

2015 WL 9608853 (Tex.Dist.) (Trial Pleading)
District Court of Texas.
Harris County

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs,
v.
BAYLOR COLLEGE OF MEDICINE, et al, Defendants.

No. 201576259.
December 21, 2015.

Plaintiffs' Original Petition

Ernest Adimora-Nweke, Jr. Esq., State Bar No: 24082602, Adimora Law Firm, 5100 Westheimer Rd, Suite 200, (281) 940-5170, Ernest@adimoralaw.com, for plaintiffs.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW **Emily-Jean Aguocha-Ohakweh et al**, Plaintiffs, and files this Original Petition complaining of Defendants, Dr(s). **Greg Broering, Joslyn Fisher, Elizabeth S. Guy, John Austin Hancock, Van Vi Hoang, Sophia Kumbanattel, Paul Edward Kwak, Sarah Moorhead Palmquist, Suman Rajagopalan, David Mathew Wynne, Cliff J. Whigham, James Parker Gregg, Diana M. Guerra, Justin A. Chetta, Susan Amelia Eicher, Anisha Gupta, William Robert Graham, John Michael Halphen, Xiaoming Jia, Christina C. Kao, Rajeev Raghavan, Holly J. Bentz, Doris Lin, Wayne X. Shandera, Jared Jung-Taek Lee, Veronica Vittone, Anita V. Kusnoor, Sudha Yarlagadda, Martha P. Mims, Vishal Delma, Chistopher Howard, Ahmit Parulekar, Erika Sphuler, William Y. Huang, Daniel Y. Wang, Courtney N Miller-Chism, Ghana Kang, Joseph Shimon Kass, Barbara Johnson; Nurse(s) Raichle Elan Hailey; Baylor College of Medicine**, and would show as follows:

OVERVIEW

This is a case that will shock any Court, the Texas State Legislature, U.S. Congress, and any jury's conscience. This is a case in which a bunch of physicians and health care providers focused on depriving a highly respected Decedent and his family of their constitutional rights, caused the Decedent mortal injury, later killed him, and caused his family grievous injury; just because of money and nationality.

Instead of providing the obvious treatment the man needed - chemotherapy - for his cancer; which was clearly stated in his records once diagnosed, Defendants decided to turn Decedent into their guinea pig on multiple occasions; used him as a medical experiment similar to the Nazis; committed aggravated assault on him while he was in their possession and for their experiment; falsified his medical records; erased pertinent medical records; then misrepresented facts to his family members (i.e. Plaintiffs) when the family members questioned what occurred; then continuously tried to coerce the Decedents' family against the family's wishes to grant them authority to kill Decedent by allowing them to make Decedent a Do Not Resuscitate (DNR) patient *while Decedent was fighting for his life and showing signs of some recovery*.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

However, even while the family refused to succumb to their coercion attempts and allow for the DNR (i.e. withholding of life-sustaining treatment), an *action that is the family's decision per American Medical Association Code of Medical Ethics Rule 2.20 "Withholding or Withdrawing Life-Sustaining Medical Treatment,"* Defendants then tried to "punt" the mortally wounded and incapacitated Decedent back to his family without any rational explanation as to the events that occurred, with further attempts of fraud and deceit as to the costs the *family* should bear for nursing care. At the same time defendants, fully knowing that the Decedent was severely wounded and unable to be moved from the hospital, continued to execute their behind the scenes conspiracy and violate clearly established Texas State and U.S. statutory laws to cause the Decedent's death, thinking they would be protected by official immunity, or their damages capped by Texas statute. Meanwhile, Decedent's family were frantically pleading with Defendants for proper remainder of life treatment for Decedent rather than DNR, mitigation of the damages and injury Defendants had caused Decedent, and a true explanation of the occurred and occurring events.

Ultimately, Defendants succeeded in causing the Decedent on September 7, 2015. Defendants have refused or are yet to pay any compensation to Plaintiffs including Decedent's estate.

DISCOVERY LEVEL

Plaintiff requests a Level 2 discovery plan. Any damages requirements for such are met.

PARTIES

Plaintiff, Emily-Jean Aguocha-Ohakweh is an individual who resides in The State of Minnesota and brings this action on behalf of herself and Philomina Ohakweh, Bethrand Ohakweh, Cynthia Chizoba Ohakweh, Obinna Ohakweh, Chukwunyenye Ohakweh, and Chisom Ohakweh as family members of Decedent, and on behalf of Decedent, Dr. Alphaeus Ohakweh (altogether and sometimes separately referred to herein as "Plaintiffs").

Plaintiff, Bethrand Ohakweh, who resides in Brazoria County, TX, is the sole Independent Administrator of the Estate of Dr. Alphaeus Ohakweh ("Decedent") and brings this action on behalf of the Estate of Decedent. Decedent, who died in Ben Taub Hospital in Harris County, TX, was a citizen of Nigeria and a permanent resident of Harris County, TX as of the date of his death. All plaintiffs mentioned are the family members of Decedent-plaintiff (altogether and sometimes separately referred to herein as "Plaintiffs").

Defendant Greg Broering is an individual who resides in Harris County, TX. During the incident complained of, he was a health care provider at Ben Taub Hospital in Harris County, TX, and a medical resident physician at Baylor College of Medicine in Harris County, TX with Texas Medical Board License Permit Number BP10045478. On or about 11/02/2015, he became a Texas Medical Board licensed physician with license number XXXXX. He may be served with citation through his attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant Joslyn Fisher is an individual who resides in Harris County, TX. During the incident complained of, she was a health care provider at Ben Taub Hospital in Harris County, TX, with Texas Medical Board License Number XXXXX, and a member of the Harris Health System Ethics Board. She may be served with citation through her attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant Elizabeth S. Guy is an individual who resides in Harris County, TX. During the incident complained of, she was a health care provider at Ben Taub Hospital in Harris County, TX, with Texas Medical Board License Number XXXXX. She may be served with citation through her attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant John Austin Hancock is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX, with Texas Medical Board License Number XXXXX. He may be served with citation through his attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant Van Vi Hoang is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX, a medical resident physician with Fellow Status at Baylor College of Medicine in Harris County, TX, and with Texas Medical Board License Permit Number BP20048661. He may be served with citation through his attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant Sophia Kumbanattel is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX, a medical resident physician Baylor College of Medicine in Harris County, TX, and with Texas Medical Board License Permit Number BP10051757. She may be served with citation through her attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant Paul Edward Kwak is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX and a resident physician at Baylor College of Medicine in Harris County, TX with Texas Medical Board License Permit Number BP10036840. He may be served with citation through his attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant Sarah Moorhead Palmquist is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX and a resident physician at Baylor College of Medicine in Harris County, TX with Texas Medical Board License Permit Number BP20045549. She may be served with citation through her attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant Suman Rajagopalan is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. She may be served with citation through her attorney, Jeffrey McClure at Andrews Kurth, LLP, 600 Travis, Suite 4200, Houston, TX 77002.

Defendant David Mathew Wynne is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. He may be served with citation at his business address located at Baylor College of Medicine, One Baylor Plaza Mail Stop 360, Department of Radiology, Houston, TX 77030.

Defendant Cliff J. Whigham is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. He may be served with citation at his business address located at Baylor College of Medicine, Radiology, 1504 Taub Loop, Ste 1E05, Houston, TX 77030. He may also be served via certified mail at One Baylor Plaza Mail Stop 360, Department of Radiology, Houston, TX 77030.

Defendant James Parker Gregg is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. He may be served with citation at his business address located at Baylor College of Medicine, Radiology, One Baylor Plaza Mail Suite 165B, Houston, TX 77030.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Defendant Diana M. Guerra is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX, and an Assistant Professor of Pulmonary & Critical Care Medicine at Baylor College of Medicine in Harris County, TX. She may be served with citation at her business address located at 6620 Main St Ste 1225, Houston, TX 77030. She may also be found at 1504 Taub Loob, 6th Floor, Houston, TX 77030.

Defendant Justin A. Chetta is an individual who resides in Cypress, Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX and a resident physician at Baylor College of Medicine in Harris County, TX with Texas Medical Board License Permit Number BP20048692. He may be served with citation at his residence located at 15410 Elm Leaf PI, Cypress, TX 77429.

Defendant Susan Amelia Eicher is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. She may be served with citation at her business address located at 6550 Fannin St., Suite 1727, Smith Tower, Houston, TX 77030.

Defendant Anisha Gupta is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX, and an internal medicine resident physician at Baylor College of Medicine with Texas Medical Board License Permit Number BP10046661. Also during the incident complained of, she became a fully licensed physician with Texas Medical Board License Number XXXXX- as of 8/14/2015. She may be served with citation at her business address located at 6620 Main Street #1100D, Houston, TX 77030.

Defendant William Robert Graham is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. He may be served with citation at his business address located at 2727 Werlein Ave, Houston, TX 77005. He may also be found at Baylor College of Medicine, Internal Medicine, 1504 Taub Loop, Houston, TX 77030, or at Baylor College of Medicine, Department of Internal Medicine, One Baylor Plaza, Houston, TX 77030.

Defendant John Michael Halphen (MD/JD) is an individual who resides in Harris County, TX and is a health care provider for Harris Health System in Harris County, TX with Texas Medical Board License Number XXXXX. During the incident complained of he was Chair of Harris Health System Ethics Board. He may be served with citation at his Texas Medical Board listed primary practice address: University of Texas Health, 5656 Kelley St., Houston, TX 77030. He may also be found at 1504 Taub Loop, Houston, TX 77030.

Defendant Xiaoming Jia is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX, and a medical resident physician with Baylor College of Medicine in Harris County, TX with Texas Medical Board License Permit Number BP10052903. She may be served with citation at her business address listed as 6620 Main Street, Houston, TX 77030.

Defendant Sudha Yarlagadda is an individual who resides in Harris County, TX. During the incident complained of, she was a resident physician at Baylor College of Medicine, in Harris County, TX with Texas Medical Board License Permit Number BP10052942, and a health care provider at Ben Taub Hospital in Harris County, TX. She may be served with citation at her business address listed as 1 Baylor Plaza, Internal Medicine, Houston, TX 77030.

Defendant Anita V. Kusnoor is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. She may be served with citation at her business address located at 1504 Taub Loop 2RM81 001, Houston, TX 77030.

Defendant Veronica Vittone is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX, and a resident physician at Baylor College of Medicine in Harris County, TX with Texas Medical Board License Permit Number BP10046691. She may be served with citation at her business address located at 1 Baylor Plaza, Internal Medicine, Houston, TX 77030.

Defendant Jared Jung-Taek Lee is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX, and an internal medicine resident physician at Baylor College of Medicine with Texas Medical Board License Permit Number BP10047067. As of 8/3/2015, he became a fully licensed physician with Texas Medical Board License Number XXXXX. He may be served with citation at his business address located at 1 Baylor Plaza, Internal Medicine, Houston, TX 77030.

Defendant Wayne X. Shandera is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX, and an Associate Professor at Baylor College of Medicine in Harris County, TX, with Texas Medical Board License Permit Number G2223. He may be served with citation at his business address located at 1504 Taub Loop, Ste 2RM81 # 001, Houston, TX 77030.

Defendant Holly J. Bentz is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX, and a resident physician at Baylor College of Medicine in Harris County, TX with Texas Medical Board License Permit Number BP20051994. She may be served with citation at her mailing address located at 10818 Almeda Park Dr., HOUSTON, TX 77045. She can also be found at 1 Baylor Plaza, Dept of Rheumatology, Houston, TX 77030.

Defendant Doris Lin is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. She may be served with citation at her business address located at 1504 Taub Loop, Internal Medicine Department, Houston, TX 77030. She may also be found at Michael E. Debakey VA Med Ctr, 2002 Holcombe Blvd, 4A-350B, Houston, TX 77030.

Defendant Christina C. Kao is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. She may be served with citation at her business address located at 1504 Taub Loop, Pulmonology Department, Houston, TX 77030. She may also be found at 1100 Bates Ave, Houston, TX 77030.

Defendant Raichle Elan Hailey is an individual who resides in Harris County, TX. During the incident complained of, she was a health care provider for Harris Health System at Ben Taub Hospital in Harris County, TX. She may be served with citation through their attorney, Ebon Swofford, Assistant County Attorney, at Office of Vince Ryan, Harris County Attorney, 2525 Holly Hall, Suite 190, Houston, TX 77054.

Defendant Martha P. Mims is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. She may be served with citation at her business address located at 1504 Taub Loop, Hematology & Oncology Department, Houston, TX 77030. She can also be found at Baylor College of Medicine, Hematology & Oncology, 1 Baylor Plaza, Houston, TX 77030.

Defendant Vishal Delma is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. He may be served with citation at his business address located at 1504 Taub Loop, Houston, TX 77030.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Defendant Erika Spuhler is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX and a Baylor College of Medicine Resident with Texas Medical Board License Permit Number BP10046139. She may be served with citation at her address located at 1330 Old Spanish Trail, Apt 4311, Houston, TX 77054.

Defendant Christopher Howard is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX and a Baylor College of Medicine physician with Texas Medical Board License Number XXXXX. He may be served with citation at her address located at BAYLOR COLLEGE OF MEDICINE; MS 620, Houston, TX 77030.

Defendant Ahmit Parulekar is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. He may be served with citation at his Texas Medical Board listed address: 6620 MAIN STREET; Houston, TX 77030

Defendant William Yumin Huang is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX with Texas Medical Board License Number XXXXX. He may be served with citation at his address located at NORTHWEST HEALTH CENTER. 1100 WEST 34TH STREET; Houston, TX 77081

Defendant Daniel Ying Wang is an individual who resides in Harris County, TX. During the incident complained of he was a health care provider at Ben Taub Hospital in Harris County, TX and a Baylor College of Medicine Resident with Texas Medical Board License Permit Number BP10043123. He may be served with citation at his address located at 2300 OLD SPANISH TRAIL UNIT 1049; Houston, TX 77054

Defendant Courtney N Miller-Chism is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX and a Baylor College of Medicine Assistant Professor with Texas Medical Board License Number XXXXX. She may be served with citation at her address located at ONE BAYLOR PLAZA, MS: BCM187, HOUSTON, TX 77030

Defendant Ghana Kang is an individual who resides in Harris County, TX. During the incident complained of she was a health care provider at Ben Taub Hospital in Harris County, TX and a Baylor College of Medicine Resident with Texas Medical Board License Permit Number BP20045783. She may be served with citation at her address located at 744 BRICK ROW #2360 RICHARDSON, TX 75081.

