

IN THE TWENTY-NINTH JUDICIAL DISTRICT COURT
W. ANDOTTE COUNTY KANSAS

In the interest of Minor, Michael J. Todd)
Cecelia B. Cole, parent plaintiff,)

VS.)

University of Kansas Medical Center)
A Corporation)
Dr. Carla Braxton, MD individually)
Sandy LNU, individually)
Defendant)

CASE No.
06 CV 830

FILED
06 MAY 12 PM 3:51
CLERK DISTRICT COURT
ANDOTTE COUNTY KANSAS

Petition

Comes now, Cecelia B. Cole, in the interest of
(son) Michael J. Todd, and hereby files this
PETITION. In support of this petition
the plaintiff:

1. Plaintiff, Cecelia B. Cole, parent and legal guardian
of Michael J. Todd, a minor, is a legal resident of
Kansas City, Missouri.

2. The Plaintiff incorporates by reference all information
in the attached PLAINTIFF'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND MOTION FOR
PRELIMINARY INJUNCTION.

WHEREFORE, PLAINTIFFS request this Honorable Court to
set a hearing on this Petition.

Respectfully submitted,

Cecelia Cole
CECELIA B. COLE
3410 Brooklyn Avenue
Kansas City, Missouri 64111

CERTIFICATE OF SERVICE * (816) 257-7858 *
(866) 861-2615

CERTIFICATE OF SERVICE

I, CECELIA COLE, hereby certify that a copy of the above and foregoing PETITION in the above-styled case was served by either placing a copy of same in the United States. Mail, postage prepaid or by hand delivery to the following:

THE UNIVERSITY OF KANSAS MEDICAL CENTER
DR. CARLA BRAXTON
SANDY LNU
3901 RAINBOW BOULEVARD
KANSAS CITY, KANSAS 66160



Respectfully submitted,

Subscribed and sworn to before me
This 12th day of May 2006
Notary Public: Virginia C. Jones
My Commission expires: April 20, 2008

Cecelia Cole
CECELIA B. COLE,
Parent and Guardian
3410 BROOKLYN Avenue
KANSAS City, Missouri
64128

IN THE TWENTY-NINTH JUDICIAL DISTRICT COURT
WYANDOTTE COUNTY KANSAS

FILED
06 MAY 12 PM 3:51
CLERK DISTRICT COURT
WYANDOTTE COUNTY KANSAS

In the Interest of Minor, Michael J. Todd,))
CECELIA B. COLE, Parent))
Plaintiff,))

CASE NO. 06 CV 30

vs.))

University of Kansas Medical Center,))
A corporation))
Dr. Carla Braxton, MD individually,))
Sandy LNU, individually))
Defendant.))

**PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION**

COMES NOW, CECELIA B. COLE, in the interest of Michael J. Todd, and hereby files this EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION in the above-styled case. In Support of this Motion, the plaintiffs states as follows:

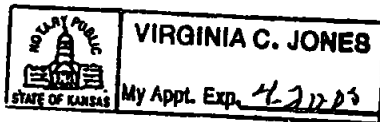
1. Plaintiff, Cecelia B. Cole, parent and legal guardian of Michael J. Todd, a minor, is a legal resident of Kansas City, Missouri.
2. Plaintiff, Michael J. Todd is a patient of the University of Kansas Medical Center in Wyandotte County, Kansas. Michael J. Todd has been a patient and under the care and control of the University of Kansas Medical Center in Wyandotte County, Kansas since May 9, 2006.
3. The Defendant, Carla Braxton, MD is a licensed physician in the State of Kansas and is the attending physician of Michael J. Todd. Carla Braxton, MD is an employee of the University of Kansas Medical Center located at 3901 Rainbow Boulevard, Kansas City, Kansas 66160.
4. The Defendant, Sandy LNU, a Registered Nurse and employee of the Kansas State University Medical Center was the on duty nurse during the evening shift in the Pediatric Neurology Unit and attended to Plaintiff.
5. **On Friday, May 12, 2006, the University of Kansas Medical Center will discontinue the medical treatment Plaintiff is receiving due to a gun shot wound to his neck and will take him off of all the support providing by the medical equipment and staff of the hospital.**

