

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

IN RE: MIRRANDA GRACE LAWSON, )  
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Case No. CL 16-2358

**OPPOSITION TO PETITION OF VCU HEALTH SYSTEMS**

COME NOW Patrick E. Lawson and Alison J. Lawson, by counsel, and hereby oppose the petition of VCU HEALTH SYSTEM AUTHORITY, dba the Children's Hospital of Richmond at VCU, dba MCV Hospitals, regarding forcing an unwanted brain death test on Miranda Lawson against the child's parents' wishes, and in support thereof state as follows:

1. Miranda was a perfectly healthy child on May 11, 2016, a short time ago. Miranda's heart is beating on its own. Miranda's heart rate and blood pressure respond to her favorite music and to the voices of her family, who are constantly at her bedside.
2. Patrick and Alison Lawson (the "Lawsons") are the parents of Miranda Grace Lawson. Under Virginia Code § 54.1-2986(A)(4), they are the persons authorized to consent or refuse consent to the provision, continuance, withholding, or withdrawal of health care.
3. As set forth herein, the Lawsons: (A) request treatments for Miranda's medical conditions that may provide a reasonable opportunity for her recovery, (B) wish to withhold an apnea brain death test, and (C) if necessary, seek time to effect a transfer to another physician.

**A. Additional Standard Treatments are Needed.**

4. The Lawsons requested that VCU Health perform medically necessary treatments for hypothyroidism and adrenal issues, but they refused due to purported risks. The Lawsons believe the risks are outweighed by the alternative of allowing the condition to remain untreated.

5. In addition to these medically indicated screenings and treatments, the Lawsons have directed VCU Health to continue all life prolonging procedures.<sup>1</sup> VCU Health begrudgingly began some artificial nutrition on May 19.

6. The needed treatments are further described in the Affidavit of Dr. Paul A. Byrne, M.D., filed herewith (“Dr. Byrne’s Affidavit”), who is an expert in this field and has reviewed Miranda’s medical records. Thyroid support especially is essential to providing an opportunity for the brain to heal and to allow for Miranda’s respiratory function to recover. Attached are Dr. Byrne’s recommended orders for Miranda, which he created in conjunction with another renowned expert in this field, Dr. Cicero Coimbra, along with Dr. Byrne’s curriculum vitae.

7. The Lawsons request that the Court enter an Order that these treatments be provided to Miranda. It is necessary to address Miranda’s hypothyroidism condition for two or three weeks before conceding that there is no reasonable probability for recovery of Miranda. If these treatments are given, Miranda’s brain and body may respond positively.

### **B. The Apnea Brain Death Test is Harmful.**

8. In the absence of an Order requiring these additional treatments, or the agreement of VCU Health to perform such treatments for Miranda, then the proper recourse under the facts and the Virginia Health Care Decisions Act is NOT to require an apnea brain death test.

9. First, the apnea brain death test is necessarily harmful to Miranda and therefore not in her best interests. It carries known and unacceptable risks to her health. Miranda would

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<sup>1</sup> “Life-prolonging procedures” are defined in Virginia Code § 54.1-2982 as “any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition... For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.”

be irreparably harmed by such a test that is unwarranted at this time. Numerous medical articles are attached to Dr. Byrne's Affidavit explain and cite evidence to support this position.

10. The apnea test is done by taking away the ventilator for up to ten minutes. This causes an increase in carbon dioxide ("hypercapnia"), which is associated with acidosis and causes increased swelling of the brain. This test does not benefit a patient and only causes harm.

11. The Society of Critical Care Medicine provides pediatric guidelines for determination of brain death in children. These guidelines state that when an apnea test cannot be performed safely, there are several accepted ancillary tests available, namely an Electroencephalogram and a Radionuclide cerebral blood flow ("perfusion") study.

12. Furthermore, the American Academy of Neurology has published guidelines that state that unconscious persons such as Miranda cannot be given a reasonably certain prognosis until 90 days have passed in the condition. Therefore, the Lawsons request that no apnea brain test be performed until 90 days have passed since Miranda's injury.

13. In any event, an independent evaluation by another physician not affiliated with VCU Health would be appropriate before any brain death test is administered.

