

Legal Update 2021

Top 10 Legal Developments
in Bioethics & Public Health

Thaddeus Mason Pope, JD, PhD, HEC-C
ASBH Annual Conference • Oct. 13, 2021

1

5 issues

2

Brain death
Medical futility
UMT
Unrepresented Pts
Conscience clauses

3

Brain Death

4



5



6

UDDA

7

5 issues

8

1

9

Mismatch

10

Clinicians do **not**
assess what
UDDA requires

11

UDDA

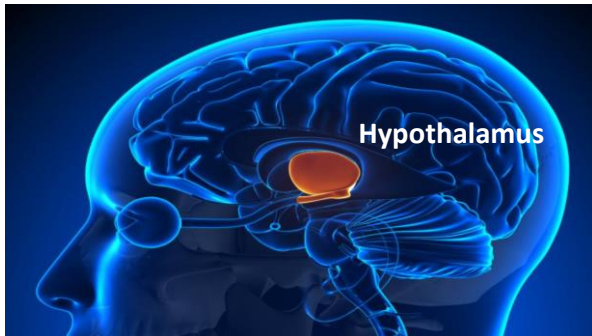
12

irreversible cessation
all functions
entire brain

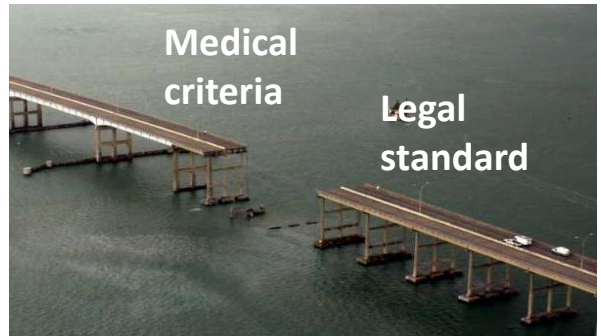
13

BUT

14



15



16

Align medical
guidelines to
legal criteria

17

2

18

“irreversible cessation
of all functions of
the entire brain”

19

“in accordance with
**accepted medical
standards**”

20



21

Clarify which
guidelines are
“accepted”

22

3

23

Accommodation
Exemption ?

24

4

25

Consent
for testing

26

2021

27



28



Uniform Law Commission

29

Moving to
amend UDDA

30

2020 – 2021
Study committee

31

July 2021
recommendation
approved

32

Drafting
committee
working now

33

1st reading
July 2022

34

2nd reading
July 2023

35

States start
adopting

36

Medical futility

37



38

TADA

39

1. Clinicians may withdraw LST **without** consent
2. For **any** reason
3. If hospital committee **agrees**

40

1999

41

BUT

42

Attacks

Legislature
Courts

43



44

Due process

H.B. 3099
S.B. 1381
S.B. 1944

45

End unilateral withdrawal

H.B. 2609
S.B. 917

46

All bills failed

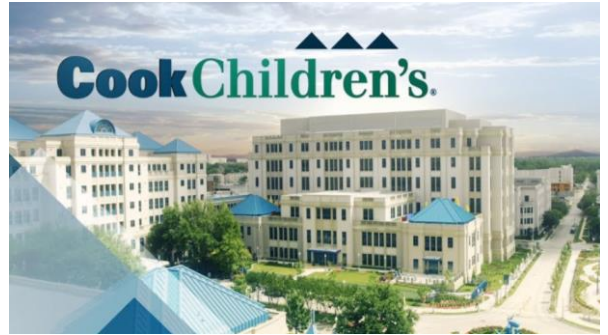
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48



49



50

“painful ...
with no clinical
benefit”

51

HEC
October 2019

52

22 members
unanimous
Neither medically nor
ethically appropriate

53

BUT

54

Preliminary injunction

55



56

After > 2 years

57



58

2^d case

59



60

Withdrew LST
without consent

61

Did **not** use TADA

62

Even **less** due process

No review committee

No 10-day transfer

63



64

Pattern
LEP, uninsured

65



66



67

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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE
 JUL 26 2021
 E. Escobedo

