IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSON AND ESTATE OF ADEN HAILU, AN ADULT. FANUEL GEBREYES, Appellant, vs. PRIME HEALTHCARE SERVICES, LLC, D/B/A ST. MARY'S REGIONAL MEDICAL CENTER, Respondent.	No. 68531

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APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT,
RENO, NEVADA
THE HONORABLE FRANCES DOUGHERTY
DISTRICT COURT CASE NO. GR15-00125

APPELLANT'S OPENING BRIEF

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Appellant, Fanuel Gebreyes, by and through his counsel, David C. O'Mara, Esq., of The O'Mara Law Firm, P.C., herein submits his Opening Brief.

I. STATEMENT OF JURISDICTION

The Nevada Supreme Court has jurisdiction over this case, pursuant to NRAP 3A(b)(1) and 3A(b)(3). The Honorable Frances Doherty's Order was entered on July 30, 2015, and Appellant timely filed a Notice of Appeal on August 3, 2015. Appellant is appealing from the District Court's final order denying Appellant's temporary restraining order and permanent injunction.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the District Court erred in denying injunctive relief when the District Court determined that Ms. Aden Hailu ("Aden") met the definition of death pursuant to the Uniform Determination of Death Act.

Whether the District Court's application of medical standards and protocols outlined by the American Academy of Neurology was in error.

III. STATEMENT OF THE CASE

This case involves an action brought by Appellant on July 1, 2015, seeking a temporary restraining order and injunctive relief that would have restrained Respondent, Prime Healthcare Services, LLC d/b/a St. Mary's Regional Medical Center ("St. Mary's") from taking any action to remove Aden from the ventilator and to continue medical care. *II AA 461-462* (1:24-2:3)[1]. Appellant argued that "Respondents have disregarded proper procedures in declaring "brain death," and have prematurely determined that Aden is dead. *I AA 002* (2:22-24). Appellant sought the Court's assistance in determining that the declaration was improper. *Id.*

St. Mary's argued that Aden is legally dead in accordance with accepted

[1] The citation to the Appellant's Appendix ("AA") will include the Volume Number "I" followed by AA, and then page. Example Appellant's Appendix Vol. I page 45 is cited as *I AA 45*.

medical standards. St. Mary's argued that there is insufficient evidence to establish a likelihood of success on the merits, and the balance of all hardships tilts in favor of St. Mary's. St. Mary's claimed that it "will be compelled to administer useless life sustaining treatments to a dead person" and "there is a hardship on the hospital required to administer them in violation of the law, and its code of ethics, and the ethical principles of morality held by a licensed physician." Respondent argued, without any legal citations, that in 1995 the American Academy of Neurologists (AAN) published practice parameters regarding the declaration of brain death and claimed that the AAN criteria are the medically accepted procedures for determining death in Nevada and the entire country. *I AA 039; 160 (16:13-15).*

A hearing was conducted by the District Court on July 2, 2015 and on July 21, 2015. The District Court announced its oral decision in favor of Respondent on July 21, 2015, and a written order was filed on July 30, 2015.

IV. STATEMENT OF FACTS

Aden is a patient at Respondent, St. Mary's Regional Medical Center ("St. Mary's") in Reno, Nevada. *I AA 2.*

On April 1, 2015, Aden was admitted to St. Mary's for abdominal pain and a fever where Dr. Michelle Chu ("Dr. Chu") conducted a laparotomy and appendectomy. *Id.* On April 2, 2015, Mr. Fanuel Gebreyes ("Mr. Gebreyes"), Aden's father and eventual guardian, arrived in Reno to see his daughter. *Id.* at 173 (29:17-18). Mr. Gebreyes was unable to see or even speak with Dr. Chu for approximately five days after his arrival. *Id.* at 174 (30:6). Dr. Chu's response to Mr. Gebreyes' question regarding what happened to his daughter was, "[t]o tell you the trust, I, I cannot tell you much." *Id.* (30:13-15). Additionally, Dr. Chu responded, "[t]o tell you the truth, I don't know what happened to Aden." *Id.* (30:21-22).

