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6 IN THE FAMILY DIVISION  
7 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE  
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10 In the Matter of the Guardianship

11 of the Person and Estate of:

Case No. GR15-00125

12 ADEN HAILU,

Dept. No. 12

13 An Adult.  
14 \_\_\_\_\_/

15 FANUEL GABREYES,

16 Petitioner,

17 Vs.

18 PRIME HEALTHCARE SEVICES, LLC dba

19 ST. MARY'S REGIONAL MEDICAL CENTER

20 Respondent  
21 \_\_\_\_\_

22 **ORDER DENYING TEMPORARY RESTRAINING ORDER**

23 **AND PERMANENT INJUNCTION**

24 Petitioner, Fanuel Gebreyes, the guardian and father of Aden Hailu ("Ms. Hailu")  
25 requests a Temporary Restraining Order that will restrain Defendants, Prime Healthcare  
26 Services, LLC d/b/a St. Mary's Regional Medical Center ("St. Mary's") from taking any  
27 action to remove the Ward and Petitioner's daughter, Ms. Hailu, from the ventilator and  
28 to continue medical care including, but not limited to, facilitating a tracheostomy and

1 insertion of a feeding tube, thyroid hormone treatment and proper nutrition “to prevent  
2 death and also to facilitate her removal from the hospital.” *See July 1, 2015 Ex Parte*  
3 *Motion*, 1:24-2:3.

4  
5 This matter was originally filed as a new action (CV15-01172) by Petitioner’s former  
6 counsel in Department 4 of this Court, Judge Connie Steinheimer, on June 18, 2015,  
7 seeking an Emergency Motion for Temporary Restraining Order “prohibiting Defendants  
8 St. Mary’s Regional Medical Center and Prime Healthcare Services from discontinuing  
9 life-sustaining measures, including the ventilation, presently sustaining Aden Hailu...  
10 until and including July 3, 2015, or such additional time as the Court may deem just and  
11 proper for Plaintiff’s to obtain an Independent Medical Evaluation.” *Emergency Motion*,  
12 1:19-1:28.

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14 Department 4 held an emergency hearing on June 18, 2015. The Parties stipulated  
15 that St. Mary’s would “maintain all current life-sustaining services until July 2, 2015 at  
16 5:00p.m. in order for the Plaintiff to have an independent examination of Aden Hailu;  
17 thereafter, any further request for continued life-sustaining services must be requested  
18 through the Guardianship Court.” The parties further stipulated that “if on July 2, 2015,  
19 it is determined that Aden Hailu is legally and clinically deceased, the hospital shall  
20 proceed as they see fit, and the instant Complaint for Temporary Restraining Order shall  
21 be dismissed.” *June 29, 2015 Court Minutes*.

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23  
24 On July 1, 2015, Mr. Gebreyes filed an Ex Parte Motion for Temporary Restraining  
25 Order and Emergency Petition for Order Authorizing Medical Care, Restraining Order  
26 and Permanent Injunction. Respondent filed an Opposition on July 2, 2015. Mr.  
27 Gebreyes argues injunctive relief will maintain the status quo, there is a strong likelihood  
28 of success on the merits, Ms. Hailu will suffer damage from denial of this motion, and

1 only a nominal bond should be required. Again, Mr. Gebreyes requests Prime Healthcare  
2 Services, LLC, “be restrained from removing Aden Hailu from the ventilator, and ordered  
3 to give thyroid hormone treatment, perform a tracheostomy and gastrostomy in order for  
4 Aden Hailu to be removed from the hospital.” 6:1-6:5.

5  
6 On July 2, 2015, Prime Healthcare Services filed an Opposition arguing Ms. Hailu  
7 is legally dead in accordance with accepted medical standards, there is insufficient  
8 evidence to establish a likelihood of success on the merits, the balance of all hardships  
9 tilts in favor of St. Mary’s as it “will be compelled to administer useless life sustaining  
10 treatments to a dead person” and “there is a hardship on the hospital required to  
11 administer them in violation of the law, and its code of ethics, and ethical principles of  
12 morality held by licensed physicians.” St. Mary’s further argues that public interest  
13 “strongly favors St. Mary’s because the public policy, as manifested in the Uniform Act, is  
14 to eliminate and preclude these types of disputes and debates from being adjudicated and  
15 resolved in courtrooms.” 7:27-8:8.  
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18 This Court held a hearing on July 2, 2015. The parties again came to an agreement  
19 at that time as follows:

