

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-18-003168  
Victoria Benavides

D-1-GN-18-003168

CAUSE NO. \_\_\_\_\_

IN RE: LINDA BADAWO A/N/F OF  
D’ASHON BADAWO (F/K/A D’ASHON  
MORRIS), A MINOR

*Petitioner.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53rd

\_\_\_\_\_ JUDICIAL DISTRICT

**RULE 202 PETITION TO INVESTIGATE POTENTIAL CLAIMS**

Pursuant to Rules 202.1 and 202.5 of the Texas Rules of Civil Procedure, Petitioner, Linda Badawo, as next friend of D’ashon Badawo (formerly known as D’ashon Morris), a minor, (“Petitioner”), files this Rule 202 Petition to Investigate Potential Claims (“Rule 202 Petition”), seeking permission from the Court to serve a subpoena duces tecum for documents and pre-suit depositions of a certain entity. This Petition seeks a Court order allowing such pre-suit depositions and document production by Respondent, Superior Healthplan, Inc. (“Superior”) in order to investigate potential civil claims which may exist in favor of Petitioner against Superior. In support of her Rule 202 Petition, Petitioner states as follows:

**I. INTRODUCTION**

1. This Rule 202 Petition seeks information in a heartbreaking case of a foster child whose State-mandated care was disrupted and refused by a managed care organization in possible dereliction of that organization’s duty to approve medically recommended and necessary treatment for that foster child, consistent with a disturbing pattern of behavior by this managed care organization. Petitioner is the adoptive mother of D’ashon Badawo, formerly D’ashon Morris (“D’ashon”), a minor. Superior is the managed care organization (“MCO”) that was required to provide State-mandated insurance coverage pursuant to an agreement with the Texas Health and Human Services Commission (“HHSC”). When it came to the care of this particular child, both Superior and HHSC failed him, and now he will live with permanent brain damage as a result.

2. To make matters worse, Superior has to date failed to provide Petitioner with any sufficient basis or reasoning for the decisions made by Superior that have resulted in D'ashon's tragic situation, preventing Petitioner from determining what amount of justice, if any, Petitioner can seek on D'ashon's behalf. Superior's alleged conduct includes hiding or otherwise ignoring medical and other records, engaging in private conversations without public scrutiny, attempting to coerce or otherwise convince medical professionals to change their medical decisions and recommendations, and manipulating the process that was put in place to ensure that a tragedy such as D'ashon's should never happen, or that in the case that it does, at least the facts would be known.

3. Petitioner files this petition to seek the deposition of a corporate representative of Superior, in addition to the production of certain documents, relevant to information Superior should have disclosed or otherwise demonstrates all factors and information considered in furtherance of Superior's duties to D'ashon, and Superior's potential breaches of those duties. As explained in further detail below, Superior made arguably improper decisions in response to requests for coverage and care for D'ashon, to improperly lobby and influence HHSC through use of HHSC's former medical director, to intrude into D'ashon's medical care, and to conceal information from Petitioner regarding the underlying reasoning for decisions related to D'ashon's medical care. As part of an ongoing effort to maximize Superior's profits, rather than acting in D'ashon's best interest, Superior actively prevented and refused to approve medically necessary treatment for D'ashon. After D'ashon suffered a serious event that has left him with irreversible brain damage and the subject of constant medical care, Superior continues to refuse to provide any further information as to its determinations for D'ashon's medical care, despite repeated attempts by Petitioner to obtain this information. Moreover, evidence may exist that Superior used improper influence with HHSC to cover its tracks with D'ashon's situation and that Superior continues the process of illegally communicating with that agency beyond the public eye.

4. While Petitioner has tried in multiple ways to obtain the information sought herein, Superior has failed and refused to provide such information. As such, Petitioner seeks information related to her potential civil claims against Superior, which requires information through the depositions and document production set forth herein pursuant to TEX. R. CIV. P. 202.1 and 202.5. Petitioner therefore asks the Court for permission to take the pre-suit depositions of a Superior corporate representative on the topics outlined below, along with the Court requiring Superior to produce certain documents as requested herein.

## **II. PARTIES**

5. Petitioner, Linda Badawo, as next friend of D’ashon Badawo (formerly known as D’ashon Morris), a minor, is an individual who resides in Dallas County, Texas.

