



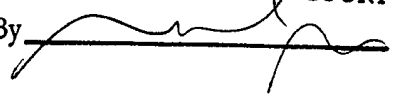
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CLERK OF THE SUPERIOR COURT

By 

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

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

CASE NO. RG 15760730

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

19 Plaintiffs,

**PLAINTIFFS' OPPOSITION TO MOTION
 FOR ORDER TO UNSEAL REPORTER'S
 TRANSCRIPT BY DEFENDANT
 FREDERICK S. ROSEN, M.D.;
 MEMORANDUM OF POINTS AND
 AUTHORITIES AND DECLARATION OF
 TERRY S. SCHNEIER IN OPPOSITION**

20 vs.

DATE: December 13, 2016
 TIME: 3:00 p.m.
 DEPT: 16

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

24 Defendants.

Date Action Filed: 03/03/15

25
 26 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

27 **COMES NOW** the Plaintiffs, by and through their attorneys of record, and
 28 oppose Defendant Rosen's Motion for Order to Unseal the Reporter's Transcript of

FAX FILING

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the Hearings on December 23 and 24, 2013 conducted by the Honorable Evelio M. Grillo in the probate matter of Winkfield v. Children's Hospital of Oakland, et al, Alameda Superior Court Case No. RG13-707598. For the reasons stated here, Plaintiffs argue that Jahi McMath continues to be a minor with a privacy right in medical information, that Defendant is not prevented from using the sealed transcript in evidence or discovering any and all relevant information about Jahi's medical treatment, and that Plaintiffs and their counsel have offered to so stipulate, which offer has been rejected.

Dated: November 29, 2016

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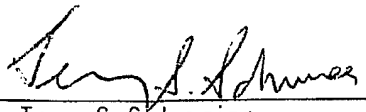
By: 
Terry S. Schneier
Attorneys for Plaintiffs

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A. Jahi's Constitutional Right to Medical Privacy Far Outweighs Defendants' Right To Publicize Details of Their Doctors' Private Medical Examinations Of Jahi Nearly Three Years Ago 11

B. Even Assuming Publication of The Sealed December 2013 Transcripts Overrides Jahi's Constitutional Privacy Rights (If Does Not), Contrary to Defendants' Claim, Plaintiffs Do Not Seek Reconsideration of Judge Grillo's Ruling Three Years Ago; Rather, Plaintiffs' Position Is That Jahi's Changed Condition Since December 2013 Alters the Legal Rights of the Parties 13

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1 **I. INTRODUCTION.**

2 Defendants argue that there no longer exists an overriding interest that
3 overcomes the public's right to access sealed testimony by medical doctors who
4 examined 13 year-old Jahi McMath in December 2013. Defendants claim the
5 physician-patient privilege no longer protects that privilege and that she has
6 waived any right to claim that privilege. As detailed below, Defendants' motion
7 to unseal the December 2013 transcript is meritless.

8 First, Defendants misstate the basis for Judge Grillo's January 2014 order. That
9 order sealing the December 2013 testimony was not based on any claim of
10 privilege. It was based on 13 year-old Jahi's constitutional right to privacy. Today,
11 three years later, 16 year-old Jahi remains a minor. It is established that minors have
12 a right of privacy secured by both the federal and state Constitutions that protects
13 private information about a minor's medical condition. (*Carey v. Population*
14 *Services International* (1977) 431 U.S. 678, 692-693, 97 S. Ct. 2010, 2019-2020, 52 L.
15 Ed.2d 675, 689-690; Cal. Const. art. I, § 1; *American Academy of Pediatrics v.*
16 *Lungren* (1997) 16 Cal.4th 307, 334 ["[T]here can be no question but that minors, as
17 well as adults, possess a constitutional right of privacy under the California
18 Constitution."]; *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181
19 Cal.App.3d 245, 276-278.) Indeed, intrusion of a minor's right to privacy is governed
20 by a standard which is 'apparently less rigorous' than the compelling state interest
21 test, 'because of the State's greater latitude to regulate the conduct of children.'
22 [Citation] (*Planned Parenthood, supra*, 181 Cal.App.3d at p. 279.) Even more
23 significantly, in direct contradiction of Defendants' argument that there is no
24 interest that overrides the public's right to access confidential medical information
25 in court records, both federal and state decisions agree that "the right to privacy
26 may be properly described as a *compelling or overriding* interest." (*Burkle v. Burkle*
27 (2006) 135 Cal.App.4th 1045, 1063 ["The right to privacy is an inalienable right
28

1 guaranteed under the California Constitution, and has been acknowledged as an
2 overriding interest"], citing *Press-Enterprise Co. v. Superior Court of Cal.* (1984) 464
3 U.S. 501, 512, 104 S. Ct. 819.)

4 Second, Judge Grillo's sealing order does not prevent Defendants from
5 producing the sealed transcript in evidence or from discovering any relevant
6 information about plaintiff's medical condition and treatment, and Plaintiffs have
7 offered to stipulate that Defendants may continue to access and use those sealed
8 transcripts to defend this lawsuit. (Please see Bruce Brusavich's letter to attorney
9 Jennifer Still in which he offered to permit unsealing of the record provided it was
10 subject to a confidentiality agreement throughout the pendency of this litigation
11 and Ms. Still's email response, attached collectively as Exhibit 1. Counsel declined
12 the offer.)

13 The sealing order simply prevents defendant from using the court files to
14 publicize what is and continues to be private medical information in sealed court
15 records concerning Jahi's condition and treatment in December 2013. Judge
16 Grillo's sealing order is limited to the transcripts of the hearing before Judge Grillo
17 in December 2013, because the testimony transcribed at that hearing described
18 examination of Jahi by medical professionals that is indisputably protected by the
19 constitutional right of privacy. This right has been universally held to be an
20 inalienable right and a compelling interest that overrides other competing rights
21 such as the right of public access to court records.

22 Defendants make three meritless arguments why the public's right to access
23 the December 2013 transcripts overrides Jahi's compelling right to privacy: 1) They
24 argue Plaintiffs seek "reconsideration" of Judge Grillo's ruling therefore it should be
25 unsealed; 2) They argue Plaintiffs have put out information to the public about
26 Jahi's condition so Defendants should also be allowed to publicize the December
27 2013 transcripts to rebut that information; and (3) They argue that " the
28

1 dissemination of misleading information about McMath's condition has caused
2 confusion about brain death."

