

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT

CARRIE WRAY, JEFFREY G. WRAY, JR. and ELIZABETH WRAY,

Plaintiffs,

v.

THE CHILDREN'S HOSPITAL CORPORATION, d/b/a "CHILDREN'S HOSPITAL BOSTON," LYDIA SHRIER, M.D., GARY J. GOSSELIN, M.D., JOHN MISASI, M.D., CATHRYN SAMPLES, M.D., and MICHAEL L. TRIEU, M.D.

Defendants.

Civil Action No. 1584CV02734

SUFFOLK SUPERIOR COURT CIVIL CLERK'S OFFICE 1 2020 MAR -2 P 4: 16 MICHAEL JOSEPH DUNOVAN CLERK / MAGISTRATE

JOINT PRETRIAL MEMORANDUM

Plaintiffs Carrie Wray, Jeffrey G. Wray Jr, Elizabeth Wray and Defendants, The Children's Hospital Corporation, d/b/a "Children's Hospital Boston," Lydia Shrier, M.D., Gary J. Gosselin, M.D., John Misasi, M.D., Cathryn Samples, M.D., and Michael L. Trieu, M.D respectfully submit their Joint Pretrial Memorandum as follows.

I. Agreed Upon Facts

The parties continue to discuss which facts, if any, will be stipulated for trial. In the absence of an agreement, the parties will rely on their own statement of facts (below).

II. Brief Statement of Each Party

Statement of Plaintiffs

Defendants breached applicable standards of care in their treatment of the then-teenager Elizabeth Wray who had been diagnosed with autoimmune disorder called PANDAS/PANS that causes anorexia and other neuropsychiatric symptoms. Defendants deviated from reasonable standards of practice by refusing to employ and/or rejecting outside experts on the diagnosis and treatment protocols for PANDAS/PANS and by failing to conduct adequate testing under the circumstances. As a result, Elizabeth remained confined to the inpatient psychiatric facility at Boston Children's Hospital ("BCH") for over six months subjected to purely psychiatric care, without any treatment directed to PANDAS/PANS, over her parents' objections and over Elizabeth's own protests. It was not until April 2013 (over two months after a court-ordered evaluation found that Elizabeth's condition correlates well with PANS) that Elizabeth was finally transferred to Massachusetts General Hospital ("MGH") where she received treatment on an outpatient basis for PANS. Elizabeth made significant progress and a full recovery once treated for her actual condition.

By the time Elizabeth was admitted to a medical floor at BCH on or about September 15, 2012, she had twice received a diagnosis of PANDAS/PANS, in February 2012 and May 2012, by two separate doctors; Michelle Haff, N.D. and Jeffrey Wulfman, M.D. Elizabeth had tested positive for mycoplasma, blastocystis hominis and Lyme (IgM Western blot positive, IgG negative). Dr. Haff treated with azithromycin. Dr. Wulfman added rifampin and ciprofloxacin to the treatment. Elizabeth improved temporarily while on azithromycin and started to regain

weight that she had lost. Elizabeth had a setback in August 2012, when she developed diarrhea for two weeks and tested positive for listeria.

At BCH, Elizabeth's health declined quickly and severely. Elizabeth increasingly became less interactive with her environment and verbally non-communicative. Healthcare providers at BCH, including Defendant Cathryn Samples M.D., insisted Elizabeth be transferred to BCH's inpatient psychiatric ward for psychiatric treatment. Dr. Samples was dismissive of Elizabeth's parents, Jay and Carrie, when they requested other healthcare options and facilities be explored; they sought recommendations for treatment from, among others, Paul Grant, M.D. and Susan Swedo, M.D. of the National Institute of Mental Health, Daniel Geller, M.D. of MGH, Michael Jenike, M.D. of McLean Hospital, and Bradley Reimann, PhD of Rogers Memorial Hospital.

On October 1, 2012, Seth Rakoff-Nahoum M.D. PhD, a Fellow in the Division of Infectious Disease consulted on Elizabeth's case to answer the following questions: "Has PANS/PANDAS diagnosis been fully addressed? Has a sufficient [infectious disease workup] been performed?" Dr. Rakoff-Nahoum acknowledged Elizabeth had a history of Group A Streptococcus infection and scarlet fever. However, he prematurely concluded that Elizabeth "does not meet criteria for PANDAS" based on his superficial finding that there was no evidence of Group A Streptococcus infection at the time of the onset of Elizabeth's illness or ongoing. Dr. Rakoff-Nahoum's consult report also acknowledged a prior positive test for mycoplasma pneumonia, thought to be a precursor to PANS. Dr. Rakoff-Nahoum discounted the possibility of an ongoing a mycoplasma pneumonia infection merely because a prior record reflected that Elizabeth had received a course of azithromycin after her positive test that he assumed, without further consideration, would have treated the infection. Defendant Dr. Misasi reviewed the consult report of the fellow, Dr. Rakoff-Nahoum, regarding Elizabeth at or about the time it was

issued and expressed his agreement with its content. The record reflects that Defendants Dr. Samples and Defendant Lydia Shrier M.D. in turn adopted Dr. Misasi's assumptions and conclusions. Thereafter, Elizabeth was transferred to the inpatient psychiatric unit.

The records reflect that the infectious disease workup occurred against the backdrop of the prospect of (and actual placement of) temporary custody over Elizabeth with the Commonwealth and the prospect of and actual admission to an inpatient psychiatric facility. State involvement was driven, at least in part, by Elizabeth's parents' belief that she was suffering from PANDAS/PANS. Under the circumstances, Elizabeth's family reasonably sought a second opinion or outside expert consultation concerning whether her PANDAS/PANS diagnosis had in fact been fully addressed. As established by Plaintiffs' expert witness Alison Agwu, reasonable practitioners in the fields of Infectious Disease and Pediatrics would have engaged in less extreme measures to test physical causes for Elizabeth's condition before committing her, over her parents' wishes, including making recommendations and/or securing a consultation with an expert on PANDAS/PANS as the parents had requested. Instead, the physicians at issue assumed, concluded and/or adopted a superficial conclusion that a PANDAS/PANS diagnosis had been fully addressed. Dr. Agwu attests to the deviation from these standards of care by Drs. Misasi, Samples and Shrier under the particular circumstances here, where: Elizabeth's family expressed their desire for further consultation with an expert; Elizabeth had previously been diagnosed with PANDAS/PANS; Elizabeth's parents had repeatedly requested such a consultation; Elizabeth faced the prospect of and actual temporary loss of her parents' custody over her to facilitate mental health treatment without treatment for physical causes; Elizabeth faced admission and confinement to an inpatient psychiatric facility; and a PANDAS/PANS diagnosis would necessarily have affected the management of Elizabeth's

care during an inpatient hospitalization.

Despite the applicable standards of care, no equivalent to consultation with an expert in PANDAS/PANS or a second opinion for Elizabeth was completed for several months while she remained confined to an inpatient psychiatric facility at the hospital, with her parents having temporarily lost legal custody. After several months, Michael A. Jenike, M.D., a Professor of Psychiatry at the Harvard Medical School, was ordered by the court to consult on Elizabeth's matter, at the request of the Massachusetts Department of Children and Families (consistent with the long-term request by and approval of Elizabeth's parents). Dr. Jenike noted that when Elizabeth was admitted to the BCH she "had been diagnosed with PANS by clinical criteria" and that her clinical picture "correlates well with PANS." Dr. Jenike recommended "[c]onsultation with a recognized expert on PANS/PANDAS" and suggested certain providers at MGH who "have a lot of experience with PANDAS/PANS." BCH providers at the inpatient psychiatric ward, including Drs. Trieu and Gosselin, were made aware of Dr. Jenike's recommendations setting forth the need for a change in treatment, but did not take appropriate steps in response to the letter.

