

IN THE CIRCUIT COURT OF MADISON COUNTY, TENNESSEE FOR THE  
TWENTY SIXTH JUDICIAL DISTRICT AT JACSON

**FILED**

FEB 11 2019  
11:00 AM  
COURT CLERK

William Yates Hazlehurst,  
By and through his Conservator  
Rolf G.S. Hazlehurst

Plaintiff,

v.

E. Carlton Hays, M.D.,  
The Jackson Clinic Professional Association, and

Defendants.

Docket: C-19-38  
Div: II  
**JURY DEMANDED**

**COMPLAINT FOR DAMAGES**

COMES NOW, your Plaintiff, William Yates Hazlehurst, by and through his Conservator, natural father, best friend, and next of kin, Rolf G.S. Hazlehurst, and his attorneys of record, Rachael E. Putnam and Putnam Firm, pursuant to Tenn. Code Ann. § 29-26-102 et seq., and files this Complaint for Damages and in support thereof would state the following:

**PARTIES AND JURISDICTION**

1. The Plaintiff, William Yates Hazlehurst (hereinafter "Plaintiff"), is an adult resident citizen of Jackson, Madison County, Tennessee.
2. Rolf G.S. Hazlehurst is the natural father, next of kin, and next friend of Plaintiff. Rolf G.S. Hazlehurst is an adult resident citizen of Jackson, Madison County, Tennessee.
3. Rolf G.S. Hazlehurst was appointed as conservator of Plaintiff by an Amended Consent Order on July 27, 2018. The court in the Amended Consent Order adjudged and decreed that "Rolf G.S. Hazlehurst shall have the authority to prosecute and defend lawsuits as

conservator of William Yates Hazlehurst pursuant to Tenn. Code Ann. § 34-3-107(n).” Amended Consent Order Granting Conservatorship of William Yates Hazlehurst, filed July 27, 2018.

4. Upon information and belief, Defendant E. Carlton Hays Jr., M.D., (hereinafter “Defendant Hays”), was at all times pertinent to the charges herein, an adult resident of Jackson, Madison County, Tennessee, and resides and/or may be reached for service of process at 828 North Parkway, Jackson Tennessee, 38305, and/or 2863 Hwy 45 Bypass, Frontage Road, Jackson Tennessee, 38305.
5. Defendant Hays was at all times pertinent to the charges herein a licensed Medical Doctor practicing his profession in the State of Tennessee. Upon information and belief, Defendant Hays is and was at all times pertinent to the charges herein, a member of the Jackson Clinic Professional Association, and an agent, servant, employee, ostensible agent, apparent agent, and/or dual agent who was acting at all times within the scope of his agency and employment and was acting with the permission of his employer, Jackson Clinic Professional Association. Defendant Hays was the licensed medical doctor who directed and ordered the administration of any and all vaccinations received by Plaintiff, during the time period February 11, 2000 through June 25, 2002.
6. Defendant Jackson Clinic Professional Association (hereinafter “Defendant Jackson Clinic”) is a Tennessee association, with its principal place of business located at 828 North Parkway, Jackson, Tennessee 38305, and may be reached for service of process with its registered agent Kevin P. McMahon, at 828 North Parkway, Jackson, Tennessee 38305.
7. Upon information and belief, at all times pertinent to the charges herein, Defendant Jackson Clinic was acting through its agents, servants, employees, ostensible agents, apparent

agents, and/or dual agents, including but not limited to its other agents and/or its medical personnel, who were acting at all times within the scope of their agency and employment and were acting with the permission of their employer.

8. Plaintiff provided written notice of potential health care liability claims to each Defendant pursuant to Tenn. Code Ann. § 29-26-121. Specifically, all Defendants were provided notice of the claims on October 16, 2018, via certified mail, return receipt requested, at their current practice address, the address listed on the Tennessee Department of Health website, the address of the registered agent, and/or current business address as applicable. Attached hereto as *Exhibit A* is an Affidavit of Certified Mailing which has attached thereto a copy of the notice of claim, with the executed HIPAA Compliant Authorization served upon each Defendant, sent via certified mail to each defendant, USPS receipt for certified mail with mailing date stamp, USPS tracking information, USPS delivery confirmation, and a Certificate of Mailing for each.
9. All of the wrongful acts and/or omissions alleged herein occurred within the jurisdiction of Madison County, Tennessee. This case has been filed in a timely manner. Specifically, all health care liability claims have been filed within one year from the date of the voluntary non-suit and within one year of Plaintiff turning 18, and all other non-health care claims have been filed within the applicable statute of limitations period and/or period was tolled by the savings statute, discovery rule, equitable estoppel, and or fraudulent concealment.
10. Plaintiff would show that the Defendants and their agents, servants, ostensible agents, apparent agents, and/or dual agents were negligent in their care and treatment of the Plaintiff thereby deviating from the recognized standard of acceptable professional practice

in the Jackson, Tennessee medical community. The Defendants' negligence was willful, wanton, and constitutes reckless misconduct on the part of the Defendants.

11. The negligence and/or the willful, wanton, reckless misconduct of the Defendants was the proximate cause of the injuries sustained by Plaintiff and all of the damages arising therefrom, all of which would not have occurred but for the Defendants' misconduct and deviation from the acceptable standard of medical care.
12. In accordance with Tenn. Code Ann. § 29-26-122, a Certificate of Good Faith is attached hereto as *Exhibit B* and incorporated herein for the health care liability raised herein.

