

# **EXHIBIT 3**

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1 (PORTIONS SEALED BY COURT ORDER)

2 SUPERIOR COURT OF THE STATE OF CALIFORNIA

3 IN AND FOR THE COUNTY OF ALAMEDA

4 RENE C. DAVIDSON COURTHOUSE - POST OFFICE BUILDING

5 BEFORE THE HONORABLE EVELIO M. GRILLO, JUDGE

6 DEPARTMENT 31

7 ---oOo---

8  
9 LATASHA WINKFIELD, Mother of JAHI  
10 MCMATH, a minor,

11 Petitioner,

12 vs.

RG13-707598

13 CHILDREN'S HOSPITAL OF OAKLAND,  
14 DR. DAVID DURAND, M.D., and  
DOES 1 through 100, inclusive,

15 Respondents.  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, DECEMBER 24, 2013

BRIGET MATTOS & ASSOCIATES  
223 San Anselmo Avenue, Suite 8  
San Anselmo, California 94960  
(415) 747-8710

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## EXHIBITS

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\* (Sealed)

\*\* (Received in evidence off the record.)

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1 TUESDAY, DECEMBER 24, 2013 -- 9:40 A.M.

2 ---oOo---

3  
4 P R O C E E D I N G S

5 (In-chambers conference with Court and counsel  
6 not reported.)

7 THE COURT: Calling the case of Winkfield vs.  
8 Children's Hospital. Your appearances, please.

9 MR. DOLAN: Good morning, Your Honor. Chris  
10 Dolan on behalf of the petitioner.

11 MR. STRAUS: Doug Straus on behalf of respondent,  
12 Children's Hospital and Research Center of Oakland. Good  
13 morning, Your Honor.

14 THE COURT: Good morning.

15 Before we get started, I want to advise members  
16 of the public and the media how today's hearing is going  
17 to be conducted.

18 We have two physicians here who will provide  
19 testimony at some point during this morning's hearing.  
20 Before the physicians provide the testimony, however,  
21 we -- the Court will be holding a short closed session in  
22 chambers where the parties will be able to question the  
23 physicians regarding some of the aspects of the  
24 examination of Jahi, which the Court has determined could  
25 implicate her medical privacy rights.

1           Once that session is concluded both of the  
2 physicians, Dr. Shanahan and Dr. Fisher, will come out and  
3 provide some testimony regarding the issue here, which is  
4 the application of Health and Safety Code Section 7180 and  
5 7181 to the case which is before the Court.

6           Counsel, would either of you care to comment?

7           MR. DOLAN: No, thank you, Your Honor.

8           MR. STRAUS: No, Your Honor.

9           THE COURT: Okay. The witnesses we have today  
10 are Dr. Shanahan and Dr. Fisher. We will start the closed  
11 session with Dr. Fisher first and we will be in chambers.  
12 It will take the reporter just a minute to set up.

13           Normally we would do this in open court and clear  
14 the courtroom, but I understand given the video and audio  
15 setups that would be quite a task, so we're going to  
16 conduct the first part in chambers, and I would ask the  
17 court reporter to get set up.

18           Are there any other matters that need to be  
19 addressed at this time?

20           MR. DOLAN: Not at this time.

21           MR. STRAUS: Not at this moment, Your Honor.

22           THE COURT: Let's get Dr. Fisher in chambers with  
23 the court reporter.

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TUESDAY, DECEMBER 24, 2013 - 9:55 A.M.

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(Following proceedings held in chambers and to remain sealed until further Court Order.)

**- PORTIONS REDACTED -**

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**- PORTIONS REDACTED -**

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(In-camera proceedings to be distributed to  
counsel and Court, if requested, but sealed for public  
distribution and to be opened only by Court Order.)

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1 TUESDAY, DECEMBER 24, 2013 - 11:25 A.M

2 ---oOo---

3  
4 (Following proceedings held in open court.)

5 THE COURT: Dr. Fisher, you have been sworn in  
6 already. I will have you sworn again, and I will ask you  
7 a few questions.

8 THE WITNESS: Yes, Your Honor.

9 DR. PAUL GRAHM FISHER,

10 a witness, called as an independently appointed court  
11 expert, being previously duly sworn, was examined and  
12 testified as follows:

13 THE CLERK: Please, one more time: State and  
14 spell your name for the record.

15 THE WITNESS: Sure. Paul Graham, G-R-A-H-A-M,  
16 Fisher, F-I-S-H-E-R.

17 THE COURT: Dr. Fisher, during the in-camera  
18 session with the attorneys for both parties, both  
19 attorneys had the opportunity to ask you some questions  
20 regarding the examination you conducted and the standards  
21 that you followed in conducting those examinations.

22 Based upon the questioning in chambers, the Court  
23 finds that you performed the examination of Jahi within  
24 the generally accepted medical guidelines as stated within  
25 Health & Safety Code Section 7180 and Section 7181.

1 I'm not going to ask you to detail everything  
2 that you did, but you have been appointed by the Court,  
3 I'm going to ask you to give your opinion as to the  
4 medical condition of Jahi.

5 THE WITNESS: Unfortunately, the medical  
6 condition of Jahi, by the statute you mentioned, she meets  
7 all the criteria for brain death. She has no brain stem  
8 and no cerebral function, and she was not able to pass an  
9 apnea test.

10 THE COURT: Okay. And the tests you performed  
11 were performed pursuant to what guidelines?

12 THE WITNESS: The guidelines established by the  
13 American Academy of Pediatrics and agreed upon by numerous  
14 other professional medical societies in North America.

15 THE COURT: Okay. You prepared a report which  
16 summarized the examination that you conducted and your  
17 findings, is that correct?

18 THE WITNESS: Yes, I did prepare a report entered  
19 into the medical record at Children's Hospital Oakland.

20 THE COURT: In chambers a request was made to  
21 have the report entered into the public record. Do either  
22 counsel have an objection to that?

23 MR. DOLAN: Yes, Your Honor. The petitioner  
24 objects insofar as this is part of the medical file of  
25 Jahi McMath, and given that the doctor's opinion is what

1 is relevant to this case in terms of the determination  
2 that the Court needs to make, given the privacy interest  
3 of Jahi, and the fact that others may read this report and  
4 seek to interpret it in their own way, which may be  
5 differently, and the fact that it may lead to further  
6 controversy, I request under Evidence Code Section 352 in  
7 terms of not so much of the probative value evidentially,  
8 but the potential for impact on this family and on this  
9 matter, that the record itself be sealed and not made part  
10 of the public file any more than any other medical record  
11 as this is now contained within her medical records.

12 Furthermore, I object insofar as it is  
13 cumulative, given the doctor's extensive testimony as to  
14 his examination and his opinion rendered here, so in the  
15 interest of the family and their privacy, I request that  
16 the medical record not be a public document.

17 THE COURT: Mr. Straus?

18 MR. STRAUS: Your Honor, the report is  
19 appropriately to be made a public document. There is a  
20 pending legal controversy over whether the standards were  
21 met by -- and the determination of brain death by the  
22 hospital and by the independent expert appointed by the  
23 Court.

24 The expert's report contains nothing particularly  
25 private or invasive of Jahi McMath's privacy other than

1 perhaps the final two lines on the second page above Dr.  
2 Fisher's signature and Children's Hospital has no  
3 objection to the redaction of those two lines of the  
4 report.

5           The remainder of the report is simply a clinical  
6 summary of the basis for Dr. Fisher's opinion, and given  
7 the public nature of this proceeding and the legal issues  
8 raised here, it's appropriate that that be in the public  
9 record.

10           MR. DOLAN: If the Court is inclined to allow any  
11 of it into the record, we would request that the portion  
12 referenced be redacted.

13           THE COURT: Okay. I have considered this, and I  
14 have discussed it with both of you in chambers, and the  
15 Court is denying the request to seal Dr. Fisher's report.

16           The Court notes that the report was court ordered  
17 to obtain a second independent opinion. I believe that  
18 gives it a value. It is distinct from a medical record,  
19 which is conducted during the examination of the patient,  
20 and I find that there is an overriding interest that  
21 overcomes the right. I do not find that there is an  
22 overriding interest that overcomes the right of the public  
23 to have access to the record, and that, in this case,  
24 access to the record should be public, so it will be  
25 released at the appropriate time.

1           Now we have a second witness. Are you prepared  
2 to proceed?

3           MR. STRAUS: Yes, Your Honor.

4           THE COURT: We will go back into chambers, and  
5 that is Dr. Shanahan?

6           MR. STRAUS: That's correct.

7           MR. DOLAN: Your Honor, in terms of being  
8 prepared to proceed, we do have an objection at this time  
9 insofar as that -- if this is to go forward, we do not  
10 have the complete medical records, scans and images, such  
11 that I could prepare myself to cross-examine this witness.

12           I was -- received a packet of medical records  
13 yesterday afternoon after we left court, but there were no  
14 digital scans or images that were taken at or near the  
15 time of this doctor's evaluation, nor do I have the recent  
16 profusion study that was done.

17           So I understand the Court will take testimony, I  
18 will ask that the Court provide me an opportunity in the  
19 future, upon receipt of this information, to perhaps  
20 conduct further cross-examination of the witness and to  
21 withhold its opinion vis-a-vis this witness until I have  
22 had that opportunity under the sixth amendment.

23           THE COURT: I will take up your objection after  
24 you have had an opportunity to examine Dr. Shanahan in  
25 chambers, and if it appears that you require those

1 documents for cross-examination, I will consider it at  
2 that time.

3 MR. DOLAN: Thank you.

4 THE COURT: All right.

5 DR. FISHER: May I leave the courthouse, Your  
6 Honor?

7 THE COURT: You are excused, Dr. Fisher.

8 (Witness excused.)

9 THE COURT: Thank you. I'd like to thank you  
10 very much for your service to the Court and your service  
11 to the family.

12 MR. DOLAN: If I may, Your Honor? The family  
13 thanks you for the additional information that you  
14 provided them at this very difficult time and your  
15 compassion.

16 MR. STRAUS: And Children's Hospital thanks you,  
17 as well.

18 MR. DOLAN: Good-bye, Doctor.

19 THE COURT: We will get Dr. Shanahan in.

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TUESDAY, DECEMBER 24, 2013 - 11:25 A.M.

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(Following proceedings held in chambers and to  
remain sealed until further Court Order.)

- **PORTIONS REDACTED** -

1                    TUESDAY, DECEMBER 24, 2013 - 2:30 P.M.

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4                    P R O C E E D I N G S

5                    (Following proceedings held in open court.)

6                    THE COURT: In the matter of Latasha Winkfield  
7 vs. Children's Hospital. Your appearances, please.

8                    MR. DOLAN: Chris Dolan on behalf of the  
9 petitioner, Your Honor.

10                    MR. STRAUS: Doug Straus on behalf of the  
11 respondent.

12                    THE COURT: Mr. Straus, are you prepared to  
13 receive testimony from Dr. Shanahan?

14                    MR. STRAUS: Yes. The respondent will call Dr.  
15 Shanahan as a witness, Your Honor.

16                    THE COURT: May we have her sworn, please.

17                    DR. ROBIN SHANAHAN,  
18 a witness, called by the Respondent, being previously duly  
19 sworn, was examined and testified as follows:

20                    THE COURT: Can you please state and spell your  
21 name for the record.

22                    THE WITNESS: Dr. Robin, R-O-B-I-N, Shanahan,  
23 S-H-A-N-A-H-A-N.

24                    DIRECT EXAMINATION

25 BY MR. STRAUS:



1 Q. Dr. Shanahan, why don't you sort of listen to me  
2 and face the Court as you give your testimony.

3 You are a licensed California physician,  
4 correct?

5 A. Yes.

6 Q. You have been so for more than 30 years?

7 A. Yes.

8 Q. And do you have a specialty?

9 A. Yes, I'm a pediatric neurologist.

10 Q. All right. Are you board certified as a  
11 pediatric neurologist?

12 A. Yes.

13 Q. How long have you been at Children's Hospital?

14 A. I will have been there 30 years this coming  
15 July.

16 Q. In your capacity as a board certified neurologist  
17 associated with Children's Hospital, on December 11th,  
18 2013, were you asked to perform a brain death evaluation  
19 of Jahi McMath?

20 A. I was.

21 Q. What is a brain death evaluation?

22 A. It's an evaluation to determine if the brain has  
23 ceased to function, all parts of the brain, including the  
24 upper cerebral hemispheres, as well as the brain stem, and  
25 that there is failure to breathe off life support.

1 Q. Have you done brain death evaluations  
2 previously?

3 A. Yes, I have done more than 300.

4 Q. Are there recognized criteria that you follow in  
5 performing a brain death elevation?

6 A. Absolutely. Children's Hospital follows the  
7 published guidelines formulated in 2011 by the American  
8 Academy of Pediatrics, as well as the Child Neurology  
9 Society, the Critical Care Society, and many others who  
10 have endorsed those recommendations.

11 Q. I am going to show you Court Exhibit's 3, which  
12 is the official journal of the American Academy of  
13 Pediatrics, "Guidelines for the Determination of Brain  
14 Death in Infants and Children, an Update of the 1987 Task  
15 Force Recommendations." Are those the guidelines that  
16 you're referring to?

17 A. Correct.

18 Q. I'm going to show you Court's Exhibit 2, which is  
19 Table 1 from the same guidelines. Are you familiar with  
20 that?

21 A. Yes.

22 Q. Okay. This is essentially the process that a  
23 physician walks through in performing a brain death  
24 evaluation, is that correct?

25 A. That is the procedure, correct.

1 Q. All right. Did you follow these guidelines and  
2 these procedures in your December 11th, 2013, brain death  
3 evaluation of Jahi McMath?

4 A. Yes, I did.

5 Q. Is the first part of that process to look at the  
6 patient's condition and evaluate whether a brain death  
7 evaluation can be completed?

8 A. Correct.

9 Q. So you looked at matters, such as body  
10 temperature and blood pressure, to eliminate anything that  
11 might preclude the evaluation from going forward?

12 A. Yes.

13 Q. Your conclusion was that you could proceed with  
14 an evaluation?

15 A. Yes, there were no confounding factors to my  
16 evaluation.

17 Q. Then you completed a physical examination of Jahi  
18 McMath on December 11th?

19 A. Yes, I did.

20 Q. You followed the guidelines and the procedures  
21 that you described previously in completing that physical  
22 examination?

23 A. Yes, I did.

24 Q. Did you see any indication of brain activity in  
25 either the upper brain or the brain stem as you performed

1 those various tests on December 11th?

2 A. None.

3 Q. Did you also perform an apnea test on December  
4 11th?

5 A. Yes.

6 Q. What is an apnea test?

7 A. An apnea test is when the patient is removed from  
8 the breathing machine and observed to see if they have  
9 spontaneous respirations.

10 There are blood tests done to document that  
11 carbon dioxide has risen sufficiently in the bloodstream,  
12 which is a potent stimulation to have people breathe, and  
13 it was documented that the carbon dioxide was sufficiently  
14 elevated after approximately 15 minutes and no breathing  
15 had occurred.

16 Q. In other words, the patient is taken off of the  
17 ventilator to see whether the patient can breathe on her  
18 own?

19 A. Yes.

20 Q. In this instance your conclusion is that Jahi  
21 McMath could not breathe without the assistance of the  
22 ventilator?

23 A. Correct.

24 Q. So in addition to these tests that you just  
25 described, did you also review an EEG?

1 A. Yes.

2 Q. And does that measure brain activity?

3 A. Yes.

4 Q. Okay. What did you see in reviewing the EEG for  
5 Jahi McMath on December 11th, 2013?

6 A. There was no brain activity.

7 Q. Did you follow all of the procedures and  
8 guidelines from the American Academy of Pediatrics in  
9 performing this brain death evaluation?

10 A. Yes.

11 Q. What was your conclusion?

12 A. My conclusion was after the required additional  
13 examination by Dr. Heidersbach, as two examiners are  
14 required, that on December 12th that the legal and medical  
15 criteria for brain death were fulfilled.

16 Q. On December 11th your conclusion was that as the  
17 first examining physician, if a second examining physician  
18 corroborated your findings, your conclusion was that Jahi  
19 McMath was dead?

20 MR. DOLAN: Objection as to scope, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: Correct.

23 MR. STRAUS: Nothing further, Your Honor.

24 We would offer Dr. Shanahan's opinion as the  
25 first of the two opinions required by Section 7181 of the

1 Health and Safety Code.

2 THE COURT: The second being Dr. Fisher's?

3 MR. STRAUS: Correct, Your Honor.

4 THE COURT: Mr. Dolan?

5 MR. DOLAN: I have several limited questions, if  
6 I may, please, Your Honor.

7 THE COURT: Sure.

8 CROSS-EXAMINATION

9 BY MR. DOLAN:

10 Q. Did you do a cerebral profusion test to see if  
11 there was blood flowing in the brain?

12 A. No.

13 Q. Have you brought with you all the laboratory data  
14 that you had used and relied upon?

15 A. No.

16 MR. DOLAN: Your Honor, we have an objection at  
17 this time.

18 We believe that without this material the  
19 documents, evidence as it relates to exactly what the --  
20 and we have said this in chambers. What all of the  
21 results of these tests were prior to the exam and the  
22 findings, that the generally accepted medical standards  
23 have not yet been met, and we have not had a full and fair  
24 opportunity to review those for cross-examination  
25 purposes, so I object to her opinion being entered at this

1 time.

2 MR. STRAUS: Your Honor, the blood profusion test  
3 is not required as part of the guidelines, and that was  
4 Dr. Fisher's testimony, so that objection is not  
5 well-founded.

6 With respect to the records, many records have  
7 been provided both to the family and to Mr. Dolan. Dr.  
8 Shanahan testified in detail in camera, and sensitivity to  
9 the family's concerns for privacy regarding the procedures  
10 that she followed, and she established very clearly that  
11 she met all of the guidelines and procedures of the  
12 American Academy of Pediatrics, and that her opinion is  
13 well-founded and it should be received into evidence.

14 MR. DOLAN: Submitted.

15 THE COURT: Anything else, Mr. Dolan?

16 MR. DOLAN: Only that we still haven't had a  
17 chance to review all the records, but submitted.

18 THE COURT: I will take a break for a couple  
19 minutes and then I will come out with a ruling.

20 (Short recess.)

21 THE COURT: The Court is now prepared to make its  
22 ruling on the petition for additional medical treatment.

23 Before I make my ruling, I want to address the  
24 family. I appreciate your tragedy and I appreciate the  
25 pain that you feel. I'm sorry for your loss, and if I

1 could fix it I would, but I can't.

2 I also want to know that I do deeply respect your  
3 religion and your religious beliefs. That has been  
4 evident to me through the filings your attorney has made  
5 and through the discussions that I've had with them and  
6 opposing counsel in chambers.

7 I'm going to try to read my ruling in a way that  
8 explains it to you, so that you understand it in the hopes  
9 that you can accept it.

10 The discussion that the Court's going to make  
11 today is a relatively narrow one, and it's a decision that  
12 is made by courts infrequently. It's only made when there  
13 is a dispute by a family member or a guardian regarding  
14 whether or not someone who has been declared brain dead  
15 is, in fact, brain dead within the meaning of the  
16 California law.

17 The definition of brain death, brain death occurs  
18 as defined by statute. It's pretty cold. It's in black  
19 and white, but those statutes are what says what brain  
20 death is, and that is when your brain ceases to work. You  
21 have irreversible cessation of brain activity, including  
22 in the stem.

23 The statutes, these two statutes, 7180 and 7181  
24 of the Health and Safety Code, require that before that  
25 determination is made two physicians, one an independent



1 physician must make the medical determination of brain  
2 death. When this has been done by two physicians, the  
3 only inquiry the Court is allowed to make is whether the  
4 determination of brain death meets with acceptable --  
5 accepted medical standards.

6           When we started this process, and I opened the  
7 first hearing there were two physicians who submitted  
8 declarations, but given the tragic history of this case,  
9 the Court determined out of deference to the family that  
10 we should have another physician be the second physician  
11 to make that determination, the independent physician, so  
12 that if, in fact, that diagnosis was confirmed, that you  
13 could accept it and perhaps be at peace.

14           So what we have done today is reviewed the  
15 medical records of Drs. Shanahan and Fisher regarding the  
16 determination. It has not been all of the medical records  
17 of Jahi going all the way back, but the medical records of  
18 the determination of brain death, which I believe is what  
19 the Court is required to do.

20           The standards that both Dr. Fisher and Dr.  
21 Shanahan have testified to, I have reviewed those  
22 standards. I have looked at their medical records, and I  
23 have looked at Dr. Fisher's report, and based upon that  
24 report I have concluded that they have made that  
25 determination under accepted medical practice, and there

1 is no relief that the Court can grant you.

2 I'm going to have to, therefore, deny the  
3 petition that Mr. Dolan has filed on your behalf to  
4 provide additional medical care and life support to Jahi.

5 Now this is a very important issue, and I may not  
6 be the last person to speak to it. I believe your  
7 attorney should have sufficient time to seek review of the  
8 appellate courts, if you, the family members in  
9 consultation with Mr. Dolan, believe that's appropriate.

10 So what I'm going to do is to continue the  
11 temporary restraining order through December 30th, 2013,  
12 to 5:00 p.m. to allow Mr. Dolan to seek the review of an  
13 appellate court if he believes that that is appropriate.

14 In absence of a stay by the appellate courts  
15 issued before the expiration of the temporary restraining  
16 order, Children's Hospital will not withdraw any life  
17 sustaining measures, and they will be maintaining the  
18 status quo.

19 However, if an appellate court does not reverse  
20 or stay my ruling by 5:00 p.m. on December 30th, then  
21 Children's Hospital will not be obligated to provide any  
22 medical treatment, or life support, or take any other  
23 life-sustaining measures.

24 This has been very, very hard on you. No one  
25 anywhere would wish this to happen to anyone. And

1 although I cannot help you or fix you, I would hope you  
2 find some comfort in your religion and in the love of your  
3 family, so that you can get through this.

4 Thank you very much and God bless you.

5 We are adjourned.

6 MR. STRAUS: Thank you, Your Honor.

7 THE COURT: Is there anything counsel need to  
8 talk about? We can do it in chambers.

9 Good luck.

10 (Proceedings adjourned at approximately 3:00  
11 p.m.)

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