

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MAYOR FRANK JACKSON ) CASE NO.  
601 Lakeside Avenue )  
Cleveland, OH 44114 ) JUDGE  
)  
And )  
) **COMPLAINT FOR PRELIMINARY AND**  
CITY OF CLEVELAND, OHIO ) **PERMANENT INJUNCTION**  
c/o MAYOR FRANK G. JACKSON ) **(Jury Demand Endorsed Hereon)**  
601 Lakeside Avenue )  
Cleveland, OH 44114 )  
)  
Plaintiffs, )  
)  
)  
v. )  
)  
)  
CLEVELAND CLINIC )  
FOUNDATION )  
C/O STATUTORY AGENT )  
CT CORPORATION SYSTEM )  
1300 EAST 9<sup>TH</sup> STREET )  
CLEVELAND, OH 44114 )  
)  
)  
Defendant. )

**INTRODUCTION**

This case concerns the delivery of vital trauma services in Northeast Ohio, specifically those areas of the cities of Cleveland and East Cleveland that currently receive emergency trauma services at Huron Hospital. The Cleveland Clinic Foundation has announced its unilateral decision to cease all trauma and emergency room services at Huron Hospital in the immediate future.

This unilateral decision comes from the Cleveland Clinic Foundation despite the fact that it has yet to resolve the logistics of minimizing any impact from its decision in

its discussions with the City of Cleveland and other effected entities over the last eight months. Those discussions were precipitated by the filing of a prior lawsuit by Cleveland after the Cleveland Clinic first announced it would only cease trauma services at Huron Hospital.

In the parties' discussions, representatives of the Cleveland Clinic Foundation have repeatedly assured Plaintiffs and the general public that trauma services would continue at Huron Hospital until the logistics of how to minimize any impact from the closure of the trauma unit were first worked out. During those discussions over the last eight months, representatives of the Cleveland Clinic Foundation have repeatedly acknowledged the importance of Huron Hospital for the delivery of trauma services. They have further acknowledged that closure of the trauma center will center will increase response time and commit Plaintiffs' emergency medical service providers to longer run times. The closure of the trauma center will cause a substantial increase in the cost of Plaintiffs' provision of emergency medical services, as well as the costs of other effected communities.

No agreement has been reached as to how to minimize the impact from the cessation of trauma services at Huron Hospital. And at no time during the parties' discussions did the Cleveland Clinic Foundation reveal its intention to close Huron Hospital and in fact repeatedly stated that both the hospital and the emergency room would remain open.

Public institutions that accept federal funding such as Medicaid and Medicare are obligated under federal law to not discriminate in the delivery of services, Title VI of the Civil Rights Act of 1964, 42 U.S.C.s 2000d. Providing federal funding conditioned on an

even-handed application is a positive measure to discourage all forms of discrimination, intentional or not. Discrimination is barred which has that effect even though no purposeful design is present.

Currently, residents needing emergency and trauma care services have access to such care at Huron Hospital. Over 95 percent of East Cleveland's population is composed of racial minorities. Over 84 percent of the population in the City of Cleveland wards that rely on Huron Hospital are racial minorities.

The Cleveland Clinic Foundation's unilateral decision to cease all trauma and emergency medical care at Huron Hospital will deprive Plaintiffs' residents of essential trauma care and emergency room services that cannot be reasonably replaced by other health care facilities. That decision, whether intended or not, will have a disparate impact on the minority residents of East Cleveland and Cleveland's east-side population.

### **Preliminary Statement**

1. Plaintiff City of Cleveland, Ohio is a municipal corporation organized and existing under the laws of the State of Ohio and pursuant to a municipal charter.
3. Plaintiff, Mayor Frank Jackson is the duly elected Mayor for the City of Cleveland. As Mayor, he has the authority to advance issues affecting the quality of life for the City's residents.
4. Defendant Cleveland Clinic Foundation is a private, not-for-profit corporation organized and existing under the laws of the State of Ohio.
5. Defendant Cleveland Clinic Foundation is a charitable corporation as defined by 26 U.S.C. §501(c)(3) and in fact holds tax exempt status under U.S.C. §501(c)(3).