Defendant Joseph Shimon Kass (MD/JD) is an individual who resides in Harris County, TX. During the incident complained of, he was a health care provider at Ben Taub Hospital in Harris County, TX, with Texas Medical Board License Number XXXXX, and a member of the Harris Health System Ethics Board. He may be served with citation at his business address located at 1504 Taub Loop, Neurology Department, Houston, TX 77030. He may also be found at Baylor College of Medicine, Neurology Department, 6501 Fannin St, Houston, TX 77030.

Defendant Barbara Johnson is an individual who resides in Harris County, TX. During the incident complained of, he was the risk manager at Baylor College of Medicine. She may be served with citation at her business address located at One Baylor Plaza, MC No. BCM 208, Houston, TX 77030.

Defendant Baylor College of Medicine is a Texas Corporation doing business in Harris County, TX. It may be served with citation through its registered agent, James Banfield, at One Baylor Plaza, Suite 106A, Houston, TX 77030.

VENUE

Harris County is a county of proper venue in that it is the county of Defendants' residence and their place of business; and the county in which Plaintiff's cause of action arose.

PLEA TO SUBJECT MATTER JURISDICTION

Harris Health System a governmental entity with taxing authority that owns and operates Ben Taub Hospital. Baylor College of Medicine, in partnership with Harris Health System, staff Ben Taub Hospital with licensed faculty physicians and resident physicians to provide health care services to the public. Baylor College of Medicine's medical students and house staff care for patients in Ben Taub's busy Level I trauma center, which serves patients from greater Houston needing emergency care with ailments and injuries involving all the specialties and subspecialties of surgery, medicine, obstetrics and gynecology, pediatrics, and psychiatry.

42 U.S.C. § 1983 reads as follows:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”

This statute creates a private and direct right of action in against persons who, acting under color of state law, violate federal constitutional or statutory rights.

Suits under 42 U.S.C. § 1983 may be brought in state courts. *Maine v. Thiboutot*, 448 U.S. 1, 10-11 (1980).

Plaintiffs have a private right of action and hereby sue all defendants in state court in their *individual* capacity 42. U.S.C § 1983, and assert causes of action allowed by state common law.

Since all acts of defendants are discretionary (i.e. involves personal deliberation, decision, and judgment), bad faith actions, amongst others, Defendants are not entitled to governmental immunity nor this case governed by Texas Civil Practice and Remedies Code Chapter 101. TEX. CIV. PRAC. & REM. CODE ANN. CHAPTER 101 Sec. 101.056; *Kassen v. Hartley*, 887 S.W.2d 4, 14 (Tex. 1994).

Plaintiffs also have a private right of action against Baylor College of Medicine under the doctrine of respondeat superior and others, because the actions of its employees constitute negligent, gross negligent, reckless, gross reckless or bad faith actions, executed under the scope of their employment. Such actions violate the purpose of the immunity normally granted Baylor College of Medicine and its employees by way of Texas Health and Safety Code § 312.001(b). Specifically, Baylor College of Medicine and its employees' actions, which was a proximate cause of all plaintiffs' injuries complained of, and with such injuries foreseeable at the time of the act and injury, violated Texas Health and Safety Code § 312.001(b)(2): “enhance patient care.” Baylor College of Medicine and its employees were not acting to “enhance patient care.” The evidence is clear. Therefore, they are not considered a State agency when executing such actions. The State of Texas does not condone the actions of Baylor College of Medicine and its employees towards plaintiffs.

Injunction

Plaintiffs have a private right of action and seek an injunction against all defendants as allowed under 42 U.S.C. § 1983 from asserting any immunity, damage caps or lack of punitive damages granted under the Texas Tort Claims Act, as said Act do not govern any of the actions this case.

DECLARATORY JUDGEMENT

Joseph Shimon Kass, Joslyn Fisher, and John Michael Halphen (“Defendants(1)”) subjected, directly or proximately caused plaintiffs deprivation of their rights, privileges, or immunities clearly secured by the Constitution at the time of their actions. Defendants(1) executed their actions in, inter alia, bad faith, maliciously, recklessly, gross recklessly, negligently, gross negligently, intentionally, or knowingly, and under the color of Texas State laws that allow normally would allow them governmental immunity, official immunity, or at the least cap their liability.

Defendants(1) actions in clear violation of plaintiffs' established federal constitutional or statutory rights, directly or proximately caused the Decedent injury and death, as well as grievous injury upon Decedent's estate, his heirs, or other plaintiffs (i.e. his family members).

At all times during Defendants(1)' actions, the resulting injury upon plaintiffs were foreseeable.

Greg Broering, Elizabeth S. Guy, John Austin Hancock, Van Vi Hoang, Sophia Kumbanattel, Paul Edward Kwak, Sarah Moorhead Palmquist, Suman Rajagopalan, David Mathew Wynne, Cliff J. Whigham, James Parker Gregg, Diana M. Guerra, Justin A. Chetta, Susan Amelia Eicher, Anisha Gupta, William Robert Graham, Xiaoming Jia, Christina C. Kao, Rajeev Raghavan, Holly J. Bentz, Doris Lin, Wayne X. Shandera, Jared Jung-Taek Lee, Veronica Vittone, Anita V. Kusnoor, Sudha Yarlagaadda, Martha P. Mims, Dr. Vishal Delma, Erika Spuhler, Chistopher Howard, Ahmit Parulekar, Erika Sphuler, William Y. Huang, Daniel Y. Wang, Courtney N Miller-Chism, Ghana Kang, and Barbara Johnson (“Defendants(2) also subjected, directly or proximately caused plaintiffs' deprivation of their rights, privileges, or immunities clearly secured by the Constitution at the time of their actions. They executed their medical discretionary acts, inter alia in bad faith, maliciously, recklessly, gross recklessly, negligently, gross negligently, intentionally, or knowingly, and under the color of Texas State laws that allow normally would allow them governmental immunity, official immunity, or at the least cap their liability.

Defendants(2) also executed their actions, inter alia, in bad faith, maliciously, recklessly, gross recklessly, negligently, gross negligently, intentionally, or knowingly, and under the color of Texas State laws and in violation of Decedent's clearly established federal constitutional rights, and directly or proximately caused the Decedent injury and death, as well as grievous injury upon Decedent's estate, his heirs, or other plaintiffs (i.e. his family members).

At all times during Defendants(2)'s actions, the resulting injury upon plaintiffs were foreseeable.

Raichle Elan Hailey (“Defendant(3)”) was participated in the actions or civil and criminal conspiracy executed by Defendants(2) and Defendants(1) to subject and directly or proximately caused plaintiffs' deprivation of their rights, privileges, or immunities clearly secured by the Constitution, and directly or proximately cause the Decedent's injuries and death, as well as grievous injuries upon Decedent's estate, his heirs, or other plaintiffs (i.e. the family members). They were active participants. At all times during Defendants(3)'s actions, the resulting injury upon plaintiffs were foreseeable. Therefore, they are also jointly liable to Plaintiffs for damages.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Defendant(4), Baylor College of Medicine is liable for the actions of Defendants(1), Defendants(2), and Defendants(3) under the doctrine of respondeat superior, and under agency or partnership liability.

Neither Defendants(1), Defendants (2), Defendant(3), nor Defendants(4) (separately and sometimes altogether herein referred to as "Defendants") are yet to pay damages to Plaintiffs. Hence there is a blatant violation of Plaintiffs' U.S. Constitution 14th Amendment, Section 1 Rights by the actions of all defendants, which continue to cause injury to Plaintiffs.

THEREFORE:

Plaintiffs seek relief pursuant to TEX. CIV. PRAC. & REM. CODE ANN. CHAPTER 37 also known as Uniform Declaratory Judgments Act.

Plaintiff seeks a judgment of this Court declaring and adjudicating that:

(a) Defendants(1), Defendants(2), and Defendant(3)'s actions against plaintiffs, inter alia, in bad faith, maliciously, recklessly, gross recklessly, negligently, gross negligently, intentionally, or knowingly, and while acting as employees of the partnership between Harris Health System and Baylor College of Medicine and under the color of Texas State laws were:

1. violation of 13th Amendment of the U.S. Constitution;
2. violation of the 14th Amendment, Section 1 of the U.S. Constitution;
3. violation of the 4th Amendment of the U.S. Constitution;
4. violation of the 5th Amendment of the U.S. Constitution;
5. violations of Article 1 of Texas Constitution, Sections 3a, 17 and 19; and

(b) Plaintiff's causes of actions and remedies against Defendants(1), Defendants(2), and Defendant(3), by right, fall outside or is not governed by either TEX. CIV. PRAC. & REM. CODE ANN. CHAPTER 101, but rather by TEX. CIV. PRAC. & REM. CODE ANN. CHAPTER 74, or in the alternative TEX. CIV. PRAC. & REM. CODE ANN. CHAPTER 71, as well as Texas common law, and any other relevant laws applicable to defendants' actions in civil actions (e.g. Texas Business and Commerce Code Chapter 17, Texas Penal Code for criminal negligent homicide, murder, aggravated assault, misapplication of fiduciary property, fraudulent destruction, removal, or concealment of writing, etc).

TEX. CIV. PRAC. & REM. CODE ANN. CHAPTER 101 does NOT apply

CPRC 101.56 reads as follows:

Sec. 101.056. DISCRETIONARY POWERS. This chapter does not apply to a claim based on:

- (1) the failure of a governmental unit to perform an act that the unit is not required by law to perform; or
- (2) a governmental unit's decision not to perform an act or on its failure to make a decision on the performance or nonperformance of an act if the law leaves the performance or nonperformance of the act to the discretion of the governmental unit.

Plaintiffs are alleging, *inter alia*, (a) the failure of defendants to do discretionary acts not required by law, and (b) failure of defendants to perform discretionary acts; all which led to the civil rights violations of plaintiffs, as well as Decedent's death, and resulting injuries to plaintiffs. Therefore CPRC Chapter 101 does not apply.

FACTUAL BACKGROUND

First Hospital Visit

On December 12, 2013, Dr. Aphaeus Ohakweh ("patient"), a 64yr old man from Nigeria with resent exposure to malaria, who had been shuttling between United States and Nigeria since 1975, had been in Nigeria since November 2012, and who had been in United States for a week prior to his 12/12/2013, arrived at Ben Taub Hospital complaining of shortness of breath.

Dr. Ohakweh is not a medically trained professional. Dr. Ohakweh was an adjunct professor in University of Imo State in Nigeria, and the Chairman of the Nigerian Institute of Town Planners.

On 12/13/2013 as of 9:06AM, he was diagnosed with Acute Myeloid Leukemia ("AML") and Neutropenia, by resident physician Dr. Lin Dai working under the oversight of a Dr. George R. Parkerson III. However, per the medical records, Dr. Ohakweh's AML was considered "medium priority," and the Neutropenia considered "high priority."

On the same 12/13/2013 and at 10:44AM, a Dr. Athreya Khannan of the internal medicine department examined Dr. Ohakweh and in the medical records on 10:44AM, that Dr. Ohakweh will need platelet and red blood cells transfusion, and that Dr. Ohakweh will be given ceftriaxone and doxycycline to cover the community acquired pneumonia and possible malaria.

On the same 12/13/2013, a Dr. Vishal Delman MD's entered into Dr. Ohakweh's medical records that Dr. Ohakweh tested positive for only fever, chills, fatigue, facial swelling, cough, shortness of breath, and headaches; but tested negative for any eye, respiratory, cardiovascular, gastrointestinal, endocrine, genitourinary, musculoskeletal, skin, allergic/immunologic, or psychiatric/behavioral issues.

Dr. Vishal disregarded the AML diagnosis, but instead executed a paracentesis procedure around 5:56PM. Paracentesis by definition is the perforation of a cavity of the body or of a cyst or similar outgrowth, especially with a hollow needle to remove fluid or gas. According to Dr. Vishal note in Dr. Ohakweh's records, verbal consent was provided by the Dr. Ohakweh. For an invasive procedure. Per Dr. Vishal, anesthesia was given to Dr. Ohakweh during this paracentesis procedure, and Dr. Ohakweh tolerated the procedure well with no complications.

On 12/14/2013, Dr. Lin Dai this time working under the authorization of a Dr. Patrice Latimer, noted in his records that he was being transported by wheelchair, and needed chemotherapy.

No treatment for chemotherapy was done or instituted on 12/14/2013. On 12/19/2013 around 6:35AM, a family medicine resident physician intern - Dr. Erika Spuhler, ordered a bronchoscopy on Dr. Ohakweh. According to her progress notes, the physicians "need biopsy for certainty of ruling out infectious etiology prior to initiation of chemotherapy."

A flexible bronchoscopy was done without intubation of Dr. Ohakweh at about 3:00pm on 12/19/2013, by a Resident Fellow physician, Dr. Christopher Howard, under the oversight of a pulmonologist, Dr. Amit Parulekar. The bronchoscope was inserted into Dr. Ohakweh via the mouth. According to Dr. Amit Parulekar, who claimed was present and oversaw the bronchoscopy, Dr. Ohakweh was informed of the procedure and gave consent. Anesthesia was also given to Dr. Ohakweh; blood pressure,

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

heart rate, and oxygen saturation was monitored during the procedure; and there was no blood loss nor any complications during the procedure. After the bronchoscopy, there was Dr. Ohakweh had cough, and there was “nonspecific abnormal findings on radiological and other examination of lung field.” Dr. Amit recommended waiting lab results on specimens for microbiology and cytology.

Interestingly, specimen samples were already collected for cytology report (aka “cytopathology”) on 12/18/2013 at 00.00 hrs, and received by Dr. David Wynne on 12/18/2013 before the bronchoscopy, per the interesting medical record entry by Dr. David Wynne.

More interesting but realist medical record entry: Dr. Christopher Howard, Fellow MD, entered another cytopathology report on 12/19/2013 after the bronchoscopy indicating that cell tissues were collected on 12/19/2013 at 3:00pm (the same time as the bronchoscopy/biopsy executed by Dr. Amit), and that he (i.e. Dr. Christopher) received the samples of Dr. Ohakweh's “lung, right middle lobe, bronchoalveolar lavage” at 10:05am on 12/20/2013. Dr. Howard claimed that the specimen received was satisfactory for evaluation and negative for malignancy. No attending physician is mentioned in Dr. Howard's entry.

On 12/18/2013 at 1:22pm, 12/17/2013 at 2:46pm, 12/16/2013 at 11:18am, 12/14/2013 at 11:53am, and at 12/19/2013 at 10:01am, Dr. Ghana Kang wrote in Dr. Ohakweh's medical records:

“...please consult social worker (citizenship, gold card, and etc.) to assess if he's a candidate for BMT later on.”

