IN THE SUPREME COURT OF OHIO

CHRISTINE LEWIS, **Plaintiff-Appellee,** **vs.** **MEDCENTRAL HEALTH SYSTEM dba OHIOHEALTH MANSFIELD HOSPITAL, et al.,** **Defendants-Appellants.**	)	**Case No. 2024-0451** **On Appeal from the Fifth Appellate District, Richland County** **Court of Appeals Case No. 2023-CA-0043**

MERIT BRIEF OF AMICI CURIAE AMERICAN MEDICAL ASSOCIATION, OHIO STATE MEDICAL ASSOCIATION, OHIO OSTEOPATHIC ASSOCIATION AND OHIO HOSPITAL ASSOCIATION IN SUPPORT OF APPELLANTS

Jonathan T. Brollier (0081172)
(COUNSEL OF RECORD)
Maurice Wells (0096804)
Wan Q. Zhang (0102306)
EPSTEIN BECKER & GREEN, P.C.
250 West Street, Suite 300
Columbus, Ohio 43215
T: 614.872.2500
E: JBrollier@ebglaw.com
MWells@ebglaw.com
WZhang@ebglaw.com

Counsel for Amici Curiae American Medical Association, Ohio State Medical Association, Ohio Osteopathic Association, and Ohio Hospital Association

Sean McGlone (0075698)
OHIO HOSPITAL ASSOCIATION
65 E. State Street, Suite 500
Columbus, Ohio 43215
T: (614) 221-7614
E: sean.mcglone@ohiohospitals.org

Counsel for Amicus Curiae Ohio Hospital Association

Danny M. Newman, Jr.
THE DONAHEY LAW FIRM, LLC
580 S. High Street, Suite #200
Columbus, Ohio 43215
T: (614) 224-8166
E: danny@donaheylaw.com

Louis E. Grube
Paul Flowers
Kendra Davitt
FLOWERS & GRUBE
Terminal Tower, 40th Floor
50 Public Square
Cleveland, Ohio 44113
T (216) 344-9393
E: leg@pwfco.com
pwf@pwfco.com
knd@pwfco.com

Counsel for Appellee

Kevin M. Norchi
Steven J. Forbes
FREEMAN, MATHIS & GARY, LLP
3201 Enterprise Parkway, Suite 190
Cleveland, Ohio 44122
T: (216) 514-9500
E: kevin.norchi@fmglaw.com
steve.forbes@fmglaw.com

Counsel for Appellants Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP

Kenneth R. Beddow
BONEZZI SWITZER POLITO & PERRY CO., L.P.A.
24 West Third Street, Suite 204
Mansfield, Ohio 44902
T: (419) 522-6242
E: kbeddow@bspplaw.com

Counsel for Defendant MedCentral Health System dba OhioHealth Mansfield Hospital

Bradley L. Snyder
ROETZEL & ANDRESS, LPA
41 South High Street
Huntington Center, 21st Floor
Columbus, Ohio 43215
T: (614) 463-9770
E: bsnyder@ralaw.com

Counsel for Defendants TotalMed and Jacqueline Schmitz, R.N.

Mary McWilliams Dengler
DICKIE, MCCAMEY & CHILCOTE, P.C.
10 West Broad Street, Suite 1950
Columbus, Ohio 43215
T: (614) 258-5717
E: mdengler@dmclaw.com

Counsel for Defendants Pluto HealthCare Staffing, LLC and Lauren Clapsaddle, R.N.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Legislative Acts

Other Authorities

STATEMENT OF INTEREST OF AMICI CURIAE AND INTRODUCTION

The American Medical Association ("AMA") is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in AMA's policy-making process. AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including Ohio.

The Ohio State Medical Association ("OSMA")[1] is a nonprofit professional association established in 1835 and is comprised of physicians, medical residents, and medical students in Ohio. The OSMA's membership includes most Ohio physicians engaged in the private practice of medicine. The OSMA's purposes are to improve public health through education, encourage interchange of ideas among members, and maintain and advance the standards of practice by requiring members to adhere to the concepts of professional ethics.

The Ohio Osteopathic Association ("OOA") advocates for approximately 7,500 osteopathic physicians and 1,000 osteopathic medical students. OOA is a state society of the American Osteopathic Association. OOA's founding purposes include promoting the health of all Ohioans; cooperating with all public health agencies; maintaining high standards at all Ohio osteopathic institutions; encouraging research and investigation, especially pertaining to the

[1] The AMA and OSMA submit this brief on their own behalf and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

principles of the osteopathic school of medicine; and maintaining the highest standards of ethical conduct in all phases of osteopathic medicine and surgery.

The Ohio Hospital Association ("OHA") is a private nonprofit trade association that was established in 1915 as the first state-level hospital association in the United States. For more than 100 years, OHA has provided a mechanism for Ohio's hospitals to come together and advocate for health care legislation and policy that promotes the best interests of hospitals and their communities. OHA is comprised of 250 hospitals and 15 health systems, collectively employing more than 430,000 Ohioans. OHA is recognized nationally for patient safety advocacy, health care quality initiatives, and environmental sustainability programs. Guided by a mission to collaborate with member hospitals and health systems to ensure a healthy Ohio, OHA centers its work on three strategic initiatives: advocacy, economic sustainability, and improving health outcomes for patients and communities.

Amici represent the vast majority of hospitals and physicians in Ohio and have a strong interest in legal and legislative developments affecting their members, including the Court's ultimate decision in this case. Because the Court of Appeals' decision departed from the plain meaning of R.C. 2323.451 and Civ.R. 15(D), the Court should reverse the Court of Appeals and reinstate the trial court's correct and well-reasoned decision to dismiss the untimely joined Defendants from this medical case. If the Court of Appeals' decision stands, it would exacerbate, not ameliorate, the practice of shot-gunning, which is what prompted the legislative changes behind R.C. 2323.451. Likewise, if the Court affirms the Court of Appeals' decision, it would permit what was supposed to be a limited exception to allow plaintiffs a brief interval to "discover" new claims or defendants to swallow the one-year statute of limitations that applies to all medical claims under long-standing Ohio law. In short, the Court should reverse the Court of Appeals'

decision, and it should hold that the statute of limitations as to Anand Patel, M.D. and his employer was not extended because Plaintiff did not "discover" her claims against Dr. Patel after she filed her original Complaint, because Dr. Patel is not therefore an "additional" Defendant under R.C. 2323.451, and because Plaintiff neglected to timely serve Dr. Patel as a John Doe Defendant, in violation of the plain language of Civ.R. 15(D).

STATEMENT OF THE CASE AND FACTS

Plaintiff Christine Lewis sued Mansfield Hospital and OhioHealth MedCentral Mansfield Hospital, together with ten John Doe Defendants who "provided negligent medical care to [Plaintiff]," in a Complaint she filed on October 18, 2022. (Comp., 1). The cover page of Lewis's Complaint included "names unknown" in its description of the John Doe Defendants. *Id*.

Lewis's description of the John Doe Defendants included "physicians" who "provided negligent medical or health care . . . to Plaintiff on February 14, 2022, while she was receiving care and treatment at Mansfield Hospital." (Comp., at ¶ 4). A complete copy of her description of the John Doe Defendants appears here:

> 4. Defendants John Doe #1-10 are physicians, nurses, hospitals, corporations, health care professionals, or other entities that provided negligent medical or health care individually or through their employees and/or agents, both actual and ostensible, to Plaintiff on February 14, 2022, while she was receiving care and treatment at Mansfield Hospital.

> Specifically, these John Doe Defendants were responsible for providing reasonable care to the Plaintiff while she underwent medical care and treatment. Plaintiff has been unable to identify the names and/or identities of Defendants John Doe #1-10 despite reasonable diligence. Plaintiff reserves the right to substitute a named defendant for such John Doe(s) upon the discovery of the name and/or identity of any such individual(s) who may have provided negligent medical care.