3 As detailed below, all of the arguments are misplaced. First, Plaintiffs do not
4 seek to reconsider Judge Grillo's January 2014 order, but rather, as Judge Grillo,
5 Judge Freedman and this Court have recognized, and as the Court of Appeal has
6 implicitly acknowledged, changed circumstances preclude Defendants from
7 using collateral estoppel to claim Jahi has not suffered brain death. Second, Judge
8 Grillo's sealing order three years ago is limited to the publication of the December
9 2013 transcripts, and does not prevent either party, including Defendants, from any
10 legal and proper attempt to disseminate information that does not violate Jahi's
11 constitutional right to privacy or to access and use such information to litigate this
12 action. Third, when weighing Jahi's right of privacy against an amorphous teaching
13 moment about confusions about brain death, Jahi's constitutional right must be
14 protected.

15 For these reasons, the motion to unseal has no merit and should be denied.

16 **II. STATEMENT OF THE CASE.**

17 Plaintiffs submit the following statement of the underlying facts and
18 procedure leading up to this motion.

19 **A. The Negligence of CHO and Dr. Rosen.**

20 The pertinent allegations in the operative first amended complaint are as
21 follows: In 2013, Dr. Rosen diagnosed Jahi with sleep apnea and recommended
22 that he perform a surgery that was unreasonably complex and risky which
23 included the removal of her tonsils and adenoids, soft pallet and uvula, and a
24 submucous resection of her bilateral turbinates. On December 9, 2013, Dr. Rosen
25 took Jahi to the operating room at CHO to perform this extensive surgery.
26 Although Dr. Rosen noted that Jahi had an anatomical anomaly in that her right
27 carotid artery was more to the center and close to the surgical site, which raised
28

1 a serious issue as to this extensive surgical procedure, he didn't note this in any of
2 his orders for any of the other health care practitioners who would be following
3 Jahi post-op. (First Amended Complaint, ¶¶10-11, attached as Exhibit C to the
4 motion) hours after surgery, Jahi began coughing up blood. (Exb. C, ¶12) The
5 nurses assured the Winkfields the bleeding was "normal" but Jahi continued to
6 cough up blood. Ms. Winkfield pleaded again and again with the nurses to call
7 a doctor to Jahi's bedside, to no avail. (Exb. C, ¶¶ 13-16) The nurses continued to
8 contradict one another and give Ms. Winkfield conflicting instructions. (Exb. C,
9 ¶¶15-16) Ms. Winkfield's mother Ms. Chatman, an experienced hospital nurse,
10 arrived and also insisted that the nurses contact doctors to come to Jahi's aid,
11 to no avail. (Exb. C, ¶17)

12 At 12:30 a.m., Ms. Chatman observed on the monitors a serious and
13 significant desaturation of Jahi's oxygenation level of her blood and precipitous
14 drop in Jahi's heart rate. Ms. Chatman called out for the nursing and medical
15 staff to institute a Code. Five minutes later, the Code was called, and a doctor
16 finally came to Jahi's side, stating "Shit, her heart stopped." The cardiopulmonary
17 arrest and Code lasted 2 hours and 33 minutes, during which the doctors and
18 nurses failed to timely establish an airway for Jahi and did not perform an
19 emergency tracheotomy even after it became apparent that endotracheal
20 incubation attempts were not resulting in prompt and adequate oxygenation of
21 Jahi in a timely manner. During the resuscitation efforts, two liters of blood were
22 pumped out of Jahi's lungs. (Exb. C, ¶¶18-20)

23 During the Code, a nurse approached Ms. Chatman to console her,
24 telling her "I knew this would happen." In nursing notes added to the chart
25 several days later, a nurse noted that she had repeatedly advised the doctors in
26 the PICU of Jahi's deteriorating condition and blood loss and charted: "This writer
27 was informed there would be no immediate intervention from ENT or Surgery."
28

1 Another nurse also noted in the chart that despite her repeated notification and
2 documentation of Jahi's post surgical hemorrhaging and critical vital signs to the
3 doctors in the PICU, no physicians would respond to intervene on behalf of Jahi.
4 (Exb. C, ¶¶21-22)

5 On December 11, the Winkfields were advised that EEG brain testing
6 indicated that Jahi had sustained significant brain damage, and on December
7 12, the Winkfields were advised that a repeat EEG also revealed that Jahi had
8 suffered severe brain damage. They were advised that Jahi had been put on
9 the organ donor list and that they would be terminating her life support the next
10 morning. (Exb. C, ¶23) When the Winkfields and Ms. Chatman requested an
11 explanation as to what happened to Jahi, the administration of CHO ignored
12 their requests, instead continuing to pressure the family to agree to donate Jahi's
13 organs and disconnect Jahi from life support. At one point, David J. Duran, M.D.,
14 the Chief of Pediatrics, slammed his fist on the table and said, "What is it you
15 don't understand? She is dead, dead, dead, dead!" Unknown to the family at
16 the time, medical facilities were contacting CHO offering to accept the transfer
17 of Jahi. These offers were given to Dr. Duran on his orders and he did not share
18 them with the family. (Exb. C, ¶24)

19 After going into cardiac arrest and lapsing into a coma in the early
20 morning hours of December 10, Jahi was maintained on a ventilator at CHO. On
21 Friday December 20, 2013, the family obtained a temporary restraining order
22 preventing CHO from terminating Jahi's life support. (Exb. C, ¶26) Judge Grillo
23 endeavored to complete the proceeding in a "reasonably brief period." CHO
24 provided some records to the family, the Court appointed an independent
25 physician, and on December 24, three court days after the petition was filed, the
26 Court found that Jahi had suffered brain death. While the family's emergency
27 Petition for Mandate a week later was pending in the Court of Appeal (No.
28

1 A140590), the parties stipulated for Jahi's release to the family (Exb. C, ¶ 26),
2 Judge Grillo's TRO was dissolved, and the Court of Appeal denied the petition
3 as moot. To this date, Jahi continues to receive 24/7 nursing care in New Jersey,
4 pursuant to her eligibility in that state for participation in the New Jersey
5 Medicaid Program.

6 In its case management conference order on October 1, 2014, a true and
7 correct copy of which is attached as Exhibit 2, Judge Grillo expressly stated:

8 The fact that this court made a finding of brain death based on the
9 evidence presented in December 2013 would not appear to
10 prevent this court, or some other court, or the California Department
11 of Public Health from reaching a different conclusion based on new
12 facts. California law on claim preclusion and issue preclusion
13 permits "reexamination of the same questions between the same
14 parties where in the interim the facts have changed or new facts
15 have occurred which may alter the legal rights of the parties." (*City*
16 *of Oakland v. Oakland Police and Fire Retirement System* (2014) 224
17 Cal.App.4th 210, 230.)

