ELECTRONICALLY FILED
4/11/2024 4:08 PM
03-CV-2024-900567.00
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MARVIN KENNEDY; **SARA KENNEDY;** and **AJA DAVIS**, Plaintiffs, v.	)	Case No. _____ **JURY TRIAL DEMANDED**

JOHN Q. HAMM, in his individual capacity as Commissioner of the Alabama Department of Corrections; **CHADWICK CRABTREE**, in his individual capacity as Warden of Limestone Correctional Facility; **UNIVERSITY OF ALABAMA SYSTEM**, a public university system; **UNIVERSITY OF ALABAMA HEALTH SERVICES FOUNDATION, P.C.**, a 501(c)(3) public charity; **THE UNIVERSITY OF ALABAMA SYSTEM BOARD OF TRUSTEES**; **RONNIE D. DAVIS**; **FICTITIOUS DEFENDANTS 1–20** whether singular or plural, are those persons, corporations, or entities who had supervisory officer duties, including Wardens, at the Limestone Correctional Facility at all relevant times and who are otherwise unknown to Plaintiffs at this time, but whose true and correct names will be substituted by amendment when ascertained; **FICTITIOUS DEFENDANTS 21–40** whether singular or plural, are those persons, corporations, or entities who were on duty as correctional officers at the Limestone Correctional Facility at all relevant times and who are otherwise unknown to Plaintiffs at this time, but whose true and correct names will be substituted by amendment when ascertained; **FICTITIOUS DEFENDANTS 41–60** whether singular or plural, are those persons, corporations, or entities employed by the University of Alabama System, the University of Alabama Health Services Foundation, P.C., and/or The University of Alabama System Board of Trustees at all relevant times who knew or should have known that Defendants were receiving organs and tissues from individuals who had died in prison custody without the consent of the deceased, their agents, or their next of kin and who are otherwise unknown to Plaintiffs at this time, but whose true and correct names will be substituted by amendment when ascertained; and **FICTITIOUS DEFENDANTS 61–80** whether singular or plural, are those persons, corporations, or entities whose negligence, wantonness, or other wrongful conduct caused or contributed to cause the events made the basis of this Complaint and who are otherwise unknown to Plaintiffs at this time, but whose true and correct names will be substituted by amendment when ascertained.

Defendants.

COMPLAINT

Statement of Parties

1. Plaintiff **MARVIN KENNEDY** ("Plaintiff Marvin") is over the age of nineteen (19) years and resides in Douglas County, Georgia. Plaintiff Marvin is the brother of Jim William Kennedy ("Decedent Kennedy").

2. Plaintiff **SARA KENNEDY** ("Plaintiff Sara") is over the age of nineteen (19) years and resides in Douglas County, Georgia. Plaintiff Sara is the sister-in-law of Decedent Kennedy.

3. Plaintiff **AJA DAVIS** ("Plaintiff Aja") is over the age of nineteen (19) years and resides in Douglas County, Georgia. Plaintiff Aja is the daughter of Decedent Kennedy.

4. Defendant **JOHN Q. HAMM** ("Commissioner Hamm") is Commissioner of the Alabama Department of Corrections ("ADOC") and is sued in his individual capacity as the Commissioner.

5. Defendant **CHADWICK CRABTREE** ("Warden Crabtree") is Correctional Warden III of the ADOC's Limestone Correctional Facility ("Limestone Facility") and is sued in his individual capacity as the Warden.

6. Defendant **THE UNIVERSITY OF ALABAMA SYSTEM** ("UA System") is a public university system based in Tuscaloosa County, Alabama that coordinates and oversees three (3) research universities, including the University of Alabama at Birmingham ("UAB").

7. Defendant **UNIVERSITY OF ALABAMA HEALTH SERVICES FOUNDATION, P.C.** ("UA Foundation") is a 501(c)(3) public charity based in Jefferson County, Alabama.

8. Defendant **THE UNIVERSITY OF ALABAMA SYSTEM BOARD OF TRUSTEES** ("UA Board"), as established by the Alabama Constitution, controls the activities of the three (3) doctoral research universities in the UA System, including UAB.

9. Defendant **RONNIE D. DAVIS** ("Defendant Davis") is over the age of nineteen (19) years and resides in Jefferson County, Alabama. Defendant Davis was, at all relevant times herein, employed by the UAB Defendants in the University of Alabama at Birmingham Marnix E.

Heersink School of Medicine ("UABSOM") Department of Pathology ("Department of Pathology") and is sued in his individual capacity within the line and scope of his employment.

10. **FICTITIOUS DEFENDANTS 1–20** whether singular or plural, are those persons, corporations, or entities who had supervisory officer duties, including Wardens, at the Limestone Facility at all relevant times and who are otherwise unknown to Plaintiffs at this time, but whose true and correct names will be substituted by amendment when ascertained.

11. **FICTITIOUS DEFENDANTS 21–40** whether singular or plural, are those persons, corporations, or entities who were on duty as correctional officers at the Limestone Facility at all relevant times and who are otherwise unknown to Plaintiffs at this time, but whose true and correct names will be substituted by amendment when ascertained.

12. **FICTITIOUS DEFENDANTS 41–60** whether singular or plural, are those persons, corporations, or entities employed by the University of Alabama System, the University of Alabama Health Services Foundation, P.C., and/or The University of Alabama System Board of Trustees at all relevant times who knew or should have known that Defendants were receiving organs and tissues from individuals who had died in prison custody without the consent of the deceased, their agents, or their next of kin and who are otherwise unknown to Plaintiffs at this time, but whose true and correct names will be substituted by amendment when ascertained.

13. **FICTITIOUS DEFENDANTS 61–80** whether singular or plural, are those persons, corporations, or entities whose negligence, wantonness, or other wrongful conduct caused or contributed to cause the events made the basis of this Complaint and who are otherwise unknown to Plaintiffs at this time, but whose true and correct names will be substituted by amendment when ascertained.

14. The term "Defendants" is made to refer to all real and fictitious Defendants described in the style of this Complaint.

15. The term "ADOC Defendants" refers collectively to Defendants John Q. Hamm, Chadwick Crabtree and Fictitious Defendants 1–40.

16. The term "UAB Defendants" refers collectively to Defendants University of Alabama System, University of Alabama Health Services Foundation, P.C., The University of Alabama System Board of Trustees, Ronnie D. Davis, and Fictitious Defendants 41–60.

17. The term "Kennedy Family" refers collectively to Plaintiffs Marvin Kennedy; Sara Kennedy; and Aja Davis.

18. Venue is proper in Montgomery County because venue of an action against a state official lies in the county of the official residence of the agency or officer.

Statement of Facts

19. At the time of his death on April 13, 2023, Decedent Kennedy was incarcerated by the ADOC and was housed at ADOC's Limestone Facility located in Harvest, Limestone County, Alabama.

20. On information and belief, Decedent Kennedy's body was transported to the UAB Defendants' Department of Pathology overnight between April 13th and April 14th to conduct an autopsy.

21. On or around April 17, 2023, approximately four days after Decedent Kennedy's date of death, Limestone Facility's Chaplain James Williams ("Chaplain Williams") contacted Plaintiff Marvin to inform him about his brother's death.

22. Chaplain Williams told Plaintiff Marvin that they had been trying to reach the Kennedy Family for a few days. However, all members of the Kennedy Family checked their

phone records and did not have any missed calls from anyone connected to the ADOC, to the Limestone Facility, or otherwise connected to Decedent Kennedy's death.

23. Plaintiff Marvin communicated to Chaplain Williams that the family wanted to claim Decedent Kennedy's body.

24. On Monday, April 17, 2023 at 10:41 AM, Chaplain Williams emailed Plaintiff Marvin a form for the release of Decedent Kennedy's body.

25. The Kennedy Family informed Chaplain Williams that, upon completion of the autopsy, they wanted Decedent Kennedy's body sent to Southern Memorial Funeral Home in Eufaula, Alabama (the "Funeral Home").

26. Upon receiving Decedent Kennedy's body, the Funeral Home informed the Kennedy Family that the body was in a severely damaged state. The Funeral Home reported that Decedent Kennedy was missing all his organs and that some of his bones, including his ribs, were broken.

27. On April 18, 2023, Plaintiff Aja wrote an email to Warden Crabtree that she sent via his assistant William Mullison as Mullison told her that he would pass along her message but declined to give Warden Crabtree's direct information to Plaintiff Aja. In her email, Plaintiff Aja wrote:

> Attention Warden Crabtree. Gm my name is Aja Davis the daughter of Jim William Kennedy. I will like to have my dads internals back and not disposed. I'm trying to reach someone on regards to this. It is ok to reach me by email. Thanks.

28. Neither Plaintiff Aja nor any other member of the Kennedy family received a message back from Warden Crabtree.

29. On or around April 20, 2023, Plaintiff Sara, sister-in-law of Decedent Kennedy, spoke with Defendant Davis, Supervisor for Autopsy and the Office of Decedent Affairs for the UAB Defendants' Department of Pathology.

30. Plaintiff Sara communicated to Defendant Davis that the Kennedy Family was very upset that Decedent Kennedy's body had been returned without his organs. She informed Defendant Davis that the Kennedy Family wanted Decedent Kennedy's organs back immediately.

31. Defendant Davis told Plaintiff Sara that the UAB Defendants' Department of Pathology had never had this request before and the UAB Defendants' Department of Pathology takes organs "all the time." Defendant Davis informed the Kennedy Family that he would have to check on the UAB Defendants' policy to make sure that he properly handled the paperwork for returning Decedent Kennedy's organs to them. Defendant Davis also stated he had to reach out to a few people to make sure what he was telling the Kennedy Family was correct.

32. Defendant Davis asked Plaintiff Sara if Decedent Kennedy had already been buried, and Sara said yes, but assured Defendant Davis that they intended to inter the missing parts of Decedent Kennedy's body as soon as they obtained them.

