

NO. _____

**GEORGE PICKERING, II and
GEORGE PICKERING, III**

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

**ADRIAN SANTAMARIA, MD and
TOMBALL REGIONAL MEDICAL
CENTER**

___ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COME NOW GEORGE PICKERING, II and GEORGE PICKERING, III, Plaintiffs herein, complaining of ADRIAN SANTAMARIA, MD and TOMBALL REGIONAL MEDICAL CENTER, Defendants herein, and for cause of action say:

Parties

1. Plaintiff George Pickering, II ("II") and Plaintiff George Pickering, III ("III"), are, and at all times material hereto, were individuals residing in Harris County, Texas. In compliance with Section 30.014 of the Texas Civil Practices & Remedies Code, Plaintiffs inform the Court that the last three numbers of George Pickering, II's driver's license is ____, and that the last three digits of his social security number is ____; and that the last three numbers of George Pickering, III's driver's license is ____, and the last three numbers of his social security number is 806. In accordance with Section 30.015 of the Texas Civil Practices & Remedies Code, Plaintiffs inform the Court that their current residence is 702 West Rolling Wood St., Pine Hurst, TX 77362.

2. Defendant Adrian Santamaria, MD is, and at all times material hereto was, a physician duly licensed in the State of Texas, specializing in neurology; and may be served with process at 455 School Street #20, Tomball, TX 77375.

3. Defendant Tomball Regional Medical Center is, and at all times material hereto was, a hospital operating in Tomball, Harris County, Texas, and may be served with process by serving its hospital administrator, Tom Jackson, at 605 Holderrieth Blvd., Tomball, TX 77375.

Discovery Level

Plaintiffs intend to conduct discovery under Level 2.

Jurisdiction

This Court has jurisdiction over this controversy and the parties involved because all parties are citizens of Texas, because the events giving rise to this controversy arose in Texas, and because the amount in controversy is within the jurisdictional limits of this Court.

Venue

This Court has venue over this lawsuit because:

- (1) all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Harris County, Texas. Tex.Civ.Prac. & Rem. Code 15.002(a)(1);

Monetary Relief Sought

Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000.

Statement of Facts Applicable to All Counts

1. Around 3:00am to 4:00am on January 8, 2015, III is taken by ambulance to Tomball Regional Medical Center.
2. At approximately 5:00am a CT scan of the head was performed on III.
3. III was intubated at approximately 8:00am.
4. Dr. Santamaria saw III at approximately 11:50am. His neurological exam stated that III was intubated and sedated, that his brain stem was intact, and that he responded to pain.

5. At approximately 6:30pm, Brandt Yeamans, RN contacted LifeGift regarding organ donation.
6. An MRI performed at approximately 6:40pm suggested active infarcts throughout the right and left hemisphere.
7. At approximately 8:00pm, Dr. Santamaria diagnosed III with a major stroke on both sides of his brain. II asked Dr. Santamaria if III was brain dead, to which Dr. Santamaria replied, "We will see."
8. At approximately midnight, Brandt Yeamans, RN represents to Katherine King of LifeGift that III appears brain dead.
9. Yolanda Nichols from LifeGift arrived at approximately 3:00am on January 9, 2016 and met with Brandt Yeamans, RN.
10. At approximately 7:30am, Phillip Pirtle diagnosed III with extensive cerebral infarction. Both he and Dr. Santamaria discussed the implications of that diagnosis with the family, and stated that the prognosis was quite poor.
11. At approximately 11:30am, Dr. Santamaria told the family that III was not brain dead, but would remain sedated for at least 72 hours, and represented to the family there was a poor prognosis regarding neurological deficit.
12. At approximately 1:30pm, Dr. Santamaria tells Michelle Powell, RN that III is not going to live long.
13. At approximately 1:45pm, Dr. Santamaria's notes include that there was a poor prognosis and that he discussed with the family that II was unlikely to gain any meaningful neurological recovery.

