

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

LATASHA WINKFIELD, an individual  
parent and guardian of Jahi McMath, a minor,

Plaintiff,

vs.

CHILDRENS HOSPITAL OAKLAND, Dr.  
David Durand M.D. and Does 1 through 10,  
inclusive,

Defendants.

Case No: C 13-5993 SBA

**ORDER OF REFERENCE**

IT IS HEREBY ORDERED THAT this matter is referred to Magistrate Judge  
Donna Ryu for a mandatory settlement conference on January 3, 2014 at 11:00 a.m. Upon  
receipt of this referral, Magistrate Judge Ryu will issue an order with further instructions  
regarding the settlement conference.

IT IS SO ORDERED.

Dated: 1/2/2014

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LATASHA WINKFIELD,

No. C-13-05993-SBA (DMR)

Plaintiff(s),

**NOTICE OF SETTLEMENT  
CONFERENCE AND SETTLEMENT  
CONFERENCE ORDER**  
(Rev. 3/26/13)

v.

CHILDRENS HOSPITAL OAKLAND,

Defendant(s).

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter was referred to Magistrate Judge Donna M. Ryu for settlement purposes.

You are hereby notified that a settlement conference is scheduled for **January 3, 2014 at 11:00 a.m.**, in Courtroom 4, Third Floor of the U.S. District Court, 1301 Clay Street, Oakland, California 94612.

**A. Confidential Settlement Letters**

By no later than **5:00 p.m. today**, counsel **shall submit, but not file or serve** a copy of a Confidential Settlement Letter by emailing the letter to Judge Ryu at [dmrpo@cand.uscourts.gov](mailto:dmrpo@cand.uscourts.gov).

The Confidential Settlement Letter shall not exceed five (5) pages of text. The Confidential Settlement Letter **shall include** the following:

- a. A brief statement of the facts of the case.
- b. A brief statement of the **principal** claims and defenses, with a forthright evaluation of the strengths and weaknesses of each claim/defense, including citations to any key legal authorities.

- 1 c. A realistic settlement figure or terms (including any non-monetary terms) that,  
 2 given all the circumstances, the party submitting the Confidential Letter  
 3 would consider seriously.
- 4 d. Any foreseeable barriers to insurance coverage or approval of a proposed  
 5 settlement, or special concerns that the insurer or entity might want addressed.
- 6 e. A list of the names, titles, and positions of all persons who will be attending  
 7 the conference.

8 **B. Mandatory Personal Attendance.**

9 **Lead trial counsel** shall appear at the settlement conference with the **parties and with the**  
 10 **person(s) having full authority** to make the final decision as to whether any settlement offer is  
 11 made, accepted, or rejected (if full authority does not rest with the party). A person who needs to  
 12 call another person not present before making, accepting, or rejecting any settlement offer does **not**  
 13 have such full authority. If a party is a **governmental entity**, its governing body shall designate one  
 14 of its members or a senior executive to appear at the settlement conference with authority to  
 15 participate in the settlement conference and, if a tentative settlement agreement is reached, to  
 16 recommend the agreement to the governmental entity for its approval. An **insured party** shall  
 17 appear with a representative of the carrier with **full authority to negotiate up to the limits of**  
 18 **coverage.**

19 Personal attendance is mandatory and will rarely be excused by the Court, and then only  
 20 upon a written request that is timely under the circumstances and that demonstrates extraordinary  
 21 hardship. Personal attendance may be excused only upon written authorization from the Court. If  
 22 the Court permits attendance by telephone, the person who is excused from personally appearing  
 23 must be available to participate by telephone throughout the entire conference.

24 **C. Duration and Content of Settlement Conference.**

25 Parties and their representatives should be prepared to devote the entire day to the conference  
 26 if necessary. Parties are encouraged to participate in the settlement conference and frankly discuss  
 27 their case. Statements they make during the conference will not be admissible at trial in the event  
 28 the case does not settle. The parties and their representatives should be prepared to discuss such

1 issues as their settlement objectives; any impediments to settlement they perceive; whether they  
2 have enough information to discuss settlement and if not, what additional information is needed; and  
3 the possibility of a creative resolution of the dispute.