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF RIVERSIDE

Case No. **CVRI 2103327**

NATALIE BURGARD, BRANDON BAILEY,
 Plaintiffs,
 vs.
 KAISER FOUNDATION HOSPITALS, a
 Corporation, doing business as KAISER

COMPLAINT FOR DAMAGES FOR
 MEDICAL MALPRACTICE

1. Wrongful Death of Rylee Bailey
 2. Negligence
 3. Negligent Infliction of Emotional

68

Did consent
to w/d LST

69

“extraordinary
pressure”

70



71

JUDICIARY OF
ENGLAND AND WALES

72



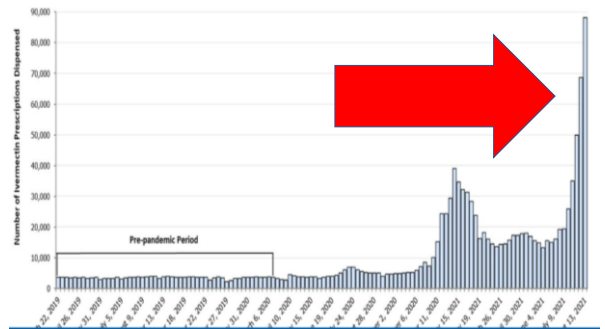
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Not all medical
futility conflicts
are in the ICU

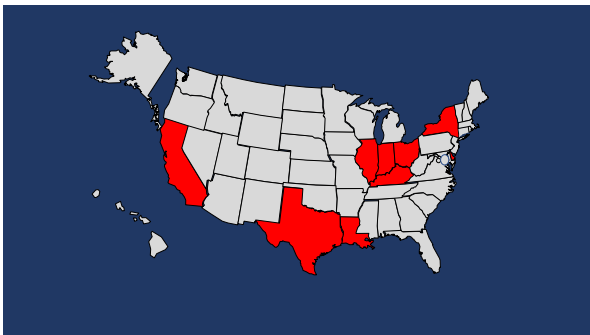
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75



76



77

“no right to compel
its use ... **outside** ...
standard of care”

78



79

The New York Times

Filing Suit for 'Wrongful Life'

More Americans are writing end-of-life instructions. Are medical providers listening?

By Paula Span

Jan. 22, 2021, 10:31 a.m. ET

80



81



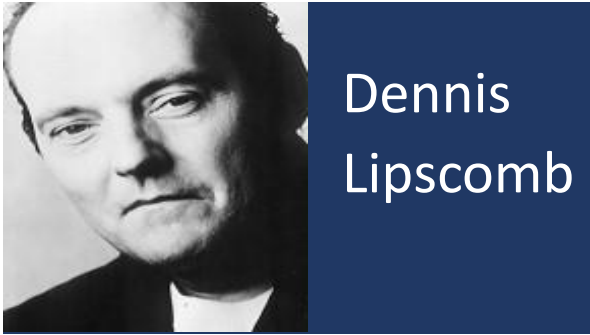
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84



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86

No damages for pain & suffering after death

87



Senate Bill No. 447

CHAPTER 448

An act to amend Section 377.34 of the Code of Civil Procedure, to civil actions.

[Approved by Governor October 1, 2021. Filed with Secretary of State October 1, 2021.]

88



89

ED: BRONX COUNTY CLERK 02/09/2021 08:03 AM INDEX NO. RECEIVED NY638E

DOC. NO. 46 NEW YORK SUPREME COURT - COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 34

GREENBERG, ELAINE Index No. 20340/2019E
- against - Hon. JOHN R. HIGGITT, J.S.C.

