15

Gene'a Griffith
Gene'a Griffith, Individually and as Executrix for the
Estate of Howard Griffith

Dated: 1-14-2015

Mark N. Rose
Aultman Hospital, by Sr. VP Legal Affairs

NOTICE APPLICABLE TO OHIO ONLY:

For your protection, Ohio law requires the following to appear on this form:

Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.