Id.

Continuing, Plaintiff alleged that the Defendants, including the John Doe physician Defendants, "were negligent regarding her care and treatment, especially as it related to monitoring Plaintiff Christine Lewis." (Comp., at ¶ 7). The Defendants' acts of alleged negligence included "failing to properly monitor and maintain Plaintiff's safety, health, and well-being while in the Mansfield Hospital emergency department. As Plaintiff was left alone, and after being medicated, she fell out of the bed and onto the floor." *Id*. These acts of alleged negligence in the Mansfield Hospital emergency department on February 14, 2022 led Plaintiff to sustain "a fractured neck that required surgery and other care." (Comp., at ¶ 8).

Plaintiff appended to her Complaint an Affidavit of Merit signed by Terrance L. Baker, M.D., who opined that "the applicable standards of care regarding the care and treatment rendered to Christine Lewis at Mansfield Hospital's emergency department were breached and that said breaches caused Ms. Lewis' injuries." (Comp., Aff. of Merit, at ¶ 6).

In short, Plaintiff timely sued the hospital, specified the date when (and the department where) the acts of medical negligence purportedly occurred, homed in on alleged lapses of monitoring that caused a specific injury, and expressly described physicians who were involved in

that incident, whose names she did not know, as John Doe Defendants. Plaintiff also procured an affidavit of merit from a medical doctor who expressed criticism of the "care and treatment rendered" to Plaintiff on that occasion. (Comp., Aff. of Merit, at ¶ 5).

The one-year statute of limitations that applied to Plaintiff's medical claims arising from these events at the hospital on February 14, 2022 came and passed a year later, on February 14, 2023.

Throughout that time, "Plaintiff failed to issue a summons to any of the John Doe Defendants . . ." (July 21, 2023, Order on Motion to Dismiss, at 2).[2]

A couple of months after the one-year statute of limitations passed, Plaintiff filed an Amended Complaint on April 14, 2023, with the consent of the originally named hospital Defendants, who consented to an "amendment to add new parties only, i.e., no new claims against [the Defendant hospital]." (Amend. Comp., at Ex. A). Besides the original hospital Defendants, Plaintiff listed six Defendants in her Amended Complaint, including three individuals, two corporations, and a partnership. (Amend. Comp., at 1–2). Relevant to this appeal, Plaintiff sued Anand Patel, M.D. in the Amended Complaint, describing him as "a physician employed by Mid-

[2] Just like the trial court did in this case, the Court can take judicial notice of Plaintiff's failure to attempt or perfect service of a summons on Dr. Patel and Mid-Ohio. "'[M]atters of public record * * * [and] items appearing in the record of the case * * * may also be taken into account'" when a court considers a motion to dismiss. *Henkel v. Aschinger*, 2012-Ohio-423, ¶ 8 (C.P.) (quoting *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1554 (6th Cir.1997)). In addition, "a court can take judicial notice of 'appropriate matters' in determining a Civ.R. 12(B)(6) motion without converting it to a motion for summary judgment . . .. These 'appropriate matters' include prior proceedings in the immediate case . . .. Applying this rule, the trial court took judicial notice of the circumstances surrounding the service of the John Doe defendants." *Pearson v. Columbus*, 2014-Ohio-5563, ¶ 17 (10th Dist.) (quoting *State ex rel. Everhart v. McIntosh*, 2007-Ohio-4798, ¶ 10). "Therefore, we conclude that the trial court did not err in taking judicial notice of the manner of service and the documents served on the John Doe defendants." *Id.*, at ¶ 19.

Ohio Emergency Physicians, LLP doing business in Mansfield, Richland County, Ohio." (Amend. Comp., at ¶ 9).

But as to Plaintiff's allegations about the medical care she had received on February 14, 2022, nothing changed between the original and the Amended Complaints – Plaintiff again alleged that the Defendants "were negligent regarding her care and treatment, especially as it related to monitoring Plaintiff Christine Lewis . . . [including by] failing to properly monitor and maintain Plaintiff's safety, health, and well-being while in the Mansfield Hospital emergency department. As Plaintiff was left alone, and after being medicated, while in a hospital bed, she fell out of said bed and onto the floor." (Amend. Comp., at ¶ 13). Paragraphs 13 and 14 of the Amended Complaint were virtually identical to Paragraphs 7 and 8 of the original Complaint.

Plaintiff attached to her Amended Complaint a second Affidavit of Merit from Dr. Baker, the same physician expert who had executed the Affidavit of Merit attached to Plaintiff's original Complaint. Besides reciting the Defendants who Plaintiff listed in her Amended Complaint, the new Affidavit of Merit generally parroted the first one. (Compare Amended Comp., Affidavit of Dr. Baker, to Complaint, Affidavit of Dr. Baker). Plaintiff added a nursing expert's Affidavit of Merit to her Amended Complaint, but Dr. Baker remains the only physician who has signed an Affidavit of Merit in this case. His opinions purportedly supported Plaintiff's claims against both the John Doe physician Defendants in the original Complaint, and Plaintiff's identical claims against Dr. Patel in the Amended Complaint. (*See* Amended Comp., at Aff. of Dr. Baker)

Plaintiff claimed to have filed her Amended Complaint "pursuant to Ohio Rule of Civil Procedure 15(A) with the opposing party's written consent . . ." (Amend. Comp., at ¶ 2). She also claimed that she filed the Amended Complaint "pursuant to [R.C.] 2323.451(C), (D)(1) and (D)(2), as the prior Complaint was filed prior to the expiration of the one-year period of limitation

applicable to medical claims under [R.C.] 2305.113, and Plaintiff is now joining in the action additional defendants." (Amend. Comp., at ¶ 3).

The Amended Complaint focused on the same incident, the same alleged deviations from the standard of care, the same injuries, the same date, the same hospital, and the same department as the original Complaint. The same physician expert signed Affidavits of Merit in the original and Amended Complaints The original Complaint had identified physicians as John Doe Defendants, and the Amended Complaint gave a name – Dr. Anand Patel – to one of those John Doe physician Defendants.

Because Plaintiff knew of her claims about the medical care she had received in the Mansfield Hospital emergency department that day, she did not "discover" them under R.C. 2323.451(C) after she sued the hospital. Her claims against Dr. Patel and Mid-Ohio Emergency Physicians, LLP ("Mid-Ohio") therefore were not "additional." Moreover, Plaintiff did not follow Civ.R. 15(D)'s procedures, so she did not join Dr. Patel – formerly a John Doe Defendant – to the action pursuant to Civ.R. 15.

For these reasons, Dr. Patel and Mid-Ohio moved the Richland County Court of Common Pleas to dismiss Plaintiff's Amended Complaint against them. (May 22, 2023 Motion to Dismiss). Following briefing, the Court of Common Pleas granted the physician-Defendants' Motion to Dismiss in an Order dated July 21, 2023. (July 21, 2023 Order on Motion to Dismiss, at 6–7). The Common Pleas Court's sound reasoning as to why R.C. 2323.451 did not operate to extend the statute of limitations as to Plaintiff's claims against Dr. Patel can be excerpted succinctly from page six of the Order:

First, in order for this statute to apply, the Plaintiff must comply with Civ.R. 15 in amending the complaint. The Plaintiff failed to comply with Civ.R.15(D). Civil Rule 15(D) requires that a summons be issued for the John Doe Defendants and that the John Doe Defendants be personally served. The summons must describe the subject and where the subject can be located and specifically include the words "name unknown."[17] Again, the John Doe designation is not a placeholder. It is for Defendants whose identity is known, but whose name is not.[18] The Plaintiff completely failed to even request service of the original complaint on any of the John Doe Defendants.

