

**STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA**

**MARIE M. FRADETTE as Administrator of the Estate of
JOAN A. CROTEAU,**

Plaintiff,

-vs-

ANSWER

Index No.: 000269/2023

**ST. JOSEPH'S HOSPITAL HEALTH CENTER; KATE
McLAUGHLIN, R.N.; MAISA ALAFYOUNI, M.D., a/k/a
MAISA ALAFYOUNI TEFF, M.D.; KYLE N. CRAMER,
M.D.; BENJAMIN CRAXTON, M.D.; P.A. SUSAN
TABER; N.P. ALEXANDRIA SOCHIA, R.N.; THERESA
CHASE, R.N.,**

Defendants.

Defendant, **Kate McLaughlin, R.N.**, by her attorneys, Gale Gale & Hunt, LLC, answer the Complaint of the Plaintiff's herein as follows:

1. **ADMIT** the allegations contained in Paragraph 8 of the Plaintiff's Complaint.
2. **DENY** any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 2, 3, 7,10, 12, 13,15, 16, 18, 19, 23 and 25 of the Plaintiff's Complaint.
3. **Paragraphs 9, 11, 14, 17, 20, 22, 24, 26, 28 and 29** of the Plaintiff's Complaint calls for a legal conclusion and all questions of law are referred to the Court; otherwise **DENIES** any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Plaintiff's Complaint.
4. **DENY** the allegations contained in Paragraphs 6 and 27 of the Plaintiff's Complaint.
5. Paragraphs 4 and 5 are missing from the Complaint, therefore Defendant has not provided a response.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS**

(Paragraph not numbered) Answers the allegations contained in Paragraphs designated 1 through 29 of the Plaintiff's Complaint, in the same manner as the said allegations are heretofore treated in this Answer.

6. **DENY** any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 30, 31, 32, 33 and 35 of the Plaintiff's Complaint.

7. **DENY** the allegations contained in Paragraphs 34, 36, 37, 38, 39, 40, 41 and 42 of the Plaintiff's Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION
IN WRONGFUL DEATH AGAINST ALL DEFENDANTS**

(Paragraph not numbered) Answers the allegations contained in Paragraphs designated 1 through 42 of the Plaintiff's Complaint, in the same manner as the said allegations are heretofore treated in this Answer.

8. **DENY** the allegations contained in Paragraphs 43, 44, 45, 46, 47, 48 and 49 of the Plaintiff's Complaint.

8. **DENIES** each and every other allegation contained in Plaintiff's Complaint not hereinbefore specifically admitted, controverted or denied.

**AS AND FOR A CROSS-CLAIM HEREIN PURSUANT TO ARTICLE 14
DEFENDANT KATE MCLAUGHLIN, R.N., ALLEGES:**

9. That the relative culpability, if any, of each person, entity, or party who is or maybe liable for the damages alleged by Plaintiff in this action should be determined in accordance with the decisional and statutory law of the State of New York and the equitable share of each person, entity, or party liable for contribution should be determined and

apportioned in accordance with the relative culpability, if any, of each such person, entity, or party pursuant to the provisions of CPLR Article 14.

AS AND FOR A SECOND CROSS-CLAIM HEREIN DEFENDANT ALLEGES:

10. That the injuries and damages alleged to have been sustained by Plaintiff in the Complaint herein were not caused by the negligence of the answering Defendant. In the event there is a recovery by or on behalf of the Plaintiff against the answering Defendant as a result of the negligence of another defendant, then the answering Defendant is entitled to indemnification and judgment for the amount of such recovery. That the answering Defendant is entitled to have its rights as between itself and other defendants adjudicated and determined in this action.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

11. The injuries and damages, if any, alleged to have been sustained by Plaintiff and/or Plaintiff's decedent were caused, contributed to, and brought about, in whole or in part, by the assumption of risk and/or culpable conduct of Plaintiff and/or Plaintiff's decedent, and the damages otherwise recoverable by Plaintiff, if any, should be diminished in proportion to the culpable conduct attributable to Plaintiff and/or Plaintiff's decedent pursuant to Article 14-A of the CPLR.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

12. That the answering Defendant will claim the benefit of the limited liability provisions of Article 16 of the New York Civil Practice Laws and Rules.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

13. That should the answering Defendant be found liable for Plaintiff's injuries, the Defendant shall rely on CPLR §4545 to obtain a set off or reduction of any award, in the total amount of any and all costs or expenses that were or will be, with reasonable certainty, replaced

or indemnified, in whole or in part, from any and all collateral source(s) as defined by said statute, including but not limited to, insurance, Social Security, Workers' Compensation, or employee benefit programs.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

14. That in the event that Plaintiff settles with or provides a release to one or more persons claimed to be liable for the same injury alleged in Plaintiff's Verified Complaint, this answering Defendant will seek an offset pursuant to General Obligations Law §15-108.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

15. That the action of Plaintiffs herein is barred by the statute of limitations as set forth in the applicable sections of the Civil Practice Law & Rules of the State of New York, including CPLR §214-a and the Estates, Powers and Trusts Law of the State of New York.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

16. That the injuries complained of in the Plaintiff's Complaint were caused or brought about by the negligence of a third person or persons over whom the Defendant herein had no control and for whose acts the Defendants are in no way responsible.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

17. Plaintiff and/or Plaintiff's decedent failed to take all reasonable and necessary steps to mitigate their damages.

AS AND FOR AN EIGHTTH AFFIRMATIVE DEFENSE:

18. Upon information and belief, some or all of the Plaintiff's alleged economic losses and special damages were, or will be, paid by or reimbursed through a benefit provider recognized pursuant to GOL §5-335, and consistent with said law, those losses and damages

cannot be sought nor recovered in this action and said benefit provider is barred from seeking reimbursement or subrogation against any settling party to this action for any such benefits.

AS AND FOR AN NINETH AFFIRMATIVE DEFENSE:

19. The answering Defendant will rely on the limited liability provision of New York State Public Health Law Section 3082, effective from August 3, 2020 through April 5, 2021, providing immunity from liability for health care facilities and professionals for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services while impacted by decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives.

WHEREFORE, Kate McLaughlin, R.N., by her attorneys, Gale Gale & Hunt, LLC, demand as follows:

- (a) dismissing the Plaintiff's Complaint against the answering Defendant;
- (b) diminishing the amount of Plaintiff's recovery, if any, in the proportion which the culpable conduct attributable to Plaintiff's bear to the culpable conduct which caused such damages, pursuant to Article 14-A of the New York Civil Practice Laws and Rules;
- (c) determining the relative liability of the parties in accordance with New York Civil Practice Laws and Rules Article 14 and awarding contribution in such amounts as shall be determined upon the trial of this action;
- (d) limiting liability for non-economic loss in accordance with New York Civil Practice Laws and Rules Article 16;
- (e) for a set off against the amount of any verdict of any monies collected from a collateral source of payment pursuant to CPLR § 4545;
- (g) for such other and further relief as to the Court may deem just and proper; and
- (h) for the costs and disbursements of this action.

Dated: February 6, 2023

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