One of Elizabeth's symptoms giving rise to Dr. Jenike's concerns about PANDAS/PANS was anorexia. Dr. Jenike testified at his deposition as follows;

Anorexia is one of the cardinal things you get when you get one of these infectious diseases. You can get psychosis. You can get OCD, which she clearly had. When they went for walks, she couldn't walk on cracks and things like that. So all of that is very consistent with an infectious etiology.

Dr. Jenike further testified that anorexia is among the typical of symptoms of PANDAS/PANS:

Well, I've described already the sudden onset and the symptoms that she had, anorexia, neurologic symptoms, behavioral regression. These are all fairly typical of these kinds of syndromes. If you -- if you -- she was, apparently, pretty good at drawing things, and her

drawing abilities went down quite dramatically. Her speech was pretty much nonexistent. These are all consistent with that kind of picture.

As established by Plaintiffs' expert witness Fabian Saleh, M.D. who is a psychiatrist, an appropriate investigation by Drs. Trieu and Gosselin of whether Elizabeth's symptoms cannot be fully explained by a general medical condition should have entailed timely efforts to follow-up on the recommendations of Dr. Jenike who, among other things, called for consultation with a specialist in PANDAS/PANS and timely efforts to follow-up on an order of the Boston Juvenile Court for a PANDAS/PANS consult on Elizabeth's case. The follow-up by Drs. Gosselin and Trieu, was inadequate. Reasonable practitioners under the circumstances would have wanted to resolve the discrepancy between Dr. Misasi's conclusion that PANDAS/PANS diagnosis had been fully addressed (on the one hand) and Dr. Jenike's recommendation calling for consultation with a specialist in PANDAS/PANS (on the other hand). Drs. Gosselin and Trieu, however, did not make efforts to involve a specialist in PANDAS/PANS after the date of Dr. Jenike's recommendations and prior to Elizabeth's discharge. Nor did Drs. Gosselin and Trieu further engage with Dr. Misasi after receipt of Dr. Jenike's report to resolve the discrepancy between Dr. Misasi's conclusion and Dr. Jenike's recommendation. Reasonable practitioners under the circumstances would have wanted to take such steps.

It was not until April 2013 that Elizabeth was transferred to MGH, where she received treatment on an outpatient basis for PANS. A review of MGH records shows a substantial improvement in Elizabeth's condition when she receive the necessary consultation and the focus of her treatment shifted to address PANS. Despite having lost her ability to communicate while under the care of physicians at issue, Elizabeth has made significant progress since being treated for her actual condition. Elizabeth can speak again in a normal fashion and her other behaviors all appear normal.

Statement of Defendants

The Defendants expect the evidence to show that in September 2012, Elizabeth Wray was a 16 year old female, who was admitted to Boston Children's Hospital ("BCH") on September 15, 2012, for treatment of life threatening anorexia nervosa, a psychiatric illness which causes severe weight loss, from which she had been suffering progressively for nearly a year without receiving the necessary medical and psychiatric treatment that had been previously recommended by other healthcare providers. At the time of admission to BCH Elizabeth was approximately 5'5" tall and weighed only 77 pounds; she was estimated to be at only 64% of her ideal body weight. Elizabeth Wray was severely malnourished and required immediate medical treatment in the form of refeeding in order to save her life. She was first brought to a hospital in Vermont which was unable to provide the necessary treatment for this very sick adolescent; that hospital recommended transfer to BCH.

The refeeding protocol was explained to her father, Jeffrey Wray, prior to his agreement to transfer his daughter to BCH; Mr. Wray agreed to the necessary treatment. Once the refeeding protocol was begun at BCH, however, the family resisted treatment and interfered with this life-saving care. Elizabeth's family insisted that her presentation was caused by PANS/PANDAS, a condition (including her severe food intake restrictions) was caused by some underlying infectious process, rather than by the psychiatric disease anorexia nervosa. The Defendants expect the evidence to show that the providers at BCH appropriately considered and investigated whether or not Elizabeth had PANS/PANDAS and carefully screened for any infectious cause that would explain this patient's symptoms and they found none, just as the prior hospital (from which Elizabeth had been transferred) had done and also found no infectious cause. The Defendants

expect the evidence to show that they each provided attentive, thorough and appropriate medical and psychiatric treatment to Elizabeth Wray at all times.

The Defendants also expect the evidence to show that the BCH providers, as mandated reporters under M.G.L. c. 119, § 51A, were legally obligated to make a report, the first of which was filed on September 19, 2012, of suspected medical neglect to the Department of Children and Families (“DCF”) when the family interfered with Elizabeth necessary and life-saving refeeding treatment that had been explained to them, and to which they had agreed, prior to her admission to BCH. The mandated report was made and was screened in by DCF. Based on its finding, DCF filed a Care and Protection Petition, and on October 2, 2012, DCF was granted emergency custody of Elizabeth Wray by the Juvenile Court. The Defendants expect the evidence to show that DCF and the Juvenile Court were responsible at all relevant times thereafter for *all* decisions regarding the medical and psychiatric treatment of, as well as family visitation and contact with, Elizabeth Wray. The Defendants are *immune* as a matter of law for the filing in good faith of a mandated 51A report, and for all of the consequences that flow from same, including the change in the parent/child relationship that resulted from the Court’s Order regarding the custody of Elizabeth Wray and the limitation on visits and contact with their daughter imposed by DCF.

The Defendants expect that the evidence will show that, throughout her treatment at BCH, Elizabeth Wray’s family insisted that she was suffering from PANS/PANDAS, and they demanded a different treatment regimen. The Defendants expect that the evidence will show that even if Elizabeth Wray *did* have PANS/PANDAS (of which there was no evidence), she already had received treatment for that presumed diagnosis by two separate prior providers, a naturopath (Haff) and a family medicine “consultant” (Wulfman), both of whom lacked the requisite training and expertise with which to diagnose PANS/PANDAS. Moreover, Defendants expect the evidence

will show that Dr. Michael Jenike, the provider who continued, at the parents' insistence, to recommend treatment for PANS/PANDAS during the BCH admission, has admitted in sworn deposition testimony that he has had little, to no, experience treating adolescents with anorexia nervosa.

The Defendants expect the evidence will show that, prior to her transfer to BCH, Elizabeth Wray was evaluated thoroughly for an infectious process, including for PANS/PANDAS, by an infectious disease specialist at a Vermont hospital (Fletcher Allen Hospital), and that no infectious process could be identified. The Defendants expect the evidence to show that the providers in Vermont and at BCH appropriately considered and investigated whether or not Elizabeth had PANS/PANDAS, and that providers at both institutions appropriately diagnosed severe malnutrition and anorexia nervosa. Elizabeth Wray clearly met the diagnostic criteria for anorexia nervosa as her primary diagnosis which required treatment.

The Defendants expect the evidence will show that each individual Defendant had a separate role and responsibility in caring for Elizabeth Wray. The evidence will show that each provider complied with the standard of care applicable to him/her in their respective field of medical practice.

With regard to Defendant **Dr. Lydia Shrier**, a pediatric and adolescent medicine physician at BCH, the evidence will show that she was involved in discussions with Fletcher Allen Hospital in VT prior to the child's transfer, and that she agreed to accept and admit Elizabeth Wray on transfer to BCH. Prior to agreeing to the transfer, Dr. Shrier explained to the child's father, Jay Wray, that his daughter was severely malnourished and in immediate need of refeeding. The refeeding protocol was explained to Mr. Wray and he requested that his daughter be transferred to BCH for this treatment. Once Elizabeth Wray was at BCH, Dr. Shrier instituted the refeeding

protocol and she provided her with the necessary medical care from admission on September 15, 2012 until the end of her service on the adolescent medicine service on September 20, 2012.

