STATE OF ALABAMA §
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COUNTY OF WALKER §

BEFORE ME, the undersigned authority, personally appeared, Thomas C. Mayes, M.D., FAAP, FCCM, who being duly sworn by me, upon his oath deposed as follows:

1. My name is Dr. Thomas C. Mayes. I am over twenty-one years of age, have never been convicted of a felony or a crime involving moral turpitude. I am fully competent to make this affidavit and have personal knowledge of the facts stated herein and they are true and correct.

2. I graduated medical school at Georgetown University in 1984. I was certified by the American Board of Pediatrics (ABP) in Pediatrics in 1987 and Pediatric Critical Care Medicine (PCCM) in 1990 and have continuously maintained certification in both through the ABP's Maintenance of Certification (MOC) program. As a board-certified pediatric intensivist, I have practiced pediatric critical medicine at multiple Texas hospitals and have held faculty positions in several Texas medical schools over the last 30 years. I am a Fellow of the American Academy of Pediatrics and the American College of Critical Care Medicine.

3. For twenty-seven years, I practiced as a pediatric intensive care specialist in San Antonio, Texas and was on the full-time faculty of the University of Texas Medical School in San Antonio (now UT Health San Antonio) from 1994 - 2016. At UT Health San Antonio I served in a variety of roles including founding division chief of pediatric critical care, founding pediatric critical care fellowship training program director, associate dean for clinical affairs, interim dean of the medical school, and chairman of the Department of Pediatrics (2002-2016). During my entire tenure at UT Health San Antonio, I maintained active clinical practice in pediatric critical care medicine. In addition to my academic responsibilities I served as medical director of the Pediatric Intensive Care Units (PICU) at University Hospital and Santa Rosa Children's Hospital

in San Antonio, Texas. From 2006-2012 I served as Physician-in-Chief of CHRISTUS Santa Rosa Children's Hospital in San Antonio. This position is best described as Chief Medical Officer for the Children's Hospital. Among my responsibilities were assuring quality care through appropriate credentialing of physicians and other providers based on training, experience and certification.

4. On sabbatical from UT Health San Antonio from September 2015 through August 2016 I served as a Robert Wood Johnson Foundation Health Policy Fellow in Washington D.C. I was assigned to work as a staff member of the Subcommittee on Health of the Committee on Ways and Means of the U.S. House of Representatives. In November of 2016 I retired from UT Health and relocated to New York for personal reasons.

5. I began work as a locum tenens pediatric intensivist at El Paso Children's Hospital (TX) in January 2017 and for the next 15 months spent approximately 1 week a month in El Paso working in the PICU at the Children's Hospital.

6. In early 2018 I was asked by the Dean of the Paul L. Foster School of Medicine (PLFSOM) of Texas Tech University Health Sciences Center El Paso to serve as interim Chair of the Department of Pediatrics. I agreed and began my service as chair of the academic pediatric department at the PLFSOM on April 1, 2018 and conclude my tenure on December 31, 2019. Shortly after this full-time academic employed appointment, I was appointed to the non-salaried medical staff position of Chair, Department of Pediatrics at El Paso Children's Hospital (EPCH). The EPCH Department of Pediatrics is composed of all providers, irrespective of PLFSOM faculty status, who are pediatricians or pediatric subspecialists. Other medical staff at EPCH were appointed to the Departments of Surgery, Anesthesia, and Diagnostic and Interventional Services depending on their specialty and training. A fifth department of dental services was added in late 2018 or early 2019.

7. While serving in my capacity as medical staff Chair the Department of Pediatrics at EPCH, one of my tasks was to ensure that physicians were appropriately trained, certified, qualified, and could demonstrate appropriate experience in practicing the hospital and professionally accepted standards of care while practicing pediatric medicine at EPCH.

8. EPCH's bylaws required narrow and clear industry-accepted standards of care relating to peer review. This was not unique. Over the last thirty years, medical providers and hospitals have widely adopted rigorous peer review processes, to ensure hospital doctors follow narrow and well-defined hospital and industry-accepted guidelines relating to standards of care and have their work product reviewed routinely by others for quality assurance.