BMT means bone marrow transplant.

On 12/15/2013 at 12:22pm and 12/20/2013 at 1:57pm, Dr. Daniel Y. Wang also wrote in Dr. Ohakweh's medical records:

“...please consult social worker (citizenship, gold card, and etc...) to assess if he's a candidate for BMT later on.”

On 12/22/2013 at 1:08pm, Dr. Daniel Y. Wang wrote again in Dr. Ohakweh's medical records:

“Also addressed his current residency status (on Visa) and lack of coverage (not eligible for Gold Card as he is living in Brazoria County)”

On the same 12/22/2013, a teaching physician by the name of Dr. Martha P. Mims MD, examined Dr. Ohakweh, and met with Dr. Ohakweh and his Bethrand. Per her medical notes, Dr. Ohakweh had lung lesions that the physicians were not were unable to understand the source, but Dr. Ohakweh's AML was the most life threatening matter according to the hospital physicians. Dr. Mims then noted a challenging “social situation” regarding Dr. Ohakweh's visa immigrant status, the need for a likely prolonged hospital retention and treatment, and payment issues.

According to Dr. Ohakweh's son, during the meeting, Dr. Mims inquired if Dr. Ohakweh or his family had money to pay for the chemotherapy treatment. However, per Dr. Mims' report, Dr. Mims excludes her inquiry statement as to payment of treatment. She rather states “The son reports that the father can pay for his treatment. They asked me how much money it would be and I said that it would run into the thousands, probably tens of thousands of dollars. I think case management needs to be involved immediately.”

Dr. Ohakweh's son would testify that they would not have asked about the cost of the treatment if Dr. Mims had not first inquired as to payment.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

On the same day, a resident physician Dr. Daniel Y. Wang MD also addressed the payment or insurance coverage situation with Dr. Ohakweh and his son, Bethrand.

On 12/28/2013 and on 1/1/2014, Dr. Spuhler noted in Dr. Ohakweh's records of the payment issue, that Dr. Ohakweh was a "candidate for a Gold Card... if is not unable to obtain, he is eligible for emergent Medicaid. Will need to stay inpatient for now as he is requiring blood products to maintain adequate erythrocyte and platelet levels."

On 1/10/2014, on the 39th day after the AML diagnosis of Dr. Ohakweh, Dr. Ohakweh finally was provided with his first chemotherapy treatment for his AML. Dr. Ohakweh's son Bethrand will testify that Dr. Ohakweh deteriorated while in the hospital, without chemo treatment; and Bethrand visited the hospital frequently to inquire as to the lack of institution of the chemotherapy, but was rather met with responses regarding payment from the physicians.

On a 1/25/2014 2:39PM progress note in Dr. Ohakweh's report by a resident physician, Dr. Keit T. Truong, the Dr. Ohakweh's lung nodules (i.e. small solid abnormality in Dr. Ohakweh's lungs) collected on the 12/19/2013 bronchoscopy, was "negative to date on cultures" and "no blasts identified on pathology report. In other words, per the pathology report, there was no showing of acute development of cancer cells in the lungs tissues taken from Dr. Ohakweh during the bronchoscopy; and the results of the culture (lab-controlled growth of the tissues for examination) was still not provided to the physicians as of 1/25/2014.

On 1/26/2014 at 3:39pm, Dr. Courtney N Miller-Chism wrote in his medical records:

"I discussed the case with the resident and agree with the diagnosis of:... Spoke to patient, son, and primary team. It is doubtful that patient will get gold card. He is awaiting Emergency Medicaid. His ANC remains above 500. We will discharge him and arrange for BM biopsy to assess for remission on 2/4 and heme f/u appt on 2/12. This will give us time for the BM to recover and hopefully for the Medicaid to kick in. He also has f/u with family medicine on 2/7."

On 2/11/2014, Dr. William Y. Huang you wrote in Dr. Ohakweh's medical records:

"Patient currently without gold card, awaiting visa status change, asked him to call me if visa status changes so we can proceed with CXR and other tests."

Another proof that the physicians and health care providers refused to administer proper medical care on Dr. Ohakweh because of money.

Ultimately, after the efforts of Dr. Ohakweh's son, Dr. Ohakweh received two of three scheduled chemotherapy treatments, and left the hospital around mid-2014. Dr. Ohakweh and his family arranged for payment with the hospital claims department, and paid their required co-pay for the medical services provided to Dr. Ohakweh as of 2014. Dr. Ohakweh's son will testify that Dr. Ohakweh was able to return to his routine active lifestyle, which included playing tennis, after the delayed chemotherapy therapy treatment that was eventually provided to Dr. Ohakweh thanks to his son's efforts.

Second Hospital Visit

On or about March 3, 2015 Dr. Ohakweh flew seventeen hours from Nigeria to receive the best care anyone can think of. Upon arrival to Houston on March 4, 2015, his son Bethrand drove him directly to the hospital for evaluation. Dr. Ohakweh walked into Ben Taub Hospital with his son for treatment complaining of fatigue, shortness of breath (SOB), cough, and chest pain (CP). A physician-Dr. Tolu Olade at Ben Taub Hospital attended to him. Dr. Ohakweh was tired but yet coherent while answering the doctor's questions. Per medical reports, Dr. Ohakweh had no allergies to any medication. Dr. Tolu Olade

relayed to Dr. Ohakweh's son that based upon her team's assessment, Dr. Ohakweh had an acute renal injury, low blood counts indicative of a possible Acute Myeloid Leukemia (AML) relapse, and that his chest x-rays showed dispersed infiltrates in his lungs uncharacteristic of pneumonia. Dr. Ohakweh's son expressed to Dr. Tolu Olade that he had been treated for leukemia in 2014, and that those infiltrates were present then, and were negative for any type of bacterial or fungal infection.

Also upon evaluation in the emergency department ("ED") at Ben Taub hospital Dr. Ohakweh's initial vital signs showed an elevated heart rate at 110 beats per minute (normal is 60 to 100), and oxygen saturation (measure of how much oxygen is dissolved in one's blood) of 91% (normal is >95%). While in the ED, it is documented that Dr. Ohakweh's oxygen saturation would occasionally drop to the 80% requiring them to place an oxygen mask around his mouth and nose for intermittent respiratory support. With the mask on, his saturation quickly improved to normal levels. As documented in the initial intake notes by the doctors, Dr. Ohakweh was responsive, able to give a full history about his condition and answer all their questions. The only positive finding on physical examination by the doctors was that Dr. Ohakweh had "decreased breath sounds in the right and left lower lung fields." This led to a work-up, as would any Dr. Ohakweh presenting to the ED in Dr. Ohakweh's state, that included blood work, non-invasive imaging of the lungs, and non-invasive evaluation of his heart.

The specific imaging results key to his care are as follows: Electrocardiogram (EKG) of the heart was negative for severe heart compromise. Chest X-ray (CXR) showed "diffuse infiltrates bilaterally" suggestive of pneumonia or volume overload. A Cat Scan (CT scan) of the chest which is more specific than a CXR showed enlarged lymph nodes, multiple airspaces and interstitial opacities" suggestive again of pneumonia but also a leukemic reaction. This would make sense given Dr. Ohakweh's history of acute myeloid leukemia (AML). Dr. Ohakweh's laboratory work also returned significant for blast cells 71% (Note: normal level is 0%) and platelet count of 15K (Note: normal level is 150-400k) both of which coincide with the possibility of Dr. Ohakweh's AML return/relapse.

Ben Taub Hospital's team of ED physicians made a decision to admit Dr. Ohakweh to a unit on the 4th floor for further evaluation.

Dr. Ohakweh's primary care was under that of Family Medicine providers with consulting services including Hematology/Oncology and the Medicine Intensive Care Unit (MICU) teams. It was the overall impression of the Family Medicine team of doctors that Dr. Ohakweh's respiratory status was a result of 1) pneumonia or 2) leukemic infiltrates due to a relapse of his AML.

Dr. Ohakweh told the resident MICU physician Dr. Elaine Chang, "I think my illness is coming back" on said 3/4/2015. Dr. Chang noted of Dr. Ohakweh's leukemia history in the medical records, reviewed his CT chest imaging with the Medical Fellow on staff, Dr. Jatinder P Hothi, and concluded that the results were "suggestive of infection or leukemic infiltration." Dr. Change noted that Dr. Ohakweh's oxygen requirements were not excessive, but suggested the need for a "bronchoscopy to distinguish between infection vs. leukemic pulmonary infiltrates." She discussed her diagnosis and treatment suggestion with the Fellow, and no attending physician. To address the possibility of pneumonia, antibiotics were started empirically. However to address the possibility of AML relapse, hematology/oncology specialist needed to weigh in their input and ultimately start chemotherapy as soon as possible, without delay.

In the early morning on 3/5/15 a rapid response was called on Dr. Ohakweh. It is documented by the nurse the Dr. Ohakweh dropped his oxygen saturation to 80% while on the oxygen mask. Dr. Ohakweh was assessed by the team of doctors and the decision was made to escalate his care and transfer him to the MICU and place him on Bilevel Positive Airway Pressure (BiPAP), a form on non-invasive mechanical ventilator (respiratory) support.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

The MICU was now the primary team after Dr. Ohakweh was transferred and thus responsible for making decisions about his care. While on the BiPAP, Dr. Ohakweh showed stable improvement in his respiratory status, however was overall still suffering from hypoxemia (i.e. low blood oxygen) and as a result in critical condition per the MICU doctors.

It was decided that Dr. Ohakweh needed a bronchoscopy with intubation. Of note, when Dr. Ohakweh was first diagnosed with AML in December 2013, a non-intubation bronchoscopy was done at that time which yielded negative results. Now this time around, Dr. Ohakweh presented with a similar situation, and only one can wonder why a bronchoscopy was necessary as the one performed in the past had no added benefit. One can also wonder why a bronchoscopy with intubation was necessary this time around.

Nonetheless, on the morning of 3/6/15 the MICU team decided to proceed with the bronchoscopy and it was their clinical judgment that Dr. Ohakweh needed to be intubated first before doing the procedure. The clinical judgment was based on the fact that the MICU team felt that Dr. Ohakweh was under severe respiratory compromise.

Now this is where the questions begin:

Did he really need the bronchoscopy? Absolutely NOT. For those that are unaware a bronchoscopy is an INVASIVE procedure that visualizes a person's trachea or windpipe. It can be used for both diagnosing and treating respiratory conditions. In the case of Dr. Ohakweh, performing a bronchoscopy was of no therapeutic value and would NOT have changed his diagnosis.

To reiterate, the medical team was charged to determine what was causing Dr. Ohakweh's respiratory difficulties. The two leading causes were either 1) a lung infection, which he was already being treated with antibiotics or 2) his leukemia. The evidence gathered earlier in Dr. Ohakweh's work-up already pointed to a relapse in Dr. Ohakweh's AML, a fact that the medical team was well aware of. Since the team was keen enough to start Dr. Ohakweh on antibiotics for presumed lung infections, he also should have been started on chemotherapy right away for his AML instead of being subject to unnecessary ELECTIVE procedures.

Moreover, any lung specialist would agree that the number one contraindication to performing a NONEMERGENT, ELECTIVE bronchoscopy are certain lung and heart conditions including severe respiratory failure. Now as the medical team may have it, if their clinical impression was that Dr. Ohakweh was suffering from hypoxemia and severe respiratory compromise, why even think to perform a bronchoscopy if it was NOT going to change the overall management of the patient? Again, these physicians did not want to give him chemotherapy because of their presumed money issue. Rather, they decided to use Dr. Ohakweh as their needed a guinea pig for experimental purposes, just as in the first hospital visit back in December 2013. After all, the more procedures the do on patients, the more funding they receive from the government. So for a patient who they believe cannot pay, such patient should become their guinea pig? What is this an indentured servitude healthcare model?

It should also be noted that as part of the bronchoscopy procedure, a patient would have to be adequately sedated with anesthetics as to not feel pain and discomfort from the procedure. In the first non-intubation bronchoscopy conducted by Dr. Amit in December 2013, Dr. Ohakweh was sedated with anesthesia.

Sedation itself naturally causes ones respiratory drive to decrease. So again, why did the medical team agree and decide for an intubative bronchoscopy to be done on a patient that they stated to be in respiratory failure? Dr. Ohakweh needed prompt evaluation by a cancer specialist and initiation of chemotherapy, and NOT to be experimented on by inexperienced health professionals. But again, after his first treatment at the hospital, the medical staff already felt he did not have any money. So they were not willing to provide experienced professionals to attend to Dr. Ohakweh.

Did Dr. Ohakweh really need to be intubated?

Medical professionals (i.e. physicians) actually disagree because it is documented on page 477-479 of Dr. Ohakweh's medical records by Dr. Sheth, that Dr. Ohakweh was able to communicate and give consent for the bronchoscopy treatment (Note: There are no copies of said consents in the medical records). Moreover, it was documented that pre-procedure, Dr. Ohakweh was alert and orientated, answering and asking appropriate questions by the doctors and nurses. Given these facts, does this coincide with someone who the doctors claim to be in respiratory failure and in dire need of intubation? The answer is NO.

But what tops it all is that on page 507 of the medical records, it is documented that Dr. Ohakweh's oxygen saturation is 92% at the start on the intubation procedure which is an acceptable level. However as mentioned above with the steps in a bronchoscopy procedure, prior to intubation Dr. Ohakweh would also require moderate sedation with drugs known to cause further respiratory depression and compromise.

Now it all comes together. An unnecessary decision to proceed with bronchoscopy on their guinea pig instead of treating his cancer issue with chemotherapy, leads to the medical team performing a hasty intubation. As a result of a botched procedure the records state on page 507 that his oxygen saturation deteriorated to the 80's, then the 70's, then the 50's, ultimately leading to the code, i.e. a comatose patient, multi-organ failure, and the point of no return.

The evidence shows that Dr. Ohakweh did not need the intubation/bronchoscopy. He needed chemotherapy. But instead of the staff treating him with chemo, they decided to experiment on their guinea pig.

Another point is as documented in the medical records, even after putting Dr. Ohakweh in the worst shape possible, comatosed and lifeless, the medical team (Dr. Sarkar and Dr. Hoang, Dr. Hoang being the same person that participated in the botched bronchoscopy) still proceeded with a "gentle broncholavage." In other words, Defendants still performed a bronchoscopy not even a few hours after the terrible event, on a critically ill and mortally wounded patient. There are many things unethically wrong with this. Most importantly, the results of the bronchoscopy were negative just as before.