#### FACTS

13. Plaintiff was born on February 11, 2000 with Apgar Scores of eight (8) at one (1) minute and nine (9) at five (5) minutes. By all appearance and function, Plaintiff was born a healthy child.
14. Plaintiff would show that for the first few months of his life, he progressed and grew normally and as a healthy child with no signs or symptoms of any major health problems.
15. On March 7, 2000, Plaintiff was diagnosed with Thrush, Colic, and Gastroesophageal Reflux. Despite these diagnoses, Plaintiff continued to grow, progress, and function as any child of his age is expected.
16. On April 7, 2000, Plaintiff presented to the Jackson Clinic, P.A., and Dr. E. Carlton Hays, M.D. for a routine well baby visit. At this time, Plaintiff was accompanied by his maternal grandmother, Ms. Judy Brandon. Neither of Plaintiff's natural parents was present now was either parent aware of the fact that Plaintiff would be vaccinated on this visit. During this visit, Dr. Hays unilaterally decided to inoculate Plaintiff with DTaP, HiB, and IPV. At

no point during this visit did Dr. Hays, Ms. Luann Upchurch, nor any personnel of the Jackson Clinic discuss these immunizations with the natural parents of Plaintiff nor did these Defendants receive consent from the child's natural parents for the immunizations to be administered to their two (2) month old child.

17. Further, neither Ms. Brandon nor the natural parents of Plaintiff received a vaccine information statement from any of the named or unnamed Defendants as mandated by federal law, codified in 42 U.S.C.A. § 300aa-26.
18. On June 6, 2000, Yates again presented to the Jackson Clinic, P.A., and Dr. Hays. During this visit, Dr. Hays informed the Plaintiff's parents of several inaccurate statements, including but not limited to, that there were "no risks" in vaccines, "there was 1 in a million risk of anaphylaxis," and that "any reaction would be almost immediate." Said statements by Dr. Hays were in direct contradiction to the immunization package inserts and contrary to the stated contraindications of vaccinations.
19. Dr. Hays further delegated the task of handing out Vaccine Information Statements to an assistant, Ms. Luann Upchurch, who has no formal education and/or training which would enable her to fully and accurately explain the information contained in the vaccine information statements and/or answer any and all questions the parent(s) may have regarding the risks and benefits of receiving vaccines. Moreover, neither Dr. Hays nor Ms. Upchurch gave vaccine information statements to the parent(s) nor did either Defendant have a meaningful or accurate discussion with the parent(s) of Plaintiff to allow them to make an informed decision as to whether or not Plaintiff should receive the vaccinations.
20. In reliance upon the erroneous assurances of Dr. Hays, Plaintiff received four (4) vaccines on June 6, 2000.

21. On August 16, 2000, Plaintiff again presented to Defendants' office. At this time, Dr. Hays was made aware that Plaintiff had congestion in his lungs and was emitting a green, nasal discharge. Despite these stated concerns of Plaintiff's parent(s), Dr. Hays failed to clinically evaluate Plaintiff. Specifically, Dr. Hays failed to take a temperature of Plaintiff and conducted no tests or examination to determine the scope, severity, or cause of the symptoms that the Plaintiff was exhibiting at that time.
22. Despite the presentation of symptoms of infection as well as the absence of an evaluation and diagnosis of the illnesses/symptoms, the Defendants administered various vaccinations through the injection of Plaintiff with four separate shots. At no point during the August 16, 2000 visit did Defendants provide vaccine information statements to the parent(s) or have a meaningful discussion whereby the parents were informed of the risks and/or benefits of vaccinations, so as to enable them to make an informed decision about whether or not Plaintiff should receive the vaccinations.
23. On August 16, 2000, Dr. Hays failed to properly, clinically evaluate Plaintiff, failed to take Plaintiff's temperature, and failed to recognize that many of Plaintiff's illnesses were unresolved, undiagnosed, and/or recurrent. Despite these failures and the fact that Plaintiff was a moderately ill child, Dr. Hays proceeded to vaccinate Plaintiff without obtaining informed consent from the parent(s).
24. Within approximately 24 to 48 hours of the vaccinations on August 16, 2000, Plaintiff suffered extreme screaming fits and began to cry for at least three hours. Approximately five (5) to seven (7) days after vaccination, Plaintiff began experiencing shaking episodes wherein his entire body trembled, his eyes rolled back in his head, and he fell over.

25. The above described episodes occurring after the August 16, 2000 vaccinations were reported to Dr. Hays on November 22, 2000. After receiving the information from the Plaintiff's parent(s), Dr. Hays failed to recognize that Plaintiff had developed encephalopathic cry and seizures following the vaccinations on August 16, 2000 both of which are indicative of Plaintiff having adverse reactions to the immunizations. Further, Dr. Hays failed to recognize each of these instances as a contraindication to vaccination and/or indications of a compromised immune system. Moreover, Dr. Hays failed to counsel and/or educate the parent(s) on the signs of an adverse vaccine reaction. As such, Plaintiff's parents were entirely unaware that these instances were adverse reactions to immunizations.
26. On September 5, 2000, Plaintiff was diagnosed with viral upper respiratory infection. Further, Plaintiff presented with swollen lymph nodes, and his medical records note that Plaintiff was pulling on his ears. Dr. Hays failed to clinically evaluate the cause of Plaintiff's frequent ear pulling and failed to clinically evaluate the cause of Plaintiff's swollen lymph nodes.
27. On September 27, 2000, Plaintiff was forced to return to the Jackson Clinic, P.A., as he had not improved since his last visit. At this time, Plaintiff was diagnosed with early otitis media.
28. On October 26, 2000, Plaintiff again presented to Jackson Clinic, P.A., with a runny nose, deep cough, congestion, fussiness, and low-grade fever. Plaintiff was diagnosed with a viral upper respiratory infection.
29. Five days later and on October 31, 2000, Plaintiff presented again to Defendants. On this occasion, the medical records note that Plaintiff had not recovered from his previous cold

and was diagnosed with otitis media. Dr. Hays failed to take into consideration that Plaintiff had multiple recurrent and unresolved health issues. Dr. Hays further failed to note that these recurrent and unresolved conditions were indicative that Plaintiff suffered from a deficient immune system.