Further, the purpose of R.C. § 2323.451(D) is to allow for the amendment of a medical complaint past the statute of limitation when new claims are **discovered** through the discovery process. It does not provide for simply substituting names for parties known but unnamed in the original complaint. Without following the procedure under Civ.R.15(D) for identifying John Doe Defendants, the Plaintiff can simply claim that any substituted John Doe is a "new defendant" and not one originally contemplated when the complaint was first filed. This is why compliance with Civ.R.15 is imperative.

(July 21, 2023 Order on Motion to Dismiss, at 6 (footnotes omitted)).

The Common Pleas Court even proposed how Plaintiff could have made service upon the John Doe emergency room physician had she wanted to, suggesting: "In this case, the summons might state 'ER doctor on duty on February 14, 2022 at 7:00 P.M. who oversaw the care of Christine Lewis, Name Unknown.'" *Id.*, at 6, n.17.

Finding that Plaintiff's claims against Dr. Patel were not "additional," and finding that Plaintiff had not complied with Civ.R. 15 because she had not made timely service of a summons on the John Doe physician Defendant, the Common Pleas Court dismissed the case as to Dr. Patel and Mid-Ohio. *Id.*

Plaintiff appealed, and the Court of Appeals for the Fifth Appellate District reversed. (Feb. 13, 2024 Fifth Dist. Op., at ¶ 18–19). The Court of Appeals found "[Dr. Patel and Mid-Ohio] are 'additional defendants' pursuant to R.C. 2323.451(D) because they were not specifically identified in the initial complaint, but were only generally **within the purview of the description of the unknown John Doe [D]efendants**. We find the trial court erred in dismissing [Dr. Patel and Mid-Ohio] from the instant case based on the expiration of the statute of limitations." *Id.*, at ¶ 18 (Emphasis added).

Even though it concluded that Dr. Patel and Mid-Ohio were "within the purview of the description of the unknown John Doe [D]efendants," the Court of Appeals simply excused the Plaintiff's failure to comply with Civ.R. 15(D). *Id.* To reach its decision, the Court of Appeals had to contravene the plain meaning of both R.C. 2323.452 and Civ.R. 15.

Unlike the Common Pleas Court, the Court of Appeals thought that requiring Plaintiff to comply with Civ.R. 15(D)'s service requirements upon the John Doe physician Defendants would have been challenging, writing: "Personal service was not attempted or perfected on the John Doe [D]efendants, and it is difficult to comprehend how personal service could be obtained based on the description of the John Doe [D]efendants." *Id.*[3] The Court of Appeals did not merely find the prospect of complying with Civ.R. 15(D) difficult, it went so far as to propose that different text in the Civil Rule would be superior, suggesting: "It seems to this Court the purpose of Civ.R. 15(D) would be better served by requiring only a copy of the amended complaint, wherein the 'John Doe[s]' have been identified, to be personally served. However, the Rule clearly states the

[3] This was a good point; Plaintiff certainly should have provided much greater specificity in her description of the John Doe physician Defendant. This should not have surprised the Court of Appeals, since the trial court specifically suggested how Plaintiff could have identified and timely served the John Doe emergency room doctor, consistent with Civ.R. 15(D). (*See* July 21, 2023 Order on Motion to Dismiss, at 6, n.17).

summons must contain the words 'name unknown,' and a copy 'thereof' must be personally served on the defendant, which appears to require personal service on an unnamed, unidentified defendant." (Feb. 13, 2024 Fifth Dist. Op., at ¶ 18, n.2).

Thus, the Court of Appeals found that Dr. Patel and Mid-Ohio had been among the "purview" of the John Doe Defendants who Plaintiff sued in her original Complaint under Civ.R. 15(D). But the Court of Appeals then proceeded to excuse Plaintiff from complying with Civ.R. 15(D)'s service requirements on John Doe Defendants. Because the Court of Appeals thought that complying with the requirements of both R.C. 2323.451 (which requires a Plaintiff to file an amended complaint pursuant to Civ.R. 15) and Civ.R. 15(D) (which requires timely service of a summons on John Doe defendants) would have been cumbersome or impracticable, the Court of Appeals excused Plaintiff from serving the John Doe physician Defendant, reversed the Common Pleas Court's decision, and ordered the case to be remanded to the trial court. *Id*. at ¶ 18–19. The Court of Appeals had to ignore the statute's plain meaning to achieve this result.

Dr. Patel and Mid-Ohio timely appealed that decision, and this Court accepted jurisdiction over the appeal. This Court cannot allow the Court of Appeals' disregard of the plain meaning of the statute to stand.

Because Plaintiff did not "discover" her claims against Dr. Patel after she filed the original Complaint, because those claims were not "additional," and because Plaintiff failed to timely serve a summons of her Complaint on the John Doe emergency room physician, R.C. 2323.451(D) did not extend the statute of limitations by an additional 180 days, and Plaintiff's Amended Complaint against Dr. Patel and Mid-Ohio was time-barred and failed as a matter of law. The Court should reverse the decision of the Court of Appeals for the Fifth Appellate District, and it should reinstate

the Richland County Court of Common Pleas' correct decision to dismiss Plaintiff's Amended Complaint as to Dr. Patel and Mid-Ohio.

LAW AND ARGUMENT

> **Amici Proposition of Law:** A plaintiff's medical claims against a physician defendant are not "additional," for the purposes of R.C. 2323.451, if the plaintiff knew of her medical claims against the physician, who she alleged provided care to her in a particular department, of a particular hospital, on a particular day, and that such care led to a particular injury, such that she was able to obtain an affidavit of merit from a physician to support her medical claims based on that care, and such that she included physicians among the category of defendants who she identified in her original complaint as John Doe Defendants under Civ.R. 15(D).
>
> **Amici Proposition of Law:** A plaintiff's medical claims against a health care professional who the Plaintiff identified as a John Doe defendant in her original complaint cannot constitute additional medical claims or additional medical defendants under R.C. 2323.451. Thus, the plaintiff cannot avail herself of R.C. 2323.451(D)(1)'s 180-day extension of the statute of limitations against that John Doe physician defendant, unless she had timely served that defendant as Civ.R. 15(D) requires.

This case turns on two points:

(1) Whether Plaintiff only discovered her claims against Dr. Patel after she filed her original Complaint and, relatedly, whether Dr. Patel counts as an "additional medical . . . defendant" under R.C. 2323.451(D)(1), such that Plaintiff could avail herself of the 180 days of extra time to sue him under that statute; and

(2) Whether, even if Dr. Patel was an "additional" defendant under the statute, Plaintiff properly joined him in the action under Civ.R. 15, since the Plaintiff had previously designated him as a John Doe physician Defendant under Civ.R. 15(D), but had not served a summons on him before the one-year statute of limitations passed.

Plaintiff already knew of her claims against the emergency department doctor at Mansfield Hospital to an extent that she was able to name him as a John Doe Defendant under Civ.R. 15(D). The Court of Appeals itself acknowledged that Dr. Patel fell within the "purview" of the Plaintiff's description of the John Doe Defendants. (Feb. 13, 2024 Fifth Dist. Op., at ¶ 18). Plaintiff did not

"discover" her claims against Dr. Patel after she filed her original Complaint – she already knew the date, time, and location of her claim, and she knew she needed a medical expert to sign an affidavit of merit to support her claims against the physician Defendants. While she claimed she did not know Dr. Patel's name, she knew more than enough to have identified and served him as required by Civ.R. 15(D). But she didn't.