6. Based on the reports, personally received from Dr. Carla Braxton and documented as showing May 10, 2006 at 11:59 A.M., Dr. Carla Braxton determined that Plaintiff was "brain dead" based upon the "Nuclear Medicine Criteria for Brain Death." This finding was made without sufficient and accurate testing being conducted
7. The Plaintiffs have indicated to Dr. Braxton, medical assistants, nurses and others that the Plaintiff has responded to touch of both of his feet which he responded by both his toes. He has also responded by shedding tears and attempting to open his right eye. Plaintiff has also attempted to grip the hands of those who hold his hands.
8. These signs have all been shown after Dr. Braxton, incorrectly diagnosed him as being brain dead.
9. Plaintiff's mother and other family members have been informed that Plaintiff has been sedated with pain medication called, Fentanyl, a narcotic used for anesthesia.
10. Based upon conversation with Melissa, an attending nurse responsible for the care of Plaintiff on Thursday, May 10, 2006, Plaintiff's were informed that Plaintiff Todd received two dosages of Fentanyl on May 10, 2006. At 3:00 A.M., he received 50 micrograms of Fentanyl and at 4:00 A.M. he received an additional 50 micrograms of Fentanyl.
11. According to medical studies, it takes at least two to three (2-3) hours for any dosage to wear off. Because Plaintiff was heavily sedated with this potent drug and was not given adequate time for the drug to wear off, based upon the "European Association of Nuclear Assessment," "interference with drugs acting on cerebral blood flow" is a "Source of Error."
12. Also, the "European Association of Nuclear Assessment," indicates that only 7.4 - 11.1 MBq/Kg should be given to children. The minimum dosage is 110 MBq which is 3 mCi. This shows that the 100 micrograms of Fentanyl that Plaintiff received shortly before any testing was done is error.
13. Additional testing as determined by the "Uniform Determination of Death Act" in the United States, a standardize criteria indicates that a person must be "free of drugs that can suppress brain activity" and diagnosis should be made ~~by~~ testing using an "EGG." A "radionuclide cerebral blood flow scan" can be used as well.
14. None of these tests have been conducted when Dr. Braxton determined that Patient was "brain dead." Even if they had, the heavy diagnosis of Fentanyl would indicate that he would have the following symptoms, "trouble breathing or shallow breathing, tiredness, inability to think, talk, feeling dizzy, confused."

15. If Defendant is allowed to discontinue the medical treatment Plaintiff has been receiving in their facility on May 12, 2006, the Plaintiff will suffer irreparable injury and legal wrong.
16. The Plaintiff's have indicated to the University of Kansas Medical Center that they do not want the Plaintiff to have his medical treatment discontinued due to this diagnosis. The Plaintiff's have also indicated that they desired for Plaintiff to be transferred to Children Mercy Hospital in Kansas City, Missouri a highly respectable and reputable hospital that has experience dealing with the injuries of Plaintiff's caliber. This facility is also located in Plaintiff's place of residence.
17. The injury that will be caused by Defendants is not susceptible of compensation in damages; an adequate remedy cannot be afforded by an action for damages. Plaintiff is without an adequate remedy at law.

WHEREFORE, Plaintiffs request this Honorable Court ~~to~~ issue an Order directing the University of Missouri Medical Center to refrain from discontinuing the life-sustaining, nutrients, medical services, and medical equipment that has been provided to assist Plaintiff while in the care of the University of Missouri Medical Center. Plaintiff also requests that he be transferred to the Children's Mercy Hospital in Kansas City, Missouri immediately. Finally, Plaintiff requests a hearing on this **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION**.

This the 12 day of May, 2006.



Respectfully submitted,

Cecelia Cole

CECELIA B. COLE, Parent and Guardian
3410 Brooklyn Avenue
Kansas City, Missouri 64128

Subscribed and sworn to before me
 This 12th day of May 2006
 Notary Public: Virginia C. Jones
 My Commission expires: April 20, 2008

CERTIFICATE OF SERVICE

I, **CECELIA B. COLE**, hereby certify that a copy of the above and foregoing **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION** in the above-styled case was served by either placing a copy of same in the United States Mail, postage prepaid or by hand delivery to the following:

This 12th day of May, 2006.