30. On November 22, 2000, Plaintiff's parent(s) reported that Plaintiff had previously experienced shaking episodes within five (5) to seven (7) days after vaccinations on August 16, 2000 and an intense, encephalopathic cry within 24 to 48 hours after the August 16, 2000 vaccinations. Each of these reactions is specifically listed as a contradiction to the DTaP vaccine which Plaintiff received on August 16, 2000.
31. Despite reported shaking episodes, encephalopathic cry, swollen lymph nodes, recurrent ear infection, recurrent thrush, and recurrent upper respiratory infections, Dr. Hays proceeded to vaccinate Plaintiff on November 22, 2000, during his compromised state. Dr. Hays failed to clinically evaluate Plaintiff in light of his medical history, failed to recognize the contraindications and/or precautions of the vaccinations, failed to provide vaccine information statements to the parent(s), and failed to have any meaningful discussion with the parent(s) of Plaintiff regarding the risks and benefits of vaccines.
32. On January 17, 2001, Plaintiff presented to the Defendants with a rash on his thumb. Again, Plaintiff was diagnosed with Thrush and given a prescription of Diflucan. This was Plaintiff's fourth diagnosis of thrush in less than a year.
33. On February 8, 2011, Plaintiff presented to Defendants with a moderate and/or severe illness that had persisted for over two weeks, suffering from fever in the previous days, and pulling on his ears. Plaintiff was diagnosed with acute, bilateral otitis media. Specifically, Plaintiff's right ear was red, and his left ear had purulent effusion. Dr. Hays prescribed the

maximum dosage of amoxicillin, which is given to treat a moderate to severe infection. At no point did the Defendants recognize that Plaintiff was suffering from multiple, recurrent and unresolved infections, nor did Defendants make any effort to ascertain the cause of said recurrent and unresolved infections of Plaintiff.

34. Defendants failed to take Plaintiff's temperature on February 8, 2001 and failed to properly, clinically evaluate Plaintiff to include reviewing Plaintiff's past medical history. Despite Plaintiff's diagnosis of bilateral otitis media, an unresolved cold for two weeks prior, and in addition to Plaintiff's past history of adverse vaccine reactions as well as Plaintiff being prescribed the maximum amount of amoxicillin for the treatment of a moderate to severe illness, Defendants vaccinated Plaintiff.

35. Defendants again failed to provide vaccine information statements to the parent(s) on February 8, 2001 and failed to have a meaningful discussion regarding the risks and benefits of vaccines.

36. Up and until the vaccinations on February 8, 2001, Plaintiff was physically and mentally developing as a normal child. After these vaccinations, Plaintiff's health and development began to regress as a result of Plaintiff suffering an encephalopathic reaction to the vaccination, other adverse reactions, and resulted in further developmental disorders.

37. Following the vaccinations on February 8, 2001, Plaintiff presented to the Defendants for treatment of various illness approximately 12 times in one year.

38. On or about February 20, 2001, Plaintiff suffered from a red rash, fever, and vomiting. Plaintiff's father called the pediatrician on call regarding his son's symptoms and was informed that Plaintiff was having an allergic reaction to penicillin. Defendants failed to recognize or acknowledge that these symptoms were consistent with an adverse reaction

to the vaccines received on February 8, 2001, but instead assumed it was an allergic reaction to penicillin.

39. On April 24, 2001, Plaintiff presented to Defendants having cried all night and tugging on his ears. Dr. Hays assessed Plaintiff with either teething or possible otitis media. Dr. Hays failed to clinically evaluate Plaintiff and failed to recognize or acknowledge that Plaintiff's recurrent and unresolved illnesses are indicative of a weakened immune system. Further, Dr. Hays failed to investigate or ascertain the cause of repeated and unresolved health issues of Plaintiff.
40. On August 17, 2001, the Plaintiff's parent(s) expressed concerns for the continuing condition of Plaintiff's mouth, teeth, lungs, breathing, stomach, intestines, blood, and lymph nodes. Despite this, Defendants vaccinated Plaintiff again. Once more, no vaccine information statements were provided to the parents and no discussion was had regarding the risks and benefits of vaccines, so as to enable Plaintiff's parents to make an informed decision as to whether or not Plaintiff should receive the vaccinations.
41. Plaintiff's health continued to deteriorate. Further, the Defendants, at all times relevant, failed to investigate or ascertain the cause of such repeated illness. Dr. Hays, by his own admission, does not clinically evaluate his patients based on their medical history.
42. Defendants failed to record Plaintiff's temperature on numerous occasions, failed to review past medical history, failed to recognize and acknowledge the signs and symptoms of encephalopathy, failed to recognize and acknowledge the contraindications and/or precautions on numerous vaccinations, failed to give the parent(s) of Plaintiff vaccine information statements, failed to discuss the risks and benefits of vaccines with the

parent(s), and failed to have a meaningful and informative discussion with parent(s) regarding vaccinations.

