

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
 BIRMINGHAM DIVISION**

**VIOLET P. HARRELL and JIMMIE )  
 L. HARRELL, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
**UNIVERSITY OF ALABAMA HEALTH )  
 SERVICES FOUNDATION, P.C., )  
 STEPHANIE REILLY, M.D., PAUL )  
 BENSON, M.D., et al., )  
 )  
 Defendants. )****

**Case No. CV-2025-901106**

**DEFENDANTS’ MOTION TO DISMISS**

Defendants University of Alabama Health Services Foundation, P.C. (“UAHSF”), Dr. Stephanie Reilly, M.D., and Dr. Paul Benson, M.D., (collectively “UAB Defendants”), respectfully move this Honorable Court to dismiss the Complaint for failure to state a claim under Alabama Rule of Civil Procedure 12(b)(6).

**INTRODUCTION**

Plaintiffs assert various claims based on allegations that Defendants performed an autopsy, including the removal and retention of organs and tissues, without proper consent. It is clear from the face of the Complaint that Plaintiffs’ claims fail as a matter of law for the following reasons:

First, Plaintiffs’ claim for violations of the Revised Uniform Anatomical Gift Act and the Notification Statute is due to be dismissed because the statutory provisions alluded to in this claim do not create a private right of action.

Second, Plaintiffs' conversion claim is due to be dismissed because the decedent's organs and tissues are not personal property capable of being converted.

Third, Plaintiffs' civil conspiracy claim fails because the Defendants did not commit an "underlying wrong" capable of supporting a civil conspiracy claim, and Plaintiffs have not alleged that any of the Defendants agreed to or intended to accomplish an unlawful end.

Fourth, Plaintiffs' fraud claim is due to be dismissed because it is not pleaded with the particularity required by Rule 9(b) and alleges misrepresentations of law rather than misrepresentations of fact.

Fifth, Plaintiffs' wantonness claim fails because the facts alleged in the Complaint contradict Plaintiffs' assertion that decedent Harrell's autopsy was performed without authorization, and the Complaint fails to satisfy the Alabama Medical Liability Act's heightened pleading standard.

Sixth, Plaintiffs' outrage claim is due to be dismissed because the UAB pathologists' reliance on Warden Melissa Kimberley's authorization to perform decedent Harrell's autopsy cannot be deemed "extreme" or "outrageous."

**I. PLAINTIFFS' CLAIM FOR VIOLATIONS OF THE REVISED UNIFORM ANATOMICAL GIFT ACT AND THE NOTIFICATION STATUTE FAILS BECAUSE THE STATUTORY PROVISIONS ALLUDED TO IN THE COMPLAINT DO NOT CREATE A PRIVATE RIGHT OF ACTION.**

Count One of the Complaint asserts a claim for "Violations of the Alabama Uniform Anatomical Gift Act and the Alabama Code," alleging the following:

44. The retention of anatomical parts by Defendants, acting as a medical examiner, is limited for the express

purposes of attempting to identify an unknown person or for determining cause or manner of death.

45. For retention of organs when the identity of the person is known, as in this case, even for the limited purpose of determining the cause or manner of death, notification to the next of kin is mandatory.

46. No notification was given to the Harrell Family, no authorization was given by Decedent's next of kin, nor was authorization granted by any other person listed in the statute who might be mistaken as having given permission to retain organs.

(Doc. 2 ¶¶ 44-46).

The Complaint does not cite specific provisions of the Revised Uniform Anatomical Gift Act ("RUAGA")<sup>1</sup> or the Alabama Code. However, the allegations contained in paragraphs 44-46 are clearly in reference to ALA. CODE § 22-19-85 (the "Notification Statute"), which requires county medical examiners to "notify next of kin" when retaining a deceased person's organs for testing to determine the cause of death and to receive "approval by" the appropriate next of kin when retaining a deceased person's organs for research or any other purpose besides determining the cause of death. ALA. CODE § 22-19-85(a)-(b).

Plaintiffs cannot bring a civil claim under the Notification Statute because the statute contains no enforcement language. The Alabama Supreme Court has made clear that "[o]ne claiming a private right of action within a statutory scheme must show clear evidence of a legislative intent to impose civil liability for a violation of the statute." *Am.*

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<sup>1</sup> Count references the "Alabama Uniform Anatomical Gift Act." This Act was repealed in 2008 with the enactment of RUAGA. *See* ALA. CODE §§ 22-19-50 *et seq.*, *repealed by* 2008 Ala. Acts 453.

*Auto. Ins. Co. v. McDonald*, 812 So. 2d 309, 311 (Ala. 2001); *Blockbuster, Inc. v. White*, 819 So. 2d 43, 44 (Ala. 2001) (same); *Vandenberg v. Aramark Educ. Servs.*, 81 So. 3d 326, 342 (Ala. 2011) (“A private right of action cannot be presumed.”). Plaintiffs do not attempt to demonstrate a private right of action in their Complaint.

