

CAUSE NO. 08CV 0832

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GALVESTON COUNTY, TEXAS
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MARVIN SIMMONS

VS.

THE UNIVERSITY OF TEXAS MEDICAL
BRANCH AT GALVESTON, TEXAS

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IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

122 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND RULE 194 REQUEST FOR DISCLOSURE**

TO THIS HONORABLE COURT:

Plaintiff MARVIN SIMMONS files this Original Petition and Request for Disclosure and respectfully shows this Court the following:

I.

Nature of this Case

Marvin Simmons suffered a stroke in January 2007. Due to swelling around his brain, the doctors at UTMB were forced to remove a portion of Mr. Simmons's skull to relieve the pressure. While his brain healed, Mr. Simmons wore a helmet to protect his brain from further injury. After repeated, unexplained delays and rescheduling of the operation to replace the bone, the doctors at UTMB ultimately came clean and admitted to Mr. Simmons that they had lost the portion of his skull that was supposed to have been preserved in the bone bank. In early October 2007, the doctors at UTMB finally replaced the boneless portion of Mr. Simmons' head; because they lost the portion of Mr. Simmons' skull, they instead used titanium mesh.

This is not a case for medical malpractice. This is instead a case alleging carelessness, gross negligence, and breach of a medical practitioner's fiduciary duty to the patient.

II.
Parties

1. Plaintiff intends to conduct discovery under Level 2.
2. Plaintiff MARVIN SIMMONS is an individual residing in Galveston County, Texas.
3. Defendant THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON, TEXAS ("UTMB") is a governmental entity that can be served through its President, David L. Callender, M.D., 301 University Blvd, Galveston, Texas 77555-0129.

III.
Venue

4. The events giving rise to this suit occurred in Galveston County, Texas; thus, venue is proper in this Court.

IV.
Facts

5. On January 25, 2007, Mr. Simmons suffered a stroke. He was transported by the Galveston Area Ambulance Authority to the emergency room at UTMB. A CT of his head revealed a "large, acute ischemic infarct in the right MCA"; and an EKG revealed increased "segmental wall motion abnormalities" and a "decline in LV systolic function."
6. On January 26, 2007, a second CT of Mr. Simmons' head showed a "large swelling already with infarction in the middle cerebral artery distributions, widespread swelling down into the basal ganglia area, even swelling onto the midline structures suggesting probably an internal carotid artery occlusion more than a simple middle cerebral artery infraction." As a result, that same day, Dr. Haring J.W. Nauta at UTMB performed a craniotomy for decompression, in which he removed part of Mr. Simmons' skull. On February 9, 2007, UTMB discharged Mr. Simmons.

7. On April 25, 2007, Mr. Simmons was examined by Dr. Nauta at UTMB regarding a "craniotomy bone flap replacement." The plan was to replace Mr. Simmons' "autologous bone flap which is in the bone bank." During the exam, Dr. Nauta observed, "I certainly think he will be happier with this skull defect replaced by his own bone. It is quite grotesque and he is needing to wear a helmet. Psychologically, it is adding to his problems." The cranioplasty was scheduled for May 3, 2007.

8. The cranioplasty for Mr. Simmons was repeatedly cancelled. By the time Mr. Simmons finally underwent his cranioplasty on October 2, 2007, Mr. Nauta confirmed that the bone flap that had been removed from Mr. Simmons' skull had been "lost." Therefore, the cranioplasty was performed with a titanium mesh instead. On October 8, 2007, Mr. Simmons was discharged to a nursing facility.

**V.
Negligence and Gross Negligence**

9. Defendant had a duty to exercise ordinary care toward Mr. Simmons, which duty was breached in the following ways:

- a. Failing to properly train, staff, and credential its physicians;
- b. Failing to properly train, staff, and credential its staff and nurses;
- c. Failing to safeguard the bone flap from Mr. Simmons' skull;
- d. Failing to develop and implement proper procedures for safeguarding the bone flap from Mr. Simmons' skull; and
- e. Failing to ensure that its employees follow proper policies and procedures.

10. Each of these negligent acts and omissions proximately caused Mr. Simmons' damages.

VI.
Breach of Fiduciary Duty

11. The doctors at UTMB, specifically Dr. Nauta, owed Plaintiff a fiduciary duty to preserve those body parts removed, which were to be replaced at a later date. UTMB and its staff breached that fiduciary duty by literally losing a portion of Plaintiff's skull, causing Plaintiff significant damage.

VII.
Damages

12. Mr. Simmons has endured in the past and will continue to endure in the future physical pain and suffering, mental anguish, physical disfigurement, and physical impairment. He has also incurred in the past and will continue to incur in the future medical, hospital, and pharmaceutical expenses. Plaintiff also seeks punitive damages.

VIII.
Notice and Conditions Precedent

13. Mr. Simmons has previously provided Defendant with notice of his claims pursuant to Sections 74.051 and 74.052 of the Texas Civil Practice & Remedies Code. Plaintiff maintains that the bulk of his claims herein are not controlled by the aforementioned Sections.

VIV.
Jury Demand

14. Mr. Simmons demands a jury trial and has tendered the appropriate fee.

X.
Prayer

15. WHEREFORE, Plaintiff Marvin Simmons respectfully prays that Defendant be cited to appear and answer, and that upon trial of this matter he be awarded the following:

- a. Actual damages;
- b. Pre-judgment and post-judgment interest;

- d. Court costs; and
- e. All other relief to which he is justly entitled.

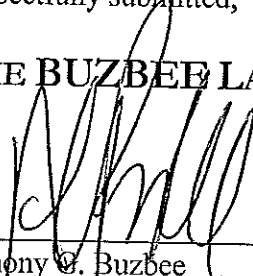
XI.

Request for Rule 194 Disclosure

15. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2(a)-(k), TEX. R. CIV. P.

Respectfully submitted,

THE BUZBEE LAW FIRM



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