

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF LOUISIANA

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U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA  
2004 JUN 23 PM 4:09  
LORETTA G. WHYTE  
CLERK

KADLEC MEDICAL CENTER and §  
WESTERN PROFESSIONAL INSURANCE §  
COMPANY §  
v. §  
LAKEVIEW ANESTHESIA ASSOCIATES §  
(a Professional Medical Corporation), et al. §

CIVIL ACTION NO. 04-0997

SECTION I, MAG. 3

**ORIGINAL ANSWER OF DEFENDANT  
LAKEVIEW MEDICAL CENTER, LLC**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

LAKEVIEW MEDICAL CENTER, LLC d/b/a LAKEVIEW REGIONAL MEDICAL CENTER, Defendant ("LRMC" or "Defendant") in the above-styled and numbered cause, files this Answer and would respectfully show the Court as follows:

**First Defense**

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

**Second Defense**

Plaintiffs' claims are barred by prescription and the doctrines of waiver and estoppel.

**Third Defense**

Plaintiffs lack standing to bring the causes of action alleged.

**Fourth Defense**

All of the relevant statements made by LRMC concerning Dr. Berry and/or his job performance were truthful.

Fee \_\_\_\_\_  
Process \_\_\_\_\_  
 Dkt'd. 16  
CtRmDep \_\_\_\_\_  
Doc. No. 7

**Fifth Defense**

All of the relevant statements made by LRMC concerning Dr. Berry and/or his job performance were made in good faith and without malice and as such, LRMC cannot be liable to Plaintiffs pursuant to LA. R. S. 23:291.

**Sixth Defense**

LRMC would show that the misconduct and/or negligence of Plaintiffs is an intervening and/or superceding cause of the damages sustained and therefore LRMC has no liability to Plaintiffs for the damages claimed.

**Seventh Defense**

At the time and on the occasion in question, there was a failure on the part of Plaintiffs to exercise that degree of care of an ordinary prudent person under the same or similar circumstances, which failure proximately caused, or contributed to cause proximately, any injuries or damages sustained herein.

**Eighth Defense**

The incident and damages made the basis of this suit were caused solely by the acts and/or omissions of third parties or instrumentalities in no way connected with LRMC, or alternatively, the acts and/or omissions of third parties or instrumentalities other than LRMC contributed to cause proximately the incidents and events in question and any resulting damages.

**Ninth Defense**

Plaintiffs have no right of contribution or indemnity against Defendants because their settlement with Kim Jones and her family related only to Plaintiffs' own fault for which Defendants would have no responsibility nor liability.

**Tenth Defense**

LRMC would show that Plaintiffs failed to mitigate their damages in that the underlying settlement was not reasonable.

### **Eleventh Defense**

To the extent it applies, this lawsuit is premature pursuant to the Louisiana Medical Malpractice Act, LA. R. S. 40:1299.41, *et seq.* Further, to the extent it applies, Plaintiffs' recovery is limited pursuant to the provisions of LA. R. S. 40:1299.42.

### **Twelfth Defense**

Subject to the foregoing, and without waiving any of the defenses asserted above, LRMC answers the specific numbered paragraphs of Plaintiffs' Complaint as follows:

1. The factual allegations in paragraph 1 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

2. The factual allegations in paragraph 2 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

3. The factual allegations in paragraph 3 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

4. The factual allegations of paragraph 4 of the Complaint are admitted.

5. LRMC admits that Dr. Mark Dennis is a physician licensed by the State of Louisiana, a member of the board of directors of LRMC, a member of LRMC's Medical Executive Committee, and Chief of Anesthesiology for LRMC. The remaining factual allegations in paragraph 5 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations.

6. LRMC admits that Dr. William Preau is a physician licensed by the State of Louisiana. The remaining factual allegations in paragraph 6 of the Complaint are denied because

LRMC is without sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations.

7. LRMC admits that Dr. David Baldone is a physician licensed by the State of Louisiana. The remaining factual allegations in paragraph 7 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations.

8. LRMC admits that Dr. Allan Parr is a physician licensed by the State of Louisiana. The remaining factual allegations in paragraph 8 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations.

9. LRMC denies that this Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332 because it is without sufficient knowledge or information to form a belief as to the truth of that allegation. The remaining factual allegations of paragraph 9 of the Complaint are denied, and LRMC denies that Plaintiffs are entitled to any of the relief sought herein.

10. LRMC admits that venue is proper in this Court pursuant to 28 U.S.C. § 1391 because some or all of the Defendants reside in this district. The remaining factual allegations in paragraph 10 of the Complaint are denied.

11. The factual allegations in paragraph 11 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

12. The factual allegations in paragraph 12 of the Complaint are denied.

13. The factual allegations in paragraph 13 of the Complaint are denied.

14. LRMC admits that Lauderdale met with Dr. Dennis in December of 2000 regarding Dr. Berry. The remaining factual allegations in paragraph 14 are denied.

