

# EXHIBIT D

## **AFFIDAVIT OF RICHARD P. BONFIGLIO, M.D.**

Richard P. Bonfiglio, M.D., being duly sworn, deposes and says, and if called upon to testify will state as follows:

1. He is a medical doctor licensed in the State of Michigan and a 1978 graduate of the University of Michigan School of Medicine, and the Curriculum Vitae attached is true and accurate delineation of his professional accomplishments.
2. He is Board Certified in Physical Medicine and Rehabilitation and has been personally involved in prior cases in which a determination of “brain death” has been found to be in error.
3. He has reviewed the medical records of Titus Jermain Cromer, Jr. who sustained an anoxic brain injury on October 17, 2019 and who has been in a coma since that date.
4. He is ready, willing, and able to examine Titus Jermain Cromer, Jr., however, has been prohibited from doing so by Beaumont Health. He has, however been allowed to visit with the family and observe Titus Jermain Cromer, Jr.
5. The review of the medical records provided to the family by Beaumont Health clearly indicate that Titus Jermain Cromer, Jr. does not meet the criteria for Brain Death pursuant to MCL 330.001, which requires “Irreversible cessation of all function of the entire brain”
6. Titus Jermain Cromer, Jr. does not meet these criteria in MCL 330.001 because the incontrovertible medical evidence in the Beaumont Health medical records shows that he has a functioning hypothalamus, which is a part of the brain, and this is evidenced by two facts:
  - a. He is maintaining and regulating his own body temperature. The medical records and my personal observations confirm that this is not being done externally through

means such as a heating pad or other artificial mechanism. The hypothalamus is the only area of the brain which controls this function, and a person without a functioning hypothalamus is incapable of regulating their own body temperature.

- b. He is producing pituitary hormones. The pituitary is not able to produce hormones and otherwise function unless it is stimulated to do so by electrical and neurotransmitter stimulation by the hypothalamus. Without a functioning hypothalamus, the medical records could not indicate any levels of pituitary hormones, and they clearly do indicate levels of these hormones. These hormones have a half-life of approximately 60 minutes, and therefore could not be present in a patient who sustained “brain death” on October 17, 2019 without a functioning hypothalamus.
  - c. His family in attendance at his bedside has indicated that he has reacted to external stimuli such as moving in response to touch, in the case of his aunt holding his hand, his fingers have moved. This cannot occur in a patient that has suffered “brain death”
7. Thus, Titus Jermain Cromer Jr.’s medical status is therefore utterly inconsistent with “brain death” as defined by Michigan Law for the foregoing reasons.
8. That additionally Titus Jermain Cromer, Jr. is independently regulating his:
- a. Heart rate and rhythm
  - b. Blood Pressure.
  - c. Transfer of oxygen from the lungs to the bloodstream, exchange of carbon dioxide from the blood to the lungs as exhalant, digestion, renal function, and production of urine and feces.

9. That based on his experience, training, skill and experience, there has not been passage of time to the extent that a determination of recover and to what extent recovery can occur as the anoxic brain injury occurred on October 17, 2019, and he believes that such decisions cannot be reasonably made until the passage of at least six months and upwards of two years duration.
10. Additionally, there is an overwhelmingly better chance of a successful rehabilitation outcome with a younger patient in excellent physical health and with no medical comorbidities such as Titus Jermain Cromer, Jr., aged 16 years, a competitive varsity wrestler and otherwise successful Junior at University of Detroit Jesuit High School in comparison to an elderly patient with extensive comorbidities who sustained the same injury.
11. That he has been involved in the care and treatment of patients who have been in the same or worst condition as Titus Jermain Cromer, Jr., and who have recovered consciousness and function.
12. That it is currently medically necessary for Titus Jermain Cromer, Jr. to have the following medical procedures performed due to the length of time he has been intubated for ventilation and had a nasal gastric feeding tube for nutrition, to prevent infection, irritation and damage to the tissues of the throat, and allow for transfer to a skilled nursing facility:
  - a. A percutaneous endoscopic gastrostomy (PEG tube), a procedure in which a flexible feeding tube is placed through the abdominal wall and into the stomach. A PEG tube allows nutrition, fluids and/or medications to be put directly into the stomach, bypassing the mouth and esophagus.

- b. A tracheostomy , which creates an opening in the neck in order to place a tube into a person's trachea. The tube is inserted through a cut in the neck below the vocal cords. This allows air to enter the lungs more efficiently.
  - c. That the need for this medical treatment constitutes an “emergency medical condition” as defined by the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. § 1395dd because the lack of treatment is a medical condition manifesting itself by acute symptoms of sufficient severity and risk such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the Titus Jermain Cromer, Jr. in serious jeopardy due to infection, irritation of tissue and other medical factors.
  - d. Performance of these surgical procedures is necessary for the medical stabilization of Titus Jermaine Cromer, Jr. before he can be safely transferred to a long-term care center.
  - e. No long-term medical care/treatment center will accept Titus Jermain Cromer, Jr. as a patient without these procedures having first been performed.
13. That it is currently medically necessary for Titus Jermain Cromer, Jr. to have the following treatment to ensure the best outcome:
- a. Neural stimulating medications
  - b. Comprehensive rehabilitation including occupational, speech and physical therapies.
14. That his understanding is that Beaumont Health is refusing to perform these two procedures which are medical required, reasonably and necessary to stabilize and treat this patient as well as institute appropriate and reasonably necessary medical treatment as outlined herein.

- 15. That the Determination of Death by Beaumont Health is clearly, absolutely and inalterably incorrect and in error.
- 16. As a result of the erroneous determination of death by Beaumont Health, Titus Jermain Cromer, Jr. has been unable to procure a transfer of the patient to any other facility for the necessary procedures and treatment, as the false proclamation of Titus Jermain Cromer, Jr.'s death has caused other treatment options to be unavailable.
- 17. That he cannot provide treatment for Titus Jermain Cromer, Jr. in another facility in which he has privileges, and he does not believe it would be in Titus Jermain Cromer, Jr.'s best interests medically to be transported an extensive distance outside of the State of Michigan.
- 18. That although he is a medical doctor licensed in the State of Michigan, and is willing, able and desires to becoming involved in Titus Jermain Cromer, Jr.'s care and treatment at Beaumont Health without subjecting Titus Jermain Cromer, Jr. to transportation, he understand that Beaumont Health is refusing to allow him temporary hospital privileges to provides such advice, treatment and rehabilitation while Titus Jermain Cromer, Jr. is in their possession.
- 19. He has reviewed the Affidavit of Paul A. Byrne, M.D. and agrees with Dr. Byrne's conclusions.

FURTHER DEPONENT SAYETH NOT.

Richard P. Bonfiglio M.D.  
**RICHARD P. BONFIGLIO, M.D.**

Dated: November 7, 2019

Subscribed and sworn to before me  
this 7th day of November, 2019.

Lenore Donnelly  
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 Notary Public  
 County, MI  
 My Commission Expires \_\_\_\_\_

LENORE DONNELLY  
 NOTARY PUBLIC, STATE OF MI  
 COUNTY OF OAKLAND  
 MY COMMISSION EXPIRES Nov 4, 2023  
 AGENT IN COUNTY OF