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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Jonee Fonseca, an individual parent and guardian of Israel Stinson, a minor, Plaintiff, Plaintiffs, v. Kaiser Permanente Medical Center Roseville, Dr. Michael Myette M.D., Karen Smith, M.D. in her official capacity as Director of the California Department of Public Health and Does 2 through 10, inclusive, Defendants.	Case No.: 2:16-cv-00889 – KJM-EFB **DECLARATION OF PAUL BYRNE, MD**

DECLARATION OF DR. PAUL BYRNE

I, Paul Byrne, MD, am not a party to the above-encaptioned case and if called upon, I could and would testify truthfully, as to my own person knowledge, as follows:

Declarant, Paul A. Byrne, M.D., states as follows:

1. I have personal knowledge of all the facts contained herein and if called to testify as a witness I would and could competently testify thereto.

2. I am a physician licensed in Missouri, Nebraska and Ohio. I am Board Certified in Pediatrics and Neonatal-Perinatal Medicine. I have published articles on "brain death" and related topics in the medical literature, law literature and the lay press for more than thirty years. I have been qualified as an expert in matters related to central nervous system dysfunction in Michigan, Ohio, New Jersey, New York, Montana, Nebraska, Missouri, South Carolina, and the United States District Court for the Eastern District of Virginia.

3. I have reviewed the medical records of Israel Stinson, a 2-year-old boy, a patient in Kaiser Permanente, Roseville Hospital. I have visited Israel Stinson several times. On April 22 when I visited him, he was in the arms of his mother. A ventilator was in place.

4. I have continued to be in touch with Israel's parents. I have reviewed the videos that have been sent to me. Israel does move in these videos. If Israel were a cadaver, this is not possible, Thus Israel is alive.

5. The Guidelines of the AAN that the hospital claims to be following are not fulfilled. The Guidelines require that "Patients must lack all evidence of responsiveness." Israel is responsive.

6. Israel's intake has been only sugar, comparable to 7-Up since April 1. For more than a month Israel has been starved of protein, fat and vitamins.

7. Israel has had a tube is his trachea (ET tube) for more than a month. Every doctor knowledgeable in ENT and intensive care knows that a tracheostomy should have been done long before now.

8. Israel receives treatment for diabetes insipidus by medication administered intravenously. I have not been provided records as to how much and how often he has been given this medication. The patient's family and I agree this treatment should continue.

9. On April 4, Cranial Doppler showed "Near total absence of blood flow into the bilateral cerebral hemispheres." "Near total absence" is not evidence of no blood flow.

10. An apnea test has been done on Israel 3 times. Every time he was made acidotic and hypercapneic (increase in carbon dioxide). These tests could not have helped Israel. Further, the third time was after Israel's parents requested that such testing not be done again.

11. Endocrine abnormalities including hypothyroidism preclude any reliable evaluation of functioning of the brain. Thyroid blood studies were done on April 18. Results showed that Israel has hypothyroidism. Thyroid was started on April 18, but only once a day.

12. Prior to April 18 Israel was not tested or treated for his hypothyroidism, which has probably been present since his cardiorespiratory arrest. Thyroid hormone is necessary for ordinary normal health and healing of the brain. Thyroid medication that has been given to Israel can be a cause of his recent movements of his body. I recommend continued treatment and testing of thyroid functions.

13. The results of test of thyroid function of Israel Stinson are:

4/17/16 TSH: 0.07 (normal 0.7-5)

4/17/16: T4: 0.4 (Normal .8-1.7)

Israel's brain (hypothalamus) is not producing sufficient TSH, thyroid stimulating hormone, which has a half-life of only a few minutes. But he does have some TSH.

14. T4 is low and brain edema has turned into brain myxedema. When thyroid is given, brain circulation can increase and resume normal levels, thereby restoring normal neurological and hypothalamic function.

15. With proper medical treatment as proposed by his parents, Israel is likely to continue to live, and may find limited to full recovery of brain function, and may possibly regain consciousness.

16. Israel has a beating heart without support by a pacemaker or medications. Israel has circulation and respiration and many interdependent functioning organs including liver, kidneys and pancreas. In spite of low thyroid Israel's body manifests healing. Israel Stinson is a living person who passes urine and would digest food and have bowel movements if he were fed through a nasogastric or PEG tube. These are functions that do not occur in a cadaver after true death.

17. The criteria for "brain death" are multiple and there is no consensus as to which set of criteria to use (Neurology 2008). The criteria supposedly demonstrate alleged brain damage from which the patient cannot recover. However, there are many patients who have recovered after a declaration of "brain death." (See below.) Israel is not deceased; Israel is not a cadaver. Israel has a beating heart with a strong pulse, blood pressure and circulation. Israel makes urine and would digest food and have bowel movements if he is fed. These are indications that Israel is alive.

18. The latest scientific reports indicate that patients deemed to be "brain dead" are actually neurologically recoverable. I recognize that such treatments are not commonly done. Further it is recognized that the public and the Court must be wondering why doctors don't all agree that "brain death" is true death. Israel, like many others, continues to live in spite of little or no attention to detail necessary for treating a person on a ventilator. Israel, like all of us needs thyroid hormone. Many persons are on thyroid hormone because they would die without it.

19. Israel Stinson may achieve even complete or nearly complete neurological recovery if he is given proper treatment soon. Every day that passes, Israel is deprived of adequate nutrition and careful administration thyroid hormone required for healing.

20. The questions presented here refer to (1) the unreliability of methods that have been used to identify death and (2) the fact that no therapeutic methods that would enable brain recovery have been used so far. In fact, the implementation of nutrition and adequate therapeutic methods are being obstructed in the hope that Israel's heart stops beating, thereby precluding his recovery through the implementation of new therapeutic methodologies.

