



20720690

FILED
ALAMEDA COUNTY

APR 06 2018

CLERK OF THE SUPERIOR COURT

By  Deputy

1 Kenneth R. Pedroza (SBN 184906)
2 Dana L. Stenvick (SBN 254267)
3 COLE PEDROZA LLP
4 2670 Mission Street, Suite 200
5 San Marino, California 91108
6 Tel: (626) 431-2787
7 Fax: (626) 431-2788

8 Attorneys for Defendants
9 UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND and
10 FREDERICK S. ROSEN, M.D.

11 Thomas E. Still (SBN 127065)
12 Jennifer Still (SBN 138347)
13 HINSHAW, MARSH, STILL & HINSHAW LLP
14 12901 Saratoga Avenue
15 Saratoga, California 95070
16 Tel: (408) 861-6500
17 Fax: (408) 257-6645

18 Attorneys for Defendant
19 FREDERICK S. ROSEN, M.D.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF ALAMEDA

22 LATASHA NAILAH SPEARS
23 WINKFIELD, *et al.*
24
25 Plaintiffs,
26
27 v.
28 FREDERICK S. ROSEN, M.D.; UCSF
BENIOFF CHILDREN'S HOSPITAL
OAKLAND, *et al.*
Defendant.

Case No. RG15760730
[Hon. Stephen Pulido, Dept. 517]

DECLARATION OF JENNIFER STILL
IN SUPPORT OF OPPOSITION BY
FREDERICK S. ROSEN, M.D. TO
PLAINTIFFS' MOTION TO
BIFURCATE

DATE: April 19, 2018
TIME: 2:30 p.m.
DEPT: 517
Reservation No: R-1917827
Action filed: 3/3/15
First Amended Complaint Filed: 11/4/15

DECLARATION OF JENNIFER STILL

I, Jennifer Still, Esq., declare as follows:

1. I am an attorney at law duly licensed to practice before the courts of the State of California. I am a member of the law offices of Hinshaw, Marsh, Still & Hinshaw, attorneys for defendant Frederick S. Rosen, M.D., herein.

2. Attached hereto at Exhibit A is a true and correct copy of the Request for Admissions (Set One) propounded by my office on behalf of defendant Frederick Rosen, M.D., on or about March 30, 2016, to plaintiff Jahi McMath, by and through her GAL, Latasha Winkfield. Also attached hereto at Exhibit A is a true and correct copy of plaintiff's responses to said requests. Plaintiff made the following admission:

REQUEST FOR ADMISSION NO. 32: Admit that Exhibit A appended hereto, the Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations, are the applicable criteria for the determination of brain death in a child such as JAHl McMATH

Plaintiff's Response to RFA NO. 32: **Admit.**

3. Attached hereto at Exhibit B is a true and correct copy of the Requests for Admission (Set One), propounded to plaintiff Latasha Winkfield by my law office on behalf of defendant Frederick Rosen, M.D, on or about Janaury 26, 2017. Also attached hereto at Exhibit B are true and correct copies of Ms. Winkfield's verified Response to Request for Admission #15 (Set One), served on March 10, 2017, and Ms. Winkfield's Response to Requests for Admission (Set One), served on March 17, 2017. Ms. Winkfield admitted the following:

- A neurologic examination performed in accord with the accepted medical standards set forth in the Guidelines has not been performed on Jahi McMath since December 23, 2013 (See Response to RFA #15);
- No physician specializing in pediatric neurology or pediatric critical care medicine with expertise in the accepted medical standards for determining pediatric brain death set forth in the Guidelines, and who has performed a neurologic examination on Jahi McMath in accord with the accepted medical standards, has found that Jahi McMath does not fulfill the accepted neurological criteria for brain death (See Response to RFA #18); and
- There is no documentary evidence prepared by a treating physician of Jahi McMath in the specialty of pediatric neurology or pediatric critical care medicine that demonstrates Jahi McMath does not fulfill the accepted neurologic criteria to assess for pediatric brain death set forth in the Guidelines (See Response to RFA No. 22).

1 4. In an attempt to resolve the question of whether McMath continues to fulfill
2 accepted medical standards for brain death (given plaintiffs' allegation in the FAC that "she no
3 longer fulfills the standard brain death criteria"), I made efforts to meet and confer with
4 plaintiffs on the issue of a brain death re-examination. Such an examination requires that Ms.
5 Winkfield provide consent for a brain death examination, as well as a release of liability for the
6 health care providers who will be facilitating and performing the brain death examination. I am
7 informed and believe that no hospital will agree to perform the examination without, at a
8 minimum, Ms. Winkfield's consent and release of liability.

9 5. Ms. Winkfield refuses to provide consent for a brain death re-examination of
10 McMath. Nor will Ms. Winkfield agree to provide a release of liability.

11 6. On or about January 25, 2018, plaintiffs' attorney, Bruce Brusavich, sent an email
12 to attorney Dick Carroll, defense counsel for Children's Hospital Oakland, wherein he
13 expressed, for the first time, that plaintiffs will not agree to a brain death re-examination "given
14 the grave risk that disconnecting [McMath] from the respirator will cause metabolic acidosis and
15 cardiac arrhythmia or arrest. ... The test is, in my opinion, violative of CCP 2032.220(a)(1)."

16 7. In an attempt to further meet and confer and seek clarification on the issue of
17 whether Mrs. Winkfield, as Jahi McMath's guardian ad litem, will consent to a brain death
18 examination, on March 1, 2018, I sent plaintiffs' attorney, Bruce Brusavich, a letter, a true and
19 correct copy of which is appended hereto at Exhibit C, requesting a response to the following
20 four questions:

21 (1) It is plaintiffs' position that Jahi McMath will more likely than not fail a
22 brain death examination performed in accord with the neurologic criteria in the
23 Guidelines for the Determination of Brain Death in Infants and Children?

24 (2) Will Mrs. Winkfield, as Jahi McMath's guardian ad litem, give her written
25 consent to a brain death examination of Jahi McMath performed in accord with the
26 Guidelines?

27 (3) Will Mrs. Winkfield, as Jahi McMath's guardian ad litem, sign a release of
28 liability for the health care providers who will be facilitating and performing the
anticipated brain death examination?

1 (4) What evidence do plaintiffs have of Jahi McMath's current brain function?

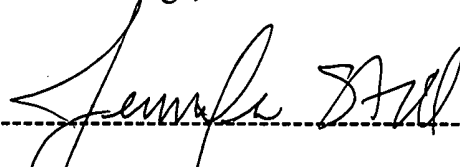
2 All of the materials relied on by Dr. Shewmon are very old. How do plaintiffs intend to
3 establish brain function today?

4 8. On or about March 20, 2018, I received a letter from Mr. Brusavich in response to
5 my own, referenced above. A true and correct copy of the letter I received from Mr. Brusavich,
6 dated March 20, 2018, is attached hereto as Exhibit D. Mr. Brusavich represented that (1) **Jahi**
7 **McMath "would most likely fail a brain death examination,"** (2) Mrs. Winkfield will not
8 provide her consent for a brain death examination citing the opinion of Alieta Eck, M.D., that it
9 "would most likely cause her death," (3) Ms. Winkfield will not agree to sign a release of
10 liability, and (4) the only current evidence of plaintiffs have of McMath's brain function are the
11 observations of percipient witnesses that McMath "continues to exhibit responsiveness at
12 times."

13 9. Defendants have yet to obtain verifiable, competent and objective evidence of
14 McMath's current brain function. The most recent medical testing of McMath was performed at
15 University Hospital on September 26, 2014. This testing demonstrated that she has no electrical
16 brain activity, no blood flow to her brain, and no cerebral mechanism to hear sound. (See
17 Exhibit D appended to Declaration of Sanford Schneider, M.D., filed in support of MSA.) Based
18 on information and belief, the most recent materials relied on by plaintiffs are video recordings
19 taken two years ago.

20 I declare under penalty of perjury under the laws of the State of California that all of the
21 foregoing is true and correct, and as to those matters stated on my information and belief, I
22 believe them to be true, and if called upon to testify to the matters herein I can competently
23 testify thereto.

24 Executed this 6th day of April, 2018 at Saratoga, California.

25
26 
27 Jennifer Still, Esq.
28

EXHIBIT

A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas E. Still, Esq. / SBN 127065 HINSHAW, MARSH, STILL & HINSHAW, LLP 12901 Saratoga Avenue Saratoga, CA 95070 TELEPHONE NO: (408 861-6500 FAX NO. (Optional): (408) 257-664 E-MAIL ADDRESS (Optional): tstill@hinshaw-law.com ATTORNEY FOR (Name): Defendant FREDERICK S. ROSEN, M.D.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Administration Building	
SHORT TITLE: LATASHA NAILAH SPEARS WINKFIELD, et al. vs. FREDERICK S. ROSEN, M.D., et al.	
<p style="text-align: center;">REQUESTS FOR ADMISSION</p> <input checked="" type="checkbox"/> Truth of Facts <input type="checkbox"/> Genuineness of Documents Requesting Party: Defendant FREDERICK S. ROSEN, M.D. Answering Party: Pltfs JAHl McMATH, a minor, by and through her GAL, LATASHA NAILAH Set No.: ONE SPEARS WINKFIELD	CASE NUMBER: RG 15760730

INSTRUCTIONS

Requests for admission are written requests by a party to an action requiring that any other party to the action either admit or deny, under oath, the truth of certain facts or the genuineness of certain documents. For information on timing, the number of admissions a party may request from any other party, service of requests and responses, restrictions on the style, format, and scope of requests for admission and responses to requests, and other details, see Code of Civil Procedure sections 94-95, 1013, and 2033.010-2033.420 and the case law relating to those sections.

An answering party should consider carefully whether to admit or deny the truth of facts or the genuineness of documents. With limited exceptions, an answering party will not be allowed to change an answer to a request for admission. There may be penalties if an answering party fails to admit the truth of any fact or the genuineness of any document when requested to do so and the requesting party later proves that the fact is true or that the document is genuine. These penalties may include, among other things, payment of the requesting party's attorney's fees incurred in making that proof.

