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Exhibit 1

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Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF OAKLAND

UNLIMITED CIVIL JURISDICTION

LATASHA WINKFIELD, the Mother of Jahi McMath, a minor

Petitioner,

v.

CHILDRENS HOSPITAL OAKLAND, Dr. David Durand M.D. and DOES 1 through 100, inclusive

Respondents.

Case No.:

PETITION FOR TEMPORARY RESTRAINING ORDER\ORDER AUTHORIZING MEDICAL TREATMENT AND AUTHORIZING PETITIONER TO GIVE CONSENT TO MEDICAL TREATMENT AND ORDER TO SHOW CAUSE WHY PERMANENT INJUNCTION SHOULD NOT BE GRANTED AS TO THE SAME;
[Prob. Code §§ 3200 *et seq.*, §§ 4600 *et seq.*]

Date: December 20, 2013
Time: 9:00 am
Dept:

2120 Martin Luther King Jr. Way
Berkeley, California 94704

Petitioner, Latasha Winkfield, alleges:

1. This petition is filed pursuant to Cal. Prob. Code §§ 3201, 4766 and 4770 for an emergency *ex parte* Temporary Restraining Order and Order to Prescribe the Health Care Authorizing

Medical treatment and Authorizing Petitioner to Give Consent to Medical Treatment of the patient Jahi McMath (hereinafter "patient.")

2. Petitioner is Jahi McMath's mother and is with full power and authority to make legal determinations and medical decisions for Jahi who is a female 13 years of age..

3. This Petition requests that the Court, in addition to issuing a Temporary Restraining Order and an Order to Prescribe the Health Care Authorizing Medical treatment and Authorizing Petitioner to Give Consent to Medical Treatment of the patient Jahi McMath, issue an Order to Show Cause to Respondent Children's Hospital Oakland why Permanent Injunction should not be issued. This Temporary Restraining Order is to be against Respondent Dr. Durand, Children's Hospital Oakland, its agents, employees, servants and independent contractors.

4. This extraordinary, immediate, emergency relief, in the form of a Temporary Restraining Order precluding discontinuation of life support/ventilation and respiratory support and Order Prescribing Health Care is warranted to preserve the status quo, and the life of Jahi McMath currently on a ventilator at Respondent's Health Care facility, Children's Hospital Oakland.

5. Failure to issue an immediate Temporary Restraining Order, Order to Prescribe Health Care of the patient Jahi McMath, and Order to Show Cause why Permanent Injunction should not be issued, will result in Children's Hospital Oakland removing Jahi McMath from life support/ventilator support and will, thereby, result in her immediate expiration.

6. This petition is filed pursuant to Cal. Prob. Code § 3201 for an order determining "that a patient lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a designated person to make a health care decision on behalf of the patient."

7. This petition is filed pursuant to Cal. Prob. Code §§ 4766, 4770 for an order determining that the mother, petitioner Latasha Winkfield, knows and can express the patient's desires and the acts and proposed acts of the petitioner are in the patient's best interest.

8. Latasha is a resident of Alameda County and the minor is currently at Children's Hospital Oakland, 747 52nd Street, Oakland Ca. 94609, in Alameda County.

9. Petitioner's address is 2742 75th Ave, Oakland, California 94605..

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10. Patient's address is Children's Hospital Oakland, 747 52nd Street, Oakland Ca. 94609, in Alameda County

11. The patient is a minor child who lives with her mother in Alameda County. No guardian has been appointed for the minor.

12. Patient is currently receiving medical treatment in the ICU of Children's Hospital Oakland 747 52nd Street, Oakland Ca. 94609, in Alameda County.

13. Respondent Children's Hospital Oakland is a health care institution as defined in Cal. Prob. Code § 4619, located at 747 52nd Street, Oakland Ca. 94609, in Alameda County.

14. Respondent David Durand M.D. is the Vice President and Chief of Pediatric Medicine at Children's Hospital Oakland

15. Venue is appropriate in this court because both Jahi McMath and Latasha Linkfieldand are residents of Alameda. Cal. Prob. Code §§ 3202, 4763.

16. Petitioner has standing and is authorized to bring this action as the mother of Jahi McMath. Cal. Prob. Code §§ 3203, 4765.

17. The relief sought in this petition is within the jurisdiction of this Court. Cal. Prob. Code §§ 3202, 3208, 4760.

18. Jahi McMath is in need of medical treatment. Jahi McMath went to Children's Hospital Oakland on December 9, 2013, for a routine tonsillectomy and adnoidectomy. Attached to this petition as Exhibit A is a declaration from the petitioner, explaining the chosen course of treatment; the threat to the patient's health if authorization for treatment is delayed; and the probable outcome of the chosen treatment.

19. Informed consent is unobtainable because Jahi McMath is a minor and she is currently in a comatose state.

WHEREFORE, petitioner prays:

1) That the Temporary Restraining Order and Order to Prescribe Health Care be issued and that the court order respondents to show cause why said temporary orders should not be made permanent with notice of said OSC to be given as per court order;

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2) For an emergency *ex parte* order to prescribe the health care of the patient pursuant to Cal. Prob. Code §§ 3201, 4766, 4770.

3) For an order determining "that a patient lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a designated, the mother, Latasha Linkfield, to make a health care decision on behalf of the patient" pursuant to Cal. Prob. Code § 3201.

4) For an order determining that Jahi's desires are known to the petitioner as her mother and the acts and proposed acts of the petitioner are in the patient's best interest pursuant to Cal. Prob. Code §§ 4766, 4770.

5) For any other and further relief as the court deems proper.

Dated: 12-30-13

Attorney for Petitioner
The Dolan Law Firm
Christopher B Dolan

VERIFICATION

I am the petitioner, Latasha Linkfield in this action. I have read the foregoing petition and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

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

Signed Latasha Linkfield

[Date]_____, [location]_____

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Exhibit 2

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IN AND FOR THE COUNTY OF OAKLAND

UNLIMITED CIVIL JURISDICTION

LATASHA WINKFIELD, the Mother of Jahi McMath, a minor

Petitioner,

v.

CHILDRENS HOSPITAL OAKLAND, Dr. DAVID DURAND M.D. and DOES 1 through 100, inclusive

Respondents.

Case No.:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR TEMPORARY RESTRAINING ORDER/ORDER AUTHORIZING MEDICAL TREATMENT AND AUTHORIZING PETITIONER TO GIVE CONSENT TO MEDICAL TREATMENT AND ORDER TO SHOW CAUSE WHY PERMANENT INJUNCTION SHOULD NOT BE GRANTED AS TO THE SAME
[Prob. Code §§ 3200 *et seq.*, §§ 4600 *et seq.*]

Date: December 20, 2013
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Berkeley, California 94704

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Petitioner Latasha Winkfield is the mother of Jahi McMath who is lying in the pediatric ICU at

Children's Hospital Oakland on a ventilator which she relies upon for oxygenation of her blood. Respondents have indicated that they wish to "quickly" remove her from the ventilator indicating that in doing so Jahi will not be able to breath on he own and her heart will stop beating. Given Respondent's statements made on December 19, 2013, Petitioner has been informed that Respondents are of the belief that they need not obtain Petitioner's consent and that they intend to engage in the termination of ventilator support over the coming weekend or during. Respondents have refused Petitioners request to not remove Jahi from life support prior to Christmas saying that they want to terminate respiratory support "quickly, quickly." Petitioner has told Durand and other physicians at Children's Hospital that they do not have her consent to do so and Respondent Durand intimated that, as Jahi is dead, they do not need her consent because taking Jahi off a ventilator is not treatment. Durand stated that the respirator is not considered by Children's Hospital to be life support because they have declared Jahi dead despite her heart beating unassisted. It is without dispute that should Respondents discontinue the ventilator Jahi's heart will stop beating and she will suffer organ death and expire.

Petitioner hereby requests a temporary restraining order prohibiting Respondents from unplugging Jahi McMath's ventilator. Petitioner also seeks an order authorizing to her to give consent for medical treatment for Jahi. Petitioner also requests that this court issue an order to show cause to Respondent Children's Hospital Oakland, its agents, employees, servants and independent contractors, including Vice President and Chief of Pediatrics, Dr. David Durand, to demonstrate why a permanent injunction should not be issued preventing them from removing Jahi McMath from her ventilator and other life supporting and maintaining medical care. Plaintiff also seeks a temporary restraining order preventing them from removing Petitioner's daughter, Jahi McMath, from a ventilator and other life supporting and maintaining medical care and treatment, and to order authorizing Petitioner to give consent for medical care until the order shortening time can heard.

Statement of Facts

Ms. Jahi McMath, 13, is a patient at respondent Children's Hospital, California. On December 9, 2013, she underwent an elective tonsillectomy and adenoidectomy. Dr Frederick Rosen was the operating surgeon and Dr. Thi Nguyen is Jahi's pediatrician. Originally the surgery was

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uneventful and Jahi awoke from sedation in the recovery room speaking with Petitioner asking for a popsicle. Not long thereafter, Jahi was taken to the ICU and her mother was told to wait several minutes while they fixed her IV. After being told several times that it would just be another 10 minutes, approximately 25-45 minutes after Jahi was brought into the ICU, Latasha went back and found her daughter sitting up in bed bleeding from her mouth. It was evident that this had been transpiring for some time. The nursing staff said "it was normal" and the mother stayed bedside as the bleeding grew increasingly worse. The nurses gave Latasha a cup/catch basin for Jahi to bleed from her mouth into. Latasha asked for assistance and was told that this was normal and was given paper towels to clean the blood off herself and Jahi. The bleeding intensified to where copious amounts of blood were being expelled from Jahi's mouth and then nose. Jahi's stepfather was also in attendance and assisted in the attempts to stem/collect the blood. Again the petitioner asked for assistance, and a doctor, and was only given a bigger container to bleed into and, later, a suction device to suction the increasing volume of blood. The stepfather continued to suction while the mother went and got her mother, a nurse, to take over for her. The grandmother saw what was happening and made multiple requests, and then a loud demand, for a doctor. Jahi shortly thereafter suffered a heart attack and fell into a comatose state. She later was pronounced "brain dead" yet her heart still beats, her kidneys function, she reacts to touch, and she appears to be quietly sleeping. No one from Respondent Hospital has explained to Petitioner why this massive bleeding happened or was allowed to continue to the point where it caused a heart attack and brain damage. Jahi is currently aided by a ventilator which provides her physical body life-support. If the ventilator is removed, Jahi dies as her heart will stop beating without a supply of oxygen.

Jahi's care is now managed by a team of doctors at Children's Hospital Oakland under the supervision of the Chief of Pediatric Medicine, Vice President of Children's Hospital, Respondent David Durand M.D. Dr. Durand has expressed that he speaks for Children's Hospital Oakland as it relates to the plan of care for Jahi. He is the most senior physician who met with the mother, father, stepfather, uncle and grandmother on December 19, 2013, indicating that Children's Hospital Oakland intended to remove Jahi from life support "quickly" "meaning not days weeks or months." In that meeting Petitioner's request to not take action until after Christmas was summarily rejected as was a

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request that she could be given 2 court days prior notice before disconnecting life support so she could seek a restraining order/injunction.

The Petitioner requested, on December 17, 2013, that Respondents provide her minor child Jahi with a feeding tube, to provide essential hydration and nutrition as well as all other life sustaining care including antibiotics and other medicines to continue to support the functions of her organs and to prolong her life. She also requested that Respondents continue to provide respiratory support in the form of a ventilator which is currently attached to Jahi through a breathing tube. On December 19, 2013, Children's Hospital Oakland, through Dr. Durand, told Petitioner that he will not authorize a feeding tube and that he wishes to remove Jahi from life support emphatically telling Petitioner, that there is no life support being provided because Jahi is "dead, dead, dead, dead." Respondents have stated that Children's Hospital Oakland intends to quickly disconnect Jahi from the respirator which will lead to her heart to promptly stop.

Petitioner and the entire close-knit extended family are in complete agreement over the appropriate course of treatment; namely the continued use of the ventilator, addition of a feeding tube, and other medical management such as prophylactic antibiotics, diuretics, and other medications designed to provide optimal support for Jahi's heart and other organs. They wish to provide Jahi with time to have her brain swelling diminish, for God to work, for her condition to improve, and for her to regain consciousness.

Children's Hospital Oakland and Dr. Durand disagree with the family's chosen course of treatment. They believes it is medically "futile treatment" because it is failing to treat Jahi's medical condition, stating that she is "dead, dead, dead, dead." He stated to the family, "there is no person to treat, we don't provide treatment to dead people. Don't you understand she is dead!" "She is not on life support, she is a dead person hooked up to a machine." He therefore indicated an imminent intent to discontinue the ventilator. Petitioner asked to be permitted to have an independent physician, not aligned with, employed by, or associated with Children's Hospital Oakland, examine Jahi for the purposes of evaluating her condition, and medical status, and to develop a plan of care and/or arrange for her transfer to a different facility that was not in such a rush to extinguish her heart. The Petitioner was told that physicians from outside Childrens Hospital Oakland are not allowed into the hospital and

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it would be "highly unusual." Petitioner was immediately grilled as to who the she would attempt to use. Petitioner responded that she was first trying to see if it was possible. Again Dr. Durand stated that "second opinions are for live people not dead people" so he saw "no need for it." Petitioner then repeated a previous request, made orally and in writing, for release of her daughter's medical records so that she could use those to obtain an independent medical opinion and to develop a plan of care to sustain and improve Jahi's health condition. Dr. Durand, and Children's Hospital Oakland, stated that their policy was not to release patient medical records to patients as long as they were receiving care and treatment indicating, in essence, that the records could be provided when Jahi was discharged i.e., dead. Petitioner stated "but you have told us she is dead so why wont you give us her records?" Petitioner asked for the records to be provided for the care rendered up to 11:59 p.m. December 18, 2013. She was told that she would not be provided the documents in their entirety. When she asked whether she could be provided at least some of them, Dr. Durand smugly replied "maybe yes, maybe no."

