



FILED
ALAMEDA COUNTY

JUN 25 2015

By *[Signature]* Exec. Off/Cle

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6 Attorneys for Defendant
7 UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA - NORTHERN DIVISION

11 LATASHA NAILAH SPEARS WINKFIELD;
12 MARVIN WINKFIELD; SANDRA
CHATMAN and JAHl McMATH, a minor,
13 by and through her Guardian Ad Litem,
LATASHA NAILAH SPEARS WINKFIELD,

14 Plaintiffs,

15 vs.

16 FREDERICK S. ROSEN, M.D.; UCSF
17 BENIOFF CHILDREN'S HOSPITAL
OAKLAND (formerly Children's Hospital &
18 Research Center at Oakland); MILTON
McMATH, a nominal defendant, and DOES
19 1 THROUGH 100,

20 Defendants.

Case No. RG15760730

The Honorable Robert B. Freedman

NOTICE OF DEMURRER, MOTION TO STRIKE, AND REQUEST FOR JUDICIAL NOTICE; UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND'S DEMURRER TO FIRST AND THIRD CAUSES OF ACTION, AND MOTION TO STRIKE PORTIONS OF COMPLAINT FOR DAMAGES

Date: July 30, 2015

Time: 2:00 p.m.

Dept: 20

Date Complaint Filed: March 3, 2015

Trial: N/A

Reservation No. R - 1640359

22 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on the 30th day of July, 2015 at 2:00 p.m. in
24 Department 20 of the above entitled court, defendant UCSF Benioff Children's Hospital
25 Oakland will demur to the first and third causes of action of plaintiffs' Complaint for
26 Damages pursuant to C.C.P. § 430.10 (e) and/or (f) for failure to state facts sufficient to
27

1 constitute a cause of action and/or for uncertainty, and will move to strike improper
2 portions of said Complaint pursuant to C.C.P. § 435-§ 436 as set forth below.

3
4 **DEMURRER**

5 **First Cause of Action**

6
7 1. The first cause of action fails to state facts sufficient to constitute a cause
8 of action for Personal Injury on behalf of Jahi McMath in that a decedent's cause of
9 action must be commenced by decedent's personal representative or successor in
10 interest, and plaintiffs have failed to properly plead standing to sue on behalf of the
11 decedent. C.C.P. § 430.10 (e)

12 **Third Cause of Action – Marvin Winkfield**

13
14 2. The third cause of action fails to state facts sufficient to constitute a cause
15 of action for wrongful death on behalf of plaintiff Marvin Winkfield in that stepparents do
16 not have standing to sue for the wrongful death of a stepchild. C.C.P. §430.10 (e)

17 **First and Third Causes of Action**

18
19 3. The first and third causes of action are vague, ambiguous and uncertain
20 as to what plaintiffs mean when they allege that recent evaluations confirm that Jahi
21 does not meet the definition of brain death. C.C.P. § 430.10 (f)

22 **MOTION TO STRIKE**

23 **Future Damages – Personal Injury Cause of Action**

- 24
25 1. "and will incur medical, nursing and other related
26 expenses in the future." Complaint for Damages at
27 9:28-10:1.
28 2. "will suffer loss of earning capacity in the future."
Complaint for Damages at 10:3.

1 **Conditional Language – Wrongful Death Action**

2 3. "In the event that it is determined that" [Jahi
3 succumbed to the injuries causes by the negligence
4 of the defendants]. Complaint for Damages at 11:16.

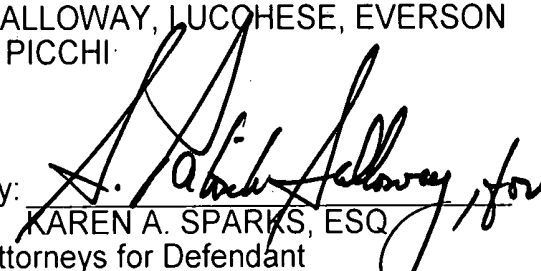
5 **REQUEST FOR JUDICIAL NOTICE**

6 The defendant will also ask the Court to take judicial notice of certain documents
7 in *Winkfield v. Children's Hospital Oakland* Case No. RP13707598 establishing that the
8 determination of death was previously litigated and finally decided, and a Certificate of
9 Death for Jahi McMath establishing that a determination of death was made and was
10 considered final.

11 This demurrer and motion will be based on this Notice/ Demurrer/ Motion to Strike, the
12 accompanying Memorandum of Points and Authorities and Request for Judicial Notice,
13 Exhibits A-E, the Declaration of G. Patrick Galloway, all pleadings and papers on file
14 herein as well argument and authority that may be presented in Reply or at the time of
15 the hearing of this matter.

16 Dated: June 24, 2015

17 GALLOWAY, LUCHESE, EVERSON
18 & PICCHI

19 By: 
20 KAREN A. SPARKS, ESQ
21 Attorneys for Defendant
22 UCSF BENIOFF CHILDREN'S
23 HOSPITAL OAKLAND

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PROOF OF SERVICE

I declare under penalty of perjury that:

I am a citizen of the United States and am employed in the County of Contra Costa. I am over the age of eighteen years and not a party to the within action. My business address is 1676 North California Boulevard, Suite 500, Walnut Creek, CA 94596-4183.

On the date set forth below, I caused the attached **NOTICE OF DEMURRER, MOTION TO STRIKE, AND REQUEST FOR JUDICIAL NOTICE UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND'S DEMURRER TO FIRST AND THIRD CAUSES OF ACTION, AND MOTION TO STRIKE PORTIONS OF COMPLAINT FOR DAMAGES; REQUEST FOR JUDICIAL NOTICE** to be served on the parties to this action as follows:

BY MAIL.

I placed a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California, addressed to the parties as set forth on the attached service list. C.C.P. §§1013(a), 2015.5.

BY COURIER SERVICE.

I retained CCX Couriers, Inc. of Walnut Creek, California, to personally serve a true copy thereof on the parties as set forth on the attached service list. C.C.P. §§1011, 2015.5.

BY UNITED PARCEL SERVICE.

I retained **UNITED PARCEL SERVICE** to serve by overnight delivery a true copy thereof on the parties as set forth on the attached service list. C.C.P. §§1013(c), 2015.5.

BY FACSIMILE TRANSMISSION.

I am readily familiar with this law firm's business practices for collection and processing of documents by way of facsimile. I telefaxed a true copy thereof at said facsimile number(s) as set forth on the attached service list. C.C.P. §§1013(e), 2015.5 and C.R.C. §2008.

BY PERSONAL SERVICE.

I personally served a true copy thereof on the parties as set forth on the attached service list at . C.C.P. §§1101, 2015.5.

RG15760730: NOTICE OF DEMURRER, MOTION TO STRIKE, AND REQUEST FOR JUDICIAL NOTICE UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND'S DEMURRER TO FIRST AND THIRD CAUSES OF ACTION, AND MOTION TO STRIKE PORTIONS OF COMPLAINT FOR DAMAGES; REQUEST FOR JUDICIAL NOTICE

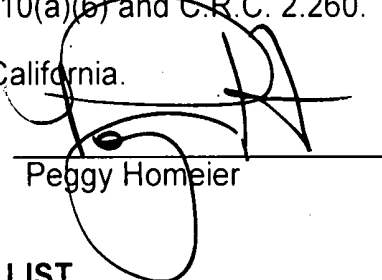
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BY ELECTRONIC SERVICE.

I electronically served a true copy thereof on the parties at said electronic notification addresses as set forth on the attached service list from my electronic notification address: xxx@glattys.com. The transmission was reported as complete and without error. C.C.P. §1010(a)(6) and C.R.C. 2.260.

Executed on June 24, 2015 at Walnut Creek, California.



Peggy Homeier

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Counsel for Defendant Frederick S. Rosen, M.D.

RG15760730: NOTICE OF DEMURRER, MOTION TO STRIKE, AND REQUEST FOR JUDICIAL NOTICE UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND'S DEMURRER TO FIRST AND THIRD CAUSES OF ACTION, AND MOTION TO STRIKE PORTIONS OF COMPLAINT FOR DAMAGES; REQUEST FOR JUDICIAL NOTICE



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FILED
ALAMEDA COUNTY

JUN 25 2015

By Gwyn Baker Exec/Off/Clerk

7 Attorneys for Defendant
 UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

8
 9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 IN AND FOR THE COUNTY OF ALAMEDA - NORTHERN DIVISION

12 LATASHA NAILAH SPEARS WINKFIELD; Case No: RG15760730
 MARVIN WINKFIELD; SANDRA
 13 CHATMAN and JAHl McMATH, a minor,
 by and through her Guardian Ad Litem,
 14 LATASHA NAILAH SPEARS WINKFIELD,

The Honorable Robert B. Freedman

15 Plaintiffs,

16 vs.

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

20 Defendants.

**DECLARATION OF G. PATRICK
 GALLOWAY IN SUPPORT OF UCSF
 BENIOFF CHILDREN'S HOSPITAL
 OAKLAND'S DEMURRER TO FIRST
 AND THIRD CAUSES OF ACTION, AND
 MOTION TO STRIKE PORTIONS OF
 COMPLAINT FOR DAMAGES**

Date: July 30, 2015

Time: 2:00 p.m.

Dept: 20

Date Complaint Filed:

Trial: N/A

Reservation No. R - 1640359

24 I, G. Patrick Galloway, declare as follows:

25 1. I am an attorney at law duly licensed to practice before all the Courts of
 26 the State of California and a member of the law firm of Galloway, Lucchese, Everson &
 27 Picchi, attorneys of record for defendant UCSF BENIOFF CHILDREN'S HOSPITAL
 28 OAKLAND in the above entitled matter.

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PROOF OF SERVICE

I declare under penalty of perjury that:

I am a citizen of the United States and am employed in the County of Contra Costa. I am over the age of eighteen years and not a party to the within action. My business address is 1676 North California Boulevard, Suite 500, Walnut Creek, CA 94596-4183.

On the date set forth below, I caused the attached **DECLARATION OF G. PATRICK GALLOWAY IN SUPPORT OF UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND'S DEMURRER TO FIRST AND THIRD CAUSES OF ACTION, AND MOTION TO STRIKE PORTIONS OF COMPLAINT FOR DAMAGES; REQUEST FOR JUDICIAL NOTICE** to be served on the parties to this action as follows:

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13901565

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ALAMEDA COUNTY

JUN 25 2015

By - *Ann Barbo* Exec Off/Clerk

6 Attorneys for Defendant UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

7
 8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF ALAMEDA - NORTHERN DIVISION

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 11 LATASHA NAILAH SPEARS WINKFIELD;
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 12 CHATMAN and JAHl McMATH, a minor,
 by and through her Guardian Ad Litem,
 13 LATASHA NAILAH SPEARS WINKFIELD,

Case No. RG15760730

The Honorable Robert B. Freedman

14 Plaintiffs,

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 17 OAKLAND (formerly Children's Hospital &
 Research Center at Oakland); MILTON
 18 McMATH, a nominal defendant, and DOES
 19 1 THROUGH 100,

20 Defendants.

MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF UCSF
 BENIOFF CHILDREN'S HOSPITAL
 OAKLAND'S DEMURRER TO FIRST
 AND THIRD CAUSES OF ACTION, AND
 MOTION TO STRIKE PORTIONS OF
 COMPLAINT FOR DAMAGES;
 REQUEST FOR JUDICIAL NOTICE

Date: July 30, 2015

Time: 2:00 p.m.

Dept: 20

Date Complaint Filed:

Trial: N/A

Reservation No. R - 1640359

21
 22
 23
 24 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UCSF**
 25 **BENIOFF CHILDREN'S HOSPITAL OAKLAND'S DEMURRER TO FIRST**
 26 **AND THIRD CAUSES OF ACTION, AND MOTION TO STRIKE PORTIONS**
 27 **OF COMPLAINT FOR DAMAGES; REQUEST FOR JUDICIAL NOTICE**

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Other Authorities

12A *Uniform Laws Annotated* (Masters Ed. 2008), Determination of Death Act..... 4, 7, 9

Weil and Brown, *California Practice Guide, Civil Procedure Before Trial* ¶ 2.77 10

I.