Unless there is an agreement or a court order providing otherwise, the answering party must respond in writing to requests for admission within 30 days after they are served, or within 5 days after service in an unlawful detainer action. There may be significant penalties if an answering party fails to provide a timely written response to each request for admission. These penalties may include, among other things, an order that the facts in issue are deemed true or that the documents in issue are deemed genuine for purposes of the case.

Answers to *Requests for Admission* must be given under oath. The answering party should use the following language at the end of responses:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE)

(SIGNATURE)

These instructions are only a summary and are not intended to provide complete information about requests for admission. This *Requests for Admission* form does not change existing law relating to requests for admissions, nor does it affect an answering party's right to assert any privilege or to make any objection.

REQUESTS FOR ADMISSION

You are requested to admit within 30 days after service, or within 5 days after service in an unlawful detainer action, of this *Requests for Admission* that:

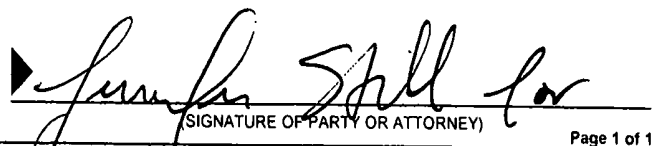
1. Each of the following facts is true (if more than one, number each fact consecutively):
SEE ATTACHMENT 1

Continued on Attachment 1

2. The original of each of the following documents, copies of which are attached, is genuine (if more than one, number each document consecutively):

Continued on Attachment 2

THOMAS E. STILL March 30, 2016
(TYPE OR PRINT NAME)


SIGNATURE OF PARTY OR ATTORNEY

REQUESTS FOR ADMISSION (SET ONE)

Attachment 1

Propounded to Plaintiff JAHI McMATH, a minor by and through her GAL,
LATASHA NAILAH SPEARS WINKFIELD

Propounded by Defendant FREDERICK S. ROSEN, M.D.

Reference is hereby made to that certain form of official interrogatories approved by the Judicial Council of California on July 1, 1987 [Rev. January 1, 2008], which is being served with this request for admissions. Specifically, plaintiff and plaintiff attorney's attention is called to interrogatory number 17.1, and subsections thereof in responding to this request for admissions.

1. Admit that at all times referred to in plaintiffs' complaint on file herein, defendant FREDERICK S. ROSEN, M.D. possessed and had the level of skill and knowledge that other reasonably careful physicians would have and possess practicing in the same field under similar circumstances while caring for JAHI McMATH.

2. Admit that at all times referred to in plaintiffs' complaint on file herein, defendant FREDERICK S. ROSEN, M.D., used the level of skill, knowledge and care in the diagnosis and/or treatment of JAHI McMATH that other reasonably careful physicians would have used in similar circumstances.

3. Admit that at all times referred to in plaintiffs' complaint on file herein, defendant FREDERICK S. ROSEN, M.D., was as skillful, knowledgeable or careful as other reasonable physicians would have been in similar circumstances.

4. Admit that all times referred to in plaintiffs' complaint on file herein, defendant FREDERICK S. ROSEN, M.D., chose one medically accepted method of treatment or diagnosis while participating in the diagnosis and treatment of JAHI McMATH.

5. Admit that at all times referred to in plaintiffs' complaint on file herein, defendant FREDERICK S. ROSEN, M.D., gave plaintiffs as much information as JAHI McMATH, and/or her mother plaintiff LATASHA WINKFIELD, needed to make an informed decision regarding the surgery performed by FREDERICK S. ROSEN, M.D., on JAHI McMATH on December 9, 2013.

6. Admit that at all times referred to in plaintiffs' complaint on file herein, defendant

1 FREDERICK S. ROSEN, M.D., disclosed to JAHl McMATH, and/or her mother, LATASHA
2 WINKFIELD, those risks that a reasonable person would consider important in deciding to have the
3 surgery performed by FREDERICK S. ROSEN, M.D., on JAHl McMATH on December 9, 2013.

4 7. Admit that prior to the surgery performed by FREDERICK S. ROSEN, M.D., on JAHl
5 McMATH on December 9, 2013, defendant FREDERICK S. ROSEN, M.D., gave JAHl McMATH,
6 and/or her mother, LATASHA WINKFIELD, that information which other reasonably careful
7 physicians would disclose to a patient under the same or similar circumstances.

8 8. Admit prior to the surgery performed by FREDERICK S. ROSEN, M.D., on JAHl
9 McMATH on December 9, 2013, defendant FREDERICK S. ROSEN, M.D., explained the risks of
10 refusing a procedure to JAHl McMATH and/or her mother, LATASHA WINKFIELD, in a manner
11 which plaintiffs could understand.

12 9. Admit that prior to the surgery performed by FREDERICK S. ROSEN, M.D., on JAHl
13 McMATH on December 9, 2013, defendant FREDERICK S. ROSEN, M.D., disclosed to JAHl
14 McMATH, and/or her mother, LATASHA WINKFIELD, those risks that a reasonable person would
15 consider important in deciding not to have a medical procedure.

16 10. Admit that JAHl McMATH met the criteria for brain death in accordance with the
17 accepted medical standards on December 11, 2013.

18 11. Admit that JAHl McMATH met the criteria for brain death in accordance with the
19 accepted medical standards on December 12, 2013.

20 13. Admit that JAHl McMATH met the criteria for brain death in accordance with the
21 accepted medical standards on December 23, 2013.

22 14. Admit that JAHl McMATH met the criteria for brain death in accordance with the
23 accepted medical standards January 17, 2014.

24 15. Admit that JAHl McMATH met the criteria for brain death in accordance with the
25 accepted medical standards on March 17, 2014.

26 16. Admit that JAHl McMATH met the criterial for brain death in accordance with the
27 accepted medical standards on October 1, 2014.

28 17. Admit that JAHl McMATH met the criterial for brain death in accordance with the

1 accepted medical standards on March 3, 2015.

2 18. Admit that as of December 12, 2013, JAHl McMATH had sustained irreversible
3 cessation of all functions of the entire brain, including the brain stem.

4 19. Admit that as of December 23, 2013, JAHl McMATH had sustained irreversible
5 cessation of all functions of the entire brain, including the brain stem.

6 20. Admit that JAHl McMATH had breast development prior to December 1, 2013.

7 21. Admit that the cardiopulmonary arrest and Code for JAHl McMATH lasted from
8 approximately 12:35 a.m. to 3:08 a.m., on the morning of December 10, 2013.

9 22. Admit the digital electroencephalograms performed on JAHl McMATH on December
10 11, 2013, December 17, 2013, and December 23, 2013, fulfilled the criteria for electrocerebral
11 silence.

12 23. Admit the cerebral blood flow study performed on JAHl McMATH on December 23,
13 2013, showed no cerebral perfusion.

14 24. Admit that from December 11, 2013, to the present, JAHl McMATH has had no
15 spontaneous respiratory effort.

16 25. Admit that from December 11, 2013 to the present, JAHl McMATH's pupils have been
17 fixed bilaterally and are non-reactive.

18 26. Admit that from December 11, 2013 to the present, JAHl McMATH has not passed an
19 apnea test.

20 27. Admit that from December 11, 2013 to the present, JAHl McMATH was unresponsive
21 to painful stimuli.

22 28. Admit that the Paul Fisher, M.D., was qualified to make a determination of whether
23 there was cessation of all functions of the entire brain, including the brain stem, of JAHl McMATH
24 on December 23, 2013.

25 29. Admit that Paul Fisher, M.D., applied the appropriate examination criteria in his brain
26 death evaluation of JAHl McMATH on December 23, 2013.

27 30. Admit that on December 23, 2013, Paul Fisher, M.D., concluded that JAHl McMATH
28 satisfied the clinical criteria for brain death in a pediatric patient.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

31. Admit that on December 23, 2013, Paul Fisher, M.D., concluded that JAHl McMATH suffered an irreversible brain injury, and an absence of cerebral function and brainstem function.

32. Admit that Exhibit A appended hereto, the Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations, are the applicable criteria for the determination of brain death in a child such as JAHl McMATH.

H:\McMath\discover\RA.1.Jahi.wpd

Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations

Thomas A. Nakagawa, Stephen Ashwal, Mudit Mathur, Mohan Mysore and the Society of Critical Care Medicine, Section on Critical Care and Section on Neurology of the American Academy of Pediatrics, and the Child Neurology Society
Pediatrics 2011;128;e720; originally published online August 28, 2011;
DOI: 10.1542/peds.2011-1511

Updated Information & Services	including high resolution figures, can be found at: http://pediatrics.aappublications.org/content/128/3/e720.full.html
References	This article cites 81 articles, 24 of which can be accessed free at: http://pediatrics.aappublications.org/content/128/3/e720.full.html#ref-list-1
Citations	This article has been cited by 2 HighWire-hosted articles: http://pediatrics.aappublications.org/content/128/3/e720.full.html#related-urls
Post-Publication Peer Reviews (P³Rs)	7 P ³ Rs have been posted to this article http://pediatrics.aappublications.org/cgi/eletters/128/3/e720
Subspecialty Collections	This article, along with others on similar topics, appears in the following collection(s): Section on Critical Care http://pediatrics.aappublications.org/cgi/collection/section_on_critical_care Neurology http://pediatrics.aappublications.org/cgi/collection/neurology_sub
Permissions & Licensing	Information about reproducing this article in parts (figures, tables) or in its entirety can be found online at: http://pediatrics.aappublications.org/site/misc/Permissions.xhtml
Reprints	Information about ordering reprints can be found online: http://pediatrics.aappublications.org/site/misc/reprints.xhtml

PEDIATRICS is the official journal of the American Academy of Pediatrics. A monthly publication, it has been published continuously since 1948. PEDIATRICS is owned, published, and trademarked by the American Academy of Pediatrics, 141 Northwest Point Boulevard, Elk Grove Village, Illinois, 60007. Copyright © 2011 by the American Academy of Pediatrics. All rights reserved. Print ISSN: 0031-4005. Online ISSN: 1098-4275.

