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Chad & Jessica Hedgcock
153 Virgil Rymer Rd NE
Cleveland, TN 37323
chadbh@protonmail.com

Jeff Woodard
Erlanger Medical Center
Legal Department
jeffrey.woodard@erlanger.org

Dear Mr. Woodard,

The decision to deny our son, Charlton Hedgcock, needed and beneficial care, determined by Hamilton County Hospital Authority dba Erlanger Medical Center, Dr. Drago Tolosa, Dr. Matthew Kreth and any other relevant physicians, Authority, see addendum below, right before a timely scheduled procedure set Dec. 17, 2020, and Jan. 11, 2021, is in violation of *Tenn. Code Ann. § 71-6-102*, a breach of your legal duties and human decency.

It is our understanding the lawful authorities coming to bear upon this matter, showing no warrant for withholding the prior determined due care, are that:

➤ In context of medical malpractice, “loss of chance” doctrine, sometimes called “increased risk of harm” doctrine, provides patient with cause of action for increase in risk of harm or loss of better chance of surviving, recovering, or more favorable result. *Kilpatrick v. Bryant*, 1993, 868 S.W.2d 594. Health Key Number 633

➤ “A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability” and notwithstanding this rule applies to resuscitation, but it appears this is applicable in the extreme case and ought to be consistent throughout the care, given the clause “acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution.”

<https://law.justia.com/codes/tennessee/2017/title-68/health/chapter-11/part-2/section-68-11-224/>

➤ **42 C.F.R. § 488.301 Abuse:** The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

Neglect: The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness

➤ **Tenn. Code Ann. § 71-6-102 - ABUSE**

(1) "Abuse or neglect" means the infliction of physical pain, injury, or mental anguish, or the **deprivation of services by a caretaker that are necessary to maintain the health and welfare** of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare.

➤ **STANDARDS FOR HOSPITALS - definitions.**

<https://publications.tnsosfiles.com/rules/1200/1200-08/1200-08-01.20190606.pdf>

(91) Transfer. The movement of a patient **between hospitals at the direction of a physician** or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons and does not apply to **the discharge or release of a patient no longer in medical need of hospital care or to a hospital's refusal, after an appropriate medical screening, to render any medical care** on the grounds that the person does not have a medical need for hospital care.

Involuntary Transfer. The movement of a patient between hospitals, **without the consent of the patient**, the patient's legal guardian, next of kin or representative.

➤ Neglect. The failure to provide goods and services necessary to **avoid physical harm**, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of STANDARDS FOR HOSPITALS CHAPTER 1200-08-01 (Rule 1200-08-01-.01, continued) June, 2019 (Revised) 7 such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

➤ **1200-08-01-.03 DISCIPLINARY PROCEDURES - P 13**

(1) (d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the patients of the hospital; and

(3) Inappropriate transfers are prohibited and violation of the transfer provisions shall be deemed sufficient grounds to suspend or revoke a hospital's license.

➤ 1200-08-01-.04 ADMINISTRATION. P14

(6) No hospital shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the board, the department, the Adult Protective Services, or the Comptroller of the State Treasury. A hospital shall neither retaliate, nor discriminate, because of information lawfully provided to these authorities, because of a person's cooperation with them, or because a person is subpoenaed to testify at a hearing involving one of these authorities.

➤ 42 CFR § 488.301 - Definitions. (Referring to the social security act)
<https://www.law.cornell.edu/cfr/text/42/488.301>

Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. *Willful*, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

➤ Tenn. Code Ann. remedies and proceedings health care liability

1) The individual or entity owed a duty of reasonable care to the claimant and that the individual or entity breached that duty; and

(2) The breach of that duty is a legal cause of loss, injury, death, or damage to the claimant. Tenn. Code Ann. § 29-26-102

Basic facts

Erlanger understands due care requires that a boy who aspirates should have combined surgical procedures to limit adverse effects. Erlanger staff had indicated he needed a triple-scope procedure including endoscopy and airway scoping. Erlanger terminated plans for these triple scopings for the December 17, 2020 visit. The Jan. 11 visit was to have involved one scoping procedure by Dr Tolosa.

