

IN THE CIRCUIT COURT OF THE SEVENTEENTH  
JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

ANDREA S. ORIOLO,  
as Personal Representative for the  
Estate of SAVERIO SASSO, Deceased,

CASE NO.: CACE-19-026017  
DIVISION: 21

Plaintiff,

vs.

CLEVELAND CLINIC FLORIDA  
HEALTH SYSTEM NONPROFIT  
CORPORATION, a Florida Not  
for Profit Corporation, and  
CLEVELAND CLINIC FLORIDA  
(A NONPROFIT CORPORATION),  
a Florida Not for Profit Corporation,

Defendants.

**PLAINTIFF'S AMENDED MOTION FOR SANCTIONS AND  
DIRECTED VERDICT FOR FRAUD ON THE COURT<sup>1</sup>**

Plaintiff files her Motion for Sanctions and Directed Verdict for Fraud on the Court and states as follows:

For 14 months Defendant CLEVELAND CLINIC represented that there were no responsive emails even after it had already searched for responsive emails. One such email was highly relevant. This was the Karen Foster email concerning Nurse Cuc freezing and leaving the Rapid Response and Code Blue, and later being counseled about it by Nurse Cuzzocrea. That email reflected a conversation between Nurse Manager Foster and Charge Nurse Cuzzocrea shortly after the incident. The email was discovered two weeks before trial which led the Court to order that

<sup>1</sup> This in trial Amended Motion for Sanctions follows and supplements Plaintiff's Motion for Sanctions filed on February 13, 2024 on the eve of trial.

which it had ordered 14 months earlier, which was for CLEVELAND CLINIC FLORIDA to produce all withheld emails in camera with a privilege log.

One of those emails – a second email – was ordered produced and it is the first documented confirmation that could support the fact that intubation was commenced by a resident rather than a fellow. Those two emails were deliberately and intentionally withheld from the Plaintiff notwithstanding the Court’s orders, thereby prejudicing Plaintiff’s ability to prepare and present her case at trial.

Then, during trial, this theme continued with several transparent new stories that were suspiciously coincident with damaging evidence in favor of Plaintiff’s case. First and foremost, was Dr. F. Scott Ross, the Chief Medical Officer at CLEVELAND CLINIC WESTON, testifying for the first time that he responded to the patient’s Code Blue, although he did not enter the room, found everything to be in order with a quick glance, and then left leaving no documentary trail of his presence. Dr. Ross admitted that he omitted that fact from his deposition. Dr. Ross further admitted that he had never told anyone other than perhaps his attorneys that he responded to the Code Blue.

This new testimony came on the heels of CLEVELAND CLINIC’s expert hospitalist conceding that Dr. Ross’ counterpart, Dr. Katz, should have attended the Code Blue but did not. The new testimony was also carefully crafted not to run afoul of Defendants’ interrogatories answers identifying all personnel “in the room” during SAVERIO SASSO’s incident, which answers omitted Dr. Ross.

While Plaintiff’s counsel did not ask the specific question in deposition, the witness’ testimony was intentionally narrowed by a limited universe of documents provided for review, which documents excluded all documents relating to the Code Blue. This was a trend throughout

all CLEVELAND CLINIC personnel depositions. Without any reason to believe that Dr. Ross would have responded to the Code Blue, because he was not listed on the interrogatory answers, this was a well-orchestrated “gotcha.”

Finally, Defendants had successfully excluded all adverse incident and investigative materials but then elicited testimony throughout trial which was directly contradicted by the evidence they excluded. For example, Defendants successfully excluded the records indicating that a “pulmonary resident” (i.e., Dr. Gonzalez) began the intubation attempts, while arguing that no documentary evidence supports Plaintiff’s allegation that it was Dr. Gonzalez, the pulmonary resident. Also, Defendants have excluded all incident reporting but elicited testimony from a witness that the intubation was not commenced by Dr. Gonzalez because, if it had been, such an “absurd” event would have been reported.

While this Court and the parties know that the incident was immediately reported and that suggestion is made of Dr. Gonzalez’s participation, that issue is off limits for the jury. Defendants used incident reporting as a sword and shield.

Where, as here, a party has sentiently set-in motion an unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense, it is appropriate to strike that party’s pleadings. *Oracle Elevator Co. v. 8660 Building, LLC*, 353 So.3d 689 (Fla. 3d DCA 2023).

All of the above is being submitted to the court in addition to the pervasive and continuing history of fraud on the Court perpetrated since the earliest inception of the case as is illustrated in the following link: <http://gofile.me/4ntwg/efTFaif2H>. See also: Exhibit A detailing Cleveland Clinic Florida’s history of discovery response on the key issues of who was present at the Rapid

Response and Code together with the absence of key evidence, including the cardiac strips and original Rapid Response and Code Sheet.