- 20 1. Petitioner has until July 21, 2015 in which to obtain the services  
21 of a physician licensed in the State of Nevada who is in good  
22 standing with the State medical board and can be credentialed  
23 by Respondent in order to examine Aden Hailu and willing to  
24 order whatever medications or procedures that licensed  
25 physician deems necessary and appropriate for Aden, to include  
26 a complete written medical plan and discharge plan. The  
27 proposed written medical plan and discharge plan for Aden  
28 Hailu will include details about how Aden Hailu will be  
discharged from the hospital and how she will be transported to  
another location.
2. Petitioner also has until July 21, 2015 in which to submit to the  
Court and Respondent a plan of care supported by a licensed  
physician in the State of Nevada that details the substance of  
ongoing treatment and care plan for Aden Hailu. The proposed

1 ongoing treatment and care plan must also be in the best  
2 interests of Aden Hailu determined by the Court as informed by  
3 the licensed physician. The care plan will include (1) the method  
4 of transportation; (2) the location of the destination; (3) a care  
5 plan for when Aden Hailu arrives at the destination; and (4) the  
6 method of payment for the ongoing care plan.

- 7 3. Petitioner will arrange for and be responsible for all payment  
8 related to all aspects of the medical plan, discharge plan and  
9 ongoing care plan.
- 10 4. Respondent will provide hospital privileges to the Nevada  
11 licensed physician as identified by Petition on an expedited basis  
12 and reasonably accommodate all medical procedures and tests  
13 ordered by the licensed physician that the licensed physician  
14 deems necessary and appropriate.
- 15 5. The July 2, 2015 hearing on Petitioner's Temporary Restraining  
16 Order is suspended until July 21, 2015 at 1:30 p.m. and at that  
17 time the Court will address all remaining issues, including  
18 supplementation of evidence which may include evidence of  
19 Respondent's ethics evaluation, and the licensed physician's (as  
20 identified by Petitioner) evaluation of Aden Hailu.

*July 23, 2015 Stipulation and Order*

21 The parties appeared before the Court again on July 21, 2015 to present additional  
22 evidence and argument. Based on the testimony, exhibits, and arguments of counsel, the  
23 Court makes the following Findings of Fact and Conclusions of Law:

**Findings of Fact**

- 24 1. The overwhelming weight of the credible medical evidence does not support, and  
25 directly contradicts the injunctive relief requested.
- 26 2. The testimony from St. Mary's physicians, Dr. Aaron Heide and Dr. Anthony  
27 Floreani, at the July 2<sup>nd</sup> and July 21<sup>st</sup> hearings, was credible and established Ms.  
28 Hailu meets the definition of death pursuant to the Uniform Determination of  
Death Act (NRS 451.007(1)(b))<sup>1</sup> based on standards outlined by the American

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<sup>1</sup> NRS 451.007 Determination of death.

1. For legal and medical purposes, a person is dead if the person has sustained an irreversible cessation of:  
(a) Circulatory and respiratory functions; or  
(b) All functions of the person's entire brain, including his or her brain stem.

1 Academy of Neurology and that St. Mary's and its physicians followed mandated  
2 medical protocols and procedures in reaching their determination.

- 3  
4 3. None of the evidence presented by Petitioner, including the testimony of Dr.  
5 Paul Byrne, Dr. Brian Callister and Dr. Scott Manthei negated the substantial,  
6 compelling, and credible evidence presented by St. Mary's.
- 7 4. The medical plan of care and discharge plan orally proposed by Petitioner is  
8 neither compelling nor convincing as a best interest plan of care for Aden Hailu  
9 because it is not sufficiently supported by medical evidence. NRS  
10 159.073(1)(c)(1)(I).

### 11 Conclusions of Law

- 12
- 13 1. The requirements to be established by Petitioner for a Temporary Restraining  
14 Order are that it clearly appears from specific facts shown by affidavit or by the  
15 verified complaint that immediate and irreparable injury, loss or damage will  
16 result. NRCP 65.<sup>2</sup>
- 17
- 18 2. Pursuant to *University and Community College Systems of Nevada*<sup>3</sup>, before a  
19 preliminary injunction will issue, the movant must show: (1) a likelihood of  
20 success on the merits, and (2) a reasonable probability that the non-moving  
21 party's conduct, if allowed to continue, will cause irreparable harm for which  
22

- 23
- 24 2. A determination of death made under this section must be made in accordance with accepted medical standards.  
25 3. This section may be cited as the Uniform Determination of Death Act and must be applied and construed to  
26 carry out its general purpose which is to make uniform among the states which enact it the law regarding the  
27 determination of death.

28 <sup>2</sup> The second prong of NRCP 65 requires that the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. This is not discussed here as notice was properly given and the respondent attended each hearing.

