

CIV-160607-CIV-DS1608931-PETENT-150602



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Petition Filed (Civil)



NEW FILE

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 07 2016

4 Attorney for Petitioners

BY 
CHRISTIAN HERNANDEZ, DEPUTY

ON DEMAND

5
6 **IN THE SUPERIOR COURT OF CALIFORNIA**

7
8 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

9 **UNLIMITED CIVIL JURISDICTION**

10
11 Alex Pierce, a minor, by Sabrina Pierce his
12 mother.

13 Petitioner,

14 v.

15 Loma Linda University Medical Center.

16 Respondent.

Case No.

17 VERIFIED EX-PARTE PETITION FOR
18 TEMPORARY RESTRAINING
19 ORDER/INJUNCTION: REQUEST FOR
20 ORDER OF INDENDENT
21 NEUROLOGICAL EXAM; REQUEST
22 FOR ORDER TO MAINTAIN LEVEL OF
23 MEDICAL CARE

24 I Sabrina Pierce am the mother of Alex Pierce who, on June 3, 2016 was involved
25 in a near drowning incident at Vista Murrieta High School. Alex attends Dorothy
26 McElhinney Middle School in Murrieta, CA. On June 3, 2016, Alex attended a school
27 sponsored pool party at Vista Murrieta High School. At one point in the evening,
28 students noticed Alex at the bottom of the pool. Students alerted the lifeguards to the
situation. Lifeguards placed Alex on a floating backboard in the pull and removed him
from the pool. 911 was called and Murrieta Fire paramedics arrived on the scene.

1 Murrieta Fire started CPR and detected a heartbeat and a pulse right away.
2 Murrieta Fire hooked Alex up to a ventilator and transported him to Inland Valley
3 Medical Center in Wildomar by ambulance. At Inland Valley, Alex received a CT scan
4 that revealed he did not have a spinal injury and that he did not have any broken bones.
5 Alex remained on a ventilator and continued to open his eyes and move his arms. Alex
6 remained Valley Medical Center for approximately 90 minutes until it was determined
7 that they could not provide the care Alex required. Alex was heliovacked to Loma Linda
8 Medical Center in Loma Linda.
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11 Once at Loma Linda, Alex was stabilized. Sometime late Friday June 3rd or early
12 June 4th, Alex was given an EEG to assess his brain activity. The EEG showed
13 measurable brain activity. Alex continued to open his eyes. A CT scan revealed that
14 Alex's heart and lungs were damaged, but given the proper treatment they could be
15 healed.
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18 Later Saturday evening, a neurologist examined Alex and diagnosed him with
19 brain spasms. The spasms continued through the evening. Another neurologist examined
20 Alex and diagnosed Alex with having brain seizures. The neurologist prescribed at least
21 four different medications for Alex to try to stop the seizures. After several hours on the
22 medications, Alex's seizures ceased. After receiving the medications for the brain
23 seizures Alex's demeanor changed drastically. Alex no longer opened his eyes or moved
24 his arms.
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1 On Sunday June 5, 2016, Loma Linda University Medical Center informed the
2 Pierce family that they were going to conduct a brain death test on Alex. The family
3 ardently opposed the brain death test. Sabrina Pierce asked the hospital for time to get a
4 second opinion about Alex's condition before the hospital performed the brain death test.
5 The family is concerned that the brain death exam itself, specifically the apnea test during
6 which Alex would be taken off the ventilator for several minutes and exposed to
7 dangerous levels of CO2 in his blood, could cause further injury to Alex's brain.
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10 I am a Christian and believe in the healing power of God. I do not want him pulled
11 off life support. Loma Linda University Medical Center has said that they have the right
12 to conduct the brain death test and if declared brain dead they claim they have the right to
13 remove Alex from life support.
14

15 I am hereby asking that Loma Linda University Medical Center be prevented from
16 removing my son, Alex Pierce, from his ventilator.
17