With respect to Plaintiffs’ claims under RUAGA, the allegations contained in Count One do not indicate which provision or provisions of RUAGA Plaintiffs allege were violated. A review of RUAGA reveals that the statute contains just two provisions that contain any kind of enforcement language: ALA. CODE § 22-19-175, which makes the purchase or sale of a deceased individual’s body parts for transplantation or therapy a Class C Felony, and ALA. CODE § 22-19-176, which makes falsifying organ donation documents a Class C Felony. *See also* ALA. CODE § 22-19-176, Official Comment (“The only express liability sections in this [act] are in Section 16 relating to sales and Section 17 relating to falsified documents.”). These two liability provisions are not applicable to Plaintiffs’ allegations. Even if they were, these provisions create criminal liability rather than civil liability.

Plaintiffs have not cited the specific statutory provisions that their claims are brought under, and they have not cited to any evidence—let alone “clear evidence”—that the legislature intended to impose civil liability for violations of these unidentified provisions. *See McDonald*, 812 So. 2d at 311 (requiring “clear evidence of a legislative intent to impose civil liability for a violation of the statute.”). The Court cannot presume that a private right of action exists. Plaintiffs’ claims for violations of RUAGA and the “Alabama Code” are due to be dismissed. (Doc. 2 at ¶¶ 43-47).

## II. PLAINTIFFS' CONVERSION CLAIM FAILS BECAUSE DECEDENT HARRELL'S REMAINS ARE NOT PERSONAL PROPERTY.

Count Two of the Complaint asserts a claim for “Unlawful Conversion of Anatomical Parts.” (Doc. 2 ¶¶ 48-56). Specifically, Plaintiffs allege that “Defendants converted property of Plaintiffs via an intentional wrongful taking, an illegal assertion of ownership, an illegal misuse of another’s property, or a wrongful detention or interference with another’s property.” *Id.* at ¶ 49.

Plaintiffs’ conversion claim rests on the misguided assertion that decedent Harrell’s organs and tissues are Plaintiffs’ personal property. *See, e.g., Ex parte Talbott*, 215 So. 3d 541, 549 (Ala. 2015) (“To establish conversion, a plaintiff must show a wrongful taking or a wrongful detention or interference or an illegal use or misuse of his or her property.”); *Fletcher v. Eddins*, No. SC-2022-0533, 2023 WL 5314677, at \*10 (Ala. Aug. 18, 2023) (“[P]laintiff must show legal title in himself to the property at the time of conversion.”); *Schaeffer v. Poellnitz*, 154 So. 3d 979, 988 (Ala. 2014) (“[A] plaintiff must establish that the defendant converted specific personal property to his own use and beneficial enjoyment.”).

A deceased individual’s organs and tissues are not personal property capable of supporting a claim for conversion. The Alabama Code defines personal property as “money, goods, chattels, things in action and evidence of debt, deeds, and conveyances.” ALA. CODE § 1-1-1(8). Beyond the statutory definition, Alabama common law recognizes that body parts cannot be treated as property. *See, e.g., Bessemer Land & Improvement Co. v. Jenkins*, 111 Ala. 135, 18 So. 565, 567 (1895) (“It seems to be very generally agreed that

a dead body is not the subject of property right.”); *Id.* (“But though the heir has property in the monuments and escutcheons of his ancestors, yet he has none in their bodies or ashes.” (quoting 2 WILLIAM BLACKSTONE, COMMENTARIES \*429)). To conclude otherwise would lead to “morbid consequences, setting up an incentive...to sell...loved one’s remains for profit.” *Boorman v. Nevada Mem’l Cremation Soc’y*, 126 Nev. 301, 311 (2010).

Other courts that have addressed this issue have rejected the idea that human remains are personal property that can support an action for conversion. *See, e.g., Moore v. Regents of Univ. of Cal.*, 51 Cal. 3d 120, 135 (1990) (“No court...has ever in a reported decision imposed conversion liability for the use of human cells in medical research.”); *Culpepper v. Pearl St. Bldg., Inc.*, 877 P.2d 877, 882 (Colo. 1994) (“We formally reject the fictional theory that a property right exists in a dead body that would support an action for conversion.”); *Boorman*, 126 Nev. at 311 (“Nevada law does not recognize a claim for conversion of a deceased human body or its parts.”); *Bauer v. N. Fulton Med. Ctr., Inc.*, 241 Ga. App. 568, 571 (1999) (rejecting widow’s conversion claim because she “has no pecuniary interest in her husband’s corpse”).

