

CIV-160607-CIV-DS1608931-PETENT-150602



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**Petition Filed (Civil)**



NEW FILE

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JUN 07 2016

4 Attorney for Petitioners

BY   
CHRISTIAN HERNANDEZ, DEPUTY

**ON DEMAND**

5  
6 **IN THE SUPERIOR COURT OF CALIFORNIA**

7  
8 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

9 **UNLIMITED CIVIL JURISDICTION**

10  
11 Alex Pierce, a minor, by Sabrina Pierce his  
12 mother.

13 Petitioner,

14 v.

15 Loma Linda University Medical Center.

16 Respondent.

Case No.

17 VERIFIED EX-PARTE PETITION FOR  
18 TEMPORARY RESTRAINING  
19 ORDER/INJUNCTION: REQUEST FOR  
20 ORDER OF INDENDENT  
21 NEUROLOGICAL EXAM; REQUEST  
22 FOR ORDER TO MAINTAIN LEVEL OF  
23 MEDICAL CARE

24 I Sabrina Pierce am the mother of Alex Pierce who, on June 3, 2016 was involved  
25 in a near drowning incident at Vista Murrieta High School. Alex attends Dorothy  
26 McElhinney Middle School in Murrieta, CA. On June 3, 2016, Alex attended a school  
27 sponsored pool party at Vista Murrieta High School. At one point in the evening,  
28 students noticed Alex at the bottom of the pool. Students alerted the lifeguards to the  
situation. Lifeguards placed Alex on a floating backboard in the pull and removed him  
from the pool. 911 was called and Murrieta Fire paramedics arrived on the scene.

1 Murrieta Fire started CPR and detected a heartbeat and a pulse right away.  
2 Murrieta Fire hooked Alex up to a ventilator and transported him to Inland Valley  
3 Medical Center in Wildomar by ambulance. At Inland Valley, Alex received a CT scan  
4 that revealed he did not have a spinal injury and that he did not have any broken bones.  
5 Alex remained on a ventilator and continued to open his eyes and move his arms. Alex  
6 remained Valley Medical Center for approximately 90 minutes until it was determined  
7 that they could not provide the care Alex required. Alex was heliovacked to Loma Linda  
8 Medical Center in Loma Linda.  
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10

11 Once at Loma Linda, Alex was stabilized. Sometime late Friday June 3<sup>rd</sup> or early  
12 June 4<sup>th</sup>, Alex was given an EEG to assess his brain activity. The EEG showed  
13 measurable brain activity. Alex continued to open his eyes. A CT scan revealed that  
14 Alex's heart and lungs were damaged, but given the proper treatment they could be  
15 healed.  
16  
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18 Later Saturday evening, a neurologist examined Alex and diagnosed him with  
19 brain spasms. The spasms continued through the evening. Another neurologist examined  
20 Alex and diagnosed Alex with having brain seizures. The neurologist prescribed at least  
21 four different medications for Alex to try to stop the seizures. After several hours on the  
22 medications, Alex's seizures ceased. After receiving the medications for the brain  
23 seizures Alex's demeanor changed drastically. Alex no longer opened his eyes or moved  
24 his arms.  
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1 On Sunday June 5, 2016, Loma Linda University Medical Center informed the  
2 Pierce family that they were going to conduct a brain death test on Alex. The family  
3 ardently opposed the brain death test. Sabrina Pierce asked the hospital for time to get a  
4 second opinion about Alex's condition before the hospital performed the brain death test.  
5  
6 The family is concerned that the brain death exam itself, specifically the apnea test during  
7 which Alex would be taken off the ventilator for several minutes and exposed to  
8 dangerous levels of CO2 in his blood, could cause further injury to Alex's brain.  
9

10 I am a Christian and believe in the healing power of God. I do not want him pulled  
11 off life support. Loma Linda University Medical Center has said that they have the right  
12 to conduct the brain death test and if declared brain dead they claim they have the right to  
13 remove Alex from life support.  
14

15 I am hereby asking that Loma Linda University Medical Center be prevented from  
16 removing my son, Alex Pierce, from his ventilator.  
17