15. LRMC denies that it took no action nor conducted any further investigation with regard to Dr. Berry after the meeting in December of 2000. LRMC admits that no formal investigation was ever instituted against Dr. Berry pursuant to the Medical Staff Bylaws and that no formal disciplinary action was taken against Dr. Berry by LRMC while he was on the medical staff. The remaining factual allegations in paragraph 15 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

16. The factual allegations in paragraph 16 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

17. The factual allegations of paragraph 17 of the Complaint are denied.

18. The factual allegations of paragraph 18 of the Complaint are denied.

19. The factual allegations in paragraph 19 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

20. LRMC admits that it was aware that Dr. Berry, at some point in 2001, was no longer affiliated with Lakeview Anesthesia. The remaining factual allegations of paragraph 20 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

21. The factual allegations of paragraph 21 of the Complaint are denied.

22. The factual allegations in paragraph 22 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

23. The factual allegations in paragraph 23 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

24. The factual allegations in paragraph 24 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

25. LRMC admits that it received correspondence from the Washington State Department of Health regarding Dr. Berry. The remaining factual allegations of paragraph 25 of the Complaint are denied because that correspondence is the best evidence of its contents.

26. LRMC admits that it responded to the correspondence from the Washington State Department of Health in its usual and customary manner by providing a standard form letter which contained only truthful information concerning Dr. Berry. The remaining factual allegations of paragraph 26 of the Complaint are denied.

27. The factual allegations in paragraph 27 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

28. The factual allegations in paragraph 28 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

29. The factual allegations in paragraph 29 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

30. The factual allegations in paragraph 30 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

31. The factual allegations in paragraph 31 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

32. The factual allegations in paragraph 32 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

33. The factual allegations in paragraph 33 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

34. The factual allegations in paragraph 34 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

35. The factual allegations in paragraph 35 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations.

36. The factual allegations in paragraph 36 of the Complaint are denied because LRMC is without sufficient knowledge or information to form a belief as to the truth of those allegations. LRMC denies that the referenced settlement was reasonable.

37. Paragraph 37 of the Complaint contains no allegations that need be admitted nor denied. The Court is referred to paragraphs 1-36 above. To the extent it does, those allegations are denied.

38. The factual allegations of paragraph 38 of the Complaint are denied.

39. The factual allegations of paragraph 39 of the Complaint are denied.

40. The factual allegations of paragraph 40 of the Complaint are denied.

41. The factual allegations of paragraph 41 of the Complaint are denied.

42. Paragraph 42 of the Complaint contains no allegations that need be admitted nor denied. The Court is referred to paragraphs 1-41 above. To the extent it does, those allegations are denied.

43. The factual allegations of paragraph 43 of the Complaint are denied.

44. The factual allegations of paragraph 44 of the Complaint are denied.

45. The factual allegations of paragraph 45 of the Complaint are denied.

46. The factual allegations of paragraph 46 of the Complaint are denied.

47. Paragraph 47 of the Complaint contains no allegations that need be admitted nor denied. The Court is referred to paragraphs 1-46 above. To the extent it does, those allegations are denied.

48. The factual allegations of paragraph 48 of the Complaint are denied.

49. The factual allegations of paragraph 49 of the Complaint are denied.

50. Paragraph 50 of the Complaint contains no allegations that need be admitted nor denied. The Court is referred to paragraphs 1-49 above. To the extent it does, those allegations are denied.

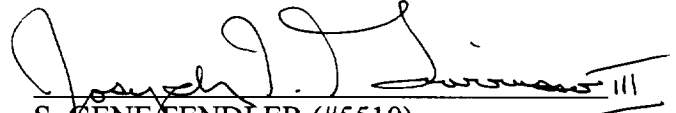
51. The factual allegations of paragraph 51 of the Complaint are denied.

52. The factual allegations of paragraph 52 of the Complaint are denied.



53. The factual allegations of paragraph 53 of the Complaint are denied.
54. The factual allegations of paragraph 54 of the Complaint are denied.
55. The factual allegations of paragraph 55 of the Complaint are denied.
56. The factual allegations of paragraph 56 of the Complaint are denied.
57. All remaining factual allegations in Plaintiffs' Complaint not specifically admitted herein are denied.

WHEREFORE, LRMC requests: (1) that the Court enter judgment dismissing the Complaint with prejudice; (2) that LRMC be awarded reasonable attorney's fees; (3) that LRMC be awarded costs of court incurred herein; and (4) that LRMC be awarded such other and further relief as the Court may deem just and appropriate.



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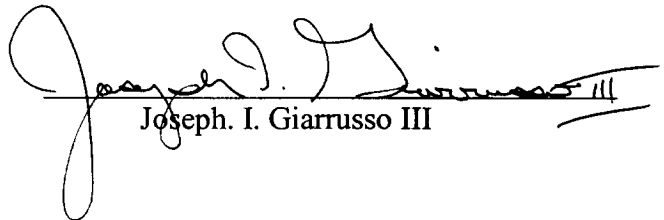
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Attorneys for Defendant,  
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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document has been forwarded to all counsel of record via certified mail, return receipt requested and/or facsimile this 23rd day of June, 2004.



Joseph I. Giarrusso III