Because decedent Harrell’s organs and tissues are not personal property, they cannot be converted. *See Pantry, Inc. v. Mosley*, 126 So. 3d 152, 162 (Ala. 2013) (“Alabama law defines conversion as the exercise of dominion of another over personal property to the exclusion of or in defiance of the owner’s right.” (quoting *Davis v. Huntsville Prod. Credit Assn.*, 481 So. 2d 1103, 1107 (Ala. 1985))). Plaintiffs’ conversion claim is therefore due to be dismissed.

**III. PLAINTIFFS' CONSPIRACY CLAIM FAILS BECAUSE PLAINTIFFS HAVE NOT ALLEGED AN UNDERLYING WRONG, NOR HAVE THEY ALLEGED THAT THE DEFENDANTS INTENDED TO ACCOMPLISH AN UNLAWFUL END.**

Count Three asserts a claim of civil conspiracy. (Doc. 2 ¶¶ 57-62). “In order to succeed on a civil-conspiracy claim, a plaintiff must prove a concerted action by two or more people that achieved an unlawful purpose or a lawful end by unlawful means.” *Singleton v. Protective Life Ins. Co.*, 857 So. 2d 803, 814 (Ala. 2003) (quoting *Luck v. Primus Auto. Fin. Servs.*, 763 So. 2d 243 (Ala. 2000)). “[L]iability for civil conspiracy rests upon the existence of an underlying wrong and if the underlying wrong provides no cause of action, then neither does the conspiracy.” *Jones v. BP Oil Co.*, 632 So. 2d 435 (Ala. 1993). *See also Drill Parts & Serv. Co. v. Joy Mfg. Co.*, 619 So. 2d 1280, 1290 (Ala. 1993) (“Conspiracy is not an independent cause of action; therefore, when alleging conspiracy, a plaintiff must have a viable underlying cause of action.”).

As demonstrated throughout this Motion, Plaintiffs have not stated a viable underlying tort claim to support their claim of civil conspiracy. Because each of Plaintiffs’ claims is due to be dismissed, Plaintiffs’ civil conspiracy claim must also fail. *See Deaton v. S. Highland Child. Dev. Ctr., Inc.*, 405 So. 3d 244 (Ala. 2024) (“[C]ivil conspiracy is not an independent cause of action; it is not viable absent the commission of an underlying independently recognized tort.”).

The Complaint also demonstrates that no “underlying wrong” occurred in this case attributable to Dr. Reilly, Dr. Benson, or UAHSF. Plaintiffs’ claims are largely based on allegations that decedent Harrell’s autopsy, including the removal of organs and tissue, was not properly authorized. The Complaint attributes these purported authorization issues to

both the Federal Bureau of Prisons and the named Defendants. Plaintiffs allege that Ashley Davis, a Bureau of Prisons Supervisory Contract Specialist, failed to obtain the proper consent for the autopsy. (Doc. 2 ¶ 20) (“At no point did Ms. Davis or anyone else seek permission from the Harrell family for the autopsy, nor did they get permission for or even mention organ/tissue donation or retention.”); *id.* at ¶ 19 (“At no point did Ms. Davis or anyone else give any information or ask Plaintiff Ms. Harrell or anyone in the Harrell family to sign any releases, authorizations of [sic] other forms related to Decedent Harrell’s death or remains.”). Later in the Complaint, Plaintiffs attribute the same authorization issues to the UAB Defendants, alleging that “[n]o effort was made by the UAB Defendants to seek next of kin’s approval for the autopsy or organ/tissue retention,” and that “Defendants had the responsibility of confirming that they had proper authorization to perform an autopsy, and they failed to do so.” *Id.* at ¶ 24.

Despite Plaintiffs’ attempts to point the finger at both the UAB Defendants and the Bureau of Prisons, the allegations in the Complaint confirm that any issues with authorization were the result of the acts and/or omissions of Bureau of Prisons officers and employees, not the Defendants. Specifically, the Complaint alleges that “The Autopsy Report states: ‘Permission for an unlimited autopsy is granted under the authority of Warden Melissa Kimberly [sic], Talladega Federal Prison.’” *Id.* at ¶ 28. Put simply, when UAB received decedent Harrell’s body, the Bureau of Prisons presented UAB with an Authorization form signed by a government official representing that she possessed proper legal authority to authorize the autopsy.

A copy of the “Authorization for Autopsy” form is attached as Exhibit A hereto.<sup>2</sup> On the Authorization form, Warden Kimberley represents the following: “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** for further study on said decedent.” *Id.* (emphasis added). The Authorization form specifies that the autopsy was to be performed “without limitations,” and consented to the removal of organs and tissues. *Id.*

Warden Kimberley’s authorization was proper under the law because wardens of federal prisons are permitted to order autopsies of deceased inmates without obtaining consent from next of kin. Specifically, 28 CFR § 549.80, titled “Authority to conduct autopsies,” states:

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<sup>2</sup> The Alabama Supreme Court has repeatedly held that courts may consider exhibits submitted in support of a motion to dismiss without converting the motion to a motion for summary judgment when the exhibits in question are referred to in the complaint and are central to the plaintiff’s complaint. *See, e.g., Newson v. Protective Indus. Ins. Co.*, 890 So. 2d 81, 86 (Ala. 2003) (“A trial court does not treat a Rule 12(b)(6) motion as a summary-judgment motion by considering authenticated documents that are attached to the motion to dismiss if ‘the document[s] are] referred to in the complaint and [are] central to the plaintiff[s]’ claims.”); *Daugherty v. Baker*, No. SC-2024-0142, 2024 Ala. LEXIS 186, at \*18 (Nov. 8, 2024); *Donoghue v. Am. Nat. Ins. Co.*, 838 So. 2d 1032, 1035 (Ala. 2002) (“[W]e are persuaded to embrace the well-founded rule...precluding conversion when the exhibits in question are referred in, and are central to, the plaintiff’s complaint.”).

Here, the Autopsy Authorization is referenced and alluded to several times in the Complaint and is without question central to the Plaintiffs’ complaint. (Doc. 2 ¶ 50) (“Defendants purported to obtain authorization for an autopsy despite informing Plaintiffs that foul play was not suspected.”); *id.* at ¶ 38 (“Defendants...wrongfully permitted a Warden to consent to organ removal and retention during an autopsy.”); *id.* at ¶ 28 (“The Autopsy Report states: ‘Permission for an unlimited autopsy is granted under the authority of Warden Melissa Kimberly [sic], Talladega Federal Prison.’”); *id.* at ¶ 46 (“No...authorization [was] granted by any other person listed in the statute who might be mistaken as having given permission to retain organs.”). Accordingly, the Court may consider Exhibit A without converting the Motion to a Motion for summary Judgment.

The Warden may order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death. The autopsy or tests may be ordered in one of these situations only when the Warden determines that the autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility.

Further, the regulation states that “[w]here the Warden has the authority to order an autopsy under this provision, no non-Bureau of Prisons authorization (e.g., from either the coroner or from the inmate’s next-of-kin) is required.” *Id.* at § 549.80(a)(2).

Moreover, the facts alleged in the Complaint do not support that the Defendants in this action—Dr. Reilly, Dr. Benson, and UAHSF—conspired with the Warden to improperly authorize the autopsy. Instead, they suggest the opposite: that UAB was presented with an Authorization form signed by a government official representing that she possessed proper legal authority to authorize the autopsy, had reason to believe that the authorization was proper pursuant to 28 CFR § 549.80, and proceeded to perform an autopsy according to the specifications set forth in the Authorization form.

The only factual allegation about Dr. Reilly is that her name appears on decedent Harrell’s autopsy report, (Doc. 2 ¶¶ 26-27), and the only factual allegation regarding Dr. Benson is that he did not return Plaintiffs’ phone calls, *id.* at ¶¶ 36-37. While Plaintiffs make conclusory allegations that “Defendants did agree to take concerted action among themselves and with other unknown or unnamed parties to achieve the wrongful performance of an autopsy,” *id.* at ¶ 58, they have not alleged any facts that suggest Dr.

Reilly or Dr. Benson ever agreed to perform an autopsy that they knew was unauthorized. Instead, the Complaint alleges that Ashley Davis from the Bureau of Prisons did not seek permission from Plaintiffs for the autopsy, and that Warden Kimberley improperly represented to UAB that she was authorized to order the autopsy. *Id.* at ¶¶ 28.

A civil conspiracy claim requires the plaintiff to “allege...that the claimed conspirators had actual knowledge of, and the intent to bring about, the object of the claimed conspiracy.” *First Bank v. Florey*, 676 So. 2d 324, 327 (Ala. Civ. App. 1996). In other words, Plaintiffs must allege that Dr. Reilly, Dr. Benson, and UAHSF *agreed* to achieve an end that they *knew* was unlawful. *See First Bank*, 676 So. 2d at 327. (“One cannot inadvertently become a member of a civil conspiracy.”). Plaintiffs do not allege the UAB Defendants *knew* that Warden Kimberley’s authorization was improper, nor do they allege facts suggesting any UAB Defendant agreed to perform an autopsy with knowledge that authorization was improper. Accordingly, the Complaint fails to state a claim of civil conspiracy.

**IV. PLAINTIFFS’ FRAUD CLAIM FAILS BECAUSE IT IS NOT PLEADED WITH THE PARTICULARITY REQUIRED BY RULE 9(b) AND IS BASED ON MISREPRESENTATIONS OF LAW RATHER THAN MISREPRESENTATIONS OF FACT.**

Count Four of the Complaint asserts a claim of fraud, alleging in pertinent part:

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

65. 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 misrepresentations.

66. Defendants made false representations concerning the legality of their performing an autopsy and retaining organs/tissue without notice or consent, with the intent to wrongfully deceive, or recklessly without knowledge.

