

NO. A10-101

State of Minnesota
In Supreme Court

Alan and Keri Bearder, individually and as parents and
natural guardians of Josiah and Alexa Bearder, minors; et al.,
Appellants,

vs.

State of Minnesota, Minnesota Department of Health,
and Dr. Sanne Magnan, Commissioner
of the Minnesota Department of Health,
Respondents.

APPELLANTS' REPLY BRIEF

FARRISH JOHNSON LAW OFFICE, CHTD.
Randall G. Knutson (#0229891)
Daniel J. Bellig (#0389075)
1907 Excel Drive
Mankato, MN 56001
(507) 625-2525

AND

BRIGGS AND MORGAN, P.A.
Sam Hanson (#41051)
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 977-8400

Attorneys for Appellants

ATTORNEY GENERAL OF
THE STATE OF MINNESOTA
Jocelyn F. Olson (#0082016)
Assistant Attorney General
445 Minnesota Street, Suite 1200
St. Paul, MN 55101-2130
(651) 296-9412

Attorneys for Respondents

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
ARGUMENT.....	1
A. Blood samples fall within the protections of the Genetic Privacy Act	1
1. Respondents failed to preserve the issue for appeal	2
2. The court of appeals correctly determined blood samples are subject to the GPA’s privacy protections	4
B. Respondents violated the GPA.....	8
1. Respondents’ storage, use and dissemination of test results and blood samples is not “otherwise expressly provided by law”	8
a. The plain meaning of “expressly”	8
b. The word “expressly” is not ambiguous	9
C. Plaintiffs stated valid claims for relief.....	11
1. The 16 minor Plaintiffs have valid claims.....	11
2. The issue of “dissemination”.....	11
3. Plaintiffs seek injunctive relief.....	13
4. Plaintiffs are entitled to a declaratory judgment.....	14
CONCLUSION.....	15

TABLE OF AUTHORITIES

CASES

<i>Arndt v. Am Family Mut. Ins. Co.</i> , 394 N.W.2d 791 (Minn. 1986)	2
<i>Basich v. Board of Pensions of the Evangelical Lutheran Church in America</i> , 493 N.W.2d 293 (Minn. Ct. App. 1992).....	14
<i>Bearder v. State</i> , 788 N.W.2d 144 (Minn. Ct. App. 2010).....	1, 2
<i>Day Masonry v. Independent School District 347</i> , 781 N.W.2d 321 (Minn. 2010)	3
<i>Hoyt Inn Co. v. Bloomington Commerce & Trade Assocs.</i> , 418 N.W.2d 173 (Minn. 1988)	2
<i>Larson v. State</i> , 790 N.W.2d 700 (Minn. 2010)	2

STATUTES, RULES, AND REGULATIONS

Minn. Stat. § 13.08	<i>passim</i>
Minn. Stat. § 13.386, subd. 1, Genetic Privacy Act.....	<i>passim</i>
Minn. Stat. § 144.125 -128, Newborn Screening Statute.....	<i>passim</i>
Minn. Stat. § 645.17	7
Minn. Stat. § 645.26	7

OTHER AUTHORITIES

Merriam-Webster Online Dictionary. 2009 Merriam Webster Online. 21 September 2009	5
Minn. R. Civ. App. P. 117, subd. 4	2

Sonia M. Suter, *Disentangling Privacy from Property:
Toward a Deeper Understanding of Genetic Privacy*,
72 Geo. Wash. L. Rev. 737 (April 2004) 14

INTRODUCTION

Respondents cannot identify a single law expressly authorizing them to indefinitely store, use, and disseminate Plaintiffs' newborn screening test results and blood samples. In their responsive brief, Respondents rely to no avail on logical inferences to draw their "express authority." Their conduct is subject to the privacy protections of the Genetic Privacy Act (the GPA). Respondents violated and continue to violate the GPA by storing, using, and disseminating test results and blood samples without informed, written consent. Each plaintiff has a viable claim for an injunction and to compel compliance with the GPA so that Respondents are kept from imposing an opt-out system in place of the GPA's statutorily mandated opt-in system. Because the minor Plaintiffs' test results and samples have been stored, used, and in potentially two cases disseminated, without their parents' informed written consent as required by the GPA, Plaintiffs also stated claims for damages. Underlying each of these claims is the necessary declaration that Plaintiffs' blood samples are protected by the GPA and that the GPA prohibits the collection, storage, use, and dissemination of test results and blood samples following initial newborn screening.

