

**IN THE CIRCUIT COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

JANICE B. MORENO, as sister and Court
Appointed Personal Representative/
Administrator of the Estate of JOHN
FRANCIS BULMANSKI, deceased,

Plaintiff,

Case No. CT-2528-20

vs.

Division 4

RHA HEALTH SERVICES TN, LLC and
RHA HEALTH SERVICES, LLC;

Defendants.

COMPLAINT

Plaintiff Janice Moreno in her capacity as sister and Court Appointed Personal Representative/Administrator of the Estate of John Francis Bulmanski, deceased, by and through undersigned counsel, files this Complaint against Defendants RHA Health Services TN, LLC and RHA Health Services, LLC, and in support shows as follows:

I. PARTIES

1. Plaintiff Janice Moreno is an adult resident citizen of Memphis, Shelby County, Tennessee, and was at all times relevant hereto. Plaintiff is the sister and the Court Appointed Personal Representative/Administrator of the Estate of her brother, John Francis Bulmanski, deceased, who was an adult resident citizen of Shelby County, Tennessee at the time of his death and was at all times relevant hereto. Plaintiff Janice Moreno is authorized by Court Order to bring this lawsuit and is doing so for the benefit of all wrongful death/surviving beneficiaries of her brother John Francis Bulmanski, who was a quadriplegic and who was developmentally disabled

at the time of his death. Plaintiff is bringing this action under Tennessee common law as well as pursuant to Tennessee's Healthcare Liability Act and any other applicable law. Plaintiff Janice Moreno is bringing this cause of action in her capacity as the Court Appointed Personal Representative/Administrator of the Estate of John Francis Bulmanski, deceased, and as sister of John Bulmanski and next friend on behalf of all wrongful death beneficiaries of John Francis Bulmanski (including herself, her other brother, Theodore Bulmanski, her sister, Brenda Smith and her sister Barbara Hawks) arising in tort as a result of personal injuries John Bulmanski sustained on or about June 25 and/or 26, 2019 in Shelby County, Tennessee.

2. Defendant RHA Health Services TN, LLC (hereinafter "Defendant RHA/TN") is a limited liability company licensed to do business in the State of Tennessee and was so licensed at all times relevant to this action. Defendant RHA/TN may be served with process by serving its registered agent, CT Corporation System, 300 Montvue Road, Knoxville, Tennessee 37919-5546. Upon information and belief, the staff, aids, sitters, drivers, healthcare workers and nurses that provided care at the home/facility where John Bulmanski resided on June 25 and 26, 2019, were all employees and/or agents of Defendant RHA/TN acting in the course and scope of their employment and/or agency at all times relevant to this claim. Therefore, Defendant RHA/TN is vicariously liable for their negligence. Defendant RHA/TN is also liable for its direct negligence which caused harm to Mr. Bulmanski including but not limited to its policies, customs, training, hiring, supervision and staffing.

3. Defendant RHA Health Services, LLC (hereinafter "Defendant RHA Health, LLC") is a limited liability company licensed to do business in the State of Tennessee and was so licensed at all times relevant to this action. Defendant RHA Health, LLC may be served with process by serving its registered agent, CT Corporation System, 300 Montvue Road, Knoxville,

Tennessee 37919-5546. Upon information and belief and by way of alternative pleading, the staff, aids, sitters, drivers, healthcare workers and nurses that provided care at the home/facility where John Bulmanski resided on June 25 and 26, 2019, were all employees and/or agents of Defendant RHA Health, LLC acting in the course and scope of their employment and/or agency at all times relevant to this claim. Therefore, Defendant RHA Health, LLC is vicariously liable for their negligence. Defendant RHA Health, LLC is also liable for its direct negligence which caused harm to Mr. Bulmanski including but not limited to its policies, customs, training, hiring, supervision and staffing.

4. Defendants RHA Health Services TN, LLC and RHA Health Services, LLC shall be referred to hereinafter collectively as the “RHA Defendants.” When Plaintiff refers to the RHA Defendants throughout this Complaint, she is referring to the RHA Defendant that employed the individuals responsible for the care of her brother at all times relevant to this claim and who were responsible for the hiring, training and supervision of such employees and the RHA Defendant that owned and maintained the van that transported John Francis Bulmanski at all relevant times to this action.

