

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pamela and John Mark Crawford, as Parents of
M.C., a minor,

Plaintiff(s)

vs.

Medical University of South Carolina, South
Carolina Department of Social Services, and
Greenville Hospital System,

Defendant(s)

Submitted By: Kenneth M. Suggs
Address: Janet, Jenner & Suggs, LLC
500 Taylor Street, Suite 301
Columbia, SC 29201

SC Bar #: 5424
Telephone #: 803-726-0050
Fax #: 803-727-1059
Other:
E-mail: ksuggs@myadvocates.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

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| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input checked="" type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: May 14, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Pamela and John Mark Crawford,
as Parents of M.C., a minor,

Plaintiffs,

v.

Medical University of South
Carolina, South Carolina Department
of Social Services, and Greenville
Hospital System,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.

SUMMONS

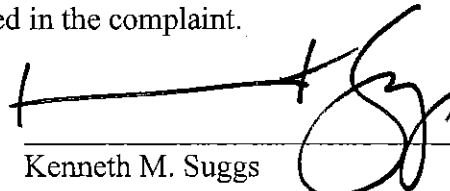
JEANETTE W. JOHNSON
C.C.P. & G.S.

2013 MAY 14 AM 8:52

FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.



Kenneth M. Suggs
Janet, Jenner & Suggs, LLC
500 Taylor Street, Suite 301
Columbia, SC 29201
(803) 726-0050 TEL
(803) 727-1059 FAX
ksuggs@myadvocates.com

Columbia, South Carolina
May 14, 2013

On behalf of Attorneys for Plaintiffs

Anne Tamar-Mattis
ADVOCATES FOR INFORMED CHOICE
P.O. Box 676
Cotati, CA 94931
(707) 793- 1190
director@aiclegal.org

John Lovi
William Ellerbe
STEPTOE & JOHNSON LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 506 3900
jlovi@steptoe.com
wellerbe@steptoe.com

Kristi Graunke
Alesdair H. Ittelson
SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
Montgomery, AL 36104
(334) 956-8200
kristi.graunke@splcenter.org
alesdair.ittelson@splcenter.org

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
Pamela and John Mark Crawford,)	
as Parents of M.C., a minor,)	
)	
Plaintiffs,)	COMPLAINT
v.)	
)	
Medical University of South Carolina,)	
South Carolina Department of Social)	
Services, and Greenville Hospital System,)	
)	
Defendants.)	

PRELIMINARY STATEMENT

1. This lawsuit challenges the decision by doctors to perform an irreversible, painful, and medically unnecessary sex assignment surgery on a sixteen-month-old child in state custody, and the failure of the South Carolina Department of Social Services to protect him from this surgery. Doctors, acting as agents and servants of Defendant hospitals, performed this surgery for the purpose of “assigning” the child the female gender despite their own conclusion that M.C. “was a true hermaphrodite but that there was no compelling reason that she should either be male or female.”

2. Plaintiff M.C. is currently eight years old. When M.C. was an infant, the South Carolina Department of Social Services (“SCDSS”) took him into state care and custody because M.C.’s biological mother was deemed unfit and M.C.’s father was deemed to have abandoned him. M.C.’s biological parents’ rights were ultimately terminated. SCDSS retained control over M.C.’s medical decisions for the entirety of the period he remained in state custody.

3. At birth, M.C. was identified as a male based on his external genitalia. Shortly after birth, however, M.C.'s doctors discovered that M.C. had "ambiguous genitals" and both male and female internal reproductive structures. As his medical records repeatedly indicated, M.C.'s doctors determined that he could be raised as either a boy or a girl, and that there was no medical necessity to remove any of his genital tissue.

4. Despite not knowing whether M.C. would ultimately grow up to be a man or a woman, and whether he would elect to have any genital surgery, Defendants decided to remove M.C.'s healthy genital tissue and radically restructure his reproductive organs in order to make his body appear to be female.