For the past week Petitioner has been repeatedly pressured by Respondents to discontinue the ventilation and other life sustaining/supporting measures. Children's Hospital Oakland has generally been uncooperative and has, in some instances, refused, to provide requested care such as a feeding tube. As stated previously, they have threatened to "quickly" disconnect the ventilator stating that they do not need Petitioner's permission to do so.

When Petitioner asked about having time and assistance to locate a facility willing to accept a transfer of care of her daughter she was rebuked repeatedly being told that action needed to be taken "quickly, very quickly" by Dr. Durand.

Summary of Argument

California statutes regarding healthcare decision-making express a clear policy in favor of placing such decisions in the hands of patients and their families, and not in the hands of healthcare professionals. Cal. Prob. Code §§ 4650, 4659. Moreover, where there is a conflict between the treatment a patient or her family decides upon and what a health care provider is willing to administer, California statutes require the health care provider to assist the appropriate decision-makers to transfer the patient to the care of a health care provider willing to administer the requested treatment. Cal.

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Prob. Code § 4736.

California also has a long common law and constitutional tradition in favor of patients and their families making health care decisions, rather than doctors. See, e.g., Bouvia v. Super. Ct., 225 Cal. Rptr. 297, 303 (Ct. App. 1986). This body of law is rooted in patients' privacy and autonomy rights to control their own bodies, to decide for themselves who will make decisions regarding their health care when they are unable, and to have health care decisions made in accord with their best interests.

These statutory and common law bodies of law mean that the Petitioner, as Jahi's mother, and not the Respondents, is the appropriate person to decide the purpose and scope of treatment Jahi will receive. If the Respondents feel they cannot carry out the Petitioner's decisions, they must assist her in transferring Jahi to a health care provider who will.

Moreover, California has general and specific common law doctrines in favor of preserving human life. Specifically, California precedent requires clear and convincing evidence of the patient's wishes when life support, such as a feeding tube, is removed from an incompetent patient who did not designate someone to make health care decisions for her. Wendland v. Wendland, 28 P.3d 151, 153 (Cal. 1991). Jahi has not expressed her desires under these circumstances, either in writing or orally to her doctors or family even if she had, as a minor, her mother would be the one to determine care. There is, therefore, insufficient evidence to remove Jahi from life support as Dr. Durand suggests. More generally, California precedent supports the traditional understanding that the state has an interest in preserving human life, even the lives of the very ill, when this can be done while respecting patients' constitutional rights. See, e.g., Thor v. Superior Court, 855 P.2d 375, 383 (Cal. 1993). Therefore, in a situation such as this, where the patient's desires are unknown, the mother has communicated her religious, moral and paternal preferences, the present illness recent, and the prognosis doubtful, life-sustaining treatment should be continued.

ARGUMENT

I. THE PROBATE CODE FORBIDS RESPONDENTS' ACTIONS AND SUPPORTS PETITIONER'S.

A. The Probate Code places medical decision-making in the family's hands.

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Two portions of the Probate Code deal with patients in Jahi's situation, namely, patients in need of medical care without someone appointed by themselves or a court to make medical decisions on their behalf. Both indicate that courts should arrange for a family member to make decisions on behalf of the patient.

Though the first, in Division 4 of the Probate Code, dealing with guardianships and conservatorships, Cal. Prob. Code §§ 1400 *et seq.*, does suggest that a court may permit a health care professional to consent to medical treatment on behalf of an incompetent patient under unusual circumstances, procedures a court must follow under those circumstances clearly indicate this is never California's *first* choice. Cal. Prob. Code § 3203 permits health care providers and public guardians, as well as patients, their friends and family members, to file a petition for the authorization of medical care for incapacitated adults without conservators. While § 3204(g) suggests that a health care institution could be granted authority to consent to medical treatment on behalf of an incompetent patient, § 3205 generally requires the court to ensure the patient has independent legal counsel when a petition is filed pursuant to § 3203. Moreover, § 3206 requires that the patient's family members be given notice of the hearing. These provisions make it clear that a patient's family should at least have the opportunity to be involved in the decision-making process, if not to remove it from health care providers completely.

The second is the Health Care Decisions Law, Cal. Prob. Code §§ 4600 *et seq.* This act allows competent Californians to appoint someone else, such as a friend of family member, to make medical decisions on their behalf in the event of incompetence. Cal. Prob. Code §§ 4600 *et seq.* .

B. When there is a conflict, the Probate Code requires health care providers work with family to transfer the patient's care.

In general, health care providers must comply with a family's wishes for an incompetent patient as surely as they must comply with a competent patient's wishes. Cal. Prob. Code § 4733. There are two situations when a health care provider may decline to follow the wishes of a patient or her family. The first is for reasons of conscience. Cal. Prob. Code § 4734. The Respondents have never cited to this as a reason for wanting to disconnect the ventilator. Rather, the Respondents seem to be couching their communications to the family under the other exception. "A health care provider

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or health care institution may decline to comply with an individual…health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution." § 4735.

Dr. Durand believes Jahi's ventilator, feeding tube, and all other medical treatments are ineffective because they do not treat her illness, which, according to him, is "brain death." He is wrong. While the Petitioner understands these measures do not directly treat Jahi's brain damage, they continue to be effective in treating her tangent medical conditions, namely breathing, nutrition, need for nutrition and hydration, kidney and heart function. Treating and maintaining these other systems allow for the brain swelling observed in Jahi's brain to decrease. Dr. Durand also asserts the provision of these treatments is pointless as Children's Hospital Oakland, and himself, "don't provide treatment to dead people." The Petitioner wishes to have an independent doctor conduct a full examination and evaluation of Jahi's current condition and prognosis. She also wishes to have time to find a second doctor and a different hospital or other medical facility in the area that believes the continued administration of these medical measures is appropriate. The Petitioner emphasizes that Children's Hospital Oakland, thought these treatments, that they now wish to deny, were appropriate when they first administered them less than two weeks ago. Rather than being a professional medical judgment, the decisions of Children's Hospital Oakland and Dr. Durand to discontinue treatment are arbitrary in these circumstances.

Even if the Respondents had a lawful reason for refusing the requested treatment, they have not fulfilled their statutory duty to assist Ms. Winkfield in locating an alternate care facility. Cal. Prob. Code § 4736 requires health care providers, such as Dr. Durand, and heath care institutions, such as Children's Hospital Oakland, not only to inform patients and their families that they are refusing to provide requested treatment, but, also, to assist them in transferring the patient to a situation where the patient will be appropriately cared for and to continue providing care while the transfer is being arranged. Rather than helping Ms. Winfkield and Jahi, as they are obliged to do by statute, the Respondents have attempted to bully, threaten, and trick petitioner into "pulling the plug" on Jahi. Dr. Durand, in stating that Children's Hospital Oakland and himself do not have to obtain Petitioner's consent to discontinue Jahi's ventilator, and, moreover, that they intend to do so "quickly" have given

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the Petitioner a grossly insufficient time to find a place to transfer her daughter. The Respondents have done nothing to suggest that as a possibility or assist Petitioner in seeking out alternatives. She is being given one alternative, turn off the ventilator. They have not fulfilled their obligation to help the Petitioner obtain care elsewhere. They are, therefore, in violation of Cal. Prob. Code § 4736 and this petition must be granted to correct the situation.

II. CALIFORNIA PRECEDENT FORBIDS RESPONDENTS' ACTIONS AND FAVORS PETITIONER'S.

A. California requires clear and convincing evidence for the removal of life support.

The California Supreme Court has held that clear and convincing evidence of the patient's desires or best interests is necessary before the removing life support from an incompetent patient who did not have the opportunity to appoint a medical decision-maker for herself. Wendland v. Wendland, 28 P.3d 151, 154 (Cal. 2001). Such evidence is entirely lacking here.

In Wendland, the court-appointed conservator of a conscious but mentally disabled patient sought to discontinue administration of nutrition and hydration by means of a feeding tube. Id. at 155. The Court held that clear and convincing evidence that this was in accord with the patient's desires or best interests was necessary before taking that step. Id. at 166, 174. Regarding the patient's desires, the Court pointed out that a court-appointed decision-maker contrasts with someone selected by the patient himself. A patient is likely to select someone who shares his values and knows his desires. On the other hand, there is no reason to think that someone appointed by a court will have the same special knowledge. There was therefore a greater risk that a conservator would make a mistake regarding what an incompetent patient wanted. Id. at 168. Considering the life-or-death nature of the decision, a higher burden of proof was prudent. Id. at 169-73.

The same considerations applied to the determination of whether treatment was in the patient's best interests. "The decision threatens the [patient's] fundamental rights to privacy and life." Id. at 174. These rights were firmly grounded in the state and federal constitutions and common law. See id. at 154, 158-59, 162-63, 165 (citing, *inter alia*, Cruzan v. Dir., Mo. Department of Health, 497 U.S. 261 (1990)). Therefore, the high, clear and convincing, evidence standard of whether discontinuance

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of treatment was within a patient's best interests was necessary in order to keep those appointed by the court from arbitrarily causing patients' deaths. Id.

Though Wendland involved an unconscious patient and the formalities of a court-appointed conservatorship, the principles are still applicable here. The patient in Wendland had suffered complications from his feeding tube. Id. at 155. He was conscious and in pain. Id. at 156. These facts suggest a patient might want, or a conservator might feel it was in his best interest, to discontinue treatment. Jahi is not in pain, and has not had any problems with the disputed treatment. Moreover, though the law regarding the powers and obligations of court-appointed conservators is more developed than the law applicable here, the conservator in Wendland, like the petitioner here, was a close relation of the patient. Id. at 155. Yet the Court still required clear and convincing evidence before treatment could be discontinued. This court should do the same.

B. The common law favors placing medical decision-making in the hands of patients' families.

Though California is less clear than other states regarding who should make medical decisions on behalf of incompetent patients, see, e.g., Protection and Adv. Sys., Inc., v. Presby. Healthcare Serv., 128 N.M. 73, 76 (1999), Jeanine Lewis, Health and Welfare: Chapter 658: California's Health Care Decisions Law, 31 McGeo. L. Rev. 501, 504-05, 521, 531 (2000), in addition to the Probate Code, two cases suggest that such authority should rest with patients' families when they are unable to exercise it themselves.

In one, dealing with patients' rights to refuse life-sustaining treatment, the Second Appellate District quoted the American Medical Association with approval: "The social commitment of the physician is to sustain life and relieve suffering. Where the performance of one duty conflicts with the other, the choice of the patient, or his family or legal representative if the patient is incompetent to act in his own behalf, should prevail." Bouvia v. Super. Ct., 225 Cal. Rptr. 297, 303 (Ct. App. 1986) (quoting a document entitled "Withholding or Withdrawing Life Prolonging Medical Treatment" by the Council on Ethical and Judicial Affairs of the American Medical Association). California courts therefore have authority from within the medical profession for placing decisions regarding continuing life-sustaining medical treatment in the hands of incompetent patients' families, not their doctors.

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Respondents are acting contrary to the advice of their own profession by acting contrary to the wishes of Jahi's family.

The second case was a homicide prosecution against two physicians who removed life support from a terminally ill patient at his family's request. The appellate court issued a peremptory writ forbidding prosecution. Barber v. Super. Ct., 195 Cal. Rptr. 484, 486 (Cal. Ct. App. 1983). The court held in part that under the circumstances, the doctors were free to abide by the decision of the patient's wife and children rather than making the necessary decision themselves or requesting guidance from a court. Id. at 492. The court reasoned first that medical decisions were usually up to patients, with information and recommendations provided by healthcare professionals. When, however, a patient cannot make the decision his/herself, the decision ought to be made according to her desires and best interests. Id. The court examined the evidence and concluded that the patient's family was most likely to know her/his desires and best able to preserve her/his interests. Barber had discussed end-of-life decision-making with his family in the past, and they cared for him at the hospital. Id. at 493.

Though the case did not present a clear conflict between a family's decision and a doctor's recommendation, it clearly suggests doctors are to defer to the decisions of patients' families: "It seems clear,…that if the family had insisted on continued treatment, petitioners would have acceded to that request." Id. at 493. Respondents should follow the example of those defendants and follow the Petitioner's instructions, or help her find healthcare providers who will.

