FILED
TARRANT COUNTY
1/14/2014 10:27:51 AM
THOMAS A. WILDER
DISTRICT CLERK

**CAUSE NO. _____**

| | | |
|---|---|---|
| **ERICK MUNOZ, AN INDIVIDUAL AND HUSBAND, NEXT FRIEND, OF MARLISE MUNOZ, DECEASED** | § | **IN THE DISTRICT COURT** |
| | § | **_____ JUDICIAL DISTRICT** |
| **v.** | § | |
| **JOHN PETER SMITH HOSPITAL, AND DOES 1 THROUGH 10, INCLUSIVE** | § | **TARRANT COUNTY, TEXAS** |

# PLAINTIFF'S ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR UNOPPOSED EXPEDITED RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, Erick Munoz, an individual and husband, next friend, of Marlise Munoz, and files this *Plaintiff's Original Petition for Declaratory Judgment and* Application for Unopposed Expedited Relief, in conjunction with Plaintiff*'s* Motion to Compel Defendants to Remove Marlise Munoz from *"Life Sustaining" Measures and* Application for Unopposed Expedited Relief, and would respectfully show the Court as follows:

## DISCOVERY CONTROL PLAN LEVEL

Discovery in this case is intended to be conducted under Level 2 of Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

## PARTIES AND SERVICE

1. Erick Munoz (hereinafter "Erick") is an adult and a resident of the State of Texas. He is the husband of Marlise Munoz (hereinafter "Marlise"), a deceased

individual, and brings this action as an individual and on her behalf. In the alternative, if this Court finds that Marlise is an incompetent person, and not deceased, Erick, as the husband of Marlise, brings this action on her behalf, regardless of the use of the term "Plaintiff" herein in the singular. Erick resides in Tarrant County, Texas. Marlise's body is located in Tarrant County, Texas.

2. Defendant, John Peter Smith Hospital (hereinafter "JPS"), is a non-profit hospital corporation serving as the headquarters of the Tarrant County Hospital District, doing business as the JPS Health Network. Defendant's principal place of business is in Fort Worth, Tarrant County, Texas. Defendant may be served through its attorney of record, Larry M. Thompson, pursuant to Rule 21a of the TEXAS RULES OF CIVIL PROCEDURE.

3. Plaintiff is ignorant of the true names and capacities of all Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names and capacities. Plaintiff is informed and believes, and on the basis of said information and belief, that JPS and each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries as herein alleged were proximately caused by the actions and/or in-actions of JPS and said DOE Defendants. Plaintiff will amend this Petition to include the true identities of said DOE Defendants when such identities are ascertained.

## JURISDICTION AND VENUE

The subject matter in controversy is within the jurisdictional limits of this Court. This Court has jurisdiction over the parties because all of the parties are Texas residents

of and/or operate the relevant business or services in Texas, as applicable. Venue in Tarrant County is proper in this Cause.

## FACTS SUPPORTING DECLARATORY ACTION AND APPLICATION FOR EXPEDITED RELIEF

1. Erick Munoz and Marlise Munoz were married on April 1, 2013. Erick and Marlise worked as paramedics during their marriage, and thus were knowledgeable of and had personally witnessed injuries that resulted in death, including brain death. Erick and Marlise frequently discussed their requests, beliefs and desires with each other, and expressed clearly to each other, family members and friends, their respective desires not to be resuscitated should either of them become brain dead.

2. On November 26, 2013, around 2:00 a.m., Erick awoke to find Marlise unconscious on the parties' kitchen floor. Marlise was approximately 14 weeks pregnant with the parties' second child. Erick immediately began providing cardio pulmonary resuscitation, and subsequently dialed 911.

3. Marlise was taken to JPS, where doctors informed Erick that Marlise had lost all activity in her brain stem, and was for all purposes brain dead. Erick saw that Marlise's medical charts indicated in writing that she was "brain dead". Although the hospital has not publically released an official diagnosis of Marlise's condition, Erick has been informed by JPS, and from that information believes, that Marlise is brain dead. At the time of the filing of this document, Erick still awaits the release of Marlise's medical records, for which the necessary releases have been duly executed and provided.

4. Despite Marlise's brain death, JPS has maintained Marlise on a respirator and has forced on her deceased body other "life sustaining" treatments.

