

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

MARK W. HOLMES,

Plaintiff,

Case No. 21-002798-NH
HON. DIANE M. DRUZINSKI

v.

HENGELBERTH MONTUFAR, DPM,
MKE HIRANO, DPM, RICHMOND FOOT
AND ANKLE CLINIC, PC, MCLAREN MACOMB,
MCLAREN HEALTH CARE CORPORATION and
MCLAREN HEALTH GROUP, Jointly and Severally,

Defendants.

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**DEFENDANTS MCLAREN MACOMB, MCLAREN HEALTH CARE
CORPORATION AND MCLAREN MEDICAL GROUP'S INITIAL
DISCLOSURES PURSUANT TO MCR 2.302(A)(1)**

NOW COMES Defendants, MCLAREN MACOMB, MCLAREN HEALTH CARE
CORPORATION and MCLAREN MEDICAL GROUP, by and through their attorneys

GIARMARCO, MULLINS & HORTON, P.C., and state as follows for their Initial Disclosures Pursuant to MCR 2.302(A)(1). Defendants provide these Initial Disclosures based on information known at this preliminary stage in this litigation and reserve the right to amend the disclosures as necessary based on information revealed during discovery. Further, these disclosures are made to the best of Defendants' ability but are limited by both the early stage of litigation and also the COVID-19 health crisis which has significantly limited Defendants' opportunity to conduct investigation on this case and others. Defendants provide these Initial Disclosures to comply with the requirements of MCR 2.302(A)(1) and do not intend these disclosures to constitute a comprehensive statement or summary of the entirety of Defendants' knowledge, defenses and evidence in the case. Subject to the foregoing, Defendants provide the following initial disclosures:

A. The factual basis for the parties' claims and defenses:

The factual basis for Defendants' defenses in this case include all of Plaintiff's medical records (including any radiology imaging), and any other records relating to Plaintiff identified during the course of discovery. Records obtained by Defendants regarding Plaintiff, Mark W. Holmes, as of the date of these Initial Disclosures include records (including any radiology imaging) from McLaren Macomb. The burden of obtaining copies of the above records is substantially the same for Plaintiff as it is for Defendants. MCR 2.309(E).

The factual basis for Defendants' defenses may also include any and all answers provided by Plaintiff in response to Defendants' interrogatories, requests for admission and requests for production. The factual basis for Defendants' defenses may also be found in any of Defendants' responses to Plaintiff's written discovery requests in this case. The factual basis for Defendants' defenses may also be found in any deposition testimony

obtained in this case. Discovery recently commenced and additional factual basis for defenses may be uncovered during the course of discovery.

Further, based upon information known to date, Defendants' factual basis for Defendants' defenses includes the fact that the Defendants complied with the standard of care at all times in their care and treatment of Mark Holmes.

B. The legal theories on which the parties' claims and defenses are based:

This is a medical malpractice action. In a medical malpractice action, the plaintiff has the burden of establishing: (1) the standard of care; (2) breach of the standard of care; (3) proximate cause; and (4) damages. *Craig v Oakwood Hosp.*, 471 Mich 67, 86; 684 NW2d 296 (2004). Defendants' defenses will include: (1) there was no breach of the standard of care; (2) that there was no proximate cause between any alleged breach of the standard of care and Plaintiff's alleged damages; and (3) that Plaintiff did not suffer damages in the manner alleged and claimed by Plaintiff as any damages are unrelated to Defendants. Defendants may also rely on any of the affirmative defenses set forth in their Answer and Affirmative Defenses and incorporate same by reference.

C. The name and, if known, the address and telephone number of each individual likely to have discoverable information:

Defendants anticipate that Plaintiff and Plaintiff's family members, friends, co-workers, supervisors and other acquaintances may have discoverable information and hereby request the depositions of Plaintiff Mark Holmes and any friends or family members Plaintiff intends to call as witnesses at trial. Lay witnesses known to Defendants at the time of this disclosure include:

- Mark Holmes (Plaintiff) (upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages)

- Brian Hake (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).
- Kim Hake (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).
- John Summer (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).
- Ray Prouty, Sr. (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).
- Ray Prouty (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).
- Paul Russano (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).
- Lori Timmons (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).
- David Naber (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).
- Joshua Ball (Plaintiff's Friend upon information and belief, this individual has or may have knowledge regarding Plaintiff's health, history, treatment, and/or damages).

