

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

**ANDREA BELENO, on Behalf of Her Infant
Son and on Behalf of the Class Similarly
Situated, GEOFFREY N. COURTNEY, on
Behalf of Two Children of His and on Behalf of
the Class Similarly Situated, MARYANN
OVERATH, on Behalf of Two Minor
Children of Hers, KEITH A. TAYLOR,
on Behalf of His Infant Daughter,
Plaintiffs**

v.

**CIVIL ACTION
NO. SA-09-CA-188-FB**

**DAVID L. LAKEY, M. D., in His Official
Capacity as Commissioner of the Texas
Department of State Health Services;
NANCY W. DICKEY, M. D., in
Her Official Capacity as Vice Chancellor
for Health Affairs of the Texas A&M
University System and President of
the Texas A&M University Health
Science Center,
Defendants**

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("**Agreement**") is entered into by and between the following parties to this lawsuit ("**The Parties**"): Andrea Beleno, on behalf of her infant son, Geoffrey N. Courtney, on behalf of two children of his, Maryann Overath, on behalf of two minor children of hers, and Keith A. Taylor, on behalf of his infant daughter (collectively "**Plaintiffs**"); and David L. Lakey, M.D., in his official capacity as Commissioner of the Texas Department of State Health Services ("**DSHS**"), and Nancy W. Dickey, M.D., in her official capacity as Vice Chancellor for Health Affairs of the Texas A&M University System and President of the Texas A&M University Health Science Center (collectively "**Defendants**").

1. RECITALS AND STIPULATIONS

1.1 Plaintiffs originally filed this lawsuit (“**The Lawsuit**”) on March 12, 2009, seeking relief on behalf of their children, born or unborn, and on behalf of a putative class similarly situated.

1.2 Nancy Pacheco, originally a named plaintiff in this lawsuit, was dismissed by order of the court on September 17, 2009, and for this reason is not a party to this Agreement.

1.3 The Texas Department of State Health Services, Texas A&M University, and Roderick E. McCallum, in his official capacity as Interim Dean of the School of Rural Public Health at The Texas A&M University System Health Science Center, originally named as defendants in this lawsuit, were dismissed by order of the Court on September 17, 2009, and for this reason are not parties to this Agreement].

1.4 At the time of this Agreement, Plaintiffs’ live pleading is their First Amended Complaint, asserting claims against Defendants for declaratory and injunctive relief for alleged violations of protections against unlawful search and seizure under the Fourth Amendment to the United States Constitution, and for alleged violations of rights to liberty and privacy under the Fourteenth Amendment to the United States Constitution, in connection with Defendants’ storage and use of blood specimens obtained through Texas’s newborn screening (“**NBS**”) program.

1.5 No class has been certified in The Lawsuit.

1.6 This Agreement is entered into by and between The Parties for the purpose of compromising and settling all matters raised, or that could have been raised, in The Lawsuit, and to avoid the further time and expenses of litigation.

1.7 This Agreement does not constitute, and shall not be construed as, an admission by any party of the truth or validity of any claim or defense asserted by any other party in The Lawsuit, or as an admission that any action taken as set out herein was taken solely as a result of The Lawsuit.

1.8 This Agreement terminates all of Plaintiffs' claims, causes of action, disputes, controversies and/or disagreements against Defendants as of the Effective Date of this Agreement (as defined in paragraph 7.6), as more fully set forth herein.

1.9 In consideration of the facts and general releases and promises contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each party hereto, The Parties agree to settle this as provided herein.

2. TERMS OF SETTLEMENT

2.1 DSHS agrees to destroy all blood specimens in its or TAMHSC's possession which were taken from infants born in Texas as part of the NBS program and received by DSHS prior to May 27, 2009, for which DSHS does not at the time of destruction have written consent from the parent/guardian/managing conservator to retain and use those specimens.

2.2 The destruction referenced in paragraph 2.1 will be completed within 120 days of the entry of the Order of Dismissal, as described in paragraph 4.1, and will be confirmed within 10 days of such destruction by affidavit signed by the Assistant Commissioner over DSHS laboratory operations.

2.3 DSHS agrees to post on the NBS website a list of all research projects for which Defendants have provided NBS blood specimens as of the Effective Date of this Agreement. DSHS also agrees to post on the NBS website a comprehensive list of categories of quality

assurance and quality control uses for which Defendants have provided NBS blood specimens as of the Effective Date of this Agreement.

2.4 The information referenced in paragraph 2.3 will be posted within 30 days of the entry of the Order of Dismissal, as described in paragraph 4.1, and will remain posted for a period of not less than 180 days from the Effective Date of this Agreement.

2.5 DSHS agrees to inform the named plaintiffs, in writing, of uses to which their children's NBS blood specimens have been put, if any, as well as any financial transactions, if any, regarding those specimens as of the Effective Date of this Agreement.

2.6 The information referenced in paragraph 2.5 will be provided within 30 days of the entry of the Order of Dismissal, as described in paragraph 4.1.

2.7 DSHS agrees to revise the NBS blood specimen destruction request form to state that said form can be mailed to DSHS by the hospital/provider or the parent/guardian/managing conservator.

