

STATE OF INDIANA)
)SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT 1
CAUSE NO. 53C01-1902-CT-000315

MATTHEW STOUT, by his Surviving)
Spouse Danell Stout,)
)
 Plaintiff,)
)
vs.)
)
DR. STEVEN CAM GABRIELEN, et al,)
)
 Defendants)

MEMORANDUM IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS DR. STEVEN CAM GABRIELEN AND MONROE HOSPITAL

Defendants, Dr. Steven Cam Gabrielsen and Monroe Hospital, by counsel, for their Memorandum in Support of their Motion for Summary Judgment state as follows:

I. STATEMENT OF FACTS

The Plaintiff filed his Proposed Complaint with the Indiana Department of Insurance (“IDOI”) against, on or about February 7, 2019 alleging that negligent care rendered by Defendants led to the death of Matthew Stout. After written discovery and extensive document production, the parties selected a review panel of experts pursuant to I.C. 34-18-10, et seq. The review panel consisted of all general surgeons. The parties provided their submissions to the review panel, which were substantial, thorough, and which contained Plaintiff’s complete medical records. Defendants’ submission included an affidavit of an expert general surgeon, Dr. Scott Hockenberry. Plaintiff’s submission did not have the support of any expert testimony.

The panel then carefully reviewed all the evidence and records, deliberated and rendered a unanimous opinion in favor of Defendants Dr. Gabrielsen and Monroe Hospital on or about March 24, 2021. The panel unanimously concluded that the evidence “does not support the

conclusion that the Defendants failed to meet the applicable standard of care and the conduct complained of was not a factor in the resultant damages.” (See unanimous panel opinion attached as Exhibit “A”).

II. ARGUMENT

Summary Judgment shall be rendered forthwith if the designated evidence shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Ind. R. Trial P. 56(C). If that requirement is met, then the burden shifts to the nonmovant to establish a genuine issue for trial. *Cansler v. Mills*, 765 N.E.2d 698 (Ind.App. 2002). The nonmovant must then set forth specific facts which demonstrate a genuine issue; he may not simply rest on the allegations of his pleadings. *Nesvig v. Town of Porter*, 668 N.E.2d 1276, 1280 (Ind. App. 1996) (citing *Stephenson v. Ledbetter*, 596 N.E.2d 1369, 1371 (Ind. 1992)).

To pursue a claim for medical malpractice, the plaintiff must establish by expert testimony and opinion that there was not only a breach of the standard of care, but also that defendant’s actions were the cause of the resulting injuries or damages. *Bethke v. Gammon*, 590 N.E.2d 573 (Ind. App., 1991). Pursuant to I.C. 34-18-10, all medical malpractice claims against qualified health care providers must be presented to a review panel for an opinion before they can proceed in state Court. The medical review panel opinion is also admissible in any subsequent proceeding brought by the Plaintiff in court. I.C. 34-18-10-23

When a review panel renders an opinion in favor of the defendant, “the plaintiff must present expert medical testimony to negate the panel’s opinion. If the plaintiff fails to provide sufficient expert testimony, summary judgment should be granted in favor of defendants.” *Smith v. Dermatology Associates of Fort Wayne, P.C.*, 977 N.E.2d 1, 3 (Ind.App., 2012) citing *Mills v.*

Berrios, 851 N.E.2d 1066 (Ind.App., 2006). When there is a unanimous medical review panel opinion in favor of the defendant, and there is no opinion from the plaintiff to counter the panel, the defendant is entitled to judgment as a matter of law. *McGee v. Bonaventura*, 605 N.E.2d 792 (Ind.App., 1993).

The failure to provide expert medical testimony to rebut the panel opinion will subject a plaintiff's claim to summary disposition. *Bhatia v. Kollipara*, 916 N.E.2d 242 (Ind.App., 2009) citing *Widmeyer v. Faulk*, 612 N.E.2d 1119 (Ind.App., 1993) See also *Marquis v. Battersby*, 443 N.E.2d 1202 (Ind.App., 1982). A hospital or other healthcare provider is also entitled to summary judgment as a matter of law if the plaintiff fails "to come forward with expert medical testimony to refute the panel's opinion on the issue of proximate cause." *Chambers by Ham v. Ludlow*, 598 N.E.2d 1111, 1117 (Ind.App., 1992). See also *Etienne v. Caputi*, 679 N.E.2d 922 (Ind.App., 1997) (*disapproved on other grounds*).

