

THE UNIVERSITY  
OF KANSAS HOSPITAL  
**KUMED**

FAX

Date: 11-9-06

To: Thaddeus Mason Pope, J.D., Ph.D.

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Page(s) to follow: 8

From: Dennis McCulloch

Dept./Title: Director, Public and Government Relations

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Comments:

**Confidentiality Notice**

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University of Kansas Hospital. UKHA denies the remainder of the allegations contained in paragraph 2 of the Motion.

3. UKHA denies that Dr. Carla Braxton is the current attending physician of Michael J. Todd, that Dr. Braxton was the attending physician of Michael J. Todd as of the filing of the Motion, and that Dr. Braxton is an employee of UKHA. UKHA admits the remainder of the allegations contained in paragraph 3 of the Motion.

4. UKHA is without sufficient information to admit or deny the allegations contained in paragraph 4 of the Motion.

5. UKHA denies the allegations contained in paragraph 5 of the Motion.

6. UKHA admits that Dr. Braxton confirmed Michael J. Todd's brain death by exam and nuclear medicine study and noted same in his medical chart on May 10, 2006. UKHA denies the remainder of the allegations contained in paragraph 6 of the Motion.

7. UKHA is without sufficient information to admit or deny the allegations contained in paragraph 7 of the Motion.

8. UKHA denies the allegations in paragraph 8 of the Motion.

9. UKHA is without sufficient information to admit or deny the allegations contained in paragraph 9 of the Motion.

10. UKHA is without sufficient information to admit or deny the allegations contained in paragraph 10 of the Motion.

11. To the extent the documents referred to in paragraph 11 of the Motion exist, UKHA states that those documents speak for themselves and respectfully refers the Court to those documents for the contents contained therein. Because the remainder of the allegations

contained in paragraph 11 of the Motion state legal conclusions, UKHA therefore denies the

same.

12. To the extent the document referred to in paragraph 12 of the Motion exists,

UKHA states that the document speaks for itself and respectfully refers the Court to that

document for the contents contained therein. Because the remainder of the allegations contained

in paragraph 12 of the Motion state legal conclusions, UKHA therefore denies the same.

13. To the extent the document referred to in paragraph 13 of the Motion exists,

UKHA states that the document speaks for itself and respectfully refers the Court to that

document for the contents contained therein. Because the remainder of the allegations contained

in paragraph 13 of the Motion state legal conclusions, UKHA therefore denies the same.

14. UKHA denies the allegations contained in paragraph 14 of the Motion.

15. UKHA denies the allegations contained in paragraph 15 of the Motion.

16. UKHA admits that Plaintiff has requested that the University of Kansas Hospital

not discontinue treatment of Michael J. Todd and that Todd be transferred to Children's Mercy

Hospital in Kansas City, Missouri. UKHA denies the remainder of the allegations in paragraph

16 of the Motion.

17. UKHA denies the allegations contained in paragraph 17 of the Motion.

**GENERAL DENIAL**

UKHA denies each and every allegation in the Petition and the Motion not specifically

admitted herein.

**PARTIES**

of Minor Michael J. Todd ("Plaintiff"), states and alleges as follows:  
and for its counterclaims against Plaintiff-Counterclaim Defendant Cecilia B. Cole, in the interest  
Defendant-Counterclaim Plaintiff University of Kansas Hospital Authority ("UKHA"), as

**DEFENDANT UNIVERSITY OF KANSAS HOSPITAL AUTHORITY'S  
COUNTERCLAIM FOR DECLARATORY JUDGMENT CONFIRMING  
DEFENDANT'S DETERMINATION OF DEATH AND REQUEST FOR HEARING**

attorneys' fees, and such other relief as is just and proper.  
and that Defendant University of Kansas Hospital Authority be granted costs incurred, including  
Kansas Medical Center, prays that Plaintiff's Petition and Motion be dismissed in the entirety  
Defendant University of Kansas Hospital Authority, referred to in the caption as University of  
Emergency Motion for Temporary Restraining Order and Motion for Preliminary Injunction,  
WHEREFORE, having fully answered the allegations in Plaintiff's Petition and  
Plaintiff's claims which may become appropriate as discovery proceeds in this case.

UKHA reserves the right to assert any other defenses or matters in avoidance of

**THIRD AFFIRMATIVE DEFENSE**

omissions.  
Plaintiffs are not in imminent danger of suffering harm as a result of UKHA's acts or

**SECOND AFFIRMATIVE DEFENSE**

granted.  
The Petition and the Motion fail to state a claim against UKHA upon which relief may be