After discussing the availability to transfer Aden to a different facility, Mr.

Gebreyes requested that Dr. Chu perform a tracheostomy on Aden. *Id.* at 175 (31:17-19). Additionally, Dr. Anthony Floreani, a pulmonologist, also suggested that a tracheostomy be performed on Aden. *Id.* (31:21-23). Dr. Chu originally told Mr. Gebreyes that she was checking on the procedure; however, the following day, Dr. Chu returned and advised Mr. Gebreyes that she was not going to perform the tracheostomy because Aden's case was now handled by lawyers and the administrators. *Id.* at 176 (32:12-21).

On April 12, 2015, Dr. Aaron Heide ("Dr. Heide") who was apparently contacted by St. Mary's to provide an initial consultation determined that Aden

> had severe neurological injury. She was not, based on the classification that we're dealing with today, classified under the brain death, or death by neurological criteria, but she was rapidly declining at the time.

II AA 259 (115:13-18). Dr. Heide testified that at this time Aden's neurological findings and functions were, were disappearing. *Id.* (115:22-23).

According to Dr. Brian Callister, ("Dr. Callister"), a physician, an electroencephalogram was performed on Aden in early April and that the EEG, as documented by the neurologist's notes, was that it was essentially normal. *Id.* at 367-368 (16:24-17:6). Two additional EEGs were conducted in the following week, and although they show deterioration, abnormal, and slow, there were brain waves diffusely recordable throughout the EEG and the neurologist commented on that. *Id* (17:9-16), *see also* 387 (36:2-7);[2] 386 (35:6-22). According to Dr. Callister, the results of the EEGs should have given just enough pause to say you can't say with certainty that Aden's chances are zero. *Id.* at 368 (17:19-21).

On June 2, 2015, Mr. Gebreyes was advised that Aden was going to be removed from the life-sustaining treatments. *I AA 176-177* (32:25-33:7), Mr.

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[2] On cross-examination, Dr. Callister again testified that there were three EEGs and that while they were deteriorating, they were not without brainwave activity.

Gebreyes was also informed that the hospital had performed an apnea test on Aden approximately one week earlier and it did not matter if, on multiple times, Mr. Gebreyes had refused consent to perform this test. *Id.* (32:24-33:12).

There is no evidence of a fourth EEG being performed on Aden and no EEG evidence that shows an absence of brain function. Indeed, Dr. Callister testified that he could not make the determination that Aden met the definition of death. Instead, Dr. Callister testified that,

I would say that there's enough variables and enough questions based on the condition of her physical body, the EEGs and the fact that no further neurologic testing has been done in several months, and the fact that no outside third party neurologist has looked at her that I would have pause. *II AA 399* (48:8-13).

V. SUMMARY OF THE ARGUMENT

The District Court incorrectly interpreted Nevada's Uniform Determination of Death Act (NRS 451.007(1)(b). The plain language of the Act specifically requires that if there is any functions of a person's brain, including his or her brain stem, then there is no "death". *See e.g. Conservatorship of Drabick*, 200 Cal. App.3d. 185 (1988)("Because his electroencephalogram is not flat he is not "brain dead.")

Additionally, the District Court failed to apply and construe the Act in a manner that makes Nevada's criteria uniform among the states which have enacted the law regarding the determination of death. NRS 451.007(3). For what appears to be the first time, a District Court has concluded that the medical standards and protocols to determine "brain death" are set by the American Academy of Neurology. Indeed, Nevada will be the first state to make a determination of death when the person was first determined to be alive, as confirmed by an electroencephalogram (EEG), without confirmatory evidence of a subsequent flat EEG.

VI. STANDARD OF REVIEW

"[Q]uestions of statutory construction, including the meaning and scope of a statute, are questions of law, which this court reviews de novo." *City of Reno v. Reno Gazette–Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003), *see also Arguello v. Sunset Station Inc.*, 127 Nev. Adv. Op. 29, 252 P.3d 206 (2011). The Nevada Supreme Court is being asked to review the District Court's decision that denied injunctive relief and determined that Aden met "the definition of death pursuant to the Uniform Determination of Death Act. Statutory interpretation is a question of law.

