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FILED
ALAMEDA COUNTY

JUL 06 2017

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CLERK OF THE SUPERIOR COURT
By *J. Thomas*
JAMIE THOMAS, Deputy

13 SUPERIOR COURT OF CALIFORNIA
14 IN AND FOR THE COUNTY OF ALAMEDA

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

20 Plaintiffs,

21 vs.

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

28 Defendants.

Case No. RG15760730

ASSIGNED FOR ALL PURPOSES TO:
JUDGE STEPHEN PULIDO
DEPARTMENT 16

**SUPPLEMENTAL DECLARATION OF
SANFORD SCHNEIDER, M.D., FAAN,
FAAP, FILED IN SUPPORT OF
DEFENDANTS' EVIDENTIARY
OBJECTIONS TO PLAINTIFFS'
DECLARATIONS**

Reservation #: R-1838158

Date: July 13, 2017

Time: 3:00 p.m.

Dept: 16

Complaint Filed: March 3, 2015

Date of Trial: None set

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ROBERT M. WESMAN, M.D.

1 I, Sanford Schneider, M.D., FAAN, FAAP, declare:

2 1. I am submitting this Supplemental Declaration following my review of the
3 Declarations of D. Alan Shewmon, M.D., Alieta Eck, M.D., and Sharleen Bangura, R.N., as well as
4 Plaintiffs' Opposition to Defendants' Motion for Summary Adjudication of Jahi McMath's First
5 Cause of Action for Personal Injuries. I understand that these documents were filed in this case in
6 support of the plaintiffs' allegation that Jahi McMath is not dead.

7 2. As I set forth in my previous declaration, the Guidelines for the Determination of
8 Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations
9 ("Guidelines"), represent the "accepted medical standards" for determining brain death in a child
10 such as J. McMath. Under California's Uniform Determination of Death Act, a child is considered
11 legally and medically deceased when the neurologic diagnostic criteria, i.e., the "accepted medical
12 standards", in the Guidelines are fulfilled. Again, the only accepted neurologic criteria for
13 assessing J. McMath's brain function is a brain death evaluation performed in accordance with the
14 accepted medical standards in the Guidelines. There are no recognized substitutes for the accepted
15 medical standards for determining brain death. Unlike in professional negligence cases, where the
16 standard of care may be met by more than one medically accepted method of treatment or
17 diagnosis, in the determination of brain death there is only one accepted methodology. This has
18 been the case for decades.

19 3. Having reviewed the plaintiffs' papers, it is evident that the plaintiffs now concede
20 that J. McMath fulfilled the accepted medical standards for brain death when she was declared
21 brain dead and deceased in December 2013, following the three separate brain death evaluations
22 performed by Robin Shanahan, M.D., Robert Heidersbach, M.D, and Paul Fisher, M.D. Plaintiffs
23 further concede that no errors were made in the application of the accepted medical standards to J.
24 McMath in December 2013 by the three physicians.

25 4. Plaintiffs believe that sometime in the spring of 2014, J. McMath managed to
26 "reverse" her death. They believe that J. McMath no longer fulfills the criteria for brain death.

27 5. Yet plaintiffs failed to provide any reliable and competent medical evidence that
28 supports their belief that she is not dead. J. McMath has not undergone a brain death evaluation

1 pursuant to the accepted medical standards set forth in the Guidelines since she was legally
2 declared deceased in December 2013.

3 6. Not only has J. McMath not undergone a brain death evaluation since Dr. Fisher's
4 examination on December 23, 2013, according to the plaintiffs' submissions in this case, the most
5 recent testing performed on J. McMath were the studies performed at University Hospital in
6 September 2014, which I addressed in my initial declaration. In other words, the plaintiffs have no
7 new theories or evidence that support their belief that J. McMath is not dead. Nothing has changed
8 since J. McMath's body was discharged to her mother's custody in early January 2014. There is
9 nothing in plaintiffs' papers that suggests there has been a change in her medical condition since
10 her death. For the past 3.6 years, J. McMath body has received total body support. A machine
11 breathes for her body. Once the respirator is withdrawn, the corpse will sustain circulatory
12 collapse. Nourishment continues to be provided through gastrostomy tube inserted through her
13 abdominal wall. The body is maintained on full endocrine replacement medications that serves as
14 replacements for vital hormones, including cortisone, vassopressin, thyroxine, and
15 mineralcorticoids. J. McMath continues to receive 24-hour a day nursing care. The fact that J.
16 McMath's corpse has remained intact (not decomposed) is due to the continued extraordinary level
17 medical resources that she receives, not because there has been a change in her condition.

18 7. It is perplexing and even disingenuous that the plaintiffs continue to advance their
19 belief that J. McMath is not dead even though they have known since her initial determination of
20 death that there is only one accepted standard for assessing brain death: a brain death evaluation in
21 accordance with the accepted medical standards in the Guidelines. They conceded this during the
22 hearing before Judge Grillo on December 24, 2013. In October 2014, Dr. Fisher informed the
23 plaintiffs in so many words that absent a brain death evaluation in accordance with the accepted
24 medical standards in the Guidelines there was no legal or medical basis to revisit J. McMath's
25 death. The plaintiffs in this case have had more than three years to obtain reliable and competent
26 evidence that J. McMath no longer meets the neurologic criteria for brain death, yet no such
27 evidence is forthcoming. Based on the information I have received to date, they decline and/or
28 refuse to submit J. McMath to the appropriate examination.