THE UNIVERSITY OF KANSAS MEDICAL CENTER
Dr. Carla Braxton
Sandy LNU
3901 RAINBOW BOULEVARD
KANSAS CITY, KANSAS 66160

Subscribed and sworn to before me
This <u>12th</u> day of <u>May</u> 200 <u>6</u>
Notary Public: <u>Virginia C. Jones</u>
My Commission expires: April 20, 2008

Respectfully submitted,

Cecelia Cole
CECELIA B. COLE, Parent and Guardian
1410 Brooklyn Avenue
Kansas City, Missouri 64128



IN THE TWENTY-NINTH JUDICIAL DISTRICT COURT

WYANDOTTE COUNTY KANSAS

FILED
06 MAY 12 PM 4:15
JUDICIAL DISTRICT COURT
WYANDOTTE COUNTY KANSAS
CASE NO.

CECELIA B. COLE, in the)
Interest of Michael J. TODD)
A MINOR)
VS.)

2006-CV-00683

University of Kansas Medical Center
A Corporation

Dr. Carla Braxton, MD individually
Sandy LNU individually

Defendants

Temporary ORDER

I hereby certify the above and foregoing to be a True and correct copy, the original of which is filed and entered record in this court.

CLERK DISTRICT COURT
WYANDOTTE CO, KS

DATE 8-23-06
by A Bowers, deputy.

Having Considered the Plaintiff motion on May 12th 2006, the Court enters it's order granting plaintiff incorporates by reference all information in the attached PLAINTIFF'S ~~Emergency~~ Emergency Motion FOR Temporary Restraining order and motion for Preliminary injunction This ~~order~~ _____ May, 2006 Daniel A. Auncer

ISSUED to Supp. to Army
5/19/06

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

[Handwritten Signature]

In the Interest of Minor Michael J. Todd,)
 CECELIA B. COLE, Parent,)
)
 Plaintiff,)
)
 v.)
)
 UNIVERSITY OF KANSAS MEDICAL)
 CENTER, et al.,)
)
 Defendants.)

Case No.: 06 CV 00830
Division No. 2

FILED
06 MAY 19 AM 8:03
CLERK DISTRICT COURT
WYANDOTTE COUNTY, KANSAS

REQUEST AND INSTRUCTION FORM

The Clerk of the Court will issue a Subpoena in the above-entitled action for: Michael Moncure, M.D.; Carla Braxton, M.D.; Andreas Deymann, M.D.; Gary Gronseth, M.D.; Reginald Dusing; and Gigi Reed. You are hereby instructed to effect service as follows:

- a. Service through the office of the Sheriff of Wyandotte County, State of Kansas, other than by certified mail.
- b. Service by a Process Server Authorized or appointed by the provisions of K.S.A. § 60-303(c)(3).
- c. Certified mail service by the undersigned litigant/ attorney, who understands that the responsibility for obtaining service and effecting its return shall be on the attorney. The receipt for service (green card) must be filed with the clerk's office before service can be perfected.
- d. Certified mail service by the Office of the Sheriff of Wyandotte County, State of Kansas. The undersigned understands that the responsibility for obtaining service and effecting its return shall be on the Sheriff.

Respectfully submitted,

POLSINELLI SHALTON WELTE SUELTHAUS PC

By: 

TIMOTHY J. SEAR (#14813)
MARY BETH BLAKE (#09470)
MISHCA L. WALICZEK (#19223)
6201 College Boulevard, Suite 500
Overland Park, Kansas 66211
(913) 451-8788
Fax No. (913) 451-6205

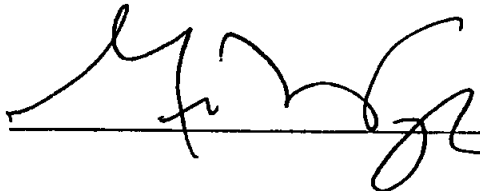
ATTORNEYS FOR DEFENDANT
UNIVERSITY OF KANSAS HOSPITAL AUTHORITY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by () U.S. Mail, postage prepaid; () fax; () Federal Express; and/or () hand delivery this 19th day of May 2006, to:

Joel Oster
Kevin Theriot
David LaPlante
Alliance Defense Fund
15192 Rosewood
Leawood, KS 66224

