

IN THE CHANCERY COURT OF TENNESSEE
20th JUDICIAL DISTRICT, DAVIDSON COUNTY, NASHVILLE

STATE OF TENNESSEE,)
Ex rel. JONATHAN SKRMETTI,)
Attorney General and Reporter,)
)
Plaintiff,)
)
v.)
)
DR. JAIME M. VASQUEZ, M.D.,)
THE CENTER FOR REPRODUCTIVE)
HEALTH, P.C., THE CENTER FOR)
ASSISTED REPRODUCTIVE)
TECHNOLOGIES, LLC,)
FERTILITY LABORATORIES OF)
NASHVILLE, INC. and AMERICAN)
EMBRYO ADOPTION AGENCY,)
)
Defendants.)

NF
Case No. 24-0520-IV

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FILED

ORDER APPROVING
CRYOPRESERVATION SERVICES AGREEMENT

Before the Court is (i) the Receiver’s Motion for an Order Approving the Cryopreservation Services Agreement dated as of August 1, 2024 by and between the Receiver (Jeremiah Foster of Resolute Commercial Services, LLC), Tennessee Fertility Associates, PLLC (“Facility”), and the State of Tennessee, Office of the Attorney General and Reporter (the “Agreement”); (ii) Defendants’ [sic] Response and Objections to Portions of Cryopreservation Storage Agreement (“Vasquez Objection”) filed on August 13, 2024; and (iii) Objection by Person Doe 1 and Person Doe 2 to Motion to Approve Cryopreservation Services Agreement and Movement of Embryos (“Doe Objection”) filed on August 14, 2024. The Court conducted a telephonic hearing on August 14, 2024 at which counsel for the Receiver, the Tennessee Attorney General, Dr. Vasquez, counsel for the landlord, and counsel for the parties identified as Person Doe 1 and Person Doe 2 presented

argument. Counsel for Dr. Vasquez indicated on the record that she withdrew the Vasquez Objection, without waiving any rights or arguments as to her client's position with respect to certain genetic material that was previously donated to AEAA (as defined below) and without waiving any rights or arguments as to her client's position with respect to the validity of claims set forth in its complaint by the Tennessee Attorney General. The Court accepts the withdrawal of the Vasquez Objection to include the caveats noted on above. The Doe Objection is overruled and counsel for the Receiver is directed to confer with counsel for the Does in regard to the matters raised in the Doe Objection.

Finding the Motion well taken, the Court hereby GRANTS the Motion, and approves the Agreement. In furtherance of this Order, the Court hereby finds and orders as follows:

Factual background

1. On April 26, 2024, the Court entered a Temporary Restraining Order with Asset Freeze and Appointing Receiver ("TRO") pursuant to which the Receiver was appointed Receiver for Center for Reproductive Health, P.C., ("CRH"), Center for Assisted Reproductive Technologies, LLC ("CART"), Fertility Laboratories of Nashville, LLC ("FLN"), and American Embryo Adoption Agency, LLC ("AEAA") (each a "Receivership Entity" and collectively, the "Receivership Entities"). The TRO was converted to a Temporary Injunction on June 24, 2024.

2. Prior to the appointment of the Receiver, one or more of the Receivership Entities were engaged in the business of providing infertility and reproductive health services, including cryopreservation services on behalf of its patients and donors.

3. The Receivership Entities' cryopreservation services involve the preservation of human tissue including sperm, embryos, and oocytes on behalf of its patients and donors (as defined in the Agreement, the "Tissues").

4. Defendant Jaime M. Vasquez, M.D., prior to the appointment of the Receiver, was the sole physician provider on behalf of the Receivership Entities.

5. Prior to the appointment of the Receiver, the Receivership Entities substantially curtailed operations and the substantial majority of its workforce ceased employment with the Receivership Entities. The Receiver has determined that continuation of the operations of the Receivership Entities is not feasible or practical given the limited financial resources, lack of operations and staff, and revocation of ambulatory surgical treatment center license.

6. The Tennessee Attorney General, pursuant to the authority set forth in the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, et seq., moved the Court to appoint Receiver for the Receiver Entities to protect the consumer-patients of Receiver Entity from potential violations of Tennessee's consumer protection laws.

7. The Receiver has determined it to be in the best interest of the Receivership Entities' respective estates, and the Tennessee Attorney General has concurred that it is in the best interest of the public, to engage the Facility to provide cryopreservation services and services for transfer of patient care ("Services") for the Tissues pursuant to the Agreement.