Pertinent details as to the second hospital visit

Per Dr. Ohakweh's medical records, on March 6, 2015, two "respiratory/anesthesiology" trained medical personnel and/or physicians conducted the intubation unsuccessfully during which Dr. Ohakweh's heart stopped, he sustained cardiopulmonary arrest, was "suffocated and died." When Dr. Ohakweh's son arrived at Ben Taub from a trip to Nigeria on 3/12/2015, he headed straight to his hospital bedside from the airport only to find that the alert and oriented individual he left in the hands of the physicians, was now on life support; with tubes all over him; bloodied up in his nose, ears, and mouth, and in the intensive care unit (6E room 11). He took pictures and began to question the staff as to what had happened. Dr. Sarkar, the attending physician at this time explained to him that his father was placed on BIPAP (oxygen mask) for two days shortly after he was admitted; that his father's sputum cultures were negative and so they decided to further assess his lungs by performing a bronchoscopy on 03/06 which required that he'd be intubated first. Dr. Sarkar stated that they obtained written consent from Dr. Ohakweh. (Note again: no such written consent has been provided.)

Per Dr. Sarkar, attempts were made to resuscitate Dr. Ohakweh for 30 minutes. Due to the length of time taken to bring him back he suffered extensive anoxic brain injury, kidney failure, respiratory failure, and digestive failure. The multiple organ failure directly resulted in his total dependence on ventilator support (following an emergency tracheostomy performed by ENT), dialysis support and GI tube feeding.

Dr. Elizabeth Guy

A Dr. Elizabeth S. Guy, MD authored the pre-op pre-procedure note for the intubation/bronchoscopy post his respiratory failure. On page 508 Dr. Guy writes a procedure note stating the details of the intubation. She indicates that the operator of the endotracheal intubation is Dr. V. Hoang, MD (i.e. Dr. Van VI. Hoang, Resident MD in Pulmonary/Critical Care PGY-4), while she, i.e. Dr. Elizabeth Guy, was the supervising physician. She claims, "Consent was obtained." Yet there is no written evidence of said consent. It's worth noting that her progress notes were written at 3:16pm after the incident. As will be noted in details further below, the procedure occurred around 12:20 - 12:40pm on 3/6/2015. Many of the medical record documented statements regarding the March 6, 2015 incident are hours after the fact, with conflicts in the records, indicating her state of mind, and a cover up amongst others. Note: Dr. Guy has been a fully licensed physician practicing since 1999.

Dr. Veronica Vittone & Paul Edward Kwak's version of the 3/6/2015 incident

Per pg. 24456 of the medical records, Dr. Veronica Vittone, Resident MD, indicated that Dr. Guy was the bronchoscopy/intubation physician on 3/6/2015. On page 24457, the notes by Dr. Guy, signed by Dr. Veronica Vittone on 7/8/2015, cites to Dr. Guy's update note at 5:04pm on 3/6/2015 stating, "a size 8 ETT (endotracheal tube) was attempted to advance but was not in the trachea." In other words, even though this experimental procedure on their guinea pig was clearly unnecessary, they did not know what they were doing as the endotracheal tube was not properly inserted into the trachea. Dr. Guy is an MICU physician with years of experience. Was her statement also part of the cover-up?

Regardless, the misplacement of the endotracheal tube led to Dr. Aphaeus' loss of oxygen with "oxygen saturations hovered in the 40s-50s" (a deadly rate) per the ENT note by Dr. Paul Kwak, Senior ENT Resident on pg 24457 of the medical records.

Furthermore, Dr. Vittone's Progress Notes cites the 3/6/2015 ENT note by Dr. Paul Kwak, who stated, "A direct laryngoscopy and oral endotracheal intubation were attempted by the anesthesia team but the airway could not be established. Oxygen saturations hovered in the 40s-50s. A vertical incision was made in the skin of the anterior neck with a #11-blade scalpel. Significant amounts of soft tissue and fat were incised with the 11-blade to the *presumed level of the trachea*, but no lumen was found despite attempts to use the Bougie and flexible bronchoscope. The trachea was again palpated and medialized, then incised horizontally with the 11-blade."

In other words, while the physicians were playing a guessing game (i.e. presumed) on their Dr. Ohakweh's trachea in an unnecessary high-risk procedure, Dr. Ohakweh lost an extreme amount of oxygen, and the physicians could not find the trachea lumen and were not able to place the tube in Dr. Ohakweh' trachea to oxygenate him. Eventually, someone palpated, medialized and stabilized the trachea tube, and so was then able to pass the tracheotomy tube that was connected to oxygen. The physicians finally were able to connect the Dr. Ohakweh to oxygen. All along, during the "presuming and guessing interim," Dr. Ohakweh was starved of oxygen.

Nurse Raichle Elan Hailey, RN's version

Nurse Raichle Elan Hailey, RN, disclosed her report made at 3/6/2015 at 7:39pm - pg. 25952 of Dr. Ohakweh' Ben Taub medical records - that "patient received anxious on BIPAP 60's FiO2... Intubation and bronchoscopy unsuccessfully attempted this shift by MICU team, MD Guy and MD Guerra, and anesthesia, ultimately emergent tracheostomy at bedside by ENT performed. Patient bradycardic and atropine administered. Patient PEA following tracheostomy at 12:26, CPR initiated and ACLS protocol followed. Patient ROSC achieved at 12:38. Right radial arterial line and right femoral CVC placed by team. Currently patient not responsive. no movement to pain. fighting vent."

First of all, the names anesthesia team personnel that were evidently present during the 3/6/2015 procedure are not mentioned in the records. There are no reports from said anesthesia team regarding the incident. Were they even there? Also note that Nurse Hailey's statement is given at 7:39pm, while the event occurred around 12:20pm through 12:40pm. Note: Dr. Guerra has been a fully licensed physician since April 2012, and is an assistant professor at Baylor College of Medicine.

Regardless, Dr. Aphaeus was so far gone/near death due to loss of oxygen because of the failed presumption of his trachea by the unnamed MICU team, Dr. Guy, Guerra, and the unnamed anesthesiologists, and without these physicians assuring the proper location and stabilizing the trachea before passing the endotracheal tube (ET) into Dr. Ohakweh's throat.

Furthermore, it is no surprise that being lightly sedated for this high-risk invasive procedure that normally required anesthesia, undergoing a procedure by medical personnel who rather seemed to be speculating instead of verifying the anatomical position of Dr. Aphaeus' trachea as required, and under unbearable pain, cardiac arrest, and brain anoxia due to the wrongfully placed the ET tube outside the trachea, that Dr. Aphaeus was reflexively and involuntarily fighting the vent under frustration, hopelessness, and helplessness (i.e. he "pulled out the tube" unconsciously "fighting vent:" a reflex/instinctive reaction like a headless chicken or reptile). Again, the fighting vent shows that he was not well sedated. A Dr. Suman Rajagopalan, MD of Ben Taub' Bt 6emi Mdcl lcu department was the care provider on 3/6/2015 per pg. 25998 of the medical records, and oversees the anesthesiology department.

These physicians mortally wounded Dr. Aphaeus by negligently, gross negligently, intentionally, knowingly, gross recklessly, or recklessly putting him under intense pain and suffering. They were passing the ET blindly, and he was not provided with anesthesia for the procedure. One can only wonder Dr. Ohakweh's level of trauma sustained at the hands of the physicians as they put him into brain anoxia, cardiac arrest, and multiple organ failure.

Addition to the 3/6/2015 incident

Per Dr. Kwak's notes on pg. 475, he performed the tracheostomy and presumed the level of the trachea. Dr. Susan A. Eicher, MD, signed off on his presumptions and activities, per her "Teaching Physician Addendum" on page 476 of Dr. Ohakweh' Ben Taub hospital records. Yet, the outstanding question is whether Dr. Paul E. Kwak, a Senior Resident, conducted the procedure in front of the Attending Physician Dr. Susan A. Eicher, MD as well as in front of Dr. Guerra, as indicated by Ms. Raichel Elan Hailey.

Other Injuries

Dr. Ohakweh sustained severe lacerations, which the medical records list as "pressure ulcer blisters," to both his left and right ear as a result of the "bronchoscopy." This Court needs to see the photos ("Exhibit A") taken from the medical records by Barbara Lynn Manning, RN, of the severe injuries sustained by Dr. Ohakweh.

The ear injuries were eventually first assessed on 3/10/2015 per pg 5565 of his medical records. Per the records, no dressing of the ulcers were ordered. The injuries were left "open to air" per the nurse's report. In other words, an open wound left undressed. After mortally wounding and committing aggravated assault on Dr. Ohakweh, Defendants left him to rot away like a guinea pig with no further benefit to them.

Dr. Ohakweh also sustained unstageable pressure ulcers to his right buttocks. These were first assessed on 5/22/2015.

Dr. Ohakweh also sustained anterior positioned lacerations to his scrotum. These were first noted on 4/2/2015 at 12:55pm by Nurse Elaine Manning. Per the medical records pg 5565, this was first assessed on 6/15/2015.

Dr. Ohakweh also sustained lacerations to his penis. The penis ulcer, per pg 4492 of the medical records, were first assessed on 6/15/2015. However, the first photos of the penis ulcer per Nurse Manning's photo entry was 4/23/2015 at 11:59am. The photos indicate that the penis ulcer occurred around the same stage of the scrotum ulcers.

Dr. Ohakweh also sustained lacerations to his left lower leg. These were first disclosed on 4/30/2015 by Nurses Bennett, Eke, Santos, and Manning. The 4/30/2015 photos by Nurse Manning indicate that the laceration occurred around the same stage of the penis, buttocks and ear ulcers.

Interestingly, the first set of photos of all the injuries ("Exhibit A") were taken by Nurse Barbara Lynn Manning and entered in to Dr. Ohakweh's records on 4/17/2015 at 7:08am. They included photos of the left and right ear, scrotum, and buttocks injuries.

The second set of photos of Dr. Ohakweh' injuries taken by Nurse Manning ("Exhibit B") were on 4/23/2015 at 11:59am. They included the buttocks, left and right ear, scrotum, and penis injuries.

The third set of photos of Dr. Ohakweh's injuries taken by Nurse Manning ("Exhibit C") were on 4/30/2015 at 2:47pm. They included the leg, left and right ear, and scrotum injuries.

The fourth set of photos of Dr. Ohakweh's injuries taken by Nurse Manning ("Exhibit D") were on 5/21/2015 at 2:31pm. They included the buttocks, leg, left and right ear, and scrotum injuries. The leg injury was healing by now, but it seemed as Dr. Ohakweh had lost a lot of weight. Also the 5/21/2015 shows that the ear injuries were finally dressed and covered.

The fifth set of photos of Dr. Ohakweh's injuries taken by Nurse Manning ("Exhibit E") were on 6/03/2015 at 8:09am. This is only of his left ear.

The sixth set of photos of Dr. Ohakweh's injuries taken by Nurse Manning ("Exhibit F") were on 6/10/2015 at 7:22am. They included the buttocks, and left and right ear injuries.

The seventh set of photos of Dr. Ohakweh's injuries taken by Nurse Manning ("Exhibit G") were on 7/2/2015 at 2:53pm. They included the buttocks, left and right ears, and penis laceration injuries.

The eight set of photos of Dr. Ohakweh's ulcers were taken by Elaine Ibanez Santos ("Exhibit H") on 7/15/2015 at 1:45pm. It included the penis laceration injury, some of the scrotum injury, and the buttocks injury.

The ninth set of photos of Dr. Ohakweh's injuries were taken by Elaine Ibanez Santos ("Exhibit I") on 7/23/2015 at 7:04am. It included the buttocks, left and right ears, and penis laceration injuries.

Interestingly, the medical records state that the buttocks and penis injuries were first assessed on 5/22/2015 and 6/15/2015. Some nurses the photos and the assessments by the Nurses were not complete at all times, even after their existence were noted in their records. It's not surprising because defendants' intent (e.g. Joslyn Fisher et al) was to get rid of Dr. Ohakweh.

The later disclosures is more evidence that Defendants, *inter alia*, negligently, gross negligently, recklessly, gross recklessly, or intentionally left Dr. Ohakweh to rot away. However, by 5/22/2015, it was evident that his family was not going to succumb to the pressures of Defendants. So they had to at least doing something, and in order to cover up their, *inter alia*, reckless, gross reckless or intentional criminal acts.

Additional Events after the March 6, 2015 incident

Evidently, per Xiaoming Jia's entry in the medical records- pg 24331 - Dr. Ohakweh was bleeding from his trachea the night of 3/11/2015. Bethrand will testify that when he arrived at Ben Taub Hospital on 3/12/2015 and saw this father, he met Dr. Sarkar in the hospital. After Dr. Sarkar told Bethrand his version of the 3/6/2015 event, Dr. Sarkar told Bethrand to "just forget about him" (i.e. forget about his father, Dr. Ohakweh). To which Bethrand replied that his father needs to remain in full code (i.e. full treatment), and that a lot of people both here and in Nigeria were depending on Dr. Ohakweh being alive.

After the 3/6/2015 incident, Dr. Ohakweh regained some kidney function (no longer on dialysis), had bowel movements on tube feeds, and respiratory function with ventilator support. However, according to conflicting medical record reports he was either (a) fully awake or (b) his brain function was still minimal. This makes no sense. The medical records sometimes stated that he had pain reflexes on occasions and eye movement but still unresponsive to commands; and other times it stated that he was fully awake or communicating and giving consent to treatment.

For example:

On 3/31/2015 and as a result of the injury sustained at the hand of Ben Taub Hospital physicians on or about 3/6/2015, Dr. Jianbo Wang, MD, a Hematology Fellow, wrote in Dr. Ohakweh' Ben Taub medical records, "Neurology staff indicates patient has no chance of meaningful neurological recovery and that he is going to enter vegetative and minimal conscious state."

On 5/21/2015, Dr. Diana M. Guerra, Assistant Professor Pulmonary and Critical Care at Baylor College of Medicine confirmed Dr. Ohakweh' vegetative state, at 12:11pm in Dr. Ohakweh' Ben Taub medical records and on page 24,832.

On 5/23/2015, at 9:38AM, page 24813 of Dr. Ohakweh' Ben Taub medical records, Dr. Stephen R. Bujarski, Fellow, Pulmonary Attending Physician, wrote, "...anoxic brain injury, vegetative status."

On 6/11/2015, Tigist Mehari, Resident MD, wrote a progress note that exists on page 24621 of Dr. Aphaues' Ben Taub medical records, "... brain injury from prolonged cardiac arrest with resuscitation. Cat Scan Impression Report on 4/15/2015."

