

CAUSE NO. _____

ERICK MUNOZ, AN INDIVIDUAL
AND HUSBAND, NEXT FRIEND,
OF MARLISE MUNOZ,
DECEASED

IN THE DISTRICT COURT

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_____ JUDICIAL DISTRICT

v.

JOHN PETER SMITH HOSPITAL,
AND DOES 1 THROUGH 10,
INCLUSIVE

TARRANT COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION FOR DECLARATORY JUDGMENT
AND APPLICATION FOR UNOPPOSED EXPEDITED RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, Erick Munoz, an individual and husband, next friend, of
Marlise Munoz, and files this *Plaintiff's Original Petition for Declaratory Judgment and
Application for Unopposed Expedited Relief*, in conjunction with Plaintiff's Motion to
Compel Defendants to Remove Marlise Munoz from "*Life Sustaining*" Measures and
Application for Unopposed Expedited Relief, and would respectfully show the Court as
follows:

DISCOVERY CONTROL PLAN LEVEL

Discovery in this case is intended to be conducted under Level 2 of Rule 190 of
the TEXAS RULES OF CIVIL PROCEDURE.

PARTIES AND SERVICE

1. Erick Munoz (hereinafter "Erick") is an adult and a resident of the State of
Texas. He is the husband of Marlise Munoz (hereinafter "Marlise"), a deceased

individual, and brings this action as an individual and on her behalf. In the alternative, if this Court finds that Marlise is an incompetent person, and not deceased, Erick, as the husband of Marlise, brings this action on her behalf, regardless of the use of the term “Plaintiff” herein in the singular. Erick resides in Tarrant County, Texas. Marlise’s body is located in Tarrant County, Texas.

2. Defendant, John Peter Smith Hospital (hereinafter “JPS”), is a non-profit hospital corporation serving as the headquarters of the Tarrant County Hospital District, doing business as the JPS Health Network. Defendant’s principal place of business is in Fort Worth, Tarrant County, Texas. Defendant may be served through its attorney of record, Larry M. Thompson, pursuant to Rule 21a of the TEXAS RULES OF CIVIL PROCEDURE.

3. Plaintiff is ignorant of the true names and capacities of all Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names and capacities. Plaintiff is informed and believes, and on the basis of said information and belief, that JPS and each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff’s injuries as herein alleged were proximately caused by the actions and/or in-actions of JPS and said DOE Defendants. Plaintiff will amend this Petition to include the true identities of said DOE Defendants when such identities are ascertained.

JURISDICTION AND VENUE

The subject matter in controversy is within the jurisdictional limits of this Court. This Court has jurisdiction over the parties because all of the parties are Texas residents

of and/or operate the relevant business or services in Texas, as applicable.

Tarrant County is proper in this Cause.

**FACTS SUPPORTING DECLARATORY ACTION AND
APPLICATION FOR EXPEDITED RELIEF**

1. Erick Munoz and Marlise Munoz were married on April 1, 2013. Erick and Marlise worked as paramedics during their marriage, and thus were knowledgeable of and had personally witnessed injuries that resulted in death, including brain death. Erick and Marlise frequently discussed their requests, beliefs and desires with each other, and expressed clearly to each other, family members and friends, their respective desires not to be resuscitated should either of them become brain dead.

2. On November 26, 2013, around 2:00 a.m., Erick awoke to find Marlise unconscious on the parties' kitchen floor. Marlise was approximately 14 weeks pregnant with the parties' second child. Erick immediately began providing cardio pulmonary resuscitation, and subsequently dialed 911.

3. Marlise was taken to JPS, where doctors informed Erick that Marlise had lost all activity in her brain stem, and was for all purposes brain dead. Erick saw that Marlise's medical charts indicated in writing that she was "brain dead". Although the hospital has not publically released an official diagnosis of Marlise's condition, Erick has been informed by JPS, and from that information believes, that Marlise is brain dead. At the time of the filing of this document, Erick still awaits the release of Marlise's medical records, for which the necessary releases have been duly executed and provided.

4. Despite Marlise's brain death, JPS has maintained Marlise on a respirator and has forced on her deceased body other "life sustaining" treatments.

5. On or about November 26, 2013, upon learning that Marlise was brain dead, Erick, with the full support of Marlise's parents, Lynne Machado and Ernest Machado, informed JPS doctors and staff of Marlise's wishes not to remain on any "life sustaining" treatment. However, despite the wishes of Marlise, Erick, and Marlise's family, JPS refused to remove the "life sustaining" treatment from Marlise, citing TEXAS HEALTH AND SAFETY CODE Section 166.049 as its basis for such refusal.

