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Attorneys for Respondent
CHILDREN'S HOSPITAL & RESEARCH
CENTER AT OAKLAND

ENDORSED
FILED
ALAMEDA COUNTY
DEC 2 0 2013
CLERK OF THE SUPERIOR COURT
By Scott Sxxx
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

________________________,

Plaintiff,

v.

CHILDREN'S HOSPITAL & RESEARCH
CENTER AT OAKLAND,

Respondent.

Case No.

PHYSICIAN DECLARATION
of Robert Heidersbach

I, Robert Scott Heidersbach, M.D., hereby declare as follows:

1. I am a duly licensed physician, board certified in the specialty of pediatric critical care medicine. I am a member in good standing of the medical staff of Children's Hospital & Research Center at Oakland (Children's).

2. I was the attending physician for patient Jahi McMath ("Ms. McMath") during the week of December 9, 2013. On December 11, 2013, based on the fact that her brain stem reflexes had disappeared, I requested that a brain death evaluation be performed by a member of the Children's Pediatric Neurology Department. The purpose of this examination was to determine whether Ms. McMath had sustained an irreversible cessation of all functions of her entire brain, including her brain stem.

3. Dr. Robin Shanahan performed the first such examination on December 11, 2013, and the results of that examination revealed that Ms. McMath had sustained an irreversible cessation of all functions of the entire brain, including her brain stem.

4. On December 12, 2013, I personally performed a second brain death evaluation on Ms. McMath, which included performing a complete physical examination as well as a brain death examination and apnea test, which determines whether there is any respiratory brain stem function. This included determination of whether Ms. McMath responded to pain or other noxious stimuli and an evaluation of multiple brain stem reflexes. This evaluation confirmed that Ms. McMath had sustained an irreversible cessation of all functions of the entire brain, including her brain stem and had no respiratory brain stem function. In addition, a total of three electroencephalograms have been performed on Ms. McMath since December 11, 2013; the reports for all of these EEGs confirm that Ms. McMath has no cerebral activity.

5. The results of the brain death evaluation I performed confirm that Ms. McMath is brain dead in accordance with all accepted medical standards.

6. There is absolutely no medical possibility that Ms. McMath's condition is reversible or that she will someday recover from death. Thus, there is no medical justification to provide any further medical treatment whatsoever to Ms. McMath.

1 I declare under the penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed this 20th day of December at Oakland, California.

ROBERT SCOTT HEIDERSBACH, M.D.

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CLERK OF THE SUPERIOR COURT
By Scott Sanchez
Deputy

Attorneys for Respondent
CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

______________________________,

Plaintiff,

v.

CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND,

Respondent.

Case No.

PHYSICIAN DECLARATION of Robin Shanahan

C0413001/1720516-1

I, Robin Shanahan, M.D., hereby declare as follows:

1. I am a duly licensed physician, board certified in the specialty of neurology with special competence in child neurology. I am a member in good standing of the medical staff of Children's Hospital & Research Center at Oakland (Children's).

2. On December 11, 2013, a brain death evaluation (the "Test") was ordered for patient Jahi McMath ("Ms. McMath"). The purpose of this Test was to determine whether Ms. McMath had sustained an irreversible cessation of all functions of her entire brain, including her brain stem.

3. The Test was performed on the morning of December 11, 2013. I personally performed the Test, which included review of her electroencephalogram (EEG) and clinical history, and performed a physical examination which included whether she responded to pain or other noxious stimuli and an evaluation of multiple brain stem reflexes. The Test revealed that Ms. McMath had sustained an irreversible cessation of all functions of the entire brain, including her brain stem. In addition, the results of the EEG revealed no cerebral activity.

4. The results of the Test confirm that Ms. McMath is considered brain dead in accordance with all accepted medical standards.

5. I also examined Ms. McMath before 9 a.m. on December 12, 2013, and found no changes in her condition.

6. There is absolutely no medical possibility that Ms. McMath's condition is reversible or that she will someday recover from death. Brain death is **always** followed by somatic death, i.e., it is inevitable that the heart will stop beating. Thus, there is no medical justification to provide any further medical treatment whatsoever to Ms. McMath.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th day of December at Oakland, California.

ROBIN SHANAHAN, M.D.