5. Despite the fact that M.C.'s condition did not threaten his health, the doctors, acting as agents and servants of Defendant hospitals, along with SCDSS employees, planned and decided to perform a "feminizing-genitoplasty" on the sixteen-month-old M.C. During this surgery, doctors cut off M.C.'s phallus to reduce it to the size of a clitoris, removed one of M.C.'s testicles, excised all testicular tissue from M.C.'s second gonad, and constructed labia for M.C. The surgery eliminated M.C.'s potential to procreate as a male and caused a significant and permanent impairment of sexual function. Doctors communicated amongst themselves and ultimately performed the surgery without consulting an ethics board. SCDSS, despite being made aware of the nature of the surgery, neglected to protect M.C. from the catastrophic loss that resulted.

6. M.C. was just under sixteen months old at the time of the surgery. The doctors knew that sex assignment surgeries on infants with conditions like M.C.'s poses a significant risk of imposing a gender that is ultimately rejected by the patient. Indeed, one of the doctors who performed the surgery on M.C. had previously published an article in a medical journal wherein

he recognized that “carrying out a feminizing-genitoplasty on an infant who might eventually identify herself as a boy would be catastrophic.”

7. Since a young age, M.C. has shown strong signs of developing a male gender. His interests, manner and play, and refusal to be identified as a girl indicate that M.C.’s gender has developed as male. Indeed, M.C. is living as a boy with the support of his family, friends, school, religious leaders, and pediatrician.

8. The irreversible, invasive, and painful sex assignment surgery was unnecessary to M.C.’s medical well-being. Medical authority recognizes that children like M.C. may be assigned a gender of rearing independent of any surgery, meaning M.C. could have been raised as a girl or a boy until he was old enough for his gender identity to emerge. At that point, M.C. and his guardians could have made appropriate decisions regarding medical treatment—including whether to have any surgery at all.

9. Defendants usurped these intimate and profound decisions from M.C. when he was barely older than an infant, knowing that surgically mis-assigning M.C.’s sex would lead to disastrous results. Unfortunately, medical technology has not devised a way to replace what M.C. has lost.

10. Defendants knowingly approved an invasive, painful, and irreversible feminizing-genitoplasty surgery on him despite the fact that such surgery often sterilizes the individual, in many cases leaves the individual with limited or absent sexual response, and impairs the individual’s ability to function sexually as the person might have chosen without surgery. Under the circumstances, defendants’ actions constituted an egregious failure to exercise even slight care.

11. Despite the fact that M.C. could have been raised as either a boy or a girl without

irreversible surgery, Defendants rushed to put into place a treatment plan that centered on a medically unnecessary, painful, and irreversible sex-assignment surgery on a sixteen-month-old child. Defendants permanently changed M.C.'s body, disregarding his well-being and causing M.C. irreparable injury. Through this suit, M.C., by and through his parents and legal guardians Pamela and John Mark Crawford, seeks to vindicate his rights.

PARTIES

12. The plaintiffs are the mother and father and natural guardians of M.C., a minor, and will apply to the Court to be appointed Guardians ad Litem for the purposes of this litigation. They bring this action in their representative capacity for the benefit of M.C., their son.

13. Defendant Medical University of South Carolina ("MUSC") is a medical care facility licensed within the State of South Carolina, with its hospital facility located in County of Charleston, State of South Carolina. MUSC is an "agency" of the State of South Carolina and is made a party to this action pursuant to the South Carolina Tort Claims Act, § 15-78-10 et seq. At all relevant times, MUSC provided medical care to M.C. pursuant to the state's responsibility for the well-being and care of M.C.

14. Defendant Greenville Hospital System, d/b/a Greenville Memorial Hospital (hereinafter "Greenville Hospital"), is a public hospital and is subject to liability under the provisions of the South Carolina Tort Claims Act, § 15-78-10 et seq. Greenville Hospital is located in Greenville County, South Carolina. Greenville Hospital System operates numerous hospitals and facilities, including Greenville Memorial Hospital, the one named in this complaint. At all relevant times, Greenville Hospital provided medical care to M.C. pursuant to the state's responsibility for the well-being and care of M.C.