67. Defendants suppressed material facts that led Plaintiffs to believe that the performance of an autopsy and removal of organs/tissue during the autopsy was not illegal, when the law in Alabama is clear that this is illegal conduct.

(Doc. 2 ¶¶ 64-67).

The fraud claim must be dismissed because it does not satisfy the particularity requirements set forth in Alabama Rule of Civil Procedure 9(b). Rule 9(b) requires that “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” The rule “commands the pleader to use more than generalized or conclusory statements to set out the fraud complained of,” and requires the pleader to allege the “time, place and the contents or substance of the false representations, the fact misrepresented, and an identification of what has been obtained.” ALA. R. CIV. P. 9(b), Committee Comments on 1973 Adoption. *See also State Farm Fire & Cas. Co. v. Fincher*, 454 So. 2d 936, 941 (Ala. 1984) (citing the Committee Comments with approval). At the motion to dismiss stage, courts are “not required to accept [plaintiff’s] conclusory allegations that [defendant] acted willfully, maliciously, fraudulently, or in bad faith,” and plaintiffs are “required to plead facts that would support [their] conclusory allegations.” *Ex parte Gilland*, 274 So. 3d 976, 985 n.3 (Ala. 2018) (emphasis omitted).

Plaintiffs’ fraud claim contains generalized and conclusory allegations of fraud without alleging the time, place, or content of the allegedly false representations. Paragraph 64 alleges that the Defendants “failed” to “communicate material information,” Paragraph

65 alleges that “Defendants made false representations of a material existing fact,” and Paragraph 67 alleges that “Defendants suppressed material facts.” (Doc. 2). These allegations do not describe (a) which Defendant or Defendants made these representations; (b) what material facts or information were misrepresented to the Plaintiffs, or (c) the time and place that the alleged misrepresentations occurred. These conclusory allegations do not satisfy the particularity requirement set forth in Rule 9(b).

In Paragraph 66, Plaintiffs allege that “Defendants made false representations concerning the legality of their performing an autopsy and retaining organs/tissue without notice or consent, with the intent to wrongfully deceive, or recklessly without knowledge.” (Doc. 2 ¶ 66). This allegation does not support Plaintiffs’ fraud claim because it alleges a misrepresentation of law rather than a misrepresentation of fact. The Alabama Supreme Court has made clear that:

[M]isrepresentation or concealment as to matter of law cannot constitute remedial fraud, because everyone is presumed to know the law, and therefore cannot in legal contemplation be deceived by erroneous statements of law, and such representations are ordinarily regarded as mere expressions of opinion on which the hearer has no right to rely.

*Johnson v. Sorensen*, 914 So. 2d 830, 839 (Ala. 2005). *See also*, *Turner v. State Employees’ Ret. Sys.*, 485 So. 2d 765, 766 (Ala. Civ. App. 1986) (“[A]s a matter of public policy, all men are charged with knowledge of the law pertaining to their transactions, and persons who deal with state governmental agencies are presumed to know the legal powers of those agencies.”). Because Plaintiffs are presumed to know the law, they are not entitled to rely on the representations of others concerning matters of law, including the legality of an

autopsy. This point is underscored by Plaintiffs' assertion in Paragraph 67 that "the law in Alabama is clear that this is illegal conduct." (Doc. 2 ¶ 67). If the law is clear, then Plaintiffs are presumed to know it.

Finally, Plaintiffs' fraud claim against the UAB Defendants fails upon consideration of Warden Kimberley's representation to UAB that she was "legally entitled to grant permission for the completion of an autopsy and the removal of organs." (Exhibit A). If decedent Harrell's autopsy was properly authorized by Warden Kimberley under 28 CFR § 549.80, then the basis of Plaintiffs' fraud claim—that the autopsy was unauthorized—cannot be true, and the claim necessarily fails. If Warden Kimberley actually misstated her authority on the Authorization form, Defendants' reliance on these misstatements does not amount to fraud.

**V. PLAINTIFFS' WANTONNESS CLAIM FAILS BECAUSE THE COMPLAINT DOES NOT ALLEGE WANTON CONDUCT AND FAILS TO SATISFY THE AMLA'S HEIGHTENED PLEADING STANDARD.**

**A. The UAB Defendants Received Authorization from Warden Kimberley to Perform Decedent Harrell's Autopsy.**

Count Five of the Complaint asserts a claim of wantonness against the Defendants. (Doc. 2 ¶¶ 70-76). One purported basis for Plaintiffs' wantonness claim is that the UAB Defendants performed decedent Harrell's autopsy, including the removal of organs, with knowledge that the autopsy was not authorized:

72. Defendants committed an act of wantonness when they wrongfully performed an autopsy and removed organs/tissue from a deceased person without notifying or obtaining the necessary consent from Decedent's family.