1 8. Plaintiffs' belief that J. McMath is not dead appears to be based solely on the
2 declaration of D. Alan Shewmon, M.D., and to a much lesser extent the declarations of Alieta Eck,
3 M.D., and Sharleen Bagurra, R.N., which I will address below. There is nothing new in Dr.
4 Shewmon's declaration that he did not address in his declaration dated December 10, 2014. Dr.
5 Shewmon continues to base his opinion on matters that no reputable expert in brain death would
6 rely upon in forming an opinion as to whether a child has suffered brain death under California law,
7 e.g., video recordings taken by family members, the purported onset of puberty, and select imaging
8 studies that are not a substitute for the accepted medical standards. Dr. Shewmon's opinion that J.
9 McMath is not dead is inconsistent with California law and the mainstream's consensus as to the
10 methodology of diagnosing brain death. Dr. Shewmon fails to reconcile how he can conclude that
11 J. McMath does not meet the accepted medical standards for determining brain death when the
12 accepted medical standards have not been applied to J. McMath since December 2013.

13 9. Dr. Shewmon's conclusion that J. McMath no longer meets the accepted medical
14 standards for determining brain death, without having first subjected J. McMath to the appropriate
15 brain evaluation per the Guidelines, is a violation of the standard of care for pediatric neurologists,
16 a breach of professional ethics, and a violation of California law, which dictates that the clinical
17 assessment of brain death must be determined in accordance with the accepted medical standards.
18 Pediatric neurologists with expertise in assessing brain death should recognize that a lawful and
19 valid brain death determination can only be made by a qualified physician who is familiar with the
20 patient's complete medical history, and who has performed the requisite neurological examination
21 and apnea tests in accordance with the specific parameters of Guidelines. Clinical determinations
22 of brain death require two examinations by two different physicians and two apnea tests. Dr.
23 Shewmon appears to concede that J. McMath would continue to meet the criteria for brain death if
24 the plaintiffs subjected her to the appropriate brain death evaluation.

25 9. Dr. Alieta Eck, J. McMath's internist, provided a declaration that is devoid of any
26 showing that she has the requisite specialized knowledge, skill, experience, training, or education
27 sufficient to render an opinion as to whether J. McMath has brain function. A determination of
28 brain death can only be made by physicians with special education, training, knowledge and

1 expertise in the legal and medical requirements for determining brain death in the State of
2 California. Dr. Eck failed to demonstrate that she has any knowledge as to how brain death is
3 declared in California, e.g., the CUDDA, the accepted medical standards, the Guidelines, etc. Dr.
4 Eck did not indicate that she has reviewed and is familiar with McMath's medical history, the State
5 of California's laws on brain death, and the accepted medical standards for determining brain
6 death, i.e, the Guidelines. Dr. Eck did not demonstrate that she has the knowledge, training, or
7 experience that is required to provide an opinion as to whether J. McMath's movements are
8 purposeless spinal reflexive movements that are consistent with brain death versus volitional
9 responses to commands indicative of brain activity. As stated in my previous declaration, J.
10 McMath has exhibited purposeless spinal reflexive movements, with and without tactile
11 stimulation, since she was pronounced deceased in December 2013. J. McMath's physicians at
12 Children's Hospital Oakland and St. Peter's consistently deemed the movements to be purposeless
13 spinal reflexive movements. The Guidelines state that the clinical differentiation of spinal
14 responses from retained motor responses associated with brain activity requires expertise. Dr. Eck
15 has not demonstrated that she has the expertise to distinguish purposeless spinal reflexive
16 movements from activity associated with brain function. Finally, observation of a patient is not a
17 substitute to a brain death evaluation performed in accordance with the accepted medical standards
18 in the Guidelines. No reputable and qualified physician would reasonably rely on the matters that
19 Dr. Eck relied upon in opining that J. McMath is not dead

20 10. Sharleen Bangura, R.N., is a nurse, not a physician. Ms. Bangura declares that she
21 has observed McMath to be "alert" and responsive to commands. Again, a determination of brain
22 death can only be made by physicians with special education, training, knowledge and expertise in
23 the accepted medical standards for assessing brain death. Ms. Bagura has no education, training or
24 expertise in assessing brain death. She failed to demonstrate that she has any knowledge how brain
25 death is determined in the State of California. Ms. Bangura failed to demonstrate that she has
26 reviewed and is familiar with McMath's medical history. Ms. Bangura failed to demonstrate that
27 she has the knowledge, training, or experience required to form an opinion as to the medical basis
28 for her observations of J. McMath.

