

1 Douglas C. Straus (Bar No. 96301)  
 2 dstraus@archernorris.com  
 3 ARCHER NORRIS  
 4 2033 North Main Street, Suite 800  
 Walnut Creek, CA 94596-3759  
 Telephone: 925.930.6600  
 Facsimile: 925.930.6620

5 Attorneys for Defendant  
 6 CHILDREN'S HOSPITAL & RESEARCH  
 CENTER AT OAKLAND

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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

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 11 LATASHA WINKFIELD, as an  
 Individual, and as Guardian Ad Litem and  
 12 mother of Jahi McMath,

13 Plaintiff,

14 v.

15 CHILDREN'S HOSPITAL & RESEARCH  
 CENTER AT OAKLAND; DR. DAVID  
 16 DURAND, and Does 1-100, inclusive,

17 Defendants.

Case No. 4:13-cv-05993-SBA

**DECLARATION OF DR. ANN PETRU  
 OPPOSING PETITIONER'S REQUEST  
 FOR COURT ORDER COMPELLING  
 CHILDREN'S HOSPITAL TO PERFORM  
 TRACHEOSTOMY AND INSERT  
 GASTROINTESTINAL TUBE**

Date: 1/7/14  
 Time: 1:00 P.M.  
 Location: Dept. 1, 4<sup>th</sup> Flr.  
 1301 Clay St., Oakland  
 Judge: Hon. Sandra Brown Armstrong

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I, Ann Petru, M.D., hereby declare as follows:

1. I am a physician licensed in the State of California. I am board certified in Pediatric Infectious Diseases. I am on the medical staff at Children's Hospital & Research Center at Oakland (Children's) and have been since 1983. I am also the Chair of the Medical Ethics Committee (the "Committee") at Children's since 1997.

2. The Committee is a medical staff committee is comprised of staff physicians and trainees, representatives of nursing, social services, and administration, palliative and spiritual care, and community members who have experience in health care and/or are parents of children who have had challenging medical conditions that brought them into frequent contact with the health care system. The Committee also has a consultant who is a professional ethicist. The Committee's role is outlined in Children's medical staff guidelines

3. On January 2, 2014 the Committee convened to discuss the demand by the family of Jahi McMath to insert a tracheostomy and gastrointestinal tube into Ms. McMath, who is deceased.

4. After considering all of the issues, the Committee unanimously concluded that it is inappropriate to subject a deceased person's body to medically and ethically inappropriate interventions, and that the hospital and Ms. McMath's health care providers should not be compelled to do so.

5. The Committee also affirmed that the physicians involved in Ms. McMath's care have acted within existing medical, legal, and ethical guidelines with respect to the determination of death by neurologic criteria. Clear medical,

legal, and ethical standards govern what should happen once a person has been declared dead, and it is the Committee's opinion that the physicians and hospital are being compelled to act contrary to those standards.

6. The Committee based its recommendation, in part, on the 2009 President's Council on Bioethics published report on Brain Death entitled *Controversies in the Determination of Death* and concluded:

"[A] careful examination of the conceptual basis for declaring death in the midst of often confusing technological interventions invites deeper reflection on the moral obligations that we bear toward those who have crossed the threshold from life to death.... **It is time to pay the deceased our respects, to mourn their passing-and to do so in the presence of, and with careful regard for, their mortal remains. It is also time to withhold or to withdraw such treatments as would actually constitute mistreatment of the newly dead...** The death of a human being is recognized for what it is, and those who survive are enabled to accept that death with finality and to regard their loved one's mortal remains with respect." (Emphasis added.)

7. The Committee also considered the 2011 published opinion of the American Academy of Pediatrics (AAP) pediatric brain death guidelines affirmed in a publication entitled *Clinical Report—Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations* which states that:

**"It should be made clear that once death has occurred, continuation of medical therapies, including ventilator support, is no longer an option unless organ donation is planned."** (Emphasis added.)