14. At approximately 2:45pm, the case manager from the hospital meets with III's mother and provides her with a list of funeral homes and crematories.
15. At approximately 3:30pm, the case manager discusses III being an organ donor with his mother.
16. At approximately 8:00am, Rank Jahan with LifeGift states that George Pickering, II is currently triggering the vent; and, thus, he is not brain dead.
17. At approximately 2:00pm, the case manager represents to III's mother that she can make the decisions for the patient without II. At that time, Dr. Santamaria tells her that there is a small window for the patient to pass peacefully, rather than recovering and remaining in an altered mental state with no quality of life.
18. At approximately 4:00pm, III's mother consents to taking him off the vent.
19. At approximately 6:00pm, preparations were made for a terminal wean, with III's family (other than II) in the room. Brandon, III's brother, calls II and tells him that he needed to come now because they are going to take him.
20. II arrives in III's room at approximately 6:30pm and demands to spend time with III. Believing that medical personnel at Tomball Regional Medical Center are about to harvest III's organs, II brought a gun with him.
21. At approximately 6:40 pm, when the security guard refuses to permit II to pull the curtains to spend time with III, II pulls out the gun he has brought. Brandon disarms II. However, II claims to have another gun.

22. At approximately 6:50pm, the Tomball police department responds to a 911 call reporting that there is a subject on the second floor of Tomball Regional Hospital with a gun. Officer Littlell retrieves the gun II had brought to the hospital and locks it in the trunk of his patrol car.

23. At approximately 7:00pm, deputy constables from Precinct 4 begin arriving.

24. II tells officers Finney and Littlell, with the Tomball police department, leave him alone.

25. At approximately 8:00pm, Detective Chambers is called by Sgt. Hammond (both with the Tomball police department) regarding a male subject with a gun at Tomball Regional Hospital.

26. At approximately 8:10pm, a Harris County Sheriff's Department SWAT team arrives at the request of the Tomball police department.

27. At approximately 8:20pm, SWAT team doctors McClelland and Decker meet with Dr. Santamaria. Dr. Santamaria tells them that III was with no cortical function or hope of meaningful recovery.

28. At approximately 8:40pm, Detective Chambers arrives at Tomball Regional Hospital.

29. At approximately 10:45pm, surrenders to a hostage negotiation team.

30. At approximately 11:00pm, Ginger Papadatos re-enters II's room. II, who Dr. Santamaria represented had no cortical function or hope of meaningful recovery, tracked her with his eyes, squeezed her hand, was able to follow commands, and was awake.

31. II would not have brought a gun if Dr. Santamaria had not represented to the family that there was a small window for II to pass peacefully, rather than recovering and remaining in an altered mental state with no quality of life. If Dr. Santamaria had not negligently made this representation to the family, Brandon would not have told II that they were about to take III. If II did not believe they were about to take III, then II would not have brought the gun or engaged in the other conduct in question. As a result, criminal charges were filed against II, II incurred attorneys' fees and other expenses defending himself from the criminal charges, and spent months in jail. Because II spent months in jail and could not associate with III, the father-son relationship between II and III was damaged during that time period.

Count One

For negligent representation cause of action against Dr. Santamaria, Plaintiffs say:

1. Plaintiffs adopt by reference each and every Paragraph of the Statement of Facts Applicable to All Counts of this Petition as if fully copied and set forth at length herein.
2. Dr. Santamaria represented, among other things, that there was a small window for II to pass peacefully, rather than recovering and remaining in an altered mental state with no quality of life. Dr. Santamaria made this representation in the course of his business, or in a transaction in which he had a pecuniary interest.
3. In making the above representation, or representations, Dr. Santamaria supplied false information for the guidance of others.
4. Dr. Santamaria failed to exercise reasonable care or competence in obtaining or communicating the above information.
5. II suffered pecuniary loss in relying on the above representations.

Count Two

For fraud cause of action against Dr. Santamaria, Plaintiffs say:

1. Plaintiffs adopt by reference each and every Paragraph of the Statement of Facts Applicable to All Counts of this Petition as if fully copied and set forth at length herein.
2. Dr. Santamaria represented, among other things, that there was a small window for II to pass peacefully, rather than recovering and remaining in an altered mental state with no quality of life.
3. The above representations were false.
4. When the above representations were made, Dr. Santamaria knew they were false, or made them recklessly without any knowledge of the truth and as a positive assertion.
5. Dr. Santamaria made the above representations with the intent that III's family, including II, should act upon them.
6. II acted in reliance on the above representations.
7. II suffered injury as a result of the above representations, including, but not limited to:
 - (a) II incurred attorneys' fees and other expenses defending himself from criminal charges;
 - (b) II spent months in jail; and
 - (c) Because II spent months in jail and could not associate with III, the father-son relationship between II and III was damaged during that time period.