Order

Now, therefore, good cause appearing therefor, the Court grants the Motion and approves the Agreement in its entirety. Further, the Court hereby Orders as follows:

1. In accordance with the terms of the Agreement, Facility will transport, take possession, store, and transfer the Tissues as provided herein. Any consents, authorizations, and releases applicable to Receiver Entities for these activities shall be applicable to Facility for these activities.

2. In accordance with the terms of the Agreement, as compensation to Facility for transporting, taking possession, storing, transferring, and performing the administrative services associated with the ultimate disposition of the Tissues as provided herein, Facility will be paid by the Tennessee Attorney General's Office, as facilitated by the Receiver during the timeframe of the Receivership and any Successor Receiver thereafter, as stated in the Agreement. The Tennessee Attorney General has agreed to make such payments after concluding that the immediate performance of these services is necessary to adequately protect the public interest, specifically the rights and interests of patients of Receivership Entities, and after concluding that no other sources of adequate funding are currently available to cover the costs of these services.

3. Within three (3) weeks from taking possession of the Tissues, Facility shall conduct an initial audit of Tissues and associated patient records, sorting each Tissue sample into the following categories: "patient-associated," "patient or donor donated to Receiver Entity," and "unknown."¹ Facility will also match all patient transfer requests to audited Tissues and patient documentation, identifying any patient transfer requests that do not clearly match to Tissues and/or patient documentation.

4. Facility shall retain the Tissues for up to six (6) months from the date on which it takes possession, during which time, Facility shall undertake its commercially reasonable best efforts that are reasonably calculated to advise the Receivership Entities' patients of the disposition of their respective Tissues, and of steps that might be taken to have such Tissues transferred to a facility of their choice for ongoing care and/or storage, which may include transfers to Facility. Facility shall have no liability for its good-faith choices in determining reasonable efforts to provide notice to Receivership Entities' patients or to coordinate transfer to other facilities under

¹ The "unknown" category will refer to any genetic material where documentation is not clear on the association with a specific patient or donor.

this provision, provided that such reasonable efforts at minimum include public posting on Receivership Entity's website, direct mail and electronic mail to all known patient and donor addresses, and responding to all patient and donor inquiries to Receiver Entities, Facility, and the Tennessee Attorney General.

5. After the initial six (6) months of possession, Facility shall endeavor to have transferred all Tissues for which Facility has received valid transfer requests from patients, identified all Tissues that are unassociated to any patient, and identified all Tissues associated with a patient for which Facility does not have a valid transfer request.

6. If the Receivership Entity patient with rights to Tissues wishes to engage Facility for ongoing care and/or storage, such patient will enter into a separate agreement directly with Facility. Upon entry into any such agreement, the terms of such agreement between the patient and Facility shall supersede the terms of the Agreement.

7. Receiver shall be responsible for reviewing and approving the process for the disposition of Tissues and for final decisions regarding disposition of Tissues, including but not limited to, the transfer, donation, or any other lawful method of disposition methods of the Tissues stored under this Agreement. For Tissues that are unassociated to any patient, either due to status "unknown" or "patient or donor donated to Receiver Entity," Facility shall transfer such Tissues as directed by Receiver, subject to the approval of the Tennessee Attorney General and this Court.

8. For patient-associated Tissues for which Facility does not have a valid transfer request at the end of the initial six (6) months of possession, Facility shall transfer such Tissues to long-term storage, either with Facility or with a different long-term storage provider selected by Receiver, subject to approval of the Tennessee Attorney General and this Court, where such Tissues must be readily retrievable for patient transfer requests.

9. With regard to Tissues that are not patient-associated, if any such Tissues cannot be donated or otherwise lawfully disposed of, continued storage shall be at the storage provider selected by the Tennessee Attorney General and at the expense of the Tennessee Attorney General unless the same shall apply to the Court for relief from this provision; no such unclaimed Tissues shall be donated or otherwise disposed of absent a final order from this Court.

10. Facility shall not be deemed to warrant that the quality or quantity of the Tissue in its possession will be fit for any particular purpose and shall have no responsibility for any handling or storage of such tissue prior to such Tissue being placed with the carrier of Facility's choosing for transport to Facility.

11. Facility shall not be held responsible for any unforeseeable or unavoidable events that may affect the stored Tissues, including but not limited to natural disasters, power outages, or equipment failures. Facility's acceptance of the Tissues under the terms of the Agreement shall not be construed as an assumption of responsibility for the condition of the Tissues, nor shall it be deemed a guarantee of the success of any cryopreservation services or future viability of the Tissues. Facility shall not be responsible for any liabilities arising from the inherent risks of the cryopreservation process, or any issues arising from the condition of the Tissues at the time of transfer and while under the care and control of Receiver Entities and Jaime Vasquez, M.D.