4 Any failure to comply with the requirements of this Order may subject the parties and/or  
5 counsel to sanctions.

6 IT IS SO ORDERED.

7 Dated: January 2, 2014



---

8 DONNA M. RYU  
9 United States Magistrate Judge

1 Christopher B. Dolan (#165358)  
Aimee E. Kirby (#216909)  
2 **THE DOLAN LAW FIRM**  
1438 Market Street  
3 San Francisco, California 94102  
Telephone: (415) 421-2800  
4 Facsimile: (415) 421-2830

5 Attorneys for Plaintiff  
6  
7

8 **UNITED STATES DISTRICT COURT OF CALIFORNIA**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 LATASHA WINKFIELD, as an  
12 Individual, and as Guardian Ad Litem and  
13 mother of Jahi McMath,

14 Plaintiff,

15 v.

16 CHILDREN'S HOSPITAL &  
17 RESEARCH CENTER AT  
OAKLAND; DR. DAVID DURAND,  
18 and Does 1-100, Inclusive,

19 Defendants.  
20  
21  
22

*Case No.: 4:13-cv-05993-SBA*

**Plaintiff's Motion to Compel Further  
Life Support and the installation of the  
a tracheostomy tube and gastric feeding  
tube to allow transportation of Jahi  
McMath; Memorandum of Points and  
Authorities in Support Thereof;  
Declaration of Aimee E. Kirby in  
Support Thereof; and Proposed Order**

Hearing Date: 1/7/2014  
Time: 1:00 pm  
Location: Dept. #1, fourth floor, 1301  
Clay Street, Oakland Ca. 94612  
Judge: Hon. Sandra Brown Armstrong

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION,  
24 Plaintiff files the following Motion to allow for the installation of tracheostomy tube and  
25 gastric tube:

26 ///

27 ///



1 provide ventilator support and maintain the status quo of medical treatment through  
2 December 30, 2012.

3 On or about December 24, 2013 Plaintiff began taking steps to attempt to move  
4 Jahi. Plaintiff's Counsel informed Defendant that the family was undertaking efforts to  
5 locate an alternate placement for Jahi so that she can be removed from the facility.  
6 During this time period, because of the holidays, arranging transportation and acceptance  
7 of Jahi was complicated. Plaintiff asked that the Defendant maintain life support until  
8 plans were finalized. The Defendants refused to do so and indicated an intent to withdraw  
9 said support at the expiration of the State issued TRO at 5:00 on Monday December 30,  
10 2013. Thereafter, Plaintiff did the following: (1) filed a Federal Compliant and an Ex  
11 Parte Application for a Temporary Restraining Order, (2) filed an Emergency Writ for  
12 Intervention by the Appellate Court, and (3) filed an Ex Parte Application for  
13 Reconsideration with the State Court based on the Declaration of Dr. Burke that Jahi was  
14 not brain dead. The Federal Court denied the request, but the Appellate Court granted and  
15 Emergency Stay and the State Court extended the TRO and requested further briefing.  
16 The Appellate Court thereafter refused to intervene, and the State Court, although  
17 extending the TRO, refused to grant the request for the procedures to allow transport.  
18  
19  
20

21 At this point, Jahi has had not nutrition for nearly three (3) weeks. She is in  
22 desperate need of the installation of a tracheostomy tube and gastric tube. The Defendant  
23 has responded based on the Court's Order that they will not allow such a procedure to be  
24 done and will not write discharge instructions that instruct a physician to carry out such  
25 orders. This complicates matters as Plaintiff has a Declaration from physician Dr. Byrne  
26 testifying under oath that he does not believe that Jahi is dead. This expert has been  
27  
28

**THE  
DOLAN  
LAW  
FIRM**

TRIAL OFFICE  
THE DOLAN BUILDING  
419 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830

1 accepted by other courts as an expert on this very same subject. Further, because Jahi will  
2 die soon without nutrition that has been withheld from her, to maintain the status quo, i.e.  
3 her existence, the procedures must be done.

4 **II. LEGAL DISCUSSION**

5  
6 **A. Is Health and Safety Code Section 7180 Constitutional, in that it defines life**  
7 **by the lack of total brain activity, while other Health and Safety Code**  
8 **sections find no life when a heartbeat and brain activity do exist.**

9 In the 1992 case of *Planned Parenthood vs. Casey*, 505 U.S. 833 (1992), the  
10 Supreme Court abandoned the strict trimester framework as outlined in *Roe vs. Wade*. In  
11 that case they adopted the standard of undue burden for evaluating state abortion  
12 restriction, but reemphasized the right to an abortion is rounded in the general sense of  
13 liberty and privacy protected by the Constitution. The constitutional protection of a  
14 women’s decision to terminate her pregnancy derives from the Due Process Clause and  
15 the Fourteenth Amendments which declares that no state shall “deprive any person of  
16 life, liberty or property without due process.” The current judicial interpretation of the  
17 U.S Constitution regarding abortion in the United States, following the Supreme Court of  
18 the United States’ 1973 decision in *Roe vs. Wade*, and subsequent companion decision is  
19 that abortion is legal but may be restricted by the states to varying degrees.  
20