Because Plaintiff neglected to comply with Civ.R. 15(D) by failing to serve the John Doe physician Defendant under Civ.R. 15(D) before the statute of limitations ran, she also failed to comply with R.C. 2323.451(D)'s requirement that she join the additional medical claim or Defendant "pursuant to rule 15 of the Rules of Civil Procedure." R.C. 2323.451(D)(1).

Most importantly, Plaintiff's claims against Dr. Patel are not "additional." She did not "discover" them during the 180-day discovery period that R.C. 2323.451(C) allows, she did not timely serve the summons as Civ.R. 15(D) required, and her claims against Dr. Patel and Mid-Ohio are therefore time-barred and fail as a matter of law.

A. The statute of limitations for medical claims is one year.

With limited exceptions that do not apply here, "an action upon a medical . . . claim shall be commenced within one year after the cause of action accrued." R.C. 2305.113(A). A plaintiff's medical claim accrues, and the one-year statute of limitations begins to run, when the patient discovers the injury, or when the physician-patient relationship ends, whichever occurs later. *Wilson v. Durrani*, 2020-Ohio-6827, ¶ 14 (citing *Frysinger v. Leech*, 32 Ohio St.3d 38 (1989), paragraph one of the syllabus)).

"In a medical malpractice case, the statute of limitations starts to run upon the occurrence of a 'cognizable event.' The occurrence of a 'cognizable event' imposes upon the plaintiff the duty to (1) determine whether the injury suffered is the proximate result of malpractice and (2) ascertain the identity of the tortfeasor or tortfeasors." *Flowers v. Walker*, 63 Ohio St.3d 546 (1992), syllabus

(statute of limitations started to run when patient learned she had cancer, rather than the later date when she discovered the identity of the radiologist who had performed her mammogram).

"A 'cognizable event' is the occurrence of facts and circumstances which lead, or should lead, the patient to believe that the physical condition of injury of which she complains is related to a medical diagnosis, treatment, or procedure that the patient previously received." *Id*. at 549 (citing *Allenius v. Thomas*, 42 Ohio St.3d 131 (1989), syllabus). Thus, "a plaintiff who believes she is a victim of malpractice has a duty to investigate and discover the identity of the practitioner who committed the alleged malpractice." *Harris v. Firelands Regional Medical Center*, 2018-Ohio-3085, ¶ 20 (6th Dist.) (citing *Flowers*, 63 Ohio St.3d at 550).

A variety of public policy concerns converged to yield the one-year statute of limitations that applies to medical claims in Ohio. "Statutes of limitations 'represent a public policy about the privilege to litigate'" and help to promote judicial efficiency and fairness by ensuring cases are resolved within a reasonable time frame. *Vaccariello v. Smith & Nephew Richards, Inc*., 94 Ohio St.3d 380, 389 (2002) (Cook, J., concurring in judgment only) (quoting *Howard v. Allen*, 30 Ohio St.2d 130, 137, (1972)). In essence, these statutes "serve a gatekeeping function for courts by (1) ensuring fairness to the defendant, (2) encouraging prompt prosecution of causes of action, (3) suppressing stale and fraudulent claims, and (4) avoiding the inconveniences engendered by delay – specifically, the difficulties of proof present in older cases." *Doe v. Archdiocese of Cincinnati*, 2006-Ohio-2625, ¶ 10 (citing *Vaccariello*, 94 Ohio St.3d at 392). Statutes of limitations encourage plaintiffs to pursue their claims diligently and are designed to prevent the indefinite threat of litigation. *Id*. By setting these time boundaries, the General Assembly aims to balance the interests of both plaintiffs and defendants, upholding justice and the integrity of the judicial process. *See Vaccariello*, 94 Ohio St.3d at 392.

The General Assembly established Ohio's one-year statute of limitations for medical claims to provide certainty to medical providers regarding the timeframe within which a claim can be brought against them and "emphasize[d] plaintiffs' duty to diligently prosecute **known** claims." *See Durrani*, 2020-Ohio-6827 at ¶¶ 8, 10 (quoting *Black's Law Dictionary* 1546 (9th Ed.2009)) (Emphasis added). The one-year statute of limitations reflects a legislative decision to balance the need for prompt legal action with the potential complexities involved in medical litigation, such as issues of causation and the gathering of expert testimony. *See Ruther v. Kaiser*, 2012-Ohio-5686, ¶ 19-21; *see also Smith v. Wyandot Mem. Hosp.*, 2018-Ohio-2441, ¶ 21 (3rd Dist.). This shorter limitations period compared to other civil causes of action is justified by the specific challenges and the needs associated with medical claims and reflects a legislative choice to prioritize reducing the potential for protracted uncertainty for healthcare providers over the possibility that claims might be brought later as a result of delayed discovery of harm. *See id.*

Thus, medical claims in Ohio accrue upon the occurrence of a cognizable event (here, that happened when Plaintiff fell out of bed and broker her neck). Plaintiffs are subject to a duty to promptly investigate and discover their claims. And, absent circumstances that do not apply here, they must file or lose their medical claims within a year after they accrue.

In the present case, Plaintiff's medical claims accrued after the Defendants allegedly failed to monitor her and maintain her safety when she was in the Mansfield Hospital emergency department on February 14, 2022, when she claims that she was left alone after having been medicated, after which she fell from the bed to the floor and fractured her neck. (Comp., at ¶ 7–8; Amend. Comp., at ¶ 13–14).

The question is whether – even though Plaintiff perfectly well knew the date, time, location, and purported cause of her injury, and even though she knew enough to identify John Doe

physician Defendants and to secure an affidavit of merit from a physician – Dr. Patel nevertheless constituted an "additional" defendant who R.C. 2323.451 permitted her to "discover" and "join in the action" during the 180-day period that that statute contains.

Because Plaintiff already contemplated suing her emergency room physician based on her emergency room encounter, because she already named a John Doe physician Defendant in her original Complaint, and because even the Court of Appeals concedes that Dr. Patel fell within the "purview" of the John Doe Defendants, Plaintiff's claims against Dr. Patel were not "additional," and she could not use R.C. 2323.451's limited extension of the ordinary statutory limitations period that R.C. 2305.113(A) provides. (*See* Feb. 13, 2024 Fifth Dist. Op., at ¶ 18).

B. The plain meaning of R.C. 2323.451 only operates to extend the statute of limitations for medical claims if the Plaintiff "discover[s]" the to-be-added medical claim or defendant during Division (C)'s discovery period, and only if the to-be-added medical claim or defendant is truly "additional."

The relevant divisions of R.C. 2323.451 became effective relatively recently, in March 2019. The middle clause of the statute's title is germane and telling: "**discovery** of any **other potential medical claims or defendants** that are not included or named in complaint; **joinder of additional medical claim or defendant; period of time for discovery** . . ." R.C. 2323.451 (Emphasis added).

Division (C) of the statute provides the mechanism for a plaintiff asserting a medical claim to use the statute's 180-discovery period to "discover" other medical claims and defendants that she had not included in her original complaint:

> The parties may **conduct discovery** . . .. Additionally, for the period of time specified in division (D)(2) of this section [that is, for 180 days], the parties **may seek to discover** the existence or identify of any **other potential medical claims or defendants** that are not included or named in the complaint. All parties shall **provide the discovery** under this division in accordance with the Rules of Civil Procedure.

R.C. 2323.451(C) (Emphasis added).

Division (D)(1) specifies how a plaintiff may join "additional" medical claims or defendants in the action by following Civ.R. 15:

> Within the [180-day] period specified in division (D)(2) of this section, the plaintiff, in an amendment to the complaint **pursuant to rule 15 of the Rules of Civil Procedure**, may join in the action any **additional medical claim or defendant** if the original one-year period of limitation applicable to that **additional** medical claim or defendant had not expired prior to the date the original complaint was filed. The plaintiff shall file an affidavit of merit supporting the joinder of the **additional medical claim or defendant** or a motion to extend the period of time to file an affidavit of merit pursuant to [Civ.R. 10(D)] with the amendment of the complaint.

