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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

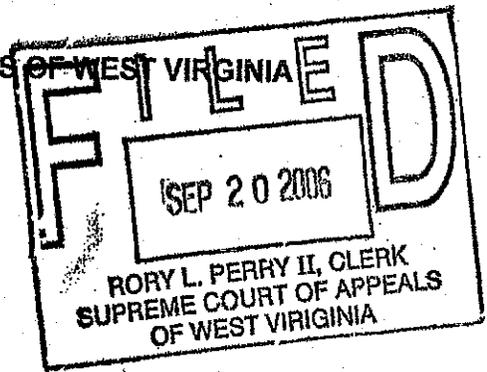
STATE OF WEST VIRGINIA EX REL.  
JEANETTE PACKARD, individually, and as  
parent, guardian, and next friend of  
ROBERT WHITT, a minor,

Petitioner,

v.

RAMANATHAN PADMANABAN, M.D., and  
and THE HONORABLE ROGER L. PERRY,  
Circuit Court Judge of Logan County, West Virginia,

Respondents.



PETITION FOR WRIT OF PROHIBITION

TO THE HONORABLE JUSTICES OF THE  
WEST VIRGINIA SUPREME COURT OF APPEALS

PETITION NUMBER \_\_\_\_\_

JEANETTE PACKARD, individually, and as  
parent, guardian, and next friend of  
ROBERT WHITT, a minor,  
By Counsel

Anne E. Shaffer, Bar No. 5174  
317 Buchanan Street  
Charleston, West Virginia 25302  
(304) 343-8202  
On-Brief

Mark H. Mitchell, Bar No. 2582  
31 East Second Avenue  
Williamson, West Virginia 25661  
(304)235-3902

Co-Counsel for Petitioner

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TO THE HONORABLE JUSTICES OF THE  
WEST VIRGINIA SUPREME COURT OF APPEALS:

This case arises from an order of the Circuit Court of Logan County, West Virginia, granting in-part Respondent, Ramanathan Padmanaban, M.D.'s, *Motion to Dismiss Plaintiff, Jeanette Packard's, Individual Claims*, wherein the Honorable Roger L. Perry, exceeded his authority by denying the minor plaintiff, Robert Whitt, the right to receive medical expenses incurred prior to his reaching the age of majority. Further, by order entered June 26, 2006, the circuit court denied the Petitioner/Plaintiff's Motion for Leave to Amend Complaint to add a count for battery as a result of failure to obtain informed consent. These rulings exceed the Court's legitimate powers in that the subject orders deny the Petitioner's – but more importantly the minor child's – right to a jury trial on all of the existing factual issues and just compensation for the injuries inflicted upon him by the defendant.

**I. Statement of Facts**

On or about November 21, 1994, the respondent, Dr. Padmanaban, reduced a fracture of Robert Whitt's elbow, leaving him with a residual cubitus varus. Robert Whitt was born June 29, 1992, and was therefore two years old at the time of the surgery. The reduction fell below the standard of care and left the minor with a permanent disability. Petitioner, Jeanette Packard, is the mother of Robert Whitt and incurred and continues to incur medical expenses due to the negligence of the respondent. Robert Whitt was eleven years old when this action was filed and is presently fourteen years of age.

## II. Statement of the Case

The Petitioner filed this medical malpractice action on June 27, 2003. In the complaint, she alleged injuries to her son, Robert Whitt, and further alleged a derivative parent's claim for herself. The Complaint specifies that Robert Whitt be compensated for his past medical expenses. On December 22, 2003, the respondent physician filed his *Motion to Dismiss Plaintiff, Jeanette Packard's, Individual Claims*, alleging, *inter alia*, that the Petitioner's claim for medical expenses incurred prior to Robert Whitt's eighteenth birthday are not recoverable by him, but are recoverable only by his mother, Jeanette Packard. Further, the respondent alleged that the claims of Jeanette Packard were time barred by the statute of limitations.

