

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|-------------------------------------|---|-----------------------|
| JANET & FRANCIS MURNAGHAN, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. 2:13cv03083 (MMB) |
| |) | |
| UNITED STATES DEPARTMENT OF |) | |
| HEALTH AND HUMAN SERVICES; |) | |
| KATHLEEN SEBELIUS, in her official |) | |
| capacity as Secretary of Health and |) | |
| Human Services |) | |
| |) | |
| Defendants. |) | |

**JOINT MOTION TO POSTPONE PRELIMINARY INJUNCTION HEARING
AND TO EXTEND TEMPORARY RESTRAINING ORDER**

The parties to this case—plaintiffs, Janet and Francis Murnaghan, and defendants, the United States Department of Health and Human Services and Kathleen Sebelius, in her official capacity as Secretary of Health and Human Services—hereby request that the Court postpone the preliminary injunction hearing currently scheduled for June 14, 2013, and extend the Temporary Restraining Order entered on June 5, 2013 as described below. A proposed order is attached.

On June 10, 2013, the Executive Committee of the Organ Procurement and Transplantation Network (“OPTN”) convened an emergency meeting to discuss whether the lung allocation policy, and specifically those provisions challenged by the above-captioned lawsuit, should be suspended on a temporary or permanent basis. At that meeting, the Executive Committee decided not to suspend the current lung allocation policy, but decided to amend the policy to permit a transplant program to seek individual exceptions for children below age 12 to

permit them to be treated as adolescents under the lung allocation policy. Specifically, the Executive Committee amended Policy 3.7.6.4 (Lung Candidates with Exceptional Cases) to allow that, for candidates below age 12, “transplant programs may request classification as an adolescent candidate for the purposes of Policy 3.7.11 (Sequence of Adult Lung Allocation) while maintaining their pediatric classification for the purposes of Policy 3.7.11.1 (Sequence of Pediatric Donor Lung Allocation).” See Policy Notice of June 11, 2013, *available at* http://optn.transplant.hrsa.gov/ContentDocuments/Policy_Note_06-2013.pdf. This new policy was effective immediately, on June 10, 2013.

The parties understand that, pursuant to this new policy, the Children’s Hospital of Philadelphia, which is the transplant center for plaintiffs’ daughter, Sarah Murnaghan, submitted an exception application on her behalf on June 11, 2013. Accordingly, to allow plaintiffs and their daughter’s transplant center sufficient time to avail themselves of this new process, which may render further litigation unnecessary, the parties respectfully request that the Court vacate the preliminary injunction hearing currently scheduled for 10 a.m. on Friday, June 14, 2013, and extend the Temporary Restraining Order until the earliest of the following:

1. The date that the OPTN’s Lung Review Board approves the transplant center’s application to classify plaintiffs’ daughter as an adolescent for purposes of Policy 3.7.11, either made as an initial determination or on appeal;
2. Seven days after the date that the OPTN’s Lung Review Board denies the transplant center’s application to classify plaintiffs’ daughter as an adolescent for purposes of Policy 3.7.11, but if a timely appeal of that denial is sought then seven days after the appeal is denied by the Lung Review Board; or
3. July 9, 2013.

The TRO will expire on the earliest of these dates.

Respectfully submitted,

/s/ Stephen G. Harvey

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Attorneys for Defendants

Dated: June 13, 2013

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2013, a true and correct copy of the foregoing Joint Motion to Postpone Preliminary Injunction Hearing and to Extend Temporary Restraining Order was electronically filed through the United States District Court for the Eastern District of Pennsylvania Electronic Document Filing System (ECF), that the document is available for viewing and downloading on that system, and that service on all parties will be accomplished electronically through that system.

/s/ Stephen G. Harvey
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