The Nevada Supreme Court has never addressed the provision of the Uniform Determination of Death Act (NRS 451.007) ("Act"). The Nevada Legislature has specifically required the Courts to consider the jurisprudence of sister jurisdictions. NRS 451.009 (the Act "must be applied and construed to carry out its general purpose which is to make uniform among the states which enact it the law regarding the determination of death.") *see also*, *Waldman v. Maini*, 124 Nev. 121 (2008).

VII. LEGAL ARGUMENT

The District Court's decision to deny Appellant's motion for injunction and enjoin Respondent from taking any action to remove Aden from the ventilator and to continue medical care, including, but not limited to, facilitating a tracheostomy and insertion of a feeding tube, thyroid hormone treatment and proper nutrition was incorrect and should be overturned. *II AA 461-462* (1:24-2:3); 136-137 (1:26-2:1) The Nevada Legislature intended to create a statute that precluded a finding of death, unless "a person has sustained an irreversible cessation of" "all functions of the person's entire brain, including his or her brain stem." This means if a person's entire brain, including the brain stem has any function, they do not meet the standard, under NRS 451.007(1)(b). If, as in this case, an electroencephalogram (EEG) is not flat, a person is not "brain dead."

a. The plain language of NRS 451.007(1)(b) compels the Nevada Supreme Court to conclude that Aden is alive.

"Unless ambiguous, a statute's language is applied in accordance with its plain meaning." *See, e.g., We The People Nevada v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1170 (2008). NRS 451.007(1)(b) provides,

> [f]or legal and medical purposes, a person is dead if the person has sustained an irreversible cessation of ... (b) **All functions** of the **person's entire brain, including his or her brain stem.**

NRS 451.007(1)(b) (emphasis added). The language of the statute sets forth the specific requirements for a determination of death, which requires, a "person's entire brain, including his or her brain stem" cease to function. This means that since Aden was determined to have "brainwave" activity, she is not "brain dead." *See e.g. Conservatorship of Drabick*, 200 Cal.App.3d 185 (1988)("Because his electroencephalogram is not flat he is not "brain dead"); *see also Petition of Jones*, 107 Misc. 2d 290 (death was not declared when "EEG suggested no, or at best, minimal activity"); *Matter of Welfare of Colyer*, 99 Wash.2d 114 (1983)[3].

Contrary to the District Court's findings, Dr. Callister's testimony specifically showed that the electroencephalogram ("EEG) on Aden was really pretty different or inconsistent with some of the other findings and that the EEG was essentially normal. *II AA 368* (17:1-6). Dr. Callister testified that the electroencephalogram, the EEG, was repeated twice more, two more times in the following week and while the EEG showed deterioration, it still showed diffuse brain waves. *Id.* at 17:9-13. "They

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[3] "[d]espite Bertha Colyer's dismal prognosis, she was not legally dead according to the criteria of the Uniform Determination of Death Act, which was judicially adopted in Washington. *See In re Bowman,* 94 Wash.2d 407, 617 P.2d 731 (1980). The Washington Court held that, "[w]hile Bertha Colyer was unable to breathe without a respirator, her other circulatory functions, such as her heartbeat and blood pressure, remained stable. Moreover, while she remained in a coma, inert to any sensory stimuli, ***monitors*** indicated some minimal reflex movement in the lower portion of her brain stem and the cerebral cortex." (emphasis added).

were abnormal and they were slow, but there were brain waves diffusely recordable throughout the EEG and the neurologist commented on that." *Id.* 17:13-16.