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DEC 20 2013

CLERK OF THE SUPERIOR COURT
By [signature] Deputy

Attorneys for Respondent
CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

______________________________, Plaintiff, v. CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND, Respondent.	Case No. **DIVISION CHIEF DECLARATION**

1 I, Sharon Williams, M.D., hereby declare as follows:

2 1. I am a duly licensed physician specializing in the field of pediatric critical care
3 medicine. I am the Division Chief of the Critical Care Division at Children's Hospital &
4 Research Center at Oakland (Children's).

5 2. I have verified that Children's has followed California law, medical guidelines and
6 Children's procedures in determining that Children's patient Jahi McMath ("Ms. McMath") is
7 deceased as a result of an irreversible cessation of all functions of her entire brain, including her
8 brainstem. I have attached hereto as Exhibit A a true and correct copy of the relevant portions of
9 pages 8-11 of the Children's Hospital End-of-Life Care Guidelines related to Brain Death.

10 3. Children's follows the standard established by Task Force on Brain Death in
11 Children: Guidelines for the Determination of Brain Death in Children, An Update of the 1987
12 Task Force Recommendations, *Pediatrics* 2011; 128: e720-e740. Ms. McMath has no
13 neurologic function.

14 4. Two separate examinations, with apnea testing, have been performed by two
15 different attending physicians with the examinations separated by an observation period of more
16 than 12 hours (in fact, here more than 24 hours). The first physician, Dr. Robin Shanahan, a
17 board-certified pediatric neurologist, examined Ms. McMath on December 11 and again on
18 December 12, 2013 and determined that Ms. McMath had met the accepted neurologic
19 examination criteria for death. The second physician, Dr. Robert Heidersbach, a board-certified
20 pediatric critical care physician, examined Ms. McMath on December 12, 2013 and determined
21 that Ms. McMath's brain death was based on an unchanged and irreversible condition.

22 5. In addition, even though the Guidelines do not require any ancillary study, two
23 separate electroencephalograms (EEGs) were performed on December 11, 2013, and December
24 12, 2013. Each of them provided further confirmation that Ms. McMath is irreversibly brain
25 dead.

26 6. All requirements of the Guidelines with respect to the pronouncement of brain
27 death have been met.

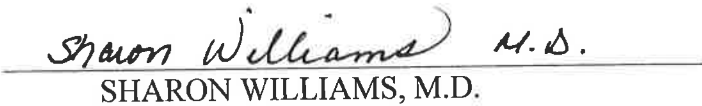
28 7. All tests and examinations have consistently and definitively confirmed that Ms.

McMath is brain dead. Accordingly, Children's declared Ms. McMath to be dead on December 12, 2013.

8. There is no medical justification to provide further intervention for a deceased person. All cardiopulmonary support and any other medical intervention should immediately be discontinued.

9. Children's staff advised Ms. McMath's family/next of kin on December 12, 2013, that, unfortunately, she is dead. Thus, CHO has provided the family/next of kin with far more time than the "reasonably brief period of accommodation" for the family to gather at Ms. McMath's bedside called for by CHO Guidelines and California Health & Safety Code section 1254.4. This is far in excess of the 2-3 days that Children's has considered to be reasonable accommodation in all brain death cases in the past 10 years.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th day of December at Oakland, California.



SHARON WILLIAMS, M.D.

VI. BRAIN DEATH

A. PURPOSE

This section provides guidance for determining brain death with the goal of reducing the potential for variations in brain death practices among physicians. The following outlines appropriate examination criteria and use of ancillary testing to diagnose brain death in neonates, infants and children.

B. SCOPE AND APPLICABILITY

This section applies to physicians who are responsible for determining brain death in neonates, infants, and children thought to be brain dead. Because of insufficient data in the literature, recommendations for preterm infants less than 37 weeks gestational age are not included in this guideline.

C. GUIDELINES

The report of the Task Force on Brain Death in Children: Guidelines for the Determination of Brain Death in Children, An Update of the 1987 Task Force Recommendations (2011) is the accepted standard for the determination of brain death at Children's Hospital.

1. Determination of brain death in term newborns, infants and children is a clinical diagnosis based on the absence of neurologic function with a known irreversible cause of coma.

2. Hypotension, hypothermia, and metabolic disturbances should be treated and corrected and medications that can interfere with the neurologic examination and apnea testing

should be discontinued, allowing for adequate clearance before proceeding with these evaluations.

