

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS, <i>et al.</i> , Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan Plaintiffs' Memorandum in Opposition to Defendant Ghoubrial's Motion for Clarification of the Court's April 10, 2019 Order
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Defendant Ghoubrial has moved the Court to “clarify” the ruling on his Motion for Judgment on the Pleadings, which rejects the identical arguments Ghoubrial unsuccessfully pressed earlier in the litigation in opposing amendment of the Plaintiffs’ Complaint. The Motion for Clarification does not speak to any actual uncertainty or confusion engendered by the Court’s ruling. Ghoubrial uses it instead to rehash arguments as to why the Court supposedly erred in sustaining the Plaintiffs’ claims, which he persists in describing as “baseless.” Motion at 2.

In moving for judgment on the pleadings, Ghoubrial principally argued that the Plaintiffs were pursuing “medical claims” against him within the meaning of R.C. 2305.113. From this premise, Ghoubrial claimed that the Plaintiffs both failed to comply with the statute of limitations governing “medical claims” and failed to submit an affidavit of merit required for “medical claims” under R.C. 2323.451.

The Court rejected these arguments. In doing so, it held that the Plaintiffs were pursuing “garden variety fraud” claims against Dr. Ghoubrial, not “medical claims,” since they were accusing him of “grossly overcharg[ing] them” for his services while knowing the Plaintiffs “placed their trust in him.” 04/10/2019 Order, p. 5.

In moving for “clarification,” Ghoubrial suggests that the common law of fraud somehow does not apply to doctors in the context of the “physician/patient relationship.” Mot. at 1–2. He also suggests that any claim arising from the “physician/patient relationship” qualifies as a “medical claim” under R.C. 2305.113. *Id.* at 2. Further, according to Ghoubrial, doctors have no fiduciary duties to patients other than those relating specifically to the care they provide. *Id.* at 1–2.

All of these arguments were raised by Ghoubrial, or should have been, in his motion for judgment on the pleadings, and all of these arguments contradict the letter and plain meaning of the Court’s decision.

Courts have no obligation to grant do-overs on dispositive motions under the guise of “clarification.” Ghoubrial is requesting exactly that. In the starkest example, he asks whether the Court “intended to hold Plaintiffs’ claim for breach of fiduciary duty survives?,” despite that the Court explicitly stated as much in its ruling. *Id.* at 2; 04/10/2019 Order at 6 (“Plaintiffs’ claims for unjust enrichment, breach of fiduciary duty, and unconscionable contract survive the Defendant’s motion as well.”).

The Court was crystal clear in denying the Motion for Judgment on the Pleadings. It should now deny Ghoubrial’s Motion for Clarification.

Respectfully submitted,

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Certificate of Service

The foregoing document was filed on April 23, 2019 using the Court's e-filing system, which will serve copies on all necessary parties.

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