9. Perhaps the most important requirement in the ECPH bylaws required practicing doctors at ECPH to be board certified in their chosen practice field. Put plainly, doctors working as pediatric intensive care specialists were required to be board certified. This policy is not unique to ECPH. It has been accepted as standard medical practice in every hospital I have practiced in over the last 30 years and over the last twenty years has become the national; standard, particularly for hospitals designated as children's hospitals.

10. In late 2018, Dr. Roberto Canales, applied for medical staff privileges at EPCH. I had not previously met Dr. Canales but was aware of his long-standing practice at another facility in El Paso. Around the time of his application for EPCH privileges I had the opportunity to review the medical records of a patient who had been under his care. That review was part of my being retained as an expert witness in a legal action not involving Dr. Canales. In that review, I was startled to see the poor quality of his medical records. I observed the documentation was universally generated by nurse practitioners (NPs) with his co-signature added at much later dates and that the physical examinations recorded in the chart were in no way consistent with

photographs I had of the child on the same dates. My impression in general is that the electronic medical record was essentially "pencil whipped" meaning boxes were checked without a corresponding examination.

11. I knew that Dr. Canales, working as a pediatric intensive care specialist at another hospital in El Paso, was neither trained nor certified by the ABP in PCCM. This was highly irregular as El Paso, in 2018, had at least eleven fellowship trained and ABP certified PCCM specialists working in the community. I viewed the lack of formal training and/or board certification in PCCM to pose a significant risk of injury to EPCH patients. In the past, I have terminated at least 5 medical school faculty physicians who were unable to achieve board certification in their chosen practice field within two testing cycles.

12. Therefore, because Dr. Canales was not fellowship trained, not certified and in my view was unqualified to practice pediatric critical care medicine at EPCH, I declined to sign off on Dr. Canales credentialing in the area of pediatric intensive care medicine. I did sign off on allowing Dr. Canales to practice general pediatric medicine. Dr. Canales was board certified in by the ABP in Pediatrics (general pediatrics) in 1985 and received a "permanent" certificate. In 1988 the ABP stopped issuing permanent certificates and began issuing time-limited certificates which required perioding testing to maintain board certification and ultimately evolved into the MOC program which is the vehicle to assure quality diplomates through a combination of continuing medical education, participation in quality improvement initiatives and periodic (every 10 years) testing. As of today, the American Board of Pediatrics website (www.abp.org) indicates that Dr. Canales was certified in Pediatrics in 1985 with certificate number 31696 which does not expire and that <u>he does not</u> participate in MOC. In my experience reviewing credentialing files, most pediatricians with "permanent" certificates participate in MOC as part of their commitment to

provide quality care to children.

13. Dr. Canales had applied for EPCH medical staff privileges in 3 distinct areas: general pediatrics (hospital care of children not in an intensive care unit), pediatric hematology/oncology for the care of children with cancer, and pediatric intensive care. As Dr. Canales had appropriate training and a permanent certificate in pediatrics from the ABP and all other documents were in order, I signed off on this set of privileges. As he had 3 years of hematology/oncology fellowship training at reputable programs in the early 1990s and had been providing care to children with cancer and blood disorders in El Paso for over 20 years, I accepted the recommendation of the medical director of hematology/oncology and signed off on these privileges and requested a waiver as called for by the EPCH Medical Staff Bylaws. As noted above I declined to approve credentials or request a waiver in credentialing for pediatric intensive care medicine.

14. When EPCH hospital administration discovered my refusal to sign of on Dr. Canales' pediatric intensive care privleges, I was ambushed by hospital administration, who repeatedly requested that I allow an exception for Dr. Canales.

15. This all began when one hospital administrator, Ms. Melissa Padilla—who reported directly to EPCH CEO Cindy Stout—requested a meeting with me, Dr. David Yates who chaired the EPCH Credentials Committee, her and Ms. Stout at 5 pm on a Monday evening. I was presented with some forms to sign related to Dr. Canales. My standard practice is to read all forms before I sign them. Upon doing so, I discovered that one of the forms was a waiver form that would create an exception and allow Dr. Canales to practice pediatric intensive care medicine despite his clear lack of certification, training, and qualifications.