WHEREFORE, the Plaintiff respectfully requests that this Court strike the Defendants' pleadings and enter a directed verdict in Plaintiff's favor on the issue of liability. However, Plaintiff requests that this Court reserve ruling on this motion until after trial and an appropriate evidentiary hearing to protect Defendants' and their counsel's due process rights.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy was served via the Florida Courts E-Filing Portal on March 7, 2024 to counsel on the attached Service List.

*Respectfully submitted by:*

**LAW OFFICES OF  
DIANA SANTA MARIA, P.A.**

*/s/ Diana Santa Maria*  
DIANA SANTA MARIA, ESQ.  
Florida Bar No. 473340  
University Place-Suite 205C  
5220 South University Drive  
Fort Lauderdale, FL 33328  
Telephone: (954) 434-1077  
Facsimile: (954) 434-4462  
*Attorneys for Plaintiff*  
[diana@santamarialaw.net](mailto:diana@santamarialaw.net)  
[pleadings@santamarialaw.net](mailto:pleadings@santamarialaw.net)

**GOULD, COOKSEY, FENNELL, PLLC**

*/s/ David M. Carter*  
DAVID M. CARTER, ESQ.  
Florida Bar No. 0887579  
*/s/ Dane R. Ullian*  
DANE R. ULLIAN, ESQ.  
Florida Bar No. 0113152  
979 Beachland Blvd.  
Vero Beach, FL 32963  
*Attorneys for Plaintiff*

Telephone: (772)231-1100  
[Dmc-eservice@gouldcooksey.com](mailto:Dmc-eservice@gouldcooksey.com)  
[Dru-eservice@gouldcooksey.com](mailto:Dru-eservice@gouldcooksey.com)

**PHILIP D. PARRISH, P.A.**

*/s/ Philip D. Parrish*

PHILIP D. PARRISH

Florida Bar No. 541877

7301 SW 57<sup>th</sup> Court, Suite 430

Miami, FL 33413

Telephone: (305) 670-5550

Facsimile: (305) 670-5552

*Attorney for Plaintiff*

[phil@parrishappeals.com](mailto:phil@parrishappeals.com)

**SERVICE LIST**

Diana Santa Maria, Esq.  
Law Offices of Diana Santa Maria, P.A.  
*Counsel for Plaintiff*  
University Place, Suite 205C  
5220 South University Drive  
Ft. Lauderdale, FL 33328  
Tel. 954-434-1077  
Fax 954-434-4462  
[diana@santamarialaw.net](mailto:diana@santamarialaw.net)  
[pleadings@santamarialaw.net](mailto:pleadings@santamarialaw.net)

James De Church, Esq.  
[jdechurch@fowler-white.com](mailto:jdechurch@fowler-white.com)  
Daniella P. Pineros, Esq.  
[dpineros@fowler-white.com](mailto:dpineros@fowler-white.com)  
Fowler White Burnett, P.A.  
*Counsel for Defendants*  
1395 Brickell Avenue, 14<sup>th</sup> Floor  
Miami, FL 33131  
Tel. 305-789-9200  
Fax 305-789-9201

David M. Carter, Esq.  
Dane R. Ullian, Esq.  
Gould Cooksey Fennell, PLLC  
*Counsel for Plaintiff*  
979 Beachland Blvd.  
Vero Beach, FL 32963  
Tel. 772-231-1100  
Fax 772-231-2020  
[dmc-service@gouldcooksey.com](mailto:dmc-service@gouldcooksey.com)  
[dru-service@gouldcooksey.com](mailto:dru-service@gouldcooksey.com)  
[nlm@gouldcooksey.com](mailto:nlm@gouldcooksey.com)  
[mma@gouldcooksey.com](mailto:mma@gouldcooksey.com)

Marc J. Schleier, Esq.  
[mschleier@fowler-white.com](mailto:mschleier@fowler-white.com)  
Fowler White Burnett, P.A.  
*Counsel for Defendants*  
Northbridge Centre, Suite 2100  
515 North Flagler Drive  
W. Palm Beach, FL 33401

## ORIOLO/SASSO – Cleveland Clinic's Discovery Responses

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Ex 58. CCF and CCH's Answer to Plaintiff's Initial Interrogatories filed on May 11, 2020

6. Please provide the name, address, phone number, job title or every resident, nurse or other staff in the hospital room of Decedent Saverio Sasso on September 24, 2018 from 5:55 AM through 7:00 AM and state each individual's role, any procedures performed, any care provided and the qualifications of each member in attendance.