C. California common law favors the preservation of life when the patient's wishes are unknown.

Numerous California cases express a clear policy of preserving life when a patient's wishes are unknown. Frequently the courts have seen this principle as so obvious, they have accepted it as a premise to their reasoning, without discussion.

The principle has been expressed by the Supreme Court twice. In affirming the lower court's allocation of the burden of proof, the Court quoted its rhetoric: "When a situation arises where it is proposed to terminate the life of a conscious but severely cognitively impaired person, it seems more rational…to ask 'why?' of the party proposing the act rather than 'why not?' of the party challenging it." Wendland v. Wendland, 28 P.3d 151, 156 (Cal. 2001) (ellipses orginial). The Court also noted,

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"A [patient's] right to life (Cal. Const. art. 1, § 1)…coincides here with the state's interest in protecting life…" Id. at 165 n.10.

This is affirmed even in those cases finding a right to refuse life-sustaining treatment. In Thor v. Superior Court, 855 P.2d 375, 378 (Cal. 1993), the Court acknowledged "Illnesses and injuries that once brought the clergy to the bedside of the afflicted now may bring a team of highly skilled medical personnel fully equipped with sophisticated, life-preserving machinery." Nevertheless,

> The state's paramount concern is the preservation of life, which embraces two separate but related aspects: an interest in preserving the life of the particular patient and an interest in preserving the sanctity of all life….It is antithetical to our scheme of ordered liberty and to our respect for the autonomy of the individual for the State to make decisions regarding the individual's quality of life.

Id. at 383.

In these cases, the Supreme Court was building upon a foundation laid by the intermediate appellate courts. One case held that competent adults have the privacy rights to refuse life-sustaining medical treatment. Nevertheless, "Balanced against these rights are the interests of the state in the preservation of life, the prevention of suicide, and maintaining the ethical integrity of the medical profession. The most significant of these interests is the preservation of life." Bartling v. Super. Ct., 163 Cal. App. 3d 186, 195 (1984). Another case provides insight into the contents of the ethical integrity of the medical profession.

> "Health care professionals serve patients best by maintaining a presumption in favor of sustaining life, while recognizing that competent patients are entitled to choose to forego any treatments, including those that sustain life." (*Deciding to Forego Life-Sustaining Treatment*, at pp. 3, 5 (U.S. GPO 1983) (Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research).)…Significant also is the statement adopted on March 15, 1986, by the Council on Ethical and Judicial Affairs of the American Medical Association. It is entitled "Withholding or Withdrawing Life Prolonging Medical Treatment." In pertinent part, it declares: "The social commitment of the physician is to sustain life and relieve suffering…."

Bouvia v. Super. Ct., 225 Cal. Rptr. 297, 303 (App. Ct. 1986).

These cases suggest that even if Petitioner were not the appropriate person to make decisions regarding Jahi's care, even if the Probate Code did not require Respondents to assist Petitioner in transferring Jahi's care, even if there was some evidence cessation of care were what Jahi wants or in her best interest, this court would still be acting contrary to California law should it permit Dr. Durand

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to terminate the treatment which he initiated and which is keeping Jahi alive

E. PETITIONERS HAVE AN UNRESOLVEABLE CONFLICT OF INTEREST – THEY MAY HAVE COMMITTED NEGLIGENCE AND THEIR DECISION TO TERMINATE LIFE SUPPORT WOUL THEREFORE POSSIBLY ENURE TO THEIR BENEFIT IF HELD LIABILE FOR DAMAGES.

Petitioner brought her healthy, beautiful daughter to Children's Hospital Oakland for a routine operation. Her daughter died from what she is concerned may be medical negligence. She has not undertaken an analysis of the professional errors that led to her daughters condition because she is focused on keeping her daughter alive. Moreover, she has been denied her daughter's medical records and the administration, while willing to talk with her, ad-infinitum, about removing her daughter from life support, will provide her no information to explain why her daughter was allowed to bleed profusely until she had a heart attack. Likewise, she has been denied an independent medical evaluation. So, if Children's Hospital Oakland is negligent, and therefore liable to Petitioner for the injuries suffered by and to her and her daughter, Children's Hospital Oakland can drastically reduce their liability by terminating Jahi's life. If they do so, the draconian MICRA law, which remains unchanged since 1976, caps the value of Jahi's existence at $250,000.00. That is the maximum recoverable for the non-economic damages for pain and suffering or the emotional damages suffered by the loss of a loved one. If Jahi is kept alive in a medical environment, and Children's Hospital Oakland is found to have committed malpractice, Respondents would be responsible to provide her medical care for the remainder of her life. If there is negligence, which is more than a remote possibility, Children's Hospital Oakland has an incentive to terminate Jahi's life support so as to minimize any future financial exposure that they may face. Given this potential conflict of interest they should surely not be the decision makes as to whether Jahi stays on a ventilator or not.

CONCLUSION

Under California statutory and common law, the appropriate party to make medical decisions for an incompetent patient, such as Jahi, is a family member, such as the Petitioner. The Probate Code requires healthcare providers such as the Respondents to assist families in transferring the medical

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care of patients when there is a dispute regarding what treatment is appropriate. Precedent also requires clear and convincing evidence before life support can be removed from an incompetent patient who has not appointed someone to make medical decisions on her behalf. There is no evidence that such an action is what Jahi wants or is in her best interest. Finally, California has a policy supporting the preservation of life, even the lives of the very ill. For these reasons, this court should issue an order to prescribe the health care of the patient pursuant to Cal. Prob. Code §§ 3201, 4766, 4770, determining "that Jahi lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a designated person to make a health care decision on behalf of the patient" pursuant to Cal. Prob. Code § 3201, and determining that the patient's desires are unknown or unclear and the acts and proposed acts of the petitioner are in the patient's best interests.

Signed this 30th day of December 2013.

Christopher B. Dolan
The Dolan Law Firm
Attorney for Petitioner

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Exhibit 3

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF OAKLAND

UNLIMITED CIVIL JURISDICTION

LATASHA WINKFIELD, the Mother of Jahi McMath, a minor

Petitioner,

v.

CHILDRENS HOSPITAL OAKLAND, Dr. DAVID DURAND M.D. and DOES 1 through 100, inclusive

Respondents.

Case No.:

DECLARATION OF LATASHA WINKFIELD IN SUPPORT OF PETITION FOR TEMPORARY RESTRAINING ORDER/ORDER AUTHORIZING MEDICAL TREATMENT AND AUTHORIZING PETITIONER TO GIVE CONSENT TO MEDICAL TREATMENT AND ORDER TO SHOW CAUSE WHY PERMANENT INJUNCTION SHOULD NOT BE GRANTED AS TO THE SAME
[Prob. Code §§ 3200 *et seq.*, §§ 4600 *et seq.*]

Date: December 20, 2013
Time: 9:00 am
Dept:

2120 Martin Luther King Jr. Way
Berkeley, California 94704

1) I Latasha Winkfield. Petitioner in this matter, am an adult over the age of 18 years of age. The following are facts known personally to me by. I am competent to testify as to the truthfulness of these facts if called upon to do so. I hereby make this declaration as part of my prayer that the judicial system will prevent Childrens Hospital Oakland from disconnecting my daughter

from the ventilator which is keeping her alive.

2) My daughter is Jahi McMath. She is in Childrens Hospital Oakland in the ICU.

3) My Daughter was admitted on 12/9/2013 for a routine tonsillectomy/adenoidectomy. We were told that it was an in-and-out procedure. I researched the hospitals in the area and chose Childrens because it was supposed to have a good reputation and specialized in children. My daughter is 13. She is a beautiful girl.

4) On 12/9/13 Jahi underwent an elective tonsillectomy and adenoidectomy. Dr Frederick Rosen was the operating surgeon and Dr. Thi Nguyen is Jahi's pediatrician.

5) Originally the surgery was uneventful and Jahi awoke from sedation in the recovery room speaking with me and asking for a popsicle.

6) Not long thereafter, for a reason not told to me, Jahi was taken to the ICU and I was told to wait several minutes while they fixed her IV. After being told several times that it would just be another 10 minutes, approximately 25-45 minutes after Jahi was brought into the ICU, I went back and found my daughter sitting up in bed bleeding from her mouth. It was evident that this had been transpiring for some time. The nursing staff said "it was normal" and as I stayed at her bedside the bleeding grew increasingly worse.

7) The nurses gave Jahi a cup/small container to bleed into from her mouth. I asked for assistance and was told that this was normal. I was given paper towels to clean the blood off myself and Jahi. The bleeding intensified to where large amounts of blood were being expelled from Jahi's mouth and then nose. Again I asked for assistance, and for a doctor to come see my daughter. The response was only to give us a bigger container for Jahi to bleed into and, later, a suction device to suction the increasing volume of blood. It got to be too much for me so I went to get my mother, a nurse, who was waiting outside the ICU.

8) My mother than made multiple requests, and then a loud demand, for a doctor. Jahi shortly thereafter suffered a heart attack and fell into a comatose state.

9) She later was pronounced "brain dead" yet her heart still beats, her kidneys function, she reacts to touch, and she appears to be quietly sleeping. I know my daughter, she is my blood and her heart beat in me before it beat outside. I know her heart. She is not gone from her body. She is

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alive.

10) No one from Respondent Hospital has explained to me why this massive bleeding happened or was allowed to continue to the point where it caused a heart attack and brain damage.

11) Jahi is currently aided by a ventilator which provides her physical body life-support. Respondents have told me, quite coldly, if the ventilator is removed, Jahi will within a minute or two die as her heart will stop beating without a supply of oxygen.

12) Jahi's care is now managed by a team of doctors at Children's Hospital Oakland under the supervision of the Chief of Pediatric Medicine, Vice President of Children's Hospital, Respondent David Durand M.D. Some of these doctors and nurses are very companionate and care for my daughter- others, like the ones who have been pressuring me (such as respondent Durand) for over a week, to sign off on a life termination order, are cold hearted.

13) Dr. Durand has expressed that he speaks for Children's Hospital Oakland as it relates to the plan of care for Jahi. He is the most senior physician who met with me on 12/19/2013 when he met with myself, Jahi's biological father, her stepfather, her uncle and her grandmother. This took place at around 5:45-6:15 p.m. in a doctor's conference room on the third floor.

14) I was told that Children's Hospital Oakland intended to remove Jahi from life support "quickly" "meaning not days weeks or months." In that meeting I repeated my request to not take any action until after Christmas. This was immediately rejected as was the request that we be given at least two court days notice of any intent to disconnect as we wanted to go to court to file an injunction.

15) On 12/17/ 2013, I had demanded that Respondents provide Jahi with a feeding tube, to provide essential hydration and nutrition as well as all other life sustaining care including antibiotics and other medicines to continue to support the functions of her organs and to prolong her life. I also requested that Respondents continue to provide respiratory support in the form of a ventilator which is currently attached to Jahi through a breathing tube.

16) On 12/19/2103 Dr. Durand, told me that he will not authorize a feeding tube and that he wishes to remove Jahi from life support emphatically telling me, that there is no life support being provided because Jahi is "dead, dead, dead, dead." He was condescending and almost angry as

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if I were stupid. I am not stupid. I know my daughter and she is still here .He indicated that Children's Hospital Oakland needed to have this come to a conclusion quickly. I asked what that meant and he said she is dead. It was clear that they want to remove Jahi from the ventilator and they intend to do it soon.

17) I am opposed to this action and told Dr. Durand and Dr. ~~Watson~~ Williams, who was also present and pressuring me to "come to a consensus (their desire to pull the plug), that they did not have my consent to remove Jahi from the ventilator. Dr. Durand intimated that he did not need my consent as she was dead and this was not providing treatment. I questioned him and he said that she is not getting treatment, she is dead and just hooked up to a machine. They also refused to provide a feeding tube saying that they don't feed or treat dead people.

18) They made it clear that they are doing nothing that might help my daughter and that they were going to act quickly to turn off the ventilator.

19) They denied my request to have an independent doctor come in and do an exam of Jahi, her studies and records. Later Dr. Williams said that might be possible if the doctor met with Children's Hospital's approval.

20) I asked for my daughter's medical records on the 16th and 17th. My lawyer asked for them in writing on the 18th and I asked them again during the meeting on the 19th. They said that I could not have them because they don't release records of patients that they are still treating. Omari, Jahi's uncle, said - well you said she is dead so I guess you aren't treating her as a patient any more.

21) I told Dr. Durand that I didn't like the way that he was talking down to us and raising his voice with his arms crossed over his chest in an angry fashion. My mother had to leave as she was so insulted and degraded by his conduct. Again, I asked for Jahi's records so we could have a doctor outside of Children's, who was not friends with, or connected with any Children's physicians look at them. He said he would not do that- then said maybe he would give us a small portion- we asked for all the records up to 11:59 p.m. 12/18/2013. His reply was "maybe yes, maybe no."

22) I know my daughter better than anyone. She and I talked about her surgery and she was scared

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that she wouldn't wake up. I know she would want to wake up, to not give up, to have me care for her and to keep her alive even if she does not come back as she was. That is my belief and it is my choice.

