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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

<p>NICHOLAS SORENSEN, KEVIN AND PAMELA SORENSEN, limited guardians and conservators of Nicholas Sorensen, Plaintiff, vs. JOHN P. BARBUTO, individually, JOHN P. BARBUTO, M.D., P.C., dba NEUROLOGY IN FOCUS, Defendants.</p>	<p>COMPLAINT AND JURY DEMAND</p> <p>Civil No. Judge</p>
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Plaintiffs allege against defendants as follows:

1. Plaintiffs are residents of Salt Lake County, State of Utah and all actions relating to this matter occurred in Salt Lake County, Utah.
2. Defendant Dr. John P. Barbuto (hereinafter “defendant Barbuto”), is a resident of Salt Lake County, State of Utah, and engages in the practice of medicine in Salt Lake County, Utah.

3. Defendant, John P. Barbuto, M.D., P.C. (hereafter “defendant Barbuto P.C.”), is a professional corporation organized under the laws of the State of Utah, with its principal place of business in Salt Lake County, Utah.

4. Defendants Barbuto and Barbuto, P.C. also do business under the name of Neurology in Focus, a clinic at Healthsouth Rehabilitation Hospital of Utah, 8074 South 1300 East, Sandy, Utah.

5. On or about July 24, 1999, plaintiff Nicholas Sorensen was involved as a passenger in a serious one car roll over on I-15 near Tremonton, Utah. In the accident, a passenger was killed and Sean Marcelis, the driver, and plaintiff Nicholas Sorensen were seriously injured, with Nicholas Sorensen sustaining significant brain and back injuries.

6. As a result of the head injuries, Nicholas Sorensen received medical care from defendants for approximately a year and a half. This treatment included diagnostic tests and examinations, prescriptions for medicine, overseeing cognitive therapy, and other treatment for seizures and brain injury. Defendants’ treatment of Nicholas Sorensen ended when defendants were no longer on the approved list of health providers under plaintiff’s medical insurance plan. Thereafter, Nicholas Sorensen was treated by Dr. Michael Goldstein at Western Neurological Associates, where he continues to receive treatment. [Back to brief](#)

7. Being unable to reach a settlement with Safeco Insurance Company, the driver’s insurer, Nicholas Sorensen filed an action seeking compensation for his injuries from the accident. The case was entitled Nicholas Sorensen v. Jack W. Marcelis, Michelle Marcelis and Sean Marcelis, Civil No. 000905711, Third Judicial District Court, Salt Lake County, State of

Utah, (hereinafter referred to as “the Personal Injury Action”). The Personal Injury Action concluded after trial in October 2003, resulting in a verdict in favor of Nicholas Sorensen.

8. During the course of the Personal Injury Action, defendants’ medical records regarding Nicholas Sorensen were produced and were made part of the stipulated evidence at trial. Neither party took the deposition of defendant Barbuto until September 30, 2003, just seven days before trial commenced. Defense counsel in the Personal Injury Action (hereinafter referred to as “PI defense counsel”) subpoenaed defendant Barbuto in May 2003 to testify at trial (which was then set for the end of May). A week before trial, the trial date was postponed until October 2003.

9. During the period of May through September 2003, defendants began having direct communications with the PI defense counsel. These communications took place without any notice to plaintiffs and plaintiffs’ counsel in the Personal Injury Action. In the course of these conversations, defendants surreptitiously volunteered and assisted PI Defense Counsel and agreed that defendant Barbuto would be their expert witness. During all times, defendants admittedly had no authorization or release from Nicholas Sorensen or his parents.

10. During the course of defendants undisclosed retention by said PI defense counsel, Defendant Barbuto changed many of his treating diagnoses and opinions regarding plaintiff’s seizure disorders and other problems. Defendant Barbuto now claimed that Nicholas Sorensen was not suffering from seizures, rather, his problems were in large part psychological/social in origin.

11. Approximately 2 – 3 weeks before trial in October 2003, by happenstance, plaintiffs' counsel discovered the surreptitious retention of defendants Barbuto P.C. by PI defense counsel and immediately scheduled Dr. Barbuto's deposition on September 30, 2003. In a meeting shortly before and during the deposition, plaintiffs learned for the first time that defendants had been retained by the PI defense counsel, had changed their treating diagnosis and opinions, and had prepared an extensive report, outlining the new opinions. At that time, plaintiffs obtained the records regarding the numerous communications between defendant Barbuto and the PI defense counsel. In an emergency motion, the trial court excluded Dr. Barbuto and his new opinions.

12. Dr. Barbuto is notorious for his extreme defense biases and his close relationship with insurers and insurer's defense counsel. He has admitted performing approximately 200 IME's per year, all for the defense, opining in nearly every case, if not all cases, that the plaintiff's pain and other problems were primarily or totally from psychological and/or secondary gain origin. He has made hundreds of thousands of dollars a year doing the independent medical examinations for the defense. He rarely, if ever, does any independent medical examinations in behalf of a plaintiff. Dr. Barbuto's reports and opinions are predictable with nearly always the same conclusion that the plaintiff's problems are psychological and founded in conscious or subconscious motivation for secondary gain.

13. Defendant Barbuto endears himself to the defense bar, which constitutes the source of the vast majority of his income. Even though he was involved with plaintiff Nicholas Sorensen as a treating physician, he disregarded his ethical and legal responsibilities of

confidentiality/privilege and readily communicated with the PI defense counsel who were in opposition to his own patient's claims. To appease defense counsel and insurance companies, defendant Barbuto will not hesitate to change or spin his treating medical opinions to favor the defense, all for the purpose of enhancing his own personal monetary gain and to advance his strong philosophical opinions cause against the legal compensation system in America.