**ANSWER: Objection. This interrogatory is vague, ambiguous, overly broad, compound and unduly burdensome. This interrogatory also seeks personal and confidential information. Subject to and without waiving these objections, Dr. Justin Dolan (resident), see attached medical records for additional names.**

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Ex 59. CCF's Better Answer to Plaintiff's Initial Interrogatories filed on July 20, 2020

**DEFENDANTS', CLEVELAND CLINIC FLORIDA HEALTH SYSTEM NONPROFIT CORPORATION and CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION), BETTER ANSWERS TO PLAINTIFF'S INTERROGATORIES SERVED ON MARCH 20, 2020, PER COURT ORDER DATED JUNE 26, 2020**

6. Please provide the name and job title of healthcare providers in the hospital room of Decedent Saverio Sasso on September 24, 2018 from 5:55 AM through 7:00 AM.

**ANSWER: Pursuant to the medical records:**

**Dr. Ian Russinoff (Attending)**

**Dr. Santiago Luis (Attending)**

**Dr. Justin Dolan (Fellow)**

**Dr. Miquel Gonzalez (Resident)**

**Dr. Kristen Selema (Resident)**

**Dr. Jacqueline Hernandez (Resident)**

**Dr. Sajive Aleyas (Attending)**

**Nurse Silvia Cuc**

**Nurse Laverne Cuzzocrea**

**Nurse Regine Suarez Merlano**

**Allen Bonami (Respiratory Therapist)**

**Philip Rivera (Respiratory Therapist)**

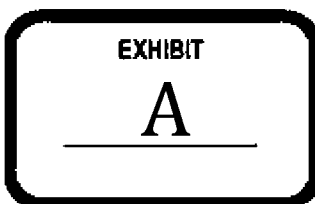
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Ex 64. CCF's Answer to Plaintiff's Second Interrogatories filed on March 15, 2021

1. Provide the shift for each person identified in your Answer to Interrogatory #6 dated July 20th, 2020.

**ANSWER: Objection. This interrogatory is vague, ambiguous, overly broad, not limited in scope or time, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.**

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Ex 66. CCF's Response to Plaintiff's Request for Admissions filed on March 22, 2021

3. Admit that there were no other health care providers present in decedent (Saverio Sasso)'s hospital room on 9/24/2018 from 05:45 am through 7:00 am other than those identified in your Answer to Interrogatory #6 dated July 20th, 2020.

**RESPONSE: Admitted that the Cleveland Clinic chart reflects that the individuals listed in Defendant's answers to Plaintiff's Interrogatory #6 were in the decedent's room on September 24, 2018 between 5:55 am to 7:00 am.**

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Ex 57. CCF's Response to Plaintiff's First Request for Production filed on February 2, 2021

Ex 61. CCFH's Response to Plaintiff's First Request for Production filed on March 1, 2021

### **CODE BLUE/RAPID RESPONSE/CPR**

38. Any and all documents that reflect the full names and positions of each and every person who was present at the time a Code Blue was called for decedent, Saverio Sasso at CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION) on September 24, 2018.

**RESPONSE: See medical records previously produced and responses to Plaintiff's interrogatories.**

39. Any and all documents that reflect the full names and positions of each and every person who was present at the time Code Blue team arrived in decedent, Saverio Sasso's room at CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION) on September 24, 2018.

**RESPONSE: See medical records previously produced and responses to Plaintiff's interrogatories.**

40. Any and all documents that reflect the full names and positions of each and every person who was present during the Code Blue of decedent, Saverio Sasso at CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION) Cleveland on September 24, 2018.

**RESPONSE: See medical records previously produced and responses to Plaintiff's interrogatories.**

41. Any and all documents that reflect the full names and positions of each and every person who was present at the time a Rapid Response was called for decedent, Saverio Sasso at CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION) on September 24, 2018.

**RESPONSE: See medical records previously produced and responses to Plaintiff's interrogatories.**



42. Any and all documents that reflect the full names and positions of each and every person who was present at the time the Rapid Response team arrived in decedent, Saverio Sasso's room at CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION) on September 24, 2018.

**RESPONSE: See medical records previously produced and responses to Plaintiff's interrogatories.**

43. Any and all documents that reflect the full names and positions of each and every person who was present during the Rapid Response of decedent, Saverio Sasso at CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION) on September 24, 2018.

**RESPONSE: See medical records previously produced and responses to Plaintiff's interrogatories.**

48. Any and all documents that reflect the full names and positions of each and every person who was present at the time decedent, Saverio Sasso went into cardiac arrest at CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION) on September 24, 2018.

