No. 25-197

In the Supreme Court of the United States

T.M., PETITIONER

v.

UNIVERSITY OF MARYLAND
MEDICAL SYSTEM CORPORATION, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX
VOLUME 1 OF 2 (PAGES 1-110)

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VOLUME 2 (UNDER SEAL)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

No. 1:23-cv-1684

T.M., J.M., AND A.M.,
PLAINTIFFS

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION; BALTIMORE WASHINGTON MEDICAL CENTER, INC.; KATHLEEN MCCOLLUM, IN HER OFFICIAL CAPACITY AS PRESIDENT AND CEO OF BALTIMORE WASHINGTON MEDICAL CENTER, INC.; THOMAS J. CUMMINGS, JR. M.D., IN HIS PERSONAL AND OFFICIAL CAPACITY AS A MEDICAL PROFESSIONAL AT BALTIMORE WASHINGTON MEDICAL CENTER, INC.; BE-LIVE-IT THERAPY LLC TRADING AS FAMILY INTERVENTION PARTNERS; ANNE ARUNDEL COUNTY OPERATING AS THE ANNE ARUNDEL CRISIS INTERVENTION TEAM,
DEFENDANTS

Filed: June 26, 2023

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (REDACTED VERSION)

Plaintiff T.M. was held against her will for over two months by Defendants Baltimore Washington Medical

Center, Inc. ("BWMC" or the "Facility"), Thomas J. Cummings, Jr. M.D ("Cummings"), and Kathleen McCollum ("McCollum") (collectively the "Hospital Defendants"), neither because she was a criminal, nor because she was a prisoner, nor because she was psychotic, nor because she was a danger to herself or others. Instead, BWMC, Cummings, and McCollum—acting under the color of law in concert with one another and conspiring with each other against T.M.—speculated that, should they release her from her involuntary detention, she would disregard her medications and wind up back in the hospital. But such speculation was never a legitimate basis for depriving T.M.'s liberties. To make matters worse, the Hospital Defendants actively sought to forcibly inject T.M. with highly potent antipsychotic medications against her will while holding her prisoner. The Hospital Defendant's actions were never sanctioned by law, and in fact, the law was "intended to put tight reins on the forced medication of involuntarily committed patients and not to allow the kind of regime portrayed in *One Flew Over The Cuckoo's Nest.*" *Mercer v. Thomas B. Fin. Ctr.*, 476 Md. 652, 265 A.3d 1044, 1071 (2021) (quoting *Md. Dep't of Health & Mental Hygiene v. Kelly*, 397 Md. 399, 447, 918 A.2d 470, 498-99 (2007) (Wilner, J., concurring)).

As proof that T.M. should be discharged, she hired an outside psychiatrist and university professor Dr. Erik Messamore ("Dr. Messamore")[1] to conduct a May 24, 2023 evaluation (the "Evaluation") to opine whether T.M. was psychotic, whether she was a danger to herself or others,

[1] A true and correct copy of Dr. Messamore's CV is attached as **Exhibit 1**.

and whether she required inpatient treatment. That Evaluation was video recorded and is available here: [redacted] (the "Video"). As Dr. Messamore documented in his May 26, 2023 Report (the "Report"),[2] as is indisputable upon viewing the Video, T.M. was a woman who was not psychotic, did not require inpatient treatment, was not a danger to herself or others, and who clearly deserved to be free. This is further borne out by the medical records, which also reflect that T.M. was not a danger to herself and others.

Under U.S. Supreme Court authorities and well-established constitutional principles, the Hospital Defendants were required to discharge T.M. Involuntary "commitment to a mental hospital produces 'a massive curtailment of liberty,'" *Vitek v. Jones,* 445 U.S. 480, 491-92 (1980) (quoting *Humphrey v. Cady,* 405 U.S. 504, 509 (1972)), and in consequence "requires due process protection." *Addington v. Texas,* 441 U.S. 418, 425 (1979). Indeed, a state actor cannot involuntarily hospitalize, or keep hospitalized, a non-dangerous individual capable of surviving safely in freedom by herself or with the help of willing and responsible family members or friends because, "even if [the] involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed." *O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975).

No basis existed to continue T.M.'s imprisonment, yet the Hospital Defendants refused to release her from custody. To secure her release from involuntary detention

[2] A true and correct copy of the Messamore Report is attached as **Exhibit 2**.

and to escape the imminent prospect of being forcibly injected with dangerous antipsychotic medications that presented a real possibility of serious, even fatal, side effects, T.M.—acting against her will and under duress—agreed to a "Consent Order" in the Circuit Court for Anne Arundel County, Maryland to resolve litigation that had been initiated to free T.M. and to vindicate the egregious violations of her constitutional rights. *See* **Exhibit 3**. The "Consent Order" not only conditioned T.M.'s freedom on her dismissal of all legal actions regarding her unlawful detention then pending, but also it imposes clearly unconstitutional limits on T.M.'s ability to control her own healthcare forever.

"No right is held more sacred, or is more carefully guarded," than "the right of every individual to the possession and control of [her] own person." *Union Pacific R. Co. v. Botsford,* 141 U. S. 250, 251 (1891); *see Cruzan v. Director, Mo. Dept. of Health,* 497 U. S. 261, 269 (1990) (It is fundamental that every adult "has a right to determine what shall be done with [her] own body"). The Constitution of the United States restricts the power of government to interfere with a person's medical decisions or compel her to undergo medical procedures or treatments. *See, e.g.*, *Winston v. Lee,* 470 U. S. 753, 766-767 (1985) (forced surgery); *Rochin v. California*, 342 U. S. 165, 166, 173-174 (1952) (forced stomach pumping); *Washington v. Harper,* 494 U. S. 210, 229, 236 (1990) (forced administration of antipsychotic drugs); *Vitek,* 445 U.S. at 492 (forced behavior modification treatment). The "Consent Order" violates this most fundamental protection and purports to control in perpetuity the medical providers T.M. must use and the medical treatment regime she must accept. The

"Consent Order" also requires T.M.'s parents, who were not even parties in the lawsuit in which the order was entered, to perform certain actions regarding T.M.'s healthcare regardless of whether they believe such actions would be in T.M.'s best interests. This Action seeks relief in the form of a declaratory judgment that the "Consent Order" is invalid, unconstitutional, and unenforceable. T.M. also seeks a preliminary and permanent injunction preventing all Defendants from seeking to enforce the "Consent Order."

INTRODUCTION

1. T.M., a college graduate, was until recently beholden to the whims of a medical provider who refused to acknowledge her autonomy and who deployed a strategy to keep her locked up, shadowing her with threats to forcibly inject her with potent antipsychotic medications.

2. Not one reasonable person could have predicted this outcome—here was a young woman with no criminal history facing an indefinite detention after requesting a ***voluntary*** admission, which the facility, for whatever reason, denied.

3. Rarely, if at all, does this occur, where a patient attempts to voluntarily admit herself, only for the provider—who must respect the rights and dignity of patients—to upend this request and immediately seek the indefinite involuntary detention of a non-criminal.

4. As an involuntary admittee, T.M. was kept away from the outside world for over two months, cordoned off from the opportunity to leave her admission, even though the provider could point to no recent episode that T.M. was a danger to herself or others.

5. What's worse, notwithstanding her continuous compliance to orally ingest medications and her significant improvement, she faced yet another extraordinary prospect: the forcible injection of antipsychotics against her will.

6. As Courts recognize, the "forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty. The interference is particularly severe when, as in this case, the medication in question is an antipsychotic, for the use of such medications threatens an individual's mental, as well as physical, integrity. On the physical side, there is the violence inherent in forcible medication, compounded when it comes to antipsychotics by the possibility of serious, even fatal, side effects. But it is the invasion into a person's mental state that truly distinguishes antipsychotics, a class of medications expressly intended to alter the will and the mind of the subject." *U.S. v. Watson*, 793 F.3d 416, 419 (4th Cir. 2015) (cleaned up and citations omitted).

7. T.M.'s father, J.M., who previously had been appointed as T.M.'s Health Care Agent to make all medical decisions for T.M. in the event she could not do so for herself, and who expressly was granted the power and authority "to approve [T.M.'s] admission to or release from a psychiatric hospital or unit," attempted to intervene on T.M.'s behalf but the Hospital Defendants refused to recognize J.M. as T.M.'s lawfully designated healthcare agent and refused to release T.M. from custody.

8. On April 20, 2023, J.M. sued the BWMC and its parent, the University of Maryland Medical System Corporation, to require them to recognize T.M.'s Advance

Medical Directive and J.M.'s appointment as T.M.'s lawfully designated healthcare agent in *J.M. v. Baltimore Washington Med. Ctr., et al.,* Case No. C-02-CV-23-000764 (Cir. Ct. A.A. County 2023). The case was still pending when the "Consent Order" was entered on June 12, 2023.

9. On May 3, 2023, T.M. filed a petition for judicial review of an ALJ decision authorizing the Hospital Defendants to involuntarily inject T.M. with psychiatric medications pursuant to Md. Health Gen. Code § 10-708 in *In re T.M.,* Case No. C-02-CV-23-000902 (Cir. Ct. A.A. County 2023). The case was still pending when the "Consent Order" was entered on June 12, 2023.

10. On May 5, 2023, T.M. filed a petition for writ of habeas corpus to remedy her unlawful detention in *T.M. v. Baltimore Washington Med. Ctr., et al.,* Case No. C-02-CV-23-000910 (Cir. Ct. A.A. County 2023). This is the underlying case in which the "Consent Order" was entered on June 12, 2023.

11. On May 28, 2023, May 30, 2023, and June 6, 2023 T.M. filed emergency motions for judicial release in *T.M. v. Baltimore Washington Med. Ctr., et al.,* Case No. C-02-CV-23-001066 (Cir. Ct. A.A. County 2023). The motion dated June 6, 2023 was still pending when the "Consent Order" was entered on June 12, 2023.

12. On June 9, 2023, T.M. brought an action in the United States District Court for the District of Maryland under 42 U.S.C. § 1983 seeking damages for violations of her constitutional rights guaranteed by the Fourteenth Amendment of the U.S. Constitution and Article 24 of the Maryland Declaration of Rights in *T.M. v. University of*

Maryland Med. Sys. Corp., et. al., 1:23-cv-10572 (D. Md. 2023). The case was still pending when the "Consent Order" was entered on June 12, 2023.

JURISDICTION AND VENUE

13. This action for declaratory and prospective injunctive relief is brought to address Defendants' ongoing deprivations of rights guaranteed by federal statutes, the U.S. Constitution, and the Maryland Declaration of Rights: the Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1 (through 42 U.S.C. § 1983); and Article 24 of the Maryland Declaration of Rights.

14. Plaintiff's claims for declaratory and injunctive relief are authorized by 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 & 2202 as well as by Rules 57 and 65 of the Federal Rules of Civil Procedure.

15. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343(a)(3) (civil rights jurisdiction).

16. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events, acts, and omissions giving rise to these claims occurred in this District. All Defendants reside in this District, maintain places of business in this District, and/or conduct business in this District.

17. For the same reasons, this Court may exercise personal jurisdiction over the Defendants.

PARTIES

18. Plaintiff T.M. is an adult person and citizen of the United States who resides in Maryland.

19. Plaintiff A.M. is an adult person and citizen of the United States who resides in Maryland and is the mother of T.M.

20. Plaintiff J.M. is an adult person and citizen of the United States who resides in Texas and is the father of T.M.

21. Defendant UMMS is a "nonprofit, nonstock corporation" in the State of Maryland. Md. Code Ann. Educ. § 13-302(7). UMMS was created by statute. *See id.* § 13-301 *et seq*. All of the voting members of its Board of Directors are appointed by the Governor of Maryland. *Id.* § 13-304(b). According to its authorizing statute, UMMS is intended to serve "the highest public interest" and its purposes "are essential to the public health and welfare" of the State. *Id.* § 13-302(4). UMMS's offices are located at 250 W. Pratt St., Baltimore, Maryland 21201. UMMS accepts federal funds and is a state actor and "governmental entity, that is, an arm or instrumental of government for purposes of Plaintiff's assertion of . . . individual constitutional rights." *See Hammons v. Univ. of Md. Med. Sys. Corp.*, 551 F. Supp. 3d 567, 584 (D. Md. 2021); *accord Napata v. Univ. of Md. Med. Sys. Corp.*, 417 Md. 724, 737, 12 A.3d 144, 151 (2011); *see also Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 399 (1995) ("We hold that where, as here, the Government creates a corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation, the corporation is

part of the Government for purposes of the First Amendment.").

22. Defendant Facility is a corporation organized under the laws of the State of Maryland, with its principal place of business located at 301 Hospital Drive, Glen Burnie, Maryland 21061. The Facility is a wholly owned subsidiary of UMMS and also accepts federal funds and is thus a state actor. *See Hammons v. Univ. of Md. Med. Sys. Corp.*, No. DKC 20-2088, 2023 WL 121741, at *16 (D. Md. Jan. 6, 2023).

23. Defendant McCollum is a natural person who resides in Maryland and who serves as the President and Chief Executive Officer of the Facility. She is sued solely in her official capacity as President and CEO of a state actor.

24. Defendant Cummings is a natural person who resides in Maryland and who is a medical professional of the Facility. He is sued solely in his official capacity as a medical professional acting on behalf of a state actor.

25. Defendant Be-Live-It Therapy LLC is a Maryland Limited Liability Company formed under the laws of Maryland and conducts business in Maryland as "Family Intervention Partners," having its principal office located at 7207 Baltimore-Annapolis Blvd., Glen Burnie, MD 21061. Under the "consent order," T.M. must accept Family Intervention Partners as one of her mental healthcare providers and must be seen at the practice "at least once every three (3) months" for the rest of her life.

26. Defendant Anne Arundel Crisis Intervention Team is, upon information and belief, a component of the Anne Arundel County Police Department consisting of

personnel and police officers who have received mental health training. The Crisis Intervention Team is a local government entity operated by Anne Arundel County, Maryland. Under the "consent order," T.M. must follow all recommendations made by the Crisis Intervention Team for the rest of her life.

FACTUAL BACKGROUND

I. T.M.'s medical history and creation of the Advance Directive

27. Since 2016, Dr. Heffner has been T.M.'s primary provider. As noted in her CV, *see* **Exhibit 4**, Dr. Heffner was once a Medical Director at the Children's National Medical Center in Washington, D.C., and an Acting Medical Director at the Good Shepherd Center in Baltimore, Maryland. Board Certified in General Psychiatry, Child and Adolescent Psychiatry, and Integrative Pediatrics, Dr. Heffner has been honored by numerous awards, including an Albert Nelson Marquis 2020 Lifetime Achievement Award by *Marquis Who's Who* and 2020 Woman in Medicine Honoree by *America's Top Doctors*.

28. Dr. Heffner has diagnosed T.M. with Hashimoto's Thyroiditis and Non-Celiac Gluten Sensitivity, which causes changes in T.M.'s mental status upon ingesting any amount of gluten. *See* **Exhibit 5** (Dr. Heffner 6/16/2022 letter).

29. Considering this diagnosis, Dr. Heffner has recommended that T.M. avoid gluten and, when necessary, be prescribed Risperidone at a dose of 0.5 mg per day with a maximum dose of 0.75 mg as an effective treatment. *Id.*

30. Conversely, Dr. Heffner has advised ***against*** the use of high doses of antipsychotic medications because these often lead to extreme lethargy, akathisia, and extrapyramidal symptoms, such as cogwheel rigidity and tongue fasciculations. *Id.*

31. Furthermore, Dr. Heffner has advised ***against*** the use of Benzodiazepines because of the fear of addiction and the risk of disinhibition and the loss of memory. *Id.*

32. A substantial body of medical literature supports Dr. Heffner's conclusion that T.M.'s episodes of psychosis "relates to a severe gluten sensitivity" triggered by her ingestion of gluten. *See* **Exhibit 6** (Dr. Heffner 5/5/2021 letter).

33. Given these recommendations and out of concern for her treatment should a psychotic episode occur, T.M. created and executed her Advance Directive and Appointment of Healthcare Agent on July 19, 2022 (the "Advanced Directive"). *See* **Exhibit 7**.

34. The purpose of the Advance Directive is to ensure that any health-care decision and treatment for T.M. is in accord with her wishes and desires, and in the event her wishes and desires are unknown, the agent selected by T.M. must act in good faith to proceed with T.M.'s best interests in mind.