6. TEXAS HEALTH AND SAFETY CODE Section 166.049 states that "a person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient."

7. However, the TEXAS HEALTH AND SAFETY CODE also states in Section 671.001 that "(a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions...(b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, **there is irreversible cessation of all spontaneous brain function.** **Death occurs when the relevant functions cease.**"

8. JPS has informed Erick and his family that Marlise Munoz is brain dead, and as such, Erick asserts that she is legally dead under Texas law. Despite the fact that Marlise is dead, JPS refuses to remove Marlise from the "life sustaining" treatment, thus mutilating, disturbing and damaging Marlise's deceased body, and further refusing to release it to Erick for proper preservation and burial.

9. Erick vehemently opposes any further alleged “life sustaining” surgery or treatment to be performed by JPS on the deceased body of his wife, Marlise. Erick has repeatedly expressed his wishes, and the wishes of Marlise, to JPS, to no avail. Defendants (including JPS) have instead consistently refused Erick’s requests to remove the “life sustaining” treatments from Marlise’s deceased body, and continue to perform medical procedures on Marlise against Erick’s wishes.

10. TEXAS HEALTH AND SAFETY CODE Section 166.049 as interpreted by JPS is in complete conflict with other portions of the statute, makes no sense, and amounts to nothing more than the cruel and obscene mutilation of a deceased body against the expressed will of the deceased and her family.

11. In the alternative, Section 166.049 is unconstitutional as applied to Marlise as a violation of the Fourteenth Amendment to the United States Constitution.

12. Erick requests this Court follow his wishes, the wishes of Marlise Munoz, and the requests of Marlise’s parents, and remove any “life sustaining” treatment from the deceased body of Marlise.

REQUEST FOR DECLARATORY JUDGMENT

There exists a genuine controversy between the parties herein that would be terminated by the granting of declaratory judgment. Plaintiff therefore requests that declaratory judgment be entered as follows:

1. Section 166.049 of the TEXAS HEALTH AND SAFETY CODE does not apply to patients that have been diagnosed as brain dead or who have suffered brain death, as brain dead persons are legally dead in the State

of Texas, thus immediately requiring Defendants, without further delay, to remove Marlise from any alleged “life sustaining” mechanisms.

2. Alternatively, that Section 166.049 of the TEXAS HEALTH AND SAFETY CODE is an unconstitutional infringement on Plaintiff’s right to privacy pursuant to the Fourteenth Amendment to the United States Constitution.
3. Alternatively, that Section 166.049 of the TEXAS HEALTH AND SAFETY CODE is an unconstitutional infringement on Plaintiff’s right to equal protection pursuant to the Fourteenth Amendment to the United States Constitution.

REQUEST FOR ATTORNEY’S FEES

Pursuant to Section 37.009 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, request is made for all costs and reasonable and necessary attorney’s fees incurred by Plaintiff herein, including all fees necessary in the event of an appeal of this Cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that citation and notice issue as required by law.

Plaintiff prays that the Court grant the relief requested in this *Plaintiff’s Original* Petition for Declaratory Judgment and Application for Unopposed Expedited Relief.

Plaintiff prays that the Court immediately grant the expedited relief requested in the *Plaintiff’s Motion to Compel Defendants to Remove Marlise Munoz from “Life*

Sustaining” *Measures and Application* for Unopposed Expedited Relief filed contemporaneously with this Petition.

Plaintiff prays that Defendants be cited to appear and answer herein, and that declaratory judgment be granted as requested herein, and Plaintiff be awarded costs and reasonable and necessary attorney’s fees, and for such other and further relief that may be awarded at law or in equity.

Wherefore, Plaintiff prays for judgment against the Defendants as follows:

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

The undersigned counsel for Plaintiff affirms and asserts that she has made reasonable efforts to confer with counsel for Respondents. However, no such resolution could be had. The undersigned counsel for Plaintiff also affirms and asserts that on January 13, 2014, she spoke to counsel for Defendants, who informed her that he was unopposed to Plaintiffs' request for an expedited hearing in this matter.



JESSICA HALL JANICEK
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that the foregoing instrument has been duly served on all attorneys of record and/or pro se parties herein, in accordance with the TEXAS RULES OF CIVIL PROCEDURE on this 14th day of January, 2014.



ATTORNEY FOR PLAINTIFF