IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

Dr. Sam Ghoubrial's Motion for Judgment on the Pleadings Pursuant to Civ.R. 12(C)

Now comes Defendant Sam Ghoubrial M.D. ("Dr. Ghoubrial"), and hereby moves this Honorable Court for judgment on the pleadings in Dr. Ghoubrial's favor on Plaintiffs' claims against Dr. Ghoubrial pursuant to Civil Rule 12(c) for the following reasons:

1. Each of putative Classes D and E's claims against Dr. Ghoubrial arise out of the "medical diagnosis, care, or treatment" Dr. Ghoubrial provided to Plaintiffs and are therefore "medical claims" governed by R.C. 2305.113, thus subject to a one-year statute of limitation. It is undisputed that Dr. Ghoubrial's purported medical treatment of Ms. Norris concluded in 2014.[1] It is likewise undisputed that Dr. Ghoubrial's medical treatment of Mr. Harbour concluded in 2012. Therefore, all medical claims are barred by the applicable statute of limitation.

2. Additionally, Plaintiffs' medical claims fail as a matter of law, as no Plaintiff has filed either an Affidavit of Merit pursuant to Ohio Civil Rule 10(D)(2) or a Motion to Extent the time to attach such Affidavit of Merit, which is a prerequisite to filing a "medical claim."

3. Moreover, putative Classes D and E's claims against Dr. Ghoubrial for breach of fiduciary duty fail as a matter of law because Dr. Ghoubrial had no fiduciary duty to disclose any alleged financial interest in administering such treatment, as a purported financial interest is unrelated to a patient's medical treatment.

[1] Dr. Ghoubrial never personally treated Plaintiff Norris. The medical records reflect that Plaintiff Norris was a patient of Dr. Ghoubrial's medical practice on one occasion where she was actually seen and treated by Dr. Richard Gunning, an employee of Dr. Ghoubrial. Plaintiffs are aware of the medical record and the fact that Dr. Ghoubrial never treated Plaintiff Norris yet refuse to acknowledge this fact. Ultimately who treated Plaintiff Norris is irrelevant for purposes of this Motion.

4. Finally, to the extent that Putative Classes D and E's claims against Dr. Ghoubrial for unjust enrichment and unconscionable are not time-barred "medical claims," the claims still fail as a matter of law because both putative classes fail to plead non-conclusory facts that could establish that Dr. Ghoubrial retained any unjust benefit or forced Plaintiffs to enter into an unreasonable contract. Ohio law does not prohibit physicians from profiting from the sale of medical supplies and does not require physicians to inform patients of an average market price for such medical treatment and/or equipment.

Accordingly, Dr. Ghoubrial respectfully request that this Court enter judgment in favor of Dr. Ghoubrial on all of Plaintiffs' claims against him.

I. Statement of the Case

Plaintiffs have filed putative class claims against Dr. Ghoubrial on behalf of Monique Norris and Richard Harbour. Plaintiffs Norris and Harbour claim to represent a sub-class comprising "[a]ll current and former KNR clients who had fees for medical equipment manufactured or distributed by Tritec deducted from their KNR settlement proceeds." *See* Fifth Amended Complaint ("FAC"), Class D, ¶¶ 259-288. The basis for putative Class D's claims is that Dr. Ghoubrial induced Plaintiffs to pay for ineffective medical equipment (TENS Units) at a high price without disclosing his financial interest in the transactions. *Id*; *Id.* at ¶ 94. Putative class D relies on four separate theories of liability: fraud, breach of fiduciary duty, unjust enrichment, and unconscionable contract. *Id.*

Additionally, Plaintiff Harbour also claims to represent a sub-class comprised of "all current and former KNR clients who had fees for injections from Dr. Ghoubrial or his employees deducted from their settlement proceeds." FAC, Class E, ¶¶ 290-321. The basis for putative Class E's claims similarly allege that Dr. Ghoubrial induced Plaintiffs to pay for unnecessary and/or ineffective medical treatment (trigger-point injections) at a high price without disclosing his financial interest in the transactions. *Id.* Specifically, Plaintiffs allege that Dr. Ghoubrial had a practice of "inflating medical bills by coercively administering as many extremely overpriced injections as KNR clients

will let him get away with." Putative Class E relies on the same four theories of liability: fraud, breach of fiduciary duty, unjust enrichment, and unconscionable contract. *Id.*

Importantly, under KNR's standard fee agreement, Plaintiffs authorized and directed KNR "to deduct from [the client's] share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for [the client's] care and treatment." *See* FAC, Exhibit B. Thus, based on this contractual language, Plaintiff agreed in writing that KNR could deduct from their settlement proceeds any unpaid balance due to doctors for their care and treatment.