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™



EXHIBIT A



Clinical Report—Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations

abstract



OBJECTIVE: To review and revise the 1987 pediatric brain death guidelines.

METHODS: Relevant literature was reviewed. Recommendations were developed using the GRADE system.

CONCLUSIONS AND RECOMMENDATIONS: (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. Because of insufficient data in the literature, recommendations for preterm infants less than 37 weeks gestational age are not included in this guideline.

(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 physicians. Apnea testing may be performed by the same physician. An observation period of 24 hours for term newborns (37 weeks gestational age) to 30 days of age, and 12 hours for infants and children (> 30 days to 18 years) is recommended. The first examination determines 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.

(4) Apnea testing to support the diagnosis of brain death must be performed safely and requires documentation of an arterial $Paco_2$ 20 mm Hg above the baseline and ≥ 60 mm Hg with no respiratory effort during the testing period. If the apnea test cannot be safely completed, an ancillary study should be performed.

(5) Ancillary studies (electroencephalogram and radionuclide cerebral blood flow) are not required to establish brain death and are not a substitute for the neurologic examination. Ancillary studies may be used to assist the clinician in making the diagnosis of brain death (i) when components of the examination or apnea testing cannot be completed safely due to the underlying medical condition of the patient; (ii) if there is uncertainty about the results of the neurologic examination; (iii) if a medication effect may be present; or (iv) to reduce the inter-examination observation period. 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.

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

Thomas A. Nakagawa, MD, Stephen Ashwal, MD, Mudit Mathur, MD, Mohan Mysore, MD, and THE SOCIETY OF CRITICAL CARE MEDICINE, SECTION ON CRITICAL CARE AND SECTION ON NEUROLOGY OF THE AMERICAN ACADEMY OF PEDIATRICS, AND THE CHILD NEUROLOGY SOCIETY

KEY WORDS

apnea testing, brain death, cerebral blood flow, children, electroencephalography, infants, neonates, pediatrics

ABBREVIATIONS

EEG—electroencephalogram
CBF—cerebral blood flow
CT—computed tomography
MRI—magnetic resonance imaging
ETT—endotracheal tube
CPAP—continuous positive airway pressure
ICP—intracranial pressure
ECS—electrocerebral silence

The guidance in this report does not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

www.pediatrics.org/cgi/doi/10.1542/peds.2011-1511

doi:10.1542/peds.2011-1511

All clinical reports from the American Academy of Pediatrics automatically expire 5 years after publication unless reaffirmed, revised, or retired at or before that time.

PEDIATRICS (ISSN Numbers: Print, 0031-4005; Online, 1098-4275).

Copyright © 2011 by the American Academy of Pediatrics, the Society for Critical Care Medicine, and the Child Neurology Society.

1 Bruce M. Brusavich, State Bar No. 93578
Terry S. Schneier, State Bar No. 118322
2 **AGNEWBRUSAVICH**
A Professional Corporation
3 20355 Hawthorne Boulevard
Second Floor
4 Torrance, California 90503
(310) 793-1400

5 Andrew N. Chang
6 ESNER, CHANG & BOYER
Southern California Office
7 234 East Colorado Boulevard
Suite 750
8 Pasadena, CA 91101
(626) 535-9860121

9
10 Attorneys for Plaintiffs

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA

14
15 LATASHA NAILAH SPEARS WINKFIELD;
MARVIN WINKFIELD; SANDRA CHATMAN;
16 and JAHl McMATH, a minor, by and
through her Guardian ad Litem, LATASHA
17 NAILAH SPEARS WINKFIELD,

18 Plaintiffs,

19 vs.

20 FREDERICK S. ROSEN, M.D.; UCSF BENIOFF
CHILDREN'S HOSPITAL OAKLAND
21 (formerly Children's Hospital & Research
Center at Oakland); MILTON McMATH, a
22 nominal defendant, and DOES 1
THROUGH 100,

23 Defendants.
24

CASE NO. RG 15760730

ASSIGNED FOR ALL PURPOSES TO:
JUDGE STEPHEN PULIDO - DEPT. "16"

**PLAINTIFF JAHl McMATH, a minor by
her GAL, LATASHA NAILAH SPEARS
WINKFIELD'S SUPPLEMENTAL
RESPONSES TO REQUESTS FOR
ADMISSION**

Date Action Filed: 03/03/15

25 PROPOUNDING PARTY: Defendant, FREDERICK S. ROSEN, M.D.

26 RESPONDING PARTY: Plaintiff, JAHl McMATH, a minor, by her GAL, LATASHA
27 NAILAH SPEARS WINKFIELD

28 SET NO.: ONE

INTRODUCTORY STATEMENT

IT SHOULD BE NOTED that this responding party has not fully completed investigation of the facts relating to this case, has not fully completed discovery in this action and has not completed preparation for trial. Therefore, the responses are based only on such information and documents as are presently available to and specifically known by responding party. It is anticipated that further discovery, independent investigation, legal research, and analysis may supply additional facts and documents, add meaning to the known facts, and/or establish entirely new factual and legal conclusions, all of which may lead to substantial additions to and changes and variations from the contentions herein set forth. The following responses are, therefore, given without prejudice to responding party's rights to produce evidence of any documents or facts subsequently discovered or recalled. Accordingly, this responding party reserves the right to change any and all responses herein set forth as additional facts are discovered or ascertained, analyses are made, and legal research is completed. Intentions are made in a good faith effort to supply as much material and factual information and as much specification as is presently known, but should in no way prejudice responding party with respect to further discovery, research and analysis.

To the extent that defendant attempts in these Requests for Admission to extend plaintiff's responsibilities beyond the scope of discovery established by California Code of Civil Procedure, plaintiff declines to accept such attempt. Moreover, plaintiff will not accept any specialized meanings or definitions ascribed by defendant in these Requests and will interpret all words in their ordinary and customary meanings.

Plaintiff objects to these Requests to the extent that they seek information privileged or protected by the attorney-client privilege or the work product doctrine. Plaintiff will not repeat this objection in each response and furnishes these responses and all documents referred to herein without prejudice

AGNEW BRUSAVICH
LAWYERS

20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401
TELEPHONE: (310) 793-1400 FACSIMILE: (310) 793-1499 E-MAIL: ab@agnewbrusavich.com

1 to this objection.

2 Furthermore, this responding party may object to a particular request
3 on the grounds that it does not seek information that is relevant to the subject
4 matter of this action, is privileged, or is otherwise not discoverable. Notwithstanding
5 this objection, the responding party may, in a good faith effort, elect to respond to
6 certain requests to which objections are raised, and to the extent that such
7 responses are given, plaintiff does not intend such response to constitute a waiver
8 of the right to object to such request at a subsequent deposition or trial.

9 No admission of fact is intended by any response set forth herein unless
10 explicitly stated therein.

11
12 SUPPLEMENTAL RESPONSES TO REQUESTS FOR ADMISSIONS

- 13 1. Deny.
14 2. Deny.
15 3. Deny.
16 4. Deny.
17 5. Deny.
18 6. Deny.
19 7. Deny.
20 8. Deny.
21 9. Deny.
22 10. Deny.
23 11. Deny.
24 12. Deny.
25 13. Deny.
26 14. Deny.
27 15. Deny.
28 16. Deny.

AGNEW BRUSAVICH
LAWYERS

20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401
TELEPHONE: (310) 793-1400 FACSIMILE: (310) 793-1499 E-MAIL: ab@agnewbrusavich.com

- 1 17. Deny.
- 2 18. Deny.
- 3 19. Deny.
- 4 20. Deny.
- 5 21. Admit.
- 6 22. Deny.
- 7 23. Deny.
- 8 24. Deny.
- 9 25. Deny.
- 10 26. Deny.
- 11 27. Deny.
- 12 28. Admit.
- 13 29. Admit that Dr. Fisher intended to apply the appropriate examination
- 14 criteria in his brain death evaluation. However, the definition of brain death
- 15 includes the "irreversible cessation of all functions of the entire brain including the
- 16 brainstem." Numerous qualified medical professionals have opined that Jahi does
- 17 not suffer from a "cessation of all functions of the entire brain and therefore Jahi
- 18 could not have met the definition of "irreversible" brain death on December 23,
- 19 2013.
- 20 **SUPPLEMENTAL RESPONSE TO RFA NO. 29:**
- 21 Deny.
- 22 30. Admit that Dr. Fisher intended to apply the appropriate examination
- 23 criteria in his brain death evaluation. However, the definition of brain death
- 24 includes the "irreversible cessation of all functions of the entire brain including the
- 25 brainstem." Numerous qualified medical professionals have opined that Jahi does
- 26 not suffer from a "cessation of all functions of the entire brain and therefore Jahi
- 27 could not have met the definition of "irreversible" brain death on December 23,
- 28 2013.

1 **SUPPLEMENTAL RESPONSE TO RFA NO. 30:**

2 Admit that Dr. Fisher so concluded.

3 31. Admit that Dr. Fisher intended to apply the appropriate examination
4 criteria in his brain death evaluation. However, the definition of brain death
5 includes the "irreversible cessation of all functions of the entire brain including the
6 brainstem." Numerous qualified medical professionals have opined that Jahi does
7 not suffer from a "cessation of all functions of the entire brain and therefore Jahi
8 could not have met the definition of "irreversible" brain death on December 23,
9 2013.

10 **SUPPLEMENTAL RESPONSE TO RFA NO. 31:**

11 Admit that Dr. Fisher so concluded.

12 32. Admit.

14 DATED: August 12, 2016

AGNEWBRUSAVICH
A Professional Corporation

By: 

BRUCE M. BRUSAVICH
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION (CCP 446, 2015.5)

I declare that:

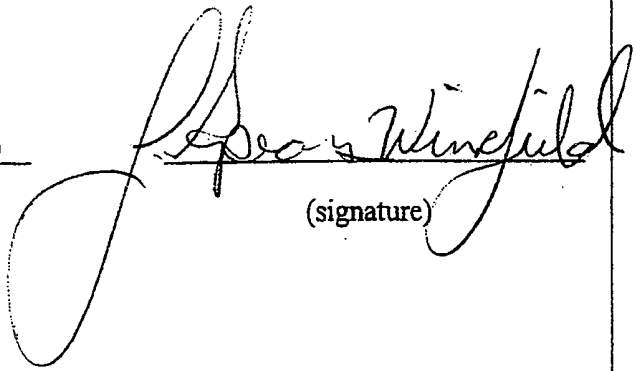
I am the plaintiff in the above-captioned matter. I am familiar with the contents of the foregoing PLAINTIFF JAHl McMATH, a minor by her GAL, LATASHA NAILAH SPEARS WINKFIELD'S SUPPLEMENTAL RESPONSES TO REQUESTS FOR ADMISSION.