15. Defendant South Carolina Department of Social Services ("SCDSS") is an agency

of the State of South Carolina, with offices located statewide and its main office in Columbia, South Carolina. SCDSS is charged with protecting the safety and well-being of children, like M.C., who are entrusted to its care and custody. SCDSS retained custody of M.C. and had the authority to make all medical decisions for him from February 16, 2005, the date of the ex-parte order removing M.C. from his biological parents, until December 11, 2006, the date that M.C. was adopted.

FACTUAL BACKGROUND

Social Services Takes Custody of M.C. Shortly After His Birth

16. Shortly after M.C.'s birth on November 20, 2004, Defendant SCDSS began an investigation into possible neglect by his biological parents. About six months later, SCDSS filed a termination of parental rights complaint. The court terminated M.C.'s biological parents' parental rights on September 9, 2006. SCDSS retained the authority to make all medical decisions for M.C. from February 16, 2005, the date of the ex parte order removing M.C. from his biological parents, until December 11, 2006, the date that he was adopted.

17. During the time M.C. was in SCDSS care, the agency made decisions as to whether to authorize all medical treatment. This included preparing paperwork, instructing M.C.'s foster family to deliver M.C. to medical appointments, and following internal consent procedures. According to SCDSS policy, any significant medical decision for a child in SCDSS custody required the authorization of the state director of SCDSS.

18. SCDSS employees received multiple communications from Defendant hospitals, acting by and through doctors acting under their control, recommending the sex assignment treatment plan for M.C. Upon information and belief, SCDSS officials authorized the sex assignment surgery, coordinated the logistical steps needed to implement the plan (including, but

not limited to, coordinating transport and M.C.'s appointment times with the foster mother, and the completion of necessary paperwork) and provided the requisite "Checklist of Necessary Information" that described the sex assignment surgery to be approved by the SCDSS State Director. Yet, at no point did SCDSS employees take action to protect M.C. from the surgery that would remove his healthy genital tissue, nor did they ensure that individual SCDSS employees approving these decisions were adequately informed about the nature and risks of these extremely serious procedures to appropriately weigh the consequences for M.C..

M.C.'s Diagnosis of Ovotesticular DSD

19. M.C. was born with a condition called ovotesticular DSD (Difference/Disorder of Sex Development). Previously referred to as "true hermaphroditism," ovotesticular DSD is characterized by the presence of both ovarian and testicular tissue.

20. M.C.'s doctors identified him as male in both the labor and delivery summary and the newborn identification form. He was born with a testicle, an ovotestis (a gonad with both ovarian and testicular tissue), and other male and female internal reproductive structures. The medical record of M.C. at birth noted that his "phallus was rather large," measuring approximately 1.5 to 2 centimeters in length. Routine blood tests indicated that M.C.'s testosterone levels were "extremely elevated." Subsequent medical records note that the M.C. was born with small vaginal opening below a "significant" phallus, with a "scrotalized" labia.

21. On April 26, 2005, when M.C. was about six months old, Dr. Michael Gauderer, a pediatric surgeon and agent and servant of Defendant Greenville Hospital System performed surgery on M.C. related to M.C.'s acid reflux condition. During the surgery, Gauderer performed exploratory surgery to inspect M.C.'s internal sex organs. His medical report indicates that M.C. had "ambiguous" genitalia, and that one gonad most closely resembled an

ovary and the other gonad most closely resembled a testis.

22. In a letter to M.C.'s pediatrician dated October 5, 2005, Doctor James Amrhein, a pediatric endocrinologist and agent and servant of Defendant Greenville Hospital System who had become involved in M.C.'s case earlier that February, described M.C.'s DSD as "confusing." In the letter, he noted that M.C. had a vagina and perhaps a uterus, but that M.C. also had "a 3.0 cm well-developed phallus" and "scrotalized labia," and that M.C.'s testosterone levels were "extremely elevated." Amrhein noted that despite his intersex condition, M.C. "continue[d] to do well with no specific concerns or problems."

Decision to Perform Sex Assignment Surgery on M.C.

