

**NAME OF PLAINTIFFS**

**NAME OF DEFENDANTS**

**Individually, Officially, and as an Agent and Employee of \_\_\_\_\_**

NO. \_\_\_\_\_

## FACTS

5. At all times relevant, the Defendants were doing business in the State of \_\_\_\_\_ by providing medical services and care. The Defendants invited the Public to use their facilities and services for payment of a valuable consideration. The Defendants, each of them, provided medical services to the Plaintiffs personally, and by and through their agents, servants and employees.
6. At all times relevant, the Defendants, each of them, were acting within the course and scope of their agency, employment and business practices.
7. On \_\_\_\_\_, \_\_\_\_\_, the Plaintiffs' \_\_\_\_-year-old deceased son was delivered to the custody and control of \_\_\_\_\_ and Dr. \_\_\_\_\_- for autopsy after he had expired under suspicious circumstances, all to the Defendants' knowledge.
8. The Defendants, and each of them, assumed the care, custody and control over the Plaintiffs' deceased son to perform an autopsy. The Defendants assumed the duty to provide competent medical care upon the Plaintiffs' deceased son.
9. The Defendant, \_\_\_\_\_, holds itself out to the Public as being a fully competent and skilled health care facility. The Defendant, \_\_\_\_\_, M. D., is a trained medical physician in the field of Pathology, holding himself out to the Public as a competent, skilled, health care professional.
10. On \_\_\_\_\_, \_\_\_\_\_, after the Defendants had assumed custody and control over the Plaintiffs' deceased son, \_\_\_\_\_, the Defendant, \_\_\_\_\_, M.D., performed an autopsy upon the deceased. During the autopsy the Defendant, \_\_\_\_\_, M. D., removed the right lung and heart of the deceased for gross examination and slide preparation. After the autopsy the heart and right lung were not replaced in the deceased's body, and were not delivered to the employees of the funeral home in charge of the burial when the funeral home arrived to take possession of the body. Some time later, the heart and right lung of the deceased, \_\_\_\_\_, were incinerated by the Defendants.
11. On \_\_\_\_\_, \_\_\_\_\_, after \_\_\_\_\_'s remains were exhumed, a second autopsy was performed upon the remains. At this second autopsy, it was discovered that the heart and right lung of the deceased were not replaced in the body for burial after the first autopsy, thereby preventing the completion of the second autopsy. Not replacing the right lung and heart in the body for burial and not presenting the entire remains of the deceased to the Plaintiffs for burial inappropriately and negligently conducted the first autopsy.

#### **COUNT I - NEGLIGENCE**

12. Consequently, the Defendants, each of them, have breached their non-delegable duty of care owed to the deceased's parents, the Plaintiffs. Each Defendant has breached their

duty that should have been exercised under the circumstances described. Each Defendant has breached their duty to use their knowledge competently and to properly perform an autopsy upon the Plaintiffs' deceased son.

13. The autopsy performed by the Defendants upon the deceased, \_\_\_\_\_, was negligently performed and as a direct and proximate result of the Defendants' intentional, willful, wanton, reckless disregard for the Plaintiffs' rights and gross negligence, or in the alternative, simple negligence, the Plaintiffs have suffered severe physical and emotional injury, which includes but is not limited to the following:
- (a) The prevention of a complete second autopsy being performed upon their deceased son's remains to help determine his exact cause of death;
  - (b) Being prevented from burying the entire body of their deceased son;
  - (c) Continuing visits for treatment and consultation;
  - (d) Expending sums of money out of their personal funds for the second autopsy, which could not be completed;
  - (e) Expending sums of money out of their personal funds for treatment and consultation;
  - (f) Suffering anxiety, worry, mental anguish and consequential damages, all to the Plaintiffs' general damages.