5. Plaintiff asserts that one or more of the RHA Defendants employed the individuals responsible for Mr. Bulmanski’s care and treatment at all relevant times to this Complaint and has named both of these RHA Defendants out of an overabundance of caution to make sure the proper defendant is before the Court. Additionally, Plaintiff asserts that one or more of the RHA Defendants owned the vehicle in which Mr. Bulmanski was transported and/or owned and/or operated the house in which Mr. Bulmanski was a resident at all relevant times to this Complaint.

6. RHA Defendants had a contract with the Tennessee Department of Intellectual and Developmental Disabilities (“DIDD”) and/or another Tennessee agency and was responsible for

staffing the home in which John Bulmanski resided at all times relevant to this action as well as staffing any and all care and support services for John Bulmanski through the home with competent and trained individuals and appropriate equipment. Plaintiff asserts that John Bulmanski was under the care and control of such staff at all relevant times to this Complaint.

II. COMPLIANCE OF NOTICE AND GOOD FAITH REQUIREMENTS

7. Plaintiff has complied with the notice requirements outlined in T.C.A. § 29-26-121 including, but not limited to, T.C.A. § 29-26-121(a) concerning these Defendants and as such, this Complaint is appropriately and timely filed. Counsel for Plaintiff is filing a Certificate of Good Faith contemporaneously with this Complaint, confirming that the undersigned has consulted with competent experts who believe there is a good faith basis to pursue this claim.

8. Plaintiff is filing this claim at least in part pursuant to the Tennessee Healthcare Liability Act because the claim arises out of Defendants' failure to provide appropriate care to a disabled adult in accordance with the applicable standard of care and in compliance with the rules, regulations and guidelines of the State of Tennessee with regard to caring for and/or supervising disabled adults. Plaintiff has fully complied with all of the notice requirements set forth in such act.

II. JURISDICTION AND VENUE

9. The events giving rise to this Complaint occurred in Memphis, Shelby County, Tennessee on or about June 25 and/or 26, 2019.

10. This Court has jurisdiction over this action pursuant to inter alia Tenn. Code Ann. § 16-10-101, § 29-20-205, § 29-20-307, and any other applicable provisions of law.

11. Venue is proper in this Court pursuant to inter alia Tenn. Code Ann. § 20-4-101, because all or part of this cause of action arose within Shelby County, Tennessee.

III. FACTS

12. John Francis Bulmanski was a 58-year-old man with developmental disabilities in June of 2019 prior to the incident that is the subject of this Complaint.

13. At all times relevant to this claim, Mr. Bulmanski was a disabled adult who resided at a group home owned and/or operated by the RHA Defendants.

14. Although Mr. Bulmanski was disabled prior to the incident, he was active and enjoyed his life. Mr. Bulmanski used a wheelchair, but was able to assist in his transfers from the wheelchair and bed and was in an overall good state of health prior to the incident. Mr. Bulmanski was able to move his arms and legs and hands and feet before the incident that is the subject of this Complaint.

15. Mr. Bulmanski had a history of schizophrenia, bipolar disorder, macular degeneration, seizure disorder, benign essential tremors and chronic arthritis and was a disabled adult because of these conditions.

16. On or about June 25, 2019, employees of the RHA Defendants transported Mr. Bulmanski to MedPost Urgent Care to treat an abrasion on his left lower leg. The physician at MedPost Urgent Care noted that no wound care was needed for Mr. Bulmanski and instructed his caregivers to give him Acetaminophen if he needed anything for pain.

17. Prior to and at the visit to MedPost Urgent Care, Mr. Bulmanski was able to move his legs and arms and hands and feet and was otherwise doing well.

18. Upon information and belief, Mr. Bulmanski was transported to MedPost Urgent Care in his wheelchair in a van designed to transport handicapped individuals that was owned, operated and maintained by the RHA Defendants. Upon further information and belief, Mr.

Bulmanski was transported back to his group home in the same van by employees of the RHA Defendants.

19. Mr. Bulmanski did not have a traumatic cervical spine injury when employees of the RHA Defendants put him back in the van after his MedPost Urgent Care visit to transport him back to his group home, but upon information and belief, something happened on the way back to the group home that resulted in Mr. Bulmanski sustaining a severe and permanent traumatic injury to his cervical spine that caused him to be a quadriplegic.

