

# Legal Update 2019

## Top 10 Legal Developments in Bioethics

Thaddeus Mason Pope  
ASBH Annual Meeting  
October 24, 2019

1

# Nothing to disclose

2



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# 1969

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Medical Futility  
Brain Death  
Conscience Rules

8

Futility

9

Beneficial

Non-  
beneficial

10

Clinician

CMO

Surrogate

LSMT

11



12



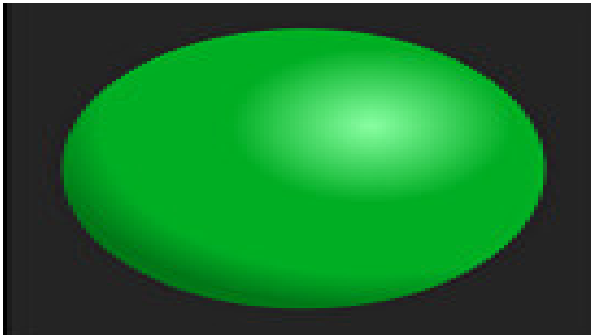
Clinician  
may proceed  
**without**  
consent

13



Clinician  
**needs**  
consent

14



15

Clinician  
friendly

16

1

17



18

1999

19

Stop LSMT  
**without**  
consent

20

**any reason**

if hospital review  
committee agrees

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23

2019

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HB 3158	SB 2355
HB 3369	SB 2069
HB 3743	SB 2129

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29

moot

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“live case or controversy”

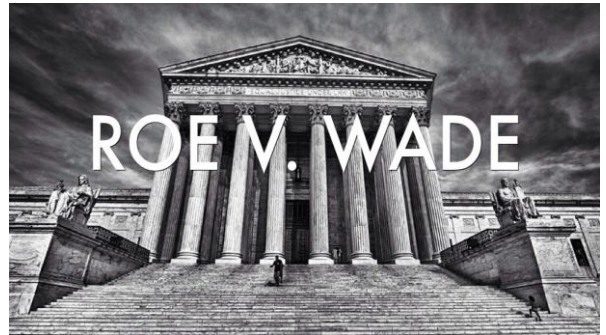
31

**BUT**

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“capable of repetition, yet evading review”

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34



35

**exempt**

EOL laws from  
judicial review

36

**Oct. 21, 2019** No. 19-0390

**IN THE SUPREME COURT OF TEXAS**

EVELYN KELLY, INDIVIDUALLY, AND ON BEHALF OF THE ESTATE OF DAVID CHRISTOPHER DUNN  
*Petitioner,*  
v.  
HOUSTON METHODIST HOSPITAL  
*Respondent.*

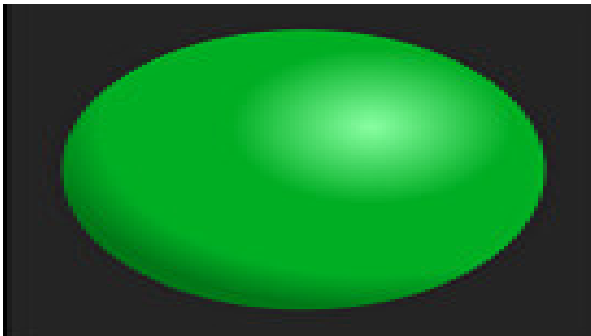
On Appeal from the First Court of Appeals, Houston, Texas.  
(No. 01-17-00866-CV)

**PETITIONER'S MOTION FOR REHEARING**

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File # 15-CRV-0488

**HEALTH PROFESSIONS APPEAL AND REVIEW BOARD**

PRESENT:

Lorne Sossin, Designated Vice-Chair, Presiding  
Beth Downing, Board Member  
Douglas Kearns, Board Member

Review held on May 17, 2016 at Toronto, Ontario

**IN THE MATTER OF A COMPLAINT REVIEW UNDER SECTION 29(1) of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, c.18, as amended**

**B E T W E E N:**

E.W.

Applicant

44



45

**August  
2019**

CITATION: Wawrzyniak v. Livingstone, 2019 ONSC 4900  
COURT FILE NO.: CV-10-409585  
DATE: 20190820

ONTARIO  
SUPERIOR COURT OF JUSTICE

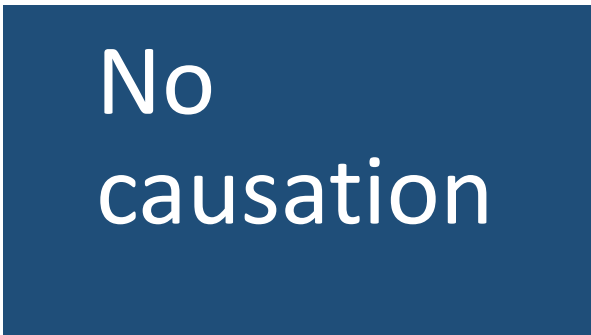
**BETWEEN:**

Elizabeth Gwendolyn Joy Wawrzyniak )  
 ) *Marshall Swadron and Nima Hojjati, for the*  
 ) Plaintiff  
 )

