

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

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 LATASHA WINKFIELD, as an
 12 Individual, and as Guardian Ad Litem and
 mother of Jahi McMath,

13 Plaintiff,

14 v.

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

17 Defendants.

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

**DECLARATION OF DR. DAVID DURAND
 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, 4th Flr.
 1301 Clay St., Oakland
 Judge: Hon. Sandra Brown Armstrong

I, David Durand, M.D., hereby declare as follows:

1. I am a physician licensed in the State of California. I am board certified in pediatrics as well as neonatal-perinatal medicine. I have been on the medical staff at Children's Hospital & Research Center at Oakland (Children's) for almost 30 years, where I have practiced in the newborn intensive care unit, and worked closely with the physicians in the pediatric intensive care unit, providing care to critically ill infants and children. I am currently the Senior Vice President and Chief Medical Officer at Children's, and I continue in active medical practice at Children's as well.

2. Children's is adamantly opposed to any court order purporting to require that the Hospital perform a tracheostomy procedure and/or insert a gastrointestinal tube into Jahi McMath.

3. First and tragically, Ms. McMath is dead. Physicians are committed to the care of the living, and providing comfort for the dying. Other than in very specific instances, such as when performing an autopsy or to remove organs for transplant, we do not perform surgery on the dead. Pursuant to the current order requiring that Children's maintain the status quo, Ms. McMath's body is maintained on a ventilator, receives intravenous fluids and vasopressin medication to keep the body relatively stable.

4. It is a fundamental medical principle that physicians do not undertake procedures without at least the potential for benefit. Ms. McMath is dead by all medical and legal criteria. No surgery will provide comfort to her or offer any other benefit to her.

5. The nurses and other non-physician medical staff affiliated with Children's are very demoralized by the ongoing court-imposed requirement that they provide care for Ms. McMath's deceased body. Constant public scrutiny coupled with the absurd notion that Ms. McMath's body will somehow come back to life has added to this burden. A court order compelling them to attend or perform surgery involving a dead body is unfathomable to our medical team.

6. To insist that surgery be performed on Ms. McMath would only add to the cruel illusion that she is not dead.

7. Moreover, Children's is a nonprofit entity and cannot perform any medical procedures. The procedures demanded here must be performed by a physician, not Children's. Medical staff members are not employed by the hospital to perform medical procedures. Some of us are employed, as am I, for administrative purposes. As Senior Vice President and Chief Medical Officer, it is my belief that no medical staff member will perform these procedures and Children's cannot compel them to do these procedures.

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.


David J. Durand, M.D.