73. Defendants consciously disregarded the law and the rights of Plaintiffs by depriving them of a right that belonged to them alone. Specifically, Defendants were fully aware that they needed consent from Decedent's family before performing autopsy, removing and retaining organs/tissue, 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.

74. Therefore, Defendants' unauthorized autopsy and organ removal constitutes wantonness and willfulness for which they can be held liable.

(Doc. 2 ¶¶ 72-74).

These paragraphs assert that Plaintiffs were the only individuals who could have properly authorized decedent Harrell's autopsy, that Defendants knew this to be true, and that Defendants knowingly performed decedent Harrell's autopsy without Plaintiffs' authorization.

These assertions are contradicted by Plaintiffs' very own allegation that decedent Harrell's autopsy was authorized by Warden Kimberley. (Doc. 2 ¶ 28). Federal law permits wardens to authorize autopsies of deceased inmates without obtaining consent from the deceased's next of kin. *See* 28 CFR § 549.80. UAB received an Authorization form signed by Warden Kimberley authorizing it to perform Harrell's autopsy "including the removal of organs or tissues." (Exhibit A). Warden Kimberley represented in the Authorization that she is "legally entitled to grant permission for the completion of an autopsy and the removal of organs and tissues." *Id.*

The Alabama Supreme Court defines "wantonness" as "the conscious doing of some act or the omission of some duty while knowing of the existing conditions and being

conscious that, from doing or omitting to do an act, injury will likely or probably result.” *Ex parte Essary*, 992 So. 2d 5, 9 (Ala. 2007). Plaintiffs cannot plausibly allege that the UAB Defendants consciously omitted obtaining authorization for decedent Harrell’s autopsy while also alleging that UAB received a signed authorization from Warden Kimberley, a government official entitled by law to provide such authorization.

**B. Plaintiffs’ Wantonness Claims Do Not Satisfy the AMLA’s Heightened Pleading Standard.**

*1. Plaintiffs’ wantonness claims are governed by the AMLA.*

The Alabama Medical Liability Act (“AMLA”) governs “any action for injury or damages...whether in contract or tort, against a health care provider for the breach of the standard of care.” ALA. CODE § 6-5-548(a). In such cases, the AMLA “govern[s]...all aspects of the action.” ALA. CODE § 6-5-551. Wantonness claims are “actions for injury...in tort,” so the AMLA governs all wantonness claims brought “against a health care provider for the breach of the standard of care” in the state of Alabama. *Id.*

Dr. Reilly, Dr. Benson, and UAHSF are “health care providers” as defined by the AMLA. Section 6-5-542 of the Alabama Code defines “health care provider” as “[a] medical practitioner, dental practitioner, medical institution, physician, dentist, hospital, or other health care provider as those terms are defined in Section 6-5-481.” Section 6-5-481, in turn, defines the following terms:

- (1) **MEDICAL PRACTITIONER.** Anyone licensed to practice medicine or osteopathy in the State of Alabama, engaged in such practice, including medical professional corporations, associations, and partnerships.

...

- (4) PROFESSIONAL CORPORATION. Any medical or dental professional corporation or any medical or dental professional association.
- (5) PHYSICIAN. Any person licensed to practice medicine in Alabama.

...

- (8) OTHER HEALTH CARE PROVIDERS. Any professional corporation or any person employed by physicians, dentists, or hospitals who are directly involved in the delivery of health care services.

ALA. CODE § 6-5-481(1),(4),(5),(8) (emphasis added).

Dr. Reilly and Dr. Benson, as licensed physicians, are “health care providers” for purposes of the AMLA. UAHSF, as a medical professional corporation, is also within the AMLA’s definition of “health care provider.” ALA. CODE § 6-5-481(1),(4),(8). *See also Univ. of Alabama Health Servs. Found., P.C. v. Bush By & Through Bush*, 638 So. 2d 794, 798 (Ala. 1994) (“[UAHSF] is a nonprofit professional corporation established by the faculty of the University of Alabama School of Medicine.”).

Furthermore, Plaintiffs’ wantonness claim is based on an alleged breach of the standard of care. Count Five asserts that the UAB Defendants “wrongfully performed an autopsy and removed organs/tissue...without notifying or obtaining the necessary consent,” that “[Defendants’] willful failure to obtain consent...rises to the level of wantonness,”<sup>3</sup> that “Defendants owed a duty of care to properly handle the Deceased’s

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<sup>3</sup> Claims for failure to obtain proper consent for medical procedures are governed by the AMLA. *See, e.g., Collins v. Ashurst*, 821 So. 2d 173 (Ala. 2001) (“[I]nformed-consent claims brought against physicians...are governed by the AMLA.”).

body,” and that “[b]y returning the body without organs and in an advanced state of decomposition, Defendants breached this duty and were wanton.” (Doc. 2 ¶¶ 72, 73, 75) (emphasis added).

