

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

LISA BLAKEY, Parent and Natural
Guardian of Lavon Williams, incompetent,

CASE NO. : 02-60639 CIV-ROETTGER

MAGISTRATE JUDGE SELTZER

Plaintiff,

v.

GINGE BRIEN, M.D.; ERIN CODY, M.D.;
ROBERT SMITH, M.D., MAYER TROBMAN,
M.D., ANNE ADE, P.A., BARBARA HAMILTON,
M.A., FERNALD BROWN, L.P.N., ROSARY
GIFFORD, R.N., JACQUELINE P. GRAHAM, R.N.,
HOPE E. HAMILTON, R.N., ROXANNE HARTEK,
L.P.N., CAROLE P. HYPPOLITE, R.N., STEPHANIE
KOPP, R.N., DOROTHY LOTMORE, M.A., KAREN
MIZRAHY, P.A., NOVELYN ALLEN, L.P.N.,
JABULANI NDHLOVU, R.N., VERONICA
O'CONNOR, P.A., MARIE RIVERA, L.P.N.,
LAURA ROSS, L.P.N., BRENDA M. SQUIRES,
L.P.N., SANCHEZ, P.A., PAULA HUGHES, R.N. E.M.S.A.
LIMITED PARTNERSHIP, a Florida Corporation, E.M.S.A.
CORRECTIONAL CARE, INC., a Florida
corporation, PRISON HEALTH SERVICES, INC.,
a Foreign Corporation, KEN JENNE, individually,
and as SHERIFF OF BROWARD COUNTY,
and BROWARD COUNTY SHERIFF'S
DEPARTMENT, a municipal corporation.

Defendants.

FILED BY: *MICHAEL*
2003 APR -4 PM 2:35
CLERK OF DISTRICT
COURT
S.D. OF FLA - FTL
D.C.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants, GINGE BRIEN, M.D., ERIN CODY, M.D., ROBERT SMITH, M.D., ANNE
ADE-ABRAHAM, P.A, BARBARA HAMILTON, M.A., NOVELYN ALLEN, L.P.N., FERNALD
BROWN, L.P.N., ROSARY GIFFORD, R.N., JACQUELINE GRAHAM, R.N., HOPE
HAMILTON, R.N., ROXANNE HARTEK, L.P.N., CAROLE HYPPOLITE, R.N., STEPHANIE

45
(Handwritten mark)

KOPP, R.N., DOROTHY LATMORE, MA, KAREN MIZRAHY, P.A., JABULANI NDHLOVU, R.N., VERONICA O'CONNOR, P.A., MARIELA RIVERA, L.P.N., LAURA ROSS, L.P.N., BRENDA SQUIRES, R.N., FRANCISCO SANCHEZ, M.D., PAULA HUGHES, R.N., E.M.S.A. LIMITED PARTNERSHIP, E.M.S.A. CORRECTIONAL CARE, INC. PRISON HEALTH SERVICES, INC. (collectively "EMSA"), KEN JENNE, individually and in his official capacity as Sheriff of Broward County ("Jenne") and the Broward County Sheriff's Department ("BSO") (as to all responding Defendants, "BSO/EMSA Defendants"), file this Answer and Affirmative Defenses as follows:

1. The BSO/EMSA Defendants deny all allegations contained in the Complaint unless specifically admitted herein. and demand strict proof of all denied allegations.

2. The BSO/EMSA Defendants admit the allegations contained in Paragraphs 3,4 and 5 of the Complaint to the extent that Brien, Cody and Smith were physicians licensed to practice medicine at the time of the incidents alleged in the Complaint.

3. The BSO/EMSA Defendants admit the allegations contained in Paragraphs 7-23 and 25 of the Complaint to the extent these individuals were properly working in their respective fields at the times stated in the Complaint.

4. The BSO/EMSA Defendants admit the allegations contained in Paragraph 26 of the Complaint to the extent that Brien, Cody and Smith were EMSA employees or independent contractors of EMSA.

5. The BSO/EMSA Defendants admit the allegations contained in Paragraph 27 of the Complaint to the extent that Brien, Cody and Smith were EMSA employees or independent contractors of EMSA.

6. The BSO/EMSA Defendants admit the allegations contained in Paragraph 29 of the Complaint to the extent that Jenne is the Sheriff of Broward County.

7. The BSO/EMSA Defendants admit the allegations contained in Paragraph 31 of the Complaint to the extent that BSO contracted for the Provision of medical care by EMSA.

8. The BSO/EMSA Defendants admit the allegations contained in Paragraph 37 of the Complaint to the extent that Williams entered the Broward County Jail on August 18, 1999.

9. The BSO/EMSA Defendants admit the allegations contained in Paragraph 38 to the extent that Williams had an initial medical screening performed on or about August 18, 1999.

10. The BSO/EMSA Defendants admit the allegations contained in Paragraph 39 to the extent that the medical record includes a note regarding "medical intake housing."

11. The BSO/EMSA Defendants admit the allegations contained in Paragraph 40 to the extent the medical records reflect this statement.

12. The BSO/EMSA Defendants admit the allegations contained in Paragraph 49 to the extent the medical records reflect this statement.

13. The BSO/EMSA Defendants admit the allegations contained in Paragraph 51 to the extent the medical records reflect this statement.

14. The BSO/EMSA Defendants admit the allegations contained in Paragraph 73 to the extent the medical records reflect this statement.

15. The BSO/EMSA Defendants admit the allegations contained in Paragraph 85 to the extent that the medical records reflect this statement.

AFFIRMATIVE DEFENSES

16. As a First Affirmative Defense the EMSA/BSO Defendants state that the Plaintiff was

negligent and that negligence directly and proximately caused or contributed to the injuries and damages alleged and is either a bar to recovery or will serve to diminish Plaintiff's right to recovery.