23. Following the surgery performed by Gauderer, Amrhein wrote to M.C.'s pediatrician, stating that in his opinion, M.C. was a "true hermaphrodite." Amrhein further opined that a decision needed to be made regarding M.C.'s gender of rearing and "surgical correction." Having decided that M.C. needed "surgical correction," Amrhein referred his case to Doctor Ian Aaronson, pediatric urologist and agent and servant of Defendant MUSC, and Doctor Yaw Appiagyei-Dankah, a pediatric endocrinologist and agent and servant of MUSC. Aaronson, Appiagyei-Dankah, and Amrhein collaborated to decide to perform the sex assignment surgery on M.C., and Aaronson ultimately performed the sex assignment surgery.

24. Over the next six months, from January to May 2006, Aaronson and Appiagyei-Dankah examined M.C. at MUSC several times and discussed his condition amongst themselves, sometimes with involvement of various SCDSS employees. Having examined M.C., Aaronson, Appiagyei-Dankah, and Amrhein all concurred that there was no compelling biological reason to raise M.C. as either male or female. This view is noted in the following medical records:

- a. January 18, 2006: "Due to the nature of [M.C.'s] external genital anatomy, either

sex of rearing is possible with appropriate surgery.” [Doctor Appiagyei-Dankah’s progress notes];

- b. January 18, 2006: “I was... able to reassure both her social worker and adoptive [sic] mother that as far as the external genitalia are concerned, this can be corrected surgically so that the baby looks either a normal boy or girl” [Letter from Aaronson to Amrhein];
- c. February 27, 2006: “[C]urrently she could be potentially raised, surgically reconstructed, and treated to be male or female.” [Appiagyei-Dankah’s progress notes];
- d. February 27, 2006: “[M]y bias at the moment is towards female, although I have raised the possibility, because of the substantial virilization of the external genitalia, that there may have been sufficient testosterone imprinting to question ultimate gender identity.” [Appiagyei-Dankah’s progress notes];
- e. December 27, 2006: “Dr. Appiagyei noted that this was a case of ‘true hermaphroditism’ and he ordered additional lab work. Dr. Aaronson concurred that this was a true hermaphrodite but that there was no compelling reason that she should be either male or female—the decision was made to raise her as female. On April 17th, 2006 she had preoperative labwork and was admitted for surgery on April 18th, 2006.” [Developmental Pediatric Evaluation].

25. Aaronson’s notes indicate that he was aware that M.C.’s exposure to high levels of testosterone (“testosterone imprinting”) could affect M.C.’s ultimate gender identification. In a letter to Amrhein, which copied Appiagyei-Dankah, Aaronson stated that “because of the substantial virilization of the external genitalia, that there may have been testosterone imprinting to question ultimate gender identity.”

26. Aaronson was also aware that the effects of performing irreversible feminizing surgery on a child who might ultimately identify as a boy would be devastating. In fact, Aaronson had earlier published an article in a medical journal where he recognized that “carrying out a feminizing genitoplasty on an infant who might eventually identify herself as a boy would

be catastrophic.”¹ Yet, upon information and belief, the catastrophic risk of performing a medically-unnecessary sex assignment surgery that could result in sterilization, among other risks, when the child’s ultimate gender was still uncertain was not explained to those responsible for M.C.’s safety and well-being.

27. No medical standard exists to determine the gender of a child with M.C.’s condition, particularly at such an early age. Amrhein, Aaronson and Appiagyei-Dankah knew they could not predict whether the child’s gender would develop as male or female.

28. Despite knowing that they could assign M.C. a gender of rearing and postpone surgery, and that they could not reasonably predict whether M.C. would ultimately identify as a man or a woman, Aaronson, Appiagyei-Dankah, and Amrhein formed the treatment team that ultimately urged SCDSS officials that M.C. undergo sex assignment surgery in order to make his body appear female.