33. Defendant Davis then told Sara, "UAB is a teaching institution. And every teaching institution that does autopsies keeps their organs."

34. Plaintiff Sara again insisted that that was not what the Kennedy Family wanted and not what Decedent Kennedy would have wanted. Plaintiff Sara clearly stated that no one in the Kennedy Family had given approval for the prison to donate Decedent Kennedy's body parts for research, and that the prison was aware of their preferences.

35. Defendant Davis informed Plaintiff Sara that the UAB Defendants' Department of Pathology was no longer in possession of 100% of Decedent Kennedy's organs.

36. Plaintiff Sara said the Kennedy Family wanted everything that the UAB Defendants' had retained to be returned to the family, emphasizing that no one in the Kennedy Family had given permission for organs to be retained during an autopsy.

37. Defendant Davis claimed not to know that the ADOC Defendants did not obtain consent from the next of kin.

38. Defendant Davis asked for time to figure out what was going on, and noted that he was not able to give a clear answer at the time of the call.

39. On Thursday, May 11, 2023, at 11:02 AM, Defendant Davis sent Plaintiff Marvin the following email message:

> Good morning, please give us a call at 205-934-4880 for information concerning Mr. Kennedy's tissue.

40. The Kennedy Family called Defendant Davis back that same day. Defendant Davis told them that they could pick up the organs that the UAB Defendants still had in their possession,

41. The Kennedy Family asked Defendant Davis how they could confirm that these organs were, in fact, those of Decedent Kennedy. Defendant Davis said he had never been asked that question, was not sure if the UAB Defendants could confirm the identity definitively, and told the Kennedy Family he would get back to them.

42. Defendant Davis never called the Kennedy Family back.

43. The Kennedy Family never received Decedent Kennedy's organs from the UAB Defendants so that they could be properly interred with the rest of his remains.

44. At no time was the Kennedy Family alerted to or asked whether they consented to the retaining of Decedent Kennedy's organs and specifically objected to the harvesting and retention of their loved one's organs.

45. Through deception and by conspiracy, acting in a concerted manner, Defendants violated Alabama law when they entered into a binding agreement that purports to (1) empower the ADOC to order that an autopsy be conducted; (2) authorized the Warden of an ADOC facility to consent to organ removal and retention during an autopsy; and (3) permitted the conversion of property (namely, the remains of their loved one) belonging to the Plaintiffs—all of which are against Alabama law. The Defendants then did take Decedent's organs without permission or without notice to or consent from his next of kin. Defendants refused to answer Plaintiffs' repeated messages seeking information about these unlawful acts, and did mislead Plaintiffs concerning whether Defendants' behavior was lawful. Defendants, each and together, engaged in unlawful and outrageous practices that deprived Decedent and the family of their right to receive the entire body of their loved one for burial.

46. The ADOC Defendants and the UAB Defendants entered into an Autopsy Services Agreement ("Autopsy Agreement") commencing on October 1, 2022, through September 30, 2023. The Autopsy Agreement is attached hereto as **Exhibit 1**.

47. The Autopsy Agreement is signed by Bernard Mays for the UA Board, on behalf of University of Alabama Hospital; George Netto for the UAB Defendants' Department of Pathology; Commissioner Hamm for ADOC; and Mandy C. Spiers for the Office of the Attorney General. Upon information and belief, the ADOC Defendants and the UAB Defendants have had such an agreement in place beginning in or around 2005 and continuing to the present.

TABLE 1. Number and Average of Specific Types of Autopsies Performed at the UAB From 2004 to 2015

	Year and No. Cases												
Type of Case	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**Average**
UAB	193	211	154	173	174	171	194	178	137	179	133	160	165
ADFS	0	0	91	112	121	0	0	2	0	30	43	70	47
Prison	0	7	20	23	37	44	29	41	32	43	34	41	34
Community	4	1	4	4	8	11	16	11	9	10	14	16	10
Private	2	3	15	16	17	21	24	22	16	28	17	24	20
VA	16	25	22	19	17	24	13	27	28	24	14	9	20
Total number	215	247	306	347	374	271	276	281	222	314	255	320	297

Atherton, Daniel Stephen, and Stephanie Reilly. "The Regional Autopsy Center: The University of Alabama at Birmingham Experience." *The American journal of forensic medicine and pathology* vol. 38,3 (2017): 189-192. doi:10.1097/PAF.0000000000000316.

48. The Autopsy Agreement begins:

> **WHEREAS**, the ADOC requires autopsy and toxicological services; and,
>
> **WHEREAS**, UAB can offer the autopsy and toxicological services to the ADOC through qualified personnel and facilities.

See **Exhibit 1**.

49. The scope of the engagement is: "The ADOC retains and engages UAB as an independent contractor to provide the autopsy and toxicological services described in this Agreement."

50. The Autopsy Agreement states, "The ADOC shall ensure that all autopsies that require a permit are properly authorized by an appropriate legal representative. The permit will substantially be in the form attached as Exhibit A." Exhibit A of the Autopsy Agreement states:

> I am the legally designated representative and therefore am legally entitled to grant permission for the completion of an autopsy and the removal of organs or tissues for further study on said inmate.
>
> I do, therefore, give my permission for the performance of an autopsy including the removal of organs or tissues from said inmate for diagnostic or other testing, including final disposition thereof. The autopsy is performed without limitations

See **Exhibit 1**, at Exhibit A.

51. The Authorization for Autopsy includes the language, "I am entitled by law to grant this permission," referring to the ADOC prison warden.

52. The ADOC Defendants pay the UAB Defendants $2,200 per autopsy and $100 per toxicology test.

53. The standard rate for autopsy services offered by the UAB Defendants to the general public is above the rate charged under the Autopsy Agreement.

54. In 2018, a group of medical students at UAB Defendants' UABSOM noticed that a disproportionate number of the specimens they encountered during their medical training originated from individuals who had died in prison custody within the ADOC. These students ("UABSOM Students") began conducting their own research into this anomaly.

55. The UABSOM Students gathered the following facts:

a. The UAB Division of Autopsy is contracted by the Department of Corrections to perform autopsies on incarcerated individuals who die in state custody. Each autopsy request is initiated by a warden. As documented through UAB Division of Autopsy publications, from 2006 to 2015, per the Division of Autopsy' 2017 publication, 23% of their yearly income comes from Department of Corrections autopsies, and 29% comes from Alabama Dept of Forensic Science.

b. Wardens can limit the autopsy to a strict determination of death, with no tissues retained for research or education. However, according to a UABSOM doctor, wardens always sign "no limitations" on the form which initiates the request for autopsy. Neither the patient, nor their family, has consented to the retention of tissues for teaching, education, or research.

c. A percentage of teaching samples used in UABSOM's preclinical pathology education have been obtained without consent.

d. Between 15% and 69% of incarcerated persons have a persistent medical problem not examined by medical personnel. Between 21% and 36% are not receiving prescriptions for current medical needs

e. The incarcerated population have inconsistent healthcare access constrained by, among other factors: $12-$100 copays, while making no money for their labor or mere cents per hour.

f. The Mission Statement of UABSOM is "[t]o improve the health and well-being of society, particularly the citizens of Alabama, by providing innovative health services of exceptional value that are patient- and family-centered, a superior environment for the education of health

professionals, and support for research that advances medical science."

g. Because of the involuntary nature of their confinement, prisoners are more vulnerable to coercion regarding their consent to participate in research, thus it is important to make the process as voluntary as possible.

h. A disproportionate amount of pathology lab specimens used for teaching purposes are from incarcerated individuals because they have the most advanced pathology (*i.e.*, it is easier to study a 3 cm tumor than a 3 mm tumor). Additionally, there have already been abstracts written by UAB Pathology regarding misdiagnosis rates at UAB Hospital versus the ADOC, including organs from incarcerated individuals.

i. As discussed above, the Department of Pathology has a private contract to perform autopsies for the ADOC, then uses these specimens for both research and teaching, but is in no way advocating for a change in health care access or quality received from the ADOC.

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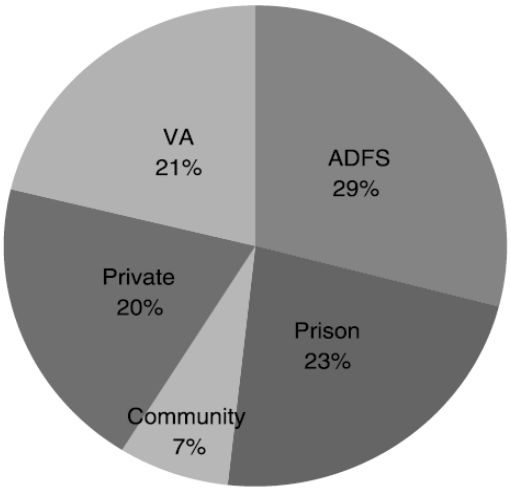

FIGURE 2. Proportion of income generated from each contract (2006–2015).

56. The UABSOM Students' initial findings are attached as **Exhibit 2**.

57. On September 20th, 2018, the UABSOM Students met with the UABSOM Ethics Oversight Committee ("Ethics Committee") to present their findings.

58. The UABSOM Students' presentation to the Ethics Committee is attached as **Exhibit 3**.

59. During this meeting, the majority of the Ethics Committee members took the position that organs removed from a cadaver's body during autopsy are used for the secondary purposes of teaching future physicians and thereby benefit future patients. If such uses are disallowed, these specimens would only be disposed of, serving no useful purpose. Thus, it was a position of the ethics committee that the autopsy process and the teaching uses of specimens obtained through the autopsy on incarcerated individuals in the current fashion would be ethically permissible.

60. The Ethics Committee acknowledged that it is true that in private autopsy the next of kin (usually family members) has the option to opt out of the retention and teaching uses of a deceased person's organs following autopsy.