2.8 The revision referenced in paragraph 2.7 will be made within 30 days of the entry of the Order of Dismissal, as described in paragraph 4.1.

2.9 DSHS agrees to post a Spanish and Vietnamese translation of the NBS blood specimen destruction request form on the NBS website.

2.10 The Spanish and Vietnamese translations of the NBS blood specimen destruction request form will be posted on the NBS website within 60 days of the entry of the Order of Dismissal, as described in paragraph 4.1.

3. ATTORNEYS' FEES

3.1 DSHS agrees to pay a total of Twenty-six Thousand Seven Hundred Twenty-two and 50/100 (\$26,722.50) dollars to Jim Harrington, Texas Civil Rights Project, 1405 Montopolis Dr., Austin, TX 78741-3438, as counsel for Plaintiffs, in full payment and satisfaction for any and all attorneys' fees, costs, and expenses that Plaintiffs, or any counsel acting for them, may have incurred in connection with The Lawsuit, and otherwise constitutes full settlement of any and all monetary claims that were asserted or could have been asserted by Plaintiffs.

3.2 Payment for attorneys fees, costs, and expenses, as described in paragraph 3.1, shall be tendered to Jim Harrington, Texas Civil Rights Project, 1405 Montopolis Dr., Austin, TX 78741-3438, within five (5) business days of receipt by the Office of the Attorney General of the state warrant for said amount from the Texas Comptroller of Public Accounts.

4. DISMISSAL

4.1 The Parties will execute a Joint Stipulation of Dismissal, With Prejudice, and a proposed Order of Dismissal, With Prejudice, in the forms attached hereto as "Exhibit A." Within 10 days of the Effective Date of this Agreement (as defined by paragraph 7.6), The Parties will file such Joint Stipulation and proposed Order of Dismissal with the Court.

5. RELEASE

5.1 Plaintiffs and their respective past, present, and future officers and directors, shareholders, general partners, limited partners, employees, agents, attorneys, heirs, administrators, successors, assigns and insurers, hereby release, acquit and discharge Defendants, The Texas Department of State Health Services, Texas A&M University, and Roderick E. McCallum, in his official capacity as Interim Dean of the School of Rural Public Health at The

Texas A&M University System Health Science Center, and their respective past, present, and future officers, directors, shareholders, general partners, limited partners, employees, agents, officials, attorneys, heirs, administrators, successors, assigns and insurers from any and all claims, demands and causes of action arising out of or relating in any way to the Lawsuit, including claims, demands and causes of action alleged in The Lawsuit as well as claims, demands and causes of action that could have been alleged in The Lawsuit, but were not, whether known at present or discovered in the future. This release covers, but is not limited to, claims for declaratory and injunctive relief and claims for monetary damages, including but not limited to mental anguish, humiliation, emotional distress, bodily injury, actual and compensatory damages, and attorney's fees and costs, together with interest on same.

6. ENFORCEMENT

6.1 In the event of a dispute among The Parties as to compliance with the terms of this Agreement, the Parties will meet and confer for a period of not less than 21 days before taking any enforcement action.

6.2 In the event of litigation to enforce or interpret any provision of this Agreement, exclusive venue for such litigation shall be in state district court in Travis County, Texas.

7. MISCELLANEOUS PROVISIONS

7.1 This Agreement embodies all terms and conditions of all agreements between The Parties. This agreement may be amended only by a written agreement signed by The Parties and approved under the circumstances in effect at the time of the amendment.

7.2 This Agreement may be executed in multiple counterparts, which taken together shall constitute a single Agreement, and when executed by all parties below shall be enforceable as to all parties to the extent allowed by law.

7.3 The provisions of this Agreement are severable. If any provision of this Agreement is held, determined, or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining provisions and shall not affect the validity or enforceability of any remaining provisions.

7.4 This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals.

7.5 The Parties understand that this Agreement is subject to all necessary approvals by the State of Texas, including those that may be required from the appropriate officials at the Office of the Attorney General, the Office of the Governor, and the Office of the Comptroller of Public Accounts.

7.6 **Effective Date.** The Effective Date of this Agreement is the date on which the Agreement receives all necessary State approvals (as provided in paragraph 7.5) or the date of the latest signature to this Agreement, whichever occurs last.

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Signed and dated as indicated below.

ANDREA BELENO, on Behalf of Her Infant
Son, *Plaintiff*

Date

GEOFFREY N. COURTNEY, on
Behalf of Two Children of His, *Plaintiff*

Date

MARYANN OVERATH, on Behalf of
Two Minor Children of Hers, *Plaintiff*

Date

JAMES C. HARRINGTON
Texas Civil Rights Project
1405 Montopolis Drive
Austin, Texas 78741-3438
jch@mail.utexas.edu
Attorneys for Plaintiffs

Date

DAVID L. LAKEY, M. D., in His Official
Capacity as Commissioner of the Texas
Department of State Health Services,
Defendant

Date

NANCY W. DICKEY, M. D., in
Her Official Capacity as Vice Chancellor
for Health Affairs of the Texas A&M
University System and President of
the Texas A&M University Health
Science Center,
Defendant

Date