Plaintiffs also signed a settlement memorandum with KNR, showing that a portion of the settlement proceeds would be deducted and paid to Dr. Ghoubrial for unpaid medical treatment. *See* FAC, Exhibit D, Exhibit E. Critically, the settlement memorandum states that the client: approved the settlement and distribution of proceeds, reviewed the distribution information, and acknowledged that it accurately reflects all outstanding expenses associated with their personal injury claim. *Id.*

II. Law and Argument

A. Standard of Review

Civ.R. 12(c) provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." The standard governing disposition of motions for judgment on the pleadings is similar to that governing a motion for failure to state a claim upon which relief may be granted under Civ.R. 12(B)(6). *Gawloski v. Miller Brewing Co.*, 96 Ohio App.3d 160, 163, 644 N.E.2d 731 (9th Dist. 1998). However, the trial court considers both the complaint and the answer when ruling on a Civ. R. 12(C) motion. *State ex re. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 569, 664 N.E.2d 931 (1996).

In considering a 12(C) motion, "dismissal is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor

of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief." *Id.* at 570. A motion for judgment on the pleadings should be granted if it appears no material factual issues exist, and the moving party is entitled to judgment as a matter of law.

Ohio law does not permit "clever pleading" to transform "medical claims" into claims for fraud, breach of fiduciary duty, unjust enrichment, or unconscionable contract. *See Amadasu v. 0 Weal,* 176 Ohio App.3d 217, 222 (1st Dist. Ct. App. 2008). All of Ms. Norris and Mr. Harbour's proposed claims against Dr. Ghoubrial are "medical claims" and thus subject to and barred by Ohio's statutes of limitation and statute of repose. O.R.C. 2305.113. Therefore, in the instant case, based on the Plaintiffs' Complaint, the Plaintiffs can prove no set of facts that would entitle them to the requested relief. As such, Dr. Ghoubrial is entitled to judgment on the pleadings.

B. All claims against Dr. Ghoubrial are time-barred "medical claims" that are not supported by an Affidavit of Merit.

The Plaintiffs' Fifth Amended Complaint, although crafted to allege fraud, breach of fiduciary duty, unjust enrichment, and unconscionable contract on behalf of proposed Classes D and E, is simply a medical malpractice claim disguised to avoid the applicable statute of limitations and statute of repose. R.C. 2305.113(E)(3) broadly defines "medical claim" as "any claim that is asserted in any civil action against a physician . . . and that arises out of the medical diagnosis, care, or treatment of any person."

1. Each claim against Dr. Ghoubrial plainly falls within the purview of R.C. 2305.113.

First, "any claim" includes "derivative claims for relief that arise from the plan of care, medical diagnosis or treatment of a person." *Young v. UC Health, West Chester Hosp.,* LLC, 2016-Ohio-5526, P19, 61 N.E.3d 34, 41, 2016 Ohio App. LEXIS 3410, *15; *see also Amadasu v. 0 Weal,*

176 Ohio App.3d 217, 222 (1st Dist. Ct. App. 2008) ("Malpractice by any other name still constitutes malpractice. It consists of the professional misconduct of members of the medical profession. Thus, the one-year statute of limitations for medical-malpractice actions applied to [plaintiff's] entire complaint."). Consequently, Plaintiffs' wordsmithing cannot remove the current claims out of the statutory definition of "any" medical claim.

Second, R.C. 2305.113 states "in any civil action," which obviously includes the present claims against Dr. Ghoubrial, as this lawsuit is captioned: CV-2016-09-3928.

Third, R.C. 2305.113 states "against a Physician," which Dr. Ghoubrial is, as evidenced by Paragraph 15 of the Complaint, which alleges Dr. Ghoubrial is a "medical doctor."

Fourth, all facts giving rise to the claims against Dr. Ghoubrial "arise out of" or involve Dr. Ghoubrial's "practice" of medicine. *See Wick v. Lorain Manor Inc.,* 9th Dist. Lorain No. 12CA010324, 2014-Ohio-4329, ¶ 18 (holding that regardless of whether a claim was for wrongful death or medical malpractice, the facts giving rise to the claim involved a nursing facility's care of the plaintiff during her residency satisfied the "arise out of" element for purposes of R.C. 2305.113(E)(3)). Specifically, each claim against Dr. Ghoubrial is supported by allegations surrounding Dr. Ghoubrial either selling medical equipment to patients or administering medical treatment to patients.