ATTORNEYS FOR PLAINTIFF



023186 / 043985
JALOW 248436

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

In the Interest of Minor Michael J. Todd,)
 CECELIA B. COLE, Parent,)
)
 Plaintiff,)
)
 v.)
)
 University of Kansas Medical Center, et al.,)
)
 Defendants.)
)

Case No.: 06 CV 00830

BY FAX
K Collins
Ly

**DEFENDANT UNIVERSITY OF KANSAS HOSPITAL AUTHORITY'S ANSWER,
 AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO PLAINTIFF'S PETITION
 AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
MOTION FOR PRELIMINARY INJUNCTION**

COMES NOW Defendant University of Kansas Hospital Authority, referred to in the caption as the University of Kansas Medical Center, ("UKHA"), and for its answer, affirmative defenses, and counterclaims to Plaintiff's Petition and Emergency Motion for Temporary Restraining Order and Motion for Preliminary Injunction ("Motion"), states as follows:

UKHA'S ANSWER TO THE ALLEGATIONS CONTAINED IN THE PETITION

1. UKHA admits the allegations contained in paragraph 1 of the Petition.
2. Because Plaintiff incorporated the Motion into the Petition, for its answer to the allegations in paragraph 2 of the Petition, UKHA hereby incorporates by reference its Response to the Allegations Contained in the Motion.

UKHA'S RESPONSE TO THE ALLEGATIONS CONTAINED IN THE MOTION

1. UKHA admits the allegations contained in paragraph 1 of the Motion.
2. UKHA admits that Michael J. Todd was admitted to the University of Kansas Hospital in Wyandotte County, Kansas, on May 9, 2006, and remains in the care of the

University of Kansas Hospital. UKHA denies the remainder of the allegations contained in paragraph 2 of the Motion.

3. UKHA denies that Dr. Carla Braxton is the current attending physician of Michael J. Todd, that Dr. Braxton was the attending physician of Michael J. Todd as of the filing of the Motion, and that Dr. Braxton is an employee of UKHA. UKHA admits the remainder of the allegations contained in paragraph 3 of the Motion.

4. UKHA is without sufficient information to admit or deny the allegations contained in paragraph 4 of the Motion.

5. UKHA denies the allegations contained in paragraph 5 of the Motion.

6. UKHA admits that Dr. Braxton confirmed Michael J. Todd's brain death by exam and nuclear medicine study and noted same in his medical chart on May 10, 2006. UKHA denies the remainder of the allegations contained in paragraph 6 of the Motion.

7. UKHA is without sufficient information to admit or deny the allegations contained in paragraph 7 of the Motion.

8. UKHA denies the allegations in paragraph 8 of the Motion.

9. UKHA is without sufficient information to admit or deny the allegations contained in paragraph 9 of the Motion.

10. UKHA is without sufficient information to admit or deny the allegations contained in paragraph 10 of the Motion.

11. To the extent the documents referred to in paragraph 11 of the Motion exist, UKHA states that those documents speak for themselves and respectfully refers the Court to those documents for the contents contained therein. Because the remainder of the allegations

contained in paragraph 11 of the Motion state legal conclusions, UKHA therefore denies the same.

12. To the extent the document referred to in paragraph 12 of the Motion exists, UKHA states that the document speaks for itself and respectfully refers the Court to that document for the contents contained therein. Because the remainder of the allegations contained in paragraph 12 of the Motion state legal conclusions, UKHA therefore denies the same.

13. To the extent the document referred to in paragraph 13 of the Motion exists, UKHA states that the document speaks for itself and respectfully refers the Court to that document for the contents contained therein. Because the remainder of the allegations contained in paragraph 13 of the Motion state legal conclusions, UKHA therefore denies the same.

14. UKHA denies the allegations contained in paragraph 14 of the Motion.

15. UKHA denies the allegations contained in paragraph 15 of the Motion.

16. UKHA admits that Plaintiff has requested that the University of Kansas Hospital not discontinue treatment of Michael J. Todd and that Todd be transferred to Children's Mercy Hospital in Kansas City, Missouri. UKHA denies the remainder of the allegations in paragraph 16 of the Motion.

17. UKHA denies the allegations contained in paragraph 17 of the Motion.

GENERAL DENIAL

UKHA denies each and every allegation in the Petition and the Motion not specifically admitted herein.