ARGUMENT

A. Blood samples fall within the protections of the Genetic Privacy Act.

The court of appeals concluded that blood samples fall within the scope of the GPA. *Bearder v. State*, 788 N.W.2d 144, 150, n6 (Minn. Ct. App. 2010). The court reasoned that the blood samples constitute "biological information" which fits within the

act's definition of "genetic information." *Id.* Respondents did not seek cross-review of this issue. Thus, this holding should not be reviewed by this court. Alternatively, if this issue is reviewed, the court of appeals' holding is correct and should be affirmed.

1. Respondents failed to preserve the issue for appeal.

An opposing party may file, with its response to a petition for review, a request for cross-review of additional issues not raised by the petition. Minn. R. Civ. App. P. 117, subd. 4. If an issue provides an alternative ground to affirm the decision, and it was not adversely decided by the lower court, the party is not required to file for cross-review and may argue the issue in the Respondents' brief as additional grounds to affirm. *Hoyt Inn Co. v. Bloomington Commerce & Trade Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988). But if the issue was adversely decided below, the Respondent must file a cross-appeal to preserve the right to argue the issue. *Arndt v. Am. Family Mut. Ins. Co.*, 394 N.W.2d 791 (Minn. 1986).

Respondents did not request cross-review of the court of appeals' decision on the definition of "genetic information" as it relates to blood samples. Because the court of appeals decided that issue adversely to Respondents, Respondents were required to cross appeal and they failed to preserve the issue for review by not doing so.

Respondents cite *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010) for the proposition that the standard of review for interpretation of a statute is *de novo*. (Respondents Brief p. 16, n.14.) But *Larson* merely begs the question – there is no dispute that the standard is *de novo* if the issue has been preserved; *Larson* does not address what is necessary to preserve an issue.

Respondents also cite *Day Masonry v. Independent School District 347*, 781 N.W.2d 321 (Minn. 2010), for the proposition that they may argue any point raised below without bringing a cross-appeal. (Respondents Brief, p. 17, n.15.) Their reliance on *Day Masonry* is misplaced. There, contractors argued, as an alternate theory, that a school district's construction defect claims were barred by the statute of repose. *Id.* at 329-330. This court emphasized that the district court resolved the case on other grounds and did not explicitly decide the issue argued by contractors:

By its terms, Rule 106 would apply if there were an adverse judgment or order on the statute-of-repose question. In this case, there is no such adverse order. In fact, the district court never reached the issue of the statute of repose, deciding the case instead on the alternative grounds of the statute of limitations.

Id. at 330. In fact, this court recognized in *Day Masonry* that the decision in *Arndt* applies to preclude review where the lower court decided the issue adversely to the Respondent and Respondent did not cross appeal. *Id.* at 332.

Unlike *Day Masonry*, both the district court and court of appeals explicitly addressed the blood sample issue. The court of appeals ruled adversely to Respondents on this issue, holding that blood samples meet the GPA's definition of "genetic information." Respondent had the opportunity to raise this issue by cross-appeal but chose not to. As a result, Appellants did not brief the issue in their initial brief. The issue is not properly before the court.¹

¹ Of course, this court has discretion to provide review in the interest of justice, even where an issue has not been properly preserved, but Respondents have not established that review is in the interest of justice or provided any reason to excuse their failure to cross-appeal.

2. The court of appeals correctly determined blood samples are subject to the GPA's privacy protections.

If this court decides to review the issue, the court of appeals' interpretation is correct and should be affirmed. The GPA provides two definitions for "genetic information":

- (a) "Genetic information" means information about an identifiable individual derived from the presence, absence, alteration or mutation of a gene, or the presence or absence of a specific DNA or RNA marker, which has been obtained from an analysis of:
 - (1) the individual's biological information or specimen; or
 - (2) the biological information or specimen of a person to whom the individual is related.
- (b) "Genetic information" also means medical or biological information collected from an individual about a particular condition that is or might be used to provide medical care to that individual or the individual's family members.

Minn. Stat. § 13.386, subd. 1.

Respondents argue that because genetic information is "obtained from an analysis of" that individual's "biological information or specimen," only the test results, and not the specimen or source of the information, is subject to the privacy protection.