16. I refused to sign the waiver form. I explained to Ms. Padilla why Dr. Canales was

significantly underqualified to practice as a pediatric intensive care specialist and why I could not in good conscience allow Dr. Canales to treat patients as a pediatric intensive care specialist. I agreed only to sign off on Dr. Canales' work in the area of general pediatric care. Ms. Padilla was clearly upset at my refusal to sign the waiver.

17. At about 45 minutes into this meeting Ms. Stout, CEO of EPCH, arrived and the whole discussion was repeated. Ms. Stout attempted to "brow beat" me into signing the waiver. She explained in detail that the hospital needed Dr. Canales to work as an intensive care specialist because of his ability to generate increased inpatient volume and associated revenue for the hospital. She explained that it was "very important for the hospital to get Dr. Canales' business," and "it would be very beneficial to the hospital." She further explained the volume of patients and money Dr. Canales could generate for EPCH if allowed to work as a pediatric intensive care specialist and explained that the hospital was not doing well financially.

18. Again, I refused to sign her waiver and explained why Dr. Canales posed a significant risk to EPCH's patients in the area of pediatric intensive care medicine, my own subspecialty. Ms. Stout left our meeting upset.

19. A few days later, I attended a 7 am meeting with Drs. Chet Moorthy (radiologist and past EPCH chief of staff), David Yates (oral surgeon and chair of the EPCH Credentials Committee), Jarrett Howe (pediatric surgeon), Bill Spurbeck (pediatric surgeon and Chair of EPCH Department of Surgery) and Marc Orlandi (Chair of EPCH Anesthesia Department). This meeting was essentially a recapitulation of the meeting described above. The group's message was that Dr. Canales "was a great guy," and they could all attest to his skill as a pediatric intensivist and that the hospital really needed his business. I listened and explained that he did not meet the qualifications set out in the EPCH Medical Staff Bylaws and that as a very senior Texas fellowship

trained and board-certified pediatric intensivist I was in a better position to judge his suitability for privileges. Dr. Prashant Joshi, the EPCH PICU Medical Director, also needed to sign off on the credentials before being presented to me. He was out of the country and so things were deferred until he returned, could evaluate the request and make a recommendation. Upon his return and review of Dr. Canales's credential packet he too declined to sign off. The badgering went on for another week or so and through at least one but perhaps two credential committee meetings, but ultimately, I let Dr. Yates know that further discussion was counterproductive as I wasn't signing off on the privileges or requesting a board certification waiver.

20. Without my signature requesting to waiver of the requirement for board certification for Dr. Canales to practice in the area of pediatric intensive care medicine, the Credentials Committee voted to recommend approval anyway and transmit it to the Medical Executive Committee for approval and submission to the EPCH Board of Directors for approval and granting of privileges. I voted against both actions as a member of the Credentials Committee and the Medical Executive Committee. The EPCH Board of Directors granted privileges for Dr. Canales to practice as a pediatric intensive care specialist over my rigorous objections.

21. As interim chair of the academic Department of Pediatrics at the PLFSOM I learned that Dr. Canales had previously obtained a non-paid clinical faculty appointment as clinical assistant professor of pediatrics. As such, he could supervise both medical students and resident physicians from the PLFSOM. After the EPCH Board of Directors granted him privileges and upon the request of Ms. Cindy Stout, EPCH CEO, I attended via videoconference a meeting on April 24, 2019 with Ms. Stout, Dr. Canales, Ms. Padilla and the pediatric residency program director, Dr. Jesus Peinado. On April 25, 2019 I wrote a letter to Dr. Canales providing clear conditions on which he could supervise medical students, and I instructed him that he was to refrain

from supervising or training medical students in the area of pediatric intensive care medicine and his supervision and training would be limited to general pediatric care and pediatric hematology/oncology.