Defendants anticipate that Plaintiff's treating health care providers are likely to have discoverable information. Defendants anticipate that each treating physician, nurse, therapist or other health care provider will testify as to his/her respective treatment of Plaintiff and any diagnoses, etiology and prognoses. Defendants specifically reserve the right to obtain opinions from Plaintiff's treating health care providers with respect to the standards of care applicable to Defendants and their compliance therewith, if they are qualified to do so, as well as opinions regarding proximate cause and damages. Potential treating health care providers known to Defendants at the time of these initial disclosures include:

- Any and all individuals and health care providers identified in the records from Richmond Foot and Ankle, P.C., 36640 Heritage Drive, Richmond, MI 48062, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Hengelberth Montufar, DPM
- Any and all individuals and health care providers identified in the records from St. Clair Adult Medicine, PC, 22201 Moross, Suite 150, Detroit, MI 48226, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Mika Hiano, DPM
- Any and all individuals and health care providers identified in the records from Dearborn Orthopedics and Sports Medicine, 23550 Park, Suite 100, Dearborn, MI 48124, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Dr. Robert Meehan
- Any and all individuals and health care providers identified in the records from Podiatric Surgical Specialists, 43391 Columbus Drive, Clinton Township, MI 48038, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Brian Loder, DPM
- Any and all individuals and health care providers identified in the records from The Core Institute, 22250 Providence Drive, Suite 401, Southfield, MI 48075, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Victor Nwosv, DPM
- Any and all individuals and health care providers identified in the records from Great Lakes Good and Ankle Institute, 32743 23 Mile Road, Suite 110, Chesterfield, MI 48047, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Matthew Hansen, DPM

- Any and all individuals and health care providers identified in the records from Henry Ford Allegiance Orthopedics, 1201 E. Michigan Avenue, Jackson, MI 49201, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Tudor Tien, DPM
- Any and all individuals and health care providers identified in the records from Foot and Ankle Specialists Southeast Michigan, 43200 Dequindre, Suite 102, Sterling Heights, MI, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Charles Kissel, DPM
- Any and all individuals and health care providers identified in the records from Associated Rheumatology Consultants, 46857 Garfield, MI 48044, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Dr. Henry Brystowski
- Any and all individuals and health care providers identified in the records from Auburn Neurology and Sleep Associates, 46813 Garfield Road, Macomb, MI 48044, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Dr. Tracey Morson
- Any and all individuals and health care providers identified in the records from North Macomb Medical Associates, 66440 Gratiot Avenue, Lenox, MI 48050, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Dr. Robert McCowan
- Any and all individuals and health care providers identified in the records from Pulmonary/Critical Care Associates, 50505 Schoenherr Road, Shelby Township, MI 48315, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Victor Gordon, M.D.

- Any and all individuals and health care providers identified in the records from William Kole, M.D., 43401 Schoenherr, Clinton Township, MI 48038, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions.
- Any and all individuals and health care providers identified in the records from Basha Diagnostics, 13753 19 Mile Road, Sterling Heights, MI, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions.
- Any and all individuals and health care providers identified in the records from Hangar Clinic, 18325 10 Mile Road, Roseville, MI 48066, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions.
- Any and all individuals and health care providers identified in the records from Binsons Medical Supplies, 43900 Schoenherr Road, Sterling Heights, MI, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions.
- Any and all individuals and health care providers identified in the records from Quest Diagnostics, 18400 Hall Road, Clinton Township, MI, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions.
- Any and all individuals and health care providers identified in the records from McLaren Macomb, 1000 Harrington, Mt. Clemens, MI 48043, who, upon information and belief, have or may have information concerning the diagnosis and treatment of Mark Holmes, damages, and expert opinions, including, but not limited to:
 - o Adeel Khalid, M.D.
 - o Andrzej S. Boguszewski, M.D.
 - o Anupama Varadarajan, M.D.
 - o James P. Redmond, M.D.
 - o Jeffrey Balazsy, M.D.
 - o Mark Zainea, M.D.
 - o Michael D. Castillo, M.D.
 - o Nancy Mesiha, M.D., FACC, FAAC, MACM
 - o Omar Kashlun, M.D.
 - o Blake Hood, D.O.
 - o Bruce S. Kovan, DO
 - o Colleen Scott, D.O.
 - o Crista Broutin, D.O.
 - o Eli E. Shapiro, D.O.
 - o Elizabeth Brooks, D.O.
 - o Eric Krutel, D.O.
 - o Harjeet Jhajj, D.O.