61. The response to the UABSOM Students from the Ethics Committee is attached as **Exhibit 4**.

62. The UABSOM Students documented that they felt frustration at the lack of response from the Ethics Committee. The UABSOM Students' impressions of the Ethics Committee Meeting are attached as **Exhibit 5**.

63. The UABSOM Students pursued meetings with other administrators and asked administrators to implement the following policies:

a. Any organs obtained with consent given only by a warden/entity of the state shall be removed from the education collection.

b. Until a process is created to obtain informed consent from incarcerated people or their true next of kin, their organs will not be used for educational or research purposes.

c. Language should be included to minimize potential coercion of organ donation by prisoners and offer the right to withdraw without penalty.

Examples from the University of Virginia Institutional Review Board recommendations:

i. "Your information will not be shared with the parole board or the prison staff. Your participation will be kept private and will not affect your parole review" and "If you decide to withdraw from the study, this information will not be shared with the parole board or with prison staff."

64. On November 26, 2018, the UABSOM Students brought their unaddressed concerns to the administration in a formal meeting. They alerted the administration that the Ethics Committee meeting was unproductive. The UABSOM Students commented that no Ethics Committee member presented outside research, prompting concern that the Ethics Committee did not do their due diligence regarding the issue. In addition, students noted that data from the Autopsy Department was provided by members of the Autopsy Department and was not double checked by the Ethics Committee. Furthermore, students reported that they were accused of being "inflammatory" and comparing their educators to "criminals."

65. During this November 26, 2018 meeting, the UABSOM Students also alerted the administration to the fact that the autopsy lab responded to the student concerns by stating that they are no longer including incarceration status in patient vignettes because of the students' ethical concerns, as had been done before they raised their ethical concerns. The students commented that refusing to provide information about the source of the tissues they encountered in the autopsy lab rendered them unable to make an informed decision about their participation in such practices.

66. An administrator admitted to the UABSOM Students that 1/3 of the samples in the pulmonary lab were from incarcerated individuals. Based on this admission and other information, the UABSOM Students concluded that incarcerated people are 50 times more likely to represent teaching samples than non-incarcerated individuals.

67. On February 18, 2019, the UABSOM Students again met with administrators. An administrator stated that solid organ autopsy specimens from incarcerated persons would no longer be utilized in UABSOM undergraduate medical education. This administrator informed the UABSOM Students that specimens would remain in the Pathology Department but would not be used to teach students. Another administrator stated that the Pathology Department has been asked to obtain consent for future specimens. UABSOM Students documented, however, that no measures were taken or, to their knowledge, have been taken to enforce this action in any way.

68. Defendants, named and fictitious, and/or their employees, agents, and/or servants acted willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law, by ordering, requesting, performing and/or allowing autopsies to be performed on inmates dying within the ADOC without obtaining authority from the rightful next of kin or a person with legal authority to order and/or authorize autopsies.

69. As a result of the events made the basis of this Complaint, Plaintiffs have the following injuries:

a. suffered physical injuries manifesting from Defendants' outrageous and intentional conduct;

b. suffered emotional and physical pain and will continue to do so in the future;

c. suffered mental anguish and will continue to do so in the future;

d. suffered permanent injuries and damages;

e. endured loss of income;

f. incurred medical expenses and will do so in the future; and

g. have been otherwise injured and damaged.

COUNT I
Unlawful Conversion of Anatomical Parts
(Against all Defendants)

70. Plaintiffs reallege all prior paragraphs of the Complaint as if set out here in full.

71. Defendants converted property of Plaintiffs via an intentional wrongful taking, an illegal assertion of ownership, an illegal use or misuse of another's property, or a wrongful detention or interference with another's property.

72. In callously mistreating the deceased's mortal remains, Defendants trampled on Plaintiffs' sacred rights of sepulcher. Defendants' appalling misconduct is nothing short of grave robbery and mutilation.

73. Defendants violated state law by retaining a deceased person's entire organ for research or for any other purpose not in conjunction with a determination of identification or cause or manner of death and without notification to, and approval by, the appropriate next of kin.

74. Defendants violated state law by failing to provide notice to next of kin when they retained organs.

75. Defendants unlawfully denied the deceased and Plaintiffs the right to determine whether the deceased's organs would be given as an anatomical gift.

76. Defendants unlawfully and intentionally usurped the authority of the deceased and/or his agent(s), by depriving Plaintiffs of the opportunity to make a determination about the disposition of the organs of their deceased next of kin.

77. As a proximate result of Defendants' actions, Plaintiffs were injured and damaged as stated in paragraph 69 above.

WHEREFORE, premises considered, Plaintiffs demand judgment against Defendants separately and severally, in such amount of compensatory and punitive damages as a court deems proper, attorney's fees, costs, and such other, more general and equitable relief as is deemed proper by the Court.

COUNT II
Conspiracy
(Against All Defendants)

78. Plaintiffs reallege all prior paragraphs of the Complaint as if set out here in full.

79. Defendants did agree to take concerted action to achieve the unlawful retention of organs from the deceased family member of Plaintiffs.

80. Through their outrageous and clearly unlawful conduct, Defendants intended to and did cause damage to Plaintiffs.

81. Defendants performed numerous overt acts that caused damage, partially evidenced by the Autopsy Agreement described above.

82. Defendants actively entered into an agreement evidencing conspiracy, while other Defendants acted to conceal or otherwise obscure the illegal agreement.

83. Defendants committed the tort of conspiracy when they coordinated to wrongfully take, detain, interfere with, or illegally assume ownership or use of Plaintiffs' interest in the remains of their loved one.

84. As a proximate result of Defendants' actions, Plaintiffs were injured and damaged as stated in paragraph 69 above.

WHEREFORE, premises considered, Plaintiffs demand judgment against Defendants separately and severally, in such amount of compensatory and punitive damages as a court deems proper, attorney's fees, costs, and such other, more general and equitable relief as is deemed proper by the Court.

COUNT III
Fraud
(Against All Defendants)

85. Plaintiffs reallege all prior paragraphs of the Complaint as if set out here in full.

86. Defendants had an obligation to communicate material information to Plaintiffs and failed to do so.

87. Defendants made false representations of a material existing fact, which Plaintiffs reasonably relied upon, and as a result, Plaintiffs suffered damage as a proximate consequence of the misrepresentation.

88. Defendants made false representations concerning the legality of their retaining organs without notice or consent, with the intent to willfully deceive, or recklessly without knowledge.

89. Defendants, as representatives of the State of Alabama, suppressed material facts that led Plaintiffs to believe that the removal of organs during an autopsy was not illegal, when the law in Alabama had recently changed to specifically outlaw such conduct.

90. Defendants were in a position of power and authority over Plaintiffs and improperly exploited their position to deceive Plaintiffs.

91. As a proximate result of Defendants' actions, Plaintiffs were injured and damaged as stated in paragraph 69 above.

WHEREFORE, premises considered, Plaintiffs demand judgment against Defendants separately and severally, in such amount of compensatory and punitive damages as a court deems proper, attorney's fees, costs, and such other, more general and equitable relief as is deemed proper by the Court.

COUNT IV
Negligence/Wantonness
(Against All Defendants)

92. Plaintiffs reallege all prior paragraphs of the Complaint as if set out here in full.

93. Defendants returned the deceased's body to Plaintiffs without organs and in a highly decomposed state.

94. Defendants committed an act of wantonness when they willfully removed organs from a deceased prison inmate without obtaining the necessary consent from the inmate's family.

95. Defendants consciously disregarded the law and the rights of Plaintiffs by depriving them of a right that belonged to them alone.

96. Defendants were fully aware that they needed consent from the inmate's family before removing and retaining organs, yet they proceeded to do so anyway in blatant disregard for Plaintiffs rights. Their willful failure to obtain consent demonstrates a reckless indifference that rises to the level of wantonness under the law.

97. Therefore, Defendants' unauthorized organ removal constitutes wantonness for which they can be held liable.

98. Defendants owed a duty of care to properly handle the deceased's body. By returning the body without organs and in an advanced state of decomposition, Defendants breached this duty and were negligent or wanton in their handling of the corpse.

99. As a direct result of Defendants' actions, Plaintiffs were injured and damaged as stated in paragraph 69 above.

WHEREFORE, premises considered, Plaintiffs demand judgment against Defendants separately and severally, in such amount of compensatory and punitive damages as a court deems proper, attorney's fees, costs, and such other, more general and equitable relief as is deemed proper by the Court.

COUNT V
Unjust Enrichment
(Against All Defendants)

100. Plaintiffs reallege all prior paragraphs of the Complaint as if set out here in full.

101. Defendants retained various body parts, tissues, and organs from the deceased after death without seeking or obtaining permission from Plaintiffs to do so.

102. Defendants kept the body parts for purposes of research, study, potential sale or profit, and/or another unlawful purpose.

103. By retaining body parts (items of high value) without consent, Defendants were unjustly enriched to Plaintiffs' detriment.

104. Although certain Defendants may have had lawful initial custody of the body, they did not have the right to retain any parts of it indefinitely without authorization.

105. Plaintiffs had the right to possession of the body in its entirety for burial or other lawful disposition. Defendants' continued retention and use of the body parts for their own benefit deprived Plaintiffs of that right.

106. Defendants retained a thing of value that they were not entitled to keep – namely, human remains – thereby enriching themselves and preventing Defendants from having to obtain organ specimens through costly means.

107. Therefore, Defendants' unauthorized retention and use of the deceased's body parts constitutes unjust enrichment.

WHEREFORE, premises considered, Plaintiffs demand judgment against Defendants separately and severally, in such amount of compensatory and punitive damages as a court deems proper, attorney's fees, costs, and such other, more general and equitable relief as is deemed proper by the Court.