INTRODUCTION

This is a medical malpractice/wrongful death action arising out of the surgical and post-operative care provided for Jahi McMath at Children's Hospital Oakland in December, 2013. The Complaint names the surgeon and the Hospital, and asserts causes of action for personal injury on behalf of Jahi McMath, negligent infliction of emotional distress on behalf of her mother and grandmother, and a wrongful death cause of action on behalf of her mother and stepfather.

Although Jahi has been declared dead, the personal injury cause of action alleged on her behalf includes a claim for future damages, and is apparently based on plaintiffs' allegation that recent evaluations by their experts have confirmed that Jahi does not meet the definition of brain death. The wrongful death cause of action is pled conditionally, "in the event that it is determined" Jahi died of her injuries. The Hospital moves to strike future damages from the personal injury cause of action as well as that portion of the wrongful death cause of action that contemplates a re-litigation of the death issue in this action.

In December, 2013, three physicians determined that Jahi was irreversibly brain dead according to accepted medical standards. Finding that clear and convincing evidence established irreversible brain death, this Court concluded that Jahi was legally dead under the Uniform Determination of Death Act (Health and Safety Code § 7180). By its nature and by statute, a determination of death is intended to be final. It cannot be re-litigated in this action. And if plaintiffs intend to challenge "irreversible brain death" as a valid basis for determining death, they would in effect be improperly asking the Court to reject the basic provisions of the Uniform Determination of Death Act (UDDA). The complaint is at the very least uncertain as to what plaintiffs mean when they allege that recent evaluations confirm that Jahi does not meet the definition of brain death.

The Hospital also demurs to the personal injury cause of action. A decedent's

1 cause of action must be filed by the decedent's personal representative or successor in
2 interest. Ms. Winkfield has not pled facts sufficient to establish that she has standing to
3 sue on behalf of Jahi.

4 Finally, stepparents cannot sue for the wrongful death of a stepchild, and the
5 Hospital demurs to Marvin Winkfield's wrongful death cause of action. He has not
6 alleged any other causes of action. The Complaint therefore fails to state facts sufficient
7 to constitute any cause of action on his behalf.

8
9 II.

10 APPLICABLE LAW

11 C.C.P. § 430.10 sets forth the grounds for demurrer:

12 The party against whom a complaint ... has been filed may object,
by demurrer ... to the pleading on any ... of the following grounds...

13 (e) The pleading does not state facts sufficient to constitute a
14 cause of action.

15 (f) The pleading is uncertain. As used in this subdivision,
"uncertain" includes ambiguous and unintelligible.

16 C.C.P. § 435 provides for motions to strike and reads in part as follows:

17 (b) (1) Any party, within the time allowed to respond to a
18 pleading may serve and file a notice of motion to strike the
19 whole or any part thereof....

20 C.C.P. § 436 permits the court in its discretion to strike various improper matters:

21 The court may, upon a motion made pursuant to Section
22 435...

23 (a) Strike out any irrelevant, false, or improper matter
inserted in any pleading.

24 (b) Strike out all or any part of any pleading not drawn or
25 filed in conformity with the laws of this state, a court rule, or
an order of the court.

26
27 The grounds for demurrers and motions to strike must be apparent from the face of the
28 complaint or from matters subject to judicial notice. C.C.P. § 430.30 and § 437.

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III.

REQUEST FOR JUDICIAL NOTICE

The Hospital respectfully asks the Court to take judicial notice of:

- 1) The following records of this Court in *Winkfield v. Children's Hospital Oakland* Case No. RP13707598:
 - a. 1/2/2014 Amended Order (1) Denying Petition For Medical Treatment and (2) Granting In Part Application To Seal Portions Of Record [non-substantive amendments to 12/26/2013 Order], Exhibit A.
 - b. 1/17/2014 Final Judgment Denying Petition for Medical Treatment, Exhibit B.
 - c. 9/30/2014 Memorandum Regarding Court's Jurisdiction To Hear Petition For Determination That Jahi McMath Is Not Dead, Exhibit C.
- 2) The Certificate of Death for Jahi McMath, Exhibit D.

Evidence Code § 452 (d) permits the Court to take judicial notice of the records of any court of this state. Evidence Code § 452 (c) permits the Court to take judicial notice of official acts of the legislative, executive and judicial departments of the state, including the filing of death certificates. People v. Terry (1974) 38 Cal. App. 3d 432, 439.

Evidence Code § 453 makes judicial notice of these matters mandatory when the adverse party has been given sufficient notice of the request. Notice is sufficient if given in the demurrer or motion to strike or in the supporting points and authorities. C.C.P. § 430.70 and § 437:

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IV.

**JAHİ WAS DECLARED DEAD, AND DETERMINATIONS
OF DEATH ARE INTENDED TO BE FINAL**

**A. THE DEATH ISSUE IN THIS CASE IS RELEVANT ONLY TO WHAT
CAUSES OF ACTION PLAINTIFFS CAN ALLEGE**

This is simply a medical malpractice action seeking damages for injuries allegedly arising out of the defendants' professional negligence. Complaint for Damages ¶¶ 35-37, 41, 44. The only issue here is what causes of action can be properly pled on behalf of plaintiffs, and on behalf of Jahi McMath, a person who has been declared legally dead.

In the prior proceedings, the Court was asked to decide whether the Hospital should be required to continue providing life sustaining treatment. Part IV C below. However, the law governing the determination of death does not address issues pertaining to the continuation of life support *after* a diagnosis of brain death has been made. Plaintiffs' right to continue caring for Jahi in a manner they believe is appropriate is not at issue here. Health and Safety Code § 7180 (Uniform Determination of Death Act); National Conference of Commissioners on Uniform State Law, Prefatory Note ¶ 6. 12A *Uniform Laws Annotated* (Masters Ed. 2008), Determination of Death Act p. 779, Exhibit E.

**B. THE COMPLAINT ITSELF ALLEGES FACTS INDICATING THAT JAHİ WAS
DECLARED DEAD**

According to the Complaint, Jahi underwent extensive surgery on December 9, 2013. Complaint for Damages ¶ 11. Plaintiffs allege that the Hospital failed to properly respond to post-operative bleeding. The next day a Code Blue was called and continued for 2 hours 33 minutes, during which time defendants allegedly failed to establish an airway, and this allegedly resulted in inadequate oxygenation. Complaint for Damages ¶¶ 18-19. On December 13, 2013, plaintiffs were advised that EEG testing showed that Jahi had sustained significant brain damage, that repeat testing the next

1 day revealed severe brain damage, that Jahi had been put on an organ donor list, and
2 that life support would be withdrawn. Complaint for Damages ¶ 23. Plaintiffs also allege
3 that the Chief of Pediatrics told them that Jahi was dead. Complaint for Damages ¶ 24.

4
5 **C. ON DECEMBER 24, 2013, THIS COURT DETERMINED THAT JAHİ WAS**
6 **LEGALLY DEAD AND DENIED PLAINTIFFS' PETITION FOR MEDICAL**
7 **TREATMENT**

8 In December, 2013, plaintiffs petitioned this Court seeking an injunction to
9 prevent the Hospital from withdrawing life support. The Hospital opposed the Petition
10 arguing the Hospital had no duty to continue any medical interventions because there
11 had been an irreversible cessation of all brain functions, and thus Jahi was dead as a
12 matter of law under Health and Safety Code § 7180. 1/2/2014 Amended Order Denying
13 the Petition For Medical Treatment at 2:7-21, Exhibit A.

14 The Court considered Declarations and/or testimony from Dr. Robert
15 Heidersbach and Dr. Robin Shanahan, the physicians at CHO who made the initial
16 diagnosis of brain death. 1/2/2014 Amended Order Denying the Petition For Medical
17 Treatment at 2:21-3:2, Exhibit A. The Court appointed Dr. Paul Fisher, Chief of Child
18 Neurology at Stanford University School of Medicine, to serve as an independent
19 physician. Dr. Fisher also examined Jahi and testified as to his findings. Id. at 5:14-6:5.
20 Documents establishing the accepted medical standards that would apply were
21 admitted, including the American Academy of Pediatrics' Guidelines for the
22 Determination of Brain Death in Infants and Children. The examination notes of Dr.
23 Shanahan and Dr. Fisher were also admitted. Id. at 6:4-17. Dr. Shanahan and Dr.
24 Fisher both testified that Jahi was brain dead under the accepted medical standards. Id.
25 at 7:1-2 and 7:21-22. Counsel for Petitioner stipulated that Dr. Fisher had conducted his
26 examination and made the brain death diagnosis according to accepted standards. Id.
27 at 6:22-7:1.

28 The Court specifically stated that in order to decide the issue presented by the
Petition, it necessarily had to determine whether Jahi was legally dead. 1/2/2014

1 Amended Order Denying the Petition For Medical Treatment 3:24-25, Exhibit A. The
2 Court found by clear and convincing evidence that Jahi was legally dead according to
3 accepted medical standards and denied the plaintiffs' Petition for Medical Treatment. Id.
4 at 16:9-22. A Final Judgment on the merits was entered. 1/17/2014 Final Judgment
5 Denying Petition for Medical Treatment, Exhibit B.

6 A death certificate was also issued. Certificate of Death, Exhibit D. See Request
7 for Judicial Notice. At the very least the filing of the death certificate establishes that a
8 determination of death was made, and that the determination was intended to be final.

9
10 **D. DEATH AND THE DETERMINATION OF DEATH ARE, BY NATURE AND BY**
STATUTE, FINAL

11
12 Health and Safety Code § 7180 adopts the Uniform Determination of Death Act
13 without change and governs the determination of death in California. Statutes are to be
14 construed in a manner consistent with the ordinary meaning of the words used, and in a
15 manner that gives effect to their intended purpose. See e.g. Estate of Griswolds v. See
16 (2004) 25 Cal. 4th 904, 910-911. Consistent with its ordinary meaning, death is final and
17 irreversible. And to serve its intended purpose, a determination of death must be final.

18 The determination of death permits medical treatment to be withdrawn (see
19 1/17/2014 Final Judgment Denying Petition for Medical Treatment, Exhibit B), and
20 organs to be removed for transplant (see Health and Safety Code § 7151.40). A
21 declaration of death also permits wills to be probated, insurance proceeds to be
22 distributed, and it permits families to move on. The determination must therefore be
23 final. It is unclear what, if any, meaning or use a reversible declaration of death would
24 have.

25 Health and Safety Code § 7180 reads as follows:

26 (a) An individual who has sustained either (1) irreversible
27 cessation of circulatory and respiratory functions, or (2)
28 *irreversible* cessation of all functions of the entire brain,
including the brain stem, is dead. A determination of death
must be made in accordance with accepted medical
standards. [Emphasis added]

1 (b) This article shall be applied and construed to effectuate
2 its general purpose to make uniform the law with respect to
the subject of this article among states enacting it.

3 (c) This article may be cited as the Uniform Determination
4 of Death Act.

5 For death to occur, the statute requires, among other things, that "the entire brain must
6 cease to function, *irreversibly*." UDDA, and National Conference of Commissioners on
7 Uniform State Laws, Prefatory Note ¶ 5, 12A U.L.A. (Masters Ed. 2008), Determination
8 of Death Act pp. 779, 781, 784, Exhibit E.

9 Inherent in the UDDA brain death requirement is the recognition that brain death
10 is irreversible, and that final a determination of brain death can be made using accepted
11 medical standards. See e.g. Part IV C.

12 **E. THE DEATH CANNOT BE RE-LITIGATED IN THIS ACTION**

13 **1. Plaintiffs Cannot Re-Litigate The Determination Of Death Made In
14 December, 2013**

15 Plaintiffs allege that they have recent evaluations confirming that Jahi does not
16 meet the definition of brain death. Complaint for Damages at 7:25-27. It is not entirely
17 clear what plaintiffs mean by this. If they are alleging that the diagnosis of irreversible
18 brain death made by Dr.'s Heidersbach, Shanahan and Fisher in 2013 was wrong, this
19 Court found that clear and convincing evidence had established that Jahi was
20 irreversibly brain dead, and that she was thus legally dead under Health and Safety
Code § 7180. See Part IV C.