### **C. Virginia Statutes Require an Opportunity to Transfer a Patient.**

14. If VCU Health refuses to perform the needed thyroid and other treatments, then we must look to Virginia law as to the correct procedure. There is no statute that requires a brain death test. Rather, we must look to Virginia Code § 54.1-2987, which states: "An attending physician who refuses to comply with ... the health care decision of an authorized person pursuant to § 54.1-2986 shall make a reasonable effort to transfer the patient to another physician and shall comply with § 54.1-2990".

15. Virginia Code § 54.1-2990(A) refers to situations where physicians disagree with decisions of patients, advance care directive agents, and persons authorized to make decisions pursuant to § 54.1-2986. (For clarity, in the following excerpt from this statute the term “decision-maker” is used for such persons.) This statute states:

Nothing in this article shall be construed to require a physician to prescribe or render health care to a patient that the physician determines to be medically or ethically inappropriate. However, in such a case, if the physician’s determination is contrary to the request of the [decision-maker], the physician shall make a reasonable effort to inform the [decision-maker] of such determination and the reasons for the determination. If the conflict remains unresolved, the physician shall make a reasonable effort to transfer the patient to another physician who is willing to comply with the request of the [decision-maker]. The physician shall provide the [decision-maker] a reasonable time of not less than fourteen days to effect such a transfer. During this period, the physician shall continue to provide any life-sustaining care to the patient which is reasonably available to such physician, as requested by the [decision-maker].

16. Currently it is unclear if a transfer is required, as the Lawsons and VCU Health have only just begun to try to resolve their conflict. Perhaps with the information provided in Dr. Byrne’s Affidavit, VCU Health will still reconsider and attempt these thyroid and other treatments. There is no assertion by VCU Health that they are unable to perform such treatments and the Lawsons have obviously consented to the treatments knowing that there are some risks.

17. However, VCU Health has not yet complied with this statute by attempting to resolve their conflict with the Lawsons and informing them of the reasons why they cannot do the standard thyroid and adrenal treatments for Miranda. Thus, the minimum fourteen-day time period to obtain a transfer of Miranda to another physician has not yet begun. The Lawsons would strongly prefer not to transfer Miranda due to the risks and costs associated, and thus a transfer would be the last option chosen by the family.

18. If VCU Health refuses to perform these medically indicated treatments and provides the Lawsons the reasons for their determination, then at least fourteen days must be

granted to the Lawsons to locate a physician willing to accept Miranda as a patient. The statute provides that fourteen days is the minimum, but it is reasonable to allow them a longer period of time due to the inherent difficulty facing the Lawsons in making these arrangements. There is no assertion by VCU Health that it will be harmed by providing the Lawsons this additional time, or that VCU Health is unable to provide care to Miranda without thereby denying the same health care to another patient.

19. Furthermore, in order to comply with Virginia Code § 54.1-2990 and prevent irreparable harm to Miranda, VCU Health must be ordered to “continue to provide any life-sustaining care”, which is defined in the statute as “any ongoing health care that utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, including hydration, nutrition, maintenance medication, and cardiopulmonary resuscitation.”

20. Miranda’s health will further decline if her hypothyroidism is not treated. The Lawsons request this Court Order VCU Health to treat Miranda’s thyroid, adrenal and other conditions and life sustaining care, until a transfer to another physician is arranged, if a transfer is required.


### CONCLUSION

21. Patients in Miranda’s age group with developing brains and no other underlying conditions have a much better capability of healing than other age groups. The Lawsons are absolutely willing to care for Miranda, even if she lives with a brain injury.

22. The Lawson’s health insurance is paying for the services of VCU Health, so they will not be harmed by providing their patient with the requested treatments and time to rule out all reasonable possibility of recovery. It would be inequitable for VCU Health to deprive this family of the opportunity to fulfill their wishes and continue to care for their child.

WHEREFORE, Patrick and Alison Lawson respectfully request that the Court DENY the relief requested by VCU Health System Authority and GRANT the relief requested herein.

Respectfully Submitted,  
Patrick E. Lawson and Alison J. Lawson,  
By Counsel,

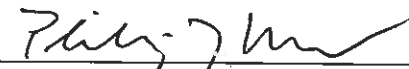
  
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CERTIFICATE OF MAILING

I hereby certify that on this 26th day of May, 2016, I sent a true copy of the foregoing by fax, email and mail to:

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