18 If Loma Linda removes Alex from a respirator and he stops breathing then they
19 will have ended his life as well as their responsibility to provide his future care for the
20 harm their negligence caused. For this reason we hereby request that an independent
21 examination be performed, including the use of an EEG. I also request that Loma Linda
22 University Medical Center be ordered to continue to provide such care and treatment to
23 Alex that is necessary to maintain his physical health and promote any opportunity for
24 healing and recovery of his brain and body. Failure to issue the Restraining Order will
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1 result in irreversible and irreparable harm so a basis in both law and fact exists for this
2 court's intervention.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 California Health and Safety Code Section 7180 (a) (The Uniform Determination
5 of Death Act) provides for a legal determination of brain death as follows; "(a) An
6 individual who has sustained either (1) irreversible cessation of circulatory and
7 respiratory functions, or (2) irreversible cessation of all functions of the entire brain,
8 including the brain stem, is dead. A determination of death must be made in accordance
9 with accepted medical standards."
10

11 Health and Safety Code Section 7181 provides for an "independent" verification
12 of any such determination stating; "When an individual is pronounced dead by
13 determining that the individual has sustained an irreversible cessation of all functions of
14 the entire brain, including the brain stem, there shall be *independent confirmation* by
15 another physician."
16

17 As established by the Court in *Dority v Superior Court* (1983) 145 Cal.App.3d
18 273, 278, this Court has jurisdiction over the issue of whether a person is "brain dead" or
19 not pursuant to Health and Safety Code Sections 7180 & 7181. Acknowledging the
20 moral and religious implications of such a diagnosis and conclusion, the *Dority* court
21 determined that it would be "unwise" to deny courts the authority to make such a
22 determination when circumstances warranted.
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1 Here, doctors from Loma Linda Medical Center have indicated that they intend to
2 perform two brain death exams on Alex Pierce, including apnea tests and a cerebral
3 perfusion test. Both of these exams will be performed by the same team in the same
4 hospital. Only Loma Linda's physicians have examined Alex in regards to possible brain
5 death.
6

7 Alex was seen at Inland Valley Medical Center immediately after his accident. At
8 that time he was responding to me and moving his arms and legs. His EEG showed
9 substantial brain activity. After Alex was transferred to Loma Linda, his attending
10 physician made the decision to sedate him. Since that time, Alex has been unresponsive.
11 As stated above, Alex's mother does not trust Loma Linda to be independent, given how
12 they are responsible for his current condition and they have a conflict of interest in
13 determining his condition. If Loma Linda can make a finding of brain death, they no
14 longer have to pay for any of his care, while if he is severely brain damaged, but not brain
15 dead, they may be legally liable to provide his ongoing care and treatment at Loma Linda
16 or elsewhere.
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20 Only one other case of this type is on record in California, namely the case of Jahi
21 McMath which was heard in Alameda County in December of 2013. That case, one of
22 first impression, where Nailah Winkfield challenged Children's Hospital Oakland's
23 determination of brain death after they negligently treated her daughter, Jahi, led to an
24 Order, issued by Hon E. Grillo, holding that an independent determination is one which
25 is performed by a physician with no affiliation with the hospital facility (in that case
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1 Children's Hospital Oakland) which was believed to have committed the malpractice
2 which led to the debilitating brain injuries Jahi suffered. ~~A true and correct copy of~~
3 ~~Judge Grillo's Order is attached to this Petition.~~ In the *McMath* case, the Trial Court
4 rejected the Hospital's position that the Court had no jurisdiction over the determination
5 of whether not Jahi McMath was "brain dead" or not.
6