18 On October 3, 2014, Plaintiffs filed, then 5 days later on October 8
19 withdrew, a petition with Judge Grillo to reverse his ruling of brain death based
20 on new and changed facts. Because the petition was withdrawn, no action
21 was taken on the petition.

22 **B. Jahi's Present Condition.**

23 Plaintiffs' operative First Amended Complaint, attached to Defendant's
24 Motion as Exhibit C, includes the following allegations that support Plaintiffs'
25 assertions that there have been changed circumstances since Judge Grillo's
26 order regarding brain death:

27 30. Since the Certificate of Death was issued, JAHl has
28 been examined by a physician duly licensed to practice in the
State of California who is an experienced pediatric neurologist with
triple Board Certifications in Pediatrics, Neurology (with special
competence in Child Neurology), and Electroencephalography.
The physician has a subspecialty in brain death and has published
and lectured extensively on the topic, both nationally and
internationally. This physician has personally examined JAHl and
has reviewed a number of her medical records and studies
performed, including an MRI/MRA done at Rutgers University
Medical Center on September 26, 2014. This doctor has also

1 examined 22 videotapes of JAHl responding to specific requests to
2 respond and move.

3 31. The MRI scan of September 26, 2014, is not consistent
4 with chronic brain death MRI scans. Instead, JAHl's MRI
5 demonstrates vast areas of structurally and relatively preserved
6 brain, particularly in the cerebral cortex, basal ganglia and
7 cerebellum.

8 32. The MRA or MR angiogram performed on September
9 26, 2014, nearly 10 months after JAHl's anoxic-ischemic event,
10 demonstrates intracranial blood flow, which is consistent with the
11 integrity of the MRI and inconsistent with brain death.

12 33. JAHl's medical records also document that
13 approximately eight months after the anoxic-ischemic event, JAHl
14 underwent menarche (her first ovulation cycle) with her first
15 menstrual period beginning August 6, 2014. JAHl also began breast
16 development after the diagnosis of brain death. There is no report
17 in JAHl's medical records from CHO that JAHl had begun pubertal
18 development. Over the course of the subsequent year since her
19 anoxic-ischemic event at CHO, JAHl has gradually developed
20 breasts and as of early December 2014, the physician found her to
21 have a Tanner Stage 3 breast development.

22 34. The female menstrual cycle involves hormonal
23 interaction between the hypothalamus (part of the brain), the
24 pituitary gland, and the ovaries. Other aspects of pubertal
25 development also require hypothalamic function. Corpses do not
26 menstruate. Neither do corpses undergo sexual maturation. There
27 is no precedent in the medical literature of a brain dead body
28 developing the onset of menarche and thelarche.

35. Based upon the pediatric neurologist's evaluation of
JAHl, JAHl no longer fulfills standard brain death criteria on account
of her ability to specifically respond to stimuli. The distinction
between random cord-originating movements and true responses
to command is extremely important for the diagnosis of brain death.
JAHl is capable of intermittently responding intentionally to a verbal
command.

36. In the opinion of the pediatric neurologist who has
examined JAHl, having spent hours with her and reviewed
numerous videotapes of her, that time has proven that JAHl has not
followed the trajectory of imminent total body deterioration and
collapsed that was predicted back in December of 2013, based on
the diagnosis of brain death. Her brain is alive in the
neuropathological sense and it is not necrotic. At this time, JAHl
does not fulfill California's statutory definition of death, which
requires the irreversible absence of *all brain function*, because she
exhibits hypothalamic function and intermittent responsiveness to
verbal commands.

C. The Trial Court's Order Overruling Defendants' Demurrers.

1. There is no collateral estoppel preclusion at this stage of the action.

In a thorough, well-reasoned ruling, a true and correct copy of which is
attached to Defendant's motion as Exhibit D, Judge Robert B. Freedman issued

1 the court's order overruling Defendants CHO and Rosen's Demurrers to the First
2 Cause of Action and Motions to Strike Portion of Plaintiffs' First Amended
3 Complaint. The court rejected Defendants' reliance on the grounds of
4 collateral estoppel, concluding in pertinent part:

5 [T]he court is not persuaded that it would be appropriate to
6 determine the collateral estoppel effect of the amended order and
7 judgment in Case No. RP13-707598 at the pleading stage, based
8 solely on the allegations in the FAC and the matters of which
9 judicial notice is taken. Collateral estoppel is an affirmative defense
10 as to which the defendants bear a "heavy" burden of proof (Kemp
11 Bros. Const. Inc. v. Titan Elec. Corp. (2007) 146 Cal.App.4th 1474,
12 1482.) There are at least some aspects of the collateral estoppel
13 determination that may require a more developed factual record.
14 The court has concerns, for example, about whether the factual
15 determinations in the context of the expedited probate petition -
16 which was filed for the purpose of determining whether CHO should
17 be ordered to continue providing medical care to Jahi - should
18 necessarily be binding on Jahi in a civil lawsuit for damages brought
19 on her own behalf. There are circumstances in which "[a] new
20 determination of the issue is warranted by differences in the quality
21 or extensiveness of the procedures followed in the two courts or by
22 factors relating to the allocation of jurisdiction between them."
23 (Restid Judgments § 28(3).) Here, the prior expedited petition did
24 not involve the same type of discovery and presentation of
25 evidence as is involved in a civil action. In addition, even where the
26 traditional elements of collateral estoppel (privity, finality and
27 necessary determination of identical issue in prior adjudication) are
28 met, there is also an "equitable nature of collateral estoppel" such
that the doctrine is to be applied "only where such application
comports with fairness and sound public policy." (Smith v. Exxon
Mobil Oil Corp. (2007) 153 Cal.App.4th 1407, 1414.) The court
believes it would be premature to determine and apply such
considerations based solely on the allegations and matters of
judicial notice before it, without a more fully developed factual
record. Further, as both sides recognize (and as Judge Grillo noted
in his Order Following Case Management Conference issued on
October 1, 2014), California law on issue preclusion permits
"reexamination of the same questions between the same parties
where in the interim the facts have changed or new facts have
occurred which may alter the legal rights of the parties." (City of
Oakland v. Oakland Police and Fire Retirement System (2014) 224
Cal.App.4th 210, 230.) Jahi has included new allegations in the FAC
as to such changed circumstances. (See, e.g., FAC, 30-36.) Such
allegations are to be taken as true on demurrer. (See, e.g., Aubry v.
Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 966-967.) The court is
hesitant to determine that, at the pleading stage, there is no factual
issue as to whether the facts have changed or new facts have
occurred.