R.C. 2323.451(D)(1) (Emphasis added).

Division (D)(2) specifies not only the mechanics of calculating the 180-day period, but it also reinforces that the joinder of additional medical claims and defendants under the statute should proceed from the discovery process that Division (C) articulates. Division (D)(2) also emphasizes that the plaintiff may only join "additional" medical claims or defendants:

> If a complaint is filed under this section prior to the expiration of [R.C. 2305.113's one-year statute of limitations], then the period of time in which the parties may conduct the **discovery under division (C) of this section** and in which the plaintiff may **join in the action any additional medical claim or defendant** under division (D)(1) of this section shall be equal to the balance of any days remaining from the filing of the complaint to the expiration of that one-year period of limitation, plus one hundred eighty days from the filing of the complaint.

R.C. 2323.451(D)(2) (Emphasis added).

When interpreting a statute, the Court first looks to the language of the statute itself, and if the language is clear and unambiguous, the Court must apply it as written. *Everhart v. Coshocton County Mem. Hosp.*, 2023-Ohio-4670, ¶ 10; *State v. Straley*, 2014-Ohio-2139, ¶ 9; *State v. Ashcraft*, 2022-Ohio-4611, ¶ 7; *Wilson v. Lawrence*, 2017-Ohio-1410, ¶ 11.

Moreover, "[s]tatutory language must be construed as a whole and given such interpretations as will give effect to every word and clause in it." *Szuch v. FirstEnergy Nuclear*

Operating Co., 2016-Ohio-620, ¶ 21 (6th Dist.). "No part of a statute should be treated as superfluous . . ." and the Court must avoid construing a statute in a way that would render any portion of the statute "meaningless or inoperative." *State v. Noling*, 2018-Ohio-795, ¶ 36, 75 (quoting *State ex rel. Myers v. Bd. of Education of Rural School Dist. of Spencer Tp. Lucas Cnty.*, 95 Ohio St. 367, 373, (1917)) (cleaned up). Moreover, the Court "assume[s] that the General Assembly does not use words or enact statutory provisions unnecessarily, and [the Court] avoid[s] construing a statute in a way that would render a portion of the statute 'meaningless or inoperative.'" *New Riegel Local Sch. Dist. Bd. of Educ. v. Buehrer Group Architecture & Eng., Inc*., 2019-Ohio-2851, ¶ 29 (quoting *State v. Moore*, 2018-Ohio-3237, ¶ 13).

Applying R.C. 2323.451's plain meaning, and giving effect to each Division of that statute, the only way R.C. 2323.451 could have permitted Plaintiff to sue Dr. Patel after the one-year statute of limitations had passed would be if she "discovered" her claims against Dr. Patel after she filed the original Complaint against the hospital, and only if those claims against Dr. Patel constituted "additional" claims under the statute. Because they were not "additional" claims, because she did not "discover" them, and because Dr. Patel was not an "additional" Defendant, R.C. 2323.451 did not extend the statute of limitations.

For the Plaintiff to prevail, and for the Court to affirm the Court of Appeals' decision, the Court would have to treat Division (C) of R.C. 2323.451 as "superfluous," rendering it "meaningless or inoperative." *Noling*, 153 Ohio St.3d 108, at ¶ 36, 75; *New Riegel*, 157 Ohio St.3d 164, at ¶ 29. That Division provides for a 180-day discovery period, during which the plaintiff may "seek to discover" the to-be-added medical claim or defendant. And that Division uses "discover" or "discovery" thrice in its three sentences; no portion of Division (C) addresses any

topic **other** than using the discovery process to identify the to-be-added "additional" medical claim or defendant that the succeeding Division contemplates.

In short, to give effect to Division (C), the to-be-added claim must be "discovered" during the post-complaint discovery period. If the plaintiff already knew enough about her medical claim to name a John Doe physician defendant, it would be impossible for her to have "discovered" her claims against that physician after she filed her original complaint. A contrary result would write Division (C) out of the statute.

Ruling otherwise would permit R.C. 2323.451's limited exception to swallow R.C. 2305.113(A)'s standard one-year statute of limitations for medical claims. Permitting the Court of Appeals' decision to stand would not mitigate "shot-gunning" – the practice plaintiffs historically adopted of naming numerous tangentially related defendants and later dropping them from the suit. Consider – in this case, the Plaintiff attempted to add **six** Defendants to the case during R.C. 2323.451's discovery period (even though Plaintiff was manifestly aware of her claims against Dr. Patel, but never timely asserted them). Plainly, the Court of Appeals' reading of this statute did not minimize the number of people who Plaintiff sued– at most, it delayed the shot-gunning, which was not only contrary to the statutory text, but also contrary to the intent of the statute, as further discussed below.

If the Plaintiff prevails and the Court of Appeals' decision stands, it would read R.C. 2323.451(C)'s "discovery" language out of the statute, and would render the limiting language of "additional" meaningless.

Turning to Division (D) of the statute, "[a]dditional" means "more than is usual or expected: added."[4] The first usage example that Merriam-Webster provides online is: "Larger windows will require ***additional*** work, but the ***additional*** light they will provide may be worth the extra trouble."[5] Merriam-Webster's first illustration of "Recent Examples from the Web" of the word "additional" was: "Thousands of ***additional*** cops in Milwaukee for RNC [p]rior to the convention . . ."[6] Webster's New World College Dictionary says "additional" means "added; more; extra."[7]

Ohio courts often treat "additional" as a synonym for "new" in a variety of legal contexts:

- Retroactivity Analysis: "'A statute is 'substantive' if it impairs or takes away vested rights . . . imposes **new or additional burdens**, duties, obligations, or liabilities . . ."[8]
- Real Estate: "In a lease of real property for a definite length of time with an option of 'renewal' by the lessee for a further term on the same basis . . . such word is generally to be treated as the equivalent of 'extension' and operates, upon exercise of the option, to continue the original lease for the further period provided therein, so that a **new lease** for **the additional term** is not necessary."[9]

[4] *Merriam-Webster Online*, "additional," www.merriam-webster.com/dictionary/additional (accessed July 22, 2024) [https://perma.cc/DPM4-96L2].
[5] *Id*. (Emphasis in original).
[6] *Id*. (Emphasis in original).
[7] *Webster's New World College Dictionary* 15 (3rd Ed.1997)
[8] *Ackison v. Anchor Packing Co*., 2008-Ohio-5243, ¶ 15 (quoting *State v. Cook, 1998-Ohio-291* (superseded by statute on other grounds)) (Emphasis added).
[9] *Corvington v. Heppert*, 156 Ohio St. 411 (1952), paragraph one of the syllabus (Emphasis added).

