

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

NO.

, M.D. and , M.D. DEFENDANTS

SEPARATE ANSWER OF DEFENDANT DR.

Now comes Dr. , one of the defendants in the above matter, by and through his/her attorneys and for answer to the Complaint says as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted against this Defendant and fails to state a cause of action against this Defendant.

SECOND DEFENSE

While this Defendant is not liable to the Plaintiff for each and all of the reasons contained and set forth in this Answer, and while the Complaint does not expressly seek punitive damages, this Defendant says further that in any event punitive damages may not be sought in the instant action for the reason that this action was not commenced within the time prescribed by Section 15-1-33 and 15-1-35 of the Mississippi Code of 1972, which said statutes are statutes of limitations and a bar insofar as punitive damages are concerned.

THIRD DEFENSE

While Plaintiff may not recover punitive damages against this Defendant for each and all of the reasons contained and set forth to the extent the Complaint seeks punitive or exemplary damages, the Complaint violates the Defendant's right to substantive and procedural due process as provided in the Fifth and Fourteenth Amendments to the United States Constitution and in Section 14 of the Mississippi Constitution; (c) the scheme of punitive damages as implemented in Mississippi violates the Defendant's right to equal protection under the laws as guaranteed by the Fourteenth Amendment to the United States Constitution; and (d) to the extent the Complaint seeks punitive damages, thereby subjecting Defendant to criminal sanctions through punitive damages, the burden of proof required to impose such damages should be beyond reasonable doubt and should also be in accordance with the requirements and protections of the Fourth, Fifth, Sixth and Eighth Amendments to the United States Constitution and in accordance with the applicable sections of the Constitution of the State of Mississippi, including, but not limited to, Sections 14, 17, 26, and 28.

FOURTH DEFENSE

Without waiving the aforementioned defenses, but reaffirming and realleging the same, and specifically reserving any and all benefits and advantages which may be had to the many errors, uncertainties, imperfections and insufficiencies of the Complaint, this Defendant specifically answers the allegations of the Complaint, paragraph by paragraph, and says:

I.

With respect to the first two unnumbered grammatical paragraphs contained within Paragraph I of the Complaint, this Defendant states that he/she is without knowledge or information sufficient to form a belief as to the truth of the allegations of those paragraphs, but admits the same in order to join issue. This Defendant admits the allegations of the third unnumbered surgical procedure on the Plaintiff on .

II.

III.

This Defendant denies the allegations of Paragraph III of the Complaint, except that he/she admits that he/she administered anesthesia to Plaintiff on .

IV.

This Defendant denies the allegations of Paragraph IV of the Complaint and demands strict proof of the same.

V.

This Defendant denies the allegations of Paragraph V of the Complaint and demands strict proof of the same.

VI.

This Defendant denies the allegations of Paragraph VI of the Complaint and demands strict proof of the same. Answering further, this Defendant denies that he/she was guilty of any negligence, fault, lack of care or wrongful act whatsoever and further denies that he/she is liable unto the Plaintiff herein in any sum or amount whatsoever.

FIFTH DEFENSE

This Defendant is a graduate of a recognized school of medicine, has experience in the practice of his/her profession and is possessed of a degree of learning, skill and experience ordinarily possessed by others of his/her profession in good standing engaged in the same general line of practice of anesthesiology. Said Defendant at all times herein exercised reasonable and ordinary care and diligence in the exertion of his/her skill and application of his/her knowledge, employed customary and approved methods of treatment and exerted his/her

best judgment as to the treatment of the said Plaintiff. Said Defendant at all times herein possessed and used such reasonable diligence, skill, competence and prudence as a .

SIXTH DEFENSE

Answering still further, this Defendant states that although he/she specifically denies he/she was, or could be, guilty of any negligence or liability as alleged in the Complaint, this Defendant says there is no causal connection between the condition of said Plaintiff and the alleged negligence of this Defendant. Rather, this Defendant says that the condition of said Plaintiff was and is the sole proximate result of conditions, causes, illnesses and circumstances which were in no way caused by, or related to, any alleged act or alleged omission of this Defendant.

Having fully answered, this Defendant prays to be dismissed.

Respectfully submitted,

Attorney for

Of Counsel:

Telephone:
MSB #
Attorney for

CERTIFICATE OF SERVICE

I, _____, one of the attorneys for Defendant, _____, M.D., do hereby certify that I have this day served a true and correct copy of the above and foregoing SEPARATE ANSWER OF DR. _____, by placing said copy in the United States Mail, postage prepaid, addressed to the following counsel of record for Plaintiff:

Dated this the _____ day of _____, 20____.