### **First Cause of Action**

6. The Cleveland Clinic Foundation is the owner and operator of Huron Hospital.
7. The Cleveland Clinic Foundation receives and accepts federal funding to support the delivery of health care services including, but not limited to, the receipt of payment from Medicaid and Medicare.
8. The Cleveland Clinic Foundation's acceptance of federal funding subjects it to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d (1976).
9. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d (1976), bans discrimination based on race, color, or national origin in any program receiving federal financial assistance.
10. Huron Hospital is for all practical purposes a component of the Cleveland Clinic Foundation's system and network of hospitals owned and operated by it.
11. Among the vital services maintained at Huron Hospital is a Level II Trauma Care Unit and emergency room. Huron Hospital has maintained a Level II Trauma Care Unit for over 15 years. The current Level II trauma certification is valid through October, 2013.
12. The trauma care unit and emergency room at Huron Hospital received approximately 3000 patients in 2010 from Cleveland EMS. Approximately 800 of those patients required emergency trauma care.
13. The delivery of trauma care services and emergency room services at Huron Hospital is vital to the residents of East Cleveland and Cleveland's east-side residents. Trauma patients who rely upon Huron Hospital and would otherwise not survive their

inquiries without the availability of such facilities. Emergency room patients rely upon Huron Hospital for vital medical services to stabilize their injuries.

14. During meetings with officials of Cleveland, officials of the Cleveland Clinic Foundation assured Plaintiffs and the general public that the emergency room at Huron Hospital would remain open and that vital emergency medical care and stabilization care would remain available at Huron Hospital.

15. The Cleveland Clinic Foundation has announced its intention to replace the community based trauma care services and emergency room care that Plaintiffs' residents currently receive at Huron Hospital with similar services at facilities located in suburban communities. Requiring Plaintiffs' residents to travel to such suburban locations will jeopardize and diminish their access to such services and, in some instances, jeopardize their ability to receive timely care for life threatening injuries.

16. The closure of Huron Hospital will have a disparate impact on the minority residents.

17. The closure of the emergency room at Huron Hospital will deprive Plaintiffs' citizens of essential stabilization care that Defendant's officials have acknowledged is vital and would remain available.

18. Officials of the Cleveland Clinic Foundation assured the Plaintiffs and the general public that no changes would be made at Huron Hospital until the logistics of how to minimize the impact were first worked out.

19. On October 27, 2010, Plaintiff first initiated litigation against the Cleveland Clinic Foundation after an announcement that the Defendant would cease to operate the emergency room at Huron Hospital as a Level II Trauma Care Unit. As a result of that

litigation, the parties agreed to meet and discuss proposed changes to emergency room services in an effort to eliminate any adverse impact to citizens requiring trauma care services currently provided at Huron Hospital.

20. Throughout the later part of 2010 to date, Plaintiffs, together with representatives of other effected communities have been in discussions with the Cleveland Clinic Foundation concerning the continuation of trauma services at Huron Hospital.

21. Those discussions have included an acknowledgement that the closure of the Huron Hospital emergency room and trauma center will increase response time and commit Plaintiffs' emergency medical service providers to longer run times. The closure of the trauma center alone will cause a substantial increase in the cost of Plaintiffs' provision of emergency medical services, as well as the costs of other effected communities. The complete closure of Huron Hospital will further exacerbate those costs and commitment of Plaintiffs' resources to emergency response time. The closure will tie-up essential emergency services for longer periods and reduce Plaintiffs' ability to respond to citizens' needs for such care.

22. At no time during those discussions has any representative of the Cleveland Clinic Foundation indicated Defendant's intention to completely close Huron Hospital.

23. Despite the Cleveland Clinic Foundation's assurances that no changes would be made at Huron Hospital until the logistics of how to minimize the impact of any change were resolved, the Cleveland Clinic Foundation has unilaterally decided to close the facility without first determining a coordinated plan with the effected communities and their emergency medical services providers on how to replace essential services currently provided at Huron Hospital.

24. The closure of Huron Hospital would be in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d (1976).

25. Should the Cleveland Clinic Foundation be permitted to close Huron Hospital the residents of East Cleveland and Cleveland's east-side will suffer irreparable harm.

26. Whether or not intended, the Cleveland Clinic Foundation's actions violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d (1976).