43. It was not until January 18, 2002, that Dr. Hays first noted that Plaintiff may have an immunodeficiency. However, Dr. Hays failed to take any further steps. In fact, on March 21, 2002, Dr. Hays declined to refer Plaintiff to Vanderbilt Medical Center for an evaluation when Plaintiff's mother expressed concerns over Plaintiff's development and behavior. On March 21, 2002, Plaintiff's mother reported concerns regarding the Plaintiff's learning development and behavior. Again, Dr. Hays failed to make a referral. At all times relevant and each time, Dr. Hays chose to just observe or "re-check" Plaintiff despite notating that Dr. Hays was concerned for possible PDD/autism.
44. On April 3, 2002, Plaintiff's parent(s) requested a copy of Plaintiff's medical records from Defendants. The copy that Plaintiff's parent(s) received was incomplete, inaccurate, and misleading. Defendants further failed to keep accurate medical records to include vaccine records as required by law.
45. On April 17, 2002, Plaintiff was examined for his recurrent and unresolved illnesses by Defendants for the 14<sup>th</sup> time since his vaccination on February 8, 2001. Despite this, Dr. Hays still refused to refer Plaintiff to Vanderbilt Medical Center.
46. On May 4, 2002 and May 9, 2002, Plaintiff was again diagnosed with and treated for otitis media.
47. On May 13, 2002, Plaintiff was seen in the emergency room of Jackson -Madison County General Hospital for an episode of unresponsiveness that lasted about one (1) minute followed by screaming for five (5) minutes and possible seizures. A similar episode occurred about one (1) hour later.

48. Thereafter, Plaintiff was diagnosed with features of Autism Spectrum Disorder on June 3, 2002. As a result of Plaintiff's diagnosis, the parent(s) of Plaintiff were instructed to see a toxicologist. Said toxicologist instructed Plaintiff's parents to obtain the lot and batch numbers of the various vaccines that were administered to Plaintiff. Subsequently, Plaintiff was diagnosed with Regressive Encephalopathy with features of Autism Spectrum Disorder.
49. As a result, Plaintiff's parents requested a copy of Plaintiff's complete vaccine record to include the lot and batch number of each vaccination. Defendants took over 5 weeks before the finally printed out Plaintiff's vaccine record on June 21, 2002. However, the record was incomplete and did not contain all of the lot and batch numbers. Nor did the Defendants provide Plaintiff's parents with a copy of the original vaccine record despite the fact that the Defendant, Dr. Hays was clearly holding it in his hand.
50. On or about June 21, 2002 through June 25, 2002, Plaintiff's parent(s) made multiple requests for Plaintiff's complete medical record and vaccine record. At all times pertinent, Defendants refused to comply with the requests of Plaintiff's parent(s).
51. Ultimately, Plaintiff's parents received a copy of Plaintiff's medical record via subpoena issued by the Juvenile Court of Madison County. On June 25, 2002, Madison County Sheriff's deputies retrieved, after direct opposition, Plaintiff's medical records from Carl Rudd of the Jackson Clinic, P.A. The deputies delivered Plaintiff's records directly to the Honorable Christy R. Little, Juvenile Court Judge of Madison County, TN.
52. Judge Little inspected the medical records of Plaintiff and found that the documents were not in chronological order and did not contain any vaccine warning documentation. Further, Judge Little noted that there were numerous documents contained within the

subpoenaed documents that were not in the original medical file that was procured upon the request of Plaintiff's parent(s). Subsequently, Judge Little entered an order to this affect.

53. Furthermore, Plaintiff would show that Defendants falsified Plaintiff's vaccine record. Specifically, Plaintiff received the Prevnar vaccine on June 6, 2000, and the vaccine record produced to Plaintiff's parent(s) states that the Vaccine Information Statement for Prevnar was handed to Plaintiff's parent(s). Plaintiff avers and submits that this is an impossibility because the vaccine information statement for Prevnar did not exist at that time. In fact, Plaintiff would show that the vaccine information statement for Prevnar was not published until July 18, 2000. Moreover, and as reflected in Plaintiff's vaccine record, Defendants and/or their agents failed to list the publication date of the vaccine information statements on Plaintiff's vaccine record. Instead, Defendants and/or their agents have stated "given," despite this being an impossibility.
54. Defendant's knowingly, willfully, intentionally, and/or recklessly withheld the Plaintiff's medical records and original vaccine record and the pediatric questionnaires because it contained evidence of Defendants negligent, willful, reckless, intentional, and/or outrageous conduct which jeopardized Plaintiff's parent(s)' attempts to mitigate damages caused upon the Plaintiff.
55. Defendants failed to abide by the ordinary or professional standard of care in the medical community in Jackson, Madison County Tennessee, at the time of the injury and/or wrongful action and the Defendants acted with less than or failed to act with ordinary and reasonable care in accordance with such standard, and as a direct and proximate result of

the Defendant's negligent acts and/or omissions, Plaintiff suffered injuries which would not otherwise have occurred.

## LIABILITY

### COUNT I – ORDINARY, PROFESSIONAL, AND GROSS NEGLIGENCE

56. Plaintiff re-alleges and incorporates by reference all of the allegations in the complaint as if fully set forth herein.
57. Plaintiff alleges that the Defendants are guilty of ordinary, professional, and/or gross negligence.
58. Beginning on March 7, 2000, Defendants undertook and assumed responsibility for the medical care and/or treatment of Plaintiff, and as a result of assuming such responsibilities, an ordinary duty of care to Plaintiff arose.
59. Plaintiff avers that Defendants breached their duty of care in the following:
- a. Failing to warn or educate the parents of Plaintiff of the dangers, possible reactions, precautions, and contraindications of vaccines.
  - b. Failing to have a meaningful discussion with the parents of Plaintiff regarding the risks and benefits of vaccines.
  - c. Failing to provide the parents of Plaintiff with the requisite Vaccine Information Statements.
  - d. Failing to accurately provide information to allow Plaintiff's parents to make an informed decision regarding vaccines.
  - e. Failing to accurately provide information to Plaintiff's parents such that the parents could give their informed consent to the vaccination of Plaintiff.
  - f. Administering vaccinations without informed consent.