COUNT VI
Intentional Infliction of Emotional Distress
(Against All Defendants)

108. Plaintiffs reallege all prior paragraphs of the Complaint as if set out here in full.

109. Defendants' conduct in unlawfully converting and retaining the organs of the deceased and returning the body to Plaintiffs in a highly decomposed state was intentional or

reckless; was extreme and outrageous; and caused emotional distress so severe that no reasonable person could be expected to endure it.

110. Defendants' outrageous and inexcusable mishandling of the deceased's body amounts to a reprehensible violation of human dignity and common decency. Their depraved indifference in returning the body bereft of vital organs and in a revolting state of decay shows utter contempt for the deceased's memory and for the profound emotional distress wantonly inflicted upon the Plaintiffs.

111. No civilized society can tolerate such a barbaric desecration of the dead. That Defendants had the audacity to ransack the body and convert its parts for their own selfish gain only compounds the egregiousness of their conduct. Their brazen theft and exploitation of the helpless deceased shocks the conscience.

112. Defendants' conduct was so extreme in degree as to go beyond all possible bounds of decency and can only be regarded as atrocious and utterly intolerable.

113. This wrongful conduct occurred in the context of a family burial.

WHEREFORE, premises considered, Plaintiffs demand judgment against Defendants separately and severally, in such amount of compensatory and punitive damages as a court deems proper, attorney's fees, costs, and such other, more general and equitable relief as is deemed proper by the Court.

COUNT VII
Tort of Outrage
(Against All Defendants)

114. Plaintiffs reallege all prior paragraphs of the Complaint as if set out here in full.

115. Defendants' conduct in unlawfully converting and retaining the organs of the deceased and returning the body to Plaintiffs in a highly decomposed state was intentional or

reckless; was extreme and outrageous; and caused emotional distress so severe that no reasonable person could be expected to endure it.

116. Defendants' outrageous and inexcusable mishandling of the deceased's body amounts to a reprehensible violation of human dignity and common decency. Their depraved indifference in returning the body bereft of vital organs and in a revolting state of decay shows utter contempt for the deceased's memory and for the profound emotional distress wantonly inflicted upon the Plaintiffs.

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119. This wrongful conduct occurred in the context of a family burial.

WHEREFORE, premises considered, Plaintiffs demand judgment against Defendants separately and severally, in such amount of compensatory and punitive damages as a court deems proper, attorney's fees, costs, and such other, more general and equitable relief as is deemed proper by the Court.

COUNT VIII
Fictitious Defendants

120. Plaintiffs reallege all prior paragraphs of the Complaint as if set out here in full.

121. Fictitious Defendants are those individuals and/or entities specifically enumerated in the caption above whose negligence, wantonness, and/or other wrongful conduct caused or contributed to cause the events made the basis of this Complaint.

122. As a proximate result of Defendants' actions, Plaintiffs were injured and damaged as stated in paragraph 69 above.

WHEREFORE, premises considered, Plaintiff demands compensatory and punitive damages against all Defendants, jointly and severally, named and fictitious, in an amount to be determined by a jury, plus costs.

PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiffs respectfully requests that this Court enter an Order:

1. Entering a judgment against Defendants;

2. Granting Plaintiffs' motion for a temporary restraining order to:

    a. Prevent Defendants from using in any way, or benefiting from the organs collected from Decedent and to the extent possible, order them to return the organs to the family, so that they may be properly examined and interred;

    b. Require that all tissues or organs obtained by Defendants without consent from all deceased individuals whom they have autopsied, or their next of kin, should be returned to next of kin;

    c. Declare as void the Autopsy Agreement, which, against Alabama law, authorizes wardens of ADOC correctional facilities to grant the Board permission to retain organs during an autopsy without obtaining consent from the subject of the autopsy or their next of kin.

3. Awarding damages, compensatory, punitive and disgorgement of any profits from unlawful organ or tissue retention, to Plaintiffs against Defendants in an amount deemed appropriate by a jury and authorized by law;

4. Awarding to Plaintiffs reasonable attorney fees, costs and expenses; and

5. Providing such other and further relief to Plaintiffs as the Court deems just and proper.

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY.

RESPECTFULLY submitted this 11th day of April, 20242024.

/s/ *Michael G. Strickland*
One of the Attorneys for Plaintiff

OF COUNSEL:

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DEFENDANTS TO BE SERVED:

JOHN Q. HAMM
c/o Alabama Department of Corrections
301 S. Ripley Street
Montgomery, AL 36104

CHADWICK CRABTREE
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28779 Nick Davis Road
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ATTN: David R. Mellon
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UNIVERSITY OF ALABAMA HEALTH SERVICES FOUNDATION, P.C.
ATTN: T.C. Fry, Jr.
500 22nd Street South, Suite 504
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THE UNIVERSITY OF ALABAMA SYSTEM BOARD OF TRUSTEES
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1720 2nd Avenue South, Suite AB 820
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RONNIE D. DAVIS
UAB Department of Pathology
P210 West Pavilion
619 South 19th Street
Birmingham, AL 35233-7331

Exhibit 1

AUTOPSY SERVICE AGREEMENT BETWEEN UNIVERSITY OF ALABAMA HOSPITAL AND ALABAMA DEPARTMENT OF CORRECTIONS

THIS AGREEMENT is by and between The Board of Trustees of the University of Alabama, on behalf of University Hospital ("UAB"), and the State of Alabama Department of Corrections ("ADOC").

WITNESSETH

WHEREAS, the ADOC requires autopsy and toxicological services; and,

WHEREAS, UAB can offer the autopsy and toxicological services to the ADOC through qualified personnel and facilities.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

ARTICLE I: ENGAGEMENT

Section 1.01 Retention and Engagement. The ADOC retains and engages UAB as an independent contractor to provide the autopsy and toxicological services described in this Agreement.

ARTICLE II: TERM AND TERMINATION

Section 2.01 Term and Termination. The term of this Agreement shall commence as of October 1, 2022, and shall continue for a period of one (1) year, or until September 30, 2023. The Agreement may be terminated by either party by furnishing thirty (30) days written notice to the other, in accordance with Section 6.04 of this Agreement.

ARTICLE III: RESPONSIBILITIES

Section 3.01 UAB Responsibilities. UAB shall furnish autopsy services to deceased ADOC inmates upon the ADOC's request as follows:

1. Autopsy services shall consist of external examination of the body, gross dissection, review of microscopic and laboratory findings, preparation of written descriptions of the gross and

microscopic findings, and generating a report of findings to include, but not be limited to, comment on the cause of death.

2. UAB will accept bodies twenty-four (24) hours a day, seven (7) days a week.

3. UAB will determine the time frame in which the examination is performed, based on time of receipt of body and case load.

4. UAB will provide a written preliminary report within twenty-four (24) hours of the autopsy procedure and a final definite written autopsy report to the ADOC within six (6) to eight (8) weeks of completion of the autopsy procedure.

5. Any suspicious circumstances or new information obtained during the autopsy will be reported to the ADOC.

6. Any requests for information related to the autopsy will be referred to the ADOC.

7. Any added toxicology will be at an additional charge. The referring Pathologist or designated contact will be notified of the need for these added procedures for approval.

Section 3.02 ADOC Responsibilities. The ADOC shall be responsible for the following:

1. The ADOC shall ensure that all autopsies that require a permit are properly authorized by an appropriate legal representative. The permit will substantially be in the form attached as Exhibit A.

2. The ADOC shall provide identity of deceased and provide all available medical records, which are subject to the restrictions as laid out in Article V of this Agreement.

3. The ADOC shall be responsible for arranging for transportation of the bodies to and from UAB.

4. The ADOC will notify UAB of any autopsy request.

5. The ADOC will notify UAB prior to the delivery of a body to assure availability of personnel to accept the body.

ARTICLE IV: COMPENSATION

Section 4.01 Compensation. As compensation for the services furnished by UAB under this Agreement, the ADOC agrees to pay to UAB the amounts set forth in Exhibit B. Payment shall be submitted to UAB after receipt of completed and documented invoices, which shall be submitted through the STAARS system. The ADOC will make every reasonable effort to submit payment within thirty (30) days after receipt of invoice. However, failure of timely submission of payment due to the action or inaction of a third party shall not be deemed a breach of the Agreement

by the ADOC. At no time shall the amount paid hereunder exceed six hundred and seventy-five thousand dollars and no/100 ($675,000). Further, it is understood that payments may be delayed at the end of the fiscal year. Payment of invoices shall be submitted to the following address:

University Hospital Autopsy Services
Attn: Kuruvilla George
JNWB, SUITE 404
500 22nd Street S
Birmingham, Alabama 35233

ARTICLE V: RECORDS

Section 5.01 Confidentiality. UAB and the ADOC agree that any confidential information received from one another, and any reports or working papers, shall only be used for the purposes of providing or receiving services under this or any other contract between the Parties. Except as provided below, UAB and the ADOC agree not to disclose the other party's confidential information or any reports to any third party without the other party's written consent. Confidential information shall not include information that: (i) is or generally becomes available to the public, other than as a result of a breach of an obligation under this clause, (ii) is acquired from a third party who owes no obligation of confidence in respect to the information; or (iii) is or have been independently developed by the recipient.

Notwithstanding the above, any party will be entitled to disclose confidential information of the other to a third party to the extent that such is required by law, provided that (and without breaching any legal or regulatory requirement), not less than five (5) business days notice is first given in writing to the other party.

UAB will promptly notify the ADOC of the happening of any of the following events: (i) a request by anyone to examine, inspect, or copy documents or records; or (ii) any attempt to serve, or the actual service of, any court order, subpoena, or summons upon UAB which requires the production of any documents or records. Nothing in the foregoing should affect UAB's ability to produce materials called for by appropriate legal process.