35. Recognizing that her father, J.M., has her best interests in mind and is well-versed in her medical history and responses to past treatment, T.M. selected her father as her health-care agent.

36. In selecting her father as her agent, T.M. understood that her father would "review[] the benefits, burdens, risks that might result from a given treatment or course of treatment, or from the withholding or withdrawal or course of treatment" and then act in her best interests when selecting an appropriate health-care decision and treatment.

37. The Advance Directive recognizes that, in the event T.M.'s wishes are not known, her father is in the best position to recognize what her wishes may be and he is authorized to make decisions on her behalf.

38. Importantly, the Advance Directive explicitly grants J.M. "the power and authority to approve [T.M.'s] admission to or release from a psychiatric hospital or unit."

39. Under the law, a provider must abide by the Advance Directive and treat a patient in accordance with the preferences set out in the Advance Directive or otherwise face possible criminal consequences. *See, e.g.*, Md. Code Ann. Health-Gen. § 10-701(c)(9); *id.* § 10-1003.

40. Even the Facility's own website recognizes that "an Advance Directive is the best way to make sure everyone knows what you want."[3]

[3] *See* https://www.umms.org/bwmc/patients-visitors/for-patients/advance-directive-molst (last accessed June 8, 2023).

II. Admission into the Facility and improper boarding in the emergency department

41. On March 23, 2023, T.M. had an unfortunate episode after accidentally ingesting gluten, at which time she was taken to the Facility's emergency room.

42. This triggered a state of psychosis, leading to agitation and aggression to the point that the police were called, who then had to escort T.M. to the Facility.

43. Immediately, J.M. notified the Defendants about the Advance Directive and the need to confer with him in the event T.M. is unable to competently make any healthcare decisions on her own behalf.

44. The Defendants were also aware of the Advance Directive because of T.M.'s past admissions to the Facility.

45. Despite their knowledge of the Advance Directive, however, the Defendants have consistently declined to recognize the Advance Directive and the desires of T.M. in contravention of the federal Patient Self-Determination Act and Maryland law, including, but not limited to Md. Health Gen. Code §§ 5-602.1, 10-701(c)(9), and 10-708.

46. Indeed, Md. Health Gen. Code § 10-701(c)(9) mandates that a provider must provide treatment "in accordance with the preferences in the advance directive."

47. Taking matters into his own hands, Dr. Cummings refused and continues to refuse to acknowledge the Advance Directive despite his view that T.M. is incompetent because he is of the belief that J.M. has coerced T.M. into making certain medical decisions.

48. Nor, in compliance with the Patient Self-Determination Act and the Centers for Medicare and Medicaid Services' Conditions of Participation and Conditions of Coverage, has Dr. Cummings provided notice of his objections to the Advance Directive and his rationale for doing so.

49. Distrustful of T.M.'s parents, whom he blames for T.M.'s condition and readmission at the Facility, Dr. Cummings shielded T.M.'s family from any input into T.M.'s treatment at the Facility.

50. He has also obstructed T.M.'s parents from receiving critical information about T.M.'s treatment plan, including what medications he was administering to her.

51. And because he placed zero weight on Dr. Heffner's diagnoses of T.M., Dr. Cummings did not take the necessary steps to rule out these diagnoses and consider alternative less intrusive treatment plans for T.M.

52. Dr. Cummings refused to confer with Dr. Heffner to discuss T.M.'s medical history and appropriate treatment plan.

53. Dr. Cummings' claim that the Advance Directive was legally deficient was simply a pretext by Dr. Cummings to avoid his legal duties to comply with a patient's Advance Directive and to punish T.M. and her family.

54. Through Dr. Cummings, the Defendants blatantly disregarded T.M.'s rights under the law.

55. For example, even though Md. Health Gen. Code § 10-624(b)(5) mandates that the Facility not keep T.M. in

the "emergency facility for more than 30 hours," the Facility boarded her in the emergency department for eight (8) days.

56. This is troubling because medical literature warns against the dangers of psychiatric boarding in emergency departments.

III. The Facility hastily seeks an involuntary admission of T.M.

57. At the outset of her initial appearance at the Facility, T.M. (either through herself or her father) consistently requested ***voluntary*** admission into the Facility.

58. The Defendants—in an unusual step unheard of in these cases—ignored this request and immediately sought T.M.'s involuntary admission by scheduling an April 11, 2023 hearing before the Maryland Office of Administrative Hearings ("OAH").

59. In doing so, the Defendants failed to provide the statutorily required notice to T.M. or alternatively J.M. (as her father and agent), who, because of the Defendants' actions and refusal to acknowledge the Advance Directive, was unable meaningfully to participate in the hearing on his daughter's behalf, unable to immediately engage counsel, unable to challenge the Defendants' contentions, unable to enter evidence into the record, unable to cross-examine the Defendants' witnesses, and unable to offer his own witnesses, including Dr. Heffner, to corroborate the dangers of the very medications the Defendants were seeking to forcibly inject.

60. Due process required, at a minimum, that T.M. be given an opportunity to prepare for and participate at a

full and fair hearing under Maryland law and the Fourteenth Amendment.

61. To make matters worse, even though the Facility failed to meet its burden under Md. Health Gen. Code §§ 10-617(a), 10-632(e)(2), and COMAR 10.21.01.09(F) to involuntarily admit T.M., Administrative Law Judge ("ALJ") Kristin Blumer somehow found in favor of the Facility on April 11, 2023. *See* **Exhibit** 8.

62. In particular, the Facility was required to prove *by clear and convincing evidence* that T.M. is unable or unwilling to be voluntarily admitted to the Facility.

63. Requests were made by both T.M. and her father that she be voluntarily admitted into the Facility.

64. Despite these requests, the Facility (through Dr. Cummings's testimony) offered two reasons for denying T.M.'s and her father's clear requests to be voluntarily admitted. Dr. Cummings opined that, while simultaneously contradicting his attorney's argument that T.M. was competent, T.M. was "very, very impaired cognitively."[4]

65. Next, when asked why he was unwilling to abide by T.M.'s father's request to voluntarily admit her under the Advance Directive, Dr. Cummings testified that her father was coercing her to request a voluntary admission: "And I think it's very important with any medical legal decision which is the standard in the field for an adult to be making their own decisions free of any coercion both from providers or clinical staff as well as from families or others."

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[4] The 4/11/2023 ALJ hearing was recorded but has been transcribed only by T.M.'s prior law firm. The audio recording is available.

66. How Dr. Cummings could flout the law is beyond comprehension at this point: T.M. signed the Advance Directive for this very reason so that when she was found to be incompetent (which Dr. Cummings cannot dispute), the decision-making authority is vested with her father, whom T.M. has deemed as someone who knows her wishes and will have her best interests in mind, including the authority to approve T.M.'s admission to or release from a psychiatric hospital or unit, such as the Facility.

67. Dr. Cummings's personal opinion that J.M. was coercing his daughter had no bearing on whether or not to abide by the Advance Directive.

68. In fact, Dr. Cummings was never in a position to ascertain whether J.M. was exerting a coercive influence over his daughter, and even if J.M. were (and he was not), it is not Dr. Cummings's prerogative to make that determination, especially here where he has not provided any written notification of his objections to the Advance Directive and his rationale for doing so.

69. Regardless of his personal opinions, the law commanded that he and the Defendants abide by the Advance Directive.

70. It is clear that Dr. Cummings's *modus operandi* was in line with Professor Perlin's exclamation that expert witnesses, in mental-health settings, have a "high propensity to purposely distort their testimony in order to achieve desired ends."

71. Throughout this testimony, he consistently contradicted himself and his own legal counsel and has been out of touch with the personnel at the Facility.

72. For instance, even though his own statements in T.M.'s medical records reflect his awareness that Dr. Heffner was T.M.'s current provider, Dr. Cummings contradicted his own statements by testifying under oath during the April 11, 2023 hearing that he was "not fully aware of who [T.M.'s] most current treater would be. The family has supplied letters of recommendations that are older in dating going back a number of years. I do not know if anyone is currently treating her."[5]

73. Dr. Cummings testified as such to sweep under the rug his unwillingness to confer with Dr. Heffner in assessing T.M.'s diagnosis and considering less intrusive means to treat T.M.

74. When Dr. Cummings finally recollected Dr. Heffner's name during his testimony, it became clear why he refuses to coordinate with her and T.M.'s family: he blames them for T.M.'s current disposition and gives no weight to the diagnoses of Hashimoto's Thyroiditis and Non-Celiac Gluten Sensitivity despite the qualifications of Dr. Heffner and the substantial medical literature supporting Dr. Heffner's conclusions. *See* **Exhibits 4 & 6**.

75. But this is not a proper basis for a psychiatrist to disregard T.M.'s wishes and best interests, and reasonable medical judgment ordinarily considers the recommendations of a patient's family members and long-time treating providers.

76. As detailed below, his own subjective findings recorded in T.M.'s medical records directly contradict the

[5] The family supplied letters referenced by Dr. Cummings in his testimony are from Dr. Heffner and are dated May 5, 2021 and June 16, 2022, *i.e.*, far from "going back a number of years."

findings of not only Dr. Messamore and Dr. Heffner but also the Facility's own personnel, including another physician and the nurses.

77. One clear example of this was Dr. Cummings's view that T.M. continued to present a danger to herself and others. Despite his assessment, the medical records show that, between April 27, 2023 and June 5, 2023, T.M. had no instances of violence. Indeed, under the Violence Checklist within the medical records, she had zero instances of confusion, irritability, boisterousness, verbal threats, physical threats, or attacking objects.

IV. Clinic Review Panel to approve the forcible injection of antipsychotics

78. After receiving ALJ Blumer's order to involuntarily admit T.M., UMMS, the Facility, and Dr. Cummings quickly scheduled a clinic review panel under Md. Health Gen. Code § 10-708 and obtained a panel order to forcibly inject T.M.

79. By doing so, the Defendants moved forward against the recommendations of Dr. Heffner, who has consistently rejected the use of high dosages of antipsychotic medications by injection.

80. To a maximum, Dr. Heffner proposed the use of Risperidone at 0.75 mg per day, but nothing more.

81. T.M. immediately appealed the panel's order and eventually a hearing before an ALJ was scheduled for April 25, 2023.

82. Amid preparation for the April 25th hearing, T.M. notified the Defendants of the witnesses she intended to present, including, but not limited to, Dr. Heffner and Dr.

Messamore. *See* **Exhibit 9** (4/20/2023 witness designation letter).

83. The Defendants had been aware of these witnesses since at least April 21, 2023, if not longer.

84. On April 21, 2023, the Defendants voluntarily withdrew their request for forcible injections (thereby cancelling the April 25th hearing) because "since the initial [clinical review panel], the patient has been taking medications." *See* **Exhibit 10** (4/21/2023 Mohink email).

85. While the news was welcomed, it was also disturbing because at no point had T.M. ever refused her medications to justify the initial panel review in the first place.

V. Dr. Cummings attempts to inject T.M. then immediately orders another clinical review panel

86. More troubling, even though T.M. continued to ingest her medications and progress significantly, Dr. Cummings attempted to inject her on April 24, 2023 in violation of Md. Health Gen. Code § 10-708(b), which proscribes forcible injections until a clinical review panel sanctions the request.

87. Astonishingly, when T.M.'s counsel confronted Mr. Mohink, the Defendants' attorney about this attempt, Mr. Mohink denied this: "You have incorrect information. There was no attempt to medicate T.M. yesterday. Perhaps your source of information should verify the information before you make a significant allegation as you did." *See* **Exhibit 11** (4/25/2023 Mohink email).

88. Testimony later confirmed, together with the medical records, that, indeed, Dr. Cummings did attempt to

inject T.M. on April 24, 2023, and for several days thereafter on April 25 and April 26, and each time, T.M. refused.

89. Undeterred by T.M.'s refusal and despite her compliance to ingest her medications, Dr. Cummings immediately re-scheduled a clinical review panel even though not a week had passed since he had agreed to withdraw his original panel request and even though T.M. "has a significant constitutional liberty interest to be free from the *arbitrary* administration of antipsychotic drugs." *Mercer v. Thomas B. Finan Ctr.*, 476 Md. 652, 265 A.3d 1044, 1064, 1074 (2021) (emphasis in original; citation and internal quotation omitted).

90. On April 26, 2023, Dr. Cummings notified T.M. that a panel would convene the next day on April 27th at 3:45 p.m. to consider his request for the forcible injection of Paliperidone palmitate (Invega Sustenna). *See* **Exhibit 12** (4/26/2023 notice of CRP letter).

91. As soon as T.M.'s counsel became aware of this panel, they immediately provided notice to counsel (including Mr. Mohink) of T.M.'s witnesses—Dr. Heffner, Dr. Richard Ratner ("Dr. Ratner"),[6] Dr. Messamore, and T.M.'s father—on April 26, 2023 at 7:25 pm EST. *See* **Exhibit 14** (4/26/2023 notice of witnesses letter).

92. Not once did the Defendants consider the April 21st notice that T.M. had witnesses who were available to testify on her behalf, nor did they even consider accommodating their availability, instead resorting to an accelerated process at the arbitrary behest of Dr. Cummings.

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[6] Dr. Ratner's CV is attached as **Exhibit 13**.

93. Given the exigent circumstances and because Defendants' counsel never responded to T.M.'s request for witnesses until 11:51 a.m. EST (not even four hours before the scheduled panel hearing), T.M.'s attorney attempted to contact T.M.'s statutorily mandated lay advisor to coordinate the presentation of T.M.'s witnesses.

94. Under Md. Health Gen. Code § 10-708(e)(2), T.M. is entitled to "present information, including witnesses" and to "request assistance from a lay advisor."

95. As defined by law, the "lay advisor" is "an individual at a facility, who is knowledgeable about mental health practice and who assists individuals with rights complaints." *Id.* at § 10-708(a)(2). Before the panel can even reach a decision, it must "[r]eceive information presented by" T.M., including her witnesses. *Id.* at §§ 10-708(f)(3)(iii), (h)(1).

96. The panel, by law, must also "[a]ssist [T.M.] and the treating physician to arrive at a mutually agreeable treatment plan," "[r]eview[] the potential consequences of requiring the administration of medication," and "may not approve the administration of medication where alternative treatments are available and are acceptable to both the individual and the facility personnel who are directly responsible for implementing [T.M.'s] treatment plan." Md. Health Gen. Code §§ 10-708(f)(2), (f)(3), (h)(3).

97. Indeed, instead of permitting T.M. to coordinate the presentation of her witnesses, the Defendants obstructed this right through their attorney Mr. Mohink, who, on April 27, 2023 (the day of the panel) at 11:51 a.m.

EST, argued that T.M. has no "right to produce any witnesses other than her civil advocate." *See* **Exhibit 15** (4/27/2023 Mohink emails string).

98. While Mr. Mohink reconsidered his position that same day at 1:25 p.m. EST, the damage was already done, with only two hours remaining until the panel. In his follow-up email, Mr. Mohink requested T.M.'s witnesses even though T.M. provided notice of her witnesses the prior evening and even though he was aware that T.M. had witnesses as of April 21, 2023 based on her prior expert disclosures. *See id.*

99. Needless to say, T.M. did not have an adequate opportunity to notify her witnesses in time and, in fact, only two of her four witnesses were available for the medical panel at 3:45 p.m. EST. Both witnesses were also limited to ten minutes each.

100. This coordination was made even more difficult by the fact that Mr. Mohink obstructed T.M.'s counsel's ability to speak directly with T.M.'s statutorily required lay advisor on the basis that the lay advisor was an employee by the Facility and was therefore represented by counsel. *See id.*

101. Yet as the statute reads, the lay advisor is an individual who is to represent T.M. and would therefore be acting in her interests in advance of, during, and after the panel. Therefore, because T.M.'s interests are adverse to the Facility's, by right the lay advisor should and must have been independent. *Washington v. Harper*, 494 U.S. 210, 236 (1990).

102. The Fourth Circuit has already admonished a lay advisor under similar circumstances for his "minimal participation during the administrative proceeding" and because his "participation at the hearing was limited." *U.S. v. Morgan*, 193 F.3d 252, 266 (4th Cir. 1999).

103. This is precisely what happened to T.M.: she was assigned a lay advisor who did not have her best interests in mind and who minimally participated, if at all, at the clinical review panel.