21  
22 One aspect of the legal abortion regime now in place has been determining when  
23 we define life (and therefore when a fetus is subject to being protected by the state). In  
24 the majority opinion delivered by the court in *Roe v. Wade*, viability was defined as  
25 "potentially able to live outside the mother's womb, albeit with artificial aid. Viability is  
26 usually placed at about seven months (28 weeks) but may occur earlier, even at 24  
27 weeks." (*Roe v. Wade* (1973) 410 U.S. 113 at 160.) When the court ruled in 1973, the  
28

**THE  
DOLAN  
LAW  
FIRM**

TRIAL OFFICE  
THE DOLAN BUILDING  
430 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830



1 then-current medical technology suggested that viability could occur as early as 24  
 2 weeks. Advances over the past three decades have allowed fetuses that are a few weeks  
 3 less than 24 weeks old to survive outside the mother's womb. These scientific  
 4 achievements, while life-saving for premature babies, have made the determination of  
 5 being "viable" somewhat more complicated. As of 2006, the youngest child to survive a  
 6 premature birth in the United States was a girl born at Kapiolani Medical Center in  
 7 Honolulu, Hawaii at 21 weeks and 3 days gestation gestational age. Currently California  
 8 state law does not affix a week at which doctors are determined to find a fetus as "alive."  
 9  
 10 (See, *Planned Parenthood vs. Casey, supra.*)  
 11

12 What is interesting in this discussion is that currently, a fetus that has had a heart  
 13 beat from early on, and brain activity can be terminated, and is not afforded the  
 14 protection of state law. However, this same criteria is then used in order to terminated life  
 15 under Health and Safety Code Section 7108. Just as abortion has been re-considered over  
 16 the years, Plaintiff urges this Court to examine if the criteria for brain dead determination,  
 17 which does not measure inner brain activity, is constitutionally flawed under strict  
 18 scrutiny. Plaintiff believes that the very definition being used is in contradiction with  
 19 other state law and violates Jahi's right to Due Process, and privacy. (See Declaration of  
 20 Dr. Bryne.)  
 21

22  
 23 **B. The Patient's Bill of Rights Mandates the installation of the devices**  
 24 **necessary for Jahi's transport.**

25 In this state, a clearly recognized legal right to control one's own medical treatment  
 26 pre-dated the Natural Death Act. A long line of cases, approved by the Supreme Court in  
 27 *Cobbs v. Grant* (1972) 8 Cal.3d 229, 104 Cal.Rptr. 505, 502 P.2d 1. These rights have  
 28 been codified under the Health and Safety Code Section as detailed below.

**THE  
 DOLAN  
 LAW  
 FIRM**

TRIAL OFFICE  
 THE DOLAN BUILDING  
 410 MARKET STREET  
 IN FRANCISCO, CA  
 94105  
 TEL: (415) 421-  
 2800  
 X: (415) 421-2830

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Health and Safety Code Section 1599: states in pertinent part:

It is the intent of the Legislature in enacting this chapter to expressly set forth fundamental human rights which all patients shall be entitled to in a skilled nursing or intermediate care facility, as defined in Section 1250, and to ensure that patients in such facilities are advised of their fundamental rights and the obligations of the facility.

Health and Safety Code Section 1599.1, further states:

Written policies regarding the rights of patients shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public. Those policies and procedures shall ensure that each patient admitted to the facility has the following rights and is notified of the following facility obligations, in addition to those specified by regulation:

(c) The facility shall provide food of the quality and quantity to meet the patients' needs in accordance with physicians' orders.

While there is no Federal Patient's Bill of Right the American Medical

Association has come up with the following guidelines:

California Hospital Association

*If it is determined that the patient has expressed a desire to have life sustaining measures applied under all conditions, an order to withhold or withdraw life sustaining treatment should not be issued unless authorized by a court.*

(a) Hospitals and medical staffs shall adopt a written policy on patients' rights.