5. On or about November 26, 2013, upon learning that Marlise was brain dead, Erick, with the full support of Marlise's parents, Lynne Machado and Ernest Machado, informed JPS doctors and staff of Marlise's wishes not to remain on any "life sustaining" treatment. However, despite the wishes of Marlise, Erick, and Marlise's family, JPS refused to remove the "life sustaining" treatment from Marlise, citing TEXAS HEALTH AND SAFETY CODE Section 166.049 as its basis for such refusal.

6. TEXAS HEALTH AND SAFETY CODE Section 166.049 states that "a person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient."

7. However, the TEXAS HEALTH AND SAFETY CODE also states in Section 671.001 that "(a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions…(b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, **there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease.**"

8. JPS has informed Erick and his family that Marlise Munoz is brain dead, and as such, Erick asserts that she is legally dead under Texas law. Despite the fact that Marlise is dead, JPS refuses to remove Marlise from the "life sustaining" treatment, thus mutilating, disturbing and damaging Marlise's deceased body, and further refusing to release it to Erick for proper preservation and burial.

9. Erick vehemently opposes any further alleged "life sustaining" medical surgery or treatment to be performed by JPS on the deceased body of his wife, Marlise. Erick has repeatedly expressed his wishes, and the wishes of Marlise, to JPS, to no avail. Defendants (including JPS) have instead consistently refused Erick's requests to remove the "life sustaining" treatments from Marlise's deceased body, and continue to perform medical procedures on Marlise against Erick's wishes.

10. TEXAS HEALTH AND SAFETY CODE Section 166.049 as interpreted by JPS is in complete conflict with other portions of the statute, makes no sense, and amounts to nothing more than the cruel and obscene mutilation of a deceased body against the expressed will of the deceased and her family.

11. In the alternative, Section 166.049 is unconstitutional as applied to Marlise as a violation of the Fourteenth Amendment to the United States Constitution.

12. Erick requests this Court follow his wishes, the wishes of Marlise Munoz, and the requests of Marlise's parents, and remove any "life sustaining" treatment from the deceased body of Marlise.

## REQUEST FOR DECLARATORY JUDGMENT

There exists a genuine controversy between the parties herein that would be terminated by the granting of declaratory judgment. Plaintiff therefore requests that declaratory judgment be entered as follows:

1. Section 166.049 of the TEXAS HEALTH AND SAFETY CODE does not apply to patients that have been diagnosed as brain dead or who have suffered brain death, as brain dead persons are legally dead in the State

of Texas, thus immediately requiring Defendants, without further delay, to remove Marlise from any alleged "life sustaining" mechanisms.

2. Alternatively, that Section 166.049 of the TEXAS HEALTH AND SAFETY CODE is an unconstitutional infringement on Plaintiff's right to privacy pursuant to the Fourteenth Amendment to the United States Constitution.

3. Alternatively, that Section 166.049 of the TEXAS HEALTH AND SAFETY CODE is an unconstitutional infringement on Plaintiff's right to equal protection pursuant to the Fourteenth Amendment to the United States Constitution.

## REQUEST FOR ATTORNEY'S FEES

Pursuant to Section 37.009 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, request is made for all costs and reasonable and necessary attorney's fees incurred by Plaintiff herein, including all fees necessary in the event of an appeal of this Cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

## PRAYER

WHEREFORE, PREMEISES CONSIDERED, Plaintiff prays that citation and notice issue as required by law.

Plaintiff prays that the Court grant the relief requested in this *Plaintiff's Original* Petition for Declaratory Judgment and Application for Unopposed Expedited Relief.

Plaintiff prays that the Court immediately grant the expedited relief requested in the *Plaintiff's Motion to Compel Defendants to Remove Marlise Munoz from "Life*

Sustaining*" Measures and Application* for Unopposed Expedited Relief filed contemporaneously with this Petition.

Plaintiff prays that Defendants be cited to appear and answer herein, and that declaratory judgment be granted as requested herein, and Plaintiff be awarded costs and reasonable and necessary attorney's fees, and for such other and further relief that may be awarded at law or in equity.