Dr. Heide testified that the criteria only required him to ascertain if Aden "had any potential for functional outcome based on her neurological status" is outside the criteria of the Uniform Determination of Death Act. *II AA 271.* The District Court, unfortunately, accepted Dr. Heide's claim that since Aden did not have the potential for "functional outcome" she was dead. In fact, the District Court was "struck by the conflict and the challenge of honoring Aden as living while disregarding that part of us who have to honor her if and when she dies." One must be careful to distinguish the effect of this decision – determining when a person has died – and when a person may be allowed to die. *See e.g. In Matter of Storar*, 52 N.Y.2d 363, 438 N.Y.S.2d 266, 420 N.E.2d 64. The Act requires the cessation of all functions, not whether a person has any potential for functional outcome. Thus, the Court's determination of death was in error because it was not based on the evidence showing that Aden still had brainwaves, but instead, based upon what the District Court stated as "the most important person's right to exist and to pass with dignity and respect." *II AA 458* (107:2-3.)

Under the plain language of the Act, Aden is alive, and accordingly, the Nevada Supreme Court should overturn the District Court's order. The issue of life or death far outweighs any of the factors for injunctive relief. The District Court's misapplication of the Act would cause Aden irreparable harm because failure to impose injunctive relief will terminate Aden's life.

b. The District Court did not apply or construe the Act uniformly with other states that have enacted this law.

A thoughtful and comprehensive reading of NRS 451.007(1)(b) with the understanding of the uniform criteria maintained throughout the country will allow

only one reading and method of implementation of the provisions of NRS 451.007(1)(b). A person cannot be determined dead unless a person's entire brain, including his or her brain stem, ceases to function. This means that if an "electroencephalogram is not flat" a person is not "brain dead." *See e.g. Conservatorship of Drabick,* 200 Cal.App.3d 185 (1988), see also *Brophy v. New England Sinai Hosp. Inc.*, 398 Mass 317, 497 N.E.2d 626 (1986).[4]

NRS 451.007(3) provides that the Act "must be applied and construed to carry out its general purpose which is to make uniform among the states which enact it the law regarding the determination of death." Thus, when applying the Act the Nevada Legislature requires the Courts to consider the jurisprudence of sister jurisdictions. *Waldman v. Maini*, 124 Nev. 121 (2008). Additionally, the Act provides that the determination of death must be made in accordance with accepted medical standards. NRS 451.007(2).

The District Court concluded that Nevada, and every other state that has adopted this Act, has applied and construed the Act under the standards and protocols outlined by the American Academy of Neurology. Contrary to the arguments/statements made by Respondent's counsel, most, if not all of the recorded cases in the United States applying the Uniform Act have followed a different set of criteria. *See e.g. I AA 169-170* (25:8-26:1).

In *Petition of Jones,* the court held that in order to make a determination of brain death, the medical professional should apply the following procedures:

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[4] In *Brophy*, the Massachusetts Court found that Mr. Brophy was not technically brain dead even though he has suffered serious and irreversible damage to his brain. In a footnote, the Court stated, "[a]n electroencephalogram (EEG) performed on April 13, 1984, was abnormal, but did not indicate controlled electrical activity generated by millions of cortical neurons, which were normal." *Brophy*, 398 Mass. at 424.

> Follow the procedure of neurological testing as established by the so-called Harvard criteria with reference to brain reflexes. (2) Appoint a committee of at least two other experts to review the findings and make their own tests.[5]

Petition of Jones, 107 Misc.2d 290. In this case, the treating physician, only after observing that there was no brain activity shown on the EEG and after conducting a series of recommended neurological tests to determine that there was any brain action did the physician conclude that the brain was dead. "If all three are in agreement that the brain is dead and it is irreversible, then they may remove the life support system without application to a court." *Id.*

In *Estate of Stewart*, the Illinois Court determined that "[a] diagnosis of brain death requires that several factors be evaluated, as discussed by Dr. Caron in his affidavit and by the courts in *Janus*[6] and *Haymer*[7]. *Estate of Stewart*, 236 Ill.App.3d 1 (1991).These include unresponsive coma, apnea, absence of cephalic reflexes, absence of spinal reflexes, isoelectric[8] EEG and an absence of drug intoxication." *Id.* In this case, while discussing the elements of brain death, "using the criteria established by the Ad Hoc committee of the Harvard Medical School," Dr. Caron found that "the fifth requirement is an isoelectric EEG" which was never performed. *Id.*