23) I believe in God and that he can heal all. God created Jahi- he can save her. She needs time, we need time, why cant they give us this time? They did this to her, they owe her some time to heal from what they did. What is their hurry to kill my daughter? I told Dr. Durand that I brought her in her heathy, you killed her when she had her heart attack and you had to revive her, so you brought her back to life and now you want to kill her again. No I won't allow it.

24) Based on that conversation I am convinced that he will do as he said and "act quickly" to disconnect the life support systems such as the respirator monitor, automatic medication dispensing device, the IV, catheter etc. He looked at me and told me that he didn't need my permission because she was a dead body hooked up to a machine.

25) I want my daughter to have every chance to get better and recover. Dozens of people have called, written and e-mailed my family, many mothers. Some say that they resisted this kind of pressure and their "brain dead" children came out of it - some weeks later- some months later. I had others tell me that the same thing happening to them here at Children's too. They encourage me not to give in. One didn't and her child, although not back to who she was before, came out of it and could recognize her mom, eat, feel love, etc.

26) Removing my daughter from life support and ending her heart beat is against my religion. Christ is in our blood. I oppose this with every ounce of my being. Don't let them kill my child, please, please. If you, Judge, have a child think of them. My children are good children. Help me please.

Signed under penalty of perjury in Berkeley California this 20th day of December 2013,

Latasha Winkfield.

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Exhibit 4

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF OAKLAND

UNLIMITED CIVIL JURISDICTION

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.:

[Proposed] TEMPORARY RESTRAINING ORDER FOLLOWING PETITION FOR EMERGENCY PROTECTIVE/RESTRAINING ORDER AUTHORIZING MEDICAL TREATMENT AND AUTHORIZING PETITIONER TO GIVE CONSENT TO MEDICAL TREATMENT;

[Prob. Code §§ 3200 *et seq.*, §§ 4600 *et seq.*]

Date: December 20, 2013
Time: 9:00 am
Dept:

2120 Martin Luther King Jr. Way
Berkeley, California 94704

The verified petition of Latasha Linkfield for a temporary restraining order prohibiting Respondent from withholding life support, including but not limited to ventilation, nutrition, medicinal support and all associated attendant care and order authorizing medical treatment and authorizing petitioner to give consent to medical treatment, along with a request for an order to show cause why permanant

injunction shoul dnot be issued, came upon ex-parte application before this court on December 20, 2013. Christopher B. Dolan appeared as attorney for petitioner.

On considering the petition and the evidence offered in support of the petition, the court finds that:

1. There exists a basis in law and in fact for the issuance of a temporary restraining order and order for provision of medical assistance as requested;

2. Failure to grant the Petition will potentially result in irreparable harm to the patient Jahi McMath and this order is necessary until such time as the petitioner can obtain her daughter's medical records and obtain an independent medical examination and the court can hold further evidentiary hearing;

3. All facts and allegations as set forth in the petition are true and correct;

4. The continuing medical condition of the patient requires the requested course of medical treatment. If withheld, the condition is life-ending; and

5. The patient is unable to give an informed consent to the recommended treatment because of her medical condition.

THEREFORE, IT IS ORDERED THAT:

The temporary restraining order is hereby granted until such time as the Order to Show Cause re Permanent Restraining Order/Injunction precluding the Respondent from removing Petitioner from the ventilator and Order Authorizing Medical Treatment and Authorizing Petitioner to Give Consent to Medical Treatment can be heard at the time and date setr forth in said Order.

This Temporary Restraining Order/Order Authorizing Medical Treatment and Authorizing Petitioner to Give Consent to Medical Treatment orders the following ;

1) Respondent CHO, its agents, employees, servants and independent contractors including Respondent Dr. Durand, is ordered to provide Jahi McMath with medical treatment and support which is essential to preserve and protect her life, body, organs and systems against death and expiration. Respondents are precluded from discontinuing said medical treatment and/or support

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without the express permission of Petitioner Latasha Winkfielf. Specifically until such time as a hearing can be had on the Order to Show Cause this Temporary Restraining Order will provide for continued administration of nutrition and hydration by means of a feeding tube, continued use of a ventilator to maintain the functioning of the patient's lungs, and all other medicines and treatments, services of health care providers, and other actions necessary to preserve and improve the tissues, organs, systems, bones and all other components of Jahi McMath's body

2) Latasha Winkfield is authorized to give consent to the requested treatment on behalf of Jahi McMath;

3) Petitioner is to be entitled, within the next two weeks to have an independent physician who is board certified in Neurology, Neurosurgery and/or rehabilitative medicine, enter Respondent's facility to conduct an independent medical examination;

4) Respondents are, within the next two weeks, ordered to produce Petitioner's medical records from the date of her pre-operative visits through the date of the signature on this order, including but not limited to any and all scans, images, x rays, medical records, nursing notes, operative notes, pre operative notes, post operative notes, anesthesia records, physicians notes, resident's notes, physician's orders, medication orders, medication administration, nursing notes, nursing report and shift change notes, documents showing physicians were paged, contacted, e-mailed or otherwise contacted by other physicians, nurses, or staff (other than those protected by the peer review privilege);

5) Respondent Children's Hospital Oakland, their agents, employees and the attending health care team, as well as Dr. Durand, M.D., are ordered to assist Petitioner Latasha Linkfield in finding a health care facility who will administer treatment in accordance with this order and until such time as such a facility is located or the date set for hearing on the permanent restraining order/injunction as contemplated by Paragraph 8(g) below;

Dated .

Judge of the Superior Court

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Exhibit 5

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF OAKLAND

UNLIMITED CIVIL JURISDICTION

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.:

[Proposed] ORDER TO SHOW CAUSE WHY RESTRAINING ORDER/INJUNCTION AND ORDER AUTHORIZING MEDICAL TREATMENT AND AUTHORIZING PETITIONER TO GIVE CONSENT TO MEDICAL TREATMENT SHOULD NOT BE ISSUED;

[Prob. Code §§ 3200 *et seq.*, §§ 4600 *et seq.*]

Date: December 20, 2013
Time: 9:00 am
Dept:

2120 Martin Luther King Jr. Way
Berkeley, California 94704

The verified Petition of Latasha Linkfield for a Restraining Order prohibiting Respondent from withholding life support, including but not limited to ventilation, nutrition, medicinal support and all associated attendant care and order authorizing medical treatment and authorizing petitioner to give consent to medical treatment, along with a request for an order to show cause why permanent injunction should not be issued, has been filed with the court.

Venue is appropriate in this court because both Jahi McMath and Latasha Linkfield and are a residents of Alameda and Children's Hospital Oakland is an entity with its principal place of business in Alameda County. Cal. Prob. Code §§ 3202, 4763.

Petitioner has standing and is authorized to bring this action as the mother of Jahi McMath. Cal. Prob. Code §§ 3203, 4765. The relief sought in this petition is within the jurisdiction of this Court. Cal. Prob. Code §§ 3202, 3208, 4760.

1) Jahi McMath went to Children's Hospital Oakland on December 9, 2013 for a routine tonsillectomy and adnoidectomy December 9, 2013. Attached to this petition as Exhibit A is a declaration from the petitioner, explaining the chosen course of treatment; the threat to the patient's health if authorization for treatment is delayed; and the probable outcome of the chosen treatment.

2) Informed consent is unobtainable because Jahi McMath is a minor and she is currently in a comatose state.

3) Pursuant to Cal. Prob. Code §§ 3201, 4766 and 4770 Petitioner sought and received an emergency *ex parte* Temporary Restraining Order against removing Jahi McMath from life support and Order to Prescribe the Health Care Authorizing Medical treatment and Authorizing Petitioner to Give Consent to Medical Treatment of the patient Jahi McMath (hereinafter patient.")

4) Petitioner also sought a permanent restraining order/injunction and order requesting that the Court, in addition to issuing a Temporary Restraining Order and an Order to Prescribe the Health Care Authorizing Medical treatment and Authorizing Petitioner to Give Consent to Medical Treatment of the patient Jahi McMath issue an Order to Show Cause to Respondent Children's Hospital Oakland, its agents, employees, servants and independent contractors, including but not limited to Dr. Durand, why Permanent Injunction and Order should not be issued for the same.

5) Petitioner contends that this extraordinary, immediate, relief, in the form of a permanent injunction precluding discontinuation of life support/ventilation and respiratory support and an order Prescribing Health Care is warranted to preserve the status quo, and the life of Jahi McMath, currently on a ventilator at Respondent's Health Care facility, Children's Hospital Oakland.

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6) Petitioner contends that failure to issue a permanent injunction/restraining order, Order to Prescribe Health Care of the patient Jahi McMath, will result in Children's Hospital Oakland removing Jahi McMath from life support/ventilator support and will, thereby, result in her immediate expiration.

7) Petitioner's has filed her petition is filed pursuant to Cal. Prob. Code § 3201 for an order determining "that a patient lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a designated person to make a health care decision on behalf of the patient."

8) Petitioner's has filed her petition pursuant to Cal. Prob. Code §§ 4766, 4770 for an order determining that the mother Latasha Winkfield knows and can express the patient's desires and the acts and proposed acts of the petitioner are in the patient's best interest.

9) Petitioner, Latasha Winkfield , is the mother of Jahi McMath (hereinafter "patient"), aged 13 years old.

10) Latasha is a resident of Alameda County and the minor is currently at Children's Hospital Oakland, 747 52nd Street, Oakland Ca. 94609, in Alameda County.

11) Petitioner's address is 2742 75th Ave, Oakland, California 94605.

12) Patient's address is Children's Hospital Oakland, 747 52nd Street, Oakland Ca. 94609, in Alameda County

13) The patient is a minor child who lives with her mother in Alameda County. No guardian has been appointed for the minor.

14) Patient is currently receiving medical treatment in the ICU of Children's Hospital Oakland 747 52nd Street, Oakland Ca. 94609, in Alameda County.

15) Respondent Children's Hospital Oakland is a health care institution as defined in Cal. Prob. Code § 4619, located at 747 52nd Street, Oakland Ca. 94609, in Alameda County.

16) Plaintiff contends that Respondent David Durand M.D. is the Vice President and Chief of Pediatric Medicine at Children's Hospital Oakland, he supervises the care and treatment

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provided to Jahi McMath and has indicated to Petitioner that he and/or Children's Hospital Oakland intend to terminate the ventilation support currently being administered to Jahi McMath;

17) Plaintiff contends that Respondent Children's Hospital Oakland has informed Petitioner that removal of Jahi McMath from the ventilator will result in Jahi's heart stopping and her body's expiration.

18) Petitioner contends hat she has informed Children's Hospital Oakland and Dr. Durand that she prohibits such action;

19) Petitioner contends that Respondent has stated that it/he sees no need to provide medical treatment to Jahi McMath as she is dead already;

20) Petitioner has a real and substantiated concern that Children's Hospital Oakland and/or Dr Durand will discontinue the use of the respirator and/or will otherwise not provide nutritional support and/or other medical and personal care to Jahi McMath thereby hastening the failure of her other organs and systems leading to her heart and other organs failing thereby causing Jahi's demise.

THEREFORE, IT IS ORDERED THAT:

Respondent is Ordered to Show Cause why a permanent restraining order/injunction precluding the respondent from removing petitioner from the ventilator and order authorizing medical treatment and authorizing petitioner to give consent to medical treatment should not be granted to Petitioner.

Specifically the Respondents are ordered to show cause why there should not be an restraining order and injunction issued precluding them from removing Jahi McMath from a ventilator and associated equipment, support and supplies (such as oxygen - tubes- suction etc) and an order requiring that they provide Jahi McMath with medical treatment and support which is essential to heal, preserve and protect her life, body, organs and systems against death and expiration including, but not limited to, respiratory support by ventilator, oxygen, etc.

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Respondents are also ordered to show cause why they should not be ordered to continue administration of nutrition and hydration by means of a feeding tube, and all other medicines and treatments, services of health care providers, and other actions necessary to preserve and improve the tissues, organs, systems, bones and all other components of Jahi McMath's body.

Respondents are also ordered to show cause why Latasha Winkfield should not be authorized by the court to give consent to the requested treatment on behalf of Jahi McMath;

Respondents are also ordered to show cause why they should not be ordered to assist Petitioner Latasha Linkfield in finding a health care facility and provider which will administer treatment in accordance with the wishes of Petitioner.

The Court Sets the following briefing schedule;

1) Plaintiff shall immediately serve Respondent Children's Hospital Oakland and Dr. Durand with the Petition, Memorandum of Points and Authorities, Supporting Declarations, Temporary Restraining Order and this Order to Show Cause by service on Children's Hospital Oakland's General Counsel Ms. Jacquelyn Garman, at Children's Hospital Oakland and shall file a proof of service as to the same by the close of the court day on December 23rd 2013.

2) On or before January 15, 2014, Petitioner, after having an opportunity to conduct her independent medical examination and receipt and review of Jahi's medical records shall supplement her evidence and Memorandum of Points and Authorities witt facts and argument supporting her request for an injunction and order;

3) Defendant shall file and serve any opposition to this Order to Show Cause on or before January 30, 2014.

4) .Petitioner shall, on or before February 6, 2014 file and serve a reply if any.

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5) The Court sets the matter for hearing on _____, at _____ in department _____ located at _____.