Count Three

For respondeat superior cause of action against Tomball Regional Medical Center,
Plaintiffs say:

1. Plaintiffs adopt by reference each and every Paragraph of the Statement of Facts Applicable to All Counts of this Petition as if fully copied and set forth at length herein.

2. Plaintiffs adopt by reference Counts One and Two of this Petition as if fully copied and set forth at length herein.

3. At all times material hereto, Dr. Santamaria was an agent, representative, employee, or ostensible agent or employee of Tomball Regional Hospital.

4. At all times material hereto, Dr. Santamaria was acting within the course and scope of his agency, representation, employment, or ostensible agency or employment of Tomball Regional Medical Center.

5. By reason of the above and foregoing circumstances, Tomball Regional Medical Center is liable for the misrepresentations and negligence of Dr. Santamaria.

Damages Applicable to All Counts

1. Plaintiffs adopt by reference the Statement of Facts Applicable to All Counts of this Petition as if fully copied and set forth at length herein.

2. Plaintiffs adopt by reference each Count of this Petition as if fully copied and set forth at length herein.

3. As a proximate result of Dr. Santamaria's misrepresentations and negligence, II suffered the following injuries and damages, among others:

(a) attorneys' fees and other expenses defending himself from criminal charges;

(b) months in jail; and

(c) Because II spent months in jail and could not associate with III, the father-son relationship between II and III was damaged during that time period.

3. Plaintiff George Pickering, III suffered, sustained and incurred, and in reasonable medical probability will continue to suffer, sustain and incur, the following injuries and damages as a proximate result of Defendants' negligence, more particularly set forth above, among others:

- (a) Because II spent months in jail and could not associate with III, the father-son relationship between II and III was damaged during that time period.

Jury Demand

Plaintiff requests trial by jury.

Notice of Health Care Liability Claim

Plaintiffs properly mailed Notices of Health Care Liability Claims to the following Defendants on the following dates:

1. Adrian Santamaria, MD June 30, 2016
2. Tomball Regional Medical Center June 30, 2016

Discovery

Plaintiffs attach the following discovery for service simultaneously with service of this Petition:

1. Plaintiffs' Request for Disclosure to Adrian Santamaria, MD. *Exhibit A.*
2. Plaintiffs' Request for Disclosure to Tomball Regional Medical Center. *Exhibit B.*
3. Plaintiffs' Request for Production to Adrian Santamaria, MD. *Exhibit C.*
4. Plaintiffs' Request for Production to Tomball Regional Medical Center. *Exhibit D.*
5. Plaintiffs' Interrogatories One Through Twenty-Three to Adrian Santamaria, MD. *Exhibit E.*
6. Plaintiffs' Interrogatories One Through Twenty-Two to Tomball Regional Medical Center. *Exhibit F.*

Exhibit E.

6. Plaintiffs' Interrogatories One Through Twenty-Two to Tomball Regional Medical Center. *Exhibit F.*

Prayer

Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final trial, Plaintiffs have judgment against Defendants, jointly and severally, for:

- (a) compensatory damages in excess of the minimum jurisdictional limits of the Court;
- (b) pre-judgment interest;
- (c) post-judgment interest;
- (d) costs of court;
- (e) such other and further relief to which Plaintiffs show themselves justly entitled to receive.

Respectfully submitted,
HOUSSIERE, DURANT & HOUSSIERE, LLP



By: /s/ Randal A. Kauffman

Charles R. Houssiere, III
Attorney in Charge
Texas Bar No. 10050700
choussiere@hdhtex.com
Randal A. Kauffman
Texas Bar No. 11111700
rkauffman@hdhtex.com
1990 Post Oak Blvd., Suite 800
Houston, Texas 77056
Telephone: (713)626-3700
Facsimile: (713)626-3709

ATTORNEYS FOR PLAINTIFF