

IN THE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

LELAH JERGER and JADE JERGER, on their )  
own behalf and on behalf of their minor child, J.J., )  
and J.J., )

Plaintiffs, )

v. )

No. 3:18-cv-30

SHANNON BLAIZE and ALISON GARRETT, )  
in their individual capacities, )

Defendants. )

JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES**

**Introductory Statement**

1. Lelah and Jade Jerger are the parents of J.J., a 2-year-old child who has been diagnosed with epilepsy. Following a voicemail complaint from one of J.J.’s providers indicating (erroneously) that J.J. was not taking a specific prescribed medication—as the Jergers, concerned about the side-effects of that medication, had initially relied on natural remedies that had proven successful both in other cases and in J.J.’s case—the Indiana Department of Child Services (DCS) initiated an investigation into the alleged medical neglect of J.J. Even though Alison Garrett (a family case manager employed by the DCS who was at all times acting under the supervision and at the direction of Shannon Blaize) was promptly informed that J.J. had already begun taking the medication, she nonetheless required—in order for the Jergers to avoid the filing of a petition alleging that J.J. was a child in need of services—that the Jergers take J.J. for a blood draw to confirm that she was currently on Keppra. This non-consensual blood draw represents a warrantless search and seizure, and

therefore violated J.J.'s Fourth Amendment rights. Insofar as it was required because of the Jergers' decision to attempt natural remedies before committing to a pharmaceutical with significant side-effects, it also violated all plaintiffs' substantive due process rights of familial association.

2. Several days after this blood draw, and despite the fact that she was taking the Keppra, J.J. experienced what appeared to be a small seizure. Following communications from Norton Hospital in Louisville, Ms. Garrett and Ms. Blaize informed the Jergers that they would be required to promptly take J.J. to Norton Hospital rather than to any other hospital. This requirement that the Jergers use a specific provider also violated the plaintiffs' substantive due process rights of familial association.
3. As a result of this ordeal, the plaintiffs are entitled to their damages.

#### **Jurisdiction, Venue, and Cause of Action**

4. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
6. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

#### **Parties**

8. Lelah Jerger is an adult resident of Dubois County, Indiana. She brings this action on her own behalf and on behalf of her minor child, J.J.
9. Jade Jerger is an adult resident of Dubois County, Indiana. He brings this action on his own behalf and on behalf of his minor child, J.J.

10. J.J. are the initials of a minor resident of Dubois County, Indiana.
11. Shannon Blaize is a Supervisor with the Dubois County office of the Indiana Department of Child Services. She is sued in her individual capacity.
12. Alison Garrett is a Case Manager with the Dubois County office of the Indiana Department of Child Services. She is sued in her individual capacity.

### **Factual Allegations**

13. Lelah and Jade Jerger are the parents and guardians of J.J.
14. J.J. is approximately two years old.
15. In or around September 2016, J.J. started experiencing small “twitches.” Although the Jergers took J.J. to her physician, her physician was unable to determine the cause of these twitches.
16. In May 2017, J.J. started again experiencing these twitches. When her parents took her back to her physician, her physician referred her to Riley Hospital for Children (“Riley”) in Indianapolis for a consult with a neurologist.
17. J.J. had an appointment with the neurologist at Riley on or about June 20, 2017. During this appointment the neurologist indicated that he suspected that J.J. had epilepsy but that tests would need to be conducted to confirm this diagnosis. These tests were conducted and this diagnosis was confirmed on July 3, 2017.
18. At that time, the neurologist at Riley recommended that J.J. start taking the medication Keppra, which is designed to minimize the frequency of seizures although it does not eliminate them altogether.
19. Lelah and Jade Jerger did some initial investigation into the side-effects of Keppra and, based on that initial investigation, decided to take some time to further research these side-

effects as well as potential alternative treatments. Of particular concern to the Jergers was the fact that Keppra has been determined to cause extreme irritability in many persons who take the drug, such that persons experience outbursts of anger known colloquially as “Keppra Rage.”

20. Among other things, Lelah Jerger joined a Facebook group of parents whose children have epilepsy. Through this group, she learned that many such parents shared her concerns about Keppra, and also learned that many children with epilepsy have experienced success taking cannabidiol oil, or CBD oil, rather than Keppra.
21. CBD oil is a natural supplement that is made from strains of cannabis but contains low levels of THC (tetrahydrocannabinol), which is what makes marijuana psychoactive. It has been shown to greatly reduce seizure activity in patients with epilepsy, and has been legalized in Indiana for that purpose beginning July 1, 2017.
22. On or about August 4, 2017, the Jergers met with a chiropractic neurologist in Evansville, who placed J.J. on CBD oil as well as fish oil and other vitamins.
23. The Jergers saw an immediate improvement in the frequency of J.J.’s seizures with this natural treatment. While before taking CBD oil, J.J. experienced as many as fifty seizures a day, after she began to take CBD oil she only experienced one or two seizures a day.
24. On August 15, 2017, when J.J. was approximately eighteen months old, J.J had another appointment at Riley, at which the Jergers were again pressured to place her on Keppra. The Jergers explained that, given the side effects of Keppra and the success that they were experiencing with CBD oil, they did not want to commit to placing J.J. on Keppra. Rather, they explained that they would take J.J. to get a second opinion about the appropriateness and dangers of Keppra in light of the successes they were experiencing with CBD oil.