(b) A list of these patients' rights shall be posted in both Spanish and English in appropriate places within the hospital so that such rights may be read by patients. This list shall include but not be limited to the patients' rights to:

(1) Exercise these rights without regard to sex, economic status, educational background, race, color, religion, ancestry, national origin, sexual orientation, disability, medical condition, marital status, registered domestic partner status, or the source of payment for care.

(2) Considerate and respectful care.

**THE  
DOLAN  
LAW  
FIRM**

TRIAL LAWYERS  
THE DOLAN BUILDING  
438 MARKET STREET  
SAN FRANCISCO, CA  
94102  
TEL: (415) 421-  
2800  
X: (415) 421-2830

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(3) Knowledge of the name of the licensed healthcare practitioner acting within the scope of his or her professional licensure who has primary responsibility for coordinating the care, and the names and professional relationships of physicians and nonphysicians who will see the patient.

(4) Receive information about the illness, the course of treatment and prospects for recovery in terms that the patient can understand.

(5) Receive as much information about any proposed treatment or procedure as the patient may need in order to give informed consent or to refuse this course of treatment. Except in emergencies, this information shall include a description of the procedure or treatment, the medically significant risks involved in this treatment, alternate courses of treatment or nontreatment and the risks involved in each and to know the name of the person who will carry out the procedure or treatment.

(6) Participate actively in decisions regarding medical care. To the extent permitted by law, this includes the right to refuse treatment.

(7) Full consideration of privacy concerning the medical care program. Case discussion, consultation, examination and treatment are confidential and should be conducted discreetly. The patient has the right to be advised as to the reason for the presence of any individual.

(8) Confidential treatment of all communications and records pertaining to the care and the stay in the hospital. Written permission shall be obtained before the medical records can be made available to anyone not directly concerned with the care.

(9) Reasonable responses to any reasonable requests made for service.

(10) Leave the hospital even against the advice of members of the medical staff.

(11) Reasonable continuity of care and to know in advance the time and location of appointments as well as the identity of persons providing the care.

(12) Be advised if the hospital/licensed healthcare practitioner acting within the scope of his or her professional licensure proposes to engage in or perform human experimentation affecting care or treatment. The patient has the right to refuse to participate in such research projects.

**THE  
DOLAN  
LAW  
FIRM**

TRIAL LAWYERS  
HEDOLAN BUILDING  
428 MARKET STREET  
SAN FRANCISCO, CA  
94102  
TEL: (415) 421-  
2800  
X: (415) 421-2830

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(13) Be informed of continuing health care requirements following discharge from the hospital.

(14) Examine and receive an explanation of the bill regardless of source of payment.

(15) Know which hospital rules and policies apply to the patient's conduct while a patient.

(16) Have all patients' rights apply to the person who may have legal responsibility to make decisions regarding medical care on behalf of the patient.

(17) Designate visitors of his/her choosing, if the patient has decision-making capacity, whether or not the visitor is related by blood, marriage, or registered domestic partner status, unless:

(A) No visitors are allowed.

(B) The facility reasonably determines that the presence of a particular visitor would endanger the health or safety of a patient, a member of the health facility staff, or other visitor to the health facility, or would significantly disrupt the operations of the facility.

(C) The patient has indicated to the health facility staff that the patient no longer wants this person to visit.

(18) Have the patient's wishes considered for purposes of determining who may visit if the patient lacks decision-making capacity and to have the method of that consideration disclosed in the hospital policy on visitation. At a minimum, the hospital shall include any person living in the household.

(19) This section may not be construed to prohibit a health facility from otherwise establishing reasonable restrictions upon visitation, including restrictions upon the hours of visitation and number of visitors.

However, when necessary, the courts may be approached to resolve legal disputes, such as when a physician believes that the surrogate decision-maker is not

**THE  
DOLAN  
LAW  
FIRM**

TRIAL OFFICE  
THE DOLAN BUILDING  
438 MARKET STREET  
IN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830

1 acting in the patient's best interests or if the physician cannot choose among available  
2 surrogate decision makers with similarly close relationships to the patient.

3  
4 **C. The rights guaranteed under the Bill of Rights survive death**

5 Even if we presume that Jahi is legally dead, and that the legislation that defines  
6 this currently does not conflict with other laws and is unconstitutional, we then must  
7 determine if the rights dictated above survive. This issue is very complicated, as some  
8 courts have touched on:  
9

10 Now, however, we are on the threshold of new terrain-the penumbra where  
11 death begins but life, in some form, continues. We have been led to it by the  
12 medical miracles which now compel us to distinguish between 'death,' as we  
13 have known it, and death in which the body lives in some fashion but the brain  
14 (or a significant part of it) does not. (Severns v. Wilmington Medical Center, Inc.  
15 (Del.1980) 421 A.2d 1334, 1344.) A court making the decision of whether to  
16 withhold or withdraw life-sustaining medical treatment from a dependent child  
17 should consider the following factors: (1) the child's present levels of physical,  
18 sensory, emotional and cognitive functioning; (2) the quality of life, life  
19 expectancy and prognosis for recovery with and without treatment, including the  
20 futility of continued treatment; (3) the various treatment options, and the risks,  
21 side effects, and benefits of each; (4) the nature and degree of physical pain or  
22 suffering resulting from the medical condition; (5) whether the medical  
23 treatment being provided is causing or may cause pain, suffering, or serious  
24 complications; (6) the pain or suffering to the child if the medical treatment is  
25 withdrawn; (7) whether any particular treatment would be proportionate or  
26 disproportionate in terms of the benefits to be gained by the child versus the  
27 burdens caused to the child; (8) the likelihood that pain or suffering resulting  
28 from withholding or withdrawal of treatment could be avoided or minimized; (9)  
the degree of humiliation, dependence and loss of dignity resulting from the  
condition and treatment; (10) the opinions of the family, the reasons behind  
those opinions, and the reasons why the family either \*\*135 has no opinion or  
cannot agree on a course of treatment; (11) the motivations of the family in  
advocating a particular course of treatment; and (12) the child's preference, if it  
can be ascertained, for treatment. This list is not meant to be exclusive, but is  
intended to provide a set of factors to be considered, analyzed and weighed. Not  
all of these factors may be applicable in a given case. The court is not limited to  
consideration of only these factors, and may take other factors into account  
when appropriate, especially as medical science and technology develop.

THE  
DOLAN  
LAW  
FIRM

TRIAL LAWYERS  
THE DOLAN BUILDING  
438 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830

1 In re Christopher I. 106 Cal.App.4th 533, 551-552, 131 Cal.Rptr.2d 122, 134 - 135  
2 (Cal.App. 4 Dist., 2003)

3 Only one case has truly touched on the fact that these rights do still exit:

4 It appears that once brain death has been determined, by medical  
5 diagnosis under Health and Safety Code section 7180 or by judicial  
6 determination, no criminal or civil liability will result from disconnecting  
7 the life-support devices (see People v. Mitchell (1982) 132 Cal.App.3d  
8 389, 183 Cal.Rptr. 166). This does not mean the hospital or the doctors are  
9 given the green light to disconnect a life-support device from a brain-dead  
10 individual without consultation with the parent or guardian. Parents do not  
11 lose all control once their child is determined brain dead. We recognize  
12 the parent should have and is accorded the right to be fully informed of the  
13 child's condition and the right to participate in a decision of removing the  
14 life-support devices. This participation should pave the way and permit  
15 discontinuation of artificial means of life support in circumstances where  
16 even those most morally and emotionally committed to the preservation of  
17 life will not be offended. Whether we tie this right of consultation to an  
18 inherent parental right, the Constitution, logic, or decency, the treating  
19 hospital and physicians should allow the parents to participate in this  
20 decision. See Dority vs. the Superior Court of San Bernarndino, (1983)  
21 145 Cal.App. 3d 273.

22 Because case law currently indicates that these rights exist past death, or at least  
23 raises the question of it, this Court should grant Plaintiff the relief to allow for Jahi's  
24 transport.

25 **D. Further this court should grant the relief sought based on**  
26 **Plaintiff's Religious beliefs defining life.**

27 The courts in the following cases held that, under the circumstances, a patient was  
28 entitled, under the state patients' bill of rights, to a particular medical treatment, or course  
of treatment, not being provided by the patient's facility.

Ordering the defendant hospital to provide a room for the performance of  
a religious circumcision, or "bris," on a newborn boy by a religiously  
qualified person "whose function it is to perform the ritual circumcision on  
male children in accordance with Hebrew religious requirements," the  
court in Oliner v. Lenox Hill Hospital, 106 Misc. 2d 107, 431 N.Y.S.2d  
271 (Sup. Ct. 1980), held that the Orthodox Jewish father's right to have a

**THE  
DOLAN  
LAW  
FIRM**

TRIAL LAWYERS  
THE DOLAN BUILDING  
418 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

"bris" performed for his infant son was mandated by N.Y. Pub. Health Law § 2803-c, which, in articulating a patient's rights, declared that "every patient's civil and religious liberties ... shall not be infringed, and the facility shall encourage and assist in the fullest possible exercise of these rights."

Granting a writ of mandamus, in an action by a state magistrate, compelling the director of the state department of health to provide detoxification and alcoholism treatment programs at community mental health centers, and compelling the state Commissioner of Finance and Administration to make funds available for the provision of such services, the court in McGraw v. Hansbarger, 171 W. Va. 758, 301 S.E.2d 848 (1983), declared that the state was obligated to provide the resources necessary to accord inmates of state mental institutions the rights that the state had granted them under W. Va. Code § 27-5-9, providing in part that "[e]ach patient of a mental health facility receiving services therefrom shall receive care and treatment that is suited to his needs."

(See, Oliner v. Lenox Hill Hospital, 106 Misc. 2d 107, 431 N.Y.S.2d 271 (Sup. Ct. 1980).

Dated: January 2, 2014

By: 

CHRISTOPHER B. DOLAN  
AIMEE E. KIRBY  
DOLAN LAW FIRM  
Attorney for Plaintiff

**THE  
DOLAN  
LAW  
FIRM**

TRIAL OFFICES  
THE DOLAN BUILDING  
418 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830

1 Christopher B. Dolan (#165358)  
Aimee E. Kirby (#216909)  
2 **THE DOLAN LAW FIRM**  
1438 Market Street  
3 San Francisco, California 94102  
Telephone: (415) 421-2800  
4 Facsimile: (415) 421-2830

5 Attorneys for Plaintiff  
6  
7

8 **UNITED STATES SAN FRANCISCO DISTRICT COURT OF CALIFORNIA**  
9 **UNLIMITED JURISDICTION**  
10

11 LATASHA WINKFIELD, as an  
Individual, and as Guardian Ad Litem and  
12 mother of Jahi McMath,

13 Plaintiff,

14 v.

15 CHILDREN'S HOSPITAL &  
16 RESEARCH CENTER AT  
17 OAKLAND CHILDREN'S  
HOSPITAL & RESEARCH CENTER  
18 AT OAKLAND; DR. DAVID  
DURAND, and  
19 Does 1-100, Inclusive  
20

*Case No.: 4:13-cv-05993-SBA*

**Declaration of Aimee E. Kirby in  
Support of Plaintiff's Motion to  
Compel Further Life Support and the  
installation of the a tracheostomy tube  
and gastric feeding tube to allow  
transportation of Jahi McMath**

Hearing Date: 1/7/2014  
Time: 1:00 pm  
Location: Dept. #1, fourth floor, 1301  
Clay Street, Oakland Ca. 94612  
Judge: Hon. Sandra Brown Armstrong

21 I, AIMEE KIRBY, declare as follows:

- 22
- 23 1. I am counsel of record for the Plaintiff, and a member in good standing with the  
24 State of California Bar and The Federal Court for the Northern District of  
25 California. I make this declaration in support of Plaintiff's Ex Parte Application  
26 For A Temporary Restraining Order And Order To Show Cause Re: Preliminary  
27 Injunction. The facts stated herein are known to me personally and, if not known  
28

**THE  
DOLAN  
LAW  
FIRM**

THE DOLAN BUILDING  
438 MARKET STREET  
IN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830



1 personally, made on information and belief.

2 2. On December 9, 2013, Jahi McMath went in for a routine procedure to have her  
3 tonsils removed in hopes that it would assist with her sleep apnea. Jahi is 13 years  
4 old, and is in the 8<sup>th</sup> grade. On December 12, 2013 the Defendants declared Jahi  
5 brain dead after her tonsil surgery ended with her bleeding profusely, going into  
6 cardiac arrest, and needing life-support. Currently, Jahi McMath remains on life-  
7 support at Defendant's Hospital.

8  
9 3. Plaintiff is actively seeking alternate placement for her child. My firm has tried to  
10 assist in that endeavor and have been informed that sub-acute facilities require  
11 that a patient have a tracheostomy tube and a gastric tube inserted prior to transfer  
12 and admission.

13  
14 4. Defendant has refused to follow the directions of Plaintiff to insert such tubes so  
15 she can transfer her daughter because they "won't provide medical treatment to a  
16 dead person."

17  
18 5. Absent an injunction, this 13 year old girl will be taken off life-support  
19 immediately by the Defendants. There can be no greater irreparable harm than  
20 death.

21  
22 6. A balancing of the relative hardships on the parties favors granting the requested  
23 temporary restraining order. There is absolutely no damage that the Defendants  
24 can claim that would override improperly ending life-support measures on child.

25  
26 7. My firm has informed the Hospital Defendants that the family is actively seeking  
27 to re-locate their daughter to an alternate care facility but, given the holidays, and  
28 the emotional difficulties accompanying this most critical and catastrophic injury,

**THE  
DOLAN  
LAW  
FIRM**

TRIAL LAWYERS  
THE DOLAN BUILDING  
410 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-2800  
FAX: (415) 421-2830

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

and the relative naiveté of the Plaintiff over medical issues, the family, despite best efforts, has been unable to locate alternate arrangements. All facilities stated that as a precondition of transfer they would require that a tracheostomy tube and gastric tube be placed into Jahi McMath.

- 8. On behalf of the family, as their designated legal representative, I have requested that measures be taken to allow ventilation support to continue and to support the physical health of Jahi McMath by installing a feeding tube, provide nutrition and place a more permanent measure to allow oxygen to be delivered.

I declare that the foregoing is true and correct under the penalty of perjury under the laws of the State of California. Executed on January 2, 2014, in Manhattan Beach, California.

Dated: January 2, 2014

By: 

CHRISTOPHER B. DOLAN  
AIMEE E. KIRBY  
DOLAN LAW FIRM  
Attorney for Plaintiff

**THE  
DOLAN  
LAW  
FIRM**  
TRIAL LAWYERS  
THE DOLAN BUILDING  
478 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830

**PROOF OF SERVICE**

***McMath v. Children's Hospital & Research Center at Oakland, et al.***

***Case No.: 4:13-cv-05993-SBA***

I, Mary Barnes, declare that:

I am employed in the County of San Francisco, State of California. I am over the age of 18, and am not a party to this action. My business address is 1438 Market Street, San Francisco, California 94102.

On January 2, 2014 I served:

**Plaintiff's Motion to Compel Further Life Support and the installation of the a tracheostomy tube and gastric feeding tube to allow transportation of Jahi McMath; Memorandum of Points and Authorities in Support Thereof; Declaration of Christopher B. Dolan in Support Thereof; and Proposed Order**

in said cause addressed as follows:

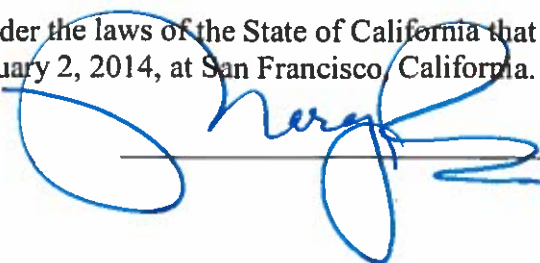
Douglas C. Straus  
Brian W. Franklin  
Noel M. Caughman  
ARCHER NORRIS  
A Professional Law Corporation 2033  
North Main Street, Suite 800  
Walnut Creek, California 94596-3759  
Telephone: 925.930.6600  
Facsimile: 925.930.6620  
*Attorneys for Defendant Children's Hospital*

Alameda Superior Court of California  
Attn: Hon. Evelio Grillo  
U.S. Post Office Building Address  
201 Thirteenth Street, 2nd Floor  
Oakland, California 94612

/XX/ **(BY ELECTRONIC SERVICE)** I caused the above-mentioned documents to be transmitted electronically according to **Douglas Straus at [dstraus@archernorris.com](mailto:dstraus@archernorris.com), Gary A Watt at [gwatt@archernorris.com](mailto:gwatt@archernorris.com), and Colin Coffey at [ccoffey@archernorris.com](mailto:ccoffey@archernorris.com).**

/XX/ **(BY MAIL)** By placing a true copy of the above-mentioned documents enclosed in a sealed envelope. I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at San Francisco, California, following ordinary business practices. **(Alameda Superior Court of California, to the attention to Judge Grillo only)**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 2, 2014, at San Francisco, California.

  
\_\_\_\_\_  
Mary Barnes

1 Christopher B. Dolan (#165358)  
Aimee E. Kirby (#216909)  
2 **THE DOLAN LAW FIRM**  
1438 Market Street  
3 San Francisco, California 94102  
Telephone: (415) 421-2800  
4 Facsimile: (415) 421-2830

5 Attorneys for Plaintiff

6

7

**UNITED STATES SAN FRANCISCO DISTRICT COURT OF CALIFORNIA**

8

**OAKLAND**

9

**UNLIMITED JURISDICTION**

10

11 LATASHA WINKFIELD, as an  
Individual, and as Guardian Ad Litem and  
12 mother of Jahi McMath,

*Case No.: 4:13-cv-05993-SBA*

13

Plaintiff,

[Proposed] Order Granting Plaintiff's  
Motion to Compel

14

v.

