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IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR IRON COUNTY, STATE OF UTAH

DAVID HINSON

Plaintiff,

vs.

DARRELL L. WILSON, M.D., JARED C.
COX, D.O., KIMBERLY D. HAYCOCK,
P.A., IHC HEALTH SERVICES, INC., IHC
HEALTH SERVICES, INC. dba VALLEY
VIEW MEDICAL CENTER, IHC HEALTH
SERVICES, INC. dba CEDAR CITY
HOSPITAL, JEFFERY L. BLEAZARD,
M.D., and DOE INDIVIDUALS 1 through
10, and ROE ENTITIES 1 through 10,
inclusive

Defendants.

**ANSWER
TO AMENDED COMPLAINT
BY
IHC HEALTH SERVICES, INC.,
IHC HEALTH SERVICES, INC. dba
VALLEY VIEW MEDICAL CENTER,
IHC HEALTH SERVICES, INC. dba
CEDAR CITY HOSPITAL**

Case No. 170500085
Judge Keith C. Barnes

COME NOW the defendants, IHC Health Services, Inc., IHC Health Services, Inc. dba Valley View Medical Center, IHC Health Services, Inc. dba Cedar City Hospital, (hereinafter “defendants” or “these defendants”) and answer plaintiff’s Amended Complaint as follows:

FIRST DEFENSE

Plaintiff fails to state a claim or cause of action upon which relief can be granted.

SECOND DEFENSE

1. Defendants are without sufficient information to admit or deny the allegations in paragraph 1 of plaintiff’s Amended Complaint, and therefore deny the same.

2. Defendants admit paragraphs 2, 3 and 4 of plaintiff’s Amended Complaint.

3. In response to paragraph 5 of plaintiff’s Amended Complaint, defendants admit that IHC Health Services, Inc. is a Utah nonprofit corporation with one of its principal places of business located in Salt Lake County, State of Utah, and that it acts through agents, servants, and employees, but otherwise deny the allegations contained in paragraph 5 of plaintiff’s Amended Complaint.

4. In response to paragraph 6 of plaintiff’s Amended Complaint, defendants admit that defendant, IHC Health Services, Inc. dba Valley View Medical Center, is a Utah nonprofit corporation with a principal place of business in Iron County, State of Utah, but otherwise deny the allegations contained in paragraph 6 of plaintiff’s Amended Complaint.

5. In response to paragraph 7 of plaintiff’s Amended Complaint, defendants admit that defendant, IHC Health Services, Inc. dba Cedar City Hospital, is a Utah nonprofit

corporation with a principal place of business in Iron County, State of Utah, but otherwise deny the allegations contained in paragraph 7 of plaintiff's Amended Complaint.

6. Defendants admit paragraph 8 of plaintiff's Amended Complaint.

7. Defendants are without sufficient information to admit or deny the allegations in paragraph 9 of plaintiff's Amended Complaint, and therefore deny the same.

8. Defendants admit duplicate paragraphs 5, 6 and 7 of plaintiff's Amended Complaint listed under the Jurisdiction and Venue heading.

9. Defendants admit plaintiff alleges tier 3 damages, but otherwise deny duplicate paragraph 8 of plaintiff's Amended Complaint.

10. In response to duplicate paragraph 9 and paragraphs 10, 11, 12, 13 and 14 of plaintiff's Amended Complaint, these defendants admit the allegations contained therein insofar as they are consistent with the medical records which speak for themselves, but otherwise deny the allegations contained therein.

11. Defendants are without sufficient information to admit or deny the allegations contained in paragraph 15 of plaintiff's Amended Complaint, and therefore deny the same.

12. In response to paragraph 16 of plaintiff's Amended Complaint, these defendants reallege and incorporate by reference their answers to paragraphs 1 through 15 of plaintiff's Amended Complaint set forth hereinabove as if fully set forth herein.

13. These defendants deny paragraphs 17 and 18 of plaintiff's Amended Complaint and all subparts contained therein insofar as these allegations that pertain to these defendants.

THIRD DEFENSE

Defendants deny each and every allegation contained in plaintiff's Amended Complaint not otherwise specifically admitted herein.

FOURTH DEFENSE

Actions of persons other than defendants or events or conditions combined and concurring over whom defendants had no supervision or control constitute the proximate cause or contributing cause of the alleged injuries and damages to the plaintiff, if any, to such a degree to preclude or reduce any recovery from these defendants.

FIFTH DEFENSE

Plaintiff has failed to mitigate his damages as set forth in his Amended Complaint.

SIXTH DEFENSE

Defendants specifically and affirmatively allege that all health care provided to David Hinson by defendants was within the appropriate standard of care and that there was no negligence or breach of any pertinent standard of care, or if there was a breach that it caused no damage.

SEVENTH DEFENSE

Defendants reserve the right to file a notice to apportion or allocate fault and liability and to designate other persons to be included on the special verdict whom these defendants believe are also at fault whose identity may be revealed in discovery. These defendants request that these persons' name or names also be included on the special verdict form pursuant to Utah Code

Annotated § 78B-5-817 through § 78B-5-823 once they are discovered and designated. Defendants allege that plaintiff was negligent and requests that his negligence and the alleged negligence of other defendants be compared, assessed and allocated on the special verdict.