Dated _____.

Judge of the Superior Court

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Exhibit 6

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF OAKLAND

UNLIMITED CIVIL JURISDICTION

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.:

[Proposed] TEMPORARY RESTRAINING ORDER FOLLOWING PETTION FOR EMERGENCY PROTECTIVE/RESTRAINING ORDER AUTHORIZING MEDICAL TREATMENT AND AUTHORIZING PETITIONER TO GIVE CONSENT TO MEDICAL TREATMENT;

[Prob. Code §§ 3200 *et seq.*, §§ 4600 *et seq.*]

Date: December 20, 2013
Time: 9:00 am
Dept:

2120 Martin Luther King Jr. Way
Berkeley, California 94704

The verified petition of Latasha Linkfield for a temporary restraining order prohibiting Respondent from withholding life support, including but not limited to ventilation, nutrition, medicinal support and all associated attendant care and order authorizing medical treatment and authorizing petitioner to give consent to medical treatment, along with a request for an order to show cause why permanant

TBD

injunction shoul dnot be issued, came upon ex-parte application before this court on December 20, 2013. Christopher B. Dolan appeared as attorney for petitioner.

On considering the petition and the evidence offered in support of the petition, the court finds that:

1. There exists a basis in law and in fact for the issuance of a temporary restraining order ~~and order for provision of medical assistance as requested;~~

2. Failure to grant the Petition will potentially result in irreparable harm to the patient Jahi McMath and this order is necessary until such time as the petitioner can obtain her daughter's medical records and obtain an independent medical examination and the court can hold further evidentiary hearing;

3. ~~All facts and allegations as set forth in the petition are true and correct;~~

4. ~~The continuing medical condition of the patient requires the requested course of medical treatment. If withheld, the condition is life-ending; and~~

5. ~~The patient is unable to give an informed consent to the recommended treatment because of her medical condition.~~

THEREFORE, IT IS ORDERED THAT:

The temporary restraining order is hereby granted until such time as the Order to Show Cause re Permanent Restraining Order/Injunction precluding the Respondent from removing Petitioner from the ventilator and ~~Order Authorizing Medical Treatment and Authorizing Petitioner to Give Consent to Medical Treatment~~ can be heard at the time and date set forth in ~~said Order.~~ maintaining → status quo regarding medicals

This Temporary Restraining Order/Order Authorizing Medical Treatment and Authorizing Petitioner to Give Consent to Medical Treatment orders the following ;

1) Respondent CHO, its agents, employees, servants and independent contractors including Respondent Dr. Durand, is ordered to provide Jahi McMath with ~~medical~~ treatment and support which is essential to preserve and protect her life, body, organs and systems against death and expiration. Respondents are precluded from discontinuing said ~~medical~~ treatment and/or support

continue

Hct. is currently being reviewed.

THE DOLAN LAW FIRM
SAN FRANCISCO, CA
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FAX: (415) 421-2830

without the express permission of Petitioner Latasha Winkfielf. Specifically until such time as a hearing can be had on the Order to Show Cause this Temporary Restraining Order will provide for continued administration of nutrition and hydration by means of a feeding tube, continued use of a ventilator to maintain the functioning of the patient's lungs, and all other medicines and treatments, services of health care providers, and other actions necessary to preserve and improve the tissues, organs, systems, bones and all other components of Jahi McMath's body.

2) Latasha Winkfield is authorized to give consent to the requested treatment on behalf of Jahi McMath;

3) Petitioner is to be entitled, within the next two weeks to have an independent physician who is board certified in Neurology, Neurosurgery and/or rehabilitative medicine, enter Respondent's facility to conduct an independent medical examination;

4) Respondents are, within the next two weeks, ordered to produce Petitioner's medical records from the date of her pre-operative visits through the date of the signature on this order, including but not limited to any and all scans, images, x rays, medical records, nursing notes, operative notes, pre operative notes, post operative notes, anesthesia records, physicians notes, resident's notes, physician's orders, medication orders, medication administration, nursing notes, nursing report and shift change notes, documents showing physicians were paged, contacted, e-mailed or otherwise contacted by other physicians, nurses, or staff (other than those protected by the peer review privilege);

5) Respondent Children's Hospital Oakland, their agents, employees and the attending health care team, as well as Dr. Durand, M.D., are ordered to assist Petitioner Latasha Linkfield in finding a health care facility who will administer treatment in accordance with this order and until such time as such a facility is located or the date set for hearing on the permanent restraining order/injunction as contemplated by Paragraph 8(g) below;

Dated _____.

Judge of the Superior Court

THE DOLAN LAW FIRM
[illegible]
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[illegible]
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Exhibit 7

Douglas C. Straus (Bar No. 96301)
Brian W. Franklin (Bar No. 209784)
Noel M. Caughman (Bar No. 154309)
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Attorneys for
CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND

ENDORSED
FILED
ALAMEDA COUNTY

DEC 20 2013

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

_____,

Plaintiff,

v.

CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND,

Respondent/Defendant.

Case No. RP13707598

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER

Date: December 20, 2013
Time: 1:30 P.M.
Dept: 31

I
INTRODUCTION

Children's Hospital & Research Center at Oakland (Children's) has no duty to continue mechanical ventilation or any other medical intervention for its deceased minor patient Jahi McMath ("Ms. McMath"). Ms. McMath is deceased as a result of an irreversible cessation of all functions of her entire brain, including her brain stem. Health & Safety Code § 7180. Sadly, this has been true for more than a week. This determination has been made by numerous physicians—including physicians unaffiliated with Children's—satisfying the requirements of Health & Safety Code § 7181.

Tragically, Ms. McMath is dead and cannot be brought back to life. Children's has given Ms. McMath's family/next of kin ample notice of its decision to stop providing mechanical support to Ms. McMath's body as is required by Health & Safety Code § 1254.4. Accordingly, Children's is under no legal obligation to provide medical or other intervention for a deceased person. The TRO should be denied.

II
RELEVANT FACTS

Ms. McMath was admitted to Children's Hospital on December 9, 2013, for a complicated surgical procedure consisting of an adenotonsillectomy, uvulopalatopharyngoplasty, and submucous resection of bilateral inferior turbinates. Following this surgical procedure, Ms. McMath was admitted, as planned, to Children's's Pediatric Intensive Care Unit, where she suffered serious complications resulting in a tragic outcome—her death.

On December 12, 2013, pursuant to California law, medical guidelines and Children's procedures, Ms. McMath was declared brain dead as a result of an irreversible cessation of all functions of her entire brain, including her brain stem. Children's follows the standard established by Task Force on Brain Death in Children: Guidelines for the Determination of Brain Death in Children, An Update of the 1987 Task Force Recommendations (2011) in making such determinations. Two separate Children's physicians determined that Ms. McMath was brain dead. In addition, at the request of the family, three additional independent physicians--unaffiliated with Children's and either selected by or approved by Ms. McMath's family/next of kin--examined Ms. McMath. Each confirmed the diagnosis of brain death. All tests and examinations have consistently and definitively confirmed that Ms. McMath is brain dead. Accordingly, Children's has declared Ms. McMath to be dead.

On December 12, 2013 Children's advised Ms. McMath's family/next of kin that she had

been determined to be brain dead. During the ensuing week, Children's undertook extraordinary measures to support Ms. McMath's family/next of kin including:

- Members of Ms. McMath's medical team have met repeatedly and at length with Ms. McMath's mother and other members of the family. They have explained Ms. McMath's complete lack of brain activity and its significance, answered the family's questions, and supported them as they have attempted to come to grips with this tragic situation.
- The family has also received support from social workers on a daily basis.
- At the family's request, Children's has provided a way for them to determine who they want to visit during regular visiting hours by instituting a visitor "code" that is used to screen potential visitors.
- Children's's chaplain has provided support and prayers for family on a near daily basis since 12/11.
- Child Life professionals have provided support to siblings.
- In order to accommodate the need for the family to support one another, Children's has also relaxed some of its visitation policies. The family has had permission to have 8 family members in the hospital overnight since 12/16. Children's has relaxed the 8 PM visitor hour to 10 PM for siblings. Children's has relaxed its policy regarding the number of visitors allowed during regular visiting hours.
- In order to provide a gathering place in the hospital, the hospital secured a room in the hospital for the family to meet.
- In order to provide privacy for family, the hospital secured space at the Family House for the family to gather and have access to nourishment.
- In order to provide a way for community members to support the family, the hospital has made it possible for donations, cards to be collected and passed to the family.

A full week after death, Children's has determined that the time has come to stop providing mechanical support to Ms. McMath's body. Accordingly, on December 19, 2013 Children's advised Ms. McMath's family/next of kin of their intent to discontinue all mechanical ventilation and any other medical intervention soon.

III.
LEGAL ARGUMENT

Pursuant to California Health & Safety Code § 7180, an individual who has sustained "irreversible cessation of all functions of the entire brain, including the brain stem," is dead. Health & Safety Code § 7181 requires independent confirmation of any determination of brain death by a second physician. Children's has fully complied with these requirements.

In this case, Ms. McMath has received neurological examinations by two separate physicians on staff at Children's, received two EEGs which detected zero brain activity and three additional independent examinations by outside physicians not associated with Children's. All five practitioners have unanimously agreed that Ms. McMath is brain dead and that her condition is irreversible. All such determinations have been made in accordance with California law, medical guidelines and Children's policy and procedure. Children's cannot be legally required to continue to provide any "medical" intervention to someone who is deceased.

Any argument that Ms. McMath's mother has a right to participate in decision-making here is based on a fundamental misapprehension. The next of kin has a right to participate in decisions regarding ***life-sustaining*** treatment. Children's's own procedures acknowledgement this fundamental right. However, there is simply no life-sustaining treatment that can be administered to a ***deceased person.*** Because Ms. McMath is dead, practically and legally, there is no course of medical treatment to continue or discontinue; there is nothing to which the family's consent is applicable. To be blunt, Children's is currently merely preserving Ms. McMath's body

from the natural post-mortem course of events. There is no legal, ethical or moral requirement that it continue to do so or that the family consent in the decision to stop doing so.

Dority v. Superior Court (1983) 145 Cal. App. 3d 273 does not hold otherwise. In that case, the Court of Appeal affirmed the trial court's decision to allow withdrawal of support to a brain dead infant over the objections of the infant's parents. Although the parents were found to lack standing due to allegations of child abuse, the Court of Appeal did explain that the courts can intervene in hospital brain death decisions to terminate support only "***upon a sufficient showing that it is reasonably probable that a mistake has been made in the diagnosis of brain death or where the diagnosis was not made in accord with accepted medical standards.***" 145 Cal. App. 3d at 280.

There is not a scintilla of evidence suggesting that the diagnosis of death is a mistake or was not made in accord with accepted medical standards.[1] To the contrary, on December 18, 2013, lawyer Christopher Dolan, writing on behalf of Ms. McMath's mother, stated that Ms. McMath "has been left brain dead" and requested a "complete explanation as to exactly how Jahi has now come to be brain dead." Copy attached hereto.

There is no factual or legal dispute. Ms. McMath is dead. California Health & Safety Code § 1254.4 requires that a hospital provide a reasonable period of accommodation between the time an individual is declared brain dead before discontinuation of cardiopulmonary support for the patient. Ms. McMath's family was told that she had been determined to be brain dead on Thursday December 12, 2013. At that time, Ms. McMath's family requested that Children's allow them through that weekend for family members to gather. Children's agreed and indeed has now accommodated Ms. McMath's family for more than a week. Children's has plainly provided

[1] *In re Christopher* is even further afield. 106 Cal. App. 4th 533 (2003). As the Court of Appeal explained, "Christopher is not brain dead" because he "has some lower and mid-brain-stem activity." 106 Cal. App. 4th at 543. Obviously, procedures for withdrawing treatment to a living person are radically different than procedures to be followed in handling the body of a dead person.

the family/next of kin with far more time than the "reasonably brief period of accommodation" called for by Children's Guidelines and California Health & Safety Code section 1254.4. The TRO should be denied.

IV.
CONCLUSION

While tragic, Ms. McMath was declared brain dead December 12, 2013. There is no medical possibility of reversal. There is no legal authority or ethical or moral imperative to compel Children's to continue mechanical ventilation or provide any other "medical" intervention on an individual who is dead. The TRO should be denied.

Dated: December 20, 2013

ARCHER NORRIS

By Douglas C. Straus
Attorneys for CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND

THE DOLAN BUILDING
1438 MARKET STREET
SAN FRANCISCO, CA 94102

CBD
THE DOLAN LAW FIRM

MATTHEW D. GRAMLY, ESQ.
(415) 421-2800 TEL
(415) 421-2830 FAX

December 18, 2013

Via Regular Mail and Facsimile
Children's Hospital and Research Center Oakland
Health Information Management Department
747 52nd Street
Oakland, CA 94609
Fax: (510) 658-1913

RE: Jahi McMath

Dear Madam or Sir:

This firm represents Nailah Winkfield, mother of Jahi McMath, a 13 year old girl who has been left brain dead following a tonsillectomy performed in your facility on December 9, 2013.