Wherefore, Plaintiff prays for judgment against the Defendants as follows:

Respectfully submitted,

**KOONSFULLER, P.C.**
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ATTORNEYS FOR PLAINTIFF

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DISTRICT CLERK

## CERTIFICATE OF CONFERENCE

The undersigned counsel for Plaintiff affirms and asserts that she has made reasonable efforts to confer with counsel for Respondents. However, no such resolution could be had. The undersigned counsel for Plaintiff also affirms and asserts that on January 13, 2014, she spoke to counsel for Defendants, who informed her that he was unopposed to Plaintiffs' request for an expedited hearing in this matter.

JESSICA HALL JANICEK
ATTORNEY FOR PLAINTIFF

## CERTIFICATE OF SERVICE

I certify that the foregoing instrument has been duly served on all attorneys of record and/or pro se parties herein, in accordance with the TEXAS RULES OF CIVIL PROCEDURE on this 14th day of January, 2014.

ATTORNEY FOR PLAINTIFF

FILED
TARRANT COUNTY
1/14/2014 10:27:51 AM
THOMAS A. WILDER
DISTRICT CLERK

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| **ERICK MUNOZ, AN INDIVIDUAL AND HUSBAND, NEXT FRIEND, OF MARLISE MUNOZ, DECEASED** | § | **IN THE DISTRICT COURT** |
| | § | **_____ JUDICIAL DISTRICT** |
| **v.** | § | |
| **JOHN PETER SMITH HOSPITAL, AND DOES 1 THROUGH 10, INCLUSIVE** | § | **TARRANT COUNTY, TEXAS** |

**PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO REMOVE MARLISE MUNOZ FROM "LIFE SUSTAINING" MEASURES AND APPLICATION FOR UNOPPOSED EXPEDITED RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff Erick Munoz, an individual and husband, next friend, of Marlise Munoz, and files this his *Plaintiff's Motion to Compel Defendants to Remove Marlise Munoz from "Life Sustaining" Measures and* Application for Unopposed Expedited Relief, in conjunction with Plaintiff*'s* Original Petition for Declaratory Judgment and Application for Unopposed Expedited Relief, and would show the Court the following:

## INTRODUCTION

Erick Munoz (hereinafter "Erick") vehemently opposes any further medical treatment to be undertaken on the deceased body of his wife, Marlise Munoz (hereinafter "Marlise"). Any claim by John Peter Smith Hospital (hereinafter "JPS") that it can ignore the requests of Erick and Marlise's family and continue conducting medical procedures on Marlise's body is factually and legally groundless. Marlise Munoz is legally dead, and

to further conduct surgical procedures on a deceased body is nothing short of outrageous. Erick requests this Court to issue an order requiring JPS to immediately cease conducting any further medical procedures on the body of Marlise, to remove Marlise from any respirators, ventilators or other "life support", and to release the body of Marlise Munoz to her family for proper preservation and burial.

## ARGUMENT

### 1. JPS Misinterprets Section 166.049 of the TEXAS HEALTH AND SAFETY CODE.

In an effort to argue that Marlise must be subjected to "life sustaining" treatments, JPS argues that the TEXAS HEALTH AND SAFETY CODE disallows it from withdrawing or withholding life-sustaining treatment from a pregnant patient. TEX. HS. CODE 166.049. However, JPS entirely misconstrues Section 166.049, further failing to read this section in conjunction with the entirety of the Code. In fact, Marlise cannot possibly be a "pregnant patient"—Marlise is dead.

Section 671.001, also found in the TEXAS HEALTH AND SAFETY CODE, provides medical and legal professionals with the definition of death in Texas:

> (a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions.
>
> (b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, **there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease.**" TEX. HS. CODE 671.001.

Although JPS has made no official public announcement, Erick has been told by Defendants that Marlise has suffered brain death. As a result, Marlise is legally dead—

she has suffered "irreversible cessation of all spontaneous brain function." Id. Thus, death for Marlise has occurred, and no further surgical procedures should be, or can be, undertaken on her deceased body. JPS has not provided any evidence to the contrary that Marlise is not brain dead, nor can it provide any evidence that Marlise is not legally dead under Texas law.

