

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY STATE OF FLORIDA
CIVIL DIVISION**

ST. JOSEPH'S HOSPITAL, INC.

Plaintiff/Counterdefendant,

v.

Case No. 09-17514

Division: C

MICHAEL J. TRENTALANGE ,

Defendant/Counterplaintiff.

ANSWER AND COUNTERCLAIM

Defendant MICHAEL J .TRENTALANGE ("TRENTALANGE") answers the correspondingly numbered paragraphs of Plaintiff's complaint and says:

1. Admitted that this purports to be such an action.
2. Admitted that ST. JOSEPH'S HOSPITAL, INC. has been a Florida corporation since 1963; otherwise, without knowledge as to the scope of its license.
3. Admitted.
4. Denied.
5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Admitted.

10. Admitted that St. Joseph's Hospital claims to have been in business since 1934, that adverse medical incidents have occurred at its hospital for 75 years; otherwise denied.

11. Without knowledge.

12. Denied.

13. Denied.

14. Admitted.

15. Denied. Admitted, however, that Fla. Const. Art. X, §25 provides as follows:

a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

(c) For purposes of this section, the following terms have the following meanings:

(1) The phrases "health care facility" and "health care provider" have the meaning given in general law related to a patient's rights and responsibilities.

(2) The term "patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(3) The phrase "adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

(4) The phrase "have access to any records" means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal

request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be "provided" by reference to the location at which the records are publicly available.

16. Denied.

17. Admitted that the Florida Supreme Court ruled in Florida Hospital v. Waterman that all barriers to the discovery of adverse incident records were destroyed with the passage of Amendment 7. Otherwise denied.

18. Admitted. Denied, however, that the statement is the exclusive holding of that case.

19. Admitted that Michael J. Trentalange wrote a letter to St. Joseph's Hospital on May 27, 2009, seeking access to adverse incident records in accordance with the Constitution of the State of Florida.

20. Admitted that the letter reads as follows:

I am a former patient of St. Joseph's Hospital. The purpose of this letter is to request immediate access to all adverse incident records in the possession of St. Joseph's Hospital from October 1, 1934 until today.

Please advise when I may view the subject documents. In the event I require copies of any the documents, I will be happy to pay reasonable copying charges of up to one dollar per page. In the event I am not provided with access to the subject records, I will file a civil action and an administrative complaint against the hospital.

Otherwise denied.

21. Admitted.

22. Admitted.

23. TRENTALANGE reasserts his previous responses.

24. Admitted.

25. Admitted that TRENTALANGE has a right to immediate access to all records covered by Art. X, Section 25. Otherwise, denied.

26. Denied that there is any legitimate confusion over the meaning of Art. X. §25. Admitted that the language of the Constitution is as quoted. Admitted that there are probably a great deal of careless acts committed at St. Joseph's Hospital. Denied that almost every act there is negligent, as there must be some care that is not. Otherwise, without knowledge.

27. Denied.

28. Denied that St. Joseph's Hospital seeks declaratory judgment for the reasons stated. Denied that St. Joseph's is entitled to apply its own definition to the term "adverse medical incidents." Otherwise without knowledge.

29. Denied. This process is specifically at odds with Art. X §25, Fla Const.

30. Denied.

31. Admitted that non conflicting sections of Fla. Stat. §381.028 may survive Buster. Denied that the definition of Adverse Medical Incidents in Section 381 is constitutionally sound. Otherwise denied.

32. Admitted that the definition of adverse medical incident in the Constitution is different than the one in the statute. Otherwise denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied that Plaintiff is entitled to such relief.

39. Admitted that Art. X. §25 provides that, in addition to any other rights conferred by general law, an immediate right of access to records of adverse medical incidents made or received by health care providers. Otherwise, denied.

40. Without knowledge.

41. Denied that all documents made or received in the course of defending litigation are outside of the “course of business” as that term is used in Art. X, §25. Otherwise denied.

42. Denied that Plaintiff is entitled to the requested relief.

43. Admitted that Plaintiff seeks access to the documents to which he is

allowed access.

44. Denied.

45. Denied.

46. Admitted.

47. Admitted that reasonable costs of compliance with requests is appropriate.

48. Denied. St. Joseph's Hospital is only entitled to the reasonable costs associated with compliance with adverse incident requests.