- Civil Procedure: "An increase in the prayer and the amount claimed in an amended petition is therefore barred by the statute of limitations because it requires **new action or additional proceedings** . . ."[10]
- State Tax: "Effective on July 1, 1983, [a statute] was amended to include an **additional provision** . . . and a **new definition** . . ."[11]
- Criminal: "the **new** statutory provisions impose **additional** registration requirements. **In addition**, the **new** statutes provide for comprehensive public notification."[12]
- Workers Compensation: "the two deposition transcripts cannot meet the definition of '**new and additional** proof' . . ."[13]

Giving "additional" its customary and usual meaning, and consistent with the preceding examples of Ohio courts interpreting "additional" to overlap with "new," Judge Frye of the Franklin County Court of Common Pleas articulated a thoughtful explanation of how R.C. 2323.451's new procedures allow plaintiffs in medical malpractice cases to "discover" and join only "additional" claims or defendants to a pending medical case:

"R.C. 2323.451 established a general framework for plaintiffs to gain additional time to discover new claims or discover new defendants if an action on a medical claim had been timely commenced. The statute used the word 'discover.' Then, procedurally speaking, Division (D)(1) referenced 'amendment to the complaint pursuant to rule 15 of the Rules of Civil Procedure.' **R.C. 2323.451(C) does not contemplate adding new parties (or new claims) that were obvious**

[10] *Baramore v. Washing*, 160 N.E.2d 432, 434 (C.P.) (disapproved of in subsequent decisions not relevant here) (Emphasis added).
[11] *Progressive Software, Inc. v. Limbach*, 1991 WL 115953, *5 (5th Dist. June 10, 1991) (Emphasis added).
[12] *State v. Roberts*, 1997 WL 799461, *9 (10th Dist. Dec. 30, 1997) (Emphasis added).
[13] *Durbin v. Indust. Comm.*, 2012-Ohio-664, ¶ 36 (10th Dist.) (Emphasis added).

when the case began. They must be 'discovered' later." *Cox v. Mills*, Franklin C.P. 21-CV-000365, 2021 WL 11659227, *3–4 (Dec. 29., 2021) (Emphasis added).

When it granted the physician Defendants' Motion to Dismiss in this case, the trial court read R.C. 2323.451 in the same way that Judge Frye did in the *Cox* case, explaining:

> [T]he purpose of R.C. 2323.451(D) is to allow the amendment of a medical complaint past the statute of limitation when new claims are **discovered** through the discovery process. It does not provide for simply substituting names for parties known but unnamed in the original complaint. Without following the procedure under Civ.R. 15(D) for identifying John Doe Defendants, the Plaintiff can simply claim that any substituted John Doe is a "new defendant" and not one originally contemplated when the complaint was first filed. This is why compliance with Civ.R. 15 is imperative.

(July 21, 2023 Order on Motion to Dismiss, at 6) (Emphasis in original).[14]

This reading gives a fair, ordinary, and plain meaning to the statutory scheme that the legislature adopted in R.C. 2323.451 and it gives meaning to all sections of the statute; it gives "additional" its ordinary meaning, and it also extends the one-year statute of limitations for medical claims only in certain cases, not across-the-board.

Thus, R.C. 2323.451's new exception to the statute of limitations is much narrower than Plaintiff contends. The statute provides a 180-day discovery period following the commencement of the original medical claim, and the plaintiff may use that period to "discover" additional claims and defendants. Then, in compliance with the procedural requirements that Civ.R. 15 specifies, the Plaintiff may amend her complaint to join only those medical claims or defendants that are "additional." This law does **not** permit a plaintiff to bring only one of the medical claims of which

[14] The Court of Appeals' finding that Dr. Patel fell within the "purview" of the John Doe Defendants only underscores this point – if the Plaintiff's claims against Dr. Patel were within the purview of the original Complaint, then it would have been impossible for her later to have "discovered" Dr. Patel during the statute's discovery period, and the claims against Dr. Patel could not constitute "additional" claims under R.C. 2323.451. (*See* Feb. 13, 2024 Fifth Dist. Op., at ¶ 18).

she is aware, wait 180 days after the statute of limitations runs, and then amend her complaint to join a raft of claims or defendants that she had known about all along. The Court of Appeals' decision would invite such rampant gamesmanship and eviscerate the statute of limitations for medical claims.

Dr. Patel and Mid-Ohio rightly warned of the wide-ranging implications of the Court of Appeals' decision in this case, cautioning: "As perhaps an unintended consequence of the Fifth District's Opinion, it will be sufficient in future cases involving a medical claim to timely file a lawsuit against one defendant, such as a hospital, and then amend the complaint to add other defendants up to six months after the statute of limitations expires even though the names of the 'new' defendants were known." (Appellants' Memo. in Support of Jur., 2).

But that's exactly what Plaintiff contends she, and future medical-claim plaintiffs throughout the state, are now allowed to do. Plaintiff's response to Dr. Patel's (and the amici's) concern is essentially: "So what?" In her jurisdictional memorandum, Plaintiff responded to Dr. Patel's concern in this regard by saying that Dr. Patel's formulation of the issue "is an apt description of the effect of the 2018 amendment to R.C. 2323.451 and plaintiffs across Ohio are already using the law this way, it was the General Assembly that made the change, not the court of appeals. And that change was undeniably the prerogative of the legislature." (Plaintiff-Appellee's Memo. in Response to Jurisdiction, at 13).

Plaintiff's argument here gets well ahead of its skis – the legislature's changes to R.C. 2323.451 do not cast aside the default one-year medical-claim statute of limitations; instead, R.C. 2323.451 provides a narrow exception, which requires a timely initial filing, then a process of discovery, and then–only if the to-be-joined claim or defendant was both "discovered" and

"additional," may the plaintiff amend her complaint to join the additional medical claim or defendant. Even then, she must still adhere to the procedural strictures that Civ.R. 15 contains.

The Court of Appeals in this case reached the result that Plaintiff urges this Court to affirm by claiming uncertainty as to the statute's plain meaning, but then discovering clarity in H.B. 7's legislative history. (Feb. 13, 2024 Fifth Dist. Op., at ¶ 18–19). In particular, the Court of Appeals found that R.C. 2323.451 "is ambiguous on its face as to whether it applies solely to newly discovered claims or defendants, or also to newly identified but originally contemplated claims and defendants." *Id*., at ¶ 11. Even if the Court finds the statute is ambiguous, reviewing the law's legislative history yields the unavoidable conclusion that "additional" does not mean "originally contemplated." One way to know that's true is that the statute uses the words "additional," but never "originally contemplated." The statute means what it says.

The amici now turn to R.C. 2323.451's legislative history to demonstrate that the law means what it says – additional medical claims and defendants may only be added after the statute of limitations has run if the plaintiff "discover[ed]" the additional claim during the 180-day discovery period that division (C) provides, only if that claim is truly additional and not previously existing, and, finally, only if the plaintiff joins the additional claim or defendant in the manner that the pertinent division of Civ.R. 15 specifies.

C. R.C. 2323.451's legislative history only bolsters the conclusion that, to gain R.C. 2323.451(D)'s 180-day extension to sue, the to-be-added medical claim or defendant must be "additional."

The legislative history of the 132nd General Assembly's Am. Sub. H.B. 7, which adopted divisions (C) and (D) of R.C. 2323.451, specifically supports the trial court's correct decision to dismiss Dr. Patel and Mid-Ohio; in fact, the trial court quoted extensively from the Ohio Legislative Service Commission's Final Analysis of the bill. (*See* July 21, 2023 Order on Motion

to Dismiss, at 6 (quoting Ohio L.S.C. Final Analysis, Am. Sub. H.B. 7, Aida S. Montaro, Effective Date: May 20, 2019[15]).

Quoting from Judge Frye's analysis of the statute's legislative history in the *Cox* case, along with the LSC's analysis of the bill, the trial court below reasoned:

> R.C. 2323.451(C) does not contemplate adding new parties (or new claims) that were obvious when the case began. They must be 'discovered' later' . . .. This is clear in the legislative history of this particular section which is headed 'Discovery and joinder of additional medical claims or defendants' and states: 'The act provides that the parties may conduct discovery as permitted by the Rules of Civil Procedure. Additionally, for the period described in the following paragraph, the parties may seek to discover the existence or identify of other potential medical claims or defendants <u>that are not included in the complaint</u>.

(July 21, 2023 Order on Motion to Dismiss, at 5–6 (quoting *Cox*, 2021 WL 11659227, at *4 (Dec. 29., 2021) (quoting Ohio L.S.C. Final Analysis, Am. Sub. H.B. 7 (Emphasis in trial court Order)).