With regard to the Defendant **Dr. John Misasi**, the Defendants expect the evidence will show that he performed an extensive infectious disease evaluation on Elizabeth Wray as part of the multi-disciplinary team that cared for her at BCH. More specifically, Dr. Misasi was consulted on October 1-2, 2012, and again on November 29, 2012 and on January 15, 2013, with regard to the ongoing evaluation for any infectious cause of her symptoms. The evidence will show that Dr. Misasi reviewed thoroughly the immediate prior infectious disease workup which had been done at Fletcher Allen Hospital just before the patient came to BCH, and in addition he conducted his own infectious disease evaluation of Elizabeth Wray for an infectious process, and he found none.

The Defendants expect that the evidence will show that **Dr. Cathryn Samples**, another pediatric and adolescent medicine physician, provided care to Elizabeth Wray on the medical floor while she was the attending on the adolescent medicine service from October 5, 2012 to October 11, 2012. Dr. Samples continued the refeeding protocol and provided appropriate, necessary and timely care to the patient.

The Defendants expect that the evidence will show that, once Elizabeth Wray had been stabilized from a medical perspective, she was transferred for continuing, much needed psychiatric care to the inpatient medical/psychiatric unit at BCH known as Bader 5. While on Bader 5, Elizabeth received intensive psychiatric treatment from two additional Defendants, **Dr. Michael Trieu** and **Dr. Gary Gosselin**, both of whom are child and adolescent psychiatrists.

The evidence will show that Elizabeth Wray's condition improved with the medical and psychiatric care provided while she was an inpatient at BCH. Elizabeth was discharged on April 8, 2013, from BCH. She received follow up out-patient care at Massachusetts General Hospital and from other providers of her parents' choice thereafter. The Defendants expect the evidence to show that they complied, at all times, with the applicable standards of care in their respective roles in Elizabeth Wray's care and treatment while she was a patient at BCH. The Defendants expect the evidence to show that nothing that they did or allegedly did not do, caused or substantially contributed to cause any injury to Elizabeth Wray or her parents Carrie or Jeffrey Wray.

III. Descriptions of the Case for the Jury

Plaintiffs' Proposed Case Description

This matter arises out of Elizabeth Wray's hospitalization at Boston Children's Hospital, which included confinement to the inpatient psychiatric unit for approximately six months from October 2012 through April 2013. Plaintiffs allege that Defendants' handling of Elizabeth's hospitalization fell below required standards of care resulting in a disruption of the parent-child relationship and resulting in Elizabeth not receiving required treatment for a medical condition from which she suffered. Defendants deny these allegations and maintain that their treatment of Elizabeth met the required standards of care.

Defendants' Proposed Case Description

This is an action for alleged medical malpractice brought by the Plaintiffs, Carrie Wray, Jeffrey Wray, Jr. and Elizabeth Wray. The Plaintiffs allege that the Defendants, Boston Children's Hospital, Lydia Shrier, M.D., Gary J. Gosselin, M.D., John Misasi, M.D., Cathryn Samples, M.D., and Michael L. Trieu, M.D. were negligent in the provision of medical and/or psychiatric care to

Elizabeth Wray, who was a minor at the time of her treatment at Boston Children's Hospital from September 15, 2012 until April 8, 2013.

The Defendants deny the Plaintiff's allegations, and maintain that each of them, complied in all respects with the applicable standards of care with regard to their respective roles in the multi-disciplinary medical care and treatment rendered to Elizabeth Wray at Boston Children's Hospital. The Defendants maintain that they did not cause any alleged injury to Elizabeth Wray or her parents. The Defendants were mandated reporters under Massachusetts law and were required to submit reports regarding any reasonable suspicion of child neglect. To the extent that the Defendants made a mandated report to the Commonwealth of Massachusetts regarding concerns about child neglect, their actions and statements are protected by state law and are completely immune from liability. The filing of a mandated report of suspected child abuse or neglect, and the consequences that flow from same, cannot be the basis for any legal claim for liability against the Defendants.

IV. Witnesses

Plaintiffs' Witnesses

Fabian M. Saleh, M.D., D.F.A.P.A.
FMS Clinical and Forensic, LLC
125 Mount Auburn Street
Cambridge, Massachusetts

Allison Agwu, MD
200 N. Wolfe Street
Rubenstein Child Health Building, Suite 3145
Baltimore, MD 21287

Rosario Trifiletti, M.D., Ph.D.
545 Island Rd #1
Ramsey, New Jersey

Michael A. Jenike, MD
149 13th Street
Charlestown, Massachusetts

Jeffrey Wulfman, MD
74 Munsill Ave #100
Bristol, Vermont

Michelle Haff, ND
18 Constitution Dr Unit 4
Bedford, New Hampshire

Daniel A. Geller, MD
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Susan Swedo, MD
National Institute of Mental Health
6001 Executive Boulevard
Bethesda, Maryland

Dr. Karen Sadler, MD
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Laura McSparron LICSW
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Kamryn Eddy PhD
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Aude Henin PhD
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Carrie Wray
Peru, New York

Jeffrey G. Wray Jr.
Peru, New York

Elizabeth Wray
Peru, New York

Isabel Wray
Peru, New York

Jeffrey G. Wray Sr.
Au Sable Forks, New York

Defendant Lydia Shrier, MD
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Defendant Gary J. Gosselin, M.D.
New York, New York

Defendant John Misasi, MD
National Institute of Allergy & Infectious Diseases
Bethesda, Maryland

Defendant Cathryn Samples, MD
Boston, Massachusetts

Defendant Michael L. Trieu, MD
Portland, Oregon

Simona Bujoreanu, Ph.D.
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Othman Mohammad, M.D.
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Peter Hunt, Ph.D.,
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Ellen Rothstein, Esq.
Boston Children's Hospital
Office of General Counsel
300 Longwood Avenue
Boston, Massachusetts

Stuart J. Novick, Esq.
Boston Children's Hospital
Office of General Counsel
300 Longwood Avenue
Boston, Massachusetts

Elaine Angelone, Esq.
25 Bay State Road
Boston, Massachusetts

Meredith Anne Aherne, Esq.
Brown Rudnick LLP
1 Financial Ctr
Boston, Massachusetts

Jeanne M Hogan, Esq.
Department of Children and Families
600 Washington St
Boston, Massachusetts

Dana Prescott, Esq.
37 Beach Street
Saco, Maine

Beth Maloney, Esq.
Law Offices of Beth Maloney
P.O. Box 468
Kennebunkport, Maine

Seth Rakoff-Nahoum MD PhD
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Staverney Y. Miller
Department of Children and Families
600 Washington Street
Boston, Massachusetts

Stephanie Haynes

Department of Children and Families
600 Washington Street
Boston, Massachusetts

Cynthia Greene
Department of Children and Families
600 Washington Street
Boston, Massachusetts

Rashida Brown
Department of Children and Families
600 Washington Street
Boston, Massachusetts

Kathleen T. Higgins RN
29 Bates Road
Watertown, Massachusetts

Allison Joyce
399 Boylston Street
Suite 900
Boston, Massachusetts

Larry Vincent
Trinity Baptist Church
108 Route 119W
Fitzwilliam, New Hampshire

Keepers of records as necessary.

Rebuttal witnesses as necessary.

Healthcare providers identified in medical records produced.

Witnesses identified by other parties.