In Ohio, physicians utilize the Harvard standards which Dr. Bryne's testimony discussed. *State v. Clark*, 20 Ohio App.3d 266 (1984). As of 1983, Ohio physicians

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[5] Dr. Callister testified that it is "very pertinent to your line of questioning, if I may add, is the fact that we have one neurology group and one pulmonary group that's been managing and making the recommendations and the interpretation and clinical opinion was of one particular neurologist." *II AA 382-383* (31:22-32:1).
[6] *Janus v. Tarasewicz*, 135 Ill.App.3d 936, 90 Ill.Dec.599.
[7] *In re Haymer*, 115 Ill.App.3d 349, 71 Ill.Dec. 252 (1983).
[8] "isoelectric" means having or involving no net electric charge or difference in electrical potential.

require two flat EEG tests within a twenty-four hour period when determining legal brain death. *Id.* Today, physicians across the country still require the performance of multiple EEGs which must be "flat" to determine brain death.

In *Hawkins v. DeKalb Medical Center, Inc.,* 313 Ga.App.209 (2011), the doctor who performed an electroencephalogram (EEG) concluded that the results were consistent with a global anoxic brain injury and he believed that at that point that brain death in Ms. Hawkins was "probably inevitable." The doctor, however, did not declare Ms. Hawkins dead. *Id.* Instead, a second and third EEG were performed on Ms. Hawkins and only after these tests demonstrated electrocerebral silence and the absence of brain wave activity was she declared dead. *Id.* A doctor involved in this case further stated that it would have been outside the ***standard of care not to perform the brain death testing***. *Id.*

The Nevada Supreme Court should follow the reasoning in *Jones*, *Hawkins*, and *Estate of Stewart* and hold that language of the Uniform Act requires that all tests, including the EEG, demonstrate electrocerebral silence and the absence of brain wave activity in order to declare a person dead. The Nevada Legislature, through the plain language of the Uniform Act, has demanded that the determinate of death only comes after the entire brain, including the brain stem, ceases to function, which cannot occur unless an EEG is flat. *Conservatorship of Drabick,* 200 Cal.App.3d 185 (1988).

The evidence in this case shows that the District Court erred when it determined that Aden meets the definition of death pursuant to the Uniform Act under the standards and protocols outlined by the American Academy of Neurology[9]. Indeed, the medical standards throughout the country is that death must

[9] The Court's decision has failed to set forth the actual standards and protocols of the American Academy of Neurology, but instead, simply chose one doctor's

be shown by a complete silence and absence of brain waves and that in these cases death cannot be determined unless the EEG is flat.

Dr. Callister's unrefuted testimony demonstrates that under the standards of our sister jurisdictions, Aden is alive and that the determination of death by St. Mary's did not follow accepted medical standards. In fact, Dr. Callister's unrefuted testimony, was that St. Mary's performed three EEGs over a period of time and while the EEG showed deterioration, they still all showed diffuse brain waves. *II AA 368* (13:16).

Unlike Nevada's sister jurisdiction, St. Mary's did not, and has not conducted an EEG that was flat, and thus, Aden is still alive under the Uniform Act. *Conservatorship of Drabick,* 200 Cal.App.3d 185 (1988). Under the District Court's decision, Nevada will be the first state that has adopted the Uniform Act to hold that death can be determined without first obtaining a flat EEG after previous EEG(s) showed signs of brain waves.[10]

The District Court's decision has failed to apply and construe the Uniform Act along the same standards as our sister jurisdictions. The District Court erred. Aden does not meet the definition of death pursuant to the Uniform Act, and accordingly, the District Court's decision must be overturned and remanded.

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testimony (a neurologist) over another without any evidentiary support of whether the AAN standards where even followed.