6. Respondent, Superior Healthplan, Inc. (“Superior”) is a Texas corporation with its principle place of business at 900 E Ben White Blvd, Austin, Texas 78704, located in Travis County, Texas. Superior may be served with process via its registered agent: C.T. Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136.

7. Upon information and belief, Petitioner currently knows of no other parties that have interests adverse to Petitioner’s in the anticipated suit as those interests pertain to potential claims against Superior. *See* TEX. R. CIV. P. 202.2(f).

## **III. BASIS UNDER RULE 202**

8. Under Rule 202 of the Texas Rules of Civil Procedure (“Rule 202”), a person may petition the Court for an order authorizing the taking of a deposition on oral examination or written questions, including the production of documents pursuant to a subpoena duces tecum to investigate a potential claim or suit. TEX. R. CIV. P. 202.1, 202.5. Petitioner files this action to investigate potential claims or a potential lawsuit against Superior as further outlined below. TEX. R. CIV. P. 202.2(d).

#### **IV. JURISDICTION, VENUE, AND VERIFICATION**

9. This Court is a court of general subject matter jurisdiction. This Court has personal jurisdiction over all parties to this Rule 202 petition because all parties are either domiciled in Texas or do business in Texas such that they have sufficient minimum contacts to justify the exercise of personal jurisdiction under the constitution and laws of the State of Texas and the United States, and doing so would not offend traditional notions of fair play and substantial justice.

10. Venue is proper in Travis County pursuant to Texas Rule of Civil Procedure 202.2(b)(1), as venue of the anticipated suit may lie in Travis County, Texas, and one or more of the witnesses are residents of Travis County, Texas. Should suit result, venue would be proper in Travis County pursuant to Texas Civil Practice and Remedies Code §15.002(a)(1) and (a)(3) because Travis County, Texas is the location of Superior's principal office and place of business.

11. This Rule 202 Petition is verified by Petitioner, Linda Badawo, as required by TEX. R. CIV. P. 202.2(a). *See Exhibit A*, Verification of Linda Badawo.

#### **V. FACTS IN SUPPORT OF RULE 202 PETITION**

##### **I. Superior Is Charged with the Care of Texas' Most Valuable Beneficiaries**

12. Petitioner Linda Badawo is the adoptive mother of D'ashon Badawo, formerly D'ashon Morris. D'ashon and his twin sister, D'asia, were born May 2, 2015 at just twenty-five weeks old. The twins had serious birth defects, including that D'ashon tested positive for drugs and weighed less than 2 pounds at birth. As a result, Child Protective Services took custody of D'ashon and his sister soon after their birth. When the twins were released from neo-natal intensive care, child welfare workers placed the twins in Petitioner's foster home—a 2-story brick house in the outer suburbs of Dallas specifically intended for children with complex medical needs. In addition to Petitioner being a pediatric nurse, other nurses worked in shifts to help Petitioner care for the twins.

13. D’ashon suffered from bleeding in the brain, internal hemorrhaging, chronic lung disease, and developmental delays, and breathing became D’ashon’s toughest challenge. For the first five months of his life, D’ashon was dependent upon a ventilator, which pushed oxygen into his lungs through a tracheostomy tube threaded through a hole in his throat. The most unfortunate result of a trach tube having being inserted at such a young age is that it is permanent and can never be removed for the rest of D’ashon’s life. While D’ashon eventually learned to breathe without the ventilator, the trach remained to ensure that his windpipe remained open.

14. Because D’ashon was a foster child, his medical care was provided through Medicaid. The State of Texas charges managed care organizations to administer Medicaid benefits to the state’s most important beneficiaries, including foster children and people with disabilities who meet certain income requirements—and D’ashon was insured by Superior HealthPlan, a managed care organization in the State of Texas. Like other MCOs in Texas, Superior promises to cut the State’s costs in administering Medicaid while also claiming to improve the medical care provided to Medicaid recipients. In exchange for a flat monthly payment per person, Superior controls and manages Medicaid recipients’ medical care while HHSC is charged with making sure Superior lives up to its responsibilities. Superior chooses the doctors and determines how much to pay and for what they will pay—driving Superior’s decision making to the detriment of its members if not properly supervised.