20. Upon information and belief, employees of the RHA Defendants failed to properly secure Mr. Bulmanski's wheelchair in the van during the transport from the MedPost Urgent Care back to the group home where he lived. Upon further information and belief, one or more employees of the RHA Defendants failed to lock down Mr. Bulmanski's wheelchair properly before the ride back to the group home or in the alternative, the van did not have the appropriate strapping equipment to enable the RHA Defendants to safely transport Mr. Bulmanski and other disabled individuals. As a result of the actions and/or inactions of the RHA Defendants and their employees, Mr. Bulmanski either fell out of his wheelchair or his wheelchair tipped over, resulting in serious injuries to Mr. Bulmanski that caused him to become a quadriplegic.

21. By way of alternative pleading, one or more of the employees of the RHA Defendants failed to properly supervise or monitor Mr. Bulmanski and failed to protect him from a fall on either June 25 or 26, 2019, despite their knowledge that he was at high risk for falls. Mr. Bulmanski was able to move his arms and legs and hands and feet when he was at MedPost Urgent Care but he was unable to move his arms and legs and hands and feet the next morning and Plaintiff asserts that her brother became a quadriplegic because of the actions or inactions of employees of the RHA Defendants. Moreover, Plaintiff asserts that employees of the RHA Defendants failed to

get Mr. Bulmanski the medical care he needed after he was injured and allowed him to suffer for hours before finally attempting to get him the care he needed.

22. At all relevant times, Mr. Bulmanski, who needed assistance with transportation and with transfers, was in the exclusive control and custody of the RHA Defendants when he suffered and sustained serious and permanent injuries.

23. Plaintiff asserts that her brother sustained a life changing injury that ultimately resulted in his death because of the actions and/or inactions of one or more employees and/or agents of the RHA Defendants including, but not necessarily limited to, Brandon Carter, Dee Dee Grant, Kanisha Harris, Shanice Williamson and/or Sharon Berry and further asserts that Carter, Grant, Harris, Williamson and Berry were all acting in the course and scope of their employment and/or agency with the RHA Defendants at all times relevant to this action. Plaintiff further asserts that the RHA Defendants were negligent in hiring one or more of the employees and/or agents of RHA Defendants responsible for this incident including, but not necessarily limited to, Carter, Grant, Harris, Williamson and/or Berry and/or in retaining them, training them and/or supervising them at all times relevant to this claim. By way of alternative pleading, Plaintiff asserts that other employees of the RHA Defendants were responsible to the injuries sustained by Mr. Bulmanski on June 25 and/or 26, 2019. Upon information and belief, Plaintiff asserts that one or more of the above individuals' conduct constituted abuse and neglect with regard to the care and/or supervision provided to Mr. Bulmanski and the RHA Defendants are vicariously liable for the abuse and neglect of their employees and their failure to take appropriate steps to protect Ms. Bulmanski from harm.

24. The negligence, carelessness, recklessness and/or wrongful acts of one or more of the agents/employees of RHA Defendants including but not necessarily limited to Carter, Grant,

Harris, Williamson and Berry are imputed to the RHA Defendants. The RHA Defendants are vicariously liable to Plaintiff for the actions of their agents and RHA Defendants are also liable under the doctrine of *respondeat superior* and for their direct negligence in failing to properly train and supervise these employees and/or in failing to have a system in place to prevent injuries such as the one that happened to Mr. Bulmanski from happening. Plaintiff asserts that the RHA Defendants are also liable in this action for hiring the individual(s) responsible for Mr. Bulmanski's injury and for their negligent retention of such individuals.

25. In addition to their actions and/or inactions in failing to protect Mr. Bulmanski from harm, the RHA Defendants' staff member(s) responsible for caring for Mr. Bulmanski at the time of his injury did not report the incident and Mr. Bulmanski was placed into his bed at the group home owned and operated by the RHA Defendants while in severe pain from the injury he sustained earlier that day. Moreover, the RHA Defendants failed to document the care they provided to Mr. Bulmanski in violation of state regulations and accepted practices.

26. On June 26, 2019, an employee of the RHA Defendants found Mr. Bulmanski in his bed, unable to move his extremities.

27. Employees of the RHA Defendants called EMS and told the paramedics that Mr. Bulmanski must have had a stroke despite knowing that he had sustained an acute traumatic injury that prevented him from being able to move his extremities.

