

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

RICHARD KREUTZ, SR., SURVIVING FATHER OF RICHARD KREUTZ, JR.,  
DECEASED, AND SUSAN KREUTZ, SURVIVING MOTHER OF RICHARD  
KREUTZ, JR., DECEASED

Appellants

v.

CURATORS OF THE UNIVERSITY OF MISSOURI, ET AL.

Respondents

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DOCKET NUMBER **WD72964**

DATE: December 13, 2011

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Appeal From:

Circuit Court of Boone County, MO  
The Honorable Mary (Jodie) Capshaw Asel, Judge

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Appellate Judges:

Division One  
Alok Ahuja, P.J., Thomas H. Newton, and James Edward Welsh, JJ.

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Attorneys:

Leonard Cervantes, St. Louis, MO      Counsel for Appellants

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Attorneys:

Sara Obermark, St. Louis, MO      Counsel for Respondents, Ordways and Life Christian  
Colly Durley, Columbia, MO      Counsel for Respondent, Kraatz

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

RICHARD KREUTZ, SR., SURVIVING FATHER OF  
RICHARD KREUTZ, JR., DECEASED, AND SUSAN KREUTZ,  
SURVIVING MOTHER OF RICHARD KREUTZ, JR.,  
DECEASED, Appellants, v. CURATORS OF THE UNIVERSITY  
OF MISSOURI, ET AL., Respondents

**WD72964**

**Boone County**

Before Division One Judges: Ahuja, P.J., Netwon, and Welsh, JJ.

The Kreutzes filed a petition seeking damages for the wrongful death of their son against the Defendants (the Curators, the treating physician, and the residential facility where the son had lived at the time of his death). Along with their petition, the Kreutzes filed health care affidavits pursuant to section 538.225, stating that they had obtained the written opinion of a “legally qualified health care provider” asserting that the defendant health care providers caused the damages claimed in the petition by breaching the standard of care. The trial court found that the qualifications of the opining doctor did not meet the statutory requirements of a legally qualified health care provider, and dismissed the Kreutzes’ petition for failure to comply with section 538.225. The trial court also dismissed the Curators from the lawsuit on the ground of sovereign immunity. The Kreutzes appeal, raising two points.

**AFFIRMED.**

**Division One Holds:**

In their first point, the Kreutzes argue that the trial court erred in finding that the opining doctor was not a legally qualified health care provider because the issue in the case involved the administration and monitoring of medicine, which the opining doctor had experience with as a medical doctor. Section 538.225.2 states, “‘legally qualified health care provider’ shall mean a health care provider licensed in this state or any other state in the same profession as the defendant and either actively practicing or within five years of retirement from actively practicing substantially the same specialty as the defendant.” Here, the opining doctor was a pathologist not actively practicing, or within five years of retiring from practicing, the administration of morphine or the post-administration monitoring of patients, so he was not a legally qualified health care provider under section 538.225. Consequently, the trial court did not err in dismissing the petition.

In their second point, the Kreutzes argue that the trial court erred in finding that the Curators were immune from tort liability because they alleged in their petition “that Defendant Curators directed and/or encouraged its agents, servants and/or employees including Defendant Kraatz to prematurely discharge decedent from its hospital,” thereby contributing to his death. The Board is considered a governmental body and is therefore immune from tort liability absent an express statutory provision. According to case law, an individual curator as a public officer can be held liable for the acts of a subordinate employee if he “directed, encouraged, ratified or personally cooperated in the allegedly tortious conduct.” Here, the Kreutzes did not sue the

individual curators but rather sued the Curators as a board. Including a conclusory allegation in the petition that the Curators directed or encouraged its agents and employees does not destroy the governmental body's immunity.

For the foregoing reasons, we affirm.

Opinion by Thomas H. Newton, Judge

December 13, 2011

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**