21 The principles of *res judicata*, and more specifically collateral estoppel, bar the
22 re-litigation of an issue decided in a prior proceeding if: 1) the issue was actually
23 litigated and necessarily decided in the prior proceeding; 2) the issue previously decided
24 is identical to the one to be re-litigated in the present proceeding; 3) the party against
25 whom collateral estoppel is asserted was a party, or in privity to a party, in the prior
26 proceeding, and 4) the previous proceeding resulted in a final judgment on the merits.
27 See e.g. Daar & Newman v. VRL Intern (2005) 129 Cal. App. 4th 482, 489.

1 The Court's records establish that Latasha Winkfield was a party in the prior
2 proceedings. The records also establish that the question of whether Jahi is legally
3 dead was actually litigated, necessarily decided, and finally determined on the merits in
4 *Winkfield v. Children's Hospital Oakland* Case No. RP13707598 See Part IV C and
5 Request for Judicial Notice above.

6 Even assuming that the principles of collateral estoppel that would permit the re-
7 litigation of an issue upon new facts when circumstances change (see e.g. California
8 Emp. Stabilization Com. v. Matcovich (1946) 74 Cal. App. 2d 398, 404), the defense
9 has found no authority applying this exception to a determination of death, which is by
10 nature and by statute, final. See Part IV D above.

11 **2. By Adopting The UDDA, The Legislature Made Irreversible Brain**
12 **Death A Basis For Determining Death As A Matter Of Law, And The**
Law Is Not Subject To Change By The Courts

13 Nine months after Jahi was declared dead in December, 2013, plaintiffs filed, but
14 later dropped, a Petition for Determination That Jahi McMath Is Not Dead. In that 2014
15 proceeding, *they did not dispute the determination of brain death made by Dr. Fisher in*
16 *2013*. They argued instead that they now had irrefutable proof that brain death is
17 *reversible*, and that Jahi was *no longer* brain dead. 9/30/2014 Memorandum Regarding
18 Court's Jurisdiction To Hear Petition For Determination That Jahi McMath Is Not Dead
19 at 3:22-4:1, Exhibit C; Request for Judicial Notice.

20 If brain death were reversible, it could not of course serve as the basis for making
21 a final determination of death. If this is what plaintiffs intend to allege, they would not
22 simply be asking the Court to re-determine the issue of death in this case in light of the
23 alleged new facts, they would in effect be asking the Court to reject the brain death
24 provisions of the law itself.

25 The Uniform Determination of Death Act was drafted by both legal and medical
26 authorities, it reflects accepted biomedical practice, it has the approval of both the ABA
27 and AMA, and it has been adopted by over 30 jurisdictions. National Conference of
28

1 Commissioners on Uniform State Law, 12A U.L.A. (Masters Ed., 2008) Determination of
2 Death Act pp. 777-779, Exhibit E.

3 When the validity of a statute depends on the existence of certain facts, the
4 legislature is presumed to have investigated and determined the existence of those
5 facts before passing the law. And it is not the judiciary's function to reweigh "legislative
6 facts." Schabarum v. California Legislature (1998) 60 Cal.App.4th 1205, 1219; C.C.P. §
7 1858. Similarly, it is not up to this Court or a jury in this case to reweigh the facts and
8 findings underlying the Uniform Determination of Death Act or to decide whether
9 irreversible brain death can or should be used as a basis for determining death. See Id.

10 Jahi has been declared legally dead, and the plaintiffs' claims and causes of
11 action have not been properly pled in light of this determination.

12 **3. The Brain Death Allegations Are At The Very Least Uncertain**

13 The complaint is at the very least vague and uncertain as to what plaintiffs mean
14 when they allege that recent evaluations confirm that Jahi does not meet the definition
15 of brain death. Complaint for Damages at 7:25-27.

16
17 **V.**

18 **THE HOSPITAL MOVES TO STRIKE THE FUTURE DAMAGES FROM**
19 **THE CAUSE OF ACTION ASSERTED ON BEHALF OF JAHİ, AS WELL**
20 **AS THAT PORTION OF THE WRONGFUL DEATH CAUSE OF ACTION**
21 **CONDITIONING IT ON A RE-DETERMINATION OF DEATH**

22 Courts have recognized the importance of striking substantively defective
23 portions of a complaint:

24 ...[I]n some cases a portion of a cause of action will be
25 substantively defective on the face of the complaint. Although a defendant may not demur to that portion, in such
26 cases, the defendant should not have to suffer discovery and navigate the often dense thicket of proceedings in summary
27 adjudication. ... [W]hen a substantive defect is clear from the
28 face of a complaint ... a defendant may attack that portion of
the cause of action by filing a motion to strike (citations
omitted)....

PH II, Inc v. Superior Court (1995) 33 Cal.App.4th 1680, 1682. The Hospital moves to

1 strike those portions of the Complaint that are inconsistent with the determination that
2 Jahi is legally dead.

3 **Future Damages.** No future damages will be incurred by Jahi McMath. The
4 following portions of the first cause of action should therefore be stricken: "*and will incur*
5 *medical, nursing and other related expenses in the future,*" and/or "*will suffer loss of*
6 *earning capacity in the future.*" Complaint for Damages at 9:28-10:1, and 10:3.

7 **Wrongful Death** The wrongful death cause of action begins with the conditional
8 phrase "*In the event that it is determined that*" [Jahi succumbed to the injuries causes by
9 the negligence of the defendants]. Complaint for Damages at 11:16. The phrase
10 improperly contemplates a subsequent re-determination of death in this action, and it
11 should be stricken.

12 VI.

13 **THE FIRST CAUSE OF ACTION FAILS TO STATE FACTS**
14 **SUFFICIENT TO ESTABLISH STANDING TO SUE**

15 The first cause of action is titled "For Personal Injuries On Behalf Of Jahi
16 McMath." Complaint for Damages at 9:18-20. Personal injury causes of action
17 belonging to a decedent at the time of death can only be maintained by the decedent's
18 personal representative, or if none, a successor in interest. C.C.P. § 377.30.

19 It does not appear from the complaint that Ms. Winkfield has been appointed the
20 decedent's personal representative or that she is proceeding as decedent's successor
21 in interest. She has not therefore pled facts sufficient to establish standing to sue on this
22 cause of action. The first cause of action therefore fails to state facts sufficient to
23 constitute a cause of action. *California Practice Guide, Civil Procedure Before Trial* ¶
24 2.77 (complaint filed by person without standing to sue subject to general demurrer).

VII.

STEPFATHERS DO NOT HAVE STANDING TO SUE FOR WRONGFUL DEATH OF A STEPCHILD, MR. WINKFIELD THEREFORE FAILS TO STATE A WRONGFUL DEATH CAUSE OF ACTION

Marvin Winkfield is Jahi's stepfather and is named as a plaintiff in the wrongful death cause of action. Complaint for Damages at 1:27-28 and 11:12. The statutes governing wrongful death actions expressly limit the right to bring these actions to certain individuals. As in this case, when the decedent has no surviving spouse and no surviving issue, persons who would be entitled to the property of the decedent by intestate succession may bring a wrongful death action. C.C.P. § 377.60.

The rules of intestate succession are set out in the Probate Code. If the decedent has no surviving spouse and no surviving issue, the estate passes to the parent or parents. Probate Code § 6402(b). As to stepparents, Probate Code § 6564 provides for intestate succession *by* a person *from* a stepparent under certain circumstances. However, the Law Revision Commission Comment to § 6564 makes it clear that stepfathers cannot sue for the wrongful death of a stepchild:

...The foster parent or stepparent may not inherit from the child...Section 6454 does not apply because the section applies only to inheritance by the foster child or stepchild ... "from" or "through" a foster parent or stepparent, not to inheritance "by" a foster parent or stepparent.

Mr. Winkfield does not have standing to sue for wrongful death.

Mr. Winkfield has alleged no other causes of action, and has thus failed, as a matter of law, to state facts sufficient to constitute any cause of action and this demurrer should be sustained without leave to amend.

Dated: June 24, 2015

GALLOWAY, LUCCHESI, EVERSON & PICCHI

By:


KAREN A. SPARKS, ESQ.

Attorneys for Defendant UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

1
2 **PROOF OF SERVICE**

3 I declare under penalty of perjury that:

4 I am a citizen of the United States and am employed in the County of Contra Costa. I
5 am over the age of eighteen years and not a party to the within action. My business
6 address is 1676 North California Boulevard, Suite 500, Walnut Creek, CA 94596-4183.

7 On the date set forth below, I caused the attached **MEMORANDUM OF POINTS AND
8 AUTHORITIES IN SUPPORT OF UCSF BENIOFF CHILDREN'S HOSPITAL
9 OAKLAND'S DEMURRER TO FIRST AND THIRD CAUSES OF ACTION, AND
10 MOTION TO STRIKE PORTIONS OF COMPLAINT FOR DAMAGES; REQUEST FOR
11 JUDICIAL NOTICE** to be served on the parties to this action as follows:

12 **BY MAIL.**

13 I placed a true copy thereof, enclosed in a sealed envelope with postage thereon
14 fully prepaid, in the United States mail at Walnut Creek, California, addressed to
15 the parties as set forth on the attached service list. C.C.P. §§1013(a), 2015.5.

16 **BY COURIER SERVICE.**

17 I retained CCX Couriers, Inc. of Walnut Creek, California, to personally serve a
18 true copy thereof on the parties as set forth on the attached service list. C.C.P.
19 §§1011, 2015.5.

20 **BY UNITED PARCEL SERVICE.**

21 I retained **UNITED PARCEL SERVICE** to serve by overnight delivery a true copy
22 thereof on the parties as set forth on the attached service list. C.C.P. §§1013(c),
23 2015.5.

24 **BY FACSIMILE TRANSMISSION.**

25 I am readily familiar with this law firm's business practices for collection and
26 processing of documents by way of facsimile. I telefaxed a true copy thereof at
27 said facsimile number(s) as set forth on the attached service list. C.C.P.
28 §§1013(e), 2015.5 and C.R.C. §2008.

BY PERSONAL SERVICE.

I personally served a true copy thereof on the parties as set forth on the attached
service list at . C.C.P. §§1101, 2015.5.

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RG15760730: MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF UCSF BENIOFF CHILDREN'S HOSPITAL
OAKLAND'S DEMURRER TO FIRST AND THIRD CAUSES OF
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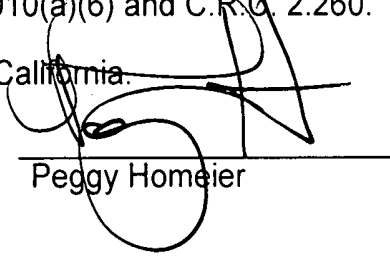
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BY ELECTRONIC SERVICE.

I electronically served a true copy thereof on the parties at said electronic notification addresses as set forth on the attached service list from my electronic notification address: xxx@glattys.com. The transmission was reported as complete and without error. C.C.P. §1010(a)(6) and C.R.C. 2.260.

Executed on June 24, 2015 at Walnut Creek, California.



Peggy Homeier

SERVICE LIST

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Counsel for Defendant Frederick S.
Rosen, M.D.



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CLERK OF THE SUPERIOR COURT

By Shirley Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

<p>LATASHA WINKFIELD, the Mother of Jahi McMath, a minor</p> <p>Petitioner,</p> <p>v.</p> <p>CHILDREN'S HOSPITAL OAKLAND, Dr. David Durand M.D. and DOES 1 through 100, inclusive</p> <p>Respondents</p>	<p>Case No. RP13-707598</p> <p>AMENDED* ORDER (1) DENYING PETITION FOR MEDICAL TREATMENT AND (2) GRANTING IN PART APPLICATION TO SEAL PORTIONS OF RECORD.</p> <p>Date: December 23, 2013 Time: 9:30 am Dept: 31</p>

The Petition of Latasha Winkfield as mother of Jahi McMath, a minor, and the motion of petitioner to seal came on for hearing on December 23 and 24, 2013, in Department 31 of this Court, the Honorable Evelio Grillo presiding. After consideration of the briefing and the argument, IT IS ORDERED: (1) the Petition of Latasha Winkfield as mother of Jahi McMath, a minor, is DENIED and (2) the motion of petitioner to seal is GRANTED IN PART.

*The court amends the Order of 12/26/13 to correct typographical errors and address several factual corrections requested by counsel. There are no substantive changes from the prior order.