18 If Loma Linda removes Alex from a respirator and he stops breathing then they  
19 will have ended his life as well as their responsibility to provide his future care for the  
20 harm their negligence caused. For this reason we hereby request that an independent  
21 examination be performed, including the use of an EEG. I also request that Loma Linda  
22 University Medical Center be ordered to continue to provide such care and treatment to  
23 Alex that is necessary to maintain his physical health and promote any opportunity for  
24 healing and recovery of his brain and body. Failure to issue the Restraining Order will  
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1 result in irreversible and irreparable harm so a basis in both law and fact exists for this  
2 court's intervention.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 California Health and Safety Code Section 7180 (a) (The Uniform Determination  
5 of Death Act) provides for a legal determination of brain death as follows; "(a) An  
6 individual who has sustained either (1) irreversible cessation of circulatory and  
7 respiratory functions, or (2) irreversible cessation of all functions of the entire brain,  
8 including the brain stem, is dead. A determination of death must be made in accordance  
9 with accepted medical standards."  
10

11 Health and Safety Code Section 7181 provides for an "independent" verification  
12 of any such determination stating; "When an individual is pronounced dead by  
13 determining that the individual has sustained an irreversible cessation of all functions of  
14 the entire brain, including the brain stem, there shall be *independent confirmation* by  
15 another physician."  
16

17 As established by the Court in *Dority v Superior Court* (1983) 145 Cal.App.3d  
18 273, 278, this Court has jurisdiction over the issue of whether a person is "brain dead" or  
19 not pursuant to Health and Safety Code Sections 7180 & 7181. Acknowledging the  
20 moral and religious implications of such a diagnosis and conclusion, the *Dority* court  
21 determined that it would be "unwise" to deny courts the authority to make such a  
22 determination when circumstances warranted.  
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1 Here, doctors from Loma Linda Medical Center have indicated that they intend to  
2 perform two brain death exams on Alex Pierce, including apnea tests and a cerebral  
3 perfusion test. Both of these exams will be performed by the same team in the same  
4 hospital. Only Loma Linda's physicians have examined Alex in regards to possible brain  
5 death.  
6

7 Alex was seen at Inland Valley Medical Center immediately after his accident. At  
8 that time he was responding to me and moving his arms and legs. His EEG showed  
9 substantial brain activity. After Alex was transferred to Loma Linda, his attending  
10 physician made the decision to sedate him. Since that time, Alex has been unresponsive.  
11 As stated above, Alex's mother does not trust Loma Linda to be independent, given how  
12 they are responsible for his current condition and they have a conflict of interest in  
13 determining his condition. If Loma Linda can make a finding of brain death, they no  
14 longer have to pay for any of his care, while if he is severely brain damaged, but not brain  
15 dead, they may be legally liable to provide his ongoing care and treatment at Loma Linda  
16 or elsewhere.  
17  
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19

20 Only one other case of this type is on record in California, namely the case of Jahi  
21 McMath which was heard in Alameda County in December of 2013. That case, one of  
22 first impression, where Nailah Winkfield challenged Children's Hospital Oakland's  
23 determination of brain death after they negligently treated her daughter, Jahi, led to an  
24 Order, issued by Hon E. Grillo, holding that an independent determination is one which  
25 is performed by a physician with no affiliation with the hospital facility (in that case  
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1 Children's Hospital Oakland) which was believed to have committed the malpractice  
2 which led to the debilitating brain injuries Jahi suffered. ~~A true and correct copy of~~  
3 ~~Judge Grillo's Order is attached to this Petition.~~ In the *McMath* case, the Trial Court  
4 rejected the Hospital's position that the Court had no jurisdiction over the determination  
5 of whether not Jahi McMath was "brain dead" or not.  
6

7 In *McMath*, Judge Grillo stated that the Section 7180's language regarding  
8 "accepted medical standards" permitted an inquiry into whether the second physician  
9 (also affiliated with Children's Hospital Oakland) was "independent" as that term was  
10 defined under Section 7181. Judge Grillo determined that the petitioner's due process  
11 rights would be protected by a focused proceeding providing limited discovery and the  
12 right to the presentation of evidence.  
13  
14