Section 5.02 Health Insurance Portability and Accountability Act (HIPAA) Compliance. As a business associate of the ADOC, as defined by HIPAA, UAB agrees (1) to only disclose protected health information ("PHI") as permitted under this engagement and allowed under the final HIPAA rule; (2) to use "appropriate safeguards" to prevent use or disclosure of PHI as permitted by the agreement executed herein; (3) to report any known misuse of PHI to the ADOC; (4) to impose HIPAA requirements upon its agents; (5) to make PHI and an accounting of disclosures available to relevant individuals as required by the final rule; (6) to make its documents, books, and records relating to the use and disclosure of PHI available to the Department of Health and Human Services, if requested; (7) to acknowledge that the ADOC may terminate the engagement if the ADOC determines that UAB has violated any provision of the final HIPAA rule; and (8) to destroy or return, upon termination of this contractual relationship, all PHI, if feasible.

ARTICLE VI: MISCELLANEOUS

Section 6.01 Independent Relationship. It is mutually understood and agreed that UAB is at all times acting and performing as an independent contractor.

Section 6.02 Assignment. Neither party shall assign its rights or delegate its duties under this Agreement without the prior, written consent of the other party. Consent to any such assignment shall not be construed as a waiver of consent to any subsequent assignment.

Section 6.03 Amendment. This Agreement shall not be modified or amended except by a written document executed by both parties to this Agreement.

Section 6.04 Notices. All notices or communications required or permitted by this Agreement shall be in writing and shall be deemed to have been given when personally delivered or deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid and addressed to the parties at the following addresses:

UAB Department of Pathology
Office of General Counsel
500 22nd Street South
Birmingham, Alabama 35233

Alabama Department of Corrections
Office of Health Services
301 S. Ripley St.
Montgomery, AL 36104
Attn: Deborah Crook

UAB Hospital Laboratories
c/o Jonathon Gidley
620 19th Street South
Birmingham, Alabama 35249-6820

Alabama Department of Corrections
Legal Division
301 S. Ripley St.
Montgomery, AL 36104
Attn: Carrie McCollum, General Counsel

Section 6.05 Entire Agreement. This Agreement and the Exhibits attached thereto constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to the subject matter hereof.

Section 6.06 Debt to State. It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number XXVI. It is further agreed that if any provision of this Agreement shall contravene any statute or constitutional provision or amendment, either now in effect or which may during the course of this contract be enacted, then that conflicting provision in the Agreement shall be deemed null and void. All other terms and conditions shall remain in full force and effect. The sole remedy for the settlement of any and all monetary disputes arising under the terms of this Agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama. For all other disputes arising under the terms of this Agreement, the Parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize

appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation.

Section 6.07 Compliance. The Parties agree, and hereby acknowledge, that all terms, covenants, and conditions, or actions taken under this Agreement shall comply with all applicable state, federal, or local laws, including the Beason-Hammond Alabama Taxpayer and Citizen Protection Act as amended. By signing this contract, the contracting parties affirm, for the duration of this Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

Section 6.08 Sanctioned Individuals, Persons, or Entities. Each party certifies and represents that neither itself nor any entity owning or controlling that party (i) is currently excluded, suspended, debarred, or otherwise ineligible to participate in Federal healthcare programs or (ii) has been convicted of a criminal offense related to the provision of healthcare items or services and has not been reinstated in the Federal healthcare programs after a period of exclusion, suspension, debarment, or ineligibility. Each party shall notify the other, within thirty (30) days, if an action or investigation arises that could result in the conviction of a criminal offense of the party or any owning or controlling entity, the imposition of civil monetary penalties against the party or any owning or controlling entity, or the exclusion of the party or any owning or controlling entity from any federal or state healthcare program.

Section 6.09 Proration. In the event of proration of the fund from which payment under this Agreement is to be made, this Agreement will be subject to termination.

Section 6.10 Boycott Certificate. In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

Section 6.11 Alternative Dispute Resolution. In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment for the State of Alabama. For any and all other disputes arising under the terms of this Contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation, subject, however, at all times to the sovereign immunity of the State. Such dispute resolution shall occur in Montgomery, Alabama utilizing, where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar.

Section 6.12 Immigration. The Parties agree, and hereby acknowledge, that all terms, covenants, and conditions, or actions taken under this Agreement shall comply with all applicable state, federal, or local laws, including the Alabama Beason-Hammon Alabama Taxpayer and Citizen Protection Act as amended. By signing this contract, the contracting parties affirm, for the duration

of this Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

Section 6.13 PREA. Pursuant to Alabama Code Section 14-11-31 as well as 28 C.F.R. Part 115, the Prison Rape Elimination Act ("PREA"), any type of sexual contact with or sexual harassment of an inmate in the custody of the ADOC by one who is responsible for the care, control, or supervision of inmates – with or without the consent of the inmate – is illegal. Under Alabama law, it constitutes a felony – custodial sexual misconduct. See also, ADOC Administrative Regulation 454, Inmate Sexual Assault and Harassment Awareness (Prison Rape Elimination Act (PREA)). The ADOC has a Zero Tolerance Policy toward all forms of custodial sexual misconduct, sexual abuse, and sexual harassment. Any type of conduct – including suspected conduct – that falls within the context of custodial sexual misconduct/sexual abuse, as defined by either the State or Federal laws referenced above, shall be reported immediately to the Warden of the facility to which he or she is assigned, or the Warden's designee.

Signatures on the following page.

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ALABAMA,
ON BEHALF OF UNIVERSITY OF
ALABAMA HOSPITAL

DocuSigned by:
Bernard Mays
C386484AD596488...

STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS

John Q. Hamm
Commissioner

ACKNOWLEDGED:

George Netto, MD
Professor and Chair
Department of Pathology

APPROVED AS TO LEGAL FORM:

Mandy C. Speirs
Assistant Attorney General

EXHIBIT A

UNIVERSITY HOSPITAL
AUTHORIZATION FOR AUTOPSY

Death _____, Time _____ AM /PM

I do hereby state that I am the Warden of _____ and custodian of:

Inmate: _____

I am the legally designated representative and therefore am legally entitled to grant permission for the completion of an autopsy and the removal of organs or tissues for further study on said inmate.

I do, therefore, give my permission for the performance of an autopsy including the removal of organs or tissues from said inmate for diagnostic or other testing, including final disposition thereof. The autopsy is performed without limitations EXCEPT:

_____
(If no restrictions, write "none")

RELEASE BODY TO:
(must be completed)

I am entitled by law to grant this permission.

_____
Funeral Home

_____
(Signature of designated representative)

_____
Address

_____
City State

We the undersigned certify and witness that proper permission is o obtained from the custodial warden as defined in the instructions.

Clinician requesting notification or attendance at autopsy

_____
Physician obtain permission Phone

_____
(Name)

_____
Head Nurse/Charge Nurse Phone

_____
Phone No.

CLINICAL PREMORTEM DIAGNOSIS

Include questions that may be potentially determined by postmortem examination:

_____

_____

The physicians MUST provide any essential information needed for the safety of others handling the remains of the deceased.

EXHIBIT B

Compensation

ADOC will pay UAB $2,200 per autopsy.

ADOC will pay UAB $100 per toxicology test.

EXHIBIT 2

Attendance

Maggie Williams	Poojitha	Grace Kennedy	Kat Baldwin
Alana Jones	Balakrishnan	Emma Thompson	Gill Garver
Rob Rosencrans	Sylvie Sontheimer	Michael Matthews	

Summary of meeting with Dr. Reilly and Litovsky

- Consent process involving specimens in the lab DOES NOT involve the patients or their families. The prison warden provides consent and always signs for "no restrictions" on what specimens can be used for, which includes their use for research and teaching purposes.
- The pathology lab has a private contract to perform autopsies for the DOC, then uses these specimens for both research *and* teaching, but is in no way advocating for a change in health care access or quality received from the DOC.
- A disproportionate amount of pathology lab specimens used for teaching purposes are from incarcerated individuals because they have the most advanced pathology. Additionally, there have already been abstracts written by UAB Path regarding misdiagnosis rates at UAB Hospital versus the DOC including organs from incarcerated individuals. Per path lab, IRB is not required for post-mortem tissue.
- Meeting felt informative but, at some point, it felt like we "hit a brick wall." It did not seem that people from the path lab thought anything happening was unethical. It seemed like they thought *students* were concerned that pathology practices were illegal, and wanted to emphasize that their practices are legal. Additionally, their biggest concern seemed to be that their residents may have been rude in how they talked about incarcerated individuals to medical students, rather than being concerned about the use of organs obtained without consent.
- Per path lab, some organs have been in use for so long they are no longer associated with a record. I.e. number connecting them to patient file has been lost.

Summary of major issues

Absence of informed consent
Organs without records
Research ethics
Legal status
Education

Goals for change

- In research ethics
    - Dr. Nakano input would be needed
    - Is it unethical?
    - Prisoners are protected class
    - Understand goal of research
        - What is the differential rate of missed diagnoses?
    - How are they explaining and contextualizing differences?
    - How does this goal (of publication) mesh with their stated lack of interest in advocacy?

        - They benefit from publishing but aren't interested in advocacy
    - They are very unclear on the algorithm which sends patients to UAB path?
- In absence of informed consent
    - Current organs
        - Largely agree they should returned or incinerated and buried, incorporated into donor ceremony at garden for anatomical donor program
        - Need to hear from bioethicist on what the differences are between organs and whole cadavers
        - If organs are unlabeled, no way to verify consent, these ethically fall under the same constraints as organs known to be retained without consent
    - Future organs
        - Minimum is that autopsy report should reflect that tissue was retained, even if nothing else changes
        - Higher internal standard-need to communicate to family with truly informed consent PRIOR to retaining specimens
        - Default should be to assume not to retain specimen, without informed consent
        - Prison intake forms exhibit informed consent for autopsy and research
- In legal status
    - Dr. Hoesley and Harada well poised to address
- In education:
    - Need to get residents to communicate the lack of agency in care and disease state (i.e. patients did not do this to themselves, avoid blaming)
    - Fellow students don't see ethics of organ snatching as problematic, need to work on sensitizing students, add topic to LC meeting, lecture in PDS
    - Need better intro to pathology program, the donor organs, etc
    - Need better coverage of prison disparity, <u>esp</u> if organs are to remain in the lab
    - Improve resident training for covering these topics
    - Education is secondary to other topics?