AFFIRMATIVE DEFENSES**FIRST AFFIRMATIVE DEFENSE**

The Petition and the Motion fail to state a claim against UKHA upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are not in imminent danger of suffering harm as a result of UKHA's acts or omissions.

THIRD AFFIRMATIVE DEFENSE

UKHA reserves the right to assert any other defenses or matters in avoidance of Plaintiff's claims which may become appropriate as discovery proceeds in this case.

WHEREFORE, having fully answered the allegations in Plaintiff's Petition and Emergency Motion for Temporary Restraining Order and Motion for Preliminary Injunction, Defendant University of Kansas Hospital Authority, referred to in the caption as University of Kansas Medical Center, prays that Plaintiff's Petition and Motion be dismissed in the entirety and that Defendant University of Kansas Hospital Authority be granted costs incurred, including attorneys' fees, and such other relief as is just and proper.

**DEFENDANT UNIVERSITY OF KANSAS HOSPITAL AUTHORITY'S
COUNTERCLAIM FOR DECLARATORY JUDGMENT CONFIRMING
DEFENDANT'S DETERMINATION OF DEATH AND REQUEST FOR HEARING**

Defendant-Counterclaim Plaintiff University of Kansas Hospital Authority ("UKHA"), as and for its counterclaims against Plaintiff-Counterclaim Defendant Cecilia B. Cole, in the interest of Minor Michael J. Todd ("Plaintiff"), states and alleges as follows:

PARTIES

1. Pursuant to K.S.A. § 76-3301 *et seq.*, UKHA is a body politic and independent instrumentality of the State of Kansas. UKHA operates the University of Kansas Hospital.
2. Plaintiff is a resident of Kansas City, Missouri, and is the parent and legal guardian of Michael J. Todd ("Todd"), a minor.
3. Pursuant to K.S.A. § 60-1701, this court has jurisdiction to declare the rights, status, and other legal relations of the parties.
4. Pursuant to K.S.A. § 60-605(1), venue is proper in this Court.

FACTS COMMON TO ALL COUNTS

5. On or about May 9, 2006, Todd was involved in an accident and suffered a gunshot wound to the neck.
6. On or about May 9, 2006 Todd was seen in the emergency room at St. Mary's Medical Center in Blue Springs, Missouri.
7. That same day, Todd was transferred to the University of Kansas Hospital.
8. On May 10, 2006, qualified physicians at the University of Kansas Hospital made a clinical determination that Todd was brain dead, and confirmed that determination through diagnostic tests.
9. The diagnosis was made pursuant to the recognized standard of care and consistent with University of Kansas Hospital Ethics Handbook Procedures for Determining Brain Death.
10. The diagnosis has been confirmed by a pediatric neurologist, a pediatric intensivist and a pediatric neurosurgeon.
11. Despite the diagnosis of Todd's brain death, no order has been issued to remove mechanical ventilation.

COUNT I - DECLARATORY JUDGMENT
CONFIRMING UKHA'S DETERMINATION OF DEATH

For Count I of its Counterclaim against Plaintiff, UKHA states and alleges as follows:

12. UKHA hereby adopts and incorporates by reference the allegations contained in paragraphs 1 through 10, as though fully set forth herein.

13. Pursuant to K.S.A. § 77-205:

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

14. Todd's condition meets the definition of death as stated in K.S.A. § 77-205(2).

15. UKHA made its determination of death in accordance with accepted medical standards.

16. Nonetheless, Plaintiff has alleged that UKHA made an improper determination that Todd is brain dead.

17. UKHA now seeks a confirmation from this Court of UKHA's determination of brain death and that Todd is legally dead.

WHEREFORE, Counterclaim-Plaintiff University of Kansas Hospital Authority respectfully requests that this Court enter its Order confirming the determination of Michael J. Todd's brain death and legal status as dead pursuant to the laws of the State of Kansas, and for such other and further relief as this Court deems necessary and appropriate.

COUNT II - DECLARATORY JUDGMENT THAT UKHA CAN CEASE
MEDICAL TREATMENT OF MICHAEL J. TODD

For Count II of its Counterclaim against Plaintiff, UKHA states and alleges as follows:

18. UKHA hereby adopts and incorporates by reference the allegations contained in paragraphs 1 through 17, as though fully set forth herein.