17. As a Second Affirmative Defense the EMSA/BSO Defendants state that the Plaintiff is barred from recovering any damages for losses sustained which have been paid by any collateral sources of indemnity available to the Plaintiff as set forth in Florida Statute 768.76.

18. As a Third Affirmative Defense the EMSA/BSO Defendants state that the actions of third parties not under their control were negligent and proximate intervening causal factors. As a result of those intervening factors, the EMSA/BSO Defendants bear no responsibility and/or liability for any injuries or damage which the Plaintiff might have sustained, or in the alternative, liability is to be diminished in proportion to the third parties' negligence. The only third parties known to the EMSA/BSO Defendants at this time is the co-defendant in this cause, but discovery continues. Although the EMSA/BSO Defendants do not have sufficient information at this time to know if the co-defendant was responsible in any degree for the injuries and damages alleged by the Plaintiff, the Plaintiff claims that the co-defendant was negligent and that his negligence caused or contributed to the injuries and damages alleged. The EMSA/BSO Defendants therefore adopt the Plaintiff's allegations of negligence with respect to the co-defendant as though fully set out in this paragraph and if the evidence in this case supports a claim against the co-defendant, the EMSA/BSO Defendants will request that the court include the co-defendant on the verdict form regardless of whether he is still a party to this cause at the time of trial.

19. As a Fourth Affirmative Defense the EMSA/BSO Defendants state that the Plaintiff's claims are barred by the applicable Statute of Limitations.

20. As a Fifth Affirmative Defense the EMSA/BSO Defendants state that the Plaintiff

has failed to comply with the good faith requirements of section 766.106, Florida Statutes (1999) and Florida Rules of Civil Procedure 1.650 regarding presuit screening of claims for medical malpractice and is barred from recovering in this action.

21. As a Sixth Affirmative Defense the EMSA/BSO Defendants state that if any injury or damage was sustained by the Plaintiff, some or all of it was based upon a pre-existing and/or congenital and/or hereditary condition which is not the responsibility of the EMSA/BSO Defendants, and the Plaintiff is not entitled to any recovery based upon any injuries or damages sustained as a result of that condition.

22. As a Seventh Affirmative Defense Jenne, in his individual capacity, states that at all material times, he was acting as the agent or employee for BSO, and as such, he is immune from personal liability in tort and cannot be named as a party Defendant in this action, pursuant to the provisions of section 768.28(9)(a), Florida Statutes (1999).

23. As an Eighth Affirmative Defense Jenne and BSO state that BSO and Jenne in his official capacity are a subdivision/agency of the State of Florida and has sovereign immunity rights and limitations with respect to claims against it, and its potential financial liability to the Plaintiff is statutorily barred or limited under section 768.28, Florida Statute.

24. As a Ninth Affirmative Defense Brien, EMSA and Jenne state that at all relevant times, they were state actors acting within the course and scope of their authority, and their actions did not violate the Plaintiff's clearly established rights, and as such, they are entitled to qualified immunity.

25. As a Tenth Affirmative Defense, EMSA, Jenne and BSO state that they cannot be held liable on a theory of respondeat superior for alleged constitutional violations.

26. As an Eleventh Affirmative Defense, Brien, EMSA, Jenne and BSO state that the Complaint fails to state a federal statutory or constitutional violation as required to bring suit under 42 U.S.C. § 1983.

27. Defendant(s) demand(s) a trial by jury as to all issues.

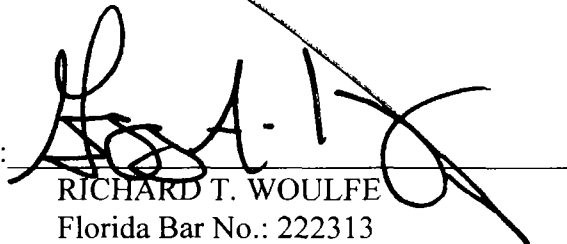
WHEREFORE, the EMSA/BSO Defendants demand dismissal of this action, the entry of judgment in their favor, an award of costs and any other relief this Court deems appropriate.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was furnished by overnight mail this 2nd day of April, 2003 to: **Janice Gallagher, Esq.**, NEEDLE, GALLAGHER & ELLENBERG, P.A. Co-Counsel for Plaintiff, 1401 Brickell Avenue, Suite 900, Miami, FL 33131 (Facsimile: 305-530-1919) and **James D. Robinson, Esq.**, Law Offices of James D. Robinson P.A., Trial Lawyers Bldg., Co-Counsel for Plaintiff, Suite 303, 633 S.E. 3rd Avenue Ft. Lauderdale, FL 33301 (Facsimile: 954-761-1977) and **Don Korman, Esquire**, Bazinski & Korman, P.A., Counsel for Trobman, 7901 S.W. 6th Court, Suite 450, Plantation, Florida 33324 (Facsimile: 954-626-0012).

BUNNELL, WOULFE, KIRSCHBAUM,
KELLER, McINTYRE & GREGOIRE, P.A.
Attorneys for EMSA/BSO Defendants
888 East Las Olas Boulevard, Suite 400
Fort Lauderdale, FL 33301
Telephone: 954-761-8600
Facsimile 954-463-6643

By:



RICHARD T. WOULFE
Florida Bar No.: 222313
GREGG A. TOOMEY
Florida Bar No.: 0159689

Gregg A. Toomey, Esquire, Attorney for Defendants, Facsimile No.: 954-525-2134
Janice Gallagher, Esquire, co-Counsel for Plaintiff, Facsimile: 305-530-1919
James D. Robinson, Esquire, co-Counsel for Plaintiff, Facsimile: 954-761-1977
Don Korman, Esquire, Counsel for Trobman, Facsimile: 954-626-0012