7 In *McMath*, Judge Grillo stated that the Section 7180's language regarding
8 "accepted medical standards" permitted an inquiry into whether the second physician
9 (also affiliated with Children's Hospital Oakland) was "independent" as that term was
10 defined under Section 7181. Judge Grillo determined that the petitioner's due process
11 rights would be protected by a focused proceeding providing limited discovery and the
12 right to the presentation of evidence.
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15 The Court determined that, under circumstances which are strikingly similar to
16 those which present themselves here, the conflict presented was such that the court found
17 that the Petitioner was entitled to have an independent physician, unaffiliated with
18 Children's Hospital Oakland, perform neurological testing, an EEG and a cerebral blood
19 flow study. Indeed, the Court Ordered Children's Hospital Oakland to permit the
20 Court's own court appointed expert to be given temporary privileges and access to the
21 Hospital's facilities, diagnostic equipment, and technicians necessary to perform an
22 "independent" exam.
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25 In a Nevada Supreme Court case with similar facts, the court unanimously
26 questioned whether the American Association of Neurology guidelines that are used to
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1 determine brain death in both Nevada and California, “adequately measure all functions
2 of the entire brain, including the brain stem.” *In re Guardianship of Hailu*, 131 Nev. Adv.
3 Op. 89. (Nov. 16, 2015). In that case, Aden Hailu, a young college student, went into
4 cardiac arrest during emergency surgery for severe stomach pain and subsequently
5 suffered a brain injury. The hospital performed three EEGs, which showed some brain
6 activity, yet doctors still proceeded to declare her brain dead pursuant to Nevada’s brain
7 death statute, which is identical to California’s. Both states use the same guidelines to
8 determine brain death, namely those developed by the American Association of
9 Neurology. In this case, Loma Linda wants to proceed with a brain death exam, even
10 though Alex’s EEGs show brain activity.

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14 As stated above, the American Association of Neurology’s brain death exam
15 includes two separate apnea tests, during which patients are taken off the ventilator for up
16 to ten minutes to see if they will take a spontaneous breath. During this time, CO2 builds
17 up in the blood to dangerous levels. This buildup of CO2 can cause severe brain damage
18 and even death. See Coimbra Declaration.

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21 As in *Dority* and *McMath*, the unique circumstances of this case invoke the
22 Court’s jurisdiction and due process considerations require that this Court grant
23 Petitioner’s Petition for a Temporary Restraining Order and order that Loma Linda
24 University Medical Center permit Petitioner to obtain an independent medical
25 examination at Loma Linda with the assistance of the Medical Center’s diagnostic
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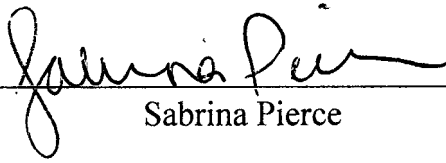
1 equipment and technicians necessary to carry out a repeat EEG and a cerebral blood flow
2 study.

3 In order to provide the requisite physical conditions for a reliable set of tests to be
4 performed, Alex Pierce should continue to be treated so as to provide his optimum
5 physical health and in such a manner so as to not interfere with the neurological testing
6 (such as the use of sedatives or paralytics).
7

8 WHEREFORE, petitioner prays:
9

- 10 1) That a Temporary Restraining Order be issued precluding Respondents from
11 performing any apnea tests on Alex Pierce be issued;
12
- 13 2) That an Order be issued precluding Respondents from removing Alex Pierce from
14 respiratory support, or removing or withholding medical treatment;
15
- 16 3) That an Order be issued that Respondents are to provide Alex Pierce treatment to
17 maintain his optimum physical health, including nutrition and thyroid hormone as
18 needed, in such a manner so as to not interfere with the neurological testing (such
19 as the use of sedatives or paralytics in such a manner and/or at such time that they
20 may interfere with the accuracy of the results).
21
- 22 4) That an Order be issued that Petitioner is entitled to an independent neurological
23 examination, with the assistance of Loma Linda University Medical Center's
24 diagnostic equipment and technicians necessary to carry out a repeat EEG and a
25 Cerebral Blood Flow Study.
26

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on June 7, 2016, at San Bernardino, California.
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5 _____
6 Sabrina Pierce
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