Fifth, all claims against Dr. Ghoubrial arise out of Dr. Ghoubrial's "medical care, diagnosis, or treatment." The terms "medical diagnosis" and "treatment" relate to the "identification and alleviation of a physical or mental illness, disease, or defect." *Rome v. Flower Mem. Hosp.*, 70 Ohio St.3d 14, 16, 1994-Ohio-574, 635 N.E.2d 1239. Paragraphs 15, 82-110 of the Fifth Amended Complaint set forth the factual allegations for the claims of proposed Classes D and E. The subject matter involves Norris and Harbour being seen (or purportedly seen) by Dr. Ghoubrial for medical treatment regarding injuries sustained from motor vehicle accidents. *Id.* The Fifth Amended Complaint alleges Dr. Ghoubrial provided medical

treatment for Norris and Harbour, involving the administration of cortisone shots, prescriptions for muscle relaxers, and TENS Units, among other things. *Id.* Thus, the claims arise out of Dr. Ghoubrial's medical diagnosis and treatment for purposes of R.C. 2305.113.

Finally, Richard Harbour and Monique Norris clearly constitute "any person" under R.C. 2305.113.

Consequently, the Fifth Amended Complaint sets forth multiple civil claims against a physician that arise out of the medical care, diagnosis, or treatment of a person. As such, all of the claims are "medical claims" under R.C. 2305.113.

2. Each claim against Dr. Ghoubrial is time-barred by R.C. 2503.113(A)'s one-year statute of limitation.

All "medical claims" are subject to a one-year statute of limitation. R.C. 2305.113(A).

Ms. Norris's claims arise out of medical treatment allegedly provided to her by Dr. Ghoubrial during 2013 and 2014. Regardless of who actually provided the treatment, since the treatment occurred more than one year prior to Plaintiffs filing it Motion for Leave to File Fourth Amended Complaint on October 23, 2018, Norris's claims are barred by the statute of limitation.

Mr. Harbour's claims also are untimely. It is undisputed that Plaintiff Harbour last treated with Dr. Ghoubrial in 2012. *See* FAC ¶¶ 108, 111. Since this treatment occurred more than one year before Plaintiffs filing of the Motion for Leave, Mr. Harbour's claims are similarly barred by the statute of limitation.

The "discovery rule" does not extend the statute of limitations as it relates to Ms. Norris and Mr. Harbour's claims. Pursuant to the "discovery rule," the statute of limitation for a medical claim begins to run "upon the discovery by the patient, or the point when, in the exercise of reasonable care and diligence, the patient should have discovered, the resulting injury." *Oliver v. Kaiser Community Health Found.*

(1983), 5 Ohio St.3d 111, 5 Ohio B. 247, 449 N.E.2d 438, syllabus; *Feysinger v. Leech* (1987), 32 Ohio St.3d 38, 512 N.E.2d 337, paragraph one of the syllabus.

The Fifth Amended Complaint alleges that Dr. Ghoubrial forced trigger point injections upon Plaintiff Harbour and that the injections did not provide a benefit. FAC, ¶ 86. Dr. Ghoubrial denies these allegations wholeheartedly, however, even if the allegations were true, Mr. Harbour would have been aware of these facts immediately upon them happening. This is not a case of a patient discovering an injury that did not manifest itself at the time of treatment. If the treatment was forced or ineffective, Mr. Harbour would have been aware of that fact immediately. Moreover, to the extent that Mr. Harbour's claims allege that the resulting injury was the allegedly overpriced medical treatment and equipment provided, Mr. Harbour plainly became aware of the amount charged for his treatments when agreed to payment on April 25, 2012 and July 29, 2015. *See* FAC, Exhibit E. A reasonably caring patient would not ignore existing injury for over five years. Mr. Harbour has been aware of the treatment he received and it's pricing since 2012 and 2015, respectively.