<u>Moving forward</u>
Meet with Dr. Nakano, then with Dr. Harada, before end of the semester
Find abstract from the research they have done

EXHIBIT 3

UAB Division of Autopsy:
Ethical Considerations on Organ Use from Incarcerated Individuals

DOCUMENT 2

Introduction

I. Violation of Justice
II. Rights of Prisoners
III. Rights of the Deceased
IV. UAB's Obligation
V. Future Organ Use
VI. Our Proposal

Violation of Justice in Research and Education

- All research has risks and benefits
- The principles of justice and beneficence dictate that these benefits and risks must be distributed equally.
- What are the potential risks incarcerated patients and their families experience by participating (non-consensually) in the Division of Autopsy's research and education?
- **What are the potential benefits? Can patients of this class actually access these benefits?**

An Asymmetric Distribution of Study

- Prisoners have a long standing categorization as protected class (e.g. Fry, 1986; Fuller & Eves, 2017)

- Not every autopsy has retained tissue. Often, per their own admission, they retain tissue from incarcerated persons' remains because of the florid pathology present, which is useful for education.

- Fry (1986) notes: "Prison practices that single out inmates for dissection merely because they happen to die in prison lack the requisite rationality required by the equal protection clause."

- In summary, being disproportionately studied because of your status as a prisoner violates legal statutes and norms.

General Benefits in General Population

- Biomedical research generally, and pathological determination of cause of death specifically, provide socially actionable information for disease prevention.

- Tsujimura-Ito (2014) note in the following examples
  - "… a rare brain sample that was exposed to sarin...has been used in the development of new examination techniques...enhancing ability to identify the cause of death.

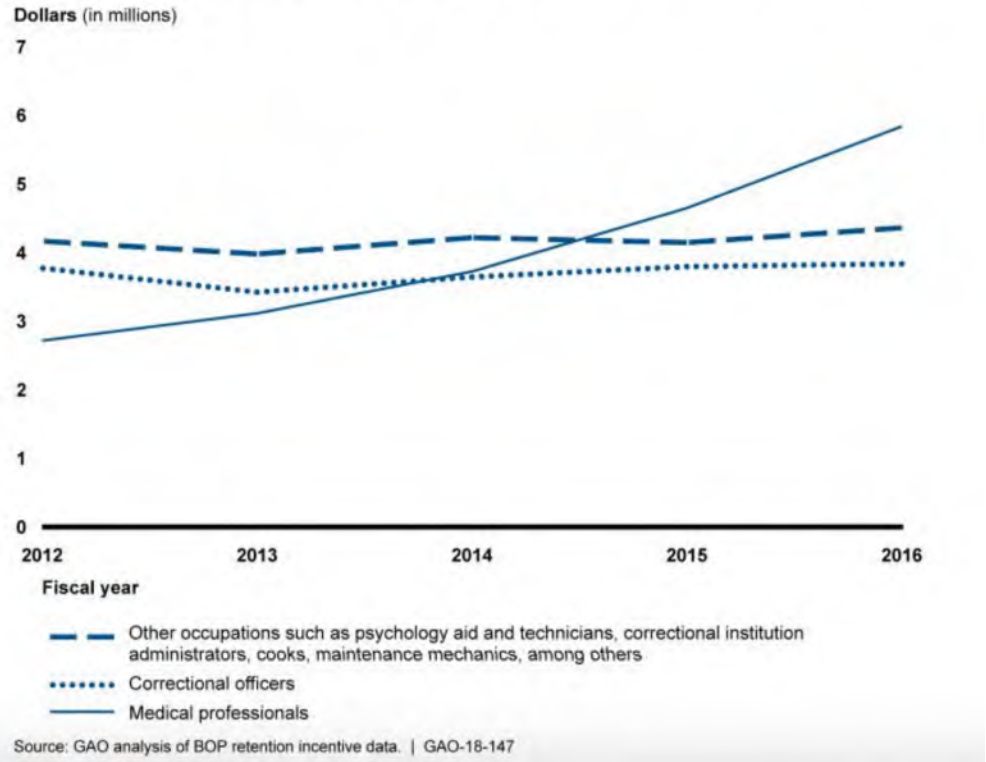
  - "...an autopsy report on pseudo-Bartter's syndrome in a woman who ingested seven diet pills daily for a week encouraged the Ministry of Health to issue a warning on the risks involved in taking these pills…information obtained from such samples is very beneficial for the public.

  - "Therefore, the authors believe that human samples should be considered as shared human assets to be used **for the benefit of all**." (emphasis ours)

Education Benefits the General Population

- However, the benefits of this research are not distributed equally to incarcerated individuals.
  - "These reviews found that, as a result of these challenges, BOP [Federal Bureau of Prisons] had agency-wide staffing shortages...For example, as of June 2017, **only 82 percent of BOP's authorized medical positions were filled.**" (*GAO-18-147)*
  - Because of **physician shortage**, the Supreme Court recently mandated release of 37,000 incarcerated individuals (Supreme Court Ruling 563. (2011). U.S. No. 09-1233.)

Figure 4: Bureau of Prisons' (BOP) Retention Incentive Expenditures by Groups of Occupations, Fiscal Years 2012 through 2016



Source: GAO analysis of BOP retention incentive data. | GAO-18-147

DOCUMENT 2

General Benefits in Incarcerated Populations

- Our (data-driven) position is as follows:
  - The benefits of research and education will not be distributed to this class in the absence of explicit commitment to advocacy and outreach.

- Prison care is not comparable to general population care, and as such, they do not access these benefits

- Van Assche (2015) note, “A first criticism challenges the public good status attributed to biomedical knowledge on the grounds **that disadvantaged groups have no (or limited) access to healthcare**…access to the results of biomedical research also depends on...one's financial situation (health insurance), the availability of **preventative healthcare...**” (emphasis mine)

Diminished Access Means Diminished Benefits

- The incarcerated population have inconsistent healthcare access constrained by, among other factors:
    - $12-$100 copays, while making sometimes as little $0.12/hour (reviewed by Andrews et al. *Penn Wharton Public Policy Initiative*, 2017)

- Such that, per Wilper et al (2009)
    - Between 15% and 69% of incarcerated persons have a persistent medical problem not examined by medical personnel
    - Between 21% and 36% are not receiving prescriptions for current medical needs

- Are these the patients that access the benefits of medical education and medical research?

Precedent for Targeted Benefit

- Others who publish on prison autopsy explicitly identify targeted benefits as a requirement for research.
    - Wu et al, 2018, in a case report on custodial death: “We aim to provide a reference to the medical and forensic community and remind the local law enforcement agencies on the problems present within the correctional healthcare system...we also aim to increase the current knowledge and understanding on custodial deaths caused by natural diseases.”

- Materially less invasive procedures (data extracted from EMR) currently also use this standard.
    - Annaheim et al (2018) note that “all data that are collected and recorded in medical files should benefit prisoners, and should not be used for any other purposes than improving their health.”

UAB Dep't of Autopsy Position on Targeted Benefits

- Explicitly noted that they do not view advocacy as being any part of their mission, whether in discharging clinical duties or in research.

- Further, they document explicitly, through their own publications, that the practice of autopsy is viewed solely through the lens of budgetary benefit
  - 23% of their yearly income comes from Dept. of Corrections autopsies
  - 29% comes from Alabama Dept of Forensic Science- Atherton 2017

Am J Forensic Med Pathol • Volume 38, Number 3, September 2017

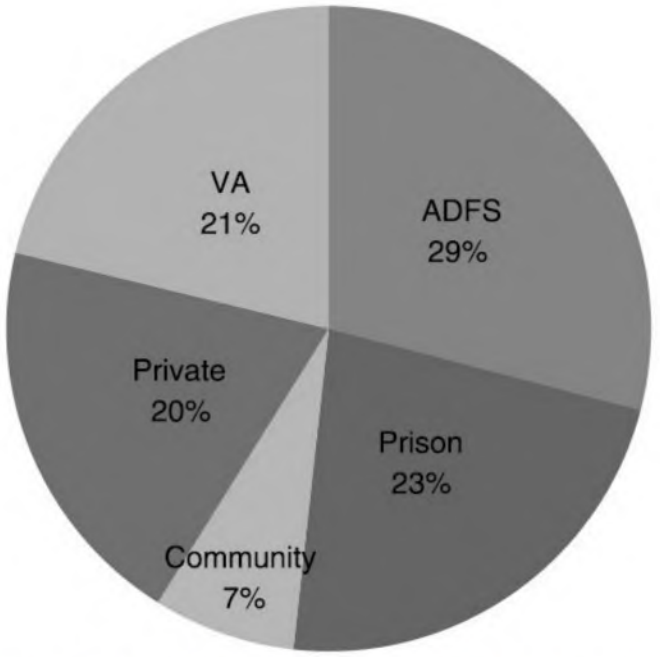


FIGURE 2. Proportion of income generated from each contract (2006–2015).

DOCUMENT 2

Targeted Benefits Left Unaddressed

- Autopsy, molecular or otherwise, provides the opportunity to disclose medically actionable findings to the family, which could prove helpful in their healthcare.

- Walker et al. 2014. “Any impetus to disclose incidental medically actionable findings was both muted by the fact that the subject would be deceased and also heightened by the fact that the family would be known to the researchers.”