25. On or about September 14, 2017, the Jergers took J.J. for an appointment with a neurologist at Norton Hospital in Louisville, Kentucky. This doctor indicated that she did not have a problem with J.J. taking the CBD oil but would like for J.J. to also take Keppra in an attempt to get her completely free of seizures. However, the doctor agreed that, if the Jergers noticed any side-effects to the Keppra, they could immediately take J.J. off of the medication.
26. Unlike the neurologist at Riley, the Jergers felt confident in this doctor's recommendations. Therefore, on or about September 18th, J.J. began taking Keppra.
27. During J.J.'s September 14th appointment at Norton Hospital, the neurologist also indicated that she would like for J.J. to have an EEG (electroencephalography), a noninvasive method of recording the electrical activity of the brain.
28. Therefore, on or about September 20, 2017, Lelah Jerger called and spoke with a nurse at Riley to see if they would be willing to perform the EEG. At no time during this phone call did the nurse inquire as to whether J.J. had begun taking Keppra; in fact, medication was not discussed during this phone call at all as the purpose of the phone call was to determine whether Riley would be willing to schedule an EEG for J.J. The nurse informed Ms. Jerger that she would speak with the doctor at Riley about whether they would perform an EEG, and would call Ms. Jerger back.
29. The nurse from Riley called Lelah Jerger back that same day and indicated that they would be willing to perform an EEG, and that Ms. Jerger should wait for a phone call to schedule that procedure.
30. Before Ms. Jerger received a phone call to schedule the EEG, she received a phone call from a social worker at Riley, who informed Ms. Jerger that Riley had decided that "it was

time to get CPS [Child Protective Services] involved.” Ms. Jerger was obviously taken aback at this information, particularly insofar as J.J. had already begun taking Kepra and she had simply been attempting to schedule an EEG. During this phone call, she therefore informed the social worker that the Jergers were firing Riley and that the practitioners at Riley would not be responsible for J.J.’s further care. Instead, the Jergers would take J.J. to Norton Hospital for her future care.

31. The following day (September 21, 2017), the Jergers received an unannounced visit at their home from Family Case Manager Alison Garrett, a case manager employed by Dubois County office of the Indiana Department of Child Services (“DCS”).
32. Ms. Garrett explained that DCS had received a voicemail complaint from Riley expressing concern that Lelah and Jade Jerger were not providing J.J. with Kepra even though it had been prescribed to her. On information and belief, neither Ms. Garrett nor anyone else employed by DCS spoke to anyone at Riley or conducted any independent research into J.J.’s condition, Kepra, or alternative treatments for J.J.’s condition.
33. Nonetheless, the Jergers explained to Ms. Garrett that the purpose of the latest phone call with Riley had been to schedule an EEG and that medications were not discussed, that J.J. had in fact been taking Kepra for several days, and that they did not understand why DCS had become involved.
34. Although Ms. Garrett appeared to accept that J.J. had already begun taking Kepra, she indicated that she would have to speak with her supervisor, Family Case Manager Supervisor Shannon Blaize. She therefore excused herself and, while in her car, spoke on the phone with Ms. Blaize for approximately twenty minutes.

35. When she returned, Ms. Garrett—at Ms. Blaize’s direction—provided the Jergers with a form called an “informal adjustment” and told the Jergers that they would be required to sign the form in order to avoid further DCS involvement. This form provided that (a) the Jergers would keep J.J. on Keppra, (b) the Jergers would take J.J. for a weekly blood draw in order to confirm that she remained on Keppra, and (c) that the Jergers would take J.J. to Norton Hospital and to no other provider for the care and treatment of her epilepsy.
36. The Jergers did not believe that they had done anything wrong, and they therefore refused to sign this “informal adjustment.” They were also concerned because they did not want to commit to keeping J.J. on Keppra if she experienced side-effects or if they decided to try using just the CBD oil again, and because they did not feel that it was appropriate for DCS to remove their option to choose or change medical providers.
37. After the Jergers refused to sign the “informal adjustment,” Ms. Garrett (again with Ms. Blaize’s knowledge and at her direction) informed them that, in order to avoid court involvement, they would be required to take J.J. to the hospital for blood work in order to ensure that J.J. was presently taking Keppra.
38. The Jergers did not feel as though they had any choice other than to take J.J. to the hospital so that her blood could be drawn and tested and, in fact, if they had not done so DCS would have filed a petition in juvenile court alleging that J.J. was a child in need of services.
39. The Jergers therefore took J.J. to have her blood drawn on September 21, 2017. However, when they arrived at the local hospital the lab indicated that they had not received an order for the blood draw.
40. The Jergers informed Ms. Garrett that the lab did not have an order for the blood draw and that J.J.’s blood therefore could not be drawn on September 21st. Following some

confusion, the blood draw order was received at the local hospital the following day, September 22nd. At Ms. Garrett's direction, Lelah Jerger therefore took J.J. to have her blood drawn as soon as she got off work on the afternoon of Friday, September 22nd.

