

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA
CIVIL DIVISION

RUFAI NADAMA and MARWA NADAMA,)
Individually and on behalf of the estate of their)
minor son, ABUBAKAR TARIQ NADAMA and)
also on behalf of their minor daughter, HAUWAU)
NADAMA,)

Plaintiffs,)

vs.)

ROY E. KERRY, M.D.,)
MARK LEWIS, M.D.,)
ADVANCED INTEGRATIVE MEDICINE)
CENTER, INC., and,)
APOTHÉCURE, INC.,)
APOTHÉCURE PHARMACY,)
APOTHÉCURE INJECTABLES, INC.,)
SPECTRAPHARM, INC.,)
LOBOTEJAS LABORATORIES, INC.,)
TEXAS INSTITUTE OF FUNCTIONAL)
MEDICINES, and,)
GARY OSBORN,)

Defendants.)

No.

JURY TRIAL DEMANDED

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defense or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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COMPLAINT

AND NOW, come the plaintiffs, Rufai Nadama and Marwa Nadama, individually and on behalf of the estate of their minor son Abubakar Tariq Nadama and their minor daughter Nauwau Nadama, by and through their attorneys, Gismondi & Associates, P.C., and John P. Gismondi, Esquire, and hereby file this action based upon the following:

COMMON ALLEGATIONS

1. The plaintiffs are the parents and personal representatives of the estate of Abubakar Tariq Nadama who died at the age of 5 on August 23, 2005. The plaintiffs are also the parents and natural guardians of their minor daughter, Hauwau Nadama.

2. The defendant Roy E. Kerry, M.D. is a physician licensed to practice medicine within the Commonwealth of Pennsylvania and who renders such services within Mercer County.

3. The defendant Mark Lewis, M.D. is a physician licensed to practice medicine within the Commonwealth of Pennsylvania and who renders such services within Mercer County.

4. The defendant Advance Integrative Medicine, Inc., is a Pennsylvania professional corporation which renders medical services within Mercer County from a principal location at 17 6th Avenue, Greenville, PA 16125, and a second location at 160 E. Portersville Road, Portersville, PA 16051.

5. At all times relevant hereto, the defendants Dr. Kerry and Dr. Lewis were employees of Advanced Integrative Medicine, Inc.

6. The defendant ApothéCure, Inc., is a Texas corporation with a principle place of business located at 4001 McEwen Road, Suite 100, Dallas, TX 75244.

7. The defendant ApothéCure Pharmacy is a Texas corporation and is a “sister” corporation of ApothéCure, Inc., with a principle place of business located at 4001 McEwen Road, Suite 100, Dallas, TX 75244.

8. The defendant ApothéCure Injectables, Inc., is a Texas corporation and is a “sister” corporation of ApothéCure, Inc., with a principle place of business located at 4001 McEwen Road, Suite 100, Dallas, TX 75244.

9. The defendant Spectrapharm, Inc., a Texas corporation and is a “sister” corporation of ApothéCure, Inc., with a principle place of business located at 4001 McEwen Road, Suite 100, Dallas, TX 75244.

10. The defendant LoboTejas Laboratories, Inc., is a Texas corporation and is a “sister” corporation of ApothéCure, Inc., with a principle place of business located at 4001 McEwen Road, Suite 100, Dallas, TX 75244.

11. The defendant Texas Institute of Functional Medicines, is a Texas corporation and is a “sister” corporation of ApothéCure, Inc., with a principle place of business located at 4001 McEwen Road, Suite 100, Dallas, TX 75244.

12. ApothéCure, Inc., and all of its “sister” corporations identified in Paragraphs 7 through 11 have a principle place of business at 4001 McEwen Road, Dallas, TX 75244.

13. The individual defendant, Gary Osborn is the owner and principal of all of the defendant corporations described in Paragraphs 6 through 11.

14. Each of the corporations and individual identified in Paragraphs 6 through 13 will be referred to collectively as the “ApothéCure Defendants” in this Complaint.

15. The ApothéCure Defendants are engaged in the regular business of either manufacturing, compounding, supplying, testing and/or promoting a variety of pharmaceuticals and nutrition products to the “alternative medicine” community in the United States and elsewhere.

