

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**LASHAUNA LOWRY as Next Friend of
TITUS JERMAINE CROMER, JR.,**

**Case No.: 19-cv-13293
HON.: Mark A. Goldsmith**

Plaintiff,

v.

BEAUMONT HEALTH,

Defendant.

RASOR LAW FIRM, PLLC

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**AMENDED VERIFIED COMPLAINT FOR DECLARATORY
JUDGMENT, PRELIMINARY INJUNCTION AND EMERGENCY
MOTION FOR TEMPORARY RESTRAINING ORDER**

NOW COMES Plaintiff, LASHAUNA LOWRY, AS NEXT FRIEND OF TITUS JERMAINE CROMER, JR., a minor, by and through legal counsel, RASOR LAW FIRM, PLLC, and for her Amended Verified Complaint for Declaratory Judgment, Preliminary Injunction and Emergency Motion for Temporary Restraining Order, states as follows:

GENERAL ALLEGATIONS/PARTIES

1. This is an Emergency action for a Declaratory Judgment, Preliminary Injunction and Motion for Temporary Restraining Order pursuant to federal law and Michigan statutory and common law.

2. Plaintiff, Lashana Lowry, is the natural birth mother of Titus Jermaine Cromer, Jr., is of sound mind and body, and wishes to serve as his next friend and is the natural guardian of the incapacitated minor Titus Jermaine Cromer, Jr. and both are residents of Oakland County, State of Michigan.

3. At all times relevant hereto, Defendant, Beaumont Health conducts business as Beaumont Hospital, Royal Oak.

4. The acts, transactions, and occurrences giving rise to the allegations complained of herein arose within the confines of Oakland County, State of Michigan.

JURISDICTION AND VENUE

5. This cause of action involves violations of federal statutory law and violations of Plaintiff's son's civil rights, as secured by the United States Constitution and is brought pursuant to the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd, *et seq.*, and the Fourteenth Amendment to the United States Constitution.

6. Defendant Beaumont Health operates an emergency department within the meaning of 42 U.S.C. § 1395dd(a) and, upon information and belief, is a “participating hospital” within the meaning of 42 U.S.C. § 1395dd(e)(2).

7. This Honorable Court has jurisdiction over the claims arising under federal law pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1395dd.

8. Plaintiff additionally relies upon the equitable jurisdiction of this Honorable Court. This action presents an Emergency Request for injunctive relief as explained herein and Plaintiff seeks a declaratory judgment that Michigan’s Determination of Death Act, M.C.L. § 333.1031, *et seq.*, and specifically § 1033, does not permit a health care provider like Defendant, acting under color of state law pursuant to a state statute, to cease providing medical treatment, a violation of Plaintiff Titus Cromer and his mother’s constitutional rights.

9. If the Court does not grant a Temporary Restraining Order, then a Temporary Restraining Order entered in Oakland County Circuit Court will be terminated by the Court upon dismissal of the action based upon jurisdictional grounds on Tuesday, November 12, 2019 at Noon. Thereafter, Defendant will remove life support from Plaintiff, and he will perish if the Court does not grant relief herein.

10. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(b), as this cause of action arises out of occurrences that took place within this District in

the County of Oakland and Defendant Beaumont Health transacts and conducts business within this District.

COMMON FACTUAL ALLEGATIONS

11. Titus Jermaine Cromer, Jr., sixteen years of age and a minor child of LaShauna Lowry, is currently in a coma at Beaumont Hospital, Royal Oak 3601 W. 13 Mile Road, Royal Oak, MI 48073.

12. Royal Oak Beaumont Hospital is part of the Beaumont Health System.

13. Defendant Beaumont operates an emergency care department at, among other facilities, Royal Oak Beaumont Hospital.

14. Upon information and belief, Defendant Beaumont Health or Royal Oak Beaumont Hospital has entered into a service agreement with Medicare and thus is covered by EMTALA.

15. On October 17, 2019, Titus was transported to and admitted by Royal Oak Beaumont Hospital after suffering traumatic injury and it appears that Titus has sustained damage to the brain as a result of low levels of oxygen and cardiac arrest.