[10] Even when an individual suffers from a bullet wound to the head, the standard medical practice is to perform an EEG. *See People v. Bonilla* (appeal consolidated with *People v. Eula*), 63 N.Y.2d 341 (1984)("An EEG indicated an absence of activity in the part of the brain tested.") The determination of death was not determined until the tests were repeated and the same diagnosis was reached the following day. *Id.*

c. St. Mary's must continue to administer life-sustaining treatment to Aden.

"The medical profession is trained to preserve life, and to care for those under its control." *Matter of McCauley*, 409 Mass. 134, 138, 565 N.E.2d 411 (1991). "The ethical integrity of the medical profession" allows "hospitals the full opportunity to care for patients under their control, especially when medical science is available to save a patient's life. *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 87 P.3d 521 (2005). In this case, the integrity of medical care outweighs St. Mary's and its physicians' objections to refuse, withhold and withdraw medical care to Aden.

In this case, the evidence shows that the doctors have failed to meet the criteria of the profession, failed to meet the criteria of society and have failed to conform to the reasonable standards with respect to human dignity in reaching their conclusion.

Contrary to the long standing belief that medical professionals are trained to preserve life and to care for their patients, St. Mary's argues that it should not have to care for Aden or provide her treatment. *I AA 038* (2:6-7). In fact, St. Mary's argues, in essence, that it has the authority to withhold and withdraw life-sustaining treatment from Aden, which directly contradicts the language of NRS 449.626.

Pursuant to NRS 449.626, a physician cannot withhold or withdraw life-sustaining treatment from a patient unless the physician has written consent from a person who has authority. Regardless of this statutory requirement, St. Mary's informed Mr. Gebreyes, the individual with authority, that it would remove the life-sustaining treatment from Aden, without his consent. *I AA 176-177* (32:25-33:2).

Unfortunately, the District Court has misinterpreted NRS 449.626, mostly in part because the District Court accepted the faulty argument by St. Mary's that Aden met the definition of death pursuant to the Uniform Act. NRS 449.626 precludes a physician from withholding or withdrawing life-sustaining treatment without the written consent of a person in authority. As such, NRS 449.626 requires the

physician to meet his ethical obligation to care for his patient in his care with all of the medical science available. *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 167.

In light of the fact that Aden is alive, the life-sustaining treatment cannot be withheld or withdrawn without the written consent of Mr. Gebreys and St. Mary's is precluded from withholding or withdrawing life sustaining treatment. NRS 449.626. St. Mary's has an ethical and statutory obligation to administer the treatment to Aden, and the medical and care plan to maintain this treatment and to preserve life is in the best interest of Aden.

d. Aden is entitled to injunctive relief.

A permanent injunction may issue to restrain a wrongful act that gives rise to a cause of action. *State Farm Mut. Auto. Ins. v. Jafbros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993). Permanent injunctive relief may only be granted if there is no adequate remedy at law, a balancing of equities favors the moving party, and success on the merits is demonstrated. *Id.* "[Q]uestions of statutory construction, including the meaning and scope of a statute, are questions of law, which this court reviews de novo." *City of Reno v. Reno Gazette–Journal* 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003).

In this case, there is no adequate remedy of law except to enjoin St. Mary's from withholding and withdrawing life-sustaining treatment from Aden in violation of NRS 449.626. Compensatory damages are an inadequate remedy.

Aden will suffer immediate and irreparable harm if St. Mary's is not enjoined and restrained from removing her from the ventilator because she is alive. Aden does not meet the definition of death under the Uniform Determination of Death Act for legal or medical purposes. Aden will be precluded from receiving the life-sustaining treatment she is entitled. Aden will be immediately and irreparably

harmed because the treatments will be removed in violation of NRS 449.626.

Aden is likely to succeed on the merits of her claims because the medical evidence presented supports the determination that Aden is alive.