- g. Misleading and/or misrepresenting to Plaintiff's parents as to the risks associated with vaccines and vaccine adverse reactions.
- h. Performing medical procedures on Plaintiff, while a minor, without the informed consent of his parent(s).
- i. Failing to follow the instructions and precautions contained in the vaccine manufacturers' package inserts.
- j. Failing to follow the instructions and precautions contained in the Physicians Desk Reference regarding the contraindications of vaccinating a moderately to severely ill child.
- k. Failing to follow the instructions and precautions contained in the American Academy of Pediatrics Red Book including, but not limited to, contraindications and/or precautions of vaccinating a moderately to severely ill child and regarding informed consent for vaccinations.
- l. Failing to follow the instructions contained in the October 2000 publication of "Contraindications for Childhood Immunizations" published by the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Guide to Contraindications to Childhood Vaccinations, which specifically states "Do not administer any vaccines to a child suffering from otitis media, moderate (with or without fever). See *Contraindications for Childhood Immunization excerpt attached as Exhibit C.*
- m. Failing to properly respond to the Plaintiff's continued significant symptoms and deficits to include failing to acknowledge and/or recognize that Plaintiff suffered

from numerous unresolved and recurrent ailments indicating immunodeficiency and failing to refer Plaintiff to another physician for consult.

- n. Failing to properly diagnose and determine the health status of Plaintiff prior to the administration of vaccines.
- o. Failing to conduct a proper clinical evaluation of Plaintiff to include reviewing Plaintiff's medical history prior to the administration of vaccines.
- p. Failing to inform Plaintiff's parent(s) of the heightened risks associated with the administration of vaccines to Plaintiff while Plaintiff was moderately to severely ill.
- q. Failing to recognize and acknowledge that Plaintiff suffered severe, adverse reactions to vaccines to include encephalopathic seizures and encephalopathic crying.
- r. Failing to inform Plaintiff's parents of the signs and symptoms of an adverse vaccine reaction.
- s. Failing to inform Plaintiff's parents of the increased risks associated with the administration of vaccines after Plaintiff had previously suffered from adverse vaccine reactions.
- t. Administering vaccinations to Plaintiff after his parents reported "shaking episodes."
- u. Administering vaccinations to Plaintiff after his parents reported an encephalopathic cry.

- v. Administering vaccinations to Plaintiff while he was moderately and/or severely ill and/or administering vaccinations while Plaintiff was suffering from moderate otitis media.
  - w. Delegating authority to personnel with no medical training.
  - x. Failing to keep and maintain accurate medical records.
  - y. Failing to produce true and correct medical records upon reasonable request by Plaintiff's parent(s).
  - z. Failing to produce and/or deliberately withholding the vaccine records of Plaintiff from Plaintiff's parents.
  - aa. Failing to take Plaintiff's temperature prior to the administration of vaccines.
  - bb. Failing to diagnose or evaluate Plaintiff's condition(s) prior to the administration of vaccines.
  - cc. Administering vaccinations to Plaintiff when precautions and contraindications to vaccines were present.
60. All of the foregoing, individual and/or collective, negligent acts were the direct and proximate cause of the Plaintiff's injuries.
61. As a direct and proximate cause of the Defendants' breach of the duty of care, Plaintiff suffered regressive encephalopathy. Plaintiff would state unto the Court that the actions of each and all of the Defendants either individually, concurrently, and/or jointly, proximately contributed to the damages suffered by Plaintiff, and the Defendants are liable for such damages sustained by the Plaintiff.

**COUNT II – DEVIATIONS FROM THE ACCEPTABLE STANDARD OF CARE**

62. Plaintiff re-alleges and incorporates by reference all of the allegations contained within the Complaint as if fully set forth herein.
63. Upon information and belief and beginning on March 7, 2000, Defendants undertook to provide medical care and/or treatment to Plaintiff and owed a duty of care consisting of the recognized standard of acceptable professional practice in the professions and specialties in which they practice in the Jackson, Tennessee community at the time that Defendants provided medical care and/or treatment to Plaintiff.
64. Upon information and belief, Defendants breached their duty of care owed to Plaintiff in failing to act with ordinary and reasonable care in accordance with such standard, including *inter alia* the following:
- a. Failing to warn or educate the parents of Plaintiff of the dangers, possible reactions, precautions, and contraindications of vaccines.
  - b. Failing to have a meaningful discussion with the parents of Plaintiff regarding the risks and benefits of vaccines.
  - c. Failing to provide the parents of Plaintiff with the requisite Vaccine Information Statements.
  - d. Failing to accurately provide information to allow Plaintiff's parents to make an informed decision regarding vaccines.
  - e. Failing to accurately provide information to Plaintiff's parents such that the parents could give their informed consent to the vaccination of Plaintiff.
  - f. Administering vaccinations without informed consent.

