



FILED
ALAMEDA COUNTY

JUN 25 2018

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

CLERK OF THE SUPERIOR COURT

By *Robert Clark*
Deputy

HAYWARD HALL OF JUSTICE

LATASHA NAILAH SPEARS
WINKFIELD, et al.,

Plaintiffs,

vs.

FREDERICK S. ROSEN, M.D., et al.,

Defendants.

Case No. RG15760730

ORDER BIFURCATING ISSUES FOR
TRIAL (CCP § 1048(b))

On April 19, 2018, counsel for Plaintiffs and Defendants appeared in Department 517, at 3:00 p.m., on the Motion of Plaintiffs for a Bifurcated Bench Trial to Determine whether the American Association of Neurology and American Academy of Pediatrics Guidelines should be applied to the facts of this case to determine whether Plaintiff Jahi McMath, appearing through her Guardian Ad Litem, Latasha Nailah Spears, meets the definition of "brain death" under H&S Code § 7180 (Uniform Determination of Death Act). See CCP § 1048(b) (court has discretionary authority to order separate trials if to do so will further the interests of convenience, expedition and/or to avoid prejudice). On April 17, 2018, the Court published its Tentative Ruling denying Plaintiffs' Motion to Bifurcate

and issuing an Alternative Bifurcation Order pursuant to CCP § 1048(b). No party expressed any concerns regarding the Court's proposed bifurcation order.

Therefore, FOR GOOD CAUSE shown, the Court declines to enter the bifurcation order proposed by Plaintiffs' counsel. Instead, the Court HEREBY ORDERS that counsel for Plaintiffs and Defendants appear on February 11, 2019, at 8:30 a.m., in Department 517 for a separate trial on the issue of whether Plaintiff Jahi McMath is a person with the capacity and/or standing to prosecute the First Cause of Action of the First Amended Complaint for Professional Negligence. *See* CCP § 367; and *Gantman v. United Pacific Ins. Co.* (1991) 232 Cal.App.3d 1560, 1566 (real party in interest is the person who has the legally conferred right to pursue the claim); and *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1001 (real party in interest is the person with a real interest in the outcome of the adjudication). "Person," as used in the Code of Civil Procedure, is defined by the Legislature in CCP § 17(b)(6). In 1992, the Legislature enacted a provision to add unborn fetuses to the definition of a "person" under the law.

The Court will determine at the trial whether Plaintiff Jahi McMath meets the legal definition of "brain death" pursuant to the criteria set forth by the Legislature in H&S Code § 7180. If the Court determines that Plaintiff meets that definition, she will not be entitled to pursue the First Cause of Action for Professional Negligence. Although the issue of whether Plaintiff has the capacity or standing to pursue her claim is ordinarily a legal issue, the Court may not make the required determination as a matter of law if the parties present conflicting evidence regarding Plaintiff's condition. The Court's determination regarding

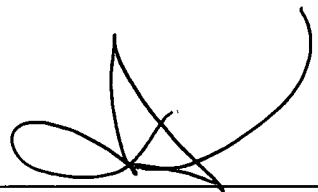
Plaintiff's legal capacity or standing to pursue her medical malpractice claim against Defendants will be based on findings of fact underlying the issue of law made by a jury. *See People v. Superior Court* (2002) 103 Cal.App.4th 409, 433 (jury makes credibility determinations and resolves underlying disputed factual issues regarding standing).

The Court's formal Trial Setting Order is HEREBY AMENDED to clarify that the Court has made the foregoing bifurcation order and that only the above-described issues will be tried during the first phase commencing on February 11, 2019. The remainder of the Court's Trial Setting Order issued on April 19, 2018 is binding on the parties and their attorneys of record.

Counsel for Defendant James Patrick Howard, M.D., Ph. D., shall file and serve the Notice of Entry of Order no later than July 3, 2018.

IT IS SO ORDERED.

Dated 6-25-2018



Stephen M. Pulido
Judge of the Superior Court

CLERK'S CERTIFICATE OF MAILING
(CCP 1013a)

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is **24405 Amador Street Hayward, California 94544**. I served this **ORDER** by placing copies in envelope(s) addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail in **Hayward**, California, following standard court practices.

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Executive Officer/Clerk of the Superior Court

By 

Kasha Clarke, Deputy Clerk