28. Mr. Bulmanski was initially transported to Saint Francis Hospital-Bartlett where he was seen by Dr. Matthew Wynne. Dr. Wynne ordered a CT scan of Mr. Bulmanski which showed a fracture of his cervical spine at C4-C5. Dr. Wynne questioned Mr. Bulmanski regarding possible trauma or a fall, at which time Mr. Bulmanski stated he fell while being transported by employees of the RHA Defendants and hit the back of his head.

29. On June 26, 2019, Mr. Bulmanski was transferred to Saint Francis Hospital Memphis and evaluated by a spine surgeon. He was taken to surgery for open posterior reduction and fixation of cervical fracture.

30. Despite the efforts of his physicians, Mr. Bulmanski was never able to regain the ability to move his extremities and he remained a quadriplegic for the rest of his life.

31. On July 3, 2019, Mr. Bulmanski was transferred to Regional One Extended Care facility and spent the remainder of his life in a hospital or an extended care facility or a nursing home on a ventilator.

32. Mr. Bulmanski died on April 28, 2020, while residing in a nursing home and Plaintiff asserts that Mr. Bulmanski's death was the direct result of the actions and/inactions asserted in this Complaint and that Mr. Bulmanski would not have died but for the actions and/or inactions of Defendants by the through their agents.

33. Defendants owed a duty to John Bulmanski to manage, train and supervise their agents/employees on the correct procedures to properly transport a patient in their care whether it be from a bed, wheelchair or in a transport vehicle to prevent injuries to its residents and/or patients including John Bulmanski, while in their care.

34. The RHA Defendants' agents/employees acting in the course and scope of their employment failed to protect Mr. Bulmanski from harm thereby breaching their duty of care owed to him.

35. Plaintiff further alleges that, upon information and belief, Mr. Bulmanski's fall and/or injury was not immediately reported therefore causing him additional pain and suffering and exacerbating his injuries.

36. Mr. Bulmanski continued to suffer painful physical and emotional injuries as a direct and proximate result of this incident up until his death.

37. But for the actions and inactions of Defendants, Plaintiff would not have fallen and would not have sustained the severe injuries alleged herein. Moreover, but for the actions and inactions of Defendants, there was a significant delay in Mr. Bulmanski getting the treatment he needed, causing him further harm. Plaintiff also asserts, upon information and belief, that Mr. Bulmanski ultimately died as a result of the actions and/or inactions of Defendants.

38. It was foreseeable that Plaintiff would sustain such injuries as a result of Defendants' negligence.

IV. NEGLIGENCE AND NEGLIGENCE PER SE

39. The allegations set forth in the previous paragraphs are incorporated herein by reference.

40. At all times relevant to this action, Defendants owed a duty of care to its residents/patients including John Bulmanski to protect them from injury and to maintain a professional, educated and trained staff.

41. Defendants breached their duty of care by failing to properly train and supervise their agents/employees to prevent harm to their residents/patients, which included John Bulmanski on June 25 and/or 26, 2019, by not properly training them on the prevention of falls and failing to promptly report any incidents involving an injury to a resident/patient.

42. The actions and/or inactions of Defendants were the proximate and actual cause and cause in fact of the injuries sustained by John Bulmanski and his death.

43. Plaintiff alleges and asserts that the Defendants are guilty of the following acts of negligence and/or recklessness, each and every one of which was a direct and proximate cause of the injuries sustained by Mr. Bulmanski. Such acts include, but are not limited to the following:

- a. Defendants, by and through their agents, servants and/or employees failed to exercise reasonable and ordinary care;
- b. Defendants, by and through their agents, servants and/or employees failed to prevent Mr. Bulmanski from falling and sustaining a traumatic injury, especially as it was foreseeable;
- c. Defendants, by and through their agents, servants and/or employees failed to take reasonable precautions and failed to follow generally accepted protocols in the manner in which they transported Mr. Bulmanski from MedPost Urgent Care back to his group home;
- d. Defendants, by and through their agents, servants and/or employees failed to inspect and/or maintain equipment including devices used to transport residents/patients;
- e. Defendants, by and through their agents, servants and/or employees, are guilty of negligence in that they carelessly failed to exercise the due care and caution required of a reasonably prudent business under the same or similar circumstances
- f. Defendants, by and through their agents, servants and/or employees, failed to comply with the applicable standard of care;
- g. Defendants, by and through their agents, servants and/or employees were reckless in the manner in which the transported and/or moved and/or supervised and/or assisted Mr. Bulmanski;