By order entered April 5, 2006, the circuit court denied the motion to dismiss on the statute of limitations, holding that it was a jury question as to when Ms. Packard discovered the malpractice; however, it agreed with Respondent physician on the issue of recoverability of medical expenses incurred before the minor child, Robert Whitt, reaches eighteen years of age. The circuit court stated:

The substance of this motion concerns the issue of whether it is Jeanette Packard or Robert Whitt that has the right to bring certain claims for medical damages incurred before and after Robert Whitt reaches the age of majority. The granting of this motion allows the Plaintiff, Jeanette Packard on behalf of Robert Whitt to include on the verdict form presented to the jury a space where the jury may enter their award, if any, to compensate Robert Whitt for those medical expenses related to the injury allegedly caused by the Defendant's alleged negligence incurred after the age of majority or, said another way, future medical expenses. However, this does not address the complexities underlying this motion that was argued by counsel.

\* \* \*

The West Virginia Supreme Court of Appeals held in Glover v. Narick: "It is generally recognized that a personal injury to a minor child gives rise to two causes of action: (1) an action on behalf of the child for pain and

suffering, permanent injury, and impairment of earning capacity; and (2) an action by the parent for consequential damages, including the loss of services and earnings during minority and expenses incurred for necessary medical treatment for the child's injuries." Glover v. Narick, 400 S.E. 2d 816, 821, 184 W.Va. 381, 386 (1990). The case goes on to state: "Although it is based upon and arises out of the negligence causing injury to the child, the parent's right of action for consequential damages is separate and distinct from the child's right of action for his or her injuries." Id. The holding of this case could not be any clearer. In the instance case, Jeanette Packard may bring an action on behalf of the child for pain and suffering, permanent injury, and impairment of earning capacity. Jeanette Packard may also bring an action individually for consequential damages, including the loss of services and earnings during minority and *expenses incurred for necessary medical treatment for the child's injuries.*

Additionally, in Hutto v. BIC Corporation, a federal court in Virginia also held that two distinct causes of action arise out of a personal injury to an infant. "One cause of action accrues on behalf of the child for the injuries themselves and another cause of action accrues on behalf of the parent or guardian which includes the expenses of curing or attempting to cure the infant from the results of any injuries. Under this scheme, the parent's cause of action is primary since an infant is generally not contractually liable for medical expenses due to her infancy. An infant, therefore, has no right to recover for medical expenses unless her status falls under one of the exceptions enumerated by the Supreme Court of Virginia in Moses v. Akers, 203 Va. 130, 122 S.E. 2d 864 (1961)." Hutto v. BIC Corp., 800 F. Supp. 1367, 1372 (1992). The logic of this holding is that an infant has no right to recover medical expenses that were incurred before the age of majority because the infant has no contractual duty to pay those expenses. Similarly, Robert Whitt in the instance case has no contractual duty to pay his medical expenses incurred before the age of majority and has no right to recover those moneys.

Therefore, this Court finds that Jeanette Packard, on behalf of Robert Whitt, has the right to recover for pain and suffering, permanent injury, and impairment of earnings capacity after majority, and that Jeanette Packard, individually, has the right to recover for consequential damages including the loss of services and earnings during minority and expenses incurred for necessary medical treatment for the child's injuries incurred prior to the child's age of majority if the jury finds that her individual claims are not barred by the statute of limitations due to the potential inapplicability of the discovery rule in this case. The Court also finds that the verdict form in this case may indicate a space for the jury's entry of their decision as to Robert Whitt's "post-age-of-majority" medical expenses, along with a space for the decided amount of compensation.

See Order, attached hereto as Exhibit A.

It is from this order, limiting the minor, Robert Whitt, from recovering medical expenses that have resulted from the Respondent physician's negligence and which were or will be incurred prior to his eighteenth birthday, that the Petitioner herein requests a writ of prohibition.

Additionally, by order entered June 26, 2006, the circuit court denied the Petitioner/Plaintiff's *ore tenus* Motion for Leave to Amend Complaint to add a count for battery as a result of the Respondent's failure to obtain informed consent for the surgery performed on the minor, Robert Whitt. At the hearing held in this matter on May 10, 2006, the circuit court, counsel for defendant, and plaintiff's counsel below engaged in the following colloquy:

THE COURT: Okay. Now, the amending part of this and we may come back to this. You said you thought that there was enough contained in the pleadings for an informed consent claim.

MR. MITCHELL: Yes. Or in fairness she be allowed to –

THE COURT: Amend.