**FIRST AFFIRMATIVE DEFENSE**

**AFFIRMATIVE DEFENSES**

- 1. Pursuant to K.S.A. § 76-3301 *et seq.*, UKHA is a body politic and independent instrumentality of the State of Kansas. UKHA operates the University of Kansas Hospital.
  - 2. Plaintiff is a resident of Kansas City, Missouri, and is the parent and legal guardian of Michael J. Todd ("Todd"), a minor.
  - 3. Pursuant to K.S.A. § 60-1701, this court has jurisdiction to declare the rights, status, and other legal relations of the parties.
  - 4. Pursuant to K.S.A. § 60-605(1), venue is proper in this Court.
- FACTS COMMON TO ALL COUNTS**
- 5. On or about May 9, 2006, Todd was involved in an accident and suffered a gunshot wound to the neck.
  - 6. On or about May 9, 2006 Todd was seen in the emergency room at St. Mary's Medical Center in Blue Springs, Missouri.
  - 7. That same day, Todd was transferred to the University of Kansas Hospital.
  - 8. On May 10, 2006, qualified physicians at the University of Kansas Hospital made a clinical determination that Todd was brain dead, and confirmed that determination through diagnostic tests.
  - 9. The diagnosis was made pursuant to the recognized standard of care and consistent with University of Kansas Hospital Ethics Handbook Procedures for Determining Brain Death.
  - 10. The diagnosis has been confirmed by a pediatric neurologist, a pediatric intensivist and a pediatric neurosurgeon.
  - 11. Despite the diagnosis of Todd's brain death, no order has been issued to remove mechanical ventilation.

For Count II of its Counterclaim against Plaintiff, UKHA states and alleges as follows:

**COUNT II - DECLARATORY JUDGMENT THAT UKHA CAN CEASE  
MEDICAL TREATMENT OF MICHAEL J. TODD**

such other and further relief as this Court deems necessary and appropriate.

Todd's brain death and legal status as dead pursuant to the laws of the State of Kansas, and for respectfully requests that this Court enter its Order confirming the determination of Michael J.

WHEREFORE, Counterclaim-Plaintiff University of Kansas Hospital Authority

brain death and that Todd is legally dead.

17. UKHA now seeks a confirmation from this Court of UKHA's determination of

that Todd is brain dead.

16. Nonetheless, Plaintiff has alleged that UKHA made an improper determination

standards.

15. UKHA made its determination of death in accordance with accepted medical

14. Todd's condition meets the definition of death as stated in K.S.A. § 77-205(2).

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

13. Pursuant to K.S.A. § 77-205:

paragraphs 1 through 10, as though fully set forth herein.

12. UKHA hereby adopts and incorporates by reference the allegations contained in

For Count I of its Counterclaim against Plaintiff, UKHA states and alleges as follows:

**COUNT I - DECLARATORY JUDGMENT  
CONFIRMING UKHA'S DETERMINATION OF DEATH**

practicable.

UKHA thus requests that this Court set the matter for hearing as soon as is reasonably Pursuant to K.S.A. 60-257, the court may order a "speedy hearing" on this matter.

**REQUEST FOR HEARING**

such other and further relief as this Court deems necessary and appropriate.

Kansas Hospital Authority may cease providing medical treatment to Michael J. Todd, and for brain death and legal status as dead pursuant to the laws of the State of Kansas, the University of

respectfully requests that this Court enter its Order confirming that, due to Michael J. Todd's

**WHEREFORE, Counterclaim-Plaintiff University of Kansas Hospital Authority**

is legally dead, UKHA is not required to continue providing medical treatment to Todd.

21. UKHA now seeks a declaration from this Court that, in light of the fact that Todd

medical treatment of Todd, despite the fact that he has been declared brain dead.

20. Nonetheless, in Todd's case, UKHA has respected Plaintiff's request to continue

in or make the decision that the patient is brain dead, and treatment of the patient should cease.

Determining Brain Death, once death is declared, the patient's family is not asked to participate

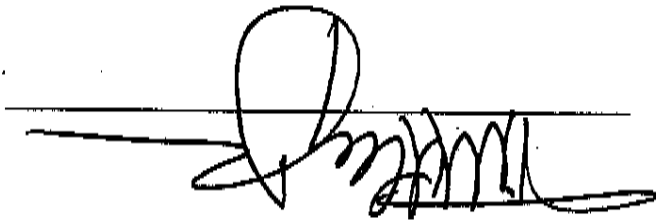
19. Pursuant to the University of Kansas Hospital Ethics Handbook Procedures for

paragraphs 1 through 17, as though fully set forth herein.

18. UKHA hereby adopts and incorporates by reference the allegations contained in



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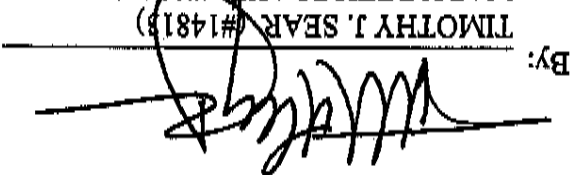


Cecelia B. Cole  
3410 Brooklyn Avenue  
Kansas City, Missouri 64128  
PLAINTIFF *PRO SE*

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by  U.S. Mail, postage prepaid;  fax;  Federal Express; and/or  hand delivery this 15th day of May 2006, to:

**CERTIFICATE OF SERVICE**

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ATTORNEYS FOR DEFENDANT  
UNIVERSITY OF KANSAS HOSPITAL AUTHORITY

By: 

POLINELLI SHALTON WELTE SUELTHAUS PC

Respectfully submitted,