The *Cox* decision, to which the trial court in the present case cited at length, extensively discussed Rep. Robert Cupp's sponsor testimony but still concluded that R.C. 2323.451 only applies to claims the plaintiff "discover[s]" during the 180-day discovery period, not claims and parties "that were obvious when the case began." *Cox*, 2021 WL 11659227, at *3–4.

In *Cox*, the court reviewed Rep. Cupp's sponsor testimony and observed that:

> [t]he background of H.B. 7 which adopted R.C. 2323.451 is important. This new law was a response to practical concerns about how the statute of limitations operated in medical claim cases. Motivated by the very short one-year statute of limitation for malpractice cases, plaintiffs frequently filed broad, so-called 'shotgun' complaints to avoid 'blowing the statute.' The goal of plaintiff's lawyers, attorneys for doctors, and liability insurers was to discourage such 'shotgun' suits against medical providers filed merely to protect against that short statute, when commonly after investigation many people mentioned in a particular medical chart were being dropped. As a result, **<u>R.C. 2323.451 established a general framework for plaintiffs to gain additional time to discover new claims or discover new</u>**

[15] Ohio L.S.C. Final Analysis, Am. Sub. H.B. 7, Aida S. Montaro, Effective Date: May 20, 2019, at 9, available at: https://www.legislature.ohio.gov/download?key=13125&format=pdf (accessed July 23, 2024).

> **defendants if an action on a medical claim had been timely commenced. The statute used the word 'discover**.'

Cox, 2021 WL 11659227, at *3–4 (Emphasis added). In other words, even after reviewing the sponsor testimony, it was clear – to at least two different common pleas court judges – that the General Assembly intended for R.C 2323.451 to permit the post-statute-of-limitations joinder only of "additional" medical claims and defendants that the plaintiff "discovered" during the 180-day discovery period that the General Assembly specifically adopted in division (C) of the new statute.

Rep. Cupp's sponsor testimony from November 13, 2018 confirms that the trial court in this case followed not just the statute's plain meaning, but the legislature's intent. Rep. Cupp explained the statutory changes that are relevant to this appeal: "[T]he bill [a]llows suit to be filed with minimum number of defendants, permits **formal discovery** to determine **other** potentially liable parties, and allows them to be joined within the same time frame as the 180 day notice [letter statute] permits. Enables more precise determination who should and should not be included in a medical claim lawsuit."[16] (Emphasis added).

Early in the General Assembly's consideration of H.B. 7, amici OSMA and OHA submitted testimony in support of the Bill. (*See* Feb. 22, 2017 Statement of the Ohio State Medical Association and the Ohio Hospital Association to the House Judiciary Committee).[17] That proponent testimony repeatedly emphasized that the statutory changes to R.C. 2323.451 would only extend the statute of limitations for "additional defendants." *Id.* OSMA and OHA also underscored the importance of the 180-day discovery period that Division (C) of the statute contains: "The modifications would impose upon Plaintiffs the obligation to exercise due diligence **to discover** the basis for asserting claims against any such **additional** defendants **within that**

[16] https://www.legislature.ohio.gov/legislation/132/hb7/committee (accessed July 23, 2024).
[17] *Id.*

period." *Id*. (Emphasis added). Continuing, OSMA's and OHA's testimony reiterated that the 180-day discovery period tolled the statute of limitations only "as to **other potential defendants**." *Id*. (Emphasis added).

OSMA and OHA never would have supported the legislation if they had known that the courts would read "discover" and "additional" right out of the statute. OSMA and OHA supported the legislation with a goal of mitigating shot-gunning; but the Court of Appeals' decision turns that policy consideration on its head.

Here, the Plaintiff knew of her medical claims against her emergency room doctor at the same time when she knew of her claims against the hospital. She did not "discover" her claims against Dr. Patel after she sued the hospital; indeed, her claims against Dr. Patel fell within the purview of the originally asserted claims. Plaintiff's claims against Dr. Patel were subsumed within the rest of the claims that she asserted in her original Complaint, particularly as to the claims against the John Doe Defendants that she specifically described. Her claims against Dr. Patel were so bound up with her original Complaint that the Court of Appeals concluded that they fell within the "purview" of her claims against the John Doe Defendants. When Plaintiff neglected to timely serve Dr. Patel as a John Doe defendant, those claims became time-barred under the normal operation of the statute of limitations that applies to medical claims. The limited exceptions that the legislature and the amici contemplated when the bill was under consideration, which now appear at R.C. 2323.451, do not apply to Plaintiff's time-barred claims against Dr. Patel.

The amici encourage the Court to conclude that medical claims that a plaintiff does not "discover" after the filing of an original lawsuit cannot constitute "additional" medical claims or defendants to which R.C. 2323.451's 180-day period would apply. In other words, when a Plaintiff is so well-aware of her claims against a particular doctor arising at a particular location, at a

particular time, and in association with a particular injury, those claims, and that doctor, cannot be "additional" under R.C. 2323.451. Naturally, OSMA and OHA would have opposed, not supported, legislation that would throw the baby (that is, the one-year standard statute of limitations for medical claims) out with the bathwater of perceived concerns with shot-gunning. The amici respectfully suggest that the trial court's application of the words "discover" and "additional" means that the statute of limitations was not extended as to Dr. Patel, since the Plaintiff's claims against him were within the purview of the claims she first filed.

Notably, if the goal of R.C. 2323.451 was to minimize the number of defendants who get pulled into malpractice cases, the Court of Appeals' decision hardly appears to have achieved that goal. While Plaintiff sued only the hospital and its corporate parent at the outset, Plaintiff also named 10 John Doe Defendants (serving precisely none of them), and then tried to sue six more Defendants in her Amended Complaint. If this wasn't a shotgun, it might as well have been a blunderbuss.

In any case, Plaintiff didn't need to use this statute at all – she knew she had a viable claim against her emergency room physician from the moment she fell and broke her neck. She knew when it happened, she knew where it happened, she knew enough to sue a John Doe physician, and she knew enough to obtain and append a physician's affidavit of merit to her original Complaint.

Plaintiff's claims against Dr. Patel were not "additional," and she did not "discover" them under R.C. 2323.451(C). Plaintiff therefore failed to invoke R.C. 2323.451's exception to the normal one-year statute of limitations, and her Amended Complaint's claims against Dr. Patel and Mid-Ohio were time-barred.

D. If a plaintiff in a medical claim already brought the medical claim under Civ.R. 15(D), that medical claim is not "additional" under R.C. 2323.451, and she must still timely serve the summons on the "John Doe" Defendant under Civ.R. 15(D) and this Court's decision in the *Erwin v. Bryan* case.

Civ.R. 15(D) is titled "Amendments Where Name of Party Unknown." The Rule provides:

> When the plaintiff does not know the name of a defendant, that defendant may be designated in a pleading or proceeding by any name and description. **When the name is discovered, the pleading or proceeding must be amended accordingly**. The plaintiff, in such a case, must aver in the complaint the fact that he could not discover the name. The summons must contain the words "name unknown," and a copy thereof must be served personally upon the defendant.

Civ.R. 15(D) (Emphasis added).

"Civ.R. 15(D) is clear; the complaint must sufficiently identify the unknown defendant so that personal service can be obtained upon filing the lawsuit." *Varno v. Bally Mfg. Co*., 19 Ohio St.3d 21, 24 (1985) (superseded on other grounds).

To successfully amend a complaint to add a John Doe defendant's name, the plaintiff still needs to have timely served a copy of the summons on the John Doe defendant before the original statute of limitation runs. *LaNeve v. Atlas Recycling, Inc*., 2008-Ohio-3921, ¶ 15 (holding that an amended complaint substituting the real name for a factiously named defendant does not relate back to the filing of the original complaint if the summons does not contain the words 'name unknown" and is not personally served).