Dr. Tolosa said Charlton also needs a g-tube.

If he were to receive his triple scope as had been planned prior, they could fix the possible laryngeal cleft, as well as doing the biopsy for his lungs and his throat; they also would be able to identify what further treatments he will need.

At 8 months since his birth, we are delaying the development of further oral skills with delay of other foods due to aspiration problems and food allergies. In doing this scope, feeding therapies would have more data and education on our son's condition which would ultimately help his progress. Many issues arise by Erlanger's refusal to follow through with this part of his due care, and additionally, interfere with a more favorable result.

With regards to a team effort of collaboration with children who aspirate, we prefer our son to have as little duress as possible getting several procedures in one day. This was agreed to by the medical professionals. He has been on a NG tube for months on end; it doesn't seem this requirement will end soon. Dr. John Gambello from Emory genetics in Atlanta suggested at his last appointment that Charlton receive a g-tube as he is a fan of g-tubes because an NG tends to be uncomfortable and painful. Charlton often pulls out his NG tube which rips at the skin on his face, so we would request this Erlanger visit to include the placing of a g-tube.

Charlton was to have had procedures at Erlanger both Dec. 17, 2020 & Jan. 11, 2021 which the hospital canceled, contrary to general standards of due care decided prior.

Given the available record, Charlton Hedgcock's involuntary transfer at this crucial time is a willful infliction of injury with continuing and prospective physical harm, pain or mental anguish. Abuse includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psycho-social well-being.

Every day he is denied care is a harm and an injury. We were told by speech during his barium swallow study that on a scale of 1 to 10, Charlton is an 8 or 9 of severity for aspiration. He can no longer be bottle fed because of aspirating and repeated instances of pain.

The Authority is imposing harm on Charlton for reasons that have nothing to do with Charlton. Dr. Tolosa's letter Jan. 11, 2021, says "*[w]e have witnessed your offensive and threatening behavior which unfortunately has caused irreparable damage to our relationship*" and "*that I will not continue taking care of Charlton and that you will need to find medical care for him at another center.*" At worst, the purported "behavior" was

the assertion “of information lawfully provided to these authorities, because of a person’s cooperation with them,” as provided by law, cited above, the retaliation the letter evidences prohibited to the Authority.

The “behavior” that is threatening and offensive is that of staff at Erlanger.

The Authority and its contractors and employees are by law obliged to act in good faith. Good faith requires it to have honesty of intention and no knowledge of circumstances which ought to put Erlanger upon inquiry — and if the Authority does obtain notice that puts it on inquiry, it has a duty to diligently ascertain if such notice serves its interests as a public hospital and those of its patients, and not turn injuriously upon Charlton or his family who are apprising the Authority of legal and ethical violations into which it is joining with others.

Individuals in your organization appear angry at our standing on our rights to not consent to inappropriate, unnecessary, even fraudulent, actions or to be free from one-sided anonymous and unsigned “pledge” agreement forms, from oppressive demands regarding PCR “tests” and from respiration-interrupting facemasks. The Authority is aware and of knowledge of litigation for fraud committed by the county relative to its purported communicable disease directives. The county health department’s administrator Rebecca Barnes is being sued for fraud over her role in and promoting an unsubstantiated pandemic, the pretended rulemaking from which Erlanger is imposing on us as part of her admitted fraud. The “Verified Notice of Lack of Authority, Liability” about the county fraud is herein incorporated by reference.

By your organization’s staff people’s statements, the withholding of due care for Charlton arises as a response to Mrs. Hedgcock, Charlton’s mother, highlighting her own medical vulnerabilities, and her insistence on her and her son’s being treated in their proper role — he as patient, and she as his mother of intimate care, best advocate for her child and his caregiver — a woman and her baby who are not sick, not communicable disease patients, not under doctor’s care or by statutorily required report, who are healthy and not under any evidence of illness by anyone.

