

OF COUNSEL

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Ms. Ann Thielke, J.D.
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St. Luke's Hospital

VIA Email and Fax

Dr. Ron Giveon

Dr. Mark Tran

Dr. Robert Carpenter
Chairman of St. Luke's Hospital

Case Manager
Blue Cross Blue Shield

Re: Andrea Clark

Dear Sirs and Madam,

As you know, I represent Andrea Clark and her family. On behalf of the family and Andrea, I have been authorized to convey treatment decisions made by the family with regard to her care. Because Andrea is heavily sedated and is limited in her ability to communicate treatment decisions to her physicians and the hospital, the family is empowered under law to make such decisions on her behalf. The family is united in its decision that life-sustaining treatments should NOT be withdrawn or withheld from Andrea Clark pending transfer to another physician or facility.

On behalf of Andrea, the family, acting as a unit, has made the following treatment decisions:

1. Life-sustaining treatment should continue pending transfer as referenced above.
2. Dr. Ron Giveon should, in the exercise of reasonable care, prepare an interim summary of his findings and diagnoses to enable other physicians to have sufficient information in order to make a decision as to whether or not to take on the care of Andrea. It is unconscionable to this family that Andrea's primary attending physician has made himself unavailable to the patient during this trying time—even though he has delegated care to Dr. Tran.

3. It is the family's position that Andrea is not a "futile case". Under the provisions and privacy regulations of HIPAA, the family is entitled to have erroneous information in Andrea's medical chart corrected. Because, it is at least one physician's opinion that a diagnosis of futility and decision that life-sustaining treatments are inappropriate, the family requests, pursuant to HIPAA, that the medical chart be corrected and that the discontinuation of life-sustaining treatments on the basis of inappropriateness not be entered into her chart. The decision that Andrea's case is "futile" has placed seemingly insurmountable obstacles to transferring Andrea's care to other providers. It is repugnant to notions of justice and fairness that Andrea's life be threatened because you have unilaterally determined a disputable outcome that impedes her chances of finding another health provider.
4. The family has decided that the regimen of pain medication be reassessed and the dosage appropriately decreased so that a proper assessment of Andrea's condition can be made by physicians other than the ones to whom this letter is directed.
5. The family withdraws consent and authorization from the attending physicians and the hospital to discuss with, disclose to or elicit opinions from Dr. Robert Carpenter regarding protected health information concerning Andrea Clark. It is the family's opinion that Dr. Carpenter's actions and opinions in this matter are informed solely by his personal philosophies regarding "futile care theories" and that he has not taken an objective approach in this matter. Furthermore, it is the family understands that Dr. Carpenter is an ob-gyn, and not a cardiologist. Thus, the family questions Dr. Carpenter's seemingly active role in affirming treatment decisions of Andrea's treating physicians.

Moreover, it is the family's opinion that Lanore Dixon and Charles Clark were treated with rudeness, insensitivity and disdain during an ethics committee meeting which focused on pain management for Andrea. The family felt that its positions were ignored and ridiculed by Dr. Carpenter. Moreover, the report Dr. Carpenter wrote as a result of that particular ethics committee meeting was rife with misstatements of the facts. For instance, Dr. Carpenter wrote: "...The specific question asked concerning that belief is when, if ever, her sister told her that she wanted to exist in a state of pain and suffering to achieve that goal. That question was never answered."

Lanore Dixon strongly disputes this and asserts that she did; indeed, state "that Andrea did tell me that she wanted all measures to be taken to save her life unless she was brain dead."

It is the family's decision and desire that Dr. Carpenter recuse himself from consideration of this case and any decision regarding Andrea's care. The family will be exploring its recourse under the law and under the enforcement mechanisms of HIPAA to this end.

6. The family requests that the ethics committee be convened on a day and time convenient for the family, their attorney and their medical experts to discuss Andrea's care.

7. The family insists that Dr. Carpenter, or any other hospital staff member desist from any attempts to unduly or unreasonably persuade, intimidate or bully any potential treating physician into accepting Dr. Carpenter's opinion that life-sustaining treatments should be withdrawn. The family, again, withdraws any consent or authorization from the parties in this matter for Dr. Carpenter to receive or discuss protected health information regarding Andrea Clark

8. The family insists that it be made privy to any conversations between representatives or case managers and attending physicians or hospital staff and Andrea Clark's insurer regarding matters of coverage. The family is entitled to know if the insurer is placing pressure on the hospital based on its assessments regarding length of stay or any other measure impacting the insurer's willingness to pay.

Furthermore, Andrea Clark has apparently developed a pressure-ulcer while under your care. The family has been informed that the pain that Andrea is experiencing, and which in part is being used to justify withdrawing life-sustaining treatment, is resulting from the pressure ulcer. The family is entitled to evaluate whether or not proper and timely interventions were implemented to prevent Andrea from developing the pressure ulcer. Further, it is the expectation of the family that all necessary and proper treatment be continued to promote healing of the ulcer. It is the position of the family that the attending physicians and hospital have developed a conflict of interest as a result of Andrea's development of a pressure ulcer that should preclude you from making a treatment decision that will inevitably result in her death. Therefore, any action or decision that you make to withdraw life-sustaining treatment is ethically tainted by questions of fact regarding the level of care received by Andrea Clark.

On behalf of the family, I am putting you on notice that the family intends to file pleadings with the appropriate court in order to restrain you from withdrawing life-sustaining treatments. There are numerous questions of fact that should not be solely determined by you with regard to Andrea's treatment. There are fact issues with regard to whether or not the physicians and the hospital have acted with reasonable care in deciding that life-sustaining treatment should be withdrawn. Should you act to withdraw life-sustaining treatment prior to review by an appropriate Court, the family intends file complaints with the appropriate regulatory and licensure entities and to take any available legal action permitted under the law and in equity.

It is the family's opinion that the attending physician and ethics committee have overreached in this case. It should not be your decision as to whether or not Andrea's life is worth living. The family demands that life-sustaining treatments be continued in light of the fact that the family intends to take this matter up with the Court.

Should you have any questions, please contact me. Thank you for your immediate attention to this matter.

Very truly yours,

Jerri Lynn Ward

Cc: MFCU, OAG
HHSC (Texas)
Texas Board of Medical Examiners
Texas Department of Health
Episcopal Diocese of Houston