16. On July 22, 2005 Tariq Nadama, accompanied by the mother-plaintiff, came under the care of Dr. Kerry, in Greenville, Mercer County, PA, ostensibly for the “treatment” of autism. Dr. Kerry determined that said “treatment” would, among other things, include the use of chelation therapy. Chelation therapy involves the administration of a synthetic chemical solution which is designed to extract certain heavy metals from the body, the theory being that such heavy metals contribute to a variety of illnesses including autism. Under the treatment plan adopted by Dr. Kerry, Tariq Nadama was to be provided a series of treatments involving the IV administration of disodium ethylenediamine tetraacetic acid (disodium EDTA).

17. The first and second such administrations of disodium EDTA occurred on July 22 and August 10, 2005, in Dr. Kerry’s Mercer County office under his direction.

18. On August 23, 2005, at approximately 10:30 a.m., with the mother-plaintiff and his sister Hauwau at his side, Tariq Nadama received a third infusion of disodium EDTA pursuant to the protocol established by Dr. Kerry. This third treatment was administered by medical assistant Theresa Bicker under the direction of Dr. Lewis at the Portersville, PA, offices of Advanced Integrative Medicine Center, Inc. The EDTA was administered via IV push over a few minutes. Shortly after the administration of said solution, Tariq Nadama went into cardiac arrest. CPR and chest compressions were given, but the child could not be revived and, therefore, he was transferred on an urgent basis to Butler Memorial Hospital. Despite aggressive resuscitative efforts at that facility, Tariq Nadama was pronounced dead shortly after arriving at the hospital.

19. The fatal cardiac arrest suffered by Tariq Nadama was caused by a low calcium level induced by the administration of the disodium EDTA over the course of his three treatments.

20. The death of Tariq Nadama resulted from the individual and/or jointly tortious conduct of all of the defendants as set forth below in separate counts below..

21. As a result of the tortious conduct of defendants, the plaintiffs claim all appropriate damages under the Wrongful Death Act, including, but not limited to, the following:

- a. Loss of economic contributions;
- b. Loss of society, comfort, and consortium;
- c. Loss of household services;
- d. Loss of guidance, tutelage, and moral upbringing;
- e. Funeral expense; and
- f. Estate administration expense.

22. As a result of the tortious conduct of the defendants, the plaintiffs, on behalf of the estate of Abubakar Tariq Nadama, claim all appropriate damages under the Survival Act, including, but not limited to, the following:

- a. Loss of earnings and earning capacity; and
- b. Pain, suffering, and inconvenience.

COUNT I – NEGLIGENCE

Plaintiffs v. Roy S. Kerry, MD, Mark Lewis, MD, and Advanced Integrative Medicine Center, Inc.

23. Each of the above paragraphs is incorporated herein by reference.

24. The aforesaid death of Tariq Nadama was caused by the negligence of Dr. Kerry in the following particulars:

- a. In failing to make a diagnosis of the child which would justify the use of disodium EDTA;
- b. In deciding to administer EDTA therapy to a child;
- c. In deciding to administer disodium EDTA to “treat” autism when he knew, or should have known, that such therapy is not effective treatment for autism;
- d. In administering disodium EDTA when he knew that such product was not approved by the Food and Drug Administration (FDA) for use in “treating” autism;
- e. In administering the wrong type of EDTA, e.g. one that did not contain an appropriate calcium additive;
- f. In ordering the administration of the EDTA in an excessive dosage and concentration;

- g. In ordering the administration of the EDTA via IV push when he knew, or should have known, that said method of administration was too fast;
- h. In failing to appropriately train, educate and instruct the employees of Advanced Integrative Medicine Center, Inc., who were involved in the administration of the EDTA;
- i. In failing to advise the deceased's mother, Marwa Nadama, of all of the risks of chelation therapy and all appropriate alternatives to such treatment;
- j. In administering the EDTA too frequently and without sufficient time in between administrations; and,
- k. In failing to use and/or have immediately available, emergency resuscitation measures including an EKG monitor, cardiac defibrillator, resuscitation medications, and an immediate source of calcium replacement.