The information supplied therein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and is therefore provided as required by law.

I declare under penalty of perjury under the laws of the state of California that the information contained in the foregoing document is true, except as to the matters which were provided by my attorneys or other agents, and as to those matters, I am informed and believe that they are true.

DATED: August 15, 2016

By LATASHA NAILAH SPEARS WINKFIELD
as Guardian ad Litem for JAHl McMATH


(signature)

AGNEW BRUSAVICH
LAWYERS
20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401
TELEPHONE: (310) 793-1400 · FACSIMILE: (310) 793-1499 · E-MAIL: ob@agnewbrusavich.com

EXHIBIT

B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas E. Still, Esq. / SBN 127065 HINSHAW, MARSH, STILL & HINSHAW, LLP 12901 Saratoga Avenue Saratoga, CA 95070 TELEPHONE NO: (408 861-6500 FAX NO. (Optional): (408) 257-6645 E-MAIL ADDRESS (Optional): tstill@hinshaw-law.com ATTORNEY FOR (Name): Defendant FREDERICK S. ROSEN, M.D.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Administration Building	
SHORT TITLE: LATASHA NAILAH SPEARS, et al. vs. FREDERICK S. ROSEN, M.D., et al.	
<p style="text-align: center;">REQUESTS FOR ADMISSION</p> <p> <input checked="" type="checkbox"/> Truth of Facts <input type="checkbox"/> Genuineness of Documents </p> <p> Requesting Party: Defendant FREDERICK S. ROSEN, M.D. Answering Party: Plaintiff, LATASHA NAILAH SPEARS WINKFIELD Set No.: ONE </p>	CASE NUMBER: RG 15760730

INSTRUCTIONS

Requests for admission are written requests by a party to an action requiring that any other party to the action either admit or deny, under oath, the truth of certain facts or the genuineness of certain documents. For information on timing, the number of admissions a party may request from any other party, service of requests and responses, restrictions on the style, format, and scope of requests for admission and responses to requests, and other details, see Code of Civil Procedure sections 94-95, 1013, and 2033.010-2033.420 and the case law relating to those sections.

An answering party should consider carefully whether to admit or deny the truth of facts or the genuineness of documents. With limited exceptions, an answering party will not be allowed to change an answer to a request for admission. There may be penalties if an answering party fails to admit the truth of any fact or the genuineness of any document when requested to do so and the requesting party later proves that the fact is true or that the document is genuine. These penalties may include, among other things, payment of the requesting party's attorney's fees incurred in making that proof.

Unless there is an agreement or a court order providing otherwise, the answering party must respond in writing to requests for admission within 30 days after they are served, or within 5 days after service in an unlawful detainer action. There may be significant penalties if an answering party fails to provide a timely written response to each request for admission. These penalties may include, among other things, an order that the facts in issue are deemed true or that the documents in issue are deemed genuine for purposes of the case.

Answers to *Requests for Admission* must be given under oath. The answering party should use the following language at the end of the responses:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE)

(SIGNATURE)

These instructions are only a summary and are not intended to provide complete information about requests for admission. This *Requests for Admission* form does not change existing law relating to requests for admissions, nor does it affect an answering party's right to assert any privilege or to make any objection.

REQUESTS FOR ADMISSION

You are requested to admit within 30 days after service, or within 5 days after service in an unlawful detainer action, of this *Requests for Admission* that:

1. Each of the following facts is true (if more than one, number each fact consecutively):

SEE ATTACHMENT 1

Continued on Attachment 1

2. The original of each of the following documents, copies of which are attached, is genuine (if more than one, number each document consecutively):

Continued on Attachment 2

THOMAS E. STILL February 26, 2017
(TYPE OR PRINT NAME)

▶ *Jennifer Still for*
(SIGNATURE OF PARTY OR ATTORNEY)

1 8. Admit that on January 10, 2014, at Saint Peter's University Hospital, Siva Jonna, M.D.,
2 explained to you, in so many words, that there was "no hope" of JAHl McMATH's "brain recovery."
3 (See Saint Peter's University Hospital Progress Note dated 1/10/14, pp. 500-501, appended hereto at
4 Exhibit B.)

5 9. Admit that during JAHl McMATH's hospitalization in the pediatric intensive care unit
6 at Saint Peter's University Hospital from January 6, 2014 to August 25, 2014, JAHl McMATH's
7 clinical examinations were at all times consistent with brain death.

8 10. Admit that during JAHl McMATH's hospitalization at Saint Peter's University
9 Hospital from January 6, 2014 to August 25, 2014, McMATH demonstrated no brain stem reflexes.

10 11. Admit that JAHl McMATH's medical records from Saint Peter's University Hospital,
11 that your attorneys produced in the course of this litigation, document that JAHl McMATH's
12 neurologic examinations performed at Saint Peter's University Hospital were at all times consistent
13 with brain death.

14 12. Admit that JAHl McMATH's medical records from Saint Peter's University Hospital,
15 that your attorneys produced in the course of this litigation, document that JAHl McMATH had no
16 volitional activity (i.e., meaningful movement) while hospitalized at Saint Peter's University
17 Hospital.

18 13. Admit that JAHl McMATH's medical records from Saint Peter's University Hospital,
19 that your attorneys produced in the course of this litigation, document that JAHl McMATH exhibited
20 active spinal reflexes while hospitalized at Saint Peter's University Hospital.

21 14. Admit that since JAHl McMATH's discharge from Saint Peter's University Hospital on
22 approximately August 25, 2014, McMATH has lived in your apartment in New Jersey, where
23 McMATH receives skilled nursing care approximately 24-hours a day.

24 15. Admit that a neurologic examination performed in accord with the accepted medical
25 standards set forth in the "Guidelines for the Determination of Brain Death in Infants and Children:
26 An Update of the 1987 Task Force Recommendations", appended hereto at Exhibit A, has not been
27 performed on JAHl McMATH since December 23, 2013.

28 16. Admit that pediatric brain death is a clinical assessment made by two qualified

1 physicians in a standardized approach that requires application of the neurological examination
2 components set forth in the "Guidelines for the Determination of Brain Death in Infants and
3 Children: An Update of the 1987 Task Force Recommendations", appended hereto at Exhibit A.

4 17. Admit that there are no accepted substitutes to the accepted medical standards for
5 diagnosing pediatric brain death in accord with the "Guidelines for the Determination of Brain Death
6 in Infants and Children: An Update of the 1987 Task Force Recommendations", appended hereto at
7 Exhibit A.

8 18. Admit that no physician specializing in pediatric neurology or pediatric critical care
9 medicine with expertise in the accepted medical standards for determining pediatric brain death set
10 forth in the "Guidelines for the Determination of Brain Death in Infants and Children: An Update of
11 the 1987 Task Force Recommendations", appended hereto at Exhibit A, and who has performed a
12 neurologic examination on JAHl McMATH in accord with the accepted medical standards, has
13 found that JAHl McMATH does not fulfill the accepted neurological criteria for brain death.

14 19. Admit that no physician specializing in pediatric neurology or pediatric critical care
15 medicine with expertise in the accepted medical standards for determining pediatric brain death set
16 forth in the "Guidelines for the Determination of Brain Death in Infants and Children: An Update of
17 the 1987 Task Force Recommendations", appended hereto at Exhibit A, and who has performed a
18 neurologic examination on JAHl McMATH in accord with the accepted medical standards, has
19 found that JAHl McMATH has active cranial nerve reflexes.

20 20. Admit that no physician specializing in pediatric neurology or pediatric critical care
21 medicine with expertise in the accepted medical standards for determining pediatric brain death set
22 forth in the "Guidelines for the Determination of Brain Death in Infants and Children: An Update of
23 the 1987 Task Force Recommendations", appended hereto at Exhibit A, and who has performed a
24 neurologic examination on JAHl McMATH in accord with the accepted medical standards, has
25 found that JAHl McMATH has active brain stem reflexes.

26 21. Admit that no physician with expertise in pediatric brain death evaluations who has
27 performed a neurologic examination of JAHl McMATH using noxious stimuli has concluded that
28 McMATH's movements during the neurologic examination were due to brain stem reflexes. (See

1 Guidelines, p. e724, Exhibit A appended hereto, stating that the “The clinical differentiation of
2 spinal responses from retained motor responses associated with brain activity requires expertise.”)

3 22. Admit that you have no documentary evidence, prepared by a treating physician of
4 JAHl McMATH in the specialty of pediatric neurology or pediatric critical care medicine, that
5 demonstrates JAHl McMATH does not fulfill the accepted neurologic criteria to assess for pediatric
6 brain death set forth in the “Guidelines for the Determination of Brain Death in Infants and Children:
7 An Update of the 1987 Task Force Recommendations”, appended hereto at Exhibit A.

8 23. Admit that an electroencephalogram is not part of the required neurologic criteria for
9 assessing pediatric brain death under the accepted medical standards. (See “Guidelines for the
10 Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force
11 Recommendations”, p. e728, appended hereto at Exhibit A.)

12 24. Admit that an electroencephalogram is not a substitute for the required neurologic
13 criteria for assessing pediatric brain death under the accepted medical standards. (See “Guidelines
14 for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force
15 Recommendations”, p. e728, appended hereto at Exhibit A.)

16 25. Admit that the accepted medical standards for assessing pediatric brain death set forth
17 in the “Guidelines for the Determination of Brain Death in Infants and Children: An Update of the
18 1987 Task Force Recommendations”, appended hereto at Exhibit A, do not include review of video
19 recordings of the patient.