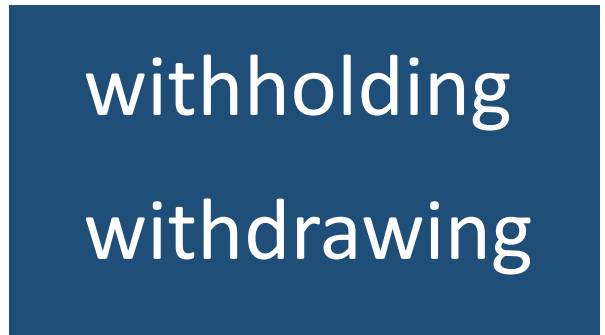
- and -

Donald J. Livingstone, Martin G. Chapman )  
 ) *Erica J. Baron and Christine Wadsworth, for*  
 ) the Defendants  
 )  
 )

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48



w/d requires  
consent

49

w/h **not**  
require consent

50



COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

**September 2019**

51



52

Surrogate  
friendly

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1

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62

# Why?

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1. No pain & suffering =  
**no harm**

64

2. Brain damage,  
but illness **stable**,  
no deterioration

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3. **Other hospitals**  
provide disputed  
treatment

66



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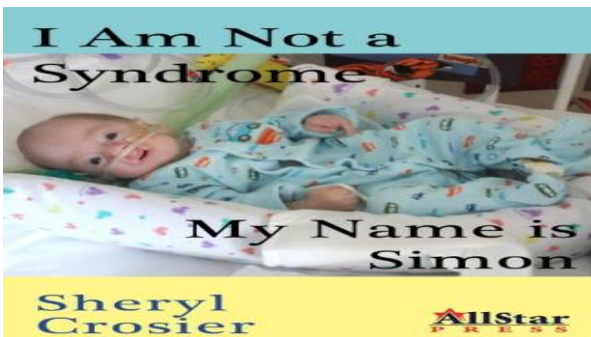
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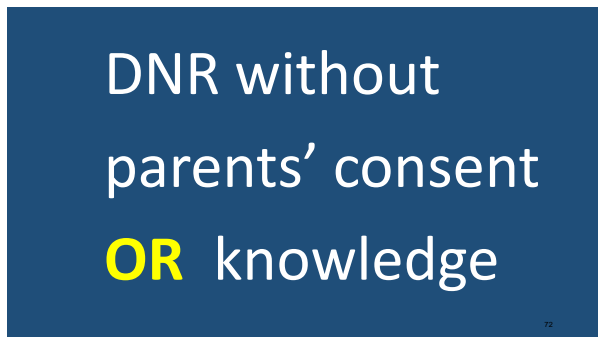
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Simon's Law  
addresses this

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“No DNR order or  
similar order shall be  
instituted . . . if . . .  
refusal of **consent**”

74

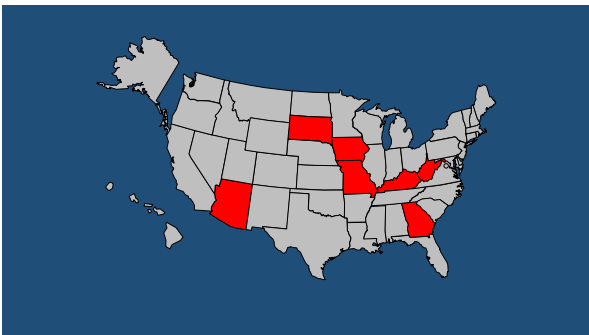
Kansas



75

2019

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**Not even a court**  
 may order withdrawal  
 over parental objections

