

Court of Common Pleas of Philadelphia County
Orphans' Court Division

Cover Sheet

FOR COURT USE ONLY

ASSIGNED TO JUDGE

HERRON

CONTROL NO.

181 866

Responding parties must include this number on all filings.

NAME OF ESTATE <i>Estate of Jayden Auyeung, a minor</i>	ORPHANS' COURT NUMBER <i>2018 MI 681</i>
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TYPE OF ESTATE				
<input type="checkbox"/> Decedent's Estate	<input type="checkbox"/> Trust Inter Vivos	<input type="checkbox"/> Testamentary Trust	<input type="checkbox"/> Incapacitated Person	<input checked="" type="checkbox"/> Minor
<input type="checkbox"/> Principal (power of attorney)	<input type="checkbox"/> Non-Profit Corporation	<input type="checkbox"/> Special Needs Trust	<input type="checkbox"/> Other (specify)	

FILING PARTY'S RELATIONSHIP TO ESTATE
INPR

PLEADING OR DOCUMENT FILED
Opposition to TRO

NAME OF FILING PARTY (NOT COUNSEL FOR THE PARTY) <i>Children's Hospital of Philadelphia</i>	ADDRESS <i>3401 Civic Center Blvd, Philadelphia PA 19104</i>
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ATTORNEYS MUST CHECK ONE BOX

TO THE CLERK OF ORPHANS' COURT:

Kindly enter my appearance on behalf of *Children's Hospital*

I have entered my appearance on behalf of


NAME OF FILING ATTORNEY OR PARTY <i>Patrick Harrington</i>	ADDRESS <i>1500 Market Street Suite 3500F Philadelphia, PA 19102</i>
PHONE NUMBER <i>215-575-7236</i>	FAX NUMBER <i>215-575-7200</i>

SUPREME COURT IDENTIFICATION NO. <i>317998</i>	E-MAIL ADDRESS <i>pharrington@dilworthlaw.com</i>
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SIGNATURE OF FILING ATTORNEY OR PARTY <i>[Signature]</i>	DATE <i>5/16/18</i>
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OTHER PARTIES (Name, address, and telephone number) *ed, use separate sheet*

Jayden Auyeung, A Minor



20180068109003

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Is notice required? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Copy of notice attached to pleading. Date of Notice: _____ <input type="checkbox"/> Yes. All joinders are attached.	If Citation is requested: 1. Was Citation against Respondent previously issued? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 2. If yes, date of service: _____	Has another petition been decided in this case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Is another petition pending? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, identify the Judge: _____
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FOR COURT USE ONLY - FIRST FILINGS ONLY (If Applicable)

DATE OF BIRTH	DATE OF DEATH	REGISTER OF WILLS NUMBER	DATE OF DEED OF TRUST
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The Filing Party shall complete the information at the bottom of the Cover Sheet filed with the Clerk, and not the service copies. The information will only be used by the Clerk. The Clerk shall not release this information to the general public.

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Estate of Jayden Auyeung, a minor	: IN THE COURT OF COMMON PLEAS : OF PHILADELPHIA COUNTY : ORPHANS' COURT DIVISION : : O.C. No. 2018PJ681 : Control No. 181866 : : : : : :
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**MEMORANDUM OF LAW IN OPPOSITION TO
EMERGENCY PETITION FOR A TEMPORARY RESTRAINING ORDER**

The plaintiff's son suffered a heart attack at home, leading to devastating oxygen deprivation and brain injury. The child succumbed to these injuries at Children's Hospital of Philadelphia ("CHOP"). Specially trained and board certified CHOP physicians conducted two independent brain death examinations and also did a brain blood flow test. All of these tests unambiguously indicated that the child was dead, and he was declared dead yesterday in accordance with accepted medical standards. Under Pennsylvania's Uniform Determination of Death law, which has been codified as 35 P.S. §10203, "an individual who has

sustained...irreversible cessation of all functions of the entire brain, including the brain stem is dead.” Accordingly, from both a legal and medical perspective, the child is deceased.

Now the parents come to court to seek an order requiring CHOP to maintain mechanical and chemical interventions to keep the heart of the deceased child beating, in a vain hope that someone can bring him back to life. Contrary to the position advocated in Plaintiff’s Petition, CHOP is not seeking to ‘terminate life support.’ Unfortunately, the child is no longer alive. Therefore, terminating the mechanical interventions would not prolong the child’s life, but would only artificially maintain certain biological functions after his death.