A narrative of our dealings with Erlanger is attached below as an amendment.

Our submitting this affidavit cannot, as a matter of relations between us and Hamilton County Hospital Authority dba Erlanger Medical System, be a wrong or a tort, or any kind of threat, menace or notice of legal action. But the notice should put Erlanger on awares that we know about a pending writ of mandamus that will compel the county to obey Tenn. Code Ann. § Title 68-5-104, the disregard of which has put the hospital

authority and the people of Hamilton County into harm-causing straits. The county's rejection of this law and the hospital's cooperation in the fraud is a fraud we in no way accept, nor will we impose it on our son, to his distress and injury.

Our notice about the fraud doesn't mean we disbelieve in the good care that is possible by the medical staff at Erlanger, and the right regard that is our due from administrative staff. But for the unfounded irrational administrative actions obstructive to due care, we are fully confident in the public hospital serving its public health interest, and count ourselves as members of the public, as we are county residents and taxpayers, as the scheduled procedures for our son indicate.

Dr. Tolosa says he is "sorry it has come to this, but our relationship without mutual trust cannot continue." Politics is not healing, nor relevant. We have every confidence in Dr. Tolosa and his staff as medical professionals full of empathy and quality. We trust his person, his care and his professionalism. His statement about trust being lost on my and my husband's part is mistaken, an error of fact. We have trust in Erlanger's otherwise good reputation and every confidence in its interest in fairness, truth and equity.

Demand and proposal

In light of the foregoing,

1. We demand that the termination action against our son's getting care at Erlanger be rescinded immediately.
2. We demand that the unwarranted discrimination against us be rescinded and that you restore our relation to the *status quo ante*, and in good faith give us the services and procedures for which we have paid \$1,527.78.

You have claimed legal and other reasons for depriving due care despite record evidence to the contrary or without any substantiation respecting general standards of care, or other laws, such as non-fraudulent medical, financial or legal reason for this termination.

If you will not restore the care of our son as planned, we demand the express legal or other foundation for terminating our relationship and the due care your organization determined our son needs; that the decision-maker, agent, is acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution.

If you do not produce evidence of your lawful warrant to withhold due care, we will rely that you have none for purposes of remedy for the irreparable harm being done to us.

The consequence of the foregoing is that the needed timely procedures are not going to occur as determined by Dr. Kreth, Dr. Tolosa and others. This unwarranted delay will have unreasonable adverse effects on our son and cause undue hardship upon us, not limited to, increased risk of harm, or loss of better chance of surviving, recovering, or more favorable result, more expense, extensive highway travel, additional delay and collateral consequences.

Erlanger's doing its duty under the law protects our legal rights, our title, equity and interest in his care. Your duty under Tennessee Code Annotated is our protection of our rights. Your observance of that law — and high regard for its claims while others disobey it — is our ground for demanding this arrangement in the best interest of the parties. We are acting in good faith.