- UAB does not as a matter of routine perform molecular /genetic autopsy, but if they were willing in theory to establish this practice, it would only further complicate the ethics of tissue retention, because the interested parties (i.e. family members’ with risk of inherited disease) have never consented to that form of autopsy (or any other), and may or may not wish to access this particular benefit.

- For example, disclosing a Huntington’s diagnosis would implicitly indicate a 50% chance of all offspring having Huntington’s in the future (autosomal dominant inheritance; under assumption of single mutated copy).

Relevant Prior Case from General Population

Does it matter why tissue is retained?

Nelkin (1998) describe the case of Los Alamos National Laboratory employee whose tissues were retained without consent, following a fully consented autopsy: Doris discovered from laboratory records that scientists had removed four kilograms of organs, bones and tissue from her husband's body without her knowledge or consent." She and her daughter, Katie Kelley Mareau, sought damages for suffering and for violation of their civil rights.'" They believed that Cecil's tissue was taken not only to learn more about the effects of radiation, but also to develop information that the laboratory could use to defend itself in potential litigation.'"

Rights of the Deceased

- The deceased (or their family) should have a right to decide what happens to their body after death.
  - Prison wardens should not be allowed to make this decision.
  - In the Journal of Medical Ethics publication "Bodily Rights and Human Rights", Bjoorkman (2006) describes one of the principle rights of any peoples as "**a right to determine how parts of his body, such as his kidneys, are to be used during his lifetime if he chooses to forego their use or, being dead, no longer has use for them.**"

- Lynch (2002) on consent to retain tissue in general population:
  - "..if one accepts the autopsy as a medical procedure (can such a proposition be denied?) and that families of certain cultural persuasions or perhaps of any background) might attach specific significance to the retention of tissue at autopsy, then perhaps the provision of quite **specific and detailed information is necessary in order to ensure a consent for autopsy is truly informed and, thus, valid.**"

DOCUMENT 2

Rights of the Deceased - Consent to Post-Mortem Tissue Retention-Incarcerated Population

- Have incarcerated persons waived their right to participate in post-mortem research and education?
- If they had, this research would be considered part of their punishment, but it is not:
- Fry (1986) on insufficient justification to study post-mortem tissue:
    - “While the **purpose of penal sanctions is to punish**, the obvious **purpose of allowing non-consented experimentation on the remains of prisoners is to increase the availability of material for experimentation**. In the same sense that a disaster affecting the food supply would not justify starving prisoners, or a kidney shortage would not justify requiring prisoners to forfeit their kidneys, a shortage of tissue for experimentation does not justify the removal of body organs without prisoners' consent.'”
- Research and education follow the same constraints: the need for tissue cannot drive the **presumed** consent, for the reasons specified above

Establishing Rights of the Deceased

- Ethical precedent for retainment of human organs/tissue established in UK with **Human Tissue Authority** (est. 2004)
    - Response to academic and medical culture of removing and retaining human tissues without consent.
    - Considered unlawful to remove, store, or use human tissue...without appropriate consent.
    - After the Post-mortem examination,

      "**If tissue samples and organs have been retained, then you should expect to be given a choice about what happens to them when they are no longer needed by the Coroner or the hospital.**"

    - Regarding anatomical and surgical skills training:

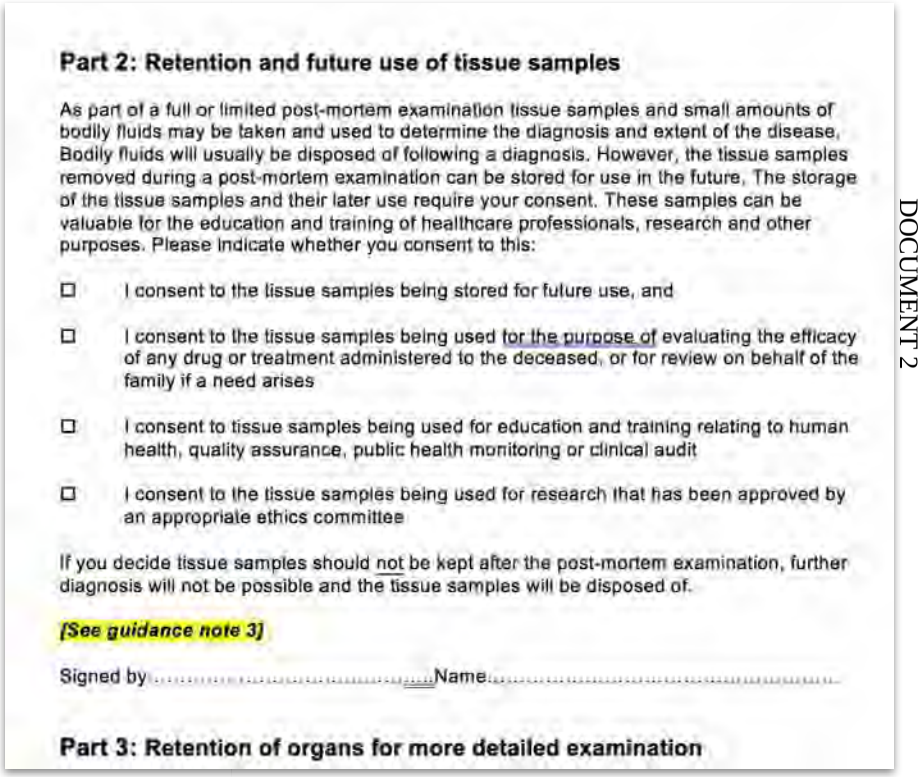
      "People must decide, and provide written and witnessed consent before they die, if they would like to donate their bodies to medical science."

      www.hta.gov.uk

DOCUMENT 2

Establishing Rights of the Deceased

- In order to truly maintain the rights of the deceased, systems for organ donation have to be arranged in a way that will preserve autonomous choice.
    - Bjorkman et al., 2006, states that "If there is a significant risk that a certain practice in dealing with a biological material will result in exploitation of human beings, then that practice should either be disallowed or modified so that the exploitation is brought to an end.
    - According to this principle, **systems for organ donation have to be arranged so that they leave potential donors with a real, autonomous choice.** (Bjorkman et al, 2006)



Part 2: Retention and future use of tissue samples

As part of a full or limited post-mortem examination tissue samples and small amounts of bodily fluids may be taken and used to determine the diagnosis and extent of the disease. Bodily fluids will usually be disposed of following a diagnosis. However, the tissue samples removed during a post-mortem examination can be stored for use in the future. The storage of the tissue samples and their later use require your consent. These samples can be valuable for the education and training of healthcare professionals, research and other purposes. Please indicate whether you consent to this:

☐ I consent to the tissue samples being stored for future use, and

☐ I consent to the tissue samples being used for the purpose of evaluating the efficacy of any drug or treatment administered to the deceased, or for review on behalf of the family if a need arises

☐ I consent to tissue samples being used for education and training relating to human health, quality assurance, public health monitoring or clinical audit

☐ I consent to the tissue samples being used for research that has been approved by an appropriate ethics committee

If you decide tissue samples should not be kept after the post-mortem examination, further diagnosis will not be possible and the tissue samples will be disposed of.

[See guidance note 3]

Signed by .....Name.....

Part 3: Retention of organs for more detailed examination

DOCUMENT 2

UAB's Obligations

- UAB should be obligated to its patients, not the Department of Corrections.
  - "Our Mission: To improve the **health and well-being of society, particularly the citizens of Alabama**, by providing innovative health services of exceptional value that are patient- and family-centered, a superior environment for the education of health professionals, and support for research that advances medical science."
  - https://www.uabmedicine.org/about

- Prisoners are citizens of Alabama
  - "In cases involving prisoners, the courts presume that **the prisoner remains a citizen of the state where he was domiciled before his incarceration**, even if he is subsequently incarcerated in a different state."
  - *Hall v. Curran*, No. 09-1354 (March 24, 2010, 1st Circuit US Court of Appeals)

UAB's Obligations, continued

- UAB should use its unique position to publish research that highlights the need for better healthcare in prisons:
    - **The University of Texas Medical Branch, 2005**
        - "Our data illustrate that the epidemiology of cancer in prison differs from that of cancers in the general U.S. population and that, overall, these cancers are associated with a high mortality...With the incarcerated population in the U.S. at its greatest numbers ever and the lengths of prison stay increasing significantly, the problems of prison oncology are unlikely to diminish in the near future. **Careful consideration may be given to the design of prison oncology programs to improve the detection and treatment of cancer and associated supportive care.**"

Mathew, P. , Elting, L. , Cooksley, C. , Owen, S. and Lin, J. (2005), Cancer in an incarcerated population. Cancer, 104: 2197-2204. doi:10.1002/cncr.21468

UAB's Obligations, continued

- UAB should use its unique position to publish research that highlights the need for better healthcare in prisons:
    - **Emory University, 2015**
        - "Our findings help justify screening for later sequelae of injection drug use, such as hepatitis C, among correctional populations and **emphasize interventions to promote liver health**, such as alcohol treatment and **access to medications that can cure viral hepatitis.**"
        - "Our study suggests that because current and former prisoners live long enough to experience sequelae of liver disease, **they need better long-term treatments**."

Spaulding, et. al. "A Comparison of Liver Disease Mortality With HIV and Overdose Mortality Among Georgia Prisoners and Releasees: A 2-Decade Cohort Study of Prisoners Incarcerated in 1991." *American Journal of Public Health*, vol. 105, no. 5, May 2015, pp. e51–57.

UAB's Obligations, continued

- UAB should use its unique position to publish research that highlights the need for better healthcare in prisons:
    - **The University of Texas Medical Branch, 2011**
        - "**Environmental conditions such as crowded quarters (i.e. prisons, assisted living, etc), poverty, and limited access to healthcare**, also appear to hinder prompt diagnosis and treatment, and to facilitate development of severe and often fatal disease."
        - "The majority of the cases reviewed involved decedents that were in the care of the TDCJ [Texas Department of Correctional Justice] system at the time of death, confirming the subpopulation of **incarcerated individuals as one of the most at-risk groups for tuberculosis**."