**A. Life Sustaining Measures Cannot Apply to the Dead.**

Consequently, as Marlise is deceased, she cannot possibly be a "pregnant patient" under Section 166.049 of the TEXAS HEALTH AND SAFETY CODE, nor can Marlise be subject to any "life-sustaining" treatment pursuant to Chapter 166 of the Code. As defined by Section 166.002(10), "life-sustaining treatment" means treatment that "based on reasonable medical judgment, sustains the life of a patient and without which the patient will die…" TEX. HS. CODE 166.002(10). However, in this case, Marlise Munoz is already dead. No treatment can possibly sustain the life of Marlise, and thus as JPS will not be "withdrawing or withholding life-sustaining treatment" from Marlise by removing her from the ventilator and all other associated machines, JPS will not be in violation of the TEXAS HEALTH AND SAFETY CODE. TEX. HS. CODE 166.049. As a result, JPS should be ordered to immediately remove Marlise from these devices.

**B. Section 166.049 Applies Only to Marlise, and Does Not Apply to A Fetus.**

Notwithstanding the fact that Marlise is deceased, even if JPS were to argue that Section 166.049 were to apply to Marlise's unborn fetus, it is clear by the plain language of Section 166.049 that this Section only applies to a "pregnant patient", and does not extend the prohibition of withholding or withdrawing life-sustaining support to a fetus. TEX. HS. CODE 166.049. Thus, absolutely no "protections" under Section 166.049 can

possibly extend to the fetus, or to any point of gestation, and must be limited to the pregnant patient herself.

**C. The Texas Advanced Directives Act is Moot—Marlise is Dead.**

In addition, JPS is attempting to apply the Texas Advanced Directives Act, Chapter 166 of the TEXAS HEALTH AND SAFETY CODE, to Marlise in an effort to argue that Section 166.049 applies to her condition. TEX. HS. CODE 166.049. However, any discussion that Section 166.049, or the entire Texas Advanced Directives Act, for that matter, applies to Marlise is absurd. Marlise is deceased. The directives of Marlise, and the directives of her family, no longer apply, and are wholly moot. Marlise is no longer alive, and as such, her body should instead immediately be released to her family, as argued more specifically below.

**D. JPS is Disturbing and Damaging Marlise's Dead Body.**

As argued elsewhere herein, Marlise Munoz is dead, clinically and legally. TEX. HS. CODE 671.001. Erick, as the spouse of the deceased, has a legal right to custody of her body. Love v. Aetna Cas. & Sur. Co., 99 S.W.2d 646 (Tex. Civ. App.—Beaumont 1936), judgment aff'd, 121 S.W.2d 986 (Comm'n App. 1938) writ dismissed; RESTATEMENT (SECOND) OF TORTS § 868 (1979). JPS has violated Erick's right to possession of his wife's body by disturbing and damaging the body, treating it in an offensive manner, and refusing to release it to Erick against Erick's wishes and those of Marlise's family, an act that is both a tortious wrong and a criminal violation. Id; V.T.C.A. PENAL CODE § 42.08(a)(1). JPS should be ordered to immediately release the body of Marlise Munoz to her husband.

In sum, Marlise Munoz's death is a horrible and tragic circumstance, but by no means should JPS be entitled to continue cutting into her deceased body in front of her husband and family under the guise of "life sustaining" treatment. Marlise Munoz is dead, and she gave clear instructions to her husband and family—Marlise was not to remain on any type of artificial "life sustaining treatment", ventilators or the like. There is no reason JPS should be allowed to continue treatment on Marlise Munoz's dead body, and this Court should order JPS to immediately discontinue such.

**2. <u>Alternatively, Erick, on behalf of Marlise, asserts her Fourteenth Amendment Right to Privacy.</u>**

In the alternative, although Erick vehemently asserts the death of Marlise prevents JPS from refusing to discontinue further medical treatment, Erick alternatively asserts that Section 166.049, and JPS's interpretation of said statute, constitute a violation of Plaintiff's right to privacy pursuant to the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U S. CONST. AMEND. XIV. The principle that a competent person has a constitutionally protected liberty interest in making decisions regarding their own body began at common law. In addition, the United States Supreme Court has repeatedly held that a person has this constitutionally protected interest. In Jacobson v. Massachusetts, 197 U.S. 11, 24-30 (1905); Cruzan by Cruzan v. Director, Miss. Dept. of Health, 497 U.S. 261, 278 (1990). "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restrain or interference of others,

unless by clear and unquestionable authority of law." See Union Pac. Ry. Co. v. Botsford, 141 U.S. 250, 251 (1891).