(Respondents' Brief, p. 17.) But Respondents are improperly merging two distinct definitions. The court need only focus on definition (b). Definition (b) is much broader in scope than definition (a) because it encompasses "medical or biological information" about an individual. Unlike definition (a), definition (b) does not limit itself to information about "identifiable individuals" or information "obtained" from a "biological specimen." Respondent's characterization of the definition of "genetic information"

effectively ignores definition (b) and grafts limitations on the definition only found in definition (a).

The plain meaning of definition (b) is that the blood samples are subject to the GPA's protections because they contain DNA, which is "genetic information." Because neither the GPA or that data practices act as a whole provide a specific definition for "biological information," or simply "information," the common definitions of "information" apply. The Merriam-Webster online dictionary defines "information" as follows:

- 2 a(1): knowledge obtained from investigation, study, or instruction...
- b: the attribute inherent in and communicated by one of two or more alternative sequences or arrangements of something (*as nucleotides in DNA* or binary digits in a computer program) that produce specific effects...

"Information." Merriam-Webster Online Dictionary. 2009 Merriam-Webster Online. 21 September 2009. <<http://www.merriam-webster.com/dictionary/information>> (emphasis added). Under this common definition, the DNA within the blood sample is information because it contains arrangements/sequences of nucleotides. The information is read through testing and analysis. In other words, the samples are like a photographic negative – they contain the properties that can easily be developed into the picture, and both the negative and the picture qualify as "information." Similarly, both the blood samples that contain the DNA and the test results that describe the DNA are "information." In fact, the blood sample, being the "source," is more reliable than the test results, which are only an interpretation of the properties of the blood sample.

Respondents' argument that there is meaningful difference between the GPA's use of the term "specimen" in definition (a) versus "medical or biological information" in definition (b) misses the mark. It is the DNA within the blood samples which is the information that brings the blood sample within the protection of the GPA. In this case, the blood samples contain the DNA of the donor, and the nucleotides in DNA fit the common definition of "information."

The GPA's definition (b) further provides that genetic information is information "that is or might be used to provide medical care to that individual or the individual's family members." Of course, the blood samples have already been used for newborn testing, which was the provision of "medical care" (screening for diseases) to the newborn. Further, the definition contains no requirement that the information actually be or is intended to be used to treat the individual, only that it "might" be. Thus, because Respondents can link any studies or testing done with the blood sample back to the original newborn donor, that information might be used to treat that individual or his or her family.

Respondents also insist that because the GPA is found in Chapter 13 (the Minnesota Government *Data Practices Act*), it should be limited to the use of "data," even though that word never appears within the GPA. They argue that blood samples are not "data" because they cannot be "copied." (Respondents' Brief, pp. 18-19.) But this argument would allow the general (the broad terms of the MGDPA as it relates to the use of "data") to control the specific (the protections afforded by the GPA with respect to "genetic information"). This is counter to the general principle that the specific controls

the general. *See* Minn. Stat. § 645.26. The plain meaning of “information”, not “data”, governs the scope of the GPA.

Even if the term “genetic information” was determined to be ambiguous, other considerations provided by the rules of statutory construction sustain the holding that the blood samples are subject to the GPA’s privacy protections. First, legislative history reflects that the legislature always contemplated that blood samples fall under the GPA’s protections. (AA, p. 163 (Representative Emmer explained MDH was to destroy the blood samples under current law); AA, pp. 163-164 (Representative Thissen expressing that bill as originally drafted required destruction of blood samples); AA, pp. 73-74 (Senator Hann referring broadly to GPA’s controls on genetic material).) Second, in the administrative interpretation given to the GPA by the ALJ, the applicability of the GPA to the blood samples was recognized and recommendations for compliance with the GPA included acquiring informed consent for storage and use of the blood samples. (*See* AA, pp. 38-39.)

Third, it would be absurd to hold that the information (the DNA) inside the specimen are not protected by the GPA, but only the test results interpreting that information are so protected. *See* Minn. Stat. § 645.17 (this court may presume that “the legislature does not intend a result that is absurd, impossible of execution, or unreasonable...”). Respondents agree that the test results are within the definition of the GPA. Thus, whenever Respondents use the blood samples for testing, they are admittedly creating “genetic information” and must obtain informed consent under the GPA. Does MDH really wish to continue storage of 1,500,000 blood samples but not use them for testing? Only one

purpose exists for the Department's warehousing of blood samples - the future analysis and extraction of genetic information. Adopting Respondents' reasoning would mean MDH could store blood spots and DNA indefinitely but could not use them because the further analysis, testing, and storage of a specimen would result in a violation of the GPA. This could not have been the legislature's intent.