22. Dr. Canales began admitting patients to EPCH in March of 2019. Accommodations for Dr. Canales increased throughout 2019. In my last meeting with Ms. Stout in November r of 2019 we discussed my concerns as PLFSOM academic chair of seemingly to two sets of quality standards and processes in place at EPCH. One set applied to Dr. Canales and the other set applied to everyone else. She denied this to be the case but the conversion evolved to the EPCH Medical Staff Peer Review Committee which I chaired and my desire to transmit to the medical staff the processes being put into place to resurrect the nascent peer review process. These processes are standard medical staff processes by which providers have peer review. Referrals would come from a variety of areas including morbidity and mortality but could be review for unexpected outcomes. In practice, most of these reviews identify system issues rather than specific practitioner issues but if practitioner issues were identified the practitioner would be notified and invited to provide their perspective and input and if warranted appear before the Peer Review Committee. Despite my insistence that EPCH follow industry-standard peer review process, codified in its bylaws, Ms. Stout notified me that she though Dr. Canales should be present to participate in his own peer review and any other avenue would be unfair. She then decided to put the entire peer review process on hold pending an outside consultant's review and recommendations. In other words, Cindy Stout was telling me that Dr. Canales could grade the quality of his own work without any accountability from his peers. Ms. Stout further explained this was necessary because Dr. Canales probably would not "get a fair shake" from the other physicians at EPCH, specifically those employed by the PLFSOM.

23. EPCH went further and instituted policies to circumvent long standing processes for the transport of patients to EPCH from outside the facility, admission policies such that Dr. Canales could claim "ownership" of patients admitted to other practitioners, providing a separate admissions pathway through the nursing AOD (administrative office of the day) and most disturbing creating two standards of care for children admitted to the PICU. One was the long standing 24/7 in house coverage of the PICU and pediatric transport team by fellowship trained and board-certified pediatric intensivists. The other was the standard of remote care often provided by NPs by a physician neither trained nor certified in PCCM. Ms. Stout it one step further by declaring that the EPCH unit medical directors (PICU, hematology/oncology and general pediatric units) could not review the inpatient charts of Dr. Canales's patients. When I questioned this as a very unusual way for a medical director to assure quality care, she let me know the medical directors served at the pleasure of the EPCH CEO.

24. This policy changed altered the way the PICU operated. Previously, a defined group of individuals oversaw and handled ICU patients and were board certified and trained to do so. That changed with Dr. Canales. Every other doctor was board certified except Dr. Canales. There were times when urgent patient concerns would arise in the ICU, and physicians were forced to respond to staff calls for assistance by saying, "that is not our patient" and "we can't help them." If a patient had a critical deterioration, the on-site intensivist would intervene and care for the child until Dr. Canales arrived. This unfortunately put the nursing and respiratory therapy staff at risk but more so the children admitted to the PICU under his name.

25. This policy—that physicians could only treat their own patients—was a business-first model prevalent in the 1970s and 1980s and has been phased out over the last forty years as specialization has occurred and separate intensive care units have evolved. The standard practice

in Texas Pediatric ICUs, particularly in children's hospitals, is for intensive care units, both pediatric and neonatal, to be covered by one group of appropriately trained and certified intensive care specialists. When Dr. Canales privileging in pediatric intensive care, EPCH disregarding its industry-accepted practices and adopted this archaic approach—where only Dr. Canales could treat his own patients—to accommodate Dr. Canales.

26. It was quite clear to me that EPCH was doing everything in its power to appease Dr. Canales in order to continue to obtain his business. This included appointing Dr. Canales as chief clinical officer in December 2019, a position that included no apparent additional responsibility but likely remuneration for the position. A mandatory medical director meeting was held to announce the appointment but for some reason Dr. Canales didn't show up.

27. In late 2018, I began to periodically meet with Cindy Stout, CEO of EPCH, to review issues and opportunities for the EPCH and the PLFSOM Department of Pediatrics. In November 2018, while the process was ongoing but before Dr. Canales was credentialed, I raised my concerns about the unintended consequences of adding a solo practitioner to a well-run clinical operation in the PICU.