The United States Supreme Court has also held that a person has a constitutionally protected right to refuse unwanted medical treatment or procedures. Cruzan v. Director, *Mo. Dep't of Health,* 497 U.S. 261, 278 (1990). A person also has the fundamental right under the Constitution to medical autonomy, described as the ultimate exercise of one's right to privacy. See Planned Parenthood v. Casey, 505 U.S. 833 (1992).

In addition, several cases in the United States have upheld medical autonomy in the case of pregnant women, even when doing so would cause grave damage to the fetus. See In re Fetus Brown, 294 Ill. App. 3d 159, 171 (1997); In re A.C., 573 A.2d 1235 (D.C. Court of Appeals 1990). "[T]he State may not override a pregnant woman's competent treatment decision, including refusal of recommended invasive medical procedures, to potentially save the life of the viable fetus." In re Fetus Brown, 294 Ill. App. 3d at 171.

Here, Marlise was competent when she made her medical directives to both her husband, Erick, and her parents. Under the Fourteenth Amendment, and Cruzan as set forth above by the United States Supreme Court, Marlise has a fundamental right to make medical decisions regarding her own body, even if those decisions affect some point of the gestation period. To take those rights away from Marlise, and force her to be subject to various medical procedures simply because she is pregnant, is a gross violation of her constitutional rights. Cruzan, 497U.S. at 278.

**3. Alternatively, Erick, on behalf of Marlise, asserts her Fourteenth Amendment Right to Equal Protection of the Law.**

In the alternative, although Erick vehemently asserts the death of Marlise prevents JPS from refusing to discontinue further medical treatment, Erick alternatively asserts that Section 166.049, and JPS's interpretation of said statute, constitute a violation of Plaintiff's right to equal protection of the law pursuant to the Fourteenth Amendment to the United States Constitution.

The Equal Protection Clause commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S.C.A. CONST. AMEND. 14. It embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly. Plyler v. Doe, 457 U.S. 202, 216 (1982).

On its face, TEXAS HEALTH & SAFETY CODE Section 169.049 violates the Equal Protection Clause, as it treats pregnant women, regardless of the state of gestation, different from everyone else, and draws a distinction between pregnant women and other persons. Because Marlise Munoz was pregnant when she died, JPS seeks, against the wishes of Marlise Munoz, to treat her differently than every other non-pregnant person in her unfortunate position.

## PRAYER

Wherefore, Plaintiff prays for judgment against the Defendants as follows:

1. Declaratory Relief as set forth herein for all counts as set forth in *Plaintiff's Original Petition for Declaratory Judgment and Application* for Unopposed Expedited Relief;

2. An order requiring Defendants to remove the ventilator support and all other "life sustaining" treatment from the body of Marlise Munoz immediately and without further delay; and

3. Any other relief, in law or in equity, that this Court deems appropriate.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

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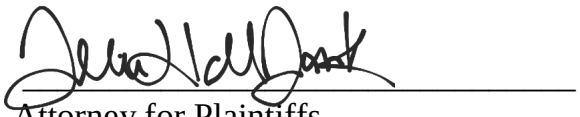
## CERTIFICATE OF CONFERENCE

The undersigned counsel for Plaintiff affirms and asserts that she has made reasonable efforts to confer with counsel for Respondents. However, no such resolution could be had. The undersigned counsel for Plaintiff also affirms and asserts that on January 13, 2014, she spoke to counsel for Defendants, who informed her that he was unopposed to Plaintiffs' request for an expedited hearing in this matter.

JESSICA HALL JANICEK
Attorney for Plaintiffs

## CERTIFICATE OF SERVICE

I certify that the foregoing instrument has been duly served on all attorneys of record and/or pro se parties herein, in accordance with the TEXAS RULES OF CIVIL PROCEDURE on this _____ day of _____, 2014.



Attorney for Plaintiffs

## NOTICE OF HEARING

The foregoing Motion is set for hearing on _____ at _____ in the _____ Judicial District Court, Tarrant County, Texas.

SIGNED on _____, 2014.

_____
DISTRICT JUDGE
Tarrant County, Texas