- g. Misleading and/or misrepresenting to Plaintiff's parents as to the risks associated with vaccines and vaccine adverse reactions.
- h. Performing medical procedures on Plaintiff, while a minor, without the informed consent his parent(s).
- i. Failing to follow the instructions and precautions contained in the vaccine manufacturers' package inserts.
- j. Failing to follow the instructions and precautions contained in the Physician's Desk Reference regarding the contraindications of vaccinating a moderately to severely ill child.
- k. Failing to follow the instructions and precautions contained in the American Academy of Pediatrics Red Book including, but not limited to, contraindications and/or precautions of vaccinating a moderately to severely ill child and regarding informed consent for vaccinations.
- l. Failing to follow the instructions contained in the October 2000 publication of "Contraindications for Childhood Immunizations" published by the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Guide to Contraindications to Childhood Vaccinations, which specifically "Do not administer any vaccines to a child suffering from otitis media, moderate (with or without fever). See *Contraindications for Childhood Immunization excerpt attached as Exhibit C.*
- m. Failing to properly respond to the Plaintiff's continued significant symptoms and deficits to include failing to acknowledge and/or recognize that Plaintiff suffered

from numerous unresolved and recurrent ailments indicating immunodeficiency and failing to refer Plaintiff to another physician for consult.

- n. Failing to properly diagnose and determine the health status of Plaintiff prior to the administration of vaccines.
- o. Failing to conduct a proper clinical evaluation of Plaintiff to include reviewing Plaintiff's medical history prior to the administration of vaccines.
- p. Failing to inform Plaintiff's parent(s) of the heightened risks associated with the administration of vaccines to Plaintiff while Plaintiff was moderately to severely ill.
- q. Failing to recognize and acknowledge that Plaintiff suffered severe, adverse reactions to vaccines to include encephalopathic seizures and encephalopathic crying.
- r. Failing to inform Plaintiff's parents of the signs and symptoms of an adverse vaccine reaction.
- s. Failing to inform Plaintiff's parents of the increased risks associated with the administration of vaccines after Plaintiff had previously suffered from adverse vaccine reactions.
- t. Administering vaccinations to Plaintiff after his parents reported "shaking episodes."
- u. Administering vaccinations to Plaintiff after his parents reported an encephalopathic cry.

- v. Administering vaccinations to Plaintiff while he was moderately and/or severely ill and/or administering vaccinations while Plaintiff was suffering from moderate otitis media.
  - w. Delegating authority to personnel with no medical training.
  - x. Failing to keep and maintain accurate medical records.
  - y. Failing to produce true and correct medical records upon reasonable request by Plaintiff's parent(s).
  - z. Failing to produce and/or deliberately withholding the vaccine records of Plaintiff from Plaintiff's parents.
  - aa. Failing to take Plaintiff's temperature prior to the administration of vaccines.
  - bb. Failing to diagnose or evaluate Plaintiff's condition(s) prior to the administration of vaccines.
  - cc. Administering vaccinations to Plaintiff when precautions and contraindications to vaccines were present.
65. As a result of the above stated actions, Defendants deviated from the minimum acceptable standard of professional care in their profession or specialty and the minimum standard of skill and care expected and required of them in the community in which they practice.
66. Plaintiff suffered damages as a direct and proximate result of the Defendants' breach of the duty of care.
67. Plaintiff avers that the acts of negligence by the Defendants and/or their agents, employees, and representatives constitute a substantial departure from the acceptable standard of care in the medical community of Jackson, Tennessee in regard to the treatment and care of the Plaintiff.

68. Plaintiff respectfully submits to this Honorable Court that the actions and/or inactions of each and all of the Defendants individually, concurrently, and/or jointly proximately caused and/or proximately contributed to the injury suffered by the Plaintiff and are therefore liable for all damages arising therefrom.

### **COUNT III – INTENTIONAL MISREPRESENTATION**

69. Plaintiff re-alleges and incorporates by reference all of the allegations as set forth in the Complaint as if fully stated herein.

70. Plaintiff avers and alleges that Defendants represented to Plaintiff vaccines were “safe and effective,” that the chances of an adverse reaction to a vaccine were “1 in a million,” that there was “no risk,” and “if [Plaintiff] were to have an adverse reaction, it would be an almost immediate reaction, within 15 minutes, and that there were medications on site to counteract the adverse reaction.”

71. Upon information and belief, Plaintiff would show that Defendants’ representations were false when they were made.

72. Vaccines are known to cause adverse reaction of a serious nature. Specifically, and in accordance with both the Center for Disease Control’s website and VIS forms, 1 in 14,000 children experience seizures from DTaP; 1 in 1,000 children experience crying for 3 hours or longer; and fussiness occurs in up to 1 in 3 children for a large majority of vaccines. Furthermore, vaccinations have a known and stated risk of both death and brain damage. These facts are in direct contradiction to the statements made by Dr. Hays. Further, Dr. Hays statement that a vaccine reaction would occur almost immediately is patently false. All of these statements are entirely contrary to the precautions and contraindications listed in the manufacturers’ package insert, the Physician’s Desk Reference the American

Academy of Pediatrics Red Book, and the October 2000 publication of "Contraindications for Childhood Immunizations" published by the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Guide to Contraindications to Childhood Vaccinations.

73. Plaintiff would show that these representations were in regard to a material fact.
74. Plaintiff avers that this false representation was made either knowingly or without belief in its truth or recklessly.
75. Plaintiff, as a patient of Defendants, reasonably relied upon these misrepresented facts in his pursuit of medical treatment.
76. As a result of the misrepresentations by Defendants, Plaintiff suffered severe damages.
77. As such, Plaintiff submits that Defendants are liable for the intentional misrepresentation regarding vaccine safety and reactions to vaccines.
78. Plaintiff further avers that Defendants represented to Plaintiff that his parent(s) had obtained a complete, true, and accurate copy of Plaintiff's medical records.
79. Plaintiff would show that this representation was in regard to a material fact.
80. Plaintiff avers that this false representation was made either knowingly or without belief in its truth or recklessly.
81. Plaintiff, as a patient of Defendants, reasonably relied upon these misrepresented facts in his pursuit of medical treatment.
82. Plaintiff would show that the representations of Defendants are patently false, made in regard to a material fact, and made knowingly or without belief in its truth or recklessly.
83. Plaintiff states that he, by and through his parents, reasonably relied upon the statements of Defendants and suffered severe damage as a result of the misrepresentations.