EXHIBIT A

PROCEDURAL AND FACTUAL BACKGROUND¹

1
2 On December 9, 2013, Jahi McMath, a thirteen year old child, had a tonsillectomy
3 performed at Children's Hospital of Oakland ("CHO"). Following the tonsillectomy Jahi began
4 to bleed profusely from her mouth and nose, and within a matter of minutes, went into cardiac
5 arrest and lapsed into a coma. As of December 26, 2013, Jahi is currently being maintained on a
6 ventilator at CHO.

7 On December 20, 2013, Latasha Winkfield, the mother of Jahi McMath, filed a verified
8 petition and ex parte application with the court pursuant to Probate Code section 3200 et seq. and
9 4600 et seq., seeking an order (1) authorizing the petitioner (Jahi's mother) to make medical care
10 decisions for Jahi; and (2) for an injunction under to prohibit respondent CHO from withholding
11 life support from Jahi. (Probate Code sections 3201, 4766, 4770.) The court set the application
12 for hearing at 1:30 p.m. on December 20, 2013, in Department 31, and requested respondent
13 CHO to submit written opposition to petitioner's ex parte application.
14

15 On December 20, 2013, the court heard Petitioner's application in Department 31.
16 Christopher B. Dolan appeared for the petitioner and Douglas C. Straus appeared for respondent
17 CHO. At the hearing, respondent CHO submitted its opposition papers and argued that
18 respondent CHO had no duty to continue mechanical ventilation or any other medical
19 intervention for Jahi, because she was deceased as the result of an irreversible cessation of all
20 functions of her entire brain, including her brain stem. (Health & Safety Code section 7180.) In
21 support of its position, respondent submitted the physician declarations of Robert Heidersbach,
22

23
24 ¹ Due to the confluence of facts concerning the medical records of a minor and the publicity that
25 accompanied this case, the parties presented many of their arguments to the court in chambers
26 and supported those arguments with offers of proof. The court has attempted in this order to
reflect and address all the issues raised in the case even if they were not formally presented and
preserved in court filings and transcribed hearings.

1 MD, Sharon Williams, MD, and Robin Shanahan, MD. Dr. Heidersbach and Dr. Shanahan were
2 the examining physicians who determined Jahi's medical status, *i.e.*, brain dead. The physician
3 declarations, read together, unequivocally stated that Jahi was considered brain dead in
4 accordance with accepted medical standards, and that there was no medical possibility that Jahi's
5 medical condition was reversible, or that she would recover from her present condition, and that
6 there was no medical justification to provide further medical intervention. Stated more plainly,
7 CHO argued that Jahi was legally dead, as defined by Health and Safety Code section 7180 and
8 7181, and that neither Probate Code sections 3200 or 4600 et seq. authorized medical treatment
9 of legally dead persons.² Petitioner responded with anecdotal evidence regarding Jahi's
10 condition, and stated that Jahi was responsive to her mother's verbal stimulation, and to physical
11 touching of her feet.
12

13 During oral argument on December 20, 2013, the court asked respondent's counsel
14 whether the two examining physicians were affiliated with CHO.³ Respondent's counsel
15 responded that Drs. Heidersbach, and Shanahan did not work for CHO, that each satisfied the
16 criteria for independence under Health and Safety Code section 7181, and thus intervention by
17 the court was neither warranted, nor authorized by law. In effect, respondent's counsel argued
18 that the court did not have jurisdiction to review the physicians' diagnosis of brain death because
19

20 ² It would appear to be self evident that where legal death has occurred, one cannot invoke the
21 provisions of Probate Code sections 3200 and 4600 to appoint a guardian to make health care
22 decisions on behalf of a deceased person, *i.e.*, a person for whom additional medical treatment
23 would be futile. There are specific statutory requirements for dealing with the remains of
24 deceased persons. (Health and Safety Code section 7000 et seq.) The issue presented by the
25 petitioner in the instant matter was more complex: whether the petitioner's daughter was entitled
26 to medical treatment in the form of life support (nutrition, intravenous fluids, ventilator breathing
support, etc.) because her daughter was not legally dead. The issues in this case as presented by
the petitioner necessarily required the court to reach the threshold issue of whether petitioner's
daughter was legally dead.

³ Health and Safety Code section 7181 states that a diagnosis of brain death requires
confirmation by a second, independent physician.

1 two independent physicians had made the determination in compliance with Health and Safety
2 Code section 7180 and 7181. On further questioning by the court, however, respondent's counsel
3 conceded that both Drs. Heidersbach and Shanahan maintained hospital privileges with CHO.
4 The declarations submitted by Drs. Heidersbach, and Shanahan both self-describe their status as
5 "a member in good standing of the medical staff of Children's Hospital & Research Center at
6 Oakland." (Heidersbach Dec., Para 1; Shanahan Dec., para 1.)

7 Because Health and Safety Code section 7181 requires confirmation of brain death by an
8 independent physician (but does not define or otherwise set a standard for determining
9 independence), the court determined that, on the unique facts of this case,⁴ the independent
10 second opinion required by section 7181 should be provided by a physician who had no
11 affiliation with CHO. The court ordered the parties to meet and confer to select a physician
12 unaffiliated with CHO to provide the second independent opinion required by Health and Safety
13 Code sections 7180 and 7181. The parties met and conferred during a break in the hearing and
14 CHO presented the court with the names of five physicians affiliated with the University of
15 California San Francisco Medical School. Petitioner did not provide the names of any licensed
16 California physicians as proposed independent experts. Counsel for Jahi stated he could not
17 consent to the process because he stated that consent could be interpreted that the independent
18 physician then could make a pronouncement of brain death that would authorize termination of
19 support.
20
21

22 ⁴ The unique facts of this case include the fact of both affiant physicians being members of the
23 CHO medical staff, the complete absence from the record of any information from which the
24 court could determine whether the physician providing the second opinion was an "independent
25 physician" within the meaning of Health and Safety Code section 7181, and the facts and
26 circumstances surrounding Jahi's treatment while under the care of CHO, *i.e.*, immediate and
dramatic death following a routine surgical procedure (a tonsillectomy), with virtually no
information surrounding the circumstances of her treatment and death provided by CHO other
than publically describing the outcome of the surgery as "catastrophic."

1 By order dated December 20, 2013, the court temporarily restrained CHO from changing
2 Jahi's level of medial support. The order stated in part: "Respondent CHO, its agents,
3 employees, servants and independent contractors are ordered to continue to provide Jahi McMath
4 with the treatment and support which is currently being provided as per the current medications
5 and physicians orders until further order of the court." The order also continued the hearing to
6 Monday, December 23, 2013, and directed CHO to contact the UCSF physicians to determine
7 whether any of them was available to examine Jahi and to provide the second independent
8 opinion required by section 7181.

9
10 On Monday December 23, 2013, the court reconvened the hearing. At the hearing,
11 respondent's counsel advised the court that the UCSF physicians had declined to provide a
12 second section 7181 opinion on the advice of counsel, as pending merger discussions between
13 UCSF and CHO could raise concerns regarding the independence of the UCSF physicians. In
14 place of the UCSF physicians, CHO's counsel offered the appointment of Paul Fisher, MD, the
15 Chief of Child Neurology for the Stanford University School of Medicine, as the physician to
16 provide the second, independent physician's opinion pursuant to Health and Safety Code section
17 7181. Petitioner opposed the process but conceded that if the process would go forward that Dr.
18 Fisher was qualified: During the December 23 hearing, petitioner's counsel also requested that
19 Paul A. Byrne, MD be allowed to examine Jahi and provide a second section 7181 opinion, or
20 alternatively, to provide expert testimony at the hearing.

21
22 By order dated December 23, 2013, the court appointed Dr. Fisher as the independent
23 7181 physician. Pursuant to that order, Dr. Fisher examined Jahi the afternoon of December 23,
24 2013. The court also continued the hearing to December 24, 2013, to receive Dr. Fisher's report
25 and testimony from a CHO physician (Dr. Shanahan) who first determined that Jahi was brain
26

1 dead, as of December 11, 2013. By separate order dated December 23, 2013, the court extended
2 the restraining order through December 30, 2013, or such other date as the court might later
3 determine.

4 On December 24, 2013, this court, during closed and public sessions, received testimony
5 from Dr. Shanahan and Dr. Fisher. During the course of the hearings, the court was presented
6 with and entered into evidence Dr. Shanahan's and Dr. Fisher's examination notes, as well as
7 documents setting forth the standards for determining brain death in infants and children. (See,
8 e.g., Exhibit 1 (Dr. Fisher's examination notes); Exhibit 2 (Guidelines for Determination of
9 Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendation.
10 Court); Exhibit 3 (Pediatrics, Official Journal of the American Academy of Pediatrics, August
11 28, 2011, Guidelines for Determination of Brain Death in Infants and Children: An Update of the
12 1987 Task Force Recommendation); Exhibit 4 (Table 3 of Exhibit 3); Exhibit 5 (Checklist,
13 Brain Death Examination for Infants and Children); Exhibit 6 (Shanahan Declaration filed
14 12/20/13); and Exhibit 7 (Consultation and Examination notes of Robin Shanahan MD dated
15 12/11/2013).⁵ The court provided Petitioner's counsel the opportunity to cross examine both Dr.
16 Fisher and Dr. Shanahan.
17

18 Dr. Fisher initially testified in a closed session. Dr. Fisher's written report served as his
19 opening statement and counsel for petitioner in cross-examination questioned Dr. Fisher about
20 the accepted medical standards for determining brain death in minors, his physical examination
21 of Jahi, and his analysis. At the conclusion of Dr. Fisher's cross-examination, petitioner's
22 counsel stipulated that Dr. Fisher conducted the brain death examination and made his brain
23

24
25 ⁵ The court also received and considered the vita curricula of Dr. Fisher and Dr. Byrne. To
26 provide a complete record, the court on its own motion augments the record to include those two
documents as Exhibits 8 and 9.

1 death diagnosis in accord with accepted medical standards. In the open session immediately
2 following, Dr. Fisher opined that Jahi was brain dead under accepted medical standards.

3 Dr. Shanahan then testified in a closed session. Dr. Shanahan testified as to the accepted
4 medical standards for determining brain death in minors, the examination of Jahi that she
5 conducted on December 11, 2013, and her conclusion on December 11, 2013, that Jahi was brain
6 dead as of that date. Petitioner's counsel was then provided with the opportunity to cross
7 examine Dr. Shanahan.

8 At the conclusion of Dr. Shanahan's cross-examination in closed session, petitioner's
9 counsel objected to Dr. Shanahan's testimony. The court overruled the objection. Petitioner's
10 counsel then requested a continuance to review additional medical records more carefully, to
11 have time to consult an expert regarding Dr. Shanahan's examination of Jahi, and, if appropriate,
12 to conduct further cross-examination of Dr. Shanahan. The court denied the request for a
13 continuance. The court reasoned that the issue before the court was limited to whether the
14 attesting physicians had conducted the 7180 and 7181 examinations in accord with accepted
15 medical standards. The court determined, based on the testimony and medical records provided
16 in the closed session (Exhibits 1 [Fisher notes] and 7 [Shanahan notes]), that although Jahi's
17 complete medical records were relevant to the cause of her death they were not relevant to
18 whether she had suffered brain death as defined under section 7181. Dr. Shanahan was then
19 sworn in open court, and testified that Jahi was brain dead on December 11, 2013, under
20 accepted medical standards.
21
22

23 The Court then took the matter under submission. The court returned to the bench after a
24 brief recess and then denied the petition and dissolved the TRO effective 5:00 p.m. December
25 30, 2013.
26

1
2 ANALYSIS:

3 JURISDICTION OF THE COURT

4 During the initial and subsequent hearings, respondent's counsel argued that after two
5 attesting physicians have determined a person to be brain dead pursuant to Health and Safety
6 Code sections 7180 and 7181, that the court had no jurisdiction to review the issue. Or stated
7 another way, counsel argued that the determination of brain death was a matter for physicians,
8 and not judges to decide, and the court lacked jurisdiction to review the physicians'
9 determination of brain death.