The panel opinion in this case is unanimous in favor of Dr. Gabrielsen and Monroe Hospital. The panel determined that the evidence did not indicate Dr. Gabrielsen and Monroe Hospital had breached the applicable standard of care. The panel also concluded that Dr. Gabrielsen and Monroe Hospital did not cause Plaintiff's damages. Despite several discussions on the subject, the Plaintiff has not provided any affidavits or expert opinion to rebut the panel opinion. As such, the only expert opinion before the Court on the issue of Dr. Gabrielsen and Monroe Hospital's negligence is the unanimous opinion of the three members of the review panel in favor of Dr. Gabrielsen and Monroe Hospital. Consequently there is no issue of material fact as to Dr. Gabrielsen and Monroe Hospital's negligence. Consistent with very clear and binding Indiana precedent, Dr. Gabrielsen and Monroe Hospital are entitled to judgment as a matter of law. *McGee v. Bonaventura*, 605 N.E.2d 792 (Ind.App., 1993).

CONCLUSION

WHEREFORE, Defendants, Dr. Steven Cam Gabrielsen and Monroe Hospital, pray that the Court enter Summary Judgment on their behalf, and for all other just and proper relief.

Respectfully Submitted,

/s/ Patrick B. Healy _____

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Fax: (513) 361-0335
phealy@ralaw.com

*Attorney for Defendants Steven Campbell
Gabrielsen, MD and Monroe Hospital*

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing upon all counsel of record, via electronic mail, this 11th day of May, 2021 upon John D. Boren, Boren Oliver & Coffey, LLP, 59 North Jefferson Street, Martinsville, Indiana 46151, johnboren@boclaywers.com; *Attorney for Plaintiff.*

/s/ Patrick B. Healy _____

Patrick Healy 29536-78

EXHIBIT

A

Panel • Chair

Medical Review Panels

March 24, 2021

Via Certified Mail

Indiana Department of Insurance
Patient Compensation Division
311 W. Washington
Room 300
Indianapolis, IN 46204

RE: Medical Review Panel
Matthew Stout, by his Surviving Spouse Danell Stout v. Dr. Steven Cam
Gabielsen and Monroe Hospital

Dear Sir or Madam:

We enclose the signed panel opinions and panelists' oaths in the above-referenced matter.

Thank you.

Very truly yours,



Neil Bemenderfer
Panel Chair
nbemenderfer@panelchair.com

TNB/lam

cc: All Counsel of Record via certified U.S. Mail and email

BEFORE AN INDIANA MEDICAL REVIEW PANEL

MATTHEW STOUT, By His Surviving Spouse)
DANELL STOUT,)
)
Plaintiff,)
)
v.)
)
STEVEN C. GABRIELSEN, M.D. and MONROE)
HOSPITAL,)
)
Defendants.)

MEDICAL REVIEW PANEL DECISION

The Medical Review Panel having now convened and considered the evidence, contentions and arguments submitted by the parties in this cause, the undersigned enters the following decision:

The evidence does not support the conclusion that Defendants failed to meet the applicable standard of care and the conduct complained of was not a factor of the resultant damages. Referral for review of fitness to practice is not recommended.



Paul J. Bowlds, M.D.

Dated: 03/23/2021



Neil Bemenderfer
Non-Voting Panel Chairman

BEFORE AN INDIANA MEDICAL REVIEW PANEL

Matthew Stout, by his Surviving Spouse Danell)
Stout,)
)
Plaintiff,)
)
v.)
)
Dr. Steven Cam Gabrielsen And Monroe)
Hospital,)
)
Defendants.)

OATH

"I (swear) (affirm) under penalties of perjury that I will well and truly consider the
evidence submitted by the parties; that I will render my opinion without bias, based upon the
evidence submitted by the parties, and that I have not and will not communicate with any party
or representative of a party before rendering my opinion, except as authorized by law."



Paul Bowlds, M.D.

Date: 1-27-21

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Daniel MacMillan, M.D.

Dated: 03/22/2021



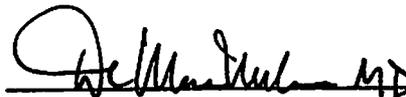
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Daniel MacMillan, M.D.

Date: 3/15/21

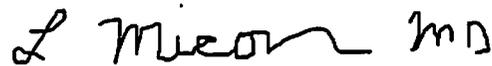
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Larry Micon, M.D.

Dated: 03/18/2021



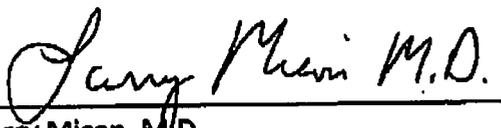
Neil Bemenderfer
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