On 7/9/2015, Dr. Lydia J. Sharp, MD, Neurologist, wrote in Dr. Ohakweh' Ben Taub medical records, "...3/6/2015 and has been unresponsive since. No improvement for past three months. No grimace... consistent with vegetative state."

On 7/22/2015, Dr. Jesus H. Hermosillo, Fellow, wrote in pg. 67 of Dr. Ohakweh' Ben Taub medical records, "respiratory failure with difficult intubation, underwent emergent tracheostomy, had PEA (pulseless electrical activity) arrest and multi organ failure... anoxic brain injury... ventilator-dependent on tube feeding."

On 6/23/2015, at 1:37pm, Dr. Joslyn Fisher also later wrote in his medical records, "...patient's terminal (and essentially irreversible) neurologic condition..."

HOWEVER, on 4/14/2015, there was a Moderate Sedation Pre Procedure Form completed by a Dr. Gregory H. Broering, Resident MD. In the Sedation Risk Assessment (pg 3387 of Ben Taub medical records), Dr. Broering states that Dr. Aphaues was an appropriate candidate for moderate sedation, and that he was "a patient with severe systemic disease that is not immediately life threatening." Dr. Broering also stated that Dr. Aphaeus had regular heart rate, strong pulses, and that his lungs were clear bilaterally. Dr. Broering also stated in the Focused Patient Interview and Physical Examination, that Dr. Aphaeus was fully awake as of that day. He even wrote in his Assessment and Plan for a hemodialysis catheter placement on Dr. Ohakweh (pg 3380 of medical records), that his recommended sedation plan was "discussed with patient who communicated understanding."

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

According to Dr. Broering in pg. 3379 of the medical records, Dr. Ohakweh was in “no respiratory distress” as of his physical examination for the hemodialysis catheter placement on 4/14/2015. Dr. Broering thereafter recommended a few sedation drugs, Versed and Fentanyl, to be used if required. David M. Wynne MD agreed and signed off on Dr. Broering 4/14/2015 Pre-op treatment plan for the hemodialysis catheter placement on pg. 3376. Therefore, as of 4/14/2015, Dr. Ohakweh was able to communicate and was in no respiratory distress.

Dr. Aphaeus was already unconscious and in a vegetative state as of April 2015. Yet on

On 5/11/2015 at 5:24pm, Dr. Sarah M. Palmquist, Resident MD, completed a similar physical, assessment and plan for pre-op, for a percutaneous gastrostomy tube placement (pg. 3376). She also stated that Dr. Ohakweh was in “no respiratory distress” and “the plan was discussed with the patient who communicated understanding.” Dr. Palmquist also thereafter recommended a few sedation drugs, Versed and Fentanyl, to be used if required. Dr. Cliff Whigham, DO signed off on Dr. Palmquist's 5/11/2015 treatment plan on 5/12/2015 at 9:01am, and wrote “See Pre-op notes completed by Dr. Palmquist on 5/11/2015” (pg. 3374 of records).

On 5/18/2015 at 4:35pm, Dr. Sarah M. Palmquist, Resident MD, completed another Pre Procedure Form. In the physical examination and assessment and plan section, she wrote “no respiratory distress” and “the plan was discussed with the patient who communicated understanding.” Dr. James Gregg, reviewed her work at 9:26am the following day, 5/20/2015, and approved her diagnosis and planned procedure.

In the moderate sedation procedure form, (pg. 3386), Dr. Palmquist stated that Dr. Aphaeus had regular heart rate, strong pulses, and that his lungs were clear bilaterally. However, she stated that Dr. Aphaeus was “a patient with sever systemic disease that is continuously life threatening.” She stated in the Focused Patient Interview and Physical Examination, that Dr. Alphaues' level of consciousness was zero (0) and he was unresponsive. Yet she recommended the same sedation management plan as Dr. Broering.

A Dr. Justin A. Chetta, Resident MD completed the same Moderate Sedation Pre Procedure Form on 7/7/2015, and stated that Dr. Aphaeus was “a patient with mild systemic disease” and was a candidate for moderate sedation, and recommended the same “plan of sedation drugs to be used” on Dr. Aphaeus as Dr(s) Broering and Palmquist. Dr. Chetta stated that Dr. Ohakweh had a regular heart rate, and strong peripheral pulses.

Interestingly, on the same 7/7/2015 at 11:48am (pg 3369) Dr. Chetta also stated that Dr. Aphaeus was in vegetative state needing replacement of feeding tube, recommended the same sedation plan as before, yet stated that “the plan was discussed with patient who communicated understanding” Dr. David Wynne agreed with Dr. Chetta's treatment plan on 7/8/2015 at 11:18am (pg. 3366 of records).

Dr. Chetta actually disclosed that the patient, Dr. Ohakweh, was in a vegetative state in the prior sentence on that same page, 3369, and then stated that the treatment plan was discussed with patient who communicated understanding.

The interesting fact to be deduced from all this is that the hospital physicians consistently, inter alia, negligently, gross negligently, intentionally, knowingly, or recklessly delegated treatment of an ill man to a bunch of resident physicians, without oversight. Hence, they authorized the continuous use of Dr. Ohakweh as a guinea pig even after he was mortally wounded under their care; because amongst others, as finally disclosed by Dr. Xandera, he was from Nigeria and likely had no funding. Dr. Ohakweh was treated as a second class citizen. When they were done with their experiments on him, they wanted him out of the hospital.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Another evidence of civil rights violation, negligence, gross negligence, recklessness, gross reckless, intentional or knowing acts of Ben Taub Hospital, its personnel, and its affiliates, as discussed in the previous paragraph, which all led to the various injuries- brain dead/vegetative state, organ failure, sacrum sores, et al sustained by Dr. Ohakweh.

FURTHERMORE:

On 3/16/2015 at 1:22pm, in the Teaching Physician note, Dr. Martha P Mims wrote “the family - I know the son from the last hospitalization. I don't think there is much we are going to be able to do for his AML.” Hence, Defendants succeeded in creating a situation in which Dr. Ohakweh would not be able to handle chemotherapy for his AML.

Throughout the second hospital visit, Dr. Ohakweh never received treatment for the relapsed acute myeloid leukemia (AML) for which he was admitted. Defendants inter alia, negligently, gross negligently, recklessly, gross recklessly, knowingly or intentionally put him in a neurological state by which he could not qualify for or handle chemotherapy. Defendant's plan to execute Dr. Ohakweh was fully put into action.

Withholding of Life Sustaining Treatment

After Dr. Ohakweh was in a mortally wounded state, it became a goal by the physicians to get him out of the hospital at his and his family's expense.

As of 3/25/2015, Dr. Joslyn Fisher was already executing the plan of withholding life sustaining treatment from Dr. Ohakweh. At 4:06pm, in her Ben Taub Ethics Consult notes, she wrote “...Medically appropriate treatment option(s) for end of life care - consider offering several options -including withdrawal of all life-sustaining care, withdrawal of some life-sustaining/prolonging care, or limiting escalation of care.” She also wrote that Dr. Sarkar must document this. She even went as far as writing into Dr. Ohakweh's medical records, “Excerpt from Harris Health System Advance Directives Policy 4128,” which includes Harris Health's procedures for decision regarding life-sustaining treatment, and which somewhat mirrors Texas Health & Safety Code 166.046.

Per Dr. Lydia Sharp's 7/9/2015 consult notes, evidently on 3/26/2015, Neurology physicians were consulted on Dr. Ohakweh's case and “he was found to have persistent brainstem reflexes but extensor responses to noxious stimuli... severely disabled state with only fragments of understanding, requiring long lasting or indefinite nursing care. Hence as of 3/26/2015, Dr. Ohakweh still had brainstem reflexes, but will require long lasting or indefinite nursing care. This is another evidence of the cost Defendants would have to bear if he was to be alive. But rather, they decided to plot to kill him.

Per Dr. Sharp's 7/9/2015 notes, “Neurology has also seen the patient on 6/15 and 6/23, no change in exam was seen.” So as of 6/23/2015, Dr. Ohakweh still had brainstem reflexes et al as stated in the paragraph above, but will require long lasting or indefinite nursing care.

Dr. Sharp's notes describing Dr. Ohakweh on 7/9/2015 at 1:37pm went as follows: “Currently the patient is afebrile with stable vital signs within normal limits. Labs show normal white count and no major metabolic abnormalities... Intact cough.” So on 7/9/2015, Dr. Ohakweh had no fever, his labs showed normal white blood cell count (white blood cells fight infections), and no major metabolic abnormalities and had an intact cough. However, she stated that Dr. Ohakweh had not been given a neurological exam for the past three (3) months. In other words, Defendants negligently, recklessly, gross negligently, gross recklessly or intentionally left him there to rot and deteriorate hoping that he would die.

On May 28, 2015, Ben Taub Hospital personnel and defendants recommended for Dr. Ohakweh to be discharged to another facility, gave them a list of locations, and told them that the facilities on the list will cost them \$1000 per day, and that such cost would be incurred by the family. The family disagreed to such a discharge because neither Dr. Ohakweh nor any his family members can afford such an expense. Moreover given that Ben Taub Hospital, its personnel, and its affiliates (i.e. Baylor College of Medicine physicians) caused the harm to Dr. Ohakweh and his family, it was inconceivable that Dr. Ohakweh's family was being asked to accept financial responsibility for the injury caused to Dr. Ohakweh while on admission at Ben Taub Hospital.

Dr. Ohakweh went to the hospital with neurological functioning to get treated for his pre-existing health problems. However, Ben Taub Hospital personnel and their affiliates caused him multiple organ failure, irreversible injuries, continues bodily injury, as well as continuous grief to his family members. The hospital's planning or attempts to discharge him with the extensive brain and various other injuries he sustained at the hands of Ben Taub Hospital, its personnel, and its affiliates, in addition to the untreated disease he was admitted for, merely shocked the family's and really any reasonable min's conscience; not to mention that they are suggesting that his family bear their estimated \$1000 per day cost to care for him in his incapacitated state, with multiple bedsores, with proof of aggravated assault on him during the 3/6/2015 procedure, and his swollen arm and body.

Interesting fact: Even after months of search, the family was even unable to find an alternative venue that would accept Dr. Ohakweh under such circumstances (e.g. \$1000/day). The hospital staff or physicians clearly lied.

Starting on March 12, 2015 with Dr. Sarkar, the hospital physicians began to pressure Dr. Ohakweh's family to make him a DNR patient. On 3/24, 3/25, 3/29, 4/1, 4/27, 5/28, 6/23, & 7/11, the hospital physicians attempted via discussions, to convince the family to approve withholding of life-sustaining treatment or to discharge him. To which they continuously refused and kept searching for alternative transfer venues.

Defendant, Joslyn Fisher, entered the recommendation to withhold life-sustaining treatment in the records of Dr. Ohakweh as of 3/25/2015 in her "Initial Summary of Recommendations." The decision was not made by the Harris Health Committee to withhold life-sustaining treatment from Dr. Ohakweh until July 27, 2015, and the 10 day time period ran out on August 3, 2015. However, per the records, Dr. Joslyn fisher entered the life sustaining treatment recommendation in Dr. Ohakweh's medical records as of 3/25/2015. The plan was already in place to create a scenario by which they can withhold life-sustaining treatment from Dr. Ohakweh and finish him with the knock-out blow.

On 4/1/2015, Defendant, Dr. Christina Kao, the MICU attending physician, Dr. Joslyn Fisher, and others met with the Dr. Ohakweh's family. Per Dr. Kao's entry in the medical records, she suggest that the hospital and family agree to make Dr. Ohakweh a DNR patient, and recommended withholding of life-sustaining treatment such as dialysis, vasopressors, and transfusions. Pertinent parts of her writing in the medical records of Dr. Ohakweh on 4/1/2015 at 7:47am reads as follows:

"A status of DNR in case of cardiac arrest was suggested as well as the recommendation by myself to withhold dialysis, vasopressors, and transfusions. The family wishes patient to remain at current status."

The family refused to allow the withholding of life-sustaining treatments and informed the physicians that Dr. Ohakweh would have wanted any fighting chance to stay alive.

The physicians, unsuccessful in obtaining approval to withhold life-sustaining treatment from Dr. Ohakweh's family decided further create a dire situation for a man fighting for his life, by writing all over his medical records about the DNR recommendation, in anticipation of the Harris Health Ethics Board's 166.046 review of the records and decision making of whether to withhold life sustaining treatment, if the family did not agree to the withholding of life-sustaining treatment.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

On 6/23 & 6/30, Jared Jung-Taek Lee wrote the same 4/1 DNR statement as Dr. Christina Cao in Dr. Ohakweh's medical records which reads as the following:

“4/1 family meeting with Ethics with Dr. Kao (MICU attending), Dr. Jabuonski (MICU fellow), Dr. Winograd, Dr. Fisher (ethics), Dr. Citron (palliative care) and multiple representatives from case management and chaplain; recommended status of DNR, family wished for patient to continue max medical support”

On 6/24 & 6/27 of 2015 Holly J. Bentz copied and pasted the same 4/1 DNR statement from Jared Jung-Taek Lee's medical entry in Dr. Ohakweh's medical records. Dr. Doris Lin signed off on Holly Bentz's writings on 6/24/2015.

Dr. Wayne Xandera, attending physician and Associate Professor at Baylor College of Medicine, signed off on the 6/23 & 6/30 statements by Jared Lee, and also wrote in Dr. Ohakweh's medical records on 6/29 at 10:16am:

“65-yo with AML, dx 2013, CHF, DM, herpes, admitted for respiratory failure, PEA, anoxic brain injury, ventilator asss pneumonia, minimally conscious but leaning toward a PVS, no funding with his being Nigerian, family is trying to decide on goals of care, a meeting tomorrow with them will take place with Ethics committee.”

Dr. Sudha Yarlagadda copied and pasted the same 4/1 DNR statement from Jared Jung-Taek Lee's medical entry in Dr. Ohakweh's medical records on 7/1, 7/9, 7/10, 7/11, 7/18, 7/16. Dr. Anita V. Kusnoor Signed off on Sudha Yarlagadda's writings on 7/17/2015 as attending physician.

Dr. Veronica Vittone copied and pasted the same 4/1 DNR statement from Jared Jung-Taek Lee's medical entry in Dr. Ohakweh's medical records on 7/8/ & 7/12.

On 7/21, 7/22, 7/23, Xiaoming Jia's medical notes in Dr. Ohakweh's medical records included another copy and paste of the same 4/1 DNR statement from Jared Jung-Taek Lee's medical entry.