25. In the alternative, and in addition to the above, the aforesaid death of Tariq Nadama was caused by the negligence of Dr. Mark Lewis in the following particulars:

- a. a. In failing to make a diagnosis of the child which would justify the use of disodium EDTA;
- b. In deciding to administer EDTA therapy to a child;

- c. In deciding to administer disodium EDTA to “treat” autism when he knew, or should have known, that such therapy is not effective treatment for autism;
- d. In administering disodium EDTA when he knew that such product was not approved by the Food and Drug Administration (FDA) for use in “treating” autism;
- e. In administering the wrong type of EDTA, one that did not contain an appropriate calcium additive;
- f. In ordering the administration of the EDTA in an excessive dosage and concentration;
- g. In ordering the administration of the EDTA via IV push when he knew, or should have known, that said method of administration was too fast;
- h. In failing to appropriately train, educate and instruct the employees of Advanced Integrative Medicine Center, Inc., who were involved in the administration of the EDTA;
- i. In failing to advise the deceased’s mother, Marwa Nadama, of all of the risks of chelation therapy and all appropriate alternatives to such treatment;
- j. In administering the EDTA too frequently and without sufficient time in between administrations; and,

- k. In failing to use and/or have immediately available, emergency resuscitation measures including an EKG monitor, cardiac defibrillator, resuscitation medications, and an immediate source of calcium replacement.

26. In the alternative, and in addition to the above, the death of Tariq Nadama was caused by the negligence of the defendant Advanced Integrative Medicine Center, Inc., acting through its agents and employees other than Dr. Kerry and Dr. Lewis, in the following particulars:

- a. In failing to provide adequate training, education, and supervision to all persons involved in the administration of chelation therapy to Tariq Nadama;
- b. In failing to properly prepare the type, dose and concentration of EDTA;
- c. In failing to use proper technique while administering the EDTA to Tariq Nadama;
- d. In administering the wrong type of EDTA, one that did not contain an appropriate calcium additive; and,
- e. In failing to use and/or have immediately available, emergency resuscitation measures including an EKG monitor, cardiac defibrillator, resuscitation medications, and an immediate source of calcium replacement.

27. In addition to the direct acts of negligence described in the previous paragraph, the defendant Advanced Integrative Medicine Center, Inc., is vicariously liable for the conduct of Dr. Kerry, Dr. Lewis, medical assistant Theresa Bicker and other employees and agents.

WHEREFORE, the plaintiffs demand judgement on each claim against each of the defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars.

COUNT II – NEGLIGENCE

Plaintiffs v. All ApothéCure Defendants

28. Each of the above paragraphs is incorporated herein by reference.

29. The EDTA administered by Dr. Kerry's office to Tariq Nadama was manufactured, compounded and/or supplied by the ApothéCure Defendants.

30. In the months and years preceding his administration of EDTA to Tariq Nadama, Dr. Kerry's and Dr. Lewis's knowledge and understanding of the appropriate or inappropriate use of EDTA was formed in large measure by information he received from ApothéCure Defendants through their direct conversations, written material, website information, product materials, and "educational" programs sponsored or presented by them.

31. At the time the ApothéCure Defendants were disseminating information to Dr. Kerry and other physicians through the means described in the previous paragraph, they knew, or should have known, that it was providing information which was inaccurate, without scientific or

medical foundation, dangerous, and likely to cause injury to patients treated pursuant to such information. It further knew that such information would be relied upon by Dr. Kerry in treating his patients such as Tariq Nadama.

32. The inaccurate, unsound and dangerous information communicated by the ApothéCure Defendants to Dr. Kerry and Dr. Lewis as described in paragraph 30 was a direct and substantial cause in Dr. Kerry's commission of the negligent acts described in paragraph 24 and 25. Therefore the ApothéCure Defendants are legally responsible for the conduct described in paragraph 24 and 25.

33. The ApothéCure Defendants, throughout all of their manufacturing, compounding and supplying and throughout all of their dissemination of information to physicians such as Dr. Kerry and Dr. Lewis, were negligent in the following respects:

- a. They failed to accurately inform and warn Dr. Kerry about the proper or improper uses of EDTA.
- b. They encouraged Dr. Kerry to make improper use of EDTA.
- c. They failed to provide accurate information and warning to Dr. Kerry about the proper dosage and concentration of EDTA to use.
- d. They failed to inform and warn Dr. Kerry about the proper method of administration of EDTA.
- e. They actively encouraged Dr. Kerry to administer EDTA in a dangerous and life-threatening way, namely, via IV push over a short period of time.

- f. They failed to inform and warn Dr. Kerry of the need to have appropriate resuscitative equipment available and in use during the administration of EDTA.
- g. They failed to supply EDTA which contained the appropriate raw material and which was of the proper mixture, concentration and dosage.
- b. They failed to adequately test the EDTA which they supplied to make sure it was of the appropriate mixture, dosage and concentration and that it contained the appropriate raw materials.

34. As a result of the above-described events, the conduct of the ApothéCure Defendants was a substantial contributing factor and factual cause in the death of Tariq Nadama.

WHEREFORE, the plaintiffs demand judgement against each of the ApothéCure Defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars.

COUNT III – INFORMED CONSENT

Plaintiffs v. Roy E. Kerry, MD and Advanced Integrative Medicine Center, Inc.

35. Each of the above paragraphs is incorporated herein by reference.

36. The defendant Dr. Kerry's use of disodium EDTA in a method and manner not approved by the FDA constituted experimental use of the drug.

37. Prior to such experimental use, the defendant Dr. Kerry, during his discussions with the deceased's mother, Marwa Nadama, in his Mercer County office on July 22, 2005, failed to obtain her informed consent because he did not inform her of all of the risks and alternatives that a reasonably prudent patient would want to have before consenting to the use of disodium EDTA therapy.

38. The defendant Advanced Integrative Medicine Center, Inc., is vicariously liable for the conduct of Dr. Kerry described in the previous paragraphs.

WHEREFORE, the plaintiffs demand judgment against the defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

COUNT IV – STRICT LIABILITY

Plaintiffs v. All ApothéCure Defendants

39. Each of the above paragraphs is incorporated herein by reference.

40. The EDTA administered through Dr. Kerry's office to Tariq Nadama was manufactured, compounded, tested and/or supplied by the ApothéCure Defendants through interstate commerce to Dr. Kerry in Pennsylvania.

41. The EDTA supplied by the ApothéCure Defendants to Dr. Kerry was defective for the following reasons:

- a. It was not manufactured, compounded or supplied with the appropriate components and materials.

- b. It lacked adequate warnings and instructions concerning the its appropriate use.
- c. It lacked appropriate warnings and instructions which advised the user of the dangerous nature of the product.
- d. It lacked adequate instructions advising the user of the proper dosage and concentration.
- e. It lacked adequate instructions and warnings advising the user how to administer the drug.
- f. It lacked adequate instructions and warnings advising the user of the dangers of administering the drug via IV push over a short period of time.
- g. It lacked adequate instructions informing the user to have appropriate resuscitative equipment and cardiac monitoring equipment immediately available and in use at the time of its administration.
- h. It lacked adequate warnings and instructions advising the users that only trained personnel should be involved in the direct administration of the drug.
- i. It was supplied without adequate approval from the FDA.
- j. It was not supplied in the appropriate dosage or concentration.

- k. It was not properly tested to verify that it contained the proper components and raw materials and that it was prepared in the appropriate dosage and concentration.

WHEREFORE, the plaintiffs demand judgment against each of the ApothéCure Defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

COUNT VI – NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

Marwa Nadama v. All Defendants

42. Each of the above paragraphs are incorporated as herein by reference as if the same were fully set forth at length.

43. The mother-plaintiff Marwa Nadama was in the room on August 23, 2005, when the aforesaid EDTA injection was given to her son, and she was an eyewitness to the fatal cardiac arrest suffered by him as a result of the tortious conduct of the defendants.

44. As a consequence of witnessing the cardiac arrest of her son, the mother plaintiff has suffered severe emotional distress manifested by a variety of physical symptoms.

WHEREFORE, the plaintiff demands judgment against the defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

COUNT VII – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Hauwau Nadama v. All Defendants

45. Each of the above paragraphs are incorporated herein by reference as if the same were fully set forth at length.

46. The sister-plaintiff Hauwau Nadama was in the room on August 23, 2005, when the aforesaid EDTA injection was given, and she was an eyewitness to the fatal cardiac arrest suffered by her son as a result of the tortious conduct of the defendants.

47. As a consequence of witnessing the cardiac arrest of her brother, the sister-plaintiff has suffered severe emotional distress manifested by a variety of physical symptoms.

WHEREFORE, the plaintiff demands judgment against the defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

COUNT VIII – PUNITIVE DAMAGES

Plaintiffs v. Roy E. Kerry, MD and Advanced Integrative Medicine Center, Inc.

48. At all times relevant hereto the defendant Dr. Kerry was operating as the agent and employee of Advanced Integrative Medicine Center, Inc.

49. Prior to treating Tariq Nadama, Dr. Kerry was specifically aware that:

- a. There were no generally accepted medical studies proving that chelation therapy offered any beneficial treatment of autism. Despite such

knowledge, he knowingly and intentionally ordered such treatment for Tariq Nadama.

- b. The only FDA approved use of disodium EDTA was for treatment of patients with hypercalcemia (high levels of calcium) or digitalis toxicity, neither of which Tariq had. Despite such knowledge, he knowingly and intentionally ordered such treatment for Tariq Nadama.
- c. He had never used EDTA therapy on a child. Despite such knowledge, he knowingly and intentionally subjected Tariq to chelation treatment with EDTA.
- d. The use of disodium EDTA could induce a state of hypocalcemia (low calcium levels) in a patient and that such hypocalcemia could lead to a cardiac arrest. Despite such knowledge, he knowingly ordered the administration of disodium EDTA, and he did so knowing that there were no cardiac monitors or resuscitation equipment in use.
- e. Disodium EDTA was the wrong type of chelation solution to use on Tariq Nadama because it did not contain a calcium additive, and therefore, could cause a cardiac arrest. Despite such knowledge, he ordered the administration of said improper solution.
- f. The only FDA approved label for disodium EDTA warned that the solution must be administered at a very slow pace over three or more hours in order to avoid triggering a fatal cardiac arrest. Despite such

knowledge, Dr. Kerry ordered that the administration of the EDTA solution be done in a matter of minutes via IV push.

50. In light of the knowledge which Dr. Kerry possessed, or should have possessed, as alleged above, the decision to “treat” Tariq Nadama’s autism with chelation therapy employing disodium EDTA in the manner described above was done with conscious and reckless disregard for the safety of Tariq Nadama and with full knowledge that death or serious bodily injury could result.

WHEREFORE, plaintiffs respectfully request that the jury award a suitable amount of punitive damages against defendant Dr. Kerry and Advanced Integrative Medicine Center, Inc.

COUNT V - PUNITIVE DAMAGES

Plaintiffs v. All ApothéCure Defendants

51. Each of the above paragraphs is incorporated herein by reference.

52. Prior to the administration of the EDTA by Dr. Kerry to Tariq Nadama each of the ApothéCure Defendants was specifically aware that:

- a. It lacked FDA approval to manufacture EDTA;
- b. It supplied the EDTA to Dr. Kerry without FDA approval for same;
- c. Its warnings and instructions did not comply with, or receive approval from, the FDA:

- d. It was actively encouraging Dr. Kerry and other physicians to use EDTA for inappropriate purposes;
- e. It was actively encouraging Dr. Kerry and other physicians to administer EDTA in a dangerous IV push fashion;
- f. It was actively promoting the use of EDTA to Dr. Kerry and other physicians for purposes not approved by the FDA;
- g. It was supplying EDTA with improper volumes and concentrations;
- h. It was extremely dangerous to administer EDTA via IV push in a short period of time, yet it was specifically recommending such administration;
- i. EDTA was not appropriate for the treatment of autism, yet it was specifically recommending it for such purpose;
- j. It was necessary to have cardiac monitoring and resuscitative equipment and drugs immediately available when EDTA was administered, yet that it was not informing the user of same.

53. Despite all of the above knowledge the ApothéCure Defendants knowingly and intentionally deceived and mis-informed physicians such as Dr. Kerry concerning the safe use of EDTA, all of which was done for the purpose of economic gain.

54. The ApothéCure Defendants were specifically aware that the actions attributed to it in these allegations would place patients such as Tariq Nadama in immediate danger of

death or serious bodily injury, yet it acted with express disregard for the well-being of such patients, all for the purpose of economic gain.

WHEREFORE, the plaintiffs demand that the jury award a suitable amount of punitive damages against each of the ApothéCure Defendants.

JURY TRIAL DEMANDED.

GISMONDI & ASSOCIATES

By _____
John P. Gismondi
Attorney for Plaintiffs