Defendants' Witnesses

In addition to the Witnesses listed by the Plaintiffs (above), the Defendants may call any or all of the following witnesses to testify at trial:

- (1) Carrie Wray, Peru, NY
- (2) Elizabeth Wray, Peru, NY
- (3) Jeffrey G. Wray, JR., Peru, NY

- (4) Cathryn Samples, M.D., Boston, MA
- (5) Michael Trieu, M.D., Portland, OR
- (6) Lydia Shrier, M.D., Boston, MA
- (7) Gary J. Gosselin, M.D., New York, NY
- (8) John N. Misasi, M.D., Bethesda, MD
- (9) Diane C. Lemly, M.D., Boston Children's Hospital
- (10) Amanda Steward M.D. M.P.H., Boston Children's Hospital
- (11) Simona Bujoreanu Ph.D., Boston Children's Hospital
- (12) Seth Rakouff Nahoum, M.D., Boston Children's Hospital
- (13) Othman Mohammad, MD, Boston Children's Hospital
- (14) Jeffery Wulfman, MD, Bristol, VT
- (15) Staverne Miller, MA Department of Children and Families
- (16) Cynthia Greene, MA Department of Children and Families
- (17) Any and all members of the security team at Boston Children's Hospital, to the extent that they were involved in interactions with Elizabeth Wray or her family members
- (18) Any and all employees of Boston Children's Hospital, as identified in the records, who were involved with care and treatment of Elizabeth Wray
- (19) Any and all employees of the Department of Children and Families, as identified in the records, who were involved with Elizabeth Wray, Carrie Wray, and/or Jeffrey Wray, Jr.
- (20) Keeper of Records, Adirondack Medical Practice
- (21) Keeper of Records, Avalon Natural Medicine

- (22) Keeper of Records, Plattsburgh Pediatrics
- (23) Keeper of Records, Boston Children's Hospital
- (24) Keeper of Records, Rosario Trifiletti, M.D.
- (25) Keeper of Records, Jeffrey Wulfman, M.D.
- (26) Keeper of Records, Vermont Children's Hospital at Fletcher-Allen
- (27) Keeper of Records, Laura Holzer, LMHC, CEAP
- (28) Keeper of Records, Massachusetts General Hospital

The Defendants reserve the right to amend and supplement this list should additional witnesses be identified or determined relevant to testify prior to trial. The Defendants reserve the right to call any witness identified by the Plaintiffs as though each were listed fully by them in this section, and incorporate by reference the Plaintiffs' witness list. The Defendants also reserve the right to call any of the parties to this case. The Defendants further reserve the right to call any of the healthcare providers identified in the medical records that have been produced during the course of this litigation and are equally known to the parties. Finally, the Defendants reserve the right to amend and supplement this witness list prior to trial and to add any necessary rebuttal witnesses during trial.

III. EXPERT WITNESES

Plaintiffs' Expert Witnesses

Allison Agwu, MD
200 N. Wolfe Street
Rubenstein Child Health Building, Suite 3145
Baltimore, MD 21287

The report of Dr. Agwu (with her CV attached) was previously submitted to the Court as Exhibit H to Plaintiffs' Opposition of to Defendants' Motion for Summary Judgment (Docket No. 65)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT

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 d/b/a "CHILDREN'S HOSPITAL BOSTON,")
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 M.D., JOHN MISASI, M.D., CATHRYN)
 SAMPLES, M.D., and MICHAEL L. TRIEU, M.D.)
)
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Civil Action No. 1584CV02734

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F

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weight that she had lost. Elizabeth had a setback in August 2012, when she developed diarrhea for two weeks and tested positive for listeria.

At BCH, Elizabeth's health declined quickly and severely. Elizabeth increasingly became less interactive with her environment and verbally non-communicative. Healthcare providers at BCH, including Defendant Cathryn Samples M.D., insisted Elizabeth be transferred to BCH's inpatient psychiatric ward for psychiatric treatment. Dr. Samples was dismissive of Elizabeth's parents, Jay and Carrie, when they requested other healthcare options and facilities be explored; they sought recommendations for treatment from, among others, Paul Grant, M.D. and Susan Swedo, M.D. of the National Institute of Mental Health, Daniel Geller, M.D. of MGH, Michael Jenike, M.D. of McLean Hospital, and Bradley Reimann, PhD of Rogers Memorial Hospital.

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issued and expressed his agreement with its content. The record reflects that Defendants Dr. Samples and Defendant Lydia Shrier M.D. in turn adopted Dr. Misasi's assumptions and conclusions. Thereafter, Elizabeth was transferred to the inpatient psychiatric unit.

The records reflect that the infectious disease workup occurred against the backdrop of the prospect of (and actual placement of) temporary custody over Elizabeth with the Commonwealth and the prospect of and actual admission to an inpatient psychiatric facility. State involvement was driven, at least in part, by Elizabeth's parents' belief that she was suffering from PANDAS/PANS. Under the circumstances, Elizabeth's family reasonably sought a second opinion or outside expert consultation concerning whether her PANDAS/PANS diagnosis had in fact been fully addressed. As established by Plaintiffs' expert witness Alison Agwu, reasonable practitioners in the fields of Infectious Disease and Pediatrics would have engaged in less extreme measures to test physical causes for Elizabeth's condition before committing her, over her parents' wishes, including making recommendations and/or securing a consultation with an expert on PANDAS/PANS as the parents had requested. Instead, the physicians at issue assumed, concluded and/or adopted a superficial conclusion that a PANDAS/PANS diagnosis had been fully addressed. Dr. Agwu attests to the deviation from these standards of care by Drs. Misasi, Samples and Shrier under the particular circumstances here, where: Elizabeth's family expressed their desire for further consultation with an expert; Elizabeth had previously been diagnosed with PANDAS/PANS; Elizabeth's parents had repeatedly requested such a consultation; Elizabeth faced the prospect of and actual temporary loss of her parents' custody over her to facilitate mental health treatment without treatment for physical causes; Elizabeth faced admission and confinement to an inpatient psychiatric facility; and a PANDAS/PANS diagnosis would necessarily have affected the management of Elizabeth's

care during an inpatient hospitalization.

Despite the applicable standards of care, no equivalent to consultation with an expert in PANDAS/PANS or a second opinion for Elizabeth was completed for several months while she remained confined to an inpatient psychiatric facility at the hospital, with her parents having temporarily lost legal custody. After several months, Michael A. Jenike, M.D., a Professor of Psychiatry at the Harvard Medical School, was ordered by the court to consult on Elizabeth's matter, at the request of the Massachusetts Department of Children and Families (consistent with the long-term request by and approval of Elizabeth's parents). Dr. Jenike noted that when Elizabeth was admitted to the BCH she "had been diagnosed with PANS by clinical criteria" and that her clinical picture "correlates well with PANS." Dr. Jenike recommended "[c]onsultation with a recognized expert on PANS/PANDAS" and suggested certain providers at MGH who "have a lot of experience with PANDAS/PANS." BCH providers at the inpatient psychiatric ward, including Drs. Trieu and Gosselin, were made aware of Dr. Jenike's recommendations setting forth the need for a change in treatment, but did not take appropriate steps in response to the letter.

One of Elizabeth's symptoms giving rise to Dr. Jenike's concerns about PANDAS/PANS was anorexia. Dr. Jenike testified at his deposition as follows:

Anorexia is one of the cardinal things you get when you get one of these infectious diseases. You can get psychosis. You can get OCD, which she clearly had. When they went for walks, she couldn't walk on cracks and things like that. So all of that is very consistent with an infectious etiology.

Dr. Jenike further testified that anorexia is among the typical of symptoms of PANDAS/PANS:

Well, I've described already the sudden onset and the symptoms that she had, anorexia, neurologic symptoms, behavioral regression. These are all fairly typical of these kinds of syndromes. If you -- if you -- she was, apparently, pretty good at drawing things, and her

drawing abilities went down quite dramatically. Her speech was pretty much nonexistent. These are all consistent with that kind of picture.

As established by Plaintiffs' expert witness Fabian Saleh, M.D. who is a psychiatrist, an appropriate investigation by Drs. Trieu and Gosselin of whether Elizabeth's symptoms cannot be fully explained by a general medical condition should have entailed timely efforts to follow-up on the recommendations of Dr. Jenike who, among other things, called for consultation with a specialist in PANDAS/PANS and timely efforts to follow-up on an order of the Boston Juvenile Court for a PANDAS/PANS consult on Elizabeth's case. The follow-up by Drs. Gosselin and Trieu, was inadequate. Reasonable practitioners under the circumstances would have wanted to resolve the discrepancy between Dr. Misasi's conclusion that PANDAS/PANS diagnosis had been fully addressed (on the one hand) and Dr. Jenike's recommendation calling for consultation with a specialist in PANDAS/PANS (on the other hand). Drs. Gosselin and Trieu, however, did not make efforts to involve a specialist in PANDAS/PANS after the date of Dr. Jenike's recommendations and prior to Elizabeth's discharge. Nor did Drs. Gosselin and Trieu further engage with Dr. Misasi after receipt of Dr. Jenike's report to resolve the discrepancy between Dr. Misasi's conclusion and Dr. Jenike's recommendation. Reasonable practitioners under the circumstances would have wanted to take such steps.