49. Denied.

50. Denied that Plaintiff is entitled to such relief.

51. Admitted.

52. Admitted that this request is made individually and not with respect to Mr. Kocna.

53. Admitted.

54. Denied.

55. Denied. Anyone, including an attorney, is permitted to contest a medical provider's description of events, or to contest an issue related to which he has personal knowledge. Admitted that an attorney cannot act as an advocate if he is a material witness in the same case. Denied that TRENTALANGE is a witness to any of the adverse events covered in the request.

56. Denied that Plaintiff is entitled to such relief.
57. All allegations not specifically admitted are denied.

COUNTERCLAIM AND DEMAND FOR JURY TRIAL

Defendant/Counterplaintiff MICHAEL J. TRENTALANGE

(“TRENTALANGE”) sues Plaintiff/Counterdefendant ST. JOSEPH’S HOSPITAL, INC. (“ST. JOSEPH’S HOSPITAL”) and alleges:

1. This is an action for damages that exceed \$15,000.00.
2. TRENTALANGE is a resident of Hillsborough County, Florida, over the age of eighteen and otherwise sui juris.
3. ST. JOSEPH’S HOSPITAL is a corporation, organized and existing under the laws of the State of Florida, and doing business in Hillsborough County.
4. ST. JOSEPH’S HOSPITAL has filed a four count complaint against TRENTALANGE, ostensibly seeking declaratory judgment against him with respect to issues regarding its obligations under Article X, §25 of the Florida Constitution.
5. Count IV of the complaint seeks to declare that TRENTALANGE should be disqualified from acting as an attorney in cases where documents obtained by him personally may be introduced in evidence at the trial of those cases.

6. Such an assertion is baseless, groundless, without merit, and without any legal or logical underpinning.

7. ST. JOSEPH'S HOSPITAL has intentionally brought Count IV for an immediate purpose other than that which a declaratory judgment action was designed: Specifically, to dissuade TRENTALANGE from exercising his constitutional right to access the subject records. This is an improper purpose for a declaratory judgment action.

8. By bringing this action. ST. JOSEPH'S HOSPITAL seeks to obtain a collateral advantage not properly involved in any proceeding seeking the court to declare rights and obligations of patient and hospital. The hospital seeks to have TRENTALANGE abandon his request for records by use of the club of disqualification – blanket, advance disqualification – from cases unknown and unforeseen.

9. The above conduct constitutes abuse of process, and TRENTALANGE has suffered damages as a result of this intentional and wrongful act. These damages include the Attorneys' fees and costs of defense of this matter, general damages, and such other and further relief as this court may deem proper.

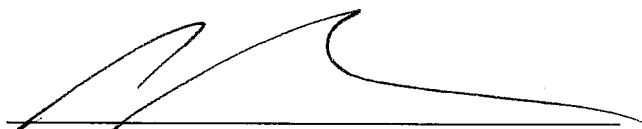
10. TRENTALANGE has retained the undersigned law firm and agreed to pay it a reasonable fee.

WHEREFORE TRENTALANGE demands judgment for damages against ST. JOSEPH'S HOSPITAL, together with costs and attorneys fees, and such other and further relief as this court may deem proper. TRENTALANGE demands trial by jury on all issues

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by facsimile and U.S. Mail to: **Andrew Steven Bolin, Esq.**, MacFarlane Ferguson & McMullen, P.A., Post Office Box 1531, Tampa, Florida 33601 this 27th Day of July, 2009.

TRENTALANGE & KELLEY, P.A.



MICHAEL J. TRENTALANGE, ESQ.

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Attorneys for Plaintiff

 *** TX REPORT ***

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MICHAEL J. TRENTALANGE, ESQUIRE
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FACSIMILE COVER SHEET

DATE: 27 July 2009

TO: Andrew S. Bolin, Esquire (813) 273-4396

FROM: Michael J. Trentalange, Esquire

RE: St. Joseph's Hospital v. Michael J. Trentalange

MESSAGE: Attached please find Defendant's Answer and Counterclaim, Interrogatories to St. Joseph's Hospital and Request to Produce to St. Joseph's Hospital. Thank you.

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NUMBER OF PAGES INCLUDING COVER PAGE: 25

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