Similarly, Ms. Norris allegedly received the medical treatment giving rise to her claims during 2013-2014. As with Mr. Harbour, Ms. Norris plainly became aware of the amount that Dr. Ghoubrial's practice charged for the medical equipment provided to her when Ms. Norris agreed to payment on May 25, 2014.[2] *See* FAC, Exhibit D. Norris has been aware of the price of the medical equipment alleged to have been provided by Dr. Ghoubrial's practice for several years before bringing the current claims. Plaintiffs cannot use Civ.R. 15 to avoid the applicable one-year statute of limitations. Therefore, Plaintiffs' medical claims pursued through Ms. Norris and Mr. Harbour on behalf of proposed Classes D and E are

[2] As Plaintiffs are aware, Dr. Ghoubrial's medical practice billed under the name of Clearwater Billing Services, Inc.

barred by the one-year statute of limitations. Accordingly, Dr. Ghoubrial is entitled to judgment on the pleadings.

3. Each claim against Dr. Ghoubrial is time-barred by R.C. 2503.113(A)'s statute of repose.

Plaintiffs' proposed claims also are subject to Ohio's statute of repose for medical malpractice claims, which provides an absolute bar prohibiting the commencement of an action on a medical claim more than four-years after the act or omission on which the claim is based. R.C. 2305.113(C). As stated, the Fifth Amended Complaint brings claims arising out of medical treatment occurring over five-years ago. Plaintiffs cannot bring any claim for any medical treatment which occurred prior to October 22, 2014, four years prior to the filing of the Motion to Amend for Leave to File Fifth Amended Complaint.

4. Clever pleading cannot transform Plaintiffs' medical claims into separate claims not governed by R.C. 2305.113.

Recently, several cases have been dismissed on the pleadings where plaintiffs have attempted to cleverly plead medical claims under separate theories of liability to avoid the statute of limitations imposed under R.C. 2305.113. As noted in Dr. Ghoubrial's Notice of Filing Additional Authority in Support of Memorandum in Opposition to Plaintiffs' Motion for Leave to File Fifth Amended Complaint, Judge Mark Schweikert recently dismissed three cases on the pleadings under Civ.R. 12(C) because each case involved disguised medical claims. *See Scott v. Durrani, et al.*, Case No. A150865, Hamilton County Court of Common Pleas (decision October 30, 2018); *Koehler v. Durrani, et al.*, Case No. A1504135, Hamilton County Court of Common Pleas (decision December 12, 2017); and *Knauer v. Durrani, et al.*, Case No. A1504130, Hamilton County Court of Common Pleas (decision December 10, 2017).

Like the current claims against Dr. Ghoubrial, the dismissed claims in *Scott*, *Koehler* and *Knauer* each arose out of alleged medically unnecessary procedures performed by Dr. Abubakar

Atiq Durrani, M.D. ("Dr. Durrani"). In *Scott*, the plaintiff brought a slew of claims, including, negligence and gross negligence, lack of informed consent, negligent misrepresentation, fraud and fraudulent concealment, civil conspiracy, loss of consortium, battery, and punitive and exemplary damages. Additionally, in *Koehler* and *Knauer*, each plaintiff brought claims against Dr. Durrani for negligence, battery, lack of informed consent, intentional infliction of emotional distress, fraud, and spoliation of evidence. In each case, Dr. Durrani moved for judgment on the pleadings pursuant to Civ.R. 12(C), successfully arguing that under the statute of repose contained in R.C. 2305.113(C), *Scott, Koehler* and *Knauer's* claims against him were time-barred medical claims because Dr. Durrani performed each alleged unnecessary procedure more than four years before *Scott, Koehler* or *Knauer* first filed suit against him.

Relying on *Crissinger v. The Christ Hospital*, 1st Dist., Hamilton Nos. C-150796, C-160157, C-160034, C¬160182, C-160053, C-160067, C-160087, and C-160113, 2017-Ohio-9256, ¶¶ 15-20 and *Young v. UC Health*, 1st Dist., Hamilton Nos. C-150562, C-150566, the Court agreed with Dr. Durrani in each case, concluding that all claims, including claims for fraud, were merely disguised medical claims under R.C. 2305.113(E)(3) and therefore were barred by the four-year statute of repose in R.C. 2305.113(C). Notably, in each case the court held that the saving statute in R.C. 2305.19 does not apply to statutes of repose, in *Scott*, stating "there is no precedent in Ohio case law that interprets the current statute to be subject to an exception not referenced specifically in RC 2305.113(C)." (*Scott*, at p. 11). In fact, the court noted:

> the Ohio Supreme Court has determined that the plain language of R.C. 2305.11(C) is "clear, unambiguous and means what it says. If a lawsuit bringing a medical, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the basis for the claim, then any action on that claim is barred." *Antoon v. Cleveland Clinic Found.*, 148 Ohio St.3d 483, 2016-Ohio-7432, ¶ 23.