Ms. Winkfield has been attempting to retrieve a complete copy of any and all medical records relating to all of her daughter's recent surgery and treatment at your hospital. She went to your office on December 16, 2013, requested the records and was initially informed by a clerk that she could have them. Apparently, however, as the clerk was retrieving a copy of the records, a supervisor in your office appeared and informed Ms. Winkfield that she could not have a copy of her daughter's medical records at that time. It is unknown why this change in position occurred.

As the legal representative of Nailah Winkfield, Jahi McMath's mother, our office now demands immediate production of a complete copy of the medical records for Jahi McMath. We request that the records be produced in their original and complete condition as they existed on the date of the incident described above. If signed copies of the medical records have not been generated yet, those copies can be generated and produced at a later date.

Attached and included herein is an Authorization for Release of Medical Information signed by Ms. Winkfield in her capacity of legal guardian for her minor child, Jahi McMath. The release conforms to all requirements for such releases as stated in California Civil Code section 56.11. The release form that is attached and included herein is a photocopy. The original signed form has already been provided to your hospital, to the office of the President to be provided to the office of risk management.

The purpose of this request is to provide the family of Jahi McMath with any and all relevant documentation related to her surgery, her treatment and any and all aftercare in order for the family to begin the process of obtaining an independent medical review. The family of Jahi McMath wants to know what happened to their daughter and how it happened and, to date, does

not feel that they have received an open, honest and complete explanation as to exactly how Jahi has now come to be brain dead.

Thank you in advance for your anticipated cooperation with this request. Please contact me if you have any questions or concerns regarding the contents of this correspondence.

Very truly yours,

Matthew D. Grannly
Senior Attorney
The Dolan Law Firm

Enclosure

Exhibit 8

Douglas C. Straus (Bar No. 96301)
Brian W. Franklin (Bar No. 209784)
Noel M. Caughman (Bar No. 154309)
dstraus@archernorris.com
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Attorneys for Respondent
CHILDREN'S HOSPITAL & RESEARCH
CENTER AT OAKLAND

ENDORSED
FILED
ALAMEDA COUNTY

DEC 20 2013

CLERK OF THE SUPERIOR COURT
By Scott Soltez
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

_____,

Plaintiff,

v.

CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND,

Respondent.

Case No.

PHYSICIAN DECLARATION

of Robert Heidersbach

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

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

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

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

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

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

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

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

ROBERT SCOTT HEIDERSBACH, M.D.

Exhibit 9

Douglas C. Straus (Bar No. 96301)
Brian W. Franklin (Bar No. 209784)
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Attorneys for Respondent
CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND

ENDORSED
FILED
ALAMEDA COUNTY

DEC 20 2013

CLERK OF THE SUPERIOR COURT
By Scott Sanchez
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

_____,

Plaintiff,

v.

CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND,

Respondent.

Case No.

PHYSICIAN DECLARATION

of Robin Shanahan

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

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

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

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

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

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

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

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

Robin Shanahan M.D.

ROBIN SHANAHAN, M.D.

Exhibit 10

Douglas C. Straus (Bar No. 96301)
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Attorneys for Respondent
CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND

ENDORSED
FILED
ALAMEDA COUNTY

DEC 20 2013

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

_____,

Plaintiff,

v.

CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND,

Respondent.

Case No.

DIVISION CHIEF DECLARATION

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

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

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

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

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

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

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

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

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

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

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

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

Sharon Williams M.D.
SHARON WILLIAMS, M.D.

VI. BRAIN DEATH

A. PURPOSE

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

B. SCOPE AND APPLICABILITY

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

C. GUIDELINES

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

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

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

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

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

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

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

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

D. ADDITIONAL CONSIDERATIONS

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

1. Interval between clinical examinations:

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

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

2. Confirmatory tests:

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

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

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

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

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

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

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

3. Sedative-hypnotic Drugs:

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

4. Body temperature:

   Body temperature should be more than 36 degrees Celsius so that reversible CNS depression due to hypothermia is excluded.

5. Independent Confirmation:

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

6. Other Contingencies:

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

E. FAMILY/NEXT OF KIN ACCOMODATION FOLLOWING BRAIN DEATH

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

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

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

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

F. BRAIN DEATH PACKET

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

Exhibit 11

10522558

FILED
ALAMEDA COUNTY
DEC 20 2013
By

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

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. RG13-707598 TEMPORARY RESTRAINING ORDER FOLLOWING PETITION FOR EMERGENCY PROTECTIVE/RESTRAINING ORDER AUTHORIZING MEDICAL TREATMENT AND AUTHORIZING PETITIONER TO GIVE CONSENT TO MEDICAL TREATMENT; [Prob. Code §§ 3200 *et seq.*, §§ 4600 *et seq.*] Date: December 20, 2013 Time: 9:00 am Dept: 31

The verified petition of Latasha Linkfield for a temporary restraining came before the Court upon Ex-Parte Application and for hearing at 1:30 p.m. in Department 31 the Honorable Evelio M. Grillo presiding.

After considering the Petition and the evidence offered in support of and opposition to the Petition, the Court finds that:

1. There exists a basis in law and in fact for the issuance of a temporary restraining order;
2. Failure to grant the Petition will potentially result in irreparable harm to the patient Jahi McMath and this order is necessary until such time as the Petitioner can obtain

her daughter's medical records and obtain an independent medical examination and the Court can hold further evidentiary hearing

THEREFORE, IT IS ORDERED THAT:

The Temporary Restraining Order is hereby granted precluding the Respondent from removing Petitioner from the ventilator or ending any of the current treatment and support provided by Respondent- in essence, the Court orders the respondent to maintain the "status quo" of treatment and support.

This Temporary Restraining Order orders the following:

1. Respondent CHO, its agents, employees, servants and independent contractors are ordered to continue to provide Jahi McMath with the treatment and support which is currently being provided as per the current medications and physicians orders until further order of the court.
2. The matter is set for hearing at 9:30 a.m. Monday December 23rd 2013 counsel to attend.
3. In the interim Archer Norris is Hereby Ordered to contact the group of five physicians identified in the hearing to locate one who would be able to conduct the tests, examination and evaluation of Jahi McMath contemplated by the Court on Monday December 23rd 2013, in accordance with the generally accepted medical standards for determining brain function/brain death.

Dated: December 20, 2013

Evelio Grillo
Judge of the Superior Court

Exhibit 12

Christopher B. Dolan (SBN 165358)
THE DOLAN LAW FIRM
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1438 Market Street
San Francisco, CA 94102
Tel: (415) 421-2800
Fax: (415) 421-2830

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF OAKLAND

UNLIMITED CIVIL JURISDICTION

LATASHA WINKFIELD, the Mother of Jahi McMath, a minor Petitioner, v. CHILDRENS HOSPITAL OAKLAND, Dr. David Durand M.D. and DOES 1 through 100, inclusive Respondents.	Case No.: Petition to have Dr. Paul A. Byrne designated as Independent Medical Expert for Examination of Jahi McMath Date: December 23, 2013 Time: 9:30 am Dept: 31

Now comes the Petitioner, Latasha Winkfield, and requests appointment of Dr. Paul A. Byrne M.D. as he selection of physician to conduct an independent examination of Jahi McMath pursuant to Cal. Welfare and Institutions Code § 7181. Section 781 states that "When an individual is pronounced dead by determining that the individual has sustained an irreversible cessation of all functions of the entire brain, including the brain stem, there shall be independent confirmation by another physician." Nowhere does Section 7181 state that the physician must be a neurologist, a licensee of the same state in which the patient is located, or have privileges at any particular hospital.

As the court can see by Dr. Byrne's CV, attached hereto, Dr. Byrne is Board Certified in Pediatrics with a sub-board in Neonatal-Perinatal Medicine of American Board of Pediatrics. He has served in many academic positions including as the Director of Neonatology, St. Charles Mercy Hospital, October 2000-2012, Oregon, OH Neonatologist, St. Charles Mercy Hospital, 1991-2012, Oregon, OH. He is licensed in Ohio, Nebraska and Missouri. Dr. Byrne has published articles on brain death and related topics in the medical literature, law literature and the lay press for more than thirty years. He has been qualified as an expert in matters related to central nervous system dysfunction in Michigan, Ohio and Virginia. Although not licensed in Virginia, provided expert testimony in the case of the *Matter of Baby K*, 832 F.Supp 1022 (E.D.Va.,1993), wherein the issue of brain death in a child was the central issue.

In Baby K the Hospital sought declaratory relief that it had no obligation to continue to provide respiratory support to an anencephalic child (congenital defect where there is a brain stem but cerebral cortex is absent). The hospital in Baby K., like the hospital here, encouraged her mother to remove her from a ventilator stating that such treatment was "futile" and decided to "wait a reasonable time for the caregiver to terminate aggressive therapy." The court in Baby K, stated, Reflecting the constitutional principles of family autonomy and the presumption in favor of life, courts have generally scrutinized a family's decision only where the family has sought to terminate or withhold medical treatment for an incompetent minor or incompetent adult. *See, e.g., Cruzan,* 497 U.S. at 270–75, 110 S.Ct. at 2847–49 (and cases cited therein). In a recent case in which a hospital sought to terminate life-supporting ventilation over the objections of the patient's husband, a Minnesota state court refused to remove decisionmaking authority from the husband. *In re Wanglie,* No. PX–91–283 (Prob.Ct., Hennepin Co., Minn., June 28, 1991). Likewise, where parents disagreed over whether to continue life-supporting mechanical ventilation, nutrition, and hydration for a minor child in an irreversible stupor or coma, a Georgia state court gave effect to the decision of the parent opting in favor of life support. (Matter of Baby K 832 F.Supp. 1022, 1031.

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Therefore Petitioner hereby requests that she be permitted to have an independent physician of her choosing, Dr. Paul A. Byrne, conduct a second examination.

Signed this 23rd Day of December, 2013;

Christopher B. Dolan
The Dolan Law Firm
Attorneys for the Petitioner

DECLARATION OF CHRISTOPHER B DOLAN

1) I Christopher B Dolan am an adult over the age of 18 yrs old, licenced to practice law I the state of California and I am the attorney of record for the petitioner herein. The following is known personally to me and I am competent to testify upon the same if called upon to do so.

2) Attached to this Petition to have Dr. Byrne appointed as the Independent Examiner is a true and correct copy of Dr. Byrne's C.V.

3) Dr. Byrne has told me he can travel to California such that he could be present on December 24, 2013.

Signed under penalty of perjury in San Rafael, Californai on December 23, 2013;

Christopher B. Dolan Esq.
The Dolan Law Firm
Attorney for Petitioner

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CURRICULUM VITAE

PAUL A. BYRNE, M.D.

DATE & PLACE OF BIRTH: February 14, 1933, Norwood, Ohio

EDUCATION:

B.S. - 1953 - Xavier University, Cincinnati, Ohio
M.D. - 1957 - St. Louis University School of Medicine

TRAINING:

Internship (Rotating) - 1957-58 - St. Louis University Group of Hospitals
Residency (Pediatrics) - 1958-61 - St. Louis University Group of Hospitals
Postgraduate - 1962 - Care of Premature, University of Colorado, Denver, CO Postgraduate - 1963 - Neonatology, American Academy of Pediatrics, Boston, MA

CERTIFICATION:

American Board of Pediatrics, 1963
Sub-Board of Neonatal-Perinatal Medicine of American Board of Pediatrics, 1975

ACADEMIC APPOINTMENTS:

Clinical Professor of Pediatrics, 1996-present - University of Toledo, College of Medicine, Toledo, Ohio.
Professor of Pediatrics, 1986-89 - Oral Roberts University School of Medicine, Tulsa, OK
Adjunct Professor of Obstetrics and Gynecology, 1986-89 - Oral Roberts University School of Medicine, Tulsa, OK
Clinical Professor of Pediatrics, 1981-86 - Creighton University School of Medicine, Omaha, NE
Clinical Professor of Pediatrics, 1978-81 - St. Louis University School of Medicine, St. Louis, MO
Associate Clinical Professor of Pediatrics, 1970-78 - St. Louis University School of Medicine, St. Louis, MO
Assistant Clinical Professor of Pediatrics, 1967-70 - St. Louis University School of Medicine, St. Louis, MO
Instructor, 1963-67 - Department of Pediatrics, St. Louis University School of Medicine, St. Louis, MO
Assistant, 1961-63 - Department of Pediatrics, St. Louis University School of Medicine, St. Louis, MO

POSITIONS:

President, Life Guardian Foundation, 2009-
Director of Neonatology, St. Charles Mercy Hospital, October 2000-2012, Oregon, OH
Neonatologist, St. Charles Mercy Hospital, 1991-2012, Oregon, OH
Chairman, Dept. of Pediatrics, St. Charles Mercy Hospital, 2001-2012, Oregon, OH
Director of Neonatology, Riverside Hospital, 1990-91, Toledo, OH
Chairman, Dept. of Pediatrics, 1989-90 - St. Vincent's Medical Center, Bridgeport, CT
Chairman, Dept. of Pediatrics, 1986-89 - Oral Roberts University, School of Medicine, Tulsa, OK
President, South Tulsa Christian Child Health Center, 1988-89, Tulsa, OK
Medical Director of Newborn Nurseries and Pediatric Ward, 1986-89, City of Faith Medical and Research Center, Tulsa, OK
Director of Neonatology, 1981-86 - Archbishop Bergan Mercy Hospital, Omaha, NE Pediatric
Director, 1975-80 - St. Louis University Perinatal Center for Southern Illinois
Director, 1963-80 - Neonatal Intensive Care Unit (founded and developed), Cardinal Glennon Memorial Hospital for Children, St. Louis, MO
Director, 1963-70 - Newborn Nursery, St. Louis University Hospital, St. Louis, MO
Private Practice, Pediatrics and Neonatology, 1961-81 - St. Louis, MO