Respectfully yours,

s/ Chad & Jessica Hedgcock

Cc: David Tulis davidtuliseditor@gmail.com

Addendum: Chronology

1. On all first appointments to Kennedy Outpatient Center on various dates I did not wear a mask. On behalf of my son, I took part in the illegal medical screenings and questionnaires in order to enter the building. Screenings were done by hostile point-blank temperature checks and public oral questionnaires within hearing of other people. I saw Oncology, Pulmonology, Cardiology, Gastroenterology, Speech and Xray. A staffer in Oncology mentioned my not wearing a mask and I referred to my medical exception and we were still seen.
2. On Sept. 22, around 9 a.m. Christine, a patient service representative, asked publicly what medical exemptions I had. She did this after I said I had a medical exemption to not cover my nose and mouth.
3. Sept. 22 at 9:15 am Mary Ann Hixson said, "You have no right to come into this building and not follow the rules." Mom-"It's a public facility, a place for all people to get healthcare." Mrs. Hixson replied, "No, ma'am, it isn't." I said, "Yes." Mrs. Hixson said, "No, it's a pediatric outpatient center and it's by appointment only. Who do you have an appointment with?" I said, "Dr. Tolosa, and I've never worn a mask and I'm not going to start. My medical history is none of your business." Mrs. Hixson said, "No but keeping people safe in this building is." I said, "Yes, and that also concerns myself." Mrs. Hixson stated "I'm not a clinical person but I know what the rules are." I said, "It doesn't matter; it's not a law. You cannot force people to do something that they are not comfortable with. This is not healthy for me."
4. Had a private discussion with Dr. Tolosa. We spoke of masks not being healthy for me and that I qualified for the Hamilton county mask exemption. He saw Charlton. He directly contacted Dr. Matthew Kreth asking if I could see him today. I said I would wait in the car in the interim so my son could get the necessary care promptly.
5. About 1 p.m. When coming back into the building after already being told I had the appointment made, Dr. Kreth refused to see us in person, told us we could do telehealth in a few hours.
6. Erlanger began a new custom in September. It called security to the building for the remainder of my visits as I moved about the floors as my son had a ng tube placed and X-Ray. The security people did not appear to follow me, but were often visible nearby.
7. Oct. 23, 2020. Dr. Cathy Stevens of genetics at about 10:30 a.m. said: "That's not going to be an adequate mask for me to be in here. But I can get you a surgical mask if you want. But there's no occlusion in here." Mom's reply: "I'm following the guidelines for the hospital. I also have a medical exemption; you can call my doctor."
8. I suffered a panic attack at the office; I was kicked out permanently that day.

9. Oct. 15, 2020. Aerodigestive clinic. A worker said by phone if I showed up with no mask I would be removed from the facility
10. My husband took our son to his Aero visit and they told him what medical procedures Charlton needed. In addition to what was necessary they asked if we would like a g-tube placement as well.
11. Received Pledge for AeroCARE in the mail on Nov. 28, 2020. In a written reply under certified mail, we refused to sign, and effectively made an open records request as to its origins and authority, to which response has not been made. We said we don't make open-ended promises. Erlanger was in receipt of this letter Dec. 8, 2020.
12. On Thursday, Jan. 7, I appeared at Kennedy center for a PCR test for Charlton, with witness David Tulis. A nurse administered the swab only at the very tip of his nostrils. I went into the front door to hand a copy of the Tulis "Verified Notice of Lack of Authority, Liability," but a male employee refused to let me pass by bodily standing in front of me. I asked him to take the notice to Mary Ann Hixson, regional manager. He refused. I tried to walk around him. He blocked me. With the document in hand, I stepped to my left and I laid the copy on the floor. To be sure to be heard by Mrs. Hixson, across the room, I raised my voice to say the document was for her. "You are being served by a citizen, and you are in violation of the Tennessee health code 68-5-104."
13. On Jan 8, nurse Courtney alongside Mary Ann Hixson called and said we were being dismissed due to my "behaviors" in asserting our rights. Dr. Tolosa notes in comment section that "mom's prior behavior and COVID behavior" as reason of termination. The note said a doctor would mail a note with an explanation.
14. Also Friday, Jan. 8, I spoke by phone with the hospital's Allyson Cole in the PR office in conference with David Tulis. Mr. Tulis said that he is assisting my family to secure the appointment for Charlton. After the call, he sent an email to Mr. Woodard telling him about the notice regarding fraud by Hamilton County health department. He demanded Charlton be seen the following Monday, as per schedule.
15. Neurology department's Dr. David Suhrbier, in a phone call with nurse Courtney T. and Mrs. Hixson on Jan. 8, canceled an appointment Jan. 11.
16. Dr. Tolosa letter by certified mail came Saturday Jan. 16.