By the Harris County Ethics Board meeting under Texas Health & Safety Code Rule 166.046, which occurred on 7/24/2015, it was basically obvious that the Ethics Board head, Dr. John Michael Halphen, was ready to make Dr. Ohakweh a DNR patient. At the meeting, Dr. John Michael Halphen stated that the ultimate decision was on the ethics board team, with his decision as supreme; that the family were merely there to give their input, and that if the family did not agree with the decision, they had 10 days to appeal the decision to the probate court. In regards to procedure, the Ethics Board personnel stated that they were not involved in the treatment of Dr. Ohakweh; that their job was merely to review the records, listen to input, and make their decision on whether to withhold life-sustaining treatment which in this case consists of withholding CPR, dialysis, pressors, and ICU treatment.

The Ethics Board meeting was merely an attempt to bully the family into succumbing to the demands of Harris County Ethics Board and Ben Taub physicians (i.e. Defendants) to kill Dr. Ohakweh by withhold life-sustaining treatment from him. Dr. Ohakweh had been in ICU for months. Authorization to withhold ICU treatment from him, coupled with withholding pressors, CPR, and dialysis, meant a bad faith authorization not to touch him anymore; even though Defendant were the ones to put him in his condition. Dr. Joslyn Fisher was at this meeting as a proponent to the withholding life-sustaining treatment. Dr. Josheph Kass was at also at the meeting and a proponent of the withholding life-sustaining treatment.

The issue at the Ethics Board meeting was whether the family would authorize the physicians to withhold CPR, dialysis, pressors, and ICU treatment, or he be discharged at the expense of his family. The family members present at the meeting requested for such specific recommendations in writing, to which the Ethics Board refused. The family members refused to give such authorization and stated that they needed some time to speak with other family members in United States and abroad. Dr.

Halphen granted the family a week to decide, but still make it clear that the decision was up to the Ethics board, and ultimately his decision.

Throughout the week of 7/26/2015, Dr. Halphen personally contacted Bethrand on Bethrand's his cell phone eight (8) times in an attempt to coerce Bethrand to act on behalf of the family and authorize the Harris Health Ethics Board to withholding of life-sustaining treatment. There exists a recorded telephone call voice mail from Dr. Halphen, left on Bethrand's voice mail asking if he and the family had made up their mind, before the 7 day period granted to them by Dr. Halphen and the Ethics Board. After seeing 8 missed call and receiving the voicemail from Dr. Halphen, Bethrand called Dr. Halphen back, told Dr. Halphen that the family needed time to decide, and ultimately asked Dr. Halphen to put his recommendations in writing; to which Dr. Halphen refused and stated "this conversation is over," and then hung up the phone on Bethrand. Bethrand will testify to this fact.

On 8/10/2015, the Ohakweh family received a decision letter from Dr. Halphen on behalf of the Harris Health Ethics Board, stating that they have decided to withhold life-sustaining (i.e. CPR, dialysis, pressors, and ICU treatment). The family immediately responded with the attached letter ("Exhibit J") stating that they disagree with the Ethics Board's decision, and that they the family desires that Dr. Ohakweh received continued administration of CPR, dialysis, pressors, ICU treatment, and other necessary measures to sustain his life.

The Final Blow

With the authorization to withhold life-sustaining treatment from Dr. Ohakweh from Harris Health Ethics Board and Dr. Halphen, and without being able to find any alternative venue to accept Dr. Ohakweh under such circumstances, the month of August 2015 was a critical month for the physician to deliver the final blow to Dr. Aphaeus. Dr. William Graham and Dr. Anisha Gupta were the physicians on staff during that month.

Dr. Ohakweh was not taken well care of by Dr. William Graham's medical team, which included Dr. Anisha Gupta. In fact, as seen in the medical records there is blatant negligence, gross negligence, recklessness, gross recklessness, knowing or intentional treatment of Dr. Ohakweh, i.e. deadly standard of care negligently, gross negligently, recklessly, gross recklessly, knowingly, or intentionally administered to Dr. Ohakweh during his time at Ben Taub and especially in August 2015, the final weeks of Dr. Ohakweh's life.

The medical records clearly show how Dr. Ohakweh's once stable state began deteriorating in front of the medical teams eyes and the treatment the medical team negligently, gross negligently, recklessly, gross recklessly, knowingly, or intentionally provided to Dr. Ohakweh accelerated his ultimate death on September 7, 2015.

It is documented in the records that daily labs were performed up until August 14, 2015. These daily labs included a complete blood count (CBC) and a basic metabolic profile (BMP). On August 14, Dr. Ohakweh had the following labs hemoglobin (hgb) 8.4, hematocrit (hct) 27.4, and platelets (plt) 11. One should know that these numbers are way below the normal cutoff especially the platelets. To this end, the medical team did transfuse Dr. Ohakweh 1 unit of platelets on that day.

Shockingly though, the next set of labs for Dr. Ohakweh was not performed until August 20. Now most medical professional would agree that after transfusing one blood products, it is normal practice to perform a post-transfusion lab work; and this should hold more true to anyone in such a critical state as Dr. Ohakweh. However the medical team delayed this blood work until August 20th, 2015 at which point things could only be worse. August 20th was also a key day regarding the medical management of Dr. Ohakweh because it was the day that marked the DE-ESCALATION of Dr. Ohakweh's medical care.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

In other words, on this paramount day of August 20th 2015, Dr. Ohakweh had the following blood work: Hgb 6.6, Hct 22.1, and Plt of 7. Again, these numbers are way below the normal ranges. In fact it is documented throughout the doctors daily progress notes that Dr. Ohakweh would receive blood product transfusions as needed if his Hgb <7 and/or his plt 10 or shows signs of bleeding. Thus with this in mind the medial team elected to give him ONLY 1 unit of packed red blood cells which would only effect his Hgb and not his Plt.

On August 24th, 2015 at 1.34pm, Dr. Anisha Gupta spoke over the phone with Dr. Ohakweh's son, lbeh about his father's August 20th lab work at which time she stated that she will not transfuse any platelets until Dr. Ohakweh bleeds.

Dr. Gupta documented in the medial records that “getting Plt tx for Plt of 7 on 8/20 without bleeding episodes was not worth the risk.” However, all along Dr. Ohakweh had been receiving Plt transfusions with values even greater than 7.

For example, on 8/14 he received 1 unit of plt for a value of 11, on 8/9 he received 1 unit for a value of 16, and on 8/5 he received 1 unit of plt for a value of 23. It should be known that up until 8/14, Dr. Ohakweh was receiving daily blood transfusion or platelet transfusion as part of his continued care.

After receiving the blood transfusion on 8/20/2015, the medical team made the decision not to obtain post-transfusion blood work, let alone conduct any further blood work until 8/27/2015.

On or about the evening of 8/25/2015, Bethrand received a call from Dr. Anish Gupta indicating that Dr. Ohawkeh was dying, and that Bethrand should come to the hospital if he wanted to see his father one last time. Bethrand and family immediately left for the hospital. When they arrived at the hospital, the nurses on staff informed them that Dr. Ohakweh was not dying, and that Dr. Gupta was away in the ER. Bethrand and family waited for Dr. Gupta. She did not arrive.

Two days later on 8/27/2015, Dr. Ohakweh reached the point of no return.

On 8/27/2015, Dr. Ohakweh's blood work was as follows: Hgb 4.4, Hct 15.2 and Plt of 2. On this day, one would also see derailments in some of Dr. Ohakweh's other blood works including a creatinine (Cr) of 2.7 and blood urea nitrogen (BUN) of 78. Up until 8/27/15, as seen in the medical records, Dr. Ohakweh's BUN and Cr were stable. Therefore, it comes as no surprise why Dr. Ohakweh suffered acute kidney injury; anyone who went to medical school knows that the number one cause of acute kidney injury is anemia or blood loss, which is evident in the drop in Dr. Ohakweh's Hgb from 6.6 to 4.4 over the course of one week: from 8/20/2015 to 8/27/2015. All of which could have been prevented if the medical team did not negligently or strategically neglect the patient to severely deteriorate.

And so the downward spiral continues.

On 8/27/2015 the medical team pumped Dr. Ohakweh with 3 units of packed red blood cells and 1 unit of platelets. The next set of blood work was performed on August 31st and this lab work was even WORSE. Dr. Aphaeus Ohakweh had a Hgb of 4.0, Hct of 13.3, and Plt of 1. The medical team again attempted to cover-up their wrong doing by ordering to give Dr. Aphaeus Ohakweh 3 units of blood and 2 units of platelets on 8/31. On a 9/1 visit to the hospital, Bethrand was told by Edwin RN that Dr. Ohakweh made 75 milliliters of just blood on 08/31/2015 and 25 milliliters that morning of 9/1/2015.

By 9/2/2015, Dr. Ohakweh's lab work showed a Hgb of 5.8, Hct of 17.1, Plt of 28, and his poor kidney function was reflected in a Cr of 5.1, BUN of 170 and urine output of virtually zero.

The Death

On the last week of August 2015, after receiving some of Decedent's medical records, plaintiffs rushed to provide Defendants with the statutorily required notice of claim letters. Some of the letters sent to the physicians were sent to Defendant-Barbara Johnson at Baylor College of Medicine's risk management department. The notice of claim letters were very detailed.

On September 1 and September 2, 2015, Mrs. Barbara Johnson also received the emails attached as "Exhibit K." Barbara Johnson schedule a call to discuss Dr. Ohakweh's matter. During the call on September 2 at 2pm CST, Barbara Johnson was informed that Dr. Anisha Gupta was part of the medical team with Dr. Graham and were executing actions on Dr. Ohakweh that was accelerating his death. She was also informed that a new medical team was on staff treating Dr. Ohakweh as of September 1.

As a risk manager, Barbara Johnson had a duty to investigate and insure that Anisha Gupta and Dr. Graham were no longer part of the medical team treating Dr. Ohakweh. However, instead, Anisha Gupta was kept involved in the care of Dr. Ohakweh.

Per the medical records, on or about 09/02/2015 at 9:29am, Dr. Gupta ordered a high dosage of acetaminophen (TYLENOL) for Dr. Ohakweh to be administered every 4 hours; a dosage level greater than the maximum limit allowed.

On 09/02/15 at 12:50pm, Dr. Ohakweh was given 500 mg of acetaminophen (TYLENOL) tablet. Per the Registered Nurse, Candelaria J. Rodriguez's comments: "Dr. Gupta notified of dosage over 4g limit. MD states okay to given medication."

On 09/02/15 at 5:00pm, Dr. Ohakweh was given 500 mg of acetaminophen (TYLENOL) tablet. Per the Registered Nurse, Candelaria J. Rodriguez's comments: "*part of barcode torn off*. Medication given now. Okay to give med per MD Gupta request. Patient with T> 100."

On 09/03/15 at 9:05am, Dr. Ohakweh was given 500 mg of acetaminophen (TYLENOL) tablet. Per the Registered Nurse, Candelaria J. Rodriguez's comments: "Per Dr. Gupta- okay to administer acetaminophen as she is okay with going over the 3 g /24 hr max limit."

Also on 09/03/15 at 1:10pm, Dr. Ohakweh was given another 500 mg of acetaminophen (TYLENOL) tablet. Per the Registered Nurse, Candelaria J. Rodriguez's comments: "Per Dr. Gupta-okay to administer acetaminophen as she is okay with going over the 3 g /24 hr max limit."

On the morning of September 7, 2015, Defendant Anisha Gupta contacted Bethrand over the telephone around 9:00am to inform him that Dr. Ohakweh had died. Dr. Gupta stated that Dr. Ohakweh developed heart complications around 6:30am, and was pronounced dead around 8:30am. The death certificate stated 8:57am.

In Dr. Ohakweh's death certificate, signed by a Dr. David Hyman, the cause of death listed was AML, Renal (i.e. Kidney) Failure, Respiratory Failure, and Hypoxic Ischemic Encephalopathy. It is worth noting that per National Institute of Health, the average time to death for someone of Dr. Ohakweh's age with AML and without treatment is 3 to 4 months. Dr. Ohakweh lasted 6 months even with his mortal wound, and lack of treatment. On the 6th month and 1 day, Defendants killed him. Furthermore, the kidney failure was induced and caused by Defendants, and the respiratory failure and hypoxic ischemic encephalopathy (i.e. brain failure) was caused by Defendants.

Defendants negligently, gross negligently, recklessly, gross recklessly, intentionally, knowingly, or maliciously killed Dr. Ohakweh by, amongst others, inducing a need for the dialysis, a dialysis they decided to withhold from Dr. Aphaeus Ohakweh against the family's wishes, and armed with the death dagger wrongfully granted to them by Dr. Halphen, Joslyn Fisher, and

Harris Health Ethics Board against the family's wishes (i.e. to withhold CPR, dialysis, pressors, and ICU treatment). Withholding life-sustaining treatment is the decision of the family per *American Medical Association Code of Medical Ethics Rule 2.20 "Withholding or Withdrawing Life-Sustaining Medical Treatment"*. Yet the Harris Health Ethics Board member Defendants did not care. They were focused on granting an authorization to kill Dr. Ohakweh.

The interesting fact is that Dr. Halphen, Joslyn Fisher, and Harris Health Ethics Board decided to withhold CPR, dialysis, pressors, and ICU treatment. Texas Health & Safety Code 166.046(d) and Harris Health System Advance Directives Policy 4128(8) required defendants to transfer Dr. Ohakweh to a physician, an alternative care setting within the facility, or another facility that will comply with the family's wishes as part of the process. However, defendants did not do so. Dr. Ohakweh was kept in the same Ben Taub Hospital unit 6D room 10 where he was as of the July 24, 2015 meeting, and his death was accelerated by Defendants (e.g. Anisha Gupta, William Graham, etc) while under their control.

Defendants, rather than acting their role in good faith as health care providers with fiduciary duties to Dr. Ohakweh and his family, became angels of death equivalent to willing to deprive Dr. Ohakweh and his family of their civil rights, cause mortal injury to Dr. Ohakweh, as well as his death and grievous injury to his family and community.

Missing and Bad Faith Activity in the Medical Records

Dr. Ohakweh's family requested for a copy of his complete medical records from Ben Taub Hospital on or about July 24, 2015, along with a business records affidavit attesting to the authenticity of the records under oath under penalty of perjury. Ben Taub Hospital provided Dr. Ohakweh's family with over 26,000 pages of his medical records along with an executed business records affidavit authenticating such records. The medical records contain false information and were also incomplete.