10
11 It is true that physicians, and not courts, are uniquely qualified (and authorized by statute)
12 to make the determination of brain death, but it does not follow that such determinations are
13 insulated from all judicial review. (*Dority v. Superior Court* (1983) 145 Cal. App.3d 273, 278.)
14 In *Dority* the trial court appointed a guardian for an infant who had been determined by
15 physicians to be brain dead under Health & Saf. Code, section 7189(a)⁶, and after hearing
16 unrefuted medical testimony concluding that the infant was brain dead, the trial court ordered the
17 temporary guardian to give the appropriate consent to the health care provider to withdraw life
18 support. (*Dority*, 145 Cal.App.3d at 276.) The child's parents and counsel for the minor
19 petitioned for a writ of prohibition against removing the life support device. The Court of Appeal
20 denied the writs and held that the trial court's order for withdrawal of the life support system,
21 after hearing the medical evidence and taking into consideration the rights of all the parties
22

23 ⁶ It appears that the reference to Health & Saf. Code section 7189(a) might be a typographical
24 error. Former section 7189, as operative during 1983, was added by Stats.1976, c. 1439, § 1,
25 related to the revocation of health care directives, and was repealed by Stats.1991, c. 895
26 (S.B.980), § 1. Health & Saf. Code section 7180, the operative section for determining death as
of 1983 (the year in which the events underlying *Dority* occurred) was added by Stats.1982, c.
810, p. 3098, § 2, and would have been the operative statute for determining death at that time.

1 involved, and after finding that the infant was dead in accordance with applicable statutes, was
2 proper and appropriate. (*Dority*, 145 Cal.App.3d at 279.)

3 *Dority* acknowledged "the moral and religious implications inherently arising when the
4 right to continued life is at issue," but concluded that the court has jurisdiction to resolve the
5 issue. *Dority* recognized "the difficulty of anticipating the factual circumstances under which a
6 decision to remove life-support devices may be made, [and] determined that it would be
7 "unwise" to deny courts the authority to make such a determination when circumstances
8 warranted." (*Dority*, 145 Cal.App.3d at 275.)

9 *Dority* states "[t]he jurisdiction of the court can be invoked upon a sufficient showing that
10 [1] it is reasonably probable that a mistake has been made in the diagnosis of brain death or [2]
11 where the diagnosis was not made in accord with accepted medical standards." (*Dority*, 145
12 Cal.App.3d at 280.) *Dority* is silent on what showing is necessary to establish "reasonable
13 probability of a mistake." *Dority* and the statutes, sections 7180 and 7181, are silent as to when a
14 diagnosis is made "in accord with accepted medical standards." *Dority* does not state that the
15 two identified bases for jurisdiction are exclusive and the statute does not state they are
16 exclusive. The court interprets the statute and holds that application of the statute permits an
17 inquiry into whether the second physician was independent. The court's jurisdiction can be
18 invoked on a showing that the second physician required by section 7181 was not "independent."
19

20 In this case there is clearly was a conflict between the party representing Jahi and the
21 health care providers as to whether brain death had occurred and whether further medical
22 intervention was warranted. Petitioner presented evidence that her daughter, Jahi, was
23 responsive (reacted to) her touch (Winkfield Decl. at para. 9), arguably suggesting that it was
24 possible that a mistake has been made in the diagnosis of brain death. Petitioner presented
25
26

1 evidence that CHO denied petitioner's request to have an independent physician examine Jahi
2 and her studies and records (Winkfield Decl., para. 19) and that CHO repeatedly refused to
3 provide petitioner with Jahi's medical records under the rationale that the hospital does not
4 provide medical records of patients that they are still treating (Winkfield Decl. at paras. 20, 21).⁷
5 These facts cast doubt on the neutrality of CHO and therefore also on the independence of the
6 physicians who were "member[s] in good standing of the medical staff of Children's" who had
7 examined Jahi and made findings of brain death. These facts are sufficient to invoke the
8 jurisdiction of the court to review whether the diagnosis was made by an independent physician
9 in accord with acceptable medical standards.⁸
10

11 NATURE OF THE HEARING AND RELATED DUE PROCESS CONCERNS.

12 Counsel for petitioner objected that petitioner was not provided a full and fair opportunity
13 to present evidence regarding whether Jahi had suffered brain death. Specifically, counsel for
14 petitioner asserted that petitioner was not provided timely access to Jahi's complete medical
15 files, that he needed additional time in which to prepare for cross-examination, and that he had
16 the right to present a competing physician to provide testimony on the issue of brain death.
17

18 Health and Safety Code sections 7180 and 7181 do not provide any guidance regarding
19 the nature of a proceeding to address brain death under those sections. *Dority*, supra, 145
20

21 ⁷ As of the hearing on Friday December 20, 2013, petitioner and petitioner's counsel had not yet
22 received copies of Jahi's medical records.

23 ⁸ There was some conflict in the argument at the December 20 hearing as to whether petitioner
24 had been allowed to have a physician examine Jahi and/or review the records of Drs. Shanahan
25 and Heidersbach, the physicians who declared Jahi to be brain dead. CHO's counsel (Mr.
26 Strauss) contended that petitioner had consulted with three physicians of her choosing, each of
whom confirmed the diagnosis of brain death. Petitioner's counsel denied Mr. Strauss'
representation and further alleged that Jahi's medical records had not been provided to petitioner
or petitioner's designated physicians, thereby precluding any meaningful review of Drs.
Shanahan's and Heidersbach's diagnoses of brain death.

1 Cal.App.3d 273, 276, did not address the nature of a proceeding under section 7181. The
2 Uniform Determination of Death Act prepared by the Uniform Law Commission does not
3 address the nature of a proceeding. The court can discern three options for categorizing the
4 nature of the proceeding: (1) a summary judicial review of physician reports; (2) a focused
5 proceeding that permits limited discovery and presentation of evidence; and (3) a civil
6 proceeding with challenges to the pleadings under CCP sections 430.10 and 435, discovery
7 rights under CCP section 2016 et seq, motions for summary judgment under CCP section 437c,
8 and a full trial on the merits.

9
10 The court rejects the first option as failing to provide appropriate due process to the
11 interested parties. If the determination were so simple that the court could resolve it on the basis
12 of declarations, then the court would not need to be involved at all in the process. (*Dority*, 145
13 Cal.App.3d at 278 [If the family and physicians agree, then “we find it completely unnecessary
14 to require a judicial “rubber stamp” on this medical determination”].) If the determination is not
15 simple, then the interested parties are entitled to cross-examine the physicians and to present
16 their own evidence.

17
18 The court finds the second option consistent with the apparent intent of the legislature,
19 California case law, and due process. Health and Safety Code sections 7180 and 7181 concern a
20 single factual issue that is medical in nature. Physicians should be able to make the required
21 examination and complete the required analysis in a relatively short time period. The legislature
22 in Health and Safety Code section 1254.4 states that after a finding of brain death under section
23 7180, a hospital must continue previously ordered cardiopulmonary support for a “reasonably
24 brief period” to afford family or next of kin the opportunity to gather at the patient’s bedside
25 before removal of the support and that “in determining what is reasonable, a hospital shall
26

1 consider the needs of other patients and prospective patients in urgent need of care." This
2 suggests that following a finding of brain death under section 7180, any challenge to the finding
3 also be completed in relatively brief period.

4 California case law indicates that trial courts have conducted hearings under section 7180
5 expeditiously. In *Dority*, the physicians found no brain activity on November 22 and again about
6 about one month later (mid-December), and the trial court held a hearing on January 17 and 21.
7 The testimony at the *Dority* trial court hearing was unrefuted. Although *Dority* did not address
8 the nature of the proceeding or hearing, it also did not criticize the conduct of the trial court.
9 (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680 [An opinion is not authority for
10 propositions not considered].)

11
12 Regarding due process, the Court has considered the following general principles as
13 stated in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal. 4th 371, 390-391:

14 Under the California Constitution, the extent to which procedural due
15 process is available depends on a weighing of private and governmental interests
16 involved. The required procedural safeguards are those that will, without unduly
17 burdening the government, maximize the accuracy of the resulting decision and
18 respect the dignity of the individual subjected to the decision making process.
19 Specifically, determination of the dictates of due process generally requires
20 consideration of four factors: [1] the private interest that will be affected by the
21 individual action; [2] the risk of an erroneous deprivation of this interest through
22 the procedures used and the probable value, if any, of additional or substitute
23 safeguards; [3] the dignitary interest of informing individuals of the nature,
24 grounds and consequences of the action and of enabling them to present their side
25 of the story before a responsible governmental official; and [4] the government
26 interest, including the function involved and the fiscal and administrative burdens
that the additional or substitute procedural requirements would entail.

1 The first three considerations, the private interest, the risk involved, and the dignitary
2 interest of the proceeding, all suggest that the due process rights of the party affected by a
3 physician's determination of death are substantial. The fourth factor, the government interest in
4 the form of administrative burden, is addressed by the focused nature of the inquiry under Health
5 and Safety Code sections 7180 and 7181.

6 The court finds the third option to be inconsistent with the apparent purpose of the statute
7 and the related statutes. The inquiry is focused and Health and Safety Code section 1254.4
8 suggests that the proceedings be commenced and concluded in a "reasonably brief period."
9

10 The court finds that the nature of the proceedings is that of a regular civil proceeding, but
11 that the trial court has the discretion to focus the case on the limited issues presented and to
12 expedite and narrow the proceedings accordingly. Paraphrasing *Dority*, 145 Cal.App.3d at 275,
13 "Considering the difficulty of anticipating the factual circumstances under which a decision to
14 remove life-support devices may be made, [limiting the discretion of the court to fashion the
15 proceedings to the circumstances] may ... be unwise." The trial court may issue orders
16 shortening time to ensure that the case is not unduly prolonged, the trial court may expedite and
17 limit discovery under CCP section 2019.020(a) and 2019.030, and the court may limit the scope
18 of the evidence presented at the hearing under Evidence Code section 352.
19

20 This court endeavored to provide petitioner with due process while completing the
21 proceeding in a "reasonably brief period." CHO provided some medical records to petitioner
22 late on Friday December 20 and provided more complete records to petitioner's counsel on
23 Monday December 23, 2013. The court appointed its own independent physician to examine
24 Jahi on Monday December 23, and counsel for petitioner was present during that examination.
25
26

1 On Tuesday December 24, counsel for petitioner had the opportunity to cross-examine both Dr.
2 Fisher and Dr. Shanahan.

3 During the proceedings, counsel for petitioner at various times requested that Paul A.
4 Byrne, MD be allowed to examine Jahi and provide a second section 7181 opinion, or provide
5 expert testimony at the hearing, or to review Jahi's records to assist in the cross-examination of
6 Dr. Shanahan. Petitioner withdrew the request that Dr. Byrne be allowed to examine Jahi and
7 provide an opinion based on his own examination. Petitioner did not pursue his request that Dr.
8 Byrne provide expert testimony. During the discussions between the court and counsel it
9 became apparent through a review of Dr. Byrne's publications that were the court to hold an
10 Evidence Code 402 hearing to determine whether Dr. Byrne was qualified as an expert under
11 Evidence Code 720 and *Sargon Enterprises, Inc. v. University of Southern Cal.* (2012) 55
12 Cal.4th 747, that Dr. Byrne might not qualify as an expert based on his religious and
13 philosophical approach to the definition of death and the possibility that he would not be able to
14 apply accepted medical standards. In addition, it became apparent that testimony and documents
15 regarding the cause of death, as opposed to the fact of death, were not relevant to the court's
16 inquiry. The court exercised its discretion in not continuing the hearing to permit petitioner to
17 review Jahi's records to assist in the cross-examination of Dr. Shanahan. The court reasoned that
18 the examinations were both under the accepted medical standards, the medical determinations
19 were consistent, and that the detriment of a prolonged proceeding would materially outweigh any
20 probable benefit to the court in making the limited finding required by section 7181.