It was not until April 2013 that Elizabeth was transferred to MGH, where she received treatment on an outpatient basis for PANS. A review of MGH records shows a substantial improvement in Elizabeth's condition when she receive the necessary consultation and the focus of her treatment shifted to address PANS. Despite having lost her ability to communicate while under the care of physicians at issue, Elizabeth has made significant progress since being treated for her actual condition. Elizabeth can speak again in a normal fashion and her other behaviors all appear normal.

Statement of Defendants

The Defendants expect the evidence to show that in September 2012, Elizabeth Wray was a 16 year old female, who was admitted to Boston Children's Hospital ("BCH") on September 15, 2012, for treatment of life threatening anorexia nervosa, a psychiatric illness which causes severe weight loss, from which she had been suffering progressively for nearly a year without receiving the necessary medical and psychiatric treatment that had been previously recommended by other healthcare providers. At the time of admission to BCH Elizabeth was approximately 5'5" tall and weighed only 77 pounds; she was estimated to be at only 64% of her ideal body weight. Elizabeth Wray was severely malnourished and required immediate medical treatment in the form of refeeding in order to save her life. She was first brought to a hospital in Vermont which was unable to provide the necessary treatment for this very sick adolescent; that hospital recommended transfer to BCH.

The refeeding protocol was explained to her father, Jeffrey Wray, prior to his agreement to transfer his daughter to BCH; Mr. Wray agreed to the necessary treatment. Once the refeeding protocol was begun at BCH, however, the family resisted treatment and interfered with this life-saving care. Elizabeth's family insisted that her presentation was caused by PANS/PANDAS, a condition (including her severe food intake restrictions) was caused by some underlying infectious process, rather than by the psychiatric disease anorexia nervosa. The Defendants expect the evidence to show that the providers at BCH appropriately considered and investigated whether or not Elizabeth had PANS/PANDAS and carefully screened for any infectious cause that would explain this patient's symptoms and they found none, just as the prior hospital (from which Elizabeth had been transferred) had done and also found no infectious cause. The Defendants

expect the evidence to show that they each provided attentive, thorough and appropriate medical and psychiatric treatment to Elizabeth Wray at all times.

The Defendants also expect the evidence to show that the BCH providers, as mandated reporters under M.G.L. c. 119, § 51A, were legally obligated to make a report, the first of which was filed on September 19, 2012, of suspected medical neglect to the Department of Children and Families (“DCF”) when the family interfered with Elizabeth necessary and life-saving refeeding treatment that had been explained to them, and to which they had agreed, prior to her admission to BCH. The mandated report was made and was screened in by DCF. Based on its finding, DCF filed a Care and Protection Petition, and on October 2, 2012, DCF was granted emergency custody of Elizabeth Wray by the Juvenile Court. The Defendants expect the evidence to show that DCF and the Juvenile Court were responsible at all relevant times thereafter for *all* decisions regarding the medical and psychiatric treatment of, as well as family visitation and contact with, Elizabeth Wray. The Defendants are *immune* as a matter of law for the filing in good faith of a mandated 51A report, and for all of the consequences that flow from same, including the change in the parent/child relationship that resulted from the Court’s Order regarding the custody of Elizabeth Wray and the limitation on visits and contact with their daughter imposed by DCF.

The Defendants expect that the evidence will show that, throughout her treatment at BCH, Elizabeth Wray’s family insisted that she was suffering from PANS/PANDAS, and they demanded a different treatment regimen. The Defendants expect that the evidence will show that even if Elizabeth Wray *did* have PANS/PANDAS (of which there was no evidence), she already had received treatment for that presumed diagnosis by two separate prior providers, a naturopath (Haff) and a family medicine “consultant” (Wulfman), both of whom lacked the requisite training and expertise with which to diagnose PANS/PANDAS. Moreover, Defendants expect the evidence

will show that Dr. Michael Jenike, the provider who continued, at the parents' insistence, to recommend treatment for PANS/PANDAS during the BCH admission, has admitted in sworn deposition testimony that he has had little, to no, experience treating adolescents with anorexia nervosa.

The Defendants expect the evidence will show that, prior to her transfer to BCH, Elizabeth Wray was evaluated thoroughly for an infectious process, including for PANS/PANDAS, by an infectious disease specialist at a Vermont hospital (Fletcher Allen Hospital), and that no infectious process could be identified. The Defendants expect the evidence to show that the providers in Vermont and at BCH appropriately considered and investigated whether or not Elizabeth had PANS/PANDAS, and that providers at both institutions appropriately diagnosed severe malnutrition and anorexia nervosa. Elizabeth Wray clearly met the diagnostic criteria for anorexia nervosa as her primary diagnosis which required treatment.

The Defendants expect the evidence will show that each individual Defendant had a separate role and responsibility in caring for Elizabeth Wray. The evidence will show that each provider complied with the standard of care applicable to him/her in their respective field of medical practice.

With regard to Defendant **Dr. Lydia Shrier**, a pediatric and adolescent medicine physician at BCH, the evidence will show that she was involved in discussions with Fletcher Allen Hospital in VT prior to the child's transfer, and that she agreed to accept and admit Elizabeth Wray on transfer to BCH. Prior to agreeing to the transfer, Dr. Shrier explained to the child's father, Jay Wray, that his daughter was severely malnourished and in immediate need of refeeding. The refeeding protocol was explained to Mr. Wray and he requested that his daughter be transferred to BCH for this treatment. Once Elizabeth Wray was at BCH, Dr. Shrier instituted the refeeding

protocol and she provided her with the necessary medical care from admission on September 15, 2012 until the end of her service on the adolescent medicine service on September 20, 2012.

With regard to the Defendant **Dr. John Misasi**, the Defendants expect the evidence will show that he performed an extensive infectious disease evaluation on Elizabeth Wray as part of the multi-disciplinary team that cared for her at BCH. More specifically, Dr. Misasi was consulted on October 1-2, 2012, and again on November 29, 2012 and on January 15, 2013, with regard to the ongoing evaluation for any infectious cause of her symptoms. The evidence will show that Dr. Misasi reviewed thoroughly the immediate prior infectious disease workup which had been done at Fletcher Allen Hospital just before the patient came to BCH, and in addition he conducted his own infectious disease evaluation of Elizabeth Wray for an infectious process, and he found none.

The Defendants expect that the evidence will show that **Dr. Cathryn Samples**, another pediatric and adolescent medicine physician, provided care to Elizabeth Wray on the medical floor while she was the attending on the adolescent medicine service from October 5, 2012 to October 11, 2012. Dr. Samples continued the refeeding protocol and provided appropriate, necessary and timely care to the patient.

The Defendants expect that the evidence will show that, once Elizabeth Wray had been stabilized from a medical perspective, she was transferred for continuing, much needed psychiatric care to the inpatient medical/psychiatric unit at BCH known as Bader 5. While on Bader 5, Elizabeth received intensive psychiatric treatment from two additional Defendants, **Dr. Michael Trieu** and **Dr. Gary Gosselin**, both of whom are child and adolescent psychiatrists.