21. Israel Stinson's brain is probably supplied by a partially reduced level of blood flow, insufficient to allow full functioning of his brain, such as control of respiratory muscles and production of a hormone controlled by the brain itself. This is called thyroid stimulating hormone, TSH, which then stimulates the thyroid gland to produce its own hormones. With insufficient amount TSH Israel has hypothyroidism. The consequent deficiency of thyroid hormones sustains cerebral edema and prevents proper functioning of the brain that control respiratory muscles.

22. On the other hand, partially reduced blood flow to his brain, despite being sufficient to maintain vitality of the brain, is too low to be detected through imaging tests currently used for that purpose. Employing these methods currently used for the declaration of "brain death" confounds NO EVIDENCE of circulation to his brain with actual ABSENCE of circulation to his brain. Both reduced availability of thyroid hormones and partial reduction of brain blood flow also inhibit brain electrical activity, thereby preventing the detection of brain waves on the EEG. The methods currently used for the declaration of "brain death" confound flat brain waves with the lack of vitality of the cerebral cortex. It is noted that EEG has not been done on Israel Stinson.

23. In 2013, Jahi McMath was in hospital in Oakland, CA. When I visited her in the hospital in Oakland, Jahi was in a condition similar to Israel. A death certificate was issued

on Jahi on December 12, 2013. Jahi was transferred to New Jersey where tracheostomy and gastrostomy were done and thyroid medication was given. Multiple neurologists recently evaluated Jahi and found that she no longer fulfills any criteria for "brain death. Since jahi has been in New Jersey, she has had her 14th and 15th birthdays. The doctors in Oakland declared Jahi dead and issued a death certificate. Jahi's mother said no to taking Jahi's organs and no to turning off her ventilator. Israel's parents are saying no to taking Israel's organs and to taking away his life support. Just like Jahi's mother!

24. Even a person in optimal clinical condition would be at risk of death after weeks of hypothyroidism and only sugar (similar to only 7-up). Israel Stinson needs a Court order requiring Kaiser Permanente to actively promote the implementation of all measures necessary for Israel's survival and neurological recovery, including tracheostomy, gastrostomy, thyroid hormone, and proper nutrition to prevent death.

25. Israel Stinson needs the following procedures done:

a. Tracheostomy and gastrostomy

b. Serum T3, T4, TSH and TRH (thyroid releasing hormone).

c. Levothyroxine 25 mcg nasoenterically, nasogastrically or IV every 6 hours the first day; dose needs to be adjusted thereafter in accord with TSH, T3 and T4.

d. Samples for lab tests for growth hormone (maybe serum samples can be frozen for future non-STAT tests).

e. Serum insulin-like growth factor I (IGF-I) to evaluate growth hormone deficiency.

f. Parathormone (PTH) and 25(OH)D3 to evaluate vitamin D deficiency and replacement.

g. Continue to follow electrolytes (sodium, chloride, potassium, magnesium, total and ionized calcium), creatinine and BUN.

h. Continued monitoring of blood gases.

i. Serum albumin and protein levels.

j. CBC including WBC with differential and platelet count.

k. Urinalysis (including quantitative urine culture and 24-hour urine protein).

l. Continue accurate Intake and Output.

m. Diet with 40 g of protein per day (nasoenterically or nasogastrically). Fat intravenous until feedings are into stomach.

n. IV fluids (volume and composition to be changed according to daily serum levels of electrolytes (sodium, chloride, potassium, magnesium, total and ionized calcium) and fluid balance.

o. Water, nasoenterically or nasogastrically, if necessary to treat hypernatremia – volume and frequency according to serum sodium.

p. Fludrocortisone Acetate (Florinef®) Tablets USP, 0.1 mg - one tablet (nasoenterically or nasogastrically) per day;

q. Prednisone 10 mg (nasoenterically or nasogastrically) twice per day;

r. Continue Vasopressin IM, or Desmopressin acetate nasal spray (DDAVP – synthetic vasopressin analogue) one or two times per day according to urinary output;

s. Human growth hormone (somatropin) [0.006 mg/kg/day (12 kg = 0.07 mg per day)] subcutaneously;

t. Arginine Alpha Ketoglutarate (AAKG) powder 10 g diluted in water (nasoenterically or nasogastrically) four times per day;

u. Pyridoxal-phosphate ("coenzymated B6", PLP) - sublingual administration four times per day;

v. Taurine 2 g diluted in water (nasoenterically or nasogastrically) four times per day;

w. Cholecalciferol 30.000 IU three times per day (nasoenterically or nasogastrically) for 3 days. Then 7,000 IU three times per day (nasoenterically or nasogastrically) from day 4.

x. Riboflavin 20 mg four times per day (nasoenterically or nasogastrically)

y. Folic acid 5 mg two times per day (nasoenterically or nasogastrically).

z. Vitamin B12 1,000 mcg once per day (nasoenterically or nasogastrically).

aa. Concentrate / mercury-free omega-3 (DHA / EPA) 3 cc four times per day (nasoenterically or nasogastrically).

bb. Chest physiotherapy

cc. Blood gases; adjust ventilator accordingly.

dd. Keep oxygen saturation 92-98%

ee. Air mattress that cycles and rotates air.

ff. Pressor agents to keep BP at 70-80/50-60.

26. In a situation such as this where continued provision of life-sustaining measures such as ventilator, medications, water and nutrition are at issue, it is my professional judgment that the decision regarding their appropriateness rests with the family, not the medical profession.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th Day of May, 2016.

S/ Paul Byrne, MD
Paul Byrne, MD