82

**Brain  
 Death**

83



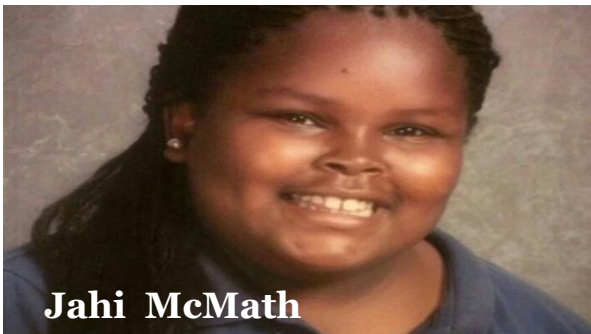
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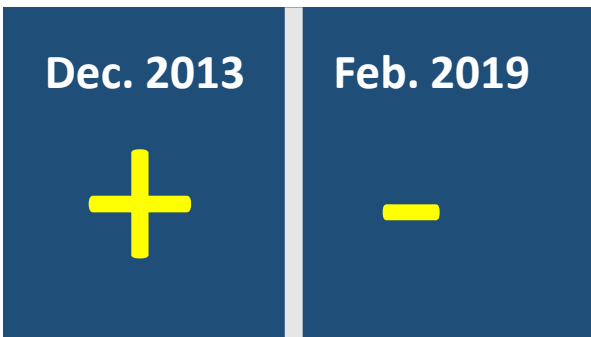
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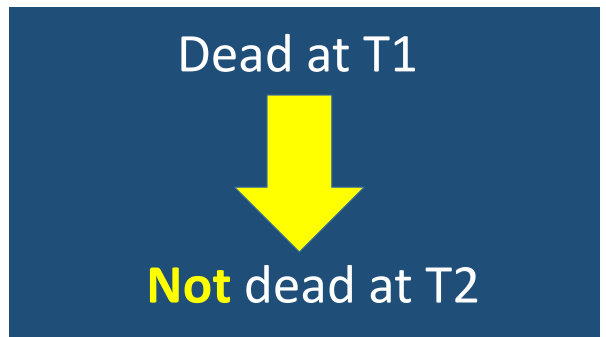
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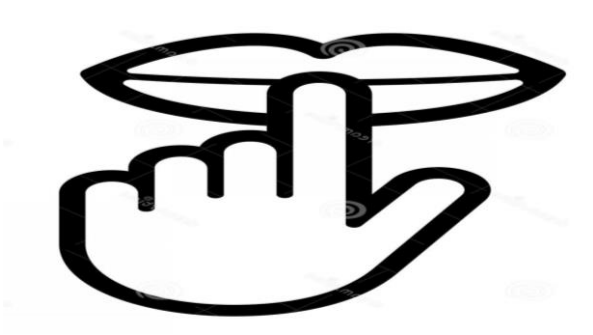
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**Legitimacy** of accepted medical standards for determining DNC

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All state & federal cases **dismissed**

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Moral **exemption** from DDNC

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Clinicians **may not** declare you dead on neuro criteria, if religious objection

97

Rejected **everywhere** outside NJ

98

Still **asked** for

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100



101



102



Conscience  
Based  
Objections

109

OCR

110



111

2 roles

112

HIPAA  
Non-discrimination

113

Roger  
Severino



114

3rd

115

Conscience &  
Religious Freedom  
Division

116



**FEDERAL REGISTER**  
The Daily Journal of the United States Government

117

Proposed Rule  
January 26, 2018

118

“Protecting  
Statutory  
Conscience Rights  
in Health Care”

119

Notice &  
Comment period

120

Final Rule  
May 21, 2019

121

Supposed to  
be effective  
July 22, 2019

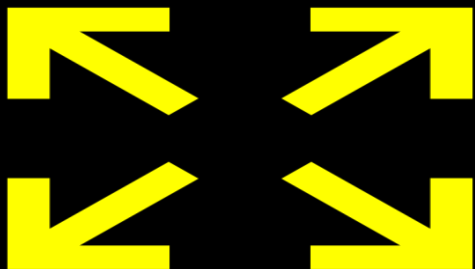
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Scheduled effective  
**November 22, 2019**

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Participating facilities cannot  
require staff to participate in  
practices and procedures to  
which they have objections

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Who

can assert CBO

126

Not just direct care  
providers, **also**  
schedulers, janitors

127

Not just  
individuals,  
**entities** too

128

**What**

type of CBO is protected

129

Religious  
Moral  
Ethical  
**Other**

130

“articulable  
connection”

131

Perform  
Assist  
Make arrangements  
**Refer**

132

Schedule  
Transport  
Prepare room

133

**When**  
can assert CBO

134

No matter  
undue burden  
on employer

135

No matter  
effect on  
patients

136



137



138

Contraception  
 Female sterilization  
 Vasectomies  
 Emergency contraception  
 Abortion

139

MAID VSED  
 PSU LSMT

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Transgender health  
 HIV/AIDS  
 Intersexuality

141

Medical Futility  
 Brain Death  
 Conscience Rules

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Materials discussed in this  
 presentation are available

<http://thaddeuspope.com>

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## Medical Futility Blog

Since July 2007, I have been blogging, almost daily, to [medicalfutility.blogspot.com](http://medicalfutility.blogspot.com). This blog focuses on reporting and discussing legislative, judicial, regulatory, medical, and other developments concerning medical futility and end-of-life medical treatment conflicts. The blog has received nearly **4 million** direct visits. Plus, it is distributed through RSS, email, Twitter, and re-publishers like WestlawNext and Bioethics.net.

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