MR. MITCHELL: – move to have the pleadings conform to the evidence. The same evidence has been available to both of us all along and it's apparent or at least it became apparent to me as we made final trial preparations that an informed consent is an important issue in this case because the parent did not sign. And in the course of preparing jury instructions, we see in the Supreme Court suggested instructions that heeding that only a parent can consent in non-emergency situations. So, that's the law and we ought to present the case along with the law to the jurors.

\*\*\*

MR. MITCHELL: The grandmother goes to Logan General with the injured child –

THE COURT: And we're speaking allegedly here.

MS. NELSON: Okay.

MR. MITCHELL: – she is asked to sign a consent as the grandmother.

She signs the consent at the direction of the hospital people and they tell her to sign her husband's name because he's the one with the insurance. So, she forges her husband's name on the document and Logan General accepts it. I'm not sure that's anything other than the facts, perhaps stipulated facts.

THE COURT: Is that kind of the way you substantially agree that's what came about or if not where to you –

MS. NELSON: I would say that the testimony of the grandparents is – I don't remember whether it was the grandmother or grandfather – but that they had attempted to contact the mother, who apparently was working at the time, were not able to reach her, whether her employer wouldn't allow the phone call to get through, for whatever reason they could not, and they felt that they were acting in the child's [best interests].

*See Transcript, May 10, 2006 Hearing, attached hereto as Exhibit B at 9-12.*

Additionally, at the May 10, 2006 hearing the trial in this matter was continued until November 13, 2006. See [Unsigned] *Order Setting Trial*, attached hereto as Exhibit C, which was signed by both counsel.

The plaintiff's motion to amend was subsequently denied by the circuit court by order entered June 26, 2006, which found as follows:

In this case, Plaintiff's counsel, by his own admission, failed to initially bring an informed consent claim because he simply overlooked the issue until this late date. Plaintiff's counsel's only reason for the delay was failure to realize the claim was there, and that he was prepared to, as he said, "fall on his sword." Since the Plaintiff cannot point to any valid reason that prevented her from being aware of the informed consent issue or prevented her from amended [sic] the complaint at an appropriate time, and because Plaintiff has known of the same facts that would support an informed consent claim from the case's inception the Court finds that the Plaintiff's oral "Motion for Leave to Amend the Complaint" is **DENIED**.

*See Order Denying Plaintiff's Motion for Leave to Amend Complaint, attached hereto as Exhibit D.*

The circuit court's order improperly quotes off-the-record discussions, taken completely out-of-context, as its reason for denying the plaintiff's motion to amend to

conform with the evidence. Accordingly, it is from this order, denying the motion to amend to conform to the evidence and denying the minor, Robert Whitt, his claim for lack of informed consent, that the Petitioner herein requests a writ of prohibition.

### III. Standard for Issuance of Writ

West Virginia Code § 53-1-1 provides:

The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.

A writ of prohibition is not available where the circuit court merely abuses its discretion; rather, it must exceed its lawful powers before the writ will lie. *State ex rel Affiliated Construction Trades Foundation v. Vieweg*, 520 S.E.2d 854 (W. Va. 1999). In determining whether to issue a writ of prohibition, this Court has stated that it will consider the following factors:

(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression.

*State ex rel. Means v. King*, 520 S.E.2d 875, 878-79 (W. Va. 1999), quoting *Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996).

#### IV. Discussion

##### **A. Order Denying the Minor the Right to Receive An Award of Medical Expenses Incurred Prior to His Majority**

This Court has often issued a writ of prohibition with regard to whether certain claims should or should not be presented to a jury. For example, in *State ex rel. Abraham Linc Corp. v. Bedell*, 216 W. Va. 99, 602 S.E.2d 542 (1998), this Court issued a writ to resolve the validity of an exclusion in an underinsured motorist policy prior to a trial being held on the issue of punitive damages. In *Bedell*, this Court noted that the writ of prohibition standard, set forth in section III herein:

[p]ermits an original prohibition proceeding in this Court to correct substantial legal errors where the facts are undisputed and resolution of the errors is critical to the proper disposition of the case, thereby conserving costs to the parties and economizing judicial resources.

*Id.* at syl. pt. 3. See also, *State ex rel. Meadows v. Stephens*, 207 W. Va. 341, 532 S.E.2d 59 (2000)(writ granted to prohibit new trial on damages); *State ex rel. Adkins v. Burnside*, 212 W. Va. 74, 569 S.E.2d 150 (2002)(writ issued to prohibit reverse bifurcation method of discovery).