16. Titus currently requires a ventilator, tube feeding, and assistance with all activities of daily living.

17. Beaumont Hospital, Royal Oak, believes that Titus suffered an “**irreversible** cessation of all functions of the entire brain, including the brain stem” as a result of traumatic injury. See Michigan Determination of Death Act, M.C.L. § 333.1033 (emphasis added).

18. However, Plaintiff has two medical opinions that Titus **HAS NOT** suffered “cessation of all functions of the entire brain, including the brain stem” pursuant to MCL 333.1033 (**Exhibit A**, Curriculum Vitae of Paul Byrne, M.D.; **Exhibit B**, Affidavit of Paul Byrne, M.D.; **Exhibit C**, Curriculum Vitae of Dr. Richard P. Bonfiglio, M.D.; **Exhibit D**, Affidavit of Dr. Richard P. Bonfiglio, M.D.)

19. Beaumont Hospital, Royal Oak had previously indicated that it planned to withdraw Titus’s life-sustaining medical treatment, which includes ventilation and artificial hydration and nutrition if the Oakland County Circuit Court had not granted a Temporary Restraining Order on October 28, 2019. In other words, Beaumont believes that it has the right to withdraw life support without Titus’ parents/guardian’s consent.

20. Accordingly, Plaintiff previously filed this case in Oakland County Circuit Court, 19-177547-CZ, which was assigned to Honorable Hala Jarbou.

21. Judge Jarbou granted a Temporary Restraining Order (TRO) on October 28, 2019 in which she ordered Defendant Beaumont Hospital to continue providing life support and other life-sustaining care, based upon the four factors required to be considered upon considering a Temporary Restraining Order.

22. However, on November 7, 2019, Judge Jarbou entered an order that the Circuit Court lacks jurisdiction over the case and that it will be dismissed on November 12, 2019. (**Exhibit E**, Order of Oakland County Circuit Court).

23. During the pendency of the State Circuit Court litigation, Plaintiff obtained independent medical opinions and expert opinions as to the potential for recovery of the Plaintiff and the time frame under which he may seek recovery. These medical opinions indicate that Titus is not brain dead within the meaning of MCL § 333.1033 and may recover from his brain injury if given additional treatment and time to heal, see paragraph 18, above)

24. Titus's Mother has expressed a clear desire to maintain life-sustaining medical treatment to the greatest extent possible based upon her deeply held religious beliefs and her beliefs that her son, without regard to Titus's current condition based upon a reasonable expectation that he has a change, however slim, for recovery, which is supported by the Affidavits of Plaintiff's Experts.

25. Defendant Beaumont Hospital, Royal Oak refuses to follow the directions of Titus's parent. This directly contravenes the general and fundamental right that "parents speak for their minor children in matters of medical treatment." *In re Rosebush*, 195 Mich App 675, 682 (1992).

26. Titus's parents have been working diligently to arrange for Titus to be transported to another facility willing and able to continue such life-sustaining treatment and to obtain independent medical opinions and other expert opinions as to his prognosis, but Beaumont Health refuses to perform medical stabilization of the patient, including a tracheostomy and percutaneous endoscopic gastrostomy

(PEG) tube, which is the standard of care for longer term support of breathing and provision of food which would stabilize the patient for transport.

27. During the pendency of the Circuit Court litigation, Titus's parents have diligently inquired as to facilities that would accept a transfer of Titus. However, due to the determination of death by the Defendant, no facility will accept him for the necessary procedures which would then allow for placement at a long-term care facility, such procedures being tracheostomy and percutaneous endoscopic gastrostomy (PEG) tube (hereinafter "medical procedures").

28. Plaintiff's Expert Richard Bonfiglio has opined in his Affidavit that such the medical procedures are medically necessary and required to be performed immediately:

12. That it is currently medically necessary for Titus Jermain Cromer, Jr. to have the following medical procedures performed due to the length of time he has been intubated for ventilation and had a nasal gastric feeding tube for nutrition, to prevent infection, irritation and damage to the tissues of the throat, and allow for transfer to a skilled nursing facility:

- a. A percutaneous endoscopic gastrostomy (PEG tube), a procedure in which a flexible feeding tube is placed through the abdominal wall and into the stomach. A PEG tube allows nutrition, fluids and/or medications to be put directly into the stomach, bypassing the mouth and esophagus.