COMMITTEES AND SOCIETY APPOINTMENTS:

Treasurer, 1988-89 - Christian Health Care Practitioners Association, Tulsa, OK
Representative, 1988-89 - American Medical Association Section on Medical Schools
President, 1987-88 Medical Faculty Assembly, Oral Roberts University School of Medicine (Elected by fellow faculty members), Tulsa, OK
Chairman, 1986-89 - Ethics Committee, City of Faith Medical and Research Center, Tulsa, OK
Member, 1986-89 - Executive Committee, Oral Roberts University School of Medicine, Tulsa, OK
Member, 1986-89 - Clinical Chair Committee, Oral Roberts University School of Medicine, Tulsa, OK
Chairman, 1975-80 - Transportation Committee, Maternal-Infant High Risk Program, State of Missouri
Program Director, 1974-80 - Annual Perinatal Symposium, St. Louis University School of Medicine, St. Louis, MO
Vice-President, 1972-74 - Cardinal Glennon Memorial Hospital For Children Medical Staff, St. Louis, MO
Secretary, 1969-71 - Cardinal Glennon Memorial Hospital for Children Medical Staff, St. Louis, MO
Secretary, 1971-73 - American Academy of Pediatrics, Missouri Chapter
Member, 1971-73 - Committee of Fetus & Newborn, American Academy of Pediatrics, Missouri Chapter
Chairman, 1970 - Infant Mortality Committee for State of Missouri White House Conference
Maternal & Infant Welfare Committee, City of St. Louis, 1967
President, - St. Louis Pediatric Society, 1966
Advisory Board of Life Seekers, St. Louis, MO, 1963-81

CONFERENCES

Participant, 1969 National Birth Defects Symposium, Southern Illinois University, Carbondale, IL
Participant, April 1971 - Round Table Spring Session, Intensive Care for High Risk Infants, American Academy of Pediatrics
Participant, April 1971 - Matt Weiss Symposium of Fetal & Newborn Problems, St. John's Mercy Hospital, St. Louis, MO
Participant, April 1974 - First National Meeting, Nurses Association of the American College of Obstetrics-Gynecology, Las Vegas, NV
Participant, June 1978 - American Medical Association Meeting, panel discussion, "Ethical Issues in the Care of the Small Premature"
Participant, March 1977 - Statewide Conference on Child Abuse and Neglect, Jefferson City, MO
Guest Lecturer, Fifth Annual Terence Cardinal Cooke Lectureship, October 19, 1988: "Medical, Legal and Ethical Aspects of Brain Death". The Institute of Human Values in Medical Ethics of New York Medical College, New York, NY
Opening Speaker, October 22, 1988: 11th Annual SIDS Awareness Day, sponsored by Oklahoma Chapter, NSIDSF, Inc., Oklahoma State Department of Health and Oral Roberts University School of Medicine, Tulsa, OK
Closing Speaker, February 16, 1989: 1st Annual Perinatal Symposium: "Diabetes in Pregnancy," Oral Roberts University School of Medicine, Tulsa, OK
Guest Lecturer, November 6-7, 1992: 3rd Annual Conference, Updated Medical/Legal Symposium of: Fetoplacental Pathology and Assessment of the Brain Damaged Infant:

"A Case For Routine Blood Gases In The Newborn," and,
"Adaptation to Extra-Uterine Life In The Asphyxiated Baby."
Sponsored by St. Joseph Hospital, Houston, and the Texas Medical Association.
Chairman, 66th Annual Meeting of The Catholic Medical Association. November 13-16,1997, Toledo Hilton Hotel, Toledo, Ohio. Morals or Ethics?
Invited Presenter, "Signs of death," Preliminary Meeting of the Pontifical Academy of Sciences, Vatican City, Italy, Feb 3-4, 2005.
Invited Presenter, "Death--The Absence of Life," Research Council of Italy, Italy Dec 11, 2006
Organizer and Presenter: *I segni della vita, La "morte cerebrale" è ancora vita*? Signs of life, Is "brain death" still life? Rome, Italy, February 19, 2009.
Organizer and Presenter: International Congress, The Boundaries of the Human, The Human Being at the time of the biotechnological Revolution, *Palazzo San Pio X, Via dell'Ospedale (via della Conciliazione) Rome, Italy,* February 25-26, 2012

SOCIETY MEMBERSHIPS:

American Academy of Pediatrics, 1963 -
Missouri Chapter of American Academy of Pediatrics, 1963-81
St. Louis Pediatric Society, 1963-81

SOCIETY MEMBERSHIPS: (continued)

St. Louis Medical Society, 1961-81
Nebraska Chapter of American Academy of Pediatrics, 1981-86
Fellowship of Catholic Scholars 1982 -Oklahoma Perinatal Association - 1986-89
Oklahoma State Medical Association, 1986 - 1989
Tulsa Pediatric Society, 1986-89
Tulsa County Medical Society, 1986-89
American Medical Association, 1986-present
Catholic Medical Association, formerly known as National Federation of Catholic Physicians' Guilds, 1984-present
- Board of Directors 1986-
- Secretary – 1993-94
- Treasurer – 1994-95
- Vice President – 1995-96
- President Elect – 1996-97
- President – 1997-98

Fairfield County Medical Society (Connecticut), 1990
Northwest Ohio Pediatric Society - 1991 -
Ohio Perinatal Association, 1991-
Ohio Chapter of American Academy of Pediatrics, 1991-
Ohio State Medical Association, 1991-
The Academy of Medicine of Toledo and Lucas County, 1991-

AWARDS:

Certificate of Appreciation from Project Get Together, December 1986, 1987, 1988, Tulsa, OK
Certificate of Appreciation from Oklahoma Chapter of National Sudden Infant Death Syndrome Foundation, October 1988
Cardinal Carberry Pro-Life Award, October 1979, St. Louis, MO
Dr. James T. Cleary Biology Award, May 1953, Xavier University, Cincinnati, OH

VOLUNTEER POSITIONS:

Project Get Together Pediatric Free Clinic (once or twice a month), 1986-89
Broken Arrow Neighbors Pediatric Free Clinic (once a month), 1986-87

PUBLICATIONS:

Fagan LF, Thurman M, LoPiccolo VJ, Jr. and Byrne PA. Myocardial Infarction in the Perinatal Period With Long-Term Survival. J Pediatrics, September 1966; 69(3): 378-382.

Byrne PA and Garlinghouse BK. Development Of A Practical Disposable CPAP Head Bag. Ped Res, April 1974; 8(4): 465.

PUBLICATIONS (continued):

Caddell JL, Erickson M, and Byrne PA. Interference From Citrate Using The Titan Yellow Method And Two Fluorometric Methods For Magnesium Determination In Plasma. Clinical Chimica Acta, 1974; 50:9-11.

Cook SA Brodeur A, Byrne PA. Aspiration Of Ear Plug Into The Respiratory Tract. Cleveland Clinic Quarterly, Spring 1974;41(1).

Byrne PA and Caddell JL. The Magnesium Load Test: II. Correlation of Clinical and Laboratory Data in Neonates. Clin Peds, May 1975; 14(5)

Caddell JL, Byrne PA, Triska RA, and McElfresh AE. The Magnesium Load Test: II. Correlation Of Clinical And Laboratory Date In Infants From One To Six Months Of Age. Clin Peds, May 1975; 14(5).

Sarnat HB, O'Connor T, and Byrne PA. Clinical Effects of Myotonic Dystrophy on Pregnancy and the Neonate. Arch Neuro, July 1976; 33:459-465.

Byrne PA. On Death. Missouri Medicine, June 1978;75(6):256-258.

Byrne PA, O'Reilly S, and Quay PM. Brain Death - An Opposing Viewpoint, JAMA, November 2, 1979; 242:1985-1990.

Byrne PA. Response [to brain-related criteria for death]: Moral Responsibility in Prolonging Life Decisions, by The Pope John XXIII Medical-Moral Research and Education Center, St. Louis, 1981.

Byrne PA, O'Reilly S, Quay PM, and Salsich PW. Brain Death - The Patient, The Physician, and Society. Gonzaga Law Review, 1984;18(3):429-516.

Byrne PA, et al. The Physician's Responsibility toward Sacred Human Life, Linacre Quarterly, November 1986:15-21.

Henderson, RL and Byrne PA. A Medical Financial System Based on Biblical Principles, Journal of Biblical Ethics in Medicine, 1990; 4(1): 14-19.

PUBLICATIONS (continued):

Evers JC, Byrne PA. Brain Death-Still a Controversy. The Pharos of Alpha Omega Alpha, Fall 1990; 53(4): 10-12.

Translated and published:
Verantwortich für die Übersetzung: Professor Dr. Gerhard Fitkau. Hirntod immer noch umstritten, Medizin & Ideologie, Dezember 1994:55-58.

Hirntod - Sind Organspende wirklich tot?
Organspend: Letzter Liebesdienst oder Euthanasie / Walter Ramm (Hg.).
[Mit einem Vorw. von W. Pó_tawska]. - 2., überarb. Aufl. - Absteinach:
Derschieder, 1995 ISBN 3-930533-03-0
NE: Ramm, Walter [Hrsg.].

Evers JC, Byrne PA. "Brain Death May Not Determine Death" -Death & Dying, Opposing View Point Series, Greenhaven Press,
William Dudley, Editor 1992; 1:23-29.

Byrne PA, Nilges, RG. The Brain Stem in Brain Death. Issues In Law & Medicine 1993; 9(1):3-21.

Byrne PA, Nilges RG, Evers JE. Anencephaly - Organ Transplantation? Issues In Law & Medicine, 1993; 9(1): 23-33.

Byrne PA, Evers JC. The Sacrament of Anointing and the Brain Dead. The Priest, August 1993; 49(8):6-9.

Byrne PA, Kurt EJ Jr JD, Campbell DD JD, Nilges RG, de Carvalho CA, Perone AM JD, Evers JC, Traynor RJ JD. Quinlan Re-Examined. Linacre Quarterly, May 1997: 58-65.

Bowes W, Byrne P, Cavanagh D, Colliton W, Foye G, Klaus, H, Pellegrino E. True Integrity for the Maternal-Fetal Medicine Physician. Linacre Quarterly, August 1997:77-81.

Byrne PA, Colliton WF, Evers JC, Fangman TR, L'Ecuyer J, Simon FG, Nilges RG, Shen JTY, Kramper RJ. Life, Life Support, and Death: Principles, Guidelines, Policies and Procedures for Making Decisions That Respect Life. Linacre Quarterly, November 1997:3-31.

Byrne PA, Rinkowski GM. "Brain Death" is False. Linacre Quarterly, February 1999:42-48.

Shewmon DA, Holmes GL, Byrne PA. Consciousness in Congenitally Decorticate Children: Developmental Vegetative State as Self-Fulfilling Prophecy. Developmental Medicine & Child Neurology, 1999, 41:364-374.

Bruskewitz FW, Vasa RF, Weaver WF, Byrne PA and Nilges RG. Are Organ Transplants Ever Morally Licit? CWR, March 2001;11(3):50-56.

PUBLICATIONS (continued):

Byrne PA, Coimbra CG, Spaemann R, and Wilson MA. "Brain Death" is Not Death. CWR, March 2005: 54-58.

Byrne PA, Miller C, and Justus K. Neonatal Group B Strept Infection Related to Breast Milk, Breastfeeding Medicine, 2006: 1(4), 263-270.

BOOKS:

Life, Life Support, and Death: Principles, Guidelines, Policies and Procedures for Making Decisions That Respect Life. Byrne, PA, Colliton, WF, Evers, JC, Fangman TR, L'Ecuyer JL, Simon FG, Shen JTY, Kramper RJ. American Life League, Stafford, VA, 1992.
Revised Edition: Byrne, PA, Colliton, WF, Evers, JC, Fangman TR, L'Ecuyer JL, Simon FG, Shen JTY, Kramper RJ, Nilges RG. American Life League, Stafford, VA, 1993.
Third Edition: Byrne, PA, Colliton, WF, Evers, JC, Fangman TR, L'Ecuyer JL, Simon FG, Shen JTY, Kramper RJ, Nilges RJ, with Sadick MH, JD Consulting Editor. American Life League, Stafford, VA, 1996.
Second Revised Edition: Byrne, PA, Colliton, WF, Evers, JC, Fangman TR, L'Ecuyer JL, Simon FG, Shen JTY, Kramper RJ, Nilges RJ, with Sadick MH, JD Consulting Editor. American Life League, Stafford, VA, 2005.