29. In urging that sex assignment surgery for M.C., Aaronson, Appiagyei-Dankah, and Amrhein knew of the irreversible nature of the surgery and its severe risks, which include complete loss of sexual function, scarring, loss of male fertility, gender mis-assignment, and lifetime psychological distress. Aaronson, Appiagyei-Dankah, and Amrhein did not disclose these serious risks to SCDSS decision makers. The doctors recommended a treatment plan that included sex assignment surgery, with the doctors jointly recommending to SCDSS officials that they authorize sex assignment surgery, and reassuring SCDSS officials of the positive outcomes, although none fully described the potentially negative outcomes. Each doctor contributed to the decision based on his area of specialization. At no point did any of these doctors request an ethics consultation or alert those responsible for M.C.’s care that such measures should be taken

¹ Ian A. Aaronson, *The Investigation and Management of the Infant with Ambiguous Genitalia: A Surgeon’s Perspective*, 31 *Curr. Probl. Pediat.* 168 (2001).

when considering such a life-altering decision.

Medically Unnecessary Sex Assignment Surgery is Performed on M.C.

30. On April 18, 2006, with the final SCDSS authorization provided over the phone by a SCDSS caseworker who appears nowhere else in M.C.'s medical record, Aaronson surgically removed the majority of M.C.'s phallus, calling it a "reduction clitoroplasty." He also effectively castrated M.C., removing his one functioning testicle and most, if not all, of the testicular tissue in his other gonad.

31. There was no medical necessity to perform sex assignment surgery on M.C. as a sixteen-month-old child. There was no medical reason why surgery could not be postponed until M.C.'s gender emerged. M.C.'s condition had no negative impact on his physical well-being at the time and M.C. could have been raised as female or male without immediate genital surgery. These actions caused emotional trauma, stress, physical pain and confinement, loss of bodily integrity, permanently impacted M.C.'s potential to function sexually and permanently destroyed M.C.'s potential male reproductive function.

32. Defendants MUSC and Greenville Hospital's actions deprived M.C. of the opportunity to delay the decision regarding which sexual surgeries to have until after M.C.'s dominant gender characteristics emerged. They deprived M.C. of the ability to make the very personal decision of which genital surgeries, if any, he wanted.

33. At no relevant time did Defendants MUSC or Greenville Hospital request or initiate an ethics consult to call into question whether M.C. should have such a life-altering surgery at such a young age. Aaronson, Appiagyi-Dankah, and Amrhein knew no such ethics consult had taken place prior to the decision to proceed with the sex assignment surgery and did not advise SCDSS officials of the potential for such an oversight.

Defendant South Carolina Department of Social Services Officials Subject M.C. to Medically Unnecessary Sex Assignment Surgery

34. SCDSS retained custody of M.C. and had the authority to make all medical decisions for him from February 16, 2005, the date of the ex-parte order removing him from his biological parents, until December 11, 2006, the date that he was adopted. At least four SCDSS employees responsible for M.C.'s care and well-being attended M.C.'s medical appointments at various points during the time when it was decided that M.C. undergo sex assignment surgery, although no single person appears as a coordinating contact in the medical record.

35. Various SCDSS employees received multiple communications from Aaronson, Amrhein, and Appiagyei-Dankah's regarding the recommended sex assignment treatment plan for M.C. SCDSS authorized the sex assignment surgery and participated in the implementation of the sex assignment surgery. Among other things, SCDSS coordinated the logistical steps needed to implement the plan (including, but not limited to, coordinating transport and M.C.'s appointment times with the foster mother, and completion of necessary paperwork) and provided the requisite "Checklist of Necessary Information" that described the sex assignment surgery (to be approved by the SCDSS State Director).

36. SCDSS policy, effective September 2, 2003, required the signature of the SCDSS State Director for any "major surgery" requiring in-patient hospitalization. Among other items in a "Check List of Necessary Information" to be attached to the request for consent included the following:

- a. "Nature of the proposed medical procedure (in non-medical English);"
- b. "Significant risks presented by the procedure;"

- c. "Why the doctor believes the procedure is needed, and the anticipated result of the procedure;" and
- d. "Physician's/hospital's consent forms (if applicable)."

37. Upon information and belief, the SCDSS State Director signed the request for consent, thus allowing the surgery. SCDSS employees directly interacting with M.C. brought him to appointments with Aaronson, Amrhein, and Appiagyei-Dankah and prepared the consent materials explained in the above paragraph. In signing and preparing these necessary consent procedures, Defendant SCDSS was aware of the nature of the surgery, including the removal of M.C.'s phallus and testicular tissue, resulting in the elimination of his male sexual function and reproductive ability that would severely interfere with M.C.'s future.