20 26. Admit that the accepted medical standards for assessing pediatric brain death set forth
21 in the “Guidelines for the Determination of Brain Death in Infants and Children: An Update of the
22 1987 Task Force Recommendations”, appended hereto at Exhibit A, do not include MR
23 angiography.

24 27. Admit that the accepted medical standards for assessing pediatric brain death set forth
25 in the “Guidelines for the Determination of Brain Death in Infants and Children: An Update of the
26 1987 Task Force Recommendations”, appended hereto at Exhibit A, do not include brain MRI
27 imaging.

28 28. Admit that the accepted medical standards for determining pediatric brain death set

1 forth in the "Guidelines for the Determination of Brain Death in Infants and Children: An Update of
2 the 1987 Task Force Recommendations", appended hereto at Exhibit A, do not include brain MRV
3 imaging.

4 29. Admit that the accepted medical standards for assessing pediatric brain death expressly
5 state that "MRI-MR angiography, and perfusion MRI imaging have not been studied sufficiently nor
6 validated in infants and children and cannot be recommended as ancillary studies to assist with the
7 determination of brain death in children at this time." (See "Guidelines for the Determination of
8 Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations", p.
9 e729, appended hereto at Exhibit A.)

10 30. Admit that the accepted medical standards for assessing pediatric brain death, set forth
11 in the "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the
12 1987 Task Force Recommendations", appended hereto at Exhibit A, do not include visual evoked
13 potentials testing.

14 31. Admit that the accepted medical standards for assessing pediatric brain death, set forth
15 in the "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the
16 1987 Task Force Recommendations", appended hereto at Exhibit A, do not include brainstem
17 auditory evoked potentials testing.

18 32. Admit that the accepted medical standards for assessing pediatric brain death, set forth
19 in the "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the
20 1987 Task Force Recommendations", appended hereto at Exhibit A, do not include somatosensory
21 evoked potentials (upper extremities) testing.

22 33. Admit that the onset of puberty, including but not limited to breast development and/or
23 the onset of menarche, is not part of the accepted medical standards for assessing pediatric brain
24 death, as set forth in the "Guidelines for the Determination of Brain Death in Infants and Children:
25 An Update of the 1987 Task Force Recommendations", appended hereto at Exhibit A.

26 34. Admit that D. Alan Shewmon, M.D., advocates that brain death, diagnosed in accord
27 with the accepted medical standards, should not be a criterion for death.

28 35. Admit that none of the video recordings of plaintiff JAHl McMATH that have been

1 produced by plaintiffs in this litigation were recorded by a physician with expertise in the accepted
2 medical standards for assessing pediatric brain death as set forth in "Guidelines for the
3 Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force
4 Recommendations", appended hereto at Exhibit A.

5 36. Admit that none of the video recordings of plaintiff JAHl McMATH that have been
6 produced by plaintiffs in this litigation were taken in the presence of a physician with expertise in the
7 accepted medical standards for assessing pediatric brain death as set forth in the "Guidelines for the
8 Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force
9 Recommendations", appended hereto at Exhibit A.

10 37. Admit that all of the video recordings of plaintiff JAHl McMATH that have been
11 produced by plaintiffs in this litigation were taken by JAHl McMATH's family members.

12 38. Admit that you cannot identify the individuals who made each of the video recordings
13 of plaintiff JAHl McMATH that have been produced by plaintiffs in this litigation.

14 39. Admit that JAHl McMATH exhibits a complete loss of consciousness as defined by the
15 accepted medical standards. (See "Guidelines for the Determination of Brain Death in Infants and
16 Children: An Update of the 1987 Task Force Recommendations", p. e724, appended hereto at
17 Exhibit A hereto.)

18 40. Admit that no physician specializing in pediatric neurology or pediatric critical care
19 medicine, who has reviewed JAHl McMATH's medical records and performed a neurologic
20 examination of McMATH, has found that the examination demonstrates McMATH is conscious.

21 41. Admit that JAHl McMATH exhibits a complete lack of volitional activity. (See
22 "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987
23 Task Force Recommendations", p. e724, appended hereto at Exhibit A hereto.)

24 42. Admit that no physician specializing in pediatric neurology or pediatric critical care
25 medicine, who has reviewed JAHl McMATH's medical records and performed a neurological
26 examination of McMATH, has found that the examination demonstrates McMATH has volitional
27 activity.

28 43. Admit that JAHl McMATH exhibits no brain stem reflexes under testing performed in

1 accord with the accepted medical standards. (See "Guidelines for the Determination of Brain Death
2 in Infants and Children: An Update of the 1987 Task Force Recommendations", p. e 724, appended
3 hereto at Exhibit A hereto.)

4 44. Admit that JAHl McMATH does not open or move her eyes to noxious stimuli. (See
5 "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987
6 Task Force Recommendations", p. e724, appended hereto at Exhibit A hereto.)

7 45. Admit that JAHl McMATH has no motor response to noxious stimuli other than
8 spinally mediated reflexes. (See "Guidelines for the Determination of Brain Death in Infants and
9 Children: An Update of the 1987 Task Force Recommendations", p. e724, appended hereto at
10 Exhibit A hereto.)

11 46. Admit that JAHl McMATH has midposition or fully dilated pupils which do not
12 respond to light under testing performed in accord with the accepted medical standards. (See
13 "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987
14 Task Force Recommendations", p. e724, appended hereto at Exhibit A hereto.)

15 47. Admit that JAHl McMATH lacks movement of buccal musculature, including facial
16 and oropharyngeal muscles, under testing performed in accord with the accepted medical standards.
17 (See "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the
18 1987 Task Force Recommendations", p. e 724, appended hereto at Exhibit A hereto.)

19 48. Admit that JAHl McMATH lacks gag, cough, sucking and rooting reflexes under
20 testing performed in accord with the accepted medical standards. (See "Guidelines for the
21 Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force
22 Recommendations", p. e724, appended hereto at Exhibit A hereto.)

23 49. Admit that JAHl McMATH lacks corneal reflexes under testing performed in accord
24 with the accepted medical standards. (See "Guidelines for the Determination of Brain Death in
25 Infants and Children: An Update of the 1987 Task Force Recommendations", p. e724, appended
26 hereto at Exhibit A hereto.)

27 40. Admit that JAHl McMATH lacks oculovestibular reflexes under testing performed in
28 accord with the accepted medical standards. (See "Guidelines for the Determination of Brain Death

1 in Infants and Children: An Update of the 1987 Task Force Recommendations”, p. e724, appended
2 hereto at Exhibit A hereto.)

3 51. Admit that JAHl McMATH has a complete absence of documented respiratory drive
4 under apnea testing performed in accord with the accepted medical standards. (See “Guidelines for
5 the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force
6 Recommendations”, appended hereto at Exhibit A hereto.)

7 52. Admit that apnea testing performed in accord with the accepted medical standards has
8 not been performed on JAHl McMATH since December 23, 2013. (See “Guidelines for the
9 Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force
10 Recommendations”, p. e724, appended hereto at Exhibit A hereto.)

11 53. Admit that JAHl McMATH has flaccid tone under testing performed in accord with the
12 accepted medical standards. (See “Guidelines for the Determination of Brain Death in Infants and
13 Children: An Update of the 1987 Task Force Recommendations”, p. e724, appended hereto at
14 Exhibit A hereto.)

15 54. Admit that JAHl McMATH has an absence of spontaneous or induced movements,
16 excluding spinal cord events such as reflex withdrawal or spinal myoclonus, under testing performed
17 in accord with the accepted medical standards. (See “Guidelines for the Determination of Brain
18 Death in Infants and Children: An Update of the 1987 Task Force Recommendations”, p. e724,
19 appended hereto at Exhibit A hereto.)

20 55. Admit that a cerebral blood flow study performed in accord with the accepted medical
21 standards has not been performed on JAHl McMATH since December 23, 2013. (See “Guidelines
22 for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force
23 Recommendations”, appended hereto at Exhibit A hereto.)

24 Dated: January ____, 2017 HINSHAW, MARSH, STILL & HINSHAW

25
26 By: _____
27 THOMAS E. STILL
28 JENNIFER STILL
Attorneys for Defendant
FREDERICK S. ROSEN, M.D.

EXHIBIT A

PEDIATRICS®

OFFICIAL JOURNAL OF THE AMERICAN ACADEMY OF PEDIATRICS

Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations

Thomas A. Nakagawa, Stephen Ashwal, Mudit Mathur, Mohan Mysore and the Society of Critical Care Medicine, Section on Critical Care and Section on Neurology of the American Academy of Pediatrics, and the Child Neurology Society
Pediatrics 2011;128:e720; originally published online August 28, 2011;
DOI: 10.1542/peds.2011-1511

The online version of this article, along with updated information and services, is located on the World Wide Web at:
[/content/128/3/e720.full.html](http://content/128/3/e720.full.html)

PEDIATRICS is the official journal of the American Academy of Pediatrics. A monthly publication, it has been published continuously since 1948. PEDIATRICS is owned, published, and trademarked by the American Academy of Pediatrics, 141 Northwest Point Boulevard, Elk Grove Village, Illinois, 60007. Copyright © 2011 by the American Academy of Pediatrics. All rights reserved. Print ISSN: 0031-4005. Online ISSN: 1098-4275.

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™



1 Bruce M. Brusavich, State Bar No. 93578
2 Terry S. Schneier, State Bar No. 118322
3 Alexander B. Boris, State Bar No. 313195
4 **AGNEWBRUSAVICH**
5 A Professional Corporation
6 20355 Hawthorne Boulevard
7 Second Floor
8 Torrance, California 90503
9 (310) 793-1400

6 Andrew N. Chang
7 ESNER, CHANG & BOYER
8 Southern California Office
9 234 East Colorado Boulevard
10 Suite 750
11 Pasadena, CA 91101
12 (626) 535-9860121

10 Attorneys for Plaintiffs

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA

15 LATASHA NAILAH SPEARS WINKFIELD;
16 MARVIN WINKFIELD; SANDRA CHATMAN;
17 and JAHl McMATH, a minor, by and
18 through her Guardian ad Litem, LATASHA
19 NAILAH SPEARS WINKFIELD,

18 Plaintiffs,

19 vs.