In the present case, there is a split of authority as to whether medical expenses incurred prior to a child's reaching of majority is: 1) an item of damages for the child, to the exclusion of the parent, 2) an item of damages for the parent, to the exclusion of the child, or 3) an item to be recovered by either (but not both) of them. While it may appear at first blush to be a case of "six of one or a half dozen of the other," in this case it is not.

In the instant case, there are two problems with the Court's order. First, there is the jury issue of whether Jeanette Packard's claims are barred by the statute of

limitations. If the jury finds the statute applies, the infant will be denied recovery of a majority of the medical expenses incurred as a result of the Respondent physician's negligence. Additionally, Petitioner anticipates that at trial the Respondent will attempt to vilify her. If the jury finds her unsympathetic it may deny her the right to recover these expenses. In either event, the minor child, Robert Whitt, who is still only fourteen years of age, will suffer.

This Court held, in *Narrck v. Glover*, 184 W.Va. 381, 400 S.E.2d 816 (W. Va. 1990), that two causes of action exist when a child under the age of majority is injured: one in the child for pain and suffering and prospective damages, and one in the parent for past medical expenses and loss of consortium. However, it has never been made clear whether these are the exclusive causes of action. Stated another way, it is unclear under West Virginia case law whether the child also possesses a right to recover past medical expenses, so long as there is no double recovery.

Many modern cases hold just that: that both the child and the parent possesses a right to receive compensation for medical expenses incurred as a result of the child's injuries, provided there is no double recovery. See *Laughner v. Bryne*, 18 Cal. App. 4<sup>th</sup> 904, 22 Cal. Rptr. 2d 671 (2d Dist. 1993)(cause of action to recover medical expenses incurred on account of minor's personal injuries does not belong exclusively to parents; it belongs to both parents and minor); *Crawford ex rel. Crawford v. Shop 'N Save Warehouse Foods, Inc.*, 91 S.W.3d 646 (Mo. Ct. App. E.D. 2002)(at common law, an injury to a child gave rise to two causes of action: one on behalf of the child for pain and suffering, permanent injury, and impairment of earning capacity after majority, and the other on behalf of the parents for loss of services during minority and expenses for

treatment; however, now, the cause of action for medical expenses is vested jointly in the parents and the child, but there may be no double recovery); *Scott County School Dist. 1 v. Asher*, 623 Ind. 47, 324 N.E.2d 496 (1975)(both parent and child could recover for past medical expenses resulting from injuries suffered by child from use of bench saw in school provided tortfeasor was protected from double recovery, but only child could recover for prospective medical expense); *Kelly v. Hughes*, 33 Ill App. 2d 314, 179 N.E.2d 273 (2d Dist. 1962)(where parent sues on behalf of minor child, child is permitted to recover medical expenses even though they were actually paid by parent, who is thereafter estopped from recovering items of damage recovered by child); *Accord, White v. Moreno Valley Unified School Dist.*, 181 Cal. App.3d 1024, 226 Cal Rptr. 742 (4<sup>th</sup> Dist. 1986). *But see also, Myer v. Dyer*, 643 A.2d 1382 (Del. Super. Ct. 1993)(Delaware law has long held that parent, being liable party, is proper party to recover medical expense for injured minor; in medical malpractice action brought by parents on their own behalf and on behalf of their minor child who sustained post-birth injuries.).

The logic that past medical expenses belong to the child is implicit in the practice of infant settlement proceedings in West Virginia. When a child is injured, his parent or guardian brings an action against the tortfeasor. The lawyer who represents the parent collects all of the medical bills and makes a demand upon the insurance carrier for the tortfeasor. If settlement is reached it is presented to the court for approval pursuant to W. Va. Code § 44-10-14. Pursuant to W. Va. Code § 44-10-14(g), the Court either accepts or rejects the settlement pursuant to statutory guidelines. Section (g) allows the attorney to pay from the gross settlement proceeds the fees and costs of the

settlement, bond, liens, and medical expenses still owed as a result of the injuries.

Section (g) *does not* state that the parent shall be reimbursed for payment of medical expenses incurred. Subsection (1) then allows attorneys fees and costs to be deducted from the settlement and subsection (2) allows monies to be paid to the minor or to another for the immediate benefit of the minor. Subsection (4) then requires that the net settlement proceeds be held for the child until he reaches the age of majority and paid to the child. In practice, attorneys throughout West Virginia do not reimburse the parents for the medical expenses incurred but, rather, pay pursuant to section (g) those bills outstanding for medical expenses at the time of the settlement.

Additionally, there is sound public policy behind allowing both the injured child and his parent to assert claims for medical expenses. It is axiomatic that the purpose behind most civil lawsuits is to make the injured party whole. A child who is injured and as a result incurs substantial medical expenses should, in equity, have a right to seek recovery of those expenses from the party that injured him. To vest the right to seek reimbursement for medical expenses solely in the parent exposes the child to the risk that he may not be made whole for his injury. If, as in the present case, a parent were subject to potential affirmative defenses that would not otherwise apply to the child, the child would not be made whole. He would not be able to expenses paid to date and would not be able to recover any expenses incurred until he reaches majority, which is nearly four years away. In other words, if an opportunity arose for the child, Robert Whitt, to have his injury repaired, *he would have to wait until his eighteenth birthday* to have the procedure or he would be responsible for the costs himself. This is patently

absurd and flies in the face of the bedrock foundation of modern jurisprudence: making the injured party whole.

What the petitioner requests is that the Circuit Court be directed to include on the verdict form a space for the jury to award *the child* his past medical expenses and those to be incurred prior to his reaching the age of majority. This practice has been specifically approved in other jurisdictions. See *Beyer v. Murray*, 33 A.D.2d 246, 306 N.Y.S.2d 619 (4<sup>th</sup> Dept. 1970)(Damages for future medical expenses, when awarded, should be included in verdict form for infant, not in verdict form for the father). This approach will ensure that Robert Whitt, a child injured at age two by the medical negligence of the Respondent physician, is fully compensated for his injuries.

**B. Order Denying Motion to Amend the Pleadings to Conform with the Evidence**

It is well established in West Virginia that:

Rule 15(b) W.Va.R.C.P., permitting the amendment of pleadings to conform to the evidence, is to be liberally applied so that the merits of the action may be considered. Further, we have said that:

"[M]otions to amend should always be granted under Rule 15 when (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue."

*Adkins v. Slater*, 171 W. Va. 203, 298 S.E.2d 236 (1982)(citing *Tennant v. Craig*, 156 W. Va. 632, 195 S.E.2d 727 (1973) and quoting syl. pt. 3 of *Rosier v. Garron, Inc.*, 156 W. Va. 861, 199 S.E.2d 50 (1973)).

As *Cleckley*, *Davis*, and *Palmer* have stated, "The underlying purpose of Rule 15 is to facilitate a decision on the merits, rather than on the pleadings or technicalities. In fulfilling this purpose trial courts should always be cognizant of the fact that leave to

amend should be freely granted." Cleckley, Davis, and Palmer, *Litigation Handbook on W.Va. Rules of Civil Procedure*, (2d ed.) at 451. See also *McDowell County Board of Education v. Stephens*, 191 W. Va. 711, 447 S.E.2d 912 (1994) ("The purpose of the words 'and leave [to amend] shall be freely given when justice so requires' in Rule 15(a) W.Va.R.Civ.P., is to secure an adjudication on the merits of the controversy as would be secured under identical factual situations in the absence of procedural impediments. . . ."). Further, in *Tennant* this Court noted that "[t]he court may grant a continuance to enable the objecting party to meet such evidence." *Tennant v. Craig*, 156 W. Va. 632, 195 S.E.2d 727 (1973) (quoting Lugar & Silverstein, *W.V. Rules* p. 138 *et seq.*).

As is revealed in the transcript of the hearing on May 15, 2006, counsel for the defendant admitted that depositions of the grandparents have already been taken. The facts surrounding the signing of the consent for surgery have already been adduced. The circuit court was then asked to allow the amendment to conform the pleadings with the evidence. However, even though the trial was that same day continued until six months after the hearing, the Court denied the motion to amend. Obviously, there was no surprise on the part of the defendant as the facts were adduced during deposition. Further, there is no prejudice that can be claimed by the defendant as the circuit court continued the trial until November 2006, or six months. Finally, the evidence – or the "identical factual situation" – is present in this case whether the amendment is granted or not. By not allowing the amendment, the circuit court and jury will be presented with evidence without a cause of action to apply to such evidence. Clearly this is a "procedural impediment" and not a factual one. Therefore, leave should have been

granted and it was beyond the legitimate power of the court to deny such motion under the circumstances.

**C. Writ of Prohibition Is the Proper and Only Vehicle Available  
To Correct The Errors Prior to Trial to Preserve the Rights of the Minor Child**

As earlier noted, the factors to be considered by this Court upon a Petition for Writ of Prohibition are as follows: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression.

The Petitioner herein has no adequate means of obtaining the requested relief prior to a trial of this matter as the entry of both the order denying the minor the right to recover his medical expenses and the order denying the motion to amend affect the Petitioner's ability to present at trial essential elements of damages and a cause of action based upon the evidence which has been adduced in discovery. Although the Petitioner could, in theory, wait until trial is concluded and appeal these issues to this Court, extensive resources of both the court and of the parties would be expended which could not be recouped and a new trial would be necessary, further diminishing the compensation that the minor would receive for his injuries. Accordingly, Robert Whitt would be severely prejudiced by incurring these unnecessary legal expenses and he would not be able to recover these costs on a direct appeal and, essentially, he will lose his ability to be fully compensated for his injuries.

A review of the case law clearly establishes that the circuit courts refusal to allow the amendment of the pleadings to conform with the evidence was erroneous and contrary to the rules and case law in West Virginia. It has always been found to be an abuse to discretion to refuse to allow an amendment where there is adequate time for the opposing party to develop the facts surrounding the amendment. While an abuse of discretion is not normally enough to warrant an extraordinary writ, in this instance the case law is so clear that it demonstrates just how far the circuit court exceeded its legitimate powers in so denying the amendment. It also demonstrates that this circuit court has and will continue to disregard the substantive and procedural laws of this State by denying motions to amend where there is adequate time, herein six months, for the opposing party to meet the amendment.

With respect to the order denying the child, Robert Whitt, the ability to recover his medical expenses prior to reaching majority, this Court has not directly and adequately addressed the issue. Now is the time for the Court to address these issues before a minor is denied just compensation for his injuries.

#### **V. Conclusion**

The Petitioner, Jeannette Packard, and the minor child, Robert Whitt, are in a position where their only hope of a fair trial and a just and equitable result lies with this Court on a writ of prohibition. The factors to be considered are present and warrant the issuance of a writ. The respondent will not be prejudiced in any way by the issuance of a writ and issuing the same will insure that judicial and personal resources of both parties are preserved.

Accordingly, the Petitioner respectfully requests that this Court prohibit the Circuit

Court of Logan County from precluding her child, Robert Whitt, from receiving compensation for the past medical expenses incurred as a result of the medical negligence of respondent physician by allowing a space on the jury verdict form whereby the jury may award him such compensation. Further, the Petitioner respectfully requests that this Court prohibit a trial on this matter without first allowing amendment of the pleadings to include a count for battery for failure to obtain informed consent.

**JEANETTE PACKARD, individually, and as  
parent, guardian, and next friend of  
ROBERT WHITT, a minor,  
By Counsel**

**Anne E. Shaffer, Bar No. 5174  
317 Buchanan Street  
Charleston, West Virginia 25302  
(304) 343-8202**

**Mark H. Mitchell, Bar No. 2582  
31 East Second Avenue  
Williamson, West Virginia 25661  
(304)235-3902**

**Co-Counsel for Petitioner**

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this the \_\_\_\_ day of September, 2006,  
the appropriate number of copies of the foregoing *Petition for Writ of Prohibition*  
were filed with the Supreme Court of Appeals and served upon the following individuals  
by depositing a copy of the same in the United States mail, postage prepaid, first class,  
addressed as follows:

Debra A. Nelson, Bar No. 6644  
MUNDY & NELSON  
P.O. Box 2985  
Huntington, West Virginia 25728

The Honorable Roger L. Perry  
Logan County Courthouse, Room 311  
300 Stratton Street  
Logan, West Virginia 25601

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Anne E. Shaffer, WV Bar No. 5174