8. The Committee also considered the 2012 American College of Physicians published sixth edition of its *Ethics Manual*, which states in a section on brain death:

**“The irreversible cessation of all functions of the entire brain is an accepted legal standard for determining death when the use of life support precludes reliance on traditional cardiopulmonary criteria. After a patient has been declared dead by brain-death criteria, medical support should ordinarily be discontinued. In some circumstances, such as the need to preserve organs for transplantation or to counsel or accommodate family beliefs or needs, physicians may temporarily support bodily functions after death has been determined.”**  
(Emphasis added.)

8. The Committee affirmed that no conceivable goal of medicine -- preserving life, curing disease, restoring function, alleviating suffering -- can be achieved by continuing to ventilate and artificially support a deceased patient. There are, therefore, not only no medical indications for proceeding with placement of a tracheostomy or gastrostomy tube, but it would also be a violation of commonly accepted medical and ethical standards to proceed with doing so. It is the consensus of the Committee it is a violation of a newly dead person's dignity to continue to provide any interventions beyond those required to accommodate the family's right to a reasonably brief period of time to gather at the bedside to say goodbye and/or perform any rituals before the body is prepared for burial, cremation, or organ donation.

9. Attached as Exhibit A is a true and correct copy of the Case Consultation Summary from the Committee.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this 2nd day of January, 2014 at Oakland, California.

A handwritten signature in cursive script, appearing to read "Ann Petru MD", written in black ink.

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Ann Petru, M.D.

# EXHIBIT A

Medical Ethics Committee  
Case Consultation Summary  
January 2, 2014

The Medical Ethics Committee of Children's Hospital & Research Center at Oakland is a committee of the medical staff that includes staff physicians and trainees, representatives of nursing, social services, and administration, palliative and spiritual care, and community members who have experience in health care and/or are parents of children who have had challenging medical conditions that brought them into frequent contact with the health care system. We have a consultant who is a professional ethicist. The Committee's role is outlined in medical staff guidelines and its discussions are protected by Evidence Code Section 1157.

Until now, there has been no involvement of the Medical Ethics Committee in the case of Jahi McMath, a 13-year-old patient who, after extensive testing by qualified physicians and consultants, was declared dead by neurologic criteria at 3 p.m. on 12/12/2013. Jahi's death was confirmed by an outside consulting pediatric neurologist 11 days later. She was pronounced and confirmed to be dead in accordance with existing medical and legal criteria. Her body remains in the Pediatric Intensive Care Unit on a ventilator, according to instructions from Alameda County Superior Court.

At the time when death was declared, there was no recognized ethical dilemma. Now the Pediatric Intensive Care Unit staff requests ethics consultation to address their concerns, because the hospital and staff are being asked by the family and compelled by the court to provide interventions contrary to professional standards and ethical consensus, creating a clear ethical dilemma and causing tremendous moral distress. The Medical Ethics Committee met to review this case and discuss our recommendations on January 2, 2014. The following recommendations were unanimously supported by the committee.

The Ethics Committee concludes that it is inappropriate to subject a deceased person's body to medically and ethically inappropriate interventions, and that the hospital and Jahi's health care providers should not be compelled to do so.

Existing law on the determination of death, outlined in the Uniform Declaration of Death Act (UDDA), is the basis upon which Jahi was declared dead. The UDDA was endorsed as a consensus document by the President's Commission on Bioethics, and supported by the American Medical Association, the American Bar Association, and the National Conference of Commissioners on Uniform State Laws. In this unfortunate case, Jahi's physicians determined that she suffered irreversible cessation of all brain function and pronounced her dead, in accordance with existing medical, legal, and ethical standards, which provide that a patient may be declared dead by either neurologic or by cardiopulmonary criteria.

The Ethics Committee affirms that the physicians involved in Jahi's care and Children's Hospital & Research Center at Oakland have acted in compliance with existing medical,

legal, and ethical guidelines with respect to the determination of death by neurologic criteria. Further, clear medical, legal, and ethical standards govern what should happen once a person has been declared dead, and it is the Ethics Committee's opinion that the physicians and hospital are being compelled to act contrary to those standards.