15

16 CHILDREN'S HOSPITAL &  
RESEARCH CENTER AT  
17 OAKLAND CHILDREN'S  
HOSPITAL & RESEARCH CENTER  
18 AT OAKLAND; DR. DAVID  
DURAND, and  
19 Does 1-100, Inclusive

20

21

22

23

24

25

26

27

28

To all parties and their attorneys of record therein, Motion to Compel came  
before this Court on \_\_\_\_\_ in Department \_\_\_\_ of the above-  
entitled Court. Counsel for all parties were present at the hearing and this Court finds  
were provided notice.

The matter having been argued, evidence having been submitted, and proof  
having been made to the satisfaction of the Court, IT IS ORDERED THAT:

The hospital is ordered to provide a nutrition tube and a tracheostomy tube so as

1 to allow Jahi to be transferred to an alternate facility.

2

3 Date: \_\_\_\_\_

4 \_\_\_\_\_

5 Judge

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**THE  
DOLAN  
LAW  
FIRM**

TRIAL LAWYERS  
THE DOLAN BUILDING  
418 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
F: (415) 421-2810

**PROOF OF SERVICE**

*McMath v. Children's Hospital & Research Center at Oakland, et al.*

*Case No.: 4:13-cv-05993-SBA*

I, Mary Barnes, declare that:

I am employed in the County of San Francisco, State of California. I am over the age of 18, and am not a party to this action. My business address is 1438 Market Street, San Francisco, California 94102.

On January 2, 2014 I served:

**[Proposed] Order Granting Plaintiff's Motion to Compel**

in said cause addressed as follows:

Douglas C. Straus  
Brian W. Franklin  
Noel M. Caughman  
ARCHER NORRIS  
A Professional Law Corporation 2033  
North Main Street, Suite 800  
Walnut Creek, California 94596-3759  
Telephone: 925.930.6600  
Facsimile: 925.930.6620

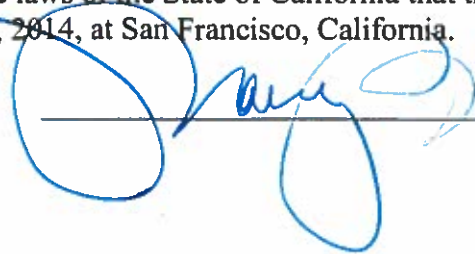
*Attorneys for Defendant Children's Hospital*

Alameda Superior Court of California  
Attn: Hon. Evelio Grillo  
U.S. Post Office Building Address  
201 Thirteenth Street, 2nd Floor  
Oakland, California 94612

/XX/ **(BY ELECTRONIC SERVICE)** I caused the above-mentioned documents to be transmitted electronically according to Douglas Straus at [dstraus@archernorris.com](mailto:dstraus@archernorris.com), Gary A Watt at [gwatt@archernorris.com](mailto:gwatt@archernorris.com), and Colin Coffey at [ccoffey@archernorris.com](mailto:ccoffey@archernorris.com).

/XX/ **(BY MAIL)** By placing a true copy of the above-mentioned documents enclosed in a sealed envelope. I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at San Francisco, California, following ordinary business practices. **(Alameda Superior Court of California, to the attention to Judge Grillo only)**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 2, 2014, at San Francisco, California.



Mary Barnes

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LATASHA WINKFIELD,

No. C-13-05993 DMR

Plaintiff(s),

**ORDER FOR APPEARANCE OF LEAD  
TRIAL COUNSEL AT SETTLEMENT  
CONFERENCE**

v.

CHILDRENS HOSPITAL OAKLAND,

Defendant(s).

The court has reviewed Defendant’s confidential settlement letter. It appears that Defendant will be represented by someone other than lead trial counsel at the January 3, 2014 emergency settlement conference. The court’s order dated January 2, 2014 specified that **lead trial counsel** must appear. [Docket No. 11.] The court expects that lead counsel Douglas C. Straus will be present on behalf of Defendant at the settlement conference.

IT IS SO ORDERED.

Dated: January 2, 2014