104. Eventually, the panel affirmed Dr. Cummings's renewed request for forcible injection. *See* **Exhibit 16** (4/27/2023 CRP Decision).

105. By making this decision, the panel concluded that T.M. objected to the medication even though she did not. *See* Md. Health Gen. Code §§ 10-708(a)(4), 10-708(b).

106. Under the relevant statutory scheme, "medication" is defined simply as the "psychiatric medication prescribed for the treatment of a mental disorder." *Id.* § 10-708(a)(3). Significantly, that definition does not distinguish between the mechanisms by which a patient absorbs the medication.

107. For weeks, T.M. had ingested the pill form of the medication that the Facility and Dr. Cummings sought to inject by force. Thus, she had not refused the medication; rather, she objected to the method of administration, *i.e.*, forcible injection against her will.

108. Additionally, the panel inherently found T.M. to be at risk of being a danger to herself and others, but the panel would have been satisfied on the lone basis that she could not maintain her essential human needs of health or

safety without forcible injections. **Exhibit 16** at 4 ("They (*sic*) will relapse into a condition in which the individual is unable to provide for the individual's essential human needs of health or safety.").

109. Ironically, in deciding whether "other reasonable alternative treatments" had been considered, the panel recognized that T.M. "has been stabilizing (getting better) on oral paliperidone." *Id.* at 2.

110. Despite T.M.'s cooperation and stabilization, astonishingly the panel agreed that the forcible injection of the *same* medication would somehow fare better. *Id.*

VI. Administrative Law Judge erroneously affirms panel finding

111. On April 27, 2023, T.M. appealed the panel's finding, triggering her right to an appeal before an ALJ.

112. Throughout the course of the May 2, 2023 hearing before ALJ Daniel Andrews, Dr. Cummings engaged in self-serving testimony that was contradictory, off base, and out of touch with the realities of T.M.'s confinement.

113. He continued to testify that T.M. presents herself as a danger to herself and others, yet when ALJ Andrews inquired whether T.M. had engaged in any dangerous behavior within the past week, the only incident that Dr. Cummings could recall was an incident over two weeks ago on April 16th, when T.M. allegedly verbally threatened a staff member.

114. How a verbal threat is tantamount to a dangerousness finding to support a forcible injection is constitutionally incomprehensible.

115. Then, in reliance on mere speculation, Dr. Cummings justified his request on the basis that T.M. may not continue orally ingesting her medications post-admission even though she had cooperated for several weeks and even though she submitted testimony that she would abide by the instructions of her psychiatrist upon discharge. *See* **Exhibit 17** (Statement regarding intent to comply with medical instructions).

116. Dr. Cummings's rationale was without any basis: the injections that Dr. Cummings sought to use apparently last for thirty (30) days, and so presumably he would equally have to rely on T.M.'s willingness to return every thirty (30) days for the injections administered by Dr. Cummings.

117. Yet, by his logic, because he believes she was unwilling to orally ingest her medications, then surely he must believe that she was unwilling to return for forcible injections.

118. And clearly, it cannot be the case that Dr. Cummings is allowed to indefinitely detain T.M. for the sole purpose of injecting her every thirty (30) days.

119. Regardless, **Exhibit 17** demonstrated T.M.'s willingness to abide by the instructions of Dr. Heffner.

120. Generalities such as Dr. Cummings's are not sufficient under the law. *See United States v. Bush*, 585 F.3d 806, 816 (4th Cir. 2009).

121. Given that the Maryland legislature has made it crystal clear that forcible injection should be the last resort, *see Martin*, 114 Md. App. at 528, 691 A.2d at 256, Dr.

Cummings's justifications should have failed to pass muster. *Accord U.S. v. Watson*, 793 F.3d 416, 419 (4th Cir. 2015) ("Forcible medication is not justified every time an incompetent defendant refuses treatment; on the contrary, 'those instances may be rare.'") (quoting *Sell v. United States*, 539 U.S. 166, 180 (2003)).

122. Forcible medication is "a tool that must not be casually deployed," and courts must be vigilant to ensure that such orders, which "carry an unsavory pedigree," do not become "routine." *United States v. Chatmon*, 718 F.3d 369, 373-74 (4th Cir.2013).

123. At any rate, it was not a permissible overriding interest to rely on a patient's length of stay as the basis for a forcible injection. *See, e.g.*, *Allmond v. Dep't of Health & Mental Hygiene*, 448 Md. 592, 618-19 (2016) (holding that an "interest in shortening the length of an individual's in-patient care . . . does not constitute an overriding justification . . . for the purpose of medicating an individual against the individual's will when the individual is not being held as a result of a criminal conviction.").

124. The paradoxical testimony continued: Dr. Cummings then justified his request for forcible injections on the basis that T.M. was unwilling to shower, as if hygiene should be the basis to forcibly inject a patient.

125. Astonishingly, the testimony was false: as the nurse's notes in T.M.'s medical records revealed, T.M. had recently showered, but Dr. Cummings danced around the issue by stating (without any personal knowledge) that the nurse's note must be present only because T.M. asked the nurse for a shower.

126. The medical records are clear: "Patient had her laundry done as requested, and also showered this shift," as noted by Nurse Jessica Dobbs on April 30, 2023.

127. This myopic reading of the medical records is consistently borne out by Dr. Cummings's testimony, just as he previously testified during the April 11th hearing before ALJ Blumer that, despite what the medical records say, he had no knowledge of who T.M.'s current provider was.

128. And yet despite these inconsistencies and insufficient testimony, despite the dangers laid out by Professor Perlin of the "high propensity [of expert witnesses] to purposely distort their testimony in order to achieve desired ends" and to "openly subvert statutory and case law criteria," ALJ Andrews found this testimony to be satisfactory and ruled in favor of the Facility by holding that, by the preponderance of the evidence, the Facility complied with the statutory mechanisms. *See* **Exhibit 18** (5/2/2023 ALJ Decision).

129. Disturbingly, recorded on the record but outside the hearing of the participants in the proceedings, Dr. Andrews engaged in deliberations with other unidentified ALJs. During this recorded conversation: (a) ALJ Andrews explicitly rejects "the way [Dr. Cummings] reviewed the record," which he found not to be persuasive; (b) ALJ Andrews blatantly calls into question the viability of forcible injections, which relies on T.M. agreeing to return to the facility ("Who knows if she'll ever come back for follow-up?"); (c) it was discussed that "the family might need to be committed as well" after Judge Andrews

remarks that T.M.'s family's views on T.M.'s gluten sensitivity are "crazy"; and (d) the hospital is questioned "[w]hy are they pushing."[7]

130. Even though ALJ Andrews, while deliberating with the unidentified ALJs, tilted against Dr. Cummings, finding his review of the record not to be persuasive and finding that it is not credible to suggest that T.M. will not be successful after discharge, all while an unidentified ALJ questioned "why [is the hospital] pushing," somehow ALJ Andrews found in favor of the Facility. The personal comments among the ALJs deriding and disparaging T.M.'s family, however—combined with ALJ Andrews's opinion of Dr. Cummings—create doubt that this was an impartial hearing.

VII. Defendants abridge T.M.'s patient rights

131. Under the law, T.M. has certain liberty rights as a patient of the Facility.

132. These rights are spelled out in the Maryland Department of Health and Mental Hygiene's Rights of Persons in Maryland's Psychiatric Facilities.

133. One of these rights include visitation rights. Under the law, T.M. "shall be entitled to converse privately with and receive visits: . . . (3) During reasonable visiting hours that the facility sets, from ***any visitor if the individual wishes to see the visitor***." Md. Health Gen. Code § 10-703(a)(3) (emphasis added).

134. Only "for medically justified reasons" may the facility restrict a visit or private conversation and only if the

[7] The audio recording containing these comments is available.

restriction is documented and made part of the patient's medical records. *Id.* § 10-703(c)(1).

135. Both the Facility and UMMS understand that patients "can choose [their] visitors," and that they cannot "restrict or deny visitation privileges based on race, religion, ethnicity, culture, national origin, language, age, sex, sexual orientation, gender identity or expression, physical or mental disability, or socio-economic status."

136. In the event they do decide to restrict a visitor, the Facility and UMMS will provide an "explanation if we restrict your visitors, mail or telephone calls."

137. Despite these clearly delineated liberty rights, T.M. had restrictions placed on her visitors.

138. For example, on May 13, 2023, T.M. (through her attorney) requested visitation by video from Dr. Messamore on May 15, 2023. On May 15, 2023, Mr. Mohink denied this request without any explanation, nor has an explanation been provided in T.M.'s medical records.

139. Only T.M.'s attorneys were permitted to visit T.M., and even still, they were unable to speak with T.M. alone.

140. The Defendants further obstructed T.M.'s parents' access to information regarding the treatment of T.M., including what medications Dr. Cummings had administered to T.M.

VIII. Dr. Messamore's evaluation and T.M.'s status today

141. As of the date of this filing, T.M. is no longer in a state of psychosis.

142. In accordance with the nurses' observations and as further proof that T.M. should not have been held against her will is the latest finding by Dr. Messamore. *See* **Exhibit 2**.

143. Dr. Messamore recorded this evaluation by Video, which is accessible at [redacted]

144. Dr. Messamore is a psychiatric physician, pharmacologist, and university professor, and his specialties include the fields of psychopharmacology, complex mood disorders, psychosis, antipsychotic medication, and schizophrenia. He currently serves as an Associate Professor of Psychiatry at the Northeast Ohio Medical University ("NEOMED") in Rootstown, Ohio, and he is also the Medical Director of NEOMED's Best Practices in Schizophrenia Treatment Center. *See* **Exhibit 1**.

145. After evaluating T.M. on May 24, 2023 and analyzing the most-recent medical records available at the time between April 25, 2023 and May 23, 2023, Dr. Messamore reached the following conclusions:

1. T.M. shows no evidence of psychosis at this time.

2. T.M. shows no evidence of danger to herself at this time.

3. T.M. shows no evidence of danger to others at this time.

4. Although she has some sort of underlying illness that causes her to experience episodes of psychosis and cognitive impairment, symptoms of that condition are currently present to only a minimal or moderate degree.

5. T.M. does not require inpatient treatment.

146. Dr. Messamore frames his review of T.M.'s medical records by explaining the Facility's "Violence Checklist" assessments, which evaluate whether a patient is confused; irritable, boisterous, verbally threatening; physical threats; and attacking objects. *Id.* at 2.

147. Notably, T.M. was evaluated 27 times between April 25, 2023 and May 22, 2023, and based on the "Violence Checklist," the only positive findings reflected in T.M.'s medical records were for "confusion" from over one month ago on April 25 and 26. *Id.*

148. Next, Dr. Messamore summarizes four categories of findings based on the medical records: mental status, interest in self-care, willingness to take oral medication, and contrasting negative assessment.

149. First, as to T.M.'s mental status, Dr. Messamore highlights several instances where the licensed clinical social worker Angela Egger ("Ms. Egger") noted that T.M. was continually improving. As Ms. Egger writes on May 8, 2023, "Patient continues to ***show improvements in both mood and symptoms of psychosis***." *Id.* (emphasis added). That same note summarizes how T.M. "was seen interacting with some peers and engaging in treatment."

150. Of significant import, as Ms. Egger states on May 1, 2023, T.M. "was ***able to hold a logical conversation***" and expressed how she has "been able to write so much lately." *Id.* (emphasis added).

151. Similarly, Ms. Egger previously wrote on April 28, 2023 that T.M. "has started journaling her ideas for different novels she would like to write [and . . .] was ***able to discuss some of her ideas and appeared to enjoy engaging in a conversation.***" *Id.* at 3 (emphasis added).

152. In fact, T.M. taught Ms. Egger how "to play a card game . . . in a logical fashion." *Id.*

153. Next, Dr. Messamore directs the reader to examples in the medical records where T.M. has expressed an interest in self-care.[8] For instance, on May 18, 2023, T.M. "verbalized she was happy to be able to shower and enjoy herself more." *Id.* This comports with Ms. Egger's note on May 1, 2023, where she draws attention to T.M.'s much-improved hygiene, noting that T.M. "had allowed staff to attempt to comb her hair . . . and also showed some interest in starting to clean herself." *Id.*

154. Further, Dr. Messamore's report identifies proof of T.M.'s willingness to take oral medication. In late April, T.M. "agreed that she feels better when she is on her psychiatric medications." In fact, on May 1, T.M. "continue[d] to voice a desire to remain on her medication orally." *Id.*

155. Finally, although there is a "striking discrepancy" between the nurses' notes and Dr. Cummings's notes, Dr. Cummings's most recent note from May 12, 2023 stated that T.M. "does not report current suicidal thoughts" and "denies current violent or homicidal ideation thoughts." Dr. Cummings also conceded that T.M. is in compliance with taking her medication, which was "generally good at this time." *Id.* at 3-4.

156. To assess T.M.'s current mental status, Dr. Messamore opines on her general attitude, appearance, and

[8] This is important because Dr. Cummings continuously cites T.M.'s hygiene as a basis to detain her. For instance, Dr. Cummings testified, without proof, that a hair bow had been stuck in T.M.'s hair for months.

behavior; speech; affect; thought process and content; and cognition.

157. He describes that T.M.'s general attitude, appearance, and behavior was "pleasant and cooperating throughout the assessment" even though the assessment was lengthy. Dr. Messamore "pressed her for answers" and "challenged her firmly" and "touched painful memories from her past." Despite these "various significant stressors, [T.M.] did not become irritable, withdrawn, or inappropriately reactive." *Id.* at 4.

158. Dr. Messamore opines that T.M.'s speech latency, speech value, and rate and prosody of her speech was normal. *Id.* at 5. Additionally, T.M. "had a restricted range of affect." *Id.*

159. T.M.'s thought process was well organized and did not suggest a disordered thought process. Dr. Messamore "attempted to elicit psychotic ideas by conducting a lengthy interview, including stress-provoking themes, and introducing topics that often elicit psychotic ideas." *Id.*

160. Despite Dr. Messamore's attempts, "[a]t no point did T.M. show any evidence of delusional thinking or hallucinations." Accordingly, T.M. showed "no evidence of psychosis" during the interview. *Id.*

161. Dr. Messamore continues that T.M. did not express "thoughts suggestive of danger to herself or others" and denied "thoughts of self-harm . . . and harming others." T.M. looked forward to going home and planned to work on her novels and join a soccer team. *Id.*

162. Finally, while her memory appeared to be impaired "in a rather complex way" and her concentration was "mild to moderately impaired," Dr. Messamore concludes that T.M.'s ability to calculate is average, her fund of knowledge is average or better than average, and her abstract reasoning ability is good. *Id.*

163. Notably, T.M., over the course of this hour-long evaluation, was able to "correctly multiply 2 x 64 in her head," correctly estimated that "it's about 3,000 miles from Maryland to California," could "recite the names of the last 5 presidents" of the United States, "correctly interprets the familiar proverb 'even monkeys fall from trees,'" "could recall 5 of 5 words after a lengthy period of distraction," and "correctly knew the date." *Id.* at 5-6.

164. Dr. Messamore concludes his report with an analysis of whether T.M. requires hospital care. Upon consideration of the medical records and his May 24, 2023 assessment of T.M., Dr. Messamore opines that "T.M.'s illness does not fulfill criteria for inpatient care. *Id.* at 7.

165. Dr. Messamore describes T.M.'s current symptom status as mild. Dr. Messamore reasons that the Facility staff consistently described T.M. as a cooperative young woman who would like to go home, work on a novel, and get a pet. Further, Dr. Messamore did not "elicit any sign of psychosis, depression, mania, anxiety, or obsession." *Id.*

166. T.M.'s status has improved so much that Dr. Messamore suspects that "most physicians would not admit her to a hospital" even on a voluntary basis and he further suspects that "most insurance companies would

deny coverage for hospital care because there is no evidence of suicidal thinking, no evidence of risk of self-harm, no evidence of danger to others, and no evidence of inability to attend to basic needs." This is especially so because T.M. has a "home she can return to, a parent to rely on for assistance, and an outpatient psychiatrist to continue her care." Indeed, "[b]ased on her current mental status, a person not aware of her past would probably not suspect her of having a mental illness." *Id.* at 7-8.