For example: The pages that should contain detailed information about Dr. Ohakweh's intubation procedure and others on March 6, 2015 - pages 26,003, are missing. The Custom History Progress Notes states, "No notes of this type exist for this encounter." Rather, it seems to be embedded and hidden in pg. 508 of Dr. Ohakweh's medical records. The History & Physical Notes also state, "No notes of this type exist for this encounter." While there is an Admission History & Physical on pg 25988 for the date that he was admitted to Ben Taub Hospital, there should be a History & Physical taken and notes written on the date that Dr. Ohakweh was admitted to unit 6E-11. Every specialty personnel should take their own History & Physical of Dr. Ohakweh and note all details in writing and in the 3/6/2015 report; as an update and data verification mechanism for proper precautions and treatment analysis. Hence, it's not surprising that Dr. Ohakweh was being blindly intubated. These physicians didn't care. They never cared about providing care to Dr. Ohakweh since his first arrival in 2013. Dr. Ohakweh was their guinea pig from Nigeria allegedly had no funding for treatment.

In pages 26001 and 26002, in the Medication Comments, under the "All Orders" subsection, it states, "No orders found." In the Results Summary, it states, "No results found." The necessary reports that should be on these pages are missing in this page. On pg 25812 of Dr. Ohakweh's Ben Taub medical records, Dr. Alison Uyemura, MD's 3/15/2015 report provided a general (non-detailed) overview of the 3/6/2015 events in the Daily MICU Progress Notes. Dr. Aradhna Seth, MD, on page 24632 of the Ben Taub Hospital records, provided the same overview-basically a duplicate version of the same general synopsis as Dr. Uyemura. Dr. Neelima Sukhvasi provided the same duplicate version of the general synopsis in her Daily MICU Progress Notes on 4/11/2015, page 25411 of the Ben Taub Hospital records. Yet the 3/6/2015 detailed records of the 3/6/2015 treatment and procedures are missing on pages 26001 to 26003, as well as the video recording of the events that occurred in room 6E-11.

While some procedure details are in pages 475 and 508, complete details about the treatment and procedure should be in pages 26001 to 26003 including the names Ben Taub hospital anesthesia personnel or affiliates that participated in the intubation on 3/6/2015; again whom are nowhere to be found in the records. A Dr. Suman Rajagopalan, MD of Ben Taub's Bt 6emi Mdel lcu

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

department was the care provider on 3/6/2015 per pg. 25998. Again, it's worth noting that the synopsis of the 3/6/2015 event as provided by Dr. Aradhna Seth, Dr. Neelima Sukhavasi, and Dr. Alison Uyemura were all identical statements, and were all provided after the 3/6/2015 incident. Again, YET, the records that should exist detailing the 3/6/2015 incident are missing.

Dr. Van Hoang's statement about the 3/6/2015 is nowhere to be seen. He was the original operator of the bad faith bronchoscopy.

Furthermore, the medical records provided per the July 24, 2015 request were only from 3/4/2015 and thereafter. There were no records from the first treatment.

The fact that the detailed records of the 3/6/2015 incident are missing from pg 26001 to 26003 where they are supposed to be, and the fact that material statements are missing show that records were deleted, and that negligent, gross negligence, reckless, gross reckless, knowing, intentional, or bad faith violations occurred on 3/6/2015. These missing records, these misplaced records, and the false statements in the records constitute criminal fraud (misappropriation of fiduciary property, forgery, and fraudulent destruction, removal, concealment of writing) considering that these records were authenticated via the business records affidavit that, amongst others, (a) "It is the regular practice of said business for an employee or representative with knowledge of the act, event, incident, order, transaction, invoice, condition, photo, video recording, audio recording, opinion, or diagnosis, to make the record, or to transmit information thereof to be included in such record," (b) "the said records were made at or near the time of occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matter," and (c) "The said records attached hereto are the originals or exact duplicates of the originals."

Furthermore, pages 26000, contain false information about Dr. Aphaeus. For example, in said page 26000, (a) under Family as of 3/6/2015, it states "None," and (b) under Family Status as of 3/6/2015, it states "None." Meanwhile on pg 3357 of the medical records, the Clinical Case Manager, Mr. Willie Peterson, disclosed "lbe Ohakweh (son)" as Dr. Aphaeus' primary contact person. This provides more evidence that the medical records were altered, which constitutes forgery, fraudulent destruction, removal, concealment of writing, and misappropriation of fiduciary property (criminal fraud).

Defendant later provided medical photos of decedent-plaintiff taken on 4/16/2015 ("Exhibit L").

Further issues and foreseeable injuries directly or proximately caused by Defendants upon Decedent while under Defendants' control at Ben Taub Hospital, as shown the medical records are as follows:

1) Height and weight discrepancies of measurements both taken on the same day, 3/4/2015, by Sophia Kumbanattel, Resident MD, indicate that as of 1pm, that day he was 5ft 10 inches in height and weighed 267lbs (see pg 25995), yet as of 4:45pm he was 5ft 11 inches in height and weighed 229lbs (see pg 25994). Hence within three (3) hours, he gained one inch in height, and lost 38lbs. These height and weight measurements are used to determine his vital and critical medications. Hence, this is, inter alia, evidence of gross mismanagement that contributed to Dr. Ohakweh' multiple irreversible organ failures including the brain failure. This is also evidence of negligence, gross negligence, recklessness, gross recklessness, intentional, or knowingly acts of the part of the physicians in the administration of care and the management of Dr. Ohakweh.

2) The medical records also show that Dr. Ohakweh has sustained increased oropharyngeal secretions as of 6/4/2015, which he acquired during his time at Ben Taup Hospital, and caused by Defendants.

3) Page 5 of the records also show that he contacted Nosocomial Pneumonia - hospital acquired pneumonia - as of 5/9/2015, acquired during his time at Ben Taup Hospital, and caused by Defendants. There is nothing in the records that show that Dr. Ohakweh received pneumonia shots as expected upon admission due to his age (over 60yrs old) to prevent him from catching pneumonia.

4) Pg 5 of the records also show that Dr. Ohakweh contacted bacteremia due to Enterecococcus - a bacteria infection of the blood stream due to the bacterial organism "coccus" forming in his blood stream acquired during his time at Ben Taup Hospital, and caused by Defendants. This occurred as of 5/9/2015 and was present as of July 24, 2015. This infection commonly affects the elderly during hospital admissions and who underwent instrumentation (i.e. Dr. Ohakweh's attempted intubation and pre-op bronchoscopy). Enterecococcus bacteria had been known to be resistant to antibiotic like vancomycin, penicillin products, and others. Did the medical team consider such before selecting the treatment antibiotics for Dr. Ohakweh? Who is the infection control team that treated Dr. Ohakweh?

5) Dr. Ohakweh also contacted Hypoxic Ischemic Enephalopathy (HIE) on 3/28/2015, acquired during his time at Ben Taup Hospital, and caused by Defendants. This was hospital acquired during his time at Ben Taup Hospital, and caused by Defendants.

6) The records also show that Dr. Ohakweh contacted Candidemia on 3/27/2015, acquired during his time at Ben Taup Hospital and as a result of the negligence, gross negligence, recklessness, gross recklessness, intentional or knowingly acts, and bad faith substandard treatment received from at the hands of Defendants. This is a fungal blood stream infection on Dr. Ohakweh's blood acquired during his time at Ben Taup Hospital, and caused by Defendants.

7) There is also evidence of colonization with multidrug-resistant bacteria that Dr. Ohakweh acquired on 3/27/2015 during his time at Ben Taup Hospital, and caused by Defendants. This contributes to the any drug-resistant infections, which led to Dr. Ohakweh's criticalness and difficulty in treating his infections.

About Dr. Ohakweh

Dr. Ohakweh was the patriarch of his family; a close-knit, highly educated, and respected Nigerian family. His level of doctorate education also makes him an important man in the community both here in the United States and in Nigeria. His value to his family and the community was disclosed to the Harris Health System ethics board on July 24, 2015. As a matter of fact, he paid for all the migration expenses for all his children currently residing in United States of America. He was also educated here in United States; he received his PhD in Portland State University in Urban and Regional Planning. One can Google him and see a copy of his thesis.

Dr. Ohakweh was also the chairman of the board of the Nigerian Institute of Town Planners, Nigeria's leading planning body for spatial, sustainable, integrative and inclusive planning. Furthermore, his family are in the medical profession here in the United States, and his in-laws are Medical Doctors and lawyers here in United States. He also mentored others in the community both here in the United States and in Nigeria, and paid for the education of many. Overall and therefore, Dr. Ohakweh was a highly respected and valuable man, with a global influence. Yet, Defendants decided to treat him and his family like worthless, second class human beings without civil or even human rights; while they continuously caused injury on him and his family with inter alia negligence, gross negligence, reckless, gross reckless, intentional or knowingly executed acts, all in bad faith.

DAMAGES

Plaintiffs hereby incorporate all facts and allegations in all sections above.

Plaintiffs sustained the following injuries as a result of Decedent-plaintiff's December 2013 treatment, the March 6, 2015 treatment, the September 7, 2015 death, as well the injuries sustained in the periods in between which were directly or proximately caused by defendants' actions, and were foreseeable at the time of their actions:

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Dr. Ohakweh or his estate's damage claims are (a) pain and suffering, (b) loss of earnings, (c) loss of earning capacity, (d) mental anguish, (e) loss of consortium, (f) funeral expenses; (g) traveling costs; and (h) attorney fees and costs.

Dr. Ohakweh's family members (other claimants) include (a) Philomina Ohakweh (wife), (b) Ibe Ohakweh (son- 35yrs- Pharmacist in Texas), (c) Emily-Jean Chinwendu Ohakweh-Aguocha (daughter- 32yrs- Research Scientist in Minnesota), (d) Chizoba Cynthia Ohakweh-Nnadi (daughter- 30yrs - Banker in Nigeria), (e) Obinna Michael Ohakweh (son- 28yrs- First year Masters in Business Administration student in Ghana), (f) Chukwuneny Alphaeus Ohakweh (son-8yrs-student), and (e) Chisolm Daniella Ohakweh (adopted daughter- 6 yrs- student).

The damages claimed for the wife are: (a) loss of consortium, (b) loss of counsel, (c) loss of advice, (d) loss of spouse's household and domestic services, (e) loss of care, (f) loss of maintenance, (g) loss of support, (h) loss of monetary contributions; (i) mental anguish, (j) traveling costs; (k) loss of inheritance; and (I) attorney fees and costs.

The damages claimed for each of the children below 18yrs of age are: (a) loss of monetary contributions; (b) loss of earning capacity; (c) loss of counsel; (d) loss of advice; (e) loss of services including nurture, care, education, and guidance; (f) loss of support; (g) mental anguish; (h) traveling costs; (i) loss of inheritance; and (j) attorney fees and costs. ***

The damages claimed for each of the children above 18yrs of age are: (a) loss of earning capacity; (b) loss of counsel; (c) loss of advice; (d) loss of services including nurture and guidance; (e) loss of care; (f) mental anguish; (h) traveling costs; (i) loss of inheritance; and (j) attorney fees and costs.

All plaintiffs also have and hereby assert a claim for all exemplary/punitive damages allowed by law and equity, and pray for such.

CAUSES OF ACTION

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages to each and every cause of actions alleged below.

All causes of action alleged below were direct and proximate causes of Plaintiffs damages; such damages were foreseeable at the time of Defendants' actions; and Defendants acted, *inter alia*, in bad faith, maliciously, negligently, gross negligently, recklessly, intentionally, or knowingly; and under the color of Texas State laws, to cause said foreseeable and proximate damages to all Plaintiffs.

Violation of Article 1, Section 17 of Texas Constitution:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

Plaintiffs' property (*inter alia* body, income, inheritance, etc.) were taken, damaged, and destroyed for and applied to public use by Defendants without adequate compensation being made, and without the proper consent of such by Plaintiffs or any of decedent-plaintiff's family members or heirs, *inter alia*, in bad faith and with intent to foreseeable and proximate harm Plaintiffs.

The taking public use of defendant's body was not for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

Violation of Article 1, Section 19 of Texas Constitution:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

Without proper due course of the law of the State of Texas, Defendants acting under a presumed shield or disguise of governmental immunity or under color of Texas State law as government employees, deprived Plaintiff - a citizen of this State - of life, liberty, property, privileges or immunities, *inter alia*, in bad faith and with intent to foreseeable and proximate harm Plaintiffs.

Plaintiffs had a right under American Medical Association Code of Medical Ethics Rule 2.20 “Withholding or Withdrawing Life-Sustaining Medical Treatment to decide on whether or not to withhold life-sustaining treatment of Decedent. This right and protection by law was denied to them by improper due process executed by Defendants in, *inter alia*, their false execution of Texas Health and Safety Code Section 166.046 executed in bad faith and with intent to foreseeable and proximate harm to Plaintiffs.

Defendants' actions were done, *inter alia*, in bad faith and with intent to cause foreseeable and proximate harm to Plaintiffs. Plaintiffs, when or where applicable, pray for such damages.

Violation of Article 1, Section 3a of Texas Constitution:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

Defendants while acting under color of Texas State law as government employees denied or abridged Plaintiffs' equality under Texas law because of their sex, race, color, creed, or national origin, *inter alia*, in bad faith and with intent to cause foreseeable and proximate harm to Plaintiffs.

Inter alia, Defendants at all times denied Decedent-plaintiff treatment with chemotherapy or proper medical treatments because of his sex, race, color, creed, or national origin. Rather, they chose to use him as a guinea pig and negligently, gross negligently, recklessly, gross recklessly, knowingly, or intentionally executed unnecessary procedures and various injury causing actions on Decedent-plaintiff thereby causing him multiple injuries and ultimately, death; as well as injury/damages listed in sections above to this family members, *inter alia*, in bad faith and with intent to cause foreseeable and proximate harm Plaintiffs. Plaintiffs, when or where applicable, pray for such damages.

Violation of 13th Amendment of the U.S. Constitution:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

13th Amendment of the U.S. Constitution reads as follows:

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

Defendants while acting under color of Texas State law as government employees subjected Plaintiffs to involuntary servitude.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Inter alia, during the first and second hospital visit, and within the United States jurisdiction, Defendants inter alia, in bad faith refused or delayed treating Decedent-plaintiff with chemotherapy or proper medical treatment because, amongst others, they believed he had no money to pay. Rather, they chose to use him as a guinea pig and negligently, gross negligently, recklessly, gross recklessly, knowingly, or intentionally executed various unnecessary procedures and harmful acts on Decedent-plaintiff thereby causing him various injuries and ultimately, death; as well as injury/damages listed in sections above to this family members, inter alia, in bad faith and with intent to cause foreseeable and proximate harm Plaintiffs. Decedent or his family members were not charged with nor convicted of any crime.

