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16 Attorneys for Defendant
17 SmithKline Beecham Corporation
18 (erroneously sued and served as Glaxosmithkline)

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF SANTA CRUZ

21 ELYZABETH SILVAH, individually, and)
22 as Guardian Ad Litem for JAIAH)
23 SILVAH,)

24 Plaintiffs,

25 vs.

26 NANETTE MICKIEWICZ, M.D., an)
27 individual; HOWARD SALEM)
28 MAGARIAN, M.D., an individual;)
29 PLANNED PARENTHOOD, a business)
30 entity; GLAXOSMITHKLINE, a)
31 corporation and DOES 1 through 50,)
32 inclusive,)

33 Defendants.

Case No. CV 145704

Judge Arthur Danner, III

Complaint Filed February 14, 2003

**DECLARATION OF JEANNE MARIE
GALLAGHER, M.D.**

Trial Date: 5/23/05

34 I, Jeanne Marie Gallagher, M.D., declare as follows:

35 1. The matters set forth in this Declaration are true and accurate based upon my
36 own expertise and personal knowledge. If called upon to do so, I could competently testify
37 to the following:
38

ORIGINAL

1 2. I am a medical doctor, licensed to practice medicine in the State of
2 California. I received my Bachelor of Science in Biology with Distinction from the
3 University of Michigan in 1989; and my Medical Degree from the University of Michigan
4 Medical School in 1993. I did my internship and residency in pediatrics at the University
5 of California, San Francisco, where I was Chief Resident in 1997. I have practiced as a
6 full-time pediatrician at the Santa Cruz Medical clinic in Santa Cruz, California, since
7 1997. As a practicing pediatrician, I have examined and treated thousands of babies,
8 children and adolescents. I am board certified in Pediatrics, and am the Chair of the
9 Pediatric Department at Dominican Hospital in Santa Cruz, California, and Secretary of
10 the Medical Executive Committee at Sutter Maternity and Surgery Center, Santa Cruz,
11 California.

12 3. This declaration is made in support of defendant SmithKline Beecham
13 Corporation's motion to compel the medical examination of Jaiah Silvah. If called I could,
14 and would testify competently with personal knowledge of the following facts.

15 4. On March 31, 2005, Jaiah Silvah presented to my office accompanied by his
16 mother, Elyzabeth Silvah, and their attorney, for a medical examination of the boy. The
17 purpose of the examination was to obtain an appropriate medical history and to evaluate
18 Jaiah's current medical condition.

19 5. As part of the examination, I intended to have blood samples drawn by a
20 licensed phlebotomist which was to have been sent to a reputable laboratory for analysis
21 based on specific tests ordered by me as part of the examination. The tests I intended to
22 order included a complete blood count, liver function tests, tests for Hepatitis B and C, as
23 well as an ELISA test, and confirmatory Western Blot test, if needed, to determine the
24 presence or absence of antibodies to HIV, the virus that causes AIDS.

25 6. When I indicated to Ms. Silvah that I intended to have Jaiah's blood analyzed
26 for HIV, her lawyer objected. Her attorney said that they would allow for a blood draw
27 and any testing of the blood other than for HIV. I declined to proceed in that manner
28 because I had been previously informed by counsel for SKB that if Ms. Silvah refused HIV

1 testing there would likely be a court ruling on the matter, and I did not want to make Jaiah
2 go through two separate blood draws in case the court ordered the HIV test.

3 7. My choice of diagnostic testing in this case was made on the basis of good
4 medical practice as well as my understanding of the medical issues in this case from my
5 review of the medical and other records and the history I obtained from the plaintiffs. It is
6 my understanding that the plaintiffs are claiming that Jaiah's ingestion of the drugs
7 Retrovir (AZT) and Epivir (3TC) created an increased risk of his contracting cancer,
8 specifically non-Hodgkin's lymphoma (NHL), sometime in the future.

9 8. Given the nature of these claims, my medical examination was in part
10 designed to determine whether Jaiah has any specific risk factors for the development of
11 NHL. A well documented risk factor for NHL is HIV infection. In fact, NHL is one of a
12 group of HIV-associated opportunistic diseases that, along with significantly decreased
13 CD4+ lymphocyte counts, allow for a diagnosis of Acquired Immune Deficiency
14 Syndrome (AIDS).

15 9. Based on my review of the medical records and the history I obtained, Jaiah
16 sustained a needle stick, with evidence of percutaneous injury, from a used syringe he
17 found in an area known to be frequented by IV drug users, who, in turn, are known to be at
18 risk for HIV infection. It is further my understanding that Jaiah's blood was tested for HIV
19 the day after the needle stick, and that the test was negative. A negative HIV test so close
20 to exposure is not unusual, and in fact is expected since the virus normally takes time to
21 replicate in numbers sufficient to induce antibody development.

22 10. It is my understanding that Ms. Silvah was advised by Dr. Mickiewicz to
23 have Jaiah undergo serial HIV tests for some period of time following the initial test and
24 the completion of post-exposure prophylaxis, but that this was not done.


25 11. Based on the fact that Jaiah was potentially exposed to HIV and did not have
26 any follow up HIV tests subsequent to the initial negative test following the needle stick,
27 his current HIV status is unknown, but potentially positive. If Jaiah is HIV positive he
28

1 would be at a significant risk for the development of all HIV/AIDS-associated diseases,
2 including NHL, especially if the infection was left untreated.

3 12. Under the circumstances, an HIV test is medically reasonable and necessary
4 in order to fully assess Jaiah's risk factors for the development of NHL.

5 I declare under penalty of perjury pursuant to the laws of the state of California that
6 the foregoing is true and correct.

7 Executed on this 12th day of April, 2005, at Santa Cruz, California.

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9 
10 Jeanne Marie Gallagher, M.D.

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