28. By way of example, but not limited to these examples, in the summer of 2019 I met with Cindy Stout and raised concerns that no physician had seen at least one patient in the PICU the weekend in July when I had been on call as a member of the core team. When I contacted the intensivist covering for Dr. Canales he admitted he, the covering physician was in San Antonio. Ms. Stout followed up with me and explained it was nursing staffs fault as the child was to have been transferred. This didn't reflect my 3-year experience with the PICU nursing staff.

29. On March 12, 2019 I met with Cindy Stout and raised concerns that "there is a sole provider who is not subject to peer review." "There is a sole provider who is able to give telephone

orders," which is not allowed. "There is a sole provider who is not subject to peer review." "There are significant concerns by myself and other doctors that the sole provider is not signing his medical charts." It was clear that I was referring to Dr. Canales.

30. Cindy Stout, her administration team, and the ECPH board promoted these accommodations on behalf of Dr. Canales for the sole purpose of appeasing Dr. Canales' demands so Dr. Canales would continue to generate significant patient volume and revenue to ECPH. This was born out in the hospital's revenue. Prior to Dr. Canales' arrival, ECPH's annually lost money. That changed once Dr. Canales began practicing at ECPH. Once Dr. Canales began generating revenue, ECPH took over and direct steps to accommodate Dr. Canales. Cindy Stout stated this was an important reason for accommodating Dr. Canales.

31. It is my opinion that ECPH violated their own bylaws and industry-accepted standards of care repeatedly when it allowed, accommodated and promoted an untrained, uncertified physician to provide direct pediatric intensive care to patients altogether, more egregiously without any oversight, peer review, or quality control. ECPH's other overt actions—including allowing Dr. Canales to phone in orders, avoid signing medical charts, failing to follow hospital procedures, ignoring repeated concerns raised by doctors about Dr. Canales' practice, and threatening doctors that challenged Dr. Canales work product—threatened the lives of patients admitted to ECPH.

32. Summarily, Dr. Canales violated accepted standards of care by routinely practicing pediatric intensive care medicine even though he was untrained, uncertified, and unqualified to do so. Even when doing so, Dr. Canales ignored clear hospital policy and procedure in practicing pediatric intensive care medicine and did so routinely. This repeatedly placed patients in grave danger and promoted a serious and continuous breach in the standards of care widely adopted by

the pediatric medical community.

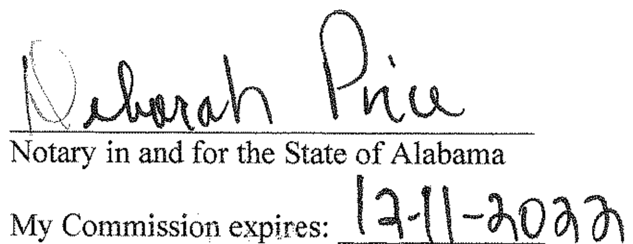
33. I have also been provided with all of the hospital records for the deceased minor child of David Saucedo. In reviewing those records, which total over 1,000 pages, it is my opinion that Dr. Canales repeatedly violated pediatric standards of care, misdiagnosed the patient, and committed gross medical malpractice in treating the child, all of which directly led to the child's death. This is not at all surprising and is consistent with the extent and scope of care I witnessed Dr. Canales provide to patients at ECPH.

34. It is my opinion—as a medical doctor, a senior Texas fellowship trained and certified pediatric intensivist, academic pediatric department chair of two public Texas medical schools, medical director of 3 separate pediatric intensive care units, and medical staff leader at numerous medical institutions, including Physician-in-Chief for 6 years at a Texas children's hospital, across over 30 years of practice—that Dr. Canales presents a real danger to his patients and should be removed from the practice of medicine.

FURTHER AFFIANT SAYETH NAUGHT

Thomas C. Mayes, M.D., FAAP, FCCM

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on the 21st day of April, 2020.



Notary in and for the State of Alabama

My Commission expires: 12-11-2022