### **Second Cause of Action**

27. Plaintiffs incorporate paragraphs 1 through 26 as if fully rewritten.

28. The Cleveland Clinic Foundation is the owner and operator of Huron Hospital.

29. Huron Hospital is a level II trauma facility located in the City of East Cleveland and is one of ten (10) listed regional hospitals that are part of Defendant Clinic's hospital system acquired by Defendant through a merger with Meridia Hospital Systems in 1997.

30. Huron Hospital provides essential in-patient services, basic emergency room care, and Level II trauma services. The Level II trauma patients who rely upon emergency care at Huron would otherwise not survive their injuries without the availability of such facilities. Emergency room patients rely upon essential care to stabilize their injuries.

31. On or about November 2009, Cleveland Clinic and MetroHealth System agreed to coordinate the delivery of vital trauma services by establishing a network of trauma centers. The Cleveland Clinic formed the Northern Ohio Regional Trauma Network ("NORTN") with MetroHealth System, the only level 1 trauma center in the region) to provide advice, expertise and coordinated trauma care at the Clinic's level II trauma centers of "Fairview, Huron, Lakewood and Hillcrest hospitals."

32. The Cleveland Clinic Foundation through its acceptance of tax exempt status under 28 U.S.C. §501(C)(3), its participation in NOTS, and its mission statement has declared its intention to fairly and justly provide trauma and emergency room services for the residents of northeast Ohio, including the residents of East Cleveland and Cleveland.

33. The tax exemption status under 28 U.S.C. §501(C)(3) for hospitals is justified as quid pro quo in that the assumption is that for every dollar of taxes forgone by exemption the public gets 100 percent return in the form of hospital services. (55 Cong. Rec. §6728).

34. The Cleveland Clinic Foundation currently has in excess of \$1.4 billion dollars in tax-exempt bonds from the State of Ohio.

35. The Cleveland Clinic Foundation, through its participation in NOTS, has agreed to be a necessary and coordinate provider of Level II trauma and emergency room services throughout northern Ohio, including the provision of emergency room services necessary to stabilize patients before being transported to a trauma center.

36. By accepting federal, state, and local tax exemptions, and further accepting tax exempt funding, as well as its voluntary participation in NOTS, the Cleveland Clinic Foundation created and entered into a public charitable trust to provide essential Level II trauma care and emergency room services in a fair and equitable manner.

37. By virtue of the charitable trust created and entered into by the Cleveland Clinic Foundation, the Cleveland Clinic Foundation owes a fiduciary duty to the citizens within its service area.

38. The Cleveland Clinic Foundation has announced its intention to cease all emergency room care and Level II trauma care services at Huron Hospital despite the fact



that Huron Hospital holds a current certification from the American College of Surgeons as a Level II trauma center.

39. Dr. Gus Kious, president of Huron, has stated that Huron serves the Clinic system's highest number of poor, is the second busiest trauma center in the region next to MetroHealth, and serves more patients with wounds caused by penetration, such as gun shots and knives, than any other hospital in the state.

40. On average 155 trauma patients per year are transported to Huron from East Cleveland.

41. The trauma care unit and emergency room at Huron received approximately 3000 patients in 2010 from Cleveland EMS. Approximately 800 of those patients required emergency trauma care.

42. The Cleveland Clinic Foundation has announced its intention to transfer Level II trauma care services from Huron Hospital to Hillcrest Hospital located in the City of Mayfield, Ohio.

43. The Cleveland Clinic Foundation has announced its intention to cease all emergency care services at Huron Hospital.

44. That transport from the City of East Cleveland to Hillcrest averages 17 minutes or more, and that only with good weather and on the rare occasion that the main transport thoroughfare of Mayfield Avenue is not congested as is typically the case.

45. The transfer of Level II trauma services will add to the response time from pick-up to delivery to the trauma II care unit for some patients. Response time is a critical factor in the survivability of patients with Level II trauma type injuries.

46. The complete closure of the Huron Hospital emergency room will deprive Plaintiffs' residents of essential medical services needed to stabilize their injuries before being transferred to a trauma center.

47. The announced decision of the Cleveland Clinic Foundation to transfer Level II trauma care services from Huron Hospital to Hillcrest Hospital and cease all emergency room services will negatively impact the response time for some patients.

48. The announced decision of the Cleveland Clinic Foundation to transfer Level II trauma care services from Huron Hospital to Hillcrest Hospital and other area facilities and to cease emergency room care will negatively impact the abilities of Plaintiffs to provide emergency response medical services by committing such services to longer response times to Hillcrest Hospital.