38. Despite being entrusted with M.C.'s safety and well-being, Defendant SCDSS employees taking steps to approve and facilitate the treatment plan all failed to inquire as to the potential catastrophic loss to M.C. if this extraordinary surgery was performed. Defendant SCDSS failed to initiate notice or a hearing that would have provided some measure of consideration concerning such a life-altering and medically unnecessary decision. Defendant SCDSS knew no such hearing had taken place prior to the decision to proceed with the sex assignment surgery. Due to the sporadic attendance of multiple SCDSS case workers at conferences regarding M.C.'s medical treatment within different time frames, Defendant SCDSS should have been aware that no one SCDSS case worker's consent to surgery was adequately informed. They should have been aware that no SCDSS representative had a full picture of the risks of and alternatives to surgery. Subjecting M.C. to such a surgery coupled with the failure to further inquire as to the lasting impact on M.C.'s reproductive capacity, sexual function, and the potential for gender mis-assignment was an intentional and conscious failure to exercise even slight care under the circumstances.

M.C.'s Adoption and Later Development

39. In June 2006, two months after the sex assignment surgery, Pam Crawford and Mark Crawford saw M.C.'s profile on the State of South Carolina's child adoption website. Mrs. Crawford expressed her interest in adopting M.C. and learned about his condition. Based on her familiarity with the negative effects of these surgeries through the experience of a childhood friend, Mrs. Crawford called the agency and clearly expressed the family's desire not to subject M.C. to unnecessary sex assignment surgery. Unfortunately, the surgery had already been completed. Mr. and Mrs. Crawford gained custody of M.C. in August 2006, and legally adopted him on December 11, 2006.

40. Mr. and Mrs. Crawford initially raised M.C. as a female in accordance with the gender of rearing. However, he has always shown strong signs of developing a male gender. His interests, manner and play, and refusal to be identified as a girl indicate that M.C.'s gender has developed as male. Indeed, M.C. is living as a boy with the support of his family, friends, school, religious leaders, and pediatrician.

COUNT ONE: Medical Malpractice

(as against the Medical University of South Carolina and Greenville Hospital System, under South Carolina Actions for Medical Malpractice, Code 1976 § 15-3-545)

41. Plaintiff incorporates paragraphs 1-40 of the Complaint as if fully stated herein.

42. Under the doctrine of informed consent, a physician who performs a diagnostic, therapeutic, or surgical procedure has a duty to obtain a patient's informed consent before proceeding in the absence of an emergency that warrants immediate medical treatment. This duty obligates the doctor to disclose: (1) the diagnosis; (2) the general nature of the contemplated procedure; (3) the material risks involved in the procedure; (4) the probability of success

associated with the procedure; (5) the prognosis if the procedure is not carried out; and (6) the existence of any alternatives to the procedure. This duty also obligates doctors to take reasonable steps to ensure that the party providing consent is competent to do so.

43. The agents and servants of Defendants MUSC and Greenville Hospital breached these professional duties by failing to obtain informed consent for the sex assignment surgery that removed M.C.'s phallus and testicular tissue. Because Plaintiff was a sixteen month old minor, he was incapable of providing informed consent. Because Plaintiff was in SCDSS custody at the time of the surgery, Defendants MUSC and Greenville Hospital were required to provide SCDSS officials in charge of Plaintiff's medical treatment with the information they need to exercise informed consent on M.C.'s behalf.

44. In urging SCDSS officials overseeing and coordinating M.C.'s medical treatment to consent to the sex assignment surgery proposed by doctors Aaronson, Amrhein, and Appiagyei-Dankah, Defendants MUSC and Greenville Hospital failed to adequately disclose the material risks of gender misassignment, loss of sexual function, and sterilization to the person who provided authorization for surgery or to others involved in authorizing the decision. In addition, Defendants MUSC and Greenville Hospital did not disclose that surgery was not medically necessary for Plaintiff's health, that it was irreversible, that it could be postponed until the gender identity was certain, and that it could cause significant and permanent injury to Plaintiff. Each of the three doctors involved was aware of these risks, and all three acted jointly and separately to advise and encourage SCDSS to authorize the sex assignment surgery. Upon information and belief, no ethics consult was performed with any hospital's staff in order to determine whether the surgery was in M.C.'s best interest.