23 The court acted consistent with the trial court in *Alvarado by Alvarado v. New York City*
24 *Health & Hospitals Corp.* (N.Y.Sup.,1989) 145 Misc.2d 687, 698, 547 N.Y.S.2d 190, *order*
25 *vacated and appeal dismissed as moot*, 157 A.D.2d 604, 550 N.Y.S.2d 353 (1st Dep't 1990),
26

1 where the court addressed a similar situation and stated, "In the instant case, the Alvarados were
2 notified before a determination was made, were given an opportunity to obtain an independent
3 medical evaluation, and were offered a chance to have the matter discussed with religious leaders
4 and friends. Therefore, it cannot be said that the family was deprived of its due process rights to
5 participate in the medical care of the child."
6

7 FINDING OF BRAIN DEATH UNDER HEALTH AND SAFETY SECTIONS 7180 AND
8 7181.
9

10 A trial court may "hear testimony and decide whether the determination of brain death
11 was in accord with accepted medical standards." (*Dority*, 145 Cal.App.3d at 279.) The law is
12 unclear whether the court's determination is under the preponderance of the evidence standard,
13 the clear and convincing evidence standard, or some other standard. This court applies the clear
14 and convincing evidence standard.

15 The court is guided by *In re Christopher I* (2003) 106 Cal.App.4th 533, 552, where the
16 court addressed the standard to be applied when removing life support from a minor who was in
17 a persistent vegetative condition. In *Christopher*, the Court of Appeal noted that the Welfare and
18 Institutions Code requires either proof by a preponderance of the evidence or clear and
19 convincing evidence, depending on the rights being adjudicated, and then stated, "Given the
20 impact of this decision on Christopher, imposition of the highest standard within the Welfare and
21 Institutions Code - the clear and convincing standard of proof - is appropriate." The court went
22 on to review the law in different states and concluded "The evidentiary standards employed by
23 other courts considering withholding or withdrawal of life-sustaining treatment from
24
25
26

1 incompetent patients reinforce our belief that the clear and convincing standard is the correct
2 one.”

3 The court notes that although *Christopher* concerned a minor in a persistent vegetative
4 condition, and, although there are medical differences between a coma, a persistent vegetative
5 state, and brain death, those differences pale in comparison to the difference between being
6 legally alive and being legally dead. When a court is called on to determine whether a person
7 has suffered brain death and is now dead under the law or can have support withdrawn and will
8 become dead under the law, the court must make that finding by clear and convincing evidence.

9
10 The court heard the testimony of Dr. Fisher and Dr. Shanahan. Both doctors presented
11 consistent testimony that established the accepted medical standards for determining brain death
12 in minors. Dr. Shanahan conducted a physical examination of Jahi on December 11, 2013, and
13 Dr. Fisher conducted an examination on December 23, 2013. Both doctors conducted their
14 examinations consistent with the accepted medical standards and both doctors reached
15 independent conclusions of brain death based on their application of the standards to Jahi's
16 condition. In addition, Dr. Shanahan reviewed an EEG taken on or about December 11, 2013,
17 and Dr. Fisher reviewed a different EEG taken on December 23, 2013, and those tests reinforced
18 their conclusions. Dr. Fisher conducted an additional test, a cerebral perfusion test, and that test
19 was also consistent with the conclusion of brain death. This clear and convincing evidence was
20 the basis of the court's conclusion on December 24, 2013, that Jahi had suffered brain death and
21 was deceased as defined under Health and Safety Code sections 7180 and 7181.

22
23 The court is mindful of the language in *Dority* that states the fact of brain death "does not
24 mean the hospital or the doctors are given the green light to disconnect a life-support device from
25 a brain-dead individual without consultation with the parent or guardian. Parents do not lose all
26

1 control once their child is determined brain dead," and that a parent should be fully informed of a
2 child's condition and have the right to participate in a decision of removing the life-support
3 devices. (*Dority*, 145 Cal.App.3d at 279-280.) (See also, Health & Safety Code section 1254.4
4 [requiring reasonable amount of time to accommodate family in event of declaration of brain
5 death].) The court expressly does not address whether that consultation and opportunity for
6 participation required by Health & Safety Code section 1254.4 occurred in this case.
7

8 APPLICABILITY OF PROBATE CODE SECTIONS 4735 AND 4736.

9

10 Petitioner's initial memorandum argued that if under Probate Code section 4735 CHO
11 made a determination to decline to comply petitioner's instructions on the basis that it would be
12 "medically ineffective health care or health care contrary to generally accepted health care
13 standards," then under Probate Code section 4736 CHO had the obligation "to make all
14 reasonable efforts to assist in the transfer of the patient to another health care provider or
15 institution that is willing to comply with the instruction or decision" and had the obligation to
16 "[p]rovide continuing care to the patient until a transfer can be accomplished or until it appears
17 that a transfer cannot be accomplished."
18

19 Probate Code section 4736 appears to apply only when is it arguable whether the
20 proposed health care would be medically effective. The court finds that Probate Code 4736 does
21 not apply after a determination of death. The court notes that Probate Code section 4736
22 provides for some time to move a patient and Health and Safety Code section 1254.4 provides a
23 "reasonably brief period" for family to gather at the bedside. Therefore, both statutes provide for
24 a brief period following a determination of brain death before a hospital can remove all support.
25 The court makes no findings and issues no orders under Probate Code sections 4735 and 4736.
26

1
2 MOTION TO SEAL

3 The Order of December 23, 2013, stated, "The court anticipates that the hearing will be
4 closed to the public under CRC 2.550 et seq. because it involves the medical records of a minor."
5 On December 23 and 24, 2013, petitioner moved to close the hearing in part and to seal and/or
6 redact certain exhibits.

7 The court CLOSED the courtroom and SEALS the record on the oral testimony provided
8 by Dr. Fisher and Dr. Shanahan in which they detailed their examinations of Jahi. This
9 testimony was provided in chambers with a court reporter present.

10 The court REDACTS Exhibit 1 (Dr. Fisher's examination notes) in part because the
11 redacted portion is not pertinent to the issues before the court and Jahi's family has an overriding
12 privacy interest in the material that outweighs the public interest in the information. The court
13 permits disclosure of the remainder of Exhibit 1. Although the exhibit reflects Dr. Fisher's
14 examination of Jahi, Dr. Fisher was acting as a court appointed expert on a matter that petitioner
15 had placed at issue in this case.

16 The court DOES NOT SEAL Exhibits 2-5. These are documents that reflect the accepted
17 medical standards.

18 The court DOES NOT SEAL Exhibit 6 (Shanahan Declaration filed 12/20/13). This is
19 already in the public file. In addition, although it concerns the medical information of a minor it
20 is conclusory and does not disclose private information.

21 The court SEALS Exhibit 7. This exhibit reflects Dr. Shanahan's and Dr. Heidersbach's
22 pre-litigation examinations of Jahi. These doctors were acting as agents of CHO and their notes
23 reflect the medical information of a minor.

1 EXTENSION OF RESTRAINING ORDER, STAY OF THIS ORDER, AND PREPARATION
2 OF JUDGMENT.

3 The court ORDERS that the Temporary Restraining Order is extended through Monday,
4 December 30, 2013, at 5:00 pm. Until that time, Respondent CHO, its agents, employees,
5 servants and independent contractors are ordered to continue to provide Jahi McMath with the
6 treatment and support which is currently being provided as per the current medications and
7 physicians orders until further order of the court.

8 In the event that before Monday, December 30, 2013, at 5:00 pm there is a change in
9 Jahi's physiological condition despite CHO provision of the current level of treatment and
10 support and petitioner wants an increased level of treatment and support that CHO is unwilling to
11 provide, then the parties may seek the assistance of the court at any time. The court has provided
12 its contact information to counsel.

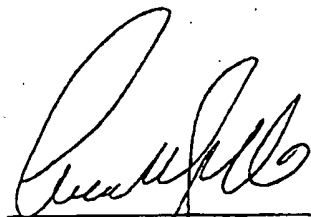
3 The court STAYS the effect of this order until Monday, December 30, 2013, at 5:00 pm
14 to permit petitioner or CHO to file a petition for relief with the Court of Appeal and to seek
15 further relief from that court.

16 CHO is to submit a proposed final judgment consistent with this order on or before
17 January 9, 2014. (C.R.C. 3.1312.)

18 The court sets a further case management conference for 1:30 pm on January 16, 2014, in
19 Dept 31. If the case has been resolved or all further near term proceedings will be in the Court of
20 Appeal, then counsel may so inform the court and the court will continue the case management
21 conference to a later date.

22 IT IS SO ORDERED.

23
24 Dated: January 2, 2014


Evelio Grillo
Judge of the Superior Court

26

EXHIBIT B

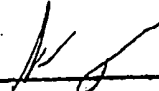
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FILED
ALAMEDA COUNTY

JAN 17 2014

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

By 

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LATASHA WINKFIELD, the Mother of Jahi
McMath, a minor

Petitioner,

v.

CHILDREN'S HOSPITAL OAKLAND, Dr.
David Durand M.D. and DOES 1 through 100,
inclusive

Respondents

Case No. RP13-707598

FINAL JUDGMENT DENYING PETITION
FOR MEDICAL TREATMENT.

The Petition of Latasha Winkfield as mother of Jahi McMath, a minor, came on for hearing on December 23 and 24, 2013, in Department 31 of this Court, the Honorable Evelio Grillo presiding. The court issued a written order dated December 26, 2013, and an amended order dated January 2, 2014. The court now enters the following JUDGMENT:

- (1) the Petition of Latasha Winkfield as mother of Jahi McMath, a minor, is DENIED
- (2) the motion of petitioner to seal was GRANTED IN PART as stated in the orders dated December 26, 2013, and January 2, 2014.
- (3) the motions of petitioner that respondent perform or permit surgical procedures was DENIED as stated in the order dated January 17, 2014.

Dated: January 17, 2014

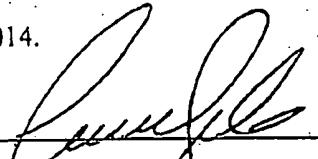

Evelio Grillo
Judge of the Superior Court

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RP13707598

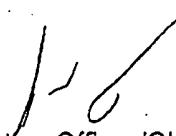
Case Name: Winkfield vs. Children's Hospital Oakland

1. Order 1) on CMC and 2) Denying Request that Deft Perform or Permit Surgical Procedures
2. Final Judgment Denying Petition for Medical Treatment

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below by placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 21, 2014


Executive Officer/Clerk of the Superior Court
By M. Scott Sanchez, Deputy Clerk

Douglas C. Straus (Bar No. 96301)
Brian W. Franklin (Bar No. 209784)
Noel M. Caughman (Bar No. 154309)
dstraus@archernorris.com
ARCHER NORRIS
A Professional Law Corporation
2033 North Main Street, Suite 800
Walnut Creek, California 94596-3759

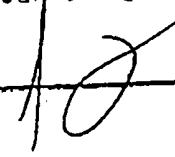
Christopher B. Dolan (SBN 165358)
THE DOLAN LAW FIRM
The Dolan Building
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42106728

1 Christopher B. Dolan (SBN 165358)
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3 The Dolan Building
4 1438 Market Street
5 San Francisco, CA 94102
6 Telephone: (415) 421-2800
7 Facsimile: (415) 421-2830

FILED
ALAMEDA COUNTY

SEP 30 2014

By 

5 Attorneys for Plaintiff
6 LATASHA WINKFIELD

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION

11 LATASHA WINKFIELD, the Mother of Jahi
12 McMath, a minor

13 Plaintiff,

14 v.

15 CHILDREN'S HOSPITAL OAKLAND, Dr.
16 David Durand, M.D. and DOES 1 through
17 100, inclusive

18 Defendants.

Case No.: RP13-707598

**MEMORANDUM REGARDING COURT'S
JURISDICTION TO HEAR PETITION FOR
DETERMINATION THAT JAHIMCMATH
IS NOT BRAIN DEAD**

21 I. INTRODUCTION

22 Jahi McMath, through her guardian and mother Nailah (Latasha) Winkfield, hereby petitions
23 this court to hold a hearing to permit her to provide new, conclusive evidence, that Jahi McMath is not
24 "brain dead" as she has brain function. On December 24, 2013, the Court concluded that there was
25 clear and convincing evidence that Jahi had suffered brain death, as defined under Health and Safety
26 Code 7180 and 7181, and declared her dead. The questions now become does the Court still retain
27 jurisdiction over this matter and, more specifically, to decide whether Jahi McMath is, currently, brain
28

THE
DOLAN
LAW FIRM
1438 MARKET STREET
SAN FRANCISCO, CA
94102
TEL: (415) 421-2800
FAX: (415) 421-2830

EXHIBIT C

1 dead as defined by those same code sections. Petitioner submits that the Court does, indeed, have
2 jurisdiction and that the interests of justice, which are literally those of life or death, demand that this
3 court exercise that jurisdiction to prevent perpetuation of a grave injustice: continuing to declare that
4 Jahi McMath is dead when she is not.