20 FREDERICK S. ROSEN, M.D.; UCSF BENIOFF
21 CHILDREN'S HOSPITAL OAKLAND
22 (formerly Children's Hospital & Research
23 Center at Oakland); MILTON McMATH, a
24 nominal defendant, and DOES 1
25 THROUGH 100,

24 Defendants.

CASE NO. RG 15760730

ASSIGNED FOR ALL PURPOSES TO:
JUDGE STEPHEN PULIDO - DEPT. "16"

**PLAINTIFF LATASHA NAILAH SPEARS
WINKFIELD'S RESPONSE TO REQUESTS
FOR ADMISSION #15, SET ONE**

Date Action Filed: 03/03/15

PROPOUNDING PARTY: Defendant, FREDERICK S. ROSEN, M.D.

RESPONDING PARTY: Plaintiff LATASHA NAILAH SPEARS WINKFIELD

SET NO.: ONE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTORY STATEMENT

IT SHOULD BE NOTED that this responding party has not fully completed investigation of the facts relating to this case, has not fully completed discovery in this action and has not completed preparation for trial. Therefore, the responses are based only on such information and documents as are presently available to and specifically known by responding party. It is anticipated that further discovery, independent investigation, legal research, and analysis may supply additional facts and documents, add meaning to the known facts, and/or establish entirely new factual and legal conclusions, all of which may lead to substantial additions to and changes and variations from the contentions herein set forth. The following responses are, therefore, given without prejudice to responding party's rights to produce evidence of any documents or facts subsequently discovered or recalled. Accordingly, this responding party reserves the right to change any and all responses herein set forth as additional facts are discovered or ascertained, analyses are made, and legal research is completed. Intentions are made in a good faith effort to supply as much material and factual information and as much specification as is presently known, but should in no way prejudice responding party with respect to further discovery, research and analysis.

To the extent that defendant attempts in these Requests for Admission to extend plaintiff's responsibilities beyond the scope of discovery established by California Code of Civil Procedure, plaintiff declines to accept such attempt. Moreover, plaintiff will not accept any specialized meanings or definitions ascribed by defendant in these Requests and will interpret all words in their ordinary and customary meanings.

Plaintiff objects to these Requests to the extent that they seek information privileged or protected by the attorney-client privilege or the work product doctrine. Plaintiff will not repeat this objection in each response and furnishes these responses and all documents referred to herein without prejudice

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

to this objection.

Furthermore, this responding party may object to a particular request on the grounds that it does not seek information that is relevant to the subject matter of this action, is privileged, or is otherwise not discoverable. Notwithstanding this objection, the responding party may, in a good faith effort, elect to respond to certain requests to which objections are raised, and to the extent that such responses are given, plaintiff does not intend such response to constitute a waiver of the right to object to such request at a subsequent deposition or trial.

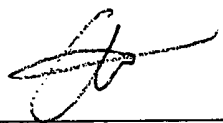
No admission of fact is intended by any response set forth herein unless explicitly stated therein.

RESPONSES TO REQUESTS FOR ADMISSIONS

15. Objection. Calls for a professional opinion from a lay witness; consequently, the question is oppressive, harassing, and without a foundational showing of competency. Without waiving said objection, Admit, in accordance with the "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendation." However, plaintiff has demonstrated brain function by way of menstruation, puberty, developing breasts, and growth.

DATED: March 10, 2017

AGNEWBRUSAVICH
A Professional Corporation

By: 

ALEXANDER B. BORIS
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION (CCP 446, 2015.5)

I declare that:

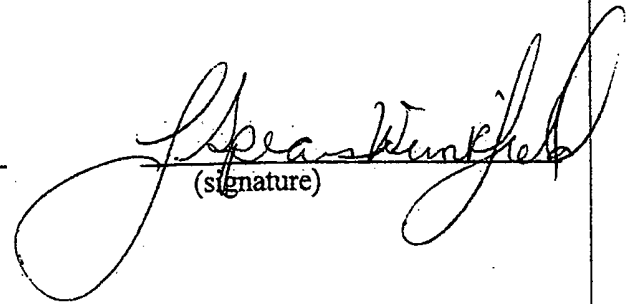
I am the plaintiff in the above-captioned matter. I am familiar with the contents of the foregoing PLAINTIFF LATASHA NAILAH SPEARS WINKFIELD'S RESPONSE TO REQUESTS FOR ADMISSION #15, Set One

The information supplied therein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and is therefore provided as required by law.

I declare under penalty of perjury under the laws of the state of California that the information contained in the foregoing document is true, except as to the matters which were provided by my attorneys or other agents, and as to those matters, I am informed and believe that they are true.

DATED: March 8, 2017

By LATASHA NAILAH SPEARS WINKFIELD


(signature)

AGNEW BRUSAVICH
LAWYERS
20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401
TELEPHONE: (310) 793-1400 FACSIMILE: (310) 793-1499 E-MAIL: db@agnawbrusavich.com

1 Bruce M. Brusavich, State Bar No. 93578
Terry S. Schneier, State Bar No. 118322
2 Alexander B. Boris, State Bar No. 313195
AGNEWBRUSAVICH
3 A Professional Corporation
20355 Hawthorne Boulevard
4 Second Floor
Torrance, California 90503
5 (310) 793-1400

6 Andrew N. Chang
ESNER, CHANG & BOYER
7 Southern California Office
234 East Colorado Boulevard
8 Suite 750
Pasadena, CA 91101
9 (626) 535-9860121

10 Attorneys for Plaintiffs

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14

15 LATASHA NAILAH SPEARS WINKFIELD; }
16 MARVIN WINKFIELD; SANDRA CHATMAN; }
17 and JAHI McMATH, a minor, by and }
18 through her Guardian ad Litem, LATASHA }
19 NAILAH SPEARS WINKFIELD, }
20 Plaintiffs, }

21 vs.

22 FREDERICK S. ROSEN, M.D.; UCSF BENIOFF }
23 CHILDREN'S HOSPITAL OAKLAND }
(formerly Children's Hospital & Research }
24 Center at Oakland); MILTON McMATH, a }
25 nominal defendant, and DOES 1 }
26 THROUGH 100, }
27 Defendants. }

CASE NO. RG 15760730

ASSIGNED FOR ALL PURPOSES TO:
JUDGE STEPHEN PULIDO - DEPT. "16"

**PLAINTIFF LATASHA NAILAH SPEARS
WINKFIELD'S RESPONSE TO REQUESTS
FOR ADMISSION, SET ONE**

Date Action Filed: 03/03/15

28 PROPOUNDING PARTY: Defendant, FREDERICK S. ROSEN, M.D.

RESPONDING PARTY: Plaintiff LATASHA NAILAH SPEARS WINKFIELD

SET NO.: ONE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTORY STATEMENT

IT SHOULD BE NOTED that this responding party has not fully completed investigation of the facts relating to this case, has not fully completed discovery in this action and has not completed preparation for trial. Therefore, the responses are based only on such information and documents as are presently available to and specifically known by responding party. It is anticipated that further discovery, independent investigation, legal research, and analysis may supply additional facts and documents, add meaning to the known facts, and/or establish entirely new factual and legal conclusions, all of which may lead to substantial additions to and changes and variations from the contentions herein set forth. The following responses are, therefore, given without prejudice to responding party's rights to produce evidence of any documents or facts subsequently discovered or recalled. Accordingly, this responding party reserves the right to change any and all responses herein set forth as additional facts are discovered or ascertained, analyses are made, and legal research is completed. Intentions are made in a good faith effort to supply as much material and factual information and as much specification as is presently known, but should in no way prejudice responding party with respect to further discovery, research and analysis.

To the extent that defendant attempts in these Requests for Admission to extend plaintiff's responsibilities beyond the scope of discovery established by California Code of Civil Procedure, plaintiff declines to accept such attempt. Moreover, plaintiff will not accept any specialized meanings or definitions ascribed by defendant in these Requests and will interpret all words in their ordinary and customary meanings.

Plaintiff objects to these Requests to the extent that they seek information privileged or protected by the attorney-client privilege or the work product doctrine. Plaintiff will not repeat this objection in each response and furnishes these responses and all documents referred to herein without prejudice

1 to this objection.

2 Furthermore, this responding party may object to a particular request
3 on the grounds that it does not seek information that is relevant to the subject
4 matter of this action, is privileged, or is otherwise not discoverable. Notwithstanding
5 this objection, the responding party may, in a good faith effort, elect to respond to
6 certain requests to which objections are raised, and to the extent that such
7 responses are given, plaintiff does not intend such response to constitute a waiver
8 of the right to object to such request at a subsequent deposition or trial.

9 No admission of fact is intended by any response set forth herein unless
10 explicitly stated therein.

11
12 RESPONSES TO REQUESTS FOR ADMISSIONS

- 13 1. Admit.
- 14 2. Admit.
- 15 3. Admit.
- 16 4. Admit.
- 17 5. Objection. Calls for a professional opinion from a lay witness;
18 consequently, the question is oppressive, harassing, and without a foundational
19 showing of competency. Without waiving said objection, Admit. However, since
20 then, Jahi has demonstrated responsiveness to verbal commands, has undergone
21 a brain MRI and brain blood flow study at Rutgers' University Hospital, which is
22 inconsistent with irreversible brain death. Jahi has also experienced menarche
23 (menstruation) and pubertal development. Female menstruation requires
24 hormonal interaction between the hypothalamus (part of the brain), the pituitary
25 gland and the ovaries. Corpses do not menstruate or undergo sexual maturation.
- 26 6. Objection. Calls for a professional opinion from a lay witness;
27 consequently, the question is oppressive, harassing, and without a foundational
28 showing of competency. Without waiving said objection, Admit. However, since

1 then, Jahi has demonstrated responsiveness to verbal commands, has undergone
2 a brain MRI and brain blood flow study at Rutgers' University Hospital, which is
3 inconsistent with irreversible brain death. Jahi has also experienced menarche
4 (menstruation) and pubertal development. Female menstruation requires
5 hormonal interaction between the hypothalamus (part of the brain), the pituitary
6 gland and the ovaries. Corpses do not menstruate or undergo sexual maturation.