The evidence will show that Elizabeth Wray's condition improved with the medical and psychiatric care provided while she was an inpatient at BCH. Elizabeth was discharged on April 8, 2013, from BCH. She received follow up out-patient care at Massachusetts General Hospital and from other providers of her parents' choice thereafter. The Defendants expect the evidence to show that they complied, at all times, with the applicable standards of care in their respective roles in Elizabeth Wray's care and treatment while she was a patient at BCH. The Defendants expect the evidence to show that nothing that they did or allegedly did not do, caused or substantially contributed to cause any injury to Elizabeth Wray or her parents Carrie or Jeffrey Wray.

III. Descriptions of the Case for the Jury

Plaintiffs' Proposed Case Description

This matter arises out of Elizabeth Wray's hospitalization at Boston Children's Hospital, which included confinement to the inpatient psychiatric unit for approximately six months from October 2012 through April 2013. Plaintiffs allege that Defendants' handling of Elizabeth's hospitalization fell below required standards of care resulting in a disruption of the parent-child relationship and resulting in Elizabeth not receiving required treatment for a medical condition from which she suffered. Defendants deny these allegations and maintain that their treatment of Elizabeth met the required standards of care.

Defendants' Proposed Case Description

This is an action for alleged medical malpractice brought by the Plaintiffs, Carrie Wray, Jeffrey Wray, Jr. and Elizabeth Wray. The Plaintiffs allege that the Defendants, Boston Children's Hospital, Lydia Shrier, M.D., Gary J. Gosselin, M.D., John Misasi, M.D., Cathryn Samples, M.D., and Michael L. Trieu, M.D. were negligent in the provision of medical and/or psychiatric care to

Elizabeth Wray, who was a minor at the time of her treatment at Boston Children's Hospital from September 15, 2012 until April 8, 2013.

The Defendants deny the Plaintiff's allegations, and maintain that each of them, complied in all respects with the applicable standards of care with regard to their respective roles in the multi-disciplinary medical care and treatment rendered to Elizabeth Wray at Boston Children's Hospital. The Defendants maintain that they did not cause any alleged injury to Elizabeth Wray of her parents. The Defendants were mandated reporters under Massachusetts law and were required to submit reports regarding any reasonable suspicion of child neglect. To the extent that the Defendants made a mandated report to the Commonwealth of Massachusetts regarding concerns about child neglect, their actions and statements are protected by state law and are completely immune from liability. The filing of a mandated report of suspected child abuse or neglect, and the consequences that flow from same, cannot be the basis for any legal claim for liability against the Defendants.

IV. **Witnesses**

Plaintiffs' Witnesses

Fabian M. Saleh, M.D., D.F.A.P.A.
FMS Clinical and Forensic, LLC
125 Mount Auburn Street
Cambridge, Massachusetts

Allison Agwu, MD
200 N. Wolfe Street
Rubenstein Child Health Building, Suite 3145
Baltimore, MD 21287

Rosario Trifiletti, M.D., Ph.D.
545 Island Rd #1
Ramsey, New Jersey

Michael A. Jenike, MD
149 13th Street
Charlestown, Massachusetts

Jeffrey Wulfman, MD
74 Munsill Ave #100
Bristol, Vermont

Michelle Haff, ND
18 Constitution Dr Unit 4
Bedford, New Hampshire

Daniel A. Geller, MD
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Susan Swedo, MD
National Institute of Mental Health
6001 Executive Boulevard
Bethesda, Maryland

Dr. Karen Sadler, MD
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Laura McSparron LICSW
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Kamryn Eddy PhD
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Aude Henin PhD
Massachusetts General Hospital
55 Fruit Street
Boston, Massachusetts

Carrie Wray
Peru, New York

Jeffrey G. Wray Jr.
Peru, New York

Elizabeth Wray
Peru, New York

Isabel Wray
Peru, New York

Jeffrey G. Wray Sr.
Au Sable Forks, New York

Defendant Lydia Shrier, MD
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Defendant Gary J. Gosselin, M.D.
New York, New York

Defendant John Misasi, MD
National Institute of Allergy & Infectious Diseases
Bethesda, Maryland

Defendant Cathryn Samples, MD
Boston, Massachusetts

Defendant Michael L. Trieu, MD
Portland, Oregon

Simona Bujoreanu, Ph.D.
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Othman Mohammad, M.D.
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Peter Hunt, Ph.D.,
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Ellen Rothstein, Esq.
Boston Children's Hospital
Office of General Counsel
300 Longwood Avenue
Boston, Massachusetts

Stuart J. Novick, Esq.
Boston Children's Hospital
Office of General Counsel
300 Longwood Avenue
Boston, Massachusetts

Elaine Angelone, Esq.
25 Bay State Road
Boston, Massachusetts

Meredith Anne Aherne, Esq.
Brown Rudnick LLP
1 Financial Ctr
Boston, Massachusetts

Jeanne M Hogan, Esq.
Department of Children and Families
600 Washington St
Boston, Massachusetts

Dana Prescott, Esq.
37 Beach Street
Saco, Maine

Beth Maloney, Esq.
Law Offices of Beth Maloney
P.O. Box 468
Kennebunkport, Maine

Seth Rakoff-Nahoum MD PhD
Boston Children's Hospital
300 Longwood Avenue
Boston, Massachusetts

Staverney Y. Miller
Department of Children and Families
600 Washington Street
Boston, Massachusetts

Stephanie Haynes

Department of Children and Families
600 Washington Street
Boston, Massachusetts

Cynthia Greene
Department of Children and Families
600 Washington Street
Boston, Massachusetts

Rashida Brown
Department of Children and Families
600 Washington Street
Boston, Massachusetts

Kathleen T. Higgins RN
29 Bates Road
Watertown, Massachusetts

Allison Joyce
399 Boylston Street
Suite 900
Boston, Massachusetts

Larry Vincent
Trinity Baptist Church
108 Route 119W
Fitzwilliam, New Hampshire

Keepers of records as necessary.

Rebuttal witnesses as necessary.

Healthcare providers identified in medical records produced.

Witnesses identified by other parties.

Defendants' Witnesses

In addition to the Witnesses listed by the Plaintiffs (above), the Defendants may call any or all of the following witnesses to testify at trial:

- (1) Carrie Wray, Peru, NY
- (2) Elizabeth Wray, Peru, NY
- (3) Jeffrey G. Wray, JR., Peru, NY

- (4) Cathryn Samples, M.D., Boston, MA
- (5) Michael Trieu, M.D., Portland, OR
- (6) Lydia Shrier, M.D., Boston, MA
- (7) Gary J. Gosselin, M.D., New York, NY
- (8) John N. Misasi, M.D., Bethesda, MD
- (9) Diane C. Lemly, M.D., Boston Children's Hospital
- (10) Amanda Steward M.D. M.P.H., Boston Children's Hospital
- (11) Simona Bujoreanu Ph.D., Boston Children's Hospital
- (12) Seth Rakouff Nahoum, M.D., Boston Children's Hospital
- (13) Othman Mohammad, MD, Boston Children's Hospital
- (14) Jeffery Wulfman, MD, Bristol, VT
- (15) Staverne Miller, MA Department of Children and Families
- (16) Cynthia Greene, MA Department of Children and Families
- (17) Any and all members of the security team at Boston Children's Hospital, to the extent that they were involved in interactions with Elizabeth Wray or her family members
- (18) Any and all employees of Boston Children's Hospital, as identified in the records, who were involved with care and treatment of Elizabeth Wray
- (19) Any and all employees of the Department of Children and Families, as identified in the records, who were involved with Elizabeth Wray, Carrie Wray, and/or Jeffrey Wray, Jr.
- (20) Keeper of Records, Adirondack Medical Practice
- (21) Keeper of Records, Avalon Natural Medicine

- (22) Keeper of Records, Plattsburgh Pediatrics
- (23) Keeper of Records, Boston Children's Hospital
- (24) Keeper of Records, Rosario Trifiletti, M.D.
- (25) Keeper of Records, Jeffrey Wulfman, M.D.
- (26) Keeper of Records, Vermont Children's Hospital at Fletcher-Allen
- (27) Keeper of Records, Laura Holzer, LMHC, CEAP
- (28) Keeper of Records, Massachusetts General Hospital

The Defendants reserve the right to amend and supplement this list should additional witnesses be identified or determined relevant to testify prior to trial. The Defendants reserve the right to call any witness identified by the Plaintiffs as though each were listed fully by them in this section, and incorporate by reference the Plaintiffs' witness list. The Defendants also reserve the right to call any of the parties to this case. The Defendants further reserve the right to call any of the healthcare providers identified in the medical records that have been produced during the course of this litigation and are equally known to the parties. Finally, the Defendants reserve the right to amend and supplement this witness list prior to trial and to add any necessary rebuttal witnesses during trial.