Finally, Respondents contradict their own argument against treating blood samples as genetic information. In suggesting that the GPA does not apply to the 16 minor Plaintiffs whose blood samples were collected prior to August 1, 2006, Respondents point out that the GPA only applies to "genetic information collected on or after that date." (Respondents Brief, p. 30.) Respondents then argue that the GPA does not apply to the 16 because their blood samples were collected before that date, thus properly equating blood samples with "genetic information."

B. Respondents Violated the GPA.

1. Respondents' storage, use and dissemination of test results and blood samples is not "otherwise expressly provided by law."

a. The plain meaning of "expressly."

Respondents argue that the NBS program of retention of genetic information falls within the "otherwise expressly provided by law" exception to the GPA. (Respondents Brief, p. 20 *et seq.*). But Respondents are not able to point to any provision in the NBS that "expressly" authorizes storage, use, or dissemination of blood samples or test results after the completion of the initial newborn screening. The two sections Respondents rely on fall far short of any express authorization.

Respondents refer to Section 144.128(5) of the NBS, providing that the MDH must “comply with a destruction request within 45 days of receiving it.” But this section imposes a limitation, rather than providing authority. The Respondents are unable to find “express” authority in this section and, at most, must suggest that authority is implied – “The *logical interpretation* of this statute is that MDH may retain the information . . .” (Respondents Brief, p. 22.) If a logical interpretation of a statute is required to discern its meaning, the statute clearly falls short of “expressly providing” that interpretation.²

Similarly, the statutory directive in the NBS that responsible parties notify parents that test results may be retained by MDH (Section 144.125, subd. 3) might support the implication that the MDH has authority to retain, but it clearly does not expressly grant any authority to MDH. Nowhere in the NBS is there an express grant of authority to MDH to retain the test results after initial screening, except the limited registry of positive test results referred to above. Moreover, this section does not even “imply” authority to use or disseminate the test results beyond the initial newborn screening. And this section does not address the retention of the blood samples and thus does not even imply authority for their retention, much less for their use and dissemination.

b. The word “expressly” is not ambiguous.

Failing to point to any part of the NBS that expressly authorizes MDH to retain, use or disseminate test results or blood samples, Respondents stretch even farther to imply such authority from legislative history. By definition, that attempt cannot supply

² Further, this statute makes perfect sense when read in conjunction with the Commissioner’s duty to retain a limited registry of positive test results. See Minn. Stat. ¶ 144.128(3).

“express” authority. And, as our initial brief demonstrated, legislative interpretation actually suggests that the newborn blood samples and test results would not be exempted from the GPA. (Appellants’ Brief, p. 25 *et seq.*)

The discussion in the 2006 Report and statements of the GPA’s author, to the effect that the GPA would not prohibit collection that is otherwise allowed by current law, does not support Respondents’ argument, for two reasons. First, as noted above, the NBS only allowed the use of blood samples for initial screening or specific follow up testing – it did not allow retention, use or dissemination of test results or blood samples after that screening was completed. Second, when the GPA was written, the exception was made even more narrow than these general statements, limiting exceptions to those that were “otherwise expressly provided by law.” Legislative history cannot be used to override the words actually used in the GPA or to supply what the NBS omitted.

The fact that the legislature did not, simultaneous to enactment of the GPA, eliminate the opt-out feature of the NBS, likewise cannot bridge the “expressly provided” gap. The NBS does expressly authorize the collection of blood samples for newborn screening and provides only an opt-out option from that screening. Thus, the retention of the opt-out system for newborn screening is perfectly logical, but it does not imply any intent to expand that opt-out system to further retention, use or dissemination of test results or blood samples after initial screening is complete.

C. Plaintiffs stated valid claims for relief.

1. The 16 minor Plaintiffs have valid claims.

Respondents are correct that blood samples were collected from 16 of the minor Plaintiffs before the effective date of the GPA. (Respondents Brief, p. 30 *et seq.*) But that does not defeat the claims asserted by those Plaintiffs, for two reasons.