On August 2, 2016, when this Honorable Court overruled Co-Defendant

1 Alicia Herrera, M.D.'s Demurrer and Motion to Strike Portions of the First
2 Amended Complaint, this court ruled similarly:

3
4 Defendant's contention that Plaintiffs are estopped from alleging
5 in the First Amended Complaint that Jahi McMath is still alive, and
6 therefore has standing to sue for medical malpractice, is not accepted.
7 The Court has already ruled that Defendant's collateral estoppel
8 argument cannot be resolved at the pleading stage, and that
9 ruling was recently affirmed by the court of appeal in an order
10 filed on July 12, 2016. The Court hereby takes judicial notice of the
11 July 12, 2016 order.

12
13 **2. Plaintiffs are not, by way of this action, seeking any redetermination
14 or reversal of the matters in the prior probate proceeding or seeking
15 to apply standards other than those set forth in the UDDA.**

16 As to the finality otherwise of a determination of death under sections
17 7180 and 7181 of the Probate Code, the court rejected "CHO's assertion that a
18 court's determination in the context of a such a dispute is to be accorded
19 finality in any and all other proceedings or disputes that may arise subsequent to
20 the life-support dispute in which the court's intervention was sought." The court
21 ruled:

22 In the absence of other authority addressing this assertion, the court
23 declines to make a final determination in this regard at the
24 pleading stage. The court is not persuaded by CHO's argument that
25 Plaintiffs are "improperly asking this court or a jury to reject the
26 accepted medical standards used to determine irreversible brain
27 death." Plaintiffs are not, by way of this action, expressly seeking any
28 redetermination or reversal of the matters in the prior probate
proceeding or seeking to apply standards other than those set forth
in the UDDA. Instead, they have brought a civil action independent
of the prior proceeding, which includes a cause of action asserted
on Jahi's behalf. CHO, as the party moving for dismissal of that
cause of action, bears the burden of showing that it is insufficient or
barred as a matter of law, and the court determines that CHO has
not met this burden at the pleading stage, based solely on the
allegations and matters of which the court takes judicial notice.

29 **III. ARGUMENT.**

30 **A. Jahi's Constitutional Right to Medical Privacy Far Outweighs Defendants'
31 Right To Publicize Details of Their Doctors' Private Medical Examinations Of
32 Jahi Nearly Three Years Ago.**

33 First, Defendants' motion to unseal misstates the basis for Judge Grillo's

34

1 January 2014 order. That order sealing the December 2013 testimony was not
 2 based on any mere claim of privilege, much less a privilege balanced against
 3 an opponent's right to discovery. It was based on 13 year-old Jahi's
 4 constitutional right to privacy, and it has nothing to do with Defendants' right to
 5 access the transcripts, which of course they have had in their possession ever
 6 since that testimony was transcribed. Defendants ignore Jahi's constitutional
 7 privacy rights and further ignore that the issue of sealing does not preclude
 8 Defendants from defending this litigation but only precludes Defendants from
 9 publicizing the most sensitive, private information that the Federal and state
 10 Constitutions guarantee must remain private except as between the litigants.

11 In this regard, it is well-established that minors have a right of privacy
 12 secured by both the Federal and state Constitutions that protects private
 13 information about a minor's medical condition. (*Carey v. Population Services*
 14 *International* (1977) 431 U.S. 678, 692-693, 97 S.Ct. 2010, 2019-2020, 52 L.Ed.2d
 15 675, 689-690; Cal. Const. art. I, § 1; *American Academy of Pediatrics v. Lungren*
 16 (1997) 16 Cal.4th 307, 334 ["[T]here can be no question but that minors, as well
 17 as adults, possess a constitutional right of privacy under the California
 18 Constitution."]; *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181
 19 Cal.App.3d 245, 276-278.) Indeed, intrusion of a minor's right to privacy is
 20 governed by a standard which is 'apparently less rigorous' than the compelling
 21 state interest test, 'because of the State's greater latitude to regulate the
 22 conduct of children.' [Citation] (*Planned Parenthood, supra*, 181 Cal.App.3d at
 23 p. 279.) Even more significantly, in direct contradiction of Defendants' argument
 24 that there is no interest that overrides the public's right to access confidential
 25 medical information in court records, both federal and state decisions agree
 26 that "the right to privacy may be properly described as a *compelling* or
 27 *overriding* interest." (*Burkle v. Burkle* (2006) 135 Cal.App.4th 1045, 1063 ["The right
 28

1 to privacy is an inalienable right guaranteed under the California Constitution,
2 and has been acknowledged as an overriding interest"], citing *Press-Enterprise*
3 *Co. v. Superior Court of Cal.* (1984) 464 U.S. 501, 512, 104 S.Ct. 819.)

4 Defendants' citation (Motion, 12-13) to *Britt v. Superior Court* (1978) 20
5 Cal.3d 844, 862-863, *In re Lifschutz* (1970) 2 Cal.3d 415, 433, and *Los Angeles*
6 *Gay and Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 311, is
7 unavailing. Those cases dealt with the physician- patient privilege found in
8 *Evidence Code* sections 996 and 1016 and whether medical records are
9 discoverable under those sections; neither of those sections are at issue here.¹

10 This case involves Jahi's constitutional right of privacy, which has been
11 held to be an issue of overriding interest. Defendants have in their possession
12 the sealed transcripts, and Plaintiffs agree that Defendants can introduce the
13 sealed transcripts into evidence at trial or in pretrial motions. The continued
14 sealing of the transcripts merely prevents Defendants from using the transcripts
15 to publicize what is indisputably a record of this minor plaintiff's private medical
16 examination by doctors.