**RESPONSE: See medical records previously produced and responses to Plaintiff's interrogatories.**

49. Any and all documents that reflect the full names and positions of each and every person who was present at the time emergency cardiopulmonary resuscitation (CPR) was performed on decedent, Saverio Sasso at CLEVELAND CLINIC FLORIDA (A NONPROFIT CORPORATION) on September 24, 2018.

**RESPONSE: See medical records previously produced and responses to Plaintiff's interrogatories.**

Ex 75. CCF and CCFH's Response to Plaintiff's Request for Admissions filed on January 10, 2022

1. Admit there was no ICU nurse in attendance at the Rapid Response and Code on September 23, 2018.

**RESPONSE: Deny.**

2. Admit there was no hospitalist present during the Rapid Response and Code on September 23, 2018.

**RESPONSE: Admit that the attending hospitalist, Dr. Herman Katz was not present.**

3. Admit there was no Emergency Department Nurse present during the Rapid Response and Code on September 23, 2018.

**RESPONSE: Admit.**

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Ex 66. CCF's Response to Plaintiff's Request for Admissions filed on March 22, 2021  
Ex 67. CCFH's Response to Plaintiff's Request for Admissions filed on March 22, 2021

8. Admit that on 9/24/2018 the hospital process for overnight airway emergency required that the Emergency Department Attending Physician be summoned to provide supervision while the Fellow intubates the patient.

**RESPONSE: Admitted that fellows are to be supervised when performing intubations. This supervision can be provided by an ICU attending, anesthesiologist, or ED attending. The remaining allegations are denied.**

9. Admit that during the Rapid Response there were no intubation attempts prior to Ian Russinoff, M.D. entering the room.

**RESPONSE: Admitted.**

18. Admit there was no airway assessment performed on decedent (Saverio Sasso) prior to the initial airway attempt.

**RESPONSE: Denied.**

19. Admit that the failure to do an airway assessment prior to performing an intubation is a violation of Standard of care.

**RESPONSE: Denied.**

20. Admit that your bylaws require an attending present before any resident or fellow may attempt emergent intubation.

**RESPONSE: Admitted that while the bylaws do not contain specific language requiring an attending to be present before any resident or fellow may attempt endotracheal intubation, this is the practice within the facility. The remaining allegations are denied.**

21. Admit that an attending was not present during the initial airway intubation attempts on decedent (Saverio Sasso).

**RESPONSE: Denied.**

22. Admit that there was no LMA intubation attempted on decedent (Saverio Sasso) during the Rapid Response on 9/24/2018.

**RESPONSE: Admitted.**

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## CARDIAC STRIPS

Ex 57. CCF's Response to Plaintiff's First Request for Production filed on February 2, 2021

7. A COLOR copy of all cardiac monitor strips from the bedside monitor or monitor bank captured pertaining to decedent, Saverio Sasso while he was being monitored in the step-down unit from the time he arrived (approx. 3:15pm) until the time he transferred to the ICU.

**RESPONSE: None other than the cardiac strips contained within the medical records produced in response to Plaintiff's interrogatories.**

8. A COLOR copy of all cardiac monitor strips, blood pressure readings, pulse rates, pulse oximetry readings taken from September 23, 2018 at 5:55 AM through and including September 24, 2018 at 6:53 AM during rapid response and code blue pertaining to decedent, Saverio Sasso.

**RESPONSE: See the medical records produced in response to Plaintiff's interrogatories.**

Ex 75. CCF and CCFH's Response to Plaintiff's Request for Admissions filed on January 10, 2022

20. Admit that the cardiac strips generated during Saverio Sasso's Code Blue event were destroyed.

**RESPONSE: Deny.**

21. Admit that the cardiac strips generated during Saverio Sasso's Code event are missing.

**RESPONSE: Deny.**

22. Admit there were no cardiac strips generated during Saverio Sasso's Code event, in violation of Cleveland Clinic's Code Blue policy.

**RESPONSE: Deny.**

Ex 76. CCF'S Response to Plaintiff's Request for Production filed on March 28, 2022

4. All monitoring strips, including raw monitoring data in its native form, for Saverio Sasso recorded between 5:00am and 7:00am on September 24, 2018.

**RESPONSE: None available at this time.**

5. All documents reflecting efforts to preserve or print monitoring data, including but not limited to sequestration of monitoring equipment in the case of Saverio Sasso.

**RESPONSE: This information has been requested and will be produced upon receipt.**

6. All policies and procedures relating to preservation or printing of monitoring data, including but not limited to sequestration of monitoring equipment, after a sentinel event.