Beyond Brain Death: Edited by Michael Potts, Ph.D., Paul A. Byrne, M.D. and Richard G. Nilges, M.D., Philosophy and Medicine (P & M) 66, Kluwer Academic Publishers, ISBN 0-7923-6578-X, 2000.

"Brain Death" Is Not Death. Byrne, PA and Weaver, WF. Chapter in "Brain Death and Disorders of Consciousness," Proceedings of the Fourth International Symposium on Coma and Death, held March 9-12, 2004, in Havana, Cuba. Edited by Calixto Machado and D. Alan Shewmon, Advances in Experimental Medicine and Biology, Klewer Academic/Plenum Publishers, New York, 2004.

Finis Vitae, Death: the Absence of Life, *Conziglio Nazionale delle Ricerche pp* 63-84, , Rubbettino, Rome, Italy, 2006.

Finis Vitae, Is "Brain Death" True Death? *Conziglio Nazionale delle Ricerche*, Rubbettino, Rome, Italy, 2006; Life Guardian Foundation, 2009.

ABSTRACTS:

Byrne PA and Beld JW. Development Of A Practical Neonatal Monitoring System For Systolic and Diastolic Blood Pressure, Heart Rate, Respiratory Rate, and Temperature. Program for the Society of Pediatric Research, 1968.
(Presented at annual meeting in New Jersey).

Byrne PA and Garlinghouse BK. Development Of A Practical Disposable CPAP Head Bag. Program for the Society of Pediatric Research, 1974.

Byrne PA. Assessment of Asphyxia in the Neonate by Measuring Brain-Type Isoenzyme of Creatine Phosphokinase (CK-BB). Presented at Great Plains Perinatal Organization, Des Moines, Iowa, September 30, 1983.

ABSTRACTS (cont'd):

Byrne PA. Nasal Variable Positive Airway Pressure (N-VPAP) in the Treatment of RDS, presented at the American Academy of Pediatrics Meeting, Phoenix, AZ, March 25, 1984.

GUEST COLUMNIST:

Starving Terminal Patients is Murder. USA Today, March 29, 1984.
We Don't Need a Law to Keep Patients Alive. USA Today, Sept 20, 1984.
Artificial Birth Control from a Medical Viewpoint. Catholic Chronicle, Toledo, Ohio, September 24, 1993, Page 3.
Medical Ethics Under Siege. The Toledo Blade, Toledo, Ohio, July 8, 1995, page 7.
Declaration of Death Requires Understanding Life. The Toledo Blade, Toledo, Ohio, June 15, 1994, page 11.
Renew America:
Vital distinctions in transplantation. July 9, 2007.
Vital organ donation. August 8, 2007.
Help! Organs taken from living people! June 4, 2008.
Person on earth begins at conception. June 16, 2008.
More on conception. June 22, 2008.
"Brain death"--enemy of life and truth. June 25, 2008.
Excision of vital organs is imposed death (*epivalothanasia*). July 9, 2008.
The demise of "brain death". September 8, 2008.
Revised Uniform Anatomical Gift Act 2006: is it unconstitutional involuntary servitude? December 10, 2008.
Bioethics experts challenge the 'Revised Uniform Anatomical Gift Act (2006)'. April 14, 2009.
Death starts when life has ended! January 26, 2010.
End of life planning--the Blumenaurer way. January 4, 2011.
Do your organs belong to the government? January 21, 2011.
Vital organ transplantation--not truly dead. August 18, 2011.
Why are Pastoral Care Workers ignorant of the realities of "brain death"?.February 16, 2012.

LETTERS:

Byrne PA. The Uniform Anatomical Gift Act. JAMA, 1982;248:1452.
Byrne PA. Response to Article on Brain Death. America, March 26, 1983:234-235.
Byrne PA. Letter to the Editor regarding "Magnesium Therapy in Premature Neonates with Apnea Neonatorum." Journal of the American College of Nutrition, 1988;7(6):520-521.
Byrne PA. Response to Editorial by Mr. Wright. The Public Medical News, June 13-27, 1989; II(12):5.
Evers JC and Byrne PA. Reply to Brain Death - The Controversy Continues. The Pharos of Alpha Omega Alpha, Spring 1991; 54(1):32-33.
Byrne PA. Phase II of Kevorkian's "Prescription: Medicide." HLI Reports, February, 1998:8.
Byrne PA. More on Organ Donations. HLI Reports, April, 1998:8-9.

FILM:

Continuum of Life. Byrne, PA. Author and Producer.

(Revised and updated (11-10-2013)

Exhibit B

Christopher B. Dolan (SBN 165358)
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The Dolan Building
1438 Market Street
San Francisco, CA 94102
Tel: (415) 421-2800
Fax: (415) 421-2830

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF OAKLAND

UNLIMITED CIVIL JURISDICTION

LATASHA WINKFIELD, the Mother of Jahi McMath, a minor

Petitioner,

v.

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

Respondents.

Case No.:

Petitioner's Further Briefing in Support of Imposition of TO and Order to Show Cause

Date: December 23, 2013
Time: 9:30 am
Dept: 31

Now comes the Petitioner, Latasha Winkfield, and files this supplemental briefing in support of her motion requesting a TRO prohibiting removal of life support from her daughter, Jahi McMath, and directing her physicians to follow Ms. Winkfield's requests for nutrition and medical treatments and the issuance of an OSC re permanent injunction.

ARGUMENT

1. California Recognizes the Fundamental Right of Citizens to Determine Their Own Health Care

The current issue in this case is whether Respondent, Children's Hospital Oakland, utilizing a state statute, is allowed to override the wishes of Latasha Winkfield concerning the best interests of

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her Jahi to continue to receive medical treatment which will prolong the life of her body or whether the court should sanction termination of her life support services based on a technical declaration of death which conflicts with Petitioner's religious beliefs and parental rights.

In the case of *Conservatorship of Drabick* (1988) 200 Cal.App.3d 185, the court, addressed the issue of whether Drabick, who suffered a brain injury in a car accident, and had been a nursing home, unconscious and in a persistent vegetative state for five years, would be allowed to die based on his conservator's decision to withhold medical treatment. Drabick's conservator sought a petition to withhold life support. The trial court denied the petition. The Appellate court reversed detailing a citizen's rights to dictate their medical treatment. Although *Drabick* dealt with a situation wherein a conservator sought to withdraw medical treatment which would hasten death, its rational and analysis are analogous to the case at bar in which the Petitioner seeks to maintain life- supporting equipment. Both cases deal with the right of a patient or their conservator/guardian to control their healthcare decisions: a right that survives the patient's consciousness or mental function.

In *Drabick* the court analyzed the right of individuals to make end-of-life decisions. The court stated the fact that ". . . each person has a right to determine the scope of his own medical treatment—is well established in this State." (*Id.* at 206.) Indeed, the court stated "there is substantial authority in California for the general proposition that incompetent persons retain certain fundamental rights." (*Id.* at 207.) Citing a host of California Appellate decisions, including the California Supreme Court, the court stated "The right is grounded both in the constitution and common law. (*Id.* at fn 206.)

"The California Legislature has also recognized the right to control one's own medical treatment and declared it to be fundamental." (*Id.*) The court recognized that such a fundamental right survives incompetence stating "[n]everthess, there is substantial authority in California for the general proposition that incompetent persons retain certain fundamental rights. (*Id.* at 207.) The court, citing the case of *In conservatorship of Valarie N.* (1985) 40 Cal.3d 143, stated "incompetence does not cause the loss of a fundamental right from which the incompetent person can still benefit." (*Drabick* at 208.) The court recognized that "medical care decisions must by guided by the individual patient's interests and values. Allowing persons to determine their own medical treatment is an important way in which society respects persons as individuals. Moreover, the respect due to persons

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as individuals does not diminish simply because they have become incapable of participating in treatment decisions. . . . . Lacking the ability to decide, [s]he has a right to a decision that takes [her] interests into account." (*Id.* at 208.) When considering statutory impacts on medical decision making, the *Drabick* court reasoned that the "Legislature did not attempt to eliminate other mechanisms for exercising the fundamental right to determine one's own medical treatment. Indeed, choice in medical care decisions is not a privilege granted by the state and subject to waiver through technical omissions. **To the contrary, the right in question is "exclusively" the conservatee's and one over which "neither the medical profession nor the judiciary have any veto power**." [*Citation omitted, emphasis added.*] (*Id* at 216.)

Drabick provides guidance in the instant case. Just as prohibiting *Drabick's* conservator from withdrawing life support would interfere with his fundamental right to make decisions regarding his healthcare while incompetent, allowing Children's Hospital to withdraw life support from Jahi would interfere with her fundamental right to make decisions re her health care- through her guardian, her mother.

In another *Bartling v. Superior Court* (1984) 163 Cal.3d 186, the court dealt with the flip side of the instant argument. Bartling suffered from a serious illness and was on a ventilator. Wishing to discontinue his ventilator he had pulled out his vent tubes several times. As a result the doctors put him in soft restraints so he could not do so again. As a result, Bartling sought a petition to force his doctors to take him off a respirator to hasten his death. His physicians, unlike these here, opposed his wishes and, unfortunately Bartling died the day before his petition could be heard. The court, recognizing the importance of the issues raised, addressed the merits notwithstanding Bartling's death. The Court stated that the individual, well recognized, legal right to control one's medical treatment predates legislative action to regulate end of life care. (*Id.* at 194.)

The *Bartling* court held that;

"the right of a competent adult patient to refuse medical treatment has its origins in the constitutional right of privacy. This right is specifically guaranteed by the California Constitution (art. I, § 1) and has been found to exist in the "penumbra" of rights guaranteed by the Fifth and Ninth Amendments to the United States Constitution. (*Griswold v. Connecticut*, 381 U.S. 479, 484.) "In short, the law recognizes the individual interest in preserving 'the

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inviolability of the person.' " (*Superintendent of Belchertown School v. Saikewicz, supra,* 370 N.E.2d 417, 424.) The constitutional right of privacy guarantees to the individual the freedom to choose to reject, or refuse to consent to, intrusions of his bodily integrity. (*Id.*, 370 N.E.2d at p. 427.)" (*Id* at 195.)

If it is true that a patient can chose a course of medical decision making designed to end their life doesn't it lie as a matter of equal or greater importance that a person, acting through their guardian has the right to make decisions, free of state influence, regarding the preservation of their life. It is a fundamental right of privacy, an"individual interest in preserving "the inviolability of the person."" (*Id.*) The *Bartling* court stated "**[h]owever if the right of the patient to self-determination as to his own medical treatment is to have any meaning at all, it must be paramount to the interests of the patient's hospital and doctors.**" (*Id.* at 196.) Here the hospital's desire to dispose of Ms. McMath is clearly subordinate of her right to self determination through her guardian.

2. The Court Needs to Empower Latasha Winkfield in the Exercise of Her Fundamental, Constitutional Right, to Make Health Care Decisions for Her Child and Order the Care She Desires.

This court must agree that if a person has a constitutional right to end their life they have an equal, if not greater right to undertake measures to prolong their life. There are numerous reports of people recovering from medically diagnosed "brain death." Latasha Winkfield has the fundamental right, over the feeble interests of Jahi's doctors, who it can not be forgotten created the critical condition faced by Jahi, to make decisions regarding Jahi's life. These decisions stem from her beliefs both as a mother as well as from her religious beliefs. Were it her choice, no one would dispute her right to remove the ventilator but, for some unfathomable reason, her decision to continue the ventilator is somehow trumped by the Hospital's desire not to put its doctors in the position of treating a "dead body" which is "unethical." Remarkably, while seeking to deprive this mother and chilkd of tehir rights to religious expression, privacy, and holding on to life, they have put forth no declaration from any physician stating that they believe that providing treatment to Jahi is causing them to violate their code of ethics. The right of Latasha Winkfield to make decisions concerning her daughter is a fundamental right of privacy and it must be recognized, respected, and protected so as to promote the paramount "individual interest in preserving "the inviolability of the person [Jahi McMath]."

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Latasha Winkfield needs to clearly, and unequivocally, be placed back into the position of the director of her daughter's care regimen. As the court maintains "status quo" it really does not do so at all, it hastens Jahi's death. She is without nutrition which is sorely needed to maintain her electrolyte balance. She is not having blood tests performed, or any treatments administered which may assist her in recovering. She is, in essence, being left to waste and die. Therefore, the court needs to affirmatively act so as to preserve the real status quo, authorizing Jahi's mother to make, and requiring the hospital to accept, medical decisions which treat Jahi as if she will survive their hellish ordeal thereby preserving Jahi's body with nutrients, medicines, and care that provide her with the best opportunity of life by any definition.

CONCLUSION

The right to determine the course of Jahi's medical treatment is an inviolate right which is hers, and in this case, her guardians. It does not enure to her doctors. The statute at issue does not trump her rights to self determination. Her right to fight for her survival, and be aided by a ventilator is as great as the right of one who wishes to give up the fight and end their life by removal from a ventilator. This fundamental right of self-determination arises out of her constitutional rights to privacy and is by both law, and nature, paramount to the interests of the hospital and its doctors.

Signed this 23rd day of December 2013,

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