

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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HELEN MEDINA and IRWIN MEDINA,

Plaintiff,

-against-

STONY BROOK EMERGENCY PHYSICIANS,  
UNIVERSITY FACULTY PRACTICE CORPORATION,  
DAVID COOLING, M.D., PECONIC BAY MEDICAL  
CENTER, SAMIR BUTE, M.D., JAMES VOSSWINKEL, M.D.  
ABIJEET SINGH, M.D., and JOHN DOE #1, intended to be the  
surgical resident or intern who evaluated Mrs. Medina  
on February 16, 2010 and discussed his findings with Dr. James  
Vosswinkel,

Defendants.  
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Index No. 36230/10

**VERIFIED ANSWER TO  
AMENDED VERIFIED  
COMPLAINT**

Defendant, JAMES VOSSWINKEL, M.D., by his attorneys, Silverson, Pareres  
& Lombardi, LLP, answering the Amended Verified Complaint of the plaintiff, alleges the  
following upon information and belief:

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION**

1. Denies knowledge or information sufficient to form a belief as to the truth  
of the allegations contained in the paragraphs of the Amended Complaint designated as  
"FIRST", "SECOND", "THIRD", "FOURTH", "FIFTH", "SIXTH", "SEVENTH", "EIGHTH",  
"NINTH", "TENTH", "ELEVENTH", "TWELFTH", "THIRTEENTH", "FOURTEENTH" and  
"FIFTEENTH".
2. Denies knowledge or information sufficient to form a belief as to the  
truth of the of the allegations contained in the paragraph of the Amended Complaint designated  
as "EIGHTEENTH", in the form alleged therein, except admits that said defendant was  
consulted with regard to a certain condition from which the plaintiff was suffering and that said

defendant rendered certain professional services to and for the plaintiff in connection with her aforesaid condition and did so within accepted standards of medical practice.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the Amended Complaint designated as NINETEENTH", "TWENTIETH", "TWENTY-FIRST", "TWENTY-SECOND", "TWENTY-THIRD", "TWENTY-FOURTH", "TWENTY-FIFTH", "TWENTY-SIXTH", "TWENTY-SEVENTH", "TWENTY-EIGHTH", "TWENTY-NINTH", "THIRTIETH", "THIRTY-FIRST", "THIRTY-SECOND", "THIRTY-THIRD", "THIRTY-FOURTH", "THIRTY-FIFTH" and "THIRTY-SIXTH".

4. Denies each and every allegation contained in the paragraphs of the Amended Complaint designated as "THIRTY-SEVENTH", "THIRTY-EIGHTH", "THIRTY-NINTH", "FORTIETH" and "FORTY-FIRST".

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION**

5. Defendant, JAMES VOSSWINKEL, M.D., repeats and re-alleges each and every denial and every denial of knowledge or information sufficient to form a belief as to the truth of the foregoing allegations contained in the paragraphs of the Amended Complaint designated as "FIRST" through "FORTY-FIRST", as if set forth fully and at length herein.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Amended Complaint designated as "FORTY-THIRD".

7. Denies each and every allegation contained in the paragraphs of the Amended Complaint designated as ""FORTY-FOURTH" and "FORTY-FIFTH".

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

8. If any liability is found as against this answering defendant, then said liability will constitute 50% or less of the total liability assigned to all persons liable and, as

such, the liability of this answering defendant for non-economic loss shall be limited and shall not exceed this answering defendant's equitable share, as provided in Article 16 of the CPLR.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

9 That in the event any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules, and consequently, if any damages are recoverable against the said answering defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall received from such collateral source.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

10. That in the event of any judgment or verdict on behalf of the plaintiff, the answering defendant is entitled to a set-off or verdict with respect to the amounts of any payments made to the plaintiff by any or all of the co-defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

11. Whatever injuries the plaintiff may have sustained at the time and place alleged in the complaint were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of the plaintiff and without any negligence or fault or want of care on the part of the answering defendant and that any award will thereby be proportionately diminished or barred.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

12. The plaintiff lacks the legal capacity to commence this action.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

13. That in the event of any judgment or verdict on behalf of the plaintiff, the answering defendant is entitled to a set-off or verdict with respect to the amounts of any payments made to the plaintiff by any or all of the co-defendants.

**WHEREFORE**, defendant **JAMES VOSSWINKEL, M.D.**, demands judgment dismissing the Complaint herein together with costs and disbursements.

Dated: New York, New York  
March 21, 2011

Yours, etc,

SILVERSON, PARERES & LOMBARDI, LLP

By: 

Victoria Lombardi, Esq.  
Attorneys for Defendant  
**JAMES VOSSWINKEL, M.D.**  
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VERIFICATION

VICTORIA LOMBARDI, ESQ., an attorney admitted to practice before the Courts of the State of New York, hereby affirms, under penalty of perjury, as follows:

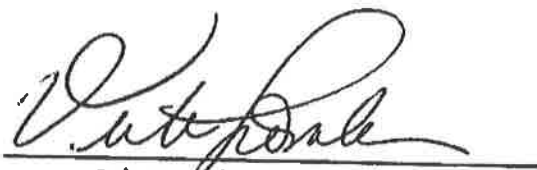
That I am a Partner in the firm of SILVERSON, PARERES & LOMBARDI, LLP, attorneys for the defendant, JAMES VOSSWINKEL, M.D. herein.

That I have read the foregoing VERIFIED ANSWER and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

The grounds for affirmants' knowledge and belief as to all matters therein stated are documents in the possession of defendant's attorneys and discussion with my client.

The reason this affirmation is made by the undersigned and not by the defendants is that defendants reside outside the County wherein I maintain my offices.

Dated: New York, New York  
March 22, 2011

  
Victoria A. Lombardi