167. These findings are on all fours with the previous findings of Dr. Ratner, who is a psychiatrist and forensic psychiatrist, who is currently a Clinical Professor of Psychiatry and Behavioral Sciences at the George Washington University School of Medicine and a Distinguished Life Fellow of the American Psychiatric Association, with nearly 50 years of practice and who was previously the President of the Washington, DC, Psychiatry Society and the American Society for Adolescent Psychiatry. *See* **Exhibit 13** (Dr. Ratner CV).

168. Dr. Ratner personally observed T.M. on April 21, 2023 and May 1, 2023 and similarly concluded that there was no longer a basis to hold T.M. against her will, as noted in a May 8, 2023 letter. *See* **Exhibit 20** (Dr. Ratner 5/8/2023 letter).

169. As of May 1, T.M. "no longer appeared actively psychotic." She was not "unruly, uncooperative nor unresponsive, and responded appropriately to the questions" Dr. Ratner had asked. *Id.*

170. Dr. Ratner was asked whether there was any basis for maintaining T.M. on involuntary status at the time of his letter. He stated: "The answer is an unequivocal 'no.'

She is voluntarily cooperating with her treatment program and seems competent to make treatment decisions for herself at this time." *Id.*

171. Despite these expert views, Dr. Cummings was willing to say whatever was necessary to confine T.M., truth be damned. In fact, the mere existence of the Consent Order, which called for the release of T.M. in exchange for her dismissal of lawsuits and agreement to follow a particular regime of medical care, demonstrates Dr. Cummings did not truly believe T.M. was psychotic or a danger to herself or others.

172. As support for his rationale, Dr. Cummings completely disregarded his own nurse's observations, who—contrary to Dr. Cummings's findings—found T.M. to be agreeable and cooperative, compliant, engaging, logical, and willing to maintain her overall hygiene.

173. And it was not beyond him to copy and paste his previous general subjective findings without any changes, which are generally devoid of any sort of conversational details or specific descriptions or examples of behaviors to support any of their generalizations or conclusions.

174. In fact, Dr. Cummings did, at times, include his general observations for a particular day several weeks after that visit with T.M. occurred.

175. This is especially illuminated by Dr. Cummings's "observations" of T.M. on the very same day that Dr. Messamore evaluated T.M. on May 24, 2023. Despite the clear proof of the Video evaluation and Dr. Messamore's findings, Dr. Cummings still observed T.M. to be "with impaired communication, . . . with impaired thinking and behavior," with responses to internal stimuli and auditory

hallucinations, with speech that is "not fully spontaneous, slow, halting rate, loud vol[ume] at times, [abnormal] rhythm and tone," with an "impaired, impoverished, disorganized" though process, with an "[u]nstable, restricted, odd, irritable" affect, and with a "poor" fund of knowledge (which he copied and pasted).

176. Finally, as expressed by Dr. Heffner in a May 7, 2023 letter, because of being sexually assaulted in college, T.M. suffers from post-traumatic stress disorder ("PTSD"). Therefore, any attempt by the Defendants to forcibly inject T.M. with antipsychotics would likely trigger and worsen T.M.'s PTSD. *See* **Exhibit 20** (Dr. Heffner's 5/7/2023 letter).

177. As Dr. Messamore notes, T.M. "has already experienced traumatizing loss of bodily autonomy. Survey data reveals that involuntary hospitalization and forced medication are perceived as violating and traumatizing by a significant portion of psychiatric patients." *See* **Exhibit 2** at 6.

178. Indeed, T.M. was helpless and at the mercy of Dr. Cummings.

179. In conclusion, the foregoing demonstrates that T.M. found herself under the care of a provider who seemed determined to forcibly inject T.M. with antipsychotic drugs, who arbitrarily sought application for forcible injections—at one moment agreeing to cancel an injection request on the basis that T.M. was ingesting her medications and then a few days later reconvening the panel without coordinating with T.M.—and who was willing to rely on contradictory testimony sworn under penalty of perjury to get what he wanted. Unfortunately, the

medical ecosystem encouraging this behavior is made worse by a statutory regime that defers extraordinarily to providers like Dr. Cummings and the Defendants, who continuously flouted the law and T.M.'s due-process rights.

180. But the legislative history of the statute demonstrates that the General Assembly "intended to put tight reins on the forced medication of involuntarily committed patients and not to allow the kind of regime portrayed in *One Flew Over The Cuckoo's Nest*." *Mercer v. Thomas B. Fin. Ctr.*, 476 Md. 652, 265 A.3d 1044, 1071 (2021) (quoting *Kelly*, 397 Md. at 447, 918 A.2d at 498-99 (Wilner, J., concurring)).

IX. Having lost her legal challenge before the ALJ, and with no way out of custody and forcible injections against her will likely imminent, T.M. succumbs to a "Consent Order" under duress to gain her freedom and avoid the forced injections.

181. T.M. and her attorneys faced a Hobson's choice: continue to pursue the legal appeals and federal lawsuit aimed at addressing the violations of T.M.'s rights under State law, the Fourteenth Amendment of the U.S. Constitution and Article 24 of Maryland's Declaration of Rights while T.M. remained incarcerated and received antipsychotic drug injections against her will or negotiate a "Consent Order" to gain T.M.'s freedom and avoid for certain the forced injections.

182. T.M., considering her own freedom and avoiding forced injections to be paramount to all else, agreed under duress to the "Consent Order" which represented the ne-

gotiated settlement agreement with the Hospital Defendants in the pending habeas case in Anne Arundel County. *See* **Exhibit 3**.

183. Under Maryland law, "a contract may be held void where, in addition to actual physical compulsion, a threat of imminent physical violence is exerted upon the victim of such magnitude as to cause a reasonable person, in the circumstances, to fear loss of life, or serious physical injury, or actual imprisonment for refusal to sign the document." *United States use of Trane Co. v. Bond*, 332 Md. 170, 182-83, 586 A.2d 734, 740 (1991).

184. "In other words, duress sufficient to render a contract void consists of the actual application of physical force that is sufficient to, and does, cause the person unwillingly to execute the document; as well as the threat of application of immediate physical force sufficient to place a person in the position of the signer in actual, reasonable, and imminent fear of death, serious personal injury, or actual imprisonment." *Id.; Goel Servs. v. Kevin Dockett, Sr. Trucking, Inc.*, 2012 U.S. Dist. LEXIS 153560, *17-18, 2012 WL 5252057 (D. Md. Oct. 22, 2012) (same).

185. The United States Supreme Court and the Fourth Circuit have both recognized that the antipsychotic drugs prescribed for T.M. by Dr. Cummings during her involuntary admission "can have serious, even fatal, side effects." *Washington v. Harper*, 494 U.S. 210, 229 (1990); *United States v. Watson*, 793 F.3d 416, 419 (4th Cir. 2015). Known side effects include "dystonia, a severe involuntary spasm of the upper body, tongue, throat, or eyes, . . . akasthesia (motor restlessness, often characterized by an inability to sit still); neuroleptic malignant syndrome (a relatively rare condition which can lead to death

from cardiac dysfunction); and tardive dyskinesia, . . . a neurological disorder, irreversible in some cases, that is characterized by involuntary, uncontrollable movements of various muscles, especially around the face." *Harper*, 494 U.S. at 230.

186. Because of the "Consent Order," T.M. is forced to continue to take the antipsychotic drug cocktails prescribed for her by Dr. Cummings—a medication regimen that is far different than that recommended by T.M.'s long-term treating psychiatrist Dr. Heffner, *see* **Exhibits 3, 5 & 6**, and which has caused and continues to cause T.M. to experience some of the side effects described in *Harper,* namely dystonia and akasthesia. *Id.*

187. The conditions to which T.M. was forced to agree to obtain her freedom in the "Consent Order" are patently unconstitutional. Under the "consent order," T.M. **must**: (1) replace her long-term treating psychiatrist, Dr. Heffner, with another psychiatrist; (2) "continue to take the Invega (paliperidone) 6 mg in pill form daily that was prescribed while in the hospital," (3) use the services of Family Intervention Partners ("FIP") at least once every three months; (4) allow FIP and its providers to act as one of her mental health providers; (5) "instruct her [new] treating psychiatrist to consult with FIP regarding her treatment regime, including . . . prescribed medication;" (6) "follow all recommendations of her [new] treating psychiatrist regarding her treatment and medications/prescriptions;" (7) "accept referral to" and "follow" all "recommendations" made by "the Anne Arundel County Crisis Intervention Team;" (8) "take all prescribed medica-

tions that concern her psychiatric health;" and (9) "dismiss, with prejudice, all pending actions against [the Defendants]."[9] **Exhibit 3.**

188. The "Consent Order" contains no time limitations and purports to control T.M.'s healthcare decisions, including the drugs she must take and the providers she must use in perpetuity. *Id.*

189. Incredibly, the "Consent Order" also purports to bind T.M.'s parents, who were not parties to the habeas case in which the order was entered. Under the "consent order," T.M.'s parents—J.M. and A.M.—**must**: (1) "remind, encourage, and monitor" T.M.'s "ingestion of her prescribed medications" and (2) "immediately notify FIP and the Anne Arundel Crisis Team if [T.M.] becomes noncompliant with her medication." *Id.*

190. "[C]onsent decrees 'have attributes both of contracts and of judicial decrees,' a dual character that has resulted in different treatment for different purposes." *Local No. 93, Int. Assoc. of Firefighters v. Cleveland*, 478 U.S. 501, 519 (citing *United States v. ITT Continental Baking Co.,* 420 U.S. 233, 235-237, and n.10). Unlike ordinary judicial orders, "the voluntary nature of a consent decree is its most fundamental characteristic." *Id.* at 521-22. "Indeed, it is the parties' agreement that serves as the source of the court's authority to enter any judgment at all." *Id.* at 522 (citing *United States v. Ward Baking Co.,*

[9] In addition to these requirements, the Consent Order effectively restricts T.M.'s ability to travel, since she must visit FIP in Glen Burnie, Maryland at least once every quarter. It also implicitly imposes upon T.M. an obligation to pay for the mandated medical services she is required to obtain under the Consent Order.

376 U.S. 327 (1964) (cannot enter consent decree to which one party has not consented)).

191. In this case, T.M.'s agreement to the terms of the "Consent Order" was given under duress. Had she not consented to the terms of the agreement, she would have continued to be incarcerated against her will and likely would have been forced to receive injections of antipsychotic drugs against her will.

192. The United States Supreme Court has recognized that, "although a State is not subject to suit without its consent there is always the right to enjoin an individual, whether he is a state officer or not, from doing an act [that] violat[es] the Constitution, . . ." *Missouri v. Chicago, B. & Q. R. Co.*, 241 U.S. 533, 537 (1916).

193. Enforcement of the "Consent Order" in this case would require the State court to continue to deprive T.M. of her most fundamental right protected by the Fourteenth Amendment of the U.S. Constitution and by Article 24 of the Declaration of Rights to determine what shall be done with [her] own body. *Cruzan v. Director*, *Mo. Dept. of Health*, 497 U. S. 261, 269 (1990) (It is fundamental that every adult "has a right to determine what shall be done with [her] own body"); *see also Union Pacific R. Co. v. Botsford*, 141 U. S. 250, 251 (1891) ("No right is held more sacred, or is more carefully guarded," than "the right of every individual to the possession and control of [her] own person.").

194. The United States Constitution guarantees that state governments shall not "deprive any person of life, liberty, or property without due process of law," U.S. CONST, amend. XIV § 1, and "forbids the government to

infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-302 (1993).

195. Article 24 of the Maryland Declaration of Rights provides "[t]hat no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

196. This is the Maryland counterpart of the Due Process Clauses found in the Fifth and Fourteenth Amendments to the United States Constitution. *Allmond v. DHMH*, 448 Md. 592, 608 (2016).

197. Unless there is good reason to do otherwise, "state constitutional provisions [such as Article 24] are in *pari materia* with their federal counterparts or are the equivalent of federal constitutional provisions or generally should be interpreted in the same manner as federal provisions." *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 621, 805 A.2d 1061 (2002).

198. "Article 24 of the Declaration of Rights and the Fifth and Fourteenth Amendments of the United States Constitution assure Maryland citizens of their rights to both procedural due process and substantive due process." *Johnson v. Md. Dep't of Health*, 470 Md. 648, 686 (2020).

199. The Hospital Defendants, while acting under the color of law, deprived T.M. of her significant liberty rights without due process of law and continue to do so through the "Consent Order."

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

a) Declare that the "Consent Order" violates the Maryland Declaration of Rights and the Due Process clause of the Fourteenth Amendment and is therefore unconstitutional, unenforceable, and void *ab initio*; and

b) Declare further that the "Consent Order" is also void and unenforceable because it was obtained under duress while T.M. faced the prospect of further unlawful confinement and forced injections of antipsychotic drugs; and

c) Grant preliminary and permanent injunctive relief preventing enforcement of the "Consent Order;" and

d) Grant any other further relief that this Honorable Court deems to be just and proper.

Dated: June 22, 2023

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

No. 1:23-CV-01684-SAG

T.M., ET AL.,
PLAINTIFFS

v.

UNIVERSITY OF MARYLAND MEDICAL
SYSTEM CORPORATION, ET AL.,
DEFENDANTS

September 5, 2023

Before: HON. STEPHANIE A. GALLAGHER, District Judge.

TRANSCRIPT OF PROCEEDINGS
TEMPORARY RESTRAINING ORDER HEARING

THE COURT: We are here in Case Number 23-1684. It is T.M., et al, versus University of Maryland Medical System Corporation. Counsel, would you identify yourselves for the record, please.

MR. SHEPARD: Good morning, Your Honor. My name is Ray Shepard. I'm here on behalf of the M. family.

THE COURT: Okay.

MR. SAUDEK: Good morning, Your Honor. Mark Saudek, Ella Aiken, and Tori Trocchia here on behalf of defendants University of Maryland Medical System, Baltimore Washington Medical Center, Kathleen McCollum, and Thomas J. Cummings, Jr.

THE COURT: Thank you, and good morning to all of you. All right. Well, we are here for a hearing on the motion for temporary restraining order that was filed some time ago and we had some intervening discussion about abstention and some other things. I have quite a few questions on this matter, mostly directed towards you, Mr. Shepard, so we may as well jump in.

First, I want to understand, what are the parents' constitutional claims?

MR. SHEPARD: Well, I think they arise under the First Amendment, Your Honor. The First Amendment carries with it not only the affirmative right to speak but also the right not to speak. Of course, if you're a criminal defendant it falls under the Fifth Amendment, but the consent order requires the parents in this case to essentially act as a state snitch should their daughter not comply with the medication regimen that's been, you know, dictated by the medical providers that the state has chosen for her. And so they had the right not to be required to do that.

THE COURT: All right. And where is that in the complaint?

MR. SHEPARD: I didn't focus on that in the complaint. I think I cited some case law that, you know, the

failure to cite it in the complaint doesn't mean that it's not—that it's not presented to the Court. I can file an Amended Complaint if necessary to specifically include that but I was focused, you know, sort of laser focused, if you will, on T.M.'s constitutional rights and in doing so, you know, struck me that that was a problem with regard to the parents as well.

THE COURT: Okay. And for purposes of the hearing, just so that we don't have issues with redaction if anyone orders a transcript, we should probably refer to the parties by the initials that are used in the complaint—

MR. SHEPARD: Will do, Your Honor.

THE COURT: —instead of using the names.

All right. The main difficulty I'm having in this case is seeing a plausible path for success on the merits because obviously the TRO that you are requesting is what is called a mandatory TRO. It's altering the status quo versus maintaining the status quo. You agree with that, I assume?

MR. SHEPARD: Yes.

THE COURT: The status quo is we have this consent order in place and you are seeking at least in part to invalidate it or prevent enforcement of an order that's in place, so the burden is heavier.

All right. Looking back at the docket in the case that was in this court back in June, 23-1572, T.M.'s claims were dismissed with prejudice on June 26th of 2023. There had been a hearing on the motion for temporary restraining order set for June 13th of 2023, and hours before that hearing was to take place, it was removed from the docket,

the notice on the docket which I can take judicial notice of says that it was—there was a motion to withdraw the order setting the hearing on the motion that was granted that afternoon.

So the lawyers in that case, the five lawyers that were representing T.M., who was referred in that case as Jane Doe, dismissed the case, the claims with prejudice after seeing this new lawsuit that had been filed. So I'm struggling with the notion of this duress claim under this set of facts which seems to make it quite implausible. You have, you know, five lawyers from three different law firms representing T.M.