17
18 **B. Even Assuming Publication of The Sealed December 2013 Transcripts**
19 **Overrides Jahi's Constitutional Privacy Rights (It Does Not), Contrary to**
20 **Defendants' Claim, Plaintiffs Do Not Seek Reconsideration of Judge Grillo's**
21 **Ruling Three Years Ago; Rather, Plaintiffs' Position Is That Jahi's Changed**
22 **Condition Since December 2013 Alters the Legal Rights of the Parties.**

23 Defendants' primary position underlying its motion to unseal the
24 December 2013 transcripts is that Plaintiffs are seeking reconsideration of Judge
25 Grillo's ruling three years ago and therefore Defendants should be able to
26 publicize that testimony to refute Plaintiffs' argument for reconsideration. As
27 should be abundantly clear, even assuming it were true that Plaintiffs were

1/27
28 _____
Sections 996 and 1016 provide in virtually identical language that "[t]here is no privilege under this article as to a communication relevant to an issue concerning the mental or emotional condition of the patient if such issue has been tendered by ... [t]he patient"

1 seeking reconsideration of Judge Grillo's ruling, Defendants are fully able to
2 access and use the transcripts in attempting to uphold that ruling and it is only
3 the publication of those transcripts that the sealing order precludes. But more
4 importantly, Plaintiffs are not seeking reconsideration of Judge Grillo's January
5 2014 ruling.

6 As Judge Freedman has ruled in this case: "Plaintiffs are not, by way of this
7 action, expressly seeking any redetermination or reversal of the matters in the
8 prior probate proceeding or seeking to apply standards other than those set
9 forth in the UDDA. Instead, they have brought a civil action independent of the
10 prior proceeding, which includes a cause of action asserted on Jahi's behalf.
11 CHO, as the party moving for dismissal of that cause of action, bears the
12 burden of showing that it is insufficient or barred as a matter of law, and the
13 court determines that CHO has not met this burden at the pleading stage,
14 based solely on the allegations and matters of which the court takes judicial
15 notice."

16 In overruling Defendants' demurrers, Judge Freedman and this Honorable
17 Court properly rejected Defendants' arguments that collateral estoppel
18 precluded Jahi from alleging that she has not suffered irreversible cessation of
19 all functions of the entire brain and has standing to bring her action for personal
20 injury against Defendants. (*City of Oakland v. Oakland Police and Fire
21 Retirement System* (2014) 224 Cal.App.4th 210, 230 [the "theory of estoppel by
22 judgment or res judicata . . . extends only to the facts in issue as they existed at
23 the time the judgment was rendered and does not prevent a reexamination of
24 the same questions between the same parties where in the interim the facts
25 have changed or new facts have occurred which may alter the legal rights of
26 the parties"]; accord, *Union Pacific Railroad Company v. Santa Fe Pacific
27 Pipelines, Inc.* (2014) 231 Cal.App.4th 134, 179-182; *Evans v. Celotex Corp.* (1987)
28

1 194 Cal.App.3d 741, 748; *United States Golf Assn. v. Arroyo Software Corp.* (1999)
2 69 Cal.App.4th 607, 616; *Hurd v. Albert* (1931) 214 Cal. 15, 26; 7 Witkin, Cal. Proc.
3 5th (2008) Judgm, § 434, p. 1087.) Further, as noted above, Judge Grillo
4 recognized and cited this very same principle.

5 Thus, century-old precedent, recognized by the Courts that have ruled in
6 this case, holds that neither *res judicata* nor collateral estoppel were ever
7 intended to prevent a re-examination of the same question between the same
8 parties where, in the interval between the first and second actions, the facts
9 have materially changed or new facts have occurred which have altered the
10 legal rights or relations of the litigants. (*Union Pacific Railroad Company v. Santa*
11 *Fe Pacific Pipelines, Inc.* (2014) 231 Cal.App.4th 134, 179-182, relying on *Hurd v.*
12 *Albert* (1931) 214 Cal. 15, 26 ["In the second trial, the court 'may and should
13 consider all the facts that exist, both prior and subsequent to the first action, so
14 as to determine properly what effect all of the facts, as they exist at the time of
15 the second trial, have on the rights of the parties'"]; see also 7 Witkin, Cal. Proc.
16 5th (2008) Judgm, § 434, p. 1087; *Wimsatt v. Beverly Hills Weight Etc. Internat.,*
17 *Inc.* (1995) 32 Cal.App.4th 1511, 1516-1517.)

18 Here, based upon medical experts' evaluations of Jahi since Judge
19 Grillo's ruling in 2013, she *no longer* fulfills standard brain death criteria, due to
20 her ability to specifically respond to stimuli. The distinction between random
21 cord-originating movements and true responses to command is crucial to
22 diagnosis of brain death. Jahi is capable of intermittently responding
23 intentionally to a verbal command. Additionally, the international team of
24 medical experts who gathered to observe, test and analyze Jahi's
25 unprecedented progress in the fall of 2014 saw evidence of brain activity in the
26 EEG. They observed the brain activity increase and become "readily
27 identifiable and profound" when Jahi's mother spoke to Jahi. A long and
28

1 thorough MRI was conducted in which they "unequivocally saw the presence of
2 brain structure including the evidence of ribbons in the brain. This is critical as it
3 showed that the brain, although damaged, was there structurally." Nine months
4 after Jahi was declared brain dead, the experts "would have expected to see
5 her brain had liquefied. It clearly was not." Additionally, the experts looked for
6 evidence of blood flow. "Blood flow was clearly evident. This does not happen
7 if a patient is brain dead."

8 In overruling Defendants' demurrer to Plaintiffs' personal injury claim, this
9 Court has properly rejected Defendants' argument that once their physicians
10 opined in December 2013 that Jahi was brain dead for the purpose of removing
11 life support, her death became static, fixed and permanent, and Jahi is
12 absolutely precluded from alleging and proving that she is, in fact, alive. To the
13 contrary, her condition has changed dramatically since Judge Grillo's ruling in
14 December 2013 – among other changes, there are vast areas of structurally and
15 relatively preserved brain, tests demonstrate intracranial blood flow consistent
16 with the integrity of the MRI and inconsistent with brain death, and Jahi
17 underwent menarche (her first ovulation cycle) and began breast
18 development.

19 Importantly, Defendants are fully able to defend against Plaintiffs' claims;
20 Judge Grillo's sealing order does not hamper Defendants' defense as they are
21 in possession of and can use the sealed transcript, and Defendants have not
22 come close to meeting its burden of proving that their right to publicize the
23 December 2013 transcripts overrides Jahi's constitutional right of privacy to the
24 confidential information surrounding the examination by Defendants' doctors of
25 her condition in the immediate aftermath of the tragically botched surgery and
26 post-operative treatment performed by Defendants three years ago.

27 ///

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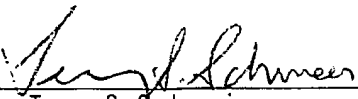
IV. CONCLUSION.