5 II. ARGUMENT

6 A. Court Retains Jurisdiction

7 In *Dority v Superior Court, San Bernidino* (1983) 145 Cal.App.3d 273, a 19 day old infant
8 suffered a medical condition that led to his health deteriorating to the point he was placed on a
9 ventilator. Later, a cerebral blood flow (CBF) study and an electroencephalograph (EEG) were done
10 showing electrocerebral silence and an absence of blood flow to the brain. The infant's physicians
11 determined that brain death had occurred and recommended removal of life support, i.e., a respirator.
12 The hospital anticipated that even with respiratory support the child's bodily functions could only be
13 maintained for several weeks. The child's organs continued to function beyond expectations and the
14 parents chose to withhold consent to remove life support. The hospital, desirous of removing said
15 support, petitioned the court for the appointment of a temporary guardian, the Director of the
16 Department of Public Social Services.¹ The court appointed the guardian and, after taking unrefuted
17 medical testimony that the child was brain dead pursuant to the statutory definition, the court declared
18 the child dead and ordered the temporary guardian to provide consent to the healthcare providers to
19 remove the ventilator. The parents and counsel for the minor child petitioned the court for a writ of
20 prohibition against removing the life-support device. Before the court could act on the petition, the
21 infant's bodily functions ceased and the life-support device was removed.

22 The court, in addressing whether the petition was rendered moot by the child's demise held
23 that "[i]n light of the important questions raised by this case, this Court has the discretion to render an
24 opinion where the issues are of continuing public interest and are likely to recur in other cases."

25 _____
26 ¹ In *Dority* the parents were suspected to be a cause of the child's brain death and were determined
27 not to be suitable to act in the best interests of the child.
28

1 (*Dority* at 276.) The court further held that “[t]he novel medical, legal and ethical issues presented in
2 this case are no doubt capable of repetition and therefore should not be ignored by relying on the
3 mootness doctrine. This requires us to set forth a framework in which both the medical and legal
4 professions can deal with similar situations.” (*Id.*) *Dority* recognized “the difficulty of anticipating the
5 factual circumstances under which a decision to remove life-support devices may be made, [and]
6 determined that it would be “unwise” to deny courts the authority to make such a determination when
7 circumstances warranted.” (*Dority* at 275.)

8 In addressing the question of a Court’s jurisdiction over the review of the determination of brain
9 death, *Dority* states “[t]he jurisdiction of the court can be invoked upon a sufficient showing that [1] it is
10 reasonably probable that a mistake has been made in the diagnosis of brain death or [2] where the
11 diagnosis was not made in accord with accepted medical standards.” (*Dority* at 280.) *Dority* is silent on
12 what showing is necessary to establish “reasonable probability of a mistake.”

13 **B. Reasonable Possibility of Mistake in Diagnosis**

14 Like *Dority*, *Jahi McMath*’s case was, and remains, a matter of international importance raising
15 significant issues of public concern. Therefore, just as the Court in *Dority* continued to have
16 jurisdiction following the complete death of the baby (both circulatory and brain death), even greater
17 rational exists for this court to continue to exercise its jurisdiction here where *Jahi*’s circulatory system
18 and, indeed all of her organs, continue to function and world class experts in neurology and brain
19 death will provide evidence that *Jahi* *no longer* meets the definition of brain death as she has neuralgic
20 function.

21 As stated by *Dority*, when it is reasonably possible that a mistake has been in the diagnosis of
22 brain death, the court has jurisdiction to hear the matter. Here Petitioner has irrefutable evidence, that
23 *Jahi* is no longer brain dead. Petitioner does not believe it necessary to challenge Dr. Fischer’s
24 diagnosis of the caseation of brain activity, at that time. The Petitioner challenges the determination
25 that it was *irreversible* and believes such a proclamation was mistaken. Clearly *Jahi*’s condition was
26 not “irreversible.” This is not a failing of Dr. Fischer, there simply is no case, other than *Jahi*
27 *McMath*, where a pediatric patient has been diagnosed as brain dead but has continued to receive
28

1 **IV. THE COURT HAS JURISDICTION PURSUANT TO CCP § 128**

2 California Code of Civil Procedure, Section 128, declares that the Court has inherent power
3 "to amend and control its process and orders so as to make them conform to law and justice." (CCP §
4 128(8).)

5
6 Courts have the inherent power to create new forms of procedure in particular pending cases.
7 "The . . . power arises from necessity where, in the absence of any previously established
8 procedural rule, rights would be lost or the court would be unable to function." (Witkin, Cal.
9 Procedure (2d ed.) Courts, s 123, p. 392.) This right is codified in Code of Civil Procedure
10 section 187 which provides that when jurisdiction is conferred on a court by the Constitution
11 or by statute ". . . all the means necessary to carry it into effect are also given; and in the
12 exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this
13 Code or the statute, any suitable process or mode of proceeding may be adopted which may
14 appear most conformable to the spirit of this Code." (See also Code Civ.Proc., s 128(8).) As
15 the Supreme Court said in *People v. Jordan*, 65 Cal. 644 at p. 646, "in the absence of any rules
16 of practice enacted by the legislative authority, it is competent for the courts of this State to
17 establish an entire Code of procedure in civil cases, and an entire system of procedure in
18 criminal cases, . . ." (See also *Citizens Utilities Co. v. Superior Court*, 59 Cal.2d 805, (1963),
19 recognizing the inherent power of courts to adopt "any suitable method of practice . . . if the
20 procedure is not specified by statute or by rules adopted by the Judicial Council.") (At p. 813).

21 (*James v. Superior Court* (1978) 77 Cal.App.3d 169, 175.)

22 The instant petition is truly a case of first impression not only in California but, based on an
23 extensive search of all Federal authorities, nationally. There simply has been no case in which brain
24 death was determined and the patient managed to remove themselves, before cardiovascular death,
25 from the facility which had received permission from the court to discontinue life support. This Court
26 has the inherent power to adopt the requested process, as, in the absence of the court exercising its
27 inherent power Jahi McMath would continue to be declared legally brain dead when she isn't. Health
28 and Safety Code Section 7181 specifically limits the legal determination of brain death to
circumstances where there is "*irreversible cessation of all functions of the entire brain, including the
brain stem.*" This Court, having made such determination, must consider the change in circumstances
presented by Plaintiff's evidence which shows that Jahi's condition is now one in which Jahi now has
brain function. Should the court refuse to do so Jahi would be barred from regaining her rightful place
in our society as a living person.

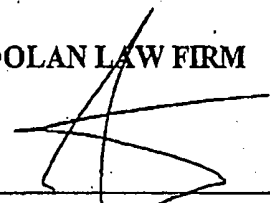
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V. CONCLUSION

In the interests of justice, and Jahi McMath's dignity and right to be considered a living human being, rather than, as she has been portrayed, a corpse, this Court must grant petitioner Nailah Winkfield's petition for hearing/reconsideration of this court's determination of her being brain dead pursuant to California Health and Safety Code Section 7181.

DATED: September 30, 2014

THE DOLAN LAW FIRM

By: 

CHRISTOPHER B. DOLAN
Attorney for Plaintiff
LATASHA WINKFIELD

CERTIFICATION OF VITAL RECORD
OFFICE OF CLERK-RECORDER
COUNTY OF ALAMEDA
 OAKLAND, CALIFORNIA

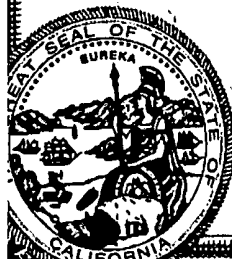
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CERTIFICATE OF DEATH

3201301008821

STATE FILE NUMBER		CERTIFICATE OF DEATH				LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT- FIRST (Given)		2. MIDDLE		3. LAST (Family)			
JAHJ		KELIS		MCMATH			
4. DATE OF BIRTH mm/dd/yyyy		5. AGE Yrs.		6. SEX			
10/24/2000		13		F			
9. BIRTH STATE/FOREIGN COUNTRY		10. SOCIAL SECURITY NUMBER		11. EVER IN U.S. ARMED FORCES?		12. MARITAL STATUS/SROP (at Time of Death)	
CA		[X] NO		NEVER MARRIED		17. DATE OF DEATH mm/dd/yyyy	
						12/12/2013	
13. EDUCATION - Highest Level Degree		14. WAS DECEDENT HISPANIC/LATINO/SPANISH?		15. DECEDENT'S RACE - Up to 3 races may be listed (see worksheet on back)			
07		[X] NO		AFRICAN AMERICAN			
17. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED		18. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.)			19. YEARS IN OCCUPATION		
STUDENT		E.C. REEMS ACADEMY			7		
20. DECEDENT'S RESIDENCE (Street and number, or location)							
2742 75TH AVE							
21. CITY		22. COUNTY/PROVINCE		23. ZIP CODE		25. STATE/FOREIGN COUNTRY	
OAKLAND		ALAMEDA		94605		CA	
26. INFORMANT'S NAME, RELATIONSHIP				27. INFORMANT'S MAILING ADDRESS (Street and number, or rural route number, city or town, state and zip)			
NAILAH WINKFIELD, MOTHER				2742 75TH, OAKLAND, CA 94605			
28. NAME OF SURVIVING SPOUSE/SROP--FIRST		29. MIDDLE		30. LAST (BIRTH NAME)			
MILTON		DELMAR		MCMATH			
31. NAME OF FATHER/PARENT--FIRST		32. MIDDLE		33. LAST		34. BIRTH STATE	
LATASHA		NAILAH		SPEARS		MI	
35. NAME OF MOTHER/PARENT--FIRST		36. MIDDLE		37. LAST (BIRTH NAME)		38. BIRTH STATE	
LATASHA		NAILAH		SPEARS		CA	
39. DISPOSITION DATE mm/dd/yyyy		40. PLACE OF FINAL DISPOSITION					
01/06/2014		UNKNOWN 3237 ARNOLD AVE, SALINA, KS 67401					
41. TYPE OF DISPOSITION(S)		42. SIGNATURE OF EMBALMER				43. LICENSE NUMBER	
REMOVAL		NOT EMBALMED					
44. NAME OF FUNERAL ESTABLISHMENT		45. LICENSE NUMBER		46. SIGNATURE OF LOCAL REGISTRAR		47. DATE mm/dd/yyyy	
LATASHA SPEARS-WINKFELD		NONE		MUNTU DAVIS, M.D.		01/03/2014	
101. PLACE OF DEATH		102. IF HOSPITAL, SPECIFY ONE		103. IF OTHER THAN HOSPITAL, SPECIFY ONE			
CHILDREN'S HOSPITAL		[X] TP		Hospital			
104. COUNTY		105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number or location)		106. CITY			
ALAMEDA		747 52ND STREET		OAKLAND			
107. CAUSE OF DEATH		108. DEATH REPORTED TO CORONER?		109. DEATH REPORTED TO CORONER?			
IMMEDIATE CAUSE (Final disease or condition resulting in death)		[X] YES		[X] YES			
(A) PENDING INVESTIGATION		[] NO		[] NO			
(B)		[] YES		[X] NO			
(C)		[] YES		[X] NO			
(D)		[] YES		[] NO			
110. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107							
NONE							
111. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 112? (If yes, list type of operation and date)		112. IF FEMALE, PREGNANT IN LAST YEAR?					
NO		[X] YES [] NO [] UNK					
113. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED		114. SIGNATURE AND TITLE OF CERTIFIER				115. LICENSE NUMBER	
[] Decedent Attended Since [] Decedent Last Seen Alive		[]				116. DATE mm/dd/yyyy	
114. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE		117. DATE mm/dd/yyyy		118. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		119. INJURY DATE mm/dd/yyyy	
[]		01/03/2014		JESSICA D HORN, DEPUTY CORONER		120. INJURED AT WORK?	
118. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED		121. INJURY DATE mm/dd/yyyy		122. HOUR (24 Hour)			
MANNER OF DEATH [] Natural [] Accident [] Homicide [] Suicide [X] Pending Investigation [] Could not be determined		[] YES [] NO [] UNK					
123. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)							
124. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)							
125. LOCATION OF INJURY (Street and number, or location, and city, and zip)							
126. SIGNATURE OF CORONER / DEPUTY CORONER		127. DATE mm/dd/yyyy		128. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER			
JESSICA D HORN		01/03/2014		JESSICA D HORN, DEPUTY CORONER			
STATE REGISTRAR		FAX AUTH.#		CENSUS TRACT			
A B C D E							

INFORMATIONAL - NOT A VALID DOCUMENT TO ESTABLISH IDENTITY



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CERTIFIED COPY OF VITAL RECORD
 STATE OF CALIFORNIA, COUNTY OF ALAMEDA



This is a true and exact reproduction of the document officially registered and placed on file in the office of the Alameda County Clerk-Recorder.