EIGHTH DEFENSE

Plaintiff's claims are limited by the provisions contained in Utah Code Annotated § 78B-5-820.

NINTH DEFENSE

Defendants allege that any injuries or damages sustained by the plaintiff were caused by a risk which was known or should have been known, which risk was assumed or consented to.

TENTH DEFENSE

As further affirmative defenses, defendants allege that plaintiff's medical malpractice claim is governed by the conditions and limitations of the Utah Health Care Malpractice Act, § 78B-3-401 *et. seq.* Utah Code Annotated; specifically including, but not limited to Utah Code Annotated § 78B-3-404 (statute of limitations; to the extent discovery determines it has run, plaintiff's claims are barred); Utah Code Annotated § 78B-3-405 (reduction of award by amounts of collateral sources available to plaintiff); Utah Code Annotated § 78B-3-406 (written consent to operation or procedure is a defense to a claim of lack of informed consent); Utah Code Annotated § 78B-3-410 (limitation of award of non-economic damages); and Utah Code Annotated § 78B-3-414 (future damages to be paid by period payments).

ELEVENTH DEFENSE

Plaintiff's claims are subject to the provisions of Utah Code Ann. § 78B-5-824 concerning unauthorized interest. Defendants request that any and all special damages actually incurred by plaintiff, if any, and for which they are entitled to recover be limited to that amount as set forth to be calculated pursuant to Utah Code Ann. § 78B-5-824. In addition, these defendants request that such damages exclude future medical expenses, loss of future wages, and loss of future earning capacity as provided in Utah Code Ann. § 78B-5-824.

TWELFTH DEFENSE

Plaintiff's special damages, if any, are limited by the doctrine of avoidable consequences.

THIRTEENTH DEFENSE

Plaintiff's special damages claim is limited to amounts actually paid out of pocket by plaintiff not covered by insurance and/or actual amounts paid by plaintiff and/or third party payers or insurance carriers, not that which was billed by health care providers. Based on Utah Code Ann. § 78B-3-405 and principles of equity what is paid by insurers is the customary and reasonable charge and the maximum recoverable as special damages.

FOURTEENTH DEFENSE

Pursuant to Utah Code Ann. § 58-13-2.5, insofar as these defendants provided emergency care to David Hinson it may only be held liable for civil damages if fault is established by clear and convincing evidence.

FIFTEENTH DEFENSE

Plaintiff has failed to state his special damages with specificity as required by Rule 9(g) of the Utah Rules of Civil Procedure.

SIXTEENTH DEFENSE

Plaintiff's claims for statutory interest must be denied to the extent that Plaintiff's Amended Complaint asserts a right to interest as provided by Utah Code Ann. § 78B-5-824, inasmuch as said statute is unenforceable and unconstitutional in that it purports to allow interest from the date of the occurrence giving rise to the cause of action, as opposed to the date that the expense, or the indebtedness for the expense, was actually incurred. That statute violates the substantive and procedural Due Process clauses of the United States Constitution, as well as the following sections of the Constitution of Utah: Art. I §§ 7 (Due Process), 27 (Fundamental Rights), 24 (Uniform Operation of the Laws), 11 (Open Courts), and others, collectively, and/or nonparties are as alleged by and in plaintiff's Amended Complaint.

SEVENTEENTH DEFENSE

Plaintiff's claims based on agency or ostensible agency are barred by Utah Code Ann. § 78B-3-424 and Utah Code 34A-2-104.

EIGHTEENTH DEFENSE

Defendants adopt all defenses which have or will be asserted by other defendants in this action and incorporate the same by reference as if fully set forth herein as defenses to plaintiff's Amended Complaint.

RELIANCE ON PLAINTIFFS' JURY DEMAND

Defendants hereby demand a jury and rely on the jury fee paid by other parties.

WHEREFORE these defendants pray that plaintiff's Amended Complaint be dismissed that he take nothing thereby, for costs, for trial by jury, and for such other and further relief as the Court deems just in the premises.

DATED this 21st day of September, 2017.

BURBIDGE & WHITE

/s/ Larry R. White

Larry R. White

Paul D. Van Komen

Attorneys for Defendants, IHC Health Services, Inc., IHC Health Services, Inc. dba Valley View Medical Center, IHC Health Services, Inc. dba Cedar City Hospital

MAILING CERTIFICATE

I hereby certify that on the 21st day of September, 2017, I caused to be served by the method indicated below a true and correct copy of the attached and foregoing **ANSWER TO AMENDED COMPLAINT BY IHC HEALTH SERVICES, INC., IHC HEALTH SERVICES, INC. dba VALLEY VIEW MEDICAL CENTER, IHC HEALTH SERVICES, INC. dba CEDAR CITY HOSPITAL** to the following:

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA ELECTRONIC FILING
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