- James M. Larkin, D.O.
- Jamie Bartley, D.O.
- John Kazmierski, D.O.
- Joseph M. Flynn, D.O.
- Karl Doelle, D.O.
- Katharine Petack, D.O.
- Nathan Fritz, D.O.
- Nicholas J. Schoch, D.O.
- Philip Homier, D.O.
- Robert Elgin, D.O.
- Robert K. McCowan, D.O.
- Ryan Malek, D.O.
- Sherezade Khambatta, D.O.
- Stephen D. Cahill, D.O.
- Bonnie J. Kras, RN
- Carol Sekton, RN
- Courtney Gady, RN
- Dale Toney, RN
- Deanine Sweet, RN
- Deborah Jansen, RN
- Debra Christensen, RN
- Denise Figueras, RN
- Denise Wassel, RN
- Jeff Torzy, RN
- Jeremy Loveland, RN
- Karen Pfeil, RN
- Kathleen Brownr, RN
- Kimberly Sikora, RN
- Kory Lagerquist, RN
- Kristy Coughlin, RN
- Lauren Evans, RN
- Lisa J. Haase, RN
- Lisa Ruhlman, RN
- Maggie Noonan, RN
- Maria Bonanno, RN
- Matt Rogers, RN
- Patricia Byndas, RN
- Patricia Vyndas, RN
- Danielle Olejniczak, CRNA
- Roderick Ditto, NA
- Vera Ivezaj, NA
- Christie Vidor, EMS
- Thomas Newland, EMS
- Alicia Autry
- Amy Lafore
- Ann Pasquinzo
- Carley Blaszczyk
- Carolyn Mosey

- Eileen Fey
- Elizabeth S. Elliot
- Erin Ball
- Francis Baker
- Gail McIntyre
- Jennifer Knapp
- Jerianne Kruzmanowski
- Jessica Nadia Merle
- John Silveri
- Joseph R. Sawyer
- Judith Munro
- Julie Lata
- Karen Baranski
- Karen Grzecki
- Kimberly Reagin
- Kimberly VanDyke
- Kristen Saldana
- Lisa Whitt
- Lotonya Edwards
- Luminita Petroj, RCIS
- Mary Hixson
- Michaelia L. Day
- Omar Kashlan
- Pranav Doshi
- Scott McPhilly
- Shannon Davis
- ShawnLee Heard
- Tony J. Kokkatt
- Tori Diller
- Valerie Stevens
- Vicki Tabor
- Zack Halanski

- Any and all treating physicians or other treating health care providers not previously identified. Said individual(s) may have historical and current information about the events in question, Plaintiff's medical condition, employment, facts including conversations with any party or treating healthcare provider, condition prior to and subsequent to the incident alleged in Plaintiff's Complaint, treatment provided to Plaintiff, and the alleged damages.

