

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

JASON MILLER, M.D., and
MARK PUCCIONI, M.D.,

Plaintiffs and
Counterclaim Defendants,

vs.

CHILDREN'S HOSPITAL & MEDICAL
CENTER, RICHARD AZIZKHAN, M.D.,
and ADAM M. CONLEY, M.D.,

Defendants and
Counterclaim Plaintiffs.

Case No. CI19-86

**ANSWER AND
COUNTERCLAIM**

COME NOW Defendants, Children's Hospital & Medical Center ("Children's"), Richard Azizkhan, M.D. ("Dr. Azizkhan"), and Adam M. Conley, M.D. ("Dr. Conley") (collectively "Defendants"), by and through their counsel, and for their Answer to Plaintiffs' Complaint, state, allege, and deny as follows:

1. In response to Paragraph 1 of Plaintiffs' Complaint, Defendants admit Plaintiff, Mark Puccioni, M.D. ("Dr. Puccioni"), is a pediatric neurosurgeon licensed to practice medicine in Nebraska. Defendants further admit Dr. Puccioni previously had privileges to practice medicine at Children's. Defendants are without sufficient knowledge as to the remaining allegations in Paragraph 1; thus Defendants deny those allegations.

2. In response to Paragraph 2 of Plaintiffs' Complaint, Defendants admit Plaintiff, Jason Miller, M.D. ("Dr. Miller"), is a plastic surgeon and fellowship-trained craniofacial and pediatric plastic surgeon, licensed to practice medicine in Nebraska. Defendants further admit Dr. Miller previously had privileges to practice medicine at Children's. Defendants are without sufficient knowledge as to the remaining allegations in Paragraph 2; thus, Defendants deny those allegations.

3. Defendants admit Paragraph 3 of Plaintiffs' Complaint.

4. Defendants admit Paragraph 4 of Plaintiffs' Complaint.

5. In response to Paragraph 5 of Plaintiffs' Complaint, Defendants admit Dr. Conley is a physician who practices pediatric neurosurgery at Children's. Defendants

further admit Dr. Conley moved to Omaha after additional training and practicing medicine at Cincinnati Children's Hospital Medical Center in Cincinnati, Ohio. The remaining allegations in Paragraph 5 of Plaintiffs' Complaint assert an alleged legal conclusion to which no response is required. To the extent a response is required, Defendants deny such remaining allegations.

6. In response to Paragraph 6 of Plaintiffs' Complaint, Defendants admit that in 2017 Dr. Conley was hired by Midwest Neurosurgery & Spine Specialists, P.C. ("Midwest Neurosurgery"), in Omaha, Nebraska, to practice medicine. Defendants further admit that Children's assisted Midwest Neurosurgery in recruiting an additional pediatric neurosurgeon to Omaha. Defendants deny all remaining allegations in Paragraph 6.

7. Defendants deny the allegations in Paragraph 7 of Plaintiffs' Complaint. In fact, Defendants affirmatively state Dr. Puccioni told Dr. Conley in late 2017 and in early 2018 of excellent reviews Dr. Conley had received from the neurosurgery partners at Midwest Neurosurgery. Dr. Puccioni only began to express concerns to Children's Hospital regarding Dr. Conley after Dr. Puccioni felt threatened by Dr. Conley's growing success as a pediatric neurosurgeon.

8. Defendants deny the allegations in Paragraph 8 of Plaintiffs' Complaint.

9. In response to Paragraph 9 of Plaintiffs' Complaint, Defendants admit Dr. Conley provided medical care to a child at Children's who passed away. Defendants deny any remaining allegations in Paragraph 9. Defendants affirmatively state that Dr. Conley followed the applicable standard of medical care at all times while providing medical care to the child and did not cause the child's death.

10. Defendants deny the allegations in Paragraph 10 of Plaintiffs' Complaint.

11. Defendants are without sufficient knowledge as to those allegations contained within Paragraph 11 of Plaintiffs' Complaint; thus, Defendants deny those allegations.

12. In response to Paragraph 12 of Plaintiffs' Complaint, Defendants admit the clinical privileges of Drs. Miller and Puccioni were summarily suspended on or about November 2, 2018, following consultation with members of Children's Medical Staff

leadership. Defendants deny any remaining allegations in Paragraph 12 of Plaintiffs' Complaint.

13. In response to Paragraph 13 of Plaintiffs' Complaint, Defendants admit the voting members of Children's Medical Staff's Executive Committee later recommended to lift Dr. Miller's summary suspension. That recommendation, however, was subject to later review and approval by a committee of Children's Board of Directors. Dr. Miller elected to voluntarily resign his Medical Staff membership and clinical privileges at Children's on November 30, 2018. Defendants deny any remaining allegations in Paragraph 13 of Plaintiffs' Complaint.

14. Defendants deny the allegations in Paragraph 14 of Plaintiffs' Complaint.

15. Defendants deny the allegations in Paragraph 15 of Plaintiffs' Complaint.

16. Defendants deny the allegations in Paragraph 16 of Plaintiffs' Complaint.

17. Paragraph 17 of Plaintiffs' Complaint contains legal averments and conclusions to which no response is required. It is therefore denied. The fact is, Children's has been working to most effectively meet the needs of the children and families it serves. Unfortunately, today many families are forced to travel far from Omaha to receive the highly specialized care their children need.

18. Defendants deny the allegations in Paragraph 18 of Plaintiffs' Complaint.

FIRST CAUSE OF ACTION

[Alleged] Tortious Interference with a Business Relationship

19. Defendants hereby reincorporate Paragraphs 1 through 18 of their Answer to Plaintiffs' Complaint as if fully set forth again.

20. In response to Paragraph 20 of Plaintiffs' Complaint, Defendants admit that at times in the past, Plaintiffs have practiced medicine at Children's. Defendants deny any remaining allegations in Paragraph 20.

21. Defendants deny the allegations in Paragraph 21 of Plaintiffs' Complaint.

22. Defendants deny the allegations in Paragraph 22 of Plaintiffs' Complaint.

SECOND CAUSE OF ACTION

[Alleged] Deceptive Trade Practices

23. Defendants hereby reincorporate Paragraphs 1 through 22 of their Answer to Plaintiffs' Complaint as if fully set forth again.

24. Defendants deny the allegations in Paragraph 24 of Plaintiffs' Complaint.
25. Defendants deny the allegations in Paragraph 25 of Plaintiffs' Complaint.

THIRD CAUSE OF ACTION
[Alleged] Wrongful Termination

26. Defendants hereby reincorporate Paragraphs 1 through 25 of their Answer to Plaintiffs' Complaint as if fully set forth again.
27. Defendants deny the allegations in Paragraph 27 of Plaintiffs' Complaint.
28. Defendants deny the allegations in Paragraph 28 of Plaintiffs' Complaint.
29. Defendants deny the allegations in Paragraph 29 of Plaintiffs' Complaint.

FOURTH CAUSE OF ACTION
[Alleged] Intentional Infliction of Emotional Distress

30. Defendants hereby reincorporate Paragraphs 1 through 29 of their Answer to Plaintiffs' Complaint as if fully set forth again.
31. Defendants deny the allegations in Paragraph 31 of Plaintiffs' Complaint.
32. Defendants deny the allegations in Paragraph 32 of Plaintiffs' Complaint.
33. Defendants deny the allegations in Paragraph 33 of Plaintiffs' Complaint.
34. Defendants generally deny each and every one of the allegations in Plaintiffs' Complaint, except for those allegations that constitute admissions against Plaintiffs' interests or those allegations that are specifically admitted herein.

AFFIRMATIVE DEFENSES

1. Plaintiffs' alleged damages, if any, were caused by one or more intervening, superseding causes unrelated to any of Defendants' actions and/or inactions.
2. Plaintiffs' claims are barred in whole or in part because they released Defendants from any and all liability for such claims when Plaintiffs applied for, and accepted, appointment to Children's Medical Staff.
3. Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs failed to exhaust any applicable administrative remedies, including, but not limited to, under Children's Bylaws and/or Medical Staff Bylaws, and/or other conditions precedent to filing their claims.

4. Plaintiffs' claims are barred in whole or in part by operation of NEB. REV. STAT. § 71-7904 et seq.

5. Plaintiffs' claims are barred in whole or in part by operation of 42 U.S.C. § 11111 et seq.

6. Plaintiffs' claims are barred in whole or in part by the doctrines of competition, truth, and/or advice.

7. Plaintiffs' claims are barred in whole or in part because any of Defendants' alleged interference was justified, privileged, and/or a bona fide claim.

8. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

9. Defendants allege the affirmative defenses of offset and setoff.

10. Plaintiffs have failed to mitigate their alleged damages, if any.

11. Defendants affirmatively allege the defense of consent.

12. Plaintiffs' claims are barred in whole or in part by the doctrines of estoppel, laches, unclean hands, and/or waiver.

13. Defendants allege the defenses of anticipatory breach, breach of contract, lack of and/or failure of consideration, impossibility, legal rescission, repudiation, and voidance.

14. Defendants allege the defenses of fraud in the inducement, fraudulent/false misrepresentation, fraudulent concealment, and material misrepresentation.

WHEREFORE, Defendants pray that the Court dismisses Plaintiffs' Complaint with prejudice; enter judgment in Defendants' favor; tax the costs of this action to Plaintiffs; award Defendants their attorney fees; and award Defendants any further just and equitable relief that this Court deems appropriate.

COUNTERCLAIM

COME NOW Defendants and Counterclaim Plaintiffs, Children's Hospital & Medical Center, Richard Azizkhan, M.D., and Adam M. Conley, M.D. (collectively, "Counterclaim Plaintiffs"), by and through their counsel, and for their Counterclaim against Plaintiffs and Counterclaim Defendants, Jason Miller, M.D., and Mark Puccioni, M.D., state and allege as follows:

PARTIES

1. Counterclaim Plaintiff, Children's Hospital & Medical Center ("Children's") is a Nebraska nonprofit corporation, with its principal place of business located in Omaha, Douglas County, Nebraska.

2. Counterclaim Plaintiff, Richard Azizkhan, M.D. ("Dr. Azizkhan"), is a resident of Omaha, Douglas County, Nebraska. Dr. Azizkhan is the President and CEO of Children's.

3. Counterclaim Plaintiff, Adam M. Conley, M.D., ("Dr. Conley") is a resident of Omaha, Douglas County, Nebraska. Dr. Conley is a pediatric neurosurgeon.

4. Counterclaim Defendant, Jason Miller, M.D., is a resident of Omaha, Douglas County, Nebraska.

5. Counterclaim Defendant, Mark Puccioni, M.D., is a resident of Omaha, Douglas County, Nebraska.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over the above-captioned lawsuit pursuant to Neb. Rev. Stat. § 24-302 because there is an actual and justiciable controversy between the parties to this lawsuit.

7. This Court has personal jurisdiction over Plaintiffs pursuant to NEB. REV. STAT. §25-536 because they have caused a tortious injury in Nebraska and have transacted business and/or supplied services or goods in Nebraska. In addition, personal jurisdiction over Plaintiffs complies with the Constitutions of Nebraska and the United States.

8. Venue is proper in Douglas County, Nebraska, pursuant to NEB. REV. STAT. § 25-403.01 because a substantial part of the events that gives rise to the above-captioned lawsuit took place in that County.

BACKGROUND

9. Counterclaim Plaintiffs hereby reincorporate Paragraphs 1 through 8 of their Counterclaim as if fully set forth again.

A. Dr. Miller's tortious interference.

10. In or around the fall of 2018, Dr. Miller learned that Children's was considering the possibility of hiring a pediatric craniofacial plastic surgeon to provide pediatric craniofacial plastic surgery services at Children's and the University of Nebraska Medical Center ("UNMC").

11. Dr. Miller objected to Children's potentially hiring a pediatric craniofacial plastic surgeon because he did not want to compete with another pediatric craniofacial plastic surgeon.

12. In response to Children's exploring the possibility of hiring a pediatric craniofacial plastic surgeon, Dr. Miller embarked on a campaign to try to dissuade Children's from hiring a pediatric craniofacial plastic surgeon.

13. After Dr. Miller learned the name of the pediatric craniofacial plastic surgeon that Children's was considering for hire, Dr. Miller called that individual and made disparaging remarks about Children's and Dr. Azizkhan and told the individual not to accept an employment position with Children's.

14. As a result of Dr. Miller's actions, the individual has not accepted an employment position with Children's at this time.

15. After learning that Children's was considering the hiring of a pediatric craniofacial plastic surgeon, Dr. Miller refused to see patients registered as Children's patients. Dr. Miller and/or his agents or employees also contacted, by and through their caregivers, numerous pediatric patients who were scheduled for surgery and/or other medical care at Children's. Dr. Miller and/or his agents or employees told them Dr. Miller would not treat the patients at Children's and rescheduled many of them for surgery and/or treatment at different hospitals in Omaha.

16. As a result of Dr. Miller's actions, many of these pediatric patients, by and through their caregivers, cancelled their appointments and treatment at Children's, causing Children's to lose these patients and suffer damages.

17. Dr. Miller was informed by multiple people, including physicians, that his request to treat one or more of his pediatric plastic surgery patients at certain locations other than Children's would pose potential health risks to such patients.

18. Dr. Miller also told Children's and/or Dr. Azizkhan that he would no longer treat pediatric patients of Children's and that if Children's had a pediatric patient, then someone else would have to care for that patient. Dr. Miller's actions and statements created potential health and safety risks to one or more pediatric patients at Children's.

19. Dr. Miller also informed Children's and/or Dr. Azizkhan that he would no longer take call at Children's for pediatric plastic surgery patients, thereby breaching an agreement with Children's to take call for such patients.

20. As a result of Dr. Miller's actions, one or more other caregivers had to cover call for Dr. Miller to ensure that patients at Children's received appropriate medical care.

21. Due to Dr. Miller's actions, Dr. Miller's clinical privileges at Children's were summarily suspended on or about November 2, 2018, following consultation with members of Children's Medical Staff leadership.

22. Pursuant to Children's Medical Staff Bylaws, Dr. Miller requested that Children's Medical Staff Executive Committee ("MSEC") review the summary suspension of his clinical privileges.

23. Although the voting members of Children's MSEC subsequently recommended to lift Dr. Miller's summary suspension, the MSEC reserved the right to consider further medical staff disciplinary and/or corrective action against Dr. Miller based on issues with Dr. Miller complying with his contract and engaging in disruptive behavior, including, but not limited to, refusing to see Children's patients in outpatient clinics.

24. In addition, MSEC's recommendation to lift Dr. Miller's summary suspension did not reinstate Dr. Miller's clinical privileges, nor could MSEC reinstate Dr. Miller's clinical privileges. Instead, MSEC's recommendation was subject to review and approval by Children's Board of Directors, which held the final decision as to whether to reinstate Dr. Miller's clinical privileges.

25. Dr. Miller voluntarily resigned his clinical privileges at Children's on November 30, 2018.

26. Dr. Miller voluntarily resigned his clinical privileges because he knew he could be the subject of further Children's Medical Staff investigations concerning his misconduct.

27. Rather than face those consequences, Dr. Miller chose to resign his membership and clinical privileges at Children's.

B. Dr. Puccioni's tortious interference.

28. At all times material to this lawsuit, Dr. Puccioni was a partner at Midwest Neurosurgery, which is composed of a large group of neurosurgeons in Omaha. These neurosurgeons practice at most, if not all, of the hospitals in Omaha.

29. In approximately February 2017, Midwest Neurosurgery extended an offer to Dr. Conley to join their practice as a pediatric neurosurgeon.

30. Dr. Puccioni and Midwest Neurosurgery actively recruited Dr. Conley to join Midwest Neurosurgery as a pediatric neurosurgeon and approved of his hiring at Midwest Neurosurgery.

31. Dr. Puccioni and Midwest Neurosurgery thoroughly reviewed Dr. Conley's medical credentials, qualifications, training, and experience as a pediatric neurosurgeon before deciding to hire Dr. Conley.

32. Dr. Puccioni and Midwest Neurosurgery promised Dr. Conley they would make him a partner at Midwest Neurosurgery in two years' time.

33. However, Dr. Puccioni told Dr. Conley in late 2017 and in early 2018 that based upon the excellent reviews Dr. Conley had received from the neurosurgery partners at Midwest Neurosurgery, as well as Dr. Conley's work productivity, the partners were planning to make Dr. Conley a partner at Midwest Neurosurgery at the end of his first year there.

34. From approximately August 2017 through June 2018, Dr. Conley provided neurosurgical care and treatment to numerous pediatric patients in the Omaha community, including pediatric patients at Children's Hospital and UNMC, while he worked for Midwest Neurosurgery.

35. During this time, Dr. Puccioni operated on many pediatric patients with Dr. Conley, saw many of Dr. Conley's pediatric patients after Dr. Conley had cared for them, and was familiar with Dr. Conley's medical skills, abilities, and surgical outcomes

while he practiced medicine for Midwest Neurosurgery and at other hospitals in Omaha, including Children's.

36. From the time that Midwest Neurosurgery hired Dr. Conley through approximately June 2018, neither Dr. Puccioni nor anyone at Midwest Neurosurgery ever questioned or doubted Dr. Conley's skill and abilities to practice medicine or to provide competent and appropriate surgical services as a pediatric neurosurgeon.

37. Indeed, while he worked for Midwest Neurosurgery, Dr. Conley had surgical outcomes comparable to those of Dr. Puccioni.

38. While Dr. Conley worked for Midwest Neurosurgery, he had an active pediatric neurosurgery practice, including, but not limited to, at Children's Hospital, that he continued to build on while he worked for Midwest Neurosurgery.

39. Dr. Conley was well-liked by his patients and their caregivers, and he received many pediatric neurosurgical referrals from other physicians, including Dr. Puccioni and Midwest Neurosurgery, while he worked for Midwest Neurosurgery.

40. Eventually, Dr. Puccioni felt threatened by Dr. Conley's growing success as a pediatric neurosurgeon.

41. Before Dr. Conley joined Midwest Neurosurgery, Dr. Puccioni was the only pediatric neurosurgeon in all of Nebraska. When Dr. Conley joined Midwest Neurosurgery, he became the second. Dr. Conley's growing success as a pediatric neurosurgeon meant that Dr. Puccioni had competition in his field, whereas before he was the only option in town.

42. Due to Dr. Puccioni's growing fears that Dr. Conley was becoming more successful than him, Dr. Puccioni engaged in actions to undermine Dr. Conley becoming a partner at Midwest Neurosurgery.

43. As a result of those actions, as well as personal interactions with Dr. Puccioni that caused Dr. Conley to doubt Dr. Puccioni's personal integrity, Dr. Conley decided to resign from Midwest Neurosurgery and to seek other work opportunities as a pediatric neurosurgeon, one of which was an opportunity to join a neurosurgery practice in another state.

44. In approximately August 2018, a Children's affiliate and Dr. Conley entered into an employment contract in which Dr. Conley agreed to serve as an on-staff pediatric neurosurgeon for Children's rather than relocating to another state.

45. When Dr. Puccioni learned that Children's affiliate was interested in hiring Dr. Conley as a pediatric neurosurgeon, Dr. Puccioni began a campaign to discourage and prevent Children's affiliate from hiring Dr. Conley; to discourage and prevent Dr. Conley from practicing medicine at or for Children's; and to smear Dr. Conley's reputation as a medical doctor.

46. Whereas before Dr. Puccioni lauded Dr. Conley's work as a pediatric neurosurgeon, once he learned that Dr. Conley might continue to work at or for Children's, Dr. Puccioni falsely and intentionally made remarks to Children's and to others that Dr. Conley allegedly lacked skills as a physician and that he was allegedly not a "good fit" for the Omaha community. But, when he was pressed by Children's on these topics, Dr. Puccioni could not provide any specific examples to support his false allegations.

47. After Children's affiliate hired Dr. Conley as a pediatric neurosurgeon, Dr. Puccioni continued to make these intentional and false accusations about Dr. Conley to others, including, but not limited to, actual and expected patients of Children's and Dr. Conley, all in an effort to destroy Dr. Conley's reputation and to drive patients away from Dr. Conley and Children's.

48. Dr. Puccioni's false accusations were made in his own financial self-interest and as part of a malicious strategy to ensure that he and no one else, including Dr. Conley, could practice pediatric neurosurgery in Omaha.

49. As a result of Dr. Puccioni's false accusations and interference with Children's relationship with Dr. Conley, Dr. Puccioni and Children's lost numerous actual and expected patients, and their reputation has been permanently and severely damaged.

C. Dr. Miller's and Dr. Puccioni's false claims about Dr. Conley's treatment of a child at Children's Hospital.

50. In the fall of 2018, Dr. Conley provided medical care to a critically ill child at Children's who unfortunately passed away (hereafter, "Child"). The Child is the same person identified in Counterclaim Defendants' Complaint.

51. Dr. Conley exercised the appropriate medical standard of care in providing treatment to the Child, did not breach the medical standard of care in treating the Child, and did not cause the Child's death.

52. Drs. Miller and Puccioni were not present while Dr. Conley provided medical care, including surgical treatment, to the Child. They have no first-hand information about the care and treatment Dr. Conley provided to the Child. They also know nothing about the Child's medical history.

53. The Child is not a patient of Drs. Miller and Puccioni, and they have never even seen the Child.

54. Drs. Miller and Puccioni have never reviewed any of the Child's medical records, including the Child's medical records from the Child's treatment at Children's Hospital before the Child passed away.

55. If Drs. Miller and Puccioni reviewed the Child's medical records (and they did not), then such a review, as well as their public comments about the Child's case, would have violated their oaths as physicians to protect patient privacy.

56. Dr. Miller is a plastic surgeon. He does not practice pediatric neurosurgery; has no qualifications, training, or experience to practice pediatric neurosurgery; and has no privileges at any hospital, including Children's, to practice pediatric neurosurgery.

57. Since he is a plastic surgeon, because he is not qualified as a pediatric neurosurgeon, and because he has no hospital privileges to practice pediatric neurosurgery, Dr. Miller could not have provided any pediatric neurosurgery services to the Child.

58. Since Dr. Puccioni has never seen any of the Child's medical records, he does not know anything about the Child's medical history, does not know why the Child was at Children's, and does not know the details of what care and treatment Dr. Conley

provided to the Child, Dr. Puccioni similarly has no basis to offer any medical opinions about the Child or whether any of Dr. Conley's actions in caring for the Child breached the medical standard of care.

59. Nevertheless, and in spite of their ignorance concerning the circumstances surrounding the Child's medical care, Drs. Miller and Puccioni have falsely stated to numerous individuals, including, but not limited to, employees of Children's, that Dr. Conley and/or Children's had allegedly caused the Child's death.

60. Drs. Miller and Puccioni have also waged a media campaign to try to destroy the medical practice and reputation of Children's, Dr. Conley, and Dr. Azizkhan following the death of the Child.

61. On or about January 4, 2019, and January 10, 2019, an agent and representative of Drs. Miller and Puccioni (hereafter, "Spokesperson") participated in two different radio show interviews on News Radio 1110 KFAB concerning their false accusations against the Counterclaim Plaintiffs.

62. During the radio show interviews, the Spokesperson for Drs. Miller and Puccioni made multiple false accusations about Counterclaim Plaintiffs.

63. These false statements included, but are not limited to, accusations that:

- (a) Dr. Conley allegedly "pour[ed] hydrogen peroxide into the open skull on the brain of the [Child]" and that he allegedly poured a "significant quantity of hydrogen peroxide" on the Child's brain;
- (b) Dr. Conley allegedly "killed" the Child;
- (c) Dr. Azizkhan was "running [Children's] into the ground"; and
- (d) Children's was allegedly a "sick institution that needs to be cured."

64. The two radio show interviews were publicly broadcasted in numerous locations, including, but not limited to, the State of Nebraska. The interviews are also freely available online for the public to hear.

65. Drs. Miller and Puccioni have taken no action to retract or distance themselves from the false accusations that their Spokesperson made.

66. Drs. Miller and Puccioni authorized the Spokesperson (a) to participate in the said radio show interviews on 1110 KFAB, (b) to speak on their behalf during the radio show interviews, and (c) to make the intentional and false statements that the Spokesperson made about the Counterclaim Plaintiffs during the interviews.

67. The Spokesperson made the intentional and false statements during the two radio show interviews on 1110 KFAB in the course and scope of the Spokesperson's agency and/or employment with Drs. Miller and Puccioni.

68. As a result of Drs. Miller's and Puccioni's false statements about Dr. Conley's treatment of the Child, as well as the Spokesperson's intentional and false statements during the 1110 KFAB interviews, Counterclaim Plaintiffs have suffered irreparable damage to their reputations and have lost actual and expected patients and business relationships.

69. Drs. Miller and Puccioni have callously and intentionally used the tragic death of a Child to falsely attack a highly skilled physician whom they believe poses a threat to their business and a hospital that has served the medical needs of children and their families for decades.

70. As a result of these two physicians' actions, numerous patients and members of the public have been intentionally misled and falsely alarmed about Counterclaim Plaintiffs, causing them permanent damages.

COUNT ONE:
TORTIOUS INTERFERENCE WITH
BUSINESS RELATIONSHIPS AND EXPECTANCIES

71. Counterclaim Plaintiffs hereby reincorporate Paragraphs 1 through 70 of their Counterclaim as if fully set forth again.

72. Dr. Miller, Dr. Puccioni, and their agents and/or employees improperly and tortiously interfered with Defendants' existing and potential patients and business relationships.

73. As a result, Counterclaim Plaintiffs have suffered the loss of existing patient relationships, existing business relationships, and a loss of new patients and business expectancies.

74. Drs. Miller and Puccioni knew that these actual and expected patients and business relationships existed.

75. Dr. Miller's and Dr. Puccioni's interference was intentional, false, unjustified, and proximately caused damages to Counterclaim Plaintiffs in an amount that will be proven at trial.

76. Drs. Miller and Puccioni, and each of them, are vicariously liable for the intentional and false statements that the Spokesperson made during the two KFAB radio show interviews, as well as for the Spokesperson's tortious interference, under all theories of agency and/or the doctrine of *respondeat superior*.

WHEREFORE, Counterclaim Plaintiffs pray for Judgment against Counterclaim Defendants on Count 1 of their Counterclaim; prejudgment and post-judgment interest thereon at the highest legal rate; the costs of this lawsuit; and for such further relief as the Court deems just and equitable.

CHILDREN'S HOSPITAL & MEDICAL CENTER,
RICHARD AZIZKHAN, M.D., and ADAM M.
CONLEY, M.D., Defendants

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Answer and Counterclaim was served by regular U.S. Mail, postage prepaid, this 23rd day of January, 2019, to:

Thomas M. White
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By: /s/ Michael F. Coyle
Michael F. Coyle, #18299
Jordan W. Adam, #23723

06656-59506/2041283

Certificate of Service

I hereby certify that on Wednesday, January 23, 2019 I provided a true and correct copy of the Answer & Counterclaim to the following:

Children's Hospital & Medical Cent service method: No Service

Conley,Adam,,M.D. service method: No Service

Puccioni,Mark,,M.D. represented by Thomas White (Bar Number: 17452) service method:
Electronic Service to twhite@whitejorgensen.com

Miller,Jason,,M.D. represented by Thomas White (Bar Number: 17452) service method:
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Azizkhan,Richard,,M.D. service method: No Service

Signature: /s/ Coyle,Michael,F (Bar Number: 18299)