

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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JOANNE MILLER, as Limited  
Co-Administrator of the Estate of  
TIMOTHY MILLER, Deceased,

Plaintiff,

**ANSWER**  
(Dr. D'Angelo)

-vs-

Index No. 801361/2024

GARY GROSNER, M.D.,  
CLAUDIA KOENIG, PA-C,  
GENERAL PHYSICIAN, P.C. d/b/a  
GREAT LAKES CARDIOVASCULAR,  
MICHAEL D'ANGELO, M.D.,  
BETTY JO McAULIFFE, P.A.,  
BUFFALO MEDICAL GROUP, P.C.,  
GEORGE E. MATTHEWS, M.D.,  
MELANIE HANNON, ANP,  
SUSAN DEMARCO, ANP,  
VIJAY IYER, M.D., and  
KALEIDA HEALTH d/b/a BUFFALO  
GENERAL MEDICAL CENTER,

Defendants.

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The defendant, MICHAEL D'ANGELO, M.D., by his attorneys, CONNORS  
LLP, for his answer to the amended complaint herein, alleges as follows upon  
information and belief:

1. Denies knowledge and information sufficient to form a belief as to the  
allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 22, 26,  
27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49,  
52, 53, 54, 55, 56, 57, 59, 60, 61, 66, 67, 68, 69, 70 and 71 of the amended complaint.

2. Admits the allegations in paragraphs 15, 18, 20, 23 and 25 of the amended complaint.
3. Answering paragraph 16 of the amended complaint, admits that he held himself out to the public as possessing the learning and skill required to practice non-invasive cardiology in his community, and otherwise denies knowledge and information sufficient to form a belief as to the allegations in that paragraph.
4. Denies the allegations in paragraphs 17, 19, 24, 50, 62, 63 and 64 of the amended complaint.
5. Answering paragraph 21 of the amended complaint, admits that Betty Jo McAuliffe, P.A., held herself out to the public as possessing the learning and skill required to practice as a P.A. in her community, and otherwise denies knowledge and information sufficient to form a belief as to the allegations in that paragraph.
6. Denies the allegations directed at him, Betty Jo McAuliffe, P.A., and Buffalo Medical Group, P.C., in paragraphs 73 and 74 of the amended complaint, and otherwise denies knowledge and information sufficient to form a belief as to the allegations in those paragraphs.
7. Repeats and realleges the answers to the allegations contained in paragraphs 51, 58, 65 and 72 with the same force and effect as if fully set forth herein.
8. Denies the remaining allegations of the amended complaint, not hereinbefore specifically admitted or otherwise denied.

**FOR A FIRST AFFIRMATIVE DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES  
UPON INFORMATION AND BELIEF:**

9. Upon trial, it may appear that some or all of the damages claimed by plaintiff were brought about or contributed to by reason of the acts, actions, negligence, assumption of risk and/or failure to mitigate of plaintiff and/or plaintiff's decedent; if so, damages, if any, must be diminished accordingly.

**FOR A SECOND AFFIRMATIVE DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES  
UPON INFORMATION AND BELIEF:**

10. That any or all of the claimed damages are subject to collateral source offset.

**FOR A THIRD AFFIRMATIVE DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES  
UPON INFORMATION AND BELIEF:**

11. That any wrongful death damages sought are limited to those for "pecuniary loss" and/or as defined by the Estates, Powers and Trusts Law.

**FOR A FOURTH AFFIRMATIVE DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES  
UPON INFORMATION AND BELIEF:**

12. Pursuant to CPLR 3018, this defendant raises any affirmative defense waived if not raised in this answer.

**FOR A FIFTH AFFIRMATIVE DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES  
UPON INFORMATION AND BELIEF:**

13. The plaintiff's claims are barred by Public Health Law Sections 3081 and 3082, the Emergency or Disaster Treatment Protection Act, Executive Orders, and the COVID-19 pandemic.

**FOR A SIXTH AFFIRMATIVE DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES  
UPON INFORMATION AND BELIEF:**

14. That in the event that plaintiff provides a release or covenant not to sue or not to enforce a judgment to one or more persons claimed to be liable for the same injury alleged in plaintiff's amended complaint, this answering defendant will seek an offset pursuant to General Obligations Law § 15-108.

**FOR A SEVENTH AFFIRMATIVE DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES  
UPON INFORMATION AND BELIEF:**

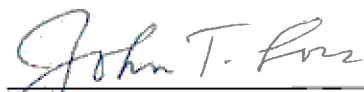
15. The lawsuit is barred by the statute of limitations.

WHEREFORE, defendant, MICHAEL D'ANGELO, M.D., demands (1) judgment dismissing the amended complaint; (2) that the plaintiff's damages, if any, be diminished in the proportion which the culpable conduct, comparative negligence, assumption of risk and failure to mitigate attributed to plaintiff and/or plaintiff's decedent bear to the culpable conduct, comparative negligence,

assumption of risk and failure to mitigate which caused such damages; and

(3) together with the costs and disbursements of this action.

DATED: Buffalo, New York  
April 5, 2024



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John T. Loss, Esq.  
Connors LLP  
Attorneys for Defendant,  
Michael D'Angelo, M.D.  
1000 Liberty Building  
Buffalo, New York 14202  
(716) 852-5533

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