## **II. As D’ashon’s Insurer, Superior Failed Him and His Adoptive Mother**

15. As D’ashon approached his first birthday, he developed a dangerous habit—pulling out his trach. He did it multiple times a day, even during his sleep. Each time he pulled out the trach, the hole in his throat would collapse and he would begin to suffocate, risking brain damage or death. The nurse on duty would have to intervene and re-insert the trach, oftentimes having to force air back into D’ashon’s lungs. The extreme danger this new habit presented to D’ashon was well documented. Child welfare workers wrote in their notes how dangerous the situation was to D’ashon; D’ashon’s

doctors and nurses sent multiple letters to Superior discussing D'ashon's condition. These medical providers recommended that D'ashon receive 24-hour one-on-one nursing care, instead of D'ashon having nursing care for just twelve hours a day.

16. Despite D'ashon's doctors' and nurses' recommendations that D'ashon's condition medically necessitated 24-hour one-on-one nursing care, Superior sent Petitioner a letter informing her that 24-hour care would not be covered by Superior. *See Exhibit B*, June 22, 2016 Denial Letter from Superior. Moreover, Superior informed Petitioner that not only was Superior denying the recommended care, but it was also planning on requiring D'ashon to start sharing a nurse with his twin sister, D'asia. *Id.* Petitioner then appealed Superior's decision, with at least one of D'ashon's nurses submitting additional medical records to Superior demonstrating D'ashon's current condition and the precarious situation presented by his tendency to pull out his trach. Despite this information and the clear recommendations of D'ashon's medical providers, near the end of May 2016, Superior notified Petitioner that it refused to change its decision. When Petitioner called Superior and pleaded for Superior to reconsider its decision, Superior informed her that if she could not manage his care, D'ashon would be moved to a new foster home.

17. By July 2016, D'ashon's doctors were growing increasingly concerned with his trach situation. D'ashon required tracheal suctioning anywhere from 2 to 7 times **per hour**. Superior was provided supplemental medical records, which included reports and nurses notes reflecting D'ashon's perilous condition, along with renewed urgent requests from D'ashon's medical providers requesting 24-hour one-on-one nursing care. On July 22, 2016, without having examined or otherwise seen D'ashon, Superior again denied these requests for full-time nursing care.

### **III. Superior's Cover-up Including Manipulating HHSC and Strong-Arm Tactics**

18. With nowhere else to turn at the time, Petitioner sought help from HHSC, the state agency that oversees managed care organizations like Superior. Petitioner requested what is known as

a “fair hearing,” where parents have an opportunity to discuss their child’s case and the managed care organization’s reimbursement decisions for their child’s medical claims with a commission employee. Unfortunately, the hearing officer—neither a lawyer nor a doctor—has a very narrow scope upon which to base their decision: whether Superior followed its own policy in rendering its decisions on D’ashon’s medical treatments. And hidden from the public and even the Legislature, and unknown to Petitioner at the time, Superior relies on a former HHSC medical director, William Glomb to lobby HHSC on these issues, despite only recently being hired away from HHSC, arguably in violation of Texas ethics rules prohibiting such employment.

19. Petitioner’s case was not heard until August 2, 2016. It occurred via conference call, with Petitioner in her living room surrounded by D’ashon’s medical records. Petitioner was not aware that this “fair hearing” would include rebuttal arguments by Superior, specifically by Dr. Glomb. During the August 2, 2016 hearing, Dr. Glomb dismissed all the medical documentation supporting D’ashon’s need for full-time nursing care, and took control of the hearing, instead suggesting that Superior and Petitioner speak without the State to reach a compromise. However, the next day, Superior proposed a radical and inhumane solution—tying D’ashon’s hands with a “soft splint” to physically restrain his arms and prevent him from removing his trach (in violation of State regulations barring the use of physical restraints on foster children except in extreme instances). This suggested solution was resoundingly rejected by Petitioner, and no compromise was reached.

20. The following day, Dr. Glomb held a conference call with other Superior representatives to discuss D’ashon’s situation. While the company had given the conference call-in information to Petitioner and Rachelle Seaton of Care Pro Home Health (“Care Pro”), the firm that supplied nurses for D’ashon and D’asia, they spoke as if they did not intend to on the call. During the call, Superior referred to home health agencies as “idiots.” *See Exhibit C*, Email from Rachelle Seaton dated August 10, 2016. Dr. Glomb also spoke about how they should strong-arm the twins’ physicians

to try to convince them that the children did not need the 24-hour one-on-one nursing care that had been requested. *Id.* On information and belief, Superior followed through with those tactics, along with improperly influencing HHSC to drop its review of the matter, although Superior and HHSC still refuse to produce information related to those communications.