41. Shortly before J.J.'s blood was drawn at the local hospital, Ms. Jerger spoke with Ms. Blaize. During this conversation, Ms. Blaize informed Ms. Jerger that DCS had filed a motion to compel the blood draw in court, and that a hearing had been schedule for 8:30am on the following Monday, September 25th.

42. Notwithstanding the fact that Ms. Blaize indicated that a motion to compel had been filed and that a hearing had been scheduled, at no point have the Jergers received service of any such motion or of any order scheduling a hearing.

43. At the direction of Ms. Garrett and Ms. Blaize, J.J.'s blood was therefore drawn on September 22, 2017. At no point did the Jergers voluntarily consent to have J.J.'s blood drawn, but they took her to have her blood drawn only because they were informed that a petition would be filed alleging that she was a child in need of services if they did not allow her blood to be drawn. This blood draw represented both a search and a seizure, for which Ms. Garrett and Ms. Blaize (and DCS) lacked probable cause, did not have a warrant, did not obtain consent, and did not have exigent circumstances.

44. That evening, Ms. Jerger spoke with Ms. Blaize who, after confirming that the blood draw had taken place, informed Ms. Jerger that DCS would be withdrawing its motion to compel and that the Jergers were not required to appear in court Monday morning. To date, the Jergers have not received service of any filing withdrawing DCS's motion to compel.



45. On or about September 26, 2017, J.J., although taking Keppra, experienced what appeared to be a small seizure. This seizure resolved itself without further incident and J.J. did not appear to be in any ongoing distress.
46. On this date, Ms. Jerger spoke with a nurse at Norton Hospital who indicated that J.J. should be admitted to the hospital immediately. However, Ms. Jerger was working at the time and had other children in the home, and so she informed the nurse that she would call her back that afternoon to decide whether J.J. needed to be admitted to the hospital.
47. Before Ms. Jerger could call Norton Hospital back, the nurse at Norton Hospital spoke with Ms. Garrett and/or Ms. Blaize about the request that the Jergers take J.J. to the hospital that day.
48. Ms. Garrett and Ms. Blaize then called the Jergers and informed them that they would be required to take J.J. to Norton Hospital that afternoon.
49. The Jergers were upset that Norton Hospital had relayed information about J.J.'s care and treatment to DCS, even though Lelah Jerger had simply informed the hospital that she would get back to them that day. Because they were upset that Norton Hospital had taken this step, the Jergers asked Ms. Garrett and Ms. Blaize whether they could take J.J. to St. Vincent Hospital in Indianapolis rather than to Norton Hospital.
50. Ms. Blaize responded to this inquiry by indicating that, if they did this, the situation "would look quite different." The Jergers understood this to mean that, if they took J.J. to a provider of their choice other than Norton Hospital, DCS would file a petition to have J.J. declared a child in need of services.
51. The Jergers therefore took J.J. to Norton Hospital on the evening of September 26th. During this visit, they had a long conversation with the neurologist and it was determined,

in consultation with and with the approval of the neurologist, that J.J. would be taken off of Keppra and that her dosage of CBD oil would be increased. It was further determined that the family would contact the hospital if J.J.'s symptoms worsened.

52. To date, J.J.'s symptoms have not worsened, and she has remained almost entirely free of seizures through use of the CBD oil.
53. As a result of the blood draw of J.J., which represented a search and a seizure, J.J. has suffered damages.
54. As a result of the repeated interference in Lelah and Jade Jerger's decisionmaking for their child, and into their parental relationship with J.J., the Jergers have suffered damages.
55. The defendants have, at all times, acted under color of state law.

### **Legal Claims**

56. The blood draw of J.J., which represented a non-consensual search and seizure without a warrant and without exigent circumstances, violated the Fourth Amendment to the United States Constitution.
57. The defendants' requirement that J.J. take Keppra represents an infringement into the Jergers' fundamental familial relationship and, as such, violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
58. The defendants' requirement that the Jergers take J.J. to Norton Hospital and no other medical provider represents an infringement into the Jergers' fundamental familial relationship and, as such, violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

### **Jury Trial Demand**

59. The plaintiffs demand a trial by jury on all issues so triable.

**Request for Relief**

**WHEREFORE**, the plaintiffs respectfully request that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing.
2. Declare that the defendants have violated the rights of the plaintiffs for the reasons described above.
3. Award the plaintiffs their damages.
4. Award the plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

*/s/ Gavin M. Rose*

Gavin M. Rose  
ACLU OF INDIANA  
1031 E. Washington St.  
Indianapolis, IN 46202  
317.635.4059  
<grose@aclu-in.org>

*Attorney for the plaintiff*