Plaintiffs have offered to allow Defendants to access the December 2013 transcripts with a protective order, maintaining the respect for the constitutional right of privacy of Jahi as to publication of the contents to the general public. Defendants refused and filed the instant motion.

For all the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion to Unseal the December 2013 Transcripts.

Dated: November 29, 2016

AGNEW & BRUSAVICH

By: 
Terry S. Schneier
Attorneys for Plaintiffs

1 **DECLARATION OF TERRY S. SCHNEIER**

2
3 I, Terry S. Schneier, declare:

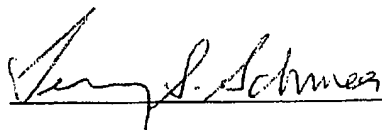
4 1. I am an attorney licensed to practice law before all of the courts of the
5 State of California, and am an associate at AGNEWBrusavich, A Professional
6 Corporation, counsel of record for plaintiffs here. I have personal knowledge of
7 the facts stated here, and if called as a witness I could and would testify
8 competently to them.

9 2. Attached collectively as Exhibit 1 and incorporated by reference here is
10 a true and correct copy of a letter sent by Bruce Brusavich to Jennifer Still on
11 October 18, 2016 suggesting that the parties agree to unseal the records
12 provided they were subject to a confidentiality agreement throughout the
13 pendency of the litigation, and a true and correct copy of Ms. Still's email
14 response refusing to agree unless Plaintiffs dismissed their First Cause of Action for
15 personal injuries.

16 3. Attached as Exhibit 2 and incorporated by reference here is a true and
17 correct copy of Judge Grillo's Order Following Case Management dated
18 10/1/14.

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

21 Executed this 29th day of November, 2016 at Torrance, California.

22
23 
24 _____

25 Terry S. Schneier, declarant
26
27
28

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

EXHIBIT 1

AGNEW BRUSAVICH
SERIOUS INJURY LAWYERS

Gerald E. Agnew, Jr.
Bruce M. Brusavich
Stephen C. Rasak
Terry S. Schneier
Puneet K. Toor

Robert N. Stone
Of Counsel

Daniel V. Favero
Administrator

Kevin P. Culpepper
Paralegal

October 18, 2016

VIA U.S. MAIL AND EMAIL: jstill@hinshaw-law.com

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

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

Dear Jennifer:

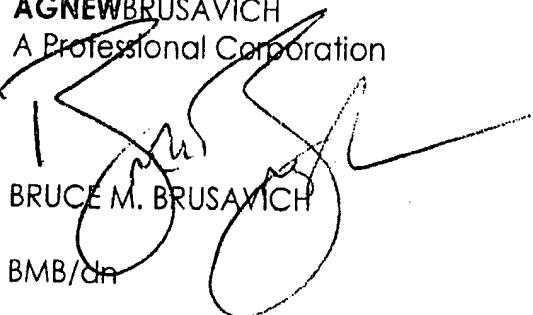
This will confirm our recent telephone conversation concerning your desire to unseal the confidential transcript of the probate proceedings concerning Jahi McMath.

I advised you that we would not oppose unsealing of the records and that we would stipulate to such an unsealing provided it is subject to a confidentiality agreement and the confidential nature of the transcript will be maintained throughout the pendency of this litigation. I am advised by Mr. Dolan that the transcript concerns a discussion about Jahi's medical condition and therefore gives rise to her privacy medical rights. Since she is still a minor, we intend to protect those rights. However, we recognize you may have some interest in seeing them in connection with this litigation.

Please let me know how you decide to proceed.

Very truly yours,

AGNEWBRUSAVICH
A Professional Corporation


BRUCE M. BRUSAVICH

BMB/dh

Main Office: 20355 Hawthorne Blvd | Torrance, CA 90503 | T: 310.793.1400 | F: 310.793.1499
Orange County: 2171 Campus Dr #240 | Irvine, CA 92612 | T: 949.229.7060 | F: 949.229.7960
E: ab@agnewbrusavich.com | www.agnewbrusavich.com

Terry S Schneier

From: Jennifer Still [jstill@hinshaw-law.com]
Sent: Tuesday, October 18, 2016 6:09 PM
To: 'Bruce Brusavich'
Cc: schneier@agnewbrusavich.com; 'Jan M Dunn'; 'Tom Still'
Subject: RE: McMath v. Rosen, et al.

Dear Bruce,

Thank you for your letter that addresses my inquiry of a Stipulation and Order to unseal the Reporter's Transcripts. I appreciate your attempt at a resolution.

Unfortunately, I cannot agree to your proposal. There is no longer any justification that the transcripts be sealed. There is a strong presumption that affords the public access to court records and transcripts. I do not believe that plaintiffs can meet their burden of demonstrating an overriding interest that overcomes the public access to court records. Plaintiffs waived Jahi McMath's privacy rights and right to confidentiality of her medical information when plaintiffs filed a personal injury action on behalf of Jahi McMath wherein it is claimed that she is not dead. The transcripts contain the evidence that Judge Grillo relied upon to find that Jahi McMath is dead. Furthermore, Ms. Winkfield and Mr. Dolan have repeatedly presented Jahi McMath's medical information to the public, via press conferences, media interviews, press releases and in video recordings posted by plaintiffs and Mr. Dolan on YouTube and Facebook.

If you agree to dismiss the first cause of action for personal injuries, I will reconsider.

I intend to file a motion to unseal as soon as I hear back from the court on a hearing date.

Please feel free to give me a call to discuss this issue further.

Thank you,
Jennifer

From: debbie@agnewbrusavich.com [mailto:debbie@agnewbrusavich.com]
Sent: Tuesday, October 18, 2016 1:12 PM
To: jstill@hinshaw-law.com
Cc: 'Bruce Brusavich' <brusavich@agnewbrusavich.com>; schneier@agnewbrusavich.com; 'Jan M Dunn' <dunn@agnewbrusavich.com>
Subject: McMath v. Rosen, et al.

Please see the attached letter. Thank you.

AGNEW BRUSAVICH
A Professional Corporation

Debbie Nawa
Legal Assistant
(310) 793-1400

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EXHIBIT 2



FILED
ALAMEDA COUNTY

OCT - 1 2014

By _____

[Handwritten signature]

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. RP13-707598

ORDER FOLLOWING CASE
MANAGEMENT CONFERENCE.