First, the GPA applies whenever “genetic information” is collected after August 1, 2006. Respondents admit that test results are “genetic information.” Thus, although blood samples for these 16 were collected prior, any further testing of their samples would “collect” new “genetic information” in the form of test results. These 16 Plaintiffs have claims under the GPA to enjoin any future use of their blood samples, and to obtain a declaratory judgment that such use conflicts with the GPA.

Second, these 16 have valid claims under the NBS to enjoin any use of their blood samples not authorized by the NBS, and to obtain a declaratory judgment that the NBS does not authorize use beyond initial newborn screening.

2. The issue of “dissemination”.

Respondents argue that no Plaintiffs have proven “dissemination” of their blood samples or test results, but this matter is before the court on summary judgment. The only “evidence” in the record is the unilateral and untested assertion of MDH that it has not disseminated the blood samples from 23 Plaintiffs and has no record of doing so with two others.³ Plaintiffs requested that the summary judgment motion be deferred to allow

³At oral argument, the court of appeals inquired as to whether these individuals were still parties to the lawsuit following a voluntary dismissal of the VanDemark family. (*See*

discovery. That request should have been granted because the “record” was not ripe for a determination that there are no genuine issues of material fact on dissemination. Only MDH has access to the information relevant to this issue, and Plaintiffs should be allowed discovery to determine if there are fact disputes.

Of course, Plaintiffs’ claims are not based solely on past disseminations because Plaintiffs also seek an injunction against future disseminations and declaratory judgment on the interplay between the GPA and the NBS.⁴

Respondents admit to disseminating over 50,000 blood samples for purposes beyond initial newborn screening. (AA, pp. 143-144, 212.) Plaintiffs’ claims include requests for injunctive relief and damages concerning Respondents dissemination of genetic information. (AA, p. 9) Further discovery is necessary to ascertain whether these children’s blood samples were used in private testing following the GPA’s enactment date, why Respondents cannot account for the use or dissemination of blood samples in

AA, pp. 267-268.) In subsequent correspondence, Respondents confirmed that these two children were Joshua Gaetano and Jerry Gaetano III, whom are still parties to this action.

⁴Plaintiffs’ claims go beyond the mere allegations of improper dissemination. Plaintiffs claim Respondents committed the following separate and distinct violations:

- (1) storage of the blood sample
- (2) use (i.e. additional internal or external testing) of the blood sample
- (3) dissemination of the blood sample
- (4) collection of test results (other than original newborn screening through additional internal or external testing)
- (5) storage of the test results
- (6) use (i.e. in additional internal or external research) of the test results
- (7) dissemination of the test results (presumably for external research).

Thus, even if this court finds that Plaintiffs did not state claims for dissemination of blood spots and test results, there are still viable claims for collection, storage, and use that must be tried.

their control, and whether there are issues of spoliation entitling Plaintiffs to an adverse inference against Respondents.

3. Plaintiffs seek injunctive relief.

Respondents' arguments that Plaintiffs' blood samples have not been used or disseminated, as discussed above, may have some significance to the claim for damages but, as noted, consideration of that issue is premature because it is not ripe for summary judgment. And, in any event, that argument does not support dismissal of the complaint because Plaintiffs also seek injunctive relief against any future use or dissemination.

Respondents argue that Plaintiffs' claims for injunctive relief must be dismissed, apparently because Plaintiffs' opt-out remedies under the NBS should be seen as adequate remedies at law, as a matter of law. (Respondents Brief, pp. 34-35.) That argument is invalid for several reasons.

First, the question of remedy is premature. As Respondents note, a request for an injunction is addressed to the district court's equitable powers, which involve considerable discretion. The district court has not exercised that discretion.

Second, and most importantly, a decision that Plaintiffs are precluded from seeking an injunction because they have opt-out rights under the NBS would have the effect of replacing the opt-in requirements of the GPA. If Plaintiffs are correct that the GPA's opt-in provisions prevail over the opt-out provisions of the NBS, then the denial of an injunction because a party can opt-out under the NBS would effectively violate the GPA. At the very least, the district court should address that question under its equity powers after the applicability of the GPA has been judicially determined.