#### **IV. When Superior Denied the Care that D’ashon So Desperately Needed, He Faced the Dangerous Incident that Badawo Had Predicted**

21. At the beginning of October 2016, Petitioner went on a long-planned trip to her native Nigeria to visit relatives. When Petitioner left for Nigeria, Child Protective Services temporarily placed D’ashon in a foster home specializing in “respite care;” D’asia was temporarily placed in a different home. A nurse named Ogechi Okusagah (“Okusagah”) worked in the foster home that temporarily took in D’ashon, but D’ashon was not her patient; she was there treating a 2-year-old with a neurological disorder.

22. On the morning of October 5, 2016, Okusagah arrived at the foster home before D’ashon’s nurse, who did not come on duty until 7:00 a.m. Upon information and belief, by the time Okusagah arrived, Simeon Jatto (“Jatto”)—the foster father at the home where D’ashon had been placed while Petitioner was out of the country—had already placed D’ashon in a baby walker so he could receive a breathing treatment. Upon information and belief, at some point during D’ashon’s breathing treatment, Jatto went upstairs, leaving D’ashon in the room unattended.

23. Sometime later (the exact length of time is unknown), while Okusagah was busy with her own patient, she heard the sounds of D’ashon choking. She saw him facing the wall, and stopped what she was doing and went to check on D’ashon. Suddenly, she realized that he had dislodged his trach and was suffocating. Okusagah immediately called for the foster parents to come help. D’ashon’s face was reported to be pale and gray, with foam coming out of his mouth. Upon information and belief, Jatto’s wife pulled out the trach and replaced it with a new one, and she began performing CPR



to force air into his lungs while Okusagah called 9-1-1, reporting that D’ashon was “coding.” The dispatcher sent units to the house, but D’ashon’s heart had stopped and he had no pulse.

24. Nurses and medics performed CPR on D’ashon for over **forty minutes**. When they reached the hospital, he still had no pulse. The doctors were miraculously able to revive him, but D’ashon suffered irreparable brain damage due to his brain having gone without oxygen for such a significant period. D’ashon was discharged from the hospital on October 21, 2016, more than two weeks after he had stopped breathing. After this tragic incident, Superior finally agreed to approve round-the-clock nursing for D’ashon—as requested by Badawo from the beginning. He needs such care even more today, as one of the consequences of his care, or lack thereof, is that D’ashon suffers from seizures an average of six times per day.

#### **V. Superior’s Hiding and Potential Destruction of Information**

25. Since that event, Petitioner has tried numerous times to obtain information from Superior regarding its decision to interfere with the medical decisions of D’ashon’s physicians. Upon information and belief, Superior’s conduct and the underlying circumstances surrounding Superior’s prior unsupported denial of 24-hour nursing care to D’ashon—and the resulting injuries and damages suffered by D’ashon as a result of this denial by Superior—may give rise to certain claims in favor of Petitioner (on D’ashon’s behalf) against Superior. However, Superior has, to date, refused to provide any such information and is potentially concealing certain information solely within its knowledge and records to avoid any responsibility it may have and pressuring HHSC representatives to do the same. Not only is Superior’s failure to turn over information telling, but too are the means of communications Superior has used (private phone calls and in-person meetings with HHSC) and its tactics of silencing others, including Care Pro.

26. In fact, efforts to unearth Superior’s actions and role has only revealed indications of a long standing pattern of choosing its financial interests over the interests of those like D’ashon that

Superior is obligated to protect. For example, Superior has stated in public filings that its decision to routinely deny claims for coverage has saved it more than \$30 million per year (at least in the year reviewed), while near the same time has paid a similar amount in annual bonuses to its management over the objection of the State Legislature. Moreover, efforts at obtaining public information from HHSC shows that Superior largely communicates with that agency through phone calls and text messages through Dr. Glomb and in-house lobbyist Holly Munin, while the HHSC employees such as Gary Jessee charged with preserving those messages have reportedly failed to do so. On information and belief, these forms of communications are intended to minimize the public record for decisions such as those in this case to limit liability of Superior, or HHSC's oversight from the Texas Legislature.