49. The announced decision of the Cleveland Clinic Foundation to transfer Level II trauma care services from Huron Hospital to Hillcrest Hospital will negatively impact the delivery of trauma services at Metro General Hospital by straining its capacity to accept such patients. That decision will further negatively impact the delivery of emergency medical care at other area facilities that lack the capacity as well as a coordinated plan of delivery with other facilities for the increased need for emergency medical care that will be caused by the closure of Huron Hospital.

50. Through its acceptance of tax exempt status, its participation in NOTS, and otherwise, the Cleveland Clinic Foundation entered into a charitable trust between itself and the citizens of Northeast Ohio to ensure the fair and equitable delivery of emergency room care and Level II trauma care services.

51. The announced decision of the Cleveland Clinic Foundation to close Huron Hospital and transfer those services to Hillcrest Hospital and other area facilities constitutes a breach of the Cleveland Clinic's fiduciary duty to insure the fair and equitable delivery of such services.

52. The announced decision of the Cleveland Clinic Foundation to close Huron Hospital and to transfer those services to Hillcrest Hospital and other area facilities violates the fiduciary obligation between the Cleveland Clinic Foundation and the citizens of northeast Ohio who will be denied prompt, vital emergency medicine and Level II trauma services, and will suffer a lower chance of survivability as a result of extended delivery time to Hillcrest Hospital.

53. The impact to the citizens of northeast Ohio who will be affected by the Cleveland Clinic Foundation's announced decision is imminent and irreparable.

54. The impact to the delivery of EMS services by Cleveland by the Cleveland Clinic Foundation's announced decision is imminent and irreparable.

55. The announced decision by the Cleveland Clinic Foundation to close Huron constitutes a breach of the charitable trust.

### **Third Cause of Action**

56. Plaintiffs incorporate paragraphs 1 through 55 as if fully rewritten.

57. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 29 of this complaint as if fully re-written herein.

58. Based upon information and belief, the Cleveland Clinic Foundation has accepted over \$1.4 billion dollars in tax exempt funding from the State of Ohio. Based upon

information and belief, said funding has been used for the maintenance and construction of Cleveland Clinic owned facilities including Huron Hospital.

59. The Cleveland Clinic Foundation's acceptance of such funding constitutes a contract between the Cleveland Clinic Foundation and the citizens of the State of Ohio.

60. The Cleveland Clinic Foundation's acceptance of such funding requires the Cleveland Clinic to continue to provide for the fair and equitable deliver of essential medical services to the citizens of the cities of East Cleveland and Cleveland.

61. The announced decision by the Cleveland Clinic Foundation to Huron Hospital and to transfer those services to Hillcrest Hospital and other area facilities constitutes a breach of contract.

**WHEREFORE**, Plaintiffs City of Cleveland and Cleveland Mayor Frank Jackson respectfully pray that this court grant the following relief, and such further and other relief as this Court deems just and equitable.

1. For a preliminary injunction barring the Cleveland Clinic Foundation from reducing or ceasing emergency room medical services currently provided at Huron Hospital and taking all measures necessary to continue the provision of those services;
2. For a preliminary injunction barring the Cleveland Clinic Foundation from reducing or ceasing trauma care services currently provided at Huron Hospital and taking all measures necessary to continue the provision of those trauma care services;
3. For a permanent injunction; and

4. For such other and further relief as this Court deems to be just and equitable.

Respectfully submitted,

ROBERT J. TRIOZZI (0016532)  
Director of Law  
City of Cleveland

By: s/Joseph F. Scott  
JOSEPH F. SCOTT (0029780)  
Chief Assistant Director of Law  
Room 106 - City Hall  
601 Lakeside Avenue  
Cleveland, Ohio 44114  
216-664-3727  
216-664-2663 (fax)  
e-mail: [jscott@city.cleveland.oh.us](mailto:jscott@city.cleveland.oh.us)  
Attorney Bar No. 0029780  
ATTORNEYS FOR PLAINTIFFS

**JURY DEMAND**

Plaintiffs respectfully request a trial by jury as to all applicable issues.

s/Joseph F. Scott  
JOSEPH F. SCOTT (0029780)  
Chief Assistant Director of Law