#### **C O U N T I I - N E G L I G E N C E P E R S E**

14. Plaintiffs incorporate herein, as if fully copied herein, all allegations and assertions contained supra.
15. \_\_\_\_\_, a copy of which is attached as Exhibit "A", relating to the disposition of human bodies or parts, imposes a non-delegable duty upon the Defendants to deliver to the person claiming a dead body for burial or cremation all body parts removed.
16. As a direct and proximate result of the Defendants breach of this statutory non-delegable duty, the Plaintiffs have suffered severe emotional injuries, all to their general damage as more particularly described supra.

#### **C O U N T I I I**

##### **WRONGFUL INTERFERENCE WITH RIGHT TO POSSESSION FOR BURIAL**

17. Plaintiffs incorporate herein, as if fully copied herein, all allegations and assertions contained supra.

18. The acts of the Defendants, not replacing the heart and right lung of the deceased, were willful, wanton, gross negligence with total disregard for the rights of the Plaintiffs, or in the alternative, simple negligence.
19. As a result of their acts, the Defendants have interfered with the Plaintiffs' legal right to possession of their deceased son's body for burial and have breached their duty not to interfere with those rights.
20. As a result of the Defendants' willful interference with the Plaintiffs' legal rights, the Defendants have prevented the Plaintiffs from exercising their right to bury the entire body of their son.
21. As a direct and proximate result of the Defendants' actions, interfering with the Plaintiffs' legal rights to possession for burial of their deceased son's body, the Defendants have caused the Plaintiffs to suffer severe physical and emotional injuries all to their general damage, as more particularly described supra.

#### **C O U N T IV. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

22. Plaintiffs incorporate herein, as if fully copied herein, all allegations and assertions contained supra.
23. The malicious and intentional acts of the Defendants, not replacing the heart and right lung of the deceased for burial, was so outrageous that the Plaintiffs have suffered emotional distress. The acts of the Defendants were beyond all bounds of decency and utterly intolerable in our civilized society and were done with reckless disregard of the certainty that it would cause the Plaintiffs profound emotional distress.
24. Therefore as a direct and proximate result of the malicious and intentional actions of the Defendants, the Plaintiffs have suffered both physical and emotional injuries, all to their general damages, as more particularly described supra.

#### **COUNT V - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

25. Plaintiffs incorporate herein, as if fully copied herein, all allegations and assertions contained supra.
26. By breaching their non-delegable duty of care, the Defendants have caused the Plaintiffs to suffer severe emotional distress, which was reasonably foreseeable by the Defendants.
27. Therefore, as a direct and proximate result of the malicious and intentional actions of the Defendants, the Plaintiffs have suffered both physical and emotional injuries, all to their general damages, as more particularly described supra.

#### **C O U N T VI - RES IPSA LOQUITA**

28. Plaintiffs incorporate herein, as if fully copied herein, all allegations and assertions contained supra.

29. The negligence of the Defendants toward the Plaintiffs, \_\_\_\_\_ and \_\_\_\_\_, was of such consequence that it caused an event, which ordinarily does not occur in the absence of someone's negligence.
30. The event was caused by an agency or instrumentality that was at all times within the exclusive control of the Defendants.
31. The event was not due to any voluntary action or contribution on the part of the Plaintiffs, \_\_\_\_\_ and \_\_\_\_\_.
32. As a direct and proximate result of the negligent conduct of the Defendants, the Plaintiffs have suffered both physical and emotional injuries, all to their general damages as more particularly described, supra.

WHEREFORE, PREMISES CONSIDERED a civil action has accrued to the Plaintiffs for which they are entitled to sue and recover against the Defendants, both jointly and severally. The Plaintiffs demand judgment against the Defendants, jointly and severally, in an amount to be determined by the jury in this case to include compensatory damages, punitive damages, actual damages, general damages, all appropriate damages, pre-judgment and post-judgment interest, all costs of this proceeding, attorney fees and other costs and expenses as deemed by the Court to be proper. The damages claimed herein are within the jurisdictional limits of the Court to which the pleadings are addressed.

If inappropriate or insufficient damages are herein prayed, such damages are prayed so that justice will be done.

Respectfully submitted,

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