First of all, how does the dismissal with prejudice not foreclose T.M.'s present claims; and then second, how can a party be permitted to enter a negotiated settlement and then claim duress to try to keep one side from enforcing the settlement?

MR. SHEPARD: Right. So Your Honor, let me address the first questions first. The dismissal of the other federal lawsuit, as you've noted from the record, occurred as a result of this consent order, not for any other reason. And that's in the last paragraph of the consent order which required T.M. and J.M. to dismiss a series of cases that were filed, including that federal lawsuit.

I think the second part of Your Honor's question is how could there possibly be duress with so many lawyers. Well, I'm prepared to present to Your Honor documents today that show that—and let me back up to set the stage because I think it's very important that you understand what was happening and when it was happening.

So as Your Honor just pointed out, there was a hearing to take place on a TRO in federal court, I believe before Judge Bredar at 2 o'clock, I believe, in the afternoon of the 13th of June. At 9 a.m. on that same day, there were two matters that were coming up for a hearing in state court. One was in the *habeas* case, and the other one, I believe—I can't recall the other case, but the—oh, yeah, the ruling, appealed the ruling for the involuntary injection of these antipsychotic medications.

The prior lawyers, who are all very good lawyers, pushed really hard to get the federal hearing on Monday. And I believe it was originally assigned to you and it was reassigned to Judge Bredar and as a result it got pushed back to Tuesday at 2 o'clock. What that meant for the defense team is that they had to be in state court in the morning and wouldn't get to federal court until the afternoon. It was the feeling amongst the defense team that they would not be successful in state court, and I have documentation to that effect.

THE COURT: When you are talking about the defense team, you are talking about your clients' team?

MR. SHEPARD: Yes.

THE COURT: All right. You guys were the plaintiffs, right?

MR. SHEPARD: Yes. Well—I'm sorry, plaintiffs' team. Thank you for that correction. The complainants below in the state court, yes.

THE COURT: And in federal court. You were the plaintiffs in both.

MR. SHEPARD: That's right, I think in all of these cases, you're correct.

THE COURT: Okay.

MR. SHEPARD: I don't know why I was saying defense. But anyway, what that meant was that the team representing T.M. and the family faced the very real possibility that before the case could be argued in front of Judge Bredar or even simultaneous with that hearing that the state court would rule against them, which was the feeling amongst the lawyers and that they expressed it in writing and that everyone believed that T.M. would be injected with the antipsychotic medication Tuesday afternoon while the case was being heard by Judge Bredar.

So the timing of things is important to understand because it's also, I think, important to understand what that meant in terms of the potential danger to T.M. and her family. It's not just that she didn't want to do that. And this was a question I had, and I'll give you my understanding of it and I'm prepared to present, you know, some evidence, but T.M. was—went to the hospital and presented herself for a voluntary admission. The hospital turned that into an involuntary admission. They then rejected J.M.'s appointment as the healthcare agent. And during her hospital stay, T.M. was compliant with taking the medications that were contrary to what her treating psychiatrist wanted her to take but were what the hospital was prescribing. She was taking it in oral form, pills, and it's a lower dosage and it doesn't—she was tolerating it and improving. And if you review the medical records as the experts did for the plaintiffs' team, they point out all the places in the records where she's doing just fine on that.

The danger with the injection, Your Honor, is that the injections, my understanding is that the injections are a much higher dose, they are intended to be used when the patient is recalcitrant and not cooperating with oral medication and the effects can be devastating, up to and including death. It has a massive effect on the person's brain, and if this case goes forward we're going to present expert testimony to explain to Your Honor why that happens and how it happens. So this wasn't an objection without a real danger. The family and T.M. herself believed wholeheartedly that this was a very dangerous situation for her to be in.

At the same time, the family is being told by very good counsel, do whatever you got to do to get her out because if she gets the needle, it's too late. So the result of that was the consent order. And it was not something that anybody wanted to do, but the primary goal for the plaintiffs' side was, for God's sake, get her out of there, she had been held for over two and a half months involuntarily, get her out and get her away from the possibility of being injected.

THE COURT: But isn't this what happens in any case where resolutions are reached? I mean, both parties are facing potential consequences they don't like, they reach a compromise position to get somebody out. It might not be their ideal position. In fact, it usually isn't. That's the nature of a settlement.

MR. SHEPARD: I agree a hundred percent and I tried to address that issue in my very first brief to the Court. And Your Honor's familiar with the Unconstitutional Conditions Doctrine which says that state actors cannot, even in connection with settlement of a case, they can't hold harm to you—they can't say we'll let you out of

confinement and not inject you with drugs but only if you agree to give up these rights.

THE COURT: I mean, I don't understand how these five lawyers essentially counseled their client to pretend to agree to conditions that they are then going to argue are coercive or constitute duress. You know, to go before a state judge and say we're all in agreement to this, we want you to sign this order and weeks later to come forward—I mean, are you saying the lawyers counseled their client to essentially pretend to agree to these things just to get them out?

MR. SHEPARD: Your Honor, the law is clear that duress is not just the client. The attorneys in this case were under duress, because they were faced with two choices: Agree to whatever we can to get her out of there, or continue the litigation which is likely to result in their client being injected. They didn't want that on their conscience.

THE COURT: But don't those lawyers have an obligation to raise that with the Court or at least to this Court when they are told, hey, you said you were going to dismiss the case and you didn't do it, shouldn't they have instead come forward and said, hey, we were forced into this agreement under duress instead of filing a motion to dismiss with prejudice? I mean, do you have evidence that you are going to present that these lawyers believed they were under duress?

MR. SHEPARD: Yeah, I'm going to—I mean, I'm going to call them as witnesses.

THE COURT: Today?

MR. SHEPARD: Well, not today. But I have e-mails that were sent to my client from them that I can present today that are backing up what I'm telling you. I mean—

THE COURT: I guess—and I'll look at the e-mails and maybe that will answer my question. Are the e-mails suggesting, hey, we've looked at the litigation risk here, we don't think going we're going to win, or are the letters saying we are under duress and you need to pretend to enter into this agreement and then we'll fight it after? Because clearly, I mean, in many cases you get e-mails from lawyers that say, hey, we don't think your chances are that great, we may want to consider settling this, that's a very different thing from we are under duress—

MR. SHEPARD: Right.

THE COURT: —and we have to do this and we're going to pretend to enter into this agreement and then we're going to challenge it later because it's unconstitutional.

MR. SHEPARD: I think it's the latter.

THE COURT: All right.

MR. SHEPARD: I mean, the plaintiffs' lawyers were telling him, look, this is not going to be enforceable, agree to it, challenge it, but you got to get her out. I mean, if you don't get her out, we're not going to win in the state case as it's postured, there's a very good likelihood that she's going to be injected Tuesday afternoon. Then it's game over.

THE COURT: Wouldn't there have been an option to ask for a stay? Assuming that the state court ruled against and there was a hearing in federal court in a couple hours,

wouldn't they have had an alternative to stay it pending the hearing taking place in a couple hours?

J.M.: They weren't listening. The judges weren't complying.

MR. SHEPARD: Well, I wasn't there, but all I know at this point is that the lawyers, who I know personally, they're very good, did not feel that that would work, and I can ask them on the stand why they felt that way.

THE COURT: I'll take a look at the e-mails that you have.

MR. SHEPARD: Yeah.

THE COURT: And has Mr. Saudek been provided with—no?

MR. SAUDEK: No, Your Honor. Not yet.

MR. SHEPARD: No. I'll provide them right now. May I approach, Your Honor?

THE COURT: Yes. Thank you.

MR. SHEPARD: You're welcome.

(Pause in Proceedings.)

THE COURT: So I have two e-mails, at the bottom, they are marked Exhibit 22 and Exhibit 23. Exhibit 22 is a little unclear what the context was. We have an e-mail from Andrew White who's one of the attorneys what says, "Respectfully, yes, you can if the other option is not to get her out." And then there's an e-mail from Attorney Michael McGraw that says, "Andy is correct, they're holding

all the cards, we're not going to win in state court on Tuesday. If we lose, they can inject Tuesday afternoon. I'll free up again in 20 minutes."

MR. SHEPARD: Right. And, Your Honor, if I may—

THE COURT: Sure.

MR. SHEPARD: I don't want to cut you off. Notice the date is Sunday, June 11th. The consent order was entered on—

THE COURT: On the 12th.

MR. SHEPARD: —on Monday the 12th. And the federal hearing was on Tuesday the 13th in the afternoon. So I just wanted to put it in context of when these e-mails were happening.

THE COURT: Okay. And then the other message, it says from Todd. I'm not—

MR. SHEPARD: Right. This is an e-mail from Mr. McGraw cutting and pasting an e-mail he received from hospital's counsel.

THE COURT: Oh, Todd is the hospital's counsel, okay.

MR. SHEPARD: Correct.

THE COURT: And it says, "Too many holes for J., I will not let Heffner be her deciding psychiatrist and if we have to go to the mat, then so be it. I will send you my language and then it's up to J."

MR. SHEPARD: Right. So they were attempting to say to hospital's counsel, look, she has her own doctors, part of the consent order says you got to get rid of your

doctor, you got to get a new doctor, and J. is saying, no, we like our doctor, she's been treating my daughter since 2016. And hospital counsel says, no, I'm not going to allow that. And so it became—

THE COURT: But back to my original question.

MR. SHEPARD: Sure.

THE COURT: Where here do the lawyers advise to enter into an agreement that is not going to be enforceable? That's the part, you know, you're saying that the lawyers essentially advised that they should, under duress, that they were under duress signing this agreement. This seems to me to be sort of standard communications that happen when parties are weighing litigation risks and negotiating an agreement.

MR. SHEPARD: What I can tell Your Honor is that—and I don't have them with me, but I know—but my client can testify to this, that in addition to these e-mails, and I believe I've seen them in writing, other e-mails where they're advising their clients that they don't believe the order is going to be enforceable. That was part of the advice that they were giving their clients. I do have e-mails that say that. I just didn't bring them.

THE COURT: Do you have a way to access them now?

MR. SHEPARD: Yes.

THE COURT: I'll give you a few minutes, then, to find them.

(Pause in Proceedings.)

THE COURT: I guess I'd also be curious if you have anything as to why the attorneys would dismiss the claims

with prejudice if they believed there was an unenforceable order.

MR. SHEPARD: Well, there was also—and I have other documents to this effect. One of the things that they say, I've read through their brief that I got on Friday night, I think they say it nine different times in their pleadings that no one ever threatened to enforce this consent order. That's not true factually. I have documents that say that Mr. Mohink, the hospital's counsel, in fact told Mr. M.'s counsel that the hospital—I'm sorry, J.M.'s counsel that they were going to move for contempt, and I can tell you why that happened.

THE COURT: When is that?

MR. SHEPARD: I'm sorry?

THE COURT: When? What time frame was that?

MR. SHEPARD: That was—I'll give you the exact. I believe it was June 25th. Yeah, June 25th is the date of the message, but it was—if I can—let me explain what was the generation of this.

So when the parties were negotiating the consent order, one of the requirements is that T.M. visit FIP, which is Family Intervention Practice—Partnership or whatever it is, a certain healthcare provider. The hospital made an appointment for T.M. to see a particular psychiatrist at that facility before she left the hospital.

The order didn't say she had to see a particular psychiatrist. It was important to the family that she comply with the order because they didn't want the hospital to come and get her, they didn't want the Crisis Intervention team to show up with handcuffs and take her back to the

hospital. So she saw a different provider, but that angered the hospital because they wanted her to see a particular psychiatrist. And when that didn't happen, even before that happened, the day that she was released and, Your Honor, I think I attached a video to my motion, the Crisis Intervention team, which is not supposed to be an enforcement agency in the sense of enforcing consent orders like this, but anyway, they show up at the house with the consent order, and Mr. J.M. is prepared to testify that, you know, the video only shows what happened outside. Once the officer—officers came inside, they were very aggressive stating that the court order required T.M. to see that particular psychiatrist on Monday and they were there to make sure that she was—intended to do that.

THE COURT: I think we've gotten far afield from my questions which were focused on the—I mean, at that point the order's already signed.

MR. SHEPARD: Right.

THE COURT: I'm trying to focus on the duress and how this got signed.

MR. SHEPARD: Right.

(Pause in Proceedings.)

MR. SHEPARD: Your Honor, I think the best way to do this, I believe these e-mails are lower in the chain, and I should have just printed out the whole 25- to 30-page chain. I think the best way to do this is maybe e-mail it to counsel and—because I only have it right now on a cell phone.

THE COURT: On a cell phone.

MR. SHEPARD: And I can e-mail it to Your Honor. Maybe we can get a printout.

THE COURT: Okay.

MR. SHEPARD: But this is just one of several where the attorneys are telling my client that they don't—

J.M.: I have more.

MR. SHEPARD: Yeah, that they don't believe this order would be enforceable.

THE COURT: They don't believe it would be enforceable because he's signing it under duress or because T.M. is signing it under duress or they don't believe some provision of it is enforceable because of its language?

MR. SHEPARD: I don't recall them saying the word "duress" but they're saying things like, just get her out, avoid the needle. To me that's duress. I mean, do they say—do they say, you know, it's not going to be enforceable because of duress? I don't know that—I don't remember reading that word to come out of their mouth or their text, but it was clear that the danger was that if they didn't get her out of the custody that she was in, the fear was she would be injected, period.

THE COURT: But that's a fear on the part of the plaintiffs' team. That's not any action at that point being taken—I mean, there's speculation about what Maryland and its doctors will do, but they're not taking any coercive action at that point. They are ready to litigate this case in the three different hearings that are pending, right?

MR. SHEPARD: Well, and Your Honor, you asked a question earlier about could they have just asked for a

stay until the federal hearing, and my client reminded me that—because I wasn't involved then, but there was a time when the attorneys did make that argument and it was—and it was rejected. They did not stay the appeal of that determination to allow a federal court to hold a hearing.

THE COURT: But that was a longer term—this is you have a hearing on the calendar at 2 p.m., presumably if there's a 9 o'clock hearing, maybe a ruling gets made that morning, maybe it doesn't.

MR. SHEPARD: Right.

THE COURT: Even if a ruling does, we are talking a matter of hours. We are not talking a matter of days or weeks or months.

MR. SHEPARD: Right.

THE COURT: So it seems to me it's a very different ball game than what you had originally which is, hey, we're going to file this federal case and we're going to try to get a hearing at some point. It's a different situation.

J.M.: Can I say something?

MR. SHEPARD: Just say it to me.

(Pause in Proceedings.)

MR. SHEPARD: So Your Honor, my client's reminding me that—and I believe there's a reference to this in the e-mail as well, that his attorneys at the time were explaining to him and their other clients that they didn't believe that the state court wanted to give this case a legitimate review, that the state court judges wanted to get rid of the case and that they were telling him that they believed based on their communications—and again, it's

hard for me to relay what they—the communications they had with hospital's counsel, but I believe it was clear to them the hospital intended to inject T.M. as soon as possible, and that's why they say the things that they say in their e-mails to their client.

THE COURT: Well, why don't you go ahead and send that e-mail to Mr. Saudek. Do you have my chambers e-mail there? I assume you may not. You can also send—do you have my chambers e-mail or not?

MR. SHEPARD: Go ahead, Your Honor.

THE COURT: It's MDD_SAGchambers@MDD.uscourts.gov. And then I guess I'll step back into chambers and take a look.

MR. SHEPARD: Yes. I just wanted to make one additional comment, if I could.

THE COURT: Sure.

MR. SHEPARD: I think the attorneys, and you may see this in the e-mail—and there are other e-mails, by the way, and if Your Honor gives me the opportunity, we'll go back and review all of them and send additional e-mails that you can review, but I think there was a belief that I personally share with his prior lawyers that the terms of the consent order on its face would not be enforceable.

THE COURT: Well, and again, that's a different question than were you under duress in signing it, right?

MR. SHEPARD: Right. Right. Right.

THE COURT: I mean, there are times when lawyers advise their clients to enter into a contract—

MR. SHEPARD: One hundred percent.

THE COURT: —believing that some of the terms might not be enforceable. That's very different from—

MR. SHEPARD: Yes.

THE COURT: —us as lawyers and my attorneys are and my clients are under duress entering into this agreement and I have a hard time reconciling the duress notion with the actions that these attorneys took, which is to dismiss the claim with prejudice a week and a half later.