Because Dr. Reilly, Dr. Benson, and UAHSF are all “health care providers” and the wantonness claim is based on alleged breaches of the standard of care, the AMLA governs.

2. *Plaintiffs’ wantonness claim does not satisfy the heightened pleading standard set forth in ALA. CODE § 6-5-551.*

Section 6-5-551 of the AMLA imposes a heightened pleading standard for claims governed by the AMLA. Section 6-5-551 states, in pertinent part:

The plaintiff shall include in the complaint filed in the action a detailed specification and factual description of each act and omission alleged by plaintiff to render the health care provider liable to plaintiff and shall include when feasible and ascertainable the date, time, and place of the act or acts.

*Id.* (emphasis added). This is a mandatory requirement, and “[a]ny complaint which fails to include such detailed specification and factual description of each act and omission shall be subject to dismissal for failure to state a claim.” *Id.* To satisfy this heightened pleading standard, a complaint must give each defendant “fair notice of the allegedly negligent act and must identify the time and place it occurred and the resulting harm.” *Mikkelsen v. Salama*, 619 So. 2d 1382, 1384 (Ala. 1993). This requires an “exactness of pleading.” *Ex parte Affinity Hosp., LLC*, 373 So. 3d 180, 187 (Ala. 2022).

Plaintiffs’ wantonness claim does not satisfy this heightened pleading standard. The Complaint contains a few specific allegations regarding the Defendants, but these allegations do not specifically allege that the Defendants participated in the allegedly

wanton act: the performance of decedent Harrell’s autopsy. For instance, the Complaint alleges Dr. Reilly “verified the autopsy on June 14, 2023, at 2:17 PM,” and “is listed as the Requesting Physician, the reviewer of the ‘Patient Identification and Consent for Autopsy’, and the examiner of both gross and microscopic findings.” (Doc. 2 ¶¶ 26, 27). For Dr. Benson, the Complaint alleges that he did not return a phone call to Plaintiff Violet Harrell after receiving multiple voicemails. *Id.* at ¶¶ 36-37. For UAHSF, the only substantive allegation is that its unnamed employees “were involved in the unauthorized autopsy and retention of organs/tissues during said autopsy.” *Id.* at ¶ 39. These allegations do not identify the specific acts or omissions of each Defendant that allegedly fell below the standard of care, and they do not allege that the Defendants actually participated in decedent Harrell’s autopsy and/or the removal of his organs.

Instead, the Complaint lumps the Defendants together and makes general allegations regarding the autopsy, without identifying the specific acts of each Defendant that fell below the standard of care. *See* (Doc. 2 ¶ 72) (“Defendants committed an act of wantonness when they wrongfully performed an autopsy and removed organs/tissue....”); *id.* at ¶ 74 (“Defendants’ unauthorized autopsy and organ removal constitutes wantonness....”); *id.* at ¶ 75 (“Defendants breached this duty and were wanton in their handling of the corpse.”). This type of general, collective pleading does not satisfy the requirements of Section 551. *See Ex parte Huntsville Emergency Med. Servs., Inc.*, 372 So. 3d 538, 547 (Ala. 2022) (“[G]eneral allegations...do not meet the level of specificity required by § 6-5-551.”). As a result, Plaintiffs’ wantonness claim is due to be dismissed. *See* ALA. CODE § 6-5-551 (“Any complaint which fails to include such detailed specification and factual description

of each act and omission shall be subject to dismissal for failure to state a claim upon which relief may be granted.”) (emphasis added).

**VI. PLAINTIFFS’ OUTRAGE CLAIM FAILS BECAUSE RELIANCE ON A FEDERAL WARDEN’S AUTOPSY AUTHORIZATION IS NOT “EXTREME” OR “OUTRAGEOUS.”**

Finally, Count Six asserts a claim against the Defendants for the tort of outrage. (Doc. 2 ¶¶ 77-82). The Complaint specifically alleges that “Defendants’ conduct in performing and [sic] unauthorized autopsy unlawfully converting and retaining the organs/tissues of the Deceased and returning the body to Plaintiffs in a severely damaged state” was “extreme and outrageous” and “caused emotional distress so severe that no reasonable person could be expected to endure it.” *Id.* at ¶ 78.

The tort of outrage is “an extremely limited cause of action” reserved for “circumstances demonstrating only the most egregious conduct.” *21st Mortg. Corp. v. Robinson*, No. SC-2023-0304, 2024 Ala. LEXIS 204, at \*26 (Dec. 20, 2024). To recover under the tort of outrage, a plaintiff “must demonstrate that the defendant’s conduct (1) was intentional or reckless; (2) was extreme and outrageous; and (3) caused emotional distress so severe that no reasonable person could be expected to endure it.” *Id.* at \*26-27 (quoting *Potts v. Hayes*, 771 So. 2d 462, 465 (Ala. 2000)). The Alabama Supreme Court has only recognized the tort of outrage with regard to three kinds of conduct: (1) “wrongful conduct in the family-burial context”; (2) “barbaric methods employed to coerce an insurance settlement;” and (3) “egregious sexual harassment.” *Id.* at \*27 (quoting *Potts*, 771 So. 2d at 465).