In 2009 the President's Council on Bioethics published a report on Brain Death entitled *Controversies in the Determination of Death* and concluded:

"[A] careful examination of the conceptual basis for declaring death in the midst of often confusing technological interventions invites deeper reflection on the moral obligations that we bear toward those who have crossed the threshold from life to death.... **It is time to pay the deceased our respects, to mourn their passing-and to do so in the presence of, and with careful regard for, their mortal remains. It is also time to withhold or to withdraw such treatments as would actually constitute mistreatment of the newly dead...** The death of a human being is recognized for what it is, and those who survive are enabled to accept that death with finality and to regard their loved one's mortal remains with respect." (Emphasis added.)

In 2011, the American Academy of Pediatrics (AAP) reviewed and updated its pediatric brain death guidelines and affirmed in a publication entitled *Clinical Report—Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations* that:

**"It should be made clear that once death has occurred, continuation of medical therapies, including ventilator support, is no longer an option unless organ donation is planned."** (Emphasis added.)

In 2012, the American College of Physicians published the sixth edition of its *Ethics Manual*, which states in a section on brain death:

"The irreversible cessation of all functions of the entire brain is an accepted legal standard for determining death when the use of life support precludes reliance on traditional cardiopulmonary criteria. **After a patient has been declared dead by brain-death criteria, medical support should ordinarily be discontinued. In some circumstances, such as the need to preserve organs for transplantation or to counsel or accommodate family beliefs or needs, physicians may temporarily support bodily functions after death has been determined.**" (Emphasis added.)



Children's Hospital & Research Center at Oakland's long-standing policies with respect to the determination of death are consistent with these standards. The hospital's End-of-Life and Medical Ethics Committees have reviewed, adopted and implemented the AAP Guidelines for the Determination of Brain Death, as initially proposed in 1987 and revised in 2011. The most recent hospital policies regarding Brain Death and End of Life were revised in April 2012 and October 2013, respectively, including guidelines for how long a recently deceased patient may remain on ventilator support to allow the family time to accept brain death. Our guidelines are consistent with the standards of The Joint Commission, which accredits more than 20,000 health care organizations and programs nationally; further, Joint Commission accreditation has been recognized as a condition of licensure by most states.

Jahi's body has remained in the Pediatric Intensive Care Unit for 3 weeks beyond the determination of brain death, far exceeding those standards and accommodations made previously for other families at this hospital, raising significant concerns of justice and fairness and potentially setting a troubling precedent for the future.

The Ethics Committee fully supports the medical team's position that care of Jahi's body should not be escalated in any way. We support their commitment to only providing medically appropriate treatment and to treating Jahi's body with respect. No conceivable goal of medicine -- preserving life, curing disease, restoring function, alleviating suffering -- can be achieved by continuing to ventilate and artificially support a deceased patient. There are, therefore, not only no medical indications for proceeding with placement of a tracheostomy or gastrostomy tube, but it would also be a violation of commonly accepted medical and ethical standards to proceed with doing so. The committee feels great compassion for the care team and the moral distress they are experiencing as a result of being asked by the family and compelled by the court to provide interventions that are against their ethical principles and professional training.

The Ethics Committee can find no existing standards that would support compelling the physicians or hospital to continue interventions in the absence of a plan to donate organs once death has been determined. In fact, the Committee would argue that it is a violation of a newly dead person's dignity to continue to provide any interventions beyond those required to accommodate the family's right to a reasonably brief period of time to gather at the bedside to say goodbye and/or perform any rituals before the body is prepared for burial, cremation, or organ donation.

We appreciate that Jahi's family may think that there is still hope for recovery. Brain death can be a confusing and difficult diagnosis to accept. The Ethics Committee feels great compassion for this family for all they have experienced, but the sad fact is that no medical intervention will bring this beloved child back to life.

In conclusion, the Ethics Committee supports the physicians' and hospital's position that Jahi's body should not continue to be subjected to medically and ethically inappropriate interventions, and her health care team should not be compelled to provide them.