You know, if you truly believe your clients were under duress entering into an agreement, I don't see how you, even understanding that that agreement committed you to dismiss with prejudice, if you believed that there was duress in signing it, I don't know how as an attorney you then dismiss the claim with prejudice.

MR. SHEPARD: Well, right. The problem with that is if it hadn't been dismissed with prejudice as required by this consent order, which is a whole another issue because I think that's really what this is all about, versus the medical requirements, but if the hospital or one of the defendants in one of those lawsuits then goes back into state court to say you haven't complied with the consent order because you haven't dismissed these cases, then that puts T.M. at risk because—

THE COURT: But at that point you haven't dismissed the federal case, so why wouldn't they raise it here? You know, when I wrote the letter which was filed in both cases saying you guys said you were going to dismiss with prejudice and you haven't, instead of dismissing with prejudice, why don't those lawyers write a letter or file a motion and say, hey, Judge, this was duress, we shouldn't have to dismiss this with prejudice because my client was

under duress when they had to sign it. They knew you were alleging duress at that point because your case had been filed.

MR. SHEPARD: Right. Right. And they've been—had I asked them to do that I'm sure they probably would have had I thought about it, but—and I'm sure that they are anticipating that they're going to have to come into court at some point and explain that. But I think the thinking on the counsels' part and mine was we don't want to give them ammunition to come after us, after T.M., for any reason, even the medical part. So—

THE COURT: But then you filed a case claiming—I mean, wouldn't that potentially trigger action, too? You filed our own case a couple weeks later.

MR. SHEPARD: No, because they would have to have a legitimate reason to initiate that, right? And we've tried very hard not to give them that. And in doing so, we are giving up very important constitutional rights, you know, because she's got a physician that wasn't her choice, she had to give up her old physician which was her choice for many years. She's following a regimen where that physician has to consult with the state-identified providers, none of that would be occurring but for this order. If—

THE COURT: Well, let me ask you this also because the other component of this that I find problematic, essentially what you're asking this court to do is enter a TRO that would one-sidedly remove one party's obligation to comply with the consent order but leaving the benefits that your clients derived from the consent order in place, meaning she's out, right?

MR. SHEPARD: That's the only—that's the only benefit that she got was her freedom.

THE COURT: But that's an important one. I mean, that's a critical piece of what was being sought was her freedom, obviously, from the communications.

MR. SHEPARD: Well, of course. Of course.

THE COURT: So what you're asking for is not to sort of revoke the consent order and go back to the preconsent order status quo. You're trying to revoke one party's—the benefits one party received from the consent order while allowing your clients to retain the benefits that they received.

MR. SHEPARD: Yes, under the Unconstitutional Conditions Doctrine, that's correct. You're exactly right. I mean, obviously we don't want T.M. back in their custody.

THE COURT: Right.

MR. SHEPARD: I mean, that's a given. And the only way that—or the only way that guaranteed that she wouldn't be injected was the course of action that the lawyers took and that they took.

THE COURT: Which you're saying is essentially to pretend that we're agreeing with this with no intent to be bound to it.

MR. SHEPARD: No, no, they've complied with the order. If they were pretending they would have said, okay, she's out, screw you, we're not complying with this order.

THE COURT: Right.

MR. SHEPARD: That didn't happen. And had that happened, I think Mr. Mohink would have made good on his threat that we're going to move for contempt.

THE COURT: But an intent to enter into the agreement knowing full well you're going to then turn around and challenge it, right?

MR. SHEPARD: Yes.

THE COURT: I mean, that's what you're saying these lawyers were advising their client to do is to enter into it and then know you're going to challenge it a few weeks later.

(Pause in Proceedings.)

MR. SHEPARD: So all of the issues that Your Honor is raising were discussed in e-mails.

THE COURT: Okay.

MR. SHEPARD: And—

THE COURT: So those are being sent to my chambers now?

MR. SHEPARD: Yes. Yes.

J.M.: Some of them.

MR. SHEPARD: Well, not all of them but we can sit here and keep sending if need be, but we'll send the ones we believe you need to see.

I know that when I was preparing for this knowing—or reading the consent order whether it was—well, the issue of duress—I mean, there are cases, Judge, where, you know, courts have invalidated agreements where the duress is merely, you know, financial. So in divorce cases, for

example, where you know, one side's got all the power and is threatening to take the kids and one party doesn't have a job or a source of income and agrees to a settlement agreement that's so one-sided that—I mean, you know, there are cases out there that find duress on far less severe facts than you're about to be injected with a high dose of antipsychotic medication that's going to alter your brain forever.

It's a completely—I mean, I think that the facts of what was happening at the time and the pace at which things were happening supports the issue of duress. Yes, people can agree to give up their constitutional rights. They do it all the time in criminal cases. But to do so you have to do it knowingly and voluntarily. You can't essentially hold a gun to somebody's head and say give up your right against self-incrimination and start talking. That's not the way our system works. And essentially in T.M.'s mind and in the mind of her parents that was the situation. There was a needle being held up to her and either you agree to this and gain your freedom or you risk the harm.

THE COURT: But the system also doesn't usually work where parties enter into an agreement knowing that they intend to immediately challenge it. I'm not going to say knowing that they don't intend to be bound by it because I understand they have so far complied with it, but they almost immediately turned around and attempt to invalidate it but want to keep the benefit that they received. I mean, this seems to me to be dangerous ground that we're on in terms of inability of a party to invalidate any settlement agreement that one might enter into and sort of the finality that settlement agreements are supposed to have.

MR. SHEPARD: Right. What's dangerous ground, Your Honor, is—and forgive me, but I believe the hospital's actions in this case are nothing that I've seen in my practice. I know that there are—there's a process in place for when patients who—and there's cases about, you know, prisoners who are psychotic and what rights they have and so forth, but the evidence in this case to me is overwhelming that she shouldn't even have been in custody.

THE COURT: And these are just different issues.

MR. SHEPARD: Right.

THE COURT: I mean, what I'm really focusing on here is the attorneys' actions.

MR. SHEPARD: Right.

THE COURT: What was happening on the legal side and the duress. I understand that you have a lot of arguments to make about the constitutional issues, but you can't get there without this duress problem.

MR. SHEPARD: I understand, Your Honor. Would it be okay if my client addressed the court? He's asking if he could.

THE COURT: I'd prefer for it to come through you. I'm happy to take a recess if you would like to consult with your client and to take a look at the e-mails that you are sending, but it's inappropriate to have the party directly addressing the Court.

MR. SHEPARD: Your Honor, if you would, I would appreciate it because I think it's important that you get a sense of the position that they found themselves in.

THE COURT: Okay.

MR. SHEPARD: And the advice that they were getting from some very good lawyers.

THE COURT: Right. Well, and again, that should be back in my chambers, as I understand it.

MR. SHEPARD: Right.

THE COURT: All right. I'll take a brief recess.

(A recess was taken from 10:43 a.m. to 10:59 a.m.)

THE COURT: I received two e-mails. One is a chain with a caption, "Do not dismiss the federal," and one was the I guess more complete chain that we had looked at earlier in the other e-mail exhibit. I can't remember if it was 22 or 23. Actually, I think I left my other one back in chambers. One more minute, let me grab my exhibits. I left them there.

(Pause in proceedings.)

THE COURT: Sorry about that. You may be seated again. It is the continuation of Exhibit 22 that we were talking about earlier. Is there anything else I was supposed to receive, Mr. Shepard?

MR. SHEPARD: No, Your Honor. I think that's it.

THE COURT: Okay. I'm happy to hear your argument on those e-mails.

MR. SHEPARD: Well, Your Honor, I think that what you can read from the e-mails are that the family was pushing back on some of the proposals and the advice was they just needed to get T. out. And you know, there's one e-mail in there about one of the lawyers doesn't think that

the state's going to monitor an essentially unenforceable order anyway, you got to get her out. The overriding concern was this forcible injection.

Now, I would like the opportunity to have Mr. M.—Mr. M.'s here for this very issue to testify about the duress to at least make the record, because duress, Your Honor, I believe is a state of mind when you enter into an agreement. Whether you're doing so voluntary is one thing, but when you're doing so to avoid a perceived and very real harm, that's quite a different thing. It takes away the voluntariness of the agreement. And that's the problem here. And the Supreme Court has said in, I believe the *Kuntz* case that state actors can coerce parties into giving up those rights. And there is coercion here and, you know, it may be—I can't imagine a more coercive environment.

THE COURT: But I want to clarify something because what I'm really having difficulty getting past here is this was a highly represented party. I mean, we had five lawyers here.

MR. SHEPARD: Sure.

THE COURT: And it seems clear to me from these e-mails that the lawyers did not believe that this was a duress situation and they did believe that they had an enforceable consent order as in the "Do not dismiss the federal" chain of e-mails, Attorney Billings-Kang on June 19th said, "Under the terms of the consent order we are obligated to dismiss the federal action. Later on the hospital will likely seek relief in state court under the terms of the consent order." And consistent with that, the lawyers do go ahead and dismiss it a week later because

they're being opposed by their client and it says, you know, you can have new counsel come in.

I mean, this is not a situation where these lawyers are standing up and saying, this is an unenforceable consent order, we don't have to do these things. So it appears to me that—and again, I'll hear from your client if you wish to do that. I guess I'm wondering if you have case law in a situation where someone is represented by counsel and then comes in and claims duress. Because this is a negotiated disposition between two sets of attorneys. I have a much harder time seeing the duress argument.

MR. SHEPARD: Right. Well, Your Honor, there are cases where—and I've read cases, I believe I cited some in my brief but I'd have to ask the Court for an opportunity go back, but there are cases that talk about the duress that counsel find themselves under in some cases.

THE COURT: But I at least presently don't see any evidence that these attorneys believed themselves to be under duress based on this set of e-mails that you just sent me and based on their actions following up on that in dismissing the case with prejudice. I mean, that's a fairly final action to take if you believed that you were under duress at the time of advising your client to enter into an agreement. I don't doubt that there may be cases in which counsel is under duress but I sort of don't see a factual basis based on what is before me and with you carrying the burden. I'm just not seeing it on the record before me here.

MR. SHEPARD: Here's the argument I would make, Your Honor, and that is when an attorney is representing a client who is facing the type of injections that T.M. was

facing, they had one overriding concern, and that was to get her out of that environment. I don't think anybody disputes that or could reasonably dispute that. As a result they were willing to accept unreasonable terms because the overriding goal was to get her out.

THE COURT: But did the attorneys believe these to be unreasonable terms? I mean, clearly there was a negotiated agreement here, and I'm not seeing that—unreasonable terms to the extent of them being unconstitutional, I'm not seeing that record here in terms of the attorneys' beliefs and the attorneys' thought processes. So then I'm left with a situation where you have a party that's being counseled by an attorney and, again, I think there's some real systematic problems for our system if parties are allowed to have one set of attorneys negotiate an agreement, then hire a new attorney and try to unwind the thing and arguing duress based on—

MR. SHEPARD: Right.

THE COURT: —deciding to comply with the advice being given, the advice about litigation risks, et cetera, being given by the first set of attorneys. I don't doubt that everyone had a real interest in just getting her out of there and that they were willing to make certain compromises to do that. That seems to me very clear from the record. But what is unclear to me is that that amounted to duress which requires essentially no other alternatives.

Here you have several court hearings coming up at which these arguments can be made. You know, I'm having real difficulty seeing how there's a likelihood of success on the duress prong based on what's before me. I'm happy to hear from your client but, frankly, based on the

record that I have right now in terms of these e-mails and the court docket and what the attorneys did, you know, again, you can put whatever you want on the record, I'm just having difficulty seeing where that's going to overcome the record I have here.

MR. SHEPARD: Right. And I don't think the law is that if you're following the advice of counsel you can't be under duress. I don't think that's the law under these circumstances. And I think I can find case law that backs me up on that. I would like to make the record and call Mr. M. as a witness because I think it's best to hear directly from someone involved—

THE COURT: Okay.

MR. SHEPARD: —you know, what was happening and the circumstances under which you would concede to this agreement.

THE COURT: Okay. All right. I think for the time being we can limit the testimony to this duress issue.

MR. SHEPARD: Yes, one hundred percent.

THE COURT: All right. Mr. Saudek?

MR. SAUDEK: Yes, Your Honor. We were under the understanding this was not an evidentiary hearing. We could have brought witnesses. We did not bring witnesses. We're happy to proceed as Your Honor wishes.

THE COURT: To the extent—I'm happy to hear from Mr. J.M. in this matter to the extent that I believe I would need additional evidence to have a complete record. I would certainly give you the opportunity to do that and we would reschedule this for another date when you can do

that. I'm not going to make a ruling against you based on your lack of having witnesses here.

MR. SAUDEK: Thank you, Your Honor. Appreciate that.

THE COURT: All right.

THE CLERK: Can you raise your right hand?

(J.M. was duly sworn.)

THE CLERK: You can have a seat. Please speak clearly into the microphone and state your full name for the record.

THE WITNESS: Do you want my full name or should I just put J.M.?

THE COURT: You can give J.M. for now.

THE WITNESS: J.M.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SHEPARD:

Q. I'm going to call you Mr. M.

A. Okay.

Q. Mr. M., were you—you are related to T.M. as her father, correct?

A. That's correct.

Q. All right. And—

THE COURT: Make sure you're speaking loudly into the microphone so that we can year you.

THE WITNESS: That is correct, sir.

BY MR. SHEPARD:

Q. Okay. You've been sitting in the courtroom listening to the exchange, the colloquy between the Judge and myself. Can you tell the Judge what was happening at the time that this consent order was being negotiated by your counsel? What was going on with respect to the proceedings below?

MR. SAUDEK: Objection, Your Honor. I do not believe Mr. M. counsel in the underlying case. I used his name. I apologize. Mr. M.

BY MR. SHEPARD:

Q. Well, Mr. M., you were a party to some of the cases that had to be dismissed?

A. That's correct.

Q. Okay. And I believe you were consulting and, in fact, there's some e-mails between T.M.'s counsel and you?

A. That's correct.

Q. And were you T.M.'s medical power of attorney?

A. I am.

THE COURT: I'll overrule the objection because of the intertwined nature of the cases and the fact that Mr. M. was represented in some of these issues and seems to be involved with the exchanges.

BY MR. SHEPARD:

Q. So let me just ask you this: Why were you and T.M., why was the family concerned about this injection?

MR. SAUDEK: Objection.

THE COURT: Overruled.

MR. SAUDEK: Mr. M. can testify to what Mr. M. knows, not to what anyone else knows.

THE COURT: Overruled as to Mr. M. He cannot testify about T.M.'s state of mind.

THE WITNESS: Okay.

BY MR. SHEPARD:

Q. What was the danger that you perceived?

A. It could be—it could be lethal for her. It could make her a vegetable, it could damage her in a lot of other ways, and it scared the hell out of me.

Q. How did you reach that conclusion?

A. By talking to professionals, okay? By talking to medical professionals, and finding—and researching myself in addition to that.

Q. What medical professionals did you speak to?

A. I talked to Dr. Messamore, Dr. Heffner, her doctors, and then I researched myself case studies. I looked at studies online. I read about this—the dangers, okay, of these things, and it scared me to death. It made no sense. None of it made sense. And I'm—so I was in a pretty bad state of mind at the time, Your Honor. You know, this had been going on for two and a half months. I'm sorry for

getting too close to the mic. And pretty dark, I should say, in my own mind.

I parallel the situation with a Netflix documentary called *Taking Care of Maya*. The only difference there is the mom was the driver there and she committed suicide. For me, it was pretty bad. And my daughter, I was talking to her. She was calling me. She was isolated. He allowed no visitors except for an attorney. He allowed—the attorney was not allowed to be alone with her. So she had no rights to speak freely.

This went on for two and a half months. And she would communicate with me and, you know, I had to assure her that I was going to do everything I could to get her out. And you know, she had been—and I begged him, I begged him from the get-go not to take these actions with her. She had been assaulted. It was horrible. You know, and I was talking to her on the phone and I explained to her, you know, I wasn't there for the assault, I didn't know anything about it, there's nothing I could do, but I promised her I would not stop until I was able to get her out. He had no intention of letting her out.

MR. SAUDEK: Objection.

THE COURT: Sustained.

BY MR. SHEPARD:

Q. You made reference to "him." Who are you talking about?

A. Dr. Cummings. He had no intention—

MR. SAUDEK: Objection.