The UAB Defendants acknowledge that the tort of outrage may fashion a remedy for plaintiffs who suffer emotional distress arising from the mishandling of human remains. *See, e.g., Whitt v. Hulsey*, 519 So. 2d 901, 906 (Ala. 1987) (“[I]n view of the deep human feelings involved, we find the evidence sufficient to support the claim of outrageous conduct, where the alleged act was the desecration and destruction of a portion of a family burial ground.”). However, with respect to the UAB Defendants, Plaintiffs have not stated an outrage claim because the Complaint alleges that decedent Harrell’s autopsy was authorized by Warden Kimberley, the Warden of FCI Talladega at the time of Harrell’s death.

Specifically, the Authorization form attached as Exhibit A to this Motion shows that Warden Kimberley gave “permission for the performance of an autopsy including the removal of organs or tissues.” Warden Kimberley also represented that she was decedent Harrell’s “legally designated representative and therefore...legally entitled to grant permission for the completion of an autopsy and the removal of organs or tissues for further study on said decedent.” *Id.* As previously mentioned, 28 CFR § 549.80 gives federal wardens authority to “order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of a homicide, suicide, fatal illness or accident, or unexplained death” where the warden determines “that the autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility.” Because decedent Harrell’s autopsy was properly authorized under 28 CFR § 549.80, there is no

basis for Plaintiffs' outrage claim. In other words, the autopsy was ordered and completed pursuant to the warden's authority to conduct autopsies.

Even if Warden Kimberley did *not* strictly comply with 28 CFR § 549.80 when she authorized the autopsy, the Defendants in this case—two UAB Pathologists and UAHSF—cannot be said to have engaged in extreme or outrageous conduct for relying on an Authorization signed by Warden Kimberley, a government official permitted by law to order the autopsies of deceased inmates, in which she represented that she was legally entitled to grant permission for the autopsy in her capacity as Warden. *See* (Exhibit A). To hold otherwise would render autopsy providers liable for the acts and omissions of federal wardens when they order autopsies and would likely prevent autopsy providers from being able to accept properly authorized autopsies from federal wardens for fear of being held liable for any defects in the warden's authorization process. Because Warden Kimberley's authority to order autopsies is grounded in the applicable federal regulations, the UAB pathologists' reliance on her assertion of authority cannot be deemed reckless, extreme, or outrageous. Plaintiffs' outrage claim is due to be dismissed.

### **CONCLUSION**

WHEREFORE, Defendants respectfully request that the Court dismiss this case.

Respectfully submitted,

*s/ Jay M. Ezelle*

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*Attorneys for the Defendants*

**CERTIFICATE OF SERVICE**

I do hereby certify that on June 27, 2025, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to the following:

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*s/ Jay M. Ezelle*

\_\_\_\_\_  
OF COUNSEL

# **EXHIBIT “A”**

AO-23-097

Attachment A:

4

**UHS HEALTH SYSTEM**  
Knowledge that will change your world

Key Plate

**AUTHORIZATION FOR AUTOPSY**

Death Date: 3/21/2023 Time: 6:12 PM

I do hereby state that I am the Warden of Matthew Harrell  
(relationship) (deceased patient)

I am the nearest relative (see instructions on back) or 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 decedent.

I do, therefore, give my permission for the performance of an autopsy including the removal of organs or tissues from said decedent for diagnostic or other testing, teaching, research and/or other useful purposes, including final disposition thereof those organs and/or tissues. The autopsy is performed without limitations EXCEPT as follows:

(if no restrictions, write "none")

RELEASE BODY TO: (must be completed)

Terry's Metropolitan Mortuary  
Funeral Home  
1702 Battle ST W-  
Address  
Talladega, Alabama 35160  
City, State

I am entitled by law to grant this permission:  
J. Williams for: Mr. Kimberley  
(Signature of legally designated representative or legal next of kin)  
565 East Renfroe Road  
(Street Address)  
Talladega, AL 35160  
(City, State, Zip Code)

We the undersigned certify and witness that proper permission has been obtained from the legally designated representative or next of kin as defined on the back of this form.

PHYSICIAN OBTAINING PERMISSION

CHARGE NURSE/HOSPITAL OPERATOR

CLINICIAN REQUESTING NOTIFICATION OR ATTENDANCE AT AUTOPSY:  
\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Beeper number) (Phone extension)

**CLINICAL PREMORTEM DIAGNOSIS**

Include questions that may potentially determined by post-mortem examination

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

The physician MUST provide any essential information needed for the safety of others handling the remains: