

# Bioethics in California Courts

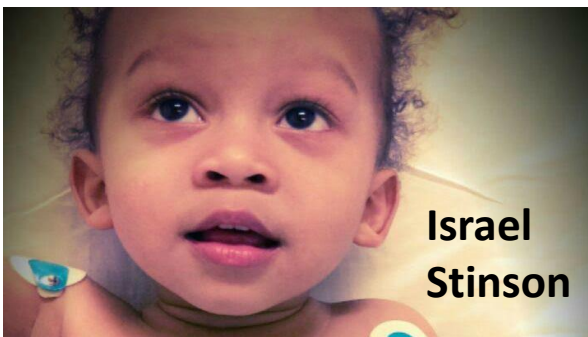
SCBCC - January 17, 2018

Thaddeus Mason Pope, JD, PhD  
Mitchell Hamline School of Law

5 notable new cases

From least to most important

1



Brain death = death

BUT

“reasonably  
brief period”

California Health &  
Safety Code § 1254.4

Contrast



Religious objection → No death by BD

“[D]eath . . . **shall not be declared** . . . neurological criteria . . . violate . . . **religious beliefs** . . . .”

# California rejected (twice)

Case 2:16-cv-00889-KJM-EFB Document 64 Filed 07/01/16 Page 1 of 17

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18 **IN THE UNITED STATES DISTRICT COURT**  
 19 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

20 ) Case No.: 2:16-cv-00889-KJM-EFB  
 21 )  
 22 )  
 23 )  
 24 )  
 25 )  
 26 )

17 James Fonseca, an individual parent  
 18 and guardian of Israel Simson, a  
 19 minor,  
 20 Plaintiff,  
 21 v.  
 22 Karen Smith, M.D. in her official  
 23 capacity as Director of the California  
 24 Department of Public Health, and Does  
 25 2 through 10, inclusive,  
 26 Defendant.

27 **Second Amended Complaint for  
 Equitable Relief**

28 **REQUEST FOR JURY TRIAL**



AAN does **not**  
measure what  
**CUDDA** requires

**Aden  
Hailu**



Thursday  
March 8

3



Sumner  
Redstone

VIACOM

CBS

© 2018 CBS



Manuela  
Herzer

**Revoked** AD  
appointing her  
as agent

Petition to  
invalidate  
revocation



Despite capacity issues

Video testimony showed  
strong negative feelings  
Herzer

Appeals court affirms

January 2, 2018

Capacity is  
decision specific

4



Cal. H&S  
1418.8  
(1992)

Unconstitutional

No written  
notice to  
resident

**No IDT** for  
anti-psychotics  
or EOL decisions

Litigation concerns  
**only 1418.8**

But . . . impacts  
**hospitals** too

#### APPENDIX 2-E

### CONSIDERATIONS FOR REVISING THE HOSPITAL'S POLICY AND PROCEDURE REGARDING DECISION MAKING FOR UNREPRESENTED PATIENTS

Hospitals that have adopted the CMA/CHA/Alliance model policy, "Health Care Decisions for Unrepresented Patients," may wish to revise their policy & procedure to address the deficiencies in state law identified in the recent Superior Court case, *California Advocates for Nursing Home Reform v. Chapman*. Hospitals may wish to consider the suggestions outlined below.

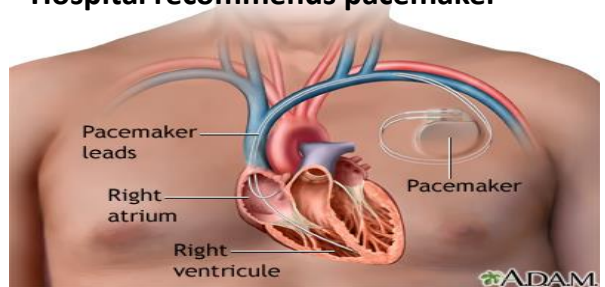
Appellate  
briefing closes  
**today, Jan. 17**

# 5



Maxine Stewart  
**agent** for  
 Anthony Carter

Hospital recommends pacemaker



Stewart declines

Hospital does  
 it anyway



POA stated  
“all measures”  
taken to preserve  
[Carter’s] life

Stewart

**Not** invited to HEC  
**Not** told surgery

Patient dies  
  
Agent sues

Elder Abuse & Dependent  
Adult Civil Protection Act  
  
Fraud by concealment  
  
Medical battery



Reinstated



Petition  
review

**USC**  
UNIVERSITY  
HOSPITAL

**USC University Hospital**

More than a hospital. An academic medical center.

USC University Hospital has established its place as one of the nation's preeminent academic medical centers. Part of USC California, and located just minutes from downtown Los Angeles, USCHH is a premier, 411-bed research and teaching hospital staffed by the faculty of the renowned Keck School of Medicine of the University of Southern California.

How should  
hospitals “fire”  
healthcare  
agents?

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