27. Given Superior's conduct, silence is no longer an option. Only a deposition and documents will reveal the truth and aid Petitioner in determining whether viable claims in favor of D'ashon truly exist. Thus, Petitioner seeks information regarding potential civil claims against Superior, pursuant to Tex. R. Civ. P. 202.1(b) and 202.5, including the pre-suit deposition of a Superior corporate representative, along with a subpoena duces tecum to ascertain the viability of such claims.

#### **VI. PRE-SUIT ORAL DEPOSITIONS AND DOCUMENT PRODUCTION REQUESTS**

28. Petitioner requests the Court to issue an order authorizing Petitioner to conduct an oral examination of Superior on the following topics and produce responsive documents related thereto:

- a. Superior's communications with HHSC representatives, physicians, and third-parties regarding D'ashon's treatment;
- b. Phone records of calls and text messages between Superior representatives, including Dr. William Glomb and Holly Munin, and HHSC representatives concerning D'ashon's case;
- c. Superior's recruitment of Dr. William Glomb from HHSC and his role in such communications with HHSC;

- d. Internal Superior communications involving D'ashon and any applicable policies and procedures applicable to Superior's decision in D'ashon's case;
- e. All records and other documents regarding D'ashon's treatment;
- f. Any communications with D'ashon's medical providers about D'ashon or his case;
- g. Facts and circumstances surrounding Superior's prior lawsuit against Care Pro, including the underlying allegations in the lawsuit and the final result of such lawsuit;
- h. Facts and circumstances surrounding the Superior conference call regarding D'ashon's medical treatment and Superior's approval or denial of same which occurred on or about August 4, 2016, and any records, minutes, notes, or the like pertaining to such a conference call;
- i. Facts and circumstances establishing whether Superior forecasted any costs related to D'ashon's medical care and utilized same as a factor in approving or denying the requested 24-hour nursing care, including any documents evidencing same; and
- j. Any reports given to HHSC or any other state or federal agency about the aforementioned matters.

*See* TEX. R. CIV. P. 202.1(b), 202.2(g), and 202.5.

29. Petitioner has an immediate need to investigate whether the underlying facts and circumstances at issue with regard to Superior's conduct support viable civil claims against Superior. In particular, the statute of limitations on such claims is fast approaching, thus necessitating the depositions and document production requested herein.

30. The likely benefit of allowing Petitioner to take the requested depositions and obtain the requested documents to investigate these potential claims far outweighs the burden or expense of the procedure. TEX. R. CIV. P. 202.4(a)(2). Specifically, the burden or expense of this Rule 202 deposition of a Superior corporate representative and the production of the requested documents is low. Petitioner will schedule a mutually-convenient time and place to conduct the depositions and produce the requested documents.

31. The likely benefit of the pre-suit depositions and document production to Petitioner and the justice system is substantial. Petitioner's investigation of potential breaches of duties owed to

D'ashon by Superior to recommend, approve, and provide for D'ashon's best interests, as opposed to Superior's financial interest, is certainly worthwhile given the underlying facts of this tragic case. In addition, these pre-suit depositions and document production will provide concrete information to allow Petitioner to adequately investigate potential civil claims and will ensure that, if litigation is necessary, it will be based on testimony and facts from knowledgeable witnesses. Furthermore, the investigation may forestall litigation by allowing the parties to reach an amicable resolution of Petitioner's potential claims.

32. In short, the pre-suit depositions of a Superior corporate representative on the limited topics listed above, along with the production of the documents requested herein by Petitioner, are likely to achieve the goals of reducing or eliminating frivolous litigation that Rule 202 is intended to achieve. *See* TEX. R. CIV. P. 202.4; *see also In re Temple*, 239 S.W.3d 885, 887 (Tex. App.—Texarkana 2007, no pet.); *In re Hewlett Packard*, 212 S.W.3d 356, 362 (Tex. App.—Austin 2006, no pet.).

#### **VII. HEARING**

After service of this Rule 202 Petition and notice thereof, Rule 202.3(a) requires that the Court hold a hearing on Petitioner's Rule 202 petition.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Petitioner, Linda Badawo, as next friend of D'ashon Badawo (f/k/a D'ashon Morris), a minor, asks the Court to set this Rule 202 Petition for hearing, and, after such hearing, that the Court order a Superior corporate representative appear for and give a deposition under oath on the topics identified above, in addition to ordering Superior to produce responsive documents requested herein, along with such other relief, whether in law or in equity, to which Petitioner may be justly entitled.

Dated June 26, 2018.

Respectfully submitted,

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

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