7 7. Plaintiff is unable to admit or deny as she is unable to recall.

8 8. Plaintiff is unable to admit or deny as she is unable to recall.

9 9. Objection. Calls for a professional opinion from a lay witness;
10 consequently, the question is oppressive, harassing, and without a foundational
11 showing of competency. Without waiving said objection, Admit. However, since
12 then, Jahi has demonstrated responsiveness to verbal commands, has undergone
13 a brain MRI and brain blood flow study at Rutgers' University Hospital, which is
14 inconsistent with irreversible brain death. Jahi has also experienced menarche
15 (menstruation) and pubertal development. Female menstruation requires
16 hormonal interaction between the hypothalamus (part of the brain), the pituitary
17 gland and the ovaries. Corpses do not menstruate or undergo sexual maturation.

18 10. Objection. Calls for a professional opinion from a lay witness;
19 consequently, the question is oppressive, harassing, and without a foundational
20 showing of competency. Objection. Vague and ambiguous as to "brain stem
21 flexes." Without waiving said objection, plaintiff can neither admit or deny.
22 However, since then, Jahi has demonstrated responsiveness to verbal commands,
23 has undergone a brain MRI and brain blood flow study at Rutgers' University
24 Hospital, which is inconsistent with irreversible brain death. Jahi has also
25 experienced menarche (menstruation) and pubertal development. Female
26 menstruation requires hormonal interaction between the hypothalamus (part of the
27 brain), the pituitary gland and the ovaries. Corpses do not menstruate or undergo
28 sexual maturation.

1 11. Objection. Calls for a professional opinion from a lay witness;
2 consequently, the question is oppressive, harassing, and without a foundational
3 showing of competency. Objection. Vague and ambiguous as to "brain stem
4 flexes." Without waiving said objection, Admit. However, the definition of brain
5 death includes the "irreversible cessation of all functions of the entire brain including
6 the brainstem." Numerous qualified medical professionals have opined that Jahi
7 does not suffer from a "cessation of all functions of the entire brain and therefore
8 Jahi could not have met the definition of "irreversible" brain death on December
9 23, 2013. For example, Jahi has demonstrated responsiveness to verbal commands,
10 has undergone a brain MRI and brain blood flow study at Rutgers' University
11 Hospital, which is inconsistent with irreversible brain death. Jahi has also
12 experienced menarche (menstruation) and pubertal development. Female
13 menstruation requires hormonal interaction between the hypothalamus (part of the
14 brain), the pituitary gland and the ovaries. Corpses do not menstruate or undergo
15 sexual maturation.

16 12. Objection. The question is vague, ambiguous, and unintelligible so as
17 to make a response impossible without speculation as to the meaning of "volitional
18 activity (i.e., meaningful movement)." Without waiving said objection, plaintiff can
19 neither admit or deny.

20 13. Objection. Calls for a professional opinion from a lay witness;
21 consequently, the question is oppressive, harassing, and without a foundational
22 showing of competency. Objection. Vague, ambiguous, and unintelligible so as
23 to make a response impossible without speculation as to the meaning of "active
24 spine reflexes." Without waiving said objection, plaintiff can neither admit or deny.

25 14. Admit.

26 15. Objection. Calls for a professional opinion from a lay witness;
27 consequently, the question is oppressive, harassing, and without a foundational
28 showing of competency. Without waiving said objection, Admit. However, the

1 definition of brain death includes the "irreversible cessation of all functions of the
2 entire brain including the brainstem." Numerous qualified medical professionals
3 have opined that Jahi does not suffer from a "cessation of all functions of the entire
4 brain and therefore Jahi could not have met the definition of "irreversible" brain
5 death on December 23, 2013. For example, Jahi has demonstrated responsiveness
6 to verbal commands, has undergone a brain MRI and brain blood flow study at
7 Rutgers' University Hospital, which is inconsistent with irreversible brain death. Jahi
8 has also experienced menarche (menstruation) and pubertal development.
9 Female menstruation requires hormonal interaction between the hypothalamus
10 (part of the brain), the pituitary gland and the ovaries. Corpses do not menstruate
11 or undergo sexual maturation.

12 16. Objection. Calls for a professional opinion from a lay witness;
13 consequently, the question is oppressive, harassing, and without a foundational
14 showing of competency. Without waiving said objection, plaintiff can neither admit
15 or deny. However, the definition of brain death includes the "irreversible cessation
16 of all functions of the entire brain including the brainstem." Numerous qualified
17 medical professionals have opined that Jahi does not suffer from a "cessation of all
18 functions of the entire brain and therefore Jahi could not have met the definition
19 of "irreversible" brain death on December 23, 2013.

20 17. Deny.

21 18. Admit. However, since then, Jahi has demonstrated responsiveness to
22 verbal commands, has undergone a brain MRI and brain blood flow study at
23 Rutgers' University Hospital, which is inconsistent with irreversible brain death. Jahi
24 has also experienced menarche (menstruation) and pubertal development.
25 Female menstruation requires hormonal interaction between the hypothalamus
26 (part of the brain), the pituitary gland and the ovaries. Corpses do not menstruate
27 or undergo sexual maturation.

28 19. Admit. However, since then, Jahi has demonstrated responsiveness to

1 verbal commands, has undergone a brain MRI and brain blood flow study at
 2 Rutgers' University Hospital, which is inconsistent with irreversible brain death. Jahi
 3 has also experienced menarche (menstruation) and pubertal development.
 4 Female menstruation requires hormonal interaction between the hypothalamus
 5 (part of the brain), the pituitary gland and the ovaries. Corpses do not menstruate
 6 or undergo sexual maturation.

7 20. Admit. However, since then, Jahi has demonstrated responsiveness to
 8 verbal commands, has undergone a brain MRI and brain blood flow study at
 9 Rutgers' University Hospital, which is inconsistent with irreversible brain death. Jahi
 10 has also experienced menarche (menstruation) and pubertal development.
 11 Female menstruation requires hormonal interaction between the hypothalamus
 12 (part of the brain), the pituitary gland and the ovaries. Corpses do not menstruate
 13 or undergo sexual maturation.

14 21. Admit. However, since then, Jahi has demonstrated responsiveness to
 15 verbal commands, has undergone a brain MRI and brain blood flow study at
 16 Rutgers' University Hospital, which is inconsistent with irreversible brain death. Jahi
 17 has also experienced menarche (menstruation) and pubertal development.
 18 Female menstruation requires hormonal interaction between the hypothalamus
 19 (part of the brain), the pituitary gland and the ovaries. Corpses do not menstruate
 20 or undergo sexual maturation.

21 22. Admit. However, since then, Jahi has demonstrated responsiveness to
 22 verbal commands, has undergone a brain MRI and brain blood flow study at
 23 Rutgers' University Hospital, which is inconsistent with irreversible brain death. Jahi
 24 has also experienced menarche (menstruation) and pubertal development.
 25 Female menstruation requires hormonal interaction between the hypothalamus
 26 (part of the brain), the pituitary gland and the ovaries. Corpses do not menstruate
 27 or undergo sexual maturation.

28 23. Admit. However, the guidelines do not account for reversible brain

1 damage. The Electroencephalogram, the brain MRI, the brain blood flow exam,
2 menstruation, and sexual maturation are all indication of brain activity and
3 inconsistent with the statutory definition of brain death.

4 24. Admit. However, the guidelines do not account for reversible brain
5 damage. The Electroencephalogram, the brain MRI, the brain blood flow exam,
6 menstruation, and sexual maturation are all indication of brain activity and
7 inconsistent with the statutory definition of brain death.

8 25. Admit. However, video recordings of volitional movement, the
9 Electroencephalogram, the brain MRI, the brain blood flow exam, menstruation,
10 and sexual maturation are all indication of brain activity and inconsistent with the
11 statutory definition of brain death.

12 26. Admit. However, the brain MRI, the brain angiography, the brain blood
13 flow exam, menstruation, and sexual maturation are all indication of brain activity
14 and inconsistent with the statutory definition of brain death.

15 27. Admit. However, the brain MRI, the brain angiography, the brain blood
16 flow exam, menstruation, and sexual maturation are all indication of brain activity
17 and inconsistent with the statutory definition of brain death.

18 28. Admit. However, the brain MRV imaging, the brain angiography, the
19 brain blood flow exam, menstruation, and sexual maturation are all indication of
20 brain activity and inconsistent with the statutory definition of brain death.

21 29. Admit. However, such testing, especially in light of documented
22 evidence of voluntary response to commands and the onset of sexual maturation,
23 are proof of brain function and inconsistent with the statutory definition of brain
24 death.

25 30. Admit. However, such testing, especially in light of documented
26 evidence of voluntary response to commands and the onset of sexual maturation,
27 are proof of brain function and inconsistent with the statutory definition of brain
28 death.

1 31. Admit. However, such testing, especially in light of documented
2 evidence of voluntary response to commands and the onset of sexual maturation,
3 are proof of brain function and inconsistent with the statutory definition of brain
4 death.

5 32. Admit. However, such testing, especially in light of documented
6 evidence of voluntary response to commands and the onset of sexual maturation,
7 are proof of brain function and inconsistent with the statutory definition of brain
8 death.

9 33. Admit. However, such testing, especially in light of documented
10 evidence of voluntary response to commands and the onset of sexual maturation,
11 are proof of brain function and inconsistent with the statutory definition of brain
12 death.

13 34. Objection. This request is argumentative as phrased and calls for
14 plaintiff to speculate as to the thought process of Alan Shewon, M.D.

15 35. Admit.

16 36. Admit.

17 37. Admit.

18 38. Deny.

19 39. Deny.

20 40. Deny.

21 41. Deny.

22 42. Objection. Calls for a professional opinion from a lay witness;
23 consequently, the question is oppressive, harassing, and without a foundational
24 showing of competency. Without waiving said objection, plaintiff can neither admit
25 or deny.