<sup>3</sup> 120 Nev. 712, 721, 100 P.3d 179, 187 (2004)

1 compensatory damages is an inadequate remedy. The Court must also weigh  
2 the potential hardships to the relative parties and others, and the public  
3 interest. The grant or denial of injunctive relief is within the reasonable  
4 discretion of the Court. See NRS 33.010. See also, *Sobol v. Capital*  
5 *Management Consultants, Inc.* 102 Nev. 444, 446, 726 P.2d 335, 337 (1986);  
6 *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44  
7 (1992).  
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- 10 3. The medical evidence herein substantially establishes by clear and convincing  
11 evidence that Ms. Hailu meets the definition of death pursuant to the Uniform  
12 Determination of Death Act (NRS 451.007(1)(b)) consistent with the medical  
13 standards and protocols outlined by the American Academy of Neurology.
  - 14 4. NRS 449.626(1)-(2) pertains to withholding treatment and does not go to the  
15 right to require the administration of medical treatment for a person or family  
16 member without a reasonable medical basis for the same.
  - 17
  - 18 5. The medical and care plan for Ms. Hailu as presented by Mr. Gebreyes is not in  
19 the best interests of the Ms. Hailu. The Court, separately from the request for  
20 and refusal of injunctive relief, does not affirm the treatment plan as proposed  
21 by Mr. Gebreyes as it is unsupported by credible medical evidence.
  - 22
  - 23 6. Petitioner will not suffer immediate and irreparable harm if St. Mary's is not  
24 enjoined and restrained from removing Ms.Hailu from the ventilator because  
25 medical evidence establishes that Ms. Hailu meets the definition of death under  
26 the Uniform Determination of Death Act (NRS 451.007(1)(b)) for legal and  
27 medical purposes.  
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7. Petitioner is not likely to succeed on the merits of his claims based on the insufficiency of medical evidence presented in support of his position, and in consideration of the weight of the medical evidence presented by St. Mary's.
8. Having balanced the equities and the potential harm, including the extent of the injunctive relief requested by Petitioner, and the impact upon Ms.Hailu, Mr. Gabreyes and St. Mary's, the Court finds that equity does not favor granting injunctive relief. The medical evidence substantially establishes by clear and convincing evidence. Ms. Hailu meets the definition of death per the Uniform Determination of Death Act (NRS 451.007(1)(b)) for legal and medical purposes consistent with the medical standards and protocols outlined by the American Academy of Neurology.
9. The public interest in this matter is ensuring effectuation of Nevada law and in the treatment and care of Ms. Hailu and similarly situated parties. There is a clear public interest in medical professionals making a final determination of death in these circumstances. Under the Uniform Determination of Death Act, there is a clear public interest in the proper treatment of Ms. Hailu after a determination is made consistent with NRS 451.007(1)(b).
10. Any findings of fact set forth in this document that are conclusions of law, or conclusions of law that are findings of fact, shall be deemed findings and conclusions as appropriate.

Based on the foregoing, the Court ORDERS that:

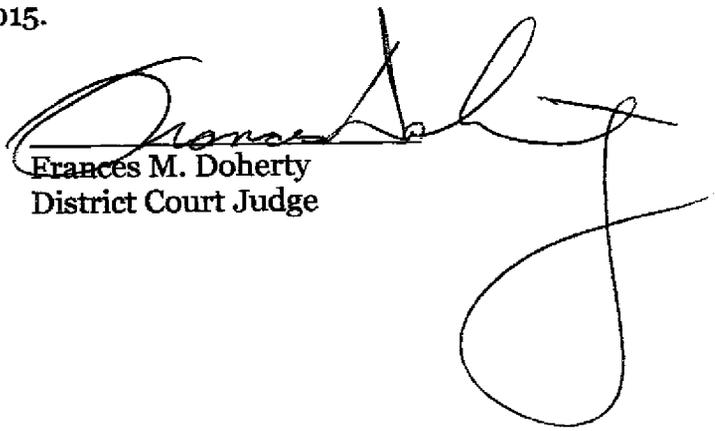
1. Petitioners' Ex Parte Motion and the Request for Restraining Order are denied.

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2. St. Mary's is not restrained from terminating, withholding, or withdrawing life support systems for Ms.Hailu.
3. This order will be stayed for ten days from the date of entry of this order to allow the Petitioner to seek review by the Nevada Supreme Court.

**IT IS SO ORDERED.**

Dated: the 30<sup>th</sup> day of July, 2015.



Frances M. Doherty  
District Court Judge

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**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on the \_\_\_\_\_ day of July, 2015, I deposited for mailing, first class postage pre-paid, at Reno, Nevada, a true and correct copy of the foregoing document addressed to:

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 30 day of ~~April~~<sup>July</sup>, 2015, I electronically filed the foregoing with the Clerk of Court by using the ECF system which will send a notice to:  
William E. Peterson, Esq.  
William O'Mara, Esq.

  
\_\_\_\_\_  
Court Employee