19. Pursuant to the University of Kansas Hospital Ethics Handbook Procedures for Determining Brain Death, once death is declared, the patient's family is not asked to participate in or make the decision that the patient is brain dead, and treatment of the patient should cease.

20. Nonetheless, in Todd's case, UKHA has respected Plaintiff's request to continue medical treatment of Todd, despite the fact that he has been declared brain dead.

21. UKHA now seeks a declaration from this Court that, in light of the fact that Todd is legally dead, UKHA is not required to continue providing medical treatment to Todd.

WHEREFORE, Counterclaim-Plaintiff University of Kansas Hospital Authority respectfully requests that this Court enter its Order confirming that, due to Michael J. Todd's brain death and legal status as dead pursuant to the laws of the State of Kansas, the University of Kansas Hospital Authority may cease providing medical treatment to Michael J. Todd, and for such other and further relief as this Court deems necessary and appropriate.

REQUEST FOR HEARING

Pursuant to K.S.A. 60-257, the court may order a "speedy hearing" on this matter. UKHA thus requests that this Court set the matter for hearing as soon as is reasonably practicable.

Respectfully submitted,

POLSINELLI SHALTON WELTE SUELTHAUS PC



By: _____

TIMOTHY J. SEAR (#14815)
MARY BETH BLAKE (#09470)
6201 College Boulevard, Suite 500
Overland Park, Kansas 66211
(913) 451-8788
Fax No. (913) 451-6205

ATTORNEYS FOR DEFENDANT
UNIVERSITY OF KANSAS HOSPITAL AUTHORITY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by () U.S. Mail, postage prepaid; () fax; () Federal Express; and/or (X) hand delivery this 15th day of May 2006, to:

Cecelia B. Cole
3410 Brooklyn Avenue
Kansas City, Missouri 64128
PLAINTIFF *PRO SE*



023186 / 043985
LETUC 1344894

FACSIMILE TRANSMISSION COVER SHEET

DATE: May 15, 2006

TO: Clerk of the District Court
In the District Court of Wyandotte County, Kansas

FAX: (913) 573-4134

CASE NUMBER: 06CV830

CAPTION: IN THE INTEREST OF MINOR MICHAEL J. TODD,
CECELIA B. COLE, PARENT,
Plaintiff

v.

UNIVERSITY OF KANSAS MEDICAL CENTER, et al.
Defendant.

FROM: TIMOTHY J. SEAR (#14813)
MARY BETH BLAKE (#09470)
POLSINELLI SHALTON WELTE SUELTHAUS PC
6201 College Boulevard, Suite 500
Overland Park, KS 66211
(913) 451-8788
Telecopier No. (913) 451-6205

ATTORNEYS FOR DEFENDANT

PLEASE FILE THE FOLLOWING:

	<u>Document Name</u>	<u>Number of Pages</u>
1.	Defendant University of Kansas Hospital Authority's Answer, Affirmative Defenses, and Counterclaims to Plaintiff's Petition and Emergency Motion for Temporary Restraining Order and Motion for Preliminary Injunction	8

JD

FILED

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

2006 JUN 14 PM 1:46

In the Interest of Minor Michael J. Todd,)
 CECELIA B. COLE, Parent,)
)
 Plaintiff,)
)
 v.)
)
 UNIVERSITY OF KANSAS MEDICAL)
 CENTER, et al.,)
)
 Defendants.)

CLERK DISTRICT COURT
#YANDOTTE COUNTY KANSAS

Case No.: 06 CV 00830
Division No. 2

JD
DEPUTY

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER

On May 19, 2006, the Court conducted, with the consent of counsel, a telephonic hearing Plaintiff appeared by Joel Oster. Defendant University of Kansas Hospital Authority appeared by Timothy J. Sear. At that time, the Court was advised that a neurologist retained by Plaintiff had reviewed the medical charts and examined Michael J. Todd and concurred in the determination of brain death from May 10, 2006.

Based upon the foregoing, the Court ordered that the Temporary Restraining Order entered on May 12, 2006 was and is DISSOLVED effective as of 3:40 pm on May 19, 2006 and that the attending physicians may withdraw medical care.