84. As such, Defendants are liable for the tort of intentional misrepresentation.

#### IV – NEGLIGENT MISREPRESENTATION

85. Plaintiff re-alleges and incorporates by reference all of the allegations as set forth in the Complaint as if fully stated herein.

86. Plaintiff avers and alleges that Defendants represented to Plaintiff vaccines were “safe and effective,” that the chances of an adverse reaction to a vaccine were “1 in a million,” that there was “no risk,” and “if [Plaintiff were to have an adverse reaction, it would be an almost immediate reaction, within 15 minutes, and that there were medications on site to counteract the adverse reaction.”

87. Upon information and belief, Plaintiff would show that Defendants representations were false when they were made.

88. Vaccines are known to cause adverse reaction of a serious nature. Specifically, and in accordance with both the Center for Disease Control’s website and VIS forms, 1 in 14,000 children experience seizures from DTaP; 1 in 1,000 children experience crying for 3 hours or longer; and fussiness occurs in up to 1 in 3 children for a large majority of vaccines. Furthermore, vaccinations have a known and stated risk of both death and brain damage. These facts are in direct contradiction to the statements made by Dr. Hays. Further, Dr. Hays statement that a vaccine reaction would occur almost immediately is patently false. All of these statements are entirely contrary to the precautions and contraindications listed in the manufacturers’ package insert, the Physician’s Desk Reference the American Academy of Pediatrics Red Book, and the October 2000 publication of “Contraindications for Childhood Immunizations” published by the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Guide

to Contraindications to Childhood Vaccinations. Plaintiff avers that the Defendants did not exercise reasonable care in obtaining or communicating accurate information to Plaintiff's parent(s), and as such, Plaintiff's parents detrimentally relied upon Defendants' negligent misrepresentation.

89. As such, Plaintiff submits that Defendants are liable for the tort of negligent misrepresentation.

#### **COUNT V – INFORMED CONSENT**

90. Plaintiff re-alleges and incorporates by reference all of the allegations as set forth in the Complaint as if fully stated herein.

91. Given the nature of the treatment sought from the Defendants, the extent of the risks involved, and the standard of care of the treating physician, Plaintiff avers that he nor his parent(s) had sufficient information concerning the risks and consequences of the treatment administered.

92. Specifically, Plaintiff would show that any consent given was not effective as it was based on inadequate information on which to make a decision to submit to treatment.

93. Plaintiff would further show that any disclosure made to Plaintiff was misleading and/or false so as to fall below the standard of conduct for an acceptable professional practice in Jackson, Madison County, Tennessee.

94. In support of this contention, Plaintiff would re-iterate that Defendants, at all times pertinent, failed to provide vaccine information statements to Plaintiff and/or his parent(s), failed to have a meaningful discussion regarding the risks and benefits of vaccines, failed to have a meaningful discussion regarding the symptoms of an adverse reaction to the vaccines, and intentionally, willfully, recklessly, and/or negligently informed Plaintiff

and/or his parent(s) that vaccines were safe, there was “1 in a million” chance of an adverse reaction, that there was “no risk,” and an adverse reaction would occur almost immediately.

95. Defendants failed to provide adequate and accurate information to Plaintiff and/or his parent(s) to allow his parents to formulate an intelligent and informed decision when authorizing vaccination.

96. Defendants failed to abide by the ordinary or professional standard of care in the medical community in Jackson, Madison County Tennessee, at the time of the injury and/or wrongful action and the Defendants acted with less than or failed to act with ordinary and reasonable care in accordance with such standard, and as a direct and proximate result of the Defendant’s negligent acts and/or omissions, Plaintiff suffered injuries which would not other wise have occurred.

97. As such, Defendants are liable under the doctrine of informed consent.

**COUNT VI – NEGLIGENCE PER SE**

98. Plaintiff re-alleges and incorporates by reference all of the allegations as set forth in the Complaint as if fully stated herein.

99. Plaintiff would show and that for each of the foregoing statutes, rules, and/or regulations: the Defendant violated the statute, rule, and or regulation that imposes a duty or prohibition for the benefit of Plaintiff and/or public; Plaintiff, an injured party, is within the class of person intended to benefit from or be protected by the statute; and the negligence was the actual and proximate cause of the injury.

100. Specifically, Plaintiff avers that Defendants had a duty to inform Plaintiff of the potential adverse side effects of vaccine injections and to provide to the Plaintiffs the Vaccine

Information Material or Vaccine Information Statement prior to the administration of each vaccine.

101. Moreover, Plaintiff would show that 42 U.S.C.A. § 300aa-26 expressly states as follows:

...each health care provider who administers a vaccine set forth in the Vaccine Injury Table shall provide to the legal representatives of any child or to any other individual to whom such provider intends to administer such vaccine a copy of the information materials developed pursuant to subsection (a), supplemented with visual presentations or oral explanations, in appropriate cases. Such materials shall be provided prior to the administration of such vaccine.”

42 U.S.C.A. § 300aa-26 (West)

102. Plaintiff submits that Defendants failures to conform to 42 U.S.C.A. § 300aa-26 constitutes negligence per se. Specifically, Defendants failed to provide to the parents of Plaintiff a copy of the information materials (vaccine information statements) and failed to supplement with visual or oral explanations prior to any of Plaintiff's vaccinations.