Date: 9/30/14
Time: 1:30 pm
Dept 31

The court held a case management conference at 1:30 pm on Tuesday, September 30, 2014. Christopher Dolan appeared for the Petitioner. Robert Straus appeared for Respondent. County counsel David Nefouse was present, but not appearing, on behalf of the Alameda County Coroner.

BACKGROUND.

On December 9, 2013, Jahi McMath, a thirteen year old child, had a tonsillectomy performed at Children's Hospital of Oakland ("CHO"). On December 11 and 12, 2013, Dr. Robert Heidersbach, and Dr. Robin Shanahan examined Jahi and concluded that she had suffered brain death under accepted medical standards.

1 On December 20, 2013, Petitioner filed this action seeking to compel Children's Hospital
2 to provide medical treatment to Jahi. The parties agreed to an examination of Jahi by Paul
3 Fisher MD, the Chief of Child Neurology for the Stanford University School of Medicine to
4 provide an independent opinion pursuant to Health and Safety Code section 7181. Dr. Fisher
5 examined Jahi the afternoon of December 23, 2013. Dr. Fisher opined that Jahi was brain dead
6 under accepted medical standards. On December 24, 2014, the court held a hearing and then
7 announced from the bench that the court's order was to deny the petition for medical treatment.

8 On December 26, 2014, the court issued a written order that denied the petition for
9 medical treatment. In the course of addressing the claims in the petition, the court found that
10 Jahi had suffered brain death as defined by Healthy and Safety Codes 7180 and 7181.
11

12 On January 3, 2014, the court held a hearing and issued an order that denied Petitioner's
13 motion for a court order ordering either that Respondent insert a feeding tube and a tracheal tube
14 into the person of Jahi McMath or that Respondent permit Petitioner to have a physician insert a
15 feeding tube and a tracheal tube into the person of Jahi McMath at the hospital. In explaining
16 that decision, the court stated, "Jahi McMath has been found to be brain dead pursuant to Health
17 and Safety Code sections 7180-7181."
18

19 On January 17, 2014, the court entered a "Final Judgment" in this case. The judgment
20 states, in part, "the Petition of Latasha Winkfield as mother of Jahi McMath, a minor, is
21 DENIED" and "the motions of petitioner that respondent perform or permit surgical procedures
22 was DENIED as stated in the order dated January 17, 2014."

23 On Wednesday September 24, 2014, counsel for petitioner sent an email to the court that
24 stated:
25
26

1 Dear Clerk in Department 31

2 From preliminary information I have received, to be soon verified, I believe that I
3 will be asking the court to reverse its ruling on brain death. As there is no other
4 party with standing (the hospital was, dismissed after Jahi was released and we
5 are not seeking to have her re-admitted - therefore Children's no longer has an
6 interest), I expect to do this by ex-parte application pursuant to CCP Section
7 128(8)(B). I would request a hearing date next Thursday and would like to know
8 what day the court would require briefing to be submitted by. I intend to have
9 declarations from various healthcare providers (experts in Neurology, EEG's and
10 Neuro Science) and live testimony from two expert witnesses. I also expect to
11 submit video/photo evidence to the court.

12 I have made no announcements to any press as of this time but they are bound to
13 catch wind so I also would like to confirm that Judge Grillo would hear the matter
14 in Department 31 rather than some other courtroom where we can use a projector
15 or TV to present evidence of a visual nature.

16 Please tell the Court that I understand that this matter placed a great strain on the
17 court previously and I want to try and approach this deliberately and not by
18 surprise to the Court.

19 On Thursday, September 25, 2014, the court notified counsel that it would set a case
20 management conference for 1:30 pm on Tuesday, September 30, 2014.

21 On Friday September 26, 2014, counsel for petitioner sent an email to the court and all
22 parties that stated:

23 Can we move the hearing date From September 30, 2014 to October, 2, 2014. I
24 have experts flying in for this hearing and they are only available on Thursday.
25 Also, will the court allow my experts to give testimony and if the hearing is
26 continued to Thursday, when are the written materials due. Thank you for your
assistance with this matter.

On Friday September 26, 2014, the court through its research attorney sent an email to
the court and all parties that stated:

///

1 Counsel and Dr. Fisher,

2 I have spoken with Judge Grillo. The CMC will remain on calendar for Tuesday,
3 September 30, 2014. It is a CMC and is not a hearing on the merits of any
4 motion. The court does not expect to hear testimony. The court will want the
5 parties to address this court's jurisdiction to entertain any motion given that
6 judgement was entered in January 2014. Assuming jurisdiction, there might be
7 other case management issues that the court will want to address.

8 The court held the CMC on Tuesday, September 30, 2014.

9 ORDER.

10 The CMC on September 30, 2014, was a CMC and there was no motion or application
11 pending. Petitioner now asserts that there is new evidence and intends to seek an order in this
12 case that Jahi McMath has not suffered brain death.

13 Petitioner must serve and file her motion or application on or before 2:30 pm on Friday,
14 October 3, 2014.

15 Respondent CHO must serve and file any opposition on or before 12:00 noon on
16 Wednesday, October 8, 2014.

17 Interested third parties such as the Alameda County Coroner and the California
18 Department of Public Health may serve and file statements on or before 12:00 noon on
19 Wednesday, October 8, 2014. The court will consider such statements as in the nature of amicus
20 curiae filings. (*Lopez v. Nissan North America, Inc.* (2011) 201 Cal.App.4th 572, 579-590 ["the
21 trial court issued a notice to the California Attorney General and the Department requesting the
22 Department's position on" the relevant issue]; *Blue Cross of California, Inc. v. Superior Court*
23 (2009) 180 Cal.App.4th 1237, 1246 ["The DMHC filed an amicus curiae brief in support of
24 defendants' demurrer".])

1 The court will hear Petitioner's motion or application on Thursday October 9, 2014, at
2 9:00 am. The court will hear the matter on the papers, including any audiovisual recordings.
3 The court will not hear live testimony. (CRC 3.1306.)

4 The court ORDERS petitioner to give notice of this order to the Alameda County
5 Coroner and the California Department of Public Health in a manner intended to permit them to
6 participate in the hearing .