This is the second such effort in this Court and it ought to be definitively rejected. These efforts are supported by no accepted medical theories or practices, are inhumane to the parents (who are suffering enough from the loss of a child) and disrespectful to the body of the deceased.

“[A] court of equity has broad discretion to decide what relief should be granted.” *Jackson v. Hendrick*, 321 A.2d 603, 606 (Pa. 1974). “[T]he court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties.” *Id.* at 606. However, “a court of equity...must be guided by the established rules and precedents.” *East Hempfield Twp. v. Brubaker*, 828 A.2d 1184, 1188 (Pa. Cmwlth. 2003). Simply, “[e]quity must follow the law.” *Bauer v P.A. Cutri Co. of Bradford*, 253 A.2d 252, 255 (Pa. 1969).

Under Pennsylvania law, “a trial court has ‘apparently reasonable grounds’ for granting the preliminary injunction (and refusing to dissolve it) where the trial court finds the party seeking the injunction has established six essential elements.” *Hendricks, supra*, 175 A.3d 323, 330 (quoting *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1000 (Pa. 2003)). Specifically, the party seeking injunction bears the burden of proving:

1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; 2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings; 3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; 4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; 5) that the injunction it seeks is reasonably suited to abate the offending activity; and, 6) that a preliminary injunction will not adversely affect the public interest.

Hendricks v. Hendricks, 175 A.3d 323, 330 (Pa. Super. 2017).

Importantly, the court must deny such relief where it properly finds that “*any one*” of the “essential prerequisites” for a preliminary injunction is not satisfied.” *Summit Towne Ctr, supra* at 1001. (Emphasis added.) *See also County of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988) (“For a preliminary injunction to issue, every one of the... prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.”) Thus if the party proposing the granting or maintaining of an injunction fails to fulfil its burden to prove just one of the prerequisites to the grant of relief, such injunction must not be granted, or here, must be vacated.

The special injunction (or temporary restraining order) requested by the plaintiff here should be denied because the plaintiff cannot establish any of the required elements:

1) The injunction is not necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. The patient who is the subject of this proceeding was declared dead in accordance with accepted medical standards. This determination was made by at least four (4) CHOP physicians, including the chief of critical care medicine. Thus there is no harm to be addressed by an injunction.

2) Greater injury will result from refusing an injunction than from granting it, and, concomitantly, the issuance of an injunction will substantially harm other interested parties in the proceedings. An injunction will divert CHOP's resources from living children whom it can help, particularly those sickest children in the CHOP Pediatric Intensive Care Unit ("PICU"). Physician and nursing staff hours consumed by caring for the body of a deceased child are taken from other children in need of their care.

3) A preliminary injunction will not properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. The patient is dead. That is the status quo. No injunction will bring him back to life. Ordering continued ventilator support for a deceased patient does nothing to preserve the status quo.

4) The activity that the injunction seeks to restrain is not actionable, a right to relief is absent, and no wrong is manifest. The plaintiff cannot show that it is likely to prevail on the merits. Absent a showing that all four CHOP physicians are wrong, or that both of the two independent death examinations were improperly conducted (which the plaintiff cannot show), the determination of death by qualified doctors using accepted medical standards is binding on the parties and the Court. Death is defined by statute which directly incorporates the accepted medical standards. See 35 P.S. §10203.

5) The injunction requested is not reasonably suited to abate the offending activity because there is no offending activity. CHOP proposes to remove a deceased patient from a ventilator in accordance with standard practice, after giving the family a reasonable period of

time to accept the death of the child. Proceeding to handle the body of a deceased child in accordance with applicable legal requirements is not “offending activity.”

6) A preliminary injunction in this case will adversely affect the public interest by diverting CHOP’s resources from its mission to cure sick children to the maintenance of a dead body.

WHEREFORE, Petitioner, the Children’s Hospital of Philadelphia, respectfully requests that this Court deny Petitioner’s Emergency Petition for a Temporary Restraining Order.

Respectfully submitted,

/s/ Lawrence G. McMichael

DATED: May 16, 2018

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CERTIFICATE OF SERVICE

I, Patrick M. Harrington, hereby certify that I caused to be served, this 16th day of May, 2018, a true and correct copy of the aforementioned Memorandum of Law, via hand delivery, upon the following counsel of record:

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