12. Facility shall not be liable for any acts related to the Tissues and related cryopreservation services prior to the transfer of the Tissues to Facility under the Agreement, including but not limited to, claims of improper freezing, labeling, maintenance, storage, withdrawal, thawing, delivery or any other handling of cryopreserved tissues as well as claims of malpractice, negligence, damage, loss, or other actionable conduct related to the Tissues at any

time prior to the transfer to Facility under the Agreement and while under the care or control of the Receiver Entities or Jaime Vasquez, M.D.

13. Facility shall release any patient-associated Tissues only to the Receivership Entities' patient with rights therein, or in accordance with written instructions provided by such patients. If such patient is deceased, Facility may release the Tissues only in accordance with the patient's prior written instructions; if no such instructions exist, to the individual specifically named in such patient's duly probated will in a specific bequest of the patient's Tissues after his/her death. Should the patient's will not contain a specific bequest of his/her Tissues, the Tissues may be donated or otherwise lawfully disposed of in accordance with a final Order of this Court.

14. If a Receivership Entity patient is or becomes legally incapacitated, Facility shall release the Tissues associated with such patient in accordance with written instructions provided by the patient; if no such instructions exist, power to direct what is to be done with that patient's Tissues will pass to the individual named in the patient's durable medical power of attorney, if such document exists and specifically references the power to make decisions about the patient's Tissues. Should the patient's durable medical power of attorney not contain a specific provision for his/her Tissues, the Tissues may be donated or otherwise lawfully disposed of in accordance with a final Order of this Court.

15. All of Facility's responsibilities with respect to any Tissue, including its responsibility for storage, shall cease upon the occurrence of any one or more of the following events, and Facility shall bear no liability for events transpiring after:

- a. Transfer or other lawful disposition of the Tissue as directed or authorized by the associated Receivership Entity patient or as otherwise provided above.

b. For Tissues that have not been so transferred or otherwise disposed of, failure of the Receivership Entity patient with rights to such Tissue or the Tennessee Attorney General to enter into a separate storage agreement with Facility at the conclusion of the initial 6-month period during which Facility has possession of the Tissue.

16. In light of the extenuating circumstances of this case and as described herein, to effectuate the critical work of identifying and organizing Tissues held by the Receivership Entities, the Court authorizes the transfer of Tissues to Facility without requiring the Parties to obtain consent from every interested Receivership Entity patient.

17. The Facility shall not be held liable for the inherent risk in the process of collection, freezing, storage, and transport, and thawing of Tissues which may render them ineffective or inappropriate for insemination purposes. The Facility shall also not be held liable for pregnancy, the health, or condition of any child resulting from the use of the patient's Tissues, or the failure of pregnancy to occur in any insemination attempt using any Tissues stored by Facility under the Agreement.

18. The Facility shall not be liable for damage or destruction to stored Tissues from flood, earthquakes, fire, vandalism, theft, riot, war, or act of God.

19. Facility shall not be required to deliver, store, maintain, or otherwise provide services related to any Tissue in a manner that would violate any applicable law.

20. Facility shall have access to the Receivership Entities' patient data, for the duration of the time in which Facility has possession of the Tissue, which will be subject to the rights and obligations contained in a Business Associate Agreement between Receiver and Facility (attached as Exhibit D to the Cryopreservation Services Agreement (Exhibit I to the motion)).

21. The Receiver is hereby authorized to disclose and provide the Receivership Entities' patient data to Facility and is authorized to take all actions reasonably necessary to do so. To the extent that files delivered to Facility contain data other than the Receivership Entities' patient data, including without limitation, data related to patients other than the Receivership Entity patients, disclosure and provision to Facility of any such additional data is also authorized. Facility will maintain the privacy of all patient data provided under the Agreement in the normal course of its business and in accordance with its ordinary privacy policies.

22. Upon the Tissues being placed with the carrier of Facility's choosing for transport to Facility, the Receiver and the Receivership Entities will be released from all claims, causes of action, and liabilities of any kind arising out of or in any way related to the storage, handling, transport, provision, or disposition of the Tissues, including, without limitation, claims that might otherwise be asserted by Facility or any Receivership Entity patient, except with respect to claims of gross negligence or malfeasance by Receiver.

IT IS SO ORDERED.


HON. RUSSELL T. PERKINS
CHANCELLOR

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CERTIFICATE OF SERVICE

I certify that I served a copy of this document on August 15, 2024 via email on the following:

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