"[A] plaintiff may use Civ.R. 15(D) to file a complaint designating a defendant by any name and designation when the plaintiff does not know the name of that defendant, provided that the plaintiff avers in the complaint that the name could not be discovered, the summons contains the words "name unknown," and that summons is personally served on the defendant. Although the plaintiff may designate a defendant whose name is unknown by 'any name and description,' the complaint must nevertheless sufficiently identify the party to facilitate obtaining personal service on that defendant upon the filing of the complaint." *Erwin v. Bryan*, 2010-Ohio-2202, ¶ 31.

"In other words, a plaintiff cannot merely add a generic "John Doe" defendant to the complaint and expect to use Civ.R. 15(D) to later amend to include the actual defendant. In addition to designating "John Doe" as a defendant, the plaintiff must provide enough information about "John Doe" to enable personal service." *Pearson*, 26 N.E.2d 842, at ¶ 13. "Thus, a plaintiff cannot name a placeholder in a timely filed complaint and expect to rely on Civ.R. 15(D) to amend the complaint after the statute of limitations has run. Civ.R. 15(D) does not provide a means for a plaintiff to pursue an action against a defendant who the plaintiff fails to identify prior to the lapse of the statute of limitations." *Id.* at ¶ 25.

Because Plaintiff already knew about her claim against Dr. Patel when she filed her original Complaint, that claim as not "additional" under the plain meaning of the statute. But even if Plaintiff's claims against Dr. Patel and his group were additional, Plaintiff still had to comply with Civ.R. 15 to amend her complaint successfully – in particular, because she had identified her medical care provider as a John Doe Defendant in the original Complaint under Civ.R. 15(D), and because her claims against Dr. Patel fell within the "purview" of her John Doe claims, she needed to follow that division's requirements before she could successfully join Dr. Patel to the case. (*See* Feb. 13, 2024 Fifth Dist. Op., at ¶ 18). But she failed to timely comply with that division of Civ.R. 15's requirements. She therefore failed to join Dr. Patel to the lawsuit "in an amendment to the complaint pursuant to rule 15 of the Rules of Civil Procedure . . ." R.C. 2323.451(D)(1).

By neglecting even to request service of a summons on the John Doe physician Defendant, much less actually accomplishing the timely service that Civ.R. 15(D) required, Plaintiff failed to join Dr. Patel to the lawsuit pursuant to Civ.R. 15(D), and Plaintiff's claims against Dr. Patel and Mid-Ohio remained time-barred, even if they had been "additional," which they were not.

Plaintiff glibly suggests in her responsive jurisdictional memorandum that R.C. 2323.451 abrogated Civ.R. 15(D)'s service requirements on John Doe defendants; she posits that "John Doe service was irrelevant below." (Plaintiff-Appellee's Memo. in Response to Jurisdiction, at 11). She further speculates that, since Robert Cupp had been an Associate Justice of this Court back when it issued the *Erwin* decision, by sponsoring H.B. 7 he somehow intended to roll back decades of Supreme Court precedent surrounding the proper method for serving lawsuits on John Doe Defendants. This argument does not hold up.

Plaintiff sued her emergency room physician in her original Complaint, though she designated him as a John Doe. But she failed to provide much specificity in her description of him, and she did not attempt or succeed in serving a summons on him. That neglect violated Civ.R. 15(D), and because she had not timely accomplished service as that division of the Civil Rule requires, she could not gain succor from the general amendment provisions that Civ.R. 15(A) contains – she was trying to amend her complaint to name the John Doe physician, and Division (D), not (A), of that Civ.R. 15 was the mechanism to have done so. Because Plaintiff did not accomplish service on the John Doe physician, her later amendment that named Dr. Patel and Mid-Ohio was untimely, and she did not join Dr. Patel to the lawsuit in time.

Because Dr. Patel was not an "additional" Defendant, because Plaintiff did not "discover" her claims against him by engaging in the discovery that R.C. 2323.451(C) contemplates, and because she did not comply with Civ.R. 15(D) to timely join this John Doe physician Defendant to the case, Plaintiff could not invoke R.C. 2323.451's 180-day extension of the statute of limitations, and her claims against Dr. Patel and Mid-Ohio were time-barred.

CONCLUSION

The Court should reverse the decision of the Court of Appeals, and it should reinstate the

trial court's correct decision to grant Dr. Patel's and Mid-Ohio's Motion to Dismiss – R.C. 2323.451 did not extend the statute of limitations as to these Defendants because Plaintiffs' claims against them were not additional, and because Plaintiff did not timely and correctly join Dr. Patel to the lawsuit as a John Doe Defendant during the one-year statute of limitations that applies to medical claims.

Respectfully submitted,

/s/ Jonathan T. Brollier

Jonathan T. Brollier (0081172)
(COUNSEL OF RECORD)
Maurice Wells (0096804)
Wan Q. Zhang (0102306)
EPSTEIN BECKER & GREEN, P.C.
250 West Street, Suite 300
Columbus, Ohio 43215
T: 614.872.2500
E: JBrollier@ebglaw.com
MWells@ebglaw.com
WZhang@ebglaw.com
Counsel for Amici Curiae American Medical Association, Ohio State Medical Association, Ohio Osteopathic Association, and Ohio Hospital Association

Sean McGlone (0075698)
OHIO HOSPITAL ASSOCIATION
65 E. State Street, Suite 500
Columbus, Ohio 43215
T: (614) 221-7614
E: sean.mcglone@ohiohospitals.org
Counsel for Amicus Curiae Ohio Hospital Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 6, 2024, a copy of the foregoing was filed electronically with the Clerk of the Supreme Court of Ohio, and that a copy of the foregoing was served upon the following by email:

Danny M. Newman, Jr.
THE DONAHEY LAW FIRM, LLC
580 S. High Street, Suite #200
Columbus, Ohio 43215
T: (614) 224-8166
E: danny@donaheylaw.com

Louis E. Grube
Paul Flowers
Kendra Davitt
FLOWERS & GRUBE
Terminal Tower, 40th Floor
50 Public Square
Cleveland, Ohio 44113
T (216) 344-9393
E: leg@pwfco.com
pwf@pwfco.com
knd@pwfco.com
Counsel for Appellee

Kenneth R. Beddow
BONEZZI SWITZER POLITO & PERRY CO., L.P.A.
24 West Third Street, Suite 204
Mansfield, Ohio 44902
T: (419) 522-6242
E: kbeddow@bspplaw.com
Counsel for Defendant MedCentral Health System dba OhioHealth Mansfield Hospital

Bradley L. Snyder
ROETZEL & ANDRESS, LPA
41 South High Street
Huntington Center, 21st Floor
Columbus, Ohio 43215
T: (614) 463-9770
E: bsnyder@ralaw.com
Counsel for Defendants TotalMed and Jacqueline Schmitz, R.N.

Mary McWilliams Dengler
DICKIE, MCCAMEY & CHILCOTE, P.C.
10 West Broad Street, Suite 1950
Columbus, Ohio 43215
T: (614) 258-5717
E: mdengler@dmclaw.com
Counsel for Defendants Pluto HealthCare Staffing, LLC and Lauren Clapsaddle, R.N

Kevin M. Norchi
Steven J. Forbes
FREEMAN, MATHIS & GARY, LLP
3201 Enterprise Parkway, Suite 190
Cleveland, Ohio 44122
T: (216) 514-9500
E: kevin.norchi@fmglaw.com
steve.forbes@fmglaw.com
Counsel for Appellants Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP

/s/ Jonathan T. Brollier
Jonathan T. Brollier (0081172)