15 The Court determined that, under circumstances which are strikingly similar to  
16 those which present themselves here, the conflict presented was such that the court found  
17 that the Petitioner was entitled to have an independent physician, unaffiliated with  
18 Children's Hospital Oakland, perform neurological testing, an EEG and a cerebral blood  
19 flow study. Indeed, the Court Ordered Children's Hospital Oakland to permit the  
20 Court's own court appointed expert to be given temporary privileges and access to the  
21 Hospital's facilities, diagnostic equipment, and technicians necessary to perform an  
22 "independent" exam.  
23  
24

25 In a Nevada Supreme Court case with similar facts, the court unanimously  
26 questioned whether the American Association of Neurology guidelines that are used to  
27  
28

1 determine brain death in both Nevada and California, “adequately measure all functions  
2 of the entire brain, including the brain stem.” *In re Guardianship of Hailu*, 131 Nev. Adv.  
3 Op. 89. (Nov. 16, 2015). In that case, Aden Hailu, a young college student, went into  
4 cardiac arrest during emergency surgery for severe stomach pain and subsequently  
5 suffered a brain injury. The hospital performed three EEGs, which showed some brain  
6 activity, yet doctors still proceeded to declare her brain dead pursuant to Nevada’s brain  
7 death statute, which is identical to California’s. Both states use the same guidelines to  
8 determine brain death, namely those developed by the American Association of  
9 Neurology. In this case, Loma Linda wants to proceed with a brain death exam, even  
10 though Alex’s EEGs show brain activity.

11  
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14 As stated above, the American Association of Neurology’s brain death exam  
15 includes two separate apnea tests, during which patients are taken off the ventilator for up  
16 to ten minutes to see if they will take a spontaneous breath. During this time, CO2 builds  
17 up in the blood to dangerous levels. This buildup of CO2 can cause severe brain damage  
18 and even death. See Coimbra Declaration.

19  
20  
21 As in *Dority* and *McMath*, the unique circumstances of this case invoke the  
22 Court’s jurisdiction and due process considerations require that this Court grant  
23 Petitioner’s Petition for a Temporary Restraining Order and order that Loma Linda  
24 University Medical Center permit Petitioner to obtain an independent medical  
25 examination at Loma Linda with the assistance of the Medical Center’s diagnostic  
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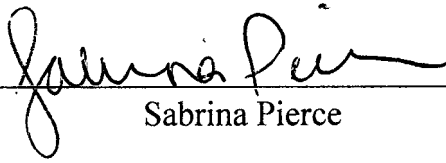
1 equipment and technicians necessary to carry out a repeat EEG and a cerebral blood flow  
2 study.

3 In order to provide the requisite physical conditions for a reliable set of tests to be  
4 performed, Alex Pierce should continue to be treated so as to provide his optimum  
5 physical health and in such a manner so as to not interfere with the neurological testing  
6 (such as the use of sedatives or paralytics).  
7

8 WHEREFORE, petitioner prays:  
9

- 10 1) That a Temporary Restraining Order be issued precluding Respondents from  
11 performing any apnea tests on Alex Pierce be issued;  
12
- 13 2) That an Order be issued precluding Respondents from removing Alex Pierce from  
14 respiratory support, or removing or withholding medical treatment;  
15
- 16 3) That an Order be issued that Respondents are to provide Alex Pierce treatment to  
17 maintain his optimum physical health, including nutrition and thyroid hormone as  
18 needed, in such a manner so as to not interfere with the neurological testing (such  
19 as the use of sedatives or paralytics in such a manner and/or at such time that they  
20 may interfere with the accuracy of the results).  
21
- 22 4) That an Order be issued that Petitioner is entitled to an independent neurological  
23 examination, with the assistance of Loma Linda University Medical Center's  
24 diagnostic equipment and technicians necessary to carry out a repeat EEG and a  
25 Cerebral Blood Flow Study.  
26

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed on June 7, 2016, at San Bernardino, California.  
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6 Sabrina Pierce  
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