III. EXPERT WITNESES

Plaintiffs' Expert Witnesses

Allison Agwu, MD
200 N. Wolfe Street
Rubenstein Child Health Building, Suite 3145
Baltimore, MD 21287

The report of Dr. Agwu (with her CV attached) was previously submitted to the Court as Exhibit H to Plaintiffs' Opposition of to Defendants' Motion for Summary Judgment (Docket No. 65)

and is incorporated herein by reference. A copy of Plaintiffs' expert disclosures with respect to Dr. Agwu made in interrogatory responses are attached.

Fabian M. Saleh, M.D., D.F.A.P.A.
FMS Clinical and Forensic, LLC
125 Mount Auburn Street
Cambridge, Massachusetts

The report of Dr. Saleh (with his CV attached) was previously submitted to the Court as Exhibit N to Plaintiffs' Opposition of to Defendants' Motion for Summary Judgment (Docket No. 65) and is incorporated herein by reference. A copy of Plaintiffs' expert disclosures with respect to Dr. Saleh made in interrogatory responses are attached.

Rosario Trifiletti, M.D., Ph.D.
545 Island Rd #1
Ramsey, New Jersey

Declarations of Dr. Trifiletti reflecting his opinions and the basis for the opinions were previously submitted to the Court as Exhibit F in connection with Defendants' Motion for Summary Judgment (Docket No. 64) and are incorporated herein by reference. Defendants have noticed the deposition of Dr. Trifiletti for March 7, 2020 and Plaintiffs anticipate that Dr. Trifiletti's deposition testimony will further reflect his opinions and the basis for the opinions. Plaintiffs will provide a copy of Dr. Trifiletti's transcript to the Court when it becomes available. A copy of Plaintiffs' expert disclosures with respect to Dr. Trifiletti made in interrogatory responses are attached.

Michael A. Jenike, MD
149 13th Strett
Charlestown, Massachusetts

A transcript of the deposition of Dr. Jenike dated May 9, 2017 (with his CV attached) reflecting his opinions and the basis for the opinions was previously submitted to the Court as Exhibit M to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment (Docket No. 65) and is

incorporated herein by reference. A letter of Dr. Jenike to Judge Stephen Limon dated January 29, 2013 also reflecting his opinions and the basis for the opinions was previously submitted to the Court as Exhibit G in connection with Defendants' Motion for Summary Judgment (Docket No. 64) and is incorporated herein by reference. A copy of Plaintiffs' expert disclosures with respect to Dr. Jenike made in interrogatory responses are attached, and a copy of his deposition transcript is also attached.

Jeffrey Wulfman, MD
74 Munsill Ave #100
Bristol, Vermont

Defendants noticed and took the deposition of Dr. Wulfman on February 24, 2020. Dr. Wulfman was a treating physician and provided opinions at his Deposition relating to Elizabeth's condition. Plaintiffs will provide a copy of Dr. Wulfman's transcript to the Court when it becomes available.

Plaintiffs reserve the right to rely on opinions of treating physicians acting as non-retained expert witnesses including for expert opinions in medical records admitted pursuant to Mass. Gen. Laws ch. 233, § 79G.

Plaintiffs reserve the right to supplement these disclosures, including for rebuttal purposes.

Defendants' Expert Witnesses

The parties have exchanged expert disclosures prior to the filing of this Joint Pretrial Conference Memorandum. Those disclosures are appended hereto and incorporated by reference. For the Court's convenience, a list of expert witnesses is included below:

The Defendants may call one or more of the following expert witnesses; a summary of their opinions and the bases therefor is attached. To the extent that the experts listed below are not available to testify at the time of trial, the Defendants expect to call, as a substitute for any

such unavailable expert, an expert who is expected to testify to the same opinions on the same grounds and is expected to address all issues raised by the Plaintiffs. The Defendants reserve the right to seasonably supplement this list prior to trial.

- (i) Stanford T. Shulman, M.D.
Chicago, IL
Pediatric Infectious Diseases
- (ii) H. Cody Meissner, M.D.
Boston, MA
Pediatric Infectious Diseases
- (iii) Neville Golden, M.D.
Palo Alto, CA
Adolescent and Pediatric Medicine
- (iv) Richard E. Kreipe, M.D.
Rochester, NY
Adolescent and Pediatric Medicine
- (v) Eileen Ryan, D.O.
Columbus, OH
Child and Adolescent Psychiatry
- (vi) Kimberly Schwartz, M.D.
Boston, MA
Pediatrics / Child Abuse Pediatrics
- (vii) Michael Koster, M.D.
Providence, RI
Pediatric Hospitalist / Pediatric Infectious Diseases

IV. STATEMENT OF UNUSUAL LEGAL ISSUES

Plaintiffs' Statement

1. *Defendants Improperly Seek to Introduce Cumulative Expert Testimony:*

Defendants have identified a total of seven expert witnesses to testify on their behalf at trial.

Defendants' expert disclosures indicate that their experts will each cover much of the same

material in a duplicative and redundant manner. Indeed, certain of Defendants' experts have signed completely identical disclosures and others have made disclosures that substantially overlap with each other. This Court should exclude all such cumulative and repetitive expert evidence to avoid undue delay, wasting time, and needlessly complicating the presentation of the case to the jury.

2. *Defendants Improperly Seek to Introduce a Narrative Summary of Underlying Facts through Expert Testimony:* According to their disclosures, each of Defendants' seven expert witnesses will testify as to facts contained in a nine-page-long single-spaced narrative that provides Defendants' slanted rendition of the underlying events, despite none of the seven expert witnesses having any first-hand knowledge about what actually took place before, during or after the underlying psychiatric confinement of a teenage girl at issue in this case. This Court should not permit experts to provide a narrative summary of the sort Defendants contemplate for each of their witnesses. Fact witnesses would be far more appropriate to present Defendants' version of the underlying events and render the expert witnesses' secondhand knowledge unnecessary for the edification of the jury.

3. *Defendants Fail to Disclose the Substance of Expert Opinions:* Defendants' expert disclosures repeatedly assert that Defendants' experts "may comment" and/or "will comment" on various topics identified in the disclosures, but do not state the substance of the facts and opinions that will be included in the anticipated expert commentary, leaving Plaintiffs to guess what the expert commentary will entail, and what the basis for the commentary will be. The disclosures do not provide Plaintiffs a fair opportunity to meet the evidence to be presented against them at trial. Defendants should be precluded from offering commentary beyond the facts and opinions expressly set forth in their expert disclosures.

4. *Defendants Should be Compelled to Produce Discovery:* Defendants have recently taken actions that undermine the readiness of this case to proceed to trial on the scheduled date. More specifically, Defendants have stated their intention to press an extreme position concerning the validity of the underlying medical conditions and diagnoses at issue and Defendants have made two large supplemental productions to Plaintiffs, while selectively choosing things that they will not produce to Plaintiffs, in a one-sided and unfair manner. Defendants' gamesmanship with trial looming results in significant prejudice to Plaintiffs and forecloses the possibility of a fair trial. Such prejudice can only be mitigated by compelling Defendants to produce all of the materials over which Defendants have improperly asserted a claim of privilege and all materials within Defendants' custody, possession or control concerning the medical condition at issue, PANDAS/PANS, whether or not such materials are maintained in information technology system of Boston Children's Hospital, or outside of that system. Trial should be continued from the currently scheduled March 16, 2020 date to allow the necessary productions by Defendants to Plaintiffs and any follow-up discovery by Plaintiffs, as may be warranted based upon any materials produced.