Sbrana, Elena, et al. "Co-Morbidities Associated with Tuberculosis in an Autopsy Case Series." *Tuberculosis*, vol. 91, Dec. 2011, pp. S38–42. *Crossref*, doi:10.1016/j.tube.2011.10.008.

Obligations of the Medical Profession

- Allen et al, 2010
  - “Prisons and jails cannot be sustained ethically or constitutionally without the support of the medical profession. In lending the good reputation of the medical profession to the work of correctional institutions in a culture of mass incarceration, physicians have placed at risk the ethical foundation of the profession itself. **To prevent this, all physicians – not just those working in prisons – must exercise their moral authority to insist upon substantial reforms relating to clinical care within the institutions.**“
- The medical profession is complicit in the U.S.’s system of mass incarceration, as prisons could not operate without medical providers. If the medical profession is to separate itself from this system, all physicians should use their position to advocate for the health and well-being of prisoners.

Future Organ Use & Organ Return

- Any organs obtained with consent given only by a **warden/entity of the state** will be removed from the education collection.
    - Regardless of the legal status, UAB should set a higher internal standard that organs are not retained unless given with informed consent from the patient or their families
    - Until a process is created to obtain informed consent from incarcerated people or their true next of kin, their organs will not be used for educational or research purposes.
    - Private Hospital Autopsy specimens given with consent will be used for medical education.

- Dignified treatment and separate disposal are the minimum considerations for organ return and disposal
    - The NHS Human Tissue Act sets these regulations: **"1. For existing holdings that are identifiable and about which relatives are in contact, no holdings in this category should be disposed of. They should be stored until relatives feel able to make their wishes clear. 2. For existing holdings which are identifiable but are unclaimed: where contact has not been made with relatives, it is reasonable for establishments to consider whether to dispose of identifiable but unclaimed tissue."**

Future Organ Use & Informed Consent

- The forms used within prisons should represent informed consent, including all possibilities for the use of retained organs
    - Because of the involuntary nature of their confinement, prisoners are more vulnerable to coercion regarding their consent to participate in research, thus it is important to make the process as voluntary as possible.
    - For example, prisoners and their family should be consented by a third party such as UAB, and not by prison employees.

Language should be included to minimize potential coercion and offer the right to withdraw without penalty. Examples from the **University of Virginia IRB recommendations**:

- **“Your information will not be shared with the parole board or the prison staff. Your participation will be kept private and will not affect your parole review”**
- **“If you decide to withdraw from the study, this information will not be shared with the parole board or with prison staff”**

Our Proposal

- **Current organs:**
  - Organs obtained without consent from the patient or their family should be returned to family members.
    - If not possible, they should be cremated and interred properly.
  - If organs are disconnected from their records (and thus not possible to prove they were obtained with consent), they should be considered obtained without consent.
- **Future organ use:**
  - Regardless of the legal status, UAB should set a higher internal standard that organs are not retained unless given with informed consent from the patient or their families.
  - The forms used within prisons should represent informed consent, including all possibilities for the use of retained organs.

Our Proposal, continued

- **Education:**
  - Medical students and residents should be educated about the quality of healthcare in Alabama prisons and prisoners' lack of access to care.
  - Medical students should receive a lecture before attending pathology lab in which they learn about their process for obtaining organs and any reasons for disproportionate representation by any group of people.
  - This ethical concern should be a topic of discussion in a small group setting (ex: LC meeting, PDS, etc.) for medical students' reflection on bodily autonomy, informed consent, etc.
  - Pathology residents should be taught how to discuss the use of organs from incarcerated people.
- **Research:**
  - UAB should not use data from organs obtained without informed consent in future research studies.
  - Publications from UAB's autopsy lab should accurately reflect differences in disease processes between incarcerated and non-incarcerated individuals, using this data to ensure that the benefits of research are evenly distributed among all people, regardless of their incarceration status.

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EXHIBIT 4

September 20, 2018

Report of Ethics Oversight Committee Meeting

Committee members present: James Hunter, Wendy Walters, Mariko Nakano, Kevin Riggs, Jason Baldwin, Christopher D. Shank, Madison Redwine, Charles Kinnaird, Marlena Barginere

Other attendants: Stephanie Reilly (Autopsy Program), Silvio Litovsky (Pathology), Cynthia Ransburg-Brown (HSF legal counsel), two medical students representing a group of 13

A consult was requested by Drs. Mariko Nakano and Caroline Harada from Dept. of Medical Education regarding student concerns about the use of anatomic path specimens, obtained from incarcerated individuals through autopsy, in their medical education. It was explained by Nakano that, as this topic pertains not only to medical education but also to the UAB hospital policy on the process of consent for retention and use of obtained tissue samples, the Department of Medical Education would like to seek guidance about the legal and the ethical status of this tissue procurement process and the teaching use of these specimens.

Copies of the student letter and Dr. Stephanie Reilly's response letter (both attached to this summary) were shared and

discussed by the committee members present. Student representatives gave a brief overview, and Drs. Reilly and Litovsky discussed their responses, providing detailed information and clarifications.

Some key clarifications given by Drs. Reilly and Litovsky included:

1) Autopsy is, whether on prisoners or on non-prisoners, done not for the purpose of obtaining tissues or to profit from its service fee, but to identify the precise cause of death. Autopsy will benefit the deceased individuals' families, wards, and prisoners alike by clearing up the suspicions about the cause of death. As such, autopsy is done out of respect for the deceased and the families, not out of lack thereof.
2) Autopsy on individuals who died in prison is, natural death or not, mandated by state laws. By state laws, wardens are to authorize the autopsy.
3) Organs removed from a cadaver's body during autopsy are then used for the secondary purposes of teaching future physicians and thereby benefits future patients. If such uses are disallowed, these specimens would only be disposed of, serving no useful purpose.
4) It is true that in private autopsy the next of kin (usually family members) has the option to opt out of the retention and teaching uses of a deceased person's organs following autopsy. However, it is extremely rare for them to do so. Of

over 3,000 cases of gross autopsy performed at UAB from 2011 to present, only 4 families refused to allow the teaching uses of the deceased person's specimens (for cultural or religious reasons).

5) Following autopsy on incarcerated individuals, the remaining body will usually be returned to family members (if available). Thus they should know the fact that autopsy was conducted.
6) In teaching, simply the best path specimens are selected and presented to medical students.
   Of the 62 specimens used this year, only 4 were from prisoners. Specimens presented to MS1 students change from year to year.

The following points were also addressed by parties present at the meeting:

7) Even in cases of non-prisoner autopsy, the UAB's consent form takes an "opt-out" style. Unless the next of kin (usually family members) explicitly refuses to allow removed organs to be used for teaching purposes, they are presumed to have given consent for such uses. As indicated in 4), such refusal seldom occurs.
8) Secondary uses of once-discarded organs are considered legitimate and require no consent, as established in *Moore v Regents*, University of California.

Based on the discussions over points 1)-8), the Committee members largely endorsed the following:

9) There is no evidence that deceased prisoners are treated unfairly as compared with non-prisoners in the autopsy procedure or in the secondary teaching uses of removed organs. Both types of deceased individuals are treated with almost the same amount of respect and care.
10) It is hard to see any lack of ethicality in the retention and teaching uses of once-removed organs.

Thus, it was a position of the ethics committee that the autopsy process and the teaching uses of specimens obtained through the autopsy on incarcerated individuals in the current fashion would be ethically permissible.

At the same time, it was suggested that the UASOM teaching faculty, especially Pathology teaching staff, should teach medical students the procurement process of pathological specimens, the purpose and importance of autopsy, and the value of learning from rare pathological specimens. The teaching staff should also demonstrate respectful handling of all pathological specimens, those of prisoners and non-prisoners alike, themselves. Preclinical students should not be made to wonder, “Had they been informed that the path specimens would be handled this way, would the family members have felt comfortable with the teaching uses of their loved one’s tissues?” Dr. Reilly pointed out that, after this ethical concern was raised by medical students early this year, the path residents received careful re-training to make sure that all specimens are handled with respect.

Finally, student representatives were commended for coming forward to address this ethical concern, which demonstrates their genuine interests in the issues of health disparities in our society. Their active involvement greatly helped us understand the legal and ethical status of the specimen-procurement process through the autopsy program.

EXHIBIT 5

November 26, 2018
Meeting with Administration

Internal Agenda

- **Thank administration for coordinating a lunch so we can discuss this issue further**
- **Update from meeting with ethics committee**
    - Meeting was unproductive
        - Medical students were told we would only introduce the issue; we were not prepared to defend our position.
            - There was an evident power dynamic between 2 medical students and 12 MDs, PhDs, and lawyers.
        - No ethics committee member presented outside research; only information from medical students and educators was presented, prompting concern that due diligence was not given to the issue.
        - Data from autopsy department was provided by members of the autopsy department and was not double-checked by the ethics committee.
        - Students were accused of being “inflammatory” and comparing our educators to “criminals.”
        - An educator made an openly racist remark that went unrebuked.

- **Our concerns are unresolved**
    - Considerations for SOM administration
        - Release ethics decision to all students, allowing them to make an informed decision about attending sessions at the autopsy lab
            - Autopsy lab stated they are no longer including incarceration status in patient vignettes because of students’ ethical concerns
            - Students unable to make an informed decision otherwise
        - Ensure all educators uphold UABSOM’s commitment to “creating an inclusive environment that values differing perspectives and experiences” (UABSOM Mission Statement).
    - Where do we go from here?
        - Students feel we have exhausted our options
            - Are there options administration can pursue within the institution?
            - Should we consider routes outside the institution?