- h. The Defendants, by and through their agents, servants and/or employees, failed in their affirmative duty to take reasonable steps to inspect equipment for foreseeable dangerous conditions;
- i. The Defendants, by and through their agents, servants and/or employees, are guilty of negligence for failure to timely report incidents when time is of the essence due to a severe injury and the potential of exacerbation of those injuries;
- j. Defendants, by and through their agents, servants and/or employees, failed to establish and maintain systems to protect individuals such as Mr. Bulmanski;
- k. Defendants failed to hire employees who possessed appropriate qualifications to perform the intended job; and,
- l. Defendants failed to appropriately train and/or supervise individuals to perform their jobs in a manner to comply with the standard of care.

44. Defendants' breach of the above duties proximately caused the injuries and damages suffered by John Bulmanski. As a direct result of the actions and/or inactions alleged herein, Mr. Bulmanski suffered severe permanent injuries, emotional distress, pain and suffering, extensive medical treatment, loss of enjoyment of life, incurred medical expenses and ultimately died as the result of the actions and inaction of Defendants.

45. Defendants further failed to adhere to the recognized standard of acceptable professional practice/care in Memphis, Shelby County, Tennessee, or similar communities with regard to the care and treatment provided in this case.

46. Defendants failed to act with ordinary and reasonable care in accordance with the recognized standard of acceptable professional practice and Mr. Bulmanski suffered injuries which otherwise would not have occurred as a proximate result of Defendants' negligence. Defendants

failed to follow generally accepted protocols for transporting disabled adults and for caring for such individuals and further failed to follow rules, regulations and guidelines set forth by the State of Tennessee for the care of disabled individuals such as Mr. Bulmanski.

47. Defendants owed Mr. Bulmanski a duty to exercise the ordinary care and diligence exercised by others similarly situated in the same or similar circumstances and/or to comply with recognized standard of acceptable professional practice/care in this or a similar community. Defendants breached such duty causing injuries to Mr. Bulmanski.

48. Mr. Bulmanski's injuries were a foreseeable consequence of the negligence alleged herein.

49. Plaintiff also asserts that the actions and inactions of Defendants and their agents violated the laws of the State of Tennessee and the regulations of the Tennessee Department of Intellectual and Developmental Disabilities and to the extent that the actions and inactions alleged herein violate state law, Plaintiff asserts that such conduct constitutes negligence *per se*. Plaintiff reserves the right to amend this Complaint to more fully expound upon these allegations as well as other allegations contained herein.

50. Plaintiff further asserts that the injury to her brother happened when he was in the exclusive control and supervision of the RHA Defendants and their agents and that the injury he sustained while in their exclusive control and supervision is one that ordinarily does not happen in the absence of negligence. As such, Plaintiff asserts that Defendants are liable in this action under a theory of *res ipsa loquiter* as well.

V. DAMAGES

51. As a direct and proximate result of the above described acts of negligence, John Bulmanski suffered damages, including but not limited to painful bodily injuries, disfigurement

and extreme emotional anguish and upon information and belief, he ultimately died as a result of the actions and inactions of agents of Defendants.

52. Plaintiff Janice Moreno is seeking all damages allowable for the injuries her brother sustained and his ultimate death, including his physical and emotional pain and suffering, permanent disfigurement, loss of enjoyment of life, medical bills and expenses and all other damages caused by Defendants' actions or inactions. Plaintiff is seeking all damages available under Tennessee law.