Other individuals and/or entities that may have discoverable information include

but are not limited to:

- Any and all current or former employees, adjusters, agents and billing specialists of the following, who may have information regarding the treatment rendered to Plaintiff, the cost associated with said treatment, and any medical liens:

- State of Michigan – Department of Treasury, 3060 W. Grand Blvd, Detroit, MI 48202, 313-456-4340;
 - Internal Revenue Service, 1500 Pennsylvania Avenue NW, Washington DC, 20229, 202-622-5000;
 - Social Security Administration, 6401 Security Blvd., Woodlawn, MD 21207, 800-772-1213;
 - Social Security Disability Division, 6401 Security Blvd., Woodlawn, MD 21207, 800-772-1213;
 - Medicare, 7500 Security Boulevard, Baltimore, MD 21244, 800-633-4227;
 - Medicaid, 333 S. Grand Ave., PO Box 30195, Lansing, MI48909, 888-367-6557.
- Any and all persons dispensing lawfully-prescribed medication to Plaintiff at any pharmacy and the records custodians for those persons/pharmacies may have information regarding the medication dispensed to Plaintiff and the cost associated with said medication.
 - Records custodians for all of the health care entities, physicians, agencies, state and federal divisions/departments, corporations and medical care providers listed in the within initial disclosures. Those records custodians may have information regarding the manner in which records are kept in the ordinary course of business and may otherwise be able to authenticate said records.
 - Any and all witnesses identified on Plaintiff's Initial Disclosures.
 - Any and all individuals named during any depositions or in any interrogatories.

Defendants specifically reserve the right to amend and add the names of further witnesses to these Initial Disclosures, as they deem necessary.

D. A copy or a description by category and location of all documents and tangible things that the disclosing parties have in their possession, custody or control and may use to support its claims or defenses:

Defendants refer to and incorporate the records identified in paragraph A above which are believed to already be in Plaintiff's counsel's possession.

E. A description by category and location of all documents, ESI and tangible things that are not in the parties' possession, custody or control that the disclosing parties may use to support their claims or defenses:

Defendants refer to and incorporate the records identified in paragraphs A and C above that have been requested, ordered and/or received by Defendants. Records of additional health care providers may be identified and requested during the course of discovery. Additionally, Defendants refer to any employment records, pharmacy records, health insurance records, records from any state or federal government agencies, including the IRS, Michigan Department of Treasury, Social Security Administration, and any police agency which are currently unknown and/or which may be requested during the course of discovery. Plaintiff's records are equally available to Plaintiff and the burden of obtaining copies of such records is substantially the same for Plaintiff as it is for Defendants. MCR 2.309(E).

F. A computation of each category of damages claimed by the disclosing parties:

This section is not applicable to Defendants as Defendants are not currently claiming damages. Defendants reserve the right to claim prevailing party costs and fees under applicable law.

G. A copy (or an opportunity to inspect and copy) of pertinent portions of any insurance agreement, etc.:

Defendant McLaren Macomb has sufficient assets and insurance to cover the incident alleged in Plaintiff's Complaint. Defendants object to producing a copy of the insurance policy, as same are not relevant nor proportional to the needs of the case.

H. The anticipated subject areas of expert testimony:

Defendants anticipate calling Podiatry experts, including but not limited to, Steven Glickmanm, D.P.M., including, but not limited to, Physical Medicine and Rehabilitation, Carla Morton, M.D., and Radiology experts, including Anthony Munaco, M.D., to provide standard of care testimony. Defendants also intend to offer expert testimony regarding the lack of proximate cause between any alleged breach of the standard of care by Defendants and Plaintiff's alleged damages. The elements of proximate cause, causation and damages may involve testimony from witnesses in multiple specialties, including but not limited to, the areas listed above and any other relevant specialty. It is also anticipated that various damages experts specializing in any of the above listed specialties may testify. If necessary, Defendants will offer expert testimony to rebut any expert reports and/or testimony offered by Plaintiff on the element of damages. Defendants may also rely on treating health care providers to provide expert opinions in their respective specialties. Defendants will disclose expert witnesses in accordance with the deadlines set forth in the Court's Scheduling Order.

GIARMARCO, MULLINS & HORTON, P.C.

BY: /s/ Jared M. Trust
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Dated: November 22, 2021

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by electronic mail on November 22, 2021.

/s/ Yvonne Ayotte
Legal Assistant