THE COURT: Sustained.

BY MR. SHEPARD:

Q. Was this something that was communicated to you?

A. Yeah. He—he told me.

THE COURT: Sustained.

BY MR. SHEPARD:

Q. Right. You can't say what he said.

A. Okay.

Q. So as a result of your conversations with Dr. Cummings, what did you do?

A. Well, I kept—well, then he cut me off and he allowed nobody in the facility to communicate with me, none of the nurses and him, nobody could talk to me about my daughter. They couldn't talk to me about her care. They couldn't talk to me about anything at all. And the only way I could talk to her is she got on the phone and she called me on one of the patient phones, okay? It was a pretty horrible situation. And I was working with the attorneys trying to get her out.

By the time we got to that end point where this happened, we were optimistic because we had the federal case filed, it was supposed to go to you, Judge Gallagher, and we were happy and, you know, it was going to be on a Monday, we figured, and the state case would be Tuesday but it's okay because we would already be in there on a Monday. And then what happened is it got pushed to Tuesday, and they, the hospital, reacted to the state case. Their attorney—the federal case.

MR. SAUDEK: Objection.

THE WITNESS: Their attorney, Todd Mohink—

THE COURT: This is likely going into objectionable territory.

MR. SHEPARD: Right.

BY MR. SHEPARD:

Q. So what was communicated to you with respect to—

A. The attorneys?

Q. Yeah, the hospital's position.

A. Yeah. So it was communicated to me from my attorneys was—

MR. SAUDEK: Objection.

THE COURT: I think he can testify about what he did in response. I'm not sure he can talk about what the attorneys communicated.

BY MR. SHEPARD:

Q. After you had conversations with your counsel, describe the position you believed you were in at the time.

A. As you can see in the e-mails, okay, I pushed back, okay? You can read that yourself. I pushed back, okay, on this whole thing. And they assured me that they felt he was evil and I had to get her away from him. I had more than one conversation. They said he was—

MR. SAUDEK: Objection.

THE WITNESS: —you got to get her away.

THE COURT: Sustained.

BY MR. SHEPARD:

Q. You can't say what they told you.

A. Okay. Just get her—

Q. Let me ask a question.

A. Just get her out.

Q. So after you say you had conversations with each of your counsel independently?

A. Right.

Q. And without telling us what they said, after you had each of those conversations, how did you feel after each of those?

A. I felt like I had no choice. I felt like if I didn't get her out, she could die, okay, and I'd be responsible for that, right? And the chance of a stay, I saw personally the judges in these cases all kicking the can. Nobody wanted the case, okay? Nobody wanted to rule. The one time somebody ruled early on, okay, and we went to the—we appealed and they got slapped down, basically, okay?

And so after that nobody—they took the case away from that judge, okay, in the courts, and then they kept passing it around and every time we went into court they found a—they found an excuse to kick it again, some administrative excuse to kick it, okay, and nobody wanted it.

And so the idea was of them giving us a stay was slim to none, okay, when we went to state court. That's the way we felt. And so I had no choice. It was either—it was like gun to my head, okay? To me—to me, this is how I felt, okay—these guys are like the cartel, okay? They had my

daughter and the ransom was, okay, they wanted this order, okay? They didn't care. Really the other stuff was irrelevant. All they cared about was me dismissing the cases because they were worried—in my opinion, this is my thinking, okay, they cared about that federal case because they were really vulnerable, okay? They felt they were vulnerable.

And so I was put in a position where I didn't have time to think about it. You have to make a decision. You got to make a decision. You got to make a decision. And they're trying to get me to influence my daughter to do it, okay? I told my daughter not to agree to anything, okay, don't sign anything. When they present it to you, call me. Let's make sure we understand what they're agreeing to. And that didn't happen. The attorney—my attorney went nuts. Hung up the phone, called her up, and got her to do it, okay? She knows she was agreeing. I can't speak to her state of mind, I apologize. Okay. I can tell you that she didn't—did she—well, can I say what she told me or not?

THE COURT: No.

MR. SHEPARD: No.

THE WITNESS: Okay. Well, I can just tell you that I didn't even understand half of this thing, okay? I questioned it. I was questioning it continually, okay, but I had no choice. I had no time. I had to make a decision, I was told. That's it, okay? So it was either go to court, okay, which I wanted to do or—and lose and then all of a sudden they can inject, okay?

So you can see from those e-mails I didn't want to do this, okay? I was forced to do it. I felt—I felt forced to do it, okay? All right. I can't—I can just tell you what I felt

in duress, okay, myself. I was broken, mentally broken at that point, okay? I've been living with this. I gave up—I mean, my business, I wasn't involved in my business for months, okay? I told my daughter I will not do anything day and night, okay?

All I did was work on her case. I read cases after cases after cases trying to understand what to do, okay, to fight for her day and night. I did nothing else, okay? I didn't care about anything else. Nothing else mattered to me, okay? I had to save her from this, from this guy, okay? And it's scary, okay, to me, right? I got phone calls, I got a phone call from disability rights, okay? They were troubled by this guy. They interviewed my daughter and they called—

THE COURT: I think we're well beyond the scope of your question and—

MR. SHEPARD: Yeah, let's not talk about that.

THE WITNESS: Okay.

BY MR. SHEPARD:

Q. So with respect to the order, were you able to review the order, the consent order in draft form before it was agreed to by the lawyers and your daughter?

A. If review means did I see it? Yes.

Q. Right.

A. I saw the order.

Q. And did you have discussions with any of the attorneys about what the order required?

A. Yes.

Q. Okay.

A. Yes.

Q. And as you've described it, you pushed back some?

A. Yeah. I didn't understand what half of it meant.

Q. Right. And with respect to the advice that you received—well, let me ask you this:

You've testified—did you want to accept this consent order?

A. No.

Q. Do you believe that it was entered into voluntarily?

A. No.

Q. What do you believe would have happened if you—or if your daughter had not agreed to this consent order?

A. They would have injected her.

MR. SHEPARD: No further questions, Judge.

THE COURT: Mr. Saudek?

MR. SAUDEK: Yes.

CROSS EXAMINATION

BY MR. SAUDEK:

Q. I'm sorry, Mr. M. I didn't understand your last answer. Would you repeat that, please?

A. I said they would have injected her.

Q. Okay. Mr. M., did you sign the consent order?

A. No, I did not.

Q. Were you a party to the consent order?

A. I'm listed so I'm told that makes me a party.

Q. Okay. Did you agree to the consent order before it was entered into?

A. No. I asked that I get a phone call—

Q. Mr. M.—

MR. SHEPARD: Objection.

MR. SAUDEK: —if you can just answer the question, I'd appreciate it.

THE COURT: It's a yes or no question. You can on redirect ask him to explain.

THE WITNESS: Okay. Yes.

BY MR. SAUDEK:

Q. You agreed to the consent order?

A. Yes.

Q. What do you mean by you agreed to the consent order?

A. I don't know how to articulate it other than they pushed it. They threw it to me. I had to make a decision. I said at that time I want—I want to talk to her before anything—she signs anything. She signed something there. I don't know what it was, okay? I have no idea. I never got what it was. And that's it. As far as—

Q. Okay. If that's your answer—

A. I don't know how else to answer it other than I already did.

Q. Mr. M.—I'm sorry. I should back up. I jumped into my questioning. My name is Mark Saudek. I'm a lawyer for four of the defendants. You and I have not met before today; is that correct?

A. No, we have not. You used my name, by the way. I don't know if that matters.

Q. Excuse me?

THE COURT: You said the full name. Just try to stick with Mr. M., if you can.

MR. SAUDEK: I apologize. Thank you. Please, if the record could reflect if I make that mistake again it's purely unintentional.

BY MR. SAUDEK:

Q. Mr. M., you and I have not met before today?

A. No, we have not.

Q. We have never spoken?

A. We've never spoken.

Q. You've not had your deposition taken in this case?

A. No, I have not.

Q. Okay. Mr. M., when you said that "they" were pressuring you, you were speaking with your lawyers, right? That's who you're referring to as "they"?

A. I was speaking about their side, the hospital side, and my lawyers.

Q. Okay. Did you ever speak with anybody from the hospital side about the consent order?

A. Just the—I just read the e-mail from Todd Mohink representing the hospital.

Q. Okay. That was in—so you did not speak with Mr. Mohink?

A. I didn't speak with him, but when he said what he said, it scared me to death.

Q. Okay. Did you correspond with Mr. Mohink directly yourself?

A. No, I did not.

Q. All communications that you're referring to went between counsel, correct?

A. That's correct.

Q. All right. And in fact, you never signed the consent order. I believe you testified to that, correct?

A. That's right, I did not sign.

Q. Five lawyers for your daughter did sign, correct?

A. You're saying they did, so I'm assuming they did.

MR. SAUDEK: Well, Your Honor, I have a copy of the consent order. May I show it to the witness?

THE COURT: Yes. If you'd like, you can put it on the screen. I think—is the system on, Denis?

THE CLERK: It is, Your Honor.

THE COURT: Okay. Yes, you can put it right on the screen there so everyone can see it.

MR. SAUDEK: Would Your Honor like me to have this marked as Exhibit 1?

THE COURT: Sure. It will be Defense 1.

BY MR. SAUDEK:

Q. Mr. M., can you see this document?

A. Yeah, I see it.

Q. All right. Have you seen this document before?

A. I believe I have.

Q. Are you familiar with it?

A. I am.

Q. Can you identify it, please?

A. It says "consent order."

Q. This is the consent order that we had been talking about today, correct?

A. I believe so.

Q. Would you like to take any more time? Would you like me to show the second page as well?

A. No, it's fine. I believe you wanted to show me the signatures.

MR. SAUDEK: Well, Your Honor, first we'd move for the admission of this document—

THE COURT: So admitted.

MR. SAUDEK: —the consent order.

THE COURT: Yes.

BY MR. SAUDEK:

Q. Have you read this page before, the second page of the consent order?

A. I have.

MR. SAUDEK: Your Honor, I realize I have an incomplete copy of it.

MR. SHEPARD: Your Honor, we stipulate that it was signed by T.M.'s counsel.

THE WITNESS: Yeah. That's fine.

THE COURT: I think Mr. Saudek has the final ripped page there.

MR. SAUDEK: I do.

THE WITNESS: Okay. There we go.

BY MR. SAUDEK:

Q. Have you seen this page before, Mr. M.?

A. You know what? I didn't look at the page, but it's probably there. I just didn't notice it.

Q. Okay. Is Mr. McGraw your counsel?

A. Yes.

Q. Your lawyer?

A. He was.

Q. And was Mr. Billings-Kang your lawyer?

A. Yes.

Q. Mr. Hesel?

A. Todd, yes.

Q. Mr. Leitess?

A. Yes.

Q. And Mr. White?

A. Yes.

Q. They all represented you?

A. Yes, that's correct.

Q. And in addition, they represented your daughter, correct?

A. That's correct.

Q. And in this context, entering into this consent order, they were representing your daughter, correct?

A. From what I'm understanding, I'm a party to this so I guess they're representing me, too.

Q. Well, when you say you're a party, what you're pointing to is that you are named in the consent order; is that correct?

A. That's correct.

Q. Is there any other way in which you believe that you were a party to the consent order?

A. I believe there's a case that's been dismissed in here that I was a party to.

Q. Okay. Were you a party to this case in which this consent order was entered?

A. I'm not sure which case it's referring to, so you have to tell me which one it is and I'll let you know.

Q. This is a case that ends in 910. Does that help you?

A. No. No. What's the title of it?

Q. The title is T.M. v. Baltimore Washington Medical Center and Kathleen McCollum.

A. I mean, what's the subject of that case?

Q. Now you're beyond me, I'm afraid. I wasn't a lawyer to that case either. There were a number of cases. We can move on from that question.

Mr. M., you were faced to the extent you had a decision to make with a choice that day, correct?

A. That's correct.

Q. Your choice was either to have the hearing run its course, correct?

A. Correct.

Q. Or to resolve the hearing, resolve the matter, it would be addressed at the hearing before the hearing happened, right?

A. When you say "resolved the matter," you mean this consent order?

Q. Well, that's one way to resolve it, but there are many other ways to resolve a matter before it's heard by a court but that is one way, correct?

A. That's correct.

Q. So that was your choice. Your choice was to either let the hearing run its course or to resolve it, correct?

A. That's correct.

Q. And in fact, that was the same choice that your daughter had that day, correct?

A. That's correct.

Q. And you chose to resolve it rather than let the hearing run its course, correct?

A. That's correct.

Q. Did your lawyers tell you that they were under duress at the time?

A. Am I allowed to speak to their state of mind?

Q. No. I'm asking you what they told you.

A. Well, am I allowed to say that? Before I wasn't allowed to say what my lawyers told me.

Q. Let me rephrase the question.

MR. SAUDEK: I'll rephrase the question, Your Honor.

BY MR. SAUDEK:

Q. At the time you entered into this order, did you understand it to be unenforceable?

A. I was told by the lawyers it was unenforceable.

Q. Did you understand it to be unenforceable?

A. Well, I'm not a lawyer. I can only go by what I'm told.

Q. Did you, in fact, comply with the terms of the order?

A. Yes, we did.

Q. Mr. M., you said that you didn't understand half the terms of this order; is that correct?

A. That's correct.

Q. Which of the terms as you've now read it did you not understand at the time?

A. Should I start from the top of the order?

Q. Please.

A. Let's go to the beginning, okay? It says—

THE COURT: Is there something having to do with the duress that you're asking him in terms of this?

MR. SAUDEK: Your Honor, I'm trying to understand whether part of the duress Mr. M. is testifying to is that he didn't understand the terms of the order.

THE COURT: Okay.

THE WITNESS: You asked me a couple minutes ago about my attorneys telling me if they were under duress, okay, and I'm just thinking for a second what I'm allowed to answer regarding that question. And all I can tell you, sir, is they said they thought the doctor was evil and that I had to get her away from him because she—

THE COURT: We're now into hearsay again.

THE WITNESS: Oh, okay.

BY MR. SAUDEK:

Q. This is what your lawyers told you, Mr. M.?

A. Yes, that she was in danger with him, very much in danger. I had to—

THE COURT: We're now getting into hearsay. I'm going to strike this testimony.

THE WITNESS: Oh, okay.

THE COURT: Go back to the question that Mr. Saudek posed.

BY MR. SAUDEK:

Q. Mr. M., what terms of this order did you not understand at the time you say you agreed to it? Which of the terms of this order did you not understand?

A. Is this about the duress again or just the whole order in general?

Q. Whole order in general. I can ask you more specific questions, if you like.

A. Yeah, why don't you be more specific.

Q. Sure. The first paragraph provides that "Upon her release from BWMC, T.M. shall obtain a new treating physician." Did you understand that?

A. Yes. No, no, I didn't, but I'll explain that in a minute but go ahead.

Q. What did you not understand about that?

A. Well, it says new treating physician other than Dr. Heffner.

Q. I'm sorry. It says new treating psychiatrist. My question was—

A. A new treating psychiatrist. I got to put my glasses on. "Shall obtain a new treating psychiatrist other than Dr. Heffner within two weeks." It doesn't say, one, she has to see that psychiatrist. It just says she has to obtain one and it doesn't define what the word "obtain" means, okay? So I'm like, what does this mean? I'm looking up these words and I'm saying, well, I don't understand, she has to obtain—do you know how hard it is to find a psychiatrist and see one that quickly? Sometimes it takes months to get with a psychiatrist and I'm required to do this within

two weeks, okay? So does this mean I just find one within two weeks and then I can push the appointment out for a month? That's where—I didn't understand that, okay?

And then it says "other than Dr. Heffner." Does that mean she keeps Dr. Heffner, too, she can have more than one, or does that mean instead of, okay? I don't really know. It doesn't tell me any of this.

Q. You had no obligation under this paragraph, correct?

A. Yeah, I had an obligation on the whole document because later on in the document it tells me I got to make sure she's complying.

Q. You're identified in one paragraph, correct? It is the third paragraph on this page that I'm now showing you, Page 2 of the consent order?

A. I'm seeing writing here where it says that Mr. M. and Mrs. M. shall remind, encourage, and monitor T.'s ingestion of her prescribed medications when T. is in care of either of them, okay, and Mr. and Mrs. M. will immediately notify Family Intervention Partners and Anne Arundel Crisis if becomes noncompliant with her medications, okay? I didn't understand that paragraph.