(*Id.* at p. 8).

Moreover, the court refused to acknowledge a proposed "fraud exception" or an "equitable estoppel exception" to the medical claim statute of repose. (*Id.* at p. 12). On this, the court poignantly stated:

> This Court rejects these arguments for the same reasons it has rejected them on numerous, recent occasions: the General Assembly could have included these exceptions in the medical claim statute of repose but chose not to do so.

(Citations omitted.) (*Id.* at p. 12). Each recent decision turned on the same rationale that applies in the present case: the state legislature did not chose to include a fraud exception in the medical claim statute of repose, thus, none exists.

Likewise, the proposed class allegations against Dr. Ghoubrial in the Fifth Amended Complaint are unquestionably time-barred medical claims. Dr. Ghoubrial's alleged medical treatment occurred well over four years prior to the filing of the Fourth Amended Complaint. Accordingly, the Court should enter judgment in favor of Dr. Ghoubrial.

5. Plaintiffs' medical claims are unsupported by a required Affidavit of Merit.

Beyond the futility of Plaintiffs' Fifth Amended Complaint based on untimeliness, proposed Classes D and E's medical claims against Dr. Ghoubrial are unsupported as a matter of law, as neither Ms. Norris nor Mr. Harbour's claims are supported by an Affidavit of Merit.

Ohio Civ. R. 10(D)(2) states that "a complaint that contains a medical claim . . . as defined in R.C. 2305.113, shall be accompanied by one or more affidavits of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability." Plaintiffs' Fifth Amended Complaint includes medical claims against Dr. Ghoubrial on behalf of a purported class of plaintiffs, but none of the claims are supported by an Affidavit of Merit. Therefore, the

proposed claims against Dr. Ghoubrial are unsupported as a matter of law. Accordingly, Dr. Ghoubrial is entitled to judgment on the pleadings.

B. Dr. Ghoubrial is entitled to judgment on the pleadings on Plaintiffs' claims for breach of fiduciary duty, unjust enrichment, and unconscionable contract regardless of whether the Court determines that the claims are time-barred.

Plaintiffs' disguised medical claims for breach of fiduciary duty, unjust enrichment, and unconscionable contract have no basis in law, entitling Dr. Ghoubrial to judgment on the pleadings irrespective of whether those claims are time-barred medical claims. Simply put, Plaintiffs have no grounds to bring claims under various theories of liability that are premised on Dr. Ghoubrial's alleged failure to inform his patients of his profit margin on the sale of medical equipment or medical treatment. No law exists to hold a doctor liable for failing to communicate profit margins to patients. It is absurd to argue that a physician has a duty to inform a patient that a specific piece of equipment or medical treatment may be cheaper elsewhere.

Moreover, Norris and Harbour's claims are unequivocally time-barred medical claims to the extent that either is based on the medical necessity of Dr. Ghoubrial's medical treatment in administering trigger-point injections or recommending the use of TENS Units to alleviate symptoms.

1. Dr. Ghoubrial did not have a fiduciary duty to disclose any purported financial interest to his patients because such dealings were not in the scope of his clinical relations.

A fiduciary relationship is formed when "special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust." *In re Termination of employment* (1974), 40 Ohio St.2d 107, 115, 321 N.E.2d 603. One is liable for breach of fiduciary duty only with respect to matter coming within "the scope of the relation." *See* Restatement [Second] of Torts § 874, Comment A.

The elements for breach of fiduciary duty are: (1) the existence of a duty arising from a fiduciary relationship; (2) a failure to observe the duty; and (3) an injury resulting proximately therefrom." *Wells Fargo Bank, N.A. v. Sessley*, 188 Ohio App.3d 213, 2010-Ohio-2902, ¶ 36 (10th Dist.).

Although the Ohio Supreme Court has supported the notion that a physician undisputedly owes a fiduciary duty to his or her patient with respect to diagnosing and treating diseases and injuries (*see Tracy v. Merrell Dow Pharmaceuticals* (1991), 58 Ohio St.3d 147, 150, 569 N.E.2d 875), no Ohio court has gone to the extent of extending this duty beyond the medical relationship and into the business arena. The Sixth District opined on this issue, holding that a physician's fiduciary duty does not extend beyond the medical relationship. *N. Ohio Med. Specialists, LLC v. Huston*, 6th Dis. Erie No. E-09-13, 2009-Ohio-5880, ¶ 16 (2009). In *Huston*, the Sixth District held:

> A physician undisputedly owes a fiduciary duty to his or her patient with respect to diagnosing and treating diseases and injuries. Appellant, however, direct us to no authority that such a duty extends beyond the medical relationship. Consequently, Appellants' claim premised on a fiduciary duty fails as a matter of law.