MONTEFIORE NEW ROCHELLE HOSP., et al

The following papers in the NYSCEF System were read on this motion for DISMISSAL, duly submitted as No. _____ on the Motion Calendar of January 22, 2021

	NYSCEF Doc. Nos.
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	27-34

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YOU LOSE!

91

COLETTE CRONIN a/k/a COLLETE SERVIDIO,
as Administratrix of the Estate of
PETER F. CRONIN, deceased,

Plaintiff,

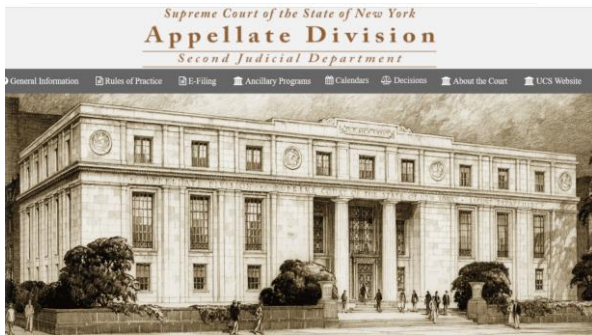
-against-

JAMAICA HOSPITAL MEDICAL CENTER,

2009

Defendant.

92



93

**Unrepresented
Unbefriended**

94



95

**Cannot
advocate
for self**

96

Have **no**
substitute
advocate

97

POSITION STATEMENT

Making Treatment Decisions for Incapacitated Older Adults
Without Advance Directives

AGS Ethics Committee

“most vulnerable”

98



99

PALTC
setting

100

IDT

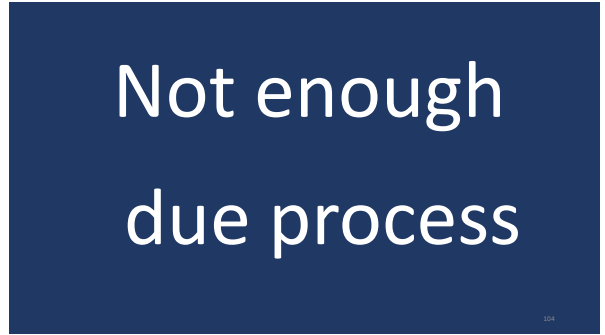
101

1. Physician
2. Nurse
3. Other staff

102



103



104



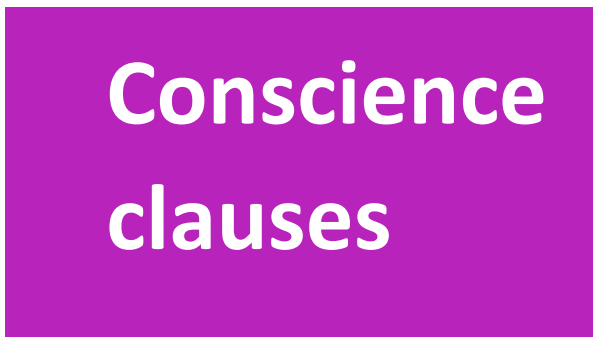
Assembly Bill No. 135

CHAPTER 85

105



106



107



108



Protecting Statutory Conscience Rights in Health Care: Delegations of Authority

109

May refuse to perform or participate **any** service ... violate moral, ethical, religious beliefs

110



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW, Rm. 7511
Washington, DC 20530

Tel: (202) 514-4027

September 7, 2021

VIA CM/ECF

Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals
for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

RE: *State of New York et al. v. U.S. Dep't of Health & Human Servs. et al.*, Nos. 19-4254, 20-31, 20-32, 20-41

111

BUT

112



113



114



115

unacceptably
compromise
 patient care




116

Contraception
 Female sterilization
 Vasectomies
 Emergency contraception
 Abortion

117

Transgender health
 HIV/AIDS
 Intersexuality

118



**Section 1557 of the
 Affordable Care Act**

119

Brain death
 Medical futility
 UMT
 Unrepresented Pts
 Conscience clauses

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B medicalfutility.blogspot.com

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