Q. What did you not understand about that paragraph?

A. Okay. That one there says, okay, number one, I'll remind, encourage, okay, when in care of. There's no definition for "in care of." I don't know what that means, okay? In care of, okay? And then this also goes back to I have to—I have to notify him prescribed medications. Well, prescribed by who, okay? So who's prescribing these

medications? Is it the psychiatrist or is it a different medication that I have to worry myself with, okay? And if it's a psychiatrist, then I got to worry about who her psychiatrist is and I got to be involved with the psychiatrist because I have to know what her medications are, okay? So I have to be involved in all of this, okay, so as this document's all intertwined, okay? It puts me in every single paragraph, okay, one way or another.

Q. So Mr. M., just so we can be clear here, you understand what this document says, you believe that there are ambiguities in the document, correct?

A. I don't understand everything it says. I have to interpret it, okay, as to what I think it might say.

Q. Okay. You agree there are ambiguities in this document, correct?

A. There's a lot of ambiguities.

Q. All right. That is the part of this document that you say you don't understand, correct?

A. That is the part—the ambiguities of the document?

Q. You so far have identified a number of what you assert are ambiguities as what you don't understand in the document?

A. The statements, they're not clear.

Q. Okay.

A. Okay?

Q. Okay. So I think we're in agreement. When you say you don't understand terms of the agreement, what you're

referring to is your view that there are ambiguities in the agreement?

A. Yeah, a lot of ambiguities.

Q. Thank you. Mr. M. —

A. I also didn't understand something else.

Q. I'm sorry?

A. You want to pull it back up? I'll tell you more I didn't understand.

Q. Yes. Pull it back up. What page would you like?

A. Yeah, I didn't understand—let's go to that page you were just on, okay, where it says that—on the cases, okay. At that last paragraph there, okay, that they have to be dismissed, okay, with prejudice. I didn't understand why, okay, that has to be included in this document. It didn't make any sense to me, okay, why these cases had to be dismissed, right? I didn't get that, okay, because it nothing to do with her care, okay, and it seemed to me that it didn't make any sense. There are pretty specific here, okay? All this other stuff is all over the place, okay, and then I see this here and I'm like, well, this is just protecting their own butts, okay? That's all they're trying to do. They were in trouble, okay, and that's why this is in here. I understood that one, okay, but I didn't understand why it was in there.

Q. Okay. Mr. M., at the end of the day, you say that you chose to resolve this matter rather than go through with the hearing, correct?

A. That's correct.

Q. And that was a choice made on the factors you've described today?

A. That was a choice made on some of the factors I described today. Some, okay? The rest of the factors were I picked up the phone and I called each attorney one by one and told them I didn't want to do this, okay, and I didn't want to agree to this. I don't understand it, okay? I feel pressured. I feel like we're pressured. I feel like we're under a gun to our heads. I don't understand this document. And they said—

THE COURT: No.

THE WITNESS: Okay. Okay. I'm sorry. By the time I was off the phone with them, okay, I felt like I had no choice, okay, but to do this. I felt like I was risking her life by not agreeing to it, okay? You can see in my e-mails I was pushing back. I did it verbally, too.

BY MR. SAUDEK:

Q. Mr. M., did you direct lawyers to dismiss the cases that were actually dismissed?

A. Did I direct them? As you can see in the e-mails, one of the e-mails there, okay, the federal case I asked them don't dismiss it, don't dismiss it, don't dismiss it, and then I got on the phone with him—well, we can't say what was said on the phone.

Q. You can say who you were on the phone with.

A. I can say Attorney Kang, okay, and he wrote in his—in the e-mail that—as you can read, okay, that if I don't dismiss the case that the hospital will bring contempt charges or whatever against me and T. I didn't

want to be—I didn't care about me. I cared about T., okay? I didn't want her under the gun again, okay, so to speak, and I didn't know what contempt meant and I nobody can tell me what contempt of this order is. And so because of that, it was too wide open. I said, okay, go ahead and dismiss it, okay, dismiss the federal case. I didn't want to dismiss the federal case. I felt pressured that I had to do it, okay? Again, you've used the word "duress." I was under duress, okay?

Q. For the reasons you've described?

A. Yes.

Q. Okay.

A. I don't want my daughter dragged back in the hospital for some—even though it's not supposed to be legal, I've seen a lot of illegal activity by this hospital, so I was like, anything's possible.

Q. Do you see anything in the consent order that would require your daughter to be readmitted under any circumstances to any University of Maryland Medical System hospital?

A. As I said, I don't understand half that agreement.

Q. Okay.

A. It's ambiguous. It doesn't say—

Q. The part that you do understand, do you see any provision that would under any circumstance require your daughter to be readmitted to any University of Maryland Medical System hospital?

A. The part I understand is about dismissing federal cases and state cases, so that part doesn't say that, okay?

But I can't speak to the rest of the document. It doesn't tell you anything.

MR. SAUDEK: Okay. I don't have any further questions, Your Honor.

THE COURT: All right. Redirect, Mr. Shepard?

MR. SHEPARD: Just very briefly.

REDIRECT EXAMINATION

BY MR. SHEPARD:

Q. At the very beginning counsel asked you if you agreed to this, I believe. Was that—

A. I said no.

Q. —voluntary?

A. It was not.

Q. Okay. And why was it not?

A. Because I felt like I was pressured. I had to do it, okay? I didn't want to do it. I didn't agree to do it. But I then felt like I had no choice but she could be harmed. What are you going to do? It's your daughter, okay? I can't be responsible for that. She'd already been raped. I'm not going to have her—I'm not going to have her—

MR. SAUDEK: Objection. Objection.

THE WITNESS: That's how I felt.

THE COURT: I think—

MR. SHEPARD: I don't know that that's objectionable.

MR. SAUDEK: Well, the testimony that my daughter could be raped—

THE WITNESS: No—

MR. SAUDEK: —if I would not agree—May I finish, sir?

THE COURT: No, I think he was talking about past events, not what's going to happen in the future.

MR. SHEPARD: That's correct.

THE COURT: I'll overrule the objection, but I think we're again getting a little far afield.

MR. SHEPARD: I am almost finished, Judge.

MR. SAUDEK: Your Honor, may I—the question is did you agree to this order. Mr. M. as a matter of law did not agree to this order. This order was entered into a case in which he was not a party, he did not agree to this order. This is an improper question, an improper line of questioning.

THE COURT: I think he's trying to clarify, I think you asked him during your testimony whether he agreed to the order. I think he's trying to clarify that, but I think we've gotten a little far afield from the question, so why don't you restate the question, Mr. Shepard.

BY MR. SHEPARD:

Q. Right. So you were asked on cross whether you agreed to this, and my question to you was, sir, was that—did you agree to it voluntarily?

A. No, not voluntarily.

Q. And the next follow-up question is was why? Why not? Why was it not voluntary?

A. Because I felt pressured that I had to do it. I had no choice or my daughter could be harmed. What I had clarified, just to clarify, and I apologize if it was misheard, okay, I said she had been raped before, okay, in the past, okay? And I was not going to see her harmed, okay, here. All right? And I was not going to be responsible for her being harmed, okay? And that's—that's further harmed than what she's already experiencing in the hospital, okay? She had already been harmed there so I'm not going to have her go further.

MR. SHEPARD: All right. Nothing further, Judge.

THE COURT: Mr. M., you may step down.

All right. Where we stand presently, you know, I continue to believe we have a real issue in terms of duress. I'm happy to hear argument on the duress point if you'd like to make further points, Mr. Shepard, both on duress and public interest. That's the other area where I think we have a problem. And again, my concern is the systematic concerns that come from an agreement to a settlement agreement and then with an intent to then try to invalidate it.

MR. SHEPARD: Your Honor, I think the overall difficulty that the Court is struggling with, and I understand, is can a party be under duress when five very competent lawyers are telling the client that they should do a particular thing, enter into a particular agreement. And you know, we all as lawyers, those of us who've practiced in federal court especially as prosecutors recall colloquies all the time with criminal defendants who sometimes say,

well, they were forced into agreeing to give up their right to trial and so forth and enter a plea, but there's always a colloquy with the Court where the Court determines prior to the acceptance of the agreement that the defendant does so knowingly and voluntarily. And if you can't make that finding based on the colloquy during this plea hearing, then the Court should reject the plea because it can only be done voluntarily.

I've tried to imagine myself what could be more coercive to my client than the threat of being injected with a drug that is known—that I believed would alter my child's brain permanently. I cannot imagine the pressure that Mr. M. was under. I can't imagine the pressure that T.M. was under knowing that that could happen to her.

There had been extensive litigation in which they were trying to stop that in the state courts and they were not—they were being met with—we could get into arguing whether the procedures were sufficient or not, but they weren't allowed to present witnesses when they should have been.

I mean, there's a lot of procedural problems that I could go into, but the bottom line is, the state protections were not being successful. The lawyers, who were all very experienced lawyers, recognized that. They understood the risk to T.M. They understood that the only thing that mattered was avoiding that shot at that point. If you have to agree to give up, you know, whatever you have to do, just get her out of there.

State actors cannot in our system demand the types of terms that are in this consent order which are clearly giving up protected constitutional rights by coercion. And

there is clear evidence of coercion in this case. I can't imagine anything more coercive than what was happening.

And I understand that the Court is struggling with the idea that, yeah, she got a benefit, she was released from this custody. Well, my response, Your Honor, would be that that release was an illusory benefit. She shouldn't have been there anyway. We believe she was being held unlawfully against her will. And I'm sure the hospital would say, well, we dotted our Is and crossed our Ts, but that ultimately may have been litigated and I'm not sure who would have won.

But the point is the overriding danger that is at the root of the duress was the threat of this shot and the fact that it could happen, notwithstanding that there was another case in which a federal court may, you know, hear or a state judge may agree to wait. But that had already been issued. That had already been litigated. I mean, if the purpose of the state hearing that was happening at 9 a.m., if they lost that hearing, there was nothing stopping the injection. It could have happened that day or that hour.

So I don't think anybody disagrees that that pressure was there. So I think there's a legal issue that I need to maybe, if you'll give me the opportunity, pull some cases and give to you that says that parties can be under duress even under circumstances when their counsel are advising them to take a particular course of action when they feel they don't have a choice. But the alternative is so bad that the agreement becomes involuntary.

THE COURT: Well, part of the problem here, though, there's obviously a legal issue there, but I also have a factual issue because the agreement was not signed by J.M. The agreement was signed by T.M., and I don't have any factual record about T.M.'s state of mind or whether T.M. was under duress.

MR. SHEPARD: Right.

THE COURT: So on the present record that's before me in this TRO, I don't have—again, it's a heavy burden on a mandatory TRO—I don't have any evidence regarding T.M.'s state of mind. And, again, as to the attorneys, I am of the view that the record shows that they did believe this was an enforceable agreement that was not under duress based upon the e-mail exchanges and based upon the docket in the federal case.

So you know, I'm in a position right now where I understand that this will continue to be an issue that going forward you may have case law to support your position, I don't know whether motions to dismiss will be filed and there might be case law that you have suggesting that duress is enough, but presently the TRO presented to me I don't see a factual basis on which I could grant it.

The case continues from here. This is the TRO being sought, but I have again, and I also do continue to believe on the legal front that there's a real issue in terms of public interest with allowing this kind—understanding your duress point with allowing a party to enter into an agreement and then immediately seek to maintain what was a benefit. I mean, it may be a benefit that he felt that your clients, including T.M., felt there was no choice in, but to sort of one-sidedly unwind an agreement that was entered

into that was represented to a state court to be a consent order.

MR. SHEPARD: Right.

THE COURT: So on those two points I'm just having difficulty seeing how I could possibly entertain a TRO in this circumstance, again, understanding that your case will proceed forward and you may eventually amass evidence and including evidence from the prior attorneys or evidence from T.M., but on the record presented to me today I don't see how I could grant a TRO in these circumstances.

MR. SHEPARD: I understand.

(Pause in Proceedings.)

MR. SHEPARD: So T.M. is traumatized, to say the least, about this entire situation. I thought about bringing her in here today, but I was advised by medical doctors that that's not a good idea and would be harmful to her.

I know that at the state level there was no colloquy between the Court and T.M. There was only a consent order presented and signed, admittedly, by her attorneys. The request here is to maintain the status quo, right? I mean, a temporary order is to prevent—

THE COURT: No, you're asking to prevent enforcement of an order that's in place, so the status quo is there's an order in place, the parties have rights under that.

MR. SHEPARD: Well, but there's no pending—there's no pending issue regarding contempt, although there was some rumblings about it.

THE COURT: Correct.

MR. SHEPARD: And I don't believe there would be a good faith basis upon which to bring such a proceeding. But I understand that the Court's going to need to hear from perhaps the counsel involved to make a determination on the merits.

THE COURT: Certainly as the case goes forward, yes, that's going to need to happen.

MR. SHEPARD: Right.

THE COURT: Because this duress issue is a significant one and I would urge the parties maybe to, as discovery is—I can't remember, Mr. Saudek, have you filed either a motion to dismiss or an answer in this case yet?

MR. SAUDEK: No, Your Honor, we have not.

THE COURT: Okay. So once that is done, you know, obviously if it's a motion to dismiss it will proceed as it is but once an answer's filed and we get into discovery, I think questioning of T.M. will happen, questioning of the attorneys likely will happen and, again, I would urge the parties to prioritize this issue of duress which could potentially be dispositive.

MR. SHEPARD: Right. I think it is. Well, I understand the Court's statements. I appreciate Your Honor letting me make the record. It's—

THE COURT: We sort of are where we are. I don't know if you wish to be heard, Mr. Saudek, as we stand. I have to deny the TRO on the record in front of me, so if there's something you wish to say, go ahead.

MR. SAUDEK: I beg the Court's indulgence. Less than two minutes, Your Honor.

THE COURT: Sure.

MR. SAUDEK: The first is there's been a lot of discussion this morning about state actors taking action, and I want to be clear that none of the defendants that I represent are state actors. I understand that that issue has been addressed by courts in certain ways, but the position of the parties in this case is that none of the defendants I represent are state actors or were state actors at any time during these proceedings.

The second point is there has been a great deal of invective directed toward my clients today and in the pleadings that are on—publicly available through PACER. We vehemently reject every one of those allegations.

This is a hospital system, perhaps the finest hospital system in the state, and doctors and executives who have worked tirelessly to protect, not only the community, but T.M. and her family. That is what happened in this case as what will continue to happen and that's what UMMS and its contingent or its hospitals, affiliated hospitals are concerned with its physicians and what its executives are concerned with and will continue to work for every day, Your Honor.

Thank you for hearing me on that.

THE COURT: All right. Thank you.

All right. So at this point I will enter an order denying the TRO. We will wait for Mr. Saudek's response to the complaint. Have the other defendants been served, Mr. Shepard?

MR. SHEPARD: I made efforts to give them informal service. I don't recall whether we've had them formally served.

THE COURT: Okay.

MR. SHEPARD: They know about it because I sent it to—I mailed it to them. They didn't have counsel so I mailed it to them. They didn't respond or indicate any that they wanted to participate.

THE COURT: Okay.

MR. SHEPARD: We will formally serve all of—I mean, I know many of the defendants have been formally served. I'm not sure about a couple of them, but they may have already been. I'm just not sure.

THE COURT: All right. Well, please make sure that you do it as soon as possible because it's much easier if we keep everyone on the same schedule once discovery begins rather than having people in sort of two waves based on the time of service so it will be easier for the case to proceed forward in that manner.

MR. SHEPARD: Your Honor, just one thing. In the event that there is a request for this transcript, I would I move on the record that any inadvertent or intentional statements regarding the identity of my clients, if there's a transcript made that it be modified to substitute initials for names.

THE COURT: Yes. I'm happy to work with the court reporter. I think they were all inadvertent when people did it but I will ensure that any transcript that's prepared refers to all the parties by their initials.

MR. SHEPARD: Thank you.

THE COURT: All right. Is there anything else from anyone's perspective that we need to address today?

MR. SAUDEK: No, Your Honor. We'll work with counsel on a date for our response to the complaint, if that's acceptable to Your Honor.

THE COURT: Yes.

MR. SHEPARD: Not today, Your Honor.

THE COURT: All right. Thank you all.

MR. SAUDEK: Thank you, Judge.

(The proceedings concluded at 11:57 a.m.)