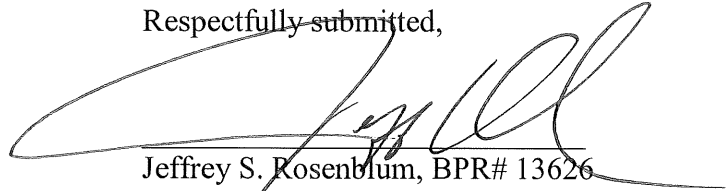
WHEREFORE, PREMISES CONSIDERED, Plaintiff as sister and Court Ordered Personal Representative/Administrator of the Estate of John Francis Bulmanski, prays:

- a. That proper process issue and be served upon Defendants and that they be required to appear and answer this Complaint within the time required by law;
- b. That Plaintiff as Court Ordered Personal Representative/Administrator of the Estate of John Bulmanski on behalf of all wrongful death beneficiaries, be awarded a judgment in the amount of \$5,000,000.00 for compensatory damages for the personal injuries he sustained as a result of Defendants' negligence and for his wrongful death or the maximum amount available under Tennessee law if such amount is less than \$5,000,000.00;
- c. That Plaintiff as Court Ordered Personal Representative/Administrator of the Estate of John Bulmanski on behalf of all wrongful death beneficiaries, be awarded punitive damages against Defendants in an amount to be determined by the jury if the proof warrants such an award; and

- d. That Plaintiff as Court Ordered Personal Representative/Administrator of the Estate of John Bulmanski, be awarded such other and further relief as the Court deems just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY WHEN THE ISSUES ARE JOINED
HEREIN.**

Respectfully submitted,



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**IN THE CIRCUIT COURT OF TENNESSEE
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JANICE B. MORENO, as sister and Court
Appointed Personal Representative/
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FRANCIS BULMANSKI, deceased,

Plaintiff,

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Division _____

v.

RHA HEALTH SERVICES TN, LLC and
RHA HEALTH SERVICES, LLC,

Defendants.

**CERTIFICATE OF GOOD FAITH
Medical Malpractice Case/Healthcare Liability
PLAINTIFF'S FORM**

A. In accordance with T.C.A. §29-26-122, I hereby state the following: (Check item 1 or 2 below and sign your name beneath the item you have checked, verifying the information you have checked. Failure to check item 1 or 2 and/or not signing item 1 or 2 will make this case subject to dismissal with prejudice.)

[] 1. The Plaintiff or Plaintiff's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that upon information and belief they:

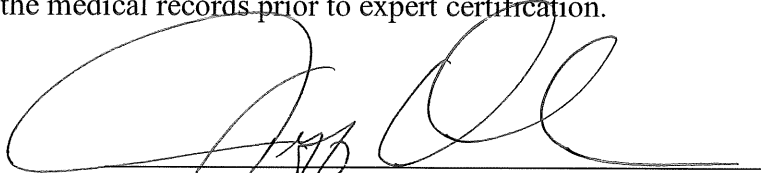
- (A) Are competent under T.C.A. §29-26-115 to express opinion(s) in the case;
and
- (B) Believe, based on the information available from the medical records concerning the care and treatment of Plaintiff for the incident(s) at issue, that there is a good faith basis to maintain the action consistent with the requirements of T.C.A. §29-26-115.

Signature of Plaintiff if not represented, or Signature
of Plaintiff's counsel

OR,

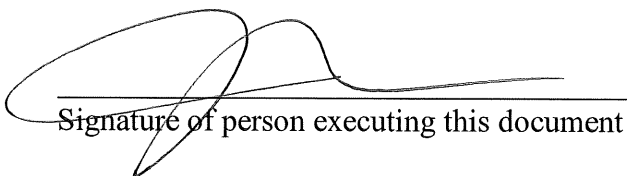
[X] 2. The Plaintiff or Plaintiff's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that, upon information and belief, they:

- (A) Are competent under T.C.A. §29-26-115 to express opinion(s) in the case; and
- (B) Believe, based on the information available from the medical records reviewed concerning the care and treatment of Plaintiff for the incident(s) at issue and, as appropriate, information from Plaintiff or others with knowledge of the incident(s) at issue, that there are facts material to the resolution of the case that cannot be reasonably ascertained from the medical records or information reasonably available to Plaintiff or Plaintiff's counsel; and that despite the absence of this information, there is a good faith basis for maintaining the action as to each Defendant consistent with the requirements of T.C.A. §29-26-115. Refusal of Defendant to release the medical records in a timely fashion, or where it is impossible for Plaintiff to obtain the medical records, shall waive the requirement that the expert review the medical records prior to expert certification.


Signature of Plaintiff if not represented, or Signature
of Plaintiff's counsel

B. You MUST complete the information below and sign:

I have NOT been found in violation of T.C.A. §29-26-122 at any time.


Signature of person executing this document

6-24-20
Date