Third, section 13.08, which provides Plaintiffs their remedies under the GPA, does not make claims for damages or for injunctive relief mutually exclusive. Rather, the remedies provided in section 13.08 may be exercised in combination. For example, subdiv. 4 provides that a plaintiff may maintain an action to compel compliance with the GPA “in addition” to claims for damages, injunctive relief, and any remedy provided by “other law.” By permitting multiple remedies, the legislature recognized that there is no adequate remedy at law for the unlawful use or dissemination of private information – in this case newborn blood and DNA. Money damages for past abuse simply do not secure the privacy interest children perpetually have in their genetic makeup. *See* Sonia M. Suter, *Disentangling Privacy from Property: Toward a Deeper Understanding of Genetic Privacy*, 72 *Geo. Wash. L. Rev.* 737, 737, 773 (April, 2004) (explaining that genetic information is unique to each of us, it is our blue print, and that “unwanted disclosure of our genetic information, like a great deal of other personal information, makes us vulnerable to unwanted exposure, stigmatization, and discrimination”). Respondents’ must conform their conduct to ensure all newborn’s children genetic privacy is protected by the GPA – something only an injunction will accomplish.

4. Plaintiffs are entitled to a declaratory judgment.

Respondents would elevate form over substance, arguing that the request for a declaratory judgment was not preserved. *See Basich v. Board of Pensions of the Evangelical Lutheran Church in America*, 493 N.W.2d 293, 295 (Minn. Ct. App. 1992) (“courts should construe pleading liberally in favor of the pleader and judge them by their substance and not their form). But Plaintiffs’ complaint alleged that Respondents’

retention, use, and dissemination of blood samples and test results was a violation of the law, alleged that Respondents continued to refuse to comply with the GPA, and asked that Respondents be enjoined from further violation of the GPA and be compelled to comply with the GPA, together with further appropriate and necessary relief. (AA, pp. 4-9.) Although the words “declaratory judgment” were not used, the claims made and relief requested necessitated declarations of the meaning and interplay of the NBS and the GPA. Such declarations would include determining that the NBS limited the authority of MDH to newborn screening, that the GPA applied to MDH after newborn screening was completed, and that the GPA required informed consent for the retention, use or dissemination of blood samples or test results after newborn screening was completed. Whether framed as a declaratory judgment or not, these determinations are inherent in the claims that are being made.

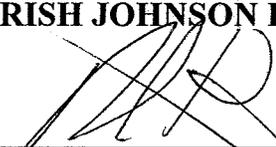
Similarly, Plaintiffs’ arguments to the district court and court of appeals sought determinations of the applicability of the GPA and the interplay with the NBS, each of which would necessitate the declaration of the law relative to these two statutes. It is not a reach to conclude that, at a minimum, the court should enter a judgment declaring the correct application of these two statutes.

CONCLUSION

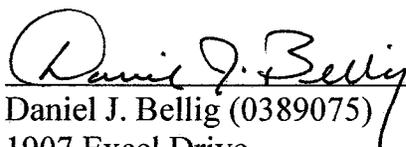
Plaintiffs respectfully request that the district court and court of appeals be reversed and this case by remanded to the district court for trial and a permanent injunction.

Dated: January 24, 2011

FARRISH JOHNSON LAW OFFICE



Randall G. Knutson (0229891)
1907 Excel Drive
Mankato, MN 56001
Phone: 507.625.2525
Fax: 507.625.4394



Daniel J. Bellig (0389075)
1907 Excel Drive
Mankato, MN 56001
Phone: 507.625.2525
Fax: 507.625.4394

AND

BRIGGS AND MORGAN, P.A.
Sam Hanson (41051)
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Phone: 612.977.8400
Fax: 612.977.8650

Attorneys for Appellants

CASE NO. A10-101

*State of Minnesota
In Supreme Court*

Alan and Keri Bearder, individually and as parents and
natural guardians of Josiah and Alexa Bearder, minors; et al.,

Appellants,

vs.

State of Minnesota, Minnesota Department of Health, and Dr.
Sanne Magnan, Commissioner of the Minnesota Department
of Health,

Respondents.

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App.
P. 132.01, Subds. 1 and 3, for a brief produced with a proportional font. The length of
this brief is 4,060 words. This brief was prepared using Microsoft Office Word 2003.

Dated: January 24, 2011



FARRISH JOHNSON LAW OFFICE, CHTD.

Randall G. Knutson (0229891)

Daniel J. Bellig (0389075)

1907 Excel Drive

Mankato, Minnesota 56001

Telephone: 507.625.2525

Attorneys for Appellants