3. Two examinations including apnea testing with each examination, separated by an observation period are required. Examinations should be performed by different attending physician. Apnea testing may be performed by the same physician.

4. The first examination determines whether the child has met the accepted neurologic examination criteria for brain death. The second examination confirms brain death based on an unchanged and irreversible condition. Assessment of neurologic function following cardiopulmonary resuscitation or other severe acute brain injuries should be deferred for 24 hours or longer if there are concerns or inconsistencies in the examination.

5. Apnea testing to support the diagnosis of brain death must be performed safely and requires documentation of an arterial PaCO2 20mm Hg above the baseline and ≥ 60mm Hg with no respiratory effort during the testing period. If the apnea test cannot be safely completed, an ancillary study should be performed.

6. Death is declared when the above criteria are fulfilled. (*Pediatrics* 2011; 128: e720–e740)

D. ADDITIONAL CONSIDERATIONS

The Special Task Force Guidelines (see above) do not specifically address several concerns that occasionally arise during a brain death determination:

1. Interval between clinical examinations:

   a) An observation period of 24 hours for term newborns (37 weeks gestational age) to 30 days of age is required.

   b) An observation period of 12 hours for infants and children (≥30 days to 18 years) is recommended.

2. Confirmatory tests:

   a) Ancillary studies (electroencephalogram and radionuclide cerebral blood flow) are **not** required to establish brain death and are not a substitute for the neurologic examination.

   b) Ancillary studies may be used to assist the clinician in making the diagnosis of brain death

      1) when components of the examination or apnea testing cannot be completed safely due to the underlying medical condition of the patient

      2) if there is uncertainty about the results of the neurologic examination

      3) if a medication effect may be present; or to reduce the inter-examination observation period.

   c) When ancillary studies are used, a second clinical examination and apnea test should be performed and components that can be completed must remain consistent with brain death. In this instance the observation interval may be

shortened and the second neurologic examination and apnea test (or all components that are able to be completed safely) can be performed at any time thereafter.

3. Sedative-hypnotic Drugs:

   CNS depression due to sedative or hypnotic drugs should be excluded. This condition may be met by directly measuring the drug blood level, or by waiting an appropriate period of time for drug elimination to proceed.

4. Body temperature:

   Body temperature should be more than 35 degrees Celsius so that reversible CNS depression due to hypothermia is excluded.

5. Independent Confirmation:

   The Task Force recommends that a second physician confirm the diagnosis of brain death after an appropriate observation period. The initial determination may be made by the ICU attending or fellow, attending neurologist, attending neurosurgeon, or attending neonatologist. The time of this examination defines the start of the observation period. The second, independent examination may be made by any of the above specialists at the end of the appropriate observation period. If the ICU physician or neonatologist does the first and second examinations, a neurologist or neurosurgeon may perform another examination in consultation at any time during the observation period. However, consultation with neurology or neurosurgery is at the discretion of the attending intensivist or neonatologist.

6. Other Contingencies:

   If circumstances arise during the course of brain death determination that are not covered adequately by this policy, then brain death determination should proceed based upon recommendations made by members of the medical staff who are skilled in the determination of brain death.

E. FAMILY/NEXT OF KIN ACCOMODATION FOLLOWING BRAIN DEATH

1. Per California HSC 1254.4, the family/next of kin will be provided with a reasonably brief period of accommodation from the time that a patient is declared dead by reason of irreversible cessation of all functions of the entire brain, including the brain stem, through discontinuation of cardiopulmonary support for the patient. During this reasonably brief period of accommodation, the hospital is required to continue only previously ordered cardiopulmonary support, with no other medical intervention required.

2. Upon request, the hospital will provide the patient's legally recognized health care decision maker, if any, or the patient's family or next of kin, if available, a written statement of the policy describing the reasonable accommodation above in E.1. If requested, the policy statement will be provided no later than shortly after the treating physician has determined that the potential for brain death is imminent.

3. If the patient's legally recognized health care decision maker, family or next of kin, voices any special religious or cultural practices and concerns of the patient or the patient's family surrounding the issue of death by reason of irreversible cessation of all functions of the

entire brain of the patient, the hospital shall make reasonable efforts to accommodate those religious and cultural practices and concerns.

F. **BRAIN DEATH PACKET**

When preparing families for brain death evaluations see the Brain Death Packet, **Attachment B.**