Id.

Plaintiffs' current claims fail as a matter of law for the same reason: Dr. Ghoubrial's fiduciary duty does not extend beyond his clinical relationship with Plaintiffs. Ohio law does not permit Plaintiffs to extend the fiduciary duty to cover financial interests and can point to no law that says otherwise. Again, both cases cited in Plaintiffs' Fifth Amended Complaint have nothing to do with the extent of the fiduciary duty of a doctor to their patient. *See In re Binder's Estate*, 137 Ohio St. 26 (involving a trustee bank's fiduciary duties owed to the beneficiaries of a trust); *Myer v. Preferred Credit, Inc.,* 117 Ohio Misc.2d 8 (involving a mortgage broker's fiduciary duties regarding fee-splitting agreements).

Alternatively, to the extent that Plaintiffs' claims rely on the allegation that Dr. Ghoubrial's undisclosed financial interest affected the treatment he provided them, then the claims unequivocally fall under R.C. 2305.113's purview and are time-barred medical claims for the reasons stated above.

Consequently, Plaintiffs' claims against Dr. Ghoubrial fail as a matter of law, no matter the basis. Either Dr. Ghoubrial owed no fiduciary duty or the claims are time-barred medical claims. As such, Dr. Ghoubrial is entitled to judgment on the pleadings.

2. Plaintiffs' claims for unjust enrichment and unconscionable contract fail as a matter of law because each are premised on a non-existent fiduciary duty to disclose a referral relationship with KNR.

Plaintiffs' claims for unjust enrichment and unconscionable contract also rely on Dr. Ghoubrial's failure to disclose a "profit interest in the transactions and without disclosing that [the medical] treatment could have been obtained at a fraction of the cost from other readily available sources." FAC, ¶¶ 314, 320; *see also Id.* at ¶¶ 282, 287. For the reasons stated, no such duty exists and Plaintiffs' claims for unjust enrichment and unconscionable contract also fail as a matter of law, regardless of whether they are time-barred medical claims.

A claim for unjust enrichment does not apply to the present factual allegations against Dr. Ghoubrial. The elements for an unjust enrichment claim are: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Poston on behalf of Poston v. Shelby-Love*, 8th Dist. Cuyahoga No. 104969, 2017-Ohio-4985, 834 N.E.2d 791, ¶ 20.

Plaintiffs cannot plead any non-medical allegations that show that it would be unjust for Dr. Ghoubrial to retain payment for the medical treatment he allegedly provided to Ms. Norris, or that he did provide to Mr. Harbour. The basis of Plaintiffs' allegation that Dr. Ghoubrial was unjustly paid

for his medical treatment is that Dr. Ghoubrial breached his fiduciary duty by both failing to disclose a profit interest in the medical treatment rendered and failing to inform Norris and Harbour that the alleged treatment and equipment could be cheaper elsewhere. As stated previously, Dr. Ghoubrial has no duty to inform his patients of such information. Dr. Ghoubrial has no duty to disclose the average market price for a TENS Unit or trigger-point injections to his patients. And to the extent that the claims are based on Dr. Ghoubrial's clinical relationship, such claims are time-barred under R.C. 2305.113. Consequently, Plaintiffs' claims for unjust enrichment fail as a matter of law and Dr. Ghoubrial is entitled to judgment on the pleadings.

Finally, a claim for unconscionable contract does not apply to the present factual allegations against Dr. Ghoubrial. No law requires a physician to communicate his or her profit margin to a patient before rendering medical treatment. Plaintiffs' cannot be permitted to proceed on such a baseless claim.

III. Conclusion

For the reasons stated, Dr. Ghoubrial requests this Court to enter judgment on the pleadings in favor of Dr. Ghoubrial for Plaintiffs' time-barred medical claims and otherwise baseless claims for fraud (Counts 10 and 14), breach of fiduciary duty (Counts 11 and 15), unjust enrichment (Counts 12 and 16), and unconscionable contract (Counts 13 and 17).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The foregoing Defendant Sam Ghoubrial, M.D.**'s** Motion for Judgment on the Pleadings pursuant to Civ.R. 12(C) has been filed on the 7th day of February, 2019 using the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. A courtesy copy has also been served to the following:

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