**HRC FERTILITY SUED FOR IMPREGNATING MOTHER WITH EMBRYO THAT TESTED POSITIVE FOR DEADLY CANCER GENE, SUBSEQUENT COVER-UP**

***Parents Each Have Cancer Genes and Went to HRC Specifically for Embryo Screening, Which The Clinic Botched and Then Attempted to Hide;***

***Child Will Need Stomach Removal Surgery To Prevent or Treat Rare and Deadly Cancer.***

**PASADENA, CA – MARCH 1, 2023 –** [HRC (Huntington Reproductive Center) Fertility](https://www.havingbabies.com/) is facing a major lawsuit filed by former patients who learned that the clinic wrongly transferred an embryo for their in vitro fertilization (IVF) that had tested positive for a rare and deadly stomach cancer gene, and then provided an altered medical record that covered up their error. The child, who is now 1 year old, will require a life-altering stomach removal surgery as a young adult to either prevent or treat hereditary diffuse gastric cancer.

HRC Fertility had performed genetic testing to screen the couple’s embryos for cancer genes but mistakenly transferred and implanted an embryo that it had identified as carrying a cancer gene. HRC Fertility then concealed its error when it altered the records it sent to the couple.

[The lawsuit](https://lostembryos.com/wp-content/uploads/2023/03/20230301-Diaz-v.-HRC-Complaint.FINAL_.pdf) and arbitration complaint—both filed in Los Angeles—alleges claims against HRC, Dr. Bradford Kolb, and an HRC employee for negligence, malpractice, battery, misuse of embryos, and fraudulent concealment. The legal claims were filed by Adam Wolf of Peiffer Wolf Carr Kane Conway & Wise (“Peiffer Wolf”) on behalf of the patients, Jason Diaz and Melissa Flores Diaz.

Adam Wolf, partner at Peiffer Wolf, said: **“HRC Fertility’s actions are catastrophic for this family. Our clients were aware there was a genetic predisposition to terminal cancer on both sides, and they went about trying to protect their child in the most responsible way possible. But HRC botched the process entirely, which will have lifelong consequences for this one-year-old child and his parents. And HRC’s altering their patient records makes it even worse.”**

Melissa Diaz said: **“Never in a million years did I think this could happen. Dr. Kolb and HRC Fertility marketed themselves as leaders in IVF and genetic screening for embryos. We’re heartbroken about what our son will have to go through because of HRC’s misconduct and lies.”**

Jason Diaz said: **“I have the gastric cancer gene and received my diagnosis when I was 32. Two of my aunts died of gastric cancer in their forties. We went to HRC Fertility to break the family curse of cancer and early death. Trusting Dr. Kolb and HRC turned out to be the biggest mistake of our lives.”**

Jason Diaz and Melissa Diaz chose HRC Fertility and Dr. Bradford Kolb because the clinic touted itself as a leader in IVF and DNA testing, including on HRC’s website that boasted that Dr. Kolb was “known for helping to develop and implementing cutting edge technologies in the genetic screening of embryos.”

Both Jason and Melissa carry genes that predispose them to cancer. Melissa carries the BRCA-1 mutation, which drastically increases her chances of developing breast and ovarian cancer. Jason has a rare mutation in the CDH1 gene that makes him extremely likely to develop a rare form of stomach cancer, hereditary diffuse gastric cancer. At the age of 32, Jason was diagnosed with diffuse gastric cancer. After chemotherapy was unsuccessful, he was required to undergo a gastrectomy (a stomach-removal surgery) in 2018. Genetic testing revealed that he carried the CDH1 mutation.

From the beginning, the Diazes expressly advised HRC Fertility and Dr. Kolb that they wanted IVF with preimplantation genetic testing to avoid having a child with Jason’s CDH1 mutation for hereditary diffuse gastric cancer. Melissa underwent egg-retrieval procedures in 2020. HRC created and stored multiple embryos, which they screened for the Diazes’ cancer genes.

On August 14, 2020, Dr. Kolb transferred the embryo that did not have either mutation. Unfortunately, this transfer resulted in an early miscarriage.

In December 2020, Melissa and Jason began planning another transfer. HRC’s IVF Coordinator had previously emailed Melissa that they had one male embryo that carried that BRCA-1 mutation but not the CDH1 mutation. Because the BRCA-1 mutation poses far less risk to boys than girls, Melissa told the IVF Coordinator that they wanted to transfer the male embryo with only the BRCA-1 mutation.

But it turns out that there was no male embryo with only the BRCA-1 mutation because HRC had miscommunicated the test results. All of their male embryos had the CDH1 mutation.

So on January 7, 2021, HRC’s IVF Coordinator wrongly instructed the embryologist and Dr. Kolb’s team to thaw an embryo that carried the CDH1 mutation. The text of the email showed that this embryo tested positive for this stomach-cancer mutation.

Dr. Kolb’s Embryo Transfer Note dated January 8, 2021, stated: “Informed consent was given and consisted of a thorough review of the embryology report[.]” This statement was false. Dr. Kolb did not thoroughly review the embryology report with Melissa or Jason before the transfer procedure. Dr. Kolb was very familiar with Jason and Melissa, and he knew from the time of his first visit with them that they intended to avoid passing on this rare mutation for stomach cancer. Even if Dr. Kolb had forgotten his patients’ objective on the transfer date, he had complete access to their charts, which repeatedly referenced the couple’s instructions to avoid transferring any embryo with a CDH1 mutation.

At the time of the January 8, 2021, transfer, Melissa and Jason had no idea that Dr. Kolb had transferred an embryo with the CDH1 mutation. They believed that he had transferred a male embryo with the BRCA mutation (but not the stomach cancer gene), just as Melissa had instructed.

Despite his patients’ clear instructions, Dr. Kolb transferred an embryo with the stomach-cancer mutation on January 8, 2021, and did not tell them he did so.

The Diazes were elated to welcome a baby boy in September 2021. The family’s joy was short-lived. In July 2022, when the baby boy was about ten months old, Melissa began corresponding with HRC Fertility to coordinate another embryo transfer. The HRC representative emailed Melissa a copy of her embryo report. This report included handwritten notes by HRC Fertility showing that Dr. Kolb transferred an embryo carrying the stomach-cancer mutation on January 8, 2021. This was the embryo that became the Diazes’ baby boy. Melissa asked the IVF Coordinator three times whether these records were correct but received no response.

Melissa was in shock. To determine whether there was any possibility that another embryo without the cancer gene had been transferred, Melissa requested her medical records. HRC Fertility provided what it represented to be Melissa’s medical records on October 10, 2022. But these records contained a falsified version of the report Melissa had received earlier with the incriminating handwritten notes deleted.

Gravely concerned that HRC altered its patients’ records, the Diazes’ attorney Adam Wolf requested Melissa’s medical records on October 24, 2022. Despite the fact that California law mandates the production of such records within fifteen days, HRC Fertility did not produce the records until December 2022. That production included the handwritten notations that were previously deleted from the October 2022 production confirming HRC’s tragic error.

Adam Wolf, partner at Peiffer Wolf, added: **“This is not the first case I’ve handled against HRC Fertility. Tragically, this is yet another disaster in HRC’s history of misusing patients’ genetic material and committing other grave fertility misconduct. In light of this history, I worry it will not be the last.”**

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**ABOUT PEIFFER WOLF CARR KANE CONWAY & WISE**

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