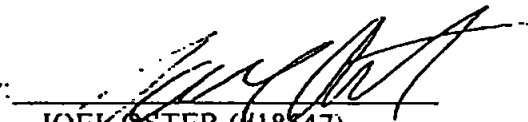
IT IS SO ORDERED.

[Signature]
 DISTRICT JUDGE

I hereby certify the above and foregoing to be a True and correct copy, the original of which is filed and entered record in this court.

CLERK DISTRICT COURT
 WYANDOTTE CO, KS
 DATE 8-23-06
 by L. Bowers, deputy.


Submitted by:

By: 

 JOEL OSTER (#18547)
 KEVIN THERIOT (#21565)
 DAVID LAPLANTE (#22226)
 15192 Rosewood
 Leawood, KS 66224

ATTORNEYS FOR PLAINTIFF

POLSINELLI SHALTON WELTE
SUELTIAUS PC

By: 

 TIMOTHY J. SEAR (#14813)
 MARY BETH BLAKE (#09470)
 MISHCA L. WALICZEK (#19223)
 6201 College Blvd., Ste. 500
 Overland Park, KS 66224
 (913) 451-8788
 Fax No (913) 451-6205

ATTORNEYS FOR DEFENDANT
UNIVERSITY OF KANSAS HOSPITAL
AUTHORITY

913 588-7281 *Stew Ruedrich*
K.G. Med
Mary Beth Blake (816) 760-4284
Possinell: Law Firm
WEDNESDAY, MAY 17, 2006 ■ THE WICHITA EAGLE

Mom fights for son's life support

BY DAVID TRIMBY
Associated Press

KANSAS CITY, Kan. — The mother of a 14-year-old gunshot victim now in the middle of a legal fight over whether he's medically dead said she's not backing down in her battle to keep a hospital from taking him off life support.

But Cecilia B. Cole also said the University of Kansas Hospital just wants to harvest her son's organs.

"You can't twist my arm and make me pull the plug on my son," Cole said Tuesday. "There's always hope."

tal from disconnecting the boy from life support systems. A bullet struck Michael in the neck during what witnesses say was an accidental shooting on May 9 in Blue Springs, Mo.

In court documents, the hospital said a pediatric neurologist, an intensive-care specialist and a neurosurgeon confirmed the diagnosis of Michael's attending physician that the boy is brain dead. Brain death is defined as the complete and irreversible ceasing of brain activity, even in the brain stem.

Cole, however, got a judge to keep the machines running, claiming that her son has shown signs of independent brain activity, including crying, attempting to open one of his eyes and trying to grasp the hands of people who hold his hands. She also said hospital staff didn't wait for sedatives to wear off before test-

ing her son's brain function. Additionally, Michael's family argues that the hospital wants to remove the boy from life support because it wants to use his organs for a donor program. Cole said doctors approached her about harvesting the organs even before declaring her son brain dead.

"I would have to call it intentional," she said of the hospital's treatment of her and her son. "Once I've said . . . don't continue it (pressure to turn off the machines), and you continue it, then you're intentional."

The hospital insists it follows state-mandated regulations for determining brain death and that it wouldn't necessarily benefit from Michael's organs.

"You do not sell organs. They're donated," spokesman Dennis McCulloch said.

Wichita balks at wireless network

BY FRED BARNHART
The Wichita Eagle

The city of Wichita decided Tuesday not to become part of a wireless data network linking it technologically with Sedgewick County, the Wichita school district and Westar Energy.

City Council members said they were worried that the system would be out of date by the time it's installed, and that it would compete with private

four partners, not the public. It was designed to provide technology for data, voice, video and vehicle location functions for the partners.

The city was to bear the burden of upfront costs among the four entities, putting up \$672,879 in matching funds for the federal grants.

"I'm extremely uncomfortable with the cost-benefit of doing this," council member Sue Schlapp said. "It seems to be an awful lot of money for

peals in Denver
summary injunc-
the eve of trial,
needed more infor-
could prevent
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requirements on
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trial, and more
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Kansas

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e's targeting of
as an attempt to
it's access to repro-
vices.
sure that adoles-
of health care
konnle Scott Jones,
center for
has, opposing

BILL

From Page 1B

passed both chambers by wide margins.