Patricia O'Connell
 PATRICK O'CONNELL
 ALAMEDA COUNTY CLERK-RECORDER

DATE ISSUED **JAN 13 2014**

This copy is not valid unless prepared on an engraved border displaying the date, seal and signature of the Clerk-Recorder.

EXHIBIT



UNIFORM LAWS
ANNOTATED

Volume 12A

Civil Procedural and Remedial Laws

With
Annotations From State and Federal Courts

THOMSON
—*—
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Mat #40575068

EXHIBIT E

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UNIFORM DETERMINATION OF DEATH ACT

1980 ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	2000 Act No. 710	7-1-2000	Code 1975, §§ 22-31-1, 22-31-2.
Arkansas	1985, No. 386		A.C.A. § 20-17-101.
California	L. 1982, c. 810	9-7-1982 *	West's Ann. Cal. Health & Safety Code, § 7180.
Colorado	1981, p. 778, § 1		West's C.R.S.A. § 12-36-136.
Delaware	65 Del. Laws, c. 237	2-5-1986	24 Del.C. § 1760.
District of Columbia	1982, D.C. Law 4-68	2-25-1982 *	D.C. Official Code, 2001 Ed. § 7-601.
Georgia	1982, pp. 723, 749		O.C.G.A. § 31-10-16.
Idaho	1981, c. 258		I.C. § 54-1819.
Indiana	1986, S.B. 282	3-3-1986	West's A.I.C. 1-1-4-3.
Kansas	1984, c. 345	7-1-1984	K.S.A. 77-204 to 77-206.
Maine	1983, c. 33	3-7-1983 *	22 M.R.S.A. §§ 2811 to 2813.
Maryland	1982, c. 327	7-1-1982	Code, Health-General, § 5-202.
Michigan	1992, P.A. 90	6-4-1992 *	M.C.L.A. §§ 333.1031 to 333.1034.
Minnesota	1989, c. 93	5-9-1989 *	M.S.A. § 145.135.
Mississippi	1981, c. 410	3-24-1981	Code 1972, §§ 41-36-1, 41-36-3.
Missouri	1982, H.B. 1223	8-13-1982	V.A.M.S. § 194.005.
Montana	L. 1983, c. 86		MCA § 50-22-101.
Nebraska	1992, LB 906	7-15-1992	R.R.S. 1943, §§ 71-7201 to 71-7203.
Nevada	1985, c. 62	3-30-1985 *	N.R.S. 451.007.
New Hampshire	1986, c. 191:1	7-1-1987	RSA 141-D:1 to 141-D:2.
New Mexico	1993, c. 174	7-1-1993	NMSA 1978 § 12-2-4.
North Dakota	1989, c. 308	7-12-1989	NDCC 23-06.3-01, 23-06.3-02.
Ohio	1982, S. 98	3-15-1982	R.C. § 2108.30.
Oklahoma	1986, c. 262	9-11-1986	63 Okl. St. Ann. §§ 3121 to 3123.
Oregon	1987, c. 517	7-8-1987 *	ORS 432.300.
Pennsylvania	Act 1982, No. 323	2-15-1983	35 P.S. §§ 10201 to 10203.
Rhode Island	1982, c. 411		Gen. Laws 1956, § 23-4-16.
South Carolina	1984, No. 339		Code 1976, §§ 44-43-450, 44-43-460.
South Dakota	1990, c. 273		SDCL 34-25-18.1.
Utah	1989, c. 276	4-24-1989	U.C.A. 1953, 26-34-1, 26-34-2.
Vermont	1981, No. 62	4-30-1981	18 V.S.A. § 5218.
Virgin Islands	1993, Act No. 5894, § 2	10-13-1993	19 V.I.C. § 869.
West Virginia	1989, c. 206		Code, 16-10-1 to 16-10-4.
Wyoming	1985, c. 223	5-23-1985	Wyo. Stat. Ann. §§ 35-19-101 to 35-19-103.

* Date of approval.

Historical Notes

The Uniform Determination of Death Act was approved by the National Conference of Commissioners on Uniform State Laws in August 1980. It supersedes the Uniform Brain Death Act approved by the Commissioners in 1978.

DETERMINATION OF DEATH

Committees

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Determination of Death Act was as follows:

George C. Keely, 1600 Colorado National Building, 950 Seventeenth Street,
Denver, CO 80202, *Chairman*

Anne McGill Gorsuch, 243 South Fairfax, Denver, CO 80222

John M. McCabe, Room 510, 645 North Michigan Avenue, Chicago, IL 60611,
Legal Counsel

William H. Wood, 208 Walnut Street, Harrisburg, PA 17108

John C. Deacon, P.O. Box 1245, Jonesboro, AR 72401, *President, Ex Officio*

M. King Hill, Jr., 6th Floor, 100 Light Street, Baltimore, MD 21202, *Chairman, Executive Committee, Ex Officio*

William J. Pierce, University of Michigan; School of Law, Ann Arbor, MI
48109, *Executive Director, Ex Officio*

Peter F. Langrock, P.O. Drawer 351, Middlebury, VT 05753, *Chairman, Division E, Ex Officio*

Prefatory Note

This Act provides comprehensive bases for determining death in all situations. It is based on a ten-year evolution of statutory language on this subject. The first statute passed in Kansas in 1970. In 1972, Professor Alexander Capron and Dr. Leon Kass refined the concept further in "A Statutory Definition of the Standards for Determining Human Death: An Appraisal and a Proposal," 121 Pa.L.Rev. 87. In 1975, the Law and Medicine Committee of the American Bar Association (ABA) drafted a Model Definition of Death Act. In 1978, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed the Uniform Brain Death Act. It was based on the prior work of the ABA. In 1979, the American Medical Association (AMA) created its own Model Determination of Death statute. In the meantime, some twenty-five state legislatures adopted statutes based on one or another of the existing models.

The interest in these statutes arises from modern advances in lifesaving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irreversibly. The medical profession, also, has developed techniques for determining loss of brain functions while cardiopulmonary support is administered. At the same time, the common law definition of death cannot assure recognition of these techniques. The common law standard for determining death is the cessation of all vital functions, traditionally demonstrated by "an absence of spontaneous respiratory and cardiac functions." There is, then, a potential disparity between current and accepted biomedical practice and the common law.

The proliferation of model acts and uniform acts, while indicating a legislative need, also may be confusing. All existing acts have the same principal goal—extension of the common law to include the new techniques for determination of death. With no essential disagreement on policy, the associations which have drafted statutes met to find common language. This Act contains that common language, and is the result of agreement between the ABA, AMA, and NCCUSL.

Part (1) codifies the existing common law basis for determining death—total failure of the cardiorespiratory system. Part (2) extends the common law to include the new procedures for determination of death based upon irreversible

DETERMINATION OF DEATH

loss of all brain functions. The overwhelming majority of cases will continue to be determined according to part (1). When artificial means of support preclude a determination under part (1), the Act recognizes that death can be determined by the alternative procedures.

Under part (2), the entire brain must cease to function, irreversibly. The "entire brain" includes the brain stem, as well as the neocortex. The concept of "entire brain" distinguishes determination of death under this Act from "neocortical death" or "persistent vegetative state." These are not deemed valid medical or legal bases for determining death.

This Act also does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or of organ donors, and protection for the dead body. These subjects are left to other law.

This Act is silent on acceptable diagnostic tests and medical procedures. It sets the general legal standard for determining death, but not the medical criteria for doing so. The medical profession remains free to formulate acceptable medical practices and to utilize new biomedical knowledge, diagnostic tests, and equipment.

It is unnecessary for the Act to address specifically the liability of persons who make determinations. No person authorized by law to determine death, who makes such a determination in accordance with the Act, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts or the acts of others based on that determination. No person who acts in good faith, in reliance on a determination of death, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts. There is no need to deal with these issues in the text of this Act.

Time of death, also, is not specifically addressed. In those instances in which time of death affects legal rights, this Act states the bases for determining death. Time of death is a fact to be determined with all others in each individual case, and may be resolved, when in doubt, upon expert testimony before the appropriate court.

Finally, since this Act should apply to all situations, it should not be joined with the Uniform Anatomical Gift Act so that its application is limited to cases of organ donation.

General Statutory Note

ALABAMA

L.2000, No. 710, effective July 1, 2000, amended Code 1975, § 22-31-1, which formerly constituted a substantial adoption of the Uniform Brain Death Act, so that § 22-31-1, and the added section following, now constitute an adoption of the Uniform Determination of Death Act.

Adds a section, which provides:

"§ 22-31-2. Use of other methods.

"Nothing in this chapter shall prohibit a physician from using other procedures based on accepted medical standards for determining death as the exclusive basis for pronouncing a person dead."

MICHIGAN

Adds a section, which provides:

"333.1032. Definitions

"As used in this act:

"(a) 'Physician' means a person licensed as a physician under part 170 or part 175 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.17001 to 333.17088 and 333.17501 to 333.17556 of the Michigan Compiled Laws.

"(b) 'Registered nurse' means a person licensed as a registered professional nurse under part 172 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.17201 to 333.17242 of the Michigan Compiled Laws."

UNIFORM DETERMINATION OF DEATH ACT

1980 ACT

Section

1. [Determination of Death].
2. [Uniformity of Construction and Application].
3. [Short Title].

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§ 1. [Determination of Death].

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

Action in Adopting Jurisdictions

Variations from Official Text:

ALABAMA

In the first sentence inserts ", in the opinion of a medical doctor licensed in Alabama," following "individual who".

COLORADO

Section provides:

"(1) An individual is dead if:

"(a) He has sustained irreversible cessation of circulatory and respiratory functions; or

"(b) He has sustained irreversible cessation of all functions of the entire brain, including the brain stem.

"(2) A determination of death under this section shall be in accordance with accepted medical standards."

DELAWARE

Section provides:

"(a) An individual who has sustained either:

"(1) Irreversible cessation of circulatory and respiratory functions or

"(2) Irreversible cessation of all functions of the entire brain, including the brain stem,

"is dead. A determination of death pursuant to this section must be made in accordance with accepted medical standards.

"(b) A determination of death pursuant to this section may be made by a person certified to practice medicine under this chapter by either:

"(1) Personal examination of the individual believed to be dead, or

"(2) The use of information provided by an EMT-P (paramedic) using telemetric or telephonic means in accordance with protocols

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All is well that ends well: Toward a policy of assisted rational suicide or merely enlightened self-determination? George P. Smith, II. 22 U.C.Davis L.Rev. 275 (1989).

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Library References

Death ☞ 1.
Westlaw Topic No. 117.
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Westlaw Electronic Research

See Westlaw Electronic Research Guide following the Preface.

Notes of Decisions

Generally 1

1. Generally

Benchmark for determining what constitutes "death" under Determination of Death Act is

irreversible cessation of either respiratory and circulatory functions or brain functions. *People v. Selwa*, Mich.App.1995, 543 N.W.2d 321, 214 Mich.App. 451, appeal denied 557 N.W.2d 307, 453 Mich. 937. Death ☞ 1

§ 2. [Uniformity of Construction and Application].

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Action in Adopting Jurisdictions

Variations from Official Text:

ALABAMA

The provisions of this section of the Uniform Act are set out in L.2000, No. 710, § 2.

OKLAHOMA

Adds a second paragraph, which provides:

"This act does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or of organ donors, and protection for the dead body."

§ 3. [Short Title].

This Act may be cited as the Uniform Determination of Death Act.