Aerodigestive CARE Clinic
910 Blackford Street
Chattanooga, TN 37403
Phone: 423-778-7627
Fax: 423-778-5249
Updated-11/2020



Aerodigestive CARE Clinic at Children's at ERLANGER HEALTH SYSTEM

Parent/Caregiver Pledge

At the Aerodigestive CARE Clinic at Children's at Erlanger, our primary mission is to improve **the health of your child in a family-centered environment**. Our program consists of a group of expert medical professionals within one clinic to assess and treat medical conditions related to swallowing dysfunction, long term lung and gastrointestinal health. A well-coordinated-care approach has been established to *provide your child with the best chances for successful medical outcomes*. After detailed review of your child's medical history and physical examination by all medical providers, our clinic establishes individualized treatment plans for your child in a multidisciplinary approach.

We encourage you as parents/caregivers to stay involved in making decisions for your child's medical treatment. In order to give your child the opportunity to have the best medical outcomes, it is very important that you consistently follow through with the individualized medical plans recommended for your child.

As part of being a patient at the Aerodigestive CARE clinic and promoting the best medical outcomes for your child, our pledge to parents/caregivers includes the following:

- ✓ I will effectively communicate my child's medical history and health goals to the medical team in order to establish a plan together that meets all needs and expectations
- ✓ I will attend scheduled appointments established for my child at the Aerodigestive clinic and/or recommended medical offices outside the clinic. These can include, but are not limited to: GI, Pulmonologist, ENT, Speech-Language Pathologist, Audiologist, Dietitian and other specialties as recommended in the medical plan. (More than 2 clinic visit cancellations or, no shows could equal removal of the patient from clinic services).
- ✓ I will follow all feeding recommendations by the medical team for my child
- ✓ After parent/provider review of medical treatment, if medications and/or other treatments are recommended, I will administer medications/treatments consistently as established.
- ✓ In order to assure the safety of my child during anesthesia scopes and procedures, I will follow all instructions provided by surgery staff prior to the scheduled procedures
- ✓ I will maintain effective communication with the Nurse Coordinator in order to help meet my child's needs and expectations.

I _____ *(Parent/Caregiver)* pledge to comply with the above to the best of my abilities in order to encourage the best health outcomes for my child.

Date: _____ Signature: _____



EMG CHE AERODIGESTIVE CLINIC AT MASSOUD
910 BLACKFORD ST
CHATTANOOGA TN 37403

November 23, 2020

RE: Charlton Bannister Victor Hedcock
DOB: 5/17/2020
ADDRESS: 153 Virgil Rymer Rd Ne
Cleveland TN 37323

We had the pleasure to see Charlton in the interdisciplinary **CARe** (Children's Aerodigestive Resources at Erlanger) on 11/19/20

Please see the attached encounter report for additional details of Charlton visit. The team recommendations below are supported by each specialties findings and impressions:

CARe Team Recommendations, Treatment, and Follow-up:

Pulmonologist Findings, Impressions and Recommendations

- Bronchoscopy with biopsies-12/17/20
- Make video of Bronch for Dr Thurston to review
- Follow up with sleep study in December 2nd
- Follow up in aerodigestive clinic after scopes

Otolaryngologist Findings, Impressions and Recommendations

- Hearing test today-Normal
- Microdirect laryngoscopy with possible Prolaryn injection-12/17/20
- Follow up in aerodigestive clinic after scopes

Gastroenterologist Findings, Impressions and Recommendations

- EGD w/biopsies-12/17/20
- PEG tube Placement recommended-12/17/20
- Follow up in aerodigestive clinic after scopes

Speech Language Pathologist Findings, Impressions and Recommendations

- Send TEIS referral, if does not have yet-sent
- Continue same diet regimen at this time

Thank you for allowing us to participate in the care of your patient. Please do not hesitate to contact us as a program or individually.

Sincerely,
Jeanette Ramirez, RN Nurse Coordinator

Care Team:

Dr Matthew Kreth, MD

Dr. Alicia Andrews, MD

Christopher St. Charles, MD

Audrey Smith and Mary Jane Thomas, SLP