Doug Anstraet, executive director of the Kansas Press Association, said the maneuver blocked public input.

"This blatant disregard for the people's right to participate in the political process is enough on its own to send this legislation back for further consideration," he said in a letter urging Sebelius to veto the bill.

No permits are likely to be issued until January, when lawmakers return for the 2007 session.

Another controversial bill, also passed on the final day of the session, contained provisions of 12 separate bills addressing advance voting procedures and campaign finance changes.

One provision, which had passed neither chamber, increased the amount of money legislative candidates can receive from a contributor in each primary and general election cycle.

"Obviously, there was not public testimony on many of those issues," said Rep. Jo Ann Potworff, R-Wichita.

Legislators also attempted, but failed, to bundle bills allowing private prisons, which a majority of the House opposed, with tougher sentences for sex predators and other criminals.

Nicole Corcoran, Sebelius' spokeswoman, said the governor has made no decision on whether to sign the gun bill that spells out how permits will be issued.

"We have received both letters in support and against this

Park, tried to get the bill set back for more negotiation at the final day of the session.

"If my neighbor's packing like to know about it," he said.

The chief Senate sponsor, Republican Phil Journey of Haysville, had agreed to pull release of names and county residence for permit holders but not addresses or Social Security numbers. The bill passed the Senate with that vision.

The House rejected that vision.

"I knew that was controversial, and it hadn't had a hearing," Journey said. "I also know we needed all the nuts and bolts, and we could deal with confidentiality next year."

Names of people whose permits are revoked for violating the gun law would become public record under the final version that passed.

Another provision creates a database of people who have been involuntarily committed by a judge for mental health treatment. They would be barred from obtaining gun permits.

Rich Gannon, lobbyist for Kansas Press Association, said making the list of all permit holders public would give people a chance to alert local officials to people with mental illness who have not been ordered into treatment.

"I would think this would be something the general public would have a great interest in," he said.

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Hopeful, she wants another diagnosis

Mom senses son declared brain dead is slipping away VIDEO

By ROBERT A. CRONKLETON
The Kansas City Star

The Kansas City mother of a 14-year-old boy declared brain dead a week ago does not want to give up hope but expressed doubt Tuesday that her son would survive.

Outside the Wyandotte County Courthouse, Cecelia B. Cole said she felt her son, Michael J. Todd, was slipping away, but she wanted an independent diagnosis.

Asked how Michael was doing, Cole responded: "He is doing poorly. I think he has expired."

Cole filed for a restraining order Friday on behalf of her son, who had been shot in the neck May 9 in Blue Springs, apparently by accident. She wanted to make sure the University of Kansas Hospital did not stop treatment.

"What I would like them to do now is for some unbiased doctor to go through some natural or regular procedures of announcing a person dead," Cole said.

A doctor from Children's Mercy Hospital did examine the boy Friday, said Tom McCormally, public information officer for Children's Mercy Hospitals and Clinics. He declined to discuss the results because of federal privacy laws.

In her request for the restraining order, Cole had asked that the University of Kansas Hospital transfer her son to Children's Mercy. The University of Kansas Hospital tried to comply with her request, said Dennis McCulloch, the hospital's director of public and government relations. But to make the transfer, he said, the receiving hospital must agree.

Children's Mercy accepts any patient that it believes it can help, McCormally said. When asked why the hospital did not accept Michael, McCormally repeated the policy, saying privacy laws prevented him from going into further detail.

Physicians at the University of Kansas Hospital diagnosed Michael as brain dead last Wednesday and confirmed that through diagnostic tests, according to a response the hospital filed Monday.

The hospital asked the court to declare the boy dead and rule that the hospital not be required to continue medical treatment. The hospital also wants the restraining order dismissed.

Cole had taken issue with the determination of brain death, claiming that her son showed signs of life afterward.

"I don't know if he is brain dead," she said Tuesday, adding that more diagnostic tests should have been done.

An attorney for the University of Kansas Hospital is expected meet at 9:45 a.m. today with Wyandotte County District Judge Muriel Y. Harris.

No hearing has been set on the hospital's motion, however, and attorneys for the hospital were trying to see whether any other judge could expedite a hearing.

Attorneys had hoped to go before Harris on Tuesday, but she was not in court.

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