Dr. Callister's testimony specifically showed that the electroencephalogram ("EEG) on Aden was really pretty different or inconsistent with some of the other findings, and that the EEG was essentially normal. *II AA 368 (17:1-6)*. Dr. Callister testified that the electroencephalogram, the EEG, was repeated twice more, two more times in the following week and while the EEG showed deterioration, it still showed diffuse brain waves. *Id.* at 17:9-13. "They were abnormal and they were slow, but there were brain waves diffusely recordable throughout the EEG and the neurologist commented on that." *Id.* 17:13-16.

Because Aden was determined to have "brainwave" activity, she is not "brain dead." *See e.g. Conservatorship of Drabick*, 200 Cal.App.3d 185 (1988)("Because his electroencephalogram is not flat he is not "brain dead"); *see also Petition of Jones*, 107 Misc. 2d 290 (death was not declared when "EEG suggested no, or at best, minimal activity"); *Matter of Welfare of Colyer*, 99 Wash.2d (1983)[11]. Thus, Aden is likely to succeed on the merits because she is alive and does not meet the definition of "death" under the standards and protocols of the Uniform Act.

When balancing the equities and the potential harm, equity favors granting injunctive relief. The medical evidence shows that Aden is alive and does not meet the definition of "death." Additionally, withholding and withdrawing the life-

[11] "[d]espite Bertha Colyer's dismal prognosis, she was not legally dead according to the criteria of the Uniform Determination of Death Act, which was judicially adopted in Washington. *See In re Bowman,* 94 Wash.2d 407, 617 P.2d 731 (1980). The Washington Court held that, "[w]hile Bertha Colyer was unable to breathe without a respirator, her other circulatory functions, such as her heartbeat and blood pressure, remained stable. Moreover, while she remained in a coma, inert to any sensory stimuli, ***monitors*** indicated some minimal reflex movement in the lower portion of her brain stem and the cerebral cortex." (emphasis added).

sustaining treatment would be in violation of NRS 449.626 because the Nevada Legislature has specifically precluded a physician/hospital from unilaterally withholding and withdrawing life-sustaining treatment from a patient, like Aden, unless there is written consent.

The State's and public interest in preserving life is both fundamental and compelling and is the basic purpose for which statutes are enacted. *See e.g. McKay v. Bergstedt*, 106 Nev. 808 (1990). The State's interest in preserving all human life, including Aden, should not be suspended or minimized under any condition. *Id.* NRS 451.007 requires human life to be preserved ***unless the entire brain, including the brain stem ceases to function***. St. Mary's has minimized Aden's right to life by determining she is dead because her condition is grim and she has no potential for "functional outcome" *II AA 271.*

Thus, the public interest in this matter is ensuring effectuation of Nevada law, under the proper standards, and in the treatment and care of Aden who does not meet the definition of death under the Uniform Act. There is clear public interest that a determination of death cannot be made unless there is no brain function, and confirmation that no activity exists is made through a flat EEG, especially when a previous test resulted in a finding of brain waves diffusely recordable throughout the EEG.

Aden is alive. She does not meet the definition of death under the Uniform Act. As such, Aden is entitled to injunctive relief and the Nevada Supreme Court should overturn the District Court's decision.

VIII. CONCLUSION

For the foregoing reasons, Appellant respectfully request that this Court overturn the District Court's decision and order that St. Mary's provide the necessary medical treatment. The District Court's decision incorrectly interpreted and applied

Nevada's Uniform Determination of Death Act when it found that Aden met the definition of death under the standards and protocols outlined by the American Academy of Neurology.

Accordingly, this Court should OVERTURN.

DATED: August 27, 2015

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ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), and the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a monospaced typeface using Microsoft Word 2008 with so many characters per inch in Times New Roman type style size 12.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

Finally, I hereby certify that I have read this Appellant's Opening Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: August 27, 2015

/s/ David C. O'Mara
DAVID C. O'MARA

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

_____ Depositing for mailing, in a sealed envelope, U.S. Postage prepaid, at Reno, Nevada

_____ Personal delivery

_____ Facsimile

_____ Messenger Service

_____ Federal Express or other overnight delivery

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DATED: August 28, 2015.

/s/ Valerie Weis

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