14. At all times mentioned herein, the actions and omissions of defendants were performed by defendant John P. Barbuto, an individual, acting within the purpose and scope of his agency and employment, and defendant Barbuto P.C. has ratified and approved all actions and omissions of defendant Barbuto individually.

FIRST CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

15. The relationship between plaintiff Nicholas Sorensen and defendants Barbuto P.C. was a special relationship through which implied duties of good faith and fair dealing arose, including the duty to guard the confidentiality, privacy and other rights of Nicholas Sorensen, consistent with laws, regulations and the general practices and procedures of the medical profession.

16. In the absence of a reasonable basis for doing so and with full knowledge and/or reckless disregard for the confidences, privileges, and rights of their patient, defendants have breached their implied duties of good faith and fair dealing.

17. Defendants intentionally and/or recklessly engaged in a course of conduct to further their own economic interests and in violation of their obligations to plaintiffs, including, but not limited to:

- a. disclosing confidential and private information without an appropriate release signed by Nicholas Sorensen;
- b. surreptitiously aiding and abetting the attorney and party opposing plaintiff's interests;
- c. unreasonably altering treating diagnosis and opinions after being retained by defense attorneys;
- d. failing to affirmatively and voluntarily disclose ex parte contacts with opposing attorneys;
- e. acting and omitting to act in conflict with their legal and ethical duties;
- f. pursuing a personal cause and philosophy in conflict with and at the expense of his own patient;
- g. performing all of the above with the intent and motive to ingratiate himself and find favor with insurance companies and defense counsel, all for the purpose of monetary and personal gain at the expense of his patient;
- h. violating other conflicts of interest; and
- i. other wrongful and illegal conduct.

18. Defendants pursued said course of conduct intentionally, maliciously, in conscious disregard of the rights and privileges of plaintiffs and/or with reckless disregard of the

circumstances of the plaintiffs and the likelihood of causing plaintiffs financial, emotional and mental harm, and/or at all times to further their own economic interests at the expense of plaintiffs' economic interests, mental health and well-being.

19. As a direct proximate result of defendants' actions and omissions, plaintiffs have suffered financial and emotional trauma as well as other general damages in an amount not yet determined. Plaintiffs have further incurred attorney's fees, litigation expenses and other consequential damages in an amount not yet determined.

SECOND CAUSE OF ACTION
(Breach of Professional Standards and Statutes)

20. Plaintiffs reallege paragraphs 1 through 19 above.

21. Professional medical standards regarding the relationship between defendants and Nicholas Sorensen, conflicts of interest, the handling of confidential and private information and other standards were breached by defendants, as set forth above.

22. In addition to the general duties of the medical profession, defendants have breached specific statutes applicable to healthcare providers, including but not limited to:

- a. the Health Insurance Portability and Accountability Act ("HIPAA");
- b. the Utah Medical Practice Act; and
- c. other statutes and regulations applicable to the defendants in these circumstances.

23. Defendants' breach of these duties proximately caused special, general and other consequential damages to plaintiffs, the amount of which will be established at the time of trial.

24. Defendants have pursued said course of conduct intentionally, maliciously and in conscious disregard of the rights of plaintiffs, and/or with reckless disregard of the circumstances of the plaintiffs and the likelihood of causing plaintiffs financial, emotional and mental distress, and/or at all times to further their own economic interest at the expense of plaintiffs' economic interests, mental health and well being; and that said conduct was a part of an overall course of conduct to unreasonably further defendants' own economic and other interests.

25. As a result of the conduct of defendants, plaintiffs are entitled to special, general, consequential and punitive damages.

THIRD CAUSE OF ACTION
(Invasion of Privacy)

26. Plaintiffs reallege paragraphs 1 through 25 above.

27. Defendants actions and nondisclosures as described above constitute a violation of plaintiffs' rights to privacy.

28. Defendants pursued said course of conduct intentionally, maliciously, in conscious disregard of the rights, and/or with reckless disregard of the circumstances of the plaintiffs and the likelihood of causing plaintiffs financial, emotional and mental distress, and/or at all times to further their own economic interest at the expense of plaintiffs' economic interests, mental health and well being; and that said conduct was a part of an overall course of conduct to unreasonably further defendants' own economic and other interests.

29. As a result of the conduct of defendants, plaintiffs are entitled to special, general, consequential and punitive damages.

FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

30. Plaintiffs reallege paragraphs 1 through 29 above.

31. As described above, defendants pursued an outrageous course of conduct, intentionally and/or recklessly, proximately causing plaintiffs severe emotional distress, shock and other painful emotions.

32. Defendants are liable for plaintiffs' special, general and exemplary damages, as set forth above.

FIFTH CAUSE OF ACTION
(Negligence)

33. Plaintiffs reallege paragraphs 1 – 32 above.

34. Professional medical standards regarding the relationship between physicians and patients outline the fiduciary-type duties owed by defendants to Nicholas Sorensen, including the duty to work in the best interest of a patient's health to protect the patient's privacy.

35. Through the course of conduct described herein, defendants have breached their duty to Nicholas Sorensen have proximately caused damage to plaintiffs, including emotional distress, shock, and other painful emotions.

36. Defendants are liable for plaintiffs' special, general and exemplary damages, as set forth above.

WHEREFORE, plaintiffs pray for judgment against defendants as follows:

1. For special, general and consequential damages as proven at the time of trial.

2. For attorney's fees, costs and expenses of litigation, as determined at the time of trial.
3. For exemplary and punitive damages as established at the time of trial.
4. For such other and further relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiffs hereby demand a trial by jury in this action and file the required statutory fee.

DATED this _____ day of January, 2004

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