45. After interacting with multiple SCDSS case workers who made decisions regarding M.C.'s medical treatment within different time frames, the agents and servants of Defendants MUSC and Greenville Hospital should have been aware that no one SCDSS case worker's consent to surgery was adequately informed. They should have been aware that no SCDSS representative understood the risks of and alternatives to surgery. Accordingly,

Defendants, MUSC and Greenville Hospital, acting by and through doctors Aaronson, Amrhein, and Appiagyei-Dankah should have been aware that SCDSS officials could not have made an informed decision concerning this irreversible medical treatment.

46. The undisclosed risks of this surgery have developed as M.C.'s sex assignment surgery has physically and emotionally injured, and continues to injure, M.C. The agents and servants of Defendants MUSC Greenville Hospital removed healthy genital and gonadal tissue and eliminated M.C.'s male reproductive ability and sexual function, knowing there was a significant possibility that the genitalia would ultimately be misaligned with his gender, that the surgery could be postponed until the gender identity was clear, and that there was significant risk of loss of fertility and sexual function. Finally, there was no medical necessity to perform this surgery on a sixteen month old child.

47. Defendants MUSC and Greenville Hospital were negligent, careless and reckless and deviated from accepted medical standards of care in the following particulars:

a. As to MUSC as an institution:

- (1) by failing to adequately disclose the material risks of gender mis-assignment,
- (2) by failing to adequately disclose loss of sexual function, and risk of sterilization;
- (3) by failing to disclose that surgery was not medically necessary for Plaintiff's health;
- (4) by failing to disclose that surgery was irreversible;
- (5) by failing to disclose that surgery could be postponed until the gender identity was certain;
- (6) by failing to disclose that surgery could cause significant and permanent injury to Plaintiff;

- (7) by failing to obtain an ethics consultation to determine if the procedure was in M.C.'s best interest; and
- (8) in such other and further particulars as the evidence adduced in discovery and at trial may disclose.

b. As to Greenville Hospital as an institution:

- (1) by failing to adequately disclose the material risks of gender mis-assignment,
- (2) by failing to adequately disclose loss of sexual function, and risk of sterilization;
- (3) by failing to disclose that surgery was not medically necessary for Plaintiff's health;
- (4) by failing to disclose that surgery was irreversible;
- (5) by failing to disclose that surgery could be postponed until the gender identity was certain;
- (6) by failing to disclose that surgery could cause significant and permanent injury to Plaintiff;
- (7) by failing to obtain an ethics consultation to determine if the procedure was in M.C.'s best interest; and
- (8) in such other and further particulars as the evidence adduced in discovery and at trial may disclose.

48. The above deviations from acceptable standards of care combined and concurred as proximate causes of the injuries and damages sustained by M.C. A reasonable patient in

M.C.'s position would have refused this procedure if fully informed of the risks and the option to wait.

49. As a result of the negligent, careless and reckless acts of Defendants MUSC and Greenville Hospital, acting by and through doctors Aaronson, Amrhein, and Appiagyeyi-Dankah, and their deviations from acceptable standards of care, M.C. suffered a non-medically necessary sex assignment surgery involving the removal of M.C.'s phallus and testicular tissue, resulting in, in the past and future:

- a. elimination of M.C.'s male sexual function;
- b. loss of potential male fertility;
- c. loss of sexual sensation; and
- d. loss of the ability to make an informed decision as to which genital surgeries to have, if any at all.

COUNT TWO: Gross Negligence

(as against the South Carolina Department of Social Services under the South Carolina Tort Claims Act, Code 1976 § 15-78-10)

50. Plaintiff incorporates paragraphs 1-49 of the Complaint as if fully stated herein.

51. During the time M.C. was in Defendant SCDSS's care, at least four different employees attended M.C.'s medical appointments at various points during the time that Defendants decided M.C. would undergo sex assignment surgery. Medical records do not indicate any consistent SCDSS presence at medical appointments. Defendant SCDSS' employees authorizing and facilitating this procedure were each aware that they did not have a full picture of the risks of this extraordinary surgery.