103. As such, Plaintiff submits that Defendants are liable for negligence per se.

104. Plaintiff would further submit that Defendants had a duty to provide Plaintiff's medical records to Plaintiff's parent(s) upon request, pursuant to 42 U.S.C.A. § 300aa-25(a) which states,

Each healthcare provider who administers a vaccine set forth in the Vaccine Injury Table to any person shall record, or ensure that there is recorded, in such person's permanent

medical record (or in a permanent office log or **file to which a legal representative shall have access upon request**)

with respect to each vaccine –

- (1) The date of the administration of the vaccine,
- (2) The vaccine manufacturer and lot number of the vaccine,
- (3) The name and address and, if appropriate, the title of the health care provider administering the vaccine, and
- (4) Any other identifying information on the vaccine required pursuant to regulations promulgated by the Secretary.

42 U.S.C.A. § 300aa-25(a) [emphasis added]

105. Plaintiff submits that Defendants failed to conform to 42 U.S.C.A. § 300aa-25 and are therefore negligent per se. Specifically, Defendants failed to provide to the parent(s) of Plaintiff a copy of Plaintiff's medical records containing the requisite information; further that Defendants intentionally provided an incomplete set of medical records omitting the requisite information; and that Defendants failed to record the requisite information and as such were unable to provide the same to Plaintiff's parent(s).

106. As such, Plaintiff avers that Defendants are liable for negligence per se.

#### **VII – MEDICAL BATTERY**

107. Plaintiff re-alleges and incorporates by reference all of the allegations as set forth in the Complaint as if fully stated herein.

108. Plaintiff alleges that Defendants are liable for Medical Battery. Specifically, Medical Battery is defined as “Performance of an unauthorized procedure...” Blanchard v. Kellum, 975 S.W.2d 522, 524 (Tenn. 1998).
109. Further, Plaintiff would show that “An injection . . . fits within the definition of a ‘procedure’ and is a species of ‘touching’ or physical contact – a battery – and so provides a sufficient factual basis for that element of a medical battery claim.” Schuler v. Garrett, 743 F.3d 170, 175 (6th Cir. 2014).
110. Plaintiff avers that Defendants failed to gain informed consent of each vaccination so as to allow the parent(s) of Plaintiff to make an educated and informed decision regarding the procedure.
111. As such, Plaintiff(s) parents were unable to authorize the repeated vaccination of Plaintiff; therefore, Defendants are liable for the tort of Medical Battery.

### **INJURIES AND DAMAGES**

112. As a direct and proximate result of the ordinary, professional, and gross negligence, medical malpractice, negligence per se, intentional misrepresentation, negligent misrepresentation, medical batter, lack of informed consent, breach of duty of care to Plaintiff, and deviations from the standard of care by the Defendants, the Plaintiff has endured significant damages, both economic and non-economic in nature, including but not limited to: physical pain and suffering, severe and permanent brain damage, neurological regression, loss of cognitive abilities, mental suffering, loss of enjoyment of life, medical expenses, custodial care expenses, rehabilitative costs, loss of services, loss of income, and all other damages recognized under the laws of the State of Tennessee.

### PUNITIVE DAMAGES

113. The Plaintiff re-allege and incorporate all of the allegations in the Complaint as if fully set forth herein.
114. The acts and omissions giving rise to each count herein were malicious, intentional, fraudulent, and/or reckless pursuant to Tenn. Code Ann. § 29-39-104, justifying an award of punitive damages.
115. Defendants maliciously, intentionally, fraudulently, and/or recklessly failed to abide by the ordinary or professional standard of care in the medical community in Jackson, Madison County Tennessee, thereby causing severe encephalopathy to Plaintiff.
116. Defendants' actions and omissions described herein were intentional and/or reckless, thereby warranting punitive damages.

### REQUEST FOR TRIAL BY JURY

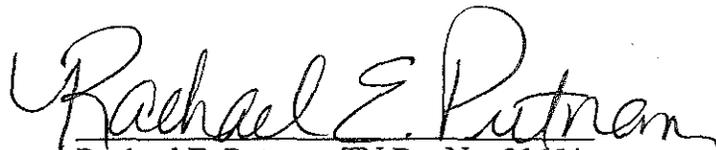
117. The Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if fully set forth herein.
118. Plaintiff demands a trial by jury on all issues herein set forth.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that this Court:

1. Issue process and cause the same to be served upon the Defendants and require that they answer in a timely manner, or have the allegations herein be deemed admitted and a default judgment entered;
2. Empanel a jury to try this case;
3. Award Plaintiff all damages to which the decedent is entitled in a fair and reasonable amount to be determined by the jury, and in an amount no less than SEVENTY-FIVE MILLION DOLLARS (\$75,000,000.00), exclusive of interest and costs;

4. Award to Plaintiff all general and special damages caused by the alleged conduct of Defendants;
5. Award punitive damages to Plaintiff sufficient to punish Defendants for their egregious conduct and to deter Defendants from ever repeating such conduct.
6. Reserve to the Plaintiffs the right to amend this pleading based upon the course of discovery in this cause;
7. Award to Plaintiff all pre-judgment interest and post-judgment interest on all verdicts or recoveries and discretionary/non-discretionary costs;
8. Award to Plaintiff all discretionary costs, court costs, and to the extent allowable under applicable law, attorneys' fees; and,
9. Award such other further relief, both general and specific, as shall be deemed reasonable and necessary and is entitled by Tennessee law.

Respectfully Submitted,



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