Per Black's Law Dictionary, slavery is defined as "A civil relationship in which one person has absolute power over the life, fortune, and liberty of another."

Defendants while acting under color of Texas State law as government employees subjected Plaintiffs to slavery.

Defendants had absolute power over the life, fortune, and liberty of Plaintiffs. Evidence shows that inter alia Defendants, in the first hospital visit, refused or delayed treating Decedent with chemotherapy until payment of their services were insured. Defendants also refused to release Decedent-plaintiff until his Gold Card was processed.

In the second hospital visit in 2015, Defendants even went as far as intentionally, knowingly, negligently, gross negligently, gross recklessly or recklessly putting plaintiff-decedent in state of injury by which he would not qualify for chemotherapy, and then accelerated his death against the wishes of his family members. Therefore, Defendants not only controlled Decedent's life, but also his liberty and fortune, inter alia, in bad faith and with intent to cause foreseeable and proximate harm to Plaintiffs.

Decedent's family member's liberty or fortune is materially dependent on decedent being alive. He is the family patriarch. Therefore, Defendants also enslaved the family members, inter alia, in bad faith and with intent to cause foreseeable and proximate harm to Plaintiffs. Plaintiffs, when or where applicable, pray for such damages.

Violation of 14th Amendment, Section 1 of the U.S. Constitution:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

14th Amendment, Section 1 of the U.S. Constitution reads as follows:

"...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Defendants while acting under color of Texas State law as government employees deprived Plaintiffs of life, liberty, and property without due process of law; and denied Plaintiffs equal protection of the laws, inter alia, in bad faith and with intent to cause foreseeable and proximate harm Plaintiffs.

Plaintiffs had a right under American Medical Association Code of Medical Ethics Rule 2.20 "Withholding or Withdrawing Life-Sustaining Medical Treatment to decide on whether or not to withhold life-sustaining treatment of Decedent. This right and protection by law was denied to them by improper due process executed by Defendants in, inter alia, their false execution of Texas Health and Safety Code Section 166.046 executed in bad faith and with intent to foreseeable and proximate harm to Plaintiffs.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Defendants, *inter alia*, put decedent-plaintiff in a position by which he would not leave their control, and, *inter alia*, refused to make reasonable efforts to transfer him to a proper alternative care. Rather, they chose to keep decedent-plaintiff in their control, and accelerated his death, fully aware of the injury their actions will cause or was causing on decedent-plaintiff and his family (Plaintiffs).

Defendants, *inter alia*, still refuse to compensate Plaintiffs for their injuries sustained.

Defendants' actions were done, *inter alia*, in bad faith and with intent to cause foreseeable and proximate harm to Plaintiffs. Plaintiffs, when or where applicable, pray for such damages.

Plaintiffs also in the alternative plead that Defendants' actions should be governed by TEX. CIV. PRAC. & REM. CODE ANN. CHAPTER 71's wrongful death statute because Defendants were not providing health care to Plaintiff-decedent or Plaintiffs but rather were, amongst others, operating a death asylum, used Plaintiff-decedent as a scapegoat to defraud the government for funding, and committed various violations that include fraud and constitutional violations on plaintiffs.

Plaintiffs, when or where applicable, pray for any and all damages sustained.

Violation of 4th Amendment, of the U.S. Constitution:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

4th Amendment of the U.S. Constitution reads as follows:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,...”

Acting under the color of Texas State laws as government employees, Defendants continuously conducted unreasonable search of Decedent-plaintiff's body via unnecessary and unwarranted bronchoscopies since December 2013, as well as unnecessary and unwarranted invasive medical procedures on Decedent-plaintiff's body while he was incapacitated. Defendants had no warrant.

Defendants also unreasonably seized Decedent-plaintiff's body during the December 2013 first Ben Taub treatment, the second Ben Taub treatment on or about March 2015 treatment, and thereafter at Ben Taub hospital for other medical experiments by Defendants; rather than either just treating him with chemotherapy in the December 2013 treatment after disclosed on December 14, 2015, and rather than just treating him with chemotherapy during the second treatment on or about March 2015.

Defendants also unreasonably seized Decedent-plaintiff's body and medical records during and after the March 2015 treatment.

In regards to the medical records, Ben Taub Hospital only provided medical records from 3/4/2015 and thereafter to plaintiff's family, per their July 24, 2015 request. The records of Deceden's prior treatment were excluded. Decedent and his family had a right to those records. They were the property of decedent and his family.

Defendants' actions were done, *inter alia*, in bad faith and with intent to foreseeable and proximate harm to Plaintiffs. Plaintiffs, when or where applicable, pray for such damages.

Violation of 5th Amendment, of the U.S. Constitution:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

5th Amendment of the U.S. Constitution reads as follows:

“... nor shall private property be taken for public use, without just compensation.”

Plaintiffs' property (inter alia his body, income, financial fortune, inheritance, etc.) were taken, damaged, and destroyed for and applied to public use by Defendants without just compensation being made to plaintiff or any of plaintiff's family (i.e. plaintiffs), all done, inter alia, in bad faith and with intent to foreseeable and proximate harm to Plaintiffs. Plaintiffs, when or where applicable, pray for such damages.

Survival Action:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

Plaintiff-Bethrand is the legal representative of the estate of the decedent-plaintiff.

Decedent-plaintiff had a cause of action for personal injury to his or her health, reputation or person before he died.

Decedent-plaintiff would have been entitled to bring a cause of action for the injury if he had lived.

Defendants' wrongful act, *inter alia*, the multiple withholding of chemotherapy treatment, the multiple offensive and unnecessary bronchoscopy treatments, the acceleration of his death by *inter alia* withholding CPR, dialysis, pressors, and ICU treatment, fraud on Plaintiffs, neglect of Decedent to deteriorate after the March 2015 bronchoscopy, lack of anesthesia, directly or proximately caused the decedent's injuries. These injuries were foreseeable at the time of all of Defendants' actions.

Pursuant to Texas Civil Practice and Remedies Code 71.002 or 74.303, Baylor College of Medicine is liable for the acts of Defendants, because Defendants are either its employees, or agents via business partnership; and Defendants' wrongful act, inter alia, neglect, carelessness, recklessness, unskillfulness, or default (non-performance of duty described in sections above) actions were direct or proximate cause of Decedent-plaintiff's death.

Decedent-plaintiff or really his estate are entitled to the following damages as a result: (a) pain and suffering, (b) loss of earnings, (c) loss of earning capacity, (d) mental anguish, (e) loss of consortium, (f) funeral expenses; (g) traveling costs; and (h) attorney fees and costs. Plaintiffs, when or where applicable, pray for such damages on behalf of plaintiff-decedent.

Claims (Only Applicable Post Dec Action) :

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

Baylor College of Medicine, by and through its actual and ostensible agents, Defendant employees, vice principals, borrowed servants, and in partnership with Harris Health System (e.g. Ben Taub Hospital) and its employees (i.e. Nurse defendants), failed to use the ordinary care in providing treatment for Dr. Plaintiff-Decedent that reasonable and prudent hospitals of the same or similar level of certification would have employed under the same or similar circumstances by, among other acts and omissions,

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

failing to develop, employ, monitor, and follow appropriate policies or procedures with regard to the assessment, treatment, management, and oversight of patients such as Plaintiff-Decedent, and by failing to train, employ, and provide appropriate personnel to carry out such policies or procedures.

In addition, Baylor College of Medicine is liable for the acts and omissions of Defendants to the extent that Defendants were the apparent and ostensible agent of Baylor College of Medicine in its partnership with Harris Health System (i.e. Ben Taub Hospital) and practicing under Baylor College of Medicine and Harris Health System's apparent direction and auspices.

Moreover, Baylor College of Medicine and Defendants knew or should have known that a sick or injured person, even one with the sickness and injuries as Plaintiff-Decedent, were subject to vulnerability and the injuries sustained by Plaintiff-Decedent and caused by Defendants.

In particular, the Defendants, or either one of them, failed to exercise the accepted standard of care and were negligent in, *inter alia*, the following ways, with each incident giving rise to a separate and independent claim:

- a. Failing to keep watch over the plaintiff while he was undergoing treatment.
- b. Failing to properly sedate Plaintiff-decedent with anesthesia.
- c. Failing to properly instruct hospital personnel or Defendants in the care and treatment of Plaintiff-decedent.
- d. Failing to provide adequate and safe facilities for the care and treatment of Plaintiff-decedent.
- e. Failing to obtain proper consent from Plaintiff-decedent or his family prior to the bronchoscopies executed in March 2015.
- f. Failing to properly notify Plaintiff-decedent's family of the true facts or circumstances of the March 6, 2015 treatment
- g. Failing to properly notify Plaintiff-decedent's family of the true facts or circumstances of alternative care after the March 6, 2015 incident.
- h. Failing to obtain proper consent from Plaintiff-decedent or his family prior to the bronchoscopies executed in March 2015 and December 2013.
- i. Failing to promptly treat Plaintiff-decedent with chemotherapy in the first hospital visit in December 2013.
- j. Failing to promptly treat Plaintiff-decedent with chemotherapy in the second hospital visit in March 2015.
- k. Writing the recommendation of withholding life-sustaining treatment in Plaintiff-decedent's records before the required statutory time under Texas Health & Safety Code 166.046(f)
- j. Failing to execute proper Texas Health & Safety Code Rule 166.046 procedures in regards to plaintiff-decedent
- i. Accelerating Plaintiff-decedent's death in August 2014 as described in facts section of this pleading.
- k. Failing to keep proper and accurate records of Plaintiff-decedent's treatment.
- j. Failing to obtain proper consent before the paracentesis procedure in December 2013.

Fraudulent Misrepresentation:

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

Defendants, *inter alia*, made a material representation to the Decedent-plaintiff and his family members regarding the necessity of the bronchoscopies in the first and second visits; and amongst others, the cost of alternative care (i.e. \$1000/day).

Inter alia, the representation for the need of bronchoscopies and the cost of the alternative care were false. Also, in the alternative, the second bronchoscopy was not only unnecessary, but was also an intubated bronchoscopy different from the first bronchoscopy conducted on decedent.

Defendants at all times made their statements to Plaintiffs knowing them to be false, or made them recklessly without any knowledge of the truth, and as positive assertions.

At all times, Defendants intended Plaintiffs to act on the statements and, *inter alia*, provide them consent for the bronchoscopies, as well as for Plaintiffs to carry the burden of the injury that Defendants created.

Plaintiffs acted in reliance on Defendants' statement, *inter alia*, without knowledge of the need or specific type of bronchoscopies, and without knowledge of the proper cost of such alternative care for Decedent by searching for months for such alternative care, while Decedent was being harmed at the hands of Defendants while at the hospital.

Inter alia, Plaintiff-decedent also was not only in duress at the time of the reliance, but was also not in the position to understand that the bronchoscopies were unnecessary or understand the different scope of bronchoscopies that were done. Plaintiffs at all times were also not in the position to, *inter alia*, know the true cost of such alternative care.

Plaintiffs suffered injury as a result, *inter alia*, bodily injury, respiratory failure, multiple organ failure, death, and all damages mentioned in the section above, hereby incorporated by reference.

Defendants actions were committed, *inter alia*, in bad faith and with intent to cause, and knowledge of causing foreseeable and proximate harm to Plaintiffs.

Plaintiffs hereby seek all damages allowed by law including but not limited to exemplary/punitive damages and any cap busters available, and pray for such.

Battery

Plaintiffs hereby incorporate all facts and allegations in all sections above, including damages.

During Decedent-plaintiff's treatment at Ben Taub Hospital, in the first and second treatment described in the facts section above, Defendants intended and did cause harmful or offensive contact on Decedent without proper consent or with consent obtained under duress or by fraudulent misrepresentation. This includes, *inter alia*, the intended contact during or after the bronchoscopies in December 2013, the intended contract during or after the bronchoscopies without anesthesia in March 2015, as well as during or after subsequent "treatments" provided under alleged yet bogus consents provided by Decedent while Decedent was supposedly in a vegetative state.

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Defendants' intended contacts upon Decedent, on devices attached to Decedent's body, or Devices that controlled the functioning of decedent's body were harmful or offensive contact to the Decedent-plaintiff that caused physical harm or injury on Decedent-plaintiff's body or person.

Plaintiffs on behalf of Decedent-plaintiff hereby pray for judgment for all harm, injury or damages sustained as a result of such harmful or offensive contacts by Defendants inclusive of exemplary or punitive damages, and all cap busters allowed by law.

NOTICE & DEMAND

Plaintiff made a demand on most Defendants and presented their healthcare liability claims on or about August 28, 2015, and subsequently afterwards. All necessary notice of claims have been presented to all Defendants.

Defendants have refused to resolve this matter despite Plaintiffs' numerous attempts to resolve the dispute.

ATTORNEY FEES

As a result of Defendants' actions complained of in this Petition, Plaintiffs were required to engage the services of Adimora Law Firm.

Plaintiffs have agreed to pay the undersigned attorney a reasonable fee for legal services.

Plaintiffs also request that Defendants pay to Plaintiff's legal fees and costs incurred in preparation of this lawsuit and declaratory judgment.

Plaintiffs also request that Defendants pay to Plaintiff all legal fees and costs incurred in prosecuting the declaratory judgment action, or such higher sum as proved at trial, together with:

- (a) Legal fees in the amount of \$50,000, if the case is appealed to the Court of Civil Appeals, and
- (b) Legal fees in the amount of \$75,000 if the case is appealed to the Supreme Court of Texas.

Plaintiffs reserve the right to plead and prove their legal fees and costs at trial time.

Plaintiffs therefore seek payment of reasonable and necessary attorney's fees and all costs incurred pursuant to TEX. CIV. PRAC. & REM. CODE ANN. SECTION 37.009.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule 194.2.

TEX. R. CIV. P. 193.7 NOTICE

Emily-Jean AGUOCHA-OHAKWEH et al, Plaintiffs, v....., 2015 WL 9608853...

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, this paragraph serves as notice that documents produced in response to written discovery requests served by Plaintiff will be used against the producing party in any pretrial proceeding and/or trial.

PRAYER

Plaintiffs pray for all requests made in this petition inclusive but not limited to the declaratory judgment request, as well as all attorney fees and costs.

Respectfully Submitted,

/s/ Ernest Adimora-Nweke

By Ernest Adimora-Nweke, Jr. Esq.

State Bar No: 24082602

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