26 43. Admit. However, the brain MRI, the brain angiography, the brain blood
27 flow exam, menstruation, and sexual maturation are all indication of brain activity
28 and inconsistent with the statutory definition of brain death.

1 44. Admit. However, the brain MRI, the brain angiography, the brain blood
2 flow exam, menstruation, and sexual maturation are all indication of brain activity
3 and inconsistent with the statutory definition of brain death.

4 45. Admit. However, the brain MRI, the brain angiography, the brain blood
5 flow exam, menstruation, and sexual maturation are all indication of brain activity
6 and inconsistent with the statutory definition of brain death.

7 46. Admit. However, the brain MRI, the brain angiography, the brain blood
8 flow exam, menstruation, and sexual maturation are all indication of brain activity
9 and inconsistent with the statutory definition of brain death.

10 47. Admit. However, the brain MRI, the brain angiography, the brain blood
11 flow exam, menstruation, and sexual maturation are all indication of brain activity
12 and inconsistent with the statutory definition of brain death.

13 48. Admit. However, the brain MRI, the brain angiography, the brain blood
14 flow exam, menstruation, and sexual maturation are all indication of brain activity
15 and inconsistent with the statutory definition of brain death.

16 49. Admit. However, the brain MRI, the brain angiography, the brain blood
17 flow exam, menstruation, and sexual maturation are all indication of brain activity
18 and inconsistent with the statutory definition of brain death.

19 50. Admit. However, the brain MRI, the brain angiography, the brain blood
20 flow exam, menstruation, and sexual maturation are all indication of brain activity
21 and inconsistent with the statutory definition of brain death.

22 51. Admit. However, the brain MRI, the brain angiography, the brain blood
23 flow exam, menstruation, and sexual maturation are all indication of brain activity
24 and inconsistent with the statutory definition of brain death.

25 52. Admit.

26 53. Admit. However, the brain MRI, the brain angiography, the brain blood
27 flow exam, menstruation, and sexual maturation are all indication of brain activity
28 and inconsistent with the statutory definition of brain death.

AGNEW BRUSAVICH

LAWYERS
20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401
TELEPHONE: (310) 793-1400 FACSIMILE: (310) 793-1499 E-MAIL: ab@agnewbrusavich.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

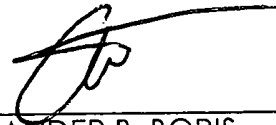
54. Admit. However, the brain MRI, the brain angiography, the brain blood flow exam, menstruation, and sexual maturation are all indication of brain activity and inconsistent with the statutory definition of brain death.

55. Deny.

DATED: March 17, 2017

AGNEWBRUSAVICH
A Professional Corporation

By: _____



ALEXANDER B. BORIS
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION (CCP 446, 2015.5)

I declare that:

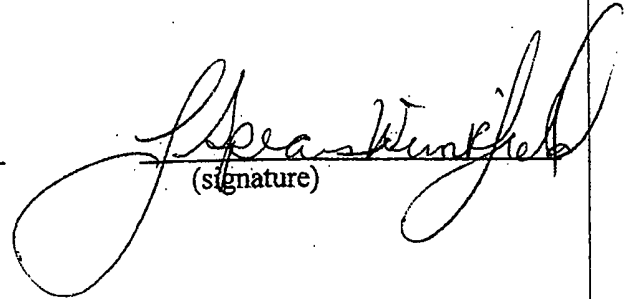
I am the plaintiff in the above-captioned matter. I am familiar with the contents of the foregoing PLAINTIFF LATASHA NAILAH SPEARS WINKFIELD'S RESPONSE TO REQUESTS FOR ADMISSIONS, SET ONE

The information supplied therein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and is therefore provided as required by law.

I declare under penalty of perjury under the laws of the state of California that the information contained in the foregoing document is true, except as to the matters which were provided by my attorneys or other agents, and as to those matters, I am informed and believe that they are true.

DATED: March 17, 2017

By LATASHA NAILAH SPEARS WINKFIELD


(signature)

AGNEW BRUSAVICH
LAWYERS
20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401
TELEPHONE: (310) 793-1400 FACSIMILE: (310) 793-1499 E-MAIL: ab@agnewbrusavich.com

EXHIBIT

C

BARRY C. MARSH
THOMAS E. STILL
BRADFORD J. HINSHAW
JENNIFER STILL
JENNIFER A. WAGSTER
SCOTT R. KANTER
THERESA A. DILLARD

LAW OFFICES OF
HINSHAW, MARSH, STILL & HINSHAW, LLP
12901 SARATOGA AVENUE
SARATOGA, CALIFORNIA 95070-9998

TELEPHONE
(408) 861-6500
FAX
(408) 257-6645
E-MAIL
jstill@hinshaw-law.com

EDWARD A. HINSHAW 1837-2016

March 1, 2018

VIA U.S. MAIL AND EMAIL

Bruce M. Brusavich, Esq.
AGNEW & BRUSAVICH
20355 Hawthorne Blvd., 2nd Floor
Torrance, CA 90503

Re: *McMath, et al v. Rosen, M.D., et al*

Dear Bruce:

We have not heard from you in regards to our meet and confer letter to you dated February 15, 2018, that addressed plaintiffs' continued failure to provide the requisite foundational and authenticating information for the materials relied on by plaintiffs and Dr. Shewmon.

In an attempt to narrow the issues to be addressed at the upcoming status conference on March 16, 2018, we are requesting that you provide answers to the following questions:

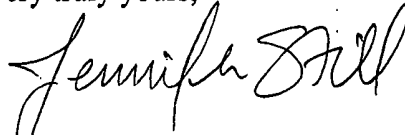
1. It is plaintiffs' position that Jahi McMath will more likely than not fail a brain death examination performed in accord with the neurologic criteria in the Guidelines for the Determination of Brain Death in Infants and Children?
2. Will Mrs. Winkfield, as Jahi McMath's guardian ad litem, give her written consent to a brain death examination of Jahi McMath performed in accord with the Guidelines?
3. Will Mrs. Winkfield, as Jahi McMath's guardian ad litem, sign a release of liability for the health care providers who will be facilitating and performing the anticipated brain death examination?
4. What evidence do plaintiffs have of Jahi McMath's current brain function? All of the materials relied on by Dr. Shewmon are very old. How do plaintiffs intend to establish brain function today?

Unless plaintiffs are able to present reliable and competent medical evidence of Jahi McMath's current brain function, we fail to see a legitimate basis for plaintiffs' challenge to the validity of the widely accepted medical standards for determining brain death.

Bruce M. Brusavich, Esq.
Re: McMath, et al v. Rosen, M.D., et al
March 1, 2018
Page 2

Please give us a call at your earliest convenience.

Very truly yours,



JENNIFER STILL
THOMAS E. STILL

JS/6-347

h:\mcmath\letter\p.3.1.18.docx D:3.1.18

CC: via Email and U.S. Mail

Dick Carroll

Robert Hodges

Thomas Doyle

Scott Murray

Kenny Pedroza

Andy Chang

EXHIBIT

D

Gerald E. Agnew, Jr.
Bruce M. Brusavich
Stephen C. Rasak
Terry S. Schneier
Alexander B. Boris

Robert N. Stone
Of Counsel

Daniel V. Favero
Administrator

Kevin P. Culpepper
Paralegal

March 20, 2018

Jennifer Still
HINSHAW, MARSH, STILL & HINSHAW, LLP
12901 Saratoga Avenue
Saratoga, CA 95070-9998

Re: Jahi McMath; et al. v. Frederick S. Rosen, M.D.; et al.

Dear Jennifer:

On March 6, 2018, Terry Schneier of my office wrote to address your February 15, 2018 correspondence concerning the videotapes wherein she set forth our position that we will be able to lay the foundation for those videos. I write to respond to your meet and confer letter of March 1, 2018.

With respect to your questions:

1. Plaintiffs have taken the position that the totality of the evidence, including the MRI, blood flow study, videos, observations of her nurses, attending physician and family members, establishes that Jahi is intermittently responsive, placing her in a category of "minimally conscious state." Declaration of D. Alan Shewmon, para. 6. Dr. Shewmon also declares at para. 9 of his declaration, "the likelihood of Jahi being in a 'responsive' state during a random examination is small!"

Therefore, we do take the position that Jahi would most likely fail a brain death examination performed at some random time.

2. Based upon the advice of Jahi's attending physician, Mrs. Winkfield will not provide consent for a brain death examination to be performed on her daughter Jahi. As I mentioned in court on March 16, 2018, I emailed Dr. Alieto Eck about the defendants' interest in performing a death examination. Her response was as follows:

March 20, 2018

Page 2

"As the attending of Jahi McMath, I would strongly oppose taking her off the ventilator for 10 minutes, as it would deprive her of needed oxygen for that period of time. While she does not have the muscle capacity to move air into and out of her lungs, her body has been able to fulfill the lung respiratory function of taking in the oxygen and using her own circulation to transport it to all the cells in her body. The cells utilize the oxygen to keep her organs functioning...including her heart. Lowering the oxygen level in her blood would certainly cause a heart arrhythmia and would most likely CAUSE her death.

"The ventilator delivers oxygen to her lungs, and depriving her of this life-sustaining element would cause her to suffocate. I question the validity of this test being used to determine brain life or death, as it would cause any ventilator-dependent person to die, regardless of the brain function.

Sincerely,
Alieto Eck, M.D."

3. No.

4. Jahi continues to exhibit responsiveness at times as witnessed by her family, attending physician, nurses and anyone else who may be there during her responsive state. It is our position that nothing has changed since the diagnostic studies of September, 2014.

Jahi's puberty and maturation also proves functioning of the hypothalamus part of her brain. Since Jahi is intermittently responsive and has some brain function, she does not meet the statutory definition of brain death which requires the "irreversible cessation of all functions of the entire brain, including the brain stem." That is her condition today and nothing has indicated it has changed.


March 20, 2018

Page 3

This question also calls for disclosure of plaintiffs' trial strategy and work-product which is privileged.

Very truly yours,

AGNEW BRUSAVICH
A Professional Corporation



BRUCE M. BRUSAVICH

BMB/dn

cc: All counsel