**RESPONSE: Please see attached policy titled Florida Record Retention Policy along with Exhibit A to such policy.**

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## **DOLAN**

Ex 75. CCF and CCFH's Response to Plaintiff's Request for Admissions filed on January 10, 2022

5. Admit that Justin Dolan, M.D. administered the Succinylcholine to Saverio Sasso during the Rapid Response on September 23, 2018.

**RESPONSE: Deny.**

6. Admit that Justin Dolan, M.D. administered the Succinylcholine to Saverio Sasso while Miquel Gonzalez, M.D. was attempting Sasso's intubation, during the Rapid Response on September 23, 2018.

**RESPONSE: Deny**

9. Admit that during the attempted intubation, Justin Dolan, M.D. and Miquel Gonzalez, M.D. switched positions allowing Dr. Dolan to attempt intubation of Saverio Sasso during the Rapid Response on September 23, 2018.

**RESPONSE: Deny**

10. Admit that Justin Dolan, M.D. attempted to intubate Saverio Sasso before Dr. Ian Russinoff entered the room during the Rapid Response on September 23, 2018.

**RESPONSE: Deny**

11. Admit that Dr. Ian Russinoff was not present during the initial intubation attempts of Saverio Sasso by Doctors Miquel Gonzalez, M.D. and Justin Dolan, M.D.

**RESPONSE: Deny**

14. Admit that NO airway assessment of Saverio Sasso's airway was performed before the intubation attempt(s) by Justin Dolan, M.D.

**RESPONSE: Deny.**

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## **GONZALEZ**

Ex 75. CCF and CCFH's Response to Plaintiff's Request for Admissions filed on January 10, 2022

4. Admit that Miquel Gonzalez, M.D. started the intubation of Saverio Sasso on September 23, 2018.

**RESPONSE: Deny.**

8. Admit that Miquel Gonzalez, M.D. was unsuccessful in his attempts at intubation of Saverio Sasso during the Rapid Response on September 23, 2018.

**RESPONSE: Deny**

9. Admit that during the attempted intubation, Justin Dolan, M.D. and Miquel Gonzalez, M.D. switched positions allowing Dr. Dolan to attempt intubation of Saverio Sasso during the Rapid Response on September 23, 2018.

**RESPONSE: Deny**

11. Admit that Dr. Ian Russinoff was not present during the initial intubation attempts of Saverio Sasso by Doctors Miquel Gonzalez, M.D. and Justin Dolan, M.D.

**RESPONSE: Deny**

13. Admit that NO airway assessment of Saverio Sasso's airway was performed before intubation attempt(s) by Miquel Gonzalez, M.D.

**RESPONSE: Deny**

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## **KATZ**

Ex 75. CCF and CCFH's Response to Plaintiff's Request for Admissions filed on January 10, 2022

12. Admit that Dr. Herman Katz, M.D. was not made aware of the Rapid Response and Code of Saverio Sasso on September 23, 2018.

**RESPONSE: Deny.**

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## **RUSSINOFF**

Ex 66. CCF's Response to Plaintiff's Request for Admissions filed on March 22, 2021

Ex 67. CCFH's Response to Plaintiff's Request for Admissions filed on March 22, 2021

9. Admit that during the Rapid Response there were no intubation attempts prior to Ian Russinoff, M.D. entering the room.

**RESPONSE: Admitted.**

10. Admit there is no way to know what time Dr. Russinoff was called to the Rapid Response.

**RESPONSE: Denied.**

11. Admit there is no way to know what time Dr. Russinoff arrived at the Rapid Response.

**RESPONSE: Denied.**

Ex 70. CCF's Response to Plaintiff's Third Request for Production filed on May 10, 2021

Ex 71. CCFH's Response to Plaintiff's Third Request for Production filed on May 10, 2021

8. a) Please produce any phone logs, either personal, Cleveland Clinic's or through the Epic System Documentation, that provides **proof of the time** that **Dr. Ian Russinoff was contacted** to come to the patient room of Saverio Sasso on 9/24/2018.

**RESPONSE: None. See medical records previously produced.**

- b) Please provide proof, written or otherwise, documenting **the time** that **Dr. Ian Russinoff arrived** at the patient room of Saverio Sasso on 9/24/2018.

**RESPONSE: See medical records previously produced.**

Ex 75. CCF and CCFH's Response to Plaintiff's Request for Admissions filed on January 10, 2022

15. Admit that NO airway assessments of Saverio Sasso's airway were performed before the intubation attempt(s) by Ian Russinoff, M.D.

**RESPONSE: Deny.**