- b. A tracheostomy , which creates an opening in the neck in order to place a tube into a person's trachea. The tube is inserted through a cut in the neck below the vocal cords. This allows air to enter the lungs more efficiently.

29. Additionally, Plaintiff's Expert Richard Bonfiglio has opined in his Affidavit that such the medical procedures are medically necessary and required pursuant to EMLATA, and that they are required before he is transferred to a long term care facility:

- c. That the need for this medical treatment constitutes an "emergency medical condition" as defined by the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd because the lack of treatment is a medical condition manifesting itself by acute symptoms of sufficient severity and risk such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the Titus Jermain Cromer, Jr. in serious jeopardy due to infection, irritation of tissue and other medical factors.
- d. Performance of these surgical procedures is necessary for the medical stabilization of Titus Jermaine Cromer, Jr. before he can be safely transferred to a long-term care center.
- e. No long-term medical care/treatment center will accept Titus Jermain Cromer, Jr. as a patient without these procedures having first been performed.

30. Defendant refuses to perform these procedures and refuses to allow any other doctors to perform these procedures at their facility.

31. However, a long-term care facility will accept Titus upon the conclusion of medical procedures of tracheostomy and percutaneous endoscopic gastrostomy (PEG) tube is to occur.

32. These stabilization procedures are necessary before any long-term medical care facility can accept Titus to continue his care and treatment.

33. Titus is a devout Christian and his faith subscribes him to fight for his life. His Mother believes his preference under these circumstances would be to wait until a conclusion has been made by objective, third-party medical providers as to his medical outlook according to his parent, who believes she understands what he would have wanted under this particular situation.

34. During the pendency of the Circuit Court litigation Plaintiff has continued to display medical improvement, including response to physical stimulae in the form of movement of his fingers while holding hands with relatives. Titus is maintaining his own temperature, blood pressure, exchanging oxygen for carbon dioxide in his lungs, producing urine and feces, continues to heal abrasions caused by his injuries, and his nails and facial hair are growing.

35. Defendant's opinion that Titus has suffered "brain death" is clearly mistaken, as Dr. Bonfiglio observes:

6. Titus Jermain Cromer, Jr. does not meet these criteria in MCL 330.001 because the incontrovertible medical evidence in the Beaumont Health medical records shows that he has a functioning hypothalamus, which is a part of the brain, and this is evidenced by two facts:

- a. He is maintaining and regulating his own body temperature. The medical records and my personal observations confirm that this is not being done externally through means such as a heating pad or other artificial mechanism. The hypothalamus is the only area of the brain which controls this function, and a person without a functioning hypothalamus is incapable of regulating their own body temperature.
- b. He is producing pituitary hormones. The pituitary is not able to produce hormones and otherwise function unless it is stimulated to do so by electrical and neurotransmitter stimulation by the hypothalamus. Without a functioning hypothalamus, the medical records could not indicate any levels of pituitary hormones, and they clearly do indicate levels of these hormones. These hormones have a half-life of approximately 60 minutes, and therefore could not be present in a patient who sustained "brain death" on October 17, 2019 without a functioning hypothalamus.
- c. His family in attendance at his bedside has indicated that he has reacted to external stimuli such as moving in response to touch, in the case of his aunt holding his hand, his fingers have moved. This cannot occur in a patient that has suffered "brain death"

36. Based upon a review of Titus's medical records, Plaintiff's own doctors have determined that Titus is not brain dead within the meaning of Michigan law, and that he is, in fact, very much alive.

37. There is no mechanism in Michigan State Law which allows for the revocation of the Death Certificate filed by Beaumont Hospital with the Oakland County Medical Examiner's Office except for a Court Order, and there is no appeal procedure from Beaumont's opinion of brain death in Michigan Law.

38. Plaintiff's parents request the entry of a preliminary injunction and temporary restraining order pursuant to 42 U.S.C. § 1395dd(d)(2)(A) (permitting "such equitable relief as is appropriate") to prevent Beaumont Hospital, Royal Oak from taking any action that would necessarily and inevitably lead to Titus's death as well as requiring Defendant Beaumont to perform the tracheostomy and percutaneous endoscopic gastrostomy (PEG), which are essential before he can be transferred to a long-term care facility and are required to "stabilize" Titus under federal law, 42 U.S.C. § 1395dd(b) of EMTALA.

**COUNT I – VIOLATION OF EMTALA, 42 U.S.C. § 1395DD(B) –
PLAINTIFF'S RIGHT TO STABILIZATION FOR TRANSFER**

39. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 38, as if fully set forth herein.

40. The Emergency Medical Treatment and Active Labor Act ("EMTALA"), as added by § 9121(b) of the Consolidated Omnibus Budget

Reconciliation Act of 1985, 100 Stat. 164, and as amended, 42 U.S.C. § 1395dd, places obligations of screening and stabilization upon hospitals and emergency rooms that receive patients suffering from an “emergency medical condition.”

41. Section 1395dd(b) of EMTALA, entitled “Necessary stabilizing treatment for emergency medical conditions and labor,” provides, in relevant part:

(1) In general

If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section

42. Section 1395dd(c) generally restricts transfers of unstabilized patients to other medical facilities.

43. Pursuant to EMTALA’s civil enforcement provision, “[a]ny individual who suffers personal harm as a direct result of a participating hospital’s violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.” 42 U.S.C. § 1395dd(d)(2)(A).

44. Plaintiff's son, Titus, is an "individual" who has suffered and continues to suffer "personal harm as a direct result of a [Defendant Beaumont's] violation" of EMTALA's stabilization requirement, 42 U.S.C. 1395dd(c).

45. Titus's brain injury resulting in loss of function requiring a ventilator, feeding tube, and assistance with all activities of daily living constitutes an "emergency medical condition." 42 U.S.C. § 1395dd(e)(1)(A)(i).

46. Upon Titus's arrival to Royal Oak Beaumont Hospital, Defendant Beaumont Health's doctors determined that Titus had an "emergency medical condition" and properly admitted him for emergency medical treatment.

47. "To stabilize" a patient with an "emergency medical condition" means "to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility[.]" § 1395dd(e)(3)(A).

48. "Transfer" is defined in the statute to include moving the patient to an outside facility or discharging him. § 1395dd(e)(4).

49. Based on the above and in accordance with the Oakland County Circuit Court's October 28, 2019 Order requiring Defendant Beaumont to continue care, Plaintiff is undeniably entitled to continue treatment of Titus pending the resolution of this matter.

50. Here, Titus's continued treatment and long-term care requires Beaumont stabilize him, including providing a tracheostomy and percutaneous

endoscopic gastrostomy (PEG) tube, as the standard of care for long term ventilation and feeding require the same and Titus cannot be transferred to a long-term care facility without these procedures having first been performed.

51. Defendant Beaumont not only refuses to perform these procedures to allow Titus to be transferred but refuses to allow any outside medical professional to perform the procedures in its facilities.

52. If Defendant Beaumont transfers Titus (by either moving him to an outside facility or by discharging him) before he receives a tracheostomy and percutaneous endoscopic gastrostomy (PEG) tube, said transfer will, within in a reasonable degree of medical probability, result in a material deterioration of Titus's condition.