1 I declare under penalty of perjury under the laws of the State of California that all of the
2 foregoing is true and correct, and as to those matters stated on my information and belief, I believe
3 them to be true, and if called upon to testify to the matters herein I can competently testify thereto.
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5 Executed on July 6, 2017, at RIVERVIEW, California.
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8 By: _____
9 SANFORD SCHNEIDER, MD, FAAN, FAAP
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PROOF OF SERVICE
(C.C.P. §§ 1013a, 2015.5)

I, the undersigned, say:

I am now and at all times herein mentioned have been over the age of 18 years, a resident of the State of California and employed in Santa Clara County, California, and not a party to the within action or cause; my business address is 12901 Saratoga Avenue, Saratoga, California 95070.

I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, mailing via Federal Express, hand delivery via messenger service, and transmission by facsimile machine. I served a copy of each of the documents listed below by placing said copies for processing as indicated herein.

**SUPPLEMENTAL DECLARATION OF SANFORD SCHNEIDER, M.D., FAAN, FAAP,
FILED IN SUPPORT OF DEFENDANT'S EVIDENTIARY OBJECTIONS TO PLAINTIFFS'
DECLARATIONS**

_____ If MAILED VIA U.S. MAIL, said copies were placed in envelopes which were then sealed and, with postage fully prepaid thereon, on this date placed for collection and mailing at my place of business following ordinary business practices. Said envelopes will be deposited with the U.S. Postal Service at Saratoga, California on this date in the ordinary course of business; and there is delivery service by U.S. Postal Service at the place so addressed.

XX If MAILED VIA FEDERAL EXPRESS, said copies were placed in Federal Express envelopes which were then sealed and, with Federal Express charges to be paid by this firm, on this same date placed for collection and mailing at my place of business following ordinary business practices. Said envelopes will be deposited with the Federal Express Corp. on this date following ordinary business practices; and there is delivery service by Federal Express at the place so addressed.

_____ If HAND DELIVERED, said copies were provided to _____, a delivery service, whose employee, following ordinary business practices, did hand deliver the copies provided to the person or firm indicated herein.

_____ If VIA FACSIMILE TRANSMISSION, said copies were placed for transmission by this firm's facsimile machine, transmitting from (408) 257-6645 at Saratoga, California, and were transmitted following ordinary business practices; and there is a facsimile machine receiving via the number designated herein, and the transmission was reported as complete and without error. The record of the transmission was properly issued by the transmitting fax machine.

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5 I certify (or declare) under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct and that this Declaration was executed on July 6, 2017.

7 Jessica Picone
8 Jessica Picone
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27 Court: Alameda County Superior Court
28 Action No: RG15760730
Case Name: *Spears/Winkfield, et al. v. Rosen, M.D., et al.*

PROOF OF SERVICE
(C.C.P. §§ 1013a, 2015.5)

I, the undersigned, say:

I am now and at all times herein mentioned have been over the age of 18 years, a resident of the State of California and employed in Santa Clara County, California, and not a party to the within action or cause; my business address is 12901 Saratoga Avenue, Saratoga, California 95070. My electronic service address is: jpicone@hinshaw-law.com.

I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, mailing via Federal Express, hand delivery via messenger service, electronic service and transmission by facsimile machine. I served a copy of each of the documents listed below by placing said copies for processing as indicated herein.

**SUPPLEMENTAL DECLARATION OF SANFORD SCHNEIDER, M.D., FAAN, FAAP,
FILED IN SUPPORT OF DEFENDANT'S EVIDENTIARY OBJECTIONS TO PLAINTIFFS'
DECLARATIONS**

_____ If MAILED VIA U.S. MAIL, said copies were placed in envelopes which were then sealed and, with postage fully prepaid thereon, on this date placed for collection and mailing at my place of business following ordinary business practices. Said envelopes will be deposited with the U.S. Postal Service at Saratoga, California on this date in the ordinary course of business; and there is delivery service by U.S. Postal Service at the place so addressed.

_____ If MAILED VIA FEDERAL EXPRESS, said copies were placed in Federal Express envelopes which were then sealed and, with Federal Express charges to be paid by this firm, on this same date placed for collection and mailing at my place of business following ordinary business practices. Said envelopes will be deposited with the Federal Express Corp. on this date following ordinary business practices; and there is delivery service by Federal Express at the place so addressed.

_____ If HAND DELIVERED, said copies were provided to _____, a delivery service, whose employee, following ordinary business practices, did hand deliver the copies provided to the person or firm indicated herein.

_____ If VIA FACSIMILE TRANSMISSION, said copies were placed for transmission by this firm's facsimile machine, transmitting from (408) 257-6645 at Saratoga, California, and were transmitted following ordinary business practices; and there is a facsimile machine receiving via the number designated herein, and the transmission was reported as complete and without error. The record of the transmission was properly issued by the transmitting fax machine.

XX If ELECTRONIC SERVICE, I electronically served the documents listed above as follows:

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14 I certify (or declare) under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct and that this Declaration was executed on July 6, 2017.

16 Jessica Picone
17 Jessica Picone

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27 Court: Alameda County Superior Court
Action No: RG15760730
28 Case Name: *Spears/Winkfield, et al. v. Rosen, M.D., et al.*