7 The court ORDERS that all of the above papers be served by email, by same day
8 delivery, or by overnight delivery.

9 At the hearing on October 9, 2014, the court will consider several procedural matters in
10 addition to hearing Petitioner's motion or application. To assist the parties in addressing the
11 court's concerns, the court sets out its tentative analysis below. The analysis is below is
12 expressly tentative and is not an order of the court. (*Silverado Modjeska Recreation and Parks*
13 *Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 300 ["a trial court's tentative ruling is not
14 binding on the court"].)
15

16 Tentative thoughts on jurisdiction. The court entered judgment in this case on January
17 17, 2014. The general rule is that the court loses jurisdiction on the entry of judgment. *Nave v.*
18 *Taggart* (1995) 34 Cal.App.4th 1173, 1177, states:
19

20 Once a trial court makes a decision after regular submission, it has no power to set
21 aside or amend its ruling for judicial error except under appropriate statutory
22 proceedings. ... A judgment is a final determination of the rights of the parties in
23 an action or proceeding. ... A judgment is final in this sense when it terminates the
24 litigation between the parties on the merits and leaves nothing in the nature of
25 judicial action to be done (other than questions of enforcement or compliance). ...
26 After judgment a trial court cannot correct judicial error except in accordance
with statutory proceedings.

1 Where, however, the plaintiff for petitioner sought and obtained injunctive relief, then the
2 court retains jurisdiction to modify the relief "when the ends of justice will be thereby served."
3 (*Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066, 1079.) (See also *Welsch*
4 *v. Goswick* (1982) 130 Cal.App.3d 398, 404.) The court could, arguably, modify the relief
5 granted. There are two problems with this: (1) the court denied the petition and did not grant
6 relief and (2) petitioner is not seeking to modify the relief sought previously by seeking an order
7 directing Children's Hospital to provide new or different medical services to Jahi McMath.

8 Tentative thoughts on notice of claims against the proper respondents. A complaint or
9 petition must identify all necessary parties as defendants or respondents. (CCP 389(a).) A
10 complaint or petition must also identify the claims in a case. (CCP 425.10.) Although a party
11 may add parties and may amend or supplement a complaint, a party at a hearing on the merits
12 cannot pursue claims against non-parties or seek relief that was not identified in the complaint or
13 petition. To permit otherwise would be to deny the real parties in interest notice of the claims
14 asserted and an opportunity to oppose the claims.

15
16 The petition in this case sought to compel Children's Hospital to provide services to Jahi.
17 Petitioner now seeks to compel some state entity, presumably the Alameda County Coroner or
18 the California Department of Public Health, to void Jahi McMath's death certificate. Petitioner
19 therefore seeks to assert new claims against entities that were and are not parties to this case. It
20 would seem that if Petitioner were to seek an order in this case that Jahi is not brain dead, then
21 Petitioner would need to supplement the petition to name the interested parties and to state her
22 new claim. (CCP 464.) The court has found no case law addressing whether a party may move
23 to file a supplemental petition or complaint after entry of judgment.
24
25
26

1 Tentative thoughts on access to the courts and due process. Petitioner argues that this
2 court's order of December 26, 2013, decided that Jahi McMath had suffered brain death and that
3 Petitioner therefore must return to this court in this case to seek relief. The fact that this case
4 resolved many issues concerning Jahi does not, however, mean that this case is a procedural
5 vehicle for all future legal issues concerning Jahi.

6 Health and Safety Code section 103225 et seq sets out a procedure for amending a record
7 of death. The California Department of Public Health Vital Records has a form "Affidavit to
8 Amend a Death Record." (Form VS 24 (Rev 1/08.))¹ Petitioner may seek relief from the
9 California Department of Public Health. If Petitioner is not satisfied with the result at the
10 California Department of Public Health, then Petitioner may file a petition for a writ under CCP
11 1095 or CCP 1094.5.


12 Petitioner could file an action asserting a claim of some form against appropriate
13 defendants (E.g., California Department of Public Health Vital Records, Alameda County
14 Coroner, etc.) seeking declaratory and/or injunctive relief.

15 The fact that this court made a finding of brain death based on the evidence presented in
16 December 2013 would not appear to prevent this court, or some other court, or the California
17 Department of Public Health from reaching a different conclusion based on new facts.
18 California law on claim preclusion and issue preclusion permits "reexamination of the same
19 questions between the same parties where in the interim the facts have changed or new facts have
20 occurred which may alter the legal rights of the parties." (*City of Oakland v. Oakland Police and*
21 *Fire Retirement System* (2014) 224 Cal.App.4th 210, 230.)

22
23
24
25 ¹(<http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/CorrectingorAmendingVitalRecords.aspx>)
26

1 The court expresses no opinion on the proper procedural vehicle for petitioner to request
2 a determination that Jahi McMath has not suffered brain death, is not deceased under the law,
3 and that her death certificate should be voided. The court's tentative thinking is that the issue is
4 not presented properly in this case.

5
6 Dated: October 1, 2014

7 
8 Evelio Grillo
9 Judge of the Superior Court
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RP13707598

Case Name: Winkfield vs. Children's Hospital Oakland

- 1) Order Following Case Management Conference

DECLARATION OF SERVICE BY MAIL

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

I declare under penalty of perjury that the foregoing is true and correct. Executed on
~~September 29, 2014~~
October 3, 2014



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

Dolan, Christopher B.
The Dolan Law Firm
1438 Market Street
San Francisco, CA 94102

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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Walnut Creek, California 94596-3759

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is AGNEW BRUSAVICH, 20355 Hawthorne Blvd., 2nd Floor, Torrance, California. On November 29, 2016, I served the within document **PLAINTIFFS' OPPOSITION TO MOTION FOR ORDER TO UNSEAL REPORTER'S TRANSCRIPT BY DEFENDANT FREDERICK S. ROSEN, M.D., etc.**

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Torrance, California, addressed as set forth below:

by placing a true copy thereof enclosed in a sealed envelope(s), and caused such envelope(s) to be delivered by hand delivery addressed pursuant to the document(s) listed above to the person(s) at the address(es) set forth below.

by electronic service. Based on a court order or an agreement of the parties to accept service by electronic transmission. I caused the documents to be sent to the persons at the electronic notification addresses as set forth below:

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20 I am readily familiar with the firm's practices of collection and processing
21 correspondence for mailing. Under that practice, it would be deposited with the
22 U.S. Postal Service on that same day with postage thereon fully prepaid in the
23 ordinary course of business. I am aware that on motion of the party served,
service is presumed invalid if post cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.

- 24 (State) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.
- 25 (Federal) I declare that I am employed in the office of a member of the
26 bar of this court at which direction the service was made.

27 Executed this 29th day of November, 2016, at Torrance, California.

28 
DEBBIE NAWA