5. *Defendants Only Recently Requested Authorizations for Additional Medical Records:* On January 31, 2020, Plaintiffs received from Defendants in the regular mail a request for Elizabeth to sign 13 additional authorizations for the release of medical records. Plaintiffs provided Defendants the requested releases within thirty (30) days (on March 2, 2020) consistent with timeframes established under Mass. R. Civ. P. 34. Defendants' requests for authorizations (which Plaintiffs have provided) are consistent with Defendants' continuing efforts to conduct discovery in the lead-up to the trial of this case, while simultaneously attempting to deny Plaintiffs the discovery they seek.

Defendants' Statement

- (1) Daubert/Lanigan Motion: The Defendants have served and filed with the Court a motion, with opposition, challenging the reliability of Plaintiffs' experts. The Motion is currently pending.
- (2) Late/Undisclosed Expert: The Defendants object to the plaintiffs attempted late disclosure of Dr. Jeffrey Wulfman as an "expert" in this matter. Experts were disclosed, by agreement and by Order of this Court, prior to the submission of this Memorandum, and Plaintiffs did not include Dr. Wulfman or any expert disclosure for same in their disclosure. Plaintiffs now seek to refer to Dr. Wulfman as an expert for the first time in this Memorandum, only *after* he has been deposed. The Defendants will move to preclude any "expert" opinions of same.
- (3) Late/Undisclosed Witness(es): Defendants reserve the right to challenge and seek exclusion of testimony relative to any witnesses not properly or timely disclosed; for example, Kathleen Higgins, R.N., and Allison Joyce, as well as Larry Vincent whom Plaintiffs have included (in their second draft of the Joint Pretrial Memorandum), but who have never been mentioned previously during discovery in this matter. Defendants object to these witnesses testifying at trial.
- (4) Summary Judgment Motion: The Defendants have served and filed with the Court, two motions for summary judgment, with opposition. The first motion seeks to establish the applicability of M.G.L. c. 231, § 85K (the limitation on liability for charitable organization) and the second motion seeks dismissal of all claims based on deficiencies in Plaintiffs' expert disclosures. Both motions for summary

judgment are currently pending. **The Defendants request that the Court assign a hearing date for these Motions prior to trial.**

(5) Motions in Limine: The Defendants have served via 9A numerous motions in limine. The Defendants will timely file these motions, along with any opposition. In addition, the Defendants will be serving a motion to preclude the testimony of trial witnesses whose identities were not properly disclosed prior to the filing of of this Memorandum.

(6) Deposition of Defendant BCH's In- House Counsel: The Plaintiff very recently noticed, long after the close of discovery, the deposition of Ellen Rothstein, Esq., who was in-house counsel for BCH at the time of Elizabeth Wray's admission. The Defendants have moved to quash and for a protective order regarding this late and improper deposition.

(7) Plaintiffs' Motion to Continue Trial and Compel Discovery: The Plaintiffs have moved for a continuance of the trial date and to compel certain discovery, which the Defendants have opposed. That motion is to be heard on March 4, 2020.

(8) Updated Medical/Psychiatric Records: The Defendants have requested that Plaintiffs provide authorizations from Elizabeth Wray to obtain updated records from her providers in advance of trial. The Defendants note that the providers are not in the Commonwealth of Massachusetts and are thus beyond the subpoena power of this Court. Thus far, Plaintiffs have failed to provide authorizations and Defendants may seek to limit their evidence at trial as a consequence.

The Defendants reserve the right to file motions *in limine* and/or address any new legal issues that may arise at or before the time of trial.

VII. ESTIMATED LENGTH OF TRIAL

Plaintiffs' counsel estimates a trial of ten (10) half days.

Defendants' counsel estimates that, based on the witnesses listed in this Pretrial Memorandum, trial will consume between four and six weeks (4-6wks) of the Court's time, exclusive of jury selection.

XIII. SPECIAL OR LIQUIDATED DAMAGES

Plaintiffs' Statement of Special Damages

In addition to damages sustained by Plaintiffs for their pain and suffering, anguish, emotional distress, loss of consortium, loss of liberty, the decline in Elizabeth's condition, disruption of the family, and delay in receiving necessary care, economic damages resulting from Defendants' conduct include that Jay Wray lost wages of at least (conservatively estimated) \$26,000 during Elizabeth's confinement at Children's Hospital, and Carrie Wray lost wages of at least \$2,900, as a result of their need to stay in Boston away from employment during that period. Jay Wray was not able to work from September 15, 2012 through April 15, 2013 and was on unpaid family medical leave. Plaintiffs were forced to incur, without limitation, many thousands of dollars in expense of having to maintain living quarters in Boston, lawyers' fees and added cost of care for Elizabeth after her release from Children's Hospital. Lodging in Boston cost more than \$7,000. Parking and ferry costs during the period for travel to and from Boston cost at least \$1,200. Moreover, Plaintiffs incurred mileage costs of \$2,104.61 for travel to and from Boston. Legal matters surrounding Elizabeth's confinement resulted in lawyer fees of approximately \$65,000, of which approximately \$40,000 remains due to be paid. Elizabeth's additional medical bills not covered by insurance (including her IVIG treatment, Dr. Trifiletti charges, and non-insurance covered medicine) necessary due to the regression and delay in

recovery at Children's Hospital amount to at least \$20,000. To cover expenses, Plaintiffs were forced to withdraw 401k funds of \$117,644, resulting in taxes of \$39,442.37

Defendants' Response to Plaintiffs' Statement

Pursuant to Massachusetts law, the Defendants are immune from any damages to any/all of the Plaintiffs which result from the mandated reporting of suspected child neglect under M.G.L. c. 119, § 51A. The Defendants deny that they caused any harm or damages to the Plaintiffs which are recoverable by law.

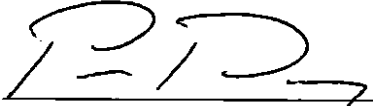
IX. CERTIFICATION

The Plaintiffs are open to participating in mediation efforts to resolve this case. A continuance of the trial date would allow mediation efforts to proceed.

The Defendants state that, to date, no demand for settlement has been received from Plaintiffs and, as a result, there has been no discussion of the possibility of settlement of this matter. Defendants state further that the Plaintiffs' reference to mediation, described above, while welcomed, was only received for the first time on March 2, 2020.

Respectfully submitted,

FOR THE PLAINTIFFS,
Carrie Wray, Jeffrey G. Wray Jr,
Elizabeth Wray,
By Their Attorneys,



Barry Pollack, BBO# 642064
Peter J. Duffy, BBO# 566682
Philip Rakhunov, BBO# 663746
Pollack Solomon Duffy LLP
101 Huntington Ave., Suite 530
Boston, MA 02199
617-439-9800
pduffy@psdfirm.com
bpollack@psdfirm.com
prakhunov@psdfirm.com

FOR THE DEFENDANTS,
The Children's Hospital Corporation,
d/b/a "Children's Hospital Boston,"
Lydia Shrier, M.D., Gary J. Gosselin, M.D.,
John Misasi, M.D., Cathryn Samples, M.D.,
and Michael L. Trieu, M.D.,
By Their Attorneys,



Ellen Epstein Cohen, BBO# 543136
Megan Grew Pimentel, BBO# 654847
Mary Azzarito, BBO#566743
Adler | Cohen | Harvey | Wakeman | Guekguezian,
LLP
75 Federal Street, 10 th, Floor
Boston, Massachusetts 02110
617-423-6674
ecohen@adlercohen.com
mpimentel@adlercohen.com
mazzarito@adlercohen.com

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