53. Providing Titus with this medically necessary treatment, which naturally follows from Beaumont's requirement to provide Plaintiff adequate and appropriate care, will permit Titus to be safely transferred to an alternative long-term care treatment facility.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- (i) Enter an Order declaring that Plaintiff is entitled to ongoing treatment including all care necessary for his stabilization and transfer, which includes installation by Beaumont Health doctors of a tracheostomy and percutaneous endoscopic gastrostomy (PEG) tube such that Titus can be safely transferred to a long-term care facility; and
- (ii) Enter an Ex Parte Temporary Restraining Order pursuant to Fed. R. Civ. P. 65(b)(1)(a), which states that a court may issue a TRO only if "specific facts in an affidavit or verified complaint clearly show that

immediate and irreparable injury, loss, or damage will result to the movant before the adversary can be heard in opposition,” prohibiting Defendant Beaumont from ceasing the above medical treatment and procedures until this matter has been adjudicated, along with any other relief this Court deems necessary and appropriate

**COUNT II – DUE PROCESS VIOLATION OF THE
CONSTITUTION OF THE UNITED STATES OF AMERICA**

54. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 53, as if fully set forth herein.

55. As the fit parent of Titus, LaShauna Lowry has plenary authority over the medical decision-making of her 16-year-old son.

56. Titus has a legitimate interest in continuing to live and his mother has a fundamental right to make decisions concerning the care, custody, and control of her children. *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923); *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

57. Titus and his mother assert claims pursuant to the Fourteenth Amendment of the United States Constitution, which states that no state shall “deprive any person of life, liberty, or property, without due process of law.”

58. The Fourteenth Amendment has substantive and procedural components. The substantive component “provides heightened protection against government interference with certain fundamental rights and liberty interests.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

59. Because there is a dispute of facts between medical professionals as to whether Titus is alive or dead, LaShauna Lowry seeks to have her son remain on life support, have appropriate medical care administered so that his condition does not deteriorate, and have him transported to a long-term care facility.

60. Any right that Defendant Beaumont has to take Titus off life support must derive from Michigan's Determination of Death Act, M.C.L. § 333.1031, *et seq.*

61. Specifically, Defendant Beaumont relied upon § 1033 in determining that Titus is legally dead. See M.C.L. § 333.1033(1)(b) (requiring a person sustain “[i]rreversible cessation of all functions of the entire brain, including the brain stem).

62. Defendant Beaumont, in allegedly complying with a state statute, is acting under color of state law.

63. Because this authority is statutory—i.e. mandated by the legislature with the power of the law—Beaumont's conduct must adhere to constitutional requirements and triggers Plaintiffs' due process rights, both substantive and procedural.

64. Accordingly, because Beaumont claims to be acting lawfully under a law passed by the Michigan Legislature, the same constitutional standards that would apply to any legislative-mandated deprivation of a fundamental right apply here.

65. “[A]t a minimum, due process of law requires that deprivation of life, liberty, or property by adjudication must be preceded by notice and an opportunity to be heard.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

66. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Dubac v. Green Oak Twp.*, 642 F.Supp.2d 694, 703 (E.D. Mich. 2009).

67. The United States Supreme Court has held that what process is due generally depends on three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

68. Defendant relies on Michigan’s Determination of Death Act, MCL § 333.1033, for its erroneous belief that it can cease providing Plaintiff, who is in a coma from a serious brain injury, medical treatment including treatment that supports breathing and feeding.

69. Defendant purports that an alleged finding of Plaintiff’s brain injury permits this conduct; conduct undeniably that will end Titus’ fundamental right to

live and deprive his mother of the right to determine the care, custody and control of her son.

70. However, MCL § 333.1033 does not permit this and does not apply in this circumstance, wherein Plaintiff's family expressly does not want life support to cease and wishes to obtain a multiple opinions and/or transfer him to another facility to receive further treatment and/or provide for a period of time according to the standard of care to see if recovery is possible.

71. Michigan's Determination of Death Act, MCL § 333.1033, was not meant to eliminate a patient and/or family's rights to seek further treatment, diagnosis, prognosis and time to allow the body to heal and/or does not transfer the fundamental right of making said decision from a patient and/or his guardian/heir into a decision that can be made by Defendant Beaumont; in other words, the statute does not transfer the decision making from parent to health care provider to make the decisions concerning cessation of life saving treatment and further medical options or opportunities.

72. Further, Defendant has not complied with procedural requirements that are fundamental in any attempt to deprive an individual of his/her fundamental rights.

73. Plaintiff here had to rush to Michigan Circuit Court in emergency fashion without barely any documentation from Beaumont asserting its purported

“decision.” This violates every essence of due process being a mandatory prerequisite to the deprivation of a fundamental right(s).

74. In terms of procedures, Beaumont’s conduct pursuant to the Statute does not require any hospital-patient/family channels for addressing either the Hospital’s internal decision or what remedies may be available before the life support ceases.

WHEREFORE, Plaintiff respectfully requests the following relief:

- a. Entry by this Honorable Court of an Ex Parte Temporary Restraining Order (TRO) and Preliminary Injunctive Order prohibiting Defendant Beaumont from ceasing the above medical treatment and procedures until this matter has been adjudicated;
- b. Declaratory relief from the Court that MCL § 333.1033 does not permit Defendant Beaumont to cease providing Plaintiff necessary medical treatment including procedures to stabilize him for transfer when Plaintiff’s family wishes to continue treatment, obtain multiple opinions and seek transfer of the patient after medical stabilization, and that MCL § 333.1033 is unconstitutional on its face for violating Titus and his mother’s due process rights; and
- c. Any other relief this Court deems necessary and appropriate.

COUNT III – UNCONSTITUTIONAL VAGUENESS
MCL § 333.1033 – MEDICAL DECISION MAKING

75. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 74, as if fully set forth herein.

76. Any right that Defendant Beaumont has to take Titus off life support must derive from Michigan’s Determination of Death Act, M.C.L. § 333.1033.

77. A party may rely on the void-for-vagueness doctrine when a law is unconstitutionally vague because it allows for potentially selective or discriminatory enforcement.

78. “Due process requires that a law not be vague.” *600 Marshall Entertainment Concepts, LLC v. City of Memphis*, 705 F.3d 576, 586 (6th Cir. 2013).

79. A law is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *United States v. Williams*, 128 S. Ct. 1830, 1845 (2008).

80. Michigan law similarly follows the “void for vagueness doctrine” which derives “from the constitutional guarantee that the state may not deprive a person of life, liberty, or property, without due process of law.” *People v. Lawhorn*, 320 Mich. App. 194; 907 N.W.2d 832 (2017).

81. While generally applicable to criminal statutes, vague non-criminal statutes receive the same review when they can result in the deprivation of a fundamental right. There are three grounds a statute can be shown as vague: “(1) it is overbroad and impinges on First Amendment freedoms; (2) it does not provide fair notice of the conduct proscribed; or (3) it is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether an offense has been committed.” *Id.*

82. M.C.L. § 333.1033 is vague and ambiguous, which allows entities like Defendant Beaumont Health to make life-altering decisions in a manner that is preferential to hospitals and health systems at the expense of patients.

83. In this case, M.C.L. § 333.1033 violates Plaintiff's constitutional rights three-fold, to wit:

- a. The statute fails to provide a procedure of informing heirs at law that the decision to obtain opinions indicating death has been declared is underway and an opportunity to object to same or obtain further opinions from other experts prior to the declaration of death;
- b. It does not prescribe for any procedures that would permit a party deemed to qualify under the statute to challenge such a decision. In other words, the statute permits entities like Beaumont to deprive an individual of fundamental rights without an opportunity to appeal, seek other opinions, or allow for the passage of time for the body to heal; and
- c. Even if the modicum of standards set forth in the statute could be viewed as "procedural," they are far inadequate given the result—i.e. "death."

84. One need look no further than Beaumont's conduct here to see this vagueness; i.e. Beaumont made decisions leading a judgement of death without an input or hearing by the family, due to obvious ambiguities in the statute.

85. A statute as ambiguous as MCL § 333.1033 cannot possibly satisfy the legal due process requirements given what is at stake: life. No one—either the parties with their rights being deprived (plaintiff and his mother) or the parties being statutorily tasked with said deprivations (Beaumont)—knows exactly what the law allows and requires. Given this confusion and the high stakes involved with this

ambiguity, the statute must be deemed unconstitutional until the legislature can add safeguards and procedural elements to this most-serious process.

86. Given the above, it is necessary for this Court to adjudicate and declare the rights of the parties to this action to guide the parties' future actions and preserve their legal rights. This Court's determination that MCL § 333.1033 is unconstitutional for the above-referenced reasons will further resolve this issue of and ensure that Plaintiff's constitutional rights are not violated.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an Order declaring that MCL § 333.1033 is unconstitutionally vague.

COUNT IV – DECLARATORY JUDGMENT – MCL § 333.1033
APPEAL OF DECISION OF BRAIN DEATH

87. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 86, as if fully set forth herein.

88. Defendant has adjudged Titus to be “brain dead” pursuant to MCL § 333.1033(1)(b), but the Michigan statute contains no right of appeal to challenge that decision.

89. Michigan's Determination of Death Act was enacted in 1992 and, upon information and belief, is based on the 1981 Uniform Determination of Death Act (UDDA), which purports to provide a comprehensive and medically sound basis for determining death in all situations.

90. Plaintiff disputes this decision, however, and Plaintiff's medical experts have determined that Defendant Beaumont Hospital's decision was incorrect.

91. The difficulties Plaintiff has encountered in attempting to get Titus transferred to a different medical facility have arisen significantly from Defendant Beaumont's decision to declare Titus legally dead within the meaning of Michigan law.

92. Based on the opinions of Plaintiff's medical experts, if Titus were to continue to receive life-sustaining treatment and the benefit of time, it would maximize the chance of recovery from the injury suffered.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an Order declaring that Plaintiff has not suffered "brain death" as determined by Defendant pursuant to MCL § 333.1033.

Respectfully Submitted,

RASOR LAW FIRM, PLLC

/s/ James B. Rasor
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Dated: November 8, 2019

**UNITED STATES DISTRICT COURT
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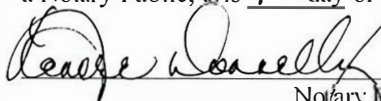
VERIFICATION STATEMENT

I, LaShauna Lowry, verify under penalty of perjury that I have read the foregoing Verified Complaint and Emergency Motion, and that it is true to the best of my information, knowledge, and belief.



LaShauna Lowry, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME,
a Notary Public, this 7th day of November, 2019.



Notary Public
_____, County, Michigan
(Acting In _____, County, Michigan)
My Commission Expires: _____

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

**UNITED STATES DISTRICT COURT
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FED. R. CIV. P.65(b)(1) ATTORNEY CERTIFICATION

In accordance with the attorney certification requirement contained in Fed. R. Civ. P 65(b)(1) to obtain a TRO, undersigned counsel for Plaintiff states as follows:

1. On October 28, 2019, the Oakland County Circuit Court issued a TRO requiring Defendant Beaumont to continue providing life-sustaining care to Titus Cromer.

2. On November 7, 2019, the Oakland County Circuit Court determined

that it did not have jurisdiction for Plaintiff's claims in that case and, accordingly, that Plaintiff's case would be dismissed on November 12, 2019, including expiration of the 10/28/19 TRO.

3. Defendant Beaumont has represented that upon expiration of the Oakland County Circuit Court's TRO at noon on November 12, 2019 it intends to stop providing life-sustaining care to Titus, which will undisputedly result in his immediate death.

4. As Defendant Beaumont participated in that litigation and was represented by counsel, Defendant Beaumont will receive notice of this filing.

5. However, due to time constraints put in place by Oakland County Circuit Court's November 7, 2019 Order, there is insufficient time for Defendant to respond to a Motion for Entry of Preliminary Injunctive Relief and, thus, a TRO is necessary to preserve the life of Titus Cromer after November 12, 2019 at Noon.

6. Accordingly, this Honorable Court should enter a TRO ordering Defendant Beaumont to continue life-sustaining care until such time as the parties can supply the Court with more thorough briefing.

Respectfully Submitted,

RASOR LAW FIRM, PLLC

/s/ James B. Rasor
James B. Rasor (P43476)
Attorney for *Plaintiff*

Dated: November 7, 2019