52. Defendant SCDSS employees knew that the proposed treatment plan was a sex

assignment surgery, and that such a surgery included the removal of healthy genital and testicular tissue that could result in sterilization. Yet at no time did Defendant SCDSS' employees request or initiate a hearing to protect M.C.'s interests. SCDSS' employees knew no such hearing had taken place prior to the decision to proceed with the sex assignment surgery. Nor did they further inquire as to the lasting impact on M.C.'s reproductive capacity, sexual function, and the potential for gender mis-assignment.

53. Defendant SCDSS' cooperation in the sex assignment treatment plan deprived M.C. of the opportunity to delay the decision regarding which sexual surgeries to have until after M.C.'s gender emerged.

54. In providing consent to the sex assignment surgery, cooperating with doctors in the treatment plan to perform these procedures, failing to inquire as to the lasting impact of this extraordinary procedure, failing to act to ensure an informed, consistent decision-maker, and failing to provide or request a hearing to determine whether the sex assignment surgery that removed healthy genital tissue and eliminated M.C.'s male reproductive ability and sexual function was in his best interest, Defendant SCDSS, acting by and through its employees and agents, failed to exercise even slight care with regard to M.C.'s well-being.

55. Defendant SCDSS' employees would have known that removing a child's healthy gonad, amputating his phallus, and otherwise surgically reconstructing a child's genitals were extreme and catastrophic actions. Defendant SCDSS' employees authorized this surgery on a child entrusted to their care, resulting in an irreversible and catastrophic mistake. Given the gravity of the surgery and the obvious impact such a surgery would have on M.C.'s life, Defendant SCDSS's authorization of and facilitation of the sex assignment surgery constituted a failure to exercise even slight care under the circumstances.

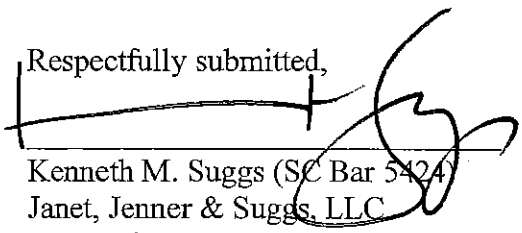
REQUESTED RELIEF

56. As a direct and proximate result of the negligent, careless and reckless acts as set forth above, and the injuries and damages to Plaintiff as set forth above, Plaintiff is entitled to compensation for such injuries and damages through his life expectancy.

57. WHEREFORE, Plaintiff prays for actual damages in a sum sufficient to compensate the minor-Plaintiff for his actual damages, for punitive damages in a sum sufficient to compensate the minor-Plaintiff for his actual damages, for punitive damages in an amount to be determined by the jury, for the costs of this action, and such other and further relief as the Court may deem just and proper.

Dated: May 14, 2013

Respectfully submitted,



Kenneth M. Suggs (SC Bar 5424)
Janet, Jenner & Suggs, LLC
500 Taylor Street, Suite 301
Columbia, SC 29201
(803) 726-0050 TEL
ksuggs@myadvocates.com

On behalf of Attorneys for Plaintiff

Anne Tamar-Mattis*
ADVOCATES FOR INFORMED CHOICE
P.O. Box 676
Cotati, CA 94931
(707) 793- 1190
director@aiclegal.org

Alesdair H. Ittelson*
SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
Montgomery, AL 36104
(334) 956-8200
alesdair.ittelson@splcenter.org

John Lovi*
William Ellerbe*
STEPTOE & JOHNSON LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 506 3900
jlovi@steptoe.com
wellerbe@steptoe.com

Kristi L. Graunke*
SOUTHERN POVERTY LAW CENTER
233 Peachtree St. NE, Suite 2150